

Building Societies sourcebook

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Chapter 1

Introduction

1.1 Application and overview

Application

1.1.1
PRA

R The Building Societies sourcebook (*BSOCS*) applies to all *building societies*.

Purpose

1.1.2
PRA

G This chapter describes the key financial and lending risks to which *societies* are exposed and sets out the framework within which the *PRA* will supervise the treasury activities of *societies*. It includes details of the five treasury "approach" categories ("Administered", "Matched", "Extended", "Comprehensive" and "Trading") applied, as well as details of the three approaches to lending activities ("Traditional", "Limited" and "Mitigated"). The chapter emphasises the respective responsibilities of boards and management for monitoring and controlling financial risks and lending.

Other applicable provisions

1.1.3
PRA

G *Societies* should note that they must also comply with the applicable prudential *rules* in *GENPRU* and *BIPRU*. *Societies* should refer to *GENPRU* and *BIPRU* for full details of these *rules*.

1.1.4
PRA

G Unless otherwise stated, references in this sourcebook to "*society*" (except those that relate to **■ BIPRU 12**) are to "*society*" groups, consolidated to include all *subsidiary undertakings*. For the avoidance of doubt, any *undertakings* in the *society's* group that are subject to the requirements of **■ BIPRU 12** must comply with those requirements on a solo basis.

1.2 Supervisory standards for treasury activities

Setting risk limits

1.2.1

PRA

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Under section 5 of the 1986 Act, a *society's* principal purpose is that of making loans which are secured on residential property and are funded substantially by its members, not undertaking, and trading in, financial risk for profit. *Societies* should therefore adopt a risk-averse approach to maturity mismatch and to structural risk management. A degree of maturity mismatch and structural risk is inherent in normal *society* operations, but boards of *societies* ("boards") should set risk limits which either:

- (1) ensure that, as far as possible, exposures to changes in interest rates are minimised; or
- (2) where interest rate positions are to be taken, restrict potential reductions in income or economic value, estimated under robust stress testing scenarios, to levels which would not compromise the current or future viability of their *societies*.

1.2.2

PRA

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Societies should aim to eliminate, as far as is practicable, all exposures to risk arising from movements in currency exchange rates.

1.2.3

PRA

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- (1) As explained in ■ BSOCS 5.2.1 G, a *society's* system for financial risk management should be adequate. The policy statement envisaged in ■ BSOCS 5.2.4 G should be appropriate for the *society's* business needs and the complexity of its existing and proposed treasury activities.

- (2) The PRA has devised five models for financial risk management and treasury operations, described as supervisory treasury approaches, of increasing sophistication, to assist *societies*. The approaches are described as "Administered", "Matched", "Extended", "Comprehensive" and "Trading". A *society* that conducts its treasury activities in accordance with the most suitable (for it) of these five models, can readily demonstrate that it complies with the requirements of ■ SYSC 4.1.1 R, ■ SYSC 7.1.2 R and ■ SYSC 7.1.4 R in the context of financial risk management. But these models are neither mandatory nor exhaustive. Guidance on the characteristics of each approach is set out in

■ BSOCS 1.5.

1.3 Supervisory standards for managing risks in the lending book

1.3.1

PRA

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Under section 6 of the 1986 Act, *societies* are required to ensure that a minimum of 75% of their commercial assets is fully secured on residential property. Since residential lending will always be such a significant part of a *society's* business, it is essential that the risks arising from further concentrations within the total lending book are properly managed and mitigated to align with the board's risk appetite.

1.3.2

PRA

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Accordingly, *societies* should adopt formal, board-approved lending policy statements that include limits on the type of lending that will be undertaken (both as a proportion of periodic flows and of stocks), as well as setting out the key underwriting policies and controls. As with financial risk limits, boards should aim to:

- (1) ensure that, as far as possible, credit risks arising from lending are aligned with management risk appetite through careful underwriting; and
- (2) ensure that any additional risk taken is appropriately priced and managed so that loss levels under stressed conditions would not compromise the current or future viability of their *societies*.

1.3.3

PRA

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The policy statement envisaged in ■ BSOCS 1.3.2 G should be appropriate for the *society's* business needs and the complexity of its existing and proposed lending activities. The PRA has devised three models for lending book management, described as supervisory lending approaches, of increasing sophistication, to assist *societies*. The approaches are described as "Traditional", "Limited" and "Mitigated". A *society* that conducts its lending activities in accordance with the most suitable (for it) of these three models can readily demonstrate that it complies with the requirements of ■ SYSC 4.1.1 R and ■ SYSC 7.1.2 R, in the context of loan book management. But these models are neither mandatory nor exhaustive. Guidance on the characteristics of each approach is set out in ■ BSOCS 2.

1.4 Supervisory discussions on change of "approach"

1.4.1

PRA

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With regard to any of the five approaches to treasury risk and financial risk management, or the three approaches to managing the lending book, the *PRA* anticipates that *societies* will wish to develop further their expertise, and that a change of "approach" may be necessary. In this respect, the "approach" categories should be seen, not as discrete compartments, but rather as stages in the continuous evolution of risk management and systems, with a change of "approach" marking a milestone in that progress. *Societies* should develop their risk management and systems to the level appropriate to support the scale and nature of their business and the *PRA* will be encouraging *societies* to enhance these capabilities where this is considered to be necessary.

1.4.2

PRA

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Whilst the "approach" benchmarks are not binding and are guidance only, the process of moving between approaches provides a useful opportunity for the *PRA* to review a *society's* progress, and to satisfy itself that policies, limits and systems are appropriate for the activities planned.

1.4.3

PRA

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Any *society* which wishes to move between the five approaches to treasury risk and financial risk management, or the three approaches to managing the lending book, should contact the *PRA* at an early stage. The *PRA* will wish to be satisfied that the *society* has the requisite expertise, management information systems, accounting systems and controls before any significant change in the *society's* treasury activities or lending policy is implemented.

1.5 Supervisory approaches to treasury management

1.5.1

PRA

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■ BSOCS 1.5 to ■ 1.10 provide *guidance* on the five models, or supervisory approaches, to treasury management described in ■ BSOCS 1.2.3 G. Where *societies* have treasury operations in *subsidiary undertakings*, these should adopt the same approach category as that of the parent *society*. An outline description of each approach is set out in ■ BSOCS 1.6 to ■ 1.10, and tables at the end of each of Chapters 3 to 5 summarise the key features.



1.6 "Administered" approach

1.6.1

PRA

G

Societies in the "Administered" approach category should have balance sheets where loan assets and funding liabilities are entirely in Sterling and predominantly (>95%) subject to administered rates. In general, it is anticipated that the "Administered" approach will tend to suit small or very small *societies* where balance sheet management is typically undertaken by the Chief Executive in conjunction with the board.

1.6.2

PRA

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Societies in this category should not hold any treasury investments, or issue any funding instruments, which contain complex structured optionality, whether this optionality relates to interest payable or receivable, instrument term or any other variable.

1.6.3

PRA

G

It is likely to be appropriate for a *society* that falls into this category to apply for a *simplified ILAS waiver*.

1.7 "Matched" approach

1.7.1

PRA

G

- (1) *Societies* adopting the "Matched" approach should have balance sheets where assets and liabilities are entirely in Sterling and use hedging contracts (or internal matching of assets and liabilities with similar interest rate and maturity features) to neutralise the risk arising from loans or funding other than at administered rates, on a tranche by tranche, product by product basis.
- (2) This approach is characteristic of small to medium sized *societies*, with limited treasury skills or resources. Typically the Chief Executive of such *societies* will be supported by a Finance Director or Finance Manager, and report direct to the board on treasury matters (or through an appropriate committee).

1.7.2

PRA

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The policies of such *societies* can allow use of standard hedging products for transactions permitted by section 9A of the 1986 Act, for example:

- (1) interest rate *swaps*; and
- (2) plain vanilla *over the counter* ("OTC") options such as swaptions, caps, collars and floors (options purchased only);

for the purpose only of matching individual products and within the exemptions permitted by section 9A. Structural hedging of the whole balance sheet should not be permitted.

1.7.3

PRA

G

Risk management for such *societies* should be achieved internally through:

- (1) matching reports (detailing individual products and the hedging instruments associated with them); and
- (2) gap analysis; for gapping purposes, reserves will need to be treated as having no fixed repricing date, and gap limits should be set at the minimum level required to give flexibility in timing the hedges for individual mortgage and investment products, with some allowance for residual risks (those too small to be economic to hedge) and for holdings of fixed rate liquid assets. *Basis risk* should be minimised by setting cautious limits for fixed rate, bank base rate and any other market rate assets and liabilities.

- 1.7.4
PRA
- G Gap monitoring reports should be updated and considered by the board at least monthly. By implication, *societies* adopting this approach should not be taking an interest rate view for the purposes of determining a hedging strategy.
- 1.7.5
PRA
- G *Societies* in this category should not hold any treasury investments, or issue any funding instruments, which contain complex structured optionality, whether this optionality relates to interest payable or receivable, instrument term or any other variable.
- 1.7.6
PRA
- G It is likely to be appropriate for a *society* that falls into this category to apply for a *simplified ILAS waiver*.

1.8 "Extended" approach

1.8.1

PRA

G

The principal difference between the "Matched" and the "Extended" approaches lies in the capability to measure and hedge structural risk across the whole balance sheet, including reserves, rather than just hedging individual transactions. The approach will thus allow a *society* to allocate reserves to specific repricing bands representing a considered view of the characteristics of those reserves, and/or the assets deemed to "represent" them, or to manage interest rate gaps as part of a strategy for hedging the endowment effect of interest free reserves against adverse interest rate movements. Risk analysis should also enable it to position its balance sheet to take advantage of a particular interest view.

1.8.2

PRA

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The PRA expects that some *societies* on the extended approach will, subject to being able to satisfy the relevant conditions, elect to apply for a *simplified ILAS waiver* whilst others may choose to remain as *standard ILAS BIPRU firms*. For a *society* that is a *standard ILAS BIPRU firm*, the PRA will discuss with the *society* the maximum level of wholesale funding that the *society* should hold. A *society* that wishes to operate the *simplified ILAS* approach will need to satisfy the relevant conditions in ■ BIPRU 12.6, including those relating to the minimum percentage of total liabilities accounted for by retail *deposits*.

1.8.3

PRA

G

A *society* on the extended approach can potentially fund and hold assets denominated in Sterling, Euros or US dollars, whether it is a *simplified ILAS BIPRU firm* or a *standard ILAS BIPRU firm*.

1.8.4

PRA

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A *society* adopting the extended approach should:

- (1) adopt policies and systems to enable it to undertake the hedging of individual transactions within the context of an overall strategy for structural hedging, based on detailed analysis of its balance sheet; and
- (2) use the output of that analysis to enable it to position its balance sheet to take advantage of a particular interest view.

1.8.5

PRA

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Management of interest risk for such *societies* will typically be controlled by the board acting through an Assets and Liabilities Committee ("ALCO") or equivalent sub-committee, which will normally be responsible for agreeing any interest rate view. Reporting to the ALCO, there will typically be a Treasurer running a small treasury department with appropriate segregation between dealing and settlement activities.

1.8.6

PRA

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Hedging instruments available to be authorised by the board will be the same as for the "Matched" approach, with the addition of (as far as permitted by section 9A):

- (1) *FRAs/futures*; and
- (2) foreign exchange *swaps/forward contracts/options* (purchase only).

1.8.7

PRA

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Risk management systems should be based on full balance sheet gap analysis, possibly supplemented by static simulation.

1.8.8

PRA

G

Gap limits could allow leeway for risk positions, to be controlled by sensitivity limits covering potential changes in both earnings and economic value.

1.9 "Comprehensive" approach

1.9.1

PRA

G

The principal differences between the "Extended" and the "Comprehensive" approaches lie in:

- (1) the depth and quality of the risk management systems put in place to monitor and control structural risk;
- (2) the frequency of analysis undertaken; and
- (3) the currencies in which treasury operations would be undertaken.

1.9.2

PRA

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Like the extended approach *societies*, comprehensive approach *societies* will manage risk using a board/ALCO/Treasurer reporting structure, but the latter will typically subdivide the treasury department further with a separate "middle office" risk management function, segregated from "front office" (dealing) and "back office" (settlement/accounting).

1.9.3

PRA

G

Hedging instruments available for use under agreed board policy will include those for the extended approach plus (as far as permitted by section 9A):

- (1) complex interest rate *swaps*;
- (2) complex interest rate caps/collars/floors (purchase only);
- (3) House Price Index *derivatives*; and
- (4) credit *derivatives*.

1.9.4

PRA

G

Risk analysis should extend beyond static gap/static sensitivity analysis to (for example):

- (1) dynamic simulation (such as projecting forward balance sheet elements and simulating the impact of different interest rate scenarios);
- (2) duration for individual portfolio elements, or present value of a basis point move calculations, to highlight sensitivity to non-parallel shifts in the yield curve; and
- (3) *value at risk*, using correlation/historic simulation and/or Monte Carlo simulation;

the impact on both earnings and economic value being assessed internally on a very regular basis.

1.9.5

PRA

G

Risk positions could reflect an interest view, subject to sensitivity limits set by the board/ALCO and incorporating *basis risk* assessment/control. Foreign exchange mismatch (i.e. exchange rate exposure) should be subject to appropriate risk management over foreign exchange movements.

1.9.6

PRA

G

It is likely to be appropriate for a *society* on the comprehensive approach to be a *standard ILAS BIPRU firm*.

 1.10 "Trading" approach

1.10.1

PRA

G

The "Trading" approach is a category for those *societies* which wish to take advantage of the ability to trade in securities. Essentially, those *societies* will adopt the comprehensive approach for the purpose of managing interest risk arising in their banking book, but with additional policies, financial instruments, systems and expertise for managing the *market risks* inherent in running a separate *trading book*.

1.10.2

PRA

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Such a *society* should control the additional *market risks* through a Market Risk Committee of the board and risk management systems should include complex portfolio management, option pricing and *value at risk* models.

1.10.3

PRA

G

It is likely to be appropriate for a *society* on the trading approach to be a *standard ILAS BIPRU firm*.



1.11 Supervisory approach to managing the lending book

1.11.1

PRA

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■ BSOCS 1.12 to ■ 1.14 provides *guidance* on the three models, or supervisory approaches, to managing the lending book described in ■ BSOCS 1.3.3 G. An outline description of each approach is set out at ■ BSOCS 1.12 to ■ 1.14 and the Tables at the end of ■ BSOCS 2 summarise the key features.

1.12 "Traditional" lending approach

1.12.1

PRA

G

Societies in the "Traditional" lending approach category should restrict their lending activities mainly to prime quality residential mortgages for owner-occupiers. The traditional approach should suit small or very small *societies* where lending decisions are fully underwritten on an individual basis, typically by the Chief Executive or a direct report, under clearly delegated mandates.

1.12.2

PRA

G

Societies adopting this approach should have board-approved lending policies that:

- (1) set a minimum limit of at least 85% of loan book for prime owner-occupied mortgages (subject to a mortgage indemnity guarantee or other recognised collateral for loan to values (LTV) in excess of 80%);
- (2) limit other types of lending within the maximum 15% balance to prime owner-occupied >80% to <90% LTV without external insurance, prime buy to let, shared ownership, social landlords and secured commercial lending (including fully secured on land) only;
- (3) require the use of approved independent valuers (in this context, independent valuer has the same meaning as in ■ BIPRU 3.4.66 R (2));
- (4) require stress tests to be undertaken at least annually to identify potential shortfalls in the value of security and allow it to review the appropriateness of its lending limits; and
- (5) limit exposure to connected counterparties to <10% *capital resources*.

1.13 "Limited" lending approach

1.13.1

PRA

G

The "Limited" lending approach is suitable for *societies* that have a slightly higher appetite for credit risk than those on the traditional approach. *Societies* adopting this approach should control the amount of risk assumed through a comprehensive system of policy limits. These limits will prevent the *society* from becoming over-exposed to non-traditional lending, and will take account of the differing risks associated with the type of lending and the type of security held. In general it is anticipated that the limited approach will tend to suit medium-sized and larger *societies* where:

- (1) there is operational segregation between underwriting and the review/audit/compliance functions which check compliance with policy and legislation and which review lending/underwriting quality;
- (2) there is operational segregation between underwriting and the mortgage sales function;
- (3) lending decisions are fully underwritten on an individual or systematically credit-scored basis, under clearly delegated mandates; and
- (4) relevant specialist expertise is employed for non-traditional lending, with access to appropriate sources of external and internal information on how risks are developing.

1.13.2

PRA

G

Societies adopting this approach should have board-approved lending policies that:

- (1) set a minimum limit of at least 65% of total loan book for prime owner-occupied mortgages;
- (2) set sub-limits, both in terms of total loan book and lending in a twelve-month period, for other types of lending within the maximum 35% balance; and
- (3) require stress-testing and scenario analysis of outcomes to be undertaken at least semi-annually.

1.14 "Mitigated" lending approach

1.14.1

PRA

G

The "Mitigated" lending approach is suitable for *societies* that undertake a diverse range of lending. *Societies* adopting this approach should mitigate their risk through sophisticated credit risk management systems that control the amount of risk assumed, both through a comprehensive system of policy limits and through the operation of stochastic risk models. In general it is anticipated that the mitigated approach will tend to suit only the largest *societies* where:

- (1) there is a segregated and independent risk function reporting directly to the board (or a board-level committee);
- (2) there is full segregation between credit underwriting and the review/audit/compliance functions which check compliance with policy and legislation, and which review lending/underwriting quality;
- (3) underwriting is independent of mortgage sales function;
- (4) lending decisions are underwritten on an individual or systematically credit-scored basis (but subject to manual override), under clearly delegated mandates; and
- (5) relevant specialist expert teams are employed for non-traditional lending, with access to appropriate sources of external and internal information on how risks are developing.

1.14.2

PRA

G

Societies adopting this approach:

- (1) should have board-approved lending policies that set appropriate limits, both in terms of total loan book and lending in a twelve-month period, for each type of lending; and
- (2) should undertake full econometric risk analysis, stress-testing and scenario analysis of outcomes at least quarterly.



1.15 Review of financial risk management approach and assessment of lending approach

1.15.1

PRA

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Societies should perform an initial review of their current financial risk management approach in the light of the guidance in *BSOCS* and undertake a self-assessment of controls over their lending book in the light of the *BSOCS* lending criteria. Having done so, the *society* should inform its supervisor at the *PRA* in writing of the approaches that it considers are the ones most suited to its systems and controls for managing financial and lending risks, provide details of any features of its systems, controls or activities that fall outside the parameters of those approaches, and discuss with its supervisor what, if any, actions are needed on the part of the *society* to address these. This should be completed by 1 October 2010.

1.15.2

PRA

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The *PRA* recognises that, where the need to make changes to funding profile, treasury investments or lending profile to achieve compliance with *SYSC* is identified, it is likely that the move to achieve this will be gradual. The *PRA* will discuss with each *society* an appropriate period of time over which any realignment should be undertaken.

1.15.3

PRA

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Subsequent to this initial review, *societies* should continue to review the suitability of their allocated approaches as appropriate and speak to their supervisor at the earliest opportunity if they anticipate that their systems, controls or activities will fall outside the parameters of those approaches.

1.16 Interpretation

1.16.1

PRA

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In this sourcebook "administered rate" is defined as a rate of interest (which may be applied to lending or funding) which is, to the extent compatible with regulatory requirements and the general law, set from time to time at the discretion of the *society* and is not geared automatically to changes in an external reference rate, subject to the following:

- (1) a *society* operating under the administered or matched approaches to financial risk management that chooses to set a contractual floor or cap should set nothing other than a floor (minimum rate receivable) on a rate charged on mortgages and/or a cap (maximum rate payable) on a rate payable to retail savers; these are the only limitations that may be applied to administered rate products allocated against the minimum policy limit; and
- (2) a *society* not operating on either of the approaches in (1) may choose to include any guarantee in combination with an administered rate; it would however be expected to set appropriate sub-limits to control the level of basis and re-pricing risk taken, and to be able to evidence that it has assessed the cumulative impact of all such guarantees on its ability to vary rates generally as part of its regular stress and scenario testing programme.

1.16.2

PRA

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In this sourcebook "total loan book" is defined as total outstanding lending whether secured on property or unsecured.

1.16.3

PRA

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For the purposes of ■ BSOCS 2.6.3 G, loans to companies or partnerships secured on buy-to-let property should always be considered commercial.

1.16.4

PRA

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In this sourcebook reference to the term of any funding or treasury investment (including those held to comply with ■ BIPRU 12) should in all cases be taken to mean the residual date to maturity.

1.16.5

PRA

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The status of the provisions in BSOCS is indicated by icons containing the letters R or G. Please refer to chapter six of the Reader's Guide for further explanation about the significance of these icons. The Reader's Guide can be found at <http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide>

Chapter 2

Lending

2.1 Introduction

2.1.1

PRA

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- (1) This chapter sets out *PRA guidance* on the management by *societies* of their lending, using the three approaches to lending set out in ■ BSOCS 1, in order to enable them to comply with the requirements in ■ SYSC 4 to ■ SYSC 7. The chapter outlines factors the *PRA* will consider when assessing whether a *society* meets these requirements in relation to lending risk management.
- (2) A list of the types of lending suitable for *societies* managing risk according to each of the three levels of lending risk management, together with appropriate controls, is set out in the tables at ■ BSOCS 2.5.2 G and ■ BSOCS 2.6.3 G .

2.2 Risks of mortgage lending

Affordability

2.2.1

PRA

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The primary risk associated with mortgage lending is that the borrower will be unable or unwilling to service the loan. In this respect, some types of mortgage will present greater risks than others. In particular, risks are likely to be increased for lenders (and in some cases also for consumers):

- (1) where repayment commitments represent an unusually high percentage of disposable income; or
- (2) where an unusually large proportion of the borrower's income is variable; or
- (3) where the borrower has an impaired credit history.

2.2.2

PRA

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Societies should ensure that they consider the risk profile of the different types of lending that they undertake, put sub-limits and other mitigating controls in place where they consider it appropriate and price their lending to reflect the perceived residual risks.

2.2.3

PRA

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- (1) *Societies* should also consider when product features such as fixed mortgage rates expire and whether to set a maturity profile. If large numbers of mortgage loans revert to, for example, another base rate or a standard variable rate (SVR) simultaneously the *society* may experience operational strain dealing with the associated administration and customer queries.
- (2) Also, if interest rates have changed significantly, *societies* may need to respond to a significant number of customers experiencing payment shock at the same time. In such a situation a *society* may experience a profitability strain resulting from abnormally high redemption levels.

2.2.4

PRA

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Whilst non-sterling mortgages expose a *society* to foreign exchange risks (covered further within ■ BSOCS 3 to ■ BSOCS 5) as well as all other risks which normally attach to mortgage lending, it may also expose the borrower to exchange rate risk which, if it crystallises, impacts on their ability to afford the loan. *Societies* (other than those with the most sophisticated lending risk management controls) should therefore set very conservative limits for such business, and confine such loans to borrowers with income denominated in the relevant currency.

2.2.5

PRA

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Societies must also comply with the general law and other regulatory requirements, including those in *MCOB* and the *Principles* for Businesses, relating to affordability and other aspects of granting a mortgage.

Valuation of security

2.2.6

PRA

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If a mortgage fails to perform, a *society* ultimately relies upon the value of its security to safeguard its interests, so the reliability of the value is important. The integrity, competence and expertise of the valuer are important, particularly where experience in more complex valuation areas (for example, related to commercial lending) is needed.

2.2.7

PRA

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In addition to general property price movements, significant local price variations can occur. Therefore lending outside a *society's* home area (or for larger *societies* lending on overseas property) can have an increased risk if local price drivers are not fully appreciated. *Societies* should consider this in setting their lending policy, balancing the potential risks against the advantages of lowering the concentration risk to which they might be exposed.

Automatic valuation models (AVMs)

2.2.8

PRA

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If a *society* proposes to use an automatic valuation model (AVM), either as part of its loan origination process or subsequent revaluation for credit decision purposes, it should do so within the terms of clear and well-considered policies. In doing so it should note that, in the calculation of the *credit risk capital component*, in relation to risk weights assigned to exposures secured by mortgages on residential property, ■ BIPRU 3.4.77 R requires that the "property shall be valued by an independent valuer at or less than market value" and that an independent valuer is defined in ■ BIPRU 3.4.66 R as a "person who possesses the necessary qualifications, ability and experience to execute a valuation and who is independent from the credit decision process." This means that, for those purposes, the use of AVM output must always fall within a process leading to a valuation that can be ascribed to an independent valuer.

2.2.9

PRA

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The *society* should also consider the limitations of AVMs before making a decision regarding whether an AVM is appropriate, particularly when the valuation plays an important role in the calculation of capital requirements. In determining a reasonable approach to AVMs a *society* should consider that:

- (1) all AVMs have estimation errors;
- (2) there are strengths and weaknesses of various AVMs. For example, many AVMs could be well suited to urban areas with many similar properties, but most will find it difficult accurately to value a property with little in common to those close by, for example in rural areas;
- (3) AVMs should not be used to value non-domestic properties.

2.2.10

PRA

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The higher the LTV, the greater the risk that an over-valuation of the property could result in the *CRD* risk weighting being mis-stated. *Societies* should be particularly careful in those situations.

2.2.11

PRA

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If a *society* chooses to use AVMs, its lending policy should set out clearly when it intends to do so. For example, it may set a maximum LTV or loan amount. A *society* should also have procedures for reviewing its use of AVMs based on experience and market developments.

2.2.12

PRA

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Statistical methods, such as house price indices or AVMs, can also be used to monitor the value of a property, identify property that needs revaluation and amend valuations assigned to a property. The detailed rules concerning monitoring of property values for the purposes of calculating the *credit risk capital component* are contained in ■ BIPRU 3.4.66R to ■ BIPRU 3.4.71G. If AVMs are used in this way, the principles of AVM use are the same as for loan origination and *societies* should consider the appropriateness of AVMs to obtain a prudent value.

Non-traditional lending

2.2.13

PRA

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- (1) Non-traditional lending can present additional risks, when compared with the more conventional prime owner-occupied lending model. *Societies* should recognise this within their risk assessment and management processes, procedures and lending policy.
- (2) ■ BSOCS 2.2.14 G to ■ BSOCS 2.2.21 G describe factors that *societies* should take into account in managing the risks associated with non-traditional lending; these are not exhaustive and not all points will be relevant to all *societies*.

Sub-prime lending

2.2.14

PRA

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Whilst the risk of default on sub-prime owner-occupied lending is initially greater than that for prime (all other things being equal) the *PRA* recognises that sub-prime borrowers may demonstrate affordability over time. In these circumstances, the *PRA* is content for *societies* to reclassify seasoned sub-prime lending as prime after five years (at the LTV at origination), if they wish to do so.

Buy-to-let

2.2.15

PRA

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- (1) Whilst buy-to-let (BTL) lending is secured on residential property and therefore falls within the Building Societies Act nature limit (the statutory requirement that 75% of lending should be secured on residential property), it presents different risks to those of conventional residential mortgages to owner-occupiers.
- (2) The *PRA* expects Boards and Management to recognise that existing experience and skills in residential mortgage lending do not simply transfer to buy-to-let and that the potentially significant differences in risk profile mean that different post-completion administration arrangements will be appropriate.

2.2.16

PRA

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A *society* undertaking BTL lending should, when determining its risk appetite, have regard to the underlying commercial nature of this type of business. Relevant factors which *societies* should consider and address within their lending policy include:

- (1) the degree to which the investor borrower is dependent on the cashflow performance of the investment property to service the loan;
- (2) the basis on which the security is valued and rental income is assessed for underwriting purposes (including how rental voids are treated);

- (3) what tenancy basis and kinds of BTL are acceptable;
- (4) information required to assess the extent of the investor-borrower's broader exposure to the BTL sector (e.g. total number of properties in portfolio and whether encumbered or unencumbered);
- (5) the maximum permitted exposure to an investor-borrower or connected investor-borrowers (which may be based on value and/or number of investment properties held); and
- (6) what post-completion loan administration is required (and the extent to which this is appropriate and proportionate to the underlying commercial nature of BTL lending) including:
 - (a) monitoring of exposures on a scheduled basis (e.g. annual review);
 - (b) requirements for the investor-borrower to provide financial information on a periodic basis which enables the lender to have an appropriate understanding of their overall exposure.

Equity release: Lifetime Mortgages and Home Reversion Plans

2.2.17

PRA

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- (1) *Lifetime mortgages* create a residential mortgage exposure (and fall within the nature limit) and also carry a morbidity risk associated with the potential deterioration of health of the borrower. In addition, those with interest roll-up features carry a mortality risk associated with the longevity of the loan, so their risks differ from conventional lending risks. Because of these risk characteristics the *PRA* would not expect limited approach *societies* to offer such products where any applicant is under 65, nor to extend loans greater than 25% LTV for borrowers of 65. If they wish to offer larger LTV advances to older borrowers they should ensure that they have appropriate actuarial expertise to enable them to assess the associated risks.
- (2) *Home reversion plans* are likely to carry even more complex risks, since they not only have an actuarial risk but also expose lenders directly to variations in the market value of the property with which the individual plan is associated. As such, *societies* should enter those markets only if they have more sophisticated lending management control structures. In these circumstances, *societies* should set very conservative limits on the amount of such business that can be done.

Commercial lending

2.2.18

PRA

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- (1) Commercial property may require different valuation skills to domestic property, and historically has a higher default rate than conventional owner-occupied lending. It may or may not fall within the nature limits, depending on whether the business of the commercial enterprise is to provide residential property.
- (2) Commercial lending can be divided into three broad types, owner occupied, commercial developments and investments. Each of these broad types typically has different associated risk profiles and is likely to require different risk management capabilities.
- (3) *Societies* on different lending approaches are likely to have different risk management capabilities with respect to the three types. *Societies* on the

traditional approach should restrict themselves to owner-occupied commercial lending. The *PRA* would expect that *societies* on the limited approach might have the risk management capabilities to undertake small scale residential development (ten properties or less) or small scale commercial investments.

- (4) Commercial lending may be "lumpy" in character, particularly that falling into the commercial investments category. When considering the risks associated with any commercial lending, *societies* should be mindful of the absolute size of individual loans, their absolute total exposure to commercial lending and the extent to which they are exposed to concentration risk, whether geographic concentration, concentration to particular counterparties or particular sectors of the economy.
- (5) *Societies* should also be mindful of the additional complexity that may attach where commercial property is owned by a special purpose vehicle or where it is financed by a syndicated loan. *Societies* on either the traditional or limited approach should not undertake any syndicated lending.
- (6) *Societies* should also ensure that when undertaking commercial lending they establish that a realistic alternative use exists for the property, in case they later have to enforce the security.

Social landlords (including Registered Social Landlords)

2.2.19

PRA

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- (1) Lending to housing associations can be difficult to evaluate and for smaller *societies* these can represent significant sized loans. Whilst loans may be low LTV, the saleability of underlying properties varies and would usually not be with vacant possession. As such, *societies* considering such lending should consider not only the portfolio valuation but also the financial management record of the landlord, including arrears management and losses through voids. The skills necessary to undertake such assessments are those of underwriting commercial lending rather than residential lending, combined with a good understanding of the sector and its risk profile.
- (2) As such, *societies* should ensure that they have appropriate underwriting skills for this type of lending and that they set a maximum proportion of their lending book for these loans, to ensure that they retain a balanced portfolio.

Shared ownership lending

2.2.20

PRA

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Shared ownership lending can be more complex than mainstream mortgage lending. *Societies* will need to assess the borrower's ability to afford the loan, which may be more complicated than for traditional lending. In addition, the value of collateral may be affected by conditions imposed by the social landlord on resale, for example to market the property only to those groups identified as a priority by the local authority. Also, administering such lending is likely to be more resource-intensive than conventional lending, since the mortgage agreement is three-way and relationships with both the borrower and social landlord need to be maintained. Particular matters that *societies* should consider include (but are not necessarily restricted to) the following.

- (1) In the event of default, if monies raised by repossession and sale of the share purchase are insufficient to cover the debt the *society* has protections allowing it to recoup certain losses from the social landlord's share of the property so long as they have complied with required procedures at the time of extending the original and any subsequent amounts, and before taking action for arrears.

Societies should ensure that they understand what protection is available and have procedures to ensure compliance with procedural requirements.

- (2) Security is held over the leasehold on the owned portion of the property, not the freehold. If the borrower fails to pay rent to the social landlord, the lease may be terminated by the landlord; if terminated then security for the loan would be lost. Whilst a social landlord must inform a *society* and give it time to remedy the breach to retain the security (costs recoverable under the mortgage protection scheme) *societies* should consider how they will manage such risk situations and decide as a matter of policy which if any costs they will consider paying.

2.2.21**PRA****G**

Given the added complexity and costs of administering such lending, *societies* should set a maximum proportion of their lending book for such loans, to ensure that they retain a balanced portfolio.

2.3 Board and management responsibilities

- 2.3.1**
PRA **G** To comply with ■ SYSC 4.1.1 R and ■ SYSC 7.1.2 R, *societies* should have a lending policy. This should be agreed and formally approved by the board and be consistent with the *society's* strategic plan and its financial risk management policy statement.
- 2.3.2**
PRA **G** The board and management should take steps to ensure that staff involved in all aspects of lending are aware of the lending policy, both on an ongoing basis and particularly where the lending policy has been changed. What steps would be most appropriate to achieve this will depend on the number of staff concerned and the complexity of the lending policy.
- 2.3.3**
PRA **G** To comply with ■ SYSC 4.1.10R (Regular monitoring), *societies* should check, on a regular basis, that staff are complying with this lending policy.

2.4 Lending policy

2.4.1

PRA

G

This section provides guidance on the issues which should be addressed in the lending policy. The list of issues is not exhaustive, not all points will be relevant to all *societies* and *societies* may wish to combine some of the subjects within sections of their policy.

Contents of policy

2.4.2

PRA

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The introduction section should include:

- (1) background to the *society's* approach to the management of credit risk, including its high-level lending strategy and its risk appetite expressed in a clear and numeric way that can be easily understood by all staff;
- (2) ratification process for obtaining board approval, including amendments to the policy statement as well as complete revisions; and
- (3) arrangements for, and frequency of, review (which should be conducted at least on an annual basis).

2.4.3

PRA

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The objectives of the policy should cross-refer to the *society's* general statement of risk appetite (as set out in its *ICAAP* for Pillar 2 capital adequacy purposes), and should set out the *society's* general philosophical approach to lending.

2.4.4

PRA

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The policy should set out the *society's* business and operational characteristics, including:

- (1) board controls and organisational structure/reporting lines;
- (2) high level framework for ensuring compliance with *MCOB* and other regulatory requirements;
- (3) delegation process and authorities;
- (4) new product development process and approved sources of new lending business;
- (5) marketing and administration controls; and
- (6) processes for ensuring compliance with policy (including arrangements for internal audit review etc).

2.4.5

PRA

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The risk management section should include a description of:

- (1) the risk management structure and reporting lines;
- (2) controls over underwriting quality and adherence to delegated limits;
- (3) how risks associated with untypical cash flow characteristics (including interest roll-up and *payment holidays*) are to be managed;
- (4) training and competence requirements for underwriters and mortgage sales staff;
- (5) the process for developing internal risk scoring systems and procedures for risk categorisation including monitoring of manual overrides;
- (6) large exposure limits for connected counterparties, by loan and borrower type;
- (7) exposure limits for individual portfolios, including BTL portfolios;
- (8) concentration risk exposure limits by product type, borrower type, security type, introducer and geographical area (expressed both in terms of the overall lending book and as a proportion of new lending in a given period);
- (9) limits on the acquisition of individual loans or portfolios of loans, either by way of sub-participation or syndication;
- (10) the processes for ensuring how the success of risk management is to be assessed and potential lessons captured and used to amend underwriting policy as necessary; and
- (11) the management information to be reported to the board.

2.4.6

PRA

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The lending permitted section should include details of the lending which the *society* intends to undertake by borrower and property/security type and origination source, including (as applicable):

- (1) prime residential mortgage lending to individuals;
- (2) near/sub-prime residential mortgage lending to individuals;
- (3) buy-to-let mortgage lending to individuals and corporate bodies;
- (4) shared-ownership residential lending to individuals;
- (5) second-charge residential lending to individuals;
- (6) *lifetime mortgage* lending to individuals;
- (7) *home reversion plans* for individuals;
- (8) commercial mortgages for owner-occupiers;
- (9) commercial mortgages for investors (both individuals and corporate bodies);

2.4.7

PRA

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The policy should also set out the acceptable types of security, including:

- (1) which types of security are acceptable (title, tenure, construction, location etc);
- (2) the maximum original loan to value ratio permitted for each lending type;
- (3) requirements for additional security such as guarantees, charges over other assets, life cover, accident/sickness/unemployment cover or for additional credit insurance (mortgage indemnity guarantee or similar) (including procedures for checking that such cover can be relied upon and is effective and checking the credit worthiness of the provider);
- (4) requirements for buildings insurance cover; and
- (5) arrangements for obtaining a reliable security valuation (including procedures for appointing valuers, use of automated valuation models).

2.4.8

PRA

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The underwriting requirements for each type of loan should be specified in the policy, including:

- (1) minimum required levels of income (or rent) to confirm affordability of the loan for the borrower (including at higher rates of interest);
- (2) information requirements for verifying stated income/outgoings levels (for both individuals and corporate borrowers);
- (3) credit checks, credit scoring requirements, manual override flexibility arrangements;
- (4) requirements for face-to-face interviews, site visits, use of specialist advisers;
- (5) evidential requirements to establish the previous track record of the borrower; and
- (6) any requirements for third party references.

2.4.9

PRA

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The policy should set out the basis for pricing new lending, including:

- (1) the required hurdle rate of return for new lending products;
- (2) requirements for adjusting pricing to reflect risk;

- (3) the approach to setting fees, routine charges and *early repayment charges*, etc; and
- (4) the methodology for setting and collecting *early repayment charges*.

2.4.10
PRA

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The policy should be consistent with the provisions relating to conduct of business that apply to the *society* under the *Handbook* and the general law, including those in *MCOB* and the *Unfair Terms Regulations*.

Lending approach
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2.4.11
PRA

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Having developed its lending policy statement, each *society* will be able to classify itself against one of the approaches set out in the table in ■ BSOCS 2.5.1G and assess its lending types and lending limits against the guidance in ■ BSOCS 2.6.1 G .

2.5 Lending risk management structures

2.5.1

PRA

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The table in ■ BSOCS 2.5.2 G describes the type of controls that the management of *societies* should put in place (and where appropriate clearly document within their lending policy documentation) in each of the three lending models to manage lending risk.

2.5.2

PRA

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This table belongs to ■ BSOCS 2.5.1G . It sets out guidance on credit risk management processes and procedures in accordance with the three lending approaches referred to in ■ BSOCS 1.1.2 G and dealt with in detail at ■ BSOCS 1.11 to ■ 1.14 . It shows the criteria which *societies* should use in assessing the controls over their lending book, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a *society's* credit risk management which are different from the *PRA's* general expectation for *societies* on their respective lending approach. *Societies* should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue

	Traditional	Limited	Mitigated
Asset characteristics - high level	<p>Mainly restricted to high quality lending to individuals, secured on residential property for owner-occupation purposes:</p> <ul style="list-style-type: none"> • LTV <= 80% or with external insurance cover on higher LTV exposures or other recognised collateral • Fully underwritten • Restricted affordability criteria 	<p>A minimum of 50% of total loan assets to comprise high quality lending to individuals, secured on residential property for owner-occupation purposes:</p> <ul style="list-style-type: none"> • LTV <= 80% or with external insurance cover on higher LTV exposures or other recognised collateral • Fully underwritten • Restricted affordability criteria <p>Other lending controlled through structure of board-approved limits set at levels comfortably</p>	<p>Exposures to non-traditional lending allowed up to statutory maxima but controlled through:</p> <ul style="list-style-type: none"> • Structure of board-approved limits (subject to <i>PRA</i> agreement) • Credit risk mitigation

	Traditional	Limited	Mitigated
Lending policy statement	Approved by board and reviewed at least annually	within statutory maxima.	
Pricing model	Board to set clear hurdle return on new lending and articulate this through key operational plans Clear delegated responsibility for monitoring actual return achieved v hurdle on regular periodic basis		Board or appropriate committee to set clear hurdle return required on loan book as minimum approach - use of economic capital and risk-based return modelling encouraged
Risk appetite statement	Approved by board at least annually Reviewed to consider continued applicability at least semi-annually	Approved by board at least annually Reviewed to consider continued applicability quarterly	Approved by board or credit risk committee (or similar) at least annually Reviewed to consider continued applicability at least quarterly
Risk management structure	If no dedicated risk management function, CEO/FD will fulfil this role	Risk management function (fully independent of lending and sales functions) reporting direct to CEO	Head of Risk function (senior executive) supported by risk management team, reporting to credit risk committee (or similar)
Loan exposure restrictions	Lending policy restricts exposure to connected counterparties to $\leq 10\%$ of <i>capital resources</i>	Lending policy restricts exposure to connected counterparties absolutely to $\leq 15\%$ of <i>capital resources</i>	Lending policy does not restrict exposures within statutory or regulatory limits
Underwriting	Cases fully underwritten on an individual basis Limited delegation under mandates Board to approve all loans where aggregate exposure to borrower and/or connected clients $\Rightarrow 2.5\%$ of <i>capital resources</i>	Independent underwriting function Cases underwritten individually or systematically credit scored Hierarchy of fully delegated mandates (with exception reporting to senior management) Appropriate specialist expertise for all categories of non-residential lending May use specialist anti-fraud systems	Independent underwriting function Cases systematically credit scored (with manual over-ride where appropriate) Hierarchy of fully delegated mandates <i>PD/LGD</i> modelling Portfolio underwriting Appropriate specialist expertise for all categories of non-residential lending

	Traditional	Limited	Mitigated
Risk mitigation	<p>Risks mitigated by combination of:</p> <ul style="list-style-type: none"> conservative LTV or external insurance on exposures > 80% LTV other recognised collateral restricted affordability criteria 	<p>Risks mitigated by combination of:</p> <ul style="list-style-type: none"> conservative LTV or external insurance on exposures > 80% LTV other recognised collateral stop-loss/excess of loss insurance 	<p>Use specialist anti-fraud systems</p> <p>Risks mitigated by combination of:</p> <ul style="list-style-type: none"> external insurance (where used) other recognised collateral stop-loss/excess of loss insurance (or similar) at pool or portfolio level credit default swaps loan book sales
Valuations	<p>Undertaken by independent valuer</p> <p>AVMs within parameters recorded in policy statement</p>	<p>Undertaken by external or staff valuer</p> <p>AVMs within parameters recorded in policy statement</p>	<p>Undertaken by external or staff valuer</p> <p>AVMs within parameters recorded in policy statement</p>
Segregation of duty between:			
Underwriting function and mortgage sales function (providing "four-eyes" check over lending)	Segregation at executive manager level	Segregation at an operational level	Full segregation
Underwriting function and the lending review/audit/ compliance functions which check	Segregation at executive manager level	Segregation at an operational level	Full segregation
(1) compliance with underwriting and fraud policy and legislation; and (2) lending/ underwriting quality (by review of MI, live fraud cases, bad debt cases etc).			
Stress testing	<p>Simple stress testing (changes in security values based on appropriate HPI movements) undertaken on annual basis, or more frequently if market conditions warrant</p>	<p>Stress testing and scenario analysis (at level of individual asset pools) on semi-annual basis</p>	<p>Econometric analysis and full stress testing/scenario analysis on at least quarterly basis</p>

Traditional	Limited	Mitigated
In this table: AVMs = automated valuation models HPI = house price index LTV = loan to value		Other recognised collateral = charge over acceptable assets, 3rd party guarantees etc

2.6 Lending types and lending limits

2.6.1

PRA

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Given the lending risk management controls and processes set out in the table at ■ BSOCS 2.5.2 G, the lending limits which *societies* following one of the three lending models have in their lending policy should resemble the table in ■ BSOCS 2.6.3 G.

2.6.2

PRA

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If a *society* plans to become exposed to mortgages of sub-types not covered in the table in ■ BSOCS 2.6.3 G, they should speak to their supervisor before entering the market, and again if their exposure reaches an agreed threshold to be set by the supervisor based on the perceived risk characteristics of the sub-type.

2.6.3

PRA

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This table belongs to ■ BSOCS 2.6.1 G. It sets out the criteria which *societies* should use in assessing the controls over their lending book, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a *society's* business model which are different from the PRA's general expectation for societies on their lending approach. *Societies* should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

Lending types	Normal loan to value at origination and other limits applying	Asset limits		
		as % to- tal loan book	as lend- ing in rolling 12 month period	
Tradition- al	Prime own- er-occupier	<= 80% LTV, or >80% to 95% LTV with external insurance	Min 85%	Min 80%
		> 80% to <= 90% LTV without ex- ternal insurance	Max 7.5%	Max 10%
	Prime Buy to Let	<= 70% LTV (min rental cover 130%, calculated assuming no void periods)	Max 15%	Max 20%
	Shared ownership	<= 90% of share purchased by bor- rower	Max 10%	Max 15%

Lending types	Normal loan to value at origination and other limits applying	Asset limits		
		as % to total loan book	as lending in rolling 12 month period	
Limited	Social Landlords	<= 80%	Max 7.5%	Max 7.5%
	Commercial/FSOL	<= 50%	Max 5%	Max 10%
	Prime owner-occupier	In total	Min 65%	Min 55%
		of which:		
		<= 80% LTV, or >80% to 100% LTV with external insurance	Min 55%	Min 40%
		> 80% to <= 95% LTV without external insurance	Max 10%	Max 15%
	Prime Buy-to-Let	In total (min rental cover 125%, calculated assuming no void periods)	Max 25%	
		Of which no lending > 80% LTV and LTV between 60% and 80%	Max 20%	Max 20%
	Impaired credit history (all types)	<= 70%	Max 10%	Max 10%
	<i>Lifetime mortgages</i>	<= 25% (min age of youngest applicant => 65)	Max 10%	Max 15%
	Shared ownership	<= 95% of share purchased by borrower	Max 15%	Max 20%
	Social Landlords	<= 80%	Max 15%	Max 15%
	Commercial/FSOL	<= 60%	Max 10%	Max 15%
Non-sterling mortgages	Only permitted where borrower also has income in relevant currency	Max 5%	Max 5%	
Mitigated	Any lending permitted subject to statutory constraints and to lending policy set by management.			

In this table:

FSOL = fully secured on land

Shared ownership = part-owned by the occupier and part by a social housing provider. This does not include shared equity arrangements where the *society* takes part of the equity interest.

Lending types	Normal loan to value at origination and other limits applying	Asset limits	
		as % to- tal loan book	as lend- ing in rolling 12 month period

LTV is based at loan to value at origination and should be calculated after taking into account any alternative recognised collateral.

Chapter 3

Treasury investments and liquidity risk management



3.1 Introduction

3.1.1

PRA

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- (1) This chapter sets out the *PRA*'s guidance specific to *societies* on management of their treasury investments, using the five approaches to financial risk management set out in ■ BSOCS 1 in order to enable them to comply with ■ BIPRU 12, ■ GENPRU 1.2 and ■ SYSC 4 to ■ SYSC 7.
- (2) The chapter outlines factors the *PRA* will consider when assessing the adequacy of a *society's* treasury investment risk management. A list of the types of asset suitable for inclusion as treasury investments for *societies* on each of the five levels of financial risk management capability is set out in the table at ■ BSOCS 3.3.12 G.

3.1.2

PRA

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Treasury investments may be held for a variety of purposes which broadly fall into three categories:

- (1) assets held for inclusion in a *society's* liquid assets buffer as required by ■ BIPRU 12.7;
- (2) other assets held operationally for matching and cash flow management purposes; and
- (3) assets which management have decided to hold in order to generate income.

3.1.3

PRA

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The *guidance* in this sourcebook relating to treasury investments applies to all treasury investments, regardless of the reason for which they are held.

3.2 Board and management responsibilities over treasury activities

Degree of risk

3.2.1
PRA

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■ BSOCS 5 (Financial risk management) refers to the potential risks to *societies* of treasury activities. In particular, the size and complexity of some transactions can make them vulnerable to losses, and the impact of losses on individual transactions in the treasury area can be significant and immediate. Boards have ultimate responsibility for deciding the degree of risk taken by their *societies*, including all categories of treasury assets and risks arising from the management of treasury activities.

3.2.2
PRA

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A *society* specialises in long-term mortgage lending which is financed mainly by liabilities which are contractually short-term. This feature of *societies'* business creates maturity mismatches which can give rise to cash flow imbalances. To ensure that it can meet its obligations as they fall due, a *society* is required to hold an adequate liquid assets buffer of the kind described in ■ BIPRU 12.7.

3.2.3
PRA

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In addition to cash flow mismatches which occur over time, *societies* can face intra-day mismatches, as outflows may precede inflows. *Societies* should ensure that they manage this risk in full compliance with the intra-day liquidity management provisions of ■ BIPRU 12.3.17 R to ■ BIPRU 12.3.21 E.

Liquidity policy statements

3.2.4
PRA

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- (1) *Societies* should have a liquidity policy statement, which, among other things, includes the strategies, policies, processes and systems to manage *liquidity risk*, and the *liquidity risk* tolerance, required by BIPRU. *Rules* and *guidance* in relation to the responsibilities placed on a *society's governing body* to approve these strategies, policies, processes and systems and to establish and document a *liquidity risk* tolerance are set out in ■ BIPRU 12.3.8 R to ■ BIPRU 12.3.13 G. The liquidity policy should be approved by the *society's* board and be consistent with the *society's* strategic plan and its financial risk management policy statement. *Societies* should also have regard to the *rules* and *guidance* in ■ GENPRU 1.2, and ■ SYSC 4 to ■ SYSC 7.
- (2) Where a *society* chooses to hold treasury investments other than for the purposes of its ■ BIPRU 12 liquid assets buffer, then the *society's* liquidity policy statement should include all such investments.

3.2.5
PRA

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Liquidity policy statements should set out the board's objectives for *liquidity risk* management, the limits within which liquidity should be maintained, the range of treasury investments in which the *society* can invest and conditions under which authority is

exercised. The document should establish the framework for operating limits and high level controls, and should set out the board's policy on credit assessment, ratings and exposure limits. Further *guidance* on the content of liquidity policy statements is set out in ■ BSOCS 3.3.

3.2.6

PRA

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A liquidity policy statement should be a working document and personnel in the treasury and settlement areas should be familiar with its contents, as should members of ALCO and/or the Finance Committee. When aspects of the policy or limits change, the policy document should be amended as frequently as necessary. The board should agree all substantive changes.

3.2.7

PRA

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Boards should establish the objectives for *liquidity risk* management, including meeting obligations as they fall due (including any unexpected adverse cash flow), smoothing out the effect of maturity mismatches and the maintenance of public confidence. The need to earn a return on treasury investments may also be recognised as an objective, although this should be secondary to the security of the assets. *Societies* should also have regard to the *rules* and *guidance* in ■ BIPRU 12.

3.2.8

PRA

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If a *society* enters into a formal arrangement with a broker where securities are delivered to and from the broker and a customer agreement between the broker and the *society* is completed, the *society* should differentiate between advice and discretionary fund management. If the *society* has entered into an agreement involving the provision of advice, it should ensure that no transaction is undertaken without its prior consent. As with discretionary fund management, *societies* should make certain that all transactions are within the terms of its liquidity policy statement.

3.2.9

PRA

G

Guidance on the content of a liquidity policy statement is set out in ■ BSOCS 3.3. *Societies* may, for convenience, wish to combine their liquidity policy statement with documentation required to satisfy the provisions of ■ BIPRU 12.4 relating to *contingency funding plans*. If they do so, *societies* need to be clear how any combined document meets the separate requirements.

3.3 Liquidity policy statement

3.3.1

PRA

G

This section provides *guidance* on the issues which should be addressed in a liquidity policy statement. The list of issues is not exhaustive and not all points will be relevant to all *societies*.

3.3.2

PRA

G

The introduction section should include:

- (1) background to the *society's* approach to *liquidity risk* management;
- (2) the ratification process for obtaining board approval, including amendments to the policy statement as well as complete revisions; and
- (3) arrangements for, and frequency of, review (which should be conducted at least on an annual basis).

3.3.3

PRA

G

The objectives section should set out whether the *PRA* has granted the *society* a *simplified ILAS waiver* of the kind described in ■ BIPRU 12.6 . A *simplified ILAS BIPRU firm* should still have a full liquidity policy statement.

3.3.4

PRA

G

The operational characteristics section should set out the *society's* business and operational characteristics, which impact on the amount and composition of liquidity and treasury investments, and the intended range for liquidity and liquidity net of mortgage commitments as a percentage of *SDL*.

3.3.5

PRA

G

The risk management section should include:

- (1) exposure policies, including controls and limits as appropriate, for countries, sectors and counterparties, including exposure to brokers;
- (2) the policy adopted for the use of credit ratings, stating the minimum quality acceptable and procedures for ensuring credit ratings are up to date, together with other information such as market intelligence which should also be reviewed when considering how to make treasury investments;
- (3) the policy of assessment to be adopted towards sectors that are non-rated;
- (4) operational and settlement risk, including: framework of board authorisation, delegations and operating limits (including, inter alia, dealer limits, transaction and day limits); deal authorisation, confirmation checking, segregation of duties;

3.3.6

PRA

G

The maturity structure section should include the policy for maturity mismatch and a "maturity ladder" of treasury investments. This should give a clear view of the maturity pattern of treasury investments to be followed, showing the maximum proportions to mature within each time band. In relation to a *society* which is a *simplified ILAS BIPRU firm*, there should be a clear policy with regard to managing the peak cumulative wholesale net cash outflow over the next 3 months in order that an adequate liquid assets buffer is maintained.

- (5) the policy in regard to use of *repo* and reverse *repo* facilities and the potential encumbrance of treasury investments held;
- (6) procedures and criteria for exceptional overrides in relation to dealing, operational rules, limits and authorisation; and
- (7) the policy for *liquidity risk* management information and reporting to the board.

3.3.7

PRA

G

The categories of assets and activities section should set out the *society's* policy for the following:

- (1) assets held in the liquid assets buffer;
- (2) inter-*society* and local authority deposits;
- (3) *repo*/reverse *repo* (both gilt-edged stock and non-gilt-edged securities);
- (4) *stock lending*;
- (5) mortgage backed securities (including, where applicable, US) mortgage backed securities and *covered bonds*;
- (6) foreign currency securities and the handling of foreign currency exposures (for those on the extended, comprehensive or trading approaches);
- (7) commercial paper;
- (8) bank deposits, certificates of deposit and other bank securities; and
- (9) collateral eligible for use in the Bank of England's open market operations and discount window facility.

3.3.8

PRA

G

The *society's* policy for membership and use of any clearing system or depository should be set out clearly, including a section dealing with authorisation and operational controls.

3.3.9

PRA

G

Liquidity implications and the role of standby facilities should be included in the policy statement.

3.3.10

PRA

G

The role of external professional advisers should be clearly stated, where applicable.

3.3.11

PRA

G

Custody arrangements should be clearly set out. If the arrangement is to use services provided by a broker then a *society* should ensure that it retains legal ownership of the investments.

3.3.12

PRA

G

This table belongs to ■ BSOCS 3.1.1 G and sets out the criteria which *societies* should use in developing the review of financial risk management, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a *society's* business model which are different from the *PRA's* general expectation for *societies* on their respective treasury management approach. *Societies* should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

TREASURY INVESTMENTS

ADMINISTERED APPROACH	
TREASURY INVESTMENTS	Bank of England reserve account No max
	Call deposits: bank No max
	Term deposits: bank (includes CDs) Max 15% <i>SDL</i>
	Term deposits: <i>societies</i> Max 10% <i>SDL</i>
	Term deposits: Local Authorities/Regional Gvt Max 10% <i>SDL</i>
	Gilts <3 years No max
	Treasury bills No max
	<i>Designated money market funds</i> No max
	<i>Qualifying money market funds</i> No max
Bank of England CAPACITY	Reserve account
	Standing deposit facility (if eligible)
MINIMUM LIQUIDITY LIMITS	<i>Simplified buffer requirement</i>
CURRENCY	Sterling only
MATCHED APPROACH	
TREASURY INVESTMENTS	Bank of England Reserve account No max
	Call deposits: bank No max
	Term deposits: bank (includes CDs) Max 15% <i>SDL</i>
	Term deposits: <i>societies</i> Max 10% <i>SDL</i>
	Term deposits: Local Authorities/Regional Gvt Max 10% <i>SDL</i>
	Gilts <5 years No max
	Treasury bills No max

	<i>Designated money market funds</i>	No max
	<i>Qualifying money market funds</i>	No max
	Reverse <i>repo</i> (Gilts only, after agreement with supervisor)	Up to limits above
Bank of England CAPACITY	Reserve account	
	Standing deposit facility (if eligible)	
MINIMUM LIQUIDITY LIMITS	<i>Simplified buffer requirement</i>	
CURRENCY	Sterling only	
EXTENDED APPROACH		
TREASURY INVESTMENTS	Bank of England Reserve account	No max
	Call deposits: banks	No max
	Term deposits: banks (includes CDs)	Max 15% <i>SDL</i>
	Term deposits: <i>societies</i>	Max 10% <i>SDL</i>
	Term deposits: Local Authorities/Regional Gvt	Max 10% <i>SDL</i>
	Gilts <5 years	No max
	Gilts >5 years	Max 5% <i>SDL</i>
	Supranational Bonds <5 years	Max 5% <i>SDL</i>
	Treasury bills	No max
	FRNs, MTNs or fixed rate bonds <5 years	Max 5% <i>SDL</i>
	UK RMBS (senior securitised position only)	Max 5% <i>SDL</i>
	UK <i>covered bonds</i> (<i>CRD</i> compliant only)	Max 5% <i>SDL</i>
	<i>Designated money market funds</i>	No max
	<i>Qualifying money market funds</i>	No max
	Reverse <i>repo</i>	Up to limits above
Bank of England CAPACITY	Reserve account	
	Standing deposit facility	
	OMO counterparty (optional, subject to BoE acceptance)	
MINIMUM LIQUIDITY LIMITS	<i>Simplified buffer requirement</i> or <i>individual liquidity guidance</i> if a <i>standard ILAS BIPRU firm</i>	
CURRENCY	No less than 99.5% of total balance sheet assets and liabilities denominated in Sterling, US\$ or € (whether on <i>simplified</i>	

buffer requirement or individual liquidity guidance if a standard ILAS BIPRU firm)

COMPREHENSIVE and TRADING APPROACHES

TREASURY INVESTMENTS Self-defined list based on market depth and marketability (subject to satisfying the requirements of BIPRU 12) Own defined limits

Bank of England CAPACITY Reserve account
Standing deposit facility

OMO counterparty (subject to BoE acceptance)

MINIMUM LIQUIDITY LIMITS *individual liquidity guidance*

CURRENCY Any traded currency

In this table:

CDs = certificates of deposit

FRN = floating rate note issued by bank or *building society*

ILAS = individual liquidity adequacy standards

MTNs = medium term notes

OMO = open market operations

RMBS = residential mortgage backed securities

Treasury Investments - all treasury investments including those held within the liquid assets buffer as required by BIPRU 12.7

In relation to minimum liquidity limits, a *society* that is a *simplified ILAS BIPRU firm* should note that the *simplified ILAS* approach does not relieve a *simplified ILAS BIPRU firm* from the obligation to hold liquidity resources which are adequate for the purpose of meeting the *overall liquidity adequacy rule* or from the obligation in BIPRU 12.3.4 R to assess and maintain on an ongoing basis the adequacy of its liquidity resources.

Chapter 4

Funding

4.1 Funding risks

4.1.1

PRA

G

Societies' core business, financing long-term residential mortgages with short-term personal savings, necessarily involves a high degree of maturity transformation, and this constitutes a major financial risk that all *societies* need to manage.

4.1.2

PRA

G

Wholesale markets may provide funding at a more definitive maturity than deposit funding, but may concentrate the refinancing risks *societies* face. Exposure to re-financing risk needs careful management, and an awareness of the risk of over-reliance on an assumption of continued access to the wholesale market.

4.1.3

PRA

G

The particular constitution of *societies* means that the scale of deposit funding has a significant impact on the position of investor members. The public perceives *society* share accounts to be as secure as (or even more secure than) bank deposits although they hold a subordinated creditor rank. A *society* which gears itself up significantly with wholesale funds thereby dilutes the security of its members, whilst at the same time increasing its refinancing and *liquidity risks*.

4.1.4

PRA

G

To access the wholesale markets some *societies* have been credit-rated by external agencies. Obtaining such a rating exposes the *society* to the danger of a change in market view of the sector or the *society*, and the process of obtaining and continuing management of the rating needs careful consideration and monitoring. The PRA would not expect *societies* on the Administered or Matched approaches to have external ratings, and would expect *societies* on the extended approach, if they have external ratings at all, to confine them to *covered bond* issues only.



4.2 Wholesale maturity structure for a society which is a simplified ILAS BIPRU firm

4.2.1

PRA

G

For *simplified ILAS BIPRU firms* ■ BIPRU 12.6.10 R sets out how they should calculate the wholesale net cash outflow component of their *simplified buffer requirement*.

4.2.2

PRA

G

Whilst a *society* which is a *simplified ILAS BIPRU firm* may choose to fund lending activities with wholesale funding of duration greater than three months, such funding will still influence the peak cumulative wholesale cash outflow position (and thus the *simplified buffer requirement*) when it is within three months from maturity. *Societies* using wholesale funding should therefore manage their wholesale maturity profile so that it does not cause excessive volatility to their liquid assets buffer.

4.2.3

PRA

G

To achieve this, a *society* which is a *simplified ILAS BIPRU firm* should ensure that its maturity profile of wholesale funding, net of any maturing treasury assets held to redeem the funding, resembles the respective profiles in ■ BSOCS 4.5.1G.

4.3 Funding limits

4.3.1

PRA

G

- (1) Whilst the section 7 funding limit is expressed as a minimum of 50% share account funding, *societies* should, for prudential monitoring purposes, draw up a funding policy which incorporates an internal policy limit based on a maximum level of funds raised by means other than the issue of shares (i.e. an inversion of the "nature limit"). In order to avoid any possibility of an inadvertent breach of the *1986 Act*, these internal policy limits should be set at levels below the 50% statutory maximum.
- (2) Similarly, one of the conditions in ■ BIPRU 12.6 to be satisfied by a *firm* for it to be eligible for a *simplified ILAS waiver* is that a minimum percentage of the *firm's* total liabilities are accounted for by retail *deposits*. The funding policy drawn up by a *simplified ILAS BIPRU firm* should include an internal policy limit referring to a maximum percentage of the *firm's* total liabilities accounted for by liabilities other than retail *deposits* (i.e. an inversion of the condition in ■ BIPRU 12.6). This maximum percentage should be set at a level below that necessary to satisfy the conditions in ■ BIPRU 12.6.

4.3.2

PRA

G

- (1) In setting funding limits, the board should consider all funding requirements over the period of their *society's* current corporate plan, and avoid setting limits at levels where usage is either unplanned or highly unlikely.
- (2) Wholesale funding can be divided into three broad types originating from different sources: offshore/overseas retail deposits up-streamed to the *society*, deposits from non-financial / non-individuals and wholesale funding from the financial markets.
- (3) Boards should set policy sub-limits for each of these sources as well as an overall limit (e.g. a *society* might set an overall deposit liabilities limit of 30%, with sub-limits of 25% for wholesale deposit funding and 10% for offshore/overseas funding, the total of the sub-limits exceeding the overall limit only on the basis that both could not be used to their full extent simultaneously or to the extent that some of the funding is both wholesale and offshore/overseas).



4.4 Repurchase (repo) transactions (including reverse repo)

4.4.1

PRA

G

The *PRA* would expect that *societies* adopting the extended, comprehensive or trading approaches to treasury management are likely to have the systems and capabilities to transact *repo* business. The *PRA* would expect that their boards would obtain full legal advice before agreeing counterparty documentation.

4.4.2

PRA

G

Whilst *societies* on the matched treasury risk management approach may have appropriate treasury risk management controls and procedures to undertake *repo* transactions, they should discuss any such plans with their supervisor before undertaking those transactions.

4.5.1

PRA

G

This table sets out guidance for wholesale funding in accordance with the five approaches (see ■ BSOCS 1.1.2G). It shows the criteria which *societies* should use in developing the review of financial risk management, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a *society's* business model which are different from the *PRA's* general expectation for *societies* on their respective treasury management approach. *Societies* should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

WHOLESALE FUNDING FROM FINANCIAL MARKETS

ADMINISTERED APPROACH

WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS	Total Wholesale	Max 10% <i>SDL</i>
	Any single sector source	Max 5% <i>SDL</i>
MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS	< 3 mths	Max 5% <i>SDL</i>
	< 12 mths	Max 10% <i>SDL</i>
FUNDING INSTRUMENTS	Term deposits and facilities	
EXTERNAL RATINGS	No	
Bank of England CAPACITY	Standing lending facility (if eligible) Discount window (if eligible)	
CURRENCY	Sterling only	

MATCHED APPROACH

WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS	Total Wholesale	Max 15% <i>SDL</i>
	Any single sector source	Max 7.5% <i>SDL</i>
MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS	< 3 mths	Max 5% <i>SDL</i>
	< 12 mths	Max 10% <i>SDL</i>

FUNDING INSTRUMENTS	Term deposits and facilities	
	<i>Repo</i> (after agreement with supervisor)	
EXTERNAL RATINGS	No	
Bank of England CAPACITY	Standing lending facility (if eligible)	
	Discount window facility (if eligible)	
	OMO counterparty (optional, subject to BoE acceptance)	
CURRENCY	Sterling only	
	EXTENDED APPROACH	
WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS		
For societies wishing to operate the simplified ILAS approach	Total Wholesale	See conditions in BIPRU 12.6
	Any single sector source	Max 7.5% <i>SDL</i>
For standard ILAS BIPRU firms	Total wholesale and sector limits as agreed individually	
MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS		
For societies wishing to operate the simplified ILAS approach	< 3 mths	Max 5% <i>SDL</i>
	< 12 mths	Max 15% <i>SDL</i>
	< 2 years	Max 20% <i>SDL</i>
For standard ILAS BIPRU firms	As agreed individually	
FUNDING INSTRUMENTS	Term deposits and facilities	
	CDs	
	FRNs	
	Fixed rate bonds	
	<i>Covered bonds</i>	
	Securitisations	
	CP	
	<i>Repo</i>	
EXTERNAL RATINGS	<i>Covered bonds</i> only	

Bank of England CAPACITY	Standing lending facility
	Discount window facility
	OMO counterparty (optional, subject to BoE acceptance)
CURRENCY	No less than 99.5% of total balance sheet assets and liabilities denominated in Sterling, US\$ or €
COMPREHENSIVE APPROACH	
W/SALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS	Total wholesale and sector limits as agreed individually
MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS	As agreed individually
FUNDING INSTRUMENTS	Term deposits and facilities
	CDs
	FRNs
	Fixed rate bonds
	<i>Covered bonds</i>
	Securitisations
	CP
	<i>Repo</i>
EXTERNAL RATINGS	Yes
Bank of England CAPACITY	Standing lending facility
	Discount window facility
	OMO counterparty (subject to BoE acceptance)
CURRENCY	Any traded currency
TRADING APPROACH	
WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS	Total wholesale and sector limits as agreed individually
MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS	As agreed individually

FUNDING INSTRUMENTS	Bank loans
	B Soc loans
	LA loans
	CDs
	FRNs
	Fixed rate bonds
	<i>Covered bonds</i>
	Securitisations
	CP
	<i>Repo</i>
EXTERNAL RATINGS	Yes
Bank of England CAPACITY	Standing lending facility
	Discount window facility
	OMO counterparty (subject to BoE acceptance)
CURRENCY	Any traded currency
In this and subsequent tables:	
CDs = certificates of deposit	
CPs = commercial paper	
FRNs = floating rate notes	
ILAS = individual liquidity adequacy standards	
LA loans = local authority loans	

Chapter 5

Financial risk management

5.1 Introduction

5.1.1

PRA

G

This chapter contains guidance for *societies* on financial risk management which supplements the high level requirement in SYSC.

5.1.2

PRA

G

As part of the implementation of the *Capital Adequacy Directive (CAD)*, the *Banking Consolidation Directive (BCD)* and the *Markets in Financial Instruments Directive (MiFID)*, provisions relating to a *society's* organisational and risk systems and controls have been introduced in ■ SYSC 4 to ■ SYSC 7. The guidance in this chapter generally explains the application of the high level requirements in ■ SYSC 4 to ■ SYSC 7 (even if there may not be a specific cross reference) in the context of financial risk management.

5.1.3

PRA

G

Rules and guidance on interest rate risk in the banking book are contained in ■ BIPRU 2.3 . Under these requirements a *society* should evaluate the effect of a standard interest rate shock specified by the PRA in that chapter. The result should be taken account of in the ICAAP.

5.1.4

PRA

G

Societies with a *trading book* will also be subject to a market risk capital requirement calculated in accordance with ■ BIPRU 7. This is unlikely to be applicable to any *societies* apart from those on the "Trading" approach: see ■ BSOCS 1.10. A *society* with foreign currency exposures will however be subject to the foreign exchange capital requirements in ■ BIPRU 7 whether or not it has a *trading book*.

5.2 General

Systems for controlling and managing financial risks

5.2.1

PRA

G

In meeting the requirements of ■ SYSC 4.1.1 R and ■ SYSC 7.1.2 R in the context of financial risk management, a *society* should have an adequate system for managing and containing financial risks to the net worth of its business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.

Systems for controlling index-related risks

5.2.2

PRA

G

The arrangements, processes, and mechanisms required in ■ SYSC 7.1.3 R should include systems and procedures for identifying, monitoring and controlling all material maturity mismatch, interest rate, base rate, foreign exchange and similar (e.g. index-related) risks, and for reporting exposures to senior management and the board of the *society* on a regular, and timely, basis. *Societies* should also have interest margin management systems in place to estimate the expected profitability of new mortgage and savings products, and to project forward the cumulative effect of mortgage incentives and loyalty schemes.

Credit limits for counterparties

5.2.3

PRA

G

Societies should have credit limits in place for all counterparties both for making treasury investments and for transacting *derivative* contracts (further *guidance* also in ■ GENPRU 1.2 and ■ BIPRU 12.4: stress testing and scenario analysis, and *contingency funding plans*).

Policy statement on financial risk management

5.2.4

PRA

G

In meeting the requirements in ■ SYSC 7.1.4 R in the context of financial risk management, the board of a *society* should approve and periodically review a policy statement on financial risk management.

5.2.5

PRA

G

The policy statement establishes guidelines for the *society's* senior managers on the control of financial risks, including: *operational risk*; structural risk; funding risk; and *counterparty credit risk* (including settlement). These documents should be consistent with the type of business undertaken by the *society* and compliant with sections 7 and 9A of the 1986 Act.

Policy statements on strategic framework for treasury operations

5.2.6

PRA

G

Policy statements should set out the strategic framework for treasury operations, recording the rationale for that framework, i.e. why and how treasury activities are expected to support the *society's* core business, and the "approach" category being followed, derived,

where possible, from the results of a financial risk review (either by the *society's* internal audit function or using external resources). They should clearly state the conditions under which authority is delegated to a board sub-committee, or to management, and should establish the operating limits and high level controls that will maintain exposures within levels consistent with the policy, and the procedures/controls on the introduction of new products or activities. Copies of the policy statements should be made available to, and read by, all personnel involved in treasury operations.



5.3 Structural risks

5.3.1

PRA

G

Most *societies* are susceptible to interest rate exposure arising not only as a result of changes (or potential changes) in the general level of interest rates or the relationship between short term and long term rates, but also from divergence of rates for different balance sheet elements (*basis risk*), for example, the risk that it may not be possible to decrease administered savings rates in line with decreases in money market (LIBOR) rates, resulting in a margin squeeze where lending is LIBOR-based. In this chapter, risks which arise from the different interest rate or currency characteristics of assets and liabilities, and from transactions based on other financial reference rates or indices, are referred to as "structural" risks.

5

5.4 Operational risks

5.4.1

PRA

G

The extension of *society* activities into more complex forms of funding, liquidity and off balance sheet instruments has dramatically increased the *operational risks* involved. The documentation, accounting treatment and settlement procedures for such instruments can be highly complex, with significant costs and penalties arising from operational mistakes. *Societies* involved in these areas of activity need rigorous management procedures and control systems to ensure that robust legal documentation is used, that compliance with market practice is achieved, and that deal recording and settlement systems are effective (with appropriate contingency arrangements in place).

5.4.2

PRA

G

Key risk categories

The key financial risks which, as envisaged in ■ BSOCS 5.2.1 G, *societies* should manage and control, are:

- (1) maturity mismatch, including the risks:
 - (a) that the *society* may be unable to refinance term wholesale borrowings on a rollover date due to general market conditions (which may or may not be related to the position of the *society* itself);
 - (b) associated with the bunching of roll-over dates for wholesale funding or maturities of term retail funding;
 - (c) from concentration on a limited number of funding providers, giving rise to increased dependence particularly on roll-over days; and
 - (d) arising from the prepayment (early repayment) profile of mortgages, and those inherent in the early withdrawal characteristics of retail savings products (i.e. behavioural as opposed to contractual maturity risks);
- (2) interest rate risk to a *society's* earnings (most significantly, to its interest margin) and to its economic value (the present value of future cashflows) arising from:
 - (a) repricing mismatches, e.g. where, in a rising interest rate environment, liabilities reprice earlier than the assets which they are funding, or, in a falling rate environment, assets reprice earlier than the liabilities funding them (in both cases leaving the *society* with a reduction in future income); repricing risk is inherent in fixed rate instruments, the market value of which will change with interest rate movements (e.g. gilts), and unhedged fixed rate retail products (e.g. unhedged fixed rate mortgages funded by variable rate liabilities would yield less margin should the cost of the liabilities increase due to changes in market rates);

- (b) yield curve risk, where unanticipated changes to the shape or slope of the yield curve will cause assets and liabilities to reprice relative to each other - possibly exposing positions which were hedged against a parallel shift in rates only;
 - (c) interest basis mismatches, arising from the imperfect correlation of rates on instruments with similar repricing characteristics, e.g. between LIBOR rates and mortgage rates (both of which are variable but are subject to different market forces), or between LIBOR and reference gilt rates, or between 3 and 12 month LIBOR rates etc. Risk can also arise where the underlying market rate is the same for matching assets and liabilities, but the margin paid relative to the offer rate diverges from the margin received relative to the bid rate;
 - (d) balance sheet composition, where an increase in the proportion of assets and liabilities repricing at fixed or variable wholesale market rates implies a reduced administered rate element in the balance sheet, which will nevertheless have to bear (at least in the short term) the full brunt of any rate changes required in order for a *society* to widen its margins, if necessary for business or profitability reasons (e.g. in the event of a significant credit deterioration leading to rising provision levels);
 - (e) optionality (i.e. explicit/contracted option contracts, such as "caps", "collars" and "floors", which confer the right, but not the obligation, to fix an interest rate for an agreed amount and for an agreed period and embedded/implied options included within products, such as early withdrawal or redemption entitlements), magnifying the effect of other interest rate risks: in particular, *societies* may be subject to implied optionality in respect of retail savings rates (for which a minimum rate payable - a "floor" - above 0% may need to be assumed), and from prepayment of mortgages/pre-withdrawal of deposits (where the *customer* may effectively have an "option" which may not be adequately "hedged" by way of *early repayment charges*); and
 - (f) product pricing, arising particularly where products are not immediately profitable and where longer term payback is dependent upon the achievement of specific cost and/or pricing assumptions;
- (3) currency risk, arising from the effects of changing exchange rates on unmatched assets and liabilities denominated in different currencies; and
 - (4) index-related risk, arising from the effects of movements in an index of financial assets (e.g. the FTSE 100), or similar reference rate, on unmatched assets or liabilities paying or receiving a return based on that index/rate.

5.4.3

PRA

G

Societies' financial risk management policies should also cover:

- (1) settlement risk: the risk of losses arising from failure to settle transactions accurately, or on a timely basis;
- (2) counterparty risk: associated with settlement risk, where a counterparty cannot or will not complete a transaction; and
- (3) *operational risk* in treasury and related activities: including failure of internal controls or procedures, and the risk arising from errors in legal documentation.

5.4.4

PRA

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IT security

Reliance on computerised dealing, information, treasury management and risk assessment systems renders *societies* particularly vulnerable to software or hardware failure. Boards of *societies* should:

- (1) ensure that treasury IT systems' access, both physical and logical, is subject to robust security;
- (2) exercise strong control over the development and modification of treasury IT systems; and
- (3) involve internal audit in reviewing the development or modification of treasury IT systems.

5.5 Risk management systems

5.5.1

PRA

G

The *guidance* in this section amplifies ■ SYSC 7.1.2 R and ■ SYSC 7.1.3 R specifically in the context of treasury management. A *society* should have in place information systems that are capable of:

- (1) measuring the level of maturity mismatch and structural risk inherent in its balance sheet;
- (2) assessing the potential impact of interest rate (and, if applicable, currency exchange rate) changes on its earnings and its economic value (including the effect of any standard interest rate shock as specified by the *PRA* in ■ BIPRU 2.3);
- (3) reporting accurately, and promptly, on risk positions (to management, to the board and, if requested, to the *PRA*) including generating the information necessary to carry out its *ICAAP* and reporting the results of stress testing for interest rate risk in the banking book;
- (4) recording accurately, and on a timely basis, all new transactions and/or cashflows which will affect calculations of structural risk exposures;
- (5) managing the settlement timetable and processes for individual treasury instruments; and
- (6) monitoring credit risk and settlement risk positions incurred with individual and groups of counterparties.

5.5.2

PRA

G

The scale and scope of the risk measurement system employed should reflect the sophistication of a *society's* treasury operations, those *societies* wishing to adopt more sophisticated approaches requiring more complex techniques to capture different facets of risk.

Control limits

5.5.3

PRA

G

Control limits confine structural risk positions within levels considered by board and management to be prudent, given the size, complexity and capital needs of the *society's* business. Where applicable, limits should also be applied to individual instrument types, asset/liability portfolios, and to separate business activities or *subsidiary undertakings*. Limits should also cover both the quantum and term/run-off of positions and should take due account of the extent to which margins are constrained, limiting business flexibility.

5.5.4

PRA

G

The structure of limits should enable the board and management to monitor actual levels of sensitivity, under different pre-defined market index, interest rate and exchange rate scenarios, against the policy specified maxima, to ensure that corrective action can be taken if required.

5.5.5

PRA

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The number and type of limits which should be applied will depend upon the relative sophistication of a *society's* treasury operations, and further *guidance* on the *PRA's* expectations for each policy approach is set out in ■ BSOCS 1.6 to ■ BSOCS 1.10 .

5.5.6

PRA

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Where limits are set as part of the overall board policy, these should be treated as absolute. Therefore any limit exceptions should be reported immediately to executive managers, and the policy should make clear what action is expected of management in those circumstances (including arrangements for informing the board and the *PRA* of the breach). Limits set by management should similarly be subject to clear guidelines covering the circumstances and periods for which breaches may be permitted (if at all) and the arrangements for notification of exceptions.

Stress testing

5.5.7

PRA

G

- (1) The risk measurement systems put in place should evaluate the impact, on income or economic value as appropriate, of abnormal market conditions. The amount and type of the stress testing required will depend upon the sophistication of treasury operations undertaken, and the level of risk taken, but where required should be regular and systematic. Within the range of scenarios tested, it is good practice for the scenario to reflect the events that would cause the *society's* business model to fail without any mitigating management action. Boards and management should, periodically, review the extent of that stress testing to ensure that any "worst case" scenarios remain valid. Contingency plans should be in place to deal with the consequences should those scenarios become reality.
- (2) *Rules* and *guidance* on stress testing and scenario analysis are in ■ GENPRU 1.2 and ■ BIPRU 2.2. Material on this subject specifically relating to *liquidity risk*, including *liquidity contingency funding plans*, is in ■ BIPRU 12.4. Requirements for stress testing for interest rate risk in the banking book are set out in ■ BIPRU 2.3.

Board information reporting

5.5.8

PRA

G

The *PRA* attaches considerable importance to the quality, timeliness, and frequency of the management information which the board uses to satisfy itself that treasury activities are being undertaken in accordance with its policies and guidelines. Information obtained by the board should include regular and systematic stress testing, as described above, which should be taken into account when policies and limits are established or reviewed.

5.6 Counterparty risk

5.6.1

PRA

G

Counterparty limits should cover:

- (1) full risk exposures (e.g. deposits or marketable instruments);
- (2) *market risk* exposures (e.g. mark to market positive value of *swaps*, plus appropriate addition for potential future exposure increases arising from changes in market rates); and
- (3) settlement risk exposures (e.g. currency deals where amounts are paid out before funds are received).

5.6.2

PRA

G

Boards should determine the extent to which authority to set counterparty limits is delegated to management, but delegation to a single individual should not be permitted. Personnel with dealing mandates should not be given authority to set new or increased counterparty limits. No dealings should take place with counterparties which do not have a pre-approved limit.

5.6.3

PRA

G

Limits should be established on the basis of a robust methodology, which should be fully documented and reviewed regularly. For *societies* with more active treasury operations, a separate credit risk committee with responsibility for preparing a credit policy statement and counterparty list may be appropriate; less active *societies* may incorporate a section on credit risk within their liquidity policy statements, with appropriate cross-references to other policy and procedures statements. In all cases, the counterparty list and individual limits should be subject to formal credit review at least annually, with interim arrangements in place to add, amend or remove limits as appropriate.

5.6.4

PRA

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- (1) If reliance is placed on sources of information or opinion external to both the *society* and the counterparty (e.g. rating agencies), the nature of the source, and arrangements for ensuring that the information relied upon is kept up to date, should be made explicit in the credit risk policy document and in procedures manuals.
- (2) Where ratings are reduced (or put on "watch" with "negative implications"), or where a *society* becomes aware of information on a counterparty which might affect its perceived creditworthiness (whether or not this results in a rate change), it should have systems for reviewing individual counterparty limits and, possibly, suspending or removing individual names from authorised lists in an expeditious manner.

- (3) Arrangements for obtaining information on counterparties where this is in the public domain should also be included in procedures manuals.

5.6.5

PRA

G

Exposures to counterparties should be monitored on a consolidated basis, aggregating exposures of the *society* and any *subsidiary undertakings* (where applicable), and setting total exposure limits for groups of connected counterparties. Similarly, country, sector and market concentrations should be monitored continuously against agreed limits.

5.6.6

PRA

G

The guidance in this section complements the high level rules and guidance on credit and counterparty risk in ■ SYSC 7.1.9 R to ■ SYSC 7.1.11 R.

Large shareholdings and deposits

5.6.7

PRA

G

Undue dependence on individual funding sources that account for a large proportion of a *society's* overall liabilities will involve risk of liquidity problems should those funds be withdrawn or not be available for roll-over. These potential problems apply whether the funds in question are raised from the retail or the wholesale markets.

5.6.8

PRA

G

A small *society* is relatively more exposed to this type of risk, and should consider the implications of concentration on individual shareholders or depositors when assessing its liquidity levels and need for committed facilities. In the management of large retail investment accounts, a *society* should normally avoid:

- (1) obtaining funding from a single shareholder or depositor which exceeds 1% of shares, deposits and loans; and
- (2) allowing the aggregate total of funding, from those single shareholders or depositors which individually represent more than one-quarter of 1% of shares, deposits and loans, to exceed 5% of shares, deposits and loans.

Committed facilities

5.6.9

PRA

G

A *society* with high levels of maturing funding, or vulnerability to withdrawal of individual deposits, may consider arranging committed facilities (or maintain higher than average levels of liquidity). In arranging committed facilities, a *society* should consider:

- (1) the credit standing and capacity of the provider of the facility;
- (2) the documented basis of the commitment (i.e. is it an unconditional commitment or a "best endeavours" arrangement); and
- (3) the cost/fee structure compared to alternatives.

5.6.10

PRA

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In extreme cases, there remains a risk that a provider may renege on a contractual commitment to provide funding, or purport to rely on widely drawn "events of default" or "material adverse change" clauses, and face the legal consequences (if any) rather than lend money to a *society* in difficulties. *Societies* should not, therefore, become over reliant on committed facilities to plug short term cashflow difficulties and should be cautious on how any such facilities should be treated in stress testing.



5.7 Independent review and controls

Internal audit

5.7.1

PRA

G

The *guidance* in this section amplifies ■ SYSC 6.2.1 R in the context of treasury management. Each board should ensure that its *society's* internal audit department (if it has one) has the skills and resources available to undertake an audit of the treasury function. Internal audit should evaluate, on a continuing basis, the adequacy and integrity of the *society's* controls over maturity mismatch, over the level of structural risk taken and should assess the effectiveness of treasury management procedures.

5.7.2

PRA

G

Societies with complex treasuries or lacking internal auditors with treasury expertise may outsource treasury audit to an audit firm with the appropriate expertise and experience. The work of outsourced internal audit should be fully integrated into the *society's* overall audit procedures and plans, with appropriate reporting lines into the audit committee. However, in order to avoid conflicts of interest, internal audit should not be contracted out to the *society's* own external auditors, even if the function were to be performed by a completely different branch of the audit firm.

5.7.3

PRA

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This table sets out guidance on financial risk management processes and procedures in accordance with the five approaches (see ■ BSOCS 1.1.2 G). It shows the criteria which *societies* should use in developing the review of financial risk management, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a *society's* treasury risk management which are different from the PRA's general expectation for *societies* on their respective treasury management approach. *Societies* should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

FINANCIAL RISK MANAGEMENT

ADMINISTERED APPROACH

RISK MANAGEMENT

CEO (+FD/FM) & Board

Dealing / settlement segregation (4 eyes)

RISK ANALYSIS

None (but MTM fixed rate liquid assets at least monthly)

FIXED RATE LENDING/FUNDING	Commercial assets: Minimum 95% on administered rates
	Liabilities: Minimum 95% <i>SDL</i> on administered rates
	No fixed rate lending > 1 year
COUNTERPARTY LIMITS	Single name/connected group limits
	UK Counterparties only
	Instrument type and maturity limits
HEDGING INSTRUMENTS	None
TREASURY SYSTEMS/CONTROLS	Management accounting system
	Internal Audit
MATCHED APPROACH	
RISK MANAGEMENT	CEO + FD (or FM) & Board
	Dealing / settlement segregation (4 eyes)
RISK ANALYSIS	Matching Report + (min mthly) Gap Analysis
	Minimal gap/NPV limits (to cover residuals, prepayment and pipeline only)
	No structural hedging (incl reserves)
	No interest rate view
	<i>Basis risk</i> report
FIXED RATE LENDING/FUNDING	Commercial assets: A minimum of 65% either on administered rates or due to revert to administered rates in the next 12 months, and of that a minimum 50% already on administered rates.
	Liabilities: Minimum 65% <i>SDL</i> on administered rates
	Fixed rate lending/funding max 5 yrs to reprice date (subject to limits).
	Max stock fixed rate (> 1 yr) 20% commercial assets + 20% <i>SDL</i>
	Max fixed rate lending/funding 25% loans advanced/retail funding p.a.

COUNTERPARTY LIMITS	Single name/connected group limits
	Country limits
	Instrument type and maturity limits
HEDGING INSTRUMENTS	Match funding
	Vanilla interest rate <i>swaps</i>
	Vanilla interest rate caps/collars/floors (purchase only)
	FTSE <i>swaps</i> (receive only)
TREASURY SYSTEMS/CONTROLS	Management accounting system
	Simple treasury matching system
	Internal Audit
	EXTENDED APPROACH
RISK MANAGEMENT	(CEO)/FD + Treasurer
	ALCO
	Front Office + Back Office
RISK ANALYSIS	Monthly (min.) static gap (+ static simulation modelling)
	Gap limits
	Sensitivity limits (NPV & NII)
	Structural hedging
	Reserves hedging (strategic)
	Interest rate view
	No FX mismatch
	<i>Basis risk</i> modelling
FIXED RATE LENDING/FUNDING	Commercial assets: A minimum of 50% either on administered rates or due to revert to administered rates in the next 12 months, and of that a minimum 30% already on administered rates.
	Liabilities: Minimum 45% <i>SDL</i> on administered rates

COUNTERPARTY LIMITS	Single name/connected group limits
	Country limits
	Sector limits
	Instrument type limits
	Currency limits
HEDGING INSTRUMENTS	Match funding
	Vanilla interest rate <i>swaps</i>
	Vanilla interest rate caps/collars /floors (purchase only)
	Swaptions (purchase only)
	<i>FRAs / Futures</i> (purchase only)
	FTSE <i>swaps</i> (receive only)
	FX <i>swaps/forward</i> contracts (purchase only)
TREASURY SYSTEMS/CONTROLS	FX <i>options</i> (purchase only)
	Treasury IT system capable of modelling optionality in static balance sheet.
	Specialist IT and Treasury Internal Audit
COMPREHENSIVE APPROACH	
RISK MANAGEMENT	FD + Treasurer (+Risk Director)
	ALCO + Daily Treasury Committee
	Front + Middle + Back Office

RISK ANALYSIS

Very frequent dynamic balance sheet modelling (future flows)

Multiple scenario & yield curve simulation modelling with sensitivity limits

(NPV & NII)

Basis risk modelling

Internal transfer pricing systems

Structural hedging

Reserves hedging (strategic)

Interest view

FX mismatch < 2% *own funds*

FIXED RATE LENDING/FUNDING

Commercial assets: Minimum 30% on administered rates

Liabilities: Minimum 30% *SDL* on administered rates

COUNTERPARTY LIMITS

Comprehensive limit structure

HEDGING INSTRUMENTS

Match funding

Complex interest rate *swaps*

Complex interest rate caps/collars/floors (purchase only)

Swaptions (purchase only)

HPI *derivatives* (purchase only)

Credit *derivatives* (purchase only)

FRAs/Futures (purchase only)

FTSE *swaps* (receive only)

FX *swaps/forward* contracts (purchase only)

FX *options* (purchase only)

TREASURY SYSTEMS/CONTROLS

Treasury IT system capable of projecting forward balance sheet and simulating different interest rate environments, plus measuring embedded optionality, *basis risk* etc.

Specialist IT and Treasury Audit

TRADING APPROACH**RISK MANAGEMENT**

FD + Treasurer (+Risk Director)

ALCO + Daily Treasury Ctee

Front + Middle + Back Office

Banking + *Trading books***RISK ANALYSIS**

Banking book: daily (min) duration / simulation analysis. Multiple yield curves and interest rate basis. Structural & reserve hedging

Interest rate view.

Trading book: Valuation at risk and equivalent measures. Daily P&L (MTM). Product, currency, counterparty limits. Dealing position limits etc.**FIXED RATE LENDING/FUNDING**

No limits

COUNTERPARTY LIMITSComprehensive limit structure, including cross banking and *trading book* limits**HEDGING INSTRUMENTS**Any available (subject to the *1986 Act* s9A restrictions on use)**TREASURY SYSTEMS/CONTROLS**Treasury IT system capable of projecting forward balance sheet and simulating different interest rate environments, plus measuring embedded optionality, *basis risk* etc.*Trading book* systems

Specialist IT and Treasury Audit

In this table:

ALCO = Assets and Liabilities Committee

HPIs = house price indices

MTM = mark to market

NII = net interest income

NPV = net present value

Chapter 6

Business model diversification



6.1 Pre-notification of business model diversification

6.1.1
PRA

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Any *society* which proposes to embark on any diversification into an area (whether regulated or unregulated, associated with the retail housing market or otherwise):

- (1) which is not covered by the *BSOCS* tables; and
- (2) where the investment (of any form) to set it up exceeds 5% of *own funds* or the projected post implementation income within any of the 3 years following the diversification exceeds 10% of projected net interest margin plus other income net of commission paid for that year;

should pre-notify the *PRA* and provide a board-approved best/worst case analysis of the risks and potential exit costs, together with a revised *ICAAP* for supervisory review and evaluation before proceeding, whether the proposed diversification is by acquisition or by investment to enter an area or facilitate organic growth.

6.1.2
PRA

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Societies should also note the provisions of section 92A of the *1986 Act* in relation to acquisition or establishment of a business.

Building Societies sourcebook

BSOCS TP Transitional provisions [deleted]

Building Societies sourcebook

Schedule 1 Record keeping requirements

Sch 1.1 G

PRA

There are no record-keeping requirements in *BSOCS*.

Building Societies sourcebook

Schedule 2 Notification requirements

Sch 2.1 G

PRA

There are no notification requirements in *BSOCS*.

Building Societies sourcebook

Schedule 3 Fees and other required payments

Sch 3.1 G

PRA

There are no requirements for fees in *BSOCS*.

Building Societies sourcebook

Schedule 4 Powers Exercised

Sch 4.1 G

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

section 138 (General rule-making power)

section 156 (General supplementary powers)

Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *BSOCS*:

section 157(1) (Guidance)

Building Societies sourcebook

Schedule 5 Rights of action for damages

Sch 5.1 G

There are no rules in *BSOCS* which give rights of action for damages.

Building Societies sourcebook

Schedule 6 Rules that can be waived

Sch 6.1 G

PRA

There are no rules in *BSOCS* that can be waived.

Collective Investment Schemes

Collective Investment Schemes

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Sch 6	Rules that can be waived

Chapter 1

Introduction

1.1 Applications and purpose

Application

1.1.1
FCA

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- (1) This sourcebook, except for ■ COLL 9 (Recognised schemes), applies to:
- (a) *investment companies with variable capital (ICVCs)*;
 - (b) *ACDs, other directors and depositaries of ICVCs*;
 - (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) ■ COLL 9 applies to *operators of schemes* that are *recognised schemes* and to those seeking to secure recognised status for such *schemes*.
- (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*.

1.1.1A
FCA

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This sourcebook does not apply to an *incoming ECA provider* acting as such.

EEA territorial scope: compatibility with European law

1.1.1B
FCA

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- (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
FCA

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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.

1.1.2

FCA

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Purpose

- (1) The general purpose of this sourcebook is to contribute to the FCA meeting its *statutory objectives* of the protection of *consumers*. It provides a regime of product regulation for *authorised funds*, which sets appropriate standards of protection for investors by specifying a number of features of those products and how they are to be operated.
- (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

FCA

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■ 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*.

The Collective Investment Schemes Information Guide

1.1.3

FCA

G

The Collective Investment Schemes Information Guide *COLLG* provides some general background material on the regulatory structure surrounding *scheme* regulation in the *UK*.

1.2 Types of authorised fund

Types of authorised fund

1.2.1
FCA

R

An application for an *authorisation order* must propose that the *scheme* be one of the following types:

- (1) a *UCITS scheme*;
- (2) a *non-UCITS retail scheme*, including:
 - (a) a *non-UCITS retail scheme* operating as a *fund of alternative investment funds (FAIF)*; and
 - (b) a *non-UCITS retail scheme* which is an *umbrella* with *sub-funds* operating as:
 - (i) *FAIFs*;
 - (ii) *standard non-UCITS retail schemes*; or
 - (iii) a mixture of (i) and (ii); or
- (3) a *qualified investor scheme*.

Umbrella schemes

1.2.1A
FCA

G

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

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

Types of authorised fund - explanation

1.2.2
FCA

G

- (1) *UCITS schemes* have to comply with the conditions necessary in order to enjoy the rights available under the *UCITS Directive*. Such *schemes* must in particular comply with:
 - (a) ■ COLL 3.2.8 R (UCITS obligations); and
 - (b) the investment and borrowing powers rules for *UCITS schemes* set out in ■ COLL 5.2 to ■ COLL 5.5 .
- (2) *Non-UCITS retail schemes* are *schemes* that do not comply with all the conditions set out in the *UCITS Directive*. Such *schemes* could become

UCITS schemes provided they are changed, so as to comply with the conditions set out in the *UCITS Directive*. *Non-UCITS retail schemes* operating as *FAIFs* have wider powers to invest in *collective investment schemes* than other *non-UCITS retail schemes*.

- (2A) A *non-UCITS retail scheme* may also be structured as an *umbrella* with *sub-funds* operating as:
- (a) *FAIFs*;
 - (b) standard *non-UCITS retail schemes*; or
 - (c) a mixture of (a) and (b).

In these cases, *rules* relating to investment powers and borrowing limits apply to each *sub-fund* as they would to a *scheme*.

- (3) *Qualified investor schemes* may only be promoted to professional investors on the same terms as *unregulated collective investment schemes*. Such *schemes* could change to become *non-UCITS retail schemes* or *UCITS schemes*.
- (4) The changes referred to in (2) and (3) require approval by the *FCA* and further information on that process is provided in ■ COLLG 3.1.5 G (Notification of changes to unit trusts (section 251)) and ■ COLLG 4.1.3 G (Notification of changes to ICVCs (Regulation 21)).

UCITS schemes

1.2.3

FCA

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

FCA

R

A *master UCITS* that has two or more *feder 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*]

Chapter 2

Authorised fund applications

2.1 Authorised fund applications

Application

2.1.1
FCA

R This chapter applies to any *person* seeking to arrange for the authorisation of a *scheme*.

Purpose

2.1.2
FCA

G This chapter helps in achieving the *statutory objectives* of protecting *consumers* by ensuring that any application for authorisation of a fund meets certain standards.

Explanation

2.1.3
FCA

- G**
- (1) This chapter sets out the requirements that a *person* must follow in applying for an *authorisation order* for a *scheme* under regulation 12 of the *OEIC Regulations* (Applications for authorisation) or section 242 of the *Act* (Applications for authorisation of unit trust schemes).
 - (2) ■ COLLG 3 (The *FCA's* responsibilities under the *Act*) and ■ COLLG 4 (The *FCA's* responsibilities under the *OEIC Regulations*) provide more information on what the *Act* and the *OEIC Regulations* require in relation to ongoing notifications to the *FCA* .

Specific requirements on application

2.1.4
FCA

D An application for an *authorisation order* in respect of an *authorised fund* must be:

- (1) in writing in the manner directed and contain the information required in the application form available from the *FCA*;
- (2) addressed for the attention of a member of *FCA* staff responsible for *collective investment scheme* authorisation matters; and
- (3) delivered to the *FCA's* address by one of the following methods:
 - (a) posting; or
 - (b) leaving it at the *FCA's* address and obtaining a time-stamped receipt; or
 - (c) delivery by hand to a member of *FCA* staff responsible for *collective investment scheme* authorisation matters.

2.1.5

FCA

G

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

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

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

Chapter 3

Constitution

3.1 Introduction

Application

3.1.1

FCA

R

This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where the *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

3.1.2

FCA

G

This chapter assists in achieving the *statutory objective* of protecting *consumers*. In particular:

- (1) ■ COLL 3.2 (The instrument constituting the scheme) contains requirements about provisions which must be included in the *instrument constituting the scheme* to give a similar degree of protection for investors in an *ICVC* or in an *AUT*; and
- (2) ■ COLL 3.3 (Units) provides *rules* and *guidance* which deal with the *classes* of *units* to ensure that investors in each *class* are treated equally.

3.2 The instrument constituting the scheme

Application

3.2.1

FCA

R

This section applies to:

- (1) an *authorised fund manager* of an *AUT* or *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

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

Relationship between the instrument constituting the scheme and the rules

3.2.2

FCA

R

- (1) The *instrument constituting the scheme* must not contain any provision that:
 - (a) conflicts with any *rule* in this sourcebook;
 - (b) prevents *units* in the *scheme* being marketed in the *United Kingdom*; or
 - (c) is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (2) Any power conferred by the *rules* on the *ICVC*, the *authorised fund manager*, any other *director* of the *ICVC*, or the *depository*, whether in a sole or joint capacity, is subject to any restriction in the *instrument constituting the scheme*.

The trust deed for AUTs

PAGE
3

3.2.3

FCA

R

An *AUT* must be constituted by a *trust deed* made between the *manager* and the *trustee*.

3.2.4
FCA

R

Matters which must be included in the instrument constituting the scheme

The statements and provisions required by ■ COLL 3.2.6 R (Table: contents of the instrument constituting the scheme) must be included in the *instrument constituting the scheme*, where appropriate.

3.2.5
FCA

G

The instrument constituting the scheme: OEIC Regulations and trust law requirements

- (1) Several of the matters set out in ■ COLL 3.2.6 R are required to be included in the *instrument constituting the scheme* under the *OEIC Regulations* or as a consequence of relevant trust law. In addition, further statements are required if the *scheme* or the *authorised fund manager* are to take advantage of the powers under the *rules* in this sourcebook.
- (2) Additional matters which are not contained in ■ COLL 3.2.6 R may be required to be included in the *instrument constituting the scheme* in order to comply with the *OEIC Regulations*, (particularly Schedule 2 - Instrument of Incorporation) and for the purposes of making the *scheme* eligible under relevant tax, pensions, or charities legislation.

3.2.6
FCA

R

Table: contents of the instrument constituting the scheme

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

	Name of scheme
1	<p>A statement of:</p> <ol style="list-style-type: none"> (1) the name of the <i>authorised fund</i>; and (2) whether the <i>authorised fund</i> is a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i>.
2	<p>Investment powers in eligible markets</p> <p>A statement that, subject to any restriction in the <i>rules</i> in this sourcebook or the <i>instrument constituting the scheme</i>, the <i>scheme</i> has the power to invest in any <i>eligible securities</i> market or <i>deal</i> on any <i>eligible derivatives</i> market to the extent that power to do so is conferred by COLL 5 (Investment and borrowing powers).</p>
3	<p>Unitholder's liability to pay</p> <p>A provision that a <i>unitholder</i> is not liable to make any further payment after he has paid the <i>price</i> of his <i>units</i> and that no further liability can be imposed on him in respect of the <i>units</i> which he holds.</p>
4	<p>Base currency</p> <p>A statement of the <i>base currency</i> of the <i>scheme</i>.</p>
5	<p>Valuation and pricing</p> <p>A statement setting out the basis for the valuation and pricing of the <i>scheme</i>.</p>
	Duration of the scheme

6 If the *scheme* is to be wound up after a particular period expires, a statement to that effect.

Object of the scheme

7 A statement:

- (1) as to the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest; and
- (2) that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of that property.

7A Where the *authorised fund* is a *qualifying money market fund*, a statement to that effect and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*.

Property Authorised Investment Funds

7B For a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* in accordance with 18 if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.

Government and public securities: investment in one issuer

8 Where relevant, for a *UCITS scheme*, a statement in accordance with COLL 5.2.12 R (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the *scheme* may be invested in *government and public securities*.

Classes of unit

9 A statement:

- (1) specifying the *classes* of *unit* that may be issued, and for a *scheme* which is an *umbrella*, the *classes* that may be issued in respect of each *sub-fund*; and
- (2) if the rights of any *class* of *unit* differ, a statement describing those differences in relation to the differing *classes*.

Authorised fund manager's charges and expenses

- 10 A statement setting out the basis on which the *authorised fund manager* may make a charge and recover expenses out of the *scheme property*.

Issue or cancellation directly through the ICVC or trustee

- 11 Where relevant, a statement authorising the *issue or cancellation of units* to take place through the *ICVC or trustee* directly.

In specie issue and cancellation

- 12 Where relevant, a statement authorising payment for the *issue or cancellation of units* to be made by the transfer of assets other than cash.

Restrictions on sale and redemption

- 13 Where relevant, the restrictions which will apply in relation to the *sale and redemption of units* under COLL 6.2.16 R (Sale and redemption).

Voting at meetings

- 14 The manner in which votes may be given at a meeting of *unitholders* under COLL 4.4.8 R (Voting rights).

Certificates

- 15 A statement:
- (1) authorising the issue of *bearer certificates* if any, and how such *holders* are to identify themselves; and
 - (2) authorising the *person* responsible for the *register* to charge for issuing any document recording, or for amending, an entry on the *register*, other than on the *issue or sale of units*.

Income

- 16 A statement setting out the basis for the distribution or re-investment of income.

Income equalisation

- 17 Where relevant, a provision for *income equalisation*.

Redemption or cancellation of units on breach of law or rules

- 18 A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

ICVCs: larger and smaller denomination shares

- 19 A statement of the proportion of a *larger denomination share* represented by a *smaller denomination share* for any relevant *unit class*.

ICVCs: resolution to remove a director

- 20 A statement that the *ICVC* may (without prejudice to the requirements of regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of *unitholders*, remove a *director* before his period of office expires, despite anything else in the *ICVC's instrument of incorporation* or in any agreement between the *ICVC* and that *director*.
- ICVCs: unit transfers
- 21 A statement that the *person* designated for the purposes of paragraph 4 of Schedule 4 to the *OEIC Regulations* (Share transfers) is the *person* who, for the time being, is the *ACD* of the *ICVC*.
- ICVCs: Charges and expenses
- 22 A statement that charges or expenses of the *ICVC* may be taken out of the *scheme property*.
- ICVCs: Umbrella schemes - principle of limited recourse
- 22A For an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose.
- AUTs: governing law for a trust deed
- 23 A statement that the *trust deed* is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.
- AUTs: trust deed to be binding and authoritative
- 24 A statement that the *trust deed*:
- (1) is binding on each *unitholder* as if it had been a party to it and that it is bound by its provisions; and
 - (2) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms.
- AUTs: declaration of trust
- 25 A declaration that, subject to the provisions of the *trust deed* and all *rules* made under section 247 of the *Act* (Trust scheme rules) and for the time being in force:
- (1) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (2) the sums standing to the credit of the *distribution account* are held by the *trustee* on trust to distribute or apply them in ac-

cordance with COLL 6.8 (Income: accounting, allocation and distribution).

AUTs: trustee's remuneration

- 26 Where relevant, a statement authorising payments to the *trustee* by way of *remuneration* for its services to be paid (in whole or in part) out of the *scheme property*.

AUTs: responsibility for the register

- 27 A statement identifying the *person* responsible under the *rules* for the maintenance of the *register*.

Investment in overseas property through an intermediate holding vehicle

- 28 If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

Umbrella scheme with only one sub-fund

3.2.7

R

- (1) [deleted]
(2) [deleted]
(3) [deleted]

UCITS obligations

3.2.8

FCA

R

- (1) The instrument constituting a *UCITS scheme* may not be amended in such a way that it ceases to be a *UCITS scheme*.
(2) [deleted]
(3) [deleted]

3.3 Units

Application

3.3.1
FCA

R This section applies to an *authorised fund manager*, an *ICVC* and the *trustee* of an *AUT*.

Classes of units

3.3.2
FCA

- G**
- (1) The *instrument constituting the scheme* may provide for different *classes* of *unit* to be issued in an *authorised fund* and, for a *scheme* which is an *umbrella*, provide that *classes* of *units* may be issued for each *sub-fund*.
 - (2) In order to be satisfied that ■ COLL 3.2.2 R (Relationship between the instrument constituting the scheme and the rules) is complied with, the *FCA* will take into account the principles in (a) to (c) when considering proposals for *unit classes*:
 - (a) a *unit class* should not provide any advantage for that *class* if that would result in prejudice to *unitholders* of any other *class*;
 - (b) the nature, operation and effect of the new *unit class* should be capable of being explained clearly to prospective investors in the *prospectus*; and
 - (c) the effect of the new *unit class* should not appear to be contrary to the purpose of any part of this sourcebook.

Currency class units

3.3.3
FCA

G A *currency class unit* differs from other *units* mainly in that its *price*, having been calculated initially in the *base currency*, will be quoted, and normally paid for, in the currency of the designation of the *class*. Income distributions will also be paid in the currency of designation of the *class*.

Currency class units: requirements

3.3.4
FCA

- R** For a *currency class unit*:
- (1) the currency of the *class* concerned must not be the *base currency* (or, in the case of a *sub-fund* which, in accordance with a statement in the *prospectus*, is to be valued in some other currency, the currency of the *class* may be in the *base currency*, but must not be in that other currency);
 - (2) the *price* must be expressed in the currency of the *class* concerned;

- (3) any distribution must be paid in the currency of the *class* concerned; and
- (4) statements of amounts of *money* or values included in statements and in tax certificates must be given in the currency of the *class* concerned (whether or not also given in the *base currency*).

Rights of unit classes

3.3.5

FCA

R

- (1) If any *class* of *units* in an *authorised fund* has different rights from another *class* of *units* in that *fund*, the *instrument constituting the scheme* must provide how the proportion of the value of the *scheme property* and the proportion of income available for allocation attributable to each such *class* must be calculated.
- (2) For an *authorised fund* which is not an *umbrella*, the *instrument constituting the scheme* must not provide for any *class* of *units* in respect of which:
 - (a) the extent of the rights to participate in the *capital property*, *income property* or *distribution account* would be determined differently from the extent of the corresponding rights for any other *class* of *units*; or
 - (b) payments or accumulation of income or capital would differ in source or form from those of any other *class* of *units*.
- (3) For a *scheme* which is an *umbrella*, the provisions in (2)(a) apply to *classes* of *units* in respect of each *sub-fund* as if each *sub-fund* were a separate *scheme*.
- (4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one *class* of *units* and to another *class* of *units* that relates solely to:
 - (a) the accumulation of income by way of periodical credit to capital rather than distribution; or
 - (b) charges and expenses that may be taken out of the *scheme property* or payable by the *unitholders*; or
 - (c) the currency in which *prices* or values are expressed or payments made; or
 - (d) the use of *derivatives* and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a *class* of *units* and either the *base currency* of the *scheme* or any currency in which all or part of the *scheme property* is denominated or valued (in this section referred to as a "class hedging transaction").

Hedging of unit classes

3.3.5A

FCA

R

A class hedging transaction must:

- (1) be undertaken in accordance with the requirements of ■ COLL 5 (Investment and borrowing powers); and
- (2) (for the purposes of valuing *scheme property* and calculating the *price of units* in accordance with ■ COLL 6.3 (Valuation and pricing)) be attributed only to the *class* of *units* for which it is undertaken.

Guidance on hedging of unit classes

3.3.5B

FCA

G

- (1) Before undertaking a class hedging transaction for a *class* of *units*, the *authorised fund manager* should:
 - (a) ensure that the relevant *prospectus* clearly:
 - (i) states that such a transaction may be undertaken for the relevant *class* of *units*; and
 - (ii) explains the nature of the risks that such a transaction may pose to investors in all *classes*;
 - (b) consult the *depository* about the adequacy of the systems and controls it uses to ensure compliance with ■ COLL 3.3.5A R (Hedging of unit classes); and
 - (c) consult the *scheme auditor* and, where appropriate, *depository* to determine how:
 - (i) the transaction will be treated in the *scheme's* accounts; and
 - (ii) any consequential tax liability will be met;

(in each case) without prejudice to *unitholders* of *classes* other than the relevant hedged *class*.
- (2) Class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a *unit*. Such transactions are not limited to *currency class units*. The *authorised fund manager* should ensure that the total value of the hedged position does not exceed the value of the relevant *class* of units unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the *class* of *units* should not be so large as to be speculative or to constitute an investment strategy.

Requirement: larger and smaller denomination shares in an ICVC

3.3.6

FCA

R

- (1) This *rule* applies whenever the *instrument of incorporation* of an *ICVC* provides, in relation to any *class*, for *smaller denomination shares* and *larger denomination shares*.

- (2) Whenever a registered holding includes a number of *smaller denomination shares* that can be consolidated into a *larger denomination share* of the same *class*, the *ACD* must consolidate the relevant number of those *smaller denomination shares* into a *larger denomination share*.
- (3) The *ACD* may, to effect a transaction in *shares*, substitute for a *larger denomination share* the relevant number of *smaller denomination shares*, in which case (2) does not apply to the resulting smaller denomination shareholding or holdings until immediately after the completion of the transaction.

Characteristics of larger and smaller denomination shares in an ICVC

3.3.7

FCA

G

Regulation 45 of the *OEIC Regulations* (Shares) allows the rights attached to a *share* in an *ICVC* of any *class* to be expressed in two denominations, in which case the 'smaller' denomination must be such proportion of the 'larger' denomination (a standard *share*) as is fixed by the *ICVC's instrument of incorporation* as described in ■ COLL 3.2.6R (19) . This will enable holdings to consist of more or less than a complete number of *larger denomination shares*.

Sub-division and consolidation of units

3.3.8

FCA

R

- (1) The *directors* of an *ICVC* or the *manager* of an *AUT* may, unless expressly forbidden to do so by the *instrument constituting the scheme*, determine that:
 - (a) each *unit* of any *class* is to be subdivided into two or more *units*; or
 - (b) *units* of any *class* are to be consolidated.
- (2) The *ICVC* or the *manager* must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each *unitholder* (or the first named of joint *unitholders*) of any sub-division or consolidation under (1).

Guarantees and capital protection

3.3.9

FCA

R

If there is any arrangement intended to result in a particular capital or income return from a holding of *units* in an *authorised fund*, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

- (1) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:
 - (a) *unitholders* and the *authorised fund manager* or *depository*; or
 - (b) *unitholders* intended and not intended to benefit from the arrangement; and

- (2) where, in accordance with any statement required by
■ COLL 4.2.5R (27)(c)(iv) (Table: contents of the prospectus), action is required by the *unitholders* to obtain the benefit of any guarantee, the *authorised fund manager* must provide reasonable notice in writing to *unitholders* before such action is required.

Switching rights: umbrella schemes

- (1) In accordance with section 235(4) of the *Act* (Collective investment schemes), the *participants* in a *scheme* which is an *umbrella* are entitled to exchange rights in one *sub-fund* for rights in another *sub-fund* of the *umbrella*.
- (2) To satisfy (1), where any *sub-fund* in a *scheme* which is an *umbrella* has provisions in its *prospectus* limiting the *issue* of *units* in that *sub-fund*, the *authorised fund manager* should ensure that at least two *sub-funds* are able to issue *units* at any time. In the case of an *umbrella* consisting of a single *sub-fund* that limits the issue of *units*, where the *ICVC* or the *manager* of such an *umbrella* intends to offer additional *sub-funds*, it should ensure that *unitholders* will have the right to switch at all times between two or more *sub-funds* in that *umbrella*.

3.3.10

FCA

G

3

Chapter 4

Investor Relations

4.1 Introduction

Application

4.1.1

FCA

R

This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

4.1.2

FCA

G

This chapter helps in achieving the *statutory objective* of protecting *consumers* by ensuring *consumers* have access to up-to-date detailed information about an *authorised fund* particularly before buying *units* and thereafter an appropriate level of investor involvement exists by providing a framework for them to:

- (1) participate in the decisions on key issues concerning the *authorised fund*; and
- (2) be sent regular and relevant information about the *authorised fund*.

4.2 Pre-sale notifications

Application

4.2.1

FCA

R

This section applies to an *authorised fund manager*, an *ICVC* and any other *director* of an *ICVC*

Publishing the prospectus

4.2.2

FCA

R

- (1) A *prospectus* must be drawn up in English and published as a *document* by the *authorised fund manager* and, for an *ICVC*, it must be approved by the *directors*.
- (2) The *authorised fund manager* must ensure that the *prospectus*:
 - (a) contains the information required by ■ COLL 4.2.5 R (Table: contents of the prospectus);
 - (b) does not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*;
 - (c) does not contain any provision that conflicts with any *rule* in this sourcebook; and
 - (d) is kept up-to-date and that revisions are made to it, whenever appropriate.

Provision and filing of the prospectus

4.2.3

FCA

R

- (1) The *authorised fund manager* of an *AUT* or an *ICVC* must:
 - (a) provide a copy of the *scheme's* most recent *prospectus* drawn up and published in accordance with ■ COLL 4.2.2 R (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 *FCA* 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) [deleted]
- (3) An *authorised fund manager* must, upon the request of a *unitholder* in a *UCITS scheme* that it manages, provide information supplementary to the *prospectus* of that *scheme* relating to:
 - (a) the quantitative limits applying to the risk management of that *scheme*;
 - (b) the methods used in relation to (a); and
 - (c) any recent development of the risk and yields of the main categories of *investment*.

[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

FCA

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 *FCA*.
- (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*]

Feeder NURS: provision of the prospectus of the qualifying master scheme

4.2.3B

FCA

R

- (1) The *authorised fund manager* of a *feeder NURS* must, where requested by an investor or the *FCA*, provide such *person* with a copy of the *prospectus* of its *qualifying master scheme* free of charge.
- (2) Except where an investor requests a paper copy or the use of *electronic communications* is not appropriate, the *prospectus* of the *qualifying master scheme* may be provided in a *durable medium* other than paper, or by means of a website that meets the *website conditions*.

4.2.4

FCA

R

False or misleading prospectus

- (1) The *authorised fund manager*:
 - (a) must ensure that the *prospectus* of the *authorised fund* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it; and
 - (b) is liable to pay compensation to any *person* who has acquired any *units* in the *authorised fund* and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this *rule*.
- (2) The *authorised fund manager* is not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if, at the time when the *prospectus* was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:
 - (a) it continued to take such reasonable care until the time of the relevant acquisition of *units* in the *scheme*; or
 - (b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or
 - (c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or
 - (d) the *person* who acquired the *units* was not materially influenced or affected by that statement or omission in making the decision to invest.
- (3) The *authorised fund manager* is also not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if:
 - (a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of *persons* likely to acquire the *units* in question; or
 - (b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the *units* were acquired.
- (4) The *authorised fund manager* is not liable to pay compensation under (1)(b) if the *person* who acquired the *units* knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.
- (5) For the purposes of this *rule* a revised *prospectus* will be treated as a different *prospectus* from the original one.

- (6) References in this *rule* to the acquisition of *units* include references to contracting to acquire them.

Table: contents of the prospectus

4.2.5

FCA

R

This table belongs to ■ COLL 4.2.2 R (Publishing the prospectus).

Document status

- 1 A statement that the *document* is the *prospectus* of the *authorised fund* valid as at a particular date (which shall be the date of the *document*).

Authorised fund

- 2 A description of the *authorised fund* including:
- (a) its name;
 - (b) whether it is an *ICVC* or an *AUT*;
 - (ba) whether it is a *UCITS scheme* or a *non-UCITS retail scheme*;
 - (bb) a statement that *unitholders* are not liable for the debts of the *authorised fund*.
 - (c) for an *ICVC*, the address of its head office and the address of the place in the *United Kingdom* for service on the *ICVC* of notices or other documents required or authorised to be served on it;
 - (d) the effective date of the *authorisation order* made by the *FCA* and relevant details of termination, if the duration of the *authorised fund* is limited;
 - (e) its *base currency*;
 - (f) for an *ICVC*, the maximum and minimum sizes of its capital;
 - (g) the circumstances in which it may be wound up under the *rules* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up; and
 - (h) if it is not an *umbrella*, a statement that it is a *feeder UCITS*, a *feeder NURS*, or a *fund of alternative investment funds*, where that is the case.

Umbrella ICVCs

- 2A For an *ICVC* which is an *umbrella*, a statement that:
- (a) its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose; and

- (b) while the provisions of the *OEIC Regulations* provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations*.

Umbrella Schemes

- 2B** For a *UCITS scheme* or *non-UCITS retail scheme* which is an *umbrella*, a statement detailing whether each specific *sub-fund* is a *feeder UCITS*, a *feeder NURS* or a *fund of alternative investment funds*, as appropriate.

Investment objectives and policy

- 3** The following particulars of the investment objectives and policy of the *authorised fund*:
- (a) the investment objectives, including its financial objectives;
 - (b) the *authorised fund's* investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
 - (c) an indication of any limitations on that investment policy;
 - (d) the description of assets which the *capital property* may consist of;
 - (e) the proportion of the *capital property* which may consist of an asset of any description;
 - (f) the description of transactions which may be effected on behalf of the *authorised fund* and an indication of any techniques and instruments or borrowing powers which may be used in the management of the *authorised fund*;
 - (g) a list of the *eligible* markets through which the *authorised fund* may invest or *deal* in accordance with [COLL 5.2.10 R \(2\)\(b\)](#) (Eligible markets: requirements);
 - (h) for an *ICVC*, a statement as to whether it is intended that the *scheme* will have an interest in any immovable property or movable property ((in accordance with [COLL 5.6.4 R \(2\)](#) (Investment powers: general) or [COLL 5.2.8 R \(2\)](#) (UCITS schemes: general)) for the direct pursuit of the *ICVC's* business;
 - (i) where [COLL 5.2.12 R \(3\)](#) (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the *scheme property* is or may be invested in *government and public securities* and the names of the individual states, local authorities or public international bodies in whose *securities* the *authorised fund* may invest more than 35% of the *scheme property*;

- (j) the policy in relation to the exercise of borrowing powers by the *authorised fund*;
- (k) for an *authorised fund* which may invest in other *schemes*, the extent to which the *scheme property* may be invested in the *units* of *schemes* which are managed by the *authorised fund manager* or by its *associate*;
- (ka) where a *scheme* is a *feeder scheme* (other than a *feeder UCITS* or a *feeder NURS*), which (in respect of investment in *units* in *collective investment schemes*) is *dedicated to units* in a single *collective investment scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the *feeder scheme* may make in it;
- (l) where a *scheme* invests principally in *scheme units*, *deposits* or *derivatives*, or replicates an index in accordance with COLL 5.2.31 R or COLL 5.6.23 R (Schemes replicating an index), a prominent statement regarding this investment policy;
- (m) where *derivatives* transactions may be used in a *scheme*, a prominent statement as to whether these transactions are for the purposes of *efficient portfolio management* (including hedging) or meeting the investment objectives or both and the possible outcome of the use of *derivatives* on the risk profile of the *scheme*;
- (n) information concerning the profile of the typical investor for whom the *scheme* is designed;
- (o) information concerning the historical performance of the *scheme* presented in accordance with COBS 4.6.2 R (the rules on past performance);
- (p) for a *non-UCITS retail scheme* which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the *authorised fund* may invest;
- (q) for a *UCITS scheme* which invests a substantial portion of its assets in other *schemes*, a statement of the maximum level of management fees that may be charged to that *UCITS scheme* and to the *schemes* in which it invests;
- (qa) where the *authorised fund* is a *qualifying money market fund*, *short-term money market fund* or *money market fund*, a statement identifying it as such a fund and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*, *short-term money market fund* or *money market fund*, as appropriate;

- (r) where the net asset value of a *UCITS scheme* 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;
- (s) for a *UCITS scheme*, a statement that any *unitholder* may obtain on request the types of information (which must be listed) referred to in COLL 4.2.3R (3) (Availability of prospectus and long report); and
- (t) 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*.

Reporting, distributions and accounting dates

4 Relevant details of the reporting, accounting and distribution information which includes:

- (a) the accounting and distribution dates;
- (b) procedures for:
 - (i) determining and applying income (including how any distributable income is paid);
 - (ii) unclaimed distributions; and
 - (iii) if relevant, calculating, paying and accounting for *income equalisation*;
- (c) the *accounting reference date* and when the long report will be published in accordance with COLL 4.5.14 R (Publication and availability of annual and half-yearly long report); and
- (d) when the short report will be sent to *unitholders* in accordance with COLL 4.5.13 R (Provision of short report).

Characteristics of the units

5 Information as to:

- (a) where there is more than one *class of unit in issue* or available for *issue*, the name of each such *class* and the rights attached to each *class* in so far as they vary from the rights attached to other *classes*;
- (b) where the *instrument constituting the scheme* provides for the *issue of bearer certificates*, that fact and what procedures will operate for them;
- (c) how *unitholders* may exercise their voting rights and what these amount to;
- (d) where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required, in what circumstances it may be required; and
- (e) for an *AUT*, the fact that the nature of the right represented by *units* is that of a beneficial interest under a trust.

Authorised fund manager

- 6** The following particulars of the *authorised fund manager*:
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the date of its incorporation;
 - (d) the address of its registered office;
 - (e) the address of its head office, if that is different from the address of its registered office;
 - (f) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*;
 - (g) if the duration of its corporate status is limited, when that status will or may cease; and
 - (h) the amount of its issued share capital and how much of it is paid up.

Directors of an ICVC, other than the ACD

- 7** Other than for the *ACD*:
- (a) the names and positions in the *ICVC* of any other *directors* (if any); and
 - (b) the manner, amount and calculation of the *remuneration* of such *directors*.

Depositary

- 8** The following particulars of the *depositary*:
- (a) its name;
 - (b) the nature of its corporate form;
 - (c) the address of its registered office;
 - (d) the address of its head office, if that is different from the address of its registered office;
 - (e) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*; and
 - (f) a description of its principal business activity.

Investment adviser

- 9** If an *investment adviser* is retained in connection with the business of an *authorised fund*:
- (a) its name; and
 - (b) where it carries on a significant activity other than providing services to the *authorised fund* as an *investment adviser*, what that significant activity is.

Auditor

10 The name of the auditor of the *authorised fund*.

Contracts and other relationships with parties

11 The following relevant details:

- (a) for an *ICVC*:
 - (i) a summary of the material provisions of the contract between the *ICVC* and the *ACD* which may be relevant to *unitholders* including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
 - (ii) the main business activities of each of the *directors* (other than those connected with the business of the *ICVC*) where these are of significance to the *ICVC's* business;
 - (iii) if any *director* is a *body corporate* in a group of which any other corporate *director* of the *ICVC* is a member, a statement of that fact;
 - (iv) the main terms of each contract of service between the *ICVC* and a *director* in summary form; and
 - (v) for an *ICVC* that does not hold annual general meetings, a statement that copies of contracts of service between the *ICVC* and its *directors*, including the *ACD*, will be provided to a *unitholder* on request;
- (b) the names of the *directors* of the *authorised fund manager* and the main business activities of each of the *directors* (other than those connected with the business of the *authorised fund*) where these are of significance to the *authorised fund's* business;
- (c) a summary of the material provisions of the contract between the *ICVC* or the *manager* of the *AUT* and the *depository* which may be relevant to *unitholders*, including provisions relating to the *remuneration* of the *depository*;
- (d) if an *investment adviser* retained in connection with the business of the *authorised fund* is a *body corporate* in a group of which any *director* of the *ICVC* or the *manager* of the *AUT* is a member, that fact;
- (e) a summary of the material provisions of any contract between the *authorised fund manager* or the *ICVC* and any *investment adviser* which may be relevant to *unitholders*;
- (f) if an *investment adviser* retained in connection with the business of the *authorised fund* has the authority of the *authorised fund manager* or the *ICVC* to make decisions on

behalf of the *authorised fund manager* or the *ICVC*, that fact and a description of the matters in relation to which it has that authority;

- (g) a list of:
 - (i) the functions which the *authorised fund manager* has delegated in accordance with *FCA rules* or, for an *EEA UCITS management company*, in accordance with applicable *Home State* measures implementing article 13 of the *UCITS Directive*; and
 - (ii) the *person* to whom such functions have been delegated; and
- (h) in what capacity (if any), the *authorised fund manager* acts in relation to any other *regulated collective investment schemes* and the name of such *schemes*.

Register of unitholders

12 Details of:

- (a) the address in the *United Kingdom* where the *register of unitholders*, and where relevant the *plan register* is kept and can be inspected by *unitholders*; and
- (b) the *registrar's* name and address.

Payments out of scheme property

13 In relation to each type of payment from the *scheme property*, details of:

- (a) who the payment is made to;
- (b) what the payment is for;
- (c) the rate or amount where available;
- (d) how it will be calculated and accrued;
- (e) when it will be paid; and
- (f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.

Allocation of payments

14 If, in accordance with [COLL 6.7.10 R](#) (Allocation of payments to income or capital), the *authorised fund manager* and the *depository* have agreed that all or part of any income expense payments may be treated as a capital expense:

- (a) that fact;
- (b) the policy for allocation of these payments; and
- (c) a statement that this policy may result in capital erosion or constrain capital growth.

Moveable and immovable property (ICVC only)

- 15** An estimate of any expenses likely to be incurred by the *ICVC* in respect of movable and immovable property in which the *ICVC* has an interest.

Valuation and pricing of scheme property

- 16** In relation to the valuation of *scheme property* and *pricing of units*:

(a) either:

- (i)** in the case of a *single-priced authorised fund*, a provision that there must be only a single *price* for any *unit* as determined from time to time by reference to a particular *valuation point*; or
- (ii)** in the case of a *dual-priced authorised fund*, the *authorised fund manager's* policy for determining *prices* for the *sale* and *redemption* of *units* by reference to a particular *valuation point* and an explanation of how those *prices* may differ;

(b) details of:

- (i)** how the value of the *scheme property* is to be determined in relation to each purpose for which the *scheme property* must be valued;
- (ii)** how frequently and at what time or times of the *day* the *scheme property* will be regularly valued for *dealing* purposes and a description of any circumstance in which the *scheme property* may be specially valued;
- (iii)** where relevant, how the *price of units* of each *class* will be determined for *dealing* purposes;
- (iv)** where and at what frequency the most recent *prices* will be published; and
- (v)** where relevant in the case of a *dual-priced authorised fund*, the *authorised fund manager's* policy in relation to *large deals*; and

- (c)** if provisions in (a) and (b) do not take effect when the *instrument constituting the scheme* or (where appropriate) supplemental *trust deed* takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

Dealing

- 17** The following particulars:

- (a)** the procedures, the dealing periods and the circumstances in which the *authorised fund manager* will effect:

- (i) the *sale and redemption of units* and the settlement of transactions (including the minimum number or value of *units* which one *person* may hold or which may be subject to any transaction of *sale or redemption*) for each *class of unit* in the *authorised fund*; and
- (ii) any direct *issue or cancellation of units* by an *ICVC* or by the *trustee* (as appropriate) through the *authorised fund manager* in accordance with [COLL 6.2.7 \(2\)](#) (Issue and cancellation of units through an authorised fund manager);
- (b) the circumstances in which the *redemption of units* may be suspended;
- (c) whether certificates will be issued in respect of registered *units*;
- (d) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for the *issue or cancellation of units* in specie;
- (e) the investment exchanges (if any) on which *units* in the *scheme* are listed or dealt;
- (f) the circumstances and conditions for issuing *units* in an *authorised fund* which limit the *issue* of any *class of units* in accordance with [COLL 6.2.18 R](#) (Limited issue);
- (g) the circumstances and procedures for the limitation or deferral of *redemptions* in accordance with [COLL 6.2.19 R](#) (Limited redemption) or [COLL 6.2.21 R](#) (Deferred redemption);
- (h) in a *prospectus* available during the period of any *initial offer*:
 - (i) the length of the *initial offer* period;
 - (ii) the initial *price* of a *unit*, which must be in the *base currency*;
 - (iii) the arrangements for issuing *units* during the *initial offer*, including the *authorised fund manager's* intentions on investing the subscriptions received during the *initial offer*;
 - (iv) the circumstances when the *initial offer* will end;
 - (v) whether *units* will be *sold* or *issued* in any other currency; and
 - (vi) any other relevant details of the *initial offer* ; and
- (i) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so

the conditions that must be satisfied in order to effect a transfer.

Dilution

18 In the case of a *single-priced authorised fund*, details of what is meant by *dilution* including:

- (a) a statement explaining:
 - (i) that it is not possible to predict accurately whether *dilution* is likely to occur; and
 - (ii) which of the policies the *authorised fund manager* is adopting under COLL 6.3.8 (1) (Dilution) together with an explanation of how this policy may affect the future growth of the *authorised fund*; and
- (b) if the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment*, a statement of:
 - (i) the *authorised fund manager's* policy in deciding when to require a *dilution levy*, including the *authorised fund manager's* policy on *large deals*, or when to make a *dilution adjustment*;
 - (ii) the estimated rate or amount of any *dilution levy* or *dilution adjustment* based either on historical data or future projections; and
 - (iii) the likelihood that the *authorised fund manager* may require a *dilution levy* or make a *dilution adjustment* and the basis (historical or projected) on which the statement is made.

SDRT provision

19 An explanation of:

- (a) what is meant by stamp duty reserve tax, *SDRT provision* and *large deals*; and
- (b) the *authorised fund manager's* policy on imposing an *SDRT provision* including its policy on *large deals*, and the occasions, and the likely frequency of the occasions, in which an *SDRT provision* may be imposed and the maximum rate of it (a usual rate may also be stated).

Forward and historic pricing

20 The *authorised fund manager's* normal basis of pricing under COLL 6.3.7 (Forward and historic pricing).

Preliminary charge

21 Where relevant, a statement authorising the *authorised fund manager* to make a *preliminary charge* and specifying the basis for and current amount or rate of that charge.

Redemption charge

- 22 Where relevant, a statement authorising the *authorised fund manager* to deduct a *redemption charge* out of the proceeds of *redemption*; and if the *authorised fund manager* makes a *redemption charge*:
- (a) the current amount of that charge or if it is variable, the rate or method of calculating it;
 - (b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the *authorised fund manager* on request; and
 - (c) how the order in which *units* acquired at different times by a *unitholder* is to be determined so far as necessary for the purposes of the imposition of the *redemption charge*.

Property Authorised Investment Funds

- 22A For a *property authorised investment fund*, a statement that:
- (1) it is a *property authorised investment fund*;
 - (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
 - (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.

General information

- 23 Details of:
- (a) the address at which copies of the *instrument constituting the scheme*, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
 - (b) the manner in which any notice or *document* will be served on *unitholders*;
 - (c) the extent to which and the circumstances in which:
 - (i) the *scheme* is liable to pay or suffer tax on any appreciation in the value of the *scheme property* or on the income derived from the *scheme property*; and

- (ii) deductions by way of withholding tax may be made from distributions of income to *unitholders* and payments made to *unitholders* on the *redemption* of *units*;
- (d) for a *UCITS scheme*, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a *unitholder* and those to be paid out of *scheme property* ; and
- (e) for an *ICVC*, whether or not annual general meetings will be held.

Information on the umbrella

24 In the case of a *scheme* which is an *umbrella* with two or more *sub-funds*, the following information:

- (a) that a *unitholder* is entitled to exchange *units* in one *sub-fund* for *units* in any other *sub-fund* (other than a *sub-fund* which has limited the *issue* of *units*);
- (b) that an exchange of *units* in one *sub-fund* for *units* in any other *sub-fund* is treated as a *redemption* and *sale* and will, for *persons* subject to *United Kingdom* taxation, be a *realisation* for the purposes of capital gains taxation;
- (c) that in no circumstances will a *unitholder* who exchanges *units* in one *sub-fund* for *units* in any other *sub-fund* be given a right by law to withdraw from or cancel the transaction;
- (d) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (e) what charges, if any, may be made on exchanging *units* in one *sub-fund* for *units* in any other *sub-fund*; and
- (f) for each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price* of *units* calculated and payments made, if this currency is not the *base currency* of the *scheme* which is an *umbrella*.
- (g) [deleted]

Application of the prospectus contents to an umbrella

25 For a *scheme* which is an *umbrella*, information required must be stated:

- (a) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (b) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

Information on a feeder UCITS

25A In the case of a *feeder UCITS*, the following information:

- (a) a declaration that the *feeder UCITS* is a feeder of a particular *master UCITS* and as such permanently invests at least 85% in value of the *scheme property* in *units* of that *master UCITS*;
- (b) the investment objective and policy, including the risk profile; and whether the performance records of the *feeder UCITS* and the *master UCITS* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in *units* of the *master UCITS* is invested in accordance with **COLL 5.8.3 R (Balance of scheme property: investment restrictions on a feeder UCITS)**;
- (c) a brief description of the *master UCITS*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the *prospectus* of the *master UCITS* may be obtained;
- (d) a summary of the *master-feeder agreement* or where applicable, the internal conduct of business rules referred to in **COLL 11.3.2 R (2) (Master-feeder agreement and internal conduct of business rules)**;
- (e) how the *unitholders* may obtain further information on the *master UCITS* and the *master-feeder agreement*;
- (f) a description of all remuneration or reimbursement of costs payable by the *feeder UCITS* by virtue of its investment in *units* of the *master UCITS*, as well as the aggregate charges of the *feeder UCITS* and the *master UCITS*; and
- (g) a description of the tax implications of the investment into the *master UCITS* for the *feeder UCITS*.

[Note: article 63(1) of the *UCITS Directive*]

Information on a feeder NURS**25B In the case of a *feeder NURS*, the following information:**

- (a) a declaration that the *feeder NURS* is a feeder of a particular *qualifying master scheme* and as such is *dedicated to units* in a single *qualifying master scheme* and the minimum (and, if relevant, maximum) investment that the *feeder NURS* may make in its *qualifying master scheme*;
- (b) the investment objective and policy of the *feeder NURS*, including its risk profile; and whether the performance records of the *feeder NURS* and the *qualifying master scheme* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in

units of the qualifying master scheme is invested in accordance with COLL 5.6.7 R (6A) (Spread: general);

- (c) *a brief description of the qualifying master scheme, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the qualifying master scheme may be obtained;*
- (d) *how the unitholders may obtain further information on the qualifying master scheme;*
- (e) *a description of all remuneration or reimbursement of costs payable by the feeder NURS by virtue of its investment in units of the qualifying master scheme, as well as the aggregate charges of the feeder NURS and the qualifying master scheme; and*
- (f) *a description of the tax implications of the investment into the qualifying master scheme for the feeder NURS.*

Marketing in another EEA state

26 *A prospectus of a UCITS scheme which is prepared for the purpose of marketing units in a EEA State other than the United Kingdom, must give details as to:*

- (a) *what special arrangements have been made:*
 - (i) *for paying in that EEA State amounts distributable to unitholders resident in that EEA State;*
 - (ii) *for redeeming in that EEA State the units of unitholders resident in that EEA State;*
 - (iii) *for inspecting and obtaining copies in that EEA State of the instrument constituting the scheme and amendments to it, the prospectus and the annual and half-yearly long report; and*
 - (iv) *for making public the price of units of each class; and*
- (b) *how the ICVC or the manager of an AUT will publish in that EEA State notice:*
 - (i) *that the annual and half-yearly long report are available for inspection;*
 - (ii) *that a distribution has been declared;*
 - (iii) *of the calling of a meeting of unitholders; and*
 - (iv) *of the termination of the authorised fund or the revocation of its authorisation.*

Investment in overseas property through an intermediate holding vehicle

26A *If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding ve-*

hicles, a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicle* is to enable the holding of overseas immovables by the *scheme*.

Additional information

- 27 Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *manager* of an *AUT*, or which the *directors* or *manager* would have obtained by making reasonable enquiries, including but not confined to, the following matters:
- (a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating;
 - (b) a clear and easily understandable explanation of any risks which investment in the *authorised fund* may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
 - (c) if there is any arrangement intended to result in a particular capital or income return from a holding of *units* in the *authorised fund* or any investment objective of giving protection to the capital value of, or income return from, such a holding:
 - (i) details of that arrangement or protection;
 - (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
 - (iii) a description of the risks that could affect achievement of that return or protection; and
 - (iv) details of the arrangements by which the *authorised fund manager* will notify *unitholders* of any action required by the *unitholders* to obtain the benefit of the guarantee; and
 - (d) whether any notice has been given to *unitholders* of the *authorised fund manager* intention to propose a change to the *scheme* and if so, its particulars.

Guidance on contents of the prospectus

- (1) In relation to ■ COLL 4.2.5R (3)(b) the *prospectus* might include:
- (a) a description of the extent (if any) to which that policy does not envisage the *authorised fund* remaining fully invested at all times;

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- (b) for a *non-UCITS retail scheme* which may invest in immovable property:
 - (i) the maximum extent to which the *scheme property* may be invested in immovables; and
 - (ii) a statement of the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
 - (c) a description of any restrictions in the assets in which investment may be made, including restrictions in the extent to which the *authorised fund* may invest in any category of asset, indicating (if appropriate) where the restrictions are more onerous than those imposed by ■ COLL 5 (Investment and borrowing powers).
- (2) In relation to ■ COLL 4.2.5R (13), the type of payments are likely to include management fees (such as periodic and performance fees), *depository fees*, custodian fees, transaction fees, registrar fees, audit fees and *FCA fees*. Expenses which represent properly incurred costs of the *scheme* may also be treated as a type of payment for this purpose.
- (3) In relation to ■ COLL 4.2.5R (27), the *prospectus* might include a statement of the *authorised fund manager's* policy in relation to holding *units* in the *scheme* as *principal*, and in particular whether it seeks to make a profit from doing so. It might also include a prominent statement of non-accountability referred to in ■ COLL 6.7.16 G (Exemptions from liability to account for profits).
- (4) In relation to ■ COLL 4.2.5 R (16)(a), where the *prospectus* includes provisions for both a *single-priced authorised fund* and a *dual-priced authorised fund*, it should state prominently which method of *pricing* is applicable to which *authorised fund*, and explain how the differences between them may affect *unitholders* (for example if a *unitholder* exchanges *units* in a *single-priced authorised fund* for *units* in a *dual-priced authorised fund*, or vice versa).
- (5) Additional matters which are not contained in ■ COLL 4.2.5 R may be required to be included in the *prospectus*, for example for the purposes of making the *scheme* eligible under relevant tax legislation.



4.3 Approvals and notifications

Application

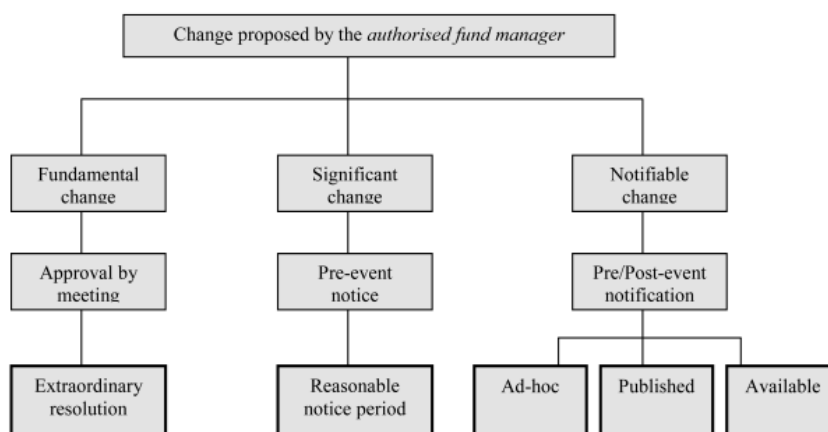
R This section applies to an *authorised fund manager*.

Explanation

- (1) The diagram in ■ COLL 4.3.3 G explains how an *authorised fund manager* should treat changes it is proposing to a *scheme* and provides an overview of the *rules* and *guidance* in this section.
- (2) Regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FCA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depository* or a change to the *instrument constituting the scheme*. This should be kept in mind when considering any proposed change.

Diagram: Change event

G This diagram belongs to ■ COLL 4.3.2 G.



Fundamental change requiring prior approval by meeting

R (1) The *authorised fund manager*, must, by way of an *extraordinary resolution*, obtain prior approval from the

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unitholders for any proposed change to the *scheme* which, in accordance with (2), is a fundamental change.

- (2) A fundamental change is a change or event which:
- (a) changes the purposes or nature of the *scheme*; or
 - (b) may materially prejudice a *unitholder*; or
 - (c) alters the risk profile of the *scheme*; or
 - (d) introduces any new type of payment out of *scheme property*.

Guidance on fundamental changes

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- (1) Any change may be fundamental depending on its degree of materiality and effect on the *scheme* and its *unitholders*. Consequently an *authorised fund manager* will need to determine whether in each case a particular change is fundamental in nature or not.
- (2) For the purpose of ■ COLL 4.3.4 R (2)(a) to ■ COLL 4.3.4 R (2)(c) a fundamental change to a *scheme* is likely to include:
 - (a) any proposal for a *scheme of arrangement* referred to in ■ COLL 7.6.2 R (Schemes of arrangement: requirements);
 - (b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
 - (c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity *investments*;
 - (d) a change in the investment policy to allow the *authorised fund* to invest in *derivatives* as an investment strategy which increases its volatility;
 - (e) a change to the characteristics of a *scheme* to distribute income annually rather than *monthly*; or
 - (f) the introduction of *limited redemption arrangements*.

Significant change requiring pre-event notification

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- (1) The *authorised fund manager* must give prior written notice to *unitholders*, in respect of any proposed change to the operation of a *scheme* that, in accordance with (2), constitutes a significant change.
- (2) A significant change is a change or event which is not fundamental in accordance with ■ COLL 4.3.4 R but which:
 - (a) affects a *unitholder's* ability to exercise his rights in relation to his investment; or
 - (b) would reasonably be expected to cause the *unitholder* to reconsider his participation in the *scheme*; or

- (c) results in any increased payments out of the *scheme property* to an *authorised fund manager* or any other *director* of an *ICVC* or an *associate* of either; or
 - (d) materially increases other types of payment out of *scheme property*.
- (3) The notice period in (1) must be of a reasonable length (and must not be less than 60 *days*).

Appointment of a new ACD or manager

- (1) In the case of a *UCITS scheme*, the appointment of a new *ACD* of an *ICVC* under ■ COLL 6.5.3 R (Appointment of an ACD) or the replacement of the *manager* of an *AUT* who proposes to retire under ■ COLL 6.5.8 R (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 4.3.6 R.
- (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 6.5.4 R (2) or ■ COLL 6.5.4 R (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

- (1) Changes may be significant depending in each case on their degree of materiality and effect on the *scheme* and its *unitholders*. Consequently the *authorised fund manager* will need to determine whether in each case a particular change is significant in nature or not.
- (2) For the purpose of ■ COLL 4.3.6 R a significant change is likely to include:
- (a) a change in the method of *price* publication;
 - (b) a change in any operational policy such as dilution policy or allocation of payments policy;
 - (c) an increase in the *preliminary charge* where *units* are purchased through a *group savings plan* ; or
 - (d) a change in the *pricing* arrangements for *units* of the *scheme* so as to cause a *single-priced authorised fund* to become a *dual-priced authorised fund*, or vice versa.

- (3) Where the *directors* of an ICVC elect to discontinue holding annual general meetings under paragraph 37A of the *OEIC Regulations*, they are required to give 60 days' written notice to *shareholders*. For the purpose of ■ COLL 4.3.6 R this should be treated as a significant change to the operation of the *scheme*.
- (4) The requirement in ■ COLL 4.3.6A R (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*).

Notifiable changes

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- (1) The *authorised fund manager* must inform *unitholders* in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the *scheme*.
- (2) A notifiable change is a change or event, other than a fundamental change under ■ COLL 4.3.4 R or a significant change under ■ COLL 4.3.6 R, which a *unitholder* must be made aware of unless the *authorised fund manager* concludes that the change is insignificant.

Guidance on notifiable changes

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- (1) The circumstances causing a notifiable change may or may not be within the control of the *authorised fund manager*.
- (2) For the purpose of ■ COLL 4.3.8 R (Notifiable changes) a notifiable change might include:
 - (a) a change of named *investment manager* where the *authorised fund* has been marketed on the basis of that individual's involvement;
 - (b) a significant political event which impacts on the *authorised fund* or its operation;
 - (c) a change to the time of the *valuation point*;
 - (d) the introduction of limited issue arrangements; or
 - (e) a change of the *depository* or a change in the name of the *authorised fund*.
- (3) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently the *authorised fund manager* will need to assess each change or event individually.
- (4) An appropriate manner of notification could include:
 - (a) sending an immediate notification to the *unitholder*;
 - (b) publishing the information on a website; or
 - (c) the information being included in the next long report of the *scheme*.

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Appointment of an AFM without prior written notice to unitholders

- (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 6.5.4 R (2) or ■ COLL 6.5.4 R (3) (Termination of appointment of an *ACD*); or
 - (b) in the case of an *AUT*, the replacement of the *manager* under ■ COLL 6.5.7 R (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.

4.3.11

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Change events relating to feeder UCITS and feeder NURS

Where the *authorised fund manager* of either a *feeder UCITS* or a *feeder NURS* is notified of any change in respect of its *master UCITS* or *qualifying master scheme* which has the effect of a change to the *feeder UCITS* or *feeder NURS*, the *authorised fund manager* must:

- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* or *feeder NURS* 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*; or
- (b) for a significant change, give written notice to *unitholders* of that change; or
- (c) for a notifiable change, comply with ■ COLL 4.3.8 R (Notifiable changes).

4.3.12

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The actions required by ■ COLL 4.3.11 R (2)(a) and ■ (b) must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* has been informed of the relevant change to the *master UCITS* or *qualifying master scheme*.

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- (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master scheme* in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS*. In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme*, the *authorised fund manager* of the *feeder UCITS* or *feeder*

NURS should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with ■ COLL 11.2.2 R (Application for approval of an investment in a master UCITS).

- (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder UCITS* or *feeder NURS* 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* or *feeder NURS* receives insufficient notice of the intended change to the *master UCITS* or *qualifying master scheme* 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* or *feeder NURS*.

4.4 Meetings of unitholders and service of notices

Application

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R This section applies to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

General meetings

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- R**
- (1) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* may convene a general meeting of *unitholders* at any time.
 - (2) The *unitholders* may request the convening of a general meeting by a requisition which must:
 - (a) state the objects of the meeting;
 - (b) be dated;
 - (c) be signed by *unitholders* who, at that date, are registered as the *unitholders* of *units* representing not less than one-tenth in value (or such lower proportion stated in the *instrument constituting the scheme*) of all of the *units* then in *issue*; and
 - (d) be deposited at the head office of the *ICVC* or with the *trustee*.
 - (3) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* must on receipt of a requisition that complies with (2), immediately convene a general meeting of the *authorised fund* for a date no later than eight weeks after receipt of the requisition.

Class meetings

4.4.3
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R This section applies, unless the context otherwise requires, to *class meetings* by reference to the *units* of the *class* concerned and the *unitholders* and *prices* of such *units*.

Special meaning of unitholder in COLL 4.4

4.4.4

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- (1) Unless a *unit* in the *authorised fund* is a *participating security*, in this section "*unitholders*" means *unitholders* as at a cut-off date selected by the *authorised fund manager* which is a reasonable time before notices of the relevant meeting are sent out.
- (2) If any *unit* in the *authorised fund* is a *participating security*, a registered *unitholder* of such a *unit* is entitled to receive a notice of a meeting or a notice of an adjourned meeting under ■ COLL 4.4.5 R (Notice of general meetings), if entered on the *register* at the close of business on a *day* to be determined by the *authorised fund manager*, which must not be more than 21 *days* before the notices of the meeting are sent out.
- (3) For the purposes of (2), in ■ COLL 4.4.6 R (Quorum) to ■ COLL 4.4.11 R (Chairman, adjournments and minutes) "*unitholders*" in relation to those *units* means:
 - (a) the *persons* entered on the *register* at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting; or
 - (b) in the case of bearer *units*, *unitholders* of bearer *units* which were in *issue* at the time applicable under (a).

Notice of general meetings

4.4.5

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- (1) Where the *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* decide to convene a general meeting of *unitholders*:
 - (a) each *unitholder* must be given at least 14 *days* written notice, inclusive of the date on which the notice is first served and the day of the meeting; and
 - (b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the *depository*.
- (2) The accidental omission to give notice to, or the non-receipt of notice by, any *unitholder* does not invalidate the proceedings at any meeting.
- (3) Notice of an adjourned meeting of *unitholders* must be given to each *unitholder*, stating that while two *unitholders* present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with ■ COLL 4.4.6 R (3), should two such *unitholders* not be present after a reasonable time of convening of the meeting.

- (4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.

Quorum

4.4.6

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- (1) The quorum required to conduct business at a meeting of *unitholders* is two *unitholders*, present in person or by proxy.
- (2) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:
 - (a) if convened on the requisition of *unitholders*, must be dissolved; and
 - (b) in any other case, must stand adjourned to:
 - (i) a day and time which is seven or more *days* after the day and time of the meeting; and
 - (ii) a place to be appointed by the chairman.
- (3) If, at an adjourned meeting under (2)(b), a quorum is not present after a reasonable time from the time for the meeting, one *person* entitled to be counted in a quorum present at the meeting shall constitute a quorum.

Resolutions

4.4.7

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- (1) Except where an *extraordinary resolution* is specifically required or permitted, any resolution of *unitholders* is passed by a simple majority of the votes validly cast at a general meeting of *unitholders*.
- (2) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.
- (3) Where a resolution (including an *extraordinary resolution*) is required to conduct business at a meeting of *unitholders* and every *unitholder* is prohibited under ■ COLL 4.4.8 R (4) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the *depository* to the process, instead be passed with the written consent of *unitholders* representing 50% or more, or for an *extraordinary resolution* 75% or more, of the *units* of the *scheme in issue*.

Voting rights

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- (1) On a show of hands every *unitholder* who is present in person has one vote.
- (2) On a poll:

- (a) votes may be given either personally or by proxy or in another manner permitted by the *instrument constituting the scheme*;
 - (b) the voting rights for each *unit* must be the proportion of the voting rights attached to all of the *units* in *issue* that the *price* of the *unit* bears to the aggregate *price* or *prices* of all of the *units* in *issue*:
 - (i) if any *unit* is a *participating security*, at the time determined under ■ COLL 4.4.4 R (2) (Special meaning of unitholder in ■ COLL 4.4);
 - (ii) otherwise at the date specified in ■ COLL 4.4.4 R (1); and
 - (c) a *unitholder* need not use all his votes or cast all his votes in the same way.
- (3) For joint *unitholders*, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint *unitholders*. For this purpose seniority must be determined by the order in which the names stand in the *register of unitholders*.
- (4) No *director* of the *ICVC* or the *manager* can be counted in the quorum of, and no such *director* or the *manager* nor any of their *associates* may vote at, any meeting of the *authorised fund*.
- (5) The prohibition in (4) does not apply to any *units* held on behalf of, or jointly with, a *person* who, if himself the registered *unitholder*, would be entitled to vote and from whom the *director*, the *manager* or its *associate* have received voting instructions.
- (6) For the purpose of this section, *units* held, or treated as held, by the *authorised fund manager* or any other *director* of the *ICVC*, must not, except as mentioned in (5), be regarded as being in *issue*.

Right to demand a poll

- (1) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
 - (a) the chairman;
 - (b) at least two *unitholders*; or
 - (c) the *depository*.
- (2) Unless a poll is demanded in accordance with (1), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.

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Proxies

4.4.10

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- (1) A *unitholder* may appoint another *person* to attend a general meeting and vote in his place.
- (2) Unless the *instrument constituting the scheme* provides otherwise, a *unitholder* may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.
- (3) Every notice calling a meeting of a *scheme* must contain a reasonably prominent statement that a *unitholder* entitled to attend and vote may appoint a proxy.
- (4) For the appointment to be effective, any *document* relating to the appointment of a proxy must not be required to be received by the *ICVC* or any other *person* more than 48 hours before the meeting or adjourned meeting

Chairman, adjournment and minutes

4.4.11

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- (1) A meeting of *unitholders* must have a chairman, nominated:
 - (a) in the case of an *AUT*, by the *trustee*;
 - (b) in the case of an *ICVC*, by a *director* other than the *ACD* or an *associate* of the *ACD* or, if no such nomination is made, by the *depository*.
- (2) If the chairman is not present after a reasonable time from the time for the meeting, the *unitholders* present must choose one of them to be chairman.
- (3) The chairman:
 - (a) may, with the consent of any meeting of *unitholders* at which a quorum is present; and
 - (b) must, if so directed by the meeting;

adjourn the meeting from time to time and from place to place.
- (4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- (5) The *authorised fund manager* must ensure that:
 - (a) minutes of all resolutions and proceedings at every meeting of *unitholders* are made and kept; and

(b) any minute made in (a) is signed by the chairman of the meeting of *unitholders*.

(6) Any minute referred to in (5)(b) is conclusive evidence of the matters stated in it.

Notices to unitholders

4.4.12

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(1) Where this sourcebook requires any notice or *document* to be served upon a *unitholder*, it is duly served :

(a) for *units* held by a registered *unitholder*, if it is:

(i) sent by post to or left at the *unitholder's* address as appearing in the *register*; or

(ii) sent by using an electronic medium in accordance with ■ COLL 4.4.13 R (Other notices); or

(b) for *units* represented by *bearer certificates*, if given in the manner provided for in the *prospectus*.

(2) Any notice or *document* served by post is deemed to have been served on the second *business day* following the *day* on which it is posted.

(3) Any *document* left at a registered address or delivered other than by post is deemed to have been served on that *day*.

Other notices

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(1) Any *document* or notice to be served on or information to be given to, any *person*, including the *FCA*, must be in legible form.

(2) For the purposes of this *rule*, any form is legible form which:

(a) is consistent with the *ICVC's*, the *directors'*, the *authorised fund manager's* or the *depository's* knowledge of how the recipient of the *document* wishes or expects to receive the *document*;

(b) is capable of being provided in hard copy by the *authorised fund manager*, the *depository* or any other *director* of the *ICVC*;

(c) enables the recipient to know or record the time of receipt; and

(d) is reasonable in the context.

(3) (a) In this sourcebook, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.

- (b) In relation to an *AUT*, where transfer of title to *units* is to be effected on the authority of an *electronic communication*, the *manager* must take reasonable steps to ensure that any *electronic communication* purporting to be made by the *unitholder* or his agent is in fact made by that *person*.

References to writing and electronic documents

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In this sourcebook references to writing and the use of electronic media should be construed in accordance with ■ GEN 2.2.14 R (References to writing) and its related *guidance* provisions.

Service of notice Regulations

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The provisions in this section relating to the service and delivery of notices and *documents* both to *unitholders* and to the *FCA*, disapply the provisions of The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) under the power in Regulation 1(6) of those Regulations.

4.5 Reports and accounts

Application

4.5.1

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The *rules and guidance* in this section apply to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

Explanation

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In order to provide the *unitholders* with regular and relevant information about the progress of the *authorised fund*, the *authorised fund manager* must:

- (1) prepare a short report and a long report half-yearly and annually;
- (2) send the short report to all *unitholders*; and
- (3) make the long report available to *unitholders* on request.

Preparation of long and short reports

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- (1) The *authorised fund manager* must for each *annual accounting period* and *half-yearly accounting period*, prepare a short report and a long report for a *scheme*.
- (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* must prepare a short report for each *sub-fund* but this is not necessary for the *umbrella* as a whole.
- (3) Where the first *annual accounting period* of a *scheme* is less than *12 months*, a half-yearly report need not be prepared.
- (4) [deleted]

ICVC requirements

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- (1) The *OEIC Regulations* contain requirements for the preparation of annual and half-yearly reports and make the *directors* of an *ICVC* responsible for the preparation of annual and half-yearly reports on the *ICVC*.
- (2) Regulations 66 (Reports: preparation), 67 (Reports: accounts) and 68 (Reports: voluntary revision) of the *OEIC Regulations* also contain a number of other requirements relating to reports and accounts of an *ICVC*.

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Contents of a short report

- (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*;
 - (b) a review of the *scheme* or *sub-fund*'s investment activities and investment performance during the period;
 - (c) a performance record consistent with ■ COLL 4.5.10 R (1) (Comparative table) so as to enable a *unitholder* to put into context the results of the investment activities of the *scheme* during the period;
 - (d) sufficient information to enable *unitholders* to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period;
 - (e) any other significant information which would reasonably enable *unitholders* to make an informed judgement on the activities of the *scheme* or *sub-fund* during the period and the results of those activities at the end of the period; and
 - (f) a statement that the latest long report is available on request.
- (1A) The short report of a *UCITS scheme* which is a *feeder UCITS* must also include:
- (a) in relation to each *annual accounting period* only, 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*]

- (1B) The short report of a *feeder NURS* must also include:
- (a) in relation to each *annual accounting period* only, a statement on the aggregate charges of the *feeder NURS* and its *qualifying master scheme*;
 - (b) a description of how the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained; and
 - (c) where the *qualifying master scheme* is a *UCITS scheme* or *non-UCITS retail scheme*, a description of how the annual and half-yearly short reports of its *qualifying master scheme* can be obtained.
- (2) The *authorised fund manager* must take reasonable steps to ensure that the short report is structured and written in such a way that it can be easily understood by the average investor.
 - (3) The short report must form a separate stand-alone *document* which must not include any extraneous material.
 - (4) The inclusion in a single *document* of the short reports of more than one of an *authorised fund manager's schemes* with the same accounting periods, or of more than one *sub-fund* in an *umbrella*, is not a contravention of (3) if each such report is discrete and easily identifiable.
 - (5) The *authorised fund manager* must ensure that the information given in the short report is consistent with the long report for the relevant accounting period prepared under ■ COLL 4.5.7 R (Contents of the annual long report) or ■ COLL 4.5.8 R (Contents of the half-yearly long report).

Significant information to be contained in the short report

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

- (1) particulars of any fundamental change to the *scheme* which required *unitholder* approval by meeting during the period;
- (2) particulars of any significant change to the operation of the *scheme* requiring pre-notification, but this need only be given if the change impacts on the *unitholders'* ability to make an informed judgement on the activities of the *scheme*;
- (3) particulars of any other developments in relation to the investment policy and strategy of the *scheme* , or the instruments used by it during the period;
- (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

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performance-related fee payable to the *authorised fund manager* or any investment adviser;

- (5) particulars of any qualification of the reports of the auditor and *depository*; and
- (6) particulars of any income or distribution relating to the period.

Contents of the annual long report

- (1) An annual long report on an *authorised fund*, other than a *scheme* which is an *umbrella*, must contain:
 - (a) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R (Authorised fund manager's report);
 - (c) the comparative table in accordance with ■ COLL 4.5.10 R (Comparative table);
 - (d) the report of the *depository* in accordance with ■ COLL 4.5.11 R (Report of the depository); and
 - (e) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor).
- (2) An annual long report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
 - (a) for each *sub-fund*:
 - (i) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R; and
 - (iii) the comparative table in accordance with ■ COLL 4.5.10 R;
 - (b) the aggregation of the accounts required by (a)(i) for each *sub-fund*;
 - (c) the report of the *depository* in accordance with ■ COLL 4.5.11 R; and
 - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *directors* of an *ICVC* or the *manager* of an *AUT* must ensure that the accounts referred to in (1)(a) , (2)(a) and (4)(a)

give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund*, or, in the case of (2)(a) and (4)(a), the *sub-fund*, for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period.

- (4) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual long report for any one or more individual *sub-funds* of the *scheme*, in which case it must contain:
- (a) in relation to the *sub-fund*:
- (i) the accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;
 - (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R; and
 - (iii) the comparative table in accordance with ■ COLL 4.5.10 R;
- (b) the report of the *depository* in accordance with ■ COLL 4.5.11 R; and
- (c) the report of the auditor in accordance with ■ COLL 4.5.12 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*]

- (6) An annual long report of a *feeder NURS* must also include:
- (a) a statement on the aggregate charges of the *feeder NURS* and its *qualifying master scheme*; and
 - (b) a description of how the annual long report (or nearest equivalent document for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.

Contents of the half-yearly long report

- (1) A half-yearly long report on an *authorised fund*, other than for a *scheme* which is an *umbrella*, must contain:

- (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
- (b) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R (Authorised fund manager's report).
- (2) A half-yearly long report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
- (a) for each *sub-fund*:
- (i) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
- (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R; and
- (b) the aggregation of the accounts in (a)(i) for each *sub-fund*.
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further half-yearly long report for any one or more individual *sub-funds* of the *scheme*. Such reports must contain the accounts and the report of the *authorised fund manager* that would be required by (1) if the *sub-fund* were a separate *authorised fund*.
- (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*]

- (5) The half-yearly long report of a *feeder NURS* must also include a description of how the half-yearly and annual long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* can be obtained.

Annual and half-yearly long reports for sub-funds of an umbrella

The *authorised fund manager* may, but need not, prepare annual and half-yearly long reports for any individual *sub-fund* of an *umbrella* in accordance with ■ COLL 4.5.7 R (4) and ■ COLL 4.5.8 R (3) and make them available on request to any *unitholder* investing in the relevant *sub-fund*. However, if the *authorised fund manager* does so, this does not relieve it of its duty:

- (1) to prepare annual and half-yearly long reports on the *umbrella* as a whole (■ COLL 4.5.7 R (2) and ■ COLL 4.5.8 R (2)); and

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- (2) to make available and publish the annual and half-yearly long reports for the *umbrella* as a whole (■ COLL 4.5.14 R).

Signing of annual and half-yearly reports

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The annual reports in ■ COLL 4.5.7R (1) and ■ (2), and the half-yearly reports in ■ COLL 4.5.8R (1) and ■ (2), must:

- (1) in the case of an *ICVC*, if there is:
- (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
 - (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT*, if the *authorised fund manager* has:
- (a) more than one *director*, be signed by at least two *directors* of the *authorised fund manager*; or
 - (b) only one *director*, be signed by the *director* of the *authorised fund manager*.

Authorised fund manager's report

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

- (1) the names and addresses of :
 - (a) the *authorised fund manager*;
 - (b) the *depository*;
 - (c) the *registrar*;
 - (d) any *investment adviser*;
 - (e) the *auditor*; and
 - (f) for a *scheme* which invests in immovables, the *standing independent valuer*;
- (2) (for an *ICVC*), the names of any *directors* other than the *ACD*;
- (3) a statement of the authorised status of the *scheme*;
- (4) (for an *ICVC*) a statement that the *unitholders* of the *ICVC* are not liable for the debts of the *ICVC*;
- (5) the investment objectives of the *authorised fund*;
- (6) the policy and strategy pursued for achieving those objectives;

- (7) a review of the investment activities during the period to which the report relates;
- (7A) a portfolio statement prepared in accordance with the requirements of the *IMA SORP*;
- (8) particulars of any fundamental changes in accordance with ■ COLL 4.3.4 R (Fundamental change requiring prior approval by meeting) made since the date of the last report;
- (9) particulars of any significant changes which have occurred in accordance with ■ COLL 4.3.6 R (Significant change requiring pre-event notification) since the date of the last report;
- (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;
- (10) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during this period and the results of those activities as at the end of that period;
- (11) for a report on an *umbrella* prepared in accordance with ■ COLL 4.5.7 R (2) or ■ COLL 4.5.8 R (2) , information required by (1) to (10) must be given for each *sub-fund*, if it would vary from that given in respect of the *umbrella* as a whole;
- (12) for a *UCITS scheme* which invests a substantial proportion of its assets in other *schemes*, a statement as to the maximum proportion of management fees charged to the *scheme* itself and to other *schemes* in which that *scheme* invests ; and
- (13) for a report on an individual *sub-fund* of a *scheme* which is an *umbrella* prepared in accordance with ■ COLL 4.5.7 R (4) or ■ COLL 4.5.8 R (3) , a statement that the latest long report prepared for the *umbrella* as a whole is available on request.

Comparative table

The comparative table required by ■ COLL 4.5.7 R (1)(c) (Contents of the annual long report) must set out:

- (1) a performance record over the last five calendar years, or if the *authorised fund* has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:

- (a) the highest and the lowest *price* of a *unit* of each *class* in issue during each of those years; and
 - (b) the net income distributed (or, for *accumulation units*, allocated) for a *unit* of each *class* in issue during each of those years, taking account of any sub-division or consolidation of *units* that occurred during that period;
- (2) as at the end of each of the last three *annual accounting periods* (or all of the *authorised fund's annual accounting periods*, if less than three):
- (a) the total net asset value of the *scheme property* at the end of each of those years;
 - (b) the net asset value per *unit* of each *class*; and
 - (c) (i) (for a report of the *directors* of an *ICVC*) the number of *units* of each *class* in issue; or
 - (ii) (for a report of the *manager* of an *AUT*) the number of *units* of each *class* in existence or treated as in existence; and
- (3) if, in the period covered by the table:
- (a) the *authorised fund* has been the subject of any event (such as a *scheme of arrangement*) having a material effect on the size of the *authorised fund*, but excluding any *issue* or *cancellation* of *units* for cash; or
 - (b) there have been changes in the investment objectives of the *authorised fund*;
 - (c) an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

Report of the depositary

- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The annual report must contain:
 - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 6.6.4 (General duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
 - (b) a statement whether, in any material respect:
 - (i) the *issue*, *sale*, *redemption* and *cancellation*, and calculation of the *price* of the *units* and the application of

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the *authorised fund's* revenue , have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the scheme*; and

- (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

Report of the auditor

The *authorised fund manager* must ensure that the report of the auditor to the *unitholders* includes the following statements:

- (1) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the *IMA SORP*, the *rules* in this sourcebook, and the *instrument constituting the scheme*;
- (2) whether, in the auditor's opinion, the accounts give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* (or, as the case may be, the *scheme property* attributable to the *sub-fund*) for the *annual accounting period* in question and the financial position of the *authorised fund* or *sub-fund* as at the end of that period;
- (3) whether the auditor is of the opinion that proper accounting records for the *authorised fund* (or, as the case may be, *sub-fund*) have not been kept or whether the accounts are not in agreement with those records;
- (4) whether the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and
- (5) whether the auditor is of the opinion that the information given in the report of the *directors* or in the report of the *authorised fund manager* for that period is consistent with the accounts.

Provision of short report

4.5.13

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- (1) The *authorised fund manager* must, within four *months* after the end of each *annual accounting period* and within two *months* after the end of each *half-yearly accounting period*, respectively provide free of charge the short report in accordance with (2).
- (2) The *authorised fund manager* must send a copy of the report:
 - (a) to each *unitholder* (or to the first named of joint *unitholders*) entered in or entitled to be entered in the *register* at the close of business on the last *day* of the relevant accounting period;

- (b) to each *unitholder* of bearer *units* at his request ; and
- (c) to any other *person* free of charge on request.

- (3) *Unitholders* in a *scheme* which is an *umbrella* must be provided with a report relating to the particular *sub-fund* in which they hold *units* subject to providing the long report on the *umbrella* on request in accordance with ■ COLL 4.5.14 R (2)(a).

Publication and availability of annual and half-yearly long report

4.5.14

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- (1) The *authorised fund manager* must, within four *months* after the end of each *annual accounting period* and two *months* after the end of each *half-yearly accounting period* respectively, make available and publish the long reports prepared in accordance with ■ COLL 4.5.7 R (1) to ■ (3) (Contents of the annual long report) and ■ COLL 4.5.8 R (1) to ■ (2) (Contents of the half-yearly long report).
- (2) The reports referred to in (1) must:
 - (a) be supplied free of charge to any *person* on request;
 - (b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;
 - (c) for a *UCITS scheme*, be available for inspection by the public at a place designated by the *authorised fund manager* in each *EEA State* other than the *United Kingdom* in which *units* in the *authorised fund* are marketed, in English and in at least one of that other *EEA State's* official languages; and
 - (d) be sent to the *FCA* 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

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- (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 *FCA*.
- (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*]

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

4.5.16

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- (1) The *authorised fund manager* of a *feeder NURS* must, where requested by an investor or the *FCA*, provide to such *person* copies of the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* free of charge.
- (2) Except where an investor requests paper copies or the use of *electronic communications* is not appropriate, the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*) of its *qualifying master scheme* may be provided in a *durable medium* other than paper, or by means of a website that meets the *website conditions*.

4.6 Simplified Prospectus provisions

Application

4.6.1

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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 *simplified prospectus scheme*.

Production and publication of simplified prospectus

4.6.2

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- (1) An operator of a *simplified prospectus scheme* must, for each *simplified prospectus scheme* in respect of which it is the operator, produce and publish a *simplified prospectus* in accordance with the rules in this section and ensure that it contains in summary form each of the matters referred to in the table below that relates to this rule.
- (2) A *simplified prospectus* must be incorporated in a written document or in any *durable medium*.
- (3) An operator of a *simplified prospectus scheme* must be satisfied on reasonable grounds that each *simplified prospectus* which it produces:
 - (a) includes all such information as is necessary to enable an investor to make an informed decision about whether to acquire *units* in the *scheme*;
 - (b) does not omit any key item of information;
 - (c) wherever possible is written in plain language which avoids technical language and jargon; and
 - (d) adopts a format and style of presentation which is clear and attractive to the average reader, so that it can be easily understood by him.
- (4) The *simplified prospectus* may be attached to the full *prospectus* as a removable part of it.

Revision of simplified prospectus

4.6.3

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An operator of a *simplified prospectus scheme* must, for each *simplified prospectus scheme* of which it is the operator, keep its *simplified prospectus* up-to-date and must revise it immediately on the occurrence of any material change.

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It is the FCA's view that any change to a *simplified prospectus scheme* that would be likely to influence the average investor in deciding whether to invest in the *scheme* or realise his investment in it should be regarded as a material change for the purposes of revision of a *simplified prospectus*. Examples would be changes to the *scheme's* objectives or investment policy. The FCA would expect a *simplified prospectus* to be updated at least annually.

Filing requirements

4.6.5

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A UCITS management company must for each UCITS scheme it manages file the *scheme's* initial *simplified prospectus*, together with each revision to it, with:

- (1) the FCA; and
- (2) the *competent authority* of each EEA state in which its *units* are to be marketed in the exercise of an *EEA right*.

UK firms exercising passporting rights in respect of UCITS scheme

4.6.6

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- (1) A UCITS management company must for each UCITS scheme it manages and in respect of which it is marketing *units* in another EEA State in the exercise of an *EEA right*, produce a *simplified prospectus* for the *scheme* drawn up in accordance with the requirements contained in this section.
- (2) The *simplified prospectus* must be drawn up in the, or one of the, official languages of the EEA State for which it was prepared or in a language approved by the *competent authority* of that EEA State.
- (3) The *simplified prospectus* may, without alteration, be used for marketing purposes in the EEA State for which it was prepared and in which the *units* of the *simplified prospectus scheme* are to be sold.

4.6.7

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- (1) In translating the *simplified prospectus* from English into one or more of the official languages of the EEA State in which the *simplified prospectus scheme* is to be marketed, or into a language approved by the *competent authority* of that State, it is permissible under article 28.3 of the UCITS Directive, in the FCA's view, for figures expressed in pounds sterling to be converted into the appropriate local currency such as euros. It is not necessary, for example, for the *simplified prospectus* of a *scheme* that is to be marketed across the EEA in the exercise of an *EEA right*, to refer to each amount in pounds sterling, in euros and additionally in every other local currency of an EEA

State in which *units* of the *scheme* are to be marketed that has not adopted the euro as its currency.

- (2) *Operators* considering marketing the *units* of their *simplified prospectus schemes* in another *EEA State* in the exercise of an *EEA right* should have regard to the local marketing legislation of such country.

Contents of the simplified prospectus

4.6.8

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This table belongs to the rule on production and publication of a simplified prospectus (■ COLL 4.6.2 R and ■ COLL 4.6.6 R)

Contents of simplified prospectus

Note: By reproducing schedule C (Contents of the simplified prospectus) to the *UCITS Directive* (as amplified by Commission Recommendation (2004/384/EC)) and cross-referring to other relevant material, this annex details the facts or matters that must included in a *simplified prospectus*.

Brief presentation of the *simplified prospectus scheme* (in this Table referred to as "the *scheme*").

- (1) when the *scheme* was created and an indication of the *EEA State* where the *scheme* has been registered or incorporated;
- (2) in the case of a *scheme* having different investment compartments (*sub-funds*), the indication of this circumstance;
- (3) the name and contact details of the *operator* (when applicable);
- (4) the expected period of existence of the *scheme* (when applicable);
- (5) the name and contact details of the *depository*;
- (6) the name and contact details of the auditors;
- (7) the name and brief details of the financial group (e.g. a bank) promoting the *scheme*;

Investment information

- (8) a short description of the *scheme's* objectives including:
 - (a) a concise and appropriate description of the outcomes sought for any investment in the *scheme*;
 - (b) a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees;
 - (c) a statement, where relevant, that the *scheme* is intended to track an index or indices, and sufficient information to enable investors both to identify the relevant index or indices

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		and to understand the extent or degree of tracking pursued; and
	(d)	where the <i>scheme</i> is a <i>qualifying money market fund, short-term money market fund or money market fund</i> , a statement identifying it as such a fund and a statement that the <i>scheme's</i> investment objectives and policies will meet the conditions in the definition of <i>qualifying money market fund, short-term money market fund or money market fund</i> , as appropriate;
Notes:	1.	Information on (8)(a) should include a statement as to whether there is any arrangement intended to result in a particular capital or income return from the <i>units</i> or any investment objective of giving protection to their capital value or income return and, if so, details of that arrangement or protection.
	2.	The information disclosed under (8)(b) should include an explanation of what is to happen when an <i>investment</i> is encashed before the expiry of any related guarantee or protection.
(9)		the <i>scheme's</i> investment policy, including:
	(a)	the main categories of eligible financial instruments which are the object of investment;
	(b)	whether the <i>scheme</i> has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries' financial instruments;
	(c)	where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors;
	(d)	if the <i>scheme</i> invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements;
	(e)	if the <i>scheme</i> uses financial derivative instruments, an indication of whether this is

		done in pursuit of the <i>scheme's</i> objectives, or for hedging purposes only;
	(f)	whether the <i>scheme's</i> management style makes some reference to a benchmark; and in particular whether the <i>scheme</i> has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and
	(g)	whether the <i>scheme's</i> management style is based on a tactical asset allocation with high frequency portfolio adjustments;
		provided the information is material and relevant;
Note:		The information referred to in paragraphs (8) and (9) may be set out as a single item in the <i>simplified prospectus</i> (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the <i>scheme</i> . The order of the information items may be adapted to reflect the <i>scheme's</i> specific investment objectives and policy.
(10)		a brief assessment of the <i>scheme's</i> risk profile by investment compartment or sub-fund, including:
	(a)	overall structure of the information provided:
		(i) a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in;
		(ii) a statement that details of all the risks actually mentioned in the <i>simplified prospectus</i> may be found in the full <i>prospectus</i> ;
		(iii) a description in words of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability; and
	(b)	details regarding the description (in words) of the following risks:
		(i) specific risks:

The description referred to in paragraph (10)(a)(iii) should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the *scheme* such as:

A **the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);**

B **the risk that an issuer or a counterparty will default (credit risk);**

C **only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);**

D **the risk that a position cannot be liquidated in a timely man-**

		ner at a reasonable price (liquidity risk);
	E	the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk);
	F	only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a subcustodian (custody risk); and
	G	risks related to a concentration of assets or markets; and
	(ii)	horizontal risk factors: The description referred to in paragraph (10)(a)(iii) should also mention, where relevant and material, the following factors that may affect the product:
	A	performance risk, including the variability of risk levels depend-

		<p>ing on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;</p>
	<p>B</p>	<p>risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;</p>
	<p>C</p>	<p>exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;</p>
	<p>D</p>	<p>inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;</p>

- E **inflation risk; and**
 - F **lack of certainty that environmental factors, such as a tax regime, will persist;**
 - (iii) **possible prioritisation of information disclosure:**

In order to avoid conveying a misleading image of the relevant risks, the information items should be presented so as to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the *scheme*;
- (11) **the historical performance of the *scheme* (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the *simplified prospectus*), including:**
 - (a) **disclosure of past performance:**
 - (i) **the *scheme's* past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years. If the *scheme* has been in existence for fewer than ten years but at least for a period of one year, it is recommended that the annual returns, calculated net of tax and charges, be given for as many years as are available; and**
 - (ii) **if a *scheme* is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the *scheme* should include a comparison with the past**

		performance of the benchmark according to which the <i>scheme</i> is managed or the performance fee is calculated;
Note:		Comparison should be achieved by representing the past performance of the benchmark and that of the <i>scheme</i> through the use of appropriate graphs to assist the reader to make the comparison.
	(b)	disclosure of cumulative performance: Disclosure should be made of the cumulative performance of the <i>scheme</i> over the ten year period referred to in paragraph (11)(a)(i). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with paragraph (11)(a)(ii);
Note:		Where the <i>scheme</i> has been in existence for fewer than ten years but at least for a period of one year, disclosure of the past cumulative performance should be made for as many years as are available.
	(c)	exclusion of subscription and redemption fees, subject to appropriate disclosure: A statement should be made that past performance of the <i>scheme</i> does not include the effect of subscription and redemption fees.
Notes:	1.	Where a comparison is being made with the cumulative performance of a benchmark as required by paragraph (11)(b), the comparison should be achieved by representing the past performance of the benchmark and that of the <i>scheme</i> through the use of appropriate graphs to assist the reader to make the comparison.
	2.	The <i>scheme's</i> historical performance may be produced as a separate attachment to the <i>simplified prospectus</i> .
	(12)	a profile of the typical investor the <i>scheme</i> is designed for;
	Economic information	
	(13)	the <i>scheme's</i> applicable tax regime, including:
	(a)	the tax regime applicable to the <i>scheme</i> in the UK; and

(b) a statement which explains that the regime of taxation of the income or capital gains received by individual investors depends on the tax law applicable to the personal situation of each individual investor and/or to the place where the capital is invested and that if investors are unclear as to their fiscal position, they should seek professional advice or information from local organisations, where available;

Note: This information should include a statement in relation to *SDRT provision*, explaining how the *scheme* may suffer stamp duty reserve tax as a result of transactions in *units* and whether the *operator's* policy is such that an *SDRT provision* may be imposed.

(14) details of any entry and exit commissions relating to the *scheme* and details of the *scheme's* other possible expenses or fees, distinguishing between those to be paid by the *unitholder* and those to be paid from the *scheme's* or the *sub-fund's* assets, including:

(a) overall contents of the information provided:

(i) disclosure of a total expense ratio (TER), calculated as indicated in Annex 1 to this chapter, except for a newly created fund where a TER cannot yet be calculated;

(ii) on an ex ante basis, disclosure of the expected cost structure, that is an indication of all costs available according to the list set forth in Annex 1 to this chapter so as to provide investors, in so far as possible, with a reasonable estimate of expected costs;

(iii) all entry and exit commissions and other expenses directly paid by the investor;

(iv) an indication of all the other costs not included in the TER, including disclosure of transaction costs;

(v) as an additional indicator of the importance of transaction costs, the portfolio turnover

<p>Note:</p>	<p>(vi)</p> <p>1.</p> <p>2.</p> <p>3.</p> <p>rate, calculated as shown in Annex 2 to this chapter; and</p> <p>an indication of the existence of fee-sharing agreements and soft commissions;</p> <p>In explaining the function of the TER to the reader, appropriate wording should be used in the <i>simplified prospectus</i>. For example, TER might be explained in the following terms: "The TER shows the annual operating expenses of the <i>scheme</i> - it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different <i>schemes</i>."</p> <p>It is the <i>FCA's</i> understanding that the disclosure of a reasonable estimate of expected costs on an ex ante basis, as required by paragraph (14)(a)(ii), only applies to new <i>schemes</i> where a TER cannot yet be calculated. Where a TER can be calculated for a <i>simplified prospectus scheme</i>, there is no need to have to disclose a reasonable estimate of expected costs on an ex ante basis in accordance with paragraph (14)(a)(ii), in addition to the TER.</p> <p>Paragraph (14)(a)(vi)) should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the <i>Handbook</i> . Taking into account current market practice, consideration should be given as to how far the</p>
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scheme's existing fee-sharing agreements and comparable fee arrangements are for the exclusive benefit of the *scheme*.

4. The *simplified prospectus* should make a reference to the full *prospectus* for detailed information on these kinds of arrangements, which should allow any investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in his/her best interest. The information provided in the *simplified prospectus* should remain concise in this respect.

5. Details of entry and exit commissions relating to the *scheme* and details of the *scheme's* other possible expenses or fees, must be presented in the *simplified prospectus* in the form required by COBS 4.6.9 R (Charges and reduction in yield).

(b) information about 'fee sharing agreements' and 'soft commissions':

(i) identification of 'fee-sharing agreements';

Note: For the purposes of paragraph (14)(b)(i), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a *scheme* agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the *scheme*.

(ii) identification of soft commissions;

Note: For the purposes of paragraph (14) (b) (ii), soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager re-

ceives in connection with the scheme's payment of commissions on transactions that involve the scheme's portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.

(c) presentation of TER and portfolio turnover rate;

Note: Both the TER and the portfolio turnover rate may be either included in or attached to the *simplified prospectus* in the same paper as information on past performance.

Commercial information

(15) how to buy the *units*;

Note: This should include an explanation of any relevant right to cancel or withdraw from the purchase, or, where it is the case, that such rights do not apply.

(16) how to sell the *units*;

(17) in the case of a *scheme* having different investment compartments (*sub-funds*), an explanation of how to switch from one investment compartment into another and any charges applicable in such cases;

(18) when and how dividends on *units* or *shares* of the *scheme* (if applicable) are distributed;

(19) when and where prices of *units* are published or made available;

Additional information

(20) A statement that, on request, the full *prospectus* and the annual and half-yearly reports of the *scheme* may be obtained free of charge before the conclusion of the contract and afterwards, together with details of how they may be obtained or how a *person* may gain access to them;

(21) the name and contact details of the *FCA* as being the *competent authority* which has authorised or registered the *scheme*;

(22) details of a contact point (*person* or department, and, if appropriate the times of day etc.) where additional information may be obtained if needed;

(23) the date of publication of the *simplified prospectus* ;

Additional information for a feeder NURS: Objectives and investment policy

(24) (a) where the *scheme* is a *feeder NURS*, in the description of objectives and investment policy, information about the proportion of the *feeder NURS'* assets which is invested in the *qualifying master scheme*; and

- (b) a description of the *qualifying master scheme's* objectives and investment policy, supplemented by:
 - (i) an indication that the investment returns of the *feeder NURS* will be very similar to those of the *qualifying master scheme*; or
 - (ii) an explanation of how and why the investment returns of the *feeder NURS* and *qualifying master scheme* may differ;

Additional information for a feeder NURS: Risk profile

- (25) (a) a description and explanation of any material differences between the risk profile of the *feeder NURS* and that of the *qualifying master scheme*; and
- (b) details of:
 - (i) any liquidity risk; and
 - (ii) the relationship between purchase and redemption arrangements for the *qualifying master scheme* and *feeder NURS*;

Additional information for a feeder NURS: Practical information

- (26) where the *scheme* is a *feeder NURS*, information specific to the *feeder NURS*, including:
 - (a) a statement that the following *documents* of the *qualifying master scheme* are available to *unitholders* of the *feeder NURS* upon request, and details of how they may be obtained:
 - (i) the *prospectus*;
 - (ii) A the *key investor information document*; or
 - B where the *authorised fund manager* of the *qualifying master scheme* has a dispensation in the

form of a general *waiver* by consent so that it may provide a *key investor information document* as modified by the general *waiver* direction, that document (a 'NURS KII document');

- C the *key features document*; or
- D the *simplified prospectus*; or
- E the nearest equivalent document for a *qualifying master scheme* that is a *recognised scheme*;

(iii) the annual and half-yearly long reports (or nearest equivalent documents for a *qualifying master scheme* that is a *recognised scheme*); and

(iv) where the *qualifying master scheme* is a *UCITS scheme* or *non-UCITS retail scheme*, its annual and half-yearly short reports;

(b) where the *qualifying master scheme* is not established in the *United Kingdom*, and where this may affect the *feeder NURS'* tax treatment, a statement to this effect;

Feeder NURS: past performance presentations

- (27)
- (a) any past performance presentation in the document of the *feeder NURS* must be specific to the *feeder NURS* and must not reproduce the performance record of the *qualifying master scheme*;
 - (b) the requirement in (a) does not apply where the *feeder NURS*:
 - (i) shows the past performance of its *qualifying master scheme* as a benchmark; or
 - (ii) was launched as a *feeder NURS* at a later date than the *qualifying master scheme* and where a simulated performance which is based on the past performance of the *qualifying master scheme* is shown for the years before the *feeder NURS* existed; or
 - (iii) has a performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart of the relevant years, with any material change labelled.

General Note:

In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader. This requirement will not apply in relation to a *simplified prospectus* that is to be used to market the *units* of the *scheme* in another *EEA state* or in relation to a *simplified prospectus* that is to be used to market the *units* of the *scheme* exclusively to *persons* who are not *retail clients*.

Charges and reduction in yield

- (1) In disclosing the information required by paragraph 14 of
- COBS 4.6.8 G (Table: Contents of the simplified prospectus), a *firm* must include an effect of charges table and a reduction in yield figure prepared in accordance with the *rules* in sections 2 (Effect of charges table) and 3 (Reduction in yield) of
 - COBS 13 Annex 3.

4.6.9

FCA

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- (2) This *rule* does not apply to a *simplified prospectus* for *units* in a *simplified prospectus scheme* that will be marketed and sold in another *EEA State* or exclusively to those who are not *retail clients*.
- (3) Note (5) to paragraph (14) of ■ COBS 4.6.8 G, and ■ COBS 4.6.9 R cease to have effect on 30 June 2011, unless remade.

Composite documents for several schemes, sub-funds and classes

4.6.10

FCA

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In the FCA's view, a *firm* may, for the purposes of the *rules* in ■ COBS 14 requiring a *firm* to provide a *key features document* or a *simplified prospectus*, combine the required information on several *simplified prospectus schemes*, *key features scheme* or *EEA simplified prospectus schemes* or any combination of them into a composite document, provided the document continues to comply with the general requirements such as being clear. Similarly, the information on different *sub-funds* or *classes* within a *scheme* may be combined into a composite document or provided as separate documents. Where the latter approach is adopted, references in this section to "*scheme*" or "*simplified prospectus scheme*" should be taken as referring to the relevant *sub-fund* or *class*, as applicable.

Multiclass schemes: use of representative class

4.6.11

FCA

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In the FCA's view, where a *simplified prospectus scheme* has more than one *class* of *unit*, the *simplified prospectus* may be prepared on a representative *class* basis, provided this is made clear and there is no material difference in the *classes* concerned. The same applies for an *umbrella*, as regards any *sub-fund* with more than one *class* of *units*.

4.6.12

FCA

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An *authorised fund manager* must ensure that its *financial promotions* which contain an invitation to purchase *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.

Use of the "keyfacts" logo within a simplified prospectus

4.6.13

FCA

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A *simplified prospectus* may include the "keyfacts" logo if:

- (1) the "keyfacts" logo is situated in a prominent position at the top of the *document*; and
- (2) The *document* also contains the following statement in a prominent position:

"The Financial Conduct Authority is an independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference".

4.7 Key investor information and marketing communications

Application

4.7.1

FCA

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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

FCA

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- (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

FCA

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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

FCA

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While the original *key investor information document* is required by ■ COLL 4.7.2 R 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

FCA

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The *key investor information document* must:

- (1) constitute pre-contractual information (see ■ COBS 14.2.1A R (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

FCA

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- (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

FCA

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- (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 *FCA*.
- (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 *FCA*.

[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

FCA

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- (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/node/49058>

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

<http://www.esma.europa.eu/node/49059>

4.7.9
FCA

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(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.

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/node/49173>

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

<http://www.esma.europa.eu/node/49174>

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

<http://www.esma.europa.eu/node/49175>

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

<http://www.esma.europa.eu/content/CESR%E2%80%99s-template-Key-Investor-Information-document>

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/content/Guidelines-Common-definition-European-money-market-funds>

Marketing communications

4.7.10
FCA

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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
FCA

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
FCA

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
FCA

- R**
- (1) An *authorised fund manager* of a *UCITS scheme* that has been approved by the *FCA* 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 5.2.11 R (9) (Spread: general):
 - (a) a statement that the *FCA* 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 5.2.11 R (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

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

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

Total expense ratio calculation

FCA

This Annex belongs to the rule on the contents of the simplified prospectus in this chapter.

Total expense ratio (TER)

1. **Definition of the TER**
 The total expense ratio (TER) of a *simplified prospectus scheme* is the ratio of the *scheme's* total operating costs to its average net assets calculated according to paragraph 3.
2. **Included/excluded costs**
 - (a) **The total operating costs are all the expenses which come in deduction of a *simplified prospectus scheme's* assets. These costs are usually shown in a scheme's statement of operation for the relevant fiscal period. They are assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.**
 - (b) **Total operating costs include any legitimate expenses of the *simplified prospectus scheme*, whatever their basis of calculation (e.g. flat-fee, asset-based, transaction-based - see note 2 above), such as:**
 - **management costs including performance fees;**
 - **administration costs;**
 - **fees linked to *depository* duties;**
 - **audit fees;**
 - **payments to shareholder services providers including payments to the *simplified prospectus scheme's* transfer agent and payments to broker-dealers that are record owners of the *scheme's* shares and that provide sub-ac-**

Total expense ratio (TER)

- counting services for the beneficial owners of the *scheme's* shares;
- payments to lawyers;
- any distribution or unit cancellation costs charged to the *scheme*;
- registration fees, regulatory fees and similar charges;
- any additional remuneration of the management company (or any other party) corresponding to certain fee-sharing agreements in accordance with paragraph 4 below.

(c)

The total operating costs do not include:

- transaction costs which are costs incurred by a *simplified prospectus scheme* in connection with transactions on its portfolio. They include brokerage fees, taxes and linked charges and the market impact of the transaction taking into account the remuneration of the broker and the liquidity of the concerned assets;
- interest on borrowing;
- payments incurred because of financial derivative instruments;
- entry/exit commissions or any other fees paid directly by the investor;
- soft commissions in accordance with paragraph 4.

Total expense ratio (TER)

- 3. Calculation method and disclosure**
- (a) The TER is calculated at least once a year on an ex post basis, generally with reference to the fiscal year of the *simplified prospectus scheme*. For specific purposes it may also be calculated for other time periods. The *simplified prospectus* should in any case include a clear reference to an information source (e.g. the *scheme's* website) where the investor may obtain previous years'/periods' TER figures.
- (b) The average net assets must be calculated using figures that are based on the *scheme's* net assets at each calculation of the net asset value (NAV), e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the *simplified prospectus scheme's competent authorities*. Further circumstances or events which could lead to misleading figures have equally to be taken into consideration.
- Tax relief should not be taken into account.
- The calculation method of the TER must be validated by the *simplified prospectus scheme's* auditors and/or *competent authorities*.
- 4. Fee-sharing agreements and soft commissions**
- It regularly results from fee-sharing agreements on expenses that are generally not included in the TER, that the management company or another party is actually meeting, in all or in part, operating costs that should normally be included in the TER. They should therefore be taken into account when calculating the TER, by adding to the total operating costs any remuneration of the management company (or another party) that derives from such fee-sharing agreements.
- There is no need to take into account fee-sharing arrangements on expenses that are already in the scope of the TER. Soft commissions should also be left outside the scope of the TER.
- Thus:
- the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs and with other fund management companies in the case of funds of funds (if this remuneration has not already been taken into account in the synthetic TER (see paragraph 6 below) or through other costs already charged to the fund and therefore directly includ-

Total expense ratio (TER)

ed into the TER) should anyway be taken into account in the TER,

- conversely, the remuneration of a management company through a fee-sharing agreement with a *scheme* (except when this remuneration falls under the scope of the specific fund-of-fund case covered in the previous indent) should not be taken into account.

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5. Performance fees:

Performance fees should be included in the TER and should also be disclosed separately as a percentage of the average net asset value.

6. Simplified prospectus scheme investing in UCITS scheme or in non-UCITS scheme:

When a *simplified prospectus scheme* invests at least 10% of its net asset value in *UCITS schemes* or in *schemes* that are not *UCITS schemes* which publish a TER in accordance with this Annex, a synthetic TER corresponding to that investment should be disclosed.

The synthetic TER is equal to the ratio of:

- the *simplified prospectus scheme's* total operating costs expressed by its TER and all the costs borne by the *scheme* through holdings in underlying funds (i.e. those expressed by the TER of the underlying funds weighted on the basis of the *simplified prospectus scheme's* investment proportion), plus the subscription and redemption fees of these underlying funds, divided by
- the average net assets of the *scheme*.

As mentioned in the previous subparagraph, subscription fees and redemption fees of the underlying funds should be included in the TER. Subscription and redemption fees may not be charged when the underlying funds belong to the same group in accordance with Article 24 (3) of the *UCITS Directive*.

When any of the underlying *schemes* that are not *UCITS schemes* does not publish a TER in accordance with this Annex, disclosure of costs should be adapted in the following way:

- the impossibility of calculating the synthetic TER for that fraction of the investment must be disclosed,
- the maximum proportion of management fees charged to the underlying fund(s) must be disclosed in the *simplified prospectus*,

Total expense ratio (TER)

- a synthetic figure of total expected costs must be disclosed, by calculating:
 - a truncated synthetic TER incorporating the TER of each of those underlying funds for which the TER is calculated according to this Annex, weighted on the basis of the *simplified prospectus scheme's* investment proportion, and
 - by adding, for each of the other underlying funds, the subscription and redemption fees plus the best available maximum estimate of TER-eligible costs. This should include the maximum management fee and the last available performance fee for that fund, weighted on the basis of the *simplified prospectus scheme's* investment proportion.

7. Umbrella funds/multiclass funds:

In the case of umbrella funds, the TER should be calculated for each *sub-fund*. If, in the case of multiclass funds, the TER differs between different share classes, a separate TER should be calculated and disclosed for each share class. Furthermore, in keeping with the principle of equality among investors, where there are differences in fees and expenses across classes, these different fees/expenses should be disclosed separately in the *simplified prospectus*. An additional statement should indicate that the objective criteria (e.g. the amount of subscription), on which these differences are based, are available in the full *prospectus*.

Notes:

1. This Annex sets out the requirements in relation to the TER. It reproduces, and adapts where appropriate for the purposes of the Simplified Prospectus provisions, Annex 1 to Commission Recommendation

(2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC).

2.

The non-exhaustive typology of calculation bases referred to in paragraph 2(b) below reflects the diversity of recent commercial practice across Member States (at the end of 2003) and should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the *Handbook*.

Portfolio turnover calculation

FCA

This Annex belongs to the rule on the contents of the simplified prospectus in this chapter.

Note:

This Annex sets out the requirements in relation to the portfolio turnover rate. It reproduces Annex II to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC). This table also includes other material which the FCA considers should be included.

Portfolio turnover rate

A *simplified prospectus scheme's* or, where relevant, a compartment's (*sub-fund's*) portfolio turnover rate must be calculated in the following way:

Purchases of securities = X

Sales of securities = Y

Total 1 = total of transactions in securities = X + Y

Issues/Subscriptions of units of the scheme = S

Cancellations/Redemptions of units of the scheme = T

Total 2 = Total transactions in units of the scheme = S + T

Reference average of total net assets = M

Turnover = [(Total 1 - Total 2)/M]*100

The reference average of total net assets corresponds to the average of net asset values calculated with the same frequency as under Annex 1 to this chapter. The portfolio turnover rate disclosed should correspond to the period(s) for which a TER is disclosed. The *simplified prospectus* should in any case include a clear reference to an information source (e.g. the *scheme's* website) where the investor may obtain previous periods' performance.

Note

Firms should note that inclusion of the portfolio turnover rate in the *simplified prospectus* is mandatory. The rate must be calculated according to the formula which is prescribed above. However, because the rate includes both purchases and sales of *securities*, readers may find it difficult to understand. Consequently *firms* should consider including an explanation of the formula, such as:

(Purchase of *securities* + Sales of *securities*) – (Subscription of units +
Redemptions of units)

(Average Fund Value over 12 months) x 100

Chapter 5

Investment and borrowing powers

5.1.1
FCA

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5.1 Introduction

Application

- (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.
- (2) Subject to 2(A), ■ COLL 5.1, ■ COLL 5.4 and ■ COLL 5.6 apply to the *authorised fund manager* and *depository* of an *authorised fund*, and to an *ICVC*, which is a *non-UCITS retail scheme*.
- (2A) ■ COLL 5.1, ■ COLL 5.4 and ■ COLL 5.7 apply to the *authorised fund manager* and the *depository* of an *authorised fund* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *fund of alternative investment funds*.
- (3) Paragraphs (2) and (2A) cease to apply if a *non-UCITS retail scheme* converts to be authorised as a *UCITS scheme*.
- (4) ■ COLL 5.9 applies to the *authorised fund manager* and the *depository* of an *authorised fund* which is a *UCITS scheme* or a *non-UCITS retail scheme* operating as a *money market fund* or a *short-term money market fund*.

Purpose

5.1.2
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- (1) This chapter helps in achieving the *statutory objective* of protecting *consumers* by laying down minimum standards for the investments that may be held by an *authorised fund*. In particular:
 - (a) the proportion of *transferable securities* and *derivatives* that may be held by an *authorised fund* is restricted if those *transferable securities* and *derivatives* are not listed on an *eligible market*; the intention of this is to restrict investment in *transferable securities* or *derivatives* that cannot be accurately valued and readily disposed of; and

(b) *authorised funds* are required to comply with a number of investment *rules* that require the spreading of risk.

(2) Table 5.1.4G gives an overview of the permissible investments and maximum investment limits for *UCITS schemes* and *non-UCITS retail schemes*.

Treatment of obligations

5.1.3
FCA

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(1) Where a *rule* in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the *authorised fund* under any other of those *rules* has also to be provided for.

(2) Where a *rule* in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered:

(a) it must be assumed that in applying any of those *rules*, the *authorised fund* must also simultaneously satisfy any other obligation relating to cover; and

(b) no element of cover must be used more than once.

Indicative overview of investment and borrowing powers

5.1.4
FCA

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This table belongs to ■ COLL 5.1.2 G (2).

Scheme investments and investment techniques	Limits for UCITS schemes		Limits for non-UCITS retail schemes	
	Permissible investment	Maximum limit	Permissible investment	Maximum limit
<i>Approved securities</i>	Yes	None	Yes	None
<i>Transferable securities</i> that are not <i>approved securities</i>	Yes	10%	Yes	20%
<i>Government and public securities</i>	Yes	None	Yes	None
Regulated <i>schemes</i> other than <i>qualified investor schemes</i>	Yes	None	Yes	None
Unregulated <i>schemes</i> and <i>qualified investor schemes</i>	No	N/A	Yes	20%(C)
<i>Warrants</i>	Yes	None	Yes	None
<i>Investment trusts</i>	Yes	None	Yes	None
<i>Deposits</i>	Yes	None	Yes	None
<i>Derivatives</i>	Yes	None	Yes	None
Immovables (i.e real property)	No	N/A	Yes	None
Gold	No	N/A	Yes	10%

<i>Scheme investments and investment techniques</i>	<i>Limits for UCITS schemes</i>		<i>Limits for non-UCITS retail schemes</i>	
Hedging	Yes	None	Yes	None
<i>Stock lending</i>	Yes	None	Yes	None
Underwriting	Yes	None	Yes	None
Borrowing	Yes	10% (T)	Yes	10%
Cash and <i>near cash</i>	Yes	None	Yes	None
Note:	Meaning of terms used:			
A percentage	an upper limit (though there may be limits of other kinds).			
"(T)"	temporary only- see <i>COLL 5.5.4R(4)</i>			
"N/A"	Not applicable			
"(C)"	In the case of a <i>non-UCITS retail scheme</i> operating as a <i>FAIF</i> there is no maximum limit - see <i>COLL 5.7.7 R.</i>			



5.2 General investment powers and limits for UCITS schemes

Application

5.2.1
FCA

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- (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 5.2.2 R (Table of application).
- (2) ■ COLL 5.2.23C R (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*.

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Table of application

5.2.2
FCA

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This table belongs to ■ COLL 5.2.1 R.

Rule	ICVC	ACD	Manager of an AUT	Depository of an ICVC	Trustee of an AUT
5.2.3R to 5.2.9R		X	X		
5.2.9AR		X	X		
5.2.10R(1)		X	X		
5.2.10R(2)(a)&(b)		X	X		
5.2.10R(2)(c)				X	X
5.2.10R(3)		X	X		
5.2.10AR to 5.2.10EG		X	X		
5.2.11R to 5.2.21R		X	X		
5.2.22R	X		X		
5.2.22AG	X	X	X	X	X
5.2.23R(1)	X	X	X		

Rule	ICVC	ACD	Manager of an AUT	Depository of an ICVC	Trustee of an AUT
5.2.23R(2) to (4)	X	X	X	X	X
5.2.23CR		X	X		
5.2.26R		X	X		
5.2.27R	X				
5.2.28R			X		
5.2.29R to 5.2.33R	X	X	X		
5.2.34G		X	X		

Note: x means "applies"

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5.2.2A
FCA

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In addition to the parts of *CESR's UCITS eligible assets guidelines* specifically referred to in this section, the *authorised fund manager* of a *UCITS scheme* should have regard to the other parts of those guidelines when applying the *rules* in this section. *CESR's UCITS eligible assets guidelines* are available at www.fca.org.uk/your-fca.

Prudent spread of risk

5.2.3
FCA

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- (1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *UCITS scheme* as stated in the most recently published *prospectus*, the *scheme property* of the *UCITS scheme* aims to provide a prudent spread of risk.
- (2) The *rules* in this section relating to spread of investments do not apply until the expiry of a period of six *months* after the date of which the *authorisation order*, in respect of the *UCITS scheme*, takes effect or on which the *initial offer* commenced, if later, provided that (1) is complied with during such period.

Investment powers: general

5.2.4

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The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections ■ COLL 5.2 to ■ COLL 5.5 that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the scheme* may further restrict:

- (1) the kind of property in which the *scheme property* may be invested;

- (2) the proportion of the *capital property* of the *UCITS scheme* be invested in assets of any description;
- (3) the descriptions of transactions permitted; and
- (4) the borrowing powers of the *UCITS scheme*.

Valuation

5.2.5

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- (1) In this chapter, the value of the *scheme property* of a *UCITS scheme* means the net value determined in accordance with ■ COLL 6.3 (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.
- (2) When valuing the *scheme property* for the purposes of this chapter:
 - (a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a *valuation point*, but the valuation and the relevant time do not count as a valuation or a *valuation point* for the purposes of ■ COLL 6.3 (Valuation and pricing);
 - (b) *initial outlay* is to be regarded as remaining part of the *scheme property*; and
 - (c) if the *authorised fund manager*, having taken reasonable care, determines that the *UCITS scheme* will become entitled to any unrealised profit which has been made on account of a transaction in *derivatives*, that prospective entitlement is to be regarded as part of the *scheme property*.
- (3) When valuing the *scheme property* of a *dual-priced authorised fund*, the *cancellation* basis of valuation referred to in ■ COLL 6.3.3 R (2) (Valuation) is to be applied.

Valuation guidance

5.2.6

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FCA

It should be noted that for the purpose of ■ COLL 5.2.5 R, ■ COLL 6.3 may be affected by specific provisions in this chapter such as, for example, ■ COLL 5.4.6 R (Treatment of collateral).

UCITS schemes: permitted types of scheme property

5.2.6A

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FCA

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:

- (1) *transferable securities*;
- (2) *approved money-market instruments*;
- (3) *units in collective investment schemes*;

- (4) *derivatives* and forward transactions;
- (5) *deposits*; and
- (6) (for an *ICVC*) movable and immovable property that is essential for the direct pursuit of the *ICVC*'s business;

in accordance with the *rules* in this section.

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

Transferable securities

5.2.7

FCA

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- (1) A *transferable security* is an *investment* which is any of the following:
 - (a) a *share*;
 - (b) a *debenture*;
 - (ba) an *alternative debenture*;
 - (c) a *government and public security*;
 - (d) a *warrant*; or
 - (e) a *certificate representing certain securities*.
- (2) An *investment* is not a *transferable security* if the title to it cannot be transferred, or can be transferred only with the consent of a third party.
- (3) In applying (2) to an *investment* which is issued by a *body corporate*, and which is a *share* or a *debenture*, the need for any consent on the part of the *body corporate* or any members or *debenture* holders of it may be ignored.
- (4) An *investment* is not a *transferable security* unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the *investment*.

Investment in transferable securities

5.2.7A

FCA

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- (1) A *UCITS scheme* may invest in a *transferable security* only to the extent that the *transferable security* fulfils the following criteria:
 - (a) the potential loss which the *UCITS scheme* may incur with respect to holding the *transferable security* is limited to the amount paid for it;
 - (b) its liquidity does not compromise the ability of the *authorised fund manager* to comply with its obligation to

redeem units at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3));

- (c) reliable valuation is available for it as follows:
 - (i) in the case of a *transferable security* admitted to or *dealt in* on an *eligible* market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
 - (ii) in the case of a *transferable security* not admitted to or *dealt in* on an *eligible* market, where there is a valuation on a periodic basis which is derived from information from the issuer of the *transferable security* or from competent investment research;
 - (d) appropriate information is available for it as follows:
 - (i) in the case of a *transferable security* admitted to or *dealt in* on an *eligible* market, where there is regular, accurate and comprehensive information available to the market on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
 - (ii) in the case of a *transferable security* not admitted to or *dealt in* on an *eligible* market, where there is regular and accurate information available to the *authorised fund manager* on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
 - (e) it is negotiable; and
 - (f) its risks are adequately captured by the risk management process of the *authorised fund manager*.
- (2) Unless there is information available to the *authorised fund manager* that would lead to a different determination, a *transferable security* which is admitted to or *dealt in* on an *eligible* market shall be presumed:
- (a) not to compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*; and
 - (b) to be negotiable.

[Note: article 2(1) of the *UCITS eligible assets Directive*]

Where the *authorised fund manager* considers that the liquidity or negotiability of a *transferable security* might compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*, it should assess the liquidity risk in accordance with CESR's *UCITS eligible assets guidelines* with respect to article 2(1) of the *UCITS eligible assets Directive*.

5.2.7C
FCA

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Closed end funds constituting transferable securities

A unit in a closed end fund shall be taken to be a *transferable security* for the purposes of investment by a *UCITS scheme*, provided it fulfils the criteria for *transferable securities* set out in ■ COLL 5.2.7A R, and either:

- (1) where the closed end fund is constituted as an investment company or a unit trust:
 - (a) it is subject to corporate governance mechanisms applied to companies; and
 - (b) where another *person* carries out asset management activity on its behalf, that *person* is subject to national regulation for the purpose of investor protection; or
- (2) where the closed end fund is constituted under the law of contract:
 - (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
 - (b) it is managed by a *person* who is subject to national regulation for the purpose of investor protection.

[Note: articles 2(2)(a) and (b) of the *UCITS eligible assets Directive*]

5.2.7D
FCA

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- (1) An *authorised fund manager* should not invest the *scheme property* of a *UCITS scheme* in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.
- (2) When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the *authorised fund manager* should consider whether the contract on which the closed end fund is based provides its investors with rights to:
 - (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
 - (b) control the investment policy of the closed end fund through appropriate mechanisms.
- (3) The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

[Note: *CESR's UCITS eligible assets guidelines with respect to articles 2(2) and 2(2)(b)(ii) of the UCITS eligible assets Directive*]

Transferable securities linked to other assets

5.2.7E
FCA

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- (1) A *UCITS scheme* may invest in any other *investment* which shall be taken to be a *transferable security* for the purposes of investment by a *UCITS scheme* provided the *investment*:
 - (a) fulfils the criteria for *transferable securities* set out in ■ COLL 5.2.7A R; and
 - (b) is backed by or linked to the performance of other assets, which may differ from those in which a *UCITS scheme* can invest.
- (2) Where an *investment* in (1) contains an embedded derivative component (see ■ COLL 5.2.19 R (3A)), the requirements of this section with respect to *derivatives* and forwards will apply to that component.

[Note: articles 2(2)(c) and 2(3) of the *UCITS eligible assets Directive*]

Approved money-market instruments

5.2.7F
FCA

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An *approved money-market instrument* is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

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

5.2.7G
FCA

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A money-market instrument shall be regarded as normally dealt in on the money market if it:

- (1) has a maturity at issuance of up to and including 397 days;
- (2) has a residual maturity of up to and including 397 days;
- (3) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
- (4) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (1) or (2) or is subject to yield adjustments as set out in (3).

[Note: article 3(2) of the *UCITS eligible assets Directive*]

5.2.7H
FCA

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- (1) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the *authorised fund manager* to *redeem units* at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3)).
- (2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and

reliable valuations systems, which fulfil the following criteria, are available:

- (a) enabling the *authorised fund manager* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
 - (b) based either on market data or on valuation models including systems based on amortised costs.
- (3) A money-market instrument that is normally *dealt in* on the money market and is admitted to or dealt in on an *eligible* market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the *authorised fund manager* that would lead to a different determination.

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

Guidance on assessing liquidity and quality of money-market instruments

5.2.71
FCA

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- (1) The *authorised fund manager* should assess the liquidity of a money-market instrument in accordance with *CESR's UCITS eligible assets guidelines* with respect to article 4(1) of the *UCITS eligible assets Directive*.
- (2) Where an *approved money-market instrument* forms part of the *scheme property* of a *qualifying money market fund, short-term money market fund or money market fund*, the *authorised fund manager* should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

[Note: *CESR's UCITS eligible assets guidelines* with respect to article 4(2) of the *UCITS eligible assets Directive*. Paragraph 11 of *CESR's guidelines on a common definition of European money market funds*.]

Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market

5.2.8
FCA

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- (1) [deleted]
- (2) [deleted]
- (3) *Transferable securities and approved money-market instruments* held within a *UCITS scheme* must be :
 - (a) admitted to or *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (1)(a) (Eligible markets: requirements); or
 - (b) *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (1)(b); or
 - (c) admitted to or *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (2); or

- (d) for an *approved money-market instrument* not admitted to or dealt in on an *eligible* market, within ■ COLL 5.2.10A R (1); or
- (e) recently issued *transferable securities*, provided that:
 - (i) the terms of issue include an undertaking that application will be made to be admitted to an *eligible* market; and
 - (ii) such admission is secured within a year of issue.

(4) However, a *UCITS scheme* may invest no more than 10% of the *scheme property* in *transferable securities* and *approved money-market instruments* other than those referred to in (3).

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

Eligible markets regime: purpose

5.2.9
FCA

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- (1) This section specifies criteria based on those in article 50 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.
- (2) Where a market ceases to be *eligible*, *investments* on that market cease to be *approved securities*. The 10% restriction in ■ COLL 5.2.8 R (4) applies, and exceeding this limit because a market ceases to be *eligible* will generally be regarded as a breach beyond the control of the *authorised fund manager*.

5.2.9A
FCA

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The ability to hold up to 10% of the *scheme property* in ineligible assets under ■ COLL 5.2.8 R (4) is subject to the following limitations:

- (1) for a *qualifying money market fund*, the 10% restriction is limited to high quality money market instruments with a maturity or residual maturity of not more than 397 *days*, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 *days*;
- (2) for a *short-term money market fund* or a *money market fund*, the 10% restriction is limited to high quality *approved money-market instruments* as determined under ■ COLL 5.9.6 R (High quality money market instruments).

Eligible markets: requirements

5.2.10
FCA

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- (1) A market is *eligible* for the purposes of the *rules* in this sourcebook if it is:
 - (a) a *regulated market*;
 - (b) a market in an *EEA State* which is regulated, operates regularly and is open to the public; or
 - (c) any market within (2).

- (2) A market not falling within (1)(a) and (b) is *eligible* for the purposes of the *rules* in this sourcebook if:
- (a) the *authorised fund manager*, after consultation with and notification to the *depository* (and in the case of an *ICVC*, any other *directors*), decides that market is appropriate for investment of, or *dealing in*, the *scheme property*;
 - (b) the market is included in a list in the *prospectus*; and
 - (c) the *depository* has taken reasonable care to determine that:
 - (i) adequate custody arrangements can be provided for the *investment dealt in* on that market; and
 - (ii) all reasonable steps have been taken by the *authorised fund manager* in deciding whether that market is *eligible*.
- (3) In (2)(a), a market must not be considered appropriate unless it:
- (a) is regulated;
 - (b) operates regularly;
 - (c) is recognised as a market or exchange or as a self-regulating organisation by an *overseas regulator*;
 - (d) is open to the public;
 - (e) is adequately liquid; and
 - (f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

Money-market instruments with a regulated issuer

5.2.10A
FCA

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- (1) (In addition to instruments admitted to or *dealt in* on an *eligible* market) a *UCITS scheme* may invest in an *approved money-market instrument* provided it fulfils the following requirements:
- (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
 - (b) the instrument is issued or guaranteed in accordance with
 ■ COLL 5.2.10B R.
- [Note: article 50(1)(h)(i) to (iii) of the *UCITS Directive*]
- (2) The issue or the issuer of a money-market instrument, other than one dealt in on an *eligible* market, shall be regarded as regulated for the purpose of protecting investors and savings if:
- (a) the instrument is an *approved money-market instrument*;

- (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with ■ COLL 5.2.10C R; and
- (c) the instrument is freely transferable.

[Note: article 5(1) of the *UCITS eligible assets Directive*]

Issuers and guarantors of money-market instruments.....

5.2.10B

FCA

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- (1) A *UCITS scheme* may invest in an *approved money-market instrument* if it is:
 - (a) issued or guaranteed by any one of the following:
 - (i) a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;
 - (ii) a regional or local authority of an *EEA State*;
 - (iii) the European Central Bank or a central bank of an *EEA State*;
 - (iv) the European Union or the European Investment Bank;
 - (v) a non-*EEA State* or, in the case of a federal state, one of the members making up the federation;
 - (vi) a public international body to which one or more *EEA States* belong; or
 - (b) issued by a body, any *securities* of which are dealt in on an *eligible market*; or
 - (c) issued or guaranteed by an establishment which is:
 - (i) subject to prudential supervision in accordance with criteria defined by *EU law*; or
 - (ii) subject to and complies with prudential rules considered by the *FCA* to be at least as stringent as those laid down by *EU law*.
- (2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:
 - (a) it is located in the *European Economic Area*;
 - (b) it is located in an *OECD* country belonging to the Group of Ten;
 - (c) it has at least investment grade rating;

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- (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by *EU* law.

[Note: article 6 of the *UCITS eligible assets Directive*]

Appropriate information for money-market instruments

5.2.10C

FCA

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- (1) In the case of an *approved money-market instrument* within
 - COLL 5.2.10B R (1)(b) or issued by a body of the type referred to in ■ COLL 5.2.10E G; or which is issued by an authority within ■ COLL 5.2.10B R (1)(a)(ii) or a public international body within ■ COLL 5.2.10B R (1)(a)(vi) but is not guaranteed by a central authority within ■ COLL 5.2.10B R (1)(a)(i), the following information must be available:
 - (a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme.
- (2) In the case of an *approved money-market instrument* issued or guaranteed by an establishment within ■ COLL 5.2.10B R (1)(c), the following information must be available:
 - (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
 - (b) updates of that information on a regular basis and whenever a significant event occurs; and
 - (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.
- (3) In the case of an *approved money-market instrument*:
 - (a) within ■ COLL 5.2.10B R (1)(a)(i), ■ (iv) or ■ (v); or
 - (b) which is issued by an authority within
 - COLL 5.2.10B R (1)(a)(ii) or a public international body within ■ COLL 5.2.10B R (1)(a)(vi) and is guaranteed by a central authority within ■ COLL 5.2.10B R (1)(a)(i);

information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

[Note: articles 5(2), (3) and (4) of the *UCITS eligible assets Directive*]

5.2.10D

FCA

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- (1) The appropriately qualified third parties referred to in ■ COLL 5.2.10C R (1)(a) should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.
- (2) The regular updates of information referred to in ■ COLL 5.2.10C R (1)(b) and ■ (2)(b) should normally occur on at least an annual basis.

[Note: *CESR's UCITS eligible assets guidelines with respect to articles 5(2)(b) and (c) of the UCITS eligible assets Directive*]

Other money-market instruments with a regulated issuer

5.2.10E

FCA

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- (1) In addition to instruments admitted to or *dealt* in on an *eligible* market, a *UCITS scheme* may also with the express consent of the *FCA* (which takes the form of a *waiver* under sections 138A and 138B of the *Act* as applied by section 250 of the *Act* or regulation 7 of the *OEIC Regulations*) invest in an *approved money-market instrument* provided:
 - (a) the issue or issuer is itself regulated for the purpose of protecting investors and savings in accordance with ■ COLL 5.2.10A R (2);
 - (b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of ■ COLL 5.2.10B R (1)(a), ■ (b) or ■ COLL 5.2.10B R (1)(c); and
 - (c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.
- (2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
- (3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by *EU* law or an establishment which is subject to and complies with prudential rules considered by the *FCA* (in accordance with ■ COLL 5.2.10B R (2)) to be at least as stringent as those laid down by *EU* law.

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

Spread: general

5.2.11

FCA

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- (1) This *rule* does not apply to *government and public securities*.

- (2) For the purposes of this *rule* companies included in the same group for the purposes of consolidated accounts as defined in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts or, in the same group in accordance with international accounting standards, are regarded as a single body.
- (3) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (4) Not more than 5% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body.
- (5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the *scheme property*. *Covered bonds* need not be taken into account for the purpose of applying the limit of 40%.
- (5A) The limit of 5% in (4) is raised to 25% in value of the *scheme property* in respect of *covered bonds*, provided that when a *UCITS scheme* invests more than 5% in *covered bonds* issued by a single body, the total value of *covered bonds* held must not exceed 80% in value of the *scheme property*.
- (6) In applying (4) and (5), *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (7) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 5% in value of the *scheme property*; this limit being raised to 10% where the counterparty is an *approved bank*.
- (8) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and *approved money-market instruments* issued by the same group (as referred to in (2)).
- (9) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (10) In applying the limits in (3),(4),(5), (6) and (7), and subject to (5A), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
 - (a) *transferable securities* (including *covered bonds*) or *approved money-market instruments* issued by; or
 - (b) *deposits* made with; or

(c) exposures from *OTC derivatives* transactions made with a single body.

(11) [deleted]

(12) [deleted]

(13) [deleted]

(14) [deleted]

[Note: article 52 of the *UCITS Directive*]

Guidance on spread: general

5.2.11A

G

FCA

(1) [deleted]

(2) [deleted]

(3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it and other companies in its group on behalf of the *scheme*.

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Counterparty risk and issuer concentration

5.2.11B

R

FCA

(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 5.2.11 R (7) and ■ COLL 5.2.11 R (10).

(2) When calculating the exposure of a *UCITS scheme* to a counterparty in accordance with the limits in ■ COLL 5.2.11 R (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 5.2.11B R (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 5.2.11 R 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 5.2.11 R (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*]

Spread: government and public securities

5.2.12
FCA

R

- (1) This *rule* applies to *government and public securities* ("such *securities*").
- (2) Where no more than 35% in value of the *scheme property* is invested in such *securities* issued by any one body, there is no limit on the amount which may be invested in such *securities* or in any one issue.
- (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:
 - (a) the *authorised fund manager* has before any such investment is made consulted with the *depository* and as a result considers that the issuer of such *securities* is one which is appropriate in accordance with the investment objectives of the *authorised fund*;
 - (b) no more than 30% in value of the *scheme property* consists of such *securities* of any one issue;

the *scheme property* includes such *securities* issued by that or another issuer, of at least six different issues; and

the disclosures in (4) have been made.

- (4) Where it is intended that (3) may apply, the *instrument constituting the scheme*, and the most recently published *prospectus*, must prominently state:
 - (a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer; and
 - (b) the names of the individual states, the local authorities or public international bodies issuing such *securities* in which the *authorised fund* may invest over 35% of its assets.

- (5) In this *rule* in relation to such *securities*:
 - (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
 - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

- (6) Notwithstanding ■ COLL 5.2.11 R (1) and subject to ■ (2) and ■ (3), in applying the 20% limit in ■ COLL 5.2.11 R (10) with respect to a single body, *government and public securities* issued by that body shall be taken into account.

Investment in collective investment schemes

5.2.13

FCA

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:
 - (a) satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
 - (b) be recognised under the provisions of section 270 of the *Act* (Schemes authorised in designated countries or territories); or
 - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or
 - (d) be authorised in another *EEA State* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or
 - (e) be authorised by the competent authority of an *OECD* member country (other than another *EEA State*) which has:
 - (i) signed the *IOSCO Multilateral Memorandum of Understanding*; and

(ii) approved the *scheme's* management company, rules and *depository/custody* arrangements;

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

- (2) the second *scheme* must comply, where relevant, with
 - COLL 5.2.15 R (Investment in associated collective investment schemes) and
 - COLL 5.2.16 R (Investment in other group schemes);
- (3) the second *scheme* must have terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes* ; and
- (4) where the second *scheme* is an *umbrella*, the provisions in (2) and (3) and ■ COLL 5.2.11 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

Qualifying non-UCITS collective investment schemes

5.2.14
FCA

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- (1) ■ COLL 9.3 gives further detail as to the recognition of a *scheme* under section 270 of the *Act*.
- (2) Article 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 5.2.13 R (1)(c) and ■ COLL 5.2.13 R (1)(d).
- (3) In determining whether a *scheme* meets the requirements of article 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*:
 - (a) the rules guaranteeing the autonomy of the *scheme* and management in the exclusive interest of the *unitholders*;
 - (b) the existence of an independent *depository/custodian* with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent *depository/custodian* is not a requirement of local law as regards *collective investment schemes*, robust governance structures may provide a suitable alternative;
 - (c) the availability of pricing information and reporting requirements;
 - (d) redemption facilities and frequency;
 - (e) restrictions in relation to dealings by related parties;
 - (f) the extent of asset segregation; and
 - (g) the local requirements for borrowing, lending and uncovered sales of *transferable securities* and money market instruments regarding the portfolio of the *scheme*.

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

- (4) The requirement for supervisory equivalence, as described in article 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*.

Investment in associated collective investment schemes

5.2.15

FCA

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- (1) A *UCITS scheme* must not invest in or dispose of *units* in another *collective investment scheme* (the *second scheme*) if the *second scheme* is managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *UCITS scheme* or an *associate* of that *authorised fund manager*, unless:
 - (a) the *prospectus* of the investing *UCITS scheme* clearly states that the property of that investing *scheme* may include such *units*; and
 - (b) ■ COLL 5.2.16 R (Investment in other group schemes) is complied with.
- (2) Where a *sub-fund* of a *UCITS scheme* which is an *umbrella* invests in or disposes of *units* in another *sub-fund* of the same *umbrella* (the *second sub-fund*), the requirement in:
 - (a) ■ COLL 5.2.15R (1)(a) is modified as follows - the *prospectus* of the *umbrella* must clearly state that the *scheme property* attributable to the investing or disposing *sub-fund* may include *units* in another *sub-fund* of the same *umbrella*; and
 - (b) ■ COLL 5.2.15R (1)(b) is modified as follows - ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "*UCITS scheme*" are taken to be references to the investing or disposing *sub-fund* and references to the "*second scheme*" are taken to be references to the *second sub-fund*.

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Investment in other group schemes

5.2.16

FCA

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- (1) Where:
 - (a) an investment or disposal is made under ■ COLL 5.2.15 R; and
 - (b) there is a charge in respect of such investment or disposal;
 the *authorised fund manager* of the *UCITS scheme* making the investment or disposal must pay the *UCITS scheme* the amounts referred to in (2) or (3) within four *business days* following the date of the agreement to invest or dispose.

PAGE 23

- (2) When an investment is made, the amount referred to in (1) is either:
 - (a) any amount by which the consideration paid by the *UCITS scheme* for the *units* in the second *scheme* exceeds the price that would have been paid for the benefit of the second *scheme* had the *units* been newly issued or sold by it; or
 - (b) if such price cannot be ascertained by the *authorised fund manager* of the *authorised fund*, the maximum amount of any charge permitted to be made by the seller of *units* in the second *scheme*.
- (3) When a disposal is made, the amount referred to in (1) is any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal.
- (4) In this *rule*:
 - (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with ■ COLL 6.3.8 (Dilution) or *SDRT provision* made in accordance with ■ COLL 6.3.7 (SDRT provision) is to be treated as part of the *price* of the *units* and not as part of any charge; and
 - (b) any charge made in respect of an exchange of *units* in one *sub-fund* or separate part of the second *scheme* for *units* in another *sub-fund* or separate part of that *scheme* is to be included as part of the consideration paid for the *units*.

Investment in nil and partly paid securities

5.2.17

FCA

R

- (1) [deleted]
- (2) A *transferable security* or an *approved money-market instrument* on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the *UCITS scheme*, at the time when payment is required, without contravening the *rules* in this chapter.

5.2.18

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[deleted]

Derivatives: general

5.2.19

FCA

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

- (a) the transaction is of a kind specified in ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards)); and
 - (b) the transaction is covered, as required by ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).
- (2) Where a *UCITS scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in ■ COLL 5.2.11 R (Spread: general) and ■ COLL 5.2.12 R (Spread: government and public securities) save as provided in (4).
- (3) Where a *transferable security* or *approved money-market instrument* embeds a *derivative*, this must be taken into account for the purposes of complying with this section.
- (3A) (a) A *transferable security* or an *approved money-market instrument* will embed a *derivative* if it contains a component which fulfils the following criteria:
- (i) by virtue of that component some or all of the cash flows that otherwise would be required by the *transferable security* or *approved money-market instrument* which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone *derivative*;
 - (ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and
 - (iii) it has a significant impact on the risk profile and pricing of the *transferable security* or *approved money-market instrument*.
- (b) A *transferable security* or an *approved money-market instrument* does not embed a derivative where it contains a component which is contractually transferable independently of the *transferable security* or the *approved money-market instrument*. That component shall be deemed to be a separate instrument.

[Note: article 10 of the *UCITS eligible assets Directive*]

- (4) Where a *scheme* invests in an index based *derivative*, provided the relevant index falls within ■ COLL 5.2.33 R (Relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of ■ COLL 5.2.11 R and ■ COLL 5.2.12 R.

- (5) The relaxation in (4) is subject to the *authorised fund manager* taking account of ■ COLL 5.2.3 R (Prudent spread of risk).

Guidance on transferable securities and money-market instruments embedding derivatives

5.2.19A

FCA

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- (1) Collateralised debt obligations (CDOs) or asset-backed securities using *derivatives*, with or without an active management, will generally not be considered as embedding a *derivative* except if:
- (a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or
 - (b) they are not sufficiently diversified.
- (2) Where a *transferable security* or *approved money-market instrument* embedding a *derivative* is structured as an alternative to an *OTC derivative*, the requirements set out in ■ COLL 5.2.23 R with respect to transactions in *OTC derivatives* will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a *scheme*, which should be considered as embedding a *derivative*. Such a product offers an alternative to the use of an *OTC derivative*, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.
- (3) The following list of *transferable securities* and *approved money-market instruments*, which is illustrative and non-exhaustive, could be assumed to embed a *derivative*:
- (a) credit linked notes;
 - (b) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a bond index;
 - (c) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a basket of shares, with or without active management;
 - (d) *transferable securities* or *approved money-market instruments* with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;
 - (e) convertible bonds; and
 - (f) exchangeable bonds.
- (4) *Schemes* cannot use *transferable securities* or *approved money-market instruments* which embed a *derivative* to circumvent the rules in this section.
- (5) *Transferable securities* and *approved money-market instruments* which embed a *derivative* are subject to the rules applicable to *derivatives* as required by this section. It is the *authorised fund manager's* responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded *derivatives* and on their impact on the *scheme*, taking into account its stated investment objective and risk profile.

[Note: CESR's UCITS eligible assets guidelines with respect to article 10 of the UCITS eligible assets Directive]

Permitted transactions (derivatives and forwards)

5.2.20

FCA

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- (1) A transaction in a *derivative* must:
 - (a) be in an *approved derivative*; or
 - (b) be one which complies with ■ COLL 5.2.23 R (OTC transactions in derivatives).

- (2) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *scheme* is *dedicated*:
 - (a) *transferable securities* permitted under ■ COLL 5.2.8 R (3)(a) to ■ (c) and ■ COLL 5.2.8 R (3)(e) ;
 - (b) *approved money-market instruments* permitted under ■ COLL 5.2.8 R (3)(a) to ■ COLL 5.2.8 R (3)(d) ;
 - (c) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
 - (d) *derivatives* permitted under this *rule*;
 - (e) *collective investment scheme* units permitted under ■ COLL 5.2.13 R (Investment in collective investment schemes);
 - (f) financial indices which satisfy the criteria set out in ■ COLL 5.2.20A R;
 - (g) interest rates;
 - (h) foreign exchange rates; and
 - (i) currencies.

[Note: article 8(1)(a) of the UCITS eligible assets Directive]

- (3) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.

- (4) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the scheme* and the most recently published *prospectus*.

- (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more *transferable securities, approved money-market instruments, units in collective investment schemes* or *derivatives* provided that a sale is not to be considered as uncovered if the conditions in ■ COLL 5.2.22R (1) (Requirement to cover sales), as read in accordance with the guidance at ■ COLL 5.2.22A G, are satisfied.

- (6) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (7) A *derivative* includes an instrument which fulfils the following criteria:
 - (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
 - (b) it does not result in the delivery or the transfer of assets other than those referred to in ■ COLL 5.2.6A R (UCITS schemes: permitted types of scheme property) including cash;
 - (c) in the case of an *OTC derivative*, it complies with the requirements in ■ COLL 5.2.23 R (OTC transactions in derivatives);
 - (d) its risks are adequately captured by the risk management process of the *authorised fund manager*, and by its internal control mechanisms in the case of risks of asymmetry of information between the *authorised fund manager* and the counterparty to the *derivative*, resulting from potential access of the counterparty to non-public information on *persons* whose assets are used as the underlying by that *derivative*.

[Note: article 8(2) of the *UCITS eligible assets Directive*]

- (8) A *UCITS scheme* may not undertake transactions in *derivatives* on *commodities*.

[Note: article 8(5) of the *UCITS eligible assets Directive*]

Financial indices underlying derivatives

5.2.20A

FCA

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- (1) The financial indices referred to in ■ COLL 5.2.20 R (2)(f) are those which satisfy the following criteria:
 - (a) the index is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.
- (2) A financial index is sufficiently diversified if:
 - (a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - (b) where it is composed of assets in which a *UCITS scheme* is permitted to invest, its composition is at least diversified in

- accordance with the requirements with respect to spread and concentration set out in this section; and
- (c) where it is composed of assets in which a *UCITS scheme* cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (3) A financial index represents an adequate benchmark for the market to which it refers if:
- (a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;
 - (b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and
 - (c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.
- (4) A financial index is published in an appropriate manner if:
- (a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and
 - (b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
- (5) Where the composition of underlyings of a transaction in a *derivative* does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to ■ COLL 5.2.20 R (2), be regarded as a combination of those underlyings.

[Note: article 9 of the *UCITS eligible assets Directive*]

Guidance on financial indices underlying derivatives

- (1) An index based on *derivatives* on *commodities* or an index on property may be regarded as a financial index of the type referred to in ■ COLL 5.2.20 R (2)(f) provided it satisfies the criteria for financial indices set out in ■ COLL 5.2.20A R.
- (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 5.3.3A R and spread set out in ■ COLL 5.2.11 R.

5.2.20B

FCA

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- (3) (a) In order to avoid undue concentration, where *derivatives* on an index composed of assets in which a *UCITS scheme* cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (b) If *derivatives* on that index are used for risk-diversification purposes, provided that the exposure of the *UCITS scheme* to that index complies with the 5%, 10% and 40% ratios required by ■ COLL 5.2.11 R (4) and ■ (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

[Note: CESR's *UCITS eligible assets guidelines* with respect to article 9 of the *UCITS eligible assets Directive*]

- (4) When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, *firms* should consider The Committee of European Securities Regulators' guidelines on the classification of hedge fund indices as financial indices (CESR/07-434). Those guidelines are available at www.fca.org.uk/your-fca.

Transactions for the purchase of property

5.2.21
FCA

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A *derivative* or forward transaction which will or could lead to the delivery of property for the account of the *UCITS scheme* may be entered into only if:

- (1) that property can be held for the account of the *UCITS scheme*; and
- (2) the *authorised fund manager* having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the *rules* in this sourcebook.

Requirement to cover sales

5.2.22
FCA

R

- (1) No agreement by or on behalf of a *UCITS scheme* to dispose of property or rights may be made unless:
 - (a) the obligation to make the disposal and any other similar obligation could immediately be honoured by the *UCITS scheme* by delivery of property or the assignment (or, in Scotland, assignation) of rights; and
 - (b) the property and rights at (a) are owned by the *UCITS scheme* at the time of the agreement.

(2) Paragraph (1) does not apply to a *deposit*.

(3) [deleted]

(4) [deleted]

Guidance on requirement to cover sales

5.2.22A

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[deleted]

FCA

- (1) In the *FCA's* view the requirement in ■ COLL 5.2.22 R (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 *depository* 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.

OTC transactions in derivatives

5.2.23

R

A transaction in an *OTC derivative* under ■ COLL 5.2.20 R (1) (b) must be:

FCA

- (1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:
 - (a) an *eligible institution* or an *approved bank*; or
 - (b) a *person* whose *permission* (including any *requirements* or *limitations*), as published in the *Financial Services Register*, or whose *Home State authorisation*, permits it to enter into the transaction as *principal off-exchange*;

- (2) on approved terms; the terms of the transaction in *derivatives* are approved only if the *authorised fund manager*:
 - (a) carries out, at least daily, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value and which does not rely only on market quotations by the counterparty; and
 - (b) can enter into one or more further transactions to *sell*, liquidate or *close out* that transactions at any time, at its fair value ;

- (3) capable of reliable valuation; a transaction in *derivatives* is capable of reliable valuation only if the *authorised fund manager* having

taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:

- (a) on the basis of an up-to-date market value which the *authorised fund manager* and the *depository* have agreed is reliable; or
- (b) if the value referred to in (a) is not available, on the basis of a pricing model which the *authorised fund manager* and the *depository* have agreed uses an adequate recognised methodology; and

(4) subject to verifiable valuation; a transaction in *derivatives* is subject to verifiable valuation only if, throughout the life of the *derivative* (if the transaction is entered into) verification of the valuation is carried out by:

- (a) an appropriate third party which is independent from the counterparty of the *derivative*, at an adequate frequency and in such a way that the *authorised fund manager* is able to check it; or
- (b) a department within the *authorised fund manager* which is independent from the department in charge of managing the *scheme property* and which is adequately equipped for such a purpose.

[Note: articles 8(1)(b), 8(3) and 8(4) of the *UCITS eligible assets Directive*]

5.2.23A
FCA

R For the purposes of ■ COLL 5.2.23 R (2), "fair value" is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

5.2.23B
FCA

R In respect of its obligations under ■ COLL 6.6.4 R (1) (a) , the *depository* must take reasonable care to ensure that the *authorised fund manager* has systems and controls that are adequate to ensure compliance with ■ COLL 5.2.23 R (1) to ■ (4).

Valuation of OTC derivatives

5.2.23C
FCA

R (1) For the purposes of ■ COLL 5.2.23 R (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 8.1.13 R (Additional requirements for a management company) and ■ COLL 6.6A.4 R (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*]

5.2.24

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- (1) [deleted]
- (2) [deleted]
- (3) [deleted]

5.2.25

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- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) [deleted]
- (8) [deleted]

Investment in deposits

5.2.26

R

A *UCITS scheme* may invest in *deposits* only if it:

- (1) is with an *approved bank*;
- (2) is:
 - (a) repayable on demand; or

(b) has the right to be withdrawn; and

(3) matures in no more than 12 *months*.

Significant influence for ICVCs

5.2.27

FCA

R

(1) An *ICVC* must not acquire *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that *body corporate* if:

(a) immediately before the acquisition, the aggregate of any such *securities* held by the *ICVC* gives the *ICVC* power to influence significantly the conduct of business of that *body corporate*; or

(b) the acquisition gives the *ICVC* that power.

(2) For the purpose of (1), an *ICVC* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held by it, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

Significant influence for managers of AUTs

5.2.28

FCA

R

(1) A *manager* must not acquire, or cause to be acquired for an *AUT* of which it is the *manager*, *transferable securities* issued by a *body corporate* and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the *body corporate* if:

(a) immediately before the acquisition, the aggregate of any such *securities* held for that *AUT*, taken together with any such *securities* already held for other *AUTs* of which it is also the *manager*, gives the *manager* power significantly to influence the conduct of business of that *body corporate*; or

(b) the acquisition gives the *manager* that power.

(2) For the purpose of (1), a *manager* is to be taken to have power significantly to influence the conduct of business of a *body corporate* if it can, because of the *transferable securities* held for all the *AUTs* of which it is the *manager*, exercise or control the exercise of 20% or more of the voting rights in that *body corporate* (disregarding for this purpose any temporary suspension of voting rights in respect of the *transferable securities* of that *body corporate*).

Concentration

5.2.29

FCA

R

A UCITS scheme:

- (1) must not acquire *transferable securities* (other than *debt securities*) which:
 - (a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and
 - (b) represent more than 10% of those *securities* issued by that *body corporate*;
- (2) must not acquire more than 10% of the *debt securities* issued by any single body;
- (3) must not acquire more than 25% of the *units* in a *collective investment scheme*;
- (4) must not acquire more than 10% of the *approved money-market instruments* issued by any single body; and
- (5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

UCITS schemes that are umbrellas

5.2.30

FCA

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- (1) In relation to a UCITS scheme which is an *umbrella*, the provisions in ■ COLL 5.2 to ■ COLL 5.5 apply to each *sub-fund* as they would for an *authorised fund*, except the following rules which apply at the level of the *umbrella* only:
 - (a) ■ COLL 5.2.27 R (Significant influence for ICVCs);
 - (b) ■ COLL 5.2.28 R (Significant influence for managers of AUTs); and
 - (c) ■ COLL 5.2.29 R (Concentration).
- (2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:
 - (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same umbrella;
 - (b) the conditions in ■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes) are complied with (for the purposes of this rule, ■ COLL 5.2.15 R and ■ COLL 5.2.16 R are to be read as modified by ■ COLL 5.2.15 R (2)); and

- (c) the investing or disposing *sub-fund* must not be a *feeder UCITS* to the second *sub-fund*.

Schemes replicating an index

5.2.31
FCA

R

- (1) Notwithstanding ■ COLL 5.2.11 R (Spread: general), a *UCITS scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *scheme* as stated in the most recently published *prospectus* is to replicate the composition of a relevant index which satisfies the criteria specified in ■ COLL 5.2.33 R (Relevant indices).

- (1A) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of *efficient portfolio management*.

[Note: article 12(1) of the *UCITS eligible assets Directive*]

- (2) The limit in (1) can be raised for a particular *UCITS scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

Index replication

5.2.32
FCA

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- (1) Where the 20% limit (see ■ COLL 5.2.31 R (1)) is raised (subject to the maximum of 35% permitted by ■ COLL 5.2.31 R (2)), the *authorised fund manager* should provide appropriate information in the *simplified prospectus*, in order to explain the *authorised fund manager's* assessment of why this increase is justified by exceptional market conditions.

[Note: CESR's *UCITS eligible assets guidelines* with respect to Article 12(2) of the *UCITS eligible assets Directive*]

- (2) In the case of a *UCITS scheme* replicating an index under ■ COLL 5.2.31 R (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index in cases where the *scheme's* investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

Relevant indices

5.2.33
FCA

R

- (1) The indices referred to in ■ COLL 5.2.31 R are those which satisfy the following criteria:
- (a) the composition is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.

- (2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.
- (3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;
 - (b) the index provider is independent from the index-replicating UCITS scheme; this does not preclude index providers and the UCITS scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

[Note: articles 12(2),(3) and (4) 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

FCA

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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.

Guidance on syndicated loans

5.2.35

FCA

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- (1) A syndicated loan for the purposes of this guidance means a form of loan where a group or syndicate of parties lend money to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders' interest in the loan and arrange or act as a conduit for the interest payments. Whether an interest in a syndicated loan constitutes a transferable security or otherwise will depend on the terms of the relevant instrument. Where an authorised fund manager plans to invest scheme property in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.
- (2) To determine whether an interest in a syndicated loan would be an eligible investment for a UCITS scheme in accordance with COLL 5.2, an authorised fund manager should first consider whether it constitutes a transferable security within the meaning of COLL 5.2.7 R (Transferable securities) and then consider the additional eligibility criteria arising out of the UCITS eligible assets Directive that relate to liquidity, valuations and negotiability (see COLL 5.2.7A R (Investment in transferable securities)).

- (3) A *UCITS scheme* cannot lend money from its *scheme property*. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a *UCITS scheme* may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.
- (4) An instrument will not be a *transferable security* if it falls within one or more of the exclusions set out in article 77(2) of the *Regulated Activities Order*. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.
- (5) In the *FCA's* opinion, for an instrument to be classed as a *debenture* for the purposes of constituting a *transferable security* (see ■ COLL 5.2.7 R (1)(b)), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a *debenture* for these purposes.
- (6) In the *FCA's* view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of ■ COLL 5.2.7AR (1)(e) (Investment in transferable securities), so as to make it a permissible investment for a *UCITS scheme*. When *securities* are capable of being traded on a capital market, whether *on-exchange* or *off-exchange*, as a class and are fungible within their class, this would tend to indicate (unless the *AFM* was aware of specific evidence to the contrary) that they are negotiable.
- (7) The *FCA's* understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, *AFMs* should use similar analysis to determine whether or not interests in such loans are eligible investments for *UCITS schemes*.
- (8) Where a loan falls within the *Glossary* definition of a *transferable security*, investment in such a loan in the case of a *UCITS scheme* is subject to the spread requirements in ■ COLL 5.2.11 R (Spread: general). *AFMs* also need to bear in mind that where such a *transferable security* does not meet the requirements of ■ COLL 5.2.8 R (3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the *scheme's* overall exposure to such loans will count towards the limit in ■ COLL 5.2.8 R (4).



5.3 Derivative exposure

Application

5.3.1
FCA

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This section applies to an *authorised fund manager of a UCITS scheme* and to an *ICVC* which is a *UCITS scheme*.

Introduction

5.3.2
FCA

G

- (1) A *scheme* may invest in *derivatives* and forward transactions as long as the exposure to which the *scheme* is committed by that transaction itself is suitably covered from within its *scheme property*. Exposure will include any *initial outlay* in respect of that transaction.
- (2) Cover ensures that a *scheme* is not exposed to the risk of loss of property, including *money*, to an extent greater than the net value of the *scheme property*. Therefore, a *scheme* is required to hold *scheme property* sufficient in value or amount to match the exposure arising from a *derivative* obligation to which the *scheme* is committed. This section sets out detailed requirements for cover of a *scheme*.
- (3) In accordance with ■ COLL 5.1.3 R (2)(b) (Treatment of obligations), cover used in respect of one transaction in *derivatives* or forward transaction should not be used for cover in respect of another transaction in *derivatives* or a forward transaction.

5.3.3

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- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- (5) [deleted]

Cover for investment in derivatives and forward transactions

5.3.3A
FCA

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*]

5

Daily calculation of global exposure

5.3.3B
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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
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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
FCA

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- (1) An *authorised fund manager* should note that the scope of ■ COLL 5.3.3C R is extended in relation to underwriting commitments by ■ COLL 5.5.8 R (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.

Borrowing

5.3.5
FCA

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- (1) Cash obtained from borrowing, and borrowing which the *authorised fund manager* reasonably regards an *eligible institution* or an *approved bank* to be committed to provide, is not available for cover under ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), except if (2) applies.
- (2) Where, for the purposes of this section, the *ICVC* or the *trustee* for the account of the *AUT* on the instructions of the *manager*:
 - (a) borrows an amount of currency from an *eligible institution* or an *approved bank*; and
 - (b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on *deposit* with the lender (or his agent or nominee);
 then this section applies as if the borrowed currency, and not the deposited currency, were part of the *scheme property*.

5.3.6

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- (1) [deleted]
- (2) [deleted]

5.3.7

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Calculation of global exposure

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 5.2.19 R (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

FCA

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- (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

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

5.3.9

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5.3.10
FCA

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■ COLL 5.2.19 R (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*]

- (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 5.5.4 R (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
FCA

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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/content/Guidelines-Risk-Measurement-and-Calculation-Global-Exposure-and-Counterparty-Risk-UCITS>

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/content/Final-report-Guidelines-competent-authorities-and-UCITS-management-companies-risk-meas-ureme>



5.4 Stock lending

Application

5.4.1

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This section applies to an *ICVC*, the *depository* of an *authorised fund* and an *authorised fund manager* in any case where the *authorised fund* is a *UCITS scheme* or a *non-UCITS retail scheme*.

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Permitted stock lending

5.4.2

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- (1) This section covers techniques relating to *transferable securities* and *approved money-market instruments* which are used for the purpose of *efficient portfolio management*. It permits the generation of additional income for the benefit of the *authorised fund*, and hence for its investors, by entry into *stock lending* transactions for the account of the *authorised fund*.
- (2) The specific method of *stock lending* permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower otherwise than by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

Stock lending: general

5.4.3

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An *authorised fund* may only enter into a *stock lending* arrangement or *repo* contract in accordance with the *rules* in this section if it reasonably appears to the *ICVC* or *manager* to be appropriate to do so with a view to generating additional income for the *authorised fund* with an acceptable degree of risk.

Stock lending: requirements

5.4.4

FCA

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

- (a) all the terms of the agreement under which *securities* are to be reacquired by the *depository* for the account of the *ICVC* or by the *trustee*, are in a form which is acceptable to the *depository* or to the *trustee* and are in accordance with good market practice;
 - (b) the counterparty is:
 - (i) an *authorised person*; or
 - (ii) a *person* authorised by a *Home State regulator*; or
 - (iii) a *person* registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
 - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives* by at least one of the following federal banking supervisory authorities of the United States of America:
 - (A) the Office of the Comptroller of the Currency;
 - (B) the Federal Deposit Insurance Corporation;
 - (C) the Board of Governors of the Federal Reserve System; and
 - (D) the Office of Thrift Supervision; and
 - (c) *collateral* is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the *collateral* is:
 - (i) acceptable to the *depository*;
 - (ii) adequate ; and
 - (iii) sufficiently immediate .
- (2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement referred to in (1)(a) to transfer to the *depository* the *securities* transferred by the *depository* under the *stock lending* arrangement or *securities* of the same kind.
- (3) (1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

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Where a *stock lending* arrangement is entered into, the *scheme property* remains unchanged in terms of value. The *securities* transferred cease to be part of the *scheme property*, but there is obtained in return an obligation on the part of the counterparty

5.4.5
FCA

to transfer back equivalent *securities*. The *depository* will also receive *collateral* to set against the risk of default in transfer, and that *collateral* is equally irrelevant to the valuation of the *scheme property* (because it is transferred against an obligation of equivalent value by way of re-transfer). ■ COLL 5.4.6 R accordingly makes provision for the treatment of the *collateral* in that context.

Treatment of collateral

5.4.6

FCA

R

(1) *Collateral* is adequate for the purposes of this section only if it is:

- (a) transferred to the *depository* or its agent;
- (b) at least equal in value, at the time of the transfer to the *depository*, to the value of the *securities* transferred by the *depository*; and
- (c) in the form of one or more of:
 - (i) cash; or
 - (ii) [deleted]
 - (iii) a certificate of *deposit*; or
 - (iv) a letter of *credit*; or
 - (v) a *readily realisable security* ; or
 - (vi) commercial paper with no embedded *derivative* content; or
 - (vii) a *qualifying money market fund*.

(1A) Where the *collateral* is invested in *units* in a *qualifying money market fund* managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *scheme* or an *associate* of that *authorised fund manager*, the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with whether or not the investing *scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*.

(2) *Collateral* is sufficiently immediate for the purposes of this section if:

- (a) it is transferred before or at the time of the transfer of the *securities* by the *depository*; or
- (b) the *depository* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.

(3) The *depository* must ensure that the value of the *collateral* at all times is at least equal to the value of the *securities* transferred by the *depository*.

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- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire or has expired where the *depository* takes reasonable care to determine that sufficient *collateral* will again be transferred at the latest by the close of business on the *day* of expiry.
- (5) Any agreement for transfer at a future date of *securities* or of *collateral* (or of the equivalent of either) under this section may be regarded, for the purposes of valuation under ■ COLL 6.3 (Valuation and pricing) or this chapter, as an unconditional agreement for the *sale* or transfer of property, whether or not the property is part of the property of the *authorised fund*.
- (6) *Collateral* transferred to the *depository* is part of the *scheme property* for the purposes of the *rules* in this sourcebook, except in the following respects:
 - (a) it does not fall to be included in any valuation for the purposes of ■ COLL 6.3 or this chapter, because it is offset under (5) by an obligation to transfer; and
 - (b) it does not count as *scheme property* for any purpose of this chapter other than this section.
- (7) Paragraph (5) and (6)(a) do not apply to any valuation of *collateral* itself for the purposes of this section.

Limitation by value

5.4.7
FCA

R

There is no limit on the value of the *scheme property* which may be the subject of *repo* contracts or *stock lending* transactions within this section.

Guidance relating to the use of cash collateral

5.4.8
FCA

G

- (1) The use of *stock lending* or the reinvestment of cash collateral should not result in a change of the *scheme's* declared investment objectives or add substantial supplementary risks to the *scheme's* risk profile.
- (2) Collateral taking the form of cash may only be invested in:
 - (a) one of the investments coming within ■ COLL 5.4.6 R (1) (c) (iii) to ■ (vii) (Treatment of collateral); or
 - (b) *deposits*, provided they:
 - (i) are capable of being withdrawn within five *business days*, or such shorter time as may be dictated by the *stock lending* agreement; and
 - (ii) satisfy the requirements of ■ COLL 5.2.26 R (1) (Investment in deposits).

5.4.9

FCA

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Where a *scheme* generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the *scheme*'s global exposure.

[Note: CESR's UCITS eligible assets guidelines with respect to article 11 of the UCITS eligible assets Directive (part)]

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5.5 Cash, borrowing, lending and other provisions

Application

5.5.1
FCA

R

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* as set out in ■ COLL 5.5.2 R (Table of application).

Table of application

5.5.2
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This table belongs to ■ COLL 5.5.1 R.

Rule	ICVC	ACD	Manager of an AUT	Depository of an ICVC	Trustee of an AUT
5.5.3R		X	X		
5.5.4R(1) to (3)	X				X
5.5.4R(4)&(5)		X	X		
5.5.4R(6)				X	X
5.5.4R(7)	X	X	X	X	X
5.5.4R(8)	X				
5.5.5R(1) to (3)		X	X		
5.5.6R(1)&(2)	X		X		X
5.5.6R(3)	X				
5.5.7R(1)-(3)	X		X		X
5.5.7R(4)	X			X	X
5.5.8R	X	X	X		
5.5.9R	X			X	X
5.5.10G	X	X	X	X	X

Note: x means "applies"

Cash and near cash

5.5.3

FCA

R

- (1) Cash and *near cash* must not be retained in the *scheme property* except to the extent that this may reasonably be regarded as necessary in order to enable:
 - (a) the pursuit of the *scheme's* investment objectives; or
 - (b) *redemption* of *units*; or
 - (c) efficient management of the *authorised fund* in accordance with its investment objectives; or
 - (d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the *authorised fund*.
- (2) During the period of the *initial offer* the *scheme property* may consist of cash and *near cash* without limitation.

General power to borrow

5.5.4

FCA

R

- (1) The *ICVC* or *trustee* (on the instructions of the *manager*) may, in accordance with this *rule* and ■ COLL 5.5.5 R (Borrowing limits), borrow *money* for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) Paragraph (1) is subject to the obligation of the *authorised fund* to comply with any restriction in the *instrument constituting the scheme*.
- (3) The *ICVC* or *trustee* may borrow under (1) only from an *eligible institution* or an *approved bank*.
- (4) The *authorised fund manager* must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the *authorised fund manager* must have regard in particular to:
 - (a) the duration of any period of borrowing; and
 - (b) the number of occasions on which resort is had to borrowing in any period.
- (5) In addition to complying with (4), the *authorised fund manager* must ensure that no period of borrowing exceeds three *months*, whether in respect of any specific sum or at all, without the prior consent of the *depository*.
- (6) The *depository* may only give its consent as required under (5) on such conditions as appear to the *depository* appropriate to ensure that the borrowing does not cease to be on a temporary basis only.

- (7) This *rule* does not apply to "back to back" borrowing under ■ COLL 5.3.5 R (2) (Borrowing).
- (8) An *ICVC* must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with (1) to (6)

Borrowing limits

5.5.5
FCA

R

- (1) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 10% of the value of the *scheme property*.
- (2) This *rule* does not apply to "back to back" borrowing under ■ COLL 5.3.5 R (2)(Borrowing).
- (3) In this *rule*, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of *money* into the *scheme property* in the expectation that the sum will be repaid.
- (4) [deleted]

Restrictions on lending of money

5.5.6
FCA

R

- (1) None of the *money* in the *scheme property* of an *authorised fund* may be lent and, for the purposes of this prohibition, *money* is lent by an *authorised fund* if it is paid to a *person* ("the payee") on the basis that it should be repaid, whether or not by the payee.
- (2) Acquiring a *debenture* is not lending for the purposes of (1); nor is the placing of *money* on deposit or in a current account.
- (3) Paragraph (1) does not prevent an *ICVC* from providing an *officer* of the *ICVC* with funds to meet expenditure to be incurred by him for the purposes of the *ICVC* (or for the purposes of enabling him properly to perform his duties as an *officer* of the *ICVC*) or from doing anything to enable an *officer* to avoid incurring such expenditure.

Restrictions on lending of property other than money

5.5.7
FCA

R

- (1) The *scheme property* of an *authorised fund* other than *money* must not be lent by way of deposit or otherwise.
- (2) Transactions permitted by ■ COLL 5.4 (Stock lending) are not to be regarded as lending for the purposes of (1).
- (3) The *scheme property* must not be mortgaged.

- (4) Where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any of the *rules* in this chapter, nothing in this *rule* prevents the *ICVC* or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, from :
 - (a) lending, depositing, pledging or charging *scheme property* for *margin* requirements; or
 - (b) transferring *scheme property* under the terms of an agreement in relation to *margin* requirements, provided that the *authorised fund manager* reasonably considers that both the agreement and the *margin* arrangements made under it (including in relation to the level of *margin*) provide appropriate protection to *unitholders*.

5.5.7A

FCA

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An agreement providing appropriate protection to *unitholders* for the purposes of ■ COLL 5.5.7 R (4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

General power to accept or underwrite placings

5.5.8

FCA

R

- (1) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* applies, subject to compliance with any restriction in the *instrument constituting the scheme*.
- (2) This *rule* applies to any agreement or understanding which:
 - (a) is an underwriting or sub-underwriting agreement; or
 - (b) contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *authorised fund*.
- (3) Paragraph (2) does not apply to:
 - (a) an *option*; or
 - (b) a purchase of a *transferable security* which confers a right to:
 - (i) subscribe for or acquire a *transferable security*; or
 - (ii) convert one *transferable security* into another.
- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:
 - (a) covered under ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions); and

- (b) such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

Guarantees and indemnities

5.5.9

FCA

R

- (1) An *ICVC* or a *depository* for the account of an *authorised fund* must not provide any guarantee or indemnity in respect of the obligation of any *person*.
- (2) None of the *scheme property* of an *authorised fund* may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any *person*.
- (3) Paragraphs (1) and (2) do not apply to:
 - (a) any indemnity or guarantee given for *margin* requirements where the *derivatives* or forward transactions are being used in accordance with the *rules* in this chapter; and
 - (b) for an *ICVC*:
 - (i) an indemnity falling within the provisions of regulation 62(3) of the *OEIC Regulations* (Exemptions from liability to be void);
 - (ii) an indemnity (other than any provision in it which is void under regulation 62 of the *OEIC Regulations*) given to the *depository* against any liability incurred by it as a consequence of the safekeeping of any of the *scheme property* by it or by anyone retained by it to assist it to perform its function of the safekeeping of the *scheme property*; and
 - (iii) an indemnity given to a *person* winding up a *scheme* if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that *scheme* becomes the first property of the *ICVC* and the *holders of units* in that *scheme* become the first *unitholders* in the *ICVC*; and
 - (c) for an *AUT*, an indemnity given to a *person* winding up a body corporate or other *scheme* in circumstances where those assets are becoming part of the *scheme property* by way of a *unitisation*.

Guidance on restricting payments

5.5.10

FCA

G

■ COLL 6.7.15 R (Payment of liabilities on transfer of assets) and ■ COLL 6.4.7 R (Payments out of scheme property) contain provisions restricting payments out of *scheme property*.



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

Application

5.6.1
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R

- (1) This section applies to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* and to an *ICVC* which is a *non-UCITS retail scheme*.
- (2) Where this section contains a reference to a *rule* in any of ■ COLL 5.1 to ■ COLL 5.5 , these *rules* and any *rules* to which they refer or any relevant *guidance* should be read as if any reference to a *UCITS scheme* is to a *non-UCITS retail scheme*.

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Explanation of ■ COLL 5.6

5.6.2
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- (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements of the *UCITS Directive*. Consequently, a *scheme* authorised as a *non-UCITS retail scheme* will not qualify for the cross border passporting rights conferred by the *UCITS Directive* on a *UCITS scheme*.
- (2) Some examples of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* are the power to:
 - (a) invest not more than 10% of the value of *scheme property* in *transferable securities* or money-market instruments issued by any single body;
 - (b) invest in up to 20% in aggregate of the value of the *scheme property* in *transferable securities* which are not *approved securities* and unregulated *schemes*;
 - (c) invest in a wider range of *schemes* which do not comply with the requirements of the *UCITS Directive*;
 - (d) include gold in the *scheme property* (up to a limit of 10% of the value of the *scheme property*);
 - (e) include immovables in the *scheme property*; and
 - (f) borrow on a non-temporary basis without any specific time limit as to repayment of the borrowing.

5.6.3
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Prudent spread of risk

- (1) An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recently published *prospectus*, the *scheme property* of the *non-UCITS retail scheme* aims to provide a prudent spread of risk
- (1A) For a *feeder NURS*, (1) applies only to the extent that the *feeder NURS* invests in assets other than *units* of its *qualifying master scheme*.
- (2) Subject to (3) and (4), the *rules* in this section relating to spread of investments, including immovables, do not apply until 12 *months* after the later of:
 - (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
 - (b) the date the *initial offer* commenced;
 provided that (1) is complied with during such period.
- (3) Subject to (4), the limits in ■ COLL 5.6.19 R do not apply until 24 *months* after the later of:
 - (a) the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
 - (b) the date the *initial offer* commenced;
 provided that (1) is complied with during such period.
- (4) The limit in ■ COLL 5.6.19 R (7) relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect and the date the *initial offer* period commenced.

Investment powers: general

5.6.4
FCA

R

- (1) The *scheme property* of a *non-UCITS retail scheme* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
- (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC's* business of investing in those assets or investments.
- (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that

non-UCITS retail scheme and within any upper limit specified in this section.

- (4) The *instrument constituting the scheme* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
 - (a) *transferable securities*;
 - (b) money-market instruments;
 - (c) *units in collective investment schemes* permitted under ■ COLL 5.6.10 R (Investment in collective investment schemes);
 - (d) *derivatives* and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
 - (e) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
 - (f) immovables permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
 - (g) gold up to a limit of 10% in value of the *scheme property*.

Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme

5.6.5
FCA

R

Transferable securities and money-market instruments held within a *non-UCITS retail scheme* must:

- (1)
 - (a) be admitted to or *dealt* in on an *eligible* market within ■ COLL 5.2.10 R (Eligible markets: requirements); or
 - (b) be recently issued *transferable securities* which satisfy the requirements for investment by a *UCITS scheme* set out in ■ COLL 5.2.8 R (3)(e); or
 - (c) be *approved money-market instruments* not admitted to or dealt in on an *eligible* market which satisfy the requirements for investment by a *UCITS scheme* set out in ■ COLL 5.2.10A R to ■ COLL 5.2.10C R ; or
- (2) subject to a limit of 20% in value of the *scheme property* be:
 - (a) *transferable securities* which are not within (1) ; or
 - (b) money-market instruments which are liquid and have a value which can be determined accurately at any time.

5.6.5A
FCA

R *Transferable securities* held within a *non-UCITS retail scheme* must also satisfy the criteria in ■ COLL 5.2.7A R, ■ COLL 5.2.7C R and ■ COLL 5.2.7E R for the purposes of investment by a *UCITS scheme*.

5.6.5B
FCA

G ■ COLL 5.2.7A R to ■ COLL 5.2.7E R contain *rules* and *guidance* relating to the criteria that need to be satisfied for the purposes of investment in *transferable securities*.

5.6.5C
FCA

R Where a *scheme* is a *short-term money market fund* or a *money market fund*, the ability to hold up to 20% of *scheme property* in ineligible assets under ■ COLL 5.6.5 R (2) is limited to high quality *approved money-market instruments* as determined under ■ COLL 5.9.6 R (High quality money market instruments).

Money Market funds

5.6.5D
FCA

R *Approved money-market instruments* held within a *non-UCITS retail scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in ■ COLL 5.2.7F R to ■ COLL 5.2.7H R (*Approved money-market instruments*).

Valuation

5.6.6
FCA

R In this section the value of the *scheme property* means the value of the *scheme property* determined in accordance with ■ COLL 5.2.5 R (*Valuation*).

Spread: general

5.6.7
FCA

- R**
- (1) This *rule* does not apply in respect of *government and public securities*.
 - (2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
 - (3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or money-market instruments issued by any single body subject to ■ COLL 5.6.23 R (*Schemes replicating an index*).
 - (3A) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.
 - (4) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
 - (5) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
 - (6) Except for a *feeder fund*, a *feeder NURS* or a *scheme dedicated to units* in a single *property authorised investment fund*, not

more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

- (6A) *Schemes* which (in respect of investment in *units* in *collective investment schemes*) are *dedicated* to *units* in a single *property authorised investment fund* or *qualifying master scheme* must, in addition to the investment in the *property authorised investment fund* or *qualifying master scheme*, only hold cash or *near cash* to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. *Schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.
- (7) For the purpose of calculating the limit in (5), the exposure in respect of an *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 (8).
- (8) The conditions referred to in (7) 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 is legally secured from the consequences of a failure of a related party; and
 - (d) can be fully enforced by the *non-UCITS retail scheme* at any time.
- (9) For the purpose of calculating the limit in (5), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
 - (a) comply with the conditions set out in Part 7 (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.
- (10) 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.

(11) For the purposes of this *rule* a single body is:

- (a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and
- (b) in relation to *deposits*, the *person* with whom they are placed.

Guidance on spread: general

5.6.7A
FCA

G

- (1) ■ COLL 5.6.7 R (7) to ■ (10) replicate 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, so as to enable *non-UCITS retail schemes* to benefit from the same flexibility.
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in ■ COLL 5.6.7 R (8) under which the collateral has to be legally enforceable at any time. It is the *FCA'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. The *depository* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under ■ COLL 6.6.4 R (General duties of the depository).
- (3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it on behalf of the *scheme*.

Spread: government and public securities

5.6.8
FCA

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- (1) This *rule* applies in respect of *government and public securities*.
- (2) The requirements in ■ COLL 5.2.12 R (Spread: government and public securities) apply to investment in *government and public securities* by a *non-UCITS retail scheme* , except for ■ COLL 5.2.12 R (4) which will apply to such a *scheme* only to the extent that it concerns the most recently published *prospectus* of the *scheme* .

Investment in nil and partly paid securities

5.6.9
FCA

R

A *non-UCITS retail scheme* must not invest in nil and partly paid *securities* unless the investment complies with the conditions in ■ COLL 5.2.17 R (Investment in nil and partly paid securities).

5.6.10

FCA

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Investment in collective investment schemes

A *non-UCITS retail scheme*, except for a *feeder NURS* (which must instead comply with ■ COLL 5.6.26 R), must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (5) :

- (1) the second *scheme*:
 - (a) satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
 - (b) is a *non-UCITS retail scheme*; or
 - (c) is a *recognised scheme*; or
 - (d) is constituted outside the *United Kingdom* and the investment and borrowing powers of which are the same or more restrictive than those of a *non-UCITS retail scheme*; or
 - (e) is a *scheme* not falling within (a) to (d) and in respect of which no more than 20% in value of the *scheme property* (including any *transferable securities* which are not *approved securities*) is invested;
- (2) the second *scheme* operates on the principle of the prudent spread of risk;
- (3) the second *scheme* is prohibited from having more than 15% in value of the property of that *scheme* consisting of *units* in *collective investment schemes*;
- (4) the *participants* in the second *scheme* must be entitled to have their *units* redeemed in accordance with the *scheme* at a *price*:
 - (a) related to the net value of the property to which the *units* relate; and
 - (b) determined in accordance with the *scheme* ; and
- (5) where the second *scheme* is an *umbrella*, the provisions in (2) to (4) and ■ COLL 5.6.7 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

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5.6.11

FCA

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Investment in associated collective investment schemes

- (1) *Units* in a *scheme* do not fall within ■ COLL 5.6.10 R if that *scheme* is managed or operated by (or, if it is an *ICVC*, has as its *ACD*) the *authorised fund manager* of the investing *non-UCITS retail scheme* or by an *associate* of that *authorised fund manager*, unless:
 - (a) the *prospectus* of the investing *authorised fund* clearly states that the property of that investing fund may include such *units*; and

(b) the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) are complied with.

(2) Where a *sub-fund* of a *non-UCITS retail scheme* which is an *umbrella* invests in or disposes of *units* in another *sub-fund* of the same *umbrella* (the second *sub-fund*), the requirement in:

(a) ■ COLL 5.6.11 R (1)(a) is modified as follows - the *prospectus* of the *umbrella* must clearly state that the *scheme property* attributable to the investing or disposing *sub-fund* may include *units* in another *sub-fund* of the same *umbrella*; and

(b) ■ COLL 5.6.11 R (1)(b) is modified as follows - ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "*UCITS scheme*" are taken to be references to the investing or disposing *sub-fund* and references to the "*second scheme*" are taken to be references to the second *sub-fund*.

Derivatives: general

5.6.12

FCA

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 5.6.13 R (Permitted transactions (derivatives and forwards)); and

(b) covered, as required by ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).

(2) Where a *scheme* invests in *derivatives*, the exposure to the underlying assets must not exceed the limits in ■ COLL 5.6.7 R (Spread: general) and ■ COLL 5.6.8 R (Spread: government and public securities) except as provided in (4).

(3) Where a *transferable security* or money-market instrument embeds a *derivative*, this must be taken into account for the purposes of calculating any limit in this section.

(4) Where a *scheme* invests in an index-based *derivative*, provided the relevant index falls within ■ COLL 5.6.23 R (Schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of ■ COLL 5.6.7 R and ■ COLL 5.6.8 R.

(5) The relaxation in (4) is subject to the *authorised fund manager* taking account of ■ COLL 5.6.3 R (Prudent spread of risk).

Permitted transactions (derivatives and forwards)

5.6.13
FCA

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- (1) A transaction in a *derivative* must be within ■ COLL 5.2.20 R (1) (Permitted transactions (derivatives and forwards)) and:
 - (a) the underlying must be within ■ COLL 5.6.4 R (5) (Investment powers: general) or ■ COLL 5.2.20 R (2)(f) to ■ (i) ; and
 - (b) the exposure to the underlying must not exceed the limits in ■ COLL 5.6.7 R (Spread: general), ■ COLL 5.6.8 R (Spread: government and public securities) and ■ COLL 5.6.5 R (2).
- (2) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.
- (3) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the scheme* and the most recently published *prospectus*.
- (4) transaction in a *derivative* must not be effected if the intended effect is to create the potential for an uncovered sale of:
 - (a) *transferable securities*;
 - (b) money-market instruments;
 - (c) *units* in *collective investment schemes*; or
 - (d) *derivatives*.
- (5) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (6) The *authorised fund manager* must ensure compliance with ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), ■ COLL 5.3.3B R and ■ COLL 5.3.3C R (Daily calculation of global exposure).

Transactions for the purchase or disposal of property

5.6.14
FCA

R

The requirements of ■ COLL 5.2.21 R (Transactions for the purchase of property) and ■ COLL 5.2.22 R (Requirement to cover sales) apply to *non-UCITS retail schemes* in the same manner as to *UCITS schemes*.

OTC transactions in derivatives

5.6.15
FCA

R

Any transaction in an *OTC derivative* under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards)) must comply with the requirements of ■ COLL 5.2.23 R (OTC transactions in derivatives).

Risk management

5.6.16
FCA

R

An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated

with a *non-UCITS retail scheme's* positions and their contribution to the overall risk profile of the *scheme*.

Risk management process

5.6.17

FCA

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- (1) The risk management process should take account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recent *prospectus*.
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under ■ COLL 6.6.4 R (General duties of the depository) and ■ COLL 6.6.14 R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *non-UCITS retail 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* 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 5.6.16 R (Risk management) to be undertaken at least daily or at each *valuation point* whichever is the more frequent.

Investment in property

5.6.18

FCA

R

- (1) Any investment in land or a building held within the *scheme property* of a *non-UCITS retail scheme* must be an immovable within (2) to (5).
- (2) An immovable must:
 - (a) be situated in a country or territory identified in the *prospectus* for the purpose of this *rule*; and
 - (b) if situated in:
 - (i) England and Wales or Northern Ireland, be a freehold or leasehold interest; or
 - (ii) Scotland, be any interest or estate in or over land or heritable right including a long lease; or
 - (c) if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the *scheme* and provides as good a title as any of the interests in (b)(i) or (ii).

- (3) The *authorised fund manager* must have taken reasonable care to determine that the title to the immovable is a good marketable title.
- (4) The *manager* or the *ICVC* must:
 - (a) have received a report from an *appropriate valuer* which:
 - (i) contains a valuation of the immovable (with and without any relevant subsisting mortgage); and
 - (ii) states that in the *appropriate valuer's* opinion the immovable would, if acquired by the *scheme*, be capable of being disposed of reasonably quickly at that valuation; or
 - (b) have received a report from an *appropriate valuer* as required by (4)(a)(i) and stating that:
 - (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property* or is another legal interest as defined in (2)(b) or (c) in an immovable which is already included in the *scheme property*; and
 - (ii) in the opinion of the *appropriate valuer*, the total value of both immovables would at least equal the sum of the price payable for the immovable and the existing value of the other immovable.
- (5) An immovable must:
 - (a) be bought or be agreed by enforceable contract to be bought within six *months* after receipt of the report of the *appropriate valuer* under (4);
 - (b) not be bought, if it is apparent to the *authorised fund manager* that the report in (a) could no longer reasonably be relied upon; and
 - (c) not be bought at more than 105% of the valuation for the relevant immovable in the report in (4).
- (6) Any furniture, fittings or other contents of any building may be regarded as part of the relevant immovable.
- (7) An *appropriate valuer* must be a *person* who:
 - (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of a *non-UCITS retail scheme* or is considered by the *scheme's*

standing independent valuer to hold an equivalent qualification;

- (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *manager* and *trustee* of the *AUT*; and
- (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

Investment in overseas property through an intermediate holding vehicle

5.6.18A

FCA

R

- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in that immovable.
- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

5.6.18B

FCA

G

- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
 - (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.

- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

Investment limits for immovables

5.6.19

FCA

R

The following limits apply in respect of immovables held as part of *scheme property of a scheme*:

- (1) not more than 15% in value of the *scheme property* is to consist of any one immovable;
- (2) in (1), immovables within ■ COLL 5.6.18 R (4) (b) (Investment in property) must be regarded as one immovable;
- (3) the figure of 15% in (1) may be increased to 25% once the immovable has been included in the *scheme property* in compliance with (1);
- (4) the income receivable from any one *group* in any accounting period must not be attributable to immovables comprising:
 - (a) more than 25%; or
 - (b) in the case of a government or public body more than 35% of the value of the *scheme property*;
- (5) not more than 20% in value of the *scheme property* is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in ■ COLL 5.6.18 R (4) (on the assumption the immovable is not mortgaged);
- (6) the aggregate value of:
 - (a) mortgages secured on immovables under (5);
 - (b) borrowing of the *scheme* under ■ COLL 5.6.22 R (5); and
 - (c) any *transferable securities* that are not *approved securities*; must not at any time exceed 20% of the value of the *scheme property*;
- (7) not more than 50% in value of the *scheme property* is to consist of *immovables* which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and
- (8) no option may be granted to a third party to buy any immovable comprised in the *scheme property* unless the value of the relevant immovable does not exceed 20% of the value of the *scheme*

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property together with, where appropriate, the value of investments in:

- (a) *unregulated collective investment schemes*; and
- (b) any *transferable securities* which are not *approved securities*.

Standing independent valuer and valuation

5.6.20

FCA

R

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

- (a) the *authorised fund manager* must ensure that any immovables in the *scheme property* are valued by an *appropriate valuer (standing independent valuer)* appointed by the *authorised fund manager*; and
- (b) the appointment must be made with the approval of the *trustee* or *depository* at the outset and upon any vacancy.

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

- (a) for an *AUT*, independent of the *manager* and *trustee*; and
- (b) for an *ICVC*, independent of the *ICVC*, the *directors* and the *depository*.

(3) The following requirements apply in relation to the functions of the *standing independent valuer*:

- (a) the *authorised fund manager* must ensure that the *standing independent valuer* values all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
- (b) for the purposes of (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
- (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
- (d) if either the *authorised fund manager* or the *depository* becomes aware of any matters that appear likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a) instead of under (c);

it must immediately inform the *standing independent valuer* of that matter;

- (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
- (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but subject to ■ COLL 6.3 (Valuation and pricing).

(4) In relation to an immovable:

- (a) any valuation under ■ COLL 6.3 (Valuation and pricing) has effect, until the next valuation under that *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

5.6.20A
FCA

G

In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 5.6.20 R (3) (f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

Stock lending

5.6.21
FCA

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A *non-UCITS retail scheme* may undertake *stock lending* in accordance with ■ COLL 5.4 (Stock lending).

Cash, borrowing, lending and other provisions

5.6.22
FCA

R

The following *rules* in Chapter 5 apply to a *non-UCITS retail scheme*:

- (1) ■ COLL 5.2.7 R (Transferable securities);
- (2) ■ COLL 5.5.1 R (Application) and ■ COLL 5.5.2 R (Table of application) ;
- (3) ■ COLL 5.5.3 R (Cash and near cash);
- (4) ■ COLL 5.5.4 R (1), ■ COLL 5.5.4 R (2), ■ COLL 5.5.4 R (3) and ■ COLL 5.5.4 R (8) (General power to borrow);
- (5) ■ COLL 5.5.5 R (1) and ■ COLL 5.5.5 R (2) (Borrowing limits);
- (6) ■ COLL 5.5.6 R (Restrictions on lending of money) ;

- (7) ■ COLL 5.5.7 R (1) , ■ (2) and ■ (4) (Restrictions on lending of property other than money);
- (8) ■ COLL 5.5.8 R (General power to accept or underwrite placings); and
- (9) ■ COLL 5.5.9 R (Guarantees and indemnities).

Schemes replicating an index

5.6.23

FCA

R

- (1) A *non-UCITS retail scheme* may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the aim of the investment policy of that *scheme* as stated in its most recently published *prospectus* is to replicate the performance or composition of an index within (2).
- (2) The index must:
 - (a) have a sufficiently diversified composition;
 - (b) be a representative benchmark for the market to which it refers; and
 - (c) be published in an appropriate manner.
- (3) The limit in (1) may be raised for a particular *scheme* up to 35% in value of the *scheme property*, but only in respect of one body and where justified by exceptional market conditions.

5.6.23A

FCA

G

- (1) Replication of the composition of an index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments for the purpose of *efficient portfolio management*.
- (2) The composition of an index is sufficiently diversified if its components adhere to the spread requirements in this section.
- (3) An index is a representative benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;
 - (b) the index provider is independent from the index-replicating *scheme*; this does not preclude index providers and the *scheme* from forming part of the same *group*, provided that effective arrangements for the management of conflicts of interest are in place.

Non-UCITS retail schemes that are umbrellas

5.6.24

FCA

R

- (1) In relation to a *scheme* which is an *umbrella*, the provisions in this section apply to each *sub-fund* as they would for a *non-UCITS retail scheme*.
- (2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:
 - (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same *umbrella*;
 - (b) the conditions in ■ COLL 5.2.16 R (Investment in other group schemes) and ■ COLL 5.6.11 R (Investment in associated collective investment schemes) are complied with (for the purposes of this *rule*, ■ COLL 5.2.16 R and ■ COLL 5.6.11 R are to be read as modified by ■ COLL 5.6.11 R (2));
 - (c) not more than 35% in value of the investing or disposing *sub-fund* is to consist of *units* of the second *sub-fund* ; and
 - (d) the investing or disposing *sub-fund* must not be a *feeder NURS* to the second *sub-fund*.

Guidance on syndicated loans

5.6.25

FCA

G

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

Qualifying collective investment schemes for feeder NURS

5.6.26

FCA

R

The *authorised fund manager* of a *feeder NURS* must ensure that the *feeder NURS* does not invest in the *qualifying master scheme*, unless the *qualifying master scheme* meets both of the requirements in (1) and (2):

- (1) the *qualifying master scheme*:
 - (a) satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
 - (b) is a *recognised scheme*; or
 - (c) is a *non-UCITS retail scheme*; and

-
- (2) where the *qualifying master scheme* is an *umbrella*, the provisions in ■ COLL 5.6.7 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.



5.7 Investment powers and borrowing limits for NURS operating as FAIFs

Application

5.7.1

FCA

R

- (1) This section applies to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* operating as a *FAIF* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *FAIF*.
- (2) Where this section refers to:
 - (a) a *rule* or *guidance* in ■ COLL 5.1 to ■ COLL 5.6, these *rules* and *guidance*, and any *rules* and *guidance* to which they refer, must be read as if a reference to a *UCITS scheme* or *non-UCITS retail scheme* were a reference to a *non-UCITS retail scheme* operating as a *FAIF*;
 - (b) a second *scheme*, and the second *scheme* is a *feeder scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the *feeder scheme's* master *scheme* invests; and
 - (c) a second *scheme*, and the second *scheme* is a *master scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *non-UCITS retail scheme* operating as a *FAIF* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

Purpose

5.7.2

FCA

G

- (1) This section contains *rules* on the types of permitted investments and any relevant limits with which *non-UCITS retail schemes* operating as *FAIFs* must comply. These *rules* allow for the relaxation of certain investment and borrowing powers from the requirements for *non-UCITS retail schemes* under ■ COLL 5.6 .
- (2) One example of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* operating as *FAIFs* is the power to invest up to 100% of the value of the *scheme property* in *schemes* to which ■ COLL 5.7.7 R (Investment in collective investment schemes) applies.

- (3) In order to ensure adequate *unitholder* protection, the *authorised fund manager* is required to implement certain due diligence procedures in respect of investment in second *schemes*.

Applicable rules in COLL 5.6

5.7.3
FCA

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The following *rules* and *guidance* in ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) apply to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* operating as a *FAIF* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *FAIF*:

- (1) ■ COLL 5.6.3 R;
- (2) ■ COLL 5.6.5 R to ■ 5.6.6 R;
- (3) ■ COLL 5.6.8 R to ■ 5.6.9 R; and
- (4) ■ COLL 5.6.11 R to ■ 5.6.24 R.

Investment powers: general

5.7.4
FCA

R

- (1) The *scheme property* of a *non-UCITS retail scheme* operating as a *FAIF* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
- (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC*'s business of investing in those assets or *investments*.
- (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that *non-UCITS retail scheme* operating as a *FAIF* and within any upper limit specified in this section.
- (4) The *instrument constituting the scheme* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
- (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
 - (a) *transferable securities*;
 - (b) money market instruments;
 - (c) *units* in *collective investment schemes* permitted under ■ COLL 5.7.7 R (Investment in collective investment schemes);

- (d) *derivatives* and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
- (e) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
- (f) immovables permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the *scheme property*.

Spread: general

5.7.5
FCA

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- (1) This *rule* does not apply in respect of *government and public securities*.
- (2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body subject to ■ COLL 5.6.23 R (Schemes replicating an index).
- (4) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.
- (5) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (6) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
- (7) Except for a feeder *scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to the *units* of a master *scheme*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.
- (8) For the purpose of calculating the limit in (6), the exposure in respect of an *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 (9).
- (9) The conditions referred to in (8) 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;

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- (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
 - (d) can be fully enforced by the *non-UCITS retail scheme* operating as a *FAIF* at any time.
- (10) For the purpose of calculating the limit in (6), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Part 7 (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.
- (11) 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.
- (12) For the purposes of this *rule* a single body is:
- (a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and
 - (b) in relation to *deposits*, the *person* with whom they are placed.

Guidance on spread: general

- (1) ■ COLL 5.7.5R (8) to ■ (11) replicate 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, so as to enable *non-UCITS retail schemes* to benefit from the same flexibility.
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in ■ COLL 5.7.5R (9) under which the collateral has to be legally enforceable at any time. It is the *FCA'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. The *depository* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under ■ COLL 6.6.4 R (General duties of the depository).

5.7.6
FCA

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- (3) In applying the spread limit of 20% in value of *scheme property* which may consist of *deposits* with a single body, all uninvested cash comprising *capital property* that the *depository* holds should be included in calculating the total sum of the *deposits* held by it on behalf of the *scheme*.

Investment in collective investment schemes

5.7.7

FCA

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A *non-UCITS retail scheme* operating as a *FAIF* must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* is a *scheme* which satisfies the criteria in ■ COLL 5.6.10 R (1) (a) to ■ (d) or meets each of the requirements at (1) to (4):

- (1) the second *scheme* operates on the principle of the prudent spread of risk;
- (2) the second *scheme* is prohibited from investing more than 15% in value of the property of that *scheme* in *units* in *collective investment schemes* or, if there is no such prohibition, the *non-UCITS retail scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made;
- (3) the *participants* in the second *scheme* must be entitled to have their *units* redeemed in accordance with the *scheme* at a *price*:
 - (a) related to the net value of the property to which the *units* relate; and
 - (b) determined in accordance with the *scheme*; and
- (4) where the second *scheme* is an *umbrella*, the provisions in (1) to (3) and ■ COLL 5.7.5 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

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5.7.8

FCA

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Feeder *schemes* which (in respect of investment in *units* in *collective investment schemes*) are *dedicated* to *units* in a single *collective investment scheme* must, in addition to the investment in the master *scheme*, only hold cash or *near cash* to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. Feeder *schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

Due diligence requirements

5.7.9

FCA

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- (1) A *non-UCITS retail scheme* operating as a *FAIF* must not invest in *units* in *schemes* in ■ COLL 5.7.7R (1) to ■ (3) ('second *schemes*') unless the *authorised fund manager* has carried out appropriate due diligence on each of the second *schemes* and:

- (a) is satisfied, on reasonable grounds and after making all reasonable enquiries, that each of the second *schemes* complies with relevant legal and regulatory requirements;
- (b) has taken reasonable care to determine that:
 - (i) the property of each of the second *schemes* is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second *scheme*;
 - (ii) the calculation of the net asset value of each of the second *schemes* and the maintenance of their accounting records is segregated from the investment management function; and
 - (iii) each of the second *schemes* is regularly audited by an independent auditor in accordance with international standards on auditing.

- (2) The *authorised fund manager* of a *non-UCITS retail scheme* operating as a *FAIF* invested in one or more second *schemes* must carry out appropriate due diligence as detailed in (1) on those *schemes* on an ongoing basis.

5.7.10
FCA

R The *authorised fund manager* of a *non-UCITS retail scheme* operating as a *FAIF* which is a *feeder scheme* must ensure that:

- (1) its master *scheme*; and
- (2) where its master *scheme* is itself a *feeder scheme*, any *scheme* into which that master *scheme* invests;

operates on a basis that is consistent with the *rules* in this section notwithstanding any due diligence previously carried out which suggested that those *schemes* would so operate.

5.7.11
FCA

G An *authorised fund manager* carrying out due diligence for the purpose of the *rules* in this section should make enquiries or otherwise obtain information needed to enable him properly to consider:

- (1) whether the experience, expertise, qualifications and professional standing of the second *scheme's* investment manager is adequate for the type and complexity of the second *scheme*;
- (2) the adequacy of the regulatory, legal and accounting regimes applicable to the second *scheme* and its investment manager;
- (3) whether the second *scheme*, its investment manager and administrator have complied with their legal and regulatory obligations, including but not limited to an evaluation of the investment manager's written policies with respect to such compliance;

- (4) the extent to which the second *scheme's* investment manager adheres to guidance and codes which amount to good practice in the industry;
- (5) the adequacy of the second *scheme's* systems, controls, governance, accounting, administration, business continuity, disaster recovery, safekeeping, custody and trading and execution arrangements;
- (6) the extent to which the property of the second *scheme* may be rehypothecated and the potential impact of such rehypothecation on the *non-UCITS retail scheme* operating as a *FAIF*;
- (7) the adequacy of the second *scheme's* risk management process, in particular:
 - (a) the methodology by which risk is measured and its practical adequacy in the light of the limitations inherent in risk measures (such as value at risk), including where appropriate, reference to market risk, credit risk (including counterparty credit risk), liquidity risk, operational risk and outsourcing risk;
 - (b) the extent to which the second *scheme's* investment manager carries out stress testing and backtesting, to determine how potential changes in market conditions could impact on the value of the second *scheme's* portfolio;
 - (c) the reporting, escalation and review processes within the second *scheme's* governance structure;
 - (d) the manner in which risks arising from services provided by third parties are managed, including where those third parties provide prime brokerage, administration, auditing, valuation, risk monitoring, business continuity and disaster recovery services; and
 - (e) the management of key person risk;
- (8) the adequacy of the second *scheme's* investment strategy and trading philosophy;
- (9) the implications of currency convertibility (if any);
- (10) whether the second *scheme* produces a valuation that is sufficiently accurate for the *authorised fund manager* to be reasonably satisfied that the price of the *FAIF's units* can be calculated in accordance with ■ COLL 6.3 (Valuation and pricing), including but not limited to an assessment of:
 - (a) the roles and responsibilities of each of the parties involved in the second *scheme's* valuation process and the extent to which these are defined;
 - (b) the extent to which the valuation process is segregated or is functionally separate from the second *scheme's* investment manager where the second *scheme* is not subject to completely independent valuation by a third party;
 - (c) the methods used by the second *scheme* for the valuation of each part of its property including those assets which are difficult to value or which are not subject to independent market pricing;
 - (d) the extent to which the investment manager of the second *scheme* does not rely on prices from external sources, and its written policies relating to this;
 - (e) the manner in which the investment manager of the second *scheme* selects and monitors the adequacy of its pricing sources;

- (f) the extent to which the investment manager of the second *scheme* operates a valuation policy that is consistent and fair to both subscribing and redeeming investors from the second *scheme*;
- (11) the level of liquidity, redemption policy and *dealing* arrangements offered by the second *scheme* and whether they are sufficient for the investing *scheme* to be able to meet its obligations in respect of redemptions; wherever appropriate the *authorised fund manager* may need to consider how many second *schemes* the investing *scheme* should invest in to ensure that that *scheme* can meet its redemption obligations; and
- (12) any relevant conflicts of interest that may arise out of the relationships of the second *scheme's* investment manager with other relevant parties and in particular detract from the integrity of the second *scheme's* decision-making process, including:
 - (a) relationships with brokers or service providers;
 - (b) conflicts that may be generated by fee structures;
 - (c) use of dealing commission to purchase goods or services;
 - (d) conflicts that may arise from the second *scheme's* investment manager managing that *scheme* alongside other business; and
 - (e) the conflicts of interest that may arise (if any) between the second *scheme's* investment manager and any *person* instructed to carry out due diligence on the *authorised fund manager's* behalf.

Non-UCITS retail schemes that are umbrellas with FAIF sub-funds

5.7.12
FCA

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In relation to a *non-UCITS retail scheme* which is an *umbrella* comprised of *sub-funds* which are:

- (1) *FAIFs*; or
- (2) a mixture of *FAIFs* and standard *non-UCITS retail schemes*;

the provisions in this section apply to each *sub-fund* operating as a *FAIF* as they would to a separate *scheme*.



5.8 Investment powers and borrowing limits for feeder UCITS

Application

5.8.1

FCA

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*.

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5.8.2

FCA

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

FCA

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 5.5.3 R (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 5.8.7 R (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
FCA

R In calculating the global exposure of a *feeder UCITS* to *derivatives* and forward transactions in accordance with ■ COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), the *feeder UCITS* must combine its own direct exposure under ■ COLL 5.8.3 R (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
FCA

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 5.2.3 R (1) (Prudent spread of risk).

Investment powers: general

5.8.6
FCA

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
FCA

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 5.1.1 R (Application), ■ COLL 5.1.2 G (1) (Purpose) and ■ COLL 5.1.3 R (Treatment of obligations);
- (2) ■ COLL 5.2.1 R (Application), ■ COLL 5.2.2 R (Table of application) and ■ COLL 5.2.2A G;

- (3) ■ COLL 5.2.5 R (Valuation) and ■ COLL 5.2.6 G (Valuation guidance);
- (4) ■ COLL 5.2.10 R (Eligible markets: requirements);
- (5) ■ COLL 5.2.11 R (7) (Spread: general);
- (6) ■ COLL 5.2.11B R (Counterparty risk and issuer concentration);
- (7) ■ COLL 5.2.15 R (1) (Investment in associated collective investment schemes);
- (8) ■ COLL 5.2.19 R (1), ■ COLL 5.2.19 R (2) and ■ COLL 5.2.19 R (4) (Derivatives: general);
- (9) ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards));
- (10) ■ COLL 5.2.20A R (Financial indices underlying derivatives), ■ COLL 5.2.20B G (1) and ■ COLL 5.2.20B G (4) (Guidance on financial indices underlying derivatives);
- (11) ■ COLL 5.2.21 R (Transactions for the purchase of property);
- (12) ■ COLL 5.2.22 R (Requirement to cover sales) and ■ COLL 5.2.22A G (Guidance on requirement to cover sales);
- (13) ■ COLL 5.2.23 R (OTC Transactions in derivatives), ■ COLL 5.2.23A R and ■ COLL 5.2.23B R);
- (14) ■ COLL 5.2.23C R (Valuation of OTC derivatives);
- (15) ■ COLL 5.2.26 R (Investment in deposits);
- (16) ■ COLL 5.5.1 R to ■ COLL 5.5.7A G (Cash, borrowing, lending and other provisions); and
- (17) ■ COLL 5.5.9 R (Guarantees and indemnities) and ■ COLL 5.5.10 G (Guidance on restricting payments).



5.9 Investment powers and other provisions for money market funds

Application

5.9.1
FCA

R

This section applies to the *authorised fund manager* and the *depository* of an *authorised fund* and to an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme* operating as a *money market fund* or a *short-term money market fund*.

Explanation

5.9.2
FCA

G

- (1) This section contains *rules* on the types of permitted investments which *schemes* operating as *short-term money market funds* and *money market funds* may invest in. These *rules* are in addition to the requirements in ■ COLL 5.2 (for *UCITS schemes*) and ■ COLL 5.6 (for *non-UCITS retail schemes*).
- (2) The purpose of these *rules* is to protect *consumers* by ensuring that an *authorised fund* or *sub-fund* which describes itself as a 'money market' fund operates in a more restricted fashion, and aims to maintain the capital value of the fund and provide a return in line with money market rates.

Investment conditions: short-term money market funds

5.9.3
FCA

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A *short-term money market fund* must satisfy the following conditions:

- (1) its primary investment objective must be to maintain the principal of the *scheme* and aim to provide a return in line with money market rates;
- (2) it must invest only in *approved money-market instruments* and *deposits* with *credit institutions*;
- (3) it must, on an ongoing basis, ensure the *approved money-market instruments* it invests in are of high quality, as determined by the *authorised fund manager*;
- (4) it must:
 - (a) provide daily net asset value and price calculation and daily subscription and *redemption* of *units*; or

- (b) where it is a *non-UCITS retail scheme* marketed solely through employee savings schemes and to a specific category of investor that is subject to divestment restrictions, provide weekly subscription and *redemption* opportunities to investors;
- (5) it must limit its investment in *securities* to those with a residual maturity until the legal redemption date of less than or equal to 397 *days*;
- (6) it must ensure that its *scheme property* has a *weighted average maturity* of no more than 60 *days*;
- (7) it must ensure that its *scheme property* has a *weighted average life* of no more than 120 *days*;
- (8) it must not take direct or indirect exposure to equity or *commodities*, including via *derivatives*;
- (9) it must only use *derivatives* in line with the money market investment strategy of the *scheme* and where using *derivatives* that give exposure to foreign exchange must do so only for the purposes of hedging;
- (10) it must only invest in non-base currency *securities* where its exposure is fully hedged;
- (11) it must limit its investment in other *collective investment schemes* as follows:
 - (a) if it is a *UCITS scheme, collective investment schemes* which satisfy the requirements of ■ COLL 5.2.13 R; or
 - (b) if it is a *non-UCITS retail scheme, collective investment schemes* which satisfy the requirements of ■ COLL 5.6.10 R; which meet the definition of a "Short-Term Money Market Fund" in *CESR's guidelines on a common definition of European money market funds*; and
- (12) it must aim to maintain a fluctuating net asset value or a constant net asset value.

[Note: box 2, paragraphs 1, 2, 3 (first sentence), 5, 6, 7, 8, 11, 12 and 13 of *CESR's guidelines on a common definition of European money market funds*]

G For the purposes of ■ COLL 5.9.3R (12), a constant net asset value should be taken as referring to an unchanging face net asset value where income in the fund is accrued daily and can either be paid out to the *unitholder* or used to purchase more *units* in the *scheme*. An *authorised fund* with a constant net asset value should generally value *scheme property* on an amortised cost basis which takes the acquisition cost of the *security* and adjust this value for amortisation of premiums (or discounts) until maturity.

[Note: definition of "Constant NAV Money Market Funds" in *CESR's guidelines on a common definition of European money market funds*]

Investment conditions: money market funds

5.9.5
FCA

R

In addition to satisfying the conditions in ■ COLL 5.9.3R (1), ■ (2), ■ (3), ■ (4), ■ (8), ■ (9) and ■ (10), a *money market fund* must:

- (1) limit investment in *securities* to those with a residual maturity until the legal redemption date of less than or equal to two years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 *days*. Floating rate securities should reset to a money market rate or index;
- (2) ensure its *scheme property* has a *weighted average maturity* of no more than 6 *months*;
- (3) ensure its *scheme property* has a *weighted average life* of no more than 12 *months*;
- (4) limit its investment in other *collective investment schemes* as follows:
 - (a) if it is a *UCITS scheme*, *collective investment schemes* which satisfy the requirements of ■ COLL 5.2.13 R (Investment in collective investment schemes); or
 - (b) if it is a *non-UCITS retail scheme*, *collective investment schemes* which satisfy the requirements of ■ COLL 5.6.10 R (Investment in collective investment schemes);

which meet the definition of a "Money Market Fund" or a "Short-Term Money Market Fund" in *CESR's guidelines on a common definition of European money market funds*; and
- (5) have a fluctuating net asset value.

[Note: box 3, paragraphs 1, 3, 4, 5, 6 and 7 of *CESR's guidelines on a common definition of European money market funds*]

High quality money market instruments

5.9.6
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In determining whether *approved money-market instruments* are high quality in accordance with ■ COLL 5.9.3R (3), the *authorised fund manager* must take into account a range of factors including, but not limited to:

- (1) the credit quality of the instrument; an instrument will be considered not to be high quality unless it is:
 - (a) an *approved money-market instrument* which has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an

- equivalent quality as determined by the *authorised fund manager's* internal rating process; or
- (b) for a *money market fund*, an *approved money-market instrument* of investment grade quality which is issued or guaranteed by one of the following:
 - (i) a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation; or
 - (ii) a regional or local authority of an *EEA State*; or
 - (iii) the European Central Bank or a central bank of an *EEA State*; or
 - (iv) the European Union or the European Investment Bank;
- (2) the nature of the asset class represented by the instrument;
- (3) for structured financial instruments, the *operational risk* and *counterparty risk* inherent within the structured financial transaction; and
- (4) the liquidity profile.

[Note: box 2, paragraphs 3 (second sentence) and 4 and box 3, paragraph 2 of *CESR's guidelines on a common definition of European money market funds*]

Calculating weighted average life and weighted average maturity.....

- (1) When calculating the *weighted average life* for *securities* (including structured financial instruments) for the purposes of
 - COLL 5.9.3R (7) and ■ COLL 5.9.5R (3), the maturity calculation must be based on either:
 - (a) the residual maturity of the instruments; or
 - (b) if the financial instrument embeds a put *option*, the exercise date of the put *option* if the following conditions are fulfilled at all times;
 - (i) the put *option* can be freely exercised by the *authorised fund manager* at its exercise date;
 - (ii) the strike price of the put *option* remains close to the expected value of the instrument at the next exercise date; and
 - (iii) the investment strategy of the *scheme* implies that there is a high probability that the *option* will be exercised at the next exercise date.

5.9.7

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- (2) Where calculating the *weighted average life* for floating rate *securities* and structured financial instruments, the *security's* stated final maturity should be used and not the interest rate reset dates.

- (3) When calculating the *weighted average life* and *weighted average maturity* for the purposes of ■ COLL 5.9.3R (6) and ■ (7), and ■ COLL 5.9.5R (2) and ■ (3), an *authorised fund manager* must take into account the impact of *derivatives, deposits and efficient portfolio management*.

[Note: definition of "weighted average life" (second sentence) and box 2, paragraphs 9 and 10 of *CESR's guidelines on a common definition of European money market funds*]

CESR guidelines

In addition to the parts of the *CESR's guidelines on a common definition of European money market funds* specifically referred to in this section, the *authorised fund managers* should have regard to the other parts of those guidelines when applying the *rules* in this section.

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5.9.8

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Chapter 6

Operating duties and responsibilities



6.1 Introduction and Application

Application

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This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT* or an *ICVC*; and
- (4) an *ICVC*,

where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

6.1.2

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This chapter helps in achieving the *statutory objective* of protecting *consumers*. It provides the operating framework within which the *authorised fund* must be operated on a day-to-day basis to ensure that *clients* are treated fairly when they become, remain or as they cease to be *unitholders*.

Explanation of this chapter

6.1.3

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- (1) The *authorised fund manager* operates the *scheme* on a day-to-day basis. Its operation is determined by the *rules* in this chapter, which require appropriate powers in the *instrument constituting the scheme* or refer to the need to state the relevant operating procedures in the *prospectus* of the *scheme*.
- (2) The *authorised fund manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*. The *rules* in this chapter set out the parameters of such delegation.
- (3) The *depository's* duty is, generally speaking, to ensure the safe custody of *scheme property* and to oversee certain functions of the *authorised fund manager* (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a *trustee* of an *AUT* are similar to, but not the same as, the oversight responsibilities of the *depository* of an *ICVC*. These differences result from the different legal structure of the *authorised funds* and the *trustee's* obligations under trust law.



6.2 Dealing

Application

6.2.1
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This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.

Purpose

6.2.2
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- (1) This section helps in achieving the *statutory objective* of securing an appropriate degree of protection for *consumers*. In accordance with *Principle 6*, this section is also concerned with ensuring the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* is responsible for arranging for the *issue* and the *cancellation of units* for the *authorised fund*, and is permitted to *sell* and *redeem units* for its own account. The *rules* in this section are intended to ensure that the *authorised fund manager* treats the *authorised fund* fairly when arranging for the *issue* or *cancellation of units*, and treats *clients* fairly when they purchase or *sell units*.
- (3) This section also sets out common standards for how the amounts in relation to *unit* transactions are to be paid. These arrangements include the *initial offer of units*, the exchange of *units* for *scheme property* and *issues and cancellations of units* by an *ICVC*, or by the *trustee* of an *AUT*, carried out directly with the *unitholder*.
- (4) This section also sets out *rules* and *guidance* relating to the *authorised fund manager's* controls over the *issue* and *cancellation of units* including any box holdings.
- (5) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*.

Initial offers

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6.2.3
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- (1) During the *initial offer* period, *units* may only be issued at the *initial price*.
- (2) The length of any *initial offer* should not be unreasonable when considered alongside the characteristics of the *authorised fund*.

6

- (3) The *authorised fund manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *depository* in respect of any *unit* it has agreed to *sell* during the period of the *initial offer* :
 - (a) in the case of a *single-priced authorised fund*, the *initial price* of that *unit*; or
 - (b) in the case of a *dual-priced authorised fund*, the *initial price* of that *unit* less, where relevant, an amount not exceeding the amount of any *preliminary charge* stated in the *prospectus*.
- (4) The period of the *initial offer* comes to an end if the *authorised fund manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

Initial offer: guidance

6.2.4
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- (1) Details of any *initial offer* period must be provided in the relevant *prospectus* as described in ■ COLL 4.2.5R (17)(h) (Table: contents of the prospectus).
- (2) It may be appropriate that the *initial offer* for a *scheme* operating limited *issue* or *limited redemption arrangements*, or intending to invest in illiquid assets, is longer than one for a *scheme* which does not have these features.

Issue and cancellation of units by an ICVC

6.2.5
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- (1) *Units* in an *ICVC* are *issued* or *cancelled* by the *ACD* making a record of the *issue* or *cancellation* and of the number of the *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless ■ COLL 3.2.6R (11) (Table: contents of the instrument constituting the scheme) applies.
- (2) The time of the *issue* or *cancellation* under (1) is the time when the record is made.

Issue and cancellation of units in an AUT

6.2.6
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- (1) The *trustee* must *issue* or *cancel units* in an *AUT* when instructed by the *manager*.
- (2) Any instructions given by the *manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).
- (3) If the *trustee* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancellation* or that to do so would not be in accordance with the *trust deed*

or *prospectus*, it must notify the *manager* of that fact and it is then relieved of the obligation to *issue* or *cancel* those *units*.

Issue and cancellation of units in multiple classes

6.2.6A

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If an *authorised fund* has two or more *classes* of *unit* in issue, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
 - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Issue and cancellation of units through an authorised fund manager

6.2.7

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

- (2) If (1) applies:
 - (a) the *instrument constituting the scheme* must provide for this; and
 - (b) the *prospectus* must provide details of the procedure to be followed which must be consistent with the *rules* in this section.

Controls over the issue and cancellation of units

6.2.8

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(1) An *authorised fund manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.

- (2) An *authorised fund manager* must not:
 - (a) for an *AUT*, when giving instructions to the *trustee* for the *issue* or *cancellation* of *units*; or
 - (b) for an *ICVC*, when arranging for the *issue* or *cancellation* of *units*;

do, or omit to do, anything that would, or might, confer on itself or an *associate* a benefit or advantage at the expense of a *unitholder* or a potential *unitholder*.

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

Controls over the issue and cancellation of units - guidance

6.2.9

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- (1) As the *authorised fund manager* normally controls the *issue, cancellation, sale* and *redemption* of an *authorised fund's units*, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its *clients*.
- (2) ■ SYSC 3.1.1 R (Systems and controls) requires that a *firm* take reasonable care to establish and maintain such systems and controls as are appropriate to its business and *Principle 8* requires a *firm* to manage conflicts of interest between itself and a *customer* fairly.
- (3) To manage the conflict of interest that arises, when an *authorised fund manager* gives an instruction to *issue* or *cancel units*, the *price* of the *units* should be calculated at the *valuation point* before or after the instruction has been given, in accordance with (4).
- (4) An *authorised fund manager* should agree a period of time with the *depository* during which it will give instructions to *issue* or *cancel units*. Where the *authorised fund manager* operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next *valuation point* but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.
- (5) The last *valuation point* should be used for the pricing of *units* where instructions are given before the expiry of the period of time agreed in (4); otherwise the next *valuation point* should be used.
- (6) Where an in specie *issue* or *cancellation* occurs it should be undertaken using the next *valuation point's price*.

Modification to number of units issued or cancelled

6.2.10

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- (1) Any instruction for the *issue* or *cancellation of units* under ■ COLL 6.2.5 R (Issue and cancellation of units by an ICVC) or ■ COLL 6.2.6 R (Issue and cancellation of units in an AUT) may be modified but only if the *depository* agrees and has taken reasonable care to determine that:
 - (a) the modification corrects an error in the instruction; and
 - (b) the error is an isolated one.

- (2) Any error in (1) must be corrected within the payment period applicable under ■ COLL 6.2.13 R (Payment for units issued) or ■ COLL 6.2.14 R (Payment for cancelled units).

Compensation for box management errors

6.2.11

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- (1) Where the *authorised fund manager* has not complied with ■ COLL 6.2.8 R (1) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.
- (2) The *authorised fund manager* need not reimburse the *authorised fund* when:
 - (a) the amount under (1) is not, in the *depository's* opinion, material to the *authorised fund*;
 - (b) the *authorised fund manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
 - (c) the requirements of ■ COLL 6.2.10 R (Modification to number of units issued or cancelled) are complied with.

Box management errors guidance

6.2.12

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Explanatory table: This table belongs to ■ COLL 6.2.2 G (4) (Purpose).

Correction of box management errors

1 Controls by authorised fund managers

An authorised fund manager needs to be able to demonstrate that it has effective controls over:

- (1) its calculations of what *units* are owned by it (its 'box'); and
- (2) compliance with COLL 6.2.8 R which is intended to prevent a negative box.

2 Controls by depositaries

- (1) Under COLL 6.6.4 (General duties of the depository), a *depository* should take reasonable care to ensure that a *scheme* is managed in accordance with COLL 6.2 (Dealing) and COLL 6.3 (Pricing and valuation).
- (2) A *depository* should therefore make a regular assessment of the *authorised fund manager's* box management procedures (including supporting systems) and controls. This should include reviewing the *authorised fund manager's* controls and procedures when the *depository* assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.

3 Recording and reporting of box management errors

- (1) An *authorised fund manager* should record all errors which result in a breach of COLL 6.2.8 R (Controls over the issue and cancellation of units) and as soon as an error is discovered, the *authorised fund manager* should report the fact to the

6.2.13
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depository, together with details of the action taken, or to be taken, to avoid repetition of the error.

- (2) A *depository* should report material box management errors to the *FCA* immediately. Materiality should be determined by taking into account a number of factors including:
 - (a) the implications of the error for the sufficiency of controls put into place by the *authorised fund manager*;
 - (b) the significance of any breakdown in the *authorised fund manager's* management controls or other checking procedures;
 - (c) the significance of any failure of systems or back-up arrangements;
 - (d) the duration of an error; and
 - (e) the level of compensation due to the *scheme*, and an *authorised fund manager's* ability (or otherwise) to meet claims for compensation in full.
- (3) A *depository* should also make a return to the *FCA* (in the manner prescribed by SUP 16.6.8 R) on a quarterly basis.

Payment for units issued

- (1) The *authorised fund manager* must, by the close of business on the fourth *business day* following the *issue* of any *units*, arrange for payment to the *trustee* or the *ICVC* of:
 - (a) in the case of a *single-priced authorised fund*, the *price* of the *units* and any payments required under ■ COLL 6.3.7 R (SDRT provision) and ■ COLL 6.3.8 R (Dilution); or
 - (b) in the case of a *dual-priced authorised fund*, the *issue price* of the *units* and any payment required under ■ COLL 6.3.7 R.
- (2) The *authorised fund manager* must make the payment referred to in (1) in cash or cleared funds unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies.
- (3) Where the *authorised fund manager* has not complied with (1), it must reimburse the *authorised fund* for any lost interest unless the amount involved is not, in the *depository's* opinion, material to the *authorised fund*.

Payment for cancelled units

6.2.14
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- (1) On *cancelling units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *trustee* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay :
 - (a) in the case of a *single-priced authorised fund*, the *price* of the *units* (less any deduction required under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R); or

(b) in the case of a *dual-priced authorised fund*, the *cancellation price* of the *units* (less any deduction required under ■ COLL 6.3.7 R);

to the *authorised fund manager* or, where relevant, the *unitholder* or, for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed*.

- (2) If the *authorised fund manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in ■ COLL 5 (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.
- (3) If (2) applies, the *authorised fund manager* must take reasonable steps to rectify the currency shortage as quickly as possible.
- (4) This *rule* does not apply where ■ COLL 6.2.15 R is in operation.
- (5) Nothing in this section requires an *ICVC*, a *depository* or an *authorised fund manager* to part with *money* or to transfer *scheme property* for a *cancellation* or *redemption* of *units* where any *money* due on the earlier *issue* or *sale* of those *units* has not been received.

In specie issue and cancellation

6.2.15
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The *depository* may take into or pay out of *scheme property* assets other than cash as payment for the *issue* or *cancellation* of *units* but only if:

- (1) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of *unitholders*; and
- (2) the *instrument constituting the scheme* so provides.

Sale and redemption

6.2.16
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- (1) In accordance with ■ COLL 4.2.5R (17) (Table: contents of the prospectus), the *authorised fund manager* must describe the arrangements for the *sale* and *redemption* of *units* in the *prospectus*.
- (2) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* in the *authorised fund*, in accordance with the conditions in the *instrument constituting the scheme* and the *prospectus* unless:
 - (a) it has reasonable grounds to refuse such *sale*; or

- (b) the *issue* of *units* is prevented under ■ COLL 6.2.18 R (Limited issue).
- (3) Subject to ■ COLL 6.2.19 R (Limited redemption) and ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must, at all times during the *dealing day*, on request of any qualifying *unitholder*, effect the *redemption* of *units* in accordance with the conditions in the *instrument constituting the scheme* and the *prospectus* unless it has reasonable grounds to refuse such *redemption*.
- (4) On agreeing to a *redemption* of *units* in (3), the *authorised fund manager* must pay the *unitholder* the appropriate proceeds of *redemption* within the period specified in (5) unless the *authorised fund manager* has reasonable grounds for withholding all or any part of the proceeds.
- (5) Except where (5A) applies the period in (4) expires at the close of business on the fourth *business day* following the later of:
- (a) the *valuation point* at which the *price* for the *redemption* was determined; or
 - (b) the time when the *authorised fund manager* has all the duly executed instruments and authorisations to effect (or enable the *authorised fund manager* to effect) the transfer of title to the *units*.
- (5A) Where a *non-UCITS retail scheme* operating as a *FAIF* operates *limited redemption arrangements*, the period in (4) expires no later than the expiry of a period of 185 *days* from the date of receipt and acceptance of the instruction to *redeem*.
- (6) Except where (7) applies, and subject to ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of *dealing in units* if later (or, for a *sale* or *redemption* at an *historic price*, at the *price* determined at the last *valuation point*).
- (7) Where the *authorised fund* operates *limited redemption arrangements*, the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the expiry of a period of 185 *days* from the date of the receipt and acceptance of the instruction to *sell* or *redeem*.
- (8) [deleted]

(9) [deleted]

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

Sale and redemption: guidance

6.2.17

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- (1) The *prospectus* of an *authorised fund* that does not operate on the basis of *historic prices* may allow the *authorised fund manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem units* at that *valuation point*. In order to protect *customers'* interests, the cut-off point should be no earlier than the close of business on the *business day* before the *valuation point* it relates to. If there is more than one *valuation point* in a *day* the cut-off should not be before any previous *valuation point*.
- (2) Where the *authorised fund* operates *limited redemption arrangements*, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185 *day* limit in ■ COLL 6.2.16 R (7) (Sale and redemption) is complied with.
- (3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to *sell* or *redeem* to the *authorised fund manager* but not to differentiate between *unitholders* or potential *unitholders*.
- (4) CESR's *guidelines on a common definition of European money market funds* recommend that, for a *UCITS scheme* which is a *short-term money market fund* or a *money market fund*, the settlement period in ■ COLL 6.2.16 R (5) should expire at the close of business on the third *business day*.

[Note: paragraph 14 of CESR's *guidelines on a common definition of European money market funds*]

Limited issue

6.2.18

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- (1) If an *authorised fund* limits the *issue* of any *class* of *unit*, the *prospectus* of an *authorised fund* must provide for the circumstances and conditions when *units* will be issued.
- (2) Where (1) applies, the *authorised fund manager* may not provide for the further *issue* of *units* unless, at the time of the *issue*, it is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *scheme's* investment objective or materially prejudicing existing *unitholders*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for the *issue* of *units* provided there is no prejudice to the interests of any *unitholder*.

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Limited redemption

- (1) The *instrument constituting the scheme* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF*, or that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.
- (2) Where (1) applies, the *scheme* must provide for *sales and redemptions* at least once in every six *months*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for *sales and redemptions* of *units* provided there is no prejudice to the interests of any *unitholder*.
- (4) The *scheme* may provide for *sales* of *units* of any *class* to be executed at a greater frequency than *redemptions* of *units* of the same *class*.

Limited redemption: guidance

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

Deferred redemption

6.2.21
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- (1) Subject to (1A) and (3) the *instrument constituting the scheme* and the *prospectus* of an *authorised fund* which has at least one *valuation point* on each *business day*, may permit deferral of *redemptions* at a *valuation point* to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.
- (1A) Subject to (3) the *instrument constituting the scheme* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF* may permit deferral of *redemptions* at a *valuation point* to a following *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.
- (2) Any deferral of *redemptions* under (1) or (1A) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:
 - (a) the consistent treatment of all *unitholders* who have sought to *redeem units* at any *valuation point* at which *redemptions* are deferred; and

(b) that all *deals* relating to an earlier *valuation point* are completed before those relating to a later *valuation point* are considered.

(3) Any deferral under (1A) is subject to the limitations on payments to *unitholders* in ■ COLL 6.2.16 R (5A).

Deferred redemption: guidance

6.2.22

FCA

G

In times of high levels of *redemption*, deferred *redemption* will enable the *authorised fund manager* to protect the interests of continuing *unitholders* by allowing it to match the sale of *scheme property* to the level of *redemptions*. This should reduce the impact of *dilution* on the *scheme*.

Property Authorised Investment Funds

6.2.23

FCA

R

(1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").

(2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:

- (a) notify the *body corporate* of that event;
- (b) not pay any income distribution to the *body corporate*; and
- (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.

(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

6.2.24

FCA

G

Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.



6.3 Valuation and pricing

Application

6.3.1

FCA

R

- (1) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.
- (2) ■ COLL 6.3.3A R to ■ COLL 6.3.3D R (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*.

Purpose

6.3.2

FCA

G

- (1) In accordance with *Principle 6*, this section is intended to ensure that the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* is responsible for valuing the *scheme property* of the *authorised fund* it manages and for calculating the *price of units* in the *authorised fund*. This section protects *clients* by:
 - (a) setting out *rules* and *guidance* to ensure the *prices of units* in both a *single-priced authorised fund* and a *dual-priced authorised fund* are calculated fairly and regularly;
 - (b) allowing for the *authorised fund manager* to mitigate the effects of any *dilution* (reduction) in the value of the *scheme property* caused by:

- (i) payment of stamp duty reserve tax (SDRT) in relation to certain *unit* transactions; and
 - (ii) buying and selling underlying investments as a result of the *issue* or *cancellation* of *units*;
 - (c) making appropriate provision to ensure *clients* are treated fairly where *units* are being *dealt* in at a known (*historic*) *price*; and
 - (d) ensuring that *prices* are made public in an appropriate manner.
- (3) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*. Consequently different methods of *pricing units* may be applied by an *authorised fund manager* to different *sub-funds* of an *umbrella*.
 - (4) The *authorised fund manager* must follow the same method of *pricing* for each *class* of *units* in an *authorised fund*, or in a *sub-fund* of an *umbrella*.

Valuation

6.3.3

FCA

R

- (1) To determine the *price* of *units* the *authorised fund manager* must carry out a fair and accurate valuation of all the *scheme property* in accordance with the *instrument constituting the scheme* and the *prospectus*.
- (2) For a *dual-priced authorised fund*, each valuation of the *scheme property* must consist of two parts, carried out on an *issue* basis and a *cancellation* basis respectively.

Accounting procedures

6.3.3A

FCA

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 4.1.9 R (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

FCA

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

FCA

G

- (1) The accounting policies and procedures referred to in ■ COLL 6.3.3B R 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

FCA

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*]

Valuation points

6.3.4

FCA

R

- (1) An *authorised fund* must not have fewer than two regular *valuation points* in any *month* and if there are only two *valuation points* in any *month*, the regular *valuation points* must be at least two weeks apart.
- (2) The *prospectus* of a *scheme* must contain information about its regular *valuation points* for the purposes of *dealing in units* in accordance with ■ COLL 4.2.5R (16) (Table: contents of the prospectus).
- (3) Where a *scheme* operates *limited redemption arrangements*, (1) does not apply and the *valuation points* must be stated in the *prospectus* but must not be set more than six *months* apart.
- (4) Where a *scheme* operates *limited redemption arrangements*, it must be valued and *prices* published in the manner set out in ■ COLL 6.3.11 R (Publication of prices) at least once in every *month*.
- (5) In (4), a *valuation point* for the purpose of publishing *prices* only, does not make it a *valuation point* for the purpose of (2) unless it is disclosed as such in the *prospectus*.
- (6) *Higher volatility funds* must have at least one *valuation point* every *business day* except where the *scheme* is a *non-UCITS retail scheme* operating as a *FAIF*.

- (6A) *Qualifying money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost basis.
- (6B) *UCITS schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost or mark to market basis.
- (6C) *Non-UCITS retail schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* or, where the scheme is marketed solely through employee savings schemes or to a specific category of investors that is subject to *redemption* restrictions, at least one every week at which the valuation is carried out on an amortised cost or mark to market basis.
- (6D) *Money market funds* must value with the appropriate frequency as required in (6B) or (6C) on a mark to market basis.
- (7) No *valuation points* are required during the period of any *initial offer*.
- (8) The *authorised fund manager* may determine to have an additional *valuation point* for an *authorised fund* as a result of market movement under ■ COLL 6.3.9 (Forward and historic pricing) or otherwise, in which case it must inform the *depository*.

Price of a unit

6.3.5

FCA

R

- (1) An *authorised fund manager* must ensure that the *price* of a *unit* of any *class* is calculated:
 - (a) by reference to the net value of the *scheme property*; and
 - (b) in accordance with the provisions of both the *instrument constituting the scheme* and the *prospectus*.
- (2) Any *unit price* calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.
- (3) For each *class* of *units* in a *single-priced authorised fund*, a single *price* must be calculated at which *units* are to be *issued* and *cancelled*.

6.3.5A
FCA

R

Sale and redemption prices for single-priced authorised funds

The *authorised fund manager* of a *single-priced authorised fund* must not:

- (1) *sell a unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any payments required under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R; or
- (2) *redeem a unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deductions under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R.

6.3.5B
FCA

R

Sale and redemption price parameters for dual-priced authorised funds

(1) The *authorised fund manager* of a *dual-priced authorised fund* must not:

- (a) *sell a unit* for more than the maximum *sale price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any payment required under ■ COLL 6.3.7 R; or
- (b) *redeem a unit* for less than the *cancellation price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deduction under ■ COLL 6.3.7 R.

(2) The maximum *sale price* of *units* under (1)(a) is the total of:

- (a) the *issue price*; and
- (b) the current *preliminary charge*.

(3) The *sale price* of *units* under (1)(a) must not be less than the relevant *redemption price* under (1)(b).

(4) The *redemption price* under (1)(b) must not exceed the relevant *issue price* of the relevant *units*.

(5) Subject to ■ COLL 6.7.9 R (Charges for the exchange of units in an umbrella), in the case of an *umbrella*:

- (a) the maximum *price* at which *units* in one *sub-fund* that is a *dual-priced authorised fund* may be acquired in exchange for *units* in another *sub-fund* must not exceed the relevant maximum *sale price* (less any *preliminary charge*) of the new *units*; and

- (b) the minimum *price* at which the old *units* in a *sub-fund* that is a *dual-priced authorised fund* may be taken in exchange must not be less than the equivalent *cancellation price*.

6.3.5C

FCA

G

The *prospectus* may make provision for *large deals* to be carried out at a higher *sale price* or a lower *redemption price* than those published, provided they do not exceed the relevant maximum and minimum parameters.

Valuation and pricing guidance

6.3.6

FCA

G

Table: This table belongs to ■ COLL 6.3.2 G (2) (a) and ■ COLL 6.3.3 R (Valuation) .

Valuation and pricing

1 The valuation of scheme property

- (1) Where possible, *investments* should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.
- (2) For some or all of the *investments* comprising the *scheme property*, different prices may be quoted according to whether they are being bought (*offer prices*) or sold (*bid prices*). The valuation of a *single-priced authorised fund* should reflect the mid-market value of such *investments*. In the case of a *dual-priced authorised fund*, the *issue* basis of the valuation will be carried out by reference to the *offer prices* of *investments* and the *cancellation* basis by reference to the *bid prices* of those same *investments*. The *prospectus* should explain how *investments* will be valued for which a single *price* is quoted for both buying and *selling*.
- (2A) *Schemes* investing in *approved money-market instruments* should value such instruments on an amortised cost basis on condition that:
 - (a) the *approved money-market instrument* has a residual maturity of less than three months and has no specific sensitivity to market parameters, including credit risk; or
 - (b) the *scheme* is a *qualifying money market fund*.

[Note: CESR's *UCITS eligible assets guidelines* with respect to article 4(2) of the *UCITS eligible assets Directive*]

- (2B) *Short-term money market funds* may value *approved money-market instruments* on an amortised cost basis.

[Note: paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]

- (3) Any part of the *scheme property* of an *authorised fund* that is not an *investment* should be valued at a fair value, but for immovables this is subject to COLL 5.6.20 R (3) (f) (Standing independent valuer and valuation).
- (4) For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the *investment* or other part of the *scheme property* should, in the case of a *single-priced authorised fund*, be excluded from the value of an *investment* or other part of the *scheme property*. In the case of a *dual-priced authorised fund*, any such payments should be added to the *issue* basis of the valuation, or subtracted from the *cancellation* basis of the valuation, as appropriate. Alternatively, the *prospectus* of a *dual-priced authorised fund* may prescribe any other method of calculating *unit prices* that ensures an equivalent treatment of the effect of these payments.

- (5) Where the *authorised fund manager* has reasonable grounds to believe that:
 - (a) no reliable price exists for a *security* at a *valuation point*; or
 - (b) the most recent price available does not reflect the *authorised fund manager's* best estimate of the value of a *security* at the *valuation point*
 it should value an *investment* at a price which, in its opinion, reflects a fair and reasonable price for that *investment* (the fair value price);
- (6) The circumstances which may give rise to a fair value price being used include:
 - (a) no recent trade in the *security* concerned; or
 - (b) the occurrence of a significant event since the most recent closure of the market where the price of the *security* is taken.
 In (b), a significant event is one that means the most recent price of a *security* or a basket of *securities* is materially different to the price that it is reasonably believed would exist at the *valuation point* had the relevant market been open.
- (7) In determining whether to use such a fair value price, the *authorised fund manager* should include in his consideration:
 - (a) the type of *authorised fund* concerned;
 - (b) the *securities* involved;
 - (c) the basis and reliability of the alternative price used; and
 - (d) the *authorised fund manager's* policy on the valuation of *scheme property* as disclosed in the *prospectus*.
- (7A) Where the *authorised fund manager*, the *depository* or the *standing independent valuer* have reasonable grounds to believe that the most recent valuation of an immovable does not reflect the current value of that immovable, the *authorised fund manager* should consult and agree with the *standing independent valuer* a fair and reasonable value for the immovable.
- (8) The *authorised fund manager* should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.
- (9) Where a *unit price* is determined using properly applied fair value prices in accordance with policies in (8), subsequent information that indicates the *price* should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

2 The pricing controls of the authorised fund manager

- (1) An *authorised fund manager* needs to be able to demonstrate that it has effective controls over its calculations of *unit prices*.
- (2) The controls referred to in (1) should ensure that:
 - (a) asset prices are accurate and up to date;
 - (b) investment transactions are accurately and promptly reflected in valuations;
 - (c) the components of the valuation (including stock, cash, and *units in issue*), are regularly reconciled to their source or prime records and any reconciling items resolved promptly and debtors reviewed for recoverability;
 - (d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
 - (e) compliance with the investment and borrowing powers is regularly reviewed;

- (f) dividends are accounted for as soon as *securities* are quoted ex-dividend (unless it is prudent to account for them on receipt);
- (g) fixed interest dividends, interest and expenses are accrued at each *valuation point* ;
- (h) tax positions are regularly reviewed and adjusted, if necessary;
- (i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated;
- (j) the fund manager regularly reviews the portfolio valuation for accuracy ; and
- (k) the valuation of *OTC derivatives* is accurate and up to date and in compliance with the methods agreed with the *depository*.

- (3) In exercising its pricing controls, the *authorised fund manager* may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the *authorised fund* or the materiality of any effect on the *price*.
- (4) Evidence of the exercise of the pricing controls should be retained.
- (5) Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in an *authorised fund manager's* favour, will make demonstrating effective controls more difficult.
- (6) Where the *pricing* function is delegated to a third party, COLL 6.6.15 R (1) (Committees and delegation) will apply.

3 The depository's review of the authorised fund manager's systems and controls

- (1) This section provides details of the types of checks a *depository* should carry out to be satisfied that the *authorised fund manager* adopts systems and controls which are appropriate to ensure that *prices* of *units* are calculated in accordance with this section and to ensure that the likelihood of incorrect *prices* will be minimised. These checks also apply where an *authorised fund manager* has delegated all or some of its *pricing* functions to one or more third parties.
- (2) A *depository* should thoroughly review an *authorised fund manager's* systems and controls to confirm that they are satisfactory. The *depository's* review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.
- (3) A review should be performed when the *depository* is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.
- (4) A review should be carried out more frequently where a *depository* knows or suspects that an *authorised fund manager's* systems and controls are weak or are otherwise unsatisfactory.
- (5) Additionally, a *depository* should from time to time review other aspects of the valuation of the *scheme property* of each *authorised fund* for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, *units in issue*, *securities* prices (and in particular the prices of *OTC derivatives*, unapproved *securities* and the basis for the valuation of unquoted *securities*) and any other relevant matters, for example an accumulation factor or a currency conversion factor.
- (6) A *depository* should ensure that any issues, which are identified in any such review, are properly followed up and resolved.

4 The recording and reporting of instances of incorrect pricing

- (1) An *authorised fund manager* should record each instance where the *price* of a *unit* is incorrect as soon as the error is discovered, and report the fact to the *depository* together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.
- (2) In accordance with COLL 6.6.11 G (Duty to inform the *FCA*), the *depository* should report any breach of the rules in COLL 6.3 immediately to the *FCA*. However, notification should relate to instances which the *depository* considers material only.
- (3) A *depository* should also report to the *FCA* immediately any instance of incorrect *pricing* where the error is 0.5% or more of the *price* of a *unit*, where a *depository* believes that reimbursement or payment is inappropriate and should not be paid by an *authorised fund manager*.
- (4) In accordance with SUP 16.6.8 R, a *depository* should also make a return to the *FCA* on a quarterly basis which summarises the number of instances of incorrect *pricing* during a particular period.

5 The rectification of pricing breaches

- (1) COLL 6.6.3 R (1) (Functions of the authorised fund manager) places a duty on the *authorised fund manager* to take action to reimburse affected *unitholders*, former *unitholders*, and the *scheme* itself, for instances of incorrect *pricing*, except if it appears to the *depository* that the breach is of minimal significance.
- (2) A *depository* may consider that the instance of incorrect *pricing* is of minimal significance if:
 - (a) the *authorised fund manager* and *depository* meet the standards of control set out in Section 2 and Section 3 of this Table; and
 - (b) the error in *pricing* of a *unit* is less than 0.5% of the correct *price*.
- (3) In determining (2), if the instance of incorrect *pricing* is due to one or more factors or exists over a period of time, each *price* should be considered separately.
- (4) If a *depository* deems it appropriate, it may, in spite of the circumstances outlined in (2), require a payment from the *authorised fund manager* or from the *authorised fund* to the *unitholders*, former *unitholders*, the *authorised fund* or the *authorised fund manager* (where appropriate).
- (5) The *depository* should satisfy itself that any payments required following an instance of incorrect *pricing* are accurately and promptly calculated and paid.
- (6) If a *depository* considers that reimbursement or payment is inappropriate, it should report the matter to the *FCA*, together with its recommendation and justification. The *depository* should take into account the need to avoid prejudice to the rights of *unitholders*, or the rights of *unitholders* in a *class* of *units*.
- (7) It may not be practicable, or in some cases legally permissible, for the *authorised fund manager* to obtain reimbursement from *unitholders*, where the *unitholders* have benefited from the incorrect *price*.
- (8) In all cases where reimbursement or payment is required, amounts due to be reimbursed to *unitholders* for individual sums which are reasonably considered by the *authorised fund manager* and *depository* to be immaterial, need not normally be paid.

6.3.7

FCA

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SDRT Provision

- (1) The *authorised fund manager* may, in accordance with the *prospectus*, require the payment of an *SDRT provision* for the *issue* or *sale* of *units* or any *class* of *units* or the deduction of an *SDRT provision* for the *redemption* or *cancellation* of *units* or any *class* of *units*.
- (2) Any such payment or deduction becomes due at the same time as payment or transfer of property becomes due for the *issue*, *sale*, *redemption* or *cancellation*.
- (3) Any payment referred to in (1) must be paid to the *depository* to become part of *scheme property* as soon as practicable after receipt.
- (4) As soon as practicable after each *valuation point*, the *authorised fund manager* must notify the *depository* of the transactions, or types of transactions for which an *SDRT provision* is applied and the amounts or rates of those *SDRT provisions*.

Dilution

6.3.8

FCA

R

- (1) When arranging to *sell*, *redeem*, *issue* or *cancel units*, or when *units* are *issued* or *cancelled* under ■ COLL 6.2.7 R (1) (Issues and cancellations through an authorised fund manager), an *authorised fund manager* is permitted to:
 - (a) require the payment of a *dilution levy*; or
 - (b) make a *dilution adjustment*; or
 - (c) neither require a *dilution levy* nor make a *dilution adjustment*; in accordance with its statements in the *prospectus* required by ■ COLL 4.2.5R (18) (Table: contents of the prospectus).
- (2) An *authorised fund manager* operating either a *dilution levy* or a *dilution adjustment*, must operate that measure in a fair manner to reduce *dilution* and solely for that purpose.
- (3) A *dilution levy* becomes due at the same time as payment or transfer of property becomes due for the *issue*, *sale*, *redemption* or *cancellation* and any such payment in respect of a *dilution levy* must be paid to the *depository* to become part of *scheme property* as soon as practicable after receipt.
- (4) A *dilution adjustment* may be made as part of the calculation of the *unit price* for the purpose of reducing *dilution* in the *scheme* or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the *issue* or *cancellation* of *units*.

- (5) Where the *authorised fund manager* decides to make or not to make a *dilution adjustment*, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an *affected person*.
- (6) As soon as practicable after a *valuation point*, the *authorised fund manager* must provide the *depository* with the amount or rate of any *dilution adjustment* made to the *price* or any *dilution levy* applied.

Forward and historic pricing

6.3.9

FCA

R

- (1) For the *sale* and *redemption* of *units*, the *authorised fund manager* must, in accordance with the *prospectus* of an *authorised fund*, operate on the basis of *forward price* only or *historic prices*.
- (2) If *forward prices* only are to be used, all *deals* must be at a *forward price*.
- (3) *Forward prices* for the *sale* and *redemption* of *units* must be used:
 - (a) for a *higher volatility fund*;
 - (b) where the regular *valuation points* are more than one *business day* apart;
 - (c) if the request to *deal* reaches the *authorised fund manager* through the post or by any similar form of non-interactive communication;
 - (d) for an *issue* or *cancellation* under ■ COLL 6.2.7 (Issue and cancellation of units through an authorised fund manager);
 - (e) if the applicant for the *sale* or *redemption* so requests; or
 - (f) where the *authorised fund manager* has reason to believe at any time that the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the last calculated *price*, unless the *authorised fund manager* has decided to carry out an additional valuation.
- (4) If an *authorised fund manager* operates *historic prices*, the *prospectus* must detail the circumstances under which *deals* in the *authorised fund*, individually or otherwise, will nevertheless be carried out on a *forward price* basis or when the *authorised fund* will elect to move to *forward prices* or declare an additional *valuation point*.
- (5) Where the *authorised fund* elects to move to *forward prices* temporarily in accordance with (4), such election will only apply until the next *valuation point*.

- (6) All *sub-funds* of a *scheme* which is an *umbrella* must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a *forward price* basis temporarily under this *rule*.

Historic pricing: guidance

6.3.10

FCA

G

The *authorised fund manager* should advise the *depository* of the date and time of any decision to use *forward prices*.

Publication of prices

6.3.11

FCA

R

Where the *authorised fund manager* is prepared to *deal in units*, or is willing to *issue* or *cancel units*, under ■ COLL 6.2.7, it must make the *dealing prices* public in an appropriate manner.

Manner of price publication

6.3.12

FCA

G

- (1) In determining the appropriate manner of making *prices* public, the *authorised fund manager* should ensure that:
 - (a) a *unitholder* or potential *unitholder* can obtain the *prices* at a reasonable cost;
 - (b) *prices* are available at reasonable times;
 - (c) publication is consistent with the manner and frequency at which the *units* are *dealt* in;
 - (d) the manner of publication is disclosed in the *prospectus*; and
 - (e) *prices* are published in a consistent manner.

- (2) Examples of what might be deemed appropriate include:
 - (a) publication in a national newspaper;
 - (b) supply through an advertised local rate or freephone telephone number;
 - (c) publication on the internet;
 - (d) inclusion in a database of *prices* which is publicly available; or
 - (e) communication to all existing *unitholders*.

- (3) The *authorised fund manager* should make previous *prices* available to any *unitholder* or potential *unitholder*.

Maintaining the value of a qualifying money market fund or a short-term money market fund

6.3.13

FCA

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The *authorised fund manager* of a *qualifying money market fund* or a *short-term money market fund* valuing *scheme* property on an amortised cost basis must:

- (1) carry out a valuation of the *scheme property* on a mark to market basis at least once every week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and
- (2) ensure that the value of the *scheme property* when valued on a mark to market basis does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.

6.3.14

FCA

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The *authorised fund manager* should advise the *depository* when the mark to market value of a *qualifying money market fund* or a *short-term money market fund* valuing *scheme* property on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *qualifying money market fund* or *short-term money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.



6.4 Title and registers

Application

6.4.1
FCA

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- (1) This section applies to a *manager* and a *trustee* of an *AUT*.
- (2) ■ COLL 6.4.9 (Plan registers) also applies to the *ACD*, any other *director* and the *depository* of an *ICVC*.

Purpose

6.4.2
FCA

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The aim of this section is to protect *consumers*, by setting out the requirements for a *register* of *unitholders* for an *AUT* and for a *plan register* for an *authorised fund*, so a proper record of ownership of *units* is maintained, whether held directly or indirectly through a *group plan*.

Explanation of this section

6.4.3
FCA

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- (1) This section deals with matters relating to the *register* of *unitholders* of *units* in an *AUT* including its establishment and contents. The *manager* or *trustee* may be responsible for the *register*. In any event, the *person* responsible for the *register* must be stated in the *trust deed* and this section details what his duties are. The provisions relating to *documents evidencing title* to *units*, including the issue of *bearer certificates* are dependent on the provisions in the *trust deed* and their operation should be set out in the *prospectus*.
- (2) For an *ICVC*, requirements as to the *register* of *holders* and transfer of *units* are contained in Schedule 3 of the *OEIC Regulations* (Register of shareholders).
- (3) ■ COLL 6.4.9 makes provision to ensure that if the cost of the *plan register* is borne by the *scheme*, *plan investors* have the same rights in respect of notice and disclosure as *unitholders* on the main *register*.

Register: general requirements and contents

6.4.4
FCA

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- (1) Either the *manager* or the *trustee* (as nominated in the *trust deed*) must establish and maintain a *register* of *unitholders* as a *document* in accordance with this section.
- (2) The *manager* or *trustee* in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.

- (3) The *register* must contain:
- (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered) other than *units* represented by *bearer certificates*;
 - (b) the number of *units* of each *class* held by each *unitholder* (other than *units* represented by *bearer certificates*);
 - (c) the date on which the *unitholder* was registered for *units* standing in his name (other than *units* represented by *bearer certificates*); and
 - (d) the number of *units* of each *class* currently in *issue*, including *bearer certificates* and the number of *units* of those *bearer certificates*.
- (4) No notice of any trust, express, implied or constructive which may be entered in the *register* is binding on the *manager* or *trustee*, but this does not affect their obligations under ■ COLL 6.4.9 R (1) (Plan registers).
- (5) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
- (6) The *person* responsible for the *register* in (1) must:
- (a) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
 - (b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;
 - (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager*), during office hours, but it may be closed for periods not exceeding 30 *business days* in any one year;
 - (d) supply free of charge to any *unitholder* or his authorised representative a copy of the entries on the *register* relating to that *unitholder* on request;
 - (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
 - (f) carry out any conversion of *units* allowed for by ■ COLL 6.4.8 R (Conversion of units) after consultation with the *manager* or *trustee*, as appropriate.

6.4.5

FCA

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The manager as unitholder

- (1) If no *person* is entered in the *register* as the *unitholder* of a *unit*, the *manager* must be treated as the *unitholder* of each such *unit* which is in *issue* (other than a *unit* which is represented by a *bearer certificate*).
- (2) Where *units* are transferred to the *manager*, they need not be *cancelled* and the *manager* need not be entered on the *register* as the new *unitholder*.

6.4.6

FCA

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Transfer of units by act of parties

- (1) Every *unitholder* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless:
 - (a) it is permitted by the *trust deed* or *prospectus*; and
 - (b) the transfer is excluded by Schedule 19 of the Finance Act 1999 from a charge to stamp duty reserve tax, or there has been paid to the *trustee*, for the account of the *AUT*, an amount agreed between the *trustee* and the *manager* not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the *units* being transferred.
- (2) Every instrument of transfer of *units* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (3) Every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
 - (a) any necessary documents that may be required by legislation; and
 - (b) any other evidence reasonably required by the *person* responsible for the *register*.
- (4) The details of instruments of transfer must be kept for a period of six years from the date of its registration.
- (5) On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

6

Certificates (including bearer certificates)

6.4.7
FCA

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- (1) Following the *sale* of *units* or as a result of ■ COLL 6.4.6 R (Transfer of units by act of parties) a document recording title to those *units* may be issued in such a form as the *trust deed* permits.
- (2) The person responsible for the *register* must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming *units* require the *unitholder* to surrender that document.
- (3) *Bearer certificates* may only be issued if they are permitted by the *instrument constituting the scheme*.

Conversion of units

6.4.8
FCA

R

Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

Plan registers

6.4.9
FCA

R

- (1) The *ACD* and any other *directors* of an *ICVC* or the *person* responsible for the *register* of an *AUT* may arrange for a *plan register* to be established and maintained.
- (2) Where payments are made out of *scheme property* to establish and maintain a *plan register*, *plan investors* must be treated as *unitholders* for the purposes of ■ COLL 4.3 to ■ COLL 4.5 and ■ COLL 6.4.4 R (Register: general requirements and contents).



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

Application

6.5.1
FCA

R This section applies in accordance with ■ COLL 6.5.2 R (Table of application).

6.5.2
FCA

R Table of application

This table belongs to ■ COLL 6.5.1 R.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other director of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
6.5.1R	x	x	x	x	x	x
6.5.3R	x	x	x	x		
6.5.4R		x	x	x		
6.5.5R		x	x			
6.5.6R	x			x		
6.5.7R					x	x
6.5.8R					x	x
6.5.9R					x	x
6.5.10R		x		x	x	x

Note: "x" means "applies", but not every paragraph in every *rule* will necessarily apply.

Appointment of an ACD

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6.5.3
FCA

- R**
- (1) The *directors* (or *director*) of an *ICVC* must take all practicable steps to ensure the *ICVC* has at all times as its *ACD* a *person* who is qualified to act as *ACD*.
 - (2) If the *ICVC* ceases to have any *director*, the *depositary* must exercise its powers, under the *OEIC Regulations*, to appoint a *person* to be an *ACD* of the *ICVC*.

- (3) For an *ICVC* that holds annual general meetings under the *OEIC Regulations*, the appointment of an *ACD* (other than the first *ACD*), under (1) or (2), must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 *months* from the date the appointment takes effect, unless the appointment has been approved by a resolution of the *unitholders* before the close of that annual general meeting or expiration of that 12 *month* period (as the case may be).
- (4) An *ACD* must not voluntarily terminate its appointment as *ACD* unless the termination is effective at the same time as the commencement of the appointment of a successor *ACD*.
- (5) (a) In the event of:
 - (i) any *person* becoming or ceasing to be a *director*;
 - (ii) the appointment of an *ACD* being terminated;
 - (iii) a new *ACD* being appointed; or
 - (iv) a corporate *director* (including the *ACD*) becoming aware of any change of its *controller*;

the *FCA* must immediately be notified in accordance with (b).
- (b) In the case of:
 - (i) (a)(i), by the *ACD*;
 - (ii) (a)(ii), by the *ACD* whose appointment is being terminated;
 - (iii) (a)(iii), by the new *ACD*; and
 - (iv) (a)(iv), by the corporate *director* concerned.

Termination of appointment of an ACD

- (1) The appointment of an *ACD* terminates immediately upon it ceasing to be a *director*.
- (2) The appointment of an *ACD* terminates if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of *directors* of the *ICVC*, is given to the *ACD*.
- (3) If there is no *director* other than the *ACD*, the appointment of the *ACD* terminates if a notice of termination of that appointment is given by the *depositary* to the *ACD* and to the *ICVC*, following any of the following events:

6.5.4
FCA

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- (a) the calling of a meeting to consider a resolution for winding up the *ACD*;
- (b) an application being made to dissolve the *ACD* or to strike it off the Register of Companies;
- (c) the presentation of a petition for the winding up of the *ACD*;
- (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *ACD*'s creditors;
- (e) the appointment of a receiver to the *ACD* (whether an administrative receiver or a receiver appointed over particular property);
- (f) anything equivalent to (a) to (e) above occurring in respect of the *ACD* in a jurisdiction outside the *United Kingdom*.

(4) Any termination under (2) or (3) takes effect when the notice is given, or on any subsequent time for its effect stated in the notice, or, if later, the time at which the termination is permitted to take effect under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).

(5) The *depositary* must (unless the termination takes effect at the same time as the appointment of a successor *ACD*) ensure that the unitholders are informed of the termination of the appointment of an *ACD*.

(6) The *depositary* is entitled to be reimbursed out of the *scheme property* for its out of pocket expenses in complying with (5).

Other directors

6.5.5

FCA

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(1) Any *directors* of an *ICVC* other than the *ACD* must exercise reasonable care to ensure that the *ACD* undertakes the responsibilities allocated under ■ COLL 6.6.3 R (1) (Functions of the authorised fund manager) in a competent manner and the *ACD* must give those *directors* the information and explanations they consider necessary for this purpose.

(2) A *director* of an *ICVC* must not appoint an alternate *director*.

(3) When there is no *person* acting as *ACD*, the *directors* of an *ICVC* have the functions of an *ACD* under ■ COLL 6.6.3 R (1) , but this does not affect the powers of the *directors* under ■ COLL 6.6.15 R (Committees and delegation).

(4) When (3) applies, the *directors* must retain the services of one or more *authorised persons* to assist them in performing the functions referred to in ■ COLL 6.6.3 R (1) and ■ COLL 6.6.3 R (2) .

6.5.6

FCA

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ICVC without a director

If the *ICVC* ceases to have any *directors*, the *depository* may:

- (1) retain the services of an *authorised person* to carry out the functions referred to in ■ COLL 6.6.3 R (3) (a) and ■ COLL 6.6.3 R (1) (b) ; or
- (2) manage the *scheme property* itself on behalf of the *ICVC* until a *director* is appointed or the winding up of the *ICVC* is commenced provided it is not prohibited from doing so by any law or *rule*.

Replacement of a manager

6.5.7

FCA

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(1) The *manager* of an *AUT* is subject to removal by written notice by the *trustee* upon any of the following events:

- (a) the calling of a meeting to consider a resolution for winding up the *manager*;
- (b) an application being made to dissolve the *manager* or to strike it off the Register of Companies;
- (c) the presentation of a petition for the winding up of the *manager*;
- (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *manager's* creditors;
- (e) the appointment of a receiver to the *manager* (whether an administrative receiver or a receiver appointed over particular property);
- (f) anything equivalent to (a) to (e) above occurring in respect of the *manager* in a jurisdiction outside the *United Kingdom*;
- (g) the *trustee* forming the reasonable opinion, and stating in writing, that a change of *manager* is desirable in the interest of *unitholders*;
- (h) a resolution of *unitholders* being passed to remove the *manager*; or
- (i) the *unitholders* of three quarters in value of all of the *units* then in *issue* (excluding *units* held or treated as held by the *manager* or by any *associate* of the *manager*) making a request in writing to the *trustee* that the *manager* should be removed.

(2) On receipt of a notice by the *trustee* under (1), the *manager* of the *AUT* ceases to be the *manager*; and the *trustee* must by deed appoint another *person* eligible under the *Act* to be the *manager*

of the *AUT* upon and subject to that other entering into such deed or deeds as the *trustee* may require.

- (3) If the name of the *AUT* contains a reference to the name of the former *manager*, the former *manager* is entitled to require the new *manager* and the *trustee* immediately on receipt of a notice under (1) to propose a change in the name of the *AUT*.

Retirement of a manager of an AUT

6.5.8
FCA

R

- (1) The *manager* of an *AUT* has the right to retire in favour of another *person* eligible under the *Act* and approved in writing by the *trustee* upon:
 - (a) the retiring *manager* appointing that *person* by deed as *manager* in its place and assigning to that *person* all its rights and duties as such a *manager*; and
 - (b) the new *manager* entering into such deeds as the *trustee* reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due performance of its duties as the *manager* of the *AUT*.
- (2) Upon retirement, the retiring *manager*:
 - (a) subject to (3), is released from all further obligations under the *rules* in this sourcebook and under the *trust deed*; and
 - (b) may retain any consideration paid to it in connection with the change without having to account for it to any *unitholder*.
- (3) Sub-paragraph (2)(a) does not affect the rights of the *trustee* or any other *person* in respect of any act or omission on the part of the retiring *manager* before his retirement.

Consequences of removal or retirement of a manager of an AUT

6.5.9
FCA

R

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

Retirement of the depository

6.5.10
FCA

R

- (1) The *depository* of an *authorised fund* may not retire voluntarily except upon the appointment of a new *depository*.

- (2) The *depositary* of an *authorised fund* must not retire voluntarily unless, before its retirement, it has ensured that the new *depositary* has been informed of any circumstance of which the retiring *depositary* has informed the *FCA*.
- (3) When the *depositary* of an *authorised fund* wishes to retire or ceases to be an *authorised person*, the *authorised fund manager* may, subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) appoint another *person* eligible to be the *depositary* in its place.



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

Application

6.6.1
FCA

R This section applies in accordance with ■ COLL 6.6.2 R (Table of application).

Table of application

6.6.2
FCA

R This table belongs to ■ COLL 6.6.1 R.

<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>
6.6.1R	X	X	X	X	X	X
6.6.3R	X	X		X	X	X
6.6.4R				X		X
6.6.5R		X	X	X	X	X
6.6.5AR		X				
6.6.5BG		X				
6.6.6R		X			X	
6.6.7R	X	X				
6.6.8R					X	X
6.6.9R					X	X
6.6.10R		X		X	X	X
6.6.11G				X		X
6.6.12R				X		X
6.6.13R		X	X	X	X	X
6.6.14R		X		X	X	X
6.6.15R	X	X	X	X		X
6.6.15AR*		X			X	

6

<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>
6.6.16G		X		X	X	X
6.6.17R		X	X	X	X	X
6.6.18G		X	X	X	X	X
Notes:	(1)	"x" means "applies", but not every paragraph in every rule will necessarily apply.				
	(2)	* COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).				

Functions of the authorised fund manager

R

6.6.3

FCA

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the scheme*;
 - (b) the *rules* in this sourcebook;
 - (c) the most recently published *prospectus*; and
 - (d) for an *ICVC*, the *OEIC Regulations*.
- (2) The *authorised fund manager* must take such steps as necessary to ensure compliance with the *rules* in this sourcebook that impose obligations upon the *ICVC*.
- (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depositary* in writing how rights attaching to the ownership of the *scheme property* are to be exercised, but not where ■ COLL 6.6.13 R (2) (Exercise of rights in respect of the *scheme property*) applies; and
 - (c) take action immediately to rectify any breach of ■ COLL 6.3 and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue* of *units*, the rectification must, (unless the *depositary* otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:
 - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;

- (ii) by the *ACD* to the *ICVC*;
- (iii) by the *ICVC* to the *ACD*;
- (iv) by the *manager* to the *trustee*; or
- (v) by the *trustee* (for the account of the *AUT*) to the *manager*.

- (4) Rectification under (3)(c) need not, unless the *depositary* so directs, extend to any such reimbursement or payment where it appears to the *depositary* such breach, is of minimal significance.

General duties of the depositary

6.6.4
FCA

R

- (1) The *depositary* of an *authorised fund* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
- (a) ■ COLL 5 (Investment and borrowing powers);
 - (b) ■ COLL 6.2 (Dealing);
 - (c) ■ COLL 6.3 (Valuation and pricing);
 - (d) ■ COLL 6.8 (Income: accounting, allocation and distribution); and
 - (e) any provision of the *instrument constituting the scheme* or *prospectus* that relates to the provisions referred to in (a) to (d).
- (2) The *depositary* must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:
- (a) the *authorised fund manager* is adopting appropriate procedures to ensure that the *price* of a *unit* is calculated for each *valuation point* in accordance with ■ COLL 6.3 ; and
 - (b) the *authorised fund manager* has maintained sufficient records to show compliance with ■ COLL 6.3 .
- (3) The *depositary*, when acting in its capacity as *depositary*, must act solely in the interests of the *unitholders*.
- (4) The *depositary*:
- (a) must also take reasonable care to ensure that;
 - (i) the *authorised fund manager* considers whether or not to exercise the power provided by ■ COLL 6.3.7 R (SDRT provision) or ■ COLL 6.3.8 R (Dilution) (as the case may be) and, if applicable, the rate or amount of any *SDRT provision*, *dilution levy* or *dilution adjustment* that is imposed;

6

- (ii) the *authorised fund manager* has in relation to (i), taken account of all factors that are material and relevant to the *authorised fund manager's* decision; and
 - (iii) when the *authorised fund manager* considers whether or not to exercise the power under ■ COLL 6.3.8 R, the *authorised fund manager* has acted in accordance with the restrictions imposed by that *rule*; and
- (b) has no duty in respect of the *authorised fund manager's* exercise of the discretion referred to in (a).

(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 6.6.5 R.

(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 1.

[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

FCA

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The requirements of ■ SUP 2 (Information gathering by the FCA on its own initiative) apply to the *depositary* of a *UCITS scheme*, under which it must enable the *FCA* to obtain, on request, all information that the *depositary* has obtained while discharging its duties and that is necessary for the *FCA* to supervise the *scheme's* compliance with the requirements referred to in ■ COLL 6.6.4 R (6).

[Note: articles 23(4) and 33(4) of the *UCITS Directive*]

Duties of the authorised fund manager and the depositary under the general law

6.6.5

FCA

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- (1) The duties and powers of the *authorised fund manager*, the *directors* of an *ICVC* and the *depositary* under the *rules* in this sourcebook and under the *instrument constituting the scheme* are in addition to the powers and duties under the general law.
- (2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the *rules* in this sourcebook or the *instrument constituting the scheme* or the *OEIC Regulations*.

Duties of the ACD of an ICVC: umbrella schemes

6.6.5A
FCA

R

Where reasonable grounds exist for an *ACD* of an *ICVC* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* may have become inconsistent with the principle of limited recourse stated in the *instrument of incorporation* of the *ICVC* (see ■ COLL 3.2.6 R (22A) (ICVCs: Umbrella schemes - principle of limited recourse)) the *ACD* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

6.6.5B
FCA

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In deciding what steps are appropriate to remedy the inconsistency, the *ACD* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* to exit the *foreign law contract*.

Maintenance of records

6.6.6
FCA

R

- (1) The *authorised fund manager* must make and retain for six years such records as enable:
 - (a) the *scheme* and the *authorised fund manager* to comply with the *rules* in this sourcebook and the *OEIC Regulations*; and
 - (b) it to demonstrate at any time that such compliance has been achieved.
- (2) The *authorised fund manager* must make and retain for six years a daily record of the *units* in the *scheme* held, acquired or disposed of by the *authorised fund manager*, including the *classes* of such *units*, and of the balance of any acquisitions and disposals.
- (3) Where relevant, an *authorised fund manager* must make and retain for a period of six years a daily record of:
 - (a) how it calculates and estimates *dilution*; and
 - (b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.
- (4) The *authorised fund manager* must on the request of the *depositary* immediately supply it with such information concerning the management and administration of the *authorised fund* as the *depositary* may reasonably require.

6.6.6A
FCA

R

- (1) This section applies to:
 - (a) an *authorised fund manager* of a *UCITS scheme*, a *depositary*, 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.6 R ((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*.

Maintenance of capital: notification

6.6.7
FCA

R

The *ACD* must immediately notify the *FCA* in writing if the *ICVC*'s capital falls below the minimum or exceeds the maximum stated in the *instrument of incorporation*.

Auditor: AUTs

6.6.8
FCA

R

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

Returns: AUTs

6.6.9
FCA

R

The *manager* of an *AUT* must prepare and supply to the *trustee* the returns required to be submitted by the *trustee* to HM Revenue and Customs.

Dealings in scheme property

6.6.10
FCA

R

- (1) The *authorised fund manager* may give instructions to deal in the property of the *scheme*.

- (2) The *authorised fund manager* must obtain the consent of the *depositary* for the acquisition or disposal of immovable property.
- (3) Where the *depositary* is of the opinion that a deal in property is not within the *rules* in this sourcebook and the *instrument constituting the scheme*, the *depositary* may require the *authorised fund manager* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.
- (4) Where the *depositary* is of the opinion that:
 - (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a *person* other than the *depositary*; and
 - (b) the *depositary* cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other *person*;

the *authorised fund manager* must, if the *depositary* so requests, either cancel the transaction or make a corresponding disposal.

Duty to inform the FCA

6.6.11

FCA

G

■ SUP 15.3 (General notification requirements) contains *rules* and *guidance* on matters that should be notified to the *FCA*. Such matters include, but are not limited to, any circumstance that the *depositary* becomes aware of whilst undertaking its functions or duties in ■ COLL 6.6.4 R (1) (General duties of the depositary) that the *FCA* would reasonably view as significant.

Control by the depositary over the scheme property

6.6.12

FCA

R

- (1) The *depositary* of an *authorised fund* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:
 - (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the *scheme*;
 - (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depositary*, its nominee or a *person* retained by it under ■ COLL 6.6.15 R (1) (Committees and delegation);
 - (c) take into its *custody* or under its control documents of title to the *scheme property* other than for transactions in *derivatives* or forward transactions; and
 - (d) ensure that any transaction in *derivatives* or a forward transaction is entered into so as to ensure that any resulting benefit is received by the *depositary*.

- (2) The *depositary* is responsible for the collection of income due to be paid for the account of the *authorised fund*.
- (3) The *depositary* must keep for six years such records as are necessary:
 - (a) to enable it to comply with the *rules* in this sourcebook; and
 - (b) to demonstrate that it has achieved such compliance.

Exercise of rights in respect of the scheme property

6.6.13
FCA

R

- (1) The *depositary* must take all necessary steps to ensure that instructions given to it by the *authorised fund manager* for the exercise of rights attaching to the ownership of *scheme property* are carried out.
- (2) Where the *scheme property* of an *authorised fund* contains *units* in any other *scheme* managed or otherwise operated by the *manager* of the *AUT* or, as the case may be, by any *director* of the *ICVC* or by any *associate* of either, the *depositary* must exercise any voting rights associated with those *units* in accordance with what he reasonably believes to be the interests of the *unitholders* in the *authorised fund*.

Duties of the depositary and the authorised fund manager: investment and borrowing powers

6.6.14
FCA

R

- (1) The *authorised fund manager* must avoid the *scheme property* being used or invested contrary to **COLL 5**, or any provision in the *instrument constituting the scheme* or the *prospectus* as referred to in **COLL 5.2.4 R** (Investment powers: general) and **COLL 5.6.4 R** (Investment powers: general), except to the extent permitted by (3)(b).
- (2) The *authorised fund manager* must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).
- (3) The *authorised fund manager* must restore compliance with *COLL 5* as soon as reasonably practicable having regard to the interests of the *unitholders* and, in any event, within the period specified in (5) or, when applicable, (6) where:
 - (a) the *scheme property* is:
 - (i) used or invested contrary to **COLL 5** (other than a provision excusing a failure to comply on a temporary basis); and
 - (ii) the contravention is beyond the control of both the *authorised fund manager* and the *depositary*; or

- (b) there is a transaction ("subsequent transaction") deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an *investment* ('original *investment*') of the scheme if:
 - (i) the subsequent transaction, but for this *rule* would constitute a breach of ■ COLL 5; and
 - (ii) at the time of the acquisition of the original *investment*, it was reasonable for the *authorised fund manager*, to expect that a breach would not be caused by the subsequent transaction; and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the *depositary* or the *authorised fund manager*.

- (4) Immediately upon the *depositary* becoming aware of any breach of any provision listed in (1), it must ensure that the *authorised fund manager* complies with (2).
- (5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):
 - (a) for six *months*; or
 - (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards)) or COLL 5.6.13R (Permitted transactions (derivatives and forwards)), until the close of business five *business days* later; or
 - (c) where the transaction relates to an immovable, for two years.
- (6) The period specified at (5)(b) is extended where:
 - (a) the transaction involved a delivery of a *commodity*, from five to twenty *business days*;
 - (b) the reason for the contravention in (3)(a) is the inability of the *authorised fund manager* to *close out* a transaction because of a limit in the number or value of transactions imposed by an *eligible derivatives* market, until five *business days* after:
 - (i) the inability resulting from any such limit is removed; or
 - (ii) it becomes, to the knowledge of the *authorised fund manager*, reasonably practicable and reasonably prudent for the transaction to be *closed out* in some other way.

6.6.15

FCA

R

Committees and delegation

- (1) The *directors* of an *ICVC* may delegate to any one or more of their number any of the *directors'* powers or duties but remain responsible for the acts or omissions of any such *directors*.
- (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 6.6.15A R.
- (2) [deleted]
- (3) [deleted]
- (4) The *depositary* of a *scheme* may delegate any function to any *person* save:
 - (a) the *ICVC* or any *director* of the *ICVC* or the *authorised fund manager* of a *scheme*, to assist the *depositary* to perform:
 - (i) any function of oversight in respect of the *scheme*, its *directors* or the *authorised fund manager* as the case may be; or
 - (ii) any function of *custody* or control of the *scheme property*;
 - (b) an *associate* of the *ICVC* or of any of the *directors* of the *ICVC* or of the *authorised fund manager* of the *scheme* (as the case may be) to assist the *depositary* to perform any function in (a)(i); or
 - (c) a *nominee company* or anyone else to assist it to perform the function of being a *custodian* of *documents* evidencing title to *scheme property* of the *scheme* unless the arrangements with the *custodian* prohibit the *custodian* from releasing the *documents* into the possession of a third party without the consent of the *depositary*.
- (5) Where a *depositary* retains services under (4):
 - (a) if it retains the services of a *director* of the *ICVC*, or an *associate* of such a *director* or its own *associate*, or the *authorised fund manager* of a *scheme* or that *authorised fund manager's* *associate*, then its liability for those services shall remain unaffected; and
 - (b) in any other case, it will not be held responsible by virtue of the *rules* in *COLL* for any act or omission of the *person* so retained if it can show that:

- (i) it was reasonable for it to obtain assistance to perform the function in question;
- (ii) the *person* retained was and remained competent to provide assistance in the performance of the function in question; and
- (iii) it had taken reasonable care to ensure that the assistance in question was provided by the *person* retained in a competent manner.

(6) Where ■ COLL 6.5.5 R (4) (Other directors) applies, the *directors* have, in respect of the functions of the *ACD* under ■ COLL 6.6.3 R (Functions of the authorised fund manager), the same rights and responsibilities as for an *ACD* under this *rule* and ■ COLL 6.6.15A R.

6.6.15A

R

FCA

(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 4A 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 *FCA* 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 6.6.15 R (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*]

Delegation: guidance

6.6.16

FCA

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- (1) *Directors* of an *ICVC*, *authorised fund managers* and *depositaries* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.
- (2) ■ SUP 15.8.6 R (Delegation by UCITS management companies) requires the *authorised fund manager* of a *UCITS scheme* to inform the *FCA* before it delegates one of its duties to another *person*.
- (3) For the purpose of ■ COLL 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the *FCA* has entered into a co-operation agreement of the kind referred to in article 102(3) of the *UCITS Directive* with the relevant *overseas regulator*.

6.6.17

FCA

R

Conflicts of interest

- (1) The *authorised fund manager*, any other *director* of an *ICVC* and the *depository* must take reasonable care to ensure that a transaction within (a) to (f) is not carried out on behalf of the *scheme*:
- (a) putting cash on *deposit* with an *affected person* unless that *person* is an *eligible institution* or an *approved bank* and the arm's length requirement in (2) is satisfied;
 - (b) lending *money* by an *affected person* to, or for the account of, the *scheme*, unless the *affected person* is an *eligible institution* or an *approved bank*, and the arm's length requirement in (2) is satisfied;
 - (c) the dealing in property by an *affected person*, to, or with, the *scheme* (or the *depository* for the account of the *scheme*), unless (3) applies;
 - (d) the vesting of property (other than cash) by an *affected person* in the *scheme* or the *depository* for the account of the *scheme* against the *issue* of *units* in the *scheme*, unless:
 - (i) (3) applies; or
 - (ii) the purpose of the vesting is that the whole or part of the property of a *body corporate* or a *collective investment scheme* becomes the first property of the *scheme* and the *unitholders* of *shares* or *units* in the *body corporate* or *collective investment scheme* become the first *unitholders* in the *scheme*;
 - (e) the *acquisition* of *scheme property* by an *affected person* from the *scheme* (or the *depository* acting for the account of the *scheme*), unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies, or unless (3) applies; and
 - (f) transactions within COLL 5.4 (Stock lending) by an *affected person* with, or in relation to, the *scheme* unless the arm's length requirement in (2) is satisfied.
- (2) Any transaction in (1)(a),(b) or (f) must be at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length between the *affected person* and an independent party.
- (3) There is no breach of (1)(c), (d) or (e) if the transaction meets the requirements of (4) (best execution *on-exchange*), (5) (independent valuation) or (6) (arm's length transaction).
- (4) There is best execution *on-exchange* for the purposes of (3) if:
- (a) the property is an *approved security* or an *approved derivative*;

- (b) the transaction is effected under the rules of the relevant exchange with or through a *person* who is bound by those rules;
 - (c) there is evidence in writing of the effecting of the transaction and of its terms; and
 - (d) the *authorised fund manager* has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the *scheme*.
- (5) There is independent valuation for the purposes of (3) if:
- (a) the value of the property is certified in writing for the purpose of the transaction by a *person* approved by the *depositary* as:
 - (i) independent of any *affected person*; and
 - (ii) qualified to value property of the relevant kind; and
 - (b) the *depositary* is of the opinion that the terms of the transaction are not likely to result in any material prejudice to *unitholders*.
- (6) There is an arm's length transaction for the purposes of (3) if:
- (a) paragraph (4)(a) is not satisfied;
 - (b) it is not reasonably practicable to obtain an independent valuation under (5); and
 - (c) the *depositary* has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in (2).

Conflicts of interest: guidance

- (1) [deleted]
- (2) Regulation 44 of the *OEIC Regulations* (Invalidity of certain transactions involving directors) is relevant to the application of ■ COLL 6.6.17 R.

6.6.18

FCA

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6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

6.6A.1

FCA

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- (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.6 R** (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 unitholder

6.6A.2

FCA

R

An *authorised fund manager* of a *UCITS schemes* 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
FCA

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
FCA

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
FCA

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
FCA

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*]



6.7 Payments

Application

6.7.1
FCA

R

This section applies in accordance with ■ COLL 6.7.2 R (Table of application).

Table of application

6.7.2
FCA

R

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

Rule	ICVC	ACD	Depository of an ICVC	Manager of an AUT	Trustee of an AUT
6.7.1R to 6.7.5G	x	x	x	x	x
6.7.6G	x	x		x	
6.7.7R		x		x	
6.7.8G		x		x	
6.7.9R		x		x	
6.7.10R		x	x	x	x
6.7.11G		x	x	x	x
6.7.12R	x	x		x	
6.7.13G	x	x		x	
6.7.14R	x				
6.7.15R	x	x	x	x	x
6.7.16G		x	x	x	x
6.7.17R	x	x		x	

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

6.7.3
FCA

G

- (1) This section assists in securing the *statutory objective* of protecting consumers through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.

- (2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for *unitholders* of any increases in charges and payments to the *authorised fund manager*.
- (3) The *prospectus* should make adequate provision for payments from an *authorised fund*. This section:
 - (a) prohibits, or stipulates the conditions on which, the payments out of the *scheme property* can be made;
 - (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
 - (c) governs the allocation of payments between capital and income.

Payments out of scheme property

6.7.4
FCA

R

- (1) The only payments which may be recovered from the *scheme property* of an *authorised fund* are those in respect of:
 - (a) remunerating the parties operating the *authorised fund*;
 - (b) the administration of the *authorised fund*; or
 - (c) the investment or safekeeping of the *scheme property*.
- (2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.
- (4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of *units* on behalf of *unitholders* rather than on behalf of the *authorised fund*.

Payments out of scheme property: guidance

6.7.5
FCA

G

- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with ■ COLL 4.2.5R (13) and ■ COLL 4.2.5R (14) (Table: contents of the prospectus).
- (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ■ COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.
- (4) Payments to third parties as referred to in ■ COLL 6.7.4 R (4) include payments to *platform service providers* and other similar platform services.

6.7.6

FCA

G

Performance fees

- (1) For the *authorised fund manager's* periodic charge or for payments out of *scheme property* to the *investment adviser*, the *prospectus* may permit a payment based on a comparison of one or more aspects of the *scheme property* or *price* in comparison with fluctuations in the value or *price* of property of any description or index or other factor designated for the purpose (a "performance fee").
- (2) Any performance fee should be specified in the appropriate manner in the *prospectus* and should be consistent with ■ COLL 6.7.4 R. In determining whether the performance fee is consistent the *authorised fund manager* should have regard to factors such as:
 - (a) it should be calculated and paid after consideration of all other payments;
 - (b) where it is made on the basis of performance of the *authorised fund* against any index or any other factor, that benchmark must be reasonable given the investment objectives of the *authorised fund* and must be consistently applied;
 - (c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;
 - (d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;
 - (e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and
 - (f) except where allowed by ■ COLL 6.7.4 R (1), there are to be no arrangements to adjust the *price* or value of *sale* or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.
- (3) In accordance with ■ COLL 4.2.5R (13) (Table: contents of prospectus) the *prospectus* should contain the maximum amount or percentage of *scheme property* that the performance fee might represent in an *annual accounting period*. This disclosure should be given in plain language together with examples of the operation of the performance fee.

6.7.7

FCA

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Charges on buying and selling units

- (1) No *person* other than the *authorised fund manager* may impose charges on *unitholders* or potential *unitholders* when they buy or sell *units*.
- (2) An *authorised fund manager* must not make any charge or levy in connection with:
 - (a) the *issue* or *sale* of *units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be either a fixed amount or calculated as a percentage of the *price* of a *unit*; or
 - (b) the *redemption* or *cancellation* of *units*, except a *redemption charge* made in accordance with the *prospectus* current at the time the relevant *units* were purchased by the *unitholder*.

- (3) This rule is subject to ■ COLL 6.3.7 R (SDRT provision), ■ COLL 6.3.8 R (Dilution) and ■ COLL 11.3.11 R (Obligations of the master UCITS).

Charges on buying and selling units: guidance

6.7.8
FCA

G

- (1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with ■ COLL 4.2.5 R (Table: contents of prospectus) and ■ COLL 4.3 (Approvals and notifications).
- (2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.
- (3) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be *redeemed* or *cancelled* for the purpose of the imposition of the *redemption charge*.

Charges for the exchange of units in an umbrella

6.7.9
FCA

R

For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

Allocation of payments to income or capital

6.7.10
FCA

R

- (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
- (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
- (b) agree the treatment of any payment with the *depository*.
- (2) Where, for any *class* of *units* for any *annual accounting period*, the amount of the *income property* is less than the income distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

Allocation of payments to income or capital: guidance

6.7.11
FCA

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- (1) Any payment as a result of effecting transactions for the *authorised fund* should be made from the *capital property* of the *scheme*.

- (2) Other than the payments in (1), all other payments should be made from *income property* in the first instance but may be transferred to the *capital account* in accordance with ■ COLL 6.7.10 R (1) (Allocation of payments to income or capital).
- (3) For payments transferred to the *capital property* of the *scheme* in accordance with (2), the *prospectus* should disclose the matters in ■ COLL 4.2.5R (14).
- (4) If the *authorised fund manager* wishes to make a change in relation to the allocation of payments, the procedures in ■ COLL 4.3 (Approvals and notifications) will be relevant.

Prohibition on promotional payments

6.7.12
FCA

R

- (1) No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale of units* in an *authorised fund*.
- (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 4.2.5 R (13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

6

Prohibition on promotional payments: guidance

6.7.13
FCA

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Examples of payments which are not permitted by ■ COLL 6.7.12 R include:

- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
- (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under ■ COLL 6.7.12 R (2)).
- (3) [deleted]

Movable or immovable property

6.7.14
FCA

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An *ICVC* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

Payment of liabilities on transfer of assets

6.7.15
FCA

R

- (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue* of *units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.

- (2) The *ICVC*, its *depository* or the *trustee* of the *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
 - (a) there is nothing in the *instrument constituting the scheme* of the *authorised fund* expressly forbidding the payment; and
 - (b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

6.7.16
FCA

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An *affected person* is not liable to account to another *affected person* or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

Allocation of scheme property

6.7.17
FCA

R

For a *scheme* which is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only, must be allocated by the *authorised fund manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella* generally.



6.8 Income: accounting, allocation and distribution

Application

6.8.1
FCA

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- (1) This section applies to an *authorised fund manager*.
- (2) ■ COLL 6.8.4 R (1) (Unclaimed, de minimis and joint unitholder distributions) also applies to the *depository* of an *authorised fund*.
- (3) Except in the case of ■ COLL 6.8.2 R (1) (Accounting periods) and ■ COLL 6.8.3 R (1) (Income allocation and distribution), ■ COLL 6.8 applies as if each *sub-fund* were a separate *authorised fund*.

Accounting periods

6.8.2
FCA

R

- (1) An *authorised fund* must have:
 - (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*.
- (2) A *half-yearly accounting period* begins when an *annual accounting period* begins and ends on:
 - (a) the *day* which is six *months* before the last *day* of that *annual accounting period*; or
 - (b) some other reasonable date as set out in the *prospectus* of the *scheme*.
- (3) The first *annual accounting period* of a *scheme* must begin:
 - (a) on the first *day* of any period of *initial offer*; or
 - (b) in any other case, on the date of the relevant *authorisation order*;

and in either case must end on the next *accounting reference date*, except where (4) applies.

- (4) When the *accounting reference date* of a *scheme* falls less than *six months* after the beginning of the first *annual accounting period*, that period may be extended until the subsequent *accounting reference date*.
- (5) Each *annual accounting period* of a *scheme* subsequent to the first period must begin immediately after the end of the previous period and must end on the next *accounting reference date*, except where (6) or (6A) applies.
- (5A) Each *annual accounting period* or *half-yearly accounting period* must end either at the end of the *day* determined under this *rule* or, if the *authorised fund manager* so decides, at the last *valuation point* on that *day*.
- (6) Following a revision to the *prospectus* of the *scheme* that includes a change to the *accounting reference date*, the *annual accounting period* may be shortened, or extended by up to *six months*, so as to end on the new *accounting reference date*.
- (6A) If the *authorised fund manager* notifies the *depository* that a particular *annual accounting period* or *half-yearly accounting period* is to end on a specified *day*, which is not more than *seven days* after, and not more than *seven days* before, the *day* on which the period would otherwise end under this *rule*, that notice is to have effect provided it is given before the *day* on which the period would otherwise end.
- (7) The *authorised fund manager* must consult the *depository* and the *scheme's* auditor before shortening or extending an accounting period in accordance with (4) or (6).

6.8.2A
FCA

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When the *annual accounting period* of a *scheme* is extended under ■ COLL 6.8.2 R (4) or ■ (6), resulting in a longer than usual period before the publication of reports to *unitholders*, the *authorised fund manager* should make summary information about the investment activities of the *scheme* available to *unitholders* during that period, in accordance with *Principles 6* (Customers' interests) and *7* (Communications with clients).

6.8.2B
FCA

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Income allocation and distribution

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*]

6.8.3
FCA

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- (1) An *authorised fund* must have an *annual income allocation date*, which must be within four *months* of the end of the relevant *annual accounting period*.

- (2) An *authorised fund* may have *interim income allocation dates* and one or more *interim accounting periods* for each of those dates and, if it does, the *interim income allocation date* must be within four *months* of the end of the relevant *interim accounting period(s)*.
- (3) An *authorised fund* must have a *distribution account* to which the amount of income allocated to *classes of units* that distribute income is transferred as at the end of the relevant accounting period.
- (3A) The amount available for income allocations must be calculated by:
 - (a) taking the net revenue after taxation determined in accordance with the *IMA SORP*;
 - (b) making any transfers, to the extent permitted by the *prospectus*, between the *income account* and the *capital account* in order that the amount available for income allocations is calculated as if the revenue from *debt securities* had been determined disregarding the effect of:
 - (i) the change in the Retail Prices Index during the period, provided that the policy is to invest predominantly in *index-linked securities* and the transfer relates only to amounts in respect of index-linked gilt-edged securities; or
 - (ii) amortisation, provided that the amount available for income allocations is not less than if such transfers had not been made;
 - (c) making any other transfers between the *income account* and the *capital account* that are required in relation to:
 - (i) stock dividends;
 - (ii) *income equalisation* included in income allocations from other *collective investment schemes*;
 - (iii) the allocation of payments in accordance with **■ COLL 6.7.10 R** (Allocation of payments to income or capital);
 - (iv) taxation;
 - (v) the aggregate amount of *income property* included in *units issued* , *cancelled* and converted during the period; and
 - (vi) amounts determined by the *authorised fund manager* to be the reportable income of other *collective investment schemes*.

- (4) If income is allocated during an accounting period:
- (a) with effect from the end of the relevant *annual* or *interim accounting period*, the amount of income allocated to *classes of units* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes of units* are in *issue* during the period;
 - (b) the adjustment in (a) must ensure the *price of units* remains unchanged despite the transfer of income; and
 - (c) the amount of any interim allocation may not be more than the amount which, in the opinion of the *authorised fund manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

Allocation of income to different classes of unit

6.8.3A
FCA

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In the case of *sub-funds* with more than one *class of units* in issue, the proportionate interests of each *class of units* in the amount available for income allocations should be determined in accordance with the *instrument constituting the scheme*.

Unclaimed, de minimis and joint unitholder distributions

6.8.4
FCA

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- (1) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.
- (2) The *authorised fund manager* and the *depository* may agree a *de minimis* amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
- (3) Distributions made to the first named joint *unitholder* on the *register* will be as effective a discharge to the *trustee and manager*, as if the first named joint *unitholder* had been a sole *unitholder*.

Guidance: contents of the prospectus

6.8.5
FCA

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■ COLL 4.2.5 R (Table: contents of prospectus) requires the details of ■ COLL 6.8.2 R, ■ COLL 6.8.3 R (1) and ■ COLL 6.8.3 R (2) and ■ COLL 6.8.4 R (1) and ■ COLL 6.8.4 R (2) to be contained in the *prospectus* as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.



6.9 Independence, names and UCITS business restrictions

Application

6.9.1
FCA

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This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *directors* of an *ICVC*.

Independence of depositories and scheme operators

6.9.2
FCA

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- (1) Regulation 15(8)(f) of the *OEIC Regulations* (Requirements for authorisation) requires independence between the *depository*, the *ICVC* and the *ICVC's directors*, as does section 243(4) of the *Act* (Authorisation orders) for the *trustee* and *manager* of an *AUT*. ■ COLL 6.9.3 G to ■ COLL 6.9.5 G give *FCA's* view of the meaning of independence of these relationships. An *ICVC*, its *directors* and *depository* or a *manager* and a *trustee* of an *AUT* are referred to as "relevant parties" in this *guidance*.
- (2) There are at least three possible kinds of links between the relevant parties:
 - (a) *directors* in common;
 - (b) cross-shareholdings; and
 - (c) contractual commitments.
- (3) If any of these links exist between the relevant parties, the *FCA* will have regard to ■ COLL 6.9.3 G to ■ COLL 6.9.5 G in determining whether there is independence.

Independence: influence by directors

6.9.3
FCA

G

- (1) Independence is likely to be lost if, by means of executive power, either relevant party could control the action of the other.
- (2) The board of one relevant party should not be able to exercise effective control of the board of another relevant party. Arrangements which might indicate this situation include quorum provisions and reservations of decision-making capacity of certain *directors*.
- (3) For an *AUT*, the *FCA* would interpret the concept of *directors* in common to include any *directors* of associates of one relevant party who are simultaneously *directors* of the other relevant party.
- (4) For an *ICVC*, independence would not be met if:

- (a) a *director* of the *ICVC* or any *associate* of the *director* is a *director*, an employee, or both of the *depository*; or
- (b) a *director* of an *ICVC*:
 - (i) has a direct or indirect shareholding for investment purposes of more than 0.5% of the votes at a general meeting or a meeting of *holders* of the class of *share* concerned of the *depository* of that *ICVC*; or
 - (ii) has any other relationship with the *depository* which might reasonably be expected to give rise to a potential conflict of interest.

Independence: influence by shareholding

6.9.4
FCA

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Independence is likely to be lost if either of the relevant parties could control the actions of the other by means of shareholders' votes. The *FCA* considers this would happen if any shareholding by one relevant party and their respective *associates* in the other exceeds 15% of the voting *share* capital, either in a single *share* class or several *share* classes. The *FCA* would be willing, however, to look at cross-shareholdings exceeding 15% on a case-by-case basis to consider if there were exceptional grounds for concluding that independence was safeguarded by other means.

Independence: contractual commitments

6.9.5
FCA

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The *FCA* would encourage relevant parties to consult it in advance about its view on the consequences of any intended contractual commitment or relationship which could affect independence, whether directly or indirectly.

Undesirable or misleading names

6.9.6
FCA

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- (1) Regulation 15(9) of the *OEIC Regulations* and section 243(8) of the *Act* require that an *authorised fund's* name must not be undesirable or misleading. This section contains *guidance* on some specific matters the *FCA* will consider in determining whether the name of an *authorised fund* is undesirable or misleading. It is in addition to the requirements of regulation 19 of the *OEIC Regulations* (Prohibition on certain names).
- (2) The *FCA* will take into account whether the name of the *scheme*:
 - (a) is substantially similar to the name of another *authorised fund*;
 - (b) implies that the *authorised fund* has merits which are not, or might not be, justified;
 - (c) implies that the *authorised fund manager* has particular qualities, which may not be justified;
 - (d) is inconsistent with the *authorised fund's* investment objectives or policy;
 - (e) implies that the *authorised fund* is not an *authorised fund* (for example, describing the *authorised fund* as a "plan" or "account" are unlikely to be acceptable); and
 - (f) might mislead investors into thinking that *persons* other than the *authorised fund manager* are responsible for the *authorised fund*.

- (3) The *FCA* is unlikely to approve a name of an *authorised fund* that includes the word "guaranteed" unless:
 - (a) the guarantee is given by:
 - (i) an *authorised person*;
 - (ii) a *person* authorised by a *Home State regulator*; or
 - (iii) a *person* subject to prudential supervision in accordance with criteria defined by *EU* law or prudential rules at least as stringent as those laid down by *EU* law;

other than the *authorised fund manager* or the *depository*.
 - (b) the *authorised fund manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
 - (c) the guarantee covers all *unitholders* within the *authorised fund* and is legally enforceable by each *unitholder* who is intended to benefit from it or by a *person* acting on that *unitholder's* behalf;
 - (d) the guarantee relates to the total amount paid for a *unit* which includes any charge or other costs of buying or selling *units* in the *authorised fund*;
 - (e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and
 - (f) where the guarantee applies to different *classes* of *unit*, it is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes* of *unit*.
- (4) The name of an *authorised fund* may indicate a guaranteed capital return or income return or both but only if the total amount paid for a *unit* is guaranteed in accordance with (3).
- (5) The *FCA* is unlikely to approve a name of an *authorised fund* that includes words implying a degree of capital security (such as "capital protected" or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus*, and:
 - (a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
 - (b) the investment objective and investment policy for the *authorised fund* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.
- (6) When determining whether (5) is complied with, the *FCA* will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

Undesirable or misleading names: umbrellas

The *authorised fund manager* must ensure that the name of a *sub-fund* or of a *class of unit* is not undesirable or misleading.

6.9.8
FCA

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Undesirable or misleading names: umbrellas - guidance

When deciding whether ■ COLL 6.9.7R is complied with, the FCA will take into account ■ COLL 6.9.6G. ■ COLL 6.9.7R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

6.9.8A
FCA

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Restrictions on the use of the term 'money market fund'

An *authorised fund* or a *sub-fund* may only be named or marketed as a 'money market fund' if it is:

- (1) a *qualifying money market fund*; or
- (2) a *short-term money market fund*; or
- (3) a *money market fund*.

[Note: Box 1, paragraph 2 of CESR's guidelines on a common definition of European money market funds]

6.9.9
FCA

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Restrictions of business for UCITS management companies

A *UCITS management company* must not engage in any activities other than:

- (1) acting as:
 - (a) an *authorised fund manager* of an *authorised fund*; or
 - (b) an *operator* of any other *collective investment scheme* for which the *firm* is subject to prudential supervision;
- (2) activities for the purposes of or in connection with those in (1);
- (3) collective portfolio management, including without limitation:
 - (a) investment management;
 - (b) administration:
 - (i) legal and fund management accounting services;
 - (ii) *customer enquiries*;
 - (iii) valuation and pricing (including tax returns);
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of *unitholder register*;
 - (vi) distribution of income;
 - (vii) *unit issues and redemptions*;
 - (viii) contract settlements (including certificate dispatch); and
 - (ix) record keeping; and

(c) marketing;

(4) *managing investments* where the relevant portfolio includes one or more *financial instruments* ;

(5) *advising on investments* where:

(a) the *firm* has a *permission* for the activity in (4); and

(b) each of the instruments are *financial instruments*; and

(6) safeguarding and administration of *collective investment scheme units* where the *firm* has a *permission* for the activity in (4).

Connected activities: guidance

6.9.10

FCA

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

(2) The restrictions of business imposed by ■ COLL 6.9.9R reflect the position under Article 6 of the *UCITS Directive*. In accordance with recital (12) of the Directive 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*.

6

Notification to the FCA in its role as registrar of ICVCs

6.9.11

FCA

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An *ICVC* must notify the *FCA* within 14 *days* of the occurrence of any of the following:

(1) any amendment to the *instrument of incorporation*;

(2) any change in the address of the head office of the *ICVC*;

(3) any change of *director*;

(4) any change of *depository*;

(5) in respect of any *director* or *depository*, any change in the information mentioned in regulation 12(1)(b) or (c) of the *OEIC Regulations* (Applications for authorisation);

(6) any change of the auditor of the *ICVC*;

(7) any order in respect of the *ICVC* made by virtue of regulation 70 of the *OEIC Regulations* (Mergers and divisions).



6.10 Senior personnel responsibilities

Application

6.10.1

FCA

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- (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

FCA

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In complying with ■ SYSC 4.3.1 R (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 6.12.5 R (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

FCA

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 ■ COLL 6.10.2R (5).

[Note: article 9(5) of the *UCITS implementing Directive*]

6



6.11 Risk control and internal reporting

Application

6.11.1

FCA

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

FCA

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 6.12.3 R (Risk management process) or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*.

6.11.3

FCA

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[Note: articles 12(1) and 12(2) of the *UCITS implementing Directive*]

Where the risk management function required under ■ COLL 6.11.2 R (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 6.12.3 R (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

FCA

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 5.2.23 R (OTC transactions in derivatives), ■ COLL 5.2.23C R (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

FCA

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

FCA

G

In the *FCA'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 6.12.3 R (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

FCA

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 *FCA* 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

FCA

G

- (1) The risk management process in ■ COLL 6.12.3 R 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 6.6.4 R (General duties of the depository) and ■ COLL 6.6.14 R (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 6.12.3 R 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

FCA

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 6.11.2 R (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

FCA

G

UK UCITS management companies operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in ■ COLL 6.12.5 R (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

FCA

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 6.12.5 R;
 - (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 6.12.5 R; 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 *FCA* of any material changes to the risk management process.

[Note: article 39(1) and 39(2) of the *UCITS implementing Directive*]

6.12.8

FCA

G

UK UCITS management companies are advised that when they applied for *authorisation* from the *FCA* under the *Act*, their ability to comply with the requirements in

■ COLL 6.12.7 R would have been assessed by the *FCA* 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 *FCA* 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

FCA

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 5.2.11B R (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

FCA

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

FCA

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 6.2.16 R (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

FCA

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*]

6.12.13

FCA

G

CESR guidelines: Risk management principles for UCITS

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/content/Guidelines-Risk-management-principles-UCITS>



6.13 Record keeping

Application

6.13.1

FCA

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*.

6

Recording of portfolio transactions

6.13.2

FCA

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

FCA

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

FCA

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 6.13.2 R and ■ COLL 6.13.3 R for a period of at least five years or, in exceptional circumstances and where directed by the *FCA*, for

a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the *FCA* 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 6.13.2 R and ■ COLL 6.13.3 R in a medium that allows the storage of information in a way accessible for future reference by the *FCA*, and in such a form and manner that the following conditions are met:
 - (a) the *FCA* 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

FCA

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 6.13.2 R (Recording of portfolio transactions) and ■ COLL 6.13.3 R (Recording of subscription and redemption orders).

[Note: article 7(1) of the *UCITS implementing Directive*]

6.13.6

FCA

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 6.13.5 R as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the *UCITS implementing Directive*]

Particulars of the standard agreement between an EEA UCITS management company and a depositary

FCA

This table belongs to ■ COLL 6.6.4 R (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 *UCITS scheme* that is entrusted to the *depositary*;
 - (b) a description of the procedures to be followed where the *authorised fund manager* envisages a modification of the *instrument constituting the scheme* or the *prospectus* of the *UCITS scheme*, and identifying when the *depositary* should be informed, or where a prior agreement from the *depositary* is needed to proceed with the modification;
 - (c) a description of the means and procedures by which the *depositary* will transmit to the *authorised fund manager* all relevant information that the *authorised fund manager* 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 *authorised fund manager* and the *UCITS scheme* to have timely and accurate access to information relating to the accounts of the *UCITS scheme*;
 - (d) a description of the means and procedures by which the *depositary* will have access to all relevant information it needs to perform its duties;
 - (e) a description of the procedures by which the *depositary* has the ability to enquire into the conduct of the *authorised fund manager* 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 *authorised fund manager* can review the performance of the *depositary* in respect of the *depositary's* contractual obligations.

[Note: article 30 of the *UCITS implementing Directive*]
- (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 *UCITS scheme*, its *authorised fund manager* and *depositary* related to the *issue, cancellation, sale and redemption of units* of the *UCITS scheme*;

Contents of the standard agreement

- (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 *FCA* or the *Home State regulator* of the *EEA UCITS management company* to gain access to relevant *documents* 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 *UCITS implementing Directive*]

(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 *depository* or the *authorised fund manager* 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 *depository's* liability as referred to at **COLL 6.6.15 R (5)** (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 *UCITS implementing Directive*]

(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 *depository* and, in the event of that transition, the procedure by which the *depository* should send all relevant information to the other *depository*.

[Note: article 33 of the *UCITS implementing Directive*]

(5) Applicable law:

A provision specifying that the law of the *United Kingdom* applies to the agreement.

[Note: article 34 of the *UCITS implementing Directive*]

(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 *UCITS implementing Directive*]

(7) Scope of the agreement:

Where the agreement is to cover more than one *UCITS scheme* managed by the *authorised fund manager*, a provision listing the *UCITS schemes* covered by the agreement.

Contents of the standard agreement

[Note: article 36 last sentence of the *UCITS implementing Directive*]

(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 *UCITS implementing Directive*]

Chapter 7

Suspension of dealings and termination of authorised funds



7.1 Introduction

Application

7.1.1
FCA

R

(1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of 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 7.1.2 R (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
FCA

R

This table belongs to ■ COLL 7.1.1 R.

Rule	ICVC	ACD	Any other directors of an ICVC	Depository of an ICVC	Manager	Trustee
7.1.1	X	X	X	X	X	X
7.1.3	X	X	X	X	X	X
7.2.1	X	X		X	X	X
7.3.1	X	X	X	X		
7.3.2	X	X	X	X		
7.3.3	X	X	X			
7.3.4	X	X	X			
7.3.5		X	X			
7.3.6	X	X	X			
7.3.7	X	X	X	X		
7.3.8		X	X			
7.3.9		X				

<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>
7.3.10	X	X	X	X		
7.3.11		X				
7.3.12	X	X				
7.3.13 (1)		X	X			
7.3.13 (2)			X	X		
7.4					X	X
7.5		X	X	X	X	X
7.6		X	X	X	X	X
7.7	X	X	X	X	X	X

Note: x means "applies"

Purpose

7.1.3
FCA

G

- (1) This chapter helps to achieve the *statutory objective* of protecting investors by ensuring they do not buy or *redeem units* at a *price* that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to value, or to dispose of and obtain payment for, all or some of the *scheme property* of an *authorised fund* or *sub-fund*. ■ COLL 7.2.1 R(Requirement) sets out the circumstances in which an *authorised fund manager* must or may suspend dealings in *units* and the manner in which a suspension takes effect.
- (2) This chapter also helps with the *statutory objective* of protecting *consumers*, by providing a cost effective and fair means of winding up *authorised funds* and terminating *sub-funds* of *ICVCs* and *AUTs*. ■ EG 14 (Collective investment schemes) deals with the *FCA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

7



7.2 Suspension and restart of dealings

Requirement

7.2.1

FCA

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- (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, temporarily suspend the *issue, cancellation, sale and redemption of units* in an *authorised fund* (referred to in this chapter as "*dealings in units*"), where due to exceptional circumstances it is in the interest of all the *unitholders* in the *authorised fund*.
 - (1A) The *authorised fund manager* and the *depository* must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the *unitholders*.
 - (2) On suspension, the *authorised fund manager*, or the *depository* if it has required the *authorised fund manager* to suspend *dealings in units*, must:
 - (a) immediately inform the *FCA*, stating the reason for its action; and
 - (b) as soon as practicable give written confirmation of the suspension and the reasons for it to:
 - (i) the *FCA*; and
 - (ii) the *Home State regulator* in each *EEA State* in which the *authorised fund manager* holds itself out as willing to *sell* or *redeem units* of the *authorised fund* concerned.
 - (2A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.
 - (2B) In making the notification set out in (2A), the *authorised fund manager* must ensure that it:
 - (a) draws *unitholders'* particular attention to the exceptional circumstance which resulted in the suspension;

- (b) is clear, fair and not misleading; and
 - (c) informs *unitholders* how to obtain the information detailed in (2C).
- (2C) The *authorised fund manager* must ensure that it publishes (on its website or by other general means) sufficient details to keep *unitholders* appropriately informed about the suspension including, if known, its likely duration.
- (3) During a suspension:
- (a) none of the obligations in ■ COLL 6.2 (Dealing) apply; and
 - (b) the *authorised fund manager* must comply with as much of ■ COLL 6.3 (Valuation and pricing) as is practicable in the light of the suspension.
- (4) The suspension of *dealings* in *units* must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased.
- (4A) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FCA* of the results of this review and any change to the information provided in (2).
- (5) The *authorised fund manager* must inform the *FCA* of the proposed restart of *dealings* in *units* and immediately after the restart must confirm this by giving notice to the *FCA* and the authorities mentioned in (2)(b)(ii).
- (6) The *authorised fund manager* may agree, during the suspension, to *deal* in *units* in which case all *deals* accepted during, and outstanding prior to, the suspension will be undertaken at a *price* calculated at the first *valuation point* after restart of *dealing* in *units*, subject to (8).
- (7) This *rule* applies to a *sub-fund* as it applies to an *authorised fund*, and:
- (a) references to the *units* of the *class* or *classes* relate to that *sub-fund* and to the *scheme property* attributable to the *sub-fund*; and
 - (b) this *rule* can only apply to one or more *classes* of *units* without being applied to other *classes*, if it is in the interest of all the *unitholders*.

- (8) If an *authorised fund* operates *limited redemption arrangements*, and the event in (1) has affected a *valuation point*, the *authorised fund manager* must declare an additional *valuation point* as soon as possible after the restart of *dealings in units*.

[Note: article 45(2) of the *UCITS Directive*]

Temporary suspension of units of a master UCITS or qualifying master scheme

7.2.1A
FCA

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Where:

- (1) an *authorised fund manager* of a *UCITS scheme* which is a *master UCITS* or a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale and redemption* of its *units*, whether at its own initiative or at the request of the *FCA*; or
- (2) an *operator* of an *EEA UCITS scheme* which is a *master UCITS* or a *qualifying master scheme* 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*; or
- (3) an *authorised fund manager* of a *non-UCITS retail scheme* which is a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale or redemption* of its *units*, whether at its own initiative or at the request of the *FCA*; or
- (4) the *operator* of a *recognised scheme* which is a *qualifying master scheme* temporarily suspends the *issue, cancellation, sale or redemption* of its *units* whether at its own initiative or at the request of its *regulator*;

the *authorised fund manager* of each of its *feeder UCITS* (which is a *UCITS scheme*) or *feeder NURS* is entitled to suspend the *issue, cancellation, sale or redemption* of its *units* for the same period of time as the *master UCITS* or *qualifying master scheme*.

[Note: article 60(3) of the *UCITS Directive*]

Guidance

7.2.2
FCA

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- (1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the *unitholders*. Difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the *authorised fund manager* and *depository* would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the *unitholders*. Before an *authorised fund manager* and *depository* determines that it is the best interests of *unitholders* to suspend *dealing*, it should ensure that any alternative courses of action have been discounted.

- (2) The *authorised fund manager* will need to ensure that any suspension, while maintaining *unitholders'* interests, is temporary, of minimal duration and is consistent with the provisions of the *prospectus* and the *instrument constituting the scheme*.
- (3) During a suspension, the *authorised fund manager* should inform any *person* who requests a *sale* or *redemption* of *units* that all *dealings* in *units* have been suspended and that that *person* has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.



7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1
FCA

G

- (1) The winding up of an *ICVC* may be carried out under this section instead of by the court provided the *ICVC* is solvent and the steps required under regulation 21 the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the *ACD* and any other *directors* of the *ICVC*.
- (2) The termination of a *sub-fund* may be carried out under this section , instead of by the court, provided the *sub-fund* is solvent and the steps required under regulation 21 of the *OEIC Regulations* are complied with . Termination can only commence once the proposed alterations to the *ICVC's instrument of incorporation* and *prospectus* have been notified to the *FCA* and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) A *sub-fund* or *ICVC* may also be terminated or wound up in connection with a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (4) ■ COLL 7.3.3 G gives an overview of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

Special meanings for termination of a sub-fund of an ICVC

7.3.2
FCA

R

In this section, where a *sub-fund* of an *ICVC* is being terminated, references to:

- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (2) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

(4) liabilities, are references to liabilities of the *ICVC* allocated or attributable to the *sub-fund* to be terminated.

Guidance on winding up or termination

7.3.3
FCA

G

This table belongs to ■ COLL 7.3.1 G (4) (Explanation of COLL 7.3)

Summary of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

Notes: N = Notice to be given to the *FCA* under regulation 21 of *OEIC Regulations*

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.3.8 R(4))

Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 <i>days</i>	7.3.5 (2)
2	Send audited solvency statement to the <i>FCA</i> with copy to <i>depository</i>	By N + 21 <i>days</i>	7.3.5 (4) and (5)
3	Receive the <i>FCA</i> approval	N + one <i>month</i>	Regulation 21 of <i>OEIC Regulations</i>
4	Normal business ceases; notify <i>unitholders</i>	E	7.3.6
5	Realise proceeds, wind up, instruct <i>depository</i> accordingly	ASAP after E	7.3.7
6	Prepare final account or termination account & have account audited	On completion of W/U or termination	7.3.8
7	Send final account or termination account and auditor's report to the <i>FCA</i> & <i>unitholders</i>	Within 4 <i>months</i> of FAP	7.3.8(6)
8	Request <i>FCA</i> to revoke relevant <i>authorisation order</i> or update its records	On completion of W/U or termination	7.3.7(9)

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

7.3.4
FCA

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(1) An *ICVC* must not be wound up except :
(a) under this section; or

- (b) as an unregistered company under Part V of the Insolvency Act 1986.
- (1A) A *sub-fund* must not:
 - (a) be terminated except under this section; or
 - (b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the *OEIC Regulations*) as an unregistered company.
- (2) An *ICVC* must not be wound up or a *sub-fund* terminated under this section if there is a vacancy in the position of *ACD*.
- (3) An *ICVC* must not be wound up or a *sub-fund* terminated under this section:
 - (a) unless and until effect may be given, under regulation 21 of the *OEIC Regulations*, to proposals to wind up the affairs of the *ICVC* or to proposals to make the alterations to the *ICVC's instrument of incorporation* and *prospectus* that will be required if a *sub-fund* is terminated; and
 - (b) unless a statement has been prepared and sent or delivered to the *FCA* under ■ **COLL 7.3.5 R** (Solvency statement) and received by the *FCA* prior to satisfaction of the condition in (a).
- (4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an *ICVC* or terminate a *sub-fund* under this section must be taken:
 - (a) if an *extraordinary resolution* to that effect is passed; or
 - (b) when the period (if any) fixed for the duration of the *ICVC* or the *sub-fund* by the *instrument of incorporation* expires or any event occurs, for which the *instrument of incorporation* provides that the *ICVC* or the *sub-fund* is to be wound up or terminated; or
 - (c) on the date stated in any agreement by the *FCA* in response to a request from the *directors* for the winding up of the *ICVC* or a request for the termination of the *sub-fund*; or
 - (d) on the effective date of a duly approved *scheme of arrangement* which is to result in the *ICVC* ceasing to hold any *scheme property*; or
 - (e) in the case of a *sub-fund*, on the effective date of a duly approved *scheme of arrangement* which is to result in the *sub-fund* ceasing to hold any *scheme property*; or

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

Solvency statement

7.3.5
FCA

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- (1) Before notice is given to the *FCA* under regulation 21 of the *OEIC Regulations* of the proposals referred to in ■ COLL 7.3.4 R (3) , the *directors* must make a full enquiry into the *ICVC's* or, in the case of termination of a *sub-fund*, the *sub-fund's* affairs, business and property to determine whether the *ICVC* or the *sub-fund* will be able to meet all its liabilities.
- (2) The *ACD* must then, based on the results of this enquiry, prepare a statement either:
 - (a) confirming that the *ICVC* or the *sub-fund* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
 - (b) stating that such confirmation cannot be given.
- (3) This solvency statement must:
 - (a) relate to the *ICVC's* or the *sub-fund's* affairs, business and property at a date no more than 28 *days* before the date on which notice is given to the *FCA*;
 - (b) if there is more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD*; and
 - (c) if it contains the confirmation under (2)(a), be signed by at least one other *director* or, if there is no *director* other than the *ACD*, be signed by the *ACD*.
- (4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the *OEIC Regulations* (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.
- (5) The solvency statement must be sent or delivered to the *FCA* and the *depository* no later than 21 *days* after notice is given to the *FCA* in accordance with regulation 21 of the *OEIC Regulations*.

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7.3.6
FCA

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Consequences of commencement of winding up or termination

- (1) Winding up or termination must commence once the conditions referred to in ■ COLL 7.3.4 R (3) are both satisfied or, if later, once the events in ■ COLL 7.3.4 R (4) have occurred.

- (2) Once winding up or termination has commenced:
- (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *ICVC* or to the *units* and *scheme property* in the case of a *sub-fund*;
 - (b) the *ICVC* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.3.7 R (5) ;
 - (c) the *ACD* must cease to *sell* or redeem *units* or to arrange for the *issue* or *cancellation* of units, except in respect of the final *cancellation* under ■ COLL 7.3.7 R (5) ;
 - (d) no transfer of a *unit* may be registered and no other change to the *register of unitholders* may be made without the sanction of the *directors*;
 - (e) where winding up an *ICVC*, the *ICVC* must cease to carry on its business, except for its beneficial winding up; and
 - (f) the corporate status and corporate powers of the *ICVC* and (subject to the preceding provisions of this *rule*) the powers of the *directors* continue until the *ICVC* is dissolved.
- (3) If the *ACD* has not previously notified *unitholders* of the proposal to wind up the *ICVC* or terminate the *sub-fund*, the *ACD* must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the *unitholders*.

Manner of winding up or termination

7.3.7
FCA

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- (1) [deleted]
- (2) The *ACD* must, as soon as practicable after winding up or termination has commenced, cause the *scheme property* to be realised and the liabilities of the *ICVC* or the *sub-fund* to be met out of the proceeds.
- (3) The *ACD* must instruct the *depository* how such proceeds (until utilised to meet liabilities or make distributions to *unitholders*) must be held and those instructions must be prepared with a view to the prudent protection of creditors and *unitholders* against loss.
- (4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the *ICVC's* or the *sub-fund's* remaining liabilities, the *ACD* may arrange for the *depository* to make one or more interim distributions to the *unitholders* proportionately

to the right of their respective *units* to participate in *scheme property* at the commencement of the winding up or termination.

- (5) On or before the date on which the final account is sent to *unitholders* in accordance with ■ COLL 7.3.8 R (Final account and termination account), the *ACD* must arrange for all *units* in issue to be *cancelled* and for the *depository* to make a final distribution to the *unitholders*, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the *ICVC* or *sub-fund*).
- (6) Paragraphs (2) to (5) are subject to the terms of any *scheme of arrangement* sanctioned by an *extraordinary resolution* passed on or before the commencement of the winding up or termination.
- (7) Where the *ICVC* and one or more *unitholders* (other than the *ACD*) agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the *scheme property* which is proportionate to the right to participate in *scheme property* of that or those *unitholders*
- (8) In the case of (7), the *ACD* must cause the *ICVC* to distribute that part of the *scheme property* in specie to that or those *unitholders* in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the *ACD* appropriate to ensure that those *unitholders* bear the proportion of the liabilities and the expenses of the distribution attributable to their *units*.
- (9) The *depository* must notify the *FCA* once the winding up of the *ICVC* or the termination of a *sub-fund* (including compliance with ■ COLL 7.3.8 R is complete and at the same time the *ACD* or the *depository* must request the *FCA* to revoke the relevant *authorisation order* (on the winding up of an *ICVC*) or to update its records (on the termination of a *sub-fund* of an *ICVC*).
- (10) Where any sum of *money* stands to the account of the *ICVC* at the date of its dissolution or a *sub-fund* at the date of its termination , the *ACD* must arrange for the *depository* to pay or lodge that sum within one *month* after that date in accordance with regulation 33(4) or (5) of the *OEIC Regulations* (Dissolution in other circumstances).
- (11) [deleted]
- (12) [deleted]
- (13) [deleted]

(14) [deleted]

(15) [deleted]

7.3.7A

FCA

G

For the purposes of this section an *ICVC* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *ACD*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with ■ COLL 7.3.7 R (8) ; and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Final account and termination account

7.3.8

FCA

R

- (1) Once the *ICVC*'s affairs are wound up or termination of the *sub-fund* has been completed (including distribution or provision for distribution in accordance with ■ COLL 7.3.7 R (5)), the *ACD* must prepare an account of the winding up or termination showing:
 - (a) how it has been conducted; and
 - (b) how the *scheme property* has been disposed of.
- (2) The account in (1) must be, if there is:
 - (a) more than one *director*, approved by the board of *directors* and be signed on their behalf by the *ACD* and at least one other *director*; or
 - (b) no *director* other than the *ACD*, signed by the *ACD*.
- (3) Once signed, this account is the "final account" for the purposes of the winding up of an *ICVC* and the "termination account" for the purposes of the termination of a *sub-fund*.
- (4) The final account must state the date on which the *ICVC*'s affairs were wound up and the date stated must be regarded as the final *day* of the accounting period of the *ICVC* then running ('final accounting period') for the purpose of ■ COLL 4.5.
- (4A) The termination account must state the date on which the *sub-fund*'s affairs were terminated.

- (5) The *ACD* must ensure that the *ICVC*'s auditor makes a report in respect of the final account or termination account, which states the auditor's opinion whether the final account or termination account has been properly prepared for the purpose of (1).
- (6) Within four *months* of the date of the completion of the winding up of the *ICVC* or termination of the *sub-fund*, the *ACD* must send a copy of the final account or termination account and the auditor's report on it to the *FCA* and to each *person* who was a *unitholder* (or the first named of joint *unitholders*) immediately before the winding up or termination commenced.

Duty to ascertain liabilities

7.3.9
FCA

R

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

Reports and accounts

7.3.10
FCA

R

- (1) The *ACD* need not (as would be required under ■ COLL 4.5.13 R (Provision of short report)) prepare a short report relating to an *annual accounting period* or *half-yearly accounting period* which begins after commencement of winding up or termination, if the *directors* of the *ICVC*, after consulting the *depository*, have reasonably determined that this is not required in the interests of *unitholders*.
 - (1A) The *ACD* must consult with the *depository* before determining that a short report is not required in the interests of *unitholders*.
 - (2) Where (1) applies, a copy of the long report must be supplied free of charge to any *unitholder* upon request.
 - (3) Where (1) applies, the *ACD* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination including, if known, its likely duration.

(4) The *ACD* must send a copy of the information required by (3) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with ■ COLL 7.3.7 R (5).

7.3.10A
FCA

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- (1) The effect of ■ COLL 7.3.10 R (1), if exercised by the *directors* of the *ICVC*, is that the *ACD* must continue to prepare annual and half-annual long reports and to make them available to *unitholders* in accordance with ■ COLL 4.5.14 R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates at six-monthly or more frequent intervals.

Liabilities of the ACD

7.3.11
FCA

R

- (1) Except to the extent that the *ACD* can show that it has complied with ■ COLL 7.3.9 R (Duty to ascertain liabilities), the *ACD* is personally liable to meet any liability of an *ICVC* or a *sub-fund*, of which it is the *ACD*, wound up or terminated under this section (whether or not the *ICVC* has been dissolved or, in the case of the *sub-fund*, termination has been completed) that was not discharged before the completion of the winding up or termination.
- (2) Where winding up an *ICVC*, if the proceeds of the realisation of the assets attributable, or allocated to a particular *sub-fund* of an *umbrella ICVC* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *ACD* must pay to the *ICVC*, for the account of that *sub-fund* the amount of the deficit, unless and to the extent that the *ACD* can show that the deficit did not arise as a result of any failure by the *ACD* to comply with the *rules* in *COLL*.
- (3) The liabilities of the *ACD* under this *rule* create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the *ICVC* in the circumstances described in (2)).
- (4) The obligations of the *ACD* under this *rule* do not affect any other obligation of the *ACD* under these *rules* or the general law.

7.3.12

R

[deleted]

Miscellaneous

7.3.13
FCA

R

(1) If:

- (a) during the course, or as a result, of the enquiry referred to in ■ COLL 7.3.5 R (1) (Solvency statement), the *directors* become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that *rule*; or
- (b) after winding up or termination has commenced, the *ACD* becomes of the opinion that the *ICVC* or the *sub-fund* will be unable to meet all its liabilities within twelve *months* of the date of the statement provided under (a) of ■ COLL 7.3.5 R (2);

the *directors* must immediately present a petition or cause the *ICVC* or *sub-fund* to present a petition for the winding up of the *ICVC* or *sub-fund* as an unregistered company under Part V of the Insolvency Act 1986.

- (2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or termination has been sent to the *FCA*, there is a vacancy in the position of *ACD* :

- (a) the directors of the *ICVC* must immediately present or cause the *ICVC* or *sub-fund* to present; or
- (b) if there are no *directors*, the *depository* must immediately present;

a petition for the winding up of the *ICVC* or *sub-fund* as an unregistered company under Part V of the Insolvency Act 1986.



7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of COLL 7.4

7.4.1
FCA

G

- (1) This section deals with the circumstances and manner in which an *AUT* is to be wound up or a *sub-fund* of an *AUT* is to be terminated. Under section 256 of the *Act* (Requests for revocation of authorisation order), the *manager* or *trustee* of an *AUT* may request the *FCA* to revoke the *authorisation order* in respect of that *AUT*. Section 257 of the *Act* (Directions) gives the *FCA* the power to make certain directions.
- (2) The termination of a *sub-fund* under this section will be subject to section 251 of the *Act* (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the *trust deed* and *prospectus* have been notified to the *FCA* in writing and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) An *AUT* or a *sub-fund* of an *AUT* may also be wound up or terminated in connection with a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (4) ■ COLL 7.4.2A G gives an overview of the main steps in winding up an *AUT* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

Special meanings for termination of a sub-fund of an AUT

7.4.2
FCA

R

In this section, where a *sub-fund* of an *AUT* is being terminated, references to:

- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (2) a resolution or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

(4) liabilities, are references to liabilities of the *AUT* allocated or attributable to the *sub-fund* to be terminated.

Guidance on winding up or termination

7.4.2A

FCA

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This table belongs to ■ COLL 7.4.1 G (4) (Explanation of COLL 7.4)

Summary of the main steps in winding up an *AUT* or terminating a *sub-fund* under *FCA rules*

Notes: N = Notice to be given to the *FCA* under section 251 of the *Act*.

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.4.5 R (4))

Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
1	Receive <i>FCA</i> approval	N + one month	Section 251 of the <i>Act</i>
		On receipt of notice from the <i>FCA</i>	
2	Normal business ceases; notify <i>unitholders</i>	E	7.4.3R
3	<i>Trustee</i> to realise and distribute proceeds	ASAP after E	7.4.4R(1) to (5)
4	Send annual long report of <i>manager</i> and <i>trustee</i> to the <i>FCA</i>	Within 4 months of FAP	7.4.5R(5)
5	Request <i>FCA</i> to revoke relevant <i>authorisation order</i>	On completion of W/U	7.4.4R(6)

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

7.4.3

FCA

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(1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:

- (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *AUT* or to the *units* and *scheme property* in the case of a *sub-fund*;
- (b) the *trustee* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.4.4 R (1) or ■ (2) ;
- (c) the *manager* must cease to *sell* and redeem *units*;

- (d) the *manager* must cease to arrange the *issue* or *cancellation* of *units* under ■ COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final *cancellation* under ■ COLL 7.4.4 R (1) or ■ (2) ;
 - (dA) no transfer of a *unit* may be registered and no other change to the *register* of *unitholders* may be made without the approval of the *person* responsible for the *register* in accordance with ■ COLL 6.4.4 R (1); and
 - (e) the *trustee* must proceed to wind up the *AUT* or terminate the *sub-fund* in accordance with ■ COLL 7.4.4 R .
- (1A) If the *manager* has not previously notified *unitholders* of the proposal to wind up the *AUT* or terminate the *sub-fund*, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the *unitholders*.
- (2) The events referred to in (1) are:
- (a) the *authorisation order* of the *AUT* is revoked;
 - (b) alterations to the *AUT's trust deed* and *prospectus* that will be required if the *sub-fund* is terminated taking effect in accordance with section 251 of the *Act*;
 - (c) the passing of an *extraordinary resolution* winding up the *AUT* or terminating the *sub-fund*, provided *FCA's* prior consent to the resolution has been obtained by the *manager* or *trustee*;
 - (d) in response to a request to the *FCA* by the *manager* or the *trustee* for the revocation of the *authorisation order*, the *FCA* has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the *AUT*, the *FCA* will agree to that request;
 - (e) the expiration of any period specified in the *trust deed* as the period at the end of which the *AUT* is to be wound up or the *sub-fund* is to terminate;
 - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the *AUT* or *sub-fund* that is subject to the *scheme of arrangement* being left with no property; or
 - (g) the date on which a *relevant pension scheme* is notified in writing by the Occupational Pensions Schemes Regulatory Authority that the *scheme* is no longer registered under the Welfare and Pensions Reform Act 1999 as a *stakeholder pension scheme*.

- (3) This *rule* is without prejudice to ■ COLL 7.2.1 R(Requirement) and to any order or direction made under section 257 or 258 of the *Act*.

Manner of winding up or termination

7.4.4
FCA

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- (1) Where ■ COLL 7.4.3 R (2) (f) applies, the *trustee* must *cancel* all *units* in issue and wind up the *AUT* or terminate the *sub-fund* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within ■ COLL 7.4.3 R :
- (a) once the *AUT* falls to be wound up or *sub-fund* terminated, the *trustee* must realise the *scheme property*;
 - (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *trustee* must *cancel* all *units* in issue and distribute the proceeds of that realisation to the *unitholders* and the *manager* proportionately to their respective interests in the *AUT* or *sub-fund* as at the date, or the date of the relevant event referred to in ■ COLL 7.4.3 R; and
 - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *trustee* after one year from the date on which they became payable must be paid by the *trustee* into court (or, in Scotland, as the court may direct), subject to the *trustee* having a right to retain any expenses properly incurred by him relating to that payment.
- (3) For an *AUT* which is a *relevant pension scheme*, payments must not be made to *unitholders* in the *AUT*, the realisation proceeds having to be paid by the *trustee* in accordance with the *trust deed*.
- (4) Where the *trustee* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *trustee* must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *trustee* for ensuring that, that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the events referred to in ■ COLL 7.4.3 R (2)(c), ■ COLL 7.4.3 R (2)(d), ■ COLL 7.4.3 R (2)(e) or ■ COLL 7.4.3 R (2) (f), the *trustee* must notify the *FCA* in writing and at the same time the *manager* or *trustee* must request the *FCA* to revoke the relevant *authorisation order*.

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7.4.4A
FCA

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For the purposes of this section, an *AUT* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *trustee* after consulting the *manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with
■ COLL 7.4.4 R (5) ; and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Accounting and reports during winding up or termination

7.4.5
FCA

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(1) For any *annual* or *half-yearly accounting period* which begins after commencement of the winding up or termination, the *manager* is not required to prepare a short report (■ COLL 4.5.13 R (Provision of short report)), provided that it has reasonably determined that the report is not required in the interests of the *unitholders*.

(1A) The *manager* must consult the *trustee* before determining that a short report is not required in the interests of *unitholders*.

(2) Where (1) applies, a copy of the long report must be supplied free of charge to any *unitholder* upon request.

(2A) Where (1) applies, the *manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.

(2B) The *manager* must send a copy of the information required by ■ COLL 7.4.5 R (2A) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with ■ COLL 7.4.4 R (2)(b).

(3) [deleted]

(4) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.

(5) Within four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund*, the annual reports of the *manager* and *trustee* must be published and sent to the *FCA*.

7.4.6
FCA

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- (6) The *manager* must, on publication of the annual long report in (5), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free-of-charge on request.
- (1) The effect of ■ COLL 7.4.5 R (1), if exercised by the *manager* and *trustee*, is that the *manager* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with ■ COLL 4.5.14 R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates to *unitholders* at six-monthly or more frequent intervals.

7



7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

7.5.1
FCA

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- (1) The *FCA* expects that the majority of requests it will receive for the winding up of an *authorised fund* (under regulation 21(1) of the *OEIC Regulations* or under section 256 of the *Act*) or termination of a *sub-fund* will be from *authorised fund managers* and *depositories* who consider that the *AUT*, *ICVC* or *sub-fund* in question is no longer commercially viable.
- (2) It is in *consumers'* interests to minimise, as far as possible, the period between which the *FCA* receives such requests and responds to them. To assist the *FCA* in arriving at a quick decision, based on all the relevant factors, it would be helpful for the *FCA* to receive the information listed at ■ COLL 7.5.2 G . Further information, however, may be requested by the *FCA* after receipt of the information, depending on the individual circumstances of the case.

Information to be provided to the FCA

7.5.2
FCA

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The information referred to in ■ COLL 7.5.1 G is listed below:

- (1) the name of the *authorised fund* or *sub-fund*;
- (2) the size of the *authorised fund* or *sub-fund*;
- (3) the number of *unitholders*;
- (4) whether dealing in *units* has been suspended;
- (5) why the request is being made;
- (6) what consideration has been given to the *authorised fund* or *sub-fund* entering into a *scheme of arrangement* with another *regulated collective investment scheme* and the reasons why a *scheme of arrangement* is not feasible;
- (7) (a) whether *unitholders* have been informed of the intention to seek termination, winding up or revocation; and
(b) if not, when they will be informed;
- (8) details of any proposed preferential switching rights offered or to be offered to *unitholders*;

- (9) details of any proposed rebate of charges to be made to *unitholders* who recently purchased *units*;
- (10) where the costs of winding up or termination will fall;
- (11) the *depository's*:
 - (a) statement whether having taken reasonable care it is certain that a *scheme of arrangement* is not feasible and explaining what steps have been considered that would result in the *authorised fund* or *sub-fund* not needing to wind up or terminate (for example, appointing a replacement *authorised fund manager*); and
 - (b) confirmation that it will not or does not expect to qualify a report made in accordance with ■ COLL 4.5.11 R (Report of the depository);
- (12) the preferred date for the *FCA's* determination to revoke authorisation or the date for the commencement of the winding up or termination; and
- (13) any additional information or material considered to be relevant to the *FCA's* decision under sections 251 and 256 of the *Act* or regulation 21 of the *OEIC Regulations* (as appropriate).



7.6 Schemes of arrangement

Schemes of arrangement: explanation

7.6.1
FCA

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- (1) A proposal that an *authorised fund* should be involved in a *scheme of arrangement* is subject to written notice to and approval by the *FCA* under section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) or regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company). Effect cannot be given to such a change except in accordance with that section or regulation.
- (2) The *issue of units* in exchange for assets as part of an approved *scheme of arrangement* is subject to:
 - COLL 6.2.5 R and ■ COLL 6.2.6 R (Issue and cancellation of units);
 - COLL 6.2.15 R (In specie issue and redemption); and
 - COLL 7.6.2 R (Scheme of arrangement: requirements).
- (3) ■ COLL 7.6.2 R (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*.

Schemes of arrangement: requirements

7.6.2
FCA

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- (1) If a *scheme of arrangement* is entered into in relation to an *authorised fund* ("transferor fund") or a *sub-fund* of a *scheme* which is an *umbrella* ("transferor sub-fund"), an *authorised fund manager* must ensure that the *unitholders* of the transferor fund or *sub-fund* do not become *unitholders of units* in a *collective investment scheme* other than a *regulated collective investment scheme*.
- (2) For a *UCITS scheme* or a *sub-fund* of a *UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* also excludes any *recognised scheme* other than a *scheme* recognised under section 264 of the *Act* (Schemes constituted in other EEA States).

- (3) Where, for the purpose of a *scheme of arrangement*, it is proposed that *scheme property* of an *authorised fund* should become the property of another *regulated collective investment scheme* or *sub-fund* of a *regulated collective investment scheme*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund*, unless (4) applies.
- (4) Where, for the purposes of a *scheme of arrangement*, it is proposed that *scheme property* attributable to a *sub-fund* of an *umbrella* should become the property of another *regulated collective investment scheme* or of another *sub-fund* of a *regulated collective investment scheme* (whether or not of that *umbrella*), the proposal must not be implemented without the sanction of:
 - (a) an *extraordinary resolution* of the *unitholders* in the *sub-fund* of that *umbrella*; and
 - (b) (unless implementation of the *scheme of arrangement* is not likely to result in any material prejudice to the interests of the *unitholders* in any other *sub-fund* of that *umbrella*) an *extraordinary resolution* of the *unitholders* of *units* in that *umbrella*.
- (5) If it is proposed that an *authorised fund* or *sub-fund* of an *umbrella* should receive property (other than its first property) as a result of a *scheme of arrangement* (or an arrangement equivalent to a *scheme of arrangement*) which is entered into by some other *collective investment scheme* or *sub-fund*, or by a *body corporate*, the proposal must not be implemented without the sanction of an *extraordinary resolution* of the *unitholders* in the *authorised fund* or (as the case may be) of the *class* or *classes* of *units* related to the *sub-fund* unless (6) applies.
- (6) This paragraph (6) applies if the *directors* of the *ICVC* or the *manager* and *trustee* of the *AUT* agree that the receipt of the property concerned for the account of the *ICVC* or *AUT*:
 - (a) is not likely to result in any material prejudice to the interests of the *unitholders* of the *authorised fund*;
 - (b) is consistent with the objectives of the *authorised fund* or *sub-fund*; and
 - (c) could be effected without any breach of a *rule* in
 - COLL 5(Investment and borrowing powers).



7.7 UCITS mergers

Application

7.7.1
FCA

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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
FCA

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- (1) The effect of ■ COLL 7.7.1 R, 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
FCA

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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
FCA

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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 *FCA* 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 7.6.2 R (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 7.6.2 R (5) and ■ (6) .

[Note: articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

Meetings of unitholders

7.7.5

FCA

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- (1) The effect of ■ COLL 7.7.4 R (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 4.4.6 R (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

FCA

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- (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 *FCA* 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 *FCA* 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 *FCA* 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 *FCA* 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

- (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

7.7.7
FCA

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- (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

FCA

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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

FCA

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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 7.7.7 R (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

FCA

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- (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 7.7.4 R (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 *FCA* 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

FCA

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- (1) The information *document* that must be provided to *unitholders* under ■ COLL 7.7.10 R (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

FCA

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- (1) The information provided to *unitholders* under ■ COLL 7.7.10 R and ■ COLL 7.7.13 R 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 7.7.10 R (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

FCA

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 7.7.10 R (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;

- 7
- (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 7.7.10 R (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 7.7.10 R (3)(d) must include:
- (a) where required by ■ COLL 7.6.2 R (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
FCA

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 R (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 7.7.13 R (2) , ■ (3) , and ■ (5) .

[Note: article 4 of the *UCITS implementing Directive No 2*]

7.7.15
FCA

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- (1) An *authorised fund manager* may add other information to that which is required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R 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 7.7.13 R (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 7.7.13 R (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

FCA

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

FCA

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- (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

FCA

R

Between the date when the information required under ■ COLL 7.7.10 R 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

FCA

R

The *authorised fund manager* of the *merging UCITS* and the *receiving UCITS* must provide the information required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R to *unitholders* in a *durable medium*.

[Note: article 7 of the *UCITS implementing Directive No 2*]

Merger costs

7.7.20

FCA

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

FCA

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- (1) In a *domestic UCITS merger*, the effective date of the merger will be the date specified by the *FCA* 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 *FCA* 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 *FCA* 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 7.7.4 R (2)(a) (UCITS mergers).

[Note: article 47 of the *UCITS Directive*]

Confirmation obligation on completion of a UCITS merger

7.7.22

FCA

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 *FCA* that the merger transfer is complete.

[Note: article 48(4) of the *UCITS Directive*]

7.7.23

FCA

G

Regulation 13 of the *UCITS Regulations 2011* sets out the conditions that must be fulfilled for a merger transfer to be considered complete.

Chapter 8

Qualified investor schemes

8.1 Introduction

Application

8.1.1

FCA

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- (1) This chapter applies to:
- (a) an *authorised fund manager* of an AUT or an ICVC;
 - (b) any other *director* of an ICVC;
 - (c) a *depository* of an AUT or an ICVC; and
 - (d) an ICVC,
- which is a *qualified investor scheme*.

- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *qualified investor schemes*.

Purpose

8.1.2

FCA

G

- (1) This chapter assists in achieving the *statutory objective* of protecting *consumers* by providing an appropriate degree of protection in respect of *authorised funds* that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in *retail schemes*.
- (2) This section ceases to apply where a *qualified investor scheme* has converted to be authorised as a *UCITS scheme* or a *non-UCITS retail scheme*.

Qualified investor schemes: eligible investors

8.1.3

FCA

R

- (1) The *authorised fund manager* of a *qualified investor scheme* must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that falls into one or more of the categories set out in
- COLL 8 Annex 1 R(Qualified Investor Scheme: eligible investors)
- .
- (2) The *authorised fund manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable

for it to rely on relevant information provided by another *person*.

Qualified investor schemes - explanation

8.1.4

FCA

G

- (1) *Qualified investor schemes* are *authorised funds* which may only be sold to sophisticated investors. Therefore, the *authorised fund manager* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to the *client* types set out in COLL 8 Annex 1R .
- (2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for retail *schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

Application and notification procedures

8.1.5

FCA

G

Details of the application procedures in respect of *qualified investor schemes* are contained in ■ COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the *FCA* .

8.2 Constitution

Application

8.2.1

FCA

R

This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

Classes of unit

8.2.2

FCA

R

A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the scheme*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

Names of schemes, sub-funds, and classes of units

8.2.3

FCA

R

- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
- (2) An *authorised fund* or a *sub-fund* may only be named or marketed as a 'money market fund' if it is:
 - (a) a *short-term money market fund*; or
 - (b) a *money market fund*.

[Note: Box 1, paragraph 2 of *CESR's guidelines on a common definition of European money market funds*]

Undesirable and misleading names

8.2.4

FCA

G

■ COLL 6.9.6 G (Undesirable or misleading names) contains *guidance* as to names which may be undesirable or misleading.

Instrument constituting the scheme

8.2.5

FCA

R

The statements and provisions required by ■ COLL 8.2.6 R must be included in the *instrument constituting the scheme* of a *qualified investor scheme*.

8.2.6

FCA

R

Table: contents of the instrument constituting the scheme

This table belongs to ■ COLL 8.2.5 R

- 1 Description of the authorised fund**
- Information detailing:**
- (1) the name of the *authorised fund*;
 - (2) that the *authorised fund* is a *qualified investor scheme*; and
 - (3) in the case of an *ICVC*, whether the head office of the *company* is situated in England and Wales or Wales or Scotland or Northern Ireland.
- Property Authorised Investment Funds**
- 1A For a *property authorised investment fund*, a statement that:**
- (1) it is a *property authorised investment fund*;
 - (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
 - (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* in accordance with 6A if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.
- 2 Constitution**
- The following statements:**
- (1) the *scheme property* of the *scheme* is entrusted to a *depository* for safekeeping (subject to any exception permitted by the *rules*);
 - (2) if relevant, the duration of the *scheme* is limited and, if so, for how long;
 - (3) charges and expenses of the *scheme* may be taken out of *scheme property*;
 - (4) for an *ICVC*:
 - (a) what the maximum and minimum sizes of the *scheme's* capital are; and
 - (b) the *unitholders* are not liable for the debts of the *company*; and
 - (4A) for an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities

of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;

- (5) for an *AUT*:
- (a) the *trust deed*:
 - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
 - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
 - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
 - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
 - (i) the *scheme* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
 - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);
 - (c) a *unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and
 - (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*.

3 Investment objectives

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

4 Units in the scheme

A statement of:

- (1) the *classes of units* which the *scheme* may issue, indicating, for a *scheme* which is an *umbrella*, which *class* or *classes* may be issued in respect of each *sub-fund*; and
- (2) the rights attaching to *units* of each *class* (including any provisions for the expression in two denominations of such rights).

5 Limitation on issue of and redemption of units**Details as to:**

- (1) the provisions relating to any restrictions on the right to redeem *units* in any *class*; and
- (2) the circumstances in which the issue of the *units* of any particular *class* may be limited.

6 Income and distribution

Details of the *person* responsible for the calculation, transfer, allocation and distribution of income for any *class* of *unit* in *issue* during the accounting period.

Redemption or cancellation of units on breach of law or rules

6A A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

7 Base currency

A statement of the *base currency* of the *scheme*.

8 Meetings

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for *unitholders*.

9 Powers and duties of the authorised fund manager and depositary

Where relevant, details of any function to be undertaken by the *authorised fund manager* and *depositary* which the *rules* in *COLL* require to be stated in the *instrument constituting the scheme*.

10 Termination and suspension**Details of:**

- (1) the grounds under which the *authorised fund manager* may initiate a suspension of the *scheme* and any associated procedures; and
- (2) the methodology for determining the rights of *unitholders* to participate in the *scheme property* on winding up.

10A Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

11 Other relevant matters

Details of those matters which enable the *scheme*, *authorised fund manager* or *depository* to obtain any privilege or power conferred by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the scheme*.

Limited issue

8.2.7

FCA

R

Units whose *issue* may be limited can only be issued if permitted by the *instrument constituting the scheme*, under the conditions set out in the *prospectus* and provided that this will not materially prejudice any existing *unitholders* in the *scheme*.

8.3 Investor relations

Application

8.3.1
FCA

R

This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* of a *qualified investor scheme*.

Drawing up and availability of prospectus

8.3.2
FCA

R

- (1) An *authorised fund manager* must ensure that a *prospectus* of a *qualified investor scheme* is drawn up which contains the information, specified in ■ COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the *authorised fund manager* must:
 - (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
 - (b) include the date of any revision in a prominent manner in the revised *prospectus* ;
 - (c) send a copy of the original and any revised *prospectus* to the *FSA* ; and
 - (d) review the *prospectus* periodically and revise it to take account of any significant change or new matter.
- (2) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (3) An *ICVC* or the *manager* of an *AUT* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *qualified investor scheme* prior to the purchase of any *units*.

False or misleading prospectus

8.3.3
FCA

R

The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

8.3.4

FCA

R

Table: contents of qualified investor scheme prospectus

This table belongs to ■ COLL 8.3.2 R.

1	<p>Document status</p> <p>A statement that this document is the <i>prospectus</i> of the <i>authorised fund</i> valid as at a particular date which shall be the date of the <i>document</i>.</p>
2	<p>Description of the authorised fund</p> <p>Information detailing:</p> <ol style="list-style-type: none"> (1) the name of the <i>authorised fund</i>; (2) that the <i>authorised fund</i> is either an <i>ICVC</i> or an <i>AUT</i>; (3) that the <i>scheme</i> is a <i>qualified investor scheme</i>; (4) where relevant, that the <i>unitholders</i> in an <i>ICVC</i> are not liable for the debts of the <i>authorised fund</i>; (5) where relevant, the address of the <i>ICVC's</i> head office and the address in the <i>United Kingdom</i> for service on the <i>ICVC</i> of documents required or authorised to be served on it; (6) the effective date of the <i>authorisation order</i> made by the <i>FCA</i> and, if the duration of the <i>authorised fund</i> is not unlimited, when it will or may terminate; (7) the <i>base currency</i> for the <i>authorised fund</i>; (8) where relevant, the maximum and minimum sizes of the <i>ICVC's</i> capital; and (9) the circumstances in which the <i>authorised fund</i> may be wound up under the <i>rules</i> in <i>COLL</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up.
3	<p>Investment objectives and policy</p> <ol style="list-style-type: none"> (1) Sufficient information to enable a <i>unitholder</i> to ascertain: <ol style="list-style-type: none"> (a) the investment objectives of the <i>authorised fund</i>; (b) the <i>authorised fund's</i> investment policy for achieving those investment objectives, including: <ol style="list-style-type: none"> (i) the general nature of the portfolio and any intended specialisation; (ii) the policy for the spreading of risk in the <i>scheme property</i>; and (iii) the policy in relation to the exercise of borrowing powers; (c) a description of any restrictions in the assets in which investment may be made; and

- (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) For investment in immovables :
 - (a) the countries or territories of immovables in which the *authorised fund* may invest;
 - (b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
 - (c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.
- (3) If intended, whether the *scheme property* may consist of *units in collective investment schemes* ("second schemes") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as:
 - (a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and
 - (b) the extent to which any such charges will be reimbursed to the *scheme*.
- (4) If intended, whether the *scheme* may enter into *stock lending* transactions and, if so, what procedures will operate and what *collateral* will be required.
- (5) Where a *scheme* is a *feeder scheme* which (in respect of investment in *units* in a single *collective investment scheme*) is *dedicated* to *units* in a *collective investment scheme*, details of the master *scheme* and the minimum (and, if relevant, maximum) investment that the *feeder scheme* may make in it;
- (6) Where the *scheme* is a *money market fund* or a *short-term money market fund*, a statement identifying it as such a fund and a statement that the *scheme's* investment objectives and policies will meet the conditions in the definition of *money market fund* or *short-term money market fund*, as appropriate.

4 Distributions and accounting dates

Relevant details of accounting and distribution dates and a description of the procedures:

- (1) for determining and applying income (including how any distributable income is paid); and
- (2) relating to unclaimed distributions.

5 The characteristics of units in the authorised fund

Information as to:

- (1) the names of the *classes of units* in issue or available for *issue* and the rights attached to them in so far as they vary from the rights attached to other *classes*;
- (2) how *unitholders* may exercise their voting rights and what these are; and
- (3) the circumstances where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required.

6 The authorised fund manager**The following particulars of the *authorised fund manager*:**

- (1) its name and the nature of its corporate form;
- (2) the country or territory of its incorporation;
- (3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
- (4) if it is a *subsidiary*, the name of its ultimate *holding company* and the country or territory in which that *holding company* is incorporated;
- (5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the *United Kingdom*;
- (6) the amount of its issued share capital and how much of it is paid up;
- (7) for an *ICVC*, a summary of the material provisions of the contract between the *ICVC* and the *authorised fund manager* which may be relevant to *unitholders* including provisions (if any) relating to termination, compensation on termination and indemnity; and
- (8) for an *AUT*, the names of the *directors* of the *manager*.

7 Directors of an ICVC, other than the ACD**Other than for the *ACD*:**

- (1) the names and positions in the *ICVC* of the *directors*; and
- (2) the manner, amount and calculation of the *remuneration* of the *directors*.

8 The depositary**The following particulars of the *depositary*:**

- (1) its name and the nature of its corporate form;
- (2) the country or territory of its incorporation;

- (3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and
- (4) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*.

9 The investment adviser

If an *investment adviser* is retained in connection with the business of the *authorised fund*, its name and whether or not it is authorised by the *FCA*.

10 The auditor

The name of the auditor of the *authorised fund*.

11 The register of unitholders

Details of the address in the *United Kingdom* where the *register of unitholders* is kept and can be inspected by *unitholders*.

12 Payments out of the scheme property

The payments that may be made out of the *scheme property* to any *person* whether by way of *remuneration* for services, or reimbursement of expense and for each category of *remuneration* or expense, the following should be specified:

- (1) the current rates or amounts of such *remuneration*;
- (2) how the *remuneration* will be calculated and accrue and when it will be paid;
- (3) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
 - (a) introduce a new category of *remuneration* for its services; or
 - (b) increase the basis of any current charge; or
 - (c) change the basis of the treatment of a payment from the *capital property* set out in COLL 8.5.13 R (2) (Payments);

particulars of that introduction or increase and when it will take place;
- (4) the types of any other charges and expenses that may be taken out of the *scheme property*; and
- (5) if, in accordance with COLL 8.5.13 R (2), all or part of the *remuneration* or expense are to be treated as a capital charge:
 - (a) that fact; and
 - (b) the basis of the charge which may be so treated.

13 Dealing

Details of:

- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale and redemption of units*;
- (2) the procedures for effecting:
 - (a) the *issue and cancellation of units*;
 - (b) the *sale and redemption of units*; and
 - (c) the settlement of transactions;
- (3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in **COLL 8.5.11 R (3) (Sale and redemption)** may be applied;
- (4) the circumstances in which the *redemption of units* may be suspended;
- (5) the *days* and times in the *day* on which recalculation of the *price* will commence;
- (6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
 - (a) any one *person* may hold; and
 - (b) may be the subject of any one transaction of *sale or redemption*;
- (7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption of units in specie*;
- (8) the circumstances in which the further *issue of units* in any particular *class* may be limited and the procedures relating to this;
- (9) the circumstances in which direct *issue or cancellation of units* by the *ICVC* or the *trustee* (as appropriate) may occur and the relevant procedures for such *issues and cancellations*; and
- (10) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer.

14 Valuation of scheme property**Details as to:**

- (1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a descrip-

tion of any circumstance where the *scheme property* may be specially valued;

- (2) in relation to each purpose for which the *scheme property* must be valued, the basis on which it will be valued; and
- (3) how the *price of units* of each *class* will be determined, including whether a forward or *historic price* basis is to be applied.

15 Sale and redemption charges

If the *authorised fund manager* makes any charges on *sale* or *redemption of units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

15A Property Authorised Investment Funds

For a *property authorised investment fund*, a statement that:

- (1) it is a *property authorised investment fund*;
- (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
- (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:
 - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
 - (b) in the interests of the *unitholders* as a whole.

16 General information

Details as to:

- (1) when annual and half- yearly reports will be published; and
- (2) the address at which copies of the *instrument constituting the scheme*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

17 Information on the umbrella

In the case of a *scheme* which is an *umbrella*, the following information:

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption* and *sale*;

- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price of units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*; and
- (5) for an *ICVC*, that:
 - (a) its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose; and
 - (b) while the provisions of the *OEIC Regulations* provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations*.

18 Application of the prospectus contents to an umbrella

For a *scheme* which is an *umbrella*, information required must be stated:

- (1) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and
- (2) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

18A Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles* a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* is to enable the holding of overseas immovables by the *scheme*.

19 Additional information

Any other material information which is within the knowledge of *the directors* of an *ICVC* or the *manager* of an *AUT*, or which the *directors* or *manager* would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating.

Report and accounts

8.3.5

FCA

R

- (1) The *authorised fund manager* must prepare a report in respect of each *annual accounting period* and *half-yearly accounting period*.
- (2) [deleted]
- (2A) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.
- (4) [deleted]
- (5) The *authorised fund manager* must provide free of charge on the request of any *person* eligible to invest in the *scheme* a copy of the latest annual or half-yearly report before the conclusion of any sale to such *person*.
- (6) The *authorised fund manager* must provide a copy of each annual and half-yearly report to the *FCA*.
- (7) For a *scheme* which is an *umbrella*, any annual report provided under (3) or (5) may be a report prepared under ■ COLL 8.3.5A R (3), but the *authorised fund manager* must nevertheless provide free of charge the report prepared under ■ COLL 8.3.5A R (2) if a *unitholder* or any other *person* eligible to invest in the *scheme* requests it.

Contents of the annual report

8.3.5A

FCA

R

- (1) An annual report, other than for a *scheme* which is an *umbrella*, must contain:
 - (a) the accounts for the *annual accounting period* prepared in accordance with the requirements of the *IMA SORP*;
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R (Authorised fund manager's report);

- (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R (Report of the depository); and
 - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor).
- (2) An annual report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:
- (a) for each *sub-fund*, the accounts required by (1)(a) and the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
 - (b) an aggregation of the accounts required by (a);
 - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
 - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual report for any one or more individual *sub-funds* of the *umbrella*, in which case it must contain:
- (a) for the *sub-fund*, the accounts required by (1)(a) and the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
 - (b) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
 - (c) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (4) The *directors* of an *ICVC* or the *manager* of an *AUT* must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* or *sub-fund* for the relevant *annual accounting period*, and of the financial position of the *authorised fund* or *sub-fund* as at the end of that period.

Contents of the half-yearly report

8.3.5B

FCA

R

- (1) A half-yearly report on an *authorised fund* or *sub-fund* must contain:
 - (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
 - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R.

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18

- (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* may choose whether the half-yearly report is prepared for the *umbrella* as a whole, or for each individual *sub-fund*, or both.

Authorised fund manager's report

8.3.5C

FCA

R

The report of the *authorised fund manager* must include:

- (1) a review of the investment activities during the period to which the report relates;
- (2) particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report; and
- (3) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

Report of the depositary

8.3.5D

FCA

R

- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The *depositary's* report must contain:
 - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
 - (b) a statement whether in any material respect:
 - (i) the *issue, sale, redemption and cancellation* and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the scheme*; and
 - (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

Signing of annual and half-yearly reports

8.3.5E

FCA

R

The annual reports in ■ COLL 8.3.5AR (1) and ■ (2) and the half-yearly reports in ■ COLL 8.3.5BR (1) must:

- (1) in the case of an *ICVC*, if there is:
 - (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or

- (b) no *director* other than the *ACD*, be signed by the *ACD*;
- (2) in the case of an *AUT*, if the *authorised fund manager* has:
 - (a) more than one director, be signed by at least two directors of the *authorised fund manager*; or
 - (b) only one director, be signed by the director of the *authorised fund manager*.

Alterations to the scheme and notices to unitholders

8.3.6

FCA

R

- (1) Any proposed change which would be reasonably considered to be a fundamental change to the *scheme* requires the prior sanction of an ordinary resolution of the *unitholders*.
- (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *unitholders* to become effective.
- (3) Alterations affecting only a particular *sub-fund* or *class of units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class of units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
- (4) This *rule* and ■ COLL 8.3.8 R (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class of units* rather than the *scheme* or *sub-fund* as a whole.

Alterations to the scheme and notices to unitholders: guidance

8.3.7

FCA

G

Although account should be taken of the *guidance* on fundamental changes (■ COLL 4.3.5 G (Guidance on fundamental changes)) and significant changes (■ COLL 4.3.7 G (Guidance on significant changes)) the impact of any change to the *scheme* should be assessed individually based on the nature of the *scheme* and its investor profile.

Meetings

8.3.8

FCA

R

- (1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the *instrument constituting the scheme* and be reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all proceedings to which ■ COLL 8.3.6 R (Alterations to the scheme and notices to unitholders) and this *rule* are relevant.

-
- (3) The provisions in ■ COLL 4.4.12 R (Notices to unitholders), ■ COLL 4.4.13 R (Other notices) and ■ COLL 4.4.14 G (References to writing and electronic documents) apply in relation to *qualified investor schemes*.

8.4 Investment and borrowing powers

Application

8.4.1

FCA

R

This section applies to an *ICVC* which is a *qualified investor scheme* and an *authorised fund manager* and a *depository* of a *qualified investor scheme*.

8.4.1A

FCA

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- (1) Where this section refers to a second *scheme*, and the second *scheme* is a feeder *scheme*, which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the feeder *scheme's* master *scheme* invests.
- (2) Where this section refers to a second *scheme*, and the second *scheme* is a master *scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *qualified investor scheme* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

Spread of risk

8.4.2

FCA

R

An *authorised fund manager* must take reasonable steps to ensure that the *scheme property* of a *qualified investor scheme* provides a spread of risk, taking into account the investment objectives and policy of the *scheme* as stated in the most recently published *prospectus*, and in particular, any investment objective as regards return to the *unitholders* (whether through capital appreciation or income or both).

Investment powers: general

8.4.3

FCA

R

- (1) The *scheme property* of a *qualified investor scheme* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the scheme* and the *prospectus* may further restrict:

- (a) the kinds of assets in which the *scheme property* may be invested;
- (b) the types of transactions permitted and any relevant limits; and
- (c) the borrowing powers of the *scheme*.

Qualified investor schemes: general

8.4.4

FCA

R

The *scheme property* of a *qualified investor scheme* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:

- (1) any *specified investment*:
 - (a) within articles 74 to 86 of the *Regulated Activities Order*; and
 - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a *specified investment* within (a);
- (2) an interest in an immovable under ■ COLL 8.4.11 R (Investment in property);
- (3) *precious metals*; or
- (4) a *commodity contract* traded on an *RIE* or a *recognised overseas investment exchange*.

Money market funds

8.4.4A

FCA

R

The *authorised fund manager* of a *qualified investor scheme* which operates as a *money market fund* or *short-term money market fund* must satisfy the conditions in ■ COLL 5.9.3 R (Investment conditions: short-term money market funds) and ■ COLL 5.9.5 R (Investment conditions: money market funds) respectively.

[Note: box 2 and box 3 of *CESR's guidelines on a common definition of European money market funds*]

8.4.4B

FCA

R

Approved money market instruments held within a *qualified investor scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in ■ COLL 5.2.7F R to ■ COLL 5.2.7H R (*Approved money-market instruments*).

Investment in collective investment schemes

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23

8.4.5

FCA

R

- (1) A *qualified investor scheme* may invest in *units* in a *scheme* (a '*second scheme*') only if the *second scheme* is:
 - (a) a *regulated collective investment scheme*; or
 - (b) a *scheme* not within (a) where the *authorised fund manager* has taken reasonable care to determine that:

- (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;
- (ii) the calculation of the net asset value of each of the second *schemes* and the maintenance of their accounting records is segregated from the investment management function;
- (iii) (unless it is a master *scheme* to whose *units* the relevant *qualified investor scheme* is dedicated) it is prohibited from investing more than 15% of its value in *units* of *schemes* or, if there is no such prohibition, the *qualified investor scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made; and
- (iv) it operates in accordance with the principle of risk spreading as described in ■ COLL 8.4.2 R.

(2) A *qualified investor scheme* must not invest more than 20% in value of the *scheme property* in *units* in second *schemes* which are unregulated *schemes* or *qualified investor schemes* unless the *authorised fund manager* has carried out appropriate due diligence on each of the second *schemes* and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second *scheme* complies with relevant legal and regulatory requirements.

(3) The *authorised fund manager* of a *qualified investor scheme* with more than 20% in value of the *scheme property* invested in one or more second *schemes* which are unregulated *schemes* or *qualified investor schemes* must carry out appropriate due diligence on those *schemes* on an ongoing basis.

Investment in a collective investment scheme that is an umbrella

8.4.5A

FCA

R

Where the second *scheme* in ■ COLL 8.4.5 R is an *umbrella*, the provisions apply to each *sub-fund* as if it were a separate *scheme*.

8.4.5B

FCA

G

- (1) The *guidance* at ■ COLL 5.7.11 G applies to an *authorised fund manager* of a *qualified investor scheme* carrying out due diligence for the purpose of ■ COLL 8.4.5 R, as if that *guidance* related to ■ COLL 8.4.5 R.
- (2) Where ■ COLL 5.7.11 G (10) refers to ■ COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to ■ COLL 8.5.9 R (Valuation, pricing and dealing).
- (3) In addition to the *guidance* at ■ COLL 5.7.11 G the *authorised fund manager* should, as part of its due diligence process, consider whether the property of each of the second *schemes* is held in safekeeping by a third party, which

is subject to prudential regulation and independent of the investment manager of the second *scheme* and, if not, what controls over the property of the second *scheme* are in place to protect investors.

Delivery of property under a transaction in derivatives or a commodities contract

8.4.6

FCA

R

- (1) An *authorised fund manager* must take reasonable care to determine the following when entering into any transaction in *derivatives* or any *commodity* contract which may result in any asset becoming part of the *scheme property*:
 - (a) if it is an asset in which the *scheme property* could be invested, that the transaction:
 - (i) can be readily closed out; or
 - (ii) would at the expected time of delivery relate to an asset which could be included in the *scheme property* under the *rules* in this chapter; or
 - (b) in any other case that the transaction can be readily closed out.
- (2) An *authorised fund manager* may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the *unitholders*, provided it has the consent of the *depository*.
- (3) Any asset within (1) acquired in accordance with (2) may form part of the *scheme property* despite any other *rule* in this chapter until the position can be rectified.

Cover for transactions in derivatives and forward transactions

8.4.7

FCA

R

- (1) A transaction in *derivatives* or a 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).
- (2) Exposure is globally covered if adequate cover from within the *scheme property* is available to meet the *scheme's* total exposure taking into account any reasonably foreseeable market movement.
- (3) The total exposure relating to *derivatives* held in a *qualified investor scheme* may not exceed the net value of the *scheme property*.
- (4) No element of cover may be used more than once.

8.4.7A

FCA

R

Valuation of an OTC derivative

A transaction in an *OTC derivative* must be capable of valuation which it will only be if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:

- (1) on the basis of the pricing model; or
- (2) on some other reliable basis reflecting an up-to-date market value;

which has been agreed between the *authorised fund manager* and the *depository*.

8.4.8

FCA

R

Continuing nature of limits and requirements

- (1) An *authorised fund manager* must, as frequently as necessary to ensure compliance with ■ COLL 8.4.7 R (2) and ■ COLL 8.4.7 R (4), re-calculate the amount of cover required in respect of *derivatives* and forwards positions in existence under this chapter.
- (2) *Derivatives* and forwards positions may be retained in the *scheme property* only so long as they remain covered globally under ■ COLL 8.4.7 R.
- (3) 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 derivatives* positions and their contribution to the overall risk profile of the *scheme*.

8.4.9

FCA

R

Permitted stock lending

- (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *trustee* at the request of the *manager*, may enter into a *repo* contract or a *stock lending* arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).
- (2) The *depository* must ensure that the value of any *collateral*, for the *stock lending* arrangement is at all times at least equal to the value of the securities transferred by the *depository*.
- (3) In the case of the expiry of validity of any *collateral*, the duty in (2) is satisfied if the *depository* or the *authorised fund manager*, as appropriate, takes reasonable care to determine that sufficient *collateral* will be transferred by close of business on the *day* of expiry.

8.4.10

FCA

R

General power to borrow

- (1) The *ICVC* or *trustee* (on the instructions of the *manager*) may borrow money for the use of the *authorised fund* on terms that the borrowing is to be repayable out of the *scheme property*.
- (2) The *authorised fund manager* must ensure that the *authorised fund's* borrowing does not, on any *day*, exceed 100 % of the net value of the *scheme property* and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.
- (3) In this rule "borrowing" also includes any arrangement (including a combination of *derivatives*) designed to achieve a temporary injection of money into the *scheme property* in the expectation that the sum will be repaid.
- (4) Where the limit in (2) is breached, the *authorised fund manager* must take action in accordance with the principles set out in ■ COLL 8.5.3 R (3) to ■ COLL 8.5.3 R (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

Investment in property

8.4.11

FCA

R

- (1) Any investment in land or a building held within the *scheme property* of a *qualified investor scheme* must be in an immovable within (2).
- (2) For an immovable :
 - (a) it must be situated in a country or territory identified in the *prospectus*;
 - (b) the *authorised fund manager* must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and
 - (c) the *manager* or the *ICVC* must have received a report from the *appropriate valuer* that:
 - (i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and
 - (ii) states that in the *appropriate valuer's* opinion the interest in the immovable would if acquired by the *scheme*, be capable of being disposed of reasonably expeditiously at that valuation;
 - (d) unless (c) is satisfied, the *manager* or the *ICVC* must have received a report from an *appropriate valuer* valuing the interest in the immovable and stating that:

- (i) the immovable is adjacent to or in the vicinity of another immovable included in the *scheme property*; and
 - (ii) in the opinion of the *appropriate valuer*, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and
- (e) it must not be bought:
- (i) if it becomes apparent to the *authorised fund manager* that the report in either (c) or (d) could no longer reasonably be relied upon; or
 - (ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).
- (3) Any contents of any building may be regarded as part of the relevant immovable.
- (4) An *appropriate valuer* must be a *person* who:
- (a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;
 - (b) is qualified to be a *standing independent valuer* of an *authorised fund* or is considered by the *scheme's standing independent valuer* to hold an equivalent qualification;
 - (c) is independent of the *ICVC*, the *depository* and each of the *directors* of the *ICVC* or of the *manager* and *trustee* of the *AUT*; and
 - (d) has not engaged himself or any of his *associates* in relation to the finding of the immovable for the *scheme* or the finding of the *scheme* for the immovable.

Investment in overseas property through an intermediate holding vehicle

- (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.
- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of

8.4.11A

FCA

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intermediate holding vehicles wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.

8.4.11B

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- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
 - (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
 - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

Investment limits for immovables

8.4.12

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The following limits apply in respect of immovables held as part of the *scheme property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under ■ COLL 8.4.11 R (2)(c) or ■ COLL 8.4.11 R (2)(d) or ■ COLL 8.4.13 R, as appropriate;
- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*; and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme* value in any 12 *month* period, calculated at the date of the granting of the option.

8.4.13

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Standing independent valuer and valuation

- (1) In relation to the appointment of a valuer the *authorised fund manager* must:
- (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
 - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer* (*standing independent valuer*) appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:
- (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
 - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
 - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
 - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
 - (i) affect the outcome of a valuation of an immovable; or
 - (ii) cause the valuer to decide to value under (a), instead of under (c),
 it must immediately inform the *standing independent valuer* of that matter;
 - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
 - (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but is subject to any provisions of the *instrument constituting the scheme*.
- (3) In relation to immovables:

- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

8.4.14

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In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 8.4.13 R (2)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

8.5 Powers and responsibilities

Application

8.5.1

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This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* any other *directors* of an *ICVC* and the *depository* of a *qualified investor scheme*.

Functions of the authorised fund manager

8.5.2

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- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the scheme*;
 - (b) the *rules* in this sourcebook;
 - (c) the most recently published *prospectus*; and
 - (d) for an *ICVC*, the *OEIC Regulations*.

- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* in this sourcebook that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.

- (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
 - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
 - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
 - (ii) by the *ACD* to the *ICVC*;

- (iii) by the *ICVC* to the *ACD*;
 - (iv) by the *manager* to the *trustee*; or
 - (v) by the *trustee* (for the account of the *AUT*) to the *manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the *OEIC Regulations*;
 - (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the *rules* in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
 - (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the *classes* of such *units*, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

8.5.3

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- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 8.4 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 8.4 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

Duties of the ACD: umbrella schemes

8.5.3A

FCA

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Where reasonable grounds exist for an *ACD* of an *ICVC* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* may have become inconsistent with the principle of limited recourse stated in the *instrument of incorporation* of the *ICVC* (see ■ COLL 8.2.6 R(2)(4A)) the *ACD* must:

- (1) promptly investigate whether there is an inconsistency; and

- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

8.5.3B

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In deciding what steps are appropriate to remedy the inconsistency, the *ACD* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* to exit the *foreign law contract*.

Duties of the depositary

8.5.4

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- (1) The *depositary* is responsible for the safekeeping of all the *scheme property*.
- (2) The *depositary* must:
- (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
 - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
 - (c) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;
 - (d) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions;
 - (e) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
 - (f) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 8.5.15 R (Income);
 - (g) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
 - (i) ■ COLL 8.4 (Investment and borrowing powers);
 - (ii) ■ COLL 8.5.9 R (Valuation, pricing and dealing); and
 - (iii) ■ COLL 8.5.15 R (Income);
 - (h) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
 - (i) be responsible for any other duties as set out in the *instrument constituting the scheme*.

- (3) If a relevant *ICVC* ceases to have any *directors*, the *depository* may act in accordance with ■ COLL 6.5.6 R (ICVC without a director).

Delegation

8.5.5

FCA

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- (1) The *authorised fund manager* (or in addition any other *director* in the case of an *ICVC*) may delegate any function to any *person*.
- (2) The *depository* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depository* to perform its functions, save that it must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.
- (3) Subject to any provisions of the *OEIC Regulations*, the delegator in (1) and (2) will not be responsible under the *rules* in *COLL* for any act or omission of the delegate provided that the delegator can show:
- that it was reasonable for the delegator to obtain assistance to perform the function in question;
 - that the delegate was and remained competent to provide that assistance; and
 - that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

Delegation and responsibility for regulatory obligations

8.5.6

FCA

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Directors of an *ICVC*, *authorised fund managers* and *depositories* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

8.5.7

FCA

R

- (1) The *authorised fund manager* and the *depository* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- (2) Paragraph (1) is subject to any provision in the *instrument constituting the scheme* and the *prospectus* imposing a prohibition in relation to any type of transaction.

The register of unitholders: AUTs

8.5.8

FCA

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- (1) The *manager* or the *trustee* (in accordance with their responsibilities as set out in the *instrument constituting the scheme*)

must maintain a *register of unitholders* as a *document* in accordance with this *rule*.

- (2) The *register* must contain:
 - (a) the name and address of each *unitholder* (for joint *unitholders* no more than four need to be registered);
 - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
 - (c) the date on which the *unitholder* was registered in the *register* for the *units* standing in his name.
- (3) The *manager* or the *trustee* (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *manager* must immediately notify the *trustee* of any information he receives which may affect the accuracy of any entry in the *register*.

Valuation, pricing and dealing

8.5.9

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- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
- (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
- (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.
- (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the scheme* and the *prospectus*, as appropriate.
 - (4A) Where a *scheme* operates as a *short-term money market fund*, the value of the *scheme property* must be determined either on an amortised cost or mark to market basis.
 - (4B) Where a *scheme* operates as a *money market fund*, the value of the *scheme property* must be determined on a mark to market basis.
- (5) Subject to (5A), the *scheme* must have a *valuation point* on each *dealing day*.

- (5A) Where a *scheme* operates as a *money market fund* or a *short-term money market fund* which is marketed solely through employee savings schemes or to a specific category of investors that are subject to *redemption* restrictions, the *scheme* may have at least one *valuation point* every week.
- (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
- (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.
- (8) [deleted]
- (9) The *authorised fund manager* must publish in an appropriate manner the *price* of any type of *unit* based on the valuation carried out in accordance with (6).
- (10) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
- (11) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

Maintaining the value of a short-term money market fund

8.5.9A

FCA

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The *authorised fund manager* of a *short-term money market fund* which values *scheme property* on an amortised cost basis must:

- (1) carry out a valuation of the *scheme property* on a mark to market basis at least once a week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and
- (2) ensure that the value of the *scheme property* when valued on a mark to market basis, does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.

[Note: paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]

8.5.9B

FCA

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The *authorised fund manager* should advise the *depository* when the mark to market value of a *short-term money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *short-term money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.

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8.5.10

FCA

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Issues and cancellations of units

- (1) The *authorised fund manager* must:
 - (a) ensure that at each *valuation point* there are at least as many *units* in issue of any *class* as there are *units* registered to *unitholders* of that *class*; and
 - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.
- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *trustee* to *issue* or *cancel units* where the *authorised fund manager* would otherwise be obliged to *sell* or *redeem* the *units* in the manner set out in the *prospectus*.
- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

Issue and cancellation of units in multiple classes

8.5.10A

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If a *qualified investor scheme* has two or more *classes* of *unit* in *issue*, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
 - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or

- (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

Sale and redemption

8.5.11

FCA

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- (1) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* to any eligible investor (within any conditions in the *instrument constituting the scheme* and the *prospectus* which must be fair and reasonable as between all *unitholders* and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such *sale*.
- (2) The *authorised fund manager* must, at all times during the *dealing day*, effect a *redemption* on the request of any eligible *unitholder* (within any conditions in the *instrument constituting the scheme* and the *prospectus*) of *units* owned by that *unitholder*, unless the *authorised fund manager* has reasonable grounds to refuse such *redemption*.
- (3) On agreeing to a *redemption* of *units* within (2), the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *instrument constituting the scheme* or the *prospectus*, unless it has reasonable grounds for withholding payment.
- (4) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which must be fair and reasonable as between redeeming *unitholders* and continuing *unitholders*.

Limited redemption periods

8.5.12

FCA

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The maximum period between *dealing days* for a *qualified investor scheme* will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the *scheme*. For instance, for a *scheme* aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between *dealing days* for liquidity reasons than for a *scheme* investing predominantly in listed *securities*.

Property Authorised Investment Funds

8.5.12A

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- (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").

- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
 - (a) notify the *body corporate* of that event;
 - (b) not pay any income distribution to the *body corporate*; and
 - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.
- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

8.5.12B

FCA

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Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

Payments

8.5.13

FCA

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- (1) An *ICVC* must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

Exemption from liability to account for profits

8.5.14

FCA

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An *affected person* is not liable to account to another *affected person* or to the *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

8.5.15

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Income

- (1) A *qualified investor scheme* must have:
- (a) an *annual accounting period*;
 - (b) a *half-yearly accounting period*; and
 - (c) an *accounting reference date*;
- the details of which must be set out in the *prospectus*.
- (1A) ■ COLL 6.8.2 R (2) to ■ COLL 6.8.2 R (7) (*Accounting periods*) also apply to the *half-yearly accounting period* and *annual accounting period* of a *qualified investor scheme*.
- (2) A *qualified investor scheme* must have an *annual income allocation date*, which must be within four months of the *accounting reference date*.
- (3) A *qualified investor scheme* may have an *interim income allocation date* and *interim accounting periods* and if it does, the *interim income allocation date* must be within a reasonable period of the end of the relevant *interim accounting period* as set out in the *prospectus*.
- (3A) ■ COLL 6.8.3 R (3) (*Income allocation and distribution*) to ■ COLL 6.8.3A G (*Allocation of income to difference classes of unit*) also apply to a *qualified investor scheme*.
- (4) [deleted]
- (5) [deleted]
- (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]



8.6 Termination, suspension, and schemes of arrangement

Application

8.6.1
FCA

R This section applies to:

- (1) an *authorised fund manager*, the *directors*, and the *depository* of a *qualified investor scheme*; and
- (2) an *ICVC* which is a *qualified investor scheme*.

Termination

8.6.2
FCA

R For a *qualified investor scheme* the provisions in ■ COLL 7.3 to ■ COLL 7.5 will apply as appropriate as if ■ COLL 7 applied to *qualified investor schemes*.

Suspension

8.6.3
FCA

- R**
- (1) The *authorised fund manager* may , with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, temporarily suspend *dealings in units* of the *scheme*, a *sub-fund* or a *class*.
 - (2) Any suspension within (1) must only be where the *authorised fund manager* has determined on reasonable grounds that there is good and sufficient reason in the interests of *unitholders* or potential *unitholders* and the *authorised fund manager* must have regard to the interests of all the *unitholders* in the *scheme* in reaching such an opinion.
 - (3) At the commencement of suspension under (1), the *authorised fund manager* must immediately inform the *FCA* of the suspension and the reasons for it.
 - (3A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.

- (3B) The *authorised fund manager* and the *depository* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.
- (4) The suspension of *dealings* in *units* must cease , as soon as (2) no longer applies.
- (4A) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FCA* of the results of this review and any change to the information provided in (3).
- (5) The *authorised fund manager* must inform the *FCA* immediately of the resumption of *dealings*.

8.6.4

G [deleted]

Schemes of arrangement

8.6.5

FCA

R In relation to an *ICVC* or an *AUT* which is a *qualified investor scheme*, the provisions in ■ COLL 7.6 (Schemes of arrangement) will apply as appropriate to the *authorised fund manager*, any other *directors* of the *ICVC* and the *depository* as if ■ COLL 7.6 applied to a *qualified investor scheme* and did not exclude *unitholders* becoming *unitholders* in another *qualified investor scheme*.

Qualified Investor Schemes: eligible investors

FCA

This Annex belongs to **COLL 8.1.3R**

For the purposes of the *rule* on qualified investor schemes: eligible investors (COLL 8.1.3R) a *firm* must only record ownership of *units* in the register of a *qualified investor scheme* in accordance with the following table:

Issue or transfer of units to:	Issue or transfer of units (see Note 1) in a qualified investor scheme which is:
Category 1 person	(1) that <i>collective investment scheme</i> ; or
A <i>person</i> :	(2) any other <i>collective investment scheme</i> whose underlying property and risk profile are both 'substantially similar' (see Note 2) to those of that <i>collective investment scheme</i> ; or
(1) who is already a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i> ; or	(3) a <i>collective investment scheme</i> which is intended to absorb or take over the assets of that <i>collective investment scheme</i> ; or
(2) who has been, in the last 30 months, a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i> .	(4) a <i>collective investment scheme</i> , <i>units</i> in which are being offered by its <i>operator</i> as an alternative to cash on the liquidation of that <i>collective investment scheme</i> .
Category 2 person	that <i>collective investment scheme</i> .
A <i>person</i> :	
(1) for whom the <i>authorised fund manager</i> or an <i>associate</i> has taken reasonable steps to ensure that <i>investment</i> in the <i>collective investment scheme</i> is suitable; and	
(2) who is an 'established' or 'newly accepted' <i>client</i> of the <i>authorised fund manager</i> or of an <i>associate</i> (see Notes 3 & 4).	

Category 3 personany such *collective investment scheme*

A *person* who is eligible to participate in a scheme constituted under:

(1) the Church Funds Investment Measure 1958;

(2) section 96 of the Charities Act 2011;
or

(3) section 25 of the Charities Act (Northern Ireland) 1964.

Category 4 person(1) A *collective investment scheme* of which the *instrument constituting the scheme*:

An eligible employee, that is, a *person* who is:

(a) restricts the *scheme property*, apart from cash and near cash, to:

(1) an officer;

(i) (where the employer is a company) *shares in and debentures of the company* or any other connected *company* (see Note 5);

(2) an *employee*;

(ii) (in any case), any property, provided that the *scheme* takes the form of a trust which the *firm* reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than *charges*) for *investment* transactions earlier entered into, which the eligible employee was not aware of at the time he entered into them; and

(3) a former officer or *employee*; or

(4) a member of the immediate family of any of (1)-(3);

of an employer which is (or is in the same *group* as) the *firm*, or which has accepted responsibility for the activities of the *firm* in carrying out the *designated investment business* in question.

(b) (in a case falling within A(1) above) restricts participation in the *scheme* to eligible employees, the employer and any connected *company*.(2) Any *collective investment scheme* provided that the participation of eligible employees is to facilitate their co-investment:(a) with one or more *companies* in the same *group* as their employer (which may include the employer); and/or(b) with one or more *clients* of such a *company*.

Category 5 person**Any collective investment scheme.**

An exempt *person* (other than a *person* exempted only by section 39 of the *Act* (Exemption of appointed representatives)) if the *issue* or transfer of *units* relates to a *regulated activity* in respect of which the *person* is exempt from the *general prohibition*.

Category 6 person**Any collective investment scheme in relation to which the *client* is categorised as a *professional client* or *eligible counterparty*.**

An *eligible counterparty* or a *professional client*.

Category 7 person**Any collective investment scheme covered by the assessment.**

A *person*:

(1) in relation to whom the *authorised fund manager* or an *associate* has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the *person* is capable of making his own investment decisions and understanding the risks involved;

(2) to whom the *authorised fund manager* or an *associate* has given a clear written warning of the protections he may lose; and

(3) who has stated in writing, in a separate document from the contract, that he is aware of the consequences of losing such protections.

The following Notes explain certain words and phrases used in the table above.

- Note 1** Issue or transfer of *units* to a category of *person* includes any *nominee company* acting for such a *person*.
- Note 2** The risk profile of a *scheme* will be substantially similar to that of another *scheme* only if there is such similarity in relation to both liquidity and volatility.
- Note 3** A *person* is an 'established client' of another *person* if he has been and remains an actual client of that *person* in relation to *designated investment business* done with or through that other *person*.
- Note 4** A *person* is a 'newly accepted' *client* of a *firm* if:

- (1) a written agreement relating to *designated investment business* exists between the *client* and the *firm* (or, if the *client* is normally resident outside the *United Kingdom*, an oral or written agreement); and
- (2) that agreement has been obtained without any contravention of any *rule in COBS* applying to the *firm* or (as far as the *firm* is reasonably aware) any other *authorised person*.

Note 5 A company is 'connected' with another company if:

- (1) they are in the same *group*; or
- (2) one *company* is entitled either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other *company* or of its holding *company*.

Chapter 9

Recognised schemes



9.1 Application and general information

Application

9.1.1

FCA

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This chapter applies to *operators of recognised schemes* and to *operators of schemes* making a notification in respect of them under Chapter V of Part XVII of the *Act* (Recognised overseas schemes).

Purpose

9.1.2

FCA

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This chapter enables potential *operators of recognised schemes* to know what information and *documents* the *FCA* wish to receive to enable it to consider whether to recognise the *scheme* under the *Act* for *marketing* in the *United Kingdom*.

General information

9.1.3

FCA

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Further information about notifications for recognition is contained in *COLLG*.



9.2 Section 264 recognised schemes

9.2.1

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- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]

9.2.2

FCA

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Marketing of units of an EEA UCITS scheme

- (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*]

9.3 Section 270 and 272 recognised schemes

Information and documents to be supplied for a section 270 notification or section 272 application

9.3.1

FCA

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- (1) If the *operator* of a *scheme* gives notice to the *FCA* under section 270 of the *Act* (Schemes authorised in designated countries or territories) or makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the notice or application must include the information in paragraph (4).
- (2) The *documents* must be in English or accompanied by a translation in English.
- (3) The *documents* must be certified by the *operator* to be true copies of the originals.
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the notification or application:
 - (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 service on the *operator* of notices or other *documents*;
 - (e) 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*;
 - (f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;
 - (g) the address of the place in the *United Kingdom* where *scheme* facilities (see ■ COLL 9.4) will be maintained;
 - (h) 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;
- (i) a copy of the *instrument constituting the scheme*;

- (j) a copy of the *prospectus* or any similar document giving details of the *scheme*;
- (k) a copy of the latest annual report and any subsequent half-yearly report;
- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; and
- (m) for notifications under section 270 only, a copy of the authorisation document issued by the authority in the designated territory confirming that the *scheme* is of a class covered by the designation order.

Additional information required in the prospectus for an application under section 272

9.3.2

FCA

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An operator of a *scheme* recognised under section 272 of the *Act* must ensure the *prospectus*:

- (1) contains a statement that "Complaints about the operation of the *scheme* may be made to the *FCA*."; and
- (2) states whether or not investors in the *scheme* would be covered by the *compensation scheme*, and if so, it must state how they are covered and who they would need to contact for further information.

Preparation and maintenance of prospectus

9.3.3

FCA

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- (1) An operator of a *scheme* which is a *recognised scheme* by virtue of section 270 or 272 of the *Act* must comply, subject to paragraph (2) below, with the requirements set out in ■ COLL 4.2 (Pre-sale notifications).
- (2) Where a *scheme* recognised under section 270 of the *Act* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of ■ COLL 4.2.5 R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

9.4 Facilities in the United Kingdom

General

9.4.1
FCA

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- (1) The *operator* of a *recognised scheme* under section 264, section 270 or section 272 of the *Act* must maintain facilities in the *United Kingdom* in order to satisfy the requirements of
 - COLL 9.4.2 R to ■ COLL 9.4.6 R.
- (2) In this section, a facility is a place of business that complies with
 - COLL 9.4.6 R (Place of facilities).

Documents

9.4.2
FCA

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- (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:
 - (a) the *instrument constituting the scheme*;
 - (b) any instrument amending the *instrument constituting the scheme*;
 - (c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);
 - (d) for a section 264 *recognised scheme*, the *EEA key investor information document*; and
 - (e) the latest annual and half-yearly reports.
- (1A) For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).
- (2) In relation to notices and *documents* sent by *operators* and *depositories* to and from the *United Kingdom*, ■ COLL 4.4.12 R (Notice to unitholders) and ■ COLL 4.4.13 R (Other notices) apply.

9.4.3

FCA

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Price and redemption

- (1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:
 - (a) information in English can be obtained about prices of *units* in the *scheme*; and
 - (b) a *participant* may *redeem* or arrange for *redemption* of *units* in the *scheme* and obtain payment.
- (2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

9.4.4

FCA

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Bearer certificates and characteristics of units in the scheme

- (1) The *operator* must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge:
 - (a) payment of dividends; and
 - (b) details or copies of any notices which have been given or sent to *participants* in the *scheme*.
- (2) The *operator* must state:
 - (a) the nature of the right represented by the *units* in the *scheme*; and
 - (b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are.

9.4.5

FCA

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Complaints

The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

9.4.6

FCA

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Place of facilities

- (1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.
- (2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address, the alternative address in paragraph (3).
- (3) The alternative address is such convenient address as the *operator* determines, except that, in the case of a *scheme* recognised under

section 272 of the *Act* where the *operator* is not an *authorised person*, the alternative address is to be the principal place of business in the *United Kingdom* of the *authorised person* who is the representative of the *operator*.

Chapter 10

Fees



10.1 The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4

- 10.1.1 [Deleted]
- 10.1.2 [Deleted]
- 10.1.3 [Deleted]
- 10.1.4 [Deleted]
- 10.1.5 [Deleted]
- 10.1.6 [Deleted]



10.2 The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4

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- 10.2.2 [Deleted]
- 10.2.3 [Deleted]
- 10.2.4 [Deleted]
- 10.2.5 [Deleted]
- 10.2.6 [Deleted]



10.3 The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4

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- 10.3.2 [Deleted]
- 10.3.3 [Deleted]
- 10.3.4 [Deleted]

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Chapter 11

Master-feeder arrangements under the UCITS Directive

11.1 Introduction

Application

11.1.1
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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 11.1.2 R (Table of application).

Table of application

11.1.2
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This table belongs to ■ COLL 11.1.1 R

Reference	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors</i> of an <i>ICVC</i>	<i>Manager</i>	<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: COLL 11.5 (with the exception of COLL 11.5.6 R) applies to auditors.

Purpose

- (1) This chapter sets out:

11.1.3

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FCA

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- (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

FCA

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- (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 *FCA* implementing article 55 of the *UCITS Directive*, unless the investment is approved by the *FCA* in accordance with that section.
- (2) The *FCA* has implemented article 55(1) of the *UCITS Directive* in ■ COLL 5.2.11 R (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

FCA

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- (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 4.7.2 R (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 4.8.3 R (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 11.5.1 R (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
FCA

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
FCA

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 1 R.
- (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 2 R.
- (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 5.2.11 R (9) (Spread: general) (20%) until the period of 30 calendar days referred to in ■ COLL 4.8.3 R (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 11.5.1 R (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
FCA

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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 1 R and ■ COLL 11 Annex 2 R 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
FCA

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In relation to the requirements in ■ COLL 11 Annex 1 R(3) and ■ Annex 2R(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
FCA

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
FCA

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

FCA

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

FCA

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

FCA

R

The *authorised fund manager* of a *master UCITS* must immediately inform the *FCA* 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

FCA

G

Where the *FCA* is informed in accordance with ■ COLL 11.3.9 R 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 *FCA* to inform the *Home State regulator* of the *feeder UCITS* immediately.

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

11.3.11

FCA

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 6.3.8 R (Dilution) or *SDRT provision* made in accordance with ■ COLL 6.3.7 R (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

FCA

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

FCA

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 11.4.3 R (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

FCA

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
FCA

R

- (1) An *authorised fund manager* of a *feeder UCITS* is responsible for communicating to the *depositary* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depositary'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
FCA

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 *depositaries*, and whether that information or those *documents* are provided by one *depositary* to the other or made available on request;
 - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depositary* of the *master UCITS* to the *depositary* of the *feeder UCITS*;
 - (c) the co-ordination of the involvement of both *depositaries*, 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 11.3.6 R (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 *depositary* of the *master UCITS* must provide to the *depositary* 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 *depositary* to the other; and
 - (g) identification of particular contingent events which ought to be notified by one *depositary* 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 *depositaries* 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 *depositaries* 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 *depositaries* 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 *depositaries* 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

- (1) Where a *depositary* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depositary* must immediately inform:

- (a) the *FCA* ;
 - (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 6.3.3 R (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
FCA

G

- (1) When notifying the *FCA* 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
FCA

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

FCA

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 11.5.3 R and ■ COLL 11.5.4 R (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

FCA

R

- (1) The information-sharing agreement referred to in ■ COLL 11.5.1 R 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 11.5.3 R and ■ COLL 4.5.12 R (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 11.5.4 R 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

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*]

11.5.3

FCA

11.5.4

FCA

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

FCA

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

FCA

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

FCA

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 *FCA* 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 *FCA* 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 *FCA* 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 *FCA* 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 *FCA* 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 *FCA* 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*.

11.6.2

FCA

R

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

- (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

FCA

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 *FCA* 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 4.2.3 R (1)(b) (Provision and filing of the prospectus) and ■ COLL 4.7.7 R (1) (Revision and filing of key investor information); and
 - (d) the other *documents* required in accordance with ■ COLL 11.2.2 R (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 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (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
FCA

R

(1) The information in ■ COLL 11.6.3 R 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 *FCA* 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
FCA

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 *FCA* 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 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (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 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);
 - (d) the other *documents* required in accordance with ■ COLL 11.2.2 R;
- (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 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (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

FCA

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:

11

- (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
FCA

R

- (1) The information in ■ COLL 11.6.5 R must be submitted to the *FCA* 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 7.7.10 R (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 *FCA* 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
FCA

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 *FCA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

11.6.9
FCA

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 *FCA* 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 4.8.3 R (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

FCA

R

Where:

- (1) the *FCA* 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.

11.6.11
FCA

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[Note: article 23(6) of the *UCITS implementing Directive No 2*]

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

11.6.12
FCA

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Requirements following approval by the FCA

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 *FCA*, 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 11.6.3 R (1) and ■ COLL 11.6.5 R (2), take the necessary measures to comply with the requirements of ■ COLL 4.8.3 R as soon as possible.

[Note: articles 21(2), 21(3), 23(2) and 23(3) of the *UCITS implementing Directive No 2*]

11.6.13
FCA

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Notification by feeder UCITS of intention to be wound up

Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FCA* 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*]

Contents of the standard master-feeder agreement

FCA

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 *master UCITS* and a *feeder UCITS*:
- (a) how and when the *master UCITS* provides the *feeder UCITS* with a copy of its *instrument constituting the scheme, prospectus and key investor information* or any amendment of them;
 - (b) how and when the *master UCITS* informs the *feeder UCITS* of a delegation of investment management and risk management functions to third parties in accordance with COLL 6.6.15AR;
 - (c) where applicable, how and when the *master UCITS* provides the *feeder UCITS* with internal operational documents, such as its risk management process and its compliance reports;
 - (d) what details of breaches by the *master UCITS* of:
 - (i) the law;
 - (ii) the *instrument constituting the scheme*; and
 - (iii) the *master-feeder agreement*;must be notified to the *feeder UCITS* and the manner and timing thereof;
 - (e) where a *feeder UCITS* uses *derivatives* for hedging purposes, how and when the *master UCITS* will provide the *feeder UCITS* with information about its actual exposure to *derivatives* to enable the *feeder UCITS* to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and
 - (f) a statement that the *master UCITS* must inform the *feeder UCITS* of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the *master UCITS* makes those other information-sharing arrangements available to the *feeder UCITS*.

[Note: article 8 of the *UCITS implementing Directive No 2*]

- (2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:
- (a) a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*;
 - (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
 - (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 9 of the *UCITS implementing Directive No 2*]

(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 *units*;
- (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, 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 *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* 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 *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*;
- (g) procedures to ensure enquiries and complaints from *unitholders* are handled appropriately; and
- (h) where the *instrument constituting the scheme* and prospectus of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 10 of the *UCITS implementing Directive No 2*]

(4) Provisions related to events affecting dealing arrangements:

- (a) the manner and timing of a notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
- (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 11 of the *UCITS implementing Directive No 2*]

(5) Provisions related to the standard arrangements for the audit report:

- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
- (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 12 of the *UCITS implementing Directive No 2*]

(6) Provisions related to changes to the standing arrangements:

How and when notice is to be given:

- (a) by the *master UCITS* of proposed and effective amendments to its *instrument constituting the scheme, prospectus* and *key investor information*, if these details differ from the standard arrangements for notification of *unitholders* laid down in the *instrument constituting the scheme* or *prospectus* of the *master UCITS*;**
- (b) by the *master UCITS* of a planned or proposed winding up, *merger* or *division*;**
- (c) by either the *feeder UCITS* or the *master UCITS* that it has ceased or will cease to meet the qualifying conditions to be a *feeder UCITS* or a *master UCITS* respectively;**
- (d) by either the *feeder UCITS* or the *master UCITS* that it intends to replace its *management company*, its *depository*, its auditor or any third party which is mandated to carry out investment management or risk management functions; and**
- (e) by the *master UCITS* of other changes to standing arrangements that it undertakes to provide.**

[Note: article 13 of the *UCITS implementing Directive No 2*]

Contents of the internal conduct of business rules

FCA

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 COLL 11.3.2R (2) must include appropriate measures to mitigate conflicts of interest that may arise between:

- (i) the *feeder UCITS* and the *master UCITS*; or
- (ii) the *feeder UCITS* and other *unitholders* of the *master UCITS*;

to the extent that these are not sufficiently addressed by the measures applied by the *management company* in order to meet the requirements of the provisions listed in (b).

(b) The provisions referred to in (a) are:

- (i) SYSC 10.1.4 R (Types of conflicts);
- (ii) SYSC 10.1.6 R (Record of conflicts);
- (iii) SYSC 10.1.10 R (Conflicts policy);
- (iv) SYSC 10.1.11 R (Contents of policy);
- (v) SYSC 10.1.17 R (Additional requirements for a management company);
- (vi) SYSC 10.1.19 R (Structure and organisation of a management company);
- (vii) SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);
- (viii) SYSC 10.1.21 R (Disclosure of conflicts for a management company); and
- (ix) COLL 6.6A.6 R (Strategies for the exercise of voting rights);

or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the *UCITS Directive* and Chapter III of the *UCITS implementing Directive*.

[Note: article 15 of the *UCITS implementing Directive No 2*]

(2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:

- (a) a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*;
- (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
- (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 16 of the *UCITS implementing Directive No 2*]

(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 *units*;
- (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, 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 *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) where necessary, appropriate measures to ensure compliance with the requirements in **COLL 11.3.6 R** (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* 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 *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*; and
- (g) where the *instrument constituting the scheme* and *prospectus* of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 17 of the *UCITS implementing Directive No 2*]

(4) Provisions related to events affecting dealing arrangements:

- (a) the manner and timing of notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
- (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 18 of the *UCITS implementing Directive No 2*]

(5) Provisions related to the standard arrangements for the audit report:

- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
- (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with **COLL 11.5.4 R** (Preparation of the audit report).

[Note: article 19 of the *UCITS implementing Directive No 2*]

Chapter 12

Management company and product passports under the UCITS Directive

12.1 Introduction

Application

12.1.1
FCA

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- (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*.
- (c) ■ COLL 12.4 (UCITS product passport) applies in accordance with ■ COLL 12.4.1 R (Application).

Purpose

12.1.2
FCA

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- (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

FCA

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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
FCA

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
FCA

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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
FCA

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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
FCA

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

FCA

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The FCA's equivalent *rules* under articles 19(3) and 19(4) of the Directive are set out in ■ COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules) and ■ COLL 6.6.3 R (Functions of the authorised fund manager).

Rules of conduct: UK UCITS management companies operating in another Member State

12.2.6

FCA

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- (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.2 R (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.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
 - (c) ■ COLL 6.6A.5 R (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 *passported 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*]

12.2.7

FCA

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Notification to the UCITS Home State regulator

- (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 depositary 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

FCA

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

FCA

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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

FCA

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- (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 *FCA 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

FCA

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 FCA: EEA UCITS management companies

PAGE
7

12.3.4

FCA

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- (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 *FCA* with the following *documents*:

- (a) the written agreement that has been entered into with the *depository* of the *scheme*, as referred to in ■ COLL 6.6.4 R (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 *FCA* 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 *FCA* 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
FCA

R

An *EEA UCITS management company* that manages a *UCITS scheme* must comply with the *rules* of the *FCA 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 depository), ■ COLL 6.6 (Powers and duties of the scheme, the authorised fund manager and the depository) (unless disapplied), ■ COLL 6.7 (Payments), ■ COLL 6.9.1 R (Application) to ■ COLL 6.9.8 G (Undesirable or misleading names: umbrellas - guidance) and ■ COLL 6.9.11 R (Notification to the *FCA* 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 6.2.19 R (Limited redemption) and ■ COLL 6.2.20 G (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 7.6.2 R (3) to ■ COLL 7.6.2 R (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 2 G 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 FCA

12.3.6

FCA

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(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 *FCA*.

(2) The *EEA UCITS management company* must ensure that the procedures and arrangements it establishes in accordance with (1), enable the *FCA* 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 FCA rules

12.3.7

FCA

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An *EEA UCITS management company* that operates a *UCITS scheme* is advised that in particular it needs to comply with:

(1) ■ COLL 6.6.3 R (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 2 G 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

FCA

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(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.2 R (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.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
 - (c) ■ COLL 6.6A.5 R (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 12.3.5 R.

[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

FCA

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 *FCA* 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

FCA

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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

FCA

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

FCA

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 *FCA* 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

- (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:

12.4.5

FCA

R

PAGE
13

12

- (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
FCA

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 6.3.11 R (Publication of prices).

[Note: article 94(3) of the *UCITS Directive*]

Reference to the scheme's legal form

12.4.7
FCA

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
FCA

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 12.4.4 R (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 *FCA* 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*]

Chapter 13

Operation of feeder NURS

13.1 Introduction

Application

13.1.1

FCA

R

This chapter applies to:

- (1) the *authorised fund manager* of a *feeder NURS*;
- (2) an *ICVC* that is a *feeder NURS*;
- (3) the *authorised fund manager* of a *UCITS scheme* or *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*; and
- (4) (in the case of ■ COLL 13.2.6 R (Inducements) only) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*.

Purpose

13.1.2

FCA

G

This chapter sets out various obligations, additional to those found elsewhere in the *Handbook*, that *persons* listed in ■ COLL 13.1.1 R must comply with in relation to the operation of a *feeder NURS* and its *qualifying master scheme*.

13.2 Operational requirements for feeder NURS

Application

13.2.1

FCA

R

This section applies as follows:

- (1) ■ COLL 13.2.2 R to ■ COLL 13.2.6 R apply to the *authorised fund manager* of a *feeder NURS*;
- (2) ■ COLL 13.2.6 R also applies to:
 - (a) an *ICVC* that is a *feeder NURS*; and
 - (b) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*; and
- (3) ■ COLL 13.2.7 R applies to the *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*.

Pre-investment requirements of the authorised fund manager of a feeder NURS

13.2.2

FCA

R

Before investing in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must:

- (1) be satisfied on reasonable grounds that the *authorised fund manager* can obtain from the *qualifying master scheme* all the information necessary to comply on an ongoing basis with the *rules* in *COLL*;
- (2) having consulted with the *depository* of the *feeder NURS*, be satisfied on reasonable grounds that the *depository* of the *feeder NURS* can obtain from the *qualifying master scheme*, the *operator* of the *qualifying master scheme* or the *depository* of the *qualifying master scheme* all the information necessary to comply with its duties under ■ COLL 6.6.4 R (General duties of the depository); and
- (3) where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, inform the *authorised fund manager* of the *qualifying master scheme* of the date on which the *feeder*

NURS will begin to invest into the *qualifying master scheme* as a *feeder NURS*.

Ownership of units in a feeder NURS

13.2.3

FCA

R

The *authorised fund manager* of a *feeder NURS* must take reasonable care to ensure that its *units* are not owned, including beneficially owned, by the *qualifying master scheme*.

Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

13.2.4

FCA

R

(1) Where the *operator* of a *qualifying master scheme* or the *authorised fund manager* of a *qualifying master scheme* imposes any charge which is, or is equivalent in effect to, a *preliminary charge* or *redemption charge* on the *feeder NURS* for the acquisition or disposal of *units* in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must pay to the *feeder NURS* an amount equal to such *charge* within four *business days* following the relevant acquisition or disposal.

(2) In this *rule*, where the *operator* of a *qualifying master scheme* or *authorised fund manager* of a *qualifying master scheme* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master scheme* which is, or is equivalent in effect to, a *dilution levy* made in accordance with ■ COLL 6.3.8 R (Dilution) or *SDRT provision* made in accordance with ■ COLL 6.3.7 R (SDRT Provision), it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

Avoidance of opportunities for market timing

13.2.5

FCA

R

The *authorised fund manager* of a *feeder NURS* must take appropriate measures to co-ordinate the timing of the *feeder NURS*' net asset value calculation and publication with those of its *qualifying master scheme*, including the publication of *dealing prices*, in order to avoid market timing of their *units*, and prevent arbitrage opportunities.

Inducements

13.2.6

FCA

R

Where, in connection with an investment in the *units* of the *qualifying master scheme*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder NURS*; or
- (2) an *authorised fund manager* of a *feeder NURS*; 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 NURS* within four *business days* of receipt of that *fee*, commission or other monetary benefit.

Obligations to unitholders of a qualifying master scheme

13.2.7

FCA

R

Where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, the *authorised fund manager* of the *qualifying master scheme* must not, if it would unfairly prejudice the interests of *unitholders* of the *qualifying master scheme* other than the *feeder NURS*, provide or make available information to the *authorised fund manager* of the *feeder NURS* without at the same time also providing or making available that information to the *unitholders* of the *qualifying master scheme* other than the *feeder NURS*.

Appendix

KII Regulation

KII Regulation

FCA



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 Member State] 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 parts 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 BARROSO

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 [] %

Exit charge [] %

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 [] %

Charges taken from the fund under certain specific conditions

Performance fee [] % 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.

Collective Investment Schemes

COLL TP 1 Transitional Provisions

FCA

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transition-al provi-sion: dates in force	Hand-book provi-sion: coming into force
Extra time provisions					
Existing schemes electing to comply with COLL					
1	[deleted]	[de- ed]	[deleted]	Expired	[deleted]
1A	Each and every <i>rule</i> in <i>COLL</i>	R	The rules in <i>COLL</i> do not apply to any relevant party in relation to an <i>authorised fund</i> where the winding up of the fund has commenced before 12 February 2007, provided that each relevant party shall continue to comply with the provisions of <i>CIS</i> as if they still applied to them.	From 12 February 2007	12 Febru-ary 2007
2	[deleted]	[de- ed]	[deleted]	Expired	
	[deleted]				
3	[deleted]	[de- ed]		Expired	[deleted]
			[deleted]		
4	[deleted] [deleted]	G	[deleted]	Expired	

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
5	[deleted]	[deleted]	[deleted]	Expired	[deleted]
6	[deleted]	[deleted]	[deleted]	Expired	
7	[deleted]	[deleted]	[deleted]	Expired	[deleted]
8	[deleted]	[deleted]	[deleted]	Expired	[deleted]
9	[deleted]	[deleted]	[deleted]	Expired	
10	[deleted]	[deleted]	[deleted]	Expired	[deleted]
Definition of relevant party					
11	[deleted]	[deleted]	[deleted]	Expired	[deleted]
12				Expired	
13	[deleted]	[deleted]	[deleted]	Expired	[deleted]
14	Amendments to COLL made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other	R	(1) The authorised fund manager of an authorised fund may elect for early compliance with the instrument, in which case COLL applies as if it had been amended by the instrument.	Expired	[deleted]

(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
	Amendments) Instrument 2008		<p>(2) An election is irrevocable and does not take effect until the <i>authorised fund manager</i> notifies the <i>depository</i> and the <i>FCA</i> in writing of the date it takes effect.</p> <p>(3) The <i>authorised fund manager</i> must make a record of the election and retain it for a period of six years from the date it takes effect.</p>	Expired	
15	Amendments to COLL 5.6.3 R made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009	R	The new timing provisions in relation to the prudent spread of risk will not take effect until 6 January 2011 in relation to those <i>non-UCITS retail schemes</i> authorised as an <i>AUT</i> or an <i>ICVC</i> prior to 6 January 2010.	6 January 2010 to 5 January 2011	6 January 2010
16	COLL 4.5 and COLL 8.3.5 R to COLL 8.3.5E R	R	In relation to the preparation of any report pursuant to COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5E R for the last <i>annual accounting period</i> or <i>half-yearly accounting period</i> ending before 6 March 2010, the <i>authorised fund manager</i> , <i>depository</i> and auditor may together elect to comply with those <i>rules</i> as they were in force on 5 March 2010. The <i>authorised fund manager</i> must make a record of any such election and retain it for a period of six years from the date on which that record is made.	From 6 March 2010 to 5 July 2010	6 March 2010
17	COLL 4.5.5 R (1)(a)(iv) and COLL 4.5.9 R (9A)	R	An <i>authorised fund manager</i> need not include in the short report or long report for a <i>UCITS scheme</i> the figure for the <i>synthetic risk and reward indicator</i> that would have been disclosed in its most recent <i>key investor informa-</i>	From 1 July 2011 to 31 October 2012	1 July 2011

(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
			<p><i>tion document</i> provided that, as at the <i>accounting reference date</i> to which the report relates, <i>marketing of units</i> in the <i>scheme</i> is being done on the basis of a <i>simplified prospectus</i> meeting the requirements of the <i>Handbook</i>.</p> <p>[Note: article 118(2) of the <i>UCITS Directive</i>]</p>		
18	Each and every rule in <i>COLL</i> that relates to <i>key investor information</i>	R	<p>(1) This <i>rule</i> applies to:</p> <p>(a) an <i>authorised fund manager</i> of a <i>UCITS scheme</i>; and</p> <p>(b) an <i>ICVC</i> which is a <i>UCITS scheme</i> and any other <i>director</i> of that <i>ICVC</i>;</p> <p>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>.</p> <p>(2) A <i>person</i> in (1) need not comply with any <i>rule</i> 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 4.2.3B R</i> (Simplified Prospectus provisions) (as it stands at 30 June 2011), and all references in any <i>rule</i> in <i>COLL</i> to <i>key investor information</i> should be read as references to the <i>simplified prospectus</i>.</p>	<p>From 1 July 2011 to 30 June 2012</p> <p>From 1 July 2011 to 30 June 2012</p>	<p>1 July 2011</p> <p>1 July 2011</p>

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies		Transitional provision		Transition- al provi- sion: dates in force	Hand- book provi- sion: coming into force
		<p>(3) A <i>person</i> 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 <i>rules</i> or <i>guidance</i> in <i>COLL</i>.</p>			
		<p>(4) A <i>person</i> 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</i> of <i>units</i> in <i>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 <i>issued</i> before, on or after 1 July 2011.</p>			
<p>[Note: article 118(2) of the <i>UCITS Directive</i>]</p>					
19	<p>COLL 4.4.12 R COLL 4.4.13 R COLL 7.7.19 R</p>	R	<p>Where a <i>UCITS scheme</i> is to be the <i>receiving UCITS</i> in a proposed <i>UCITS merger</i> and no meeting of <i>unitholders</i> is required to be held under COLL 7.6.2 R (5) and COLL 7.6.2 R (6), the <i>authorised fund manager</i> may satisfy its duty to the <i>unitholders</i> of the <i>receiving UCITS</i> under COLL 7.7.19 R (Method of providing merger information to unitholders) to provide the information by making it public in an appropriate manner.</p>	<p>From 1 July 2011 to 31 December 2013</p>	<p>1 July 2011</p>

(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
20	<p>COLL 4.4.12 R</p> <p>COLL 4.4.13 R</p> <p>COLL 7.7.19 R</p>	G	<p>(1) In determining the appropriate manner of making the information public, the <i>authorised fund manager</i> should ensure that:</p> <p>(a) a <i>unitholder</i> can obtain the information at a reasonable cost;</p> <p>(b) the information is available at reasonable times;</p> <p>(c) 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>.</p> <p>(2) Examples of what might be deemed appropriate include one or more of:</p> <p>(a) publication in a national newspaper;</p> <p>(b) supply through an advertised local rate or freephone telephone number;</p> <p>(c) publication on the internet; or</p> <p>(d) communication to all existing <i>unitholders</i>, before the merger has taken effect.</p> <p>(3) 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 COLL 7.7.14 R (1) (Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS).</p>	From 1 July 2011 to 31 December 2013	1 July 2011

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transition- al provi- sion: dates in force	Hand- book provi- sion: coming into force
21	COLL 4.2.5R (3)(qa)	R	Where a <i>scheme</i> meets the conditions in COLL 5.9.3 R (Investment conditions: short-term money market funds) or COLL 5.9.5 R (Investment conditions: money market funds) on 30 June 2011 an <i>authorised fund manager</i> need not include the statement in COLL 4.2.5R (3)(qa).	1 July 2011 to 31 December 2011	1 July 2011
22	COLL 4.6.8R(8)(d)	R	Where a <i>scheme</i> meets the conditions in COLL 5.9.3 R or COLL 5.9.5 R on 30 June 2011 an <i>authorised fund manager</i> need not include the statement in COLL 4.6.8R(8)(d).	1 July 2011 to 31 December 2011	1 July 2011
23	COLL 5.9.3 R and COLL 5.9.5 R	R	The conditions in COLL 5.9.3 RC and COLL 5.9.5 R that a <i>money market fund</i> or a <i>short-term money market fund</i> must satisfy do not apply to investments acquired prior to 1 July 2011.	1 July 2011 to 31 December 2011	1 July 2011
24	COLL 8.3.4R (6)	R	Where a <i>scheme</i> meets the conditions in COLL 5.9.3 R or COLL 5.9.5 R on 30 June 2011 an <i>authorised fund manager</i> need not include the statement in COLL 8.3.4R(6).	1 July 2011 to 31 December 2011	1 July 2011
25	COLL 3 to COLL 8	R	(1) The following chapters and provisions of <i>COLL</i> apply as if the amendments made to those chapters and provisions by the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011 had not been made in respect of an <i>ICVC</i> in the circumstances specified under (2): (a) COLL 3 ; (b) COLL 4; (c) COLL 5; (d) COLL 6 ;	From 21 December 2011 to 20 December 2014	21 December 2011

(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
			<p>(e) COLL 7 (except COLL 7.3.3 G and COLL 7.3.7 R (9)); and</p> <p>(f) COLL 8.</p> <p>(2) The chapters and provisions referred to in (1) apply as described in respect of an <i>ICVC</i> until the date on which either:</p> <p>(a) the <i>instrument of incorporation</i> is amended to contain a statement to effect compliance with paragraph 2(ba) of Schedule 2 to the <i>OEIC Regulations</i>; or</p> <p>(b) an <i>authorisation order</i> is given to an <i>ICVC</i> which contains in its <i>instrument of incorporation</i> the statement to effect compliance with paragraph 2(ba) of Schedule 2 to the <i>OEIC Regulations</i>.</p>		
26	COLL 3 to COLL 8	D	<p>In respect of an <i>ICVC</i> which is amending its <i>instrument of incorporation</i> under <i>COLL TP 1.1R(25)(2)(a)</i>, the <i>FCA</i> must be provided with the notification required by regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 in writing. That notification must consist of a statement confirming that the <i>umbrella</i> does not have any agreements or contracts with a third party the provisions of which are inconsistent with paragraph (1) or (2) of regulation 11A of the <i>OEIC Regulations</i>. The notification must be provided at the same time as providing the notification required by regulation 21 of the <i>OEIC Regulations</i>.</p>	From 21 December 2011 to 20 December 2014	21 December 2011

(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
27	COLL 3 to COLL 8	G	Prior to amending the <i>instrument of incorporation</i> as set out in <i>COLL TP1.1R(25)(2)(a)</i> , regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 requires notification to be provided to the <i>FCA</i> in such form as the <i>FCA</i> may direct. The form in which the <i>FCA</i> directs this notification is to be provided is set out in TP1.1D(26).	From 21 December 2011 to 20 December 2014	21 December 2011

Collective Investment Schemes

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

1 Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>COLL</i> Transitional Provision 3	Election or revocation to comply with <i>CIS</i>	Details	At election or revocation	6 years
<i>COLL</i> Transitional Provision 14	Election for early compliance with the instrument	Details	At election	6 years
<i>COLL</i> 4.4.11 R (5)	Minutes of meetings (<i>AFM</i>)	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
<i>COLL</i> 6.2.5 R (1)	<i>Issues</i> and <i>cancellations</i> of <i>units</i> (<i>AFM</i>)	Full details	As implicit from the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>
<i>COLL</i> 6.4.6 R (4)	Instruments of Transfer (<i>person</i> responsible for the register)	Full details	From registration	6 years
<i>COLL</i> 6.6.6 R (1)	General record-keeping obligations (<i>AFM</i>)	Such as to demonstrate compliance with the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>	6 years
<i>COLL</i> 6.6.6 R (2)	<i>Units</i> held, acquired or disposed of (<i>AFM</i>)	Daily record of <i>units</i> held, acquired or disposed of by the <i>AFM</i>	As implicit in rules in <i>COLL</i>	6 years
<i>COLL</i> 6.6.6 R (3)	Dilution record-keeping obligations (<i>AFM</i>)	How the <i>AFM</i> calculates and estimates <i>dilution</i> and its policy and method for determining the amount of any <i>dilution levy</i> or <i>dilution adjustment</i>	As implicit from the rules in <i>COLL</i>	6 years
<i>COLL</i> 6.6.12 R (3)	General record-keeping obligations (<i>depository</i>)	Such as to demonstrate compliance with the rules in <i>COLL</i>	As implicit from the rules in <i>COLL</i>	6 years
<i>COLL</i> 6.13.2 R	Portfolio <i>transactions</i> relating to a <i>UCITS</i>	Full details	After transaction	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
COLL 6.13.3 R	Subscription and <i>redemption</i> orders	Full details	After receipt of order	5 years
COLL 6.13.4 R	Records referred to in COLL 6.13.2 R and COLL 6.13.3 R	Full details	After termination of authorisation of <i>UCITS management company</i>	Outstanding term of 5 year period
COLL 8.3.8 R (2)	Minutes of meetings (<i>AFM</i>)	Full details	As implicit from the <i>rules in COLL</i>	6 years
COLL 8.5.2 R (3)(e)	General record keeping obligations (<i>AFM</i>)	Full details	As implicit from the <i>rules in COLL</i>	As implicit from the <i>rules in COLL</i>
COLL 8.5.2 R (3)(f)	<i>Units</i> held, acquired or disposed of (<i>AFM</i>)	Daily record of <i>units</i> held, acquired or disposed of by the <i>AFM</i>	As implicit from the <i>rules in COLL</i>	6 years
COLL 8.5.4 R (2)(h)	General record keeping obligation (<i>depository</i>)	Full details	As implicit from the <i>rules in COLL</i>	As implicit from the <i>rules in COLL</i>
COLL 8.5.10 R (4)	<i>Issues</i> and <i>cancellations</i> of <i>units</i> (<i>AFM</i>)	Full details	As implicit from the <i>rules in COLL</i>	As implicit from the <i>rules in COLL</i>
COLL TP 1.1.16	Election to comply with COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5DR as those rules were in force on 5 March 2010	Details	At election	6 years

Collective Investment Schemes

Schedule 2 Notification requirements

Sch 2.1 G

FCA

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

Sch 2.2 G

FCA

1 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COLL</i> Transitional provision 3	Election or revocation to comply with CIS	Details and the date from which it is to take effect	At election or revocation	Immediate
<i>COLL</i> Transitional Provision 14	Election for early compliance with the instrument	Details and the date from which it is to take effect	At election	Immediate
<i>COLL</i> 4.2.3 R (1)(b)	<i>Prospectus</i> and any revisions thereto	Copy provided	<i>Marketing scheme</i>	Before <i>marketing</i> begins
<i>COLL</i> 4.2.3A R (1)(b)	Copy of <i>prospectus</i> of the <i>master UCITS</i>	Full details, together with any amendments	On publication	Immediately on publication
<i>COLL</i> 4.2.3B R (1)	<i>Prospectus</i> of the <i>qualifying master scheme</i> of a <i>feeder NURS</i>	Copy provided	Upon request by the <i>FCA</i>	Immediate
<i>COLL</i> 4.5.14 R (2)(d)	Annual and half-yearly reports	Copy of report	End of annual or <i>half-yearly accounting period</i>	Immediately on publication
<i>COLL</i> 4.5.15 R (1)(b)	Copies of the annual and half-yearly long reports of the <i>master UCITS</i>	Full details	End of <i>annual</i> or <i>half-yearly accounting period</i>	Immediately on publication
<i>COLL</i> 4.5.16 R (1)	Annual and half-yearly long report (or	Copy provided	Upon request by the <i>FCA</i>	Immediate

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	nearest equivalent documents for a <i>qualifying master scheme</i> that is a <i>recognised scheme</i>) of the <i>qualifying master scheme</i> of a <i>feeder NURS</i>			
COLL 4.7.7 R (2)	<i>Key investor information document</i>	Full details, together with any amendments	On first use	Immediate
COLL 4.7.7 R (3)	<i>Key investor information document</i> of the <i>master UCITS</i>	Full details, together with any amendments	On first use	Immediate
COLL 6.5.3 R (5)	Change of <i>ACD</i> , <i>directors</i> or <i>controller</i> of <i>ACD</i> or a corporate <i>director</i>	Details	Occurrence	Immediate
COLL 6.6.7 R	Capital of <i>ICVC</i>	Details if capital: (a) falls below minimum or (b) exceeds maximum	Occurrence	Immediate
COLL 6.9.11 R	Change to <i>ICVC</i> or to one of its officers	Details	Occurrence	14 days
COLL 6.12.3 R	Risk management process	Details in COLL 6.12.3 R (2)(a) and COLL 6.12.3 R (2)(b) and any material alterations thereof	On first use of process	On a regular basis and at least annually
COLL 6.12.6R(2)	Material change to the risk management process	Full details of change	On first use of amended process	Immediate
COLL 7.2.1 R (2) & COLL 7.2.1R (5)	Suspension or resumption of <i>dealing</i>	Details including reason for suspension	Occurrence	Immediate
COLL 7.3.5 R (5)	Winding up a solvent <i>ICVC</i> or terminating a solvent <i>ICVC sub-fund</i> (<i>Directors</i>)	Solvency statement	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	Within 21 days of notice given under regulation 21 of <i>OE-IC Regulations</i>
COLL 7.3.7 R (9)	Winding up a solvent <i>ICVC</i> or <i>sub-fund</i> of an <i>ICVC</i> (<i>Depository</i>)	Completion of winding up or termination of a <i>sub-fund</i>	Winding up a solvent <i>ICVC</i> or <i>ICVC sub-fund</i>	As soon as reasonably practical after winding up completed
COLL 7.3.8 R (6)	Winding up a solvent <i>ICVC</i> (<i>ACD</i>)	Final accounts	Completion of winding up	Four months
COLL 7.3.8 R (6)	Winding up a solvent <i>ICVC sub-fund</i> (<i>ACD</i>)	Termination account and auditor's report	Termination of <i>sub-fund</i>	Four months

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COLL 7.4.4R (6)	Winding up of an <i>AUT</i> or an <i>AUT sub-fund (Trustee)</i>	Completion of winding up	Winding up of an <i>AUT</i>	Immediate
COLL 7.4.5 R (5)	Winding up an <i>AUT</i> or <i>AUT sub-fund</i>	Annual reports of the <i>manager</i> and <i>trustee</i>	End of final accounting period	Four months
COLL 7.7.22 R	Confirmation of the completion of the merger transfer	Details of completion	On completion of transfer	Immediate
COLL 8.3.2 R	<i>Prospectus</i> and revisions	Full documents	Before marketing commences	Immediate
COLL 8.3.5 R (6)	Annual and half yearly reports	Copy of report	End of annual or <i>half-yearly accounting period</i>	Immediately on publication
COLL 8.6.3 R (3) & COLL 8.6.3 R (5)	Suspension or resumption of <i>dealing</i> (AFM)	Details including reason for suspension	Occurrence	Immediate
COLL 9.3.1 D	Notification of a <i>scheme</i> constituted in a <i>designated territory</i>	Prescribed details	Intention to market <i>scheme</i> in <i>UK</i>	As implicit from <i>rules</i> in <i>COLL</i>
COLL 9.3.1 D	Application under section 272 of the <i>Act</i>	Details	Intention to market <i>scheme</i> in the <i>UK</i>	Up to 6 months before commencing marketing
COLL 11.3.9 R	Identity of investing <i>feeder UCITS</i>	Full details	After investment	Immediate
COLL 11.4.3 R	Notification of irregularities relating to a <i>master UCITS</i>	Full details	Detection	Immediate

Collective Investment Schemes

Schedule 3 Fees and other required payments

Sch 3.1 G

FCA

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Sch 3.2 G

FCA

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Collective Investment Schemes

Schedule 4 Powers exercised

Sch 4.1 G

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

- Section 138 (General rule-making power)
- Section 139 (Miscellaneous ancillary powers)
- Section 140 (Restriction on managers of certain collective investment schemes)
- Section 145 (Financial promotion rules)
- Section 156 (General supplementary powers)
- Section 238(5) (Restrictions on promotion)
- Section 242 (Applications for authorisation of unit trust schemes)
- Section 247 (Trust scheme rules)
- Section 248 (Scheme particulars rules)
- Section 278 (Rules as to scheme particulars)
- Section 340 (Appointment)
- Paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority)
- Regulation 6 (FSA rules) of the *OEIC regulations*

Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *COLL*:

- Section 157(1) (Guidance)

Sch 4.3 G

The following powers in the *Act* have been exercised by the *FSA* in *COLL* to specify and direct:

- Section 270(6)(b) (Schemes authorised in designated countries or territories)
- Section 274 (Applications for recognition of individual schemes)

Collective Investment Schemes

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

The table below sets out the rules in *COLL* contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed For private person, the rule may be actionable by a private person under section 138D unless a Yes appears in the column headed Removed. A Yes in the column headed Removed indicates that the *FCA* has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

- (1) any individual, except when acting in the course of carrying on a regulated activity; and
- (2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

Sch 5.2 G

FCA

1. Actions for damages: the New Collective Investment Schemes Sourcebook

Chapter/Appendix	Section/Annex	Paragraph	Right of action section 138D		
			For private person?	Removed	For other person?
All rules in <i>COLL</i>			Yes	No	No

Collective Investment Schemes

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

1. The rules in *COLL* can be *waived* by the *FCA* under sections 138A and 138B, or section 250 of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (Modification or waiver of FCA rules), except *COLL* 3.2.8R (UCITS obligations) and *COLL* 6.9.9 (Restrictions of business for UCITS management companies).

Sch 6.2 G

FCA

2. Although the *FCA* has the formal power of *waiver* under the *Act* in relation to these *rules*, much of *COLL* implements the requirements of the *UCITS Directive* by ensuring that relevant *authorised funds* comply with such requirements. Accordingly, while formal power may exist to waive such *UCITS Directive* derived rules, the *FCA's* ability to do so is severely constrained.

Sch 6.3 G

Credit Unions New sourcebook

Credit Unions New sourcebook

CREDS 1	Introduction
1.1	Application and purpose
CREDS 2	Senior management arrangements, systems and controls
2.1	Application and purpose
2.2	General provisions
CREDS 3	Investment and borrowing
3.1	Application, purpose and interpretation
3.2	Investment
3.3	Borrowing and financial risk management
CREDS 4	Shares and deposits
4.1	Application and purpose
4.2	Shares
4.3	Deposits
4.4	Insurance against fraud or other dishonesty
4 Annex 1	Insurance against fraud or other dishonesty (see CREDS 4.4.1R)
CREDS 5	Capital
5.1	Application and purpose
5.2	Components of capital
5.3	Version 1 credit unions
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Chapter 1

Introduction

1.1 Application and purpose

Application

1.1.1

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- (1) The Credit Unions New Sourcebook, *CREDS* for short, is the specialist sourcebook for *credit unions*.
- (2) [deleted]

1.1.2

FCA PRA

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- (1) *CREDS* covers only the requirements associated with a *Part 4A permission to accept deposits*. The Conduct of Business sourcebook (*COBS*) sets out additional requirements for *credit unions* that are *CTF providers* in relation to *cash deposit CTFs*.
- (2) Other *permissions* are covered elsewhere in the *Handbook*. So, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*), and a *credit union* seeking a *permission* to undertake *insurance mediation activity* in relation to *non-investment insurance contracts* would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (*ICOBS*).
- (3) The provisions of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (*MIPRU*) and the Interim Prudential sourcebook for Investment Businesses (*IPRU(INV)*) may also be relevant to a *credit union* whose *Part 4A permission* includes *insurance mediation activity* or *mortgage mediation activity* or which is a *CTF provider* with permission to carry on *designated investment business*.

1.1.3

FCA PRA

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Every *credit union* is either a *version 1 credit union* or a *version 2 credit union*. The *rules* relating to, for example, borrowing, the payment of dividends on shares, capital and lending to members are different depending on whether a *credit union* is a *version 1 credit union* or a *version 2 credit union*.

Purpose

1.1.4

FCA PRA

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CREDS sets out *rules* and *guidance* that are specific to *credit unions*. ■ *CREDS 10* refers to other more generally applicable provisions of the *Handbook* that are likely to be relevant to *credit unions* with *Part 4A permission to accept deposits*. For details of these provisions, we would expect *credit unions* to access the full text in the *Handbook*.

1.1.5

FCA PRA

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The status of the provisions in *CREDS* is indicated by icons containing the letters R, G or E. Please refer to chapter [...] of the Reader's Guide for further explanation about the significance of these icons. The Reader's Guide can be found at <http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide>

1

Chapter 2

Senior management arrangements, systems and controls

2.1 Application and purpose

Application

2.1.1

FCA PRA

R

This chapter applies to all *credit unions*.

Purpose

2.1.2

FCA PRA

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The purpose of this chapter is to provide *rules* and *guidance* relating to senior management arrangements, systems and controls that are specific to *credit unions* with a *permission to accept deposits*.

2.1.3

FCA PRA

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This chapter is also intended to remind *credit unions* that the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) also contains a number of high level *rules* relating to senior management arrangements, systems and controls designed to have general application to all *firms*, including *credit unions*. ■ SYSC 1 and ■ SYSC 4 to ■ SYSC 10 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. ■ SYSC 18 applies to all *credit unions* without restriction. This chapter does not seek to repeat the requirements of SYSC that are relevant to *firms* more generally.

2.1.4

FCA PRA

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The purposes of SYSC, which applies to all *credit unions*, are:

- (1) to encourage *directors* and *senior managers* to take appropriate practical responsibility for the arrangements that all *firms* must put in place on matters likely to be of interest to the *appropriate regulator* because they impinge on the *appropriate regulator's* function under the *Act*;
- (2) to reinforce *Principle 3*, under which all *firms* must take reasonable care to organise and control their affairs responsibly and effectively with adequate risk management systems;
- (3) to encourage all *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*.



2.2 General provisions

Appropriate systems and controls

2.2.1

FCA PRA

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■ SYSC 4.1.1 R requires every *firm*, including a *credit union*, to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

2.2.2

FCA PRA

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For *credit unions*, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R should be comprehensive and proportionate to the nature, scale, and complexity of the *credit union's* activities. That is the effect of ■ SYSC 4.1.2 R and ■ SYSC 4.1.2A G.

2.2.3

FCA PRA

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A small *version 1 credit union* will not be expected to have the same systems and controls as a large *version 2 credit union*.

Business plan

2.2.4

FCA PRA

R

A *credit union* must establish, maintain and implement an up-to-date business plan approved by the committee of management and supply a copy on request to the *appropriate regulator*.

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.6.]

2.2.5

FCA PRA

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Guidance on business planning is given in ■ CREDS 2.2.51 G to ■ CREDS 2.2.58 G.

Policies and procedures manual

2.2.6

FCA PRA

R

A *credit union* must establish, maintain, and implement an up-to-date and fully documented policies and procedures manual, and supply a copy on request to the *appropriate regulator*.

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.6.]

2.2.7

FCA PRA

G

Guidance on documentation of policies and procedures is given in ■ CREDS 2.2.59 G to ■ CREDS 2.2.61 G.

System of control

2.2.8 **R** A *credit union* must establish, maintain and implement a fully documented system of control.

FCA PRA

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.6.]

2.2.9 **G** Guidance on the documentation of systems of control is given in ■ CREDS 2.2.20 G to ■ CREDS 2.2.23 G.

FCA PRA

Internal audit function

2.2.10 **A** (1) A *credit union* must have an internal audit function (this may be either in-house or outsourced to a third party).

FCA PRA

(2) Contravention of (1) may be relied on as tending to establish contravention of ■ SYSC 4.1.1 R (see ■ CREDS 2.2.1 G).

2.2.11 **G** (1) The term 'internal audit function' in ■ CREDS 2.2.10 E refers to the generally understood concept of internal audit within a *firm*, in other words the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).

FCA PRA

(2) Guidance on internal audit is given in ■ CREDS 2.2.40 G to ■ CREDS 2.2.50 G.

Segregation of duties

2.2.12 **G** A *credit union* should ensure appropriate segregation of duties in order to minimise the risk of *financial crime* or contravention of requirements and standards under the *regulatory system*.

FCA PRA

2.2.13 **G** Guidance on segregation of duties is given in ■ CREDS 2.2.18 G and ■ CREDS 2.2.19 G.

FCA PRA

Committee of management

2.2.14 **G** Under section 4(1) of, and Schedule 1 to, the Credit Unions Act 1979 or article 8(1) of, and Schedule 1 to, the Credit Unions (Northern Ireland) Order 1985, as appropriate, a *credit union* is required to have a committee of management. The committee of management should be competent to control the affairs of a *credit union*, and have an appropriate range of skills and experience relevant to the activities carried on by the *credit union*.

FCA PRA

2.2.15 **G** In accordance with *Statement of Principle 7* of the *Statements of Principle for Approved Persons*, it is the responsibility of each individual member of the committee of management to understand, and ensure that the *credit union* complies with, the requirements of all the relevant Acts, secondary legislation and *rules*.

FCA PRA

2.2.16 **G** (1) As the *credit union's governing body*, the committee of management has responsibility for ensuring that the *credit union* complies with the

FCA PRA

requirements of ■ SYSC 4.1.1 R (see ■ CREDS 2.2.1 G and ■ CREDS 2.2.2 G). So, the committee of management has overall responsibility for:

- (a) establishing objectives and formulating a business plan;
- (b) monitoring the financial position of the *credit union*;
- (c) determining and documenting policies and procedures;
- (d) directing and coordinating the work of all *employees* and volunteers, and ensuring that they are capable and properly trained;
- (e) maintaining adequate reserves;
- (f) making provision for bad and doubtful debts;
- (g) recommending a dividend on shares to members subject to the *credit union's* financial position;
- (h) ensuring that the *credit union* complies with all statutory and regulatory requirements; and
- (i) ensuring that the *credit union* complies with the requirements of its registered rules.

(2) [deleted]

2.2.17

FCA PRA

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The committee of management should meet at least monthly.

Organisation

2.2.18

FCA PRA

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■ CREDS 2.2.12 G states that all *credit unions* should ensure appropriate segregation of duties. Duties should be segregated to prevent one individual from initiating, controlling, and processing a transaction (for example, both the approval and the payment of an invoice).

2.2.19

FCA PRA

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Responsibilities of connected *persons* (for example, relatives and other close relationships) should be kept entirely separate. They should not hold key posts at the same time as each other. Where this is unavoidable, a *credit union* should have a written policy for ensuring complete segregation of duties and responsibilities.

Documentation of systems of control

2.2.20

FCA PRA

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■ CREDS 2.2.8 R requires a *credit union's* system of control to be fully documented. The documentation helps the committee of management to assess if systems are maintained and controls are operating effectively. It also helps those reviewing the systems to verify that the controls in place are those that have been authorised, and that they are adequate for their purpose.

PAGE
5

2.2.21

FCA PRA

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- (1) The committee of management should decide what form this documentation should take, but the committee should have in mind the following points.
 - (a) Documents should be comprehensive: they should cover all material aspects of the operations of the *credit union*.
 - (b) Documents should be integrated: separate elements of the system should be cross-referred so that the system can be viewed as a whole.

- (c) Documents should identify risks and the controls established to manage those risks. The controls should be identified and their purpose defined so that their effectiveness can be evaluated.
 - (d) There should be named *persons* or posts for each control function and alternatives in case of absence.
 - (e) Documents should state how the operation of the control is evidenced. Evidence might include signatures, records and registers. Documents should also state for how long that evidence is to be retained, taking account of ■ SYSC 9.1.
 - (f) Documents should be unambiguous. Instructions should be clear and precise, avoiding expressions such as "normally" and "if possible".
 - (g) Documents should be practical and easy to consult and use when operating and reviewing systems.
 - (h) Documents should be up to date. There should be an accurate description of the function that the control is to address. When changes are made to the function, the appropriate systems of control need to be updated and documented at the same time.
- (2) The committee of management should, from time to time, seek confirmation that the systems of control are being complied with.

2.2.22
FCA PRA

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Documentation should not be restricted to "lower level" controls applied in processing transactions, but should also cover "high level" controls including:

- (1) identifying those powers to be exercised only by the committee of management, and the powers delegated to others;
- (2) the purpose, composition and reporting lines of sub-committees, and *senior managers* to whom responsibilities are delegated;
- (3) the specific roles and responsibilities of individual *officers*;
- (4) the timing, form and purpose of meetings of the committee of management and sub-committees, and the way in which policies and decisions are recorded and their implementation monitored.

2.2.23
FCA PRA

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The documentation of IT controls should be integrated within the overall documentation of a *credit union's* system of control.

Accounting records and systems

2.2.24
FCA PRA

G

■ SYSC 9.1.1 R requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act*, secondary legislation under the *Act*, or *rules* (including accounting records). These records should be capable of being reproduced in the English language and on paper.

2.2.25
FCA PRA

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A *credit union* should have appropriate systems in place to fulfil its obligations with respect to adequacy, access, periods of retention, and security of records.

2.2.26

FCA PRA

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The main reasons why a *credit union* should maintain adequate accounting and other records are:

- (1) to provide the committee of management with adequate financial and other information to enable it to conduct its business in a prudent manner on a day-to-day basis;
- (2) to safeguard the assets of the *credit union* and the interests of members and *persons* too young to be members;
- (3) to assist *officers* of the *credit union* to fulfil their regulatory and statutory duties in relation to the preparation of annual accounts;
- (4) to provide the committee of management with sufficient timely and accurate information to assist them to submit the information required or requested by the *appropriate regulator*.

2.2.27

FCA PRA

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When forming their opinion of whether the accounting and other records are adequate, the committee of management should satisfy itself that they capture and record on a timely basis, and in an orderly fashion, every transaction. The accounting and other records should provide sufficient information in respect of each transaction to explain:

- (1) its nature and purpose;
- (2) the asset or liability, actual and contingent, which arises (or may arise) from it;
- (3) the income or expenditure, current and deferred, which arises from it.

2.2.28

FCA PRA

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The committee of management should satisfy itself that the records are maintained in an integrated and orderly manner to disclose, with reasonable accuracy and promptness, the state of the business at any time.

The compliance function

2.2.29

FCA PRA

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- (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *credit union* to have a separate compliance function.
- (2) The organisation and responsibilities of a compliance function should be documented.
- (3) A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *credit union's* relevant records as well as ultimate recourse to its *governing body*.

2.2.30

FCA PRA

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Guidance on compliance is located in ■ SYSC 6.1.3 R.

[Note: As explained in ■ SYSC 1 Annex 1.3.3G, ■ SYSC 6.1.3 R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]

2.2.31

FCA PRA

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Some important compliance issues include:

- (1) insurance against fraud and dishonesty;
- (2) arrangements for the prevention, detection and reporting of *money laundering*;
- (3) establishing and maintaining a satisfactory system of control;
- (4) keeping proper books of account;
- (5) computation and application of profits;
- (6) investment of surplus funds;
- (7) capital requirements;
- (8) liquidity requirements;
- (9) limits on shares and loans;
- (10) maintenance of membership records;
- (11) submission of financial reports to the regulator;
- (12) *approved persons* regime;
- (13) payment of regulatory fees.

Management information

2.2.32

FCA PRA

G

Guidance on management information is located in ■ SYSC 7.1.4 R.

[Note: As explained in ■ SYSC 1 Annex 1.3.3G, ■ SYSC 7.1.4 R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]

2.2.33

FCA PRA

G

A *credit union* should maintain information systems to enable the committee of management to direct and control the *credit union's* business effectively, and to provide the information required by the *appropriate regulator*.

2.2.34

FCA PRA

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The committee of management should be satisfied that:

- (1) the information available is sufficient for the proper assessment of the potential risks for the *credit union*, and in order to determine its need for capital and liquidity;
- (2) the information available is sufficiently comprehensive to provide a clear statement of the performance and financial position of the *credit union*;
- (3) management information reports are prepared with sufficient frequency;

- (4) sufficient attention is focused on key factors affecting income and expenditure and that appropriate performance indicators are employed;
- (5) actual performance is compared with planned and previous performance.

2.2.35
FCA PRA

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In forming a view on whether the management information system is sufficiently comprehensive, the committee of management should consider whether, where relevant, the substance of reports provides a clear statement of:

- (1) the capital position;
- (2) the liquidity position;
- (3) profits and losses, assets and liabilities, and flow of funds;
- (4) loans, arrears, and provisions.

2.2.36
FCA PRA

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The matters listed in ■ CREDS 2.2.35 G should be compared against limits, ratios and other parameters set by the committee of management, as well as regulatory requirements.

Information for the PRA

2.2.37
FCA PRA

G

Credit unions should ensure that quarterly and annual returns required by SUP are reviewed at a sufficiently senior level before they are submitted to the *appropriate regulator*. The review should check for consistency between different returns, between various tables on the same return, and between information prepared for the committee of management.

Personnel

2.2.38
FCA PRA

G

Guidance on employees and agents is located in ■ SYSC 5.1.2 G.

2.2.39
FCA PRA

G

A *credit union* should identify present and future staffing requirements (including volunteers and paid staff) and make appropriate plans for their recruitment and training.

Internal Audit

2.2.40
FCA PRA

G

■ CREDS 2.2.10 E states that a *credit union* should have an internal audit function.

2.2.41
FCA PRA

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Guidance on internal audit and audit committees (otherwise known as the supervisory committee) is located in ■ SYSC 6 and ■ SYSC 4.1.11 G.

2.2.42
FCA PRA

G

Depending upon the scale and nature of the *credit union's* activities, it may be appropriate for the audit committee to delegate the task of monitoring the effectiveness and appropriateness of its systems and controls to an *employee* or other third party.

2.2.43
FCA PRA

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The purposes of an internal audit are:

- (1) to ensure that the policies and procedures of the *credit union* are followed;

- (2) to provide the committee of management with a continuous appraisal of the overall effectiveness of the control systems, including proposed changes;
- (3) to recommend improvements where desirable or necessary;
- (4) to determine whether the *internal controls* established by the committee of management are being maintained properly and operated as laid down in the policy, and comply with relevant Acts, secondary legislation, *rules*, policies and procedures;
- (5) to ensure that accounting records are prepared promptly and accurately, and that they are in order;
- (6) to assess whether financial and operating information supplied to the committee of management is accurate, pertinent, timely, and complete.

2.2.44

FCA PRA

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The internal audit function (see ■ CREDS 2.2.11G) should develop an audit plan, covering all aspects of the *credit union's* business. The audit plan should identify the scope and frequency of work to be carried out in each area. Areas identified as higher risk should be covered more frequently. However, over a set timeframe (likely to be one year) all areas should be covered. Care should be taken to avoid obvious patterns in assessing the different areas of the *credit union's* business, so that the audit plan produces a representative snapshot of the operation and effectiveness of the credit union's internal systems and controls, procedures and policies.

2.2.45

FCA PRA

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The internal audit work programme should include items such as:

- (1) verification of cash (counting and reconciliation) without prior notification;
- (2) *bank* reconciliation (checking records against *bank* statements);
- (3) verification of passbooks or account statements;
- (4) checking for compliance with policies and procedures;
- (5) checking for compliance with relevant Acts, secondary legislation and *rules*;
- (6) checking minutes and reports of the committee of management and other sub-committees for compliance, and assessing regularity and completeness;
- (7) checking loan applications;
- (8) verification of the *credit union's* assets and *investments*.

2.2.46

FCA PRA

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The key elements of a satisfactory system of internal audit include the following:

- (1) Terms of reference. These should be specified with precision and include, amongst other things, scope and objectives of the audit committee and the internal audit function (see ■ CREDS 2.2.11G), access to records, powers to obtain information and explanations for *officers*, and reporting requirements. These should be approved by the committee of management.

- (2) Risk analysis. Key risks in each area of the *credit union's* business should be identified. The adequacy of the specific controls put in place to address those risks should be assessed.
- (3) Internal audit plan. This should be developed on the basis of the risk analysis.
- (4) Detailed programmes. These should be based on the internal audit plan, together with the controls and their objectives specified in the control documentation. Each programme should be comprehensive, specifying the frequency with which the various parts of the programme are to be carried out and how the work is to be performed.
- (5) Working papers. These should be maintained to evidence who performed the work, how it was controlled and supervised, and to record the conclusions reached. They should be cross referenced to reports made and action taken.
- (6) System of reporting. Formal reports should be submitted at the completion of each aspect of programmed work, stating the areas covered together with any recommendations and conclusions reached.

2.2.47

FCA PRA

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The internal audit function (see ■ CREDS 2.2.11 G) should be independent of all of the functions it inspects.

2.2.48

FCA PRA

G

The committee of management should be satisfied that the status and reporting relationship of the chairman of the audit committee is sufficient to maintain the independence and objectivity of the function.

2.2.49

FCA PRA

G

The qualifications, experience and training of individuals performing the internal audit function (see ■ CREDS 2.2.11 G) should be adequate in relation to its objectives.

2.2.50

FCA PRA

G

The committee of management should be satisfied that the internal audit function (see ■ CREDS 2.2.11 G) is being properly carried out. In order to review the overall effectiveness of the internal audit function it should consider the following:

- (1) the adequacy and scope of planning;
- (2) the adequacy and scope of work performed in relation to the plans and programmes;
- (3) the regularity and level of reporting on matters arising from the inspections;
- (4) the disposal of points and recommendations raised, and reasons for the rejection of any major points;
- (5) a review of the overall effectiveness of the internal audit function.

Business planning

2.2.51

FCA PRA

G

■ CREDS 2.2.4 R requires that a *credit union* maintains a current business plan.

2.2.52 **FCA** **PRA** **G** *Version 2 credit unions* should submit a copy of their business plan to the *PRA* . A *version 2 credit union* making any significant changes to the business plan should provide the *PRA* with a copy of the amended plan as soon as possible after it has been adopted.

2.2.53 **FCA** **PRA** **G** *Guidance* on business strategy is located in ■ SYSC 6.1.2 R and ■ SYSC 7.1.2 R.

[Note: As explained in ■ SYSC 1 Annex 1.3.3G, ■ SYSC 6.1.2 R and ■ SYSC 7.1.2 R are to be read as *guidance* rather than as *rules*, and as if "should" appeared in those provisions instead of "must".]

2.2.54 **FCA** **PRA** **G** The committee of management should have a satisfactory planning system to provide a framework for growth and development of the *credit union*, and to enable it to identify, measure, manage and control risks of regulatory concern.

2.2.55 **FCA** **PRA** **G** The business plan should cover a period of three years from the current financial year, in other words the remainder of the current financial year and the two following financial years.

2.2.56 **FCA** **PRA** **G** The planning system should be defined clearly, documented appropriately, and planning related tasks and decision-making responsibilities allocated clearly within the *credit union*.

2.2.57 **FCA** **PRA** **G** The conclusions, recommendations, projections and assumptions set out in the business plan should be supported by analysis, based on adequate data, and properly documented for comparison with actuals.

2.2.58 **FCA** **PRA** **G** The committee of management should consider the range of possible outcomes in relation to various risks. These risks are increased when a *credit union* provides ancillary services such as issuing and administering means of payment and money transmission, which result, in particular, in higher liquidity and operational risks.

Documentation of policies and procedures

2.2.59 **FCA** **PRA** **G** ■ CREDS 2.2.6 R requires that a *credit union* maintains a manual of its policies and procedures.

2.2.60 **FCA** **PRA** **G** *Version 2 credit unions* should submit a copy of their policy and procedures manual to the *PRA* . A *version 2 credit union* making any significant changes to their policies or procedures should provide the *PRA* with a copy of the amended manual as soon as possible after it has been adopted.

2.2.61 **FCA** **PRA** **G** The policy and procedures manual should cover all aspects of the *credit union's* operations, including matters such as:

- (1) cash handling and disbursements;
- (2) collection procedures;

- (3) lending, including large *exposures* (see ■ CREDS 7.1 to ■ CREDS 7.5);
- (4) arrears management (see ■ CREDS 7.2.9 G to ■ CREDS 7.2.10 G);
- (5) provisioning (see ■ CREDS 7.5);
- (6) liquidity management (see ■ CREDS 6);
- (7) financial risk management (see ■ CREDS 3);
- (8) *money laundering* prevention (see ■ SYSC 6.3);
- (9) internal audit (see ■ CREDS 2.2.40 G to ■ CREDS 2.2.50 G);
- (10) information technology (see ■ CREDS 2.2.23 G);
- (11) business continuity, otherwise known as disaster recovery (see ■ CREDS 2.2.62 G to ■ CREDS 2.2.64 G);
- (12) marketing;
- (13) training;
- (14) connected *persons* and managing conflicts of interest (see ■ CREDS 2.2.19 G);
- (15) *complaints* handling (see ■ DISP 1).

Business continuity

2.2.62

FCA PRA

G

Guidance on business continuity is located in ■ SYSC 4.1.6R to ■ SYSC 4.1.8 G.

[**Note:** As explained in ■ SYSC 1 Annex 1.3.3G, ■ SYSC 4.1.6R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]

2.2.63

FCA PRA

G

A *credit union* should put in place contingency arrangements to ensure that it could continue to operate and meet its regulatory requirements in the event of an unforeseen interruption that may otherwise prevent the *credit union* from operating normally (for example, if there was a complete failure of IT systems or if the premises were destroyed by fire).

2.2.64

FCA PRA

G

Business continuity arrangements should be reviewed and tested regularly in order to ensure their effectiveness.

Chapter 3

Investment and borrowing



3.1 Application, purpose and interpretation

Application

3.1.1

FCA PRA

R

This chapter applies to all *credit unions*.

Purpose

3.1.2

FCA PRA

G

- (1) The *rules* and *guidance* contained in this chapter are designed to address risks that can arise from the structure of a *credit union's* balance sheet.
- (2) These risks include the risk that a *credit union's* income is not sufficiently large to cover its funding, operational and other costs, and the risk that a *credit union* may not be able to renew or replace wholesale funding at an affordable rate.

Interpretation

3.1.3

FCA PRA

R

For the purposes of this chapter:

- (1) the maturity of a *security* or loan is the last or only date on which it will be repayable by or under its terms; and
- (2) surplus funds means funds not immediately required for a *credit union's accepting deposits, lending and ancillary purposes*.



3.2 Investment

Types of investment

3.2.1

FCA PRA

R

Subject to the general limitations on its powers contained in the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985 (as appropriate) and to the limitations contained in ■ CREDS 3.2.2 R and ■ CREDS 3.2.3 R, a *credit union* may invest its surplus funds and funds serving liquidity purposes only in the following types of *investment*:

- (1) *deposits* or loans to a UK domestic firm with Part 4A permission to accept deposits;
- (2) *deposits* or loans to an institution which is authorised in any other EEA State to accept deposits;
- (3) sterling-denominated *securities* issued by the government of any EEA State;
- (4) fixed-interest sterling-denominated *securities* guaranteed by the government of any EEA State, provided that any guarantee is unconditional in respect of the payment of both principal and interest on those *securities*.

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.7.]

Maturity of investments

3.2.2

FCA PRA

R

Any *securities* invested in, or loans made, in accordance with ■ CREDS 3.2.1 R by a *version 1 credit union* must have a maturity date of not more than 12 months from the date on which the *investment* is made.

[Note: a transitional provision applies to this rule: see ■ CREDS TPs 1.8 and ■ 1.9.]

3.2.3

FCA PRA

R

Any *securities* invested in, or loans made, in accordance with ■ CREDS 3.2.1 R by a *version 2 credit union* must have a maturity date of not more than five years from the date on which the *investment* is made.

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.10.]

3.2.4

FCA PRA

R

Cash in custody of officers

Surplus funds not invested by a *credit union* in accordance with ■ CREDS 3.2.1 R to ■ CREDS 3.2.3 R must be held as cash in the custody of *officers* of the *credit union*.

3.2.5

FCA PRA

R

Investment conditions no longer satisfied

Where under ■ CREDS 3.2.1 R to ■ CREDS 3.2.3 R above, a *firm* or another institution ceases to satisfy the conditions necessary for a *credit union* to invest with it or lend to it, and any funds of a *credit union* are with that *firm* or other institution, the *credit union* must take all practicable steps to call in and realise that investment or loan within three *months* of that cessation, or, if that is not possible, as soon after the end of that period as possible.

3.2.6

FCA PRA

G

Transactions between credit unions

- (1) A *credit union* may accept a loan from another *credit union* (section 10(1) of the Credit Unions Act 1979) or article 27(1) of the Credit Unions (Northern Ireland) Order 1985 (as appropriate) .
- (2) ■ CREDS 3.2.2 R to ■ CREDS 3.2.3 R apply to loans between *credit unions*, except for subordinated loans qualifying as capital under ■ CREDS 5.2.1 R (4). (See ■ CREDS 3.2.1 R and ■ CREDS 5.2.8 R (2).)
- (3) ■ CREDS 5.2.1 R to ■ CREDS 5.2.9 G apply to subordinated loans between *credit unions* qualifying as capital under ■ CREDS 5.2.1 R (4).
- (4) ■ CREDS 7 (Lending) (which covers loans to members) does not apply to loans between *credit unions* (see ■ CREDS 7.1.1 R). However, in relation to those loans, *credit unions* should have regard to the principles outlined in ■ CREDS 7.4.6 G and ■ CREDS 7.5 (Provisioning).
- (5) ■ CREDS 6.3.4 R (2) applies to loans between *credit unions* in relation to liquidity.

3.2.7

PRA

G

Loans between *credit unions* should only be arranged after careful consideration by both parties. For example:

- (1) the borrower should consider the financial implications of relying on such borrowing in order to lend to members, or to finance share withdrawals; and
- (2) the lender should assess the risk of late and non-repayment arising from the borrower's own liquidity and credit risks, and keep the aggregate of its loans to other *credit unions* to a very modest level.



3.3 Borrowing and financial risk management

Borrowing

3.3.1
FCA PRA

R A *credit union* must not borrow from a natural person, except by subordinated loan qualifying as capital under ■ CREDS 5.2.1 R (4).

3.3.2
FCA PRA

G ■ CREDS 3.3.1 R does not apply to borrowing from a *body corporate*. A loan made to a *credit union* by a *body corporate* can either be a subordinated loan (providing regulatory capital within ■ CREDS 5.2.1 R (1)(c)) or a senior loan (providing ordinary funding, but not constituting regulatory capital).

3.3.3
PRA

R The borrowing of a *version 1 credit union* must not exceed, except on a short-term basis, an amount equal to 20% of the *total non-deferred shares* in the *credit union*.

3.3.4
PRA

- E**
- (1) The borrowing of a *version 1 credit union* must not exceed an amount equal to 20% of the *total non-deferred shares* in the *credit union* at the end of more than two consecutive quarters.
 - (2) Contravention of ■ CREDS 3.3.4 E (1) may be relied on as tending to indicate contravention of ■ CREDS 3.3.3 R.

3.3.5
PRA

R The borrowing of a *version 2 credit union* must not at any time exceed an amount equal to 50 per cent of the *total non-deferred shares* in the *credit union*.

3.3.6
PRA

R A *credit union* must not count subordinated debt obtained by the *credit union* and forming part of its capital (see ■ CREDS 5.2.1 R) towards the borrowing limits under ■ CREDS 3.3.3 R and ■ CREDS 3.3.5 R.

Financial risk management policy statement

3.3.7
FCA PRA

R A *version 2 credit union* must establish, maintain and implement an up-to-date financial risk management policy statement approved by the committee of management.

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.6.]

3.3.8
FCA PRA

G

This policy should address both interest rate and funding risk. It should cover aggregate limits on holdings of *investments* and borrowings from sources other than members. It should deal with avoidance of funding concentrations (both source and time-band concentrations) and should detail the organisational arrangements, systems and controls in respect of these matters.

3.3.9
FCA PRA

G

A *credit union's* committee of management should review and approve its financial risk management policy at least once a year, and more frequently if necessary, especially in the light of significant changes in business.

3.3.10
FCA PRA

R

A *version 2 credit union* must send to the PRA a copy of its financial risk management policy statement as soon as reasonably practicable after it has been approved by the committee of management.

Chapter 4

Shares and deposits



4.1 Application and purpose

Application

4.1.1

FCA PRA

R

This chapter applies to all *credit unions*.

Purpose

4.1.2

FCA PRA

G

The purpose of this chapter is to provide for limits on holdings of shares and deposits, joint accounts, dividends and insurance cover (based on the aggregate value of shares and deposits).



4.2 Shares

Maximum shareholdings

4.2.1

R

FCA PRA

- (1) A *credit union* must not permit a member to have or claim any interest in the *total non-deferred shares* of the *credit union*, exceeding the greater of:
- (a) £ 15,000 ; or
 - (b) 1.5 per cent of the *total non-deferred shares* in the *credit union*.

(2) [deleted]

4.2.2

R

FCA PRA

Where:

- (1) there is an increase in the percentage of the *total non-deferred shares* in the *credit union* held by a member; and
- (2) this is the result of a reduction in the *total non-deferred shares* in the *credit union* occurring after the time at which that member last acquired shares, or an interest in the shares, of the *credit union*, other than *deferred shares*;

that increase in the percentage of the *total non-deferred shares* in the *credit union* held by that member must be disregarded for the purposes of the limits in ■ CREDS 4.2.1 R (2) and ■ CREDS 4.2.5 R .

4.2.3

G

FCA PRA

■ CREDS 4.2.2 R makes it unnecessary for a member to reduce his shareholding merely because of a reduction in the *total non-deferred shares* in the *credit union*.

Joint accounts

4.2.4

G

FCA PRA

There is no restriction on the number of members who may jointly hold shares in a *credit union*.

4.2.4A

G

[deleted]

4.2.5

R

FCA PRA

- (1) For the purpose only of the limits in ■ CREDS 4.2.1R (1), ■ CREDS 7.3.2 R and ■ CREDS 7.3.6 R the interest of a member in a

joint account must be treated as the percentage represented by that individual member as a percentage of the total number of members holding an interest in the joint account.

(2) [deleted]

Dividends on shares

4.2.6
PRA

R

A version 1 credit union must not:

- (1) pay different dividends on different accounts unless:
 - (a) at the time of the payment of any dividends it has a capital-to-total assets ratio of at least 5%; and
 - (b) the payment of any of those dividends does not reduce the capital-to-total assets ratio to below 5%; or
- (2) pay dividends out of interim profits more than once a year.

4.2.7
PRA

G

A version 2 credit union is permitted to:

- (1) pay different dividends on different accounts; and
- (2) pay dividends out of interim profits more than once a year.

4.3 Deposits

4.3.1

R

FCA PRA

(1) A *credit union* must not accept *deposits* except:

- (a) by way of subscription for its shares from *persons* who may lawfully be admitted to membership of the *credit union* under the Credit Unions Act 1979 or the Credit Union (Northern Ireland) Order 1985 (as appropriate) and the rules of the *credit union*; or
- (b) from *persons* too young to be members under (2); or
- (c) as loans from *persons* under ■ CREDS 3.3.1 R to ■ CREDS 3.3.2 G.

(2) A *credit union* must not accept *deposits* exceeding the greater of £10,000 or 1.5 per cent of the *total non-deferred shares* in the *credit union* from a person who is under the age at which, by virtue of (for *Great Britain credit unions*) any provision of the *credit union's* rules, (for *Northern Ireland credit unions*) under article 15 of the Credit Unions (Northern Ireland) Order 1985 or any provision of the *credit union's* rules, or otherwise, he may lawfully become a member of the *credit union*, unless the *deposits* are held in a *CTF* in which case the *credit union* may accept a larger *deposit*.

4.3.2

G

FCA PRA

Credit unions that provide *CTFs* should ensure that under their rules depositors under the age of 18 whose *deposits* are held within a *CTF* continue to be treated as juvenile depositors until the age of 18. This will provide for the fact that *CTF* account holders may not withdraw any money from the *CTF* until they reach the age of 18, in contrast to the position in relation to other *deposits* which become shares and may be withdrawn earlier.

4.3.3

G

FCA PRA

■ CREDS 3.3.1 R and ■ CREDS 4.3.1 R are intended to ensure that the liberalisation of *credit union* borrowing (■ CREDS 3.3.2 G) does not have the unintended effect of undermining the common bond concept by allowing *credit unions* to operate deposit accounts for natural *persons* who do not qualify for membership.



4.4 Insurance against fraud or other dishonesty

4.4.1 **R** A *credit union* must at all times maintain in force a policy of insurance complying with ■ CREDS 4.4.2 R.

FCA **PRA**

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.11.]

4.4.2 **R** In order to comply with ■ CREDS 4.4.1 R, a policy of insurance (subject to the exception in ■ CREDS 4.4.3 R):

FCA **PRA**

- (1) must insure the *credit union* in respect of every description of loss suffered or liability incurred by reason of the fraud or other dishonesty of any of its officers or employees;
- (2) must so insure the *credit union* up to the limits set out in ■ CREDS 4 Annex 1 R in respect of any one claim, except that the liability of the insurer may be restricted to the amounts set out in ■ CREDS 4 Annex 1 R in respect of the total of the claims made in any one year; and
- (3) must not provide, in relation to any claim, for any amount greater than one per cent of the limits on any one claim set out in ■ CREDS 4 Annex 1 R to be met by the *credit union*.

4.4.3 **R** From the losses and liabilities against which a policy complying with ■ CREDS 4.4.2 R must insure, there must be excepted all loss suffered or liability incurred by a *credit union* other than direct pecuniary loss discovered during the currency of the policy of insurance or within 18 months of the date on which either the policy of insurance lapses, or the duties of the officer or employee concerned are terminated, whichever occurs first.

FCA **PRA**

4.4.4 **R** The "aggregate value" in ■ CREDS 4 Annex 1 R comprises the shares and deposits (including those held in a *CTF*) referred to in ■ CREDS 4.3.1 R (1)(a) and ■ (b) .

FCA **PRA**

4.4.5 **G** The tables in ■ CREDS 4 Annex 1 R set out the minimum levels of insurance cover required by a *credit union*. It is prudent for a *credit union* to consider whether additional cover:

FCA **PRA**

- (1) is needed for its own particular circumstances; and

-
- (2) should be obtained to cater for actual or projected growth in the "aggregate value" (see paragraph 1 of ■ CREDS 4 Annex 1 R) between "relevant dates" (see paragraph 3 of ■ CREDS 4 Annex 1 R).

Insurance against fraud or other dishonesty (see CREDS 4.4.1R)

FCA PRA

	Column (1)	Column (2)	Column (3)
	Aggregate value of share subscriptions and other deposits received and not repaid (the "aggregate value")	Cover required in respect of any one claim	Cover required in respect of total claims made in any one year
Row (A)	Less than £10,000	The higher of £500 or 50 per cent of the aggregate value	The higher of £1,000 or 100 per cent of the aggregate value
Row (B)	£10,000 to £100,000	The higher of £5,000 or 20 per cent of the aggregate value	100 per cent of the aggregate value
Row (C)	More than £100,000	The higher of £20,000 or 15 per cent of the aggregate value	The higher of £100,000 or 75 per cent of the aggregate value
Row (D)	More than £1,000,000	£150,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £2,000,000	£750,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £4,000,000

Notes:

(1) In relation to a *credit union* which, at the relevant date, has accepted and not repaid share subscriptions and other deposits of the aggregate value stipulated in column (1) of the table in this Annex, the limit in respect of any one claim is the amount appearing in the corresponding part of column (2); and the amount in respect of the total of claims made in any one year is the amount appearing in the corresponding part of column (3).

(2) For the purposes of this Annex, "the relevant date" is either the date of inception or renewal of the policy of insurance, or such other date as the *credit union* determines, provided that the relevant date in each year subsequent to the first must be not more than one year after the relevant date in the preceding year.

Chapter 5

Capital



5.1 Application and purpose

Application

5.1.1
PRA

R

This chapter applies to all *credit unions* except for ■ CREDS 5.3, which applies only to *version 1 credit unions*, and ■ CREDS 5.4, which applies only to *version 2 credit unions*.

Purpose

5.1.2
PRA

G

This chapter amplifies *Principle 4*, under which a *firm* must maintain adequate financial resources, and the *threshold condition* that a *firm's* resources must be adequate in relation to the *regulated activities* that it carries on .

5.1.3
PRA

G

The purpose of setting capital requirements is to ensure that a *credit union* has an appropriate level of capital available to absorb unexpected losses.

5.1.4
PRA

G

The capital and net worth requirements set out in this chapter represent the minimum requirements that a *credit union* must comply with. A *credit union* should decide for itself the amount of capital that it needs to hold over and above these minimum standards proportionate to its scale of operations and its risk profile.

5.1.5
PRA

G

The *PRA* may require a *credit union* to hold minimum amounts of capital greater than those set out in this chapter where it considers that particular circumstances make that appropriate.

5.1.6
PRA

G

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

5.1.7
PRA

G

The Credit Unions (Northern Ireland) Order 1985 does not provide for a *Northern Ireland credit union* to issue interest-bearing shares or deferred shares.

5.2 Components of capital

5.2.1

FCA PRA

R

- (1) The following are included in the meaning of 'capital' for the purposes of this chapter:
 - (a) audited reserves;
 - (b) interim net profits;
 - (c) *deferred shares*;
 - (d) subordinated debt meeting the requirements set out at (4);
 - (e) initial capital; and
 - (f) revaluation reserves, arising from the differences between book values and the current market values of property fixed assets which:
 - (i) meet the requirements in (6) to (7); and
 - (ii) are subject to the limit in (8).
- (2) Audited reserves are audited accumulated profits or losses, or both, retained by a *credit union* after payment of tax, dividends and interest on *deposits*. Reserves also include other realised gains and gifts of capital, for example from a sponsoring organisation. *Deferred shares* are included in the meaning of 'capital' but must not be counted twice in the calculation of capital. Where a *credit union's* audited reserves include sums, equal to the amount paid on *deferred shares* subscribed for in full, and transferred to the reserves in accordance with section 7(6) of the Credit Unions Act 1979, that amount must not also be counted separately under (1)(c).
- (3) Interim net profits are interim profits net of tax and anticipated dividends.
- (4) To be included in the calculation of capital, subordinated debt must meet the following conditions:
 - (a) the maturity of the loan must be more than five years from the date on which the loan is made;

- (b) the subordination provisions provide that the claims of the subordinated creditors rank behind those of all unsubordinated creditors including the *credit union's* shareholders;
 - (c) to the fullest extent possible, creditors waive their rights to set off amounts they owe the *credit union* against subordinated amounts owed to them by the *credit union*;
 - (d) the only events of default are non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*;
 - (e) the remedies available to the subordinated creditor in the event of default in respect of the subordinated debt are limited to petitioning for the winding up of the *credit union* or proving for and claiming in the liquidation of the *credit union*;
 - (f) the subordinated debt must not become due and payable before its stated final maturity date except on an event of default complying with (d);
 - (g) the terms of the subordinated debt must be set out in a written agreement or instrument that contains terms that provide for the above conditions;
 - (h) the debt must be unsecured and fully paid up.
- (5) Initial capital is a *credit union's* capital at the time it is given *Part 4A permission to accept deposits*, but this does not apply in cases where the *credit union* is treated as having such a *permission on credit unions day*. Initial capital consists of a *credit union's* assets less its liabilities. For this purpose, liabilities do not include the items set out in (1)(a) to (c).
- (6) To be included in the calculation of capital, revaluation reserves must meet the following conditions:
- (a) the *credit union* must apply the revaluation method to all of its property fixed assets and not selectively;
 - (b) the values must result from regular professional valuations of each property;
 - (c) if professional valuations are not carried out annually, there must be:
 - (i) a rolling programme such that no professional valuation of a property is more than five years old;
 - (ii) in the intervening year(s) in which a property is not professionally valued, an interpolation of value by the Board which takes into account any decline in property

values disclosed by valuations of other properties in that year;

(d) any increase of revaluation reserve must be supported by a professional valuation.

(7) Subject to the conditions in (6), and the limit in (8), the amount of revaluation reserve used for the calculation of capital must be:

- (a) the amount standing to the credit of any such reserve in the balance sheet in the most recent annual return to have been sent to the *PRA* under ■ SUP 16.12.5 R (see ■ CREDS 8.2.3 G); or
- (b) the amount of any such reserve in the accounting records of the *credit union*, for the time being, whichever is the lesser amount.

(8) The amount of revaluation reserve included in the calculation of capital must not represent more than 25 per cent of the total of capital resources in (1)(a) to (f).

5.2.1A

PRA

R

The written agreement or instrument referred to in ■ CREDS 5.2.1R (4)(g) must contain a prominent statement that the subordinated debt is not covered by the *compensation scheme*.

5.2.2

FCA PRA

G

The effect of ■ CREDS 5.2.1 R (4)(a) is that the shortest permissible period for a subordinated loan qualifying as capital under ■ CREDS 5.2.1 R (4)(a) is five years and one day.

5.2.3

PRA

G

Subordinated debt is due and payable only in accordance with ■ CREDS 5.2.1 R (4). However, this *rule* does not prevent the debt from being issued on terms which permit the *credit union*, in accordance with a board resolution, to repay the debt. The decision to repay the debt should be genuinely at the instance of the *credit union's* board. The *credit union* should satisfy itself that the remaining capital would be adequate for the *credit union's* present and future foreseeable needs. The *credit union* should notify the *PRA* at least one *month* in advance of its intention to repay the debt (thereby giving the *PRA* the opportunity to raise objections to the proposed repayment). If repayment is proposed within the first five years, and the *PRA* considers that the remaining capital may not be adequate, then the *PRA* is likely to consider exercising its *own-initiative powers* to ensure that the *credit union* continues to satisfy the *threshold conditions*.

5.2.4

PRA

G

The effect of ■ CREDS 5.2.1 R (8) is that no more than 25 per cent of a *credit union's* regulatory capital may consist of amounts deriving from the revaluation of property, however large the amount standing to the credit of the *credit union's* revaluation reserve.

5.2.5

PRA

R

Negative reserves and any interim net losses must be deducted from capital.

5.2.6

PRA

R

The amount of any subordinated loan counting towards a *credit union's* regulatory capital must, over its final four years to maturity, be written

down by 20% of the amount of the loan per year (see Table at ■ CREDS 5.2.7 R.)

5.2.7
PRA

R Writing down subordinated loans over final four years

This table belongs to ■ CREDS 5.2.6 R

Years to maturity	Amount of loan counting towards capital
More than 4	100%
Less than and including 4 but more than 3	80%
Less than and including 3 but more than 2	60%
Less than and including 2 but more than 1	40%
Less than and including 1	20%

5.2.8
PRA

- R**
- (1) When a *credit union* makes a subordinated loan to another *credit union* qualifying as capital under ■ CREDS 5.2.1 R (4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under ■ CREDS 5.2.7 R) must be deducted from the lender's capital.
 - (2) A subordinated loan within ■ CREDS 5.2.1 R (4)(a) is not an investment under ■ CREDS 3.2.1 R.

5.2.9
PRA

G The effect of ■ CREDS 5.2.8 R is that the maturity limits in ■ CREDS 3.2.2 R and ■ CREDS 3.2.3 R do not apply to subordinated loans made by a *credit union*.

5



5.3 Version 1 credit unions

Requirement to maintain capital assets ratio

5.3.1
PRA

R A *version 1 credit union* must at all times maintain a capital-to-total assets ratio of at least 3%.

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.1.]

Building reserves

5.3.2
PRA

R A *version 1 credit union* must establish and maintain a general reserve.

5.3.3
PRA

R If, at the end of any year of account, the amount in its general reserve stands at less than 10% of its total assets, a *version 1 credit union* must transfer to its general reserve at least 20% of its profits for that year (or such lesser sum as is required to bring the amount in its general reserve up to 10% of its total assets).

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.12.]

5.3.4
PRA

R For the purposes of ■ CREDS 5.3.3 R 'profits' means the profits resulting from the operations of a *credit union* in the year of account in question after deduction of all operating expenses (including payment of interest) and after making provision for the depreciation of assets, for tax liabilities and for bad and doubtful debts, but before the payment of any dividend.

5.3.5
PRA

R A *version 1 credit union* may not transfer from its general reserve where its general reserve stands at less than 10% of its total assets.

[Note: a transitional provision applies to this *rule*: see ■ CREDS TP 1.12.]

Minimum initial capital

5.3.6
PRA

R A *credit union* must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.

PAGE
7

5.3.7
PRA

- ⚠** (1) A *version 1 credit union* should have initial capital of at least £10,000.
- (2) Contravention of (1) may be relied on as tending to establish contravention of ■ CREDS 5.3.6 R.

5.3.8

PRA

G

For the meaning of 'initial capital' see ■ CREDS 5.2.1 R (5).

5.3.9

PRA

G

It should be noted that the requirement in ■ CREDS 5.3.6 R does not affect a *credit union's* obligations to meet the other capital requirements that apply to it. The ability of a *credit union* to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for *authorisation*.

Capital requirement for certain version 1 credit unions

5.3.10

FCA PRA

R

(1) A *version 1 credit union* must not lend to a member more than £7,500 in excess of the *attached shares* held by that member, unless it has a capital-to-total assets ratio of at least 5%.

(2) A *credit union* which is owed by a member a total amount greater than £7,500 in excess of the *attached shares* held by that member must maintain at all times, while such an amount is outstanding, a capital-to-total assets ratio of at least 5%.

5.3.11

PRA

G

■ CREDS 5.3.10 R (2) does not have the effect of invalidating existing loans if the capital-to-assets ratio falls below 5%.

5.3.12

PRA

G

■ CREDS 7.5.1 R and ■ CREDS 7.5.2 R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.

Capital requirements for large version 1 credit unions

5.3.13

PRA

R

A *version 1 credit union* with total assets of more than £5 million or a total number of members of more than 5,000, or both, must maintain at all times a capital-to-total assets ratio of at least 5%.

5.3.14

PRA

G

■ CREDS 7.5.1 R and ■ CREDS 7.5.2 R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.

5.3.15

PRA

R

(1) A *version 1 credit union* with total assets of more than £10 million or a total number of members of more than 10,000, or both, must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.

(2) 'Risk-adjusted capital' has the same meaning as in ■ CREDS 5.4.1 R and ■ CREDS 5.4.2 R (Risk-adjusted capital requirements for *version 2 credit unions*).



5.4 Version 2 credit unions

5

5.4.1
PRA

R

- (1) A *version 2 credit union* must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.
- (2) Risk-adjusted capital is calculated as follows: Capital + (provisions - balance of the *net liability* of borrowers where their loans are 12 *months* or more in arrears - 35% of the *net liability* of borrowers where their loans are 3 to 12 *months* in arrears).

5.4.2
PRA

R

In calculating risk-adjusted capital:

- (1) the maximum net figure for provisions (after deduction of the stipulated amounts for loans in arrears) that can be included is 1% of total assets;
- (2) 'provisions' includes specific provisions and general provisions; and
- (3) mortgage loans and provisions in respect of mortgage loans must not be included in calculating the loan balances to be deducted from, and the provisions to be added to, the amount of capital.

Minimum initial capital

5.4.3
PRA

R

A *credit union* must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.

5.4.4
PRA

A

- (1) A *version 2 credit union* should have initial capital of at least £50,000.
- (2) Contravention of (1) may be relied on as tending to establish contravention of ■ CREDS 5.4.3 R.

PAGE 9
5.4.5
PRA

G

For the meaning of 'initial capital' see ■ CREDS 5.2.1 R (5).

5.4.6
PRA

G

It should be noted that the requirement in ■ CREDS 5.4.3 R does not affect a *credit union's* obligations to meet the other capital requirements that apply to it. The ability of a *credit union* to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for *authorisation*.

Chapter 6

Liquidity



6.1 Application and purpose

Application

6.1.1

PRA

R

This chapter applies to all *credit unions*.

Purpose

6.1.2

PRA

G

This chapter amplifies *Principle 4*, under which a *credit union* must maintain adequate financial resources, and the *threshold condition for permission* that a *credit union's* resources must be adequate in relation to the *regulated activities* that it carries on.

6.1.3

PRA

G

A central feature of *credit union* business is maturity transformation, in other words taking short-term *deposits* (in the form of share accounts) from members and making comparatively long-term loans. It is important, in order to maintain confidence and protect members, that a *credit union* has adequate liquid assets (liquidity) to enable it to fulfil members' withdrawal requests within expected timeframes.



6.2 General requirements

Liquid assets

- 6.2.1
PRA
R
A *credit union* must hold liquid assets of an amount and composition that is prudent and appropriate to the scale and nature of its business, having regard to material risks, including the risk of a sudden adverse cash flow, with a view to enabling it to meet its objectives.
- 6.2.2
PRA
G
The liquid assets held by a *credit union* should be sufficient to meet its day-to-day business needs and to provide an appropriate cushion in the event of pressure arising from unexpected events.
- 6.2.3
PRA
G
The responsibility for ensuring that a *credit union* can meet its obligations as they fall due rests with the *credit union's* management.

Liquid management policy statement

- 6.2.4
PRA
R
A *credit union* must establish, maintain and implement an up-to-date liquidity management policy statement approved by the committee of management and designed to ensure its compliance with ■ CREDS 6.2.1 R.
- 6.2.5
PRA
R
A *version 2 credit union* must send to the PRA a copy of its liquidity management policy statement as soon as reasonably practicable after it has been approved by the committee of management.
- 6.2.6
PRA
G
A *credit union* should be able to satisfy the PRA on a continuing basis that it has a prudent liquidity management policy and adequate management systems in place to ensure that the policy is adhered to.
- 6.2.7
PRA
G
The liquidity management policy statement of a *credit union* should set out the *credit union's* objectives for liquidity, the limits within which liquidity should be maintained, and the types of liquid assets which the *credit union* should hold.
- 6.2.8
PRA
G
A *credit union's* committee of management should review and approve its liquidity management policy statement at least once a year, and more frequently if necessary, especially in the light of significant changes in business.

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.6.]

6.2.9

PRA

G

Where a *version 2 credit union* has borrowed wholesale funds, the maturity of such funds and the risk of their not being able to be refinanced should be taken into account in the formulation of the *credit union's* liquidity management policy statement.

6.2.10

PRA

G

When a *credit union* provides ancillary services such as issuing and administering means of payment and money transmission, it should take into account the potentially greater volatility of its funds when deciding what amount and composition of liquid assets is necessary to comply with ■ CREDS 6.2.1 R.

6.3 Minimum liquidity requirements

- 6.3.1** **R** A *credit union* must at all times hold liquid assets of a value equal to at least 5% of its *total relevant liabilities*.
PRA
- 6.3.2** **R** A *credit union* must further hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the *credit union's* liquid assets below 10% of its *total relevant liabilities*.
PRA
- [Note: a transitional provision applies to this rule: see ■ CREDS TP 1.2.]
- 6.3.3** **G** The liquidity requirements set out in ■ CREDS 6.3.1 R and ■ CREDS 6.3.2 R are minimum requirements and are subject to the overarching requirement of ■ CREDS 6.2.1 R.
PRA
- 6.3.4** **R**
- (1) For the purposes of ■ CREDS 6.3.1 R and ■ CREDS 6.3.2 R, only those assets will count as liquid which can be realised for cash at short notice, and within at most eight *days*.
 - (2) Amounts loaned by one *credit union* to another must not be counted as liquid by the lender.
- 6.3.5** **R** For the purposes of calculating the ratio of a *credit union's* liquid assets to its *total relevant liabilities* (in ■ CREDS 6.3.1 R and ■ CREDS 6.3.2 R), assets must be valued at the amount for which they could be realised within eight *days*.
PRA
- 6.3.6** **A**
- (1) For the purposes of calculating the ratio of a *credit union's* liquid assets to its *total relevant liabilities* (in ■ CREDS 6.3.1 R and ■ CREDS 6.3.2 R), the *securities* referred to in ■ CREDS 3.2.1 R to ■ CREDS 3.2.3 R must be valued on the basis that they could be realised at market value minus the following discounts (whether or not this is the case in fact):
 - (a) maturity less than 1 year - zero;
 - (b) maturity 1 to 5 years - 5%.

(2) Compliance with ■ CREDS 6.3.6E (1) may be relied on as tending to establish compliance with ■ CREDS 6.3.5 R (the 8-day realisation-value rule).

6.3.7

PRA

G

An asset maturing on a non-business *day* should be regarded as maturing on the succeeding *business day*.

6.3.8

PRA

G

For the purposes of clarity, funds serving liquidity purposes may be invested in the manner set out in ■ CREDS 3.2.1 R provided that the resulting assets satisfy the relevant requirements of this chapter.

6.3.9

PRA

G

Where a *credit union* buys or holds property as premises from which to conduct its business, the *credit union* should not count those premises as liquid assets for the purposes of ■ CREDS 6.3.4 R.

Chapter 7

Lending to members

7.1 Application, purpose and interpretation

Application

7.1.1

FCA PRA

R

This chapter applies to all *credit unions*.

Purpose

7.1.2

FCA PRA

G

- (1) This chapter seeks to protect the interests of *credit unions*' members in respect of loans to members under section 11 of the Credit Unions Act 1979 or article 28 of the Credit Unions (Northern Ireland) Order 1985 . *Principle 4* requires *credit unions* to maintain adequate financial resources and ■ CREDS 5 sets out the *PRA*'s detailed capital adequacy requirements in respect of *credit unions*.
- (2) This chapter is not relevant to loans between *credit unions*, except as indicated in ■ CREDS 3.2.6 G (4).

Interpretation

7.1.3

FCA PRA

G

The *rules* and *guidance* in this chapter are in addition to the provisions of (in relation to *Great Britain credit unions*) section 11 of the Credit Unions Act 1979 and (in relation to *Northern Ireland credit unions*) article 28 of the Credit Unions (Northern Ireland) Order 1985 in relation to loans made by *credit unions*. Under these provisions

- (1) a *Great Britain credit union* may make a loan only to:
 - (a) a member of the *credit union* who is an individual; and
 - (b) a corporate member of the *credit union*, if the *credit union's* rules provide that it may make loans to corporate members and making the loan would not result in the aggregate of the outstanding balances on loans made by the *credit union* to corporate members exceeding the percentage of the aggregate of the outstanding balances on all loans made by the *credit union* specified by or under section 11 of the Credit Unions Act 1979;
 - (c) other *credit unions*;
- (1A) a *Northern Ireland credit union* may make a loan only to:
 - (a) a member of the *credit union* who is an individual; and
 - (b) other *credit unions*;

(2) a *credit union* may not make a loan to a member of the *credit union* holding only *deferred shares*.

7.1.4

FCA PRA

G

"Corporate member" has the same meaning as in section 5A of the Credit Unions Act 1979.



7.2 General requirements concerning lending policy

7.2.1 **R** [deleted]

7.2.1A **R** *A credit union* must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in ■ CREDS 7.3.

FCA **PRA**

7.2.1B **R** *A credit union* must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in ■ CREDS 7.4.

PRA

[Note: a transitional provision applies to ■ CREDS 7.2.1A R and ■ CREDS 7.2.1B R: see ■ CREDS TP 1.6.]

7.2.2 **R** *A version 2 credit union* must provide the PRA with a copy of its lending policy statement as soon as reasonably practicable after it has been approved by the committee of management.

FCA **PRA**

7.2.3 **G** A principal purpose of *credit unions*' business is the accumulation of members' savings to provide a fund out of which loans are provided for the benefit of the members. *Credit unions* may often in practice have less scope to minimise credit risk through the exercise of discretion than some other lenders. It is therefore important that a *credit union* has a carefully considered and effective lending policy statement.

FCA **PRA**

7.2.4 **G** ■ CREDS 2.2.6 R requires a *credit union* to maintain a manual of its policies and procedures. This should include the policy and procedure for making loans.

FCA **PRA**

7.2.5 **G** The *credit union's* committee of management should review and approve its lending policy at least once a year, and more frequently if necessary (for example if there is an escalating arrears problem), especially in the light of significant changes in business.

FCA **PRA**

7.2.6 **G** The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications.

FCA **PRA**

7.2.7

FCA PRA

R

- (1) A *credit union* must not make a loan to:
- (a) one of its officers or *approved persons* on terms more favourable than those available to other members of the *credit union* unless:
 - (i) that person is a paid employee (other than a *director*) of the *credit union*; and
 - (ii) the registered rules of the *credit union* provide explicitly for the making of loans to paid employees on such terms;
 - (b) (in the case of a *Great Britain credit union*) a relative of, or any person otherwise connected with, an officer, *approved person* or paid employee of the *credit union* on terms more favourable than those available to other members of the *credit union* ;
 - (c) (in the case of a *Northern Ireland credit union*) a member of the family of, or any person otherwise connected with, an officer, *approved person* or paid employee of the *credit union* on terms more favourable than those available to other members of the *credit union*.
- (2) "Relative" has the same meaning as in section 31 of the Credit Unions Act 1979.
- (3) "Member of the family" has the same meaning as in article 2 of the Credit Unions (Northern Ireland) Order 1985.

7.2.8

FCA PRA

G

- (1) To prevent conflicts of interest, a *credit union* should have clear arrangements for dealing with loans to the persons specified in ■ CREDS 7.2.7 R.
- (2) In relation to staff, the prohibition in ■ CREDS 7.2.7 R applies only to those who are officers or *approved persons*.
- (3) "Connected" in ■ CREDS 7.2.7 R includes any close business or personal relationship.

7.2.9

FCA PRA

G

A *credit union* should have a documented arrears management policy, setting out the procedures and process for dealing with borrowers who fall into arrears. This should be reviewed regularly and promptly in the light of experience.

7.2.10

FCA PRA

G

A *credit union* should have a clear, robust and effective approach to handling arrears and be able to satisfy the *appropriate regulator* on a continuing basis that it has adequate management and control systems in place to monitor arrears.

7.2.11

FCA PRA

G

A *credit union* should ensure that loan assets are valued correctly in their accounts. A provisioning policy relating to problem loans and arrears cases should be clearly defined and documented covering the circumstances in which provisions are to be made.

7.2.12

FCA PRA

G

- (1) A *credit union* may make a loan to a member for a business purpose. However, this does not mean that a *credit union* may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose.
- (2) A *credit union* should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in ■ CREDS 7.3.



7.3 Lending limits

7.3.1 FCA PRA R Subject to ■ CREDS 7.3.8 R, a *version 1 credit union* must not lend for a period of more than five years where unsecured and ten years where secured.

[Note: a transitional provision applies to this rule: see ■ .]

7.3.2 FCA PRA R The outstanding balance of a loan by a *version 1 credit union* to a member must not at any time be more than £15,000 in excess of the *attached shares* held by that member, but this rule is subject to the additional requirement in ■ CREDS 5.3.10 R (1).

7.3.3 FCA PRA G The effect of ■ CREDS 5.3.10 R (1) is to prevent a *version 1 credit union* from lending more than £7,500 in excess of the *attached shares* held by that member unless it has a capital-to-total assets ratio of at least 5%.

7.3.4 FCA PRA R Subject to ■ CREDS 7.3.8 R, a *version 2 credit union* must not lend for a period of more than ten years where unsecured and 25 years where secured.

[Note: a transitional provision applies to this rule: see ■ .]

7.3.5 PRA G A *credit union* should not attempt to evade the limits in ■ CREDS 7.3.1 R and ■ CREDS 7.3.4 R by making loans in the expectation that they will not be fully repaid by the end of the period, but will be automatically extended or rescheduled.

7.3.6 FCA PRA R The outstanding balance of a loan by a *version 2 credit union* to a member must not at any time be more than:

(1) £15,000 in excess of the *attached shares* held by that member; or

(2) an amount equivalent to 1.5% of *total non-deferred shares* in the *credit union* in excess of the *attached shares* held by that member;

whichever is the greater.

7.3.7 FCA PRA G The lending limit requirements set out above are maxima. A *credit union* should have adequate systems for recording and controlling all potential *exposures*. The capital requirements for *version 1 credit unions* and *version 2 credit unions* in respect of lending are set out in ■ CREDS 5.3 and ■ CREDS 5.4, including the PRA's requirements in respect of calculating risk-adjusted capital.

7.3.8

FCA PRA

R

A credit union with permission for entering into a regulated mortgage contract must not enter into such a contract for a term of more than 25 years.

7.4 Large exposures

7.4.1 **R** For the purposes of this section, a large *exposure* is defined as an individual *net liability* to the *credit union* which meets both of the following criteria:

FCA **PRA**

- (1) it is at least £7,500;
- (2) it is at least 10% of the value of the *credit union's* total capital.

7.4.2 **R** An individual large *exposure* must not exceed 25% of the *credit union's* capital. In no circumstances may the aggregate total of all large *exposures* exceed 500% of the *credit union's* capital.

FCA **PRA**

[Note: a transitional provision applies to this rule: see ■.]

7.4.3 **R** A *credit union* must not permit the aggregate total of all large *exposures* to exceed 300% of capital unless the *credit union* notifies the *PRA* in advance.

FCA **PRA**

7.4.4 **G** For the purposes of large *exposures* the maximum *net liability* of a *credit union* with assets of £500,000 and 8% capital would be £10,000, subject to ■ CREDS 7.4.2 R and ■ CREDS 7.3.6 R.

FCA **PRA**

7.4.5 **G** For a *credit union* with assets of £1million and 10% capital the maximum *net liability* would be £25,000.

FCA **PRA**

7.4.6 **G** Excessive *exposure* (large loans to an individual borrower and in aggregate) by a *credit union* can create a concentration of risk on the balance sheet and increase a *credit union's* vulnerability to bad debt. This can lead to a strain on capital and solvency. While this risk cannot be eliminated, it can be contained by limits and controlling the extent to which *credit unions* commit themselves to large *exposures*. Therefore the large *exposure* limits set the maximum sum that may be loaned to any one member as a percentage of reserves to prevent concentration. All *credit unions* should set and document their own large *exposure* policy limits to avoid concentration of risk.

FCA **PRA**

7.4.7 **G** It is the committee of management's responsibility to monitor large *exposures*. The large *exposures* limits policy should be reviewed on an annual basis (or more frequently where required).

FCA **PRA**



7.5 Provisioning

7.5.1 **R**
FCA PRA

A *credit union* must make adequate provision for bad and doubtful debt.

7.5.2 **R**
FCA PRA

A *credit union* must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:

- (1) 35% of the *net liability* to the *credit union* of borrowers where the amount is more than three *months* in arrears; and
- (2) 100% of the *net liability* to the *credit union* of borrowers where the amount is more than 12 *months* in arrears.

7.5.3 **G**
FCA PRA

In addition to the requirements of ■ CREDS 7.5.2 R, a *credit union* should consider making the following specific provisions in its accounts for bad and doubtful debts:

- (1) 60% of the *net liability* to the *credit union* of borrowers where the amount is more than six *months* in arrears; and
- (2) 80% of the *net liability* to the *credit union* of borrowers where the amount is more than nine *months* in arrears.

7.5.4 **E**
FCA PRA

- (1) A *credit union* should maintain a general provision for bad and doubtful debts of at least 2% of the *net liability* to the *credit union* of borrowers not covered by the specific provisions in ■ CREDS 7.5.2 R.

- (2) Contravention of (1) may be relied on as tending to establish contravention of ■ CREDS 7.5.1 R.

7.5.5 **G**
FCA PRA

In order to comply with the requirements of ■ CREDS 7.5.1 R to ■ CREDS 7.5.4 E a *credit union* should review its provisioning requirements frequently. The *PRA* recommends that this is done at least quarterly.

7.5.6 **G**
FCA PRA

A *credit union* should make it its business to know its *customers* and, in conjunction with its auditor, make a judgment on the degree of risk of non-payment attached to loans that are in arrears. Provisioning should reflect that judgment.

7.5.7

FCA PRA

G

Where a delinquent loan is rescheduled and the arrears capitalised, the loan should be regarded as remaining impaired until there is sufficient evidence that it is performing on the rescheduled terms. In the meantime, any provision made in relation to that loan should be maintained, not released.

7.5.8

FCA PRA

G

- (1) ■ CREDS 7.5.2 R requires a *credit union* to maintain minimum levels of specific provision. However, a *credit union* that only maintains the minimum levels does not necessarily comply with ■ CREDS 7.5.1 R. This will depend on the assessment and judgment referred to in ■ CREDS 7.5.6 G.
- (2) (a) Failure to maintain a general provision of the level indicated in ■ CREDS 7.5.4 E creates a presumption that the *credit union* is not complying with ■ CREDS 7.5.1 R, though that presumption can be rebutted by the *credit union*: for example, it may be able to demonstrate that the occurrence of impaired loans that are either below the threshold for specific provision (that is, they are less than three *months* in arrears) or are unidentified at the time, is very low.
- (b) If, on the other hand, a *credit union* does maintain the indicative level in ■ CREDS 7.5.4 E, that does not necessarily mean that it complies with ■ CREDS 7.5.1 R.

7.5.9

FCA PRA

G

If a *credit union* needs to make higher provisions, beyond the levels in ■ CREDS 7.5.2 R and ■ CREDS 7.5.4 E, in order to meet ■ CREDS 7.5.1 R, then it should do so.

7

Chapter 8

Supervision



8.1 Application and purpose

Application

8.1.1

G

This section applies to all *credit unions*.

FCA PRA

Purpose

8.1.2

G

The purpose of this section is to provide additional *rules* and *guidance* relating to reporting requirements that are specific to *credit unions*. *Credit unions* also need to comply with the relevant provisions of *SUP* relating to reporting, including ■ SUP 16.3 and ■ SUP 16.12.

FCA PRA



8.2 Reporting requirements

Quarterly return

8.2.1

FCA PRA

G

■ SUP 16.12.5 R states that a *credit union* must submit a quarterly return. The content, reporting frequency and due date in relation to that report are shown in ■ CREDS 8.2.2 G. The form can be found at ■ SUP 16 Annex 14(1)R.

[Note: a transitional provision applies to ■ SUP 16.12.5 R: see ■ CREDS TP 1.17.]

[Note: a transitional provision applies in respect of the form to be used at ■ SUP 16 Annex 14(1)R (see ■ CREDS TP 1.4).]

8.2.2

FCA PRA

G

This table belongs to ■ CREDS 8.2.1 G

Content of report	Form	Frequency	Due date
Key financial data	CQ	Quarterly	One <i>month</i> after quarter end

Annual return

8.2.3

FCA PRA

G

■ SUP 16.12.5 R states that a *credit union* must submit an annual return. The content, reporting frequency and due date in relation to that report are shown in ■ CREDS 8.2.4 G. The form can be found at ■ SUP 16 Annex 14(2) R.

[Note: transitional provisions apply to the requirement in ■ SUP 16.12.5 R (see) and in respect of the form to be used at ■ SUP 16 Annex 14(2)R (see)■ CREDS TP 1.4.]

[Note: a transitional provision applies to ■ SUP 16.12.5 R: see ■ CREDS TP 1.18.]

8.2.4

FCA PRA

G

This table belongs to ■ CREDS 8.2.3 G

Content of report	Form	Frequency	Due date
Extended financial data	CY	Annually	Six <i>months</i> after financial year end

8.2.5

FCA PRA

G

The form may be updated from time to time. *Credit unions* should use the form in force at the end of the financial year on which they are reporting.

Accounts and audit

8.2.6

FCA PRA

R

- (1) Every *credit union* must send to the *PRA* a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985.
- (2) The accounts must:
 - (a) be made up for the period beginning with the date of the *credit union's* registration or with the date to which the *credit union's* last annual accounts were made up, whichever is the later, and ending on the *credit union's* most recent financial year end; and
 - (b) accompany the annual return submitted to the *PRA* under ■ SUP 16.12.5 R (see ■ CREDS 8.2.3 G), unless they have been submitted already.

8.2.7

FCA PRA

R

Every *credit union* must supply free of charge, to every member or person interested in the funds of the *credit union* who applies for it, a copy of the latest audited accounts of the *credit union* sent to the *PRA* under ■ CREDS 8.2.6 R.

Financial penalties for late submission of reports

8.2.8

FCA PRA

G

- (1) Financial penalties may be imposed for the late submission of:
 - (a) the quarterly and annual returns referred to in ■ SUP 16.12.5 R; and
 - (b) the audited accounts referred to in ■ CREDS 8.2.6 R.
- (2) Details of the policy and procedures on financial penalties are given in *DEPP*.



8.3 Approved persons

8.3.1

FCA PRA

G

The purpose of this section is to set out further *guidance* relating to the *approved persons* regime that is specific to *credit unions*. *Credit unions* should also read Chapter 10 of the Supervision manual (*SUP*) concerning *approved persons*.

Introduction

8.3.2

FCA PRA

G

The effect of section 59 of the *Act* and ■ SUP 10 is that a *credit union* must apply to the *appropriate regulator* for the approval of one or more individuals to perform the functions which are known as *controlled functions*. *Controlled functions* fall within two groups:

- (1) The *significant influence functions* describe the roles performed by the *governing body* and *senior managers* of the *firm* who exert a significant influence over the *regulated activities* of the *firm*.
- (2) The *customer functions* describe the roles of individuals who deal with *customers* or with the property of *customers*. These *customer functions* do not extend to activities in relation to accepting *deposits* or general insurance and therefore will not be relevant to *credit unions* with *permission* for *accepting deposits* only.

Controlled functions

8.3.3

FCA PRA

G

The complete list of all *controlled functions* is located in ■ SUP 10.4.5 R. *Guidance* on those *controlled functions* most likely to be relevant to *credit unions* is provided below.

8.3.4

FCA PRA

G

■ SUP 10.6: the *governing functions*:

- (1) ■ SUP 10.6.4 R: the *director function*, This is the function of acting in the capacity of a *director* of a *credit union*.
- (2) ■ SUP 10.6.8 R: the *non-executive director function*. It is unusual for a *credit union* to appoint *non-executive directors* as such. But this function would include membership of a *credit union's* supervisory committee and any other committee which scrutinises the approach of executive management, the *credit union's* performance, and its standards of conduct.
- (3) ■ SUP 10.6.11 R: the *chief executive function*. Acting in the capacity of *chief executive*, whether or not using that title. This role includes anyone having the responsibility, alone or jointly with one or more others, under the immediate authority of the committee of management, for the conduct of the whole of the business.

8.3.5

FCA PRA

G

■ SUP 10.7: the *required functions*:

- (1) [deleted]
- (2) ■ SUP 10.7.13 R: the *money laundering reporting function*. This is the function of acting in the capacity of the *money laundering reporting officer* of a *credit union*.

8.3.6

FCA PRA

G

■ SUP 10.8: the *systems and controls function*. This is the function of acting as an employee with responsibility for reporting to the committee of management in relation to:

- (1) the *credit union's* financial affairs; or
- (2) setting and controlling its risk exposure; or
- (3) adherence to internal systems and controls, procedures and policies.

8.3.7

FCA PRA

G

Where an *employee* performs the *systems and controls function* the *appropriate regulator* would expect the *credit union* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively, for example by occupying the role of a *director* or *senior manager*.

8.3.8

FCA PRA

G

■ SUP 10A.9: the *significant management functions*: This *controlled function* will only apply to the *credit union* if the function is not being performed by a member of the committee of management and the *credit union* has followed the *guidance* in ■ SUP 10A.9.4 G.

Chapter 9

Complaints reporting rules for credit unions



9.1 Application and purpose

Application

9.1.1
FCA

R This chapter applies to all *credit unions*.

Purpose

9.1.2
FCA

G This chapter sets out *rules* and *guidance* for *credit unions* on completing reports concerning *complaints* received from *eligible complainants*. It replaces **■ DISP 1.10** (Complaints reporting rules) and **■ DISP 1.10A** (Complaints data publication rules), which do not apply to *credit unions* (**■ DISP 1.1.5A R**).

9.1.3
FCA

G The other elements of **■ DISP 1** (**■ DISP 1.2** (Consumer awareness rules), **■ DISP 1.3** (Complaints handling rules), **■ DISP 1.4** to **■ DISP 1.8** (Complaints resolution rules etc.) and **■ DISP 1.9** (Complaints record rule)) apply to *credit unions*.

9.1.4
FCA

G **■ DISP 2** to **■ DISP 4** (which cover jurisdiction and procedures of the *Financial Ombudsman Service*) and **■ FEES 5** (which covers funding of the *Financial Ombudsman Service*) apply to *credit unions*.



9.2 Reporting

9.2.1

FCA

R

A *credit union* must provide the FCA , once a year, with a report in the format set out in ■ CREDS 9 Annex 1 R (Credit Union complaints return) which contains (for the relevant reporting period) information about:

- (1) the total number of *complaints* received by the *credit union*;
- (2) the number of *complaints* closed by the *credit union*:
 - (a) within eight weeks of receipt; and
 - (b) more than eight weeks after receipt;
- (3) the total number of *complaints*:
 - (a) upheld by the *credit union* in the reporting period;
 - (b) outstanding at the start of the reporting period; and
- (4) the total amount of redress paid in respect of *complaints* during the reporting period.

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.16.]

9.2.2

FCA

R

A *credit union* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under ■ DISP 1.7 (the complaints forwarding rules).

9.2.3

FCA

G

Where a *credit union* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *firms*.

9.2.4

FCA

R

■ CREDS 9.2.1 R does not apply to a *complaint* that is resolved by close of business on the *business day* following its receipt.

9.2.5

FCA

G

For the purposes of ■ CREDS 9.2.4 R:

- (1) a *complaint* received on any day other than a *business day*, or after close of business on a *business day*, may be treated as received on the next *business day*; and

9.2.6

FCA

G

For the purpose of ■ CREDS 9.2.1 R, and upon completing the return, the *credit union* should note that:

- (2) a *complaint* is resolved where the complainant has indicated acceptance of a response from the *credit union*, with neither the response nor acceptance having to be in writing.
- (1) where a *complaint* could fall into more than one category, the *complaint* should be recorded against the category that the *credit union* considers to form the main part of the *complaint*;
 - (2) where a *complaint* has been upheld under ■ CREDS 9.2.1R (3)(a), a *credit union* should report any *complaints* to which it has given a *final response* which accepts the *complaint* and, where appropriate, offers redress, even if the redress offered is disputed by the complainant. Where a *complaint* is upheld in part, or where the *credit union* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, the *credit union* should treat the *complaint* as upheld for reporting purposes. Where a *credit union* rejects a *complaint*, yet chooses to make an ex-gratia payment to the complainant, the *complaint* should be recorded as rejected;
 - (3) where a *credit union* reports on the amount of redress paid under ■ CREDS 9.2.1R (4), redress should be interpreted to include any amount paid, or cost borne, by the *credit union*, where a cash value can be readily identified, and should include:
 - (a) amounts paid for distress and inconvenience;
 - (b) a free transfer out to another provider which transfer would normally be paid for;
 - (c) ex-gratia payments and goodwill gestures;
 - (d) interest on delayed settlements
 - (e) waiver of an excess on an insurance policy; and
 - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred;
 - (4) where a *credit union* reports on the amount of redress paid under ■ CREDS 9.2.1R (4), such redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *credit union* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

9.2.7

FCA

R

For the purposes of ■ CREDS 9.2.1 R:

- (1) the relevant reporting period is from 1 April to 31 March each year; and
- (2) reports are to be submitted to the *FCA* within one *month* of the end of the relevant reporting period.

[Note: a transitional provision applies to this rule: see ■ CREDS TP 1.16.]

9.2.8

FCA

G

Financial penalties may be imposed for the late submission of the complaints report required by ■ CREDS 9.2.1 R.

9.2.9

FCA

R

For the purposes of making reports under ■ CREDS 9.2.1 R, a closed *complaint* is a *complaint*:

- (1) where the *credit union* has sent a *final response*; or
- (2) where the complainant has positively indicated acceptance of the *credit union's* earlier response; or
- (3) where the complainant has failed to revert to the *credit union* within eight weeks of the *credit union's* most recent letter.

9.2.10

FCA

R

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

9.2.11

FCA

G

■ SUP 16.3.14 R applies to the *credit unions'* complaints returns.

9.2.12

FCA

R

For the purpose of inclusion in the public record maintained by the FCA, a *credit union* must provide the FCA, at the time of its *authorisation*, with details of a single contact within the *credit union* for complainants, and in its quarterly return must notify the FCA of any subsequent change.

9.2.13

FCA

G

The contact point in ■ CREDS 9.2.1 R and ■ CREDS 9.2.12 R can be by name or job title and may include, for example, a telephone number.

Credit union complaints return

FCA

This annex consists only of one or more forms.

Credit union complaints return

Chapter 10

Application of other parts of the Handbook to Credit unions



10.1 Application and purpose

Application

10.1.1 **R**
FCA PRA

This chapter applies to all *credit unions*.

Purpose

10.1.2 **G**
FCA PRA

This chapter is intended to draw *credit unions'* attention to the application of other key parts of the Handbook to *credit unions* as set out in the table at ■ CREDS 10.1.3 G. That table refers only to the parts of the *Handbook* that apply with respect to *Part 4A permission to accept deposits*.

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3 **G**
FCA PRA

Module	Relevance to Credit Unions
The Principles for Businesses (<i>PRIN</i>)	The Principles for Businesses (<i>PRIN</i>) set out, high-level requirements, some of which are imposed by the <i>FCA</i> and some by the <i>PRA</i> . They provide a general statement of regulatory requirements. The <i>Principles</i> apply to all <i>credit unions</i> . In applying the <i>Principles</i> to <i>credit unions</i> , the <i>appropriate regulator</i> will be mindful of proportionality. In practice, the implications are likely to vary according to the size of the <i>credit union</i> .
Senior Management Arrangements, Systems and Controls (<i>SYSC</i>)	<i>SYSC 1</i> and <i>SYSC 4</i> to <i>10</i> apply to all <i>credit unions</i> in respect of their <i>regulated activities</i> and unregulated activities in a <i>prudential context</i> . <i>SYSC 18</i> applies to all <i>credit unions</i> without restriction.
Threshold Conditions (<i>COND</i>)	In order to become <i>authorised</i> under the <i>Act</i> all <i>firms</i> must meet the <i>threshold conditions</i> . The <i>threshold conditions</i> must be met on a continuing basis by <i>credit unions</i> . Failure to meet one of the conditions is sufficient grounds for the exercise by the <i>appropriate regulator</i> of its powers.
Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	The purpose of the <i>Statements of Principle</i> contained in <i>APER 2</i> is to provide guidance to <i>approved persons</i> in relation to the conduct expected of them in the performance of a <i>controlled function</i> . The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <i>appropriate regulator</i> , do not comply with a <i>Statement of Principle</i> and, in the case of <i>Statement of Principle 3</i> , conduct which tends to show compliance within that statement.

Module	Relevance to Credit Unions
The Fit and Proper test for Approved Persons (<i>FIT</i>)	The purpose of <i>FIT</i> is to set out and describe the criteria that the <i>appropriate regulator</i> will consider when assessing the fitness and propriety of a person in respect of whom an application is being made for approval to undertake a <i>controlled function</i> under the approved persons regime. The criteria are also relevant in assessing the continuing fitness and propriety of persons who have already been approved.
General Provisions (<i>GEN</i>)	<i>GEN</i> contains <i>rules</i> and <i>guidance</i> on general matters, including interpreting the <i>Handbook</i> , statutory status disclosure, the <i>appropriate regulator's</i> logo and insurance against financial penalties.
Fees manual (<i>FEES</i>)	This manual sets out the fees applying to <i>credit unions</i> .
Conduct of Business sourcebook (<i>COBS</i>)	A <i>credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i> . <i>COBS</i> 4.6 (Past, simulated past and future performance), <i>COBS</i> 4.7.1 R (Direct offer financial promotions), <i>COBS</i> 4.10 (Systems and controls and approving and communicating financial promotions), <i>COBS</i> 13 (Preparing product information) and <i>COBS</i> 14 (Providing product information to clients) apply with respect to <i>accepting deposits</i> as set out in those provisions, <i>COBS</i> 4.1 and <i>BCOBS</i> .
Banking: Conduct of Business sourcebook (<i>BCOBS</i>)	<i>BCOBS</i> sets out <i>rules</i> and <i>guidance</i> for <i>credit unions</i> on how they should conduct their business with their <i>customers</i> . In particular there are <i>rules</i> and <i>guidance</i> relating to communications with banking customers and <i>financial promotions</i> (<i>BCOBS</i> 2), distance communications (<i>BCOBS</i> 3), information to be communicated to banking customers (<i>BCOBS</i> 4), post sale requirements (<i>BCOBS</i> 5), and cancellation (<i>BCOBS</i> 6). <i>BCOBS</i> 5.1.13 R (Value dating) does not apply to <i>credit unions</i> . The <i>rules</i> in <i>BCOBS</i> 3.1 that relate to <i>distance contracts</i> for <i>accepting deposits</i> are likely to have limited application to a <i>credit union</i> . This is because the <i>Distance Marketing Directive</i> only applies where there is "an organised distance sales or service-provision scheme run by the supplier" (Article 2(a)). If, therefore, the <i>credit union</i> normally operates face to face and has not set up facilities to enable <i>customers</i> to deal with it at a distance, such as facilities for a <i>customer</i> to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant.
Supervision manual (<i>SUP</i>)	The following provisions of <i>SUP</i> are relevant to <i>credit unions</i> : <i>SUP</i> 1A (The <i>appropriate regulator's</i> approach to supervision), <i>SUP</i> 2 (Information gathering by the <i>appropriate regulator</i> on its own initiative), <i>SUP</i> 3.1 to <i>SUP</i> 3.8 (Auditors), <i>SUP</i> 5 (Skilled persons), <i>SUP</i> 6 (Applications to vary or cancel Part 4A permission), <i>SUP</i> 7 (Individual requirements), <i>SUP</i> 8 (Waiver and modification of rules), <i>SUP</i> 9 (Individual guidance), <i>SUP</i> 10A and <i>SUP</i> 10B (Approved persons), <i>SUP</i> 11 (Controllers and Close links), <i>SUP</i> 15 (Notifications to the <i>appropriate regulator</i>) and <i>SUP</i> 16 (Reporting Requirements).
	<i>Credit unions</i> are reminded that they are subject to the requirements of the <i>Act</i> and <i>SUP</i> 11 on <i>controllers</i> and <i>close links</i> , and are bound to notify the <i>appropriate regulator</i> of changes. It may be unlikely, in practice, that <i>credit unions</i> will develop such relationships. It is possible, however, that a <i>person</i> may acquire control of a credit union within the meaning of the <i>Act</i> by reason of holding the prescribed proportion of <i>deferred shares</i> in the <i>credit union</i> .

Module	Relevance to Credit Unions
	In relation to SUP 16, <i>credit unions</i> are exempted from the requirement to submit annual reports of <i>controllers</i> and <i>close links</i> .
Decision, Procedure and Penalties manual (DEPP)	DEPP is relevant to <i>credit unions</i> because it sets out: (1) the FCA's decision-making procedure for giving <i>statutory notices</i> . These are <i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> (DEPP 1.2 to DEPP 5); and (2) the FCA's policy with respect to the imposition and amount of penalties under the <i>Act</i> (see DEPP 6).
Dispute Resolution: Complaints (DISP)	DISP sets out <i>rules</i> and <i>guidance</i> in relation to treating complainants fairly and the <i>Financial Ombudsman Service</i> .
Compensation (COMP)	COMP sets out <i>rules</i> relating to the scheme for compensating consumers when authorised <i>firms</i> are unable, or likely to be unable, to satisfy claims against them.
The Enforcement Guide (EG)	The Enforcement Guide (EG) describes the FCA's approach to exercising the main enforcement powers given to it by the <i>Act</i> and by regulation 12 of the <i>Unfair Terms Regulations</i> .
Financial crime: a guide for firms (FC)	FC provides <i>guidance</i> on steps that a <i>firm</i> can take to reduce the risk that it might be used to further <i>financial crime</i> .

Appendix 1

Key Definitions

1.1 Key Definitions



Note: The following key definitions relevant to CREDS are extracted from the *Glossary*.

attached shares means any shares in the *credit union* (other than any *deferred shares*):

- (a) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by section 7 (5) of the Credit Unions Act 1979 or (in relation to a *Northern Ireland credit union*) the withdrawal of which is not permitted by article 23(4) of the Credit Unions (Northern Ireland) Order 1985; or
- (b) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by the terms of a loan made to a member; or
- (c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the *credit union*.

In relation to a *Great Britain credit union*, paragraph (c) of this definition is relevant only where the *credit union* made a loan to the holder of the shares before the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 came into force.

complaint 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:

- (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

	(b) relates to an activity of that <i>respondent</i> , or of any other <i>respondent</i> with whom that <i>respondent</i> has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the <i>Financial Ombudsman Service</i> .
CREDS	the Credit Unions New sourcebook.
deferred shares	in relation to a <i>Great Britain credit union</i> , means any shares of a class defined as deferred shares by section 31A of the Credit Unions Act 1979.
final response	(in CREDS 9) a written response from a <i>respondent</i> which: <ul style="list-style-type: none"> (a) accepts the <i>complaint</i>, and, where appropriate, offers redress or remedial action; or (b) offers redress or remedial action without accepting the <i>complaint</i>; or (c) rejects the <i>complaint</i> and gives reasons for doing so; and which informs the complainant that, if he remains dissatisfied with the <i>firm's</i> response, he may now refer his complaint to the <i>Financial Ombudsman Service</i> and must do so within six months.
net liability	means the outstanding balance of any loan made to the borrower and any interest or charges on that loan that are due but unpaid, less any <i>attached shares</i> held by the borrower.
total non-deferred shares	means the total of members' share balances in a <i>credit union</i> shown in the most recent annual return to have been sent to the <i>PRA</i> under SUP 16.12.5 R (see CREDS 8.2.3 G), excluding any <i>deferred shares</i> in the <i>credit union</i> .
total relevant liabilities	means the sum of: <ul style="list-style-type: none"> (a) <i>unattached shares</i> in the <i>credit union</i>, and <i>deposits</i> by persons too young to be members of the <i>credit union</i>; and (b) liabilities (other than liabilities for shares) with an original or remaining maturity of less than three <i>months</i> (including overdrafts and instalments of loans).
unattached shares	means the total shares in the <i>credit union</i> other than any <i>attached shares</i> or <i>deferred shares</i> .

Credit Unions New sourcebook

CREDS TP 1 Transitional Provision

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Hand-book provisions: coming in-to force
1 [FCA] [PRA]	CREDS 5.3.1 R	R	A <i>version 1 credit union</i> need not comply with CREDS 5.3.1 R until midnight on 30 September 2014. CRED 8.3.1 R, as it was in force on 31 December 2011, will apply from the beginning of this transitional period until midnight on 30 September 2012. From midnight on that day until midnight on 30 September 2013, the <i>version 1 credit union</i> must at all times maintain a capital-to-total assets ratio of at least 1%. From midnight on 30 September 2013 until the end of this transitional period at midnight on 30 September 2014, the <i>version 1 credit union</i> must at all times maintain a capital-to-total assets ratio of at least 2%.	From midnight on 30 September 2012 to midnight on 30 September 2014	8 January 2012
2 [FCA] [PRA]	CREDS 6.3.2 R	R	A <i>version 2 credit union</i> need not comply with CREDS 6.3.2 R until midnight on 30 September 2014. From midnight on 30 September 2012 until midnight on 30 September 2013, the <i>version 2 credit union</i> must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the <i>credit union's</i> liquid assets below 6% of its <i>total relevant liabilities</i> . From midnight on 30 September 2013, until the end of this transitional period at midnight on 30 September 2014, the <i>version 2 credit union</i> must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the <i>credit union's</i> liquid assets below 8% of its <i>total relevant liabilities</i> .	From midnight on 30 September 2012 to midnight on 30 September 2014	8 January 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Hand-book provisions: coming into force
3 [FCA] [PRA]	SUP 16.12.7 R	R	The change in the applicable due date for the submission by a <i>credit union</i> of an annual return under SUP 16.12.5 R from 7 months to 6 months does not apply to an annual return in respect of the financial year ending on or before 31 July 2012.	31 July 2012	8 January 2012
4 [FCA] [PRA]	SUP 16 Annex 14 R	R	SUP 16 Annex 14 R, as it was in force on 31 December 2011, continues to apply to: (i) quarterly returns for <i>credit unions</i> in respect of the quarter ending on or before 31 December 2011, and (ii) annual returns in respect of the financial year ending on or before 7 January 2012	8 January 2012	8 January 2012
5 [FCA] [PRA]	CREDS TPs 1, 2, 3 and 4	R	CREDS TPs 1, 2, 3 and 4 do not apply to <i>Northern Ireland credit unions</i> .	From 31 March 2012 for as long as the relevant TPs remain in force	For <i>Northern Ireland credit unions</i> 31 March 2012
6 [FCA] [PRA]	CREDS 2.2.4 R, CREDS 2.2.6 R, CREDS 2.2.8 R, CREDS 3.3.7 R, CREDS 6.2.4 R and CREDS 7.2.1 R	R	A <i>Northern Ireland credit union</i> need not comply with CREDS 2.2.4 R, CREDS 2.2.6 R, CREDS 2.2.8 R, CREDS 3.3.7 R, CREDS 6.2.4 R and CREDS 7.2.1 R.	From 31 March 2012 until 31 December 2012	For <i>Northern Ireland credit unions</i> 31 March 2012
7 [FCA] [PRA]	CREDS 3.2.1 R	R	A <i>Northern Ireland credit union</i> need not comply with CREDS 3.2.1 R with respect to any types of <i>investment</i> invested in prior to <i>credit unions day</i> provided those types of <i>investment</i> were permitted under the Credit Unions (Northern Ireland) Order 1985 and the Credit Unions (Authorised Investments) Regulations (Northern Ireland) 1995 prior to <i>credit unions day</i> .	From 31 March 2012 until 30 March 2013	For <i>Northern Ireland credit unions</i> 31 March 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transition- al provi- sions: dates in force	Hand- book pro- visions: coming in- to force
8	CREDS 3.2.2 R [FCA] [PRA]	R	A Northern Ireland credit union that is a <i>version 1 credit union</i> need not comply with CREDS 3.2.2 R with respect to any <i>securities</i> invested in, or loans made, in accordance with CREDS 3.2.1 R prior to <i>credit unions day</i> provided those <i>securities</i> or loans mature in accordance with the terms of the relevant agreement as at <i>credit unions day</i> . This transitional provision does not apply to any <i>securities</i> invested in, or loans made, in accordance with CREDS 3.2.1 R prior to <i>credit unions day</i> that satisfy the requirements in CREDS 3.2.2 R.	From 31 March 2012 until the maturity date of the <i>securities</i> invested in or loans made	For Northern Ireland <i>credit unions</i> 31 March 2012
9	CREDS 3.2.2 R [FCA] [PRA]	R	A Northern Ireland credit union that is a <i>version 1 credit union</i> need not comply with CREDS 3.2.2 R with respect to any <i>securities</i> invested in, or loans made, in accordance with CREDS 3.2.1 R using surplus funds within one year from <i>credit unions day</i> and which in accordance with the terms of the relevant agreement have a maturity of up to three years.	From 31 March 2012 until 30 March 2013	For Northern Ireland <i>credit unions</i> 31 March 2012
10	CREDS 3.2.3 R [FCA] [PRA]	R	A Northern Ireland credit union that is a <i>version 2 credit union</i> need not comply with CREDS 3.2.3 R with respect to any <i>securities</i> invested in, or loans made, in accordance with CREDS 3.2.1 R prior to <i>credit unions day</i> provided those <i>securities</i> or loans mature in accordance with the terms of the relevant agreement as at <i>credit unions day</i> . This transitional provision does not apply to any <i>securities</i> invested in, or loans made, in accordance with CREDS 3.2.1 R prior to <i>credit unions day</i> that comply with CREDS 3.2.3 R.	From 31 March 2012 until the maturity date of the <i>securities</i> invested in or loans made	For Northern Ireland <i>credit unions</i> 31 March 2012
11	CREDS 4.4.1 R [FCA] [PRA]	R	A Northern Ireland credit union need not comply with CREDS 4.4.1 R.	From 31 March 2012 until 30 March 2013	For Northern Ireland <i>credit unions</i> 31 March 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transitional provisions: dates in force	Hand-book provisions: coming into force
12 [PRA]	CREDS 5.3.3 R and CREDS 5.3.5 R	R	Where the requirements of CREDS 7.5.1 R, CREDS 7.5.2 R and CREDS 7.5.4 E would result in a <i>Northern Ireland credit union</i> having to make higher provision than would have been required prior to <i>credit unions day</i> , that <i>Northern Ireland credit union</i> need not comply with CREDS 5.3.3 R and CREDS 5.3.5 R to the extent that that <i>Northern Ireland credit union</i> may transfer out of its general reserve the amount of provision that is additional to the amount that would have been required prior to <i>credit unions day</i> . If a <i>Northern Ireland credit union</i> takes advantage of this transitional provision it must advise the <i>PRA</i> of the amount transferred by the due date of submission for submission of its next annual return. This provision applies even where the amount standing to the <i>Northern Ireland credit union's</i> general reserve is, or as a result of the transfer would be, less than 10% of total assets.	From 31 March 2012 until the due date for submission by that <i>Northern Ireland credit union</i> of its next annual return	For <i>Northern Ireland credit unions</i> 31 March 2012
13 [FCA] [PRA]	CREDS 7.3.1 R	R	A <i>Northern Ireland credit union</i> that is a <i>version 1 credit union</i> need not comply with CREDS 7.3.1 R with respect to any loan outstanding on <i>credit unions day</i> . That loan must be repaid in accordance with the terms as at <i>credit unions day</i> of the relevant loan agreement. This transitional provision does not apply to any loan outstanding on <i>credit unions day</i> that satisfies the requirements in CREDS 7.3.1 R.	From 31 March 2012 until the day the loan is repaid	For <i>Northern Ireland credit unions</i> 31 March 2012
14 [FCA] [PRA]	CREDS 7.3.4 R	R	A <i>Northern Ireland credit union</i> that is a <i>version 2 credit union</i> need not comply with CREDS 7.3.4 R with respect to any loan outstanding on <i>credit unions day</i> . That loan must be repaid in accordance with the terms as at <i>credit unions day</i> of the relevant loan agreement. This transitional provision does not	From 31 March 2012 until the day the loan is repaid	For <i>Northern Ireland credit unions</i> 31 March 2012

(1)	(2)	(3)	(4)	(5)	(6)
	Materials to which the transitional provision applies		Transitional Provision	Transition- al provi- sions: dates in force	Hand- book pro- visions: coming in- to force
			apply to any loans outstanding on <i>credit unions day</i> that satisfies the requirements in CREDS 7.3.4 R.		
15 [PRA]	CREDS 7.4.2 R	R	A Northern Ireland credit union need not comply with CREDS 7.4.2 R with respect to any individual large <i>exposure</i> in existence on <i>credit unions day</i> or the aggregate total of all large <i>exposures</i> in existence on <i>credit unions day</i> . Those large <i>exposures</i> must be repaid in accordance with the terms of the agreement relating to the relevant large <i>exposure</i> as at <i>credit unions day</i> . This transitional provision does not apply to any individual large <i>exposure</i> in existence on <i>credit unions day</i> or the aggregate total of all large <i>exposures</i> in existence on <i>credit unions day</i> that comply with CREDS 7.4.2 R.	From 31 March 2012 until 30 March 2014 or the day the individual large <i>exposure</i> or the aggregate total of all large <i>exposures</i> satisfies the requirements in CREDS 7.4.2 R if earlier	For Northern Ireland <i>credit unions</i> 31 March 2012
16 [FCA]	CREDS 9.2.1 R and CREDS 9.2.7 R	R	A Northern Ireland credit union need not comply with the requirement to submit a return under CREDS 9.2.1 R until 30 April 2013, and the relevant reporting period under CREDS 9.2.7 R for this return is from 1 October 2012 to 31 March 2013.	From 31 March 2012 until 30 April 2013	For Northern Ireland <i>credit unions</i> 31 March 2012
17	SUP 16.12.5 R	R	A Northern Ireland credit union need not comply with the requirement to submit quarterly returns under SUP 16.12.5 R until 31 January 2013 for the period from 1 October to 31 December 2012.	From 31 March 2012 until 31 January 2013	For Northern Ireland <i>credit unions</i> 31 March 2012
18	SUP 16.12.5 R	R	A Northern Ireland credit union need not comply with the requirement to submit an annual return under SUP 16.12.5 R for the year end 30 September 2011.	From 31 March 2012 indefinitely.	For Northern Ireland <i>credit unions</i> 31 March 2012

Credit Unions New sourcebook

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA **PRA**

There are no requirements relating to record keeping in *CREDS*.

Credit Unions New sourcebook

Schedule 2 Notification requirements

Sch 2.1 G

FCA **PRA**

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification requirements.

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

Sch 2.2 G

FCA **PRA**

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CREDS 2.2.4 R	Business plan	Copy of business plan	Upon request	As soon as reasonably practical
CREDS 2.2.52 G			<i>Version 2 credit unions</i> should submit after adoption and / or amendment	
CREDS 2.2.6 R	Policies and procedures manual	Copy of policies and procedures manual.	Upon request	As soon as reasonably practical
CREDS 2.2.60 G		Wide range of detail as specified as guidance in CREDS 2	<i>Version 2 credit unions</i> should submit after adoption and / or amendment	
CREDS 3.3.10 R	Financial risk Management Policy	Statement of financial risk management policy	<i>Version 2 credit unions</i> must submit after adoption and / or amendment	As soon as reasonably practicable
CREDS 5.2.3 G	General notification	Any proposed repayment of subordinated debt	As soon as <i>credit union</i> aware	At least one <i>month</i> in advance of proposed repayment
CREDS 6.2.5 R	Liquidity	Liquidity Management Policy Statement	<i>Version 2 credit unions</i> must submit after adoption and/or amendment	As soon as reasonably practical
CREDS 7.2.1 R to CREDS 7.2.2 R	Lending policy	Current lending policy statement	<i>Version 2 credit unions</i> must submit	As soon as reasonably practical

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CREDS 7.4.3 R	Large <i>exposures</i>	The aggregate total of all large <i>exposures</i> will exceed 300% of capital.	Prior to the aggregate total of all large <i>exposures</i> exceeding 300% of capital.	As soon as reasonably practicable.
CREDS 8.2.1 G	Quarterly return	Key financial data	Quarter end	1 <i>month</i> after quarter end
CREDS 8.2.3 G	Annual return	Extended financial data	Financial year end	6 <i>months</i> after financial year end
CREDS 8.2.6 R	Audited accounts	Revenue account and balance sheet	Financial year end	Until submission of annual return
CREDS 9.2.1 R	Complaints report	Analysis of complaints	31 March each year	1 <i>month</i> after period end

Credit Unions New sourcebook

Schedule 3 Fees and other required payments

Sch 3.1 G

FCA **PRA**

There are no requirements for fees or other payments in *CREDS*.

The table below summarises the fee requirements for *credit unions* detailed elsewhere.

Sch 3.2 G

FCA **PRA**

Description of fee	Reference
<i>Appropriate regulator rules</i> relating to <i>authorisation</i> fees	FEES 3
Schedule of <i>authorisation</i> fees payable	FEES 3 Annex 1 R
<i>Appropriate regulator fees rules</i> relating to the periodic fee	FEES 4
Schedule of periodic fees payable	FEES 4 Annex 2A R Part 1 and FEES 4 Annex 2B R Part 1
<i>FOS</i> funding rules	FEES 5
<i>FSCS</i> funding rules	FEES 6

Credit Unions New sourcebook

Schedule 4 Powers exercised

Sch 4.1 G

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

- Section 138 (General rule-making power)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)
- Section 213 (The compensation scheme)
- Section 214 (General)
- Section 226 (Compulsory jurisdiction)
- Paragraph 13 (Compulsory jurisdiction) of Schedule 17 (The Ombudsman Scheme)

Sch 4.2 G

The following powers in or under the *Act* have been exercised by the *FSA* to give the *guidance* in *CREDS*:

- Section 157(1) (Guidance).

Credit Unions New sourcebook

Schedule 5 Rights of actions for damages

Sch 5.1 G

FCA

The table below sets out the *rules* in *CREDS* contravention of which by an *authorised person* may be actionable under Section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under Section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

The column headed "For other person?" indicates whether the *rule* is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

Sch 5.2 G

FCA

Chapter / Appendix	Section / Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
All <i>rules</i> in <i>CREDS</i> with the status letter 'E'.			No	No	No
All <i>rules</i> in <i>CREDS</i> that require a <i>credit union</i> to have or maintain financial resources.			No	No	No
All other <i>rules</i> in <i>CREDS</i> .			Yes	No	No

Credit Unions New sourcebook

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA **PRA**

The *rules* made in *CREDS* can be waived by the *appropriate regulator* under sections 138A and 138B (Modification or waiver of rules) of the *Act*.

CREDS includes *guidance* on *rules* made in other parts of the *Handbook*. Reference should be made to those parts of the *Handbook* concerning *waiver* of those *rules*.

Professional Firms

Professional Firms

PROF 1	Professional firms
1.1	Application and Purpose
PROF 2	Status of exempt professional firm
2.1	Designated professional bodies and exempt regulated activities
2 Annex 1	Status of exempt professional firm G
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PROF 3	The FSA's duties and powers
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3.2	The FCA's power to make a direction
3 Annex 1	The FCA's duties and powers
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PROF 4	Disclosure
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PROF 5	Non-mainstream regulated activities
5.1	Application and purpose
5.2	Nature of non-mainstream regulated activities
5.3	Reference to other sourcebooks and manuals
5.4	Application of the Distance Marketing Regulations
PROF 6	Fees
6.1	[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
6.2	[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
6.3	[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
6 Annex 1	[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
6 Annex 2	[deleted]

PROF 7	Insurance mediation activity
7.1	Register of persons carrying on insurance mediation activity
7.2	Passporting under the Insurance Mediation Directive
	Transitional Provisions and Schedules
TP 1	Transitional provisions
Sch 1	Record keeping requirements
Sch 2	Notification requirements
Sch 3	Fees and other required payments
Sch 4	Powers exercised
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

Professional firms



1.1 Application and Purpose

Application

1.1.1
FCA

R This sourcebook applies as follows:

- (1) ■ PROF 1 to ■ PROF 4 apply to *exempt professional firms*;
- (2) ■ PROF 5 applies to *authorised professional firms*; and
- (3) [deleted]
- (4) PROF 7 applies to every *designated professional body* and every *exempt professional firm* that is carrying on, or proposing to carry on, *insurance mediation activity*.

1.1.1A
FCA

R This sourcebook does not apply to an *incoming ECA provider* acting as such.

1.1.2
FCA

G This sourcebook is also relevant to *designated professional bodies*.

Purpose

1.1.3
FCA

G Under Part XX of the *Act* (Provision of Financial Services by Members of the Professions) certain individuals, partnerships or corporate entities, known as *exempt professional firms*, can carry on particular *regulated activities* (which the *Act* terms *exempt regulated activities*) under supervision and regulation by *designated professional bodies*.

1.1.4
FCA

G This sourcebook outlines:

- (1) the arrangements for designation of professional bodies;
- (2) the conditions for activities to be treated as *exempt regulated activities* (see ■ PROF 2.1.3 G);
- (3) the *FCA's* duty to keep itself informed about how *designated professional bodies* supervise and regulate the *exempt regulated activities* of *exempt professional firms* and how *exempt professional firms* carry on *exempt regulated activities*;

- (4) the FCA's power under section 328 of the *Act* (Directions in relation to the general prohibition) to make a direction to deny the exemption to different classes of *person* or to different descriptions of *regulated activity*;
- (5) the implications for an *authorised professional firm* that carries on an *non-mainstream regulated activities*; and
- (6) the arrangements made by the FCA for complying with its obligations under the *Insurance Mediation Directive* in relation to:
 - (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance mediation activity*; and
 - (b) *exempt professional firms* that wish to passport under the *Insurance Mediation Directive*.

1.1.5

FCA

G

This sourcebook also contains disclosure *rules* made by the FCA under the power conferred by section 332(1) of the *Act* (Rules in relation to persons to whom the general prohibition does not apply). These *rules* apply to *exempt professional firms* for the purpose of ensuring that their *clients* are made aware that *exempt professional firms* are not *authorised persons*.

1.1.6

FCA

G

The *rules* and *guidance* in this sourcebook are intended to:

- (1) assist the protection of *clients* of *exempt professional firms* by ensuring that the FCA has information which allows it to keep under review the exercise of the direction power under section 328 of the *Act* (see ■ PROF 1.1.4 G (4));
- (2) secure an appropriate degree of protection for *consumers* by ensuring that the *clients* of an *exempt professional firm* are made aware that the firm is not an *authorised person*;
- (3) enable the FCA to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under 325 of the *Act* (FCA's general duty); and
- (4) explain the background to and the arrangements made by the FCA for:
 - (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance mediation activity*; and
 - (b) *authorised professional firms* and *exempt professional firms* that wish to exercise their *EEA right* under the *Insurance Mediation Directive* to establish a *branch* or provide *cross border services* in another *EEA State*.

1.1.7

FCA

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Professional firms should refer to ■ PERG 8 (Financial promotion and related activities) for general *guidance* on financial promotion and to ■ PERG 8.15 (Financial promotions by members of the professions (articles 55 and 55A)) for *guidance* on the exemptions which are specifically intended for *professional firms*.

Chapter 2

Status of exempt professional firm

2.1 Designated professional bodies and exempt regulated activities

Designated professional bodies

- 2.1.1 FCA G The Treasury designates professional bodies. Section 326 of the *Act* (Designation of professional bodies) sets out the conditions a body must satisfy before it can be designated.
- 2.1.2 FCA G The professional bodies that have been designated by the Treasury are listed in ■ PROF 2 Annex 1 G.

Exempt regulated activities

- 2.1.3 FCA G Section 327 of the *Act* (Exemption from the general prohibition) sets out the conditions which must be met for a *person* to be treated as an *exempt professional firm*, and for the *person's regulated activities* to be treated as *exempt regulated activities*. If the exemption in section 327 does not apply to a *person* and the *person* carries on a *regulated activity*, the *person* may contravene the *general prohibition* and be committing a criminal offence. The *FCA's* approach to the use of its powers in respect of alleged contraventions of the *general prohibition* is explained in ■ EG 12.
- 2.1.4 FCA G If the *FCA* has made a direction under section 328 of the *Act* (Directions in relation to the general prohibition) (see ■ PROF 3.2) in relation to classes of *person* (or *regulated activity*), then a *person* within the class (or carrying on the *regulated activity*) specified will not be an *exempt professional firm*. In addition, section 329 of the *Act* (Orders in relation to the general prohibition) gives the *FCA* power to make an order disapplying the Part XX exemption from a *person* named in the Order. The *FCA's* general approach to the use of this power is explained in ■ EG 16.
- 2.1.5 FCA G Section 327(2) provides that an *exempt professional firm* must be a *member* of a profession or be controlled or managed by one or more *members*. The *FCA* considers that "managed" here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant *person*.
- 2.1.6 FCA G The effect of section 327(7) of the *Act* is that an *exempt professional firm* can carry on *regulated activities* in that capacity or as an *exempt person* but not otherwise. Therefore, an *exempt professional firm* cannot be an *authorised person*.

- 2.1.7**
FCA **G** The *Act* does not, however, prevent an *exempt professional firm* from carrying on, in addition to *exempt regulated activities*, any *regulated activities* in relation to which it is an *exempt person*. For example, it is possible for an *exempt professional firm* to carry on *regulated activities* as an *appointed representative*.
- 2.1.8**
FCA **G** Section 327 also sets out the conditions which determine the particular *regulated activities* an *exempt professional firm* may carry on.
- 2.1.9**
FCA **G** Section 327(6) of the *Act* gives the Treasury power to make an order specifying activities, or activities relating to specified *investments*, that a *person* cannot carry on as an *exempt professional firm*. The relevant orders are listed in ■ PROF 2 Annex 2 G.
- 2.1.10**
FCA **G** Section 332(3) of the *Act* requires a *designated professional body* to make rules that define the particular *regulated activities* which its *members* are allowed to carry on. Section 332(4) of the *Act* provides that those rules must be designed to secure that, in providing a particular professional service to a particular *client*, a *member* must carry on only *regulated activities* which arise out of, or are complementary to, the provision by the *member* of that professional service to the *client*.
- 2.1.11**
FCA **G** The *FCA* is required to approve the rules *designated professional bodies* make under section 332(3) of the *Act*. These rules must be in place in order to allow a *person* to be an *exempt professional firm*. They add to the other conditions within section 327 but do not override them, and a firm may need to refer to section 327 if it is in doubt whether an activity is an *exempt regulated activity*.
- 2.1.12**
FCA **G** Section 327(3) deals with the treatment by a firm of a pecuniary reward or other advantage received from anyone other than the firm's *client*. For a *regulated activity* to be treated as an *exempt regulated activity*, the firm must account to its *client* for any such receipt. The *FCA* considers this to mean that an *exempt professional firm* must hold to the order of its *client* any such reward or other advantage that it receives.
- 2.1.13**
FCA **G** Section 327(4) states that the manner of the provision of any service in the course of carrying on *regulated activities* must be incidental to the provision by the *exempt professional firm* of professional services. For this purpose, professional services are services which do not constitute carrying on a *regulated activity*, and the provision of which is supervised and regulated by a *designated professional body*.
- 2.1.14**
FCA **G** The *FCA* considers that to satisfy the condition in section 327(4) *regulated activities* cannot be a major part of the practice of the firm. The *FCA* also considers the following further factors to be among those that are relevant:
- (1) the scale of *regulated activity* in proportion to other professional services provided;
 - (2) whether and to what extent activities that are *regulated activities* are held out as separate services; and
 - (3) the impression given of how the firm provides *regulated activities*, for example through its advertising or other promotions of its services.

2.1.15

FCA

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The FCA's view is that, in the context of section 327 as an exemption from the *general prohibition*, the conditions in section 327 should be interpreted as not imposing any restriction on the *regulated activities* that an *exempt professional firm* may carry on outside the *United Kingdom*. For further guidance on when a *regulated activity* is carried on 'in the *United Kingdom*', *exempt professional firms* are referred to section 418 of the *Act* and the *guidance* in ■ PERG 2.4 (Link between activities and the United Kingdom).

Status of exempt professional firm G

FCA

On 28 March 2001 the following professional bodies were designated by the Treasury under section 326(1) of the *Act*:

the Law Society of England & Wales

the Law Society of Scotland

the Law Society of Northern Ireland

the Institute of Chartered Accountants in England and Wales

the Institute of Chartered Accountants of Scotland

the Institute of Chartered Accountants in Ireland

the Association of Chartered Certified Accountants

the Institute of Actuaries.

On 14 January 2005, the Council for Licensed Conveyancers was designated by the Treasury under section 326(1) of the *Act*.

On 10 February 2006, the Royal Institution of Chartered Surveyors was designated by the Treasury under section 326(1) of the *Act*.

Status of exempt professional firm G

FCA

Table Non Exempt activities orders under section 327(6) of the Act (see ■ PROF 2.1.9 G)

As at 31 October 2004, the Treasury had made the following orders under section 327(6):

The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227), as amended by: article 3 of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); article 7 of the Financial Services and Markets Act 2000 (Regulated activities) (Amendment) Order 2002 (SI 2002/682); article 3 of the Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (SI 2002/1777); article 24 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 1) Order 2003 (SI 2003/1475), and article 16 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003 (SI 2003/1476).

Chapter 3

The FSA's duties and powers

3.1 The FCA's duty to keep itself informed

3.1.1

FCA

G

325 of the *Act* (Authority's general duty) imposes on the *FCA* a duty to keep itself informed about:

- (1) the way in which *designated professional bodies* supervise and regulate the carrying on of *exempt regulated activities* by *exempt professional firms*; and
- (2) the way in which *exempt professional firms* carry on *exempt regulated activities*.

3.1.2

FCA

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The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct *insurance mediation activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:

- (1) complaints and redress arrangements;
- (2) complaints volumes and their analysis;
- (3) disciplinary action;
- (4) supervisory activity;
- (5) the activities carried on by *exempt professional firms*, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements; and
- (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, *insurance mediation activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the *insurance mediation activity* and, where relevant, the passporting information required by the *FCA* for the purposes of paragraph 25 of Schedule 3 to the *Act* (EEA Passport Rights).

3.1.3

FCA

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Information may also be obtained from *exempt professional firms*, government departments, trade bodies, consumer organisations and *clients* of *exempt professional firms*. The *FCA* may also commission or carry out reviews of the supervisory and

regulatory activities of a *designated professional body* and commission or carry out research about, or surveys of, *exempt professional firms* or their *clients*.

3.2 The FCA's power to make a direction

3.2.1

FCA

G

Section 328 of the *Act* (Directions in relation to the general prohibition) gives the *FCA* power to make a direction that the exemption under section 327 of the *Act* (see ■ PROF 2.1.3 G) does not apply to the extent specified in the direction. Section 328 allows the *FCA* to make a direction in relation to different classes of *person* or different descriptions of *regulated activity*. Section 325(3) of the *Act* requires the *FCA* to keep under review the desirability of exercising its powers under Part XX of the *Act* (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the *Act*.

3.2.2

FCA

G

If the *FCA* gives a direction in relation to specified classes of *person*, then any *person* within those classes may be in contravention of the *general prohibition* unless:

- (1) it ceases to carry on *regulated activities*; or
- (2) it is an *authorised person*; or
- (3) it is an *exempt person*.

3.2.3

FCA

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A direction might also cover classes of *persons* who are *members* of different *designated professional bodies*.

3.2.4

FCA

G

Were the *FCA* to give a direction in relation to a description of *regulated activity* (for example, *dealing in investments as agent*), then that activity could no longer be carried on within the terms of the exemption.

3.2.5

FCA

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- (1) The *FCA* may exercise its direction powers under section 328(6) of the *Act* in two situations, as set out in (2) and (3).
- (2) First, the *FCA* may exercise its direction power under section 328(6)(a) of the *Act* if it is satisfied that it is desirable in order to protect the interests of *clients*. In considering whether it is satisfied, the *FCA* is required by section 328(7) of the *Act* to have regard, among other things, to the effectiveness of any arrangements made by a *designated professional body*:
 - (a) for securing compliance with *rules* made under section 332(1) of the *Act* (see ■ PROF 4.1.1 G);

- (b) for dealing with complaints against its *members* in relation to the carrying on by them of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d));
 - (c) in order to offer redress to *clients* who suffer, or claim to have suffered, loss as a result of misconduct by its *members* in their carrying on of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d)); and
 - (d) for cooperating with the *FCA* under section 325(4) of the *Act* (see ■ PROF 3.1.2 G).
- (3) Second, the *FCA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the *Insurance Mediation Directive* . For example, the *FCA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *Financial Services Register* (see PROF 7.1).

3.2.6
FCA

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Section 330 of the *Act* (Consultation) sets out procedures which the *FCA* must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

- (1) the *FCA* must consult publicly on its proposed direction;
- (2) the *FCA* must have regard to any representations made in response to the consultation; and
- (3) if the *FCA* then gives the proposed direction, it must publish an account of the representations made and its response to them.

3.2.7
FCA

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The directions the *FCA* has made under section 328 (6)(a) are set out in ■ PROF 3 Annex 1 G. Directions made by the *FCA* under section 328(6)(b) of the *Act* are listed in ■ PROF 3 Annex 2 G (The *FCA*'s duties and powers).

The FCA's duties and powers

FCA

Directions made by the **FCA** under section 328(6)(a) of the *Act* (see ■ PROF 3.2.7 G)

The *FCA* has made no directions under section 328(6)(a) of the *Act*.

The FCA's duties and powers

FCA

Directions made by the FCA under section 328(6)(b) of the *Act* (see ■ PROF 3.2.7 G)

The *FCA* has made no directions under section 328(6)(b) of the *Act*.

Chapter 4

Disclosure

4.1 Disclosure rules

4.1.1

FCA

G

The effectiveness of arrangements made by a *designated professional body* for securing compliance with the *rules* in this chapter is one of the factors that the *FCA* must take into account in considering whether to exercise its powers to give a direction under section 328 of the *Act* (see ■ PROF 3.2.5 G (2) and ■ PROF 3.2.5 G (3)).

4.1.2

FCA

R

An *exempt professional firm* must avoid making any representation to a *client* that:

- (1) it is authorised under the *Act* or regulated by the *FCA*; or
- (2) the regulatory protections provided by or under the *Act* to a *person* using the services of an *authorised person* are available.

4.1.3

FCA

R

- (1) An *exempt professional firm* must, before it provides a service which includes the carrying on of a *regulated activity* in the *United Kingdom*, other than an *insurance mediation activity*, with or for a *client*, disclose in writing to the *client* in a manner that is clear, fair and not misleading that it is not authorised under the *Act*.

- (2) An *exempt professional firm*, must, before it provides a service which includes the carrying on of an *insurance mediation activity* with or for a *client*, make the following statement in writing to the *client* in a way that is clear, fair and not misleading and no less prominent than any other information provided to the *client* at the same time:

"[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our of business, including arrangements for complaints or redress if something goes wrong, is regulated by [DPB]. The register can be accessed via the Financial Conduct Authority website at www.fsa.gov.uk/register/home.do."

4.1.4

FCA

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- (1) The FCA considers that material provided to satisfy ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) need not be tailored to the individual *client*. The disclosures in ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) may be provided alongside or integrated with other material provided to a *client*. *Exempt professional firms* may therefore include the information within engagement letters or client care letters, if they wish.
- (2) The FCA considers that it is important that *clients* understand the implications for them of receiving services from an *exempt professional firm* that is not authorised under the *Act*. It is also important that *clients* understand the implications of the difference between authorisation under the *Act* and being on the register maintained by the FCA, so that the *exempt professional firm* can conduct *insurance mediation activity*, in relation to which activity the regulatory protections established by the *Act* for the benefit of *consumers* will not apply. The FCA therefore expects *designated professional bodies* to make rules covering the information to be provided to *clients*. These rules should require *exempt professional firms* to make a disclosure to *clients* containing the following elements:
 - (a) where the *exempt professional firm* conducts a *regulated activity* other than an *insurance mediation activity*, a statement that the *exempt professional firm* is not an *authorised person*;
 - (b) the nature of the *regulated activities* carried on by the *exempt professional firm*, and the fact that they are limited in scope;
 - (c) a statement that the *exempt professional firm* is regulated for these *regulated activities* by the *exempt professional firm's designated professional body*, identifying the *designated professional body* concerned;
 - (d) the nature of the complaints and redress mechanisms available to *clients* in respect of these *regulated activities*; and
 - (e) where the *regulated activity* consists of *insurance mediation activity*, the statement contained at ■ PROF 4.1.3 R (2).
- (3) *Exempt professional firms* should also ensure that any statement that makes reference to the FCA does not lead a *client* to suppose that the FCA has direct regulatory responsibility for the *exempt professional firm*. This could be a breach of ■ PROF 4.1.2 R. This consideration is particularly important in relation to *insurance mediation activity*, where *clients* may well fail to appreciate the difference between authorisation under the *Act* and being included on the register maintained by the FCA so as to permit the *exempt professional firm* to carry on *insurance mediation activity*.

4.1.5

FCA

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For further guidance on when a *regulated activity* is carried on 'in the United Kingdom', *exempt professional firms* are referred to section 418 of the *Act* and the guidance in ■ PERG 2.4.

Chapter 5

Non-mainstream regulated activities



5.1 Application and purpose

Application

5.1.1

FCA

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This chapter applies to an *authorised professional firm* that carries on *non-mainstream regulated activities*.

Purpose

5.1.2

FCA

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This chapter:

- (1) contrasts "*exempt regulated activities*" with "*non-mainstream regulated activities*";
- (2) sets out the conditions which must be satisfied for a *regulated activity* of an *authorised professional firm* to constitute a *non-mainstream regulated activity*;
- (3) refers to other parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities*;
- (4) gives effect to the *Distance Marketing Regulations* with respect to the *non-mainstream regulated activities* of *authorised professional firms*.

Exempt regulated activities contrasted with non-mainstream regulated activities

5.1.3

FCA

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- (1) The *FCA's* policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities.
- (2) Subject to conditions (see ■ PROF 2), members of *designated professional bodies* that are not authorised can carry on particular *regulated activities*, known as *exempt regulated activities*, and obtain the benefit of the exemption under section 327 of the *Act* from the *general prohibition*.
- (3) In contrast, *non-mainstream regulated activities* are particular *regulated activities* carried on by an *authorised professional firm*. If the *professional firm* were not authorised under the *Act*, these same activities would be *exempt regulated activities* which, if the *firm* could meet the necessary conditions in section 327, would enable it to benefit from the section 327 exemption.

- (4) Therefore, a number of provisions of the *Handbook* (see ■ PROF 5.3) have been disapplied or modified in respect of these *non-mainstream regulated activities* of *authorised professional firms*.

5.1.4

FCA

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A "*non-mainstream regulated activity*" is defined in the *Glossary* as "a *regulated activity* of an *authorised professional firm* in relation to which the conditions in ■ PROF 5.2.1 R are satisfied". Conditions (1) to (6) of ■ PROF 5.2.1 R replicate section 327(1)(b)(i), (3), (4), (5) and (6) of the *Act*, as if those conditions applied to an *authorised professional firm*.



5.2 Nature of non-mainstream regulated activities

Conditions for non-mainstream regulated activity

A "*non-mainstream regulated activity*" is a *regulated activity* of an *authorised professional firm* in relation to which the following conditions are satisfied:

- (1) the *firm* must not receive from a *person* other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of the carrying on of the *regulated activity*;
- (2) the manner of the provision by the *firm* of any service in the course of carrying on the *regulated activity* must be incidental to the provision by it of professional services (see ■ PROF 5.2.2 R);
- (3) the *regulated activity* must not be of a description, or relate to an investment of a description, specified in The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) or in any other order made by the Treasury under section 327(6) of the *Act* (see ■ PROF 2 Annex 2 GG);
- (4) there must not be in force any direction under section 328 of the *Act* (Directions in relation to the general prohibition) in relation to:
 - (a) a class of *person* which would have included the *firm* were it not an *authorised person*; or
 - (b) a description of *regulated activity* which includes the *regulated activity* the *firm* proposes to carry on;
- (5) the *regulated activity* must be an activity which *exempt professional firms* which are *members* of the same *designated professional body* as the *authorised professional firm* are permitted to carry on under rules made by that body as required by section 332(3) of the *Act* ; and

(6) the *authorised professional firm* is subject to the rules referred to in (5).

5.2.1A

R

[deleted]

FCA

5.2.2

R

In ■ PROF 5.2.1 R (2), "professional services" means services:

FCA

(1) which do not constitute a *regulated activity*; and

(2) the provision of which is supervised and regulated by a *designated professional body*.



5.3 Reference to other sourcebooks and manuals

Introduction

5.3.1
FCA

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The parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities* include those described in ■ PROF 5.3.1A G to ■ PROF 5.3.9 G

General provisions

5.3.1A
FCA

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■ 4.3.5 R provides that ■ 4.3.1 R (Disclosure in letters to private customers) does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

Conduct of business sourcebook

5.3.2
FCA

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■ COBS 18.11 provides that COBS does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:

- (1) the *fair, clear and not misleading rule*;
- (1A) the *financial promotion rules*, but only in limited circumstances;
- (2) (where these are *insurance mediation activities*) ■ COBS 7 (Insurance mediation) unless:
 - (a) the *designated professional body* of the *firm* has made rules which implement some or all of articles 12 and 13 of the *Insurance Mediation Directive* ;
 - (b) those rules have been approved by the FCA under section 332(5) of the *Act*; and
 - (c) the *firm* is subject to the rules in the form in which they were approved;
- (3) ■ COBS 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest ; and
- (4) ■ COBS 5.2 (E-commerce).

Training and Competence sourcebook

5.3.3
FCA

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■ TC Appendix 3 provides that TC, which imposes the substantive training and competence requirements for *retail clients* or *customers*, does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.

Senior Management Arrangements, Systems and Controls

5.3.4
FCA

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■ SYSC 3.2.6A R to ■ SYSC 3.2.6J G and ■ SYSC 6.3 (Financial crime), in relation to *money laundering*, do not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*.

Supervision manual

5.3.5
FCA

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■ SUP 10A.1.17 R provides that ■ SUP 10A (Approved persons) does not apply (except in respect of the *required functions*) to an *authorised professional firm* in respect of its *non-mainstream regulated activities*. So a person such as a *partner*, whose only *regulated activities* are incidental to his professional services, in an *authorised professional firm* whose principal purpose is to carry on activities other than *regulated activities*, need not be an *approved person*.

Dispute resolution: Complaints sourcebook

5.3.6
FCA

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■ DISP 1.1.5 R (3) provides that ■ DISP 1 (Treating complainants fairly) only applies to an *authorised professional firm* in so far as its mainstream regulated activities are concerned. ■ DISP 2.3.4 R further provides that a *complaint* about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates solely to *non-mainstream regulated activity* and can be handled by a *designated professional body*. This is because such a *complaint* will be handled by the relevant professional body.

Market Conduct sourcebook

5.3.7
FCA

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■ MAR 4.4.1 R (3) provides that ■ MAR 4, which deals with the endorsement of the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares, does not have effect in relation to an *authorised professional firm* in respect of *non-mainstream regulated activity*.

Mortgages: Conduct of business sourcebook

5.3.8
FCA

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■ MCOB 1.2.10 R provides that MCOB does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for ■ MCOB 2.2 (Clear, fair and not misleading communication), ■ MCOB 3 (Financial promotion) and to a limited extent ■ MCOB 4.4 (Initial disclosure requirements).

5.3.9
FCA

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■ CASS 1.2.4 R provides that with the exception of ■ CASS 1 and the *insurance client money chapter*, CASS does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. ■ CASS 1.2.5 R further provides that if the *non-mainstream regulated activities* are *insurance mediation activity*, ■ CASS 5 (the insurance client money chapter) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which implement the *Insurance Mediation Directive* and which are in the form approved by the FCA under section 332(5) of the *Act*.

5.3.10

FCA

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Insurance: Conduct of Business sourcebook

- (1) *ICOBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see ■ *ICOBS* 1 Ann 1, Part 1, 3.1R , except for:
- (a) the provisions on communications to *clients* and *financial promotions* (■ *ICOBS* 2.2);
 - (b) the e-commerce provisions (■ *ICOBS* 3.2);
 - (c) status disclosure requirements in relation to complaints procedures (■ *ICOBS* 4.1); and
 - (d) provisions in *ICOBS* which implement articles 12 and 13 of the *Insurance Mediation Directive* (■ *ICOBS* 4.1 and ■ *ICOBS* 5.2.3 R) , except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA* .
- (2) [deleted]



5.4 Application of the Distance Marketing Regulations

5.4.1

FCA

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- (1) In addition to those provisions of the *Distance Marketing Regulations* which apply directly, an *authorised professional firm* must, with respect to its *non-mainstream regulated activities*, comply with regulations 7 to 11 and 15 of the *Distance Marketing Regulations*. Those regulations have effect to cancel *distance contracts* the making or performance of which by such *firms* constitutes a *non-mainstream regulated activity*.
- (2) Paragraph (1) does not apply in relation to regulations 7 to 8 and 15 if the *designated professional body* of the *authorised professional firm* has rules equivalent to some or all of those regulations and:
 - (a) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
 - (b) the *authorised professional firm* is subject to those rules in the form in which they have been approved;

in which case those regulations are disappplied to the extent that they are implemented by the rules of the *designated professional body*.

5.4.2

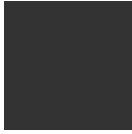
FCA

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The effect of ■ PROF 5.4.1 R is that it allows *designated professional bodies* to make rules which allow an *authorised professional firm* to comply with the *Distance Marketing Regulations* in respect of its *non-mainstream regulated activities* in the same way as an *exempt professional firm* which is a member of the same *designated professional body* in respect of its *exempt regulated activities*.

Chapter 6

Fees



6.1

[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]

- 6.1.1
- 6.1.2
- 6.1.3
- 6.1.4
- 6.1.5

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6.2

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- 6.2.1
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- 6.2.3
- 6.2.4

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6.3

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6.3.1

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Chapter 7

Insurance mediation activity



7.1 Register of persons carrying on insurance mediation activity

Background

7.1.1
FCA

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The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (SI 2003/1476) implements in part the provisions of the *Insurance Mediation Directive* and amends the *Regulated Activities Order*.

The FCA's obligation to maintain a record

7.1.2
FCA

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Article 93 of the amended *Regulated Activities Order* requires the FCA to maintain an up-to-date record of every *unauthorised person*, whether an appointed representative or an *exempt professional firm* that carries on, or is proposing to carry on, *insurance mediation activity* and to whom the *general prohibition* does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the *Act*.

7.1.3
FCA

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The FCA is not to include an *exempt professional firm* in the register relating to *unauthorised persons* if:

- (1) under a direction given by the FCA under section 328(1) of the *Act*, section 327(1) of the *Act* does not apply in relation to the carrying on by it of *insurance mediation activity*; or
- (2) the FCA has made an order under section 329(2) of the *Act* disapplying section 327(1) of the *Act* in relation to the carrying on by the *exempt professional firm* of *insurance mediation activity*.

Provision of information to the FCA

7.1.4
FCA

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Article 94 of the *Regulated Activities Order* obliges a *designated professional body* to provide the FCA with the information it needs to maintain the record referred to in ■ PROF 7.1.2 G of every *unauthorised person* that carries on, or proposes to carry on, *insurance mediation activity* and keep it up to date. This information needs to include the details referred to in ■ PROF 7.1.7 G. This is the responsibility of the *designated professional body* and not each *exempt professional firm*.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

7.1.5
FCA

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- (1) The attention of *exempt professional firms* is drawn to the significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services

and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that *exempt professional firms* may not carry on certain regulated activities which relate to a contract of insurance in reliance on the *Part XX exemption* unless the *exempt professional firm* is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the FCA under article 93 of the *Regulated Activities Order*.

- (2) Each *exempt professional firm* carrying on, or proposing to carry on, *insurance mediation activity* should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the FCA. Any such *exempt professional firm* carrying on, or proposing to carry on, *insurance mediation activity* whose name does not appear in the record maintained by the FCA is likely to be breaching the general prohibition which is a criminal offence under section 23 of the *Act*.

Financial Services Register

7.1.6

FCA

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In order to comply with its obligations to maintain a record of *unauthorised persons* that carry on, or are proposing to carry on, *insurance mediation activity*, the FCA has established an appropriate record which forms part of the record maintained by the FCA under section 347 of the *Act*. The record maintained by the FCA under section 347 of the *Act* is known as the *Financial Services Register*. The *Financial Services Register* therefore contains a record of each *authorised* and *unauthorised person* that carries on, or proposes to carry on, *insurance mediation activity*.

7.1.7

FCA

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The information to be included on the record in relation to *exempt professional firms* will, as required by the *Insurance Mediation Directive*, include details of:

- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, *insurance mediation activity*;
- (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the *insurance mediation activity*; and
- (3) each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the *Insurance Mediation Directive* :
 - (a) has established a *branch*; or
 - (b) is providing *cross border services*.

FCA Website

7.1.8

FCA

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The *Financial Services Register* can be accessed through the FCA website under the link www.fca.org.uk/firms/systems-reporting/register.



7.2 Passporting under the Insurance Mediation Directive

7.2.1
FCA

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All *persons* that are on the register maintained by the *FCA* in accordance with article 3 of the *Insurance Mediation Directive* , and so permitted to conduct *insurance mediation activity*, are entitled to exercise the *EEA right* conferred upon them by article 6 of the *Insurance Mediation Directive* to establish a *branch* or provide services relating to *insurance mediation activity* in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FCA* get the benefit of these passporting rights.

7.2.2
FCA

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Any *authorised professional firm* or *exempt professional firm* that is contemplating the exercise of rights under article 6 of the *Insurance Mediation Directive* to establish a *branch* or provide services relating to *insurance mediation activity* in another *EEA State* is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including ■ SUP 13.

7.2.3
FCA

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A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the *Insurance Mediation Directive* must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FCA* a notice in the required form of its intention to establish the *branch*.
■ SUP 13.3.2 G to to ■ SUP 13.3.2C G and ■ SUP 13.3.5 G detail the procedure to be followed once such a *notice of intention* has been received by the *FCA*. ■ SUP 13.5.1 R (Specified contents: notice of intention to establish a branch) and ■ SUP 13.6.9A G (Firms passporting under the *Insurance Mediation Directive*) will also be relevant.

7.2.4
FCA

G

A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the *Insurance Mediation Directive* must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FCA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in ■ SUP 13.4.2 G , ■ SUP 13.4.4 G and ■ SUP 13.4.5 G. ■ SUP 13.5.2 R (Specified contents: notice of intention to provide cross border services) and ■ SUP 13.7.11 G will also be relevant.

Professional Firms

PROF TP 1 Transitional provisions

FCA

1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	PROF 4.1.2 R	G	The <i>FCA</i> considers that the issue by an <i>exempt professional firm</i> of a letter to a client on a letterhead that includes a statement that it is "authorised" will be in breach of PROF 4.1.2 R. This includes a statement such as: 'This firm is authorised in the conduct of investment business by [name of recognised professional body] under the Financial Services Act 1986.' However, an <i>exempt professional firm</i> which has been authorised for investment business by a recognised professional body under the Financial Services Act 1986 may continue to use stocks of notepaper and other material that discloses its status under that act, provided that it strikes through the disclosure statement.	From <i>commencement</i>	<i>Commencement</i>
2	<i>PROF</i>	G	<i>GEN</i> contains some technical transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i> .	From <i>commencement</i>	<i>Commencement</i>

Professional Firms

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

There are no record keeping requirements in *PROF*.

Professional Firms

Schedule 2 Notification requirements

Sch 2.1 G

FCA

There are no notification or reporting requirements in *PROF*.

Professional Firms

Schedule 3 Fees and other required payments

Sch 3.1 G

FCA

There are no requirements for fees or other payments in *PROF*.

Professional Firms

Schedule 4 Powers exercised

Sch 4.1 G

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

Section 138 (General rule-making power)

Section 156 (General supplementary powers)

Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)

Sch 4.2 G

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *PROF*:

Section 157(1) (Guidance)

Professional Firms

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

The table below sets out the *rules* in *PROF* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

FCA

If a "YES" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No. 2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

FCA

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

FCA

Chapter/Appendix	Section/Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
PROF 5.2.1 R	Conditions for non-mainstream regulated activity		Yes	No	No

Professional Firms

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Regulated Covered Bonds

Regulated Covered Bonds

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RCB 2	Applications for registration
2.1	Application and purpose of chapter
2.2	Applying for registration
2.3	Determination of registration
2 Annex 1	Application for the admission to the register of issuers and register of regulated covered bonds
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3.1	Application and Purpose
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3.5	Other notifications
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3 Annex 1	Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook
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3 Annex 7A	Loan level disclosure form
3 Annex 7B	Guidance on loan level disclosure form
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5.1	[Deleted]
5.2	[Deleted]

RCB 6	Warning and decision notices
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Sch 3	Fees and other requirement payments
Sch 4	Powers exercised
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

Introduction

1.1 Introduction to sourcebook

Application

- 1.1.1 FCA G This sourcebook applies to *issuers* and *owners* in relation to *regulated covered bonds*.

Purpose

- 1.1.2 FCA G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FCA* under the *RCB Regulations*. Those regulations enable bonds to be issued which comply with Article 52(4) of the *UCITS Directive*.

- 1.1.3 FCA G This sourcebook should be read together with the *RCB Regulations*.

Other relevant provisions

- 1.1.4 FCA G This section refers to some of the other parts of the *FCA Handbook* and *PRA Handbook* which may be relevant to *regulated covered bonds*.
- 1.1.5 FCA G Investors in *regulated covered bonds* may be able to take advantage of different regulatory treatments depending on what type of investor they are.
- 1.1.6 FCA G *BIPRU firms* which have *exposures* to *covered bonds* which meet the requirements set out in the provisions of ■ BIPRU 3.4.106 R to ■ BIPRU 3.4.109 R , whether made by the *FCA* or the *PRA*, may benefit from reduced *risk weights* as set out in the version of ■ BIPRU 3.4.110 R applying to that *BIPRU firm*.
- 1.1.7 FCA G An *insurer* (which is not a *non-directive friendly society*, *incoming EEA firm* or an *incoming Treaty firm*) may benefit from increased counterparty limits under ■ INSPRU 2.1.22 R (3)(b).
- 1.1.8 FCA G *UCITS schemes* and *non-UCITS retail schemes* may benefit from less onerous spread requirements and increased investment limits under ■ COLL 5.2.11 R and ■ COLL 5.6.7 R.
- 1.1.9 FCA G (1) *Issuers* which are subject to an obligation to publish a prospectus under the *Prospectus Directive* are required by Article 3 of the *PD Regulation* to disclose risk factors. These requirements are set out in ■ PR 2.3.1 EU and ■ PR App 3.1.1 EU.

- (2) In complying with these obligations, *issuers* should consider disclosing the risk that actions by a regulatory authority in relation to the *issuer* may adversely affect the ability of the *issuer* to meet its obligations to investors or the ability of the *owner* to meet its guarantee obligations to investors. An example of such action may include restricting the *issuer's* ability to transfer further *assets* to the *asset pool*.

Chapter 2

Applications for registration



2.1 Application and purpose of chapter

Application

2.1.1

G

This chapter applies to *issuers*.

FCA

Purpose

2.1.2

G

This chapter sets out the requirements that an *issuer* must follow to apply for registration as a *regulated covered bond issuer* and for registration of a *regulated covered bond* under Regulations 8(a) and 8(b) of the *RCB Regulations* (applications to the *FCA* for registration).

FCA

2.2 Applying for registration

Form, manner and verification of application

- 2.2.1**
FCA **D** The *issuer* must apply for registration using the form at **■ RCB 2 Annex 1D** (application for registration).
- 2.2.2**
FCA **G** **■ RCB 3.6.5 D** sets out the methods the *issuer* may use to send the form to the *FCA*.
- 2.2.3**
FCA **D** Until the application has been determined by the *FCA* , the issuer must inform the *FCA* of any significant change to the information given in the application immediately it becomes aware of that change.
- 2.2.4**
FCA **G** The form and content of the application documentation is a matter for direction by the *FCA* , which will determine what additional information and documentation may be required on a case-by-case basis.
- 2.2.5**
FCA **G** The *FCA* will not treat the application as having been received until it receives the registration fee (see **■ RCB 5.2.5 R**) and all relevant documentation requested by the *FCA* before its on-site review of the application.
- 2.2.6**
FCA **D** The *issuer* must ensure that a *director* or a *senior manager* of the *issuer* verifies the application by confirming on the *FCA*'s form that the *issuer* has obtained the appropriate third party advice or reports as required by **■ RCB 2.3.16 D** and is satisfied that:
- (1) the information provided in the application is correct and complete; and
 - (2) the arrangements relating to the *covered bond* or *programme* will comply with the requirements in the *RCB Regulations* and in *RCB*.
- 2.2.7**
FCA **G** The *FCA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation the *senior manager* gives in relation to compliance with the requirements of the *RCB Regulations* and *RCB*.
- 2.2.8**
FCA **D** The *issuer* must ensure that the *senior manager*, who verifies the application for registration under this section, gives their consent to the *FCA* displaying their confirmation of compliance with the relevant requirements on the *FCA*'s website.

2.3 Determination of registration

- 2.3.1** **FCA** **G** To enable the *FCA* to be satisfied that the *issuer* and the proposed owner will comply with requirements imposed on the *issuer* or *owner*, as the case may be, by or under the *RCB Regulations*, the applicant should use the application form to provide relevant details of the proposed *covered bond* or *programme* and demonstrate how each of the requirements will be complied with.
- 2.3.2** **FCA** **G**
- (1) The *FCA*'s application form covers both *issuer* registration and *covered bond* registration as the *FCA* will not normally consider applications for *issuer* registration in isolation from the application for registration of the *covered bond*.
 - (2) An *issuer* which has been admitted to the register of *issuers* should use the same form to apply for registration of subsequent *covered bonds* or *programmes*.
 - (3) The *issuer* does not need to apply for registration of individual issuances from a *programme* which has already been registered, but does need to notify the *FCA* of the issuance under ■ RCB 3.4.1 D.
- 2.3.3** **FCA** **G** In relation to registration of an *issuer* of *regulated covered bonds*, the *FCA* will need to be satisfied that the *issuer's* compliance with the requirements of the *regulatory system* has been adequate and does not give rise to any material cause for concern over the *issuer's* ability to issue *regulated covered bonds* in compliance with the *RCB Regulations*.
- 2.3.4** **FCA** **G** To demonstrate that the *issuer* and the proposed owner will comply with Regulation 17, and Regulations 23 and 24 of the *RCB Regulations* (capability of the *asset pool* to cover claims), the *issuer* should set out what it considers to be the risks of the regulation not being complied with and show how those risks have been adequately mitigated by reference to the tests and provisions set out in the *covered bond* or *programme* documentation.
- 2.3.5** **FCA** **G** **Asset pool of sufficient quality**
 Regulations 17(2)(d) (requirements on *issuer* relating to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) require the *issuer* of a *regulated covered bond* and the *owner* of the *relevant asset pool* to make arrangements so that the *asset pool* is of sufficient quality to give investors confidence that in the event of the failure of the *issuer* there will be a low risk of default in the timely payment by the *owner* of claims attaching to a *regulated covered bond*.

2.3.6

FCA

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The FCA will:

- (1) expect the *issuer* to demonstrate that it has in place appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation;
- (2) expect the *issuer* to demonstrate that the cash-flows generated by the *assets* would be sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the *issuer*;
- (3) take account of any *over collateralisation* used to mitigate these risks to achieve the desired outcome so that, for example, potential credit losses and mismatches are offset; and
- (4) not only consider the probability of default in timely payment of claims, but also the loss in the event of a default. This will include consideration of recovery assumptions, timing and costs.

2.3.7

FCA

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The risk factors which the FCA will take into account in assessing the *issuer's* and *owner's* compliance with Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) will include credit risk of the *assets*, concentration risk, market risk and counterparty risk.

Credit risk

2.3.8

FCA

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- (1) The credit risk of an *asset* is the risk of loss if another party fails to perform its obligations or fails to perform them in a timely fashion.
- (2) Where, for example, the *asset pool* includes residential mortgages the relevant factors which the FCA may consider include:
 - (a) whether the *asset pool* contains (or could contain) loans made to individuals who have been made bankrupt or have had court judgments made against them;
 - (b) the extent to which the *asset pool* contains (or could contain) loans made to individuals whose earnings have been self-certified rather than independently verified;
 - (c) whether the *asset pool* contains (or could contain) loans which have a higher credit risk in terms of individuals' willingness or ability to pay (for example, because they have high loan-to-value ratios, low debt service ratios or high income multipliers);
 - (d) the quantity and duration of mortgages which are in arrears;
 - (e) the length of time the loan has been in place; and
 - (f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate, off-set or endowment).
- (3) Where, for example, the *asset pool* includes commercial mortgages, the relevant factors the FCA may consider in addition to any of the relevant residential mortgage factors described above, include:
 - (a) the type of property to which the mortgage relates (for example whether it is office, retail, industrial);

2.3.9
FCA

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- (b) the terms of the loans (including size, interest rate, maturity, options, representations and warranties); and
- (c) occupation levels, rental income and terms of rental agreements of the property secured.

Concentration risk

Concentration risk is the risk of loss from exposures being limited in number or variety. The relevant factors the *FCA* may consider include:

- (1) the level of granularity of the *asset pool* (i.e. what is the number and size distribution of *assets* in the pool);
- (2) whether the borrowers or collateral is unduly concentrated in a particular industry, sector, or geographical region.

2.3.10
FCA

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Market risk is the risk that arises from fluctuations in the values of, or income from, *assets* or in interest or exchange rates. The relevant factors the *FCA* may consider include whether the hedging agreements (defined in Regulation 1(2) of the *RCB Regulations* as agreements entered into or *assets* held as protection against possible financial loss) adequately protect against any adverse mismatched cash-flows due to changes in market variables.

2.3.11
FCA

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Counterparty risk

Counterparty risk is the risk that the counterparty to a transaction could default before the final settlement of the transactions cash flows. The relevant factors the *FCA* may consider include whether the:

- (1) counterparty has an appropriate credit rating;
- (2) counterparty can unilaterally terminate the hedging agreement, and if so under what circumstances;
- (3) contractual arrangements contain appropriate termination procedures (for example, what provisions apply in the event of default or in respect of the calculation of termination payments); and
- (4) contractual arrangements provide adequately for what is to happen in the event of *issuer* default.

2.3.12
FCA

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Assessment of risk factors

- (1) The *FCA* will assess each risk factor separately and then assess any inter-dependencies and correlations to form a judgment on the quality of the *asset pool* as a whole. For example, an *asset pool* which is of high credit quality and so low risk due to a combination of factors such as owner occupation, low income multiples, full valuation methodologies, and a strong payments track record, may permit another factor such as high loan-to-value ratios, that would otherwise be considered as inconsistent with high quality, to be included.

- (2) The more that an *asset pool* consists of loans involving risks such as high loan-to-value ratios, self-certification, borrowers with poor credit profiles, and low borrower affordability, the less likely it is, without other mitigating factors, to be of sufficiently high quality to meet the requirements in Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*.

Covered bonds collateralised by real estate

2.3.13

FCA

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In assessing whether the *asset pool* is of sufficient quality, the *FCA* will have regard to the requirements about legal certainty referred to in ■ BIPRU 3.4.64 R, the requirements about monitoring of property values in ■ BIPRU 3.4.66 R and the valuation rules in ■ BIPRU 3.4.77 R to ■ BIPRU 3.4.80 R.

Rectifying non-compliance

2.3.14

FCA

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The *FCA* expects the *issuer* to demonstrate that there are provisions in the *covered bond* or *programme* that adequately deal with:

- (1) the identification and rectification of any breach of Regulations 17(2) (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*;
- (2) the appointment of replacements for parties, for example servicers, cash managers or paying agents; and
- (3) the orderly winding-up of the *asset pool* in the event that breaches of Regulations 17(2) and 24 are not rectified in a timely way.

Representation of bond investors' views and interests

2.3.15

FCA

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The *FCA* expects the *issuer* to demonstrate, as part of showing that Regulations 17 (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations* will be complied with, that there are provisions in the *covered bond* or *programme* which enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way by a suitably qualified, adequately resourced, third party who acts independently, such as a bond trustee.

Third party advice and reports

2.3.16

FCA

D

The *issuer* must obtain written advice and reports regarding the compliance of the *issuer* and the relevant *covered bond* or *programme* with the requirements in the *RCB Regulations* and *RCB* from suitable independent third party advisers, such as lawyers and accountants, before making an application.

Legal advice

2.3.17

FCA

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- (1) The *FCA* expects legal advice to deal adequately with at least the following matters in relation to the actual or proposed arrangements:
 - (a) whether the transfer of the *assets* to the owner would be upheld in the event of liquidation or administration, or similar collective insolvency proceedings, of the *issuer* or the transferor (if different from the *issuer*);

- (b) the risk of the transfer of an *asset* to the owner being re-characterised as the creation of a security interest;
 - (c) the risk of an *asset* transferred to the owner being clawed back under insolvency law provisions (such as rules against preferences, or transactions at an undervalue);
 - (d) whether the contractual arrangements limit eligible property to the items listed in Regulation 2(1) of the *RCB Regulations* (meaning of eligible property);
 - (e) whether the contractual arrangements limit the situation of eligible property to locations permitted under Regulation 2(2) of the *RCB Regulations* (situation of eligible property);
 - (f) whether the contractual arrangements limit the asset pool to items listed in Regulation 3 of the *RCB Regulations* (composition of asset pool);
 - (g) if security is granted over the *asset pool* by the *owner*, the enforceability of that security and any relevant legal limitations;
 - (h) whether the *owner* meets the requirements set out in Regulation 4 of the *RCB Regulations* (meaning of owner);
 - (i) whether the *owner* is a company or limited liability partnership which has its registered office in the *United Kingdom* and whether the contractual arrangements support an analysis that the owner's "centre of main interests" (defined in Regulation 1(2) of the *RCB Regulations* as having the same meaning as in Article 3(1) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings) is also situated in the *United Kingdom*;
 - (j) whether the contractual arrangements are consistent with the obligation of the *issuer* to lend sums derived from the issue of a *regulated covered bond* to the *owner* of the *relevant asset pool* under Regulation 16 of the *RCB Regulations* (sums derived from the issue of *regulated covered bonds*);
 - (k) whether the contractual arrangements provide that if the *owner* is wound up, the *asset pool* will be used to reimburse the claims of investors in *regulated covered bonds* under the priority set out in Regulation 27 of the *RCB Regulations* (priority in a winding-up of an *owner*);
 - (l) whether the contractual arrangements provide for the appointment of a person who will enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way as explained in ■ RCB 2.3.15 G;
 - (m) whether the contractual arrangements provide for the identification and rectification of breaches of Regulation 17 of the *RCB Regulations* (general requirements on *issuer* relating to the *asset pool*) and Regulations 23 and 24 of the *RCB Regulations* (requirements relating to the *asset pool*) and the orderly winding-up of the *asset pool* in the event that the breaches cannot be rectified; and
 - (n) the enforceability of the contractual arrangements.
- (2) Where *assets* are situated outside England and Wales, the *FCA* expects the *issuer* to obtain advice on whether the law of those jurisdictions impacts on the enforceability of security and the availability of those *assets*. Relevant issues to consider may include true sale, perfection of security, priority and recognition of insolvency proceedings, and foreclosure rights.

Accountancy reports

2.3.18

FCA

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- (1) The FCA expects the report from the accountants to address at least the following matters:
- (a) that the level of *over collateralisation* meets the limits set out in the *covered bond* arrangements which are designed to ensure compliance with the requirement that the *asset pool* is capable of covering claims attaching to the bond in Regulation 17 (requirements on *issuer* in relation to the *asset pool*) of the *RCB Regulations*; and
 - (b) that appropriate due diligence procedures (which should include an analysis of a representative statistical sample at a 99% confidence level of the *assets* in the *asset pool*) have been carried out to check whether:
 - (i) the attributes of the *asset pool* correspond accurately to supporting information obtained from other sources (for example, in the case of mortgage pools, that information such as the mortgage amount, value, term, type and location correspond to land registry records, valuation reports and loan agreements);
 - (ii) the attributes of the *asset pool* are appropriately reflected on the records which are maintained in order to comply with the requirements of Regulations 17(2)(a) and 24(1)(a)(i) of the *RCB Regulations* (requirement to keep a record of each *asset* in the *asset pool*) and on the *issuer's* systems; and
 - (iii) the *issuer's* analysis of the *assets* provided to the FCA is accurate.

Providing advice and reports to the FCA

2.3.19

FCA

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The FCA's use of its power under Regulation 12 of the *RCB Regulations* (requirement of further information to determine application) may include requiring the *issuer* to provide copies of the advice or reports referred to in ■ RCB 2.3.16 D to the FCA .

Liquid assets

2.3.20

FCA

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Assets which would be eligible for inclusion in a liquidity buffer under ■ BIPRU 12.7 can be liquid assets for the purposes of limb (a) of the definition of liquid assets in Regulation 1(2) of the *RCB Regulations*. The FCA will also expect that liquid assets which consist of deposits should be held in the same currency or currencies as the *regulated covered bonds* issued by the *issuer*.

Application for the admission to the register of issuers and register of regulated covered bonds

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Application for the admission to the register of issuers and register of regulated covered bonds - FSA/docs/rcb/rcb_chapter2_annex1d_20130401.doc

Chapter 3

Notifications



3.1 Application and Purpose

Application

3.1.1

FCA

G

This chapter applies to *issuers* , *asset pool monitors* and *owners*.

Purpose

3.1.2

FCA

G

This chapter sets out the reporting and notifications requirements under Regulations 17A, 18, 20, 24 and 25 of the *RCB Regulations*.

3.2 Annual confirmations of compliance and asset pool monitor

Form of confirmation and use of third party advisers and asset pool monitor's report

3.2.1 **FCA** **D** The *issuer* must send to the *FCA* annual written confirmation of compliance with Regulations 16 (sums derived from the issue of *regulated covered bonds*) and 17 (general requirements on the *issuer* in relation to the *asset pool*) of the *RCB Regulations* in the form set out in ■ RCB 3 Annex 1D (annual confirmation of compliance).

3.2.2 **FCA** **D** Before providing the confirmation required by this section, the *issuer* must obtain and consider written advice or reports from suitable independent third parties such as the *asset pool monitor* and, where appropriate, lawyers.

3.2.3 **FCA** **G** The *FCA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation.

3.2.4 **FCA** **G** The *FCA* expects the *asset pool monitor's* report to address at least the matters to be checked and due diligence procedures set out in ■ RCB 2.3.18 G. The *FCA* may also specify additional matters that the *asset pool monitor's* report should address in relation to a particular *issuer*.

3.2.4A **FCA** **G** The *FCA's* use of its power under Regulation 18 of the *RCB Regulations* may include requiring the *issuer* to provide to the *FCA* copies of the advice or reports referred to in ■ RCB 3.2.2 D.

3.2.4B **FCA** **D** The *issuer* must provide a copy of the *asset pool monitor's* report to the *FCA* when it sends the confirmation required by this section to the *FCA* .

Timing of confirmation date

3.2.5 **FCA** **D** (1) The first confirmation date in relation to the annual confirmation must be the earlier of any date the *issuer* selects, or the date 12 *months* from the *registration date*.

(2) Subsequent confirmations must be made on the anniversary of the first confirmation date.

3.2.6 **FCA** **D** The *issuer* must send each confirmation to the *FCA* within one *month* after the relevant confirmation date.

Period covered by confirmation

3.2.7 **D** The first confirmation must cover compliance during the period from the *registration date* up to the confirmation date referred to in ■ RCB 3.2.5 D (1).
FCA

3.2.8 **D** Subsequent confirmations must cover compliance for the period from the last confirmation date to the date of the current confirmation.
FCA

Verification of confirmation

3.2.9 **D** The *issuer* must ensure that a *director* or a *senior manager* signs the annual confirmation and confirms on the *FCA*'s form that the *issuer* has obtained the appropriate third party advice or reports required by this section.
FCA

3.2.9A **G** Where possible, the *director* or *senior manager* who signs the annual confirmation should be the same *director* or *senior manager* who has verified the application for registration under ■ RCB 2.2.6 D. If the *director* or *senior manager* is different to the *director* or *senior manager* who verified the application for registration, the *issuer* should notify the *FCA* at least one *month* before sending the confirmation to the *FCA*.
FCA

Notifications by the owner

3.2.10 **D** If the *issuer* is in insolvency, the *owner* must send the *FCA* under ■ RCB 3.2.1 D:
FCA

- (1) a confirmation of compliance within one *month* of the date of insolvency; and
- (2) annual confirmations by the same dates as the date the confirmations under ■ RCB 3.2.5 D are due.

3.2.11 **D** (1) The *owner* must ensure that a duly authorised representative signs the confirmation and confirms on the *FCA*'s form that the *owner* has obtained the appropriate third party advice or reports required by this section.
FCA

- (2) The *owner* must obtain appropriate advice in the same manner as set out in ■ RCB 3.2.2 D and must provide a copy of the *asset pool monitor*'s report to the *FCA* as set out in ■ RCB 3.2.4B D.

Review by asset pool monitor

3.2.12 **G** In addition to requiring the *asset pool monitor* to prepare an annual report, Regulation 17A of the *RCB Regulations* requires that the *asset pool monitor* must inspect the compliance of the *issuer* or *owner* (as the case may be) with the requirements in Regulations 16, 17 or 24 of the *RCB Regulations* once every 12 months.
FCA

3.2.13 **G** The *FCA* expects the inspection by the *asset pool monitor* of the compliance of the *issuer* or *owner* (as the case may be) with the relevant requirements in the *RCB Regulations* to address at least the matters to be checked and due diligence procedures set out in ■ RCB 2.3.18 G. The *FCA* expects that the inspection will be conducted on an agreed-upon-procedures basis.
FCA

3.2.14 **G** As required under Regulation 17A of the *RCB Regulations*, if it appears to the *asset pool monitor* that the *issuer* or *owner* (as the case may be) has failed to comply with
FCA

the requirements set out in Regulations 17 or 24 of the *RCB Regulations*, or has not provided all relevant information or explanations, the *asset pool monitor* must report that to the *FCA* in writing as soon as possible.

Change of asset pool monitor

3.2.15

FCA

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If the *asset pool monitor* is changed, the *issuer* (or *owner*, as the case may be) should notify the *FCA* when the new *asset pool monitor* is appointed, giving the name of the new *asset pool monitor* and details of the reason for the change.

3

3.3 Asset pool notifications

Form of notifications

- 3.3.1** **FCA** **D** The *issuer* must send to the *FCA*, information relating to the *asset pool*, in the form set out in **RCB 3 Annex 2D** (asset notification form), and information relating to the *regulated covered bonds* issued under the *programme*, in the form set out in **RCB 3 Annex 3 D** (asset and liability profile form).
- 3.3.2** **FCA** **D** The *issuer* must send the asset notification form to the *FCA* each *month* following the *registration date*, and the asset and liability profile form to the *FCA* within one *month* of the end of each quarter following the *registration date*.
- 3.3.2A** **FCA** **D** The *issuer* must send to the *FCA* loan-by-loan level data relating to the *asset pool* in the form set out in **RCB 3 Annex 7A D** within one *month* of the end of each quarter following any issuance of *regulated covered bonds* after 1 January 2013. Guidance on how to complete this form is set out in **RCB 3 Annex 7B G**.

Notifications by the owner

- 3.3.3** **FCA** **D** If the *issuer* is in insolvency, the *owner* must send to the *FCA* the notifications set out at **RCB 3.3.1 D** and **RCB 3.3.2A D** by the same dates as the dates the notifications under those directions are due.

Due diligence

- 3.3.4** **FCA** **G** The *issuer* or the *owner*, as the case may be, should carry out, or make arrangements to carry out, appropriate due diligence to check that the analysis in the information provided to the *FCA* is correct.

Addition or removal of assets from the asset pool

- 3.3.5** **FCA** **D** If the *issuer* or the *owner* (as the case may be) proposes to add or remove *assets* to or from the *asset pool* which change the level of *over collateralisation* by 5% or more, it must notify the *FCA* using the form set out in **RCB 3 Annex 2 D** (asset notification form) at least 5 *business days* prior to the proposed transfer, giving expected details of the size and composition of the transfer.

 **3.4 Covered Bond issuance notifications****3.4.1****FCA**

- D** The *issuer* must inform the *FCA* of the information relating to bond issuances from a *regulated covered bond* in the form set out in ■ RCB 3 Annex 4 D (indicative terms form) at least 3 business days before the date of issuance.

3.4.2**FCA**

- D** On the date of issuance, the issuer must send to the *FCA* :
- (1) the information in the form set out in ■ RCB 3 Annex 5 D (issuance form);
 - (2) the information in the form set out in ■ RCB 3 Annex 3 D (asset and liability profile form); and
 - (3) the final terms of the *regulated covered bonds* or equivalent issuance documents setting out the terms of the *regulated covered bonds* and signed copies of swap documents.

3.5 Other notifications

Notifications of change of owner

3.5.1
FCA

G

Regulation 25 of the *RCB Regulations* (change of *owner*) sets out the procedures which apply where a *regulated covered bond* has been issued and the *owner* of the *relevant asset pool* proposes to transfer ownership to another person.

3.5.2
FCA

D

If an *owner* proposes to transfer the *asset pool* to a new *owner* it must provide the *FCA* as a minimum with the following information in writing at least three *months* before the proposed transfer date:

- (1) name, address and contact details of the proposed new *owner*;
- (2) proposed transfer date and reasons for the transfer;
- (3) an explanation of how the proposed new *owner* will comply with the requirements imposed on it by the *RCB Regulations* and *RCB*; and
- (4) confirmation that the existing *owner* and the proposed new owner have obtained appropriate advice in relation to the proposed transfer, and details of such advice.

Notifications of material changes

3.5.3
FCA

G

Regulation 20 of the *RCB Regulations* (material changes to the regulated covered bond) sets out the procedures which apply where an *issuer* proposes to make a material change to the contractual terms of the bond.

3.5.4
FCA

D

If an *issuer* proposes to make a material change to the contractual terms of a *regulated covered bond*, it must inform the *FCA* of the following information to the *FCA* at least 3 months before the proposed date of the change:

- (1) details of the proposed change including proposed date of change and the reasons for it;
- (2) an assessment of the impact of the change on the ability of the *issuer* and *owner* to continue to comply with their requirements under the *RCB Regulations* and *RCB*; and
- (3) confirmation that the *issuer* has obtained appropriate advice in relation to the proposed change and details of such advice.

- 3.5.5**
FCA **G** The *FCA* will regard as material any change that may affect the ability of the *issuer* or the *owner* to continue to comply with the requirements made on them under the *RCB Regulations* and *RCB*.
- Notifications to the FCA if asset pool is not capable or not likely to be capable of covering claims and of other matters**
- 3.5.6**
FCA **D** The *issuer* or the *owner*, as the case may be, must notify the *FCA* immediately, in writing by e-mail or hand-delivered letter, if Regulation 18(2), or 24(1)(c) of the *RCB Regulations* (obligation to inform *FCA* if *asset pool* not capable, or not likely to be capable of covering claims) is triggered.
- 3.5.7**
FCA **D** The *issuer* or the *owner*, as the case may be, must notify the *FCA* immediately in writing by e-mail, or hand-delivered letter, if requirements relating to the relevant *regulated covered bond* under the *RCB Regulations* or *RCB* are, or are likely to be, materially breached, or of any other matter which the *FCA* should be made aware of.
- 3.5.8**
FCA **G** The *issuer* or the *owner*, as the case may be, should include details of proposals to rectify the breach at the time they notify, or as soon as practicable after that time.
- Notification of cancellation**
- 3.5.9**
FCA **D** The *issuer* must notify the *FCA* if it proposes to cancel in full or in part a *regulated covered bond* or *programme* at least 3 *business days* before the cancellation will take effect.
- 3.5.10**
FCA **D** The *issuer* must send to the *FCA* the information in the form set out in **■ RCB 3 Annex 6 D** and an updated asset and liability profile form (**■ RCB 3 Annex 3 D**) on the date of cancellation of the *regulated covered bond* or *programme*.
- Publication of asset pool information and transaction documents**
- 3.5.11**
FCA **D** The *issuer* must publish the asset notification form sent to the *FCA* under **■ RCB 3.3.1 D**.
- 3.5.12**
FCA **D** The *issuer* must publish the information relating to the individual loan *assets* in the *asset pool* in the form set out in **■ RCB 3 Annex 7A D** (loan level disclosure) within one *month* of the end of each quarter following any issuance of *regulated covered bonds* after 1 January 2013.
- 3.5.13**
FCA **D** The *issuer* must publish the transaction documents (excluding legal opinions) relating to the *regulated covered bond* or *programme*.
- 3.5.14**
FCA **G** The publication of the information and documents required under **■ RCB 3.5.11 D**, **■ RCB 3.5.12 D** and **■ RCB 3.5.13 D** should be made on a subscription-only, secure, password-protected website. This website should also contain a link to the latest published *prospectus* relating to the relevant *regulated covered bond* or *programme*.
- 3.5.15**
FCA **G** (1) The transaction documents published under **■ RCB 3.5.13 D** should include the asset sale agreement, the servicing agreements, the administration and cash management agreements, the trust deed, the security deed, the agency agreements, the account bank agreement, the guaranteed investment contract, the master definitions agreement, intercompany loan agreements, the LLP deed, the asset

3.5.16

FCA



If the *issuer* is in insolvency, the *owner* must publish the information set out at ■ RCB 3.5.11 D and ■ RCB 3.5.12 D in accordance with those directions.

monitor agreement, the swap documentation, the final terms of the *regulated covered bonds* or equivalent issuance documents setting out the terms of the *regulated covered bonds* and, if applicable, liquidity facility agreements.

- (2) Where the transaction documents contain sensitive commercial terms (such as the up-front costs associated with a swap), the *issuer* may redact these terms for the purposes of publication, provided the relevant transaction documents are non-public and the relevant redacted terms refer to sunk costs which do not impact the transaction cash flows.

3.6 Fees and other matters

Administrative fee

3.6.1

FCA

R

If an *issuer* or *owner* does not provide the notifications to the *FCA* required by directions made under this chapter by the date specified, then that *issuer* or *owner* must pay to the *FCA* an administrative fee of £250.

Further information and direction

3.6.2

FCA

G

The *FCA*'s exercise of its powers under Part 1 paragraph 3 of the Schedule to the *RCB Regulations* (power to require information) may include requesting information on the reviews undertaken or advice given by accountants and where appropriate lawyers.

3.6.3

FCA

G

The form and content of the notifications in this chapter are a matter for direction by the *FCA* which will determine any additional information and documentation required on a case-by-case basis.

Review of legal advice

3.6.4

FCA

G

The *issuer* or the *owner*, as the case may be, should review legal advice as necessary. For example, advice should be reviewed if a relevant statutory provision is amended or where a new decision or judgment of a court might have a bearing on the conclusions reached which is material to the *issuer*'s or *owner*'s compliance with the requirements of the *RCB Regulations* or the *RCB*.

Method of sending forms and information to FCA

3.6.5

FCA

D

Unless otherwise stated, the *issuer* or the *owner*, as the case may be, must send the relevant forms and information to the *FCA*'s address marked for the attention of the "Covered Bonds Team, Capital Markets Sector" by any of the following methods:

- (1) post; or
- (2) leaving it at the *FCA*'s address and obtaining a time-stamped receipt; or
- (3) e-mail to rcb@fsa.gov.uk.

Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook - FSA/docs/rcb/rcb_chapter3_annex1d_20130401.pdf

Asset pool notification form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Asset pool notification form - [FSA/docs/rcb/rcb_chapter3_annex2d](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex2d)

Asset and liability profile form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Asset and liability profile form- [FSA/docs/rcb/rcb_chapter3_annex3d](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex3d)

Indicative terms form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Indicative terms form- [FSA/docs/rcb/rcb_chapter3_annex4d](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex4d)

Issuance form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Issuance form- [FSA/docs/rcb/rcb_chapter3_annex5d](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex5d)

Cancellation form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Cancellation form- [FSA/docs/rcb/rcb_chapter3_annex6d](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex6d)

Loan level disclosure form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Loan level disclosure form- [FSA/docs/rcb/rcb_chapter3_annex7ad](https://www.fsa.gov/docs/rcb/rcb_chapter3_annex7ad)

Guidance on loan level disclosure form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance on loan level disclosure form- FSA/docs/rcb/rcb_chapter3_annex7bg_20130101.xls

Chapter 4

Enforcement powers



4.1 Application and purpose

Application

4.1.1

FCA

G

This chapter contains guidance for *issuers*, and *owners* and other persons subject to the *RCB Regulations*.

Purpose

4.1.2

FCA

G

The purpose of this chapter is to give guidance on the *FCA's* approach to the use of its enforcement powers under the *RCB Regulations* and to set out the *FCA's* policy on the imposition and amount of financial penalties.

4.2 Enforcement powers and penalties

The FSA's enforcement powers

4.2.1

FCA

G

The *FCA*'s approach to the exercise of its enforcement powers will be consistent with its approach in *DEPP* and *EG* so far as appropriate.

4.2.2

FCA

G

The *FCA*'s exercise of its powers under the *RCB Regulations* is without prejudice to the use of its powers under the *Act* or under other legislation.

4.2.3

FCA

G

- (1) When deciding whether to take enforcement action under Part 7 of the *RCB Regulations*, and what form that enforcement action should take, the *FCA* will consider all relevant factors, including:
 - (a) the relevant factors on decisions to take action set out in ■ *DEPP* 6.2.1 G;
 - (b) whether any contractual or other arrangements agreed between the parties can be used effectively to address any perceived failure under the *RCB Regulations*; and
 - (c) the interests of investors in the relevant *regulated covered bond*.
- (2) The *FCA* does not normally expect to use its enforcement powers where the *issuer* or the *owner* are in the process of rectifying non-compliance and where they have taken account of the views and interests of investors in the *regulated covered bond*. This is without prejudice to the *FCA*'s use of its enforcement powers as a result of its consideration of all relevant factors, as set out in ■ *RCB* 4.2.3 G (1) .

Financial penalties

4.2.4

FCA

G

The *FCA*'s policy on imposing financial penalties (including the amount of any such penalties) under the *RCB Regulations* will be consistent with the policy as set out in *DEPP* and *EG* with appropriate modifications.

4.2.5

FCA

G

When considering whether to impose a financial penalty, the amount of penalty, and whether to impose the penalty on the *issuer* or the *owner*, the *FCA* will have regard, where relevant , to:

- (1) the statement on determining the appropriate level of a financial penalty set out in ■ *DEPP* 6.5 to ■ *DEPP* 6.5D ;

-
- (2) the particular arrangements between the *issuer* and the *owner*;
 - (3) the likely impact of the penalty on the interests of investors in a *regulated covered bond*; and
 - (4) the conduct of the *issuer* or the *owner*.

Chapter 5

Fees



5.1

[Deleted]



5.2

[Deleted]

Chapter 6

Warning and decision notices



6.1 Application and purpose

6.1.1
FCA

G

Application.....
This chapter contains guidance for *issuers* and *owners* and other persons subject to the *RCB Regulations*.

6.1.2
FCA

G

Purpose.....
The purpose of this chapter is to set out the *FCA*'s statement of the procedure which it proposes to follow on giving *warning notices* and *decision notices* in relation to *regulated covered bonds*.

6.2 Policy on decision and warning notices

Decision and warning notices

6.2.1

FCA

G

When making a decision on an application for registration under the *RCB Regulations*, or in relation to material changes to the contractual terms of the *regulated covered bond*, or in relation to a change of *owner*, or when seeking to use direction, revocation or penalty powers, the *RCB Regulations* require the *FCA* to give the subject of the intended action a *warning notice* and a *decision notice*. The recipient of a *warning notice* has the right to make representations to the decision maker, and may refer the decision to give a *decision notice* to the *Tribunal*.

6.2.2

FCA

G

Regulation 44 of the *RCB Regulations* (Warning notices and decision notices) applies Part XXVI of the *Act* (Notices) in respect of notices that we give under the *RCB Regulations*. This means that the provisions of section 393 of the *Act* (Third party rights) and section 394 of the *Act* (Access to Authority material) apply to penalty procedures under the *RCB Regulations* and that, if the matter is not referred to the *Tribunal*, then upon taking the action to which a *decision notice* relates, the *FCA* will issue the subject of the decision notice a *final notice*. The *FCA* is required to publish such details about the matter to which a *final notice* relates as it considers appropriate.

FCA decision maker

6.2.3

FCA

G

■ DEPP 2 Annex 1 G identifies the relevant decision maker in relation to *warning notices* and *decision notices* issued by the *FCA* under the *RCB Regulations*.

6.2.4

FCA

G

Decisions on applications for registration, in relation to material changes to contractual terms of the *regulated covered bond*, or in relation to a change of owner, or decisions to issue a direction under the *RCB Regulations* or to revoke an *issuer's* registration, will be taken under *executive procedures* following the process set out in ■ DEPP 4 .

6.2.5

FCA

G

Decisions to impose a financial penalty under regulation 34 of the *RCB Regulations* will be taken by the *RDC* under the procedure set out in ■ DEPP 3.2 or, where relevant, ■ DEPP 3.3.

Regulated Covered Bonds

Schedule 1 Record keeping requirements

G

FCA

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in this sourcebook.

(2) Regulation 17(2)(a) (general requirements on *issuer* in relation to the *asset pool*) and Regulation 24(1)(a)(i) (requirements on *owner* in relation to the *asset pool*) require a record to be kept of each asset in the asset pool.

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

(4) There are no other record-keeping requirements in *RCB*.

(5) Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
n/a	n/a	n/a	n/a	n/a

Regulated Covered Bonds

Schedule 2 Notification requirements

G

FCA

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements

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

(3) Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.2.1 D	Confirmation of compliance by <i>issuer</i> .	<i>Senior manager</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> . Use Form RCB 2 Ann 1D.	The earlier of a date which the <i>issuer</i> selects, or 12 months from the <i>registration date</i> , then annually after that.	One month after the relevant confirmation date.
RCB 3.3.1 D and RCB 3.3.3 D	Information relating to the <i>asset pool</i> and information relating to the <i>regulated covered bonds</i> issued under the <i>programme</i>	Information on various attributes of the <i>asset pool</i> and issued <i>regulated covered bonds</i> . Use Forms RCB 3 Ann 2D and RCB 3 Annex 3 D.	Monthly (in relation to the information in Form RCB 3 Annex 2 D) or quarterly (in relation to the information in Form RCB 3 Annex 3 D) following <i>registration date</i> .	One month after the end of the relevant month or quarter.
RCB 3.2.10 D	Confirmation of compliance by <i>owner</i>	<i>Owner</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> Use Form RCB 2 Ann 1D.	(1) when the issuer goes into insolvency (2) the anniversary date of the date the issuer sent annual confirmations	(1) Within one month of <i>issuer's</i> insolvency. (2) One month after the relevant confirmation date.
RCB 3.3.2A D	Information about loans relating to the <i>asset pool</i>	Loan-by-loan level data relating to the <i>asset pool</i> . Use Form RCB 3 Annex 7A D.	End of each quarter following <i>registration date</i> following any issuance of <i>regulated covered bonds</i> after 1 January 2013.	One month after the end of the relevant quarter.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.3.5 D	Addition or removal of <i>assets</i> to or from the <i>asset pool</i>	Details of the size and composition of the transfer. Use Form RCB 3 Annex 2 D.	Addition or removal of <i>assets</i> from the <i>asset pool</i> which change the <i>over-collateralisation</i> level by 5% or more.	5 business days before the proposed transfer.
RCB 3.4.1 D	Covered bond issuance	Information on the covered bond issuance. Use Form RCB 3 Annex 4 D.	Issuance of a <i>regulated covered bond</i>	3 <i>business days</i> before date of issuance
RCB 3.4.2 D	Covered bond issuance	Information on the covered bond issuance. Use Form RCB 3 Annex 6 D, RCB 3 Annex 3 D and the final terms of the <i>regulated covered bonds</i> and signed copies of swap documents.	Issuance of a <i>regulated covered bond</i>	On date of issuance
RCB 3.5.2 D	Change of <i>owner</i>	At least: (1) name, address and contact details of proposed new <i>owner</i> . (2) proposed transfer date and reasons for transfer (3) explanation of how proposed new <i>owner</i> will comply with requirements in <i>RCB Regulations</i> and in <i>RCB</i> . (4) confirmation that existing <i>owner</i> and proposed new <i>owner</i> have obtained appropriate advice	Proposal to change <i>owner</i>	At least 3 <i>months</i> before proposed date of transfer
RCB 3.5.4 D	Material changes being any change that may affect the ability of the <i>issuer</i> or the <i>owner</i> to continue to comply with the requirements made on them under the <i>RCB Regulations</i> and <i>RCB</i>	At least: (1) details of the proposed change including proposed date of change and the reasons for it (2) an assessment of the impact of the change on the ability of the <i>issuer</i> and <i>owner</i> to continue to comply with the requirements in <i>RCB Regulations</i> and in <i>RCB</i> .	Proposal to make material change	At least 3 <i>months</i> before proposed date of change

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.5.6 D	Capability of <i>asset pool</i> to meet bondholder claims	(3) confirmation that <i>issuer</i> has obtained appropriate advice (1) fact that the <i>asset pool</i> is not capable or not likely to be capable of covering claims. (2) proposals to rectify the breach	(1) and (2) As soon as Regulations 18(2) or 24(1)(c) of the <i>RCB Regulations</i> is triggered	(1) Immediately (2) upon notification of breach or as soon as practicable after that time.
RCB 3.5.7 D	(1) That the requirements in the <i>RCB Regulations</i> and <i>RCB</i> are, or are likely to be materially breached, or (2) of any other matter which the FSA should be made aware of.	(1) fact of breach or likely breach (2) details of matter	Material breach, or likely material breach. As soon as <i>issuer</i> or <i>owner</i> becomes aware of matter.	Immediately
RCB 3.5.9 D	Cancellation	Notice of cancellation of a <i>regulated covered bond</i> or <i>programme</i>	Proposal to cancel a <i>regulated covered bond</i> or <i>programme</i> in part or in full.	3 <i>business days</i> before cancellation will take effect.
RCB 3.5.10 D	Cancellation	Information on the cancellation of a <i>regulated covered bond</i> or <i>programme</i> and updated asset and liability profile form. Use Forms RCB 3 Annex 6 D and RCB 3 Annex 3 D.	Cancellation of a <i>regulated covered bond</i> or <i>programme</i> .	On date of cancellation of the a <i>regulated covered bond</i> or <i>programme</i> .

Regulated Covered Bonds

Schedule 3 Fees and other requirement payments

FCA

The provisions relating to fees are set out in ■ FEES 3.2.7 R(zn) (application fee), ■ FEES 3.2.7 R(zn) (material change fee) and in ■ RCB 3.6.1 R (administrative fee).

Regulated Covered Bonds

Schedule 4 Powers exercised

Sch 4.1 G

The following powers and related provisions in the *RCB Regulations* have been exercised by the *FSA* to make the rules and directions in *RCB*:

- Regulation 8 (Applications for registration)
- Regulation 9 (Applications for admission to the register of issuers)
- Regulation 18 (Notification requirements)
- Regulation 20 (Material changes to the regulated covered bond)
- Regulation 24 (Requirements relating to the asset pool)
- Regulation 25 (Change of owner)
- Regulation 36 (financial penalties policy statement)
- Regulation 46, and paragraph 5 (fees) of the Schedule (Modifications to primary and secondary legislation)

Sch 4.2 G

The following power under the *Act* has been exercised by the *FSA* to make the rules in *RCB*:

- Section 138 (General rule-making power)

Sch 4.3 G

The following power in the *RCB Regulations* has been exercised by the *FSA* to give the *guidance* in *RCB*:

- Regulation 42 (Guidance)

Regulated Covered Bonds

Schedule 5 Rights of action for damages

G

FCA

Not applicable

Regulated Covered Bonds

Schedule 6 Rules that can be waived

G

FCA

Not applicable

Recognised Investment Exchanges

Recognised Investment Exchanges

REC 1	Introduction
1.1	Application
1.2	Purpose, status and quotations
REC 2	Recognition requirements
2.1	Introduction
2.2	Method of satisfying the recognition requirements
2.3	Financial resources
2.4	Suitability
2.5	Systems and controls and conflicts
2.5A	Guidance on Public Interest Disclosure Act: Whistleblowing
2.6	General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading
2.7	Access to facilities
2.8	Settlement and clearing facilitation services
2.9	Transaction recording
2.10	Financial crime and market abuse
2.11	Custody
2.12	Availability of relevant information and admission of financial instruments to trading (UK RIEs only)
2.13	Promotion and maintenance of standards
2.14	Rules and consultation
2.15	Discipline
2.16	Complaints
2.16A	Operation of a multilateral trading facility
2.17	Recognition requirements relating to the default rules of UK RIEs
REC 2A	Recognised Auction Platforms
2A.1	Introduction
2A.2	Method of satisfying the RAP recognition requirements
2A.3	Guidance on RAP recognition requirements
2A.4	Power and procedure for RAP penalties and censures
REC 3	Notification rules for UK recognised bodies
3.1	Application and purpose
3.2	Form and method of notification
3.3	Waivers
3.4	Key individuals and internal organisation
3.5	Disciplinary action and events relating to key individuals

3.6	Constitution and governance
3.7	Auditors
3.8	Financial and other information
3.9	Fees and incentive schemes
3.10	Complaints
3.11	Insolvency events
3.12	Legal proceedings
3.13	Delegation of relevant functions
3.14	Products, services and normal hours of operation
3.14A	Operation of a regulated market or MTF
3.15	Suspension of services and inability to operate facilities
3.16	Information technology systems
3.17	Inability to discharge regulatory functions
3.18	Membership
3.19	Investigations
3.20	Disciplinary action relating to members
3.21	Criminal offences and civil prohibitions
3.22	Restriction of, or instruction to close out, open positions
3.23	Default
3.24	Transfers of ownership
3.25	Significant breaches of rules and disorderly trading conditions
3.26	Proposals to make regulatory provision
REC 4	Supervision
4.1	Application and purpose
4.2	The supervisory relationship with UK recognised bodies
4.2A	Publication of information by UK RIEs and RAPs
4.2B	Exercise of passport rights by a UK RIE
4.2C	Control over a UK RIE
4.2D	Suspension and removal of financial instruments from trading
4.2E	Information: compliance of UK recognised bodies with EU requirements
4.2F	Information gathering power on FCA's own initiative
4.2G	Reports by skilled persons
4.3	Risk assessments for UK recognised bodies
4.4	Complaints
4.5	FCA supervision of action by UK RIEs under their default rules
4.6	The section 296 power to give directions
4.6A	The section 192C power to direct qualifying parent undertakings
4.7	The section 297 power to revoke recognition
4.8	The section 298 procedure
4.9	Disciplinary measures
REC 5	Applications for Recognition (UK recognised bodies)
5.1	Introduction and legal background
5.2	Application process
REC 6	Overseas Investment Exchanges

6.1	Introduction and legal background
6.2	Applications
6.3	Recognition requirements
6.4	[Deleted]
6.5	FCA decision on recognition
6.6	Supervision
6.7	Notification rules for overseas recognised bodies
6.8	Powers to supervise

REC 6A EEA market operators in the United Kingdom

6A.1	Exercise of passport rights by EEA market operator
6A.2	Removal of passport rights from EEA market operator

REC 7 Fees

7.1	[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1,2, 3 and 4]
7.2	[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1,2, 3 and 4]
7.3	[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1,2, 3 and 4]
7 Annex 1	[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]
7 Annex 2	[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES?3 Annex 3R]

Transitional Provisions and Schedules

TP 1	Transitional provisions
Sch 1	Record keeping requirements
Sch 2	Notification requirements
Sch 3	[Deleted]
Sch 4	[Deleted]
Sch 5	Rights of action for damages
Sch 6	Rules that can be waived

Chapter 1

Introduction

1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See

[web address tbc]

1.1.1

FCA

G

The *rules* and *guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under the *RAP regulations*.

1.1.1A

FCA

G

The *guidance* in ■ REC 6A applies to *EEA market operators* exercising passporting rights in the *United Kingdom*.

1.1.2

FCA

G

- (1) *UK RIEs* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).
- (2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the *MiFID implementing requirements* in the *MiFID Regulation*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the *MiFID Regulation*. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).
- (3) *UK RIEs* must also comply with notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*.

1.1.3

FCA

G

- (1) The *recognition requirements* for *UK recognised bodies* and the *MiFID implementing requirements* are set out, with *guidance*, in ■ REC 2. The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in ■ REC 2A.
- (2) The *notification rules* for *UK recognised bodies* are set out in ■ REC 3 together with *guidance* on those *rules*.

- (3) *Guidance* on the FCA's approach to the supervision of *recognised bodies* is given in ■ REC 4.
- (4) *Guidance* for applicants (and potential applicants) for *UK recognised body* status is given in ■ REC 5.
- (5) The *recognition requirements, notification rules, and guidance* for *ROIEs* and *guidance* for applicants (and potential applicants) for *ROIE* status are set out in ■ REC 6.
- (5A) *Guidance* for *EEA market operators* exercising their passporting rights in the *United Kingdom* is set out in ■ REC 6A.
- (6) The *fees rules* for *recognised bodies* and applicants are set out in ■ FEES 1, ■ 2, ■ 3 and ■ 4 .

1.2 Purpose, status and quotations

Purpose

1.2.1
FCA

G

The purpose of the *guidance* (other than in ■ REC 6A) in this sourcebook is to give information on the *recognised body requirements*. The purpose of the *guidance* in ■ REC 6A is to give *EEA market operators* information about their passporting rights in the *United Kingdom*. Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

Status

1.2.2
FCA

G

- (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from *UK* statute or statutory instruments are marked with the letters "UK" unless they form part of a piece of *guidance*. Quotations from the directly applicable *MiFID Regulation* are marked with the letters "EU". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.
- (2) Where the *guidance* states that the *FCA* may have regard to any factor in assessing or determining whether a *recognised body requirement* is satisfied, it means that the *FCA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the *recognised body requirements*, the *FCA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

Quotations

1.2.3
FCA

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- (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* and the *Companies Act 1989* and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.
- (2) The additions and substitutions are enclosed in square brackets ([]). The omission of words within a quotation is indicated by three dots (...).
- (3) Any words in these quotations which have the same meaning as *Handbook* defined terms are shown in italics and their definitions may be found in the *Glossary*.

- (4) As these quotations contain provisions which impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are *rules* made by the *FCA*.
- (5) None of the editorial changes made by the *FCA* in these quotations can supersede or alter the meaning of the provision concerned.

Chapter 2

Recognition requirements

2.1 Introduction

2.1.1
FCA

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This chapter contains the *recognition requirements* for UK RIEs (other than RAPs) and sets out *guidance* on those requirements. Except for ■ REC 2.5A, references to *recognised body* or *UK recognised bodies* in the rest of this chapter shall be read as referring to UK RIEs. This chapter also contains the *MiFID implementing requirements* for UK RIEs.

2.1.1A
FCA

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Guidance on the *RAP recognition requirements* which apply to RAPs is set out in ■ REC 2A (Recognised Auction Platforms). *Guidance* on the *recognition requirements* for ROIEs is set out in ■ REC 6 (Overseas Investment Exchanges).

2.1.2
FCA

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These *recognition requirements* must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. In addition the *MiFID implementing requirements* must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. The same standards apply both on initial recognition and throughout the period *recognised body* status is held. The term UK RIE in the *guidance* should be taken, therefore, to refer also to an applicant when appropriate.

2.1.3
FCA

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- (1) The paragraphs in the Schedule to the *Recognition Requirements Regulations* are grouped in this sourcebook in sections which give *guidance* on the same subject for UK RIEs.
- (2) The table in ■ REC 2.1.4 G indicates in which section each of those paragraphs (and the associated *guidance*) can be found.

2.1.4
FCA

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Table Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
Regulation 6	Method of satisfying recognition requirements	2.2
Part I of the Schedule	UK RIE recognition requirements	
Paragraph 1	Financial resources	2.3
Paragraph 2	Suitability	2.4

Recognition Requirements Regulations	Subject	Section in REC 2
Paragraph 3	Systems and controls	2.5
Paragraphs 4(1) and 4(2)(aa)	General safeguards for investors	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(b)	Proper markets	2.12
Paragraph 4(2)(c)	Availability of relevant information	2.12
Paragraph 4(2)(d)	Settlement	2.8
Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
Paragraph 4B	Provision of post-trade information about share trading	2.6
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph 7A	Admission of financial instruments to trading	2.12
Paragraph 7B and 7C	Access to facilities	2.7
Paragraph 7D	Settlement	2.8
Paragraph 7E	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
Paragraph 9A	Operation of a multilateral trading facility	2.16A
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

2.1.5

FCA

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Recitals and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in ■ REC 2.6. Articles from the *MiFID Regulation* relevant to admission to trading are set out in ■ REC 2.12.

2.2 Method of satisfying the recognition requirements

2.2.1

FCA



Recognition Requirements Regulations, Regulation 6

(1) In considering whether a [UK recognised body] or applicant satisfies *recognition requirements* applying to it under these [Recognition Requirements Regulations], the [FCA] may take into account all relevant circumstances including the constitution of the *person* concerned and its *regulatory provisions* within the meaning of section 300E of the *Act*.

(2) Without prejudice to the generality of paragraph (1), a [UK recognised body] or applicant may satisfy *recognition requirements* applying to it under these [Recognition Requirements Regulations] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where a [UK recognised body] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the *Act* on the [UK recognised body] or applicant to satisfy *recognition requirements* applying to it under these [Recognition Requirements Regulations], but it is in addition a *recognition requirement* applying to the [UK recognised body] or applicant that the *person* who performs (or is to perform) the functions is a fit and proper *person* who is able and willing to perform them.

2.2.2

FCA



Relevant circumstances

The FCA will usually expect :

- (1) the constitution, *regulatory provisions* and practices of the *UK recognised body* or applicant;
- (2) the nature (including complexity, diversity and risk) and scale of the *UK recognised body's* or applicant's business;
- (3) the size and nature of the market which is supported by the *UK recognised body's* or applicant's *facilities*;
- (4) the nature and status of the types of investor who use the *UK recognised body's* or applicant's *facilities* or have an interest in the market supported by the *UK recognised body's* or applicant's *facilities*; and
- (5) the nature and scale of the risks to the *statutory objectives* associated with the matters described in (1) to (4);

to be among the relevant circumstances which it will take into account in considering whether a *UK recognised body* or applicant satisfies the *recognition requirements*.

Outsourcing

2.2.3

FCA

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It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. The *recognition requirement* referred to in Regulation 6(3) applies to the *UK recognised body* and not to any *person* who performs any function on its behalf. In this context, for a *person* to be "fit and proper" does not necessarily imply that he is an *authorised person*, or qualified to be so, or that the required standard is the same as that required either for *authorised persons* or *recognised bodies*.

2.2.4

FCA

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If a *UK recognised body* makes arrangements for functions to be performed on its behalf by *persons* who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.

2.2.5

FCA

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If a *person* who performs a function on behalf of a *UK recognised body* is himself carrying on a *regulated activity* in the *United Kingdom*, he will, unless he is a *person* to whom the *general prohibition* does not apply, need to be either an *authorised person* or an *exempt person*. The *person* to whom a function is delegated is not covered by the *UK recognised body's* exemption.

2.2.6

FCA

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In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on its behalf:

- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
- (2) has adequate systems and controls to manage that function and to report on its performance to the *UK recognised body*;
- (3) is managed by *persons* of sufficient skill, competence and integrity;
- (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under the *Act*; and
- (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act*.

2.2.7

FCA

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In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:

- (1) the contracts (and other relevant *documents*) between the *UK recognised body* and the *person* who performs the delegated function;

-
- (2) the arrangements made to monitor the performance of that function; and
 - (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

2.3 Financial resources

2.3.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 1

(1) The [UK RIE] must have financial resources sufficient for the proper performance of its [*relevant functions*] as a [UK RIE].

(2) In considering whether this requirement is satisfied, the [FCA] must (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any *person*, and any activity carried on by the [UK RIE], whether or not it is an *exempt activity*.

2.3.2



[deleted]

2.3.3

FCA



In determining whether a *UK recognised body* has financial resources sufficient for the proper performance of its *relevant functions*, the *FCA* may have regard to:

- (1) the operational and other risks to which the *UK recognised body* is exposed;
- (2) if the *UK recognised body* guarantees the performance of transactions in *specified investments*, the counterparty and market risks to which it is exposed in that capacity;
- (3) the amount and composition of the *UK recognised body's* capital;
- (4) the amount and composition of the *UK recognised body's* liquid financial assets;
- (5) the amount and composition of the *UK recognised body's* other financial resources (such as insurance policies and guarantees, where appropriate);
- (6) the financial benefits, liabilities, risks and exposures arising from the *UK recognised body's* connection with any *person*, including but not limited to, its connection with:
 - (a) any *undertaking* in the same *group* as the *UK recognised body*;
 - (b) any other *person* with a significant shareholding or stake in the *UK recognised body*;
 - (c) any other *person* with whom the *UK recognised body* has made a significant investment whether in the form of equity, debt, or by means of any guarantee or other form of commitment;
 - (d) any *person* with whom it has a significant contractual relationship.

- (7) the nature and extent of the transactions concluded on the *UK RIE*.

Accounting information and standards

2.3.4
FCA

G

The *FCA* will usually rely on a *UK recognised body's* published and internal *management accounts* and financial projections, provided that those accounts and projections are prepared in accordance with *UK*, *US* or international accounting standards.

Counterparty and market risks: principles

2.3.5
FCA

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In assessing whether a *UK recognised body* has sufficient financial resources in relation to counterparty and market risks, the *FCA* may have regard to:

- (1) the amount and liquidity of its financial assets and the likely availability of liquid financial resources to the *UK recognised body* during periods of major market turbulence or other periods of major stress for the *UK financial system*; and
- (2) the nature and scale of the *UK recognised body's* exposures to counterparty and market risks and, where relevant, the counterparties to which it is exposed.

Operational and other risks: principles

2.3.6
FCA

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In assessing whether a *UK recognised body* has sufficient financial resources in relation to operational and other risks, the *FCA* may have regard to the extent to which, after allowing for the financial resources necessary to cover counterparty and market risks, the *UK recognised body's* financial resources are sufficient and sufficiently liquid:

- (1) to enable the *UK recognised body* to continue carrying on properly the *regulated activities* that it expects to carry on; and
- (2) to ensure that it would be able to complete an orderly closure or transfer of its *exempt activities* without being prevented from doing so by insolvency or lack of available funds.

Operational and other risks: components of calculation

2.3.7
FCA

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In considering whether a *UK recognised body* has sufficient financial resources in relation to operational and other risks, the *FCA* will normally have regard to two components: eligible financial resources and net capital.

2.3.8

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- (1) [deleted]
- (2) [deleted]

Operational and other risks: UK RIEs - the standard and risk-based approach

2.3.9
FCA

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- (1) The *FCA* considers that a *UK RIE* which at any time holds:
 - (a) eligible financial resources not less than the greater of:

- (i) the amount calculated under the standard approach; and
 - (ii) the amount calculated under the risk-based approach; and
- (b) net capital not less than the amount of eligible financial resources determined under (1)(a);

will, at that time, have sufficient financial resources to meet the *recognition requirement* in respect of operational and other risks unless there are special circumstances indicating otherwise.

- (2) The *FCA* would normally regard the amount calculated under ■ REC 2.3.9G (1)(a)(i) to be a minimum amount of financial resources below which a *UK RIE* would be failing the *recognition requirements*. The *FCA* would expect a *UK RIE* to hold, in addition to this minimum amount, an amount constituting an operational risk buffer calculated in accordance with ■ REC 2.3.22 G.

Operational and other risks: individual guidance

2.3.10

FCA

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The *FCA* would expect to provide a *UK recognised body* with individual *guidance* on the amount of eligible financial resources which it considers would be sufficient for the *UK recognised body* to hold in respect of operational and other risks in order to satisfy the *recognition requirements*. In formulating its individual *guidance*, the *FCA* will ordinarily apply the approach described in ■ REC 2.3.9 G for *UK RIEs*.

Operational and other risks: eligible financial resources

2.3.11

FCA

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For the purposes of ■ REC 2.3, "eligible financial resources" should consist of liquid financial assets held on the balance sheet of a *UK recognised body*, including cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect.

Operational and other risks: net capital

2.3.12

FCA

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For the purposes of ■ REC 2.3, "net capital" should be in the form of equity. For this purpose, the *FCA* considers that common stock, retained earnings, disclosed reserves and other instruments classified as common equity tier one capital or additional tier one capital constitute equity. The *FCA* considers that, when calculating its net capital, a *UK recognised body*:

- (1) should deduct holdings of its own securities, or those of any undertaking in the same *group* as the *UK recognised body*, together with any amount owed to the *UK recognised body* by an undertaking in its *group* under any loan or credit arrangement and any exposure arising under any guarantee, charge or contingent liability given in favour of such an undertaking or a creditor of such undertaking; and
- (2) may include interim earnings that have been independently verified by its auditor.

Operational and other risks: eligible financial resources calculated under the standard approach

2.3.13

FCA

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- (1) Under the standard approach, the amount of eligible financial resources is equal to six months of operating costs.

- (2) Under the standard approach, the *FCA* assumes liquid financial assets are needed to cover the costs that would be incurred during an orderly wind-down of the *UK recognised body's exempt activities*, while continuing to satisfy all the *recognition requirements* and complying with any other obligations under the *Act* (including the obligations to pay periodic fees to the *FCA*).
- (3) For the purposes of the standard approach, the *FCA* would normally expect the calculation of operating costs to be based on the *UK recognised body's* most recent audited annual accounts, with six months of operating costs being equal to one half of the sum of all operating costs reflected in the audited annual accounts of the *UK recognised body* in the course of performing its functions during the year to which the accounts relate. In calculating the gross annual operating costs, the *FCA* would consider it reasonable to exclude non-cash costs (costs that do not involve an outflow of funds).
- (4) The *FCA* considers it to be reasonable for a *UK recognised body* to adjust its operating expenditure calculation if, during the period since its last audited accounts were prepared, its level of operating expenditure has changed materially as documented by the current annual budget or forecast adopted by the *UK recognised body's governing body*.
- (5) The *FCA* considers that it is reasonable for a *UK recognised body* to adjust its operating expenditure to take account of arrangements between two or more undertakings in the same *group*, which are all subject to prudential regulation in the *United Kingdom* under which specified costs are shared or recharged among those undertakings and those costs would otherwise be double-counted in the calculation of their financial resources requirement.

Operational and other risks: eligible financial resources calculated under the risk-based approach (UK RIE's only)

2.3.14

FCA

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- (1) The risk-based approach is intended to ensure that sufficient financial resources are maintained at all times such that a *UK RIE* would not be prevented from implementing an orderly wind-down as a result of the financial impacts of stress events affecting its business or the markets in which it operates.
- (2) Under the risk-based approach the amount of eligible financial resources is calculated by adding together:
 - (a) the amount estimated by the *UK RIE* to absorb the potential business losses that a business of its nature, scale and complexity might incur in stressed but plausible market conditions; and
 - (b) the amount estimated by the *UK RIE* to effect an orderly closure.

In this context, a business loss arises where there is an increase in cost or reduction of revenue relative to a *UK RIE's* expectation of its financial performance, such that a loss needs to be charged against its capital.

Operational and other risks: the risk-based assessment (UK RIEs only)

2.3.15

FCA

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For the purposes of calculating the risk-based approach, the *FCA* would normally expect the *UK RIE* to provide the *FCA* with an annual financial risk assessment that identifies the risks to its business. As a financial risk assessment is likely to form an

integral part of the *UK RIE*'s management process and decision-making culture, the *FCA* would normally expect it to be approved by the *UK RIE*'s governing body.

2.3.16

FCA

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The *FCA* would normally expect to use the financial risk assessment prepared by the *UK RIE* in the course of preparing individual *guidance* on the amount of financial resources that it considers is sufficient for a *UK RIE* to hold in order to satisfy the *recognition requirements*. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the *UK RIE* under the risk-based approach.

2.3.17

FCA

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The financial risk assessment should be based on a methodology which provides a reasonable estimate of the potential business losses which a *UK RIE* might incur in stressed but plausible market conditions. The *FCA* would expect a *UK RIE* to carry out a financial risk assessment at least once in every twelve-month period, or more frequently if there are material changes in the nature, scale or complexity of the *UK RIE*'s operations or its business plans that suggest such financial risk assessment no longer provides a reasonable estimate of its potential business losses. The *FCA* considers that it would be reasonable for a financial risk assessment to proceed in the following way:

- (1) Step 1: the *UK RIE* would identify, in writing, the risks to which the business of the *UK RIE* is exposed and which could have a material adverse effect on its financial position, in the light of the nature, scale and complexity of its operations and its business plans. For this purpose, it would be reasonable to refer to the categorisation of risk used under the system of risk management adopted by the *UK RIE* in order to meet its responsibilities under the *recognition requirements* referred to in ■ REC 2.5. That description would identify which risks are indemnified or transferred by the *UK RIE* and which are retained and accepted.
- (2) Step 2: the *UK RIE* would conduct an assessment of the potential business losses that could arise in the event that the risks identified in accordance with step 1 were to materialise. For this purpose, it would be reasonable for a *UK RIE* to develop, and keep under review, a stress and scenario testing plan designed to simulate the effects of a pre-determined series of events, or sets of circumstances, that would be likely to occur following the crystallisation of one or more identified risks, taking into account the systems and controls in place to mitigate those risks. The stress and scenario testing plan would:
 - (a) cover a forward-looking period of at least one year;
 - (b) consider a suitable range of adverse events and sets of circumstances, of a defined severity and duration, which could occur in stressed but plausible market conditions;
 - (c) consider how a particular adverse event or set of circumstances could lead to or be correlated with other events;
 - (d) consider the potential for a particular adverse event or set of circumstances to affect multiple business lines;
 - (e) take into account realistic management actions to resolve such adverse events and circumstances; and
 - (f) where appropriate, involve sensitivity analysis showing the effects of changes to assumptions made about the impact of particular adverse events and circumstances.

In designing its stress and scenario testing plan, the *FCA* considers that it would be reasonable for a *UK RIE* to be guided by any risk-scoring methodology that it deploys for general risk-management purposes that might have application in evaluating the probability and impact of its risks.

- (3) Step 3: the *UK RIE* would assess the eligible financial resources that it would need to hold to cover such potential business losses. Such eligible financial resources would enable the *UK RIE* to absorb any financial shocks attributable to such business risks were they to arise.

In carrying out this assessment, the *FCA* considers that it would be reasonable for a *UK RIE* to take account of any action which its senior management might plan on taking in response to a given stress event. For example, if the risk appetite of a *UK RIE* is such that it would not pursue recovery from a given stress event (and would instead initiate an orderly wind-down), the assessment of eligible financial resources needed in such circumstances might reasonably be limited to the costs of orderly wind-down from the point in time at which that decision would be likely to be made.

Where a *UK RIE* expects to be making a loss during the period covered by the financial risk assessment as a result of its anticipated business performance in normal market conditions, the business losses which are relevant to the calculation of the risk-based approach are those additional losses which the *UK RIE* would expect to incur in stressed but plausible market conditions.

- (4) Step 4: the *UK RIE* would make an assessment of the cost of orderly closure. The *FCA* considers that an orderly closure should normally include an assessment of the impact of closure on the users of the markets operated by that *UK RIE*. For the purpose of this assessment, the *FCA* considers that it would be reasonable for a *UK RIE* to adopt the amount needed under the standard approach as its cost of orderly closure or to use its own method of calculation based on a scenario plan which comprehensively documents the costs that a *UK RIE* in its position might incur in order to fully implement an orderly wind-down.
- (5) Step 5: the *UK RIE* would produce a proposal for the amount of eligible financial resources considered to be adequate to meet the risk-based approach. Such a proposal would be based on the sum of:
 - (a) the amount assessed to cover potential business losses in accordance with ■ REC 2.3.17G (3); and
 - (b) an amount assessed to cover the cost of orderly closure in accordance with ■ REC 2.3.17G (4).
- (6) Step 6: the *UK RIE* would calculate the amount available as an operational risk buffer in accordance with ■ REC 2.3.22 G. To the extent the amount available is insufficient to constitute an operational risk buffer, the *UK RIE* would include within its proposal the amount it would propose to hold (in addition to the sum of the amounts referred to in (5)(a) and (b)) for those purposes.

2.3.18
FCA

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The FCA would normally expect a financial risk assessment to include a description of the methodology applied by the UK RIE to arrive at the proposal made in accordance with ■ REC 2.3.17G (5).

2.3.19
FCA

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Where a UK RIE is a member of a *group*, the FCA would normally expect the annual risk assessment to be accompanied by a consolidated balance sheet:

- (1) of any *group* in which the UK RIE is a *subsidiary undertaking*; or
- (2) (if the UK RIE is not a *subsidiary undertaking* in any *group*) of any *group* of which the UK RIE is a *parent undertaking*.

2.3.20
FCA

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The FCA would expect to consider the financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating its *guidance* on the amount of eligible financial resources it considers to be sufficient for the UK RIE to hold in order to meet the *recognition requirements*. In formulating its guidance, the FCA would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:

- (1) the risks related to the administration and operation of the UK RIE as a business enterprise (whether as a result of adverse reputational effects, poor execution of business strategy, ineffective response to competition, or otherwise);
- (2) the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by a UK RIE (whether as a result of errors or delays in processing, system outages, insufficient capacity, fraud, data loss and leakage, or otherwise);
- (3) the risk that the financial position of the UK RIE may be adversely affected by its relationships (financial or non-financial) with other entities in the same *group* or by risks which may affect the financial position of the whole *group*, including reputational contagion; and
- (4) any other type of risk which is relevant to that particular UK RIE.

Operational and other risks: purpose of the risk buffer

2.3.21
FCA

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The FCA would normally consider a UK recognised body to be failing the *recognition requirements* if it held financial resources less than the amount calculated under ■ REC 2.3.9G (1)(a)(i) (in respect of UK RIEs). The FCA therefore expects a UK recognised body to hold an operational risk buffer of a sufficient amount in excess of this minimum, to ensure that it is at all times able to comply with its regulatory obligations.

Operational and other risks: calculation of the operational risk buffer - UK recognised bodies

2.3.22
FCA

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- (1) [deleted]
- (2) The FCA would normally expect a UK RIE to hold, in addition to the minimum amount determined under ■ REC 2.3.9G (1)(a)(i), an operational risk buffer consistent with a risk-based approach.

- (a) Where the amount of eligible financial resources calculated by a *UK RIE* under ■ REC 2.3.17G (5) (the risk-based approach) is greater than the amount of eligible financial resources calculated under ■ REC 2.3.13 G (the standard approach), and the difference is of an amount sufficient to serve the purposes of the operational risk buffer, then the *FCA* considers that there would be no need for a *UK RIE* to hold any further amount as an operational risk buffer.
 - (b) Where the amount of eligible financial resources calculated by a *UK RIE* under ■ REC 2.3.17G (5) (the risk-based approach) is not sufficient to provide an effective operational risk buffer over and above the amount calculated under ■ REC 2.3.13 G (the standard approach), then the *FCA* would expect the *UK RIE* to include within its annual risk assessment a proposal to hold additional financial resources sufficient to constitute an operational risk buffer.
- (3) As the operational risk buffer is an amount in excess of the minimum financial resources sufficient to meet the *recognition requirements*, the *FCA* would normally not regard a *UK recognised body* that draws upon or temporarily depletes the operational risk buffer to have failed or be failing a *recognition requirement* in respect of its financial resources. However, the *FCA* would expect to be notified as soon as reasonably practicable if the *UK recognised body* draws upon, or intends to draw upon, its operational risk buffer.

2.4 Suitability

2.4.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 2

(1) The [UK RIE] must be a fit and proper person to perform the [relevant functions] of a [UK RIE].

(2) In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person.

(3) The persons who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it.

(4) The persons who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

2.4.2



[deleted]

2.4.3

FCA



In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to:

- (1) the commitment shown by the *UK recognised body's governing body* to satisfying the *recognition requirements* and to complying with other obligations in or under the *Act*;
- (2) its arrangements, policies and resources for fulfilling its obligations under the *Act* in relation to its activities as a *UK recognised body*;
- (3) the extent to which its constitution and organisation provide for effective governance;
- (4) the arrangements made to ensure that its *governing body* has effective oversight of the *UK recognised body's relevant functions*;
- (5) the access which its regulatory department has to the *governing body*;
- (6) the size and composition of its *governing body*, including:

- (a) the number of members of the *governing body* who represent *members* of the *UK recognised body* or other *persons* and the types of *person* whom they represent;
 - (b) the number and responsibilities of any members of the *governing body* with executive roles within the *UK recognised body*; and
 - (c) the number of independent members of the *governing body*;
- (7) the structure and organisation of its *governing body*, including any distribution of responsibilities among its members and committees;
 - (8) the integrity and competence of its *governing body* and *key individuals*;
 - (9) breaches of any relevant law, regulation or code of practice by the *UK recognised body* or its *key individuals*;
 - (10) its arrangements for ensuring that it employs individuals who are honest and demonstrate high standards of integrity;
 - (11) the effectiveness of its arrangements to control conflicts of interest (see also REC 2.5); and
 - (12) the independence of its regulatory department from its commercial and marketing departments.

2.4.4

FCA

G

In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to its connections with:

- (1) any *undertaking* in the same *group*;
- (2) any owner or part-owner of the *UK recognised body*;
- (3) any *person* who has the right to appoint or remove members of the *governing body* or other *key individuals*;
- (4) any *person* who is able in practice to appoint or remove members of the *governing body* or other *key individuals*;
- (5) any *person* in accordance with whose instructions the *governing body* or any *key individual* is accustomed to act; and
- (6) any *key individual* in relation to the *UK recognised body* .

2.4.5

FCA

G

In assessing whether its connection with any *person* could affect whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to:

- (1) the reputation and standing of that other *person*, including his standing with any relevant *UK* or *overseas regulator*;
- (2) breaches of any law or regulation by that other *person*;

- (3) the roles of any of the *UK recognised body's key individuals* who have a position within organisations under the control or influence of that other *person*, including their responsibilities in that organisation and the extent and type of their access to its senior management or governing body;
- (4) the extent to which the *UK recognised body* operates as a distinct entity notwithstanding its connection with that other *person*;
- (5) the extent to which the *UK recognised body's governing body* is responsible for its day-to-day management and operations;

but nothing in this paragraph should be taken to imply any restriction on the ability of a *UK recognised body* to outsource any function to any *person* in a manner consistent with Regulation 6 of the Recognition Requirements Regulations.

2.4.6

FCA

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In assessing whether the *persons* who effectively direct the business and operations of the *UK RIE* are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it, the *FCA* may have regard to the repute and experience of the *UK RIE's key individuals*.

2.5 Systems and controls and conflicts

2.5.1

FCA



Schedule to the Recognition Requirements Regulations, paragraph 3

- (1) The [UK RIE] must ensure that the systems and controls used in the performance of its *[relevant functions]* are adequate, and appropriate for the scale and nature of its business.
- (2) Sub-paragraph (1) applies in particular to systems and controls concerning -
 - (a) the transmission of information;
 - (b) the assessment, mitigation and management of risks to the performance of the *[UK RIE's relevant functions]*;
 - (c) the effecting and monitoring of transactions on the *[UK RIE]*;
 - (ca) the technical operation of the *[UK RIE]*, including contingency arrangements for disruption to its *facilities*;
 - (d) the operation of the arrangements mentioned in paragraph 4(2)(d); and
 - (e) (where relevant) the safeguarding and administration of assets belonging to users of the *[UK RIE's facilities]*.

2.5.1A

FCA



Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

- Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
- appropriate arrangements are made to -
- (i) identify conflicts between the interests of the *[UK RIE]*, its owners and operators and the interests of the persons who make use of its *facilities* or the interests of the financial markets operated by it; and
 - (ii) manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the *[UK RIE]* and for the *persons* who make use of its *facilities*.

2.5.2



[deleted]

2.5.3

FCA



In assessing whether the systems and controls used by a *UK recognised body* in the performance of its *relevant functions* are adequate and appropriate for the scale and nature of its business, the *FCA* may have regard to the *UK recognised body's*:

- (1) arrangements for managing, controlling and carrying out its *relevant functions*, including:
 - (a) the distribution of duties and responsibilities among its *key individuals* and the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (b) the staffing and resources of the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (c) the arrangements made to enable *key individuals* to supervise the departments for which they are responsible;
 - (d) the arrangements for appointing and supervising the performance of *key individuals* (and their departments); and
 - (e) the arrangements by which the *governing body* is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of, *key individuals* under review;
- (2) arrangements for the identification and management of conflicts of interest;
- (3) arrangements for internal and external audit; and
- (4) information technology systems.

2.5.4

FCA



The following paragraphs set out other matters to which the *FCA* may have regard in assessing the systems and controls used for the transmission of information, risk management, the effecting and monitoring of transactions, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the Recognition Requirements Regulations) and the safeguarding and administration of assets.

Information transmission

2.5.5

FCA



In assessing a *UK recognised body's* systems and controls for the transmission of information, the *FCA* may also have regard to the extent to which these systems and controls ensure that information is transmitted promptly and accurately:

- (1) within the *UK recognised body* itself;
- (2) to *members*; and
- (3) (where appropriate) to other market participants or other relevant persons.

2.5.6

FCA

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Risk management

In assessing a *UK recognised body's* systems and controls for assessing and managing risk, the *FCA* may also have regard to the extent to which these systems and controls enable the *UK recognised body* to:

- (1) identify all the general, operational, legal and market risks wherever they arise in its activities;
- (2) measure and control the different types of risk;
- (3) allocate responsibility for risk management to *persons* with appropriate knowledge and expertise; and
- (4) provide sufficient, reliable information to *key individuals* and, where relevant, the *governing body* of the *UK recognised body*.

2.5.7

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[deleted]

Effecting and monitoring of transactions and operation of settlement arrangements

2.5.8

FCA

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In assessing a *UK RIE's* systems and controls for the effecting and monitoring of transactions, and for the operation of settlement arrangements, the *FCA* may have regard to the totality of the arrangements and processes through which the *UK RIE's* transactions are effected, cleared, and settled, including:

- (1) a *UK RIE's* arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its arrangements with another person under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or *clearing house*;
- (2) (if relevant), a *UK RIE's* arrangements under which instructions relating to a transaction to be cleared by another person by means of a *clearing facilitation service* are entered into its systems by the relevant other person and transmitted to the other person; and
- (3) the arrangements made by the *UK RIE* for monitoring and reviewing the operation of these systems and controls.

Safeguarding and administration of assets

2.5.9

FCA

G

In assessing a *UK recognised body's* systems and controls for the safeguarding and administration of assets belonging to users of its *facilities*, the *FCA* may have regard to the totality of the arrangements and processes by which the *UK recognised body*:

- (1) records the assets held and the identity of the owners of (and other *persons* with relevant rights over) those assets;
- (2) records any instructions given in relation to those assets;
- (3) records the carrying out of those instructions;

- (4) records any movements in those assets (or any corporate actions or other events in relation to those assets); and
- (5) reconciles its records of assets held with the records of any *custodian* or *sub-custodian* used to hold these assets, and with the records of beneficial or legal ownership of those assets.

Management of conflicts of interest

2.5.10
FCA

G

A conflict of interest arises in a situation where a *person* with responsibility to act in the interests of one *person* may be influenced in his action by an interest or association of his own, whether personal or business or employment related. Conflicts of interest can arise both for the *employees* of *UK recognised bodies* and for the *members* (or other *persons*) who may be involved in the decision-making process, for example where they belong to committees or to the *governing body*. Conflicts of interest may also arise for the *UK recognised body* itself as a result of its connection with another *person*.

2.5.11
FCA

G

The *FCA* recognises that a *UK RIE* has legitimate interests of its own and that its general business policy may properly be influenced by other *persons* (such as its owners). Such a connection does not necessarily imply the existence of a conflict of interest nor is it necessary to exclude individuals closely connected with other *persons* (for example, those responsible for the stewardship of the owner's interests) from all decision-making processes in a *UK recognised body*. However, there may be decisions, primarily regulatory decisions, from which it may be appropriate to exclude an individual in certain circumstances where an interest, position or connection of his conflicts with the interest of the *recognised body*.

2.5.12
FCA

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■ REC 2.5.13 G to ■ REC 2.5.16 G set out the factors to which the *FCA* may have regard in assessing a *UK recognised body's* systems and controls for managing conflicts of interest.

2.5.13
FCA

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The *FCA* may have regard to the arrangements a *UK recognised body* makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

- (1) the size and composition of the *governing body* and relevant committees;
- (2) the roles and responsibilities of *key individuals*, especially where they also have responsibilities in other organisations;
- (3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
- (4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

2.5.14
FCA

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The *FCA* may also have regard to the systems and controls intended to ensure that confidential information is only used for proper purposes. Where relevant, *recognised bodies* will have to comply with section 348 (Restrictions on disclosure of confidential information by the *FCA* etc.) and regulations made under section 349 (Exemptions from section 348) of the *Act*.

2.5.15

FCA

G

The *FCA* may also have regard to the contracts of employment, staff rules, letters of appointment for members of the *governing body*, members of relevant committees and other *key individuals* and other guidance given to individuals on handling conflicts of interest. Guidance to individuals may need to cover:

- (1) the need for prompt disclosure of a conflict of interest to enable others, who are not affected by the conflict, to assist in deciding how it should be managed;
- (2) the circumstances in which a general disclosure of conflicts of interest in advance of any particular instance in which a conflict of interest arises may be sufficient;
- (3) the circumstances in which a general advance disclosure may not be adequate;
- (4) the circumstances in which it would be appropriate for a conflicted individual to withdraw from involvement in the matter concerned, without disclosing the interest; and
- (5) the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-taking process, or from access to relevant information.

2.5.16

FCA

G

The *FCA* may also have regard to the arrangements made:

- (1) for enforcing rules or other provisions applicable to staff and other *persons* involved in regulatory decisions; and
- (2) to keep records of disclosures of conflicts of interest and the steps taken to handle them.

Internal and external audit

2.5.17

FCA

G

A *UK recognised body's* arrangements for internal and external audit will be an important part of its systems and controls. In assessing the adequacy of these arrangements, the *FCA* may have regard to:

- (1) the size, composition and terms of reference of any audit committee of the *UK recognised body's governing body*;
- (2) the frequency and scope of external audit;
- (3) the provision and scope of internal audit;
- (4) the staffing and resources of the *UK recognised body's* internal audit department;
- (5) the internal audit department's access to the *UK recognised body's* records and other relevant information; and
- (6) the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the *UK recognised body*.

Information technology systems

2.5.18

FCA

G

Information technology is likely to be a major component of the systems and controls used by any *UK recognised body*. In assessing the adequacy of the information technology used by a *UK recognised body* to perform or support its *relevant functions*, the *FCA* may have regard to:

- (1) the organisation, management and resources of the information technology department within the *UK recognised body*;
- (2) the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and
- (3) the performance, capacity and reliability of information technology systems.

2.5.19

FCA

G

The *FCA* may also have regard to the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including:

- (1) the procedures for the evaluation and selection of information technology systems;
- (2) the arrangements for testing information technology systems before live operations;
- (3) the procedures for problem management and system change;
- (4) the arrangements to monitor and report system performance, availability and integrity;
- (5) the arrangements (including spare capacity and access to back-up facilities) made to ensure information technology systems are resilient and not prone to failure;
- (6) the arrangements made to ensure business continuity in the event that an information technology system does fail;
- (7) the arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access; and
- (8) the arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems.

2.5.20

FCA

G

The *FCA* may have regard to the arrangements made to keep clear and complete audit trails of all uses of information technology systems and to reconcile (where appropriate) the audit trails with equivalent information held by system users and other interested parties.

2.5A Guidance on Public Interest Disclosure Act: Whistleblowing

Application and Purpose: Application

2.5A.1
FCA

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This section is relevant to every *UK recognised body* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

2.5A.2
FCA

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- (1) The purposes of this section are to:
 - (a) provide *UK recognised bodies* with *guidance* regarding the provisions of PIDA; and
 - (b) Encourage *UK recognised bodies* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.
- (2) In this section "worker" includes, but is not limited to, an individual who has entered into a contract of employment.

2.5A.3
FCA

G

The *guidance* in this section concerns the effect of PIDA in the context of the relationship between *UK recognised bodies* and the *FCA*. It is not comprehensive guidance on PIDA itself.

Practical Measures: Effect of PIDA

2.5A.4
FCA

G

Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").

2.5A.5
FCA

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In accordance with section 1 of PIDA:

- (1) a "protected disclosure" is a qualifying disclosure which meets the relevant requirements set out in that section;
- (2) a "qualifying disclosure" is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:
 - (a) a criminal offence; or

- (b) a failure to comply with any legal obligation; or
- (c) a miscarriage of justice; or
- (d) the putting of the health and safety of any individual in danger; or
- (e) damage to the environment; or
- (f) deliberate concealment relating to any of (a) to (e);

it is immaterial whether the relevant failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal Procedures

2.5A.6
FCA

G

- (1) *UK recognised bodies* are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FCA*.
- (2) In considering appropriate internal procedures, *UK recognised bodies* may find the *guidance* provided to *firms* in ■ SYSC 18.2.2 G (2) and ■ SYSC 18.2.2 G (3) helpful.

Link to fitness and propriety

2.5A.7
FCA

G

In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to, how the *UK recognised body* and *key individuals* have complied with any relevant law (see REC 2.4.3 G (9)).



2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

2.6.1
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(1)
The [UK RIE] must ensure that business conducted by means of its *facilities* conducted in an orderly manner and so as to afford proper protection to investors.

2.6.2
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
it has transparent and non-discretionary rules and procedures -
(i) to provide for fair and orderly trading, and
(ii) to establish objective criteria for the efficient execution of orders;

2.6.3
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4A
(1) The [UK RIE] must make arrangements for-
(a) current bid and offer prices for *shares*, and
(b) the depth of trading interest in *shares* at the prices which are advertised through its systems,
to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7 EU and REC 2.6.21 EU to REC 2.6.24 EU)].
(2) If [a UK RIE] decides to give *investment firms and credit institutions* required to publish their quotes in *shares*-
(a) in accordance with Article 27 of [MiFID], or
(b) by the [FCA],

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The [FCA] may waive the requirements of sub-paragraph (1) in the circumstances specified-

(a) in the case of *shares* to be traded on a multilateral trading facility operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)]; or

(b) in the case of *shares* to be traded on a *regulated market* operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)].

2.6.4

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4B

(1) The [UK RIE] must make arrangements for the price, volume and time of transactions executed in *shares* to be made available to the public as soon as possible after the time of the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.15 EU and REC 2.6.21 EU to REC 2.6.24 EU)].

(2) If [a UK RIE] decides to give *investment firms* and *credit institutions* required to make public details of their transactions in *shares*-

(a) in accordance with Article 28 of [MiFID], or

(b) by the [FCA].

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non discriminatory basis.

(3) The [FCA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-

(a) in the case of *shares* traded on a *multilateral trading facility* operated by [a UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)]; or

(b) in the case of *shares* traded on *regulated market* operated by [a UK RIE], in Article 45.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)].

(4) If the [FCA] permits [UK RIEs] to defer the publication required by sub-paragraph (1), those [UK RIEs] must ensure that the existence of and the terms of the permission are disclosed to users and members of their *facilities* and to investors.

2.6.5
FCA



Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

2.6.6
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7E

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a regulated market operated by it any *financial instrument* which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

2.6.7
FCA



Article 17 of the MiFID Regulation

Pre-trade transparency obligations

- (1) **A ... market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8 EU)], make public the information set out in paragraphs 2 to 6.**
- (2) **Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.**
- (3) **Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.**

The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.

In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
- (4) **Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each**

Pre-trade transparency obligations	
	share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
(5)	<p>Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.</p> <p>In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.</p>
(6)	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see REC 2.6.8 EU)]

2.6.8
FCA



Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see REC 2.6.9EU)

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
continuous auction order book trading system	a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.
quote-driven trading system	a system where <i>transactions</i> are concluded on the basis of firm quotes that are continuously made available to participants, which requires	the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by [the] first three rows	adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

2.6.9

FCA



Recital 14 to the MiFID Regulation

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [(see REC 2.6.3 UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10

FCA



Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction

- (1) Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3 UK)] may be granted by the[FCA] for systems

Waivers based on market model and type of order or transaction

operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:

- (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;**
- (b) they formalise negotiated transactions [(see REC 2.6.11 EU)], each of which meets one of the following criteria:**
 - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;**
 - (ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12 EU)].**

For the purposes of point (b), the other conditions specified in the rules of the *regulated market* or *MTF* for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

- (2) Waivers in accordance with Articles 29(2) and 44(2) of [*MiFID*] [(see REC 2.6.3 UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the *regulated market* or the *MTF* pending their being disclosed to the market.**

2.6.11

FCA



Article 19 of the MiFID Regulation

References to negotiated transaction

For the purpose of Article 18(1)(b) [(see REC 2.6.10 EU)] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* and where that member or participant in doing so undertakes one of the following tasks:

References to negotiated transaction

- (a) dealing on own account with another member or participant who acts for the account of a *client*;
- (b) dealing with another member or participant, where both are executing orders on own account;
- (c) acting for the account of both the buyer and seller;
- (d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
- (e) trading for own account against a *client* order.

2.6.12

FCA



Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

- (1) A *transaction* related to an individual share in a *portfolio trade* shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a *transaction* subject to conditions other than the current market price.
- (2) A volume weighted average price *transaction* shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a *transaction* subject to conditions other than the current market price.

2.6.13

FCA



Article 20 of the MiFID Regulation

Waivers in relation to transactions which are large in scale

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see REC 2.6.14 EU)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

2.6.14

FCA



Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size

Class in terms of average daily turnover (ADT)	ADT < 250 000	250 000 < ADT < 1 000 000	1 000 000 < ADT < 250 000	ADT > 250 000
Minimum size of or-	250 000	100 000	250 000	400 000

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2.6.15

FCA



Article 27(1) of the MiFID Regulation

Post-trade transparency obligation

1. **... regulated markets, and ... market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded ... within their systems, make public the following details:**
 - (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16 EU)]
 - (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17 EU)];
 - (c) an indication that the trade was a negotiated trade, where applicable;
 - (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each *transaction* or in a form aggregating the volume and price of all *transactions* in the same share taking place at the same price at the same time.

2.6.16

FCA



Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	Trading Day	The trading day on which the <i>transaction</i> was executed.
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
6.	Instrument Identification	This shall consist in: - a unique code to be decided by the competent authority (if any) to which

		<p>the report is made identifying the [share] which is the subject of the <i>transaction</i>;</p> <p>- if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...</p>
16.	Unit Price	The price per [share] excluding commission and (where relevant) accrued interest. ...
17.	Price Notation	The currency in which the price is expressed ...
18.	Quantity	The number of units of the [shares].
21.	Venue identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i> 's] ... unique harmonised identification code;
		...

2.6.17

FCA



Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

1. A *transaction* related to an individual share in a *portfolio trade* ... shall ... be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.
2. A volume weighted average price *transaction* ... shall be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2.6.18

FCA



Article 28 of the MiFID Regulation

Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in Table 4 in Annex II [(see REC 2.6.20 EU)] for the class of share and *transaction* concerned, provided the following criteria are satisfied:

- (a) the *transaction* is between [a *MiFID investment firm*] *dealing on own account* and a *client* of that firm;

Deferred publication of large transactions

(b) the size of that *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see REC 2.6.20 EU)].

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

2.6.19

FCA



Article 29(3), second sentence of the MiFID Regulation

Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see REC 2.6.18 EU).

2.6.20

FCA



Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

		Class of shares in terms of average daily turnover (ADT)			
		ADT < ?100 000	?100 000 ?1 000 000	?1 000 000 ?50 000 000	ADT ? ?50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	?10 000	Greater of 5% of ADT and ?25 000	Lower of 10% of ADT and ?3 500 000	Lower of 10% of ADT and ?7 500 000
	180 minutes	?25 000	Greater of 15% of ADT and ?75 000	Lower of 15% of ADT and ?5 000 000	Lower of 20% of ADT and ?15 000 000
	Until end of trading day (or roll-over to noon of next trad-	?45 000	Greater of 25% of ADT and ?100 000	Lower of 25% of ADT and ?10 000 000	Lower of 30% of ADT and ?30 000 000

Class of shares in terms of average daily turnover (ADT)				
	ADT < £100 000	£100 000 ≤ ADT < £1 000 000	£1 000 000 ≤ ADT < £50 000 000	ADT ≥ £50 000 000
Minimum qualifying size of transaction for permitted delay				
ing day if trade undertaken in final 12 hours of trading day)				
Until end of trading day next after trade	£60 000	Greater of 50% of ADT and £100 000	Greater of 50% of ADT and £1 000 000	100% of ADT
Until end of second trading day next after trade	£80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third trading day next after trade		250% of ADT	250% of ADT	

2.6.21

FCA



Article 29 of the MiFID Regulation

Publication and availability of pre- and post-trade transparency data

1. **A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.**
2. **Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating**

- to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*.
3. Information relating to a *portfolio trade* shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
 4. Post-trade information referring to *transactions* taking place on a [*regulated market* or *MTF*] but outside its *normal trading hours* shall be made public before the opening of the next trading day of the [*regulated market* or *MTF*] on which the transaction took place.

2.6.22

FCA



Recital 18 to the MiFID Regulation

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time

2.6.23

FCA



Article 30 of the MiFID Regulation

Public availability of pre- and post-trade information

... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

2.6.24

FCA



Article 32 of the MiFID Regulation

Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see REC 2.6.23 EU)] ... , shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

2.6.25 

[deleted]

2.6.26 
FCA

In determining whether:

- (1) business conducted by means of a *UK RIE's facilities* is conducted so;
- (2) [deleted]

as to afford proper protection to investors, the *FCA* may, in addition to the matters dealt with in ■ REC 2.7 to ■ REC 2.12, have regard to all the arrangements made by the *UK recognised body* concerning the operation of its *facilities*.

2.6.27 
FCA

The *FCA* may also have regard to the extent to which the *UK recognised body's* rules, procedures and the arrangements for monitoring and overseeing the use of its *facilities*:

- (1) include appropriate measures to prevent the use of its *facilities* for abusive or improper purposes;
- (2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its *facilities*;
- (3) provide appropriate information to enable users of its *facilities* to monitor their use of the *facilities*;
- (4) include appropriate arrangements to enable users of its *facilities* to raise queries about any use of those *facilities* which they are reported to have made;
- (5) include appropriate arrangements to enable users of its *facilities* to comply with any relevant regulatory or legal requirements; and
- (6) include appropriate arrangements to reduce the risk that those *facilities* will be used in ways which are incompatible with relevant regulatory or legal requirements;

and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the *UK recognised body's facilities*, the types of persons who will use the *facilities* and the use which they will make of those *facilities*.

Orderly markets

2.6.28 
FCA

In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to the extent to which the *UK RIE's* rules and procedures:

- (1) are consistent with the *Code of Market Conduct* (see ■ MAR 1);
- (2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
- (3) prohibit or prevent:
 - (a) trades in which a party is improperly indemnified against losses;

- (b) trades intended to create a false appearance of trading activity ("wash trades");
- (c) cross trades executed for improper purposes;
- (d) improperly prearranged or prenegotiated trades;
- (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
- (f) trades which one party does not intend to close out or settle.

2.6.29

FCA

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In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to whether the *UK RIE's* arrangements and practices:

- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
- (2) ensure:
 - (a) sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and
 - (b) sufficient post-trade transparency in the *UK RIE's* markets taking into account the nature and liquidity of the *specified investments* traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for *members* and *clients* for whom they act, and the needs of different market participants for timely price information;
- (2A) (2) does not apply to a *UK RIE's* markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE's* markets for shares admitted to trading on a *regulated market*, see in particular ■ REC 2.6.3 UK and ■ REC 2.6.4 UK and ■ REC 2.6.7 EU to ■ REC 2.6.24 EU;
- (3) include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and
- (4) if they include arrangements to support or encourage liquidity:
 - (a) are transparent;
 - (b) are not likely to encourage any *person* to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any *client* for whom he acts);
 - (c) are consistent with a reliable, undistorted price-formation process; and
 - (d) alleviate dealing or other identified costs associated with trading on the *UK RIE's* markets and do not subsidise a market position of a user of its *facilities*.

2.6.30

FCA

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- (1) The *FCA* accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with

the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a *UK RIE*, subject to any necessary safeguards, where appropriate.

- (2) (1) does not apply to a *UK RIE*'s markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE*'s markets for shares admitted to trading on a regulated market, see in particular ■ REC 2.6.3 UK and ■ REC 2.6.4 UK and ■ REC 2.6.7EU to ■ REC 2.6.24 EU.

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

2.6.31
FCA

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The *FCA* has exercised its power referred to in ■ REC 2.6.3 UK(3) to waive the pre-trade transparency requirements referred to in ■ REC 2.6.3 UK(1). The waivers granted are those based on market model (see ■ REC 2.6.10 EU1), type of order (see ■ REC 2.6.10 EU2) and *transactions* which are large in scale (see ■ REC 2.6.13 EU). These waivers apply to all *regulated markets* and *MTFs* operated by *UK RIEs*.

2.6.32
FCA

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The *FCA* has exercised its power referred to in ■ REC 2.6.4 UK(3) to permit the deferral of the post-trade transparency requirements referred to in ■ REC 2.6.4 UK(1). This permission is with respect to large *transactions* (see ■ REC 2.6.17 EU). This permission applies to all *regulated markets* and *MTFs* operated by *UK RIEs*.

Arrangements for making information public

2.6.33
FCA

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The *FCA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ REC 2.6.24 EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

2.6.34
FCA

G

- (1) In respect of arrangements facilitating the consolidation of data as required in ■ REC 2.6.24 EU(b), the *FCA* considers information as being made public in accordance with ■ REC 2.6.24 EU(b), if it:
 - (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
 - (c) is accompanied by instructions outlining how users can access the information.
- (2) The *FCA* considers that an arrangement fulfils the 'machine-readable' criteria where the data:
 - (a) is in a physical form that is designed to be read by a computer;
 - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and

- (c) is in a format that is known in advance by the party wishing to access the data.
- (3) The *FCA* considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.
- (4) The *FCA* considers that information that is made public in accordance with
 - REC 2.6.24 EU should conform to a consistent and structured format based on industry standards. *Regulated markets* or *market operators* operating an *MTF* can choose the structure that they use.

2.7 Access to facilities

2.7.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)
 Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

access to the [UK RIE's] *facilities* is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7B

- (1) The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its *facilities*.
- (2) In particular those rules must specify the obligations for users or members of its *facilities* arising from -
 - (a) the constitution and administration of the [UK RIE];
 - (b) rules relating to transactions on the market;
 - (c) its professional standards for staff of any *investment firm* or *credit institution* having access to or membership of a financial market operated by the [UK RIE];
 - (d) conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the [UK RIE] by persons other than *investment firms* or *credit institutions*; and
 - (e) the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the [UK RIE].
- (3) Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only -
 - (a) an *investment firm*,

- (b) a *credit institution*, or
- (c) a *person* who -
 - (i) is fit and proper,
 - (ii) has a sufficient level of trading ability and competence,
 - (iii) where applicable, has adequate organisational arrangements, and
 - (iv) has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).
- (4) Rules under this paragraph must enable -
 - (a) an *investment firm* authorised under Article 5 of [MiFID], or
 - (b) a *credit institution* authorised under the *Banking Consolidation Directive*,

by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have direct or remote access to or membership of, any financial market operated by the [UK RIE] on the same terms as a *UK firm*.
- (5) The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or members of its *facilities*.
- (6) This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7C

- (1) This paragraph applies to [a UK RIE] which provides central counterparty, clearing or settlement *facilities*.
- (2) The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those *facilities*.
- (3) The rules under sub-paragraph (2) must enable an *investment firm* or a *credit institution* authorised by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have access to those *facilities* on the same terms as a *UK firm* for the purposes of finalising or arranging the finalisation of transactions in *financial instruments*.
- (4) The [UK RIE] may refuse access to those *facilities* on legitimate commercial grounds.

2.7.2




[deleted]

2.7.2A 


[deleted]

2.7.3 
FCA

In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FCA* may have regard to whether:

- (1) the *UK recognised body* limits access as a *member* to *persons*:
 - (a) over whom it can with reasonable certainty enforce its rules contractually;
 - (b) who have sufficient technical competence to use its *facilities*;
 - (c) whom it is appropriate to admit to membership having regard to the size and sophistication of users of its *facilities* and the nature of the business effected by means of, or cleared through, its *facilities*; and
 - (d) (if appropriate) who have adequate financial resources in relation to their exposure to the *UK recognised body* or its central counterparty;
- (2) [deleted]
- (3) indirect access to the *UK recognised body's facilities* is subject to suitable criteria, remains the responsibility of a *member* of the *UK recognised body* and is subject to its rules; and
- (4) where access is granted to *members* outside the *United Kingdom*, there are adequate safeguards against *financial crime* (see also  REC 2.10).

2.7.3A 
FCA

 REC 2.7.3 G does not apply to a *UK RIE's* arrangements to grant access to *investment firms* or *credit institutions*.








Electronic access

2.7.4 
FCA

The *FCA* may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:

- (1) the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;
- (2) the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;
- (3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;
- (4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
- (5) procedures to determine whether to suspend trading by those systems or access to them by or through individual *members*.

2.8 Settlement and clearing facilitation services

- 2.8.1**  Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)
 Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);
- 2.8.1A**  Schedule to the Recognition Requirements Regulations, Paragraph 7D
 (1) The rules of the [UK RIE] must permit a user or member of a *regulated market* operated by it to use whatever settlement facility he chooses for a transaction.
 (2) Sub-paragraph (1) only applies where -
 (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and
 (b) the [UK RIE] is satisfied that the smooth and orderly functioning of the financial markets will be maintained.
- 2.8.2**  [deleted]
- 2.8.3**  In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions, the *FCA* may have regard to the *UK recognised body's*:
 (1) rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services;
 (2) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 (3) where relevant, arrangements for making deliveries and payments, in all relevant jurisdictions;

- (4) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
- (5) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
- (6) arrangements for monitoring its *members'* settlement performance; and
- (7) (where appropriate) *default rules* and default procedures.






2.8.4

FCA

G

A *UK recognised body* will not be regarded as failing to comply with the *recognition requirement* merely because it is unable to arrange for a specific transaction to be settled.

2.9 Transaction recording

- 2.9.1**  **Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(e)**
 **Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-**
satisfactory arrangements are made for recording transactions effected on the [UK RIE], and transactions (whether or not effected on the [UK RIE] which are cleared or to be cleared by means of its facilities;
- 2.9.2**  **[deleted]**
- 2.9.3**  In determining whether a *UK recognised body* has satisfactory arrangements for recording the transactions effected on its facilities, or cleared or to be cleared by another person by means of, its *facilities*, the *FCA* may have regard to:
- (1) whether the *UK recognised body* has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least three years (five years in respect of transactions carried out by *members* who are not incorporated in the *United Kingdom* if the *UK recognised body* is a *regulated market*); and
 - (2) the type of information recorded and the extent to which the record includes details for each transaction of:
 - (a) the name of the *investment* (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;
 - (b) the identities and, where appropriate, the roles of the counterparties to the transaction;
 - (c) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and
 - (d) the date and manner of settlement of the transaction.
- 2.9.4**  **[deleted]**



2.10 Financial crime and market abuse

2.10.1



[deleted]

FCA

2.10.2



[deleted]

2.10.3



In determining whether a *UK recognised body's* measures are appropriate to reduce the extent to which its *facilities* can be used for a purpose connected with *market abuse* or *financial crime*, to facilitate their detection and to monitor their incidence, the *FCA* may have regard to:

FCA

- (1) whether the rules of the *UK recognised body* enable it to disclose any information to the *FCA*, or other appropriate bodies involved in the detection, prevention or pursuit of *market abuse* or *financial crime* in the *United Kingdom* or overseas; and
- (2) whether the arrangements, resources, systems, and procedures of the *UK recognised body* enable it to:
 - (a) monitor the use made of its *facilities* so as to obtain information regarding possible patterns of normal, abnormal or improper use of those *facilities*;
 - (b) detect possible instances of *market abuse* and *financial crime*, for example, by detecting suspicious patterns in the use of its *facilities*;
 - (c) communicate information about *market abuse* and *financial crime* promptly and accurately to appropriate organisations; and
 - (d) cooperate with all relevant bodies in the prevention, investigation and pursuit of *market abuse* and *financial crime*.

2.10.4



The law on *market abuse* and *financial crime*, including Part VI of the Criminal Justice Act 1988 and the *Money Laundering Regulations*, applies to *UK recognised bodies*. This *recognition requirement* (and this *guidance*) does not restrict, diminish or alter the obligations contained in that legislation.

FCA

2.11 Custody

2.11.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(g)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-

where the [UK RIE's] facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

2.11.2



[deleted]

2.11.3

FCA



In determining whether a *UK recognised body* has made satisfactory arrangements for the safeguarding and administration of assets belonging to the users of its *facilities*, the FCA may have regard to:

- (1) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;
- (2) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (3) whether the arrangements ensure that the assets are not transferred to the *UK recognised body* or to any other *person* to settle the debts of the owner (or other *person* with the appropriate rights over the assets) except in accordance with valid instructions from a *person* entitled to give those instructions, or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (4) whether the arrangements include satisfactory procedures to ensure that any rights arising in relation to the assets held as a result of any actions by the *issuers* of those assets (or other relevant persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (5) whether there are adequate arrangements to ensure the proper segregation of assets belonging to the *UK recognised body* (or to *undertakings* in the same *group*) from those belonging to the users of its *facilities* for the safeguarding and administration of assets;

- (6) whether the arrangements include satisfactory procedures for the selection, oversight and review of *custodians* or *sub-custodians* used to hold the assets;
- (7) whether the agreements by which the *UK recognised body* undertakes to safeguard and administer assets belonging to users of its *facilities* include appropriate information regarding the terms and conditions of that service and the obligations of the *UK recognised body* to the user of the service and of the user of the service to the *UK recognised body*;
- (8) whether the records kept of those assets and the operation of the safeguarding services provide sufficient accurate and timely information:
 - (a) to identify the legal and beneficial owners of the assets and of any *persons* who have charges over, or other interests, in the assets;
 - (b) to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and
 - (c) to identify separately the assets owned by (or, where appropriate, on behalf of) different *persons*, including, where appropriate, the assets owned by *members* of the *UK recognised body* and their clients;
- (9) the frequency of reconciliation of the assets held by (or on behalf of) the *UK recognised body* with the accounts held with the *UK recognised body* by the users of its safeguarding and administration services and the extent of the arrangements for resolving a shortfall identified in any reconciliation; and
- (10) the frequency with which statements of their holdings are provided to the users of the safeguarding and administration services, to the owners of the assets held and other appropriate *persons* in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets.

2.11.4

FCA

G

Where a *UK recognised body* arranges for other *persons* to provide services for the safeguarding and administration services of assets belonging to users of its *facilities*, it will also need to satisfy the *recognition requirement* in Regulation 6 of the *Recognition Requirements Regulations* (see ■ REC 2.2).



2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

2.12.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(c)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

- (c) appropriate arrangements are made for *relevant information* to be made available (whether by the [UK RIE] or, where appropriate, by *issuers* of the [specified investments]) to *persons engaged in dealing* in [specified investments] on the [UK RIE];

2.12.2

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(3)

In sub-paragraph [4(2)(c)], "*relevant information*" means information which is relevant in determining the current value of the [specified investments].

2.12.2A

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7A

- (1) The [UK RIE] must make clear and transparent rules concerning the admission of *financial instruments* to trading on any *financial market* operated by it.
- (2) The rules must ensure that all *financial instruments* admitted to trading on any *regulated market* operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable).
- (3) The rules must ensure that -
 - (a) all *transferable securities* admitted to trading on a *regulated market* operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and
 - (b) all contracts for derivatives admitted to trading on a regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

- (4) The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a *multilateral trading facility* operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.
- (5) The [UK RIE] must maintain effective arrangements to verify that issuers of *transferable securities* admitted to trading on a *regulated market* operated by it comply with the *disclosure obligations*.
- (6) The [UK RIE] must maintain arrangements to assist users of a *regulated market* operated by it to obtain access to information made public under the *disclosure obligations*.
- (7) The [UK RIE] must maintain arrangements regularly to review whether the *financial instruments* admitted to trading on a *regulated market* operated by it comply with the admission requirements for those instruments.
- (8) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a *regulated market* operated by it a *transferable security* which has been admitted to trading on another *regulated market*, the [UK RIE]
 - (a) must inform the issuer of that security as soon as is reasonably practicable; and
 - (b) may not require the issuer of that security to demonstrate compliance with the *disclosure obligations*.
- (9) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a *multilateral trading facility* operated by it a transferable security which has been admitted to trading on a *regulated market*, it may not require the issuer of that security to demonstrate compliance with the *disclosure obligations*.
- ...
- (11) This paragraph is without prejudice to the generality of paragraph 4.

2.12.2B

FCA



Article 35 of the MiFID Regulation

Transferable securities

- 1. *Transferable securities* shall be considered freely negotiable for the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2A UK)] if they can be traded between the parties to a *transaction*, and subsequently transferred without restriction, and if all

Transferable securities

- securities within the same class as the security in question are fungible.
2. *Transferable securities* which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.
 3. *Transferable securities* that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.
 4. When exercising its discretion whether to admit a share to trading, a *regulated market* shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:
 - (a) the distribution of those shares to the public; and
 - (b) such historical financial information, information about the *issuer*, and information providing a business overview as is required to be prepared under [the *PD*], or is or will be otherwise publicly available.
 5. A *transferable security* that is officially listed in accordance with [*CARD*], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.
 6. For the purposes of Article 40(1) of [*MiFID*] [(see REC 2.12.2A UK)], when assessing whether a *transferable security* referred to Article 4(1)(18)(c) of [*MiFID*] is capable of being traded in a fair, orderly and efficient manner, the *regulated market* shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:
 - (a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
 - (b) the price or other value measure of the underlying is reliable and publicly available;
 - (c) there is sufficient information publicly available of a kind needed to value the security;
 - (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;

Transferable securities

- (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

2.12.2C

FCA



Recital 19 to the MiFID Regulation

For the purposes of the provisions of [the *MiFID Regulation*] as to the admission to trading on a *regulated market* of a *transferable security* as defined in article 4(1)(18)(c) of [*MiFID*], [(see REC 2.12.2B EU6(c))], in the case of a security within the meaning of [the *PD*], there should be considered to be sufficient information publicly available of a kind needed to value that *financial instrument*.

2.12.2D

FCA



Article 36 of the MiFID Regulation

Units in collective investment undertakings

1. A *regulated market* shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the *UCITS Directive*], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the *regulated market*.
2. Without prejudice to [the *UCITS Directive*] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a *regulated market*.
3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [*MiFID*] [(see REC 2.12.2A UK)], the *regulated market* shall take the following aspects into account:
 - (a) the distribution of those units to the public;
 - (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;

Units in collective investment undertakings	
(c)	whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.
4.	When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2A UK)], the <i>regulated market</i> shall take the following aspects into account: <ul style="list-style-type: none"> (a) the distribution of those units to the public; (b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of net asset value.

2.12.2E



Article 37 of the MiFID Regulation

FCA

Derivatives	
1.	When admitting to trading a <i>financial instrument</i> of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], <i>regulated markets</i> shall verify that the following conditions are satisfied: <ul style="list-style-type: none"> (a) the terms of the contract establishing the <i>financial instrument</i> must be clear and unambiguous, and enable a correlation between the price of the <i>financial instrument</i> and the price or other value measure of the underlying; (b) the price or other value measure of the underlying must be reliable and publicly available; (c) sufficient information of a kind needed to value the derivative must be publicly available; (d) the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying; (e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.
2.	Where the <i>financial instruments</i> concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:

Derivatives

- (a) the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
- (b) the *regulated market* must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such *financial instruments*;
- (c) the *regulated market* must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those *financial instruments*.

2.12.3 D [deleted]

2.12.4 G [deleted]

2.12.5 G [deleted]

2.12.6 G [deleted]

2.12.7 G [deleted]

2.12.8 G [deleted]

2.12.9 G [deleted]

2.12.10 G [deleted]

Proper information

2.12.11

FCA

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In determining whether appropriate arrangements have been made to make *relevant information* available to *persons engaged in dealing in specified investments admitted to trading* on the UK RIE, the FCA may have regard to:

- (1) the extent to which *members* and *clients* for whom they act are able to obtain information about those *specified investments*, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those *specified investments* in a timely fashion;
- (2) what restrictions, if any, there are on the dissemination of *relevant information* to the UK RIE's *members* and *clients* for whom they act; and

- (3) whether *relevant information* is or can be kept to restricted groups of *persons* in such a way as to facilitate or encourage *dealing* in contravention of the *Code of Market Conduct* (see ■ MAR 1).

Own means of dissemination

2.12.12

FCA

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UK RIEs do not need to maintain their own arrangements for disseminating news or information about *specified investments* (or underlying assets) to their *members* where they have made adequate arrangements for other *persons* to do so on their behalf or there are other effective and reliable arrangements for this purpose.

2.12.13

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[deleted]

Rules concerning the admission of financial instruments to trading on a multilateral trading facility

2.12.14

FCA

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In determining whether a *UK RIE* has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the *FCA* considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see ■ REC 2.6.2 UK). In determining whether the rules are based on such criteria, the *FCA* may have regard to:

- (1) whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;
- (2) the extent to which there are any limitations on the *persons* who may hold or deal in the *financial instrument*, or the amounts of the *financial instrument* which may be held; and
- (3) whether the *UK RIE* has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that *financial instrument*.

2.13 Promotion and maintenance of standards

2.13.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 6

(1) The [UK RIE] must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities* by persons in the course of using the facilities provided by the [UK RIE].

(2) The [UK RIE] must be able and willing to cooperate by the sharing of information or otherwise, with the [FCA].with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any *regulated activity* or other financial service, or with an *overseas regulator* within the meaning of section 195 of the Act.

2.13.2



[deleted]

2.13.3

FCA



In determining whether a *UK recognised body* is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities*, the FCA may have regard to the extent to which the *UK recognised body* seeks to promote and encourage, through its rules, practices and procedures, conduct in *regulated activities* which is consistent with the *Code of Market Conduct* (see ■ MAR 1) and with any other codes of conduct, rules or principles relating to behaviour in *regulated activities* which users of the *UK financial system* would normally expect to apply to the *regulated activity* and the conduct in question.

2.13.4

FCA



In assessing the ability of a *UK recognised body* to cooperate with the FCA and other appropriate bodies, the FCA may have regard to the extent to which the constitution and rules of the *UK recognised body* and its agreements with its *members* enable it to obtain information from *members* and to disclose otherwise confidential information to the FCA and other appropriate bodies.

2.13.5

FCA



In assessing the willingness of a *UK recognised body* to cooperate with the FCA and other appropriate bodies, the FCA may have regard to:

- (1) the extent to which the *UK recognised body* is willing to provide information about it and its activities to assist the FCA in the exercise of its functions;
- (2) the extent to which the *UK recognised body* is open with the FCA or other appropriate bodies in regulatory matters;

- (3) how diligently the *UK recognised body* investigates or pursues enquiries from the *FCA* or other appropriate bodies; and
- (4) whether the *UK recognised body* participates in appropriate international fora.

2.13.6

FCA

G

For the purpose of this section, 'information' includes information held about large positions held by *members* of a *UK recognised body*.

2

2.14 Rules and consultation

2.14.1

FCA



Schedule to the Recognition Requirements Regulations, paragraph 7

(1) The [UK RIE] must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the [UK RIE's] facilities in appropriate cases.

(3) The [UK RIE] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 8(3) ... (or on any changes it proposes to make to those arrangements).

2.14.2



[deleted]

2.14.3

FCA



In determining whether a *UK recognised body* has appropriate procedures for it to make rules, for keeping its rules under review and for amending them, the *FCA* may have regard to:

- (1) the arrangements made for taking decisions about making and amending rules in the *UK recognised body*, including the level at which the decisions are taken and any provision for the delegation of decisions by the *governing body*;
- (2) the arrangements made for determining whether or not it is appropriate to consult *members* or other users of the *UK recognised body's facilities*;
- (3) the procedures for consulting *members* and other users of its *facilities* in appropriate cases; and
- (4) the arrangements for notifying *members* (and other appropriate *persons*) of rule changes.

2.14.4

FCA



- (1) In determining whether a *UK recognised body's* procedures include procedures for consulting users of its *facilities* in appropriate cases, the *FCA* may have regard to whether those procedures include provision for consulting users of those *facilities* before changes are made to any rules relating to its *regulatory functions*.

2.14.5

FCA

G

(2) In the *FCA's* view, a *UK recognised body's* procedures may not need to contain provision for consulting users of its *facilities* before making minor changes to any rules of an administrative or commercial character.

(1) In determining whether a *UK recognised body's* procedures for consulting *members* and other users of its *facilities* are appropriate, the *FCA* may have regard to the range of persons to be consulted by the *UK recognised body* under those procedures.

(2) In the *FCA's* view, consultation with a smaller range of persons may be appropriate where limited, technical changes to a *UK recognised body's* rules are proposed.

(3) In the *FCA's* view, a *UK recognised body's* procedures may include provision to restrict consultation where it is essential to make a change to the rules without delay in order to ensure continued compliance with the *recognition requirements* or other obligations under the *Act*.

2.14.6

FCA

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In determining whether a *UK recognised body's* procedures for consulting *members* and other users of its *facilities* are appropriate, the *FCA* may have regard to the extent to which the procedures include:

(1) informal discussions at an early stage with users of its *facilities* or appropriate representative bodies;

(2) publication to users of its *facilities* of a formal consultation paper which includes clearly expressed reasons for the proposed changes and an appropriately detailed assessment of the likely costs and benefits;

(3) adequate time for users of its *facilities* to respond to the consultation paper and for the *UK recognised body* to take their responses properly into account;

(4) adequate arrangements for making responses to consultation available for inspection by users of its *facilities*, unless the respondent requests otherwise;

(5) adequate arrangements for ensuring that the *UK recognised body* has proper regard to the representations received; and

(6) publication, no later than the publication of the amended rules, of a reasoned account of the *UK recognised body's* decision to amend its rules.

2.15 Discipline

2.15.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 8

- (1) The [UK RIE] must have -
 - (a) effective arrangements (which include the monitoring of transactions effected on the [UK RIE]) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE]);
 - (b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and
 - (c) effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.
- (2) Arrangements made pursuant to sub-paragraph (1) must include procedures for -
 - (a) investigating complaints made to the [UK RIE] about the conduct of persons in the course of using the [UK RIE's] facilities; and
 - (b) the fair, independent and impartial resolution of appeals against decisions of the [UK RIE].
- (3) Where arrangements made pursuant to sub-paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways -
 - (a) towards meeting expenses incurred by the [UK RIE] in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the [UK RIE] in relation to that breach;
 - (b) for the benefit of users of the [UK RIE's] facilities;
 - (c) for charitable purposes.

2.15.2



[deleted]

2.15.3

FCA

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In determining whether a *UK recognised body* has effective arrangements for monitoring and enforcing compliance with its rules (including its settlement arrangements), the *FCA* may have regard to:

- (1) the *UK recognised body's* ability to:
 - (a) monitor and oversee the use of its *facilities*;
 - (b) assess its *members'* compliance with its rules (and settlement arrangements, where appropriate);
 - (c) assess the significance of any non-compliance;
 - (d) take appropriate disciplinary action against *members* in breach of its rules (and settlement arrangements, where appropriate);
 - (e) suspend a *member's* access to its *facilities*;
 - (f) refer *members'* or others' conduct to other appropriate authorities for possible action or further investigation;
 - (g) retain authority over a *member* for at least one year after he has ceased to be a *member*;
 - (h) where appropriate, enforce its rules (and settlement arrangements, where appropriate) against users (other than *members*) of its *facilities*; and
 - (i) take action against suppliers of services to *members* (for example, warehouses) whose performance or conduct may be critical to ensuring compliance with its rules (and settlement arrangements, where appropriate);
- (2) the position, management and resources of the departments responsible for monitoring and overseeing the use of the *UK recognised body's facilities* and for enforcing compliance with its rules (and settlement arrangements, where appropriate); and
- (3) the arrangements made for the determination of disciplinary matters including the arrangements for disciplinary hearings and the arrangements made for appeals from the *UK recognised body's* decisions in those matters.

2.15.4

FCA

G

In assessing whether the procedures made by a *UK recognised body* to investigate complaints about the users of its *facilities* are satisfactory, the *FCA* may have regard to:

- (1) whether these procedures include arrangements which enable the *UK recognised body* to:
 - (a) acknowledge complaints promptly;
 - (b) consider and investigate these complaints objectively, promptly and thoroughly;
 - (c) provide a timely reply to the complainant; and
 - (d) keep adequate records of complaints and investigations;
- (2) the arrangements made to enable a *person* who is the subject of a complaint to respond in an appropriate manner to that complaint; and

2.15.5

FCA

G

In assessing whether the arrangements include procedures for the fair, independent and impartial resolution of appeals against decisions of a *UK recognised body*, the *FCA* may have regard to at least the following factors:

- (1) the appeal procedures of the *UK recognised body*, including the composition and roles of any appeal committees or tribunals, and their relationship to the *governing body*;
- (2) the arrangements made to ensure prompt hearings of appeals from decisions made by the *UK recognised body*;
- (3) the format, organisation and rules of procedure of those hearings;
- (4) the arrangements made to select the *persons* to preside over those hearings and to serve as *members* of any appeal tribunal;
- (5) the provision for determining whether or not such hearings should be in public;
- (6) the provision made to enable an appellant to be aware of the procedure at any appeal hearing and to have the opportunity to prepare and present his case at that hearing;
- (7) the provision made for an appeal tribunal to give an explanation of its decision;
- (8) the provision for publicity for any appeals or for determining whether or not publicity should be given to the outcome of any appeal.

2.15.6

FCA

G

In assessing whether a *UK recognised body's* arrangements include appropriate provision for ensuring the application of any financial penalties in ways described in the *recognition requirement*, the *FCA* may have regard to:

- (1) the *UK recognised body's* policy regarding the application of financial penalties;
- (2) the arrangements made for applying that policy in individual cases;

but the *FCA* does not consider that it is necessary for *UK recognised bodies* to follow any specific policy in order to meet this *recognition requirement*.

2.16 Complaints

2.16.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 9

- (1) The [UK RIE] must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its *regulatory functions*.
- (2) But sub-paragraph (1) does not extend to -
 - (a) complaints about the content of rules made by the [UK RIE], or
 - (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 8(2)(b).
- (3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by *a person* independent of the [UK RIE], and for him to report on the result of his investigation to the [UK RIE] and to the complainant.
- (4) The arrangements must confer on *the person* mentioned in sub-paragraph (3) the power to recommend, if he thinks appropriate, that the [UK RIE] -
 - (a) makes a compensatory payment to the complainant,
 - (b) remedies the matter complained of,
 or takes both of those steps.
- (5) Sub-paragraph (3) is not to be taken as preventing the [UK RIE] from making arrangements for the initial investigation of a complaint to be conducted by the [UK RIE].

2.16.2



[deleted]

2.16.3

FCA



In determining whether a *UK recognised body* has effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its *regulatory functions*, the *FCA* may have regard to the extent to which the *UK recognised body's* resources and procedures enable it to:

- (1) acknowledge complaints promptly;
- (2) make an objective, prompt and thorough initial investigation of complaints;

2.16.4

FCA

G

In determining whether a *UK recognised body's* arrangements for the investigation of complaints include appropriate arrangements for the complaint to be fairly and impartially investigated by an independent *person* (a "*complaints investigator*"), the *FCA* may have regard to:

- (3) provide a timely reply to the complainant after that initial investigation;
 - (4) inform the complainant of his right to apply to the *UK recognised body's complaints investigator*; and
 - (5) keep adequate records of complaints and investigations.
- (1) the arrangements made for appointing (and removing) a *complaints investigator*, including the terms and conditions of such an appointment and the provision for remuneration of a *complaints investigator*;
 - (2) the *complaints investigator's* access to, and relationship with, the *UK recognised body's governing body* and *key individuals*;
 - (3) the arrangements made for giving complainants access to the *complaints investigator*;
 - (4) the facilities made available to the *complaints investigator* to enable him to pursue his investigation and prepare his report and recommendations, including access to the *UK recognised body's* records, *key individuals* and other staff (including, where appropriate suppliers, contractors or other *persons* to whom any functions have been outsourced and their staff); and
 - (5) the arrangements made for the *UK recognised body* to consider the *complaints investigator's* report and recommendations.

2.16A Operation of a multilateral trading facility

2.16A.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 9A

- (1) [A UK RIE] operating a *multilateral trading facility* must also operate a *regulated market*.
- (2) [A UK RIE] operating a *multilateral trading facility* must comply with those requirements of-
 - (a) Chapter I of Title II of [*MiFID*], and
 - (b) *MiFID implementing Directive*,which are applicable to a *market operator ...* operating such a facility.
- (3) The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).

2.16A.2

FCA



In determining whether a UK RIE operating a *multilateral trading facility* complies with those requirements of Chapter I of Title II of *MiFID* and the *MiFID implementing Directive* which are applicable to a *market operator* operating such a facility, the FCA will have regard to the compliance of the UK RIE with equivalent *recognition requirements*.

2.17 Recognition requirements relating to the default rules of UK RIEs

2.17.1

FCA

G

The text of part of regulation 3 (Interpretation) of and Parts II and IV of the Schedule to the *Recognition Requirements Regulations* is set out below.

2.17.1A

FCA

UK

Regulation 3 (Interpretation) of the Recognition Requirements Regulations:

..."default fund" means the sum of the default fund contributions by the members or designated non-members of a [*recognised investment exchange*] to that exchange or by one [*recognised investment exchange*] to another or by the members of a [*recognised clearing house*] to that clearing house or by one [*recognised clearing house*] to another to the extent those contributions have not been returned or otherwise applied;

"default fund contribution" has the same meaning as in section 188(3A) of the Companies Act [1989];"...

2.17.2

FCA

UK

Schedule to the Recognition Requirements Regulations, Part II

Paragraph 10 (Default rules in respect of market contracts)

- (1) The [*UK RIE*] must have *default rules* which, in the event of a *member* of the [*UK RIE*] being or appearing to be unable to meet his obligations in respect of one or more *market contracts*, enable action to be taken in respect of unsettled *market contracts* to which he is party.
- (2) The [*default rules*] may authorise the taking of the same or similar action in relation to a *member* who appears to be likely to become unable to meet his obligations in respect of one or more *market contracts*.
- (3) The [*default rules*] must enable action to be taken in respect of all unsettled *market contracts*, other than those entered into for the purposes of or in connection with the provision of clearing services for the [*UK RIE*].
- (4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a [*recognised clearing house*] or another [*recognised investment exchange*].

- (5) A [UK RIE] must have [*default rules*] which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more [*market contracts*], enable action to be taken in respect of unsettled [*market contracts*] to which that person is a party.

Paragraph 11 (Content of rules)

- (1) This paragraph applies as regards contracts falling within section 155(2)(a) of the Companies Act [1989].
- (2) The [*default rules*] must provide -
- (a) for all rights and liabilities between those party as principal to unsettled *market contracts* to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the [*default rules*];
 - (b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and
 - (c) for the certification by or on behalf of the [UK RIE] of the net sum payable or, as the case may be, of the fact that no sum is payable.
- (3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled *market contracts* does not include rights and liabilities -
- (a) in respect of margin; or
 - (b) arising out of a failure to perform a *market contract*.
- (4) The [*default rules*] may make the same or similar provision, in relation to [*designated non-members*] designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to *members* of the [UK RIE].
- (5) If such provision is made as is mentioned in sub-paragraph (4), the [UK RIE] must have adequate procedures -
- (a) for designating the *persons*, or descriptions of person, in respect of whom action may be taken;
 - (b) for keeping under review the question which *persons* or descriptions of person should be or remain so designated; and
 - (c) for withdrawing such designation.
- (6) The procedures must be designed to secure that -
- (a) a *person* is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more *market contracts* would be unlikely adversely to affect the operation of the market; and

(b) a description of persons is not, or does not remain, designated if failure by a *person* of that description to meet his obligations in respect of one or more *market contracts* would be unlikely adversely to affect the operation of the market.

(7) The [*UK RIE*] must have adequate arrangements -

(a) for bringing a designation or withdrawal of designation to the attention of the *person* or description of persons concerned; and

(b) where a description of *persons* is designated, or the designation of a description of persons is withdrawn, for ascertaining which *persons* fall within that description.

Paragraph 12 (Content of rules)

(1) This paragraph applies as regards contracts falling within section 155(2)(b) or (c) of the Companies Act [1989].

(2) The [*default rules*] must provide -

(a) for all rights and liabilities of the defaulter under or in respect of unsettled *market contracts* to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the [*default rules*];

(b) for the sums so payable by or to the defaulter in respect of different contracts entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989] to be aggregated or set off so as to produce a net sum;

(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;

(c) for the net sum referred to in [(2)](b) or, if relevant, the net sum referred to in [(2)](bb) -

(i) if payable by the defaulter to the exchange, to be set off against -

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its *default rules*;

- (iii) if payable by the exchange to the defaulter, to be aggregated with -
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
 - (bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; and
- (d) for the certification by or on behalf of the [UK RIE] of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(2A) In sub-paragraph (2), "margin set off agreement" means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.

(2B) In sub-paragraph (2) -

"AP" means a [*recognised clearing house*] or another [*recognised investment exchange*] of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who

- (a) is a member of the exchange;
- (b) is a member or participant of AP; and
- (c) chooses to participate, in accordance with the rules of the exchange, in such agreement.

(2C) The property, contribution, funds or resources referred to in (2)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.

(3) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the [*default rules*] authorising -

- (a) the effecting by the [UK RIE] of corresponding contracts in relation to unsettled *market contracts* to which the defaulter is party;

- (b) the transfer of the defaulter's position under an unsettled *market contract* to another *member* of the [UK RIE];
 - (c) the exercise by the UK RIE of any *option* granted by an unsettled *market contract*.
- (4) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the *market contract* but under which the *person* who is the buyer under the *market contract* agrees to sell and the *person* who is the seller under the *market contract* agrees to buy.
- (5) Sub-paragraph (4) applies with any necessary modifications in relation to a *market contract* which is not an agreement to sell.
- (6) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Paragraph 12A (Content of rules)

The rules of the [UK RIE] must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).


Paragraph 13 (Notification to other parties affected)

The [UK RIE] must have adequate arrangements for ensuring that -

- (a) in the case of unsettled *market contracts* with a defaulter acting as principal, parties to the contract are notified as soon as reasonably practicable of the default and of any decision taken under the [default rules] in relation to contracts to which they are a party; and
- (b) in the case of unsettled *market contracts* with a defaulter acting as agent, parties to the contract and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Paragraph 14 (Cooperation with other authorities)

The [UK RIE] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any *relevant office-holder* and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a *member* of the [UK RIE] or any [designated non-member] or the default of a [recognised clearing house] or another [recognised investment exchange].

2.17.3		[deleted]
2.17.4		[deleted]
2.17.5		[deleted]

2.17.6

FCA

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The Companies Act 1989 contains provisions which protect action taken by a *UK recognised body* under its *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.

2

Chapter 2A

Recognised Auction Platforms

 **2A.1 Introduction****2A.1.1****FCA****G**

This chapter applies to an *RAP* or to a *UK RIE* applying to become an *RAP*. Regulation 2 of the *RAP regulations* provides that an entity must have *UK RIE* status before it can apply for *RAP* status.

2A.1.2**FCA****G**

The *RAP recognition requirements* must be satisfied by an *RAP* applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that *RAP* status is held. Therefore, the term *RAP* in the *guidance* should be understood to also refer to an applicant where appropriate and where not otherwise stated.

2A.1.3**FCA****G**

The *RAP regulations* apply modified provisions of the *Act* to an *RAP*. For example, an *RAP* is an *exempt person* in respect of its business as an *auction platform* due to the application of section 285 of the *Act* as modified by the *RAP regulations*. Similarly, section 293 of the *Act* is applied and modified by the *RAP regulations* to provide for *notification rules* and notification requirements in relation to *RAPs*.

2A.2 Method of satisfying the RAP recognition requirements

2A.2.1

FCA



Recognised Auction Platforms Regulations, regulation 13

(1) In considering whether [an *RAP*] or applicant satisfies the [*RAP recognition requirements*], the [*FCA*] may-

(a) treat compliance by the [*RAP*] or applicant with the [*recognition requirements* or *MiFID implementing requirements*] applying to it as a [*UK RIE*] as conclusive evidence that the [*RAP*] or applicant satisfies any equivalent [*RAP recognition requirements*] applying to it under these [*RAP regulations*], taking into account any arrangements that would be necessary to meet the [*RAP recognition requirements*], and

(b) take into account all relevant circumstances including the constitution of the *person* concerned.

(2) Without prejudice to the generality of paragraph (1), [an *RAP*] or applicant may satisfy [*RAP recognition requirements*] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where [an *RAP*] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [*RAP regulations*] on the [*RAP*] or applicant to satisfy the [*RAP recognition requirements*], but it is in addition [an *RAP recognition requirement*] applying to the [*RAP*] or applicant that the *person* who performs (or is to perform) the functions is a fit and proper *person* who is able and willing to perform them.

2A.2.2

FCA



The *FCA* will request information from an *RAP* or *RAP* applicant in order to determine whether it meets the *RAP recognition requirements*.

2A.3 Guidance on RAP recognition requirements

2A.3.1

FCA

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In assessing compliance with the *RAP recognition requirements*, the *FCA* will have regard to relevant guidance in ■ REC 2 on the equivalent requirements set out in the *Recognition Requirement Regulations*. The *FCA* may also take into account compliance by the *RAP* or *RAP* applicant with the *recognition requirements* (see ■ REC 2A.2.1 UK). The *FCA* will not make a separate assessment of compliance with the *recognition requirements* during the course of examining an application to become an *RAP* or as part of its ongoing supervision of an *RAP*, unless there is a specific reason to do so.

2A.3.2

FCA

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The *guidance* in relation to the *recognition requirements* in the sections of ■ REC 2 listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

Column A	Column B	Column C
<i>REC 2</i> guidance which applies to an <i>RAP</i>	Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Relevant <i>RAP recognition requirement</i>
REC 2.2.2 G to REC 2.2.7 G (Relevant circumstances and Outsourcing)		Reg 13
REC 2.3.3 G to REC 2.3.9 G (Financial resources)		Reg 14
REC 2.4.3 G to REC 2.4.6 G (Suitability)	In addition to the matters set out in REC 2.4.3 G to REC 2.4.6 G, the <i>FCA</i> will have regard to whether a <i>key individual</i> has been allocated responsibility for overseeing the <i>auction platform</i> of the <i>UK recognised body</i> .	Reg 15
REC 2.5.3 G to REC 2.5.20 G (Systems and controls and conflicts) and REC 2.5A (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16 and 17(2)(f)

Column A	Column B	Column C
<i>REC 2 guidance which applies to an RAP</i>	<i>Modification to REC 2 guidance for an RAP</i>	<i>Relevant RAP recognition requirement</i>
REC 2.6.26 G to REC 2.6.34 G (Safeguards for investors)		Reg 17
REC 2.7.3 G to REC 2.7.4 G (Access to facilities)	The <i>FCA</i> shall have regard to whether an <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to bid under article 18 of the <i>auction regulation</i> .	Reg 17(2)(a) and 20
REC 2.8.3 G to REC 2.8.4 G (Settlement and clearing services)		Reg 17(2)(d) and 21
REC 2.9.3 G to REC 2.9.4 G (Transaction recording)		Reg 17(2)(e)
REC 2.10.3 G to REC 2.10.4 G (Financial crime and market abuse)		Reg 17(2)(g)
REC 2.11.3 G to REC 2.11.4 G (Custody)	REC 2.11.4 G is replaced with the following for an <i>RAP</i> : Where an <i>RAP</i> arranges for other <i>persons</i> to provide services for the safeguarding and administration services of assets belonging to users of its <i>facilities</i> , it will also need to satisfy the <i>RAP recognition requirement</i> in regulation 17(2)(h) of the <i>RAP regulations</i> (see REC 2A.2.1 UK).	Reg 17(2)(h)
REC 2.12.11 G to REC 2.12.12 G (Availability of relevant information)	REC 2.12.11 G to REC 2.12.12 G are replaced with the following for an <i>RAP</i> : REC 2.12.11 G In determining whether appropriate arrangements have been made to make <i>relevant information</i> available to <i>persons</i> engaged in dealing in <i>emissions auction products</i> the <i>FCA</i> may have regard to: (1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>emissions auction products</i> and the terms on which they will be	Reg 17(2)(c)

Column A <i>REC 2 guidance which applies to an RAP</i>	Column B <i>Modification to REC 2 guidance for an RAP</i>	Column C <i>Relevant RAP recognition requirement</i>
	<p>auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media;</p> <p>(2) what restrictions, if any, there are on the dissemination of <i>relevant information</i> to auction bidders; and</p> <p>(3) whether <i>relevant information</i> is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage <i>market abuse</i>.</p> <p>REC 2.12.12 G</p> <p>An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>emissions auction products</i> to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.</p>	
<p>REC 2.13.3 G to REC 2.13.6 G (Promotion and maintenance of standards)</p>		<p>Reg 18</p>
<p>REC 2.14.3 G to REC 2.14.6 G (Rules and consultation)</p>		<p>Reg 19</p>
<p>REC 2.15.3 G to REC 2.15.6 G (Discipline)</p>		<p>Reg 22</p>
<p>REC 2.16.3 G to REC 2.16.4 G (Complaints)</p>		<p>Reg 23</p>

2A.4 Power and procedure for RAP penalties and censures

2A.4.1

FCA

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Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the FCA considers that an RAP has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the *auction regulation*, the FCA has the power to impose a civil penalty on that RAP.

2A.4.2

FCA

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Where the FCA is entitled to impose a penalty on an RAP, it may instead publish a statement censuring it.

2A.4.3

FCA

G

The provisions of the *auction regulation* referred to in ■ REC 2A.4.1 G are directly applicable to an RAP and require it to, in summary:

- (1) only grant admission to bid to applicants that comply with the conditions set out in article 19 of the *auction regulation*, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the *auction regulation*;
- (2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the RAP;
- (3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
 - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
 - (b) where the RAP suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
- (4) monitor the relationship with bidders admitted to bid in its auctions.

2A.4.4

FCA

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The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the FCA's other supervisory powers in relation to RAPs (see ■ REC 4) and its power to impose penalties on an RAP under the *Money Laundering Regulations*.

The *FCA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in ■ DEPP 6.2.1 G. In deciding between a civil penalty or a public statement, the *FCA* will also have regard to the relevant factors listed in ■ DEPP 6.4.

2A.4.5

FCA

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The *FCA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases.

2A.4.6

FCA

G

Where the *FCA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in ■ DEPP 6.5 to ■ DEPP 6.5D in determining the appropriate level of financial penalty.

2A.4.7

FCA

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The *FCA* will also have regard to whether the person followed any of the *FCA*'s guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

2A.4.8

FCA

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When the *FCA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FCA*'s proposed decision.

2A.4.9

FCA

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Where the *FCA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FCA*'s decision maker will be the *RDC*. This is to ensure that the *FCA*'s power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FCA* under other legislation. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.

2A.4.10

FCA

G

Sections 393 and 394 of the *Act* apply to notices referred to in this section. See ■ DEPP 2.4 (Third party rights and access to *FCA* material).

2A.4.11

FCA

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As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in ■ DEPP 6.7 applies to penalties imposed under the *RAP Regulations*.

2A.4.12

FCA

G

The *FCA* will apply the approach to publicity that it has outlined in ■ EG 6.

Chapter 3

Notification rules for UK recognised bodies



3.1 Application and purpose

Application

3.1.1
FCA

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- (1) The *notification rules* in this chapter, which are made under section 293 of the *Act* (Notification requirements), apply to all *UK recognised bodies*.
- (2) The *rules* relating to the form and method of notification in ■ REC 3.2 also apply to *overseas recognised bodies*.

3.1.2
FCA

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The *notification rules* for *overseas recognised bodies* are set out in ■ REC 6. The *guidance* set out at ■ REC 3.3 in relation to the waiving and modification of *notification rules* also applies to the *notification rules* in this chapter and to the *notification rules* in ■ REC 6.

3.1.3
FCA

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The *notification rules* in this chapter are in addition to the requirements on *UK RIEs* to give notice or information to the *FCA* and if applicable, the Bank of England under sub-sections 293(5) and (6) of the *Act*.

3.1.3A
FCA

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The *notification rules* in this chapter which apply to an *RAP* are without prejudice to *notification rules* which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates an *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and an *RAP*.

Purpose

3.1.4
FCA

G

The *notification rules* in this chapter are made by the *FCA* in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the *Act*.



3.2 Form and method of notification

Form of notification

3.2.1
FCA

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Where a *recognised body* is required to give any notice or information under any *notification rule*, it may do so (unless that *rule* expressly provides otherwise) orally or in writing, whichever is the more appropriate in the circumstances, but, where it gives notice or information orally, it must confirm that notice or information in writing promptly.

Method of notification

3.2.2
FCA

R

Unless otherwise stated in the *notification rule*, a written notification required from a *recognised body* under any *notification rule* must be:

- (1) given to, or addressed for the attention of, the *recognised body's* usual supervisory contact at the *FCA*;
- (2) delivered to the *FCA* by one of the methods in ■ REC 3.2.3 R.

3.2.3
FCA

R

Table Methods of notification

Method of delivery
(1) <i>Post</i> to the address in REC 3.2.4 R
(2) Leaving the notification at the address in REC 3.2.4 R and obtaining a time-stamped receipt
(3) Electronic mail to an address for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> and obtaining an electronic confirmation of receipt
(4) Hand delivery to the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i>
(5) Fax to a fax number for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> , provided that the <i>FCA</i> receives a copy of the notification by one of methods (1) - (4) in this table within five <i>business days</i> after the date of the faxed notification

3.2.4

FCA

R

The address for a written notification to the *FCA* is:

The Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Timely notification

3.2.5

FCA

R

If a *notification rule* requires notification within a specified period:

- (1) the *recognised body* must give the notification so as to be received by the *FCA* no later than the end of that period; and
- (2) if the end of that period falls on a *day* which is not a *business day*, the notification must be given so as to be received by the *FCA* no later than the first *business day* after the end of that period.

3.2.6

FCA

G

Service of Notice Regulations

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) do not apply to notifications required under the *notification rules* in this chapter and in ■ REC 6 because of the specific *rules* in this section.



3.3 Waivers

Statutory power

3.3.1
FCA

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Under section 294 of the *Act* (Modification or waiver of rules), the *FCA* may, on the application or with the consent of a *recognised body* (including an *ROIE*), direct that any *notification rule* is not to apply to the body or is to apply with such modifications as may be specified in the *waiver*.

3.3.2
FCA

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A *waiver* given under section 294 of the *Act* may be made subject to conditions.

3.3.3
FCA

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Under section 294(4) of the *Act*, before the *FCA* may give a *waiver of notification rules*, it must be satisfied that:

- (1) compliance by the *recognised body* with those *notification rules*, or with those *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which those *rules* were made; and
- (2) the *waiver* would not result in undue risk to *persons* whose interests those *rules* are designed to protect.

Applications

3.3.4
FCA

G

Where a *recognised body* wishes to make an application to the *FCA* for a *waiver* of a *notification rule*, it should in the first instance inform its usual supervisory contact at the *FCA*.

3.3.5
FCA

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There is no application form, but applicants should make their application formally and in writing and in accordance with any direction the *FCA* may make under section 294(2) of the *Act*. Each application should set out at least:

- (1) full particulars of the *waiver* which is requested;
- (2) the reason why the *recognised body* believes that the criteria set out in section 294(4) (and described in ■ REC 3.3.3 G) would be met, if this *waiver* were granted; and
- (3) where the *recognised body* believes that these criteria would be met if the *FCA* gave a *waiver* under section 294 subject to any condition, particulars of the kind of condition contemplated.

3.3.6
FCA

G

The *FCA* may request further information from the applicant, before deciding whether to give a *waiver* under section 294 of the *Act*.

Waivers

3.3.7
FCA

G

Any *waiver* given by the *FCA* under section 294 of the *Act* will be made in writing, stating:

- (1) the name of the *recognised body* in respect of which the *waiver* is made;
- (2) the *notification rules* which are to be waived or modified in respect of that body;
- (3) where relevant, the manner in which any *rule* is to be modified;
- (4) any condition or time limit to which the *waiver* is subject; and
- (5) the date from which the *waiver* is to take effect.

3.3.8
FCA

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Where the *FCA* considers that it will not give the *waiver* which has been applied for, the *FCA* will give reasons to the applicant for its decision. The *FCA* will endeavour, where practicable, to inform an applicant in advance where it seems that an application is likely to fail unless it is amended or expanded, so that the applicant will have the opportunity to make any necessary amendments or additions before the application is considered.

3.3.9
FCA

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Where the *FCA* wishes to give a *waiver* under section 294 of the *Act* with the consent of a *recognised body* (rather than on the application of a *recognised body*), the *FCA* will correspond or discuss this with that body in order to agree an appropriate *waiver*.

Reviews of waivers

3.3.10
FCA

G

The *FCA* will periodically review any *waiver* it has given. The *FCA* has the right to revoke a *waiver* under section 294(6) of the *Act*. This right is likely to be exercised in the event of a material change in the circumstances of the *recognised body* or in any fact on the basis of which the *waiver* was given.



3.4 Key individuals and internal organisation

Purpose

3.4.1
FCA

G

The purpose of ■ REC 3.4 is to enable the *FCA* to monitor changes in the arrangements a *UK recognised body* makes for the carrying out of its *relevant functions* or for overseeing the work of *key individuals* or departments responsible for its *relevant functions*.

Key individuals

3.4.2

R

[deleted]

3.4.2A
FCA

R

Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a *key individual*, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this rule in ■ REC 3.4.4A R to the *FCA*.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

3.4.2B
FCA

R

Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a *key individual*, that *UK RIE* must immediately give notice of that event, and give the name of the *person*.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

3.4.3
FCA

G

- (1) *Key individuals* include the *persons* who, under the operational or managerial arrangements of the *UK recognised body*, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A *person* appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a *key individual*.
- (2) A *key individual* need not be an *employee* of a *UK recognised body*. For example, an *employee* of an *undertaking* in the same *group* or a self-employed contractor of a *UK recognised body* might be a *key individual*, depending on the role he plays in that body.
- (3) A department of a *UK recognised body* should be regarded as responsible for carrying out a *relevant function* if it is responsible for any activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the performance of a *relevant function*.

- (4) The *FCA* does not need to be notified where minor changes are made to the responsibilities of a *key individual*, but where a major change in responsibilities is made which amounts to a new appointment, the *FCA* should be notified under ■ REC 3.4.2A R.

3.4.4 R

[deleted]

3.4.4A FCA R

The following information is specified for the purposes of ■ REC 3.4.2A R:

- (1) that *person's* name;
- (2) his date of birth;
- (3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected , including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

Standing committees

3.4.5 FCA R

Where the *governing body* of a *UK recognised body* delegates any of its functions (which relate to that *UK recognised body's relevant functions*) to a standing committee, or appoints a standing committee to manage or oversee the carrying out of any of that *UK recognised body's relevant functions*, that *UK recognised body* must immediately notify the *FCA* of that event and give the *FCA* the following information:

- (1) the names of the members of that standing committee; and
- (2) the terms of reference of that standing committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

3.4.6 FCA R

Where:

- (1) there is any change in the composition or the terms of reference of any standing committee referred to in ■ REC 3.4.5 R; or
- (2) any such committee is dissolved;

the *UK recognised body* must immediately notify the *FCA* of that event and give particulars of any change referred to in (1) to the *FCA*.

3.4.7 FCA G

- (1) Standing committees include permanent committees with executive, supervisory, policy-making or rule-making responsibilities. Committees appointed for particular tasks or committees established for purely consultative or advisory purposes would not usually be considered to be standing committees.

-
- (2) Committees which include *persons* who are not members of the *governing body* can be standing committees.



3.5 Disciplinary action and events relating to key individuals

Disciplinary action

3.5.1
FCA

R

Where any *key individual* of a *UK recognised body*:

- (1) is the subject of any disciplinary action because of concerns about his alleged misconduct;
- (2) resigns as a result of an investigation into his alleged misconduct; or
- (3) is dismissed for misconduct;

that body must immediately give the *FCA* notice of that event, and give the information specified for the purposes of this *rule* in ■ REC 3.5.2 R.

3.5.2
FCA

R

The following information is specified for the purposes of ■ REC 3.5.1 R:

- (1) the name of the *key individual* and his responsibilities within the *UK recognised body*;
- (2) details of the acts or alleged acts of misconduct by that *key individual*; and
- (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that *key individual*.

Other events

3.5.3
FCA

R

Where a *UK recognised body* becomes aware that any of the following events has occurred in relation to a *key individual*, it must immediately give the *FCA* notice of that event:

- (1) a petition for bankruptcy is presented (or similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom* are commenced) against that *key individual*; or
- (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him; or

-
- (3) he enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his creditors.



3.6 Constitution and governance

3.6.1
FCA

R Where a *UK recognised body* is to circulate any notice or other *document* proposing any amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution) to:

- (1) its shareholders (or any group or class of them); or
- (2) its *members* (or any group or class of them); or
- (3) any other group or class of *persons* which has the power to make that amendment or whose consent or approval is required before it may be made;

that *UK recognised body* must give notice of that proposed amendment, and give the information specified for the purposes of this *rule* in ■ REC 3.6.2 R to the *FCA*, at the same time as that notice or *document* is circulated.

3.6.2
FCA

R The following information is specified for the purposes of ■ REC 3.6.1 R:

- (1) the proposed amendments referred to in ■ REC 3.6.1 R;
- (2) the reasons for the proposal; and
- (3) a description of the group or class of *persons* to whom the proposal is to be circulated.

3.6.3
FCA

G A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with ■ REC 3.6.1 R by providing a copy of the notice of special resolution issued to its shareholders.

3.6.4
FCA

R Where a *UK recognised body* makes an amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution), that *UK recognised body* must immediately give the *FCA* notice of that event, and give written particulars of that amendment and of the date on which it is to become or became effective.

3.6.5

FCA

G

A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with ■ REC 3.6.4 R by providing a copy of the special resolution effecting the amendment.

3.6.6

FCA

R

Where any change is made to an agreement which relates to the constitution or governance of a *UK recognised body*:

- (1) between that *UK recognised body* and another *person*; or
- (2) between the owners of that *UK recognised body*; or
- (3) between the owners of that *UK recognised body* and another *person*; or
- (4) between other *persons*;

that *UK recognised body* must give the *FCA* notice of that event as soon as it is aware of it, and give written particulars of that change and of the date on which it is to become or became effective.

3.6.7

FCA

G

The purpose of ■ REC 3.6.6 R is to ensure that the *FCA* is informed of changes to agreements which specify the arrangements by which a *UK recognised body* will be governed or by which important decisions will be taken within that body. It is not intended to cover any agreement by which someone is appointed to be a *key individual* or which covers the terms and conditions of service in such an appointment.



3.7 Auditors

3.7.1
FCA

R Where the auditors of a *UK recognised body* cease to act as such, that *UK recognised body* must immediately give the *FCA* notice of that event, and the following information:

- (1) whether the appointment of those auditors expired or was terminated;
- (2) the date on which they ceased to act; and
- (3) if it terminated, or decided not to renew, their appointment, its reasons for taking that action or decision.

3.7.2
FCA

R Where a *UK recognised body* appoints new auditors, that body must immediately give the *FCA* notice of that event, and the following information:

- (1) the name and business address of those new auditors; and
- (2) the date of their appointment as auditors.

3.8 Financial and other information

3.8.1

FCA

R

A UK recognised body must give the FCA:

- (1) a copy of its *annual report and accounts*; and
- (2) a copy of the consolidated *annual report and accounts*:
 - (a) of any group in which the UK recognised body is a *subsidiary undertaking*; or
 - (b) (if the UK recognised body is not a *subsidiary undertaking* in any group) of any group of which the UK recognised body is a *parent undertaking*;

no later than the time specified for the purpose of this rule in ■ REC 3.8.2 R.

3.8.2

FCA

R

The time specified for the purpose of ■ REC 3.8.1 R is the latest of:

- (1) four months after the end of the financial year to which the *document* which is to be given to the FCA relates; or
- (2) the time when the *documents* described in ■ REC 3.8.1 R (1) or ■ REC 3.8.1 R (2)(b) are sent to the *members* or shareholders of the UK recognised body; or
- (3) the time when the *document* described in ■ REC 3.8.1 R (2)(a) are sent to the shareholders in a *parent undertaking* of the group to which that *document* relates.

3.8.3

FCA

R

Where an audit committee of a UK recognised body has prepared a report in relation to any period or any matter relating to any *relevant function* of that UK recognised body, the UK recognised body must immediately give the FCA a copy of that report.

3.8.4

FCA

R

A UK recognised body must give the FCA a copy of:

- (1) its quarterly *management accounts*; or
- (2) its monthly *management accounts*;

within one month of the end of the period to which they relate.

3.8.5
FCA

G

A *UK recognised body* is not required to provide quarterly and monthly *management accounts* in respect of the same period, but *management accounts* (whether quarterly or monthly) should be submitted for all periods. A *UK recognised body* may choose whichever method is the more suitable for it, but where it intends to change from providing monthly to quarterly *management accounts* (or from quarterly to monthly *management accounts*), it should inform the *FCA* of that fact.

3.8.6
FCA

R

A *UK recognised body* must give the *FCA*:

- (1) a statement of its anticipated income, expenditure and cashflow for each financial year; and
- (2) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

3.8.7
FCA

R

Where the *accounting reference date* of a *UK recognised body* is changed, that body must immediately give notice of that event to the *FCA* and inform it of the new *accounting reference date*.



3.9 Fees and incentive schemes

3.9.1

FCA

G

The purpose of ■ REC 3.9.2 R is to enable the *FCA* to obtain information on changes to standard tariffs for matters such as *membership* and trading and of any scheme introduced by the *UK recognised body* for rebating or waiving fees or charges. A *UK recognised body* is not required to inform the *FCA* of fees or charges for which the *UK recognised body* does not charge according to a standard tariff.

3.9.2

FCA

R

A *UK recognised body* must give the *FCA* a summary of:

- (1) any proposal to change the fees or charges levied on its *members* (or any group or class of them), at the same time as the proposal is communicated to those *members*; and
- (2) any such change, no later than the date when it is published or notified to those *members*.



3.10 Complaints

3.10.1

FCA

R

Where a *UK recognised body's complaints investigator* has investigated a complaint arising in connection with the performance of, or failure to perform, any of its *regulatory functions*, and that *complaints investigator* has made a recommendation in respect of that complaint that the *UK recognised body* should:

- (1) make a compensatory payment to any *person*; or
- (2) remedy the matter which was the subject of that complaint;

the *UK recognised body* must immediately notify the *FCA* of that event, and give the *FCA* a copy of the *complaints investigator's* report and particulars of his recommendations as soon as that report or those recommendations are available to it.

3.11 Insolvency events

3.11.1

FCA

R

On:

- (1) the presentation of a petition for the winding up of a *UK recognised body* (or the commencement of any similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom*); or
- (2) the appointment of a receiver, administrator, liquidator, trustee or sequestrator of assets of that body (or of any similar or analogous appointment under the laws of a jurisdiction outside the *United Kingdom*); or
- (3) the making of a voluntary arrangement by that body with its creditors (or of any similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*);

that body must immediately give the *FCA* notice of that event.

3.12 Legal proceedings

3.12.1
FCA

R If any civil or criminal legal proceedings are instituted against a *UK recognised body*, it must, unless ■ REC 3.12.2 R applies, immediately give notice of that event and give the following information to the *FCA*:

- (1) in the case of civil proceedings, the name of the claimant, particulars of the claim, the amount of damages and any other remedy sought by the claimant, and particulars of any allegation that any act or omission of that body was in bad faith; and
- (2) in the case of criminal proceedings, particulars of the offence with which that body is charged.

3.12.2
FCA

R A *UK recognised body* is not required to give notice of civil legal proceedings or information about them to the *FCA* under ■ REC 3.12.1 R, where:

- (1) the amount of damages claimed would not significantly affect that *UK recognised body's* financial resources, if the claim were successful;
- (2) the claim would not have a significant adverse effect on the reputation and standing of that body, if that claim were successful; and
- (3) the claim does not relate to that body's *regulatory functions*.



3.13 Delegation of relevant functions

3.13.1
FCA

G

- (1) The purpose of ■ REC 3.13 is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* or, in relation to an *RAP*, under regulation 13 of the *RAP regulations* . See ■ REC 2.2 and ■ REC 2A.2).
- (2) The *FCA* does not need to be notified of every instance of outsourcing by a *UK recognised body*, but only where an activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the performance of a *relevant function* are outsourced.

3.13.2
FCA

R

Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the *FCA* notice of that event, and:

- (1) inform the *FCA* of the reasons for that delegation or proposed delegation;
- (2) inform the *FCA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or (for an *RAP*) *RAP recognition requirements* following that delegation;
- (3) where it makes such an offer by issuing a written invitation to tender to another body or *person*, give the *FCA* a copy of that invitation to tender; and
- (4) where it makes such an agreement, give the *FCA* a copy of that agreement.

3.13.3
FCA

R

A *UK recognised body* must immediately give the *FCA* notice, where it makes an offer or agrees to undertake any *relevant function* of another *UK recognised body*.



3.14 Products, services and normal hours of operation

Purpose

3.14.1
FCA

G

The purpose of ■ REC 3.14 is to ensure that the *FCA* is informed of planned changes to the services a *UK recognised body* intends to provide and of the normal hours of operation of those services. Unplanned suspensions of those services, unplanned changes in hours of operation and events causing a *UK recognised body* to be unable to provide those services should be notified to the *FCA* under the *rules* in ■ REC 3.15.

Products and services

3.14.2
FCA

R

Where a *UK RIE* proposes to *admit to trading* (or to cease to *admit to trading*) by means of its *facilities*:

(1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or

(2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event, and the information specified for the purposes of this *rule* in ■ REC 3.14.6 R to the *FCA*, at the same time as that proposal is first formally communicated to its *members* or *shareholders* (or any group or class of them).

3.14.2A
FCA

R

When a *UK RIE* removes a *financial instrument* from trading on a *regulated market*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of *MiFID*]

3.14.3
FCA

R

Where a *UK recognised body* proposes to provide (or to cease to provide) *clearing facilitation services* in respect of:

(1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or

(2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event and the information specified for the purposes of this *rule* in ■ REC 3.14.6 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.4 **R** [deleted]

3.14.5 **G** *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

3.14.6 **R** The following information is specified for the purposes of ■ REC 3.14.2 R and ■ REC 3.14.3 R:

FCA

- (1) a description of the *specified investment* to which the proposal relates;
- (2) where that *specified investment* is a *derivative*, the proposed terms of that *derivative*; and
- (3) in the case of a *UK RIE* which is admitting that *specified investment* to trading, the name of any *RCH* which will provide clearing services in respect of that *specified investment* under an agreement with that *UK RIE*.

3.14.7 **R** Where:

FCA

- (1) a *UK RIE* proposes to amend the standard terms of any *derivative admitted to trading* by means of its *facilities*; or
- (2) a *UK RIE* proposes to amend the standard terms relating to any *derivative* in respect of which it provides *clearing facilitation services*;

it must give the *FCA* notice of that event, and written particulars of those proposed amendments, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.8 **R** Where a *UK recognised body* proposes to make (or to cease to make) arrangements for the safeguarding and administration of assets belonging to any other *person* (other than an *undertaking* in the same *group*), that *recognised body* must give the *FCA* notice of that event, and the information specified for the purposes of this *rule* in ■ REC 3.14.9 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

FCA

3.14.9

FCA

R

The following information is specified for the purposes of ■ REC 3.14.8 R:

- (1) a description of the assets (or types of assets) to which the proposal relates; and
- (2) the date or dates on which arrangements referred to in ■ REC 3.14.8 R will be made (or cease to be made).

3.14.10

FCA

G

The FCA does not need to be notified of proposals to offer (or to withdraw offers of) safeguarding and administration services for individual assets of the same type. *Specified investments* (other than *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will also normally be regarded as being of the same type.

Hours of operation

3.14.11

FCA

R

Where a *UK recognised body* proposes to change its normal hours of operation or (for *RAPs*) the timing, frequency or duration of its bidding windows, it must give the FCA notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its *members* or shareholders, or any group or class of them.



3.14A Operation of a regulated market or MTF

Purpose

3.14A.1
FCA

G

The purpose of ■ REC 3.14A is to ensure that the *FCA* is informed of planned changes to a *UK RIE* markets and their regulatory status as either a *regulated market* or *MTF*.

Operation of a regulated market

3.14A.2
FCA

R

Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in ■ REC 3.14A.3 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.3
FCA

R

The following information is specified for the purposes of ■ REC 3.14A.2 R:

- (1) where the *UK RIE* proposes to operate a new *regulated market*:
 - (a) a description of the *regulated market*; and
 - (b) a description of the *specified investments* which will be admitted to trading on that *regulated market*.
- (2) where the *UK RIE* proposes to close a *regulated market*, the name of that *regulated market*.

Operation of an MTF

3.14A.4
FCA

R

Where a *UK RIE* proposes to operate a new *MTF* or close an existing *MTF* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in ■ REC 3.14A.5 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

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3.14A.5
FCA

R

The following information is specified for the purposes of ■ REC 3.14A.4 R:

- (1) where the *UK RIE* proposes to operate a new *MTF*:
 - (a) a description of the *MTF*; and

(b) a description of the *specified investments* which will be admitted to trading on that *MTF*.

(2) where the *UK RIE* proposes to close a *MTF*, the name of that *MTF*.

Operation of a recognised auction platform

If a *UK RIE* proposes to operate an *RAP*, it will need to make a separate application to be recognised as an *RAP* (see ■ REC 5 (Applications)).

3

3.14A.6

FCA

G



3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1
FCA

G

- (1) The purpose of ■ REC 3.15.2 R to ■ REC 3.15.5 G is to enable the *FCA* to obtain information where a *UK recognised body* decides to suspend the provision of its services in relation to particular *investments* or (for an *RAP*) decides to cancel an auction. Planned changes to the provision of services should be notified to the *FCA* under ■ REC 3.14.
- (2) ■ REC 3.15.6 R to ■ REC 3.15.7 R provide for notification to the *FCA* where a *UK recognised body* is unable to operate or provide its *facilities* for reasons outside its control or where it decides to extend its hours of operation in an emergency.
- (3) ■ REC 3.15.8 R to ■ REC 3.15.9 G provide for notification to the *FCA* where an *RAP* has to cancel an auction in specified circumstances.

Suspension of services

3.15.2
FCA

R

Where, for any reason, an *RIE*:

- (1) suspends trading in any *derivative* (other than an *option* in relation to a *security*), in any type of *security* or in any type of *option* in relation to a *security*; or
- (2) temporarily calls a trading halt in respect of any type of *security* or in any type of *option* in relation to a *security*;

it must immediately give the *FCA* notice of that event, particulars of that *derivative*, type of *security* or type of *option* in relation to a *security*, as the case may be, and the reasons for the action taken.

3.15.2A
FCA

R

When a *UK RIE* suspends trading on a *regulated market* in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of *MiFID*]

3.15.3

R

Where a *UK recognised body* suspends providing *clearing facilitation services* generally in respect of any *derivative* (other than an *option* in

relation to a *security*), type of *security* or type of option in relation to a *security*, it must immediately give the *FCA* notice of that event, particulars of that *derivative*, type of *security* or type of *option* in relation to a *security*, as the case may be, and the reasons for the action taken.

3.15.4
FCA

R

Where a *UK recognised body* suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to any other *person* (other than an *undertaking* in the same *group*), that *UK recognised body* must immediately give the *FCA* notice of that event, particulars of that type of asset and the reasons for the action taken.

3.15.5
FCA

G

Specified investments (other than *securities* or *options* in relation to *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being assets of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

Inability to operate facilities

3.15.6
FCA

R

Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to operate any of its *facilities* within its normal hours of operation, it must immediately give the *FCA* notice of that inability and inform the *FCA*:

- (1) which *facility* it is unable to operate;
- (2) what event or circumstance has caused it to become unable to operate that *facility* within those hours; and
- (3) what action, if any, it is taking or proposes to take to enable it to recommence operating that *facility*.

Extension of hours of operation

3.15.7
FCA

R

Where, because of the occurrence of any event or circumstances, a *UK recognised body* extends its hours of operation, it must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what event or circumstance has caused it to do so;
- (2) the new hours of operation; and
- (3) the date on which it expects to revert to its normal hours of operation.

Recognised auction platforms - cancellation of auctions

3.15.8

FCA

R

Where an *RAP* has to cancel an auction in the circumstances set out in articles 7(5) or 7(6) of the *auction regulation*, it must immediately give the *FCA* notice of that cancellation.

3.15.9

FCA

G

Under article 7(7) of the *auction regulation*, an *RAP* is required to notify the *FCA* of:

- (1) the methodology used to determine the application of article 7(6) of the *auction regulation*; and
- (2) modifications to that methodology made between bidding windows.

3

3.16 Information technology systems

3.16.1
FCA

G

The purpose of ■ REC 3.16 is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the *documents* containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

3.16.2
FCA

R

Where a *UK recognised body* changes any of its plans for action in the event of a failure of any of its information technology systems resulting in disruption to the operation of its *facilities*, it must immediately give the *FCA* notice of that event, and a copy of the new plan.

3.16.3
FCA

R

Where any reserve information technology system of a *UK recognised body* fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its *facilities* during its normal hours of operation, that body must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what action that *UK recognised body* is taking to restore the operation of the reserve information technology system; and
- (2) when it is expected that the operation of that system will be restored.



3.17 Inability to discharge regulatory functions

3.17.1

FCA

R

Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to discharge any *regulatory function*, it must immediately give the *FCA* notice of its inability to discharge that function, and inform the *FCA*:

- (1) what event or circumstance has caused it to become unable to do so;
- (2) which of its *regulatory functions* it is unable to discharge; and
- (3) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that *regulatory function*.



3.18 Membership

3.18.1

FCA

G

- (1) The purpose of ■ REC 3.18 is to enable the *FCA* to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the *FCA* has notice of foreign jurisdictions in which the *members* of *UK recognised bodies* are based. *UK recognised bodies* may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition requirements* or (for *RAPs*) *RAP recognition requirements* continue to be met.
- (2) ■ REC 3.18.2 R focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for an *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. ■ REC 3.18.3 R focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an *RAP*) *RAP recognition requirements* can be met.
- (3) The information required under ■ REC 3.18 is relevant to the *FCA*'s supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the *FCA*'s broader responsibilities concerning integrity of the *UK financial system* and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both ■ REC 3.18.2 R and ■ REC 3.18.3 R, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FCA*.

3.18.2

FCA

R

Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to *membership*, it must immediately give the *FCA* notice of that event, and:

- (1) a description of the type of *person* whom it is admitting to *membership*;
- (2) (in relation to a *UK RIE*) particulars of its reasons for considering that, in admitting that type of *person* to

membership, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) of the Schedule to the *Recognition Requirements Regulations* which applies to it; and

- (3) (in relation to an *RAP*) particulars of its reasons for considering that, in admitting that type of *person to membership*, it is able to continue to satisfy the *RAP recognition requirement* in regulation 20 (*Access to auctions*) which applies to it.

3.18.3

FCA

R

Where a *UK recognised body* admits for the first time a *member* whose head or registered office is in a jurisdiction from which that *UK recognised body* has not previously admitted *members*, it must immediately give the *FCA* notice of that event, and:

- (1) the name of that jurisdiction;
- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to *specified investments* or (for an *RAP*) relating to *emissions auction products*; and
- (3) particulars of its reasons for considering that, in admitting a *member* from that jurisdiction to *membership*, it is able to continue to satisfy the *recognition requirements* or (for an *RAP*) the *RAP recognition requirements* which apply to it.

3.18.4

FCA

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A type of *member* means the description of any group of *members* to whom the same generic description could be applied. For example, the description of any group of *members* separately identified or defined in the rules might constitute a type of *member* for the purposes of this section.



3.19 Investigations

3.19.1

FCA

R

Where a *UK recognised body* becomes aware that a *person* has been appointed by any *regulatory body* (other than the *FCA* or a *UK recognised body*) to investigate:

- (1) any business transacted by means of its *facilities* or
- (2) any aspect of the *clearing facilitation services* which it provides;

it must immediately give the *FCA* notice of that event.

3.19.2

FCA

G

A *UK recognised body* need not give the *FCA* notice of:

- (1) routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of 'theme visits'; or
- (2) routine requests for information; or
- (3) investigations into the conduct of *members* of the *UK recognised body* or of other users of its *facilities* where the use of its *facilities* is a small or incidental part of the subject matter of the investigation.



3.20 Disciplinary action relating to members

3.20.1

FCA

R

Where a *UK recognised body* has taken any disciplinary action against any *member* or any *employee* of a *member*, in respect of a breach of a rule relating to the carrying on by the *UK recognised body* of any of its *regulatory functions*, that body must immediately notify the *FCA* of that event, and give:

- (1) the name of the *person* concerned;
- (2) details of the disciplinary action taken by the *UK recognised body*; and
- (3) the *UK recognised body's* reasons for taking that disciplinary action.

3.20.2

FCA

R

Where an appeal is lodged against any disciplinary action referred to in ■ REC 3.20.1 R, the *UK recognised body* must immediately give the *FCA* notice of that event, and:

- (1) the name of the appellant and the grounds on which the appeal is based, immediately; and
- (2) the outcome of the appeal, when known.

3.21 Criminal offences and civil prohibitions

3.21.1

FCA

R

Where a *UK recognised body* has evidence tending to suggest that any *person* has:

- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or
- (2) been engaged in *market abuse*; or
- (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
- (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (*Insider dealing*); or
- (5) committed a criminal offence under the *Money Laundering Regulations*;

it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of *MiFID*. The rest of Article 26(2), first sentence (in so far as it relates to *market operators* operating an *MTF*) and Article 43(2), first sentence of *MiFID* is implemented by ■ REC 3.25.1 R]



3.22 Restriction of, or instruction to close out, open positions

3.22.1

FCA

R

Where a *UK RIE* decides to:

- (1) restrict the open position on any of the contracts of a *member*; or
- (2) issue instructions to a *member* to close out its positions on any contracts;

that *UK RIE* must immediately give the *FCA* notice of that event, and the *member's* name, the nature and size of any position to be restricted or closed out and the reasons for the *UK RIE's* decision.

3.22.2

FCA

R

Where an *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse*, *financial crime* or anti-competitive behaviour in accordance with article 57 of the *auction regulation*, the *RAP* must give the *FCA* notice of that event and details of the remedial measures proposed.



3.23 Default

3.23.1

FCA

R

Where a *UK RIE* decides to put a *member* into default, it must immediately give notice of that event, and give the following information to the *FCA*, at the same time as that decision is communicated to that *member* or to any other *member* (or group or class of them) of that body:

- (1) the name of the *member* and (where relevant) the class of membership;
- (2) the reasons for that decision; and
- (3) the names of any other exchange, *clearing house* or *auction platform* on which, to the best of that *UK RIE*'s knowledge, that *member* clears business or transacts for, or in respect of, its *clients* .



3.24 Transfers of ownership

3.24.1

FCA

R

When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

(1) give the name of the *person(s)* concerned; and

(2) give details of the transfer.

[Note: Article 38(2)(b) of *MiFID*]

3.24.2

FCA

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The *FCA* may regard a person who falls within any of the cases in section 301(B)(2) of the *Act* as being in a position to exercise significant influence.



3.25 Significant breaches of rules and disorderly trading conditions

3.25.1

FCA

R

A UK RIE and an RAP must immediately notify the FCA of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets or auctions.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of *MiFID*. The rest of Article 26(2), first sentence (in so far as it relates to *market operators* operating an *MTF*) and Article 43(2), first sentence of *MiFID* is implemented by ■ REC 3.21.1 R (2)]



3.26 Proposals to make regulatory provision

Statutory power

3.26.1
FCA

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Under section 300B(1) of the *Act* (Duty to notify proposal to make regulatory provision), a *UK RIE* that proposes to make any *regulatory provision* must give written notice of the proposal to the *FCA* without delay.

3.26.2
FCA

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Under section 300B(2) of the *Act*, the *FCA* may, by rules under section 293 (Notification requirements):

- (1) specify descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or
- (2) provide that the duty applies only to specified descriptions of *regulatory provision* or in specified circumstances.

3.26.3
FCA

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Under section 300B(3) of the *Act*, the *FCA* may also by rules under section 293:

- (1) make provision as to the form and contents of the notice required, and
- (2) require the *UK recognised body* to provide such information relating to the proposal as may be specified in the rules or as the *FCA* may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

3.26.4
FCA

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The duty in section 300B(1) of the *Act* does not apply to any of the following:

- (1) any *regulatory provision* which is required under *EU law* or any enactment or rule of law in the *United Kingdom*; or
- (2) (a) the specification of the standard terms of any *derivative* which a *UK RIE* proposes to *admission to trading*, or the amendment of the standard terms of any *derivative* already *admitted to trading*; or
- (b) the specification or any amendment of standard terms relating to the provision of *clearing facilitation services* for any *derivative*; or

- (c) the specification or any amendment of operating procedures which are reasonably consequential on any *regulatory provision* falling within (a) or (b); or
- (3) any *regulatory provision* which is expressed to have effect for no longer than three months which is made by a *UK recognised body* in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or
- (4) any *regulatory provision* which does not impose a requirement (including any obligation or burden) on *persons* affected (directly or indirectly) by it; or
- (5) any other *regulatory provision* which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other *regulatory provision* not otherwise the subject of a notice under section 300B(1) of the *Act*):
 - (a) materially increases disclosure, reporting or corporate governance requirements imposed on any *person* (whether directly or indirectly); or
 - (b) imposes a material limitation affecting any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of *financial instruments* which may be *listed* or the subject of *admission to trading* on the *facilities* operated by the *UK RIE* proposing to make the *regulatory provision*; or
 - (c) materially limits access to, or use by, any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the *facilities* operated by the *UK recognised body* proposing to make the *regulatory provision* or
 - (d) materially adds to the circumstances in which any *person* (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

Notice to the FCA

3.26.5

FCA

R

A notice under section 300B(1) of the *Act* of a proposal to make a *regulatory provision* must be in writing and state expressly that it is a notice for the purpose of that section. To be effective, a notice must:

- (1) contain full particulars of the proposal to make a *regulatory provision* which is the subject of that notice; and
- (2) either be accompanied by sufficient supporting information to enable the *FCA* to assess the purpose and effect of the proposed

regulatory provision or refer to such information in circumstances where such information has already been provided to the *FCA*.

3.26.6

FCA

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In determining whether a *UK RIE* has provided sufficient supporting information, the *FCA* may have regard to the extent to which the information includes:

- (1) clearly expressed reasons for the proposed *regulatory provision*; and
- (2) an appropriately detailed assessment of the likely costs and benefits of the proposed *regulatory provision*.

3.26.7

FCA

R

A *UK RIE* must provide such additional information in connection with a notice under section 300B(1) of the *Act* as the *FCA* may reasonably require.

3.26.8

FCA

G

Where a *UK RIE* wishes to give notice to the *FCA* for the purposes of section 300B(1) of the *Act*, it should in the first instance inform its usual supervisory contact at the *FCA*.

3.26.9

FCA

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The *FCA* expects that an advanced draft of any consultation document a *UK RIE* intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in ■ **REC 3.26.5 R** .

Chapter 4

Supervision

4.1 Application and purpose

Application

4.1.1
FCA

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■ REC 4.2 to ■ REC 4.2E, ■ REC 4.3, ■ REC 4.5 and ■ REC 4.6A apply to *UK recognised bodies*. ■ REC 4.2F to ■ REC 4.2G, ■ REC 4.4 and ■ REC 4.6 to ■ REC 4.8 apply to all *recognised bodies*. ■ REC 4.8 applies to applicants for recognition as a *recognised body*.

Purpose

4.1.2
FCA

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This chapter sets out the *FCA's* approach to the supervision of *recognised bodies* and contains *guidance* on:

- (1) the arrangements for investigating complaints about *recognised bodies* made under section 299 of the *Act* (Complaints about recognised bodies) (■ REC 4.4);
- (2) the *FCA's* approach to the exercise of its powers under:
 - (a) (for *RIEs*) section 296 of the *Act* (Appropriate regulator's power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations* to give directions to *recognised bodies* (■ REC 4.6);
 - (b) (for *RIEs*) section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations* to revoke *recognition orders* (■ REC 4.7);

and the procedure to be followed in those cases and where the *FCA* decides to refuse an application for recognition as a *recognised body* (■ REC 4.8); and

- (3) the *FCA's* approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the Companies Act 1989 to give directions to *UK RIEs* in relation to action under their *default rules* (■ REC 4.5).

4.1.3
FCA

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The *FCA's* general approach to supervision is intended to ensure that:

- (1) the *FCA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognised body requirements*; and
- (2) the *FCA's* supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the *regulatory objectives*.

4.1.4

FCA

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In applying these principles of risk based supervision to the supervision of *recognised bodies*, the FCA has had particular regard to the special position of *recognised bodies* under the *Act* as well as to its general duties set out in section 2 of the *Act* (The FCA's general duties).

4.1.5

FCA

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More information on the supervision of *UK recognised bodies* is given in ■ REC 4.2 and ■ REC 4.3. More information on the supervision of *overseas recognised bodies* is given in ■ REC 6.

4.2 The supervisory relationship with UK recognised bodies

4.2.1

FCA

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The *FCA* expects to have an open, cooperative and constructive relationship with *UK recognised bodies* to enable it to have a broad picture of the *UK recognised body's* activities and its ability to meet the *recognised body requirements*. This broad picture is intended to complement the information which the *FCA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see ■ REC 3). The *FCA* will usually arrange meetings between the Markets Division and *key individuals* of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.

4.2.2

FCA

G

UK recognised bodies are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognised body requirements*.

4.2.3

FCA

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The *FCA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognised body requirements* when considering any changes to its business or operations.

4.2.4

FCA

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However, the *FCA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with their plans and operational initiatives, and will provide it with appropriate assurance that the *recognised body requirements* will continue to be satisfied.



4.2A Publication of information by UK RIEs and RAPs

4.2A.1
FCA

G

Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP* , whether directly or indirectly, as the *FCA* may reasonably require.

4.2A.2
FCA

G

Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE* which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FCA* may reasonably require.

4.2A.3
FCA

G

Under subsection 292A(5) of the *Act*, a *UK RIE* must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it as the *FCA* may reasonably require.

 4.2B Exercise of passport rights by a UK RIE

4.2B.1

FCA

G

Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market, multilateral trading facility or auction platform* operated by it, it must give the *FCA* written notice of its intention to do so. The notice must:

- (1) describe the arrangements; and
- (2) identify the *EEA State* in which the *UK RIE* intends to make them.

4.2B.2

FCA

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The *FCA* must, within one month of receiving the *UK RIE*'s notice, send a copy of it to the *Host State regulator*.

4.2B.3

FCA

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The *UK RIE* may not make the arrangements until the *FCA* has sent a copy of the notice to the *Host State regulator*.

4.2B.4

FCA

G

The requirements that a *UK RIE* must give the *FCA* written notice and the *UK RIE* may not make the arrangements until the *FCA* has sent a copy of it to the *Host State regulator* do not apply to arrangements made by a *UK RIE* on or before 31 October 2007.

4.2C Control over a UK RIE

- 4.2C.1**
FCA **G** Section 301A(1) of chapter 1A of Part XVIII of the *Act* places an obligation on a *person* who decides to acquire or increase control (see sections 301D and 301E of the *Act*) over a *UK RIE* to notify the *FCA*, before making the acquisition . Furthermore, those *persons* are required to obtain the *FCA*'s approval before acquiring control or increasing the level of control held.
- 4.2C.2**
FCA **G** The *FCA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*). The reference to any financial market is to be read as including a reference to any *auction platform* as a result of the *RAP regulations*.
- 4.2C.3**
FCA **G** If a proposed acquirer has complied with the obligation to notify, the procedure the *FCA* will follow if it approves or does not approve of that *person* acquiring or increasing control is set out in sections 301F and 301G of the *Act*.
- 4.2C.4** **G** [deleted]
- 4.2C.5** **G** [deleted]
- 4.2C.6**
FCA **G** The *FCA*'s internal arrangements provide for any decisions to refuse to approve an acquisition or object to an existing control to be taken at an appropriately senior level.
- 4.2C.7**
FCA **G** If the *FCA* refuses to approve an acquisition or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see ■ EG 2.39).
- 4.2C.8**
FCA **G** The powers the *FCA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FCA*'s refusal to approve the acquisition of control or the *FCA*'s objection to the exercise of control are set out in sections 301J and 301K of the *Act*.
- 4.2C.9**
FCA **G** The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section 301L of the *Act*.

4.2D Suspension and removal of financial instruments from trading

4.2D.1

FCA

G

- (1) Under section 313A of the *Act*, the *FCA* may for the purpose of protecting:
- (a) the interests of investors; or
 - (b) the orderly functioning of the financial markets;
- require a *UK RIE* to suspend or remove a *financial instrument* from trading.
- (2) If the *FCA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.

4.2D.2

FCA

G

The procedure the *FCA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in sections 313B to 313BE of the *Act*. The *FCA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FCA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal* (see ■ EG 2.39).

4.2D.3

FCA

G

Under section 313C(1) of the *Act*, if the *FCA* exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading, it must as soon as reasonably practicable:

- (1) publish its decision in such manner as it considers appropriate, unless the decision has already been published under section 313B(2)(b) of the *Act*; and
- (2) inform *ESMA* and the competent authorities of all other *EEA States* of its decision.

4.2D.4

FCA

G

Under section 313C(2) of the *Act*, if the *FCA* receives notice from a *UK RIE* that the *UK RIE* has suspended or removed a *financial instrument* from trading on a *regulated market* operated by it, the *FCA* must inform the competent authorities of all other *EEA States* of the action taken by the *UK RIE*.

4.2D.5

FCA

G

Under sections 313C(3) and (4) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the suspension of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to suspend the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.

4.2D.6

FCA

G

Under sections 313C(3) and (5) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the removal of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to remove the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.



4.2E Information: compliance of UK recognised bodies with EU requirements

4.2E.1

FCA

G

Under section 293A of the *Act*, the *FCA* may require a *UK recognised body* to give such information as it reasonably requires in order to satisfy itself that the *UK recognised body* is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the *Act* by the Treasury.

4.2F Information gathering power on FCA's own initiative

4.2F.1

FCA

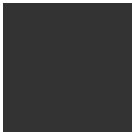
G

- (1) While the *FCA* will seek to obtain information from an *RIE* in the context of an open, cooperative and constructive relationship with the *RIE*, where it appears to the *FCA* that obtaining information in that context will not achieve the necessary results, the *FCA* or (as the case may be) its officers may, under section 165(7) of the *Act*, by notice in writing, require any of the following persons to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require:
 - (a) the *RIE*; or
 - (b) a person who is connected with the *RIE*.
- (2) Under section 165(11) of the *Act*, a person is connected with a *recognised body* if he is or has at any relevant time been:
 - (a) a member of the *RIE*'s group; or
 - (b) a controller of the *RIE*; or
 - (c) any other member of a partnership of which the *RIE* is a member; or
 - (d) a person mentioned in Part I of Schedule 15 of the *Act* (reading references in that Part to the 'authorised person' as references to the *RIE*).

4.2G.1

FCA

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- ### 4.2G Reports by skilled persons
- (1) Where the *FCA* exercises its power conferred by section 166(1) of the *Act* (Reports by skilled persons), ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R (to the extent they relate to the *FCA*'s powers under section 166 of the *Act*) apply to a *RIE* in the same way as they apply to a *firm*.
 - (2) The guidance in ■ SUP 5 which relates to the *FCA*'s power in section 166 of the *Act* also applies to a *RIE* in the same way as it applies to a *firm*.



4.3 Risk assessments for UK recognised bodies

4.3.1

FCA**G**

Information is needed to support the *FCA's* risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the *regulatory objectives* and the *FCA's* general duties under the *Act*. The central element of the process of risk based supervision is a systematic assessment by the *FCA* (a risk assessment) of the main supervisory risks and concerns for each regulated entity.

4.3.2

FCA**G**

For each *UK recognised body*, the *FCA* will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of *recognised bodies* under the *Act*, the nature of the *UK recognised body's members*, the position of other users of its *facilities* and the business environment more generally.

4.3.3

FCA**G**

The risk assessment will guide the *FCA's* supervisory focus. It is important, therefore, that there is good dialogue between the *FCA* and the *recognised body*. The *FCA* expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with *key individuals* of the *UK recognised body*. If appropriate, the *FCA* may send a detailed letter to the body's *chief executive*, chairman or both with proposals for further action or work to address particular concerns or issues and seek their comments on the risk assessment.

4.4 Complaints

Recognised body's arrangements

4.4.1

FCA

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Recognised bodies may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see ■ REC 2.15 and ■ REC 2.16) or *RAP recognition requirements* (see ■ REC 2A.3.2 G).

The FCA's arrangements

4.4.2

FCA

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The *Act* does not provide a mechanism for appeals to the *FCA* from decisions by *recognised bodies* in relation to complaints. However, the *FCA* is required by section 299 of the *Act* (Complaints about recognised bodies) to have arrangements to investigate complaints (called *relevant complaints* in the *Act*) which it considers relevant to the question of whether a *recognised body* should remain recognised as such. This section describes aspects of the *FCA's* arrangements for investigating *relevant complaints*.

4.4.3

FCA

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Where the *FCA* receives a complaint about a *recognised body*, it will, in the first instance, seek to establish whether the complainant has approached the *recognised body*. Where this is not the case, the *FCA* will ask the complainant to complain to the *recognised body*. Where the complainant is dissatisfied with the handling of the complaint, but has not exhausted the *recognised body's* own internal complaints procedures (in the case of a complaint against a *UK recognised body*, including by applying to that body's *complaints investigator*), the *FCA* will encourage the complainant to do so.

4.4.4

FCA

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The *FCA* will not usually consider a complaint which has not, in the first instance, been made to the *recognised body* concerned, unless there is good reason for believing that it is a *relevant complaint* which merits early consideration by the *FCA*.

4.4.5

FCA

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When it is considering a *relevant complaint*, the *FCA* will make its own enquiries as appropriate with the *recognised body*, the complainant and other *persons*. It will usually ask the *recognised body* and the complainant to comment upon any preliminary or draft conclusions of its review and to confirm any matters of fact at that stage.

4.4.6

FCA

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The *FCA* will communicate the outcome of its review of a *relevant complaint* to the complainant and the *recognised body*, but will normally only discuss any action which it considers the *recognised body* should take with the *recognised body* itself.

4.5 FCA supervision of action by UK RIEs under their default rules

4.5.1

FCA

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UK RIEs which, under their *rules*, have *market contracts* are required to have *default rules* enabling them (among other things) to take action in relation to a *member* who appears to be unable to meet his obligations in respect of one or more unsettled *market contracts*. The detailed *recognition requirements* relating to the *default rules* are set out in ■ REC 2.17.

4.5.2

FCA

G

The *default rules* are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled *market contract* are discharged, and for there to be paid between the defaulter and each counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.

4.5.3

FCA

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The Companies Act 1989 also gives the FCA powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the appropriate regulator to give directions) (see ■ REC 4.5.4 G), the FCA may direct a UK RIE to take, or not to take, action under its *default rules*. Before exercising these powers the FCA must consult the UK RIE. The FCA may also exercise these powers if a *relevant office-holder* applies to it under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken) (see ■ REC 4.5.9 G).

4.5.4

FCA

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Table The Companies Act 1989: section 166

The FCA may issue a "positive" direction (to take action) under section 166(2)(a) of the Companies Act 1989:

Where in any case a [UK RIE] has not taken action under its *default rules*- if it appears to [the FCA] that it could take action, [the FCA] may direct it to do so,

but under section 166(3)(a) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and [the FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

The FCA may issue a "negative" direction (not to take action) under section 166(2)(b) of the Companies Act 1989:

Where in any case a [UK RIE] has not taken action under its *default rules* - if it appears to the [FCA] that it is proposing to take or may take action, [the FCA] may direct it not to do so.

but under section 166(3)(b) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and the [FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

4.5.5
FCA

G Other than in exceptional circumstances, the *FCA* will consult with the Bank of England before exercising these powers.

4.5.6
FCA

G Under section 166(6) of the Companies Act 1989, a negative direction cannot be given if, in relation to the defaulter, either:

- (1) a bankruptcy order or an award of sequestration of the defaulter's estate has been made, or an interim receiver or interim trustee has been appointed; or
- (2) a winding-up order has been made, a resolution for voluntary winding-up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

and any previous negative direction will cease to have effect on the making or passing of any such order, award or appointment.

4.5.7
FCA

G Under section 166(5) of the Companies Act 1989, a negative direction may be expressed to have effect until a further direction is given, which may either be a positive direction or a revocation of the earlier negative direction.

4.5.8
FCA

G Under section 166(7) of the Companies Act 1989, where a *UK RIE* has taken action either of its own accord or in response to a direction, the *FCA* may direct it to do or not to do specific things subject to these being within the powers of the *UK RIE* under its *default rules*. However,

- (1) where the *UK RIE* is acting in accordance with a direction given by the *FCA* to take action under section 166(2)(a) of the *Act* on the basis that failure to take action would involve undue risk to investors or other participants in the market, the *FCA* will not direct it to do or not to do specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings; and
- (2) where the *UK RIE* has taken action under its *default rules* without being directed to do so, the *FCA* will not direct it to do or not to do specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that:

- (a) the direction will not impede or frustrate the proper and efficient conduct of the default proceedings; or
- (b) the direction is necessary:
 - (i) having regard to the public interest in the stability of the *UK financial system*;
 - (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime); or
 - (iii) in connection with a particular exercise of a power under Part 1 of the Banking Act 2009.

Section 167 of the Companies Act 1989

4.5.9

FCA

G

Where, in relation to a *member* (or *designated non-member*) of a *UK RIE* :

- (1) a bankruptcy order; or
- (2) an award of sequestration of his estate; or
- (3) an order appointing an interim receiver of his property; or
- (4) an administration or winding-up order; or
- (5) a resolution for a voluntary winding-up; or
- (6) an order appointing a provisional liquidator;

has been made or passed and the *UK RIE* has not taken action under its *default rules* as a result of this event or of the matters giving rise to it, a *relevant office-holder* appointed in connection with the order, award or resolution may make an application to the *FCA* under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

4.5.10

FCA

G

The effect of an application under section 167 of the Companies Act 1989 is to require the *UK recognised body* concerned to take action under its *default rules* or to require the *FCA* to take action under section 166 of the Companies Act 1989 (see REC 4.5.4G).

4.5.11

FCA

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The procedure is that the *FCA* must notify the *UK recognised body* of the application and, unless within three *business days* after receipt of that notice, the *UK recognised body*:

- (1) takes action under its *default rules*; or
- (2) notifies the *FCA* that it proposes to take action forthwith; or
- (3) is directed to take action by the *FCA* under section 166(2)(a) of the Companies Act 1989;

the provisions of sections 158 to 165 of the Companies Act 1989 do not apply in relation to *market contracts* to which the *member* or *designated non-member* is a party or to anything done by the *UK recognised body* for the purpose of, or in connection with, the settlement of any *market contracts*.

4.6 The section 296 power to give directions

4.6.1

FCA

G

Under section 296 of the *Act* (FCA's power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FCA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognised body requirements*. In the case of a *UK RIE* (including one which operates an *RAP*) those steps may include granting the *FCA* access to the *UK RIE's* premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction .

4.6.2

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[deleted]

4.6.3

FCA

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The *FCA* is likely to exercise its power under section 296 of the *Act* or regulation 3 of the *RAP regulations* if it considers that:

- (1) there has been, or was likely to be, a failure to satisfy one or more of the *recognised body requirements* which has serious consequences;
- (2) compliance with the direction would ensure that one or more of the *recognised body requirements* is satisfied; and
- (3) the *recognised body* is capable of complying with the direction.

4.6.4

FCA

G

Under section 298(7) of the *Act* (Directions and revocation: procedure), and (for *RAPs*) regulation 5(7) of the *RAP regulations*, the *FCA* need not follow the consultation procedure set out in the rest of section 298 (see ■ REC 4.8) or may cut short that procedure, if it considers it reasonably necessary to do so. For *RAPs*, the *FCA* need not follow the procedure set out in regulation 5 of the *RAP regulations* or may cut short the procedure, if it considers it essential to do so.

4.6A The section 192C power to direct qualifying parent undertakings

4.6A.1

FCA

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- (1) Under section 192C of the *Act* (Power to direct qualifying parent undertaking), the *FCA* has the power to give a direction to the qualifying parent undertaking of a *UK RIE* if the general condition is satisfied.
- (2) For the purposes of section 192C of the *Act*, a parent undertaking of a *UK RIE* is a 'qualifying parent undertaking' if:
 - (a) the parent undertaking is a body corporate which is incorporated in the United Kingdom, or has a place of business in the United Kingdom;
 - (b) the parent undertaking is not itself an *authorised person*, a *RIE* or a *RCH*; and
 - (c) the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (3) For the purposes of section 192C of the *Act*, the general condition is that the *FCA* considers that it is desirable to give the direction in order to advance one of more of its operational objectives.
- (4) In exercising or deciding whether to exercise its power under section 192(c) of the *Act*, the *FCA* will have regard to any statement of policy published under this section and for the time being in force.

[Note:1. Treasury has issued a draft order for consultation prescribing the types of financial institutions which are qualifying parent undertakings. See the draft *Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201**, as published in the Treasury consultation paper titled 'A new approach to financial regulation: draft secondary legislation': http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf.

2. The *FCA* has issued a draft statement of policy for consultation with respect to the giving of directions under section 192C. See *Chapter 5 and Appendix 7 of CP 12/34*: [web address tbc]

4.7 The section 297 power to revoke recognition

4.7.1

FCA

G

Under section 297 of the *Act* (Revoking recognition) and (for *RAPs*) under regulation 4 of the *RAP regulations*, the *FCA* has the power to revoke a *recognition order* relating to a *recognised body*.

4.7.2

FCA

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The *FCA* will revoke a *recognition order* if:

- (1) [deleted]
- (2) the *recognised body* has asked the *FCA* to revoke the order.

4.7.2A

FCA

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Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also an *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as an *RAP*.

4.7.3

FCA

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The *FCA* will usually consider revoking a *recognition order* if:

- (1) the *recognised body* is failing or has failed to satisfy one or more of the *recognised body requirements* and that failure has or will have serious consequences; or
- (2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FCA*'s power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (3) for some other reason, it would not be appropriate for the *FCA* to give a direction under section 296 or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange during the 12 *months* beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six *months* ending with the day the *recognition order* is revoked ; or
- (5) in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an *auction platform* at

any time during the period of six *months* ending with the day the *RAP recognition order* is revoked.

4.7.4

FCA

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The *FCA* would be likely to consider the conditions in ■ REC 4.7.3 G (2) or ■ REC 4.7.3 G (3) to be triggered in the following circumstances:

- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy one or more of the *recognised body requirements*; or
- (2) the *recognised body* does not appear to be willing to satisfy one or more of the *recognised body requirements*; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies one or more of the *recognised body requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

4.7.5

FCA

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In addition to the relevant factors set out in ■ REC 4.7.4 G, the *FCA* will usually consider that it would not be able to secure an *ROIE*'s compliance with the *recognition requirements* or other obligations in or under the *Act* by means of a direction under section 296 of the *Act*, if it appears to the *FCA* that the *ROIE* is prevented by any change in the legal framework or supervisory arrangements to which it is subject in its *home territory* from complying with the *recognition requirements* or other obligations in or under the *Act*.

4.8 The section 298 procedure

4.8.1

FCA

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A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations*; or
- (2) make a direction under section 296 (*FCA's* powers to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for *RAPs*) regulation 2 of the *RAP regulations* ;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) and (for *RAPs*) regulation 5 of the *RAP regulations* set out procedures (see ■ REC 4.8.9 G) which the *FCA* will follow unless, in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1) or regulation 4(1) of the *RAP regulations*) or :

- (a) in case where the *FCA* proposes to make a direction under section 296 it considers it is reasonably necessary not to follow, or to cut short, the procedure (see ■ REC 4.8.7 G); or
- (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *Rap regulations*, it considers it is essential not to follow, or to cut, short, the procedure.

4.8.2

FCA

G

The *FCA's* internal arrangements provide for any of these decisions to be taken at an appropriately senior level.

4.8.3

FCA

G

In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will have regard to all relevant information and factors including:

- (1) its *guidance to recognised bodies*;
- (2) the results of its routine supervision of the body concerned;
- (3) the extent to which the failure or likely failure to satisfy one or more of the *recognised body requirements* may affect the *statutory objectives*.

4.8.4
FCA

G

In considering whether or not to make a *recognition order*, the *FCA* will have regard to all relevant information and factors, including its *guidance to recognised bodies* and applicants and the information provided by applicants. Details of the application processes and other *guidance* for applicants are set out in ■ REC 5 and (for overseas applications) ■ REC 6.

4.8.5
FCA

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The procedures laid down in section 298 of the *Act* and (for *RAPs*) regulation 5 of the *RAP regulations* are summarised, with the *FCA*'s *guidance* about the actions it proposes to take in following these procedures, in the tables at ■ REC 4.8.9 G and ■ REC 4.8.10 G respectively .

4.8.6
FCA

G

Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will usually discuss its intention, and the basis for this, with the *key individuals* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

4.8.7

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[deleted]

4.8.8

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[deleted]

4.8.9
FCA

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Table Key steps in the section 298 procedure

The <i>FCA</i> will:	<i>Guidance</i>
(1) give written notice to the <i>RIE</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the period within which representations should be made (unless subsequently extended by the <i>FCA</i>).
(2) receive representations from the <i>RIE</i> or applicant concerned;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>RIE</i> (or applicant). It will normally only hear oral representations from the <i>RIE</i> on request.
(3) write promptly to <i>RIE</i> (or applicant) who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>RIE</i> (or applicant) further time to respond.
(4) have regard to representations made;	
(5) (when it has reached its decision) notify the <i>RIE</i> (or applicant) concerned in writing.	

4.8.10

FCA

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For RAPs, key steps in the regulation 5 procedure

	The FCA will:	Guidance
(1)	give written notice to the <i>RAP</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.
(2)	take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be;	The <i>FCA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other <i>persons</i> of the same class.
(3)	publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;	
(4)	receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.
(5)	write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond.
(6)	have regard to representations made;	
(7)	(when it has reached its decision) notify the <i>RAP</i> (or applicant) concerned in writing;	
(8)	(if it has decided to give a direction, or revoke or refuse to make a <i>recognition order</i>) take such steps as it considers reasonably practicable to bring its decision to the attention of <i>members</i> of the <i>RAP</i> or applicant and to other <i>persons</i> likely to be affected.	The <i>FCA</i> will usually give notice of its decision to the same <i>persons</i> and in the same manner as it gave notice of its intention to act.

4.9 Disciplinary measures

4.9.1

FCA

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- (1) Under sections 312E and 312F of the *Act*, if the *FCA* considers that a *recognised body* has contravened a requirement imposed by the *FCA* under any provision of the *Act* that relates to a *RIE*, or under any provision of the *Act* whose contravention constitutes an offence the *FCA* has power to prosecute, or by a qualifying EU provision specified by the Treasury, it may:
 - (a) publish a statement to that effect; or
 - (b) impose on the body a financial penalty of such amount as it considers appropriate.
- (2) The procedures and policies which the *FCA* will follow if it proposes to publish a statement under section 312E or to impose a penalty under section 312F, and if it decides to publish such statement or impose such penalty, are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power to impose a penalty under section 312F of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[**Note:**The *FCA* has issued a statement of policy for consultation with respect to the exercise of its powers under section 312F of the *Act*.]

4.9.2

FCA

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- (1) Under section 192K of the *Act*, if the *FCA* considers that a qualifying parent undertaking of a *UK RIE* has contravened a requirement of a direction given by the *FCA* under section 192C of the *Act*, or a provision of rules made by the *FCA* under section 192J of the *Act*, it may:
 - (a) impose a penalty of such amount as it considers appropriate on the qualifying parent undertaking of the *UK RIE*, or any person who was knowingly concerned in the contravention; or
 - (b) publish a statement censuring the person.
- (2) The procedures which the *FCA* will follow if it proposes to take action, and if it decides to take action against a *person*, under section 192K are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power under section 192K of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[Note: The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 192K of the Act.]

Chapter 5

Applications for Recognition (UK recognised bodies)



5.1 Introduction and legal background

5.1.1

FCA

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A *body corporate* or an unincorporated association may apply to the FCA for recognition as a *UK recognised body* under sections 287 (Application by an investment exchange) or 288 (Application by a clearing house) of the *Act*.

5.1.1A

FCA

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A *UK RIE* may apply to the FCA for recognition as an *RAP* under regulation 2 of the *RAP regulations*.

5.1.2

FCA

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This chapter sets out *guidance* for *UK* applicants and for *UK* entities which are considering making an application. *Guidance* for applicants and prospective applicants for *ROIE* status is given in ■ REC 6.

5.1.3

[Deleted]

5.1.4

[Deleted]

5.1.5

[Deleted]

5.1.6

[Deleted]

5.1.7

[Deleted]



5.2 Application process

5.2.1

FCA

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An applicant for *recognised body* status needs to demonstrate to the *FCA* that it is able to meet the *recognised body requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognised body requirements* at all times. (*Guidance on the recognised body requirements* applicable to *UK recognised bodies* (and applicants) is given in ■ REC 2 and ■ REC 2A).

5.2.1A

FCA

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In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the *FCA* must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* if it appears to the *FCA* that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of *clearing facilitation services* imposes, or will impose, an excessive requirement (as defined in section 300A of the *Act*) on *persons* directly or indirectly affected by it.

5.2.2

FCA

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- (1) There is no standard application form. A prospective applicant should contact the Markets Division at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of its application.
- (2) It is very important, if an application is to be processed smoothly and in a reasonable time, that it is comprehensively prepared and based on a well-developed and clear proposal.

5.2.3

FCA

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An application should:

- (1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
- (2) in the case of an application under section 287 of the *Act*, be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see ■ REC 5.2.3A G) (the material specifically prescribed in section 287 or section 288);
- (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FCA* that the *recognised body requirements* will be met; and
- (4) be accompanied by the appropriate fee (see ■ REC 7).

<p>5.2.3A FCA</p>	<p>G</p>	<p>The information required pursuant to sub-sections 287(c), (d) and (e) of the <i>Act</i> is:</p> <ol style="list-style-type: none"> (1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure; (2) particulars of the persons who effectively direct the business and operations of the exchange; and (3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.
<p>5.2.4 FCA</p>	<p>G</p>	<p>Other information and documentation which should normally accompany an application is listed in more detail in ■ REC 5.2.14 G.</p>
<p>5.2.5 FCA</p>	<p>G</p>	<p>A prospective applicant who is an <i>authorised person</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as an <i>authorised person</i> can be used to support an application to become a <i>UK recognised body</i>.</p>
<p>5.2.5A FCA</p>	<p>G</p>	<p>A <i>UK RIE</i> applying for recognition as an <i>RAP</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as a <i>UK RIE</i> can be used to support an application to be recognised as an <i>RAP</i>.</p>
<p>5.2.6 FCA</p>	<p>G</p>	<p>Under section 289 of the <i>Act</i> (Applications: supplementary) or (for an <i>RAP</i> applicant) regulation 2 of the <i>RAP regulations</i>, the <i>FCA</i> may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the <i>FCA</i> will normally wish to arrange for its own inspection of an applicant's information technology systems.</p>
<p>5.2.6A FCA</p>	<p>G</p>	<p>In the case of an application to become a <i>UK RIE</i> or an <i>RAP</i>, under subsection 290(1B) of the <i>Act</i> and (for an <i>RAP</i> applicant) regulation 2(8) of the <i>RAP regulations</i>, the application must be determined by the <i>FCA</i> before the end of the period of six <i>months</i> beginning with the date on which it receives the completed application.</p>
<p>5.2.7 FCA</p>	<p>G</p>	<p>At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the <i>FCA</i>.</p>
<p>5.2.8 FCA</p>	<p>G</p>	<ol style="list-style-type: none"> (1) The <i>FCA</i> will keep the applicant informed of the progress of the application. (2) It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The <i>FCA</i> may wish to discuss various aspects of the application and may invite the applicant to attend one or more meetings for that purpose. When requested to do so, the <i>FCA</i> will explain the nature of the information which it has asked an applicant to supply in connection with its application.

5.2.9	G	(1) [deleted]
		(2) [deleted]
5.2.10	G	[deleted]
5.2.11	G	[deleted]
5.2.12	G	Where the <i>FCA</i> considers that it is unlikely to make a <i>recognition order</i> it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see ■ REC 5.2.7 G). If the <i>FCA</i> decides that it will not make a <i>recognition order</i> , it will follow the procedure set out in section 298 of the <i>Act</i> (Directions and revocation: procedure) or (in the case of an <i>RAP</i>) regulation 5 of the <i>RAP regulations</i> and described in more detail in ■ REC 4.8.
FCA		
5.2.13	G	[deleted]
5.2.14	G	Table Information and supporting documentation (see ■ REC 5.2.4 G).
FCA		
		<ol style="list-style-type: none"> (1) Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i>) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i>. (2) Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> (if not contained in the information listed in REC 5.2.3A G). (3) Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for an <i>RAP</i>) <i>auction platform</i>, settlement arrangements, <i>clearing facilitation services</i> and <i>custody services</i> which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate. (4) Copies of the last three annual reports and accounts and, for the current financial year, quarterly <i>management accounts</i>. (5) Details of its business plan for the first three years of operation as a <i>UK recognised body</i> (if not contained in the information listed in REC 5.2.3A G). (6) A full organisation chart and a list of the posts to be held by <i>key individuals</i> (with details of the duties and responsibilities) and the names of the <i>persons</i> proposed for these appointments when these names are available (if not contained in the information listed in REC 5.2.3A G). (7) Details of its auditors, bankers, solicitors and any <i>persons</i> providing corporate finance advice or similar services (such as reporting accountants) to the applicant. (8) Details of any <i>relevant functions</i> to be outsourced or delegated, with copies of relevant agreements. (9) Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.

- (10) Details of all plans to minimise disruption to operation of its *facilities* in the event of the failure of its information technology systems.
- (11) Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.
- (12) Details of its arrangements for managing any counterparty risks .
- (13) Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.
- (14) Details of arrangements for complying with the *notification rules* and other requirements to supply information to the *FCA*.
- (15) Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.
- (16) A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including *default rules*) and the results and conclusions reached.
- (17) Details of the procedures to be followed for declaring a *member* in default, and for taking action after that event to close out positions, protect the interests of other *members* and enforce its *default rules*.
- (18) Details of membership selection criteria, rules and procedures , including (for an *RAP*) details of how the rules of the *UK RIE* will change in order to reflect *RAP* status.
- (19) Details of arrangements for recording transactions effected by, or cleared through, its *facilities*.
- (20) Details of arrangements for detecting *financial crime* and *market abuse* , including arrangements for complying with *money laundering law*.
- (21) Details of criteria, rules and arrangements for selecting *specified investments* to be admitted to trading on (or cleared by) an *RIE* and, where relevant, details of how information regarding *specified investments* will be disseminated to users of its *facilities*.
- (22) Details of arrangements for cooperating with the *FCA* and other appropriate authorities, including draft memoranda of understanding or letters.
- (23) Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes.
- (24) Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.

Chapter 6

Overseas Investment Exchanges

6.1 Introduction and legal background

6.1.1

FCA

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The Act prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

- (1) obtain a *Part 4A permission* from the *FCA*;
- (2) (in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or
- (3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under Articles 31(5) and 31(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or Article 42(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or
- (4) obtain *exempt person* status by being declared by the *FCA* to be an *ROIE*.

6.1.2

FCA

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Having the status of an *ROIE* facilitates the participation of *overseas investment exchanges* in *UK markets*. In comparison with *Overseas Investment Exchanges* and *Overseas Clearing Houses* with *authorisation*, it reduces the involvement which *UK authorities* need to have in the day-to-day affairs of an *overseas recognised body* because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.

6.2 Applications

6.2.1

FCA

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- (1) *Overseas investment exchanges* which are considering whether to seek *authorisation* or recognition should first consider whether they will be carrying on *regulated activities* in the *United Kingdom*. *Overseas investment exchanges* which do not carry on *regulated activities* in the *United Kingdom* need take no action.
- (2) Prospective applicants should discuss *authorisation* and recognition with the *FCA* before deciding whether to seek *authorisation* or recognition.

6.2.2

FCA

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A prospective applicant may wish to contact the Markets Division at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.

6.2.3

FCA

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Applicants for *authorised person* status should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation> . Applications for recognition as an *overseas recognised body* should be addressed to:

The Financial Conduct Authority (Markets Division)

25 The North Colonnade

Canary Wharf

London E14 5HS

6.2.4

FCA

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There is no standard application form for application for recognition as an *ROIE*. An application should be made in accordance with any direction the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* and should include:

- (1) the information, evidence and explanatory material necessary to demonstrate to the *FCA* that the *recognition requirements* (set out in ■ REC 6.3) will be met;
- (2) the application fee (see ■ REC 7);
- (3) the address of the applicant's head office in its *home territory*;
- (4) the address of a place in the *United Kingdom* for the service on the applicant of notices or other *documents* required or authorised to be served on it under the *Act* (see section 292(1));

- (5) the applicant's *regulatory provisions*;
- (6) one copy of each of the following *documents*:
 - (a) its most recent *annual report and accounts*; and
 - (b) the applicant's memorandum and articles of association or any similar or analogous *documents*; and
- (7) information identifying the following (if not contained in the *documents* listed in (5) or (6) or the material referred to in (1)):
 - (a) any type of *regulated activity* which the applicant envisages carrying on in the *United Kingdom*;
 - (b) any type of *specified investment dealt in* on, or arranged to be cleared through the applicant;
 - (c) the date by which the applicant wishes the *recognition order* to take effect; and
 - (d) any body or authority which supervises the applicant under the law of the *home territory*, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

6.2.5

FCA

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The *FCA* may require further information from the applicant and may need to have discussions with the appropriate authorities in the applicant's *home territory*. To allow sufficient time for applications to be processed and for the necessary contacts to be made with the appropriate *home territory* authorities, applications should be made not later than six months before the applicant wishes the *recognition order* to take effect. No guarantee can be given that a decision will be reached within this time, although the *FCA* will endeavour to meet the applicant's reasonable timing requirements.

6.2.6

FCA

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All material should be supplied in English, or accompanied, if appropriate, by an accurate English translation. An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

6.3 Recognition requirements

6.3.1

FCA

G

Before making a *recognition order*, the *FCA* will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (Overseas investment exchanges) have been met. These requirements are the only *recognition requirements* applicable to *ROIEs* .

6.3.2

FCA

UK

Sections 292(3) and 292(4) state:

Section 292(3)

The requirements are that-

- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with *recognition requirements* other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph;
- (b) there are adequate procedures for dealing with a *person* who is unable, or likely to become unable, to meet his obligations in respect of one or more *market contracts* connected with the [ROIE]
- (c) the applicant is able and willing to co-operate with the [FCA] by the sharing of information and in other ways; and
- (d) adequate arrangements exist for co-operation between the [FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

Section 292(4)

In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [FCA] is to have regard to-

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
- (b) the rules and practices of the applicant.

6.3.3

FCA

G

The reference to *recognition requirements* in section 292(3)(a) of the *Act* is a reference to the requirements applicable to *UK RIEs* in the *Recognition Requirements Regulations*. These requirements are set out, together with *guidance*, in ■ REC 2.



6.4

[Deleted]



6.5 FCA decision on recognition

6.5.1

FCA

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If the *FCA* considers that the requirements of the *Act* are satisfied, it may make a *recognition order*, which will state the date on which it takes effect.

6.5.2

FCA

G

Where the *FCA* considers that it is unlikely to make a *recognition order*, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the *FCA* decides to refuse to make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the *Act* (Recognition orders)) which is described in more detail in ■ REC 4.8.

6.5.3

6.6 Supervision

6.6.1

FCA

G

An *ROIE* is required to notify the *FCA* of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) requires each *ROIE* to provide the *FCA* with a report (at least once a year) which contains:

- (1) a statement as to whether any events have occurred which are likely to affect the *FCA*'s assessment of whether it is satisfied that the *ROIE* continues to satisfy the *recognition requirements* set out in the section 292(3) of the *Act* (Overseas investment exchanges and overseas clearing houses) (see ■ REC 6.3);
- (2) the information specified in the *FCA*'s *notification rules* for *ROIEs* (see ■ REC 6.7).

6.6.2

FCA

G

The following events are examples of events likely to affect an assessment of whether an *ROIE* is continuing to satisfy the *recognition requirements*

- (1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:
 - (a) governing exchanges or, if relevant to an *ROIE*'s satisfaction of the recognition requirements, *clearing houses*;
 - (b) designed to prevent insider dealing, market manipulation or other forms of market abuse or misconduct;
 - (c) designed to protect the interests of *clients of members* of the *ROIE*, or of a class of bodies which includes the *ROIE*;
 - (d) which affect:
 - (i) the ability of the *ROIE* to seek information (whether compulsorily or voluntarily) from its *members*, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;
 - (ii) the ability of the *ROIE* to pass such information, on request, to *UK* authorities;
- (2) significant changes to its internal organisation or structure;
- (3) significant changes to the practices of the *ROIE* applying to any *regulated activities* carried on by it in the *United Kingdom*;

- (4) any other event or series of events in relation to the body which:
 - (a) affects or may significantly affect cooperation between the *ROIE*, or its supervisor in its *home territory*, and the *FCA*; or
 - (b) has or may have a substantial effect on the structure of the markets in which the body operates; or
 - (c) brings about or may bring about a substantial change in the nature and composition of its *membership* in the *United Kingdom*; or
 - (d) brings about or may bring about a substantial change in the *regulated activities* undertaken by it in the *United Kingdom*.

6.6.3

FCA

G

The period covered by a report submitted under section 295(1) of the *Act* starts on the day after the period covered by its last report or, if there is no such report, after the making of the *recognition order* recognising the *ROIE* as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.

6.6.4

FCA

G

If an *ROIE* changes the period covered by its report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.

6.6.5

FCA

G

The period covered by a report submitted under section 295(1) of the *Act* would most conveniently be one year.

6.6.6

FCA

G

Copies of the report should be sent to the *FCA* within two months after the end of the period to which it relates.

6.7 Notification rules for overseas recognised bodies

Application

6.7.1
FCA

R The *notification rules* in this chapter, which are made under sections 293 (Notification requirements) and 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses), apply to all *ROIEs*.

Purpose

6.7.2
FCA

G The *notification rules* in this chapter are made by the *FCA* in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the *Act*.

Reports under section 295

6.7.3
FCA

R Where an *ROIE* includes in its report made under section 295(1) of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) a statement in compliance with section 295(2)(a) of the *Act* that an event has occurred in the period covered by that report which is likely to affect the *FCA*'s assessment of whether it is satisfied as to the requirements set out in section 292(3) (Overseas investment exchanges and overseas clearing houses), it must include particulars of that event.

6.7.4
FCA

R An *ROIE* must include in its report submitted in compliance with section 295(1) of the *Act*:

- (1) particulars of any changes to:
 - (a) its memorandum and articles of association or any similar or analogous *documents*;
 - (b) its *regulatory provisions*;
 - (c) its chairman or president, or *chief executive* (or equivalent);
- (2) particulars of any disciplinary action (or any similar or analogous action) taken against it by any supervisory authority in its *home territory*, whether or not that action has been made public in that territory; and

(3) a copy of its *annual report and accounts*;
 where those events occurred, or the period covered by that *annual report and accounts* ended, in the period covered by that report.

First report

6.7.5

FCA

R

An *ROIE* must include in the first report submitted under section 295(1) of the *Act* after the *recognition order* in relation to that *ROIE* is made:

- (1) particulars of any events of the kind described in section 295(2) of the *Act* which occurred;
- (2) particulars of any change specified in ■ REC 6.7.4 R (1) or disciplinary action specified in ■ REC 6.7.4 R (2) which occurred; and
- (3) any *annual report and accounts* which covered a period ending;

after the application for recognition was submitted to the *FCA* but which were not included in the application or in any supplementary information submitted to the *FCA* before the *recognition order* was made.

6.7.6

FCA

G

Guidance on the period covered by an *ROIE*'s report submitted in compliance with section 295(1) of the *Act* is given in ■ REC 6.6.3 G .

Changes of address

6.7.7

FCA

R

Where an *ROIE* proposes to change:

- (1) its address in the *United Kingdom* for the service of notices or other *documents* required or authorised to be served on it under the *Act*; or
- (2) the address of its head office;

it must give notice to the *FCA* and inform it of the new address at least 14 days before the change is effected.

Revocation or modification of home territory licence, permission or authorisation

6.7.8

FCA

R

Where an *ROIE* has notice that any licence, permission or authorisation which it requires to conduct any *regulated activity* in its *home territory* has been or is about to be:

- (1) revoked; or
- (2) modified in any way which would materially restrict the *ROIE* in performing any *regulated activity* in its *home territory* or in the *United Kingdom*;

it must immediately notify the *FCA* of that fact and must give the *FCA* the information specified for the purposes of this *rule* in ■ REC 6.7.9 R, as soon as that information is known to it.

6.7.9

FCA

R The following information is specified for the purposes of ■ REC 6.7.8 R:

- (1) particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the *ROIEs regulated activities* to which it relates;
- (2) an explanation of how the revocation or modification restricts or will restrict the *ROIE* in carrying on any *regulated activity* in its *home territory* or in the *United Kingdom*;
- (3) the date on which the revocation or modification took, or will take, effect and, if it is a temporary measure, any date on which, or any conditions that must be met before which, it will cease to have effect; and
- (4) any reasons given for the revocation or modification.

Language of notice

6.7.10

FCA

R Any notice to be given or information to be supplied under these *notification rules* must be supplied in English, and any *document* to be provided must be accompanied, if not in English, by an accurate English translation.

6.7.11

FCA

G An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

Form and method of notification

6.7.12

FCA

R The *rules* relating to the form and method of notification in ■ REC 3.2 also apply to *ROIEs*.

Waivers

6.7.13

FCA

G *ROIEs* may apply to the *FCA* for a *waiver* of any of the *notification rules*. The procedure is the same as that for applications from *UK recognised bodies*. *Guidance* on the procedure is given in ■ REC 3.3.

6.8 Powers to supervise

6.8.1

FCA

G

The *FCA* has similar powers to supervise *ROIEs* to those it has to supervise *UK RIEs*. It may (in addition to any other powers it might exercise):

- (1) give directions to an *ROIE* under section 296 of the *Act* (Authority's power to give directions) if it has failed, or is likely to fail, to satisfy the *recognition requirements* or if it has failed to comply with any other obligation imposed by or under the *Act*; or
- (2) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) if an *ROIE* is failing, or has failed, to comply with the *recognition requirements* or any other obligation in or under the *Act* ; or
- (3) require an *ROIE* or a person connected with the *ROIE*, under section 165 of the *Act*, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; or
- (4) require any of the following persons, under section 166 of the *Act*, to provide the *FCA* with a report on any matter, or appoint a skilled person to provide the *FCA* with information or produce documents with respect to any matter:
 - (a) the *ROIE*; or
 - (b) any other member of the *ROIE's* group; or
 - (c) a partnership of which the *ROIE* is a member; or
 - (d) a person who has at any time been a person falling within (a), (b) or (c).

6.8.2

FCA

G

The *FCA* will follow the approach in ■ REC 4.6, ■ REC 4.7 , ■ REC 4.8 , ■ REC 4.2F and ■ REC 4.2G if it is considering exercising these powers in relation to an *ROIE*.

Chapter 6A

EEA market operators in the United Kingdom



6A.1 Exercise of passport rights by EEA market operator

6A.1.1
FCA

G

Under section 312A of the *Act*, an *EEA market operator* may make arrangements in the *United Kingdom* to facilitate access to, or use of, a *regulated market* or *multilateral trading facility* operated by it if:

- (1) the operator has given its *Home State regulator* notice of its intention to make such arrangements; and
- (2) the *Home State regulator* has given the *FCA* notice of the operator's intention.

6A.1.2
FCA

G

In making these arrangements, the operator has *exempt person* status as respects any *regulated activity*, which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of that business.

6A.1.3
FCA

G

An *EEA market operator* has *exempt person* status as respects any *regulated activity* which is carried on as a part of its business of operating a *regulated market* or *multilateral trading facility* if the operator made arrangements in the *United Kingdom* on or before 31 October 2007 to facilitate access to, or use of, that *regulated market* or *multilateral trading facility*.

6A.1.4
FCA

G

In accordance with the *RAP regulations*, references in section 312A of the *Act* to specified *regulated market* and market are to be read as including reference to a specified *auction platform* and an *auction platform* as applicable.



6A.2 Removal of passport rights from EEA market operator

6A.2.1
FCA

G Under section 312B of the *Act*, the *FCA* may prohibit an *EEA market operator* from making or, as the case may be, continuing arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, or *multilateral trading facility*, operated by the operator if:

- (1) the *FCA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (2) the *FCA* has first complied with sections 312B(3) to (9) of the *Act*.

6A.2.2
FCA

G A requirement is relevant if it is imposed:

- (1) by the operator's *Home State regulator* in the implementation of *MiFID* or any *EU* legislation made under *MiFID*;
- (2) by provision implementing *MiFID*, or any *EU* legislation made under it, in the operator's *Home State*; or
- (3) by any directly applicable *EU* regulation made under *MiFID*.

6A.2.3
FCA

G The procedure the *FCA* will follow if it is to exercise this prohibition power is set out in sections 313B(3) to (9) of the *Act*.

6A.2.4
FCA

G If the *FCA* exercises this prohibition power it must at the earliest opportunity notify the Commission and *ESMA* of the action taken in relation to the operator.

6A.2.5
FCA

G The operator's *exempt person* status ceases to apply if the *FCA* exercises this prohibition power.

6A.2.6
FCA

G The operator's right to make arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, or *multilateral trading facility*, operated by the operator may be reinstated (together with its *exempt person* status) if the *FCA* is satisfied that the contravention which led the *FCA* to exercise its prohibition power has been remedied.

6A.2.7
FCA

G In accordance with the *RAP regulations*, references in section 312B of the *Act* to *regulated market* are to be read as including reference to an *auction platform* and references to *MiFID* are to be read as including reference to the *auction regulation*.

6A

Chapter 7

Fees



7.1

**[deleted: the provisions in relation to
Recognised Investment Exchanges and
Recognised Clearing Houses are set out
in FEES 1,2, 3 and 4]**

- 7.1.1 [Deleted]
- 7.1.2 [Deleted]
- 7.1.3 [Deleted]
- 7.1.4 [Deleted]
- 7.1.5 [Deleted]
- 7.1.6 [Deleted]
- 7.1.7 [Deleted]
- 7.1.8 [Deleted]



7.2

**[deleted: the provisions in relation to
Recognised Investment Exchanges and
Recognised Clearing Houses are set out in
FEES 1,2, 3 and 4]**

7.2.1

[Deleted]



7.3

**[deleted: the provisions in relation to
Recognised Investment Exchanges and
Recognised Clearing Houses are set out
in FEES 1,2, 3 and 4]**

- 7.3.1
- 7.3.2
- 7.3.3
- 7.3.4

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[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]

[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES?3 Annex 3R]

Recognised Investment Exchanges

REC TP 1 Transitional provisions

Introduction

FCA

- 1 This schedule sets out the transitional provisions in *REC*.
- 2 The *Recognition Requirements Regulations* also contain transitional provisions applying to *recognised bodies*.
- 3 *GEN* also contains some technical transitional provisions that apply throughout the *Handbook*

Recognised Investment Exchanges

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

There are no record keeping requirements as such in *REC*.

UK recognised bodies have obligations under the *Recognition Requirements Regulations* to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their *facilities*. See *REC 2.9* for *guidance* (in the case of *RAPs*, see *REC 2.9* as applied by *REC 2A.3.2 G*).

RAPs also have separate record keeping obligations under the *auction regulation*.

Recognised Investment Exchanges

Schedule 2 Notification requirements

Sch 2.1 G

FCA

The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in *Notification rules for UK recognised bodies* and REC 6.7 and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the *Companies Act 1989* are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FCA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *ROIEs* is given in REC 6.6.

Sch 2.2 G

FCA

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>UK RIEs</i>				
The <i>Act</i> 293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay
The <i>Act</i> s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
The <i>Act</i> s293(6)(a)	Changes to arrangements for <i>clearing facilitation services</i> in respect of <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The <i>Acts</i> 293(6)(b)	Changes to criteria determining to whom it will provide <i>clearing facilitation services</i>	Details of change	Change to criteria	Without delay
<i>RAPs</i>				

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
The <i>auction regulation</i> article 7(7)	Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i>	See REC 3.15	Event concerned	Without delay
<i>Notification rules for UK recognised bodies</i> (see Notification rules for UK recognised bodies)				
REC 3.4	<i>Key individuals</i> and internal organisation	Details of change	See REC 3.4	See REC 3.4
REC 3.5	Disciplinary action and events relating to <i>key individuals</i>	Details of disciplinary action or event	Disciplinary action or awareness of event	Immediately
REC 3.6	Constitution and governance	Details of proposals to amend constitution, amendments to constitution and agreements relating to constitution	Communication of proposal to amend constitution, making amendment to constitution or awareness of agreement relating to constitution	Immediately
REC 3.7	Auditors	Details of removal or appointment of auditors	Removal or appointment of auditors	Immediately
REC 3.8	Financial and other information	See REC 3.8	See REC 3.8	See REC 3.8
REC 3.9	Fees and incentive schemes	Summary of proposals to change fees and charges and changes to fees and charges	Communication to <i>members</i>	Immediately
REC 3.10	Complaints	Copy of adverse report and details of recommendations from <i>complaints investigator</i>	Availability of report or recommendations	Immediately
REC 3.11	Insolvency events	Notice of insolvency event	Insolvency event	Immediately
REC 3.12	Legal proceedings	Details of legal proceedings commenced against <i>UK recognised body</i>	Institution of proceedings	Immediately
REC 3.13	Delegation of <i>relevant functions</i>	Details of offers or agreements to delegate <i>relevant functions</i> and offers or agreements to undertake relevant functions on behalf of another <i>recognised body</i>	Making offer or agreement to delegate	Immediately
REC 3.14	Products, services and normal hours of operation or (for <i>RAPs</i>) the timing, frequency or duration of its bidding windows	See REC 3.14	See REC 3.14	Immediately

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
REC 3.14A	Operation of a <i>regulated market</i> or <i>MTF</i>	Details of proposal to operate a new <i>regulated market</i> or <i>MTF</i> or close an existing <i>regulated market</i> or <i>MTF</i>	Communication of proposal to <i>members</i> or shareholders	Immediately
REC 3.15	Suspension of services and inability to operate <i>facilities</i> or (for <i>RAPs</i>) the cancellation of an auction	See REC 3.15	Event concerned	Immediately
REC 3.16	Information technology systems	Details of business continuity plans and details of failure of reserve information technology system	Changes to business continuity plans and failure of reserve information technology system	Immediately
REC 3.17	Inability to discharge <i>regulatory functions</i>	Details of inability to discharge a <i>regulatory functions</i>	Event concerned	Immediately
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering the <i>recognition requirements</i> or (for <i>RAPs</i>) the <i>RAP recognition requirement</i> in regulation 20 can still be met	Admission of new type of <i>non-authorised person</i> or <i>person</i> from new non-UK jurisdiction to membership	Immediately
REC 3.19	Investigations	Notice of appointment of person to investigate use of <i>facilities</i> or provision of services	Awareness of appointment	Immediately
REC 3.20	Disciplinary action	Details of person against whom disciplinary action taken	Taking disciplinary action	Immediately
REC 3.21	Criminal offences and civil prohibitions	Evidence tending to suggest contraventions of the <i>general prohibition</i> , certain criminal offences or <i>market abuse</i>	Having evidence concerned	Immediately
REC 3.22	Restriction or instruction to close out, open positions or (for <i>RAPs</i>) restriction on maximum bid size or other remedial measures	Details of decision to restrict member's open position or instruction to close out position or (for <i>RAPs</i>) details of the event and remedial measures proposed	Decision to take action or (for <i>RAPs</i>) proposal to take action	Immediately
REC 3.23	Default	Notice of decision to put <i>member</i> into default	Communicating decision to <i>member</i> concerned or any other member	Immediately
REC 3.24	Transfers of ownership	Details of transfer of ownership	When the <i>UK RIE</i> becomes aware of the transfer of ownership	Immediately

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
REC 3.25	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Immediately
REC 3.26	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
<i>ROIEs</i>				
The Act s295	Report to <i>FCA</i>	Statement as to whether events have occurred which would affect the <i>FCA's</i> assessment of whether the <i>recognition requirements</i> are met	Not applicable	Once a year
<i>Notification rules for ROIEs (see REC 6.7)</i>				
REC 6.7.3 R	Events which might affect the <i>FCA's</i> assessment of whether the <i>recognition requirements</i> are met	Particulars of event	Not applicable	Include in report under s295
REC 6.7.4 R	Inclusion of certain matters in report	See REC 6.7.4 R	Not applicable	Include in report under s295
REC 6.7.5 R	First report	See REC 6.7.5 R	Not applicable	Include in report under s295
REC 6.7.7 R	Changes of address	Details of new addresses	Decision to change address	14 <i>days</i> in advance of change of address
REC 6.7.8 R and REC 6.7.9 R	Revocation or modification of home territory licence etc	Details of revocation or modification	Awareness of revocation or modification	Immediately

Recognised Investment Exchanges

Schedule 3 [Deleted]

Recognised Investment Exchanges

Schedule 4
[Deleted]

Recognised Investment Exchanges

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

There are no rights of action under section 150 of the *Act* in respect of any contravention by a *recognised body* of any *rule* made under the *Act*.

Recognised Investment Exchanges

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

The *notification rules* in REC 3 and REC 6 can be *waived* by the FCA under section 294 of the Act (Modification or waiver of rules). (The statutory notification requirements, also summarised in Schedule 2 to REC, cannot be *waived* by the FCA.)

