

Glossary

(c) taking any necessary steps for the purposes of collecting or recovering payments due under that *agreement* from the agreement seller;

but a *person* is not to be treated as administering a *regulated sale and rent back agreement* because he has, or exercises, a right to take action for the purposes of enforcing that *agreement* (or to require that such action is or is not taken);

and in relation to a *person* who acquires obligations or rights under a *regulated sale and rent back agreement*, an activity is a specified kind of activity for the purposes of this definition only if the *agreement* was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1 July 2009.

administering a
specified
benchmark

FCA

The *regulated activity*, specified in article 63O(1)(b) of the *Regulated Activities Order*, which means:

- (1) administering the arrangements for determining a *specified benchmark*, or
- (2) collecting, analysing or processing information or expressions of opinion for the purpose of determining a *specified benchmark*, or
- (3) determining a *specified benchmark* through the application of a formula or other method of calculation to the information or expressions of opinion provided for that purpose.

administrative
expenses

FCA PRA

has the meaning set out in the *insurance accounts rules*.

administrative
functions

FCA PRA

- (a) (in relation to managing *investments*):
 - (i) arranging settlement;
 - (ii) monitoring and processing corporate actions;
 - (iii) *client* account administration, liaison and reporting, including valuation and performance measurement;
 - (iv) *ISA* or *CTF* administration;
 - (v) *investment trust savings scheme* administration;
- (b) (in relation to *effecting* or carrying out *life policies*):
 - (i) new business administration;
 - (ii) *policy* alterations including surrenders and *policy* loans;
 - (iii) preparing *projections*;
 - (iv) processing claims including pension payments;
 - (v) fund switching;
- (c) (in relation to the operation of a *stakeholder pension scheme*):
 - (i) new business administration;
 - (ii) receipt of or alteration to contributions;
 - (iii) preparing *projections* and annual statements;
 - (iv) administration of transfers;
 - (v) handling claims, including pension payments;
 - (vi) fund allocation and switching.

admissible asset

FCA **PRA**

(1) (for the purpose of the *rules* in *GENPRU* and *INSPRU* as they apply to *members* of the *Society* of Lloyd's, the *Society* and *managing agents*) an asset that , subject to paragraphs (2) and (3) of ■ *GENPRU 2 Annex 7 R*, falls into one or more categories in paragraph (1) of ■ *GENPRU 2 Annex 7 R* as modified by ■ *GENPRU 2.3.34 R*.

(2) otherwise:

(a) (in relation to an *insurer* which is not a *pure reinsurer*) an asset that, subject to paragraphs (2) and (3) of ■ *GENPRU 2 Annex 7 R*, falls into one or more categories in paragraph (1) of ■ *GENPRU 2 Annex 7 R* ; or

(b) (in relation to a *pure reinsurer*) an asset the holding of which is consistent with compliance by the *firm* with ■ *INSPRU 3.1.61A R*.

(in *LR*) *admission* of *securities* to the *official list*.

admission or admission to listing

FCA **PRA**

admission to trading

FCA **PRA**

(1) (in *LR*) admission of *securities* to trading on an *RIE*'s market for *listed securities*.

(2) (in *PR* and *DTR*) admission to trading on a *regulated market*.

(3) (elsewhere in the *Handbook*)(in relation to an *investment* and an exchange) the process by which the exchange permits members of the exchange to enter into transactions in that *investment* under and subject to the rules of the exchange.

advanced IRB approach

FCA **PRA**

one of the following:

(a) (in relation to the *sovereign, institutional and corporate IRB exposure class*) the approach under the *IRB approach* under which a *firm* supplies its own estimates of *LGD* and *conversion factors*;

(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ *BIPRU 8* (Group risk - consolidation); or

(c) when the reference is to the rules of or administered by a *regulatory body* other than the *appropriate regulator*, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.

advanced measurement approach

FCA **PRA**

one of the following:

(a) the adjusted method of calculating the *operational risk capital requirement* set out in ■ *BIPRU 6.5* (Operational risk: advanced measurement approaches);

(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ *BIPRU 8* (Group risk - consolidation); or

(c) when the reference is to the rules of or administered by a *regulatory body* other than the *appropriate regulator*, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.

advanced prudential calculation approach

FCA **PRA**

one of the following:

(a) the *IRB approach*; or

(b) the *advanced measurement approach*; or

(c) the *VaR model approach*; or

advising on
pension
transfers and
pension
opt-outs

FCA PRA

advising on *investments* in respect of *pension transfers* and *pension opt-outs*.

advising on
regulated
mortgage
contracts

FCA PRA

the *regulated activity*, specified in article 53A of the *Regulated Activities Order*, which is in summary: advising a *person* if the advice:

(a) is given to the *person* in his capacity as a borrower or potential borrower; and

(b) is advice on the merits of his:

(i) entering into a particular *regulated mortgage contract*; or

(ii) varying the terms of a *regulated mortgage contract* entered into by him on or after 31 October 2004 in such a way as to vary his obligations under that contract.

advising on
syndicate
participation at
Lloyd's

FCA PRA

the *regulated activity*, specified in article 56 of the *Regulated Activities Order* (Advice on syndicate participation at Lloyd's), of advising a *person* to become, or continue or cease to be, a member of a particular Lloyd's *syndicate*.

affected person

FCA PRA

(in *COLL*):

(a) (in relation to an *ICVC*):

(i) the *ICVC*;

(ii) its *depository*;

(iii) a *director* of the *ICVC*;

(iv) any *investment adviser* of the *ICVC*;

(v) any *associate* of any *person* in (a)(i), (ii), (iii) or (iv);

(vi) the auditor of the *scheme*;

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

(i) the *manager*;

(ii) the *trustee*;

(iii) any *investment adviser* of the *manager*;

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

(v) the auditor of the *scheme*.

affiliated
company

FCA PRA

(in relation to a *person*) an *undertaking* in the same *group* as that *person*.

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AFM

FCA PRA

authorised fund manager.

agent

FCA PRA

(in relation to *payment services* or *electronic money*) a *person* who acts on behalf of a *payment institution* or an *electronic money institution* in providing *payment services*.

[Note: article 4(22) of the *Payment Services Directive*]

agreeing to carry on a regulated activity

FCA PRA

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

- (a) *accepting deposits*;
- (aa) *issuing electronic money*;
- (b) *effecting contracts of insurance*;
- (c) *carrying out contracts of insurance*;
- (d) *establishing, operating or winding up a collective investment scheme*;
- (e) *acting as trustee of an authorised unit trust scheme*;
- (f) *acting as the depositary or sole director of an open-ended investment company*;
- (g) *establishing, operating or winding up a stakeholder pension scheme*;
- (h) *establishing, operating or winding up a personal pension scheme*.

aircraft

FCA PRA

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 5 of Part I of Schedule 1 to the *Regulated Activities Order* (Contracts of general insurance), upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.

aircraft liability

FCA PRA

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 11 of Part I of Schedule 1 to the *Regulated Activities Order* (Contracts of general insurance), against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.

all price risk measure

FCA PRA

(in ■ BIPRU 7.10 (Use of a Value at Risk Model)) has the meaning in ■ BIPRU 7.10.116A R (Capital calculations for VaR models), which is, in relation to a *business day*, the *all price risk measure* required under the provisions in ■ BIPRU 7.10 about *specific risk* for the *correlation trading portfolio*.

allocation period

FCA PRA

a single 24-hour period or, with the agreement of each *professional client* concerned, a period spanning five consecutive *business days*, during which an aggregated *series of transactions* may be *executed*.

allotment

FCA PRA

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the process or processes by which the number of *relevant securities* to be received by investors who have previously subscribed or applied for them is determined.

alternative debenture

FCA PRA

the *investment* specified in article 77A of the *Regulated Activities Order* (Alternative finance investment bonds).

alternative investment fund manager

FCA PRA

a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an *undertaking* which is outside the *EEA* and which would require authorisation in accordance with Directive 2011/61/EU if it had its registered office within the *EEA*.

alternative projection

FCA PRA

(in COBS) a *projection* calculated on the basis described in paragraph 1.5R of the *projection rules* (■ COBS 13 Annex 2), rather than in accordance with the remainder of those *rules*.

alternative standardised approach

FCA PRA

one of the following:

- (a) a version of the *standardised approach to operational risk* under which a *firm* uses different indicators for certain business lines as referred to in ■ BIPRU 6.4.19 R (The alternative standardised approach);
- (b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ BIPRU 8 (Group risk - consolidation); or
- (c) when the reference is to the rules of or administered by a *regulatory body* other than the *appropriate regulator*, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.

AMA

FCA PRA

the *advanced measurement approach*.

AMA permission

FCA PRA

an *Article 129 implementing measure*, a *requirement* or a *waiver* that requires a *BIPRU firm* or an *institution* to use the *advanced measurement approach to operational risk* on a solo basis or, if the context requires, a consolidated basis.

ancillary activity

FCA PRA

an activity which is not a *regulated activity* but which is:

- (a) carried on in connection with a *regulated activity*; or
- (b) held out as being for the purposes of a *regulated activity*.

ancillary insurance services undertaking

FCA PRA

(in relation to any *undertaking* in a *consolidation group*, *sub-group* or other group of *persons*) an *undertaking* complying with the following conditions:

- (a) its principal activity consists of:
 - (i) owning or managing property; or
 - (ii) managing data-processing services; or
 - (iii) any other similar activity;
- (b) the activity in (a) is ancillary to the principal activity of one or more *insurance undertakings*; and
- (c) those *insurance undertakings* are also members of that *consolidation group*, *sub-group* or other group of *persons*.

ancillary risk

FCA PRA

(in relation to an *insurer* with *permission* under the *Act* to insure a principal risk belonging to one *class* (as defined for the purposes of *INSPRU* and *SUP*) of *general insurance business*) a risk included in another such class which is:

- (a) connected with the principal risk,
- (b) concerned with the object which is covered against the principal risk, and
- (c) the subject of the same contract insuring the principal risk.

However, the risks included in *classes* 14, 15 and 17 may not be treated as risks ancillary to other classes, except that the risk included in *class* 17 (legal expenses insurance) may be regarded as an ancillary risk of *class* 18 where:

- (d) the conditions laid down in (a) to (c) are fulfilled, and

ancillary
service

FCA PRA

(e) the principal risk relates solely to assistance provided for *persons* who fall into difficulties while travelling, while away from home or while away from their permanent residence or where it concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

any of the services listed in Section B of Annex I to *MiFID* , that is:

(a) safekeeping and administration of *financial instruments* for the account of *clients*, including custodianship and related services such as cash/collateral management;

(b) granting credits or loans to an investor to allow him to carry out a transaction in one or more *financial instruments*, where the firm granting the credit or loan is involved in the transaction;

(c) advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

(d) foreign exchange services where these are connected to the provision of *investment services*;

(e) *investment research* and financial analysis or other forms of general recommendation relating to transactions in *financial instruments*;

(f) services related to underwriting; and

(g) *investment services and activities* as well as ancillary services within (a) to (f), above, related to the underlying of the *derivatives* included under Section C - 5, 6, 7 and 10, that is (in accordance with that Annex and Recital 21 to, and Article 39 of, the *MiFID Regulation*):

(i) commodities;

(ii) climatic variables;

(iii) freight rates;

(iv) emission allowances;

(v) inflation rates or other official economic statistics;

(vi) telecommunications bandwidth;

(vii) commodity storage capacity;

(viii) transmission or transportation capacity relating to commodities, where cable, pipeline or other means;

(ix) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(x) a geological, environmental or other physical variable;

(xi) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(xii) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where these are connected to the provision of *investment services* or ancillary services.

[Note: article 4(1)(3) of *MiFID*]

ancillary
services
undertaking

FCA PRA

(1) (in accordance with Article 4(21) of the *Banking Consolidation Directive* (Definitions) and subject to (2)) and in relation to an *undertaking* in a *consolidation group*, *sub-group* or another group of *persons*) an *undertaking* complying with the following conditions:

<p><i>ancillary stabilisation</i> FCA PRA</p>	<p>(a) its principal activity consists of:</p> <ul style="list-style-type: none"> (i) owning or managing property; or (ii) managing data-processing services; or (iii) any other similar activity; <p>(b) the activity in (a) is ancillary to the principal activity of one or more <i>credit institutions</i> or <i>investment firms</i>; and</p> <p>(c) those <i>credit institutions</i> or <i>investment firms</i> are also members of that <i>consolidation group</i>, <i>sub-group</i> or group.</p> <p>(2) (for the purpose of ■ GENPRU 1.3 (Valuation) and ■ INSPRU 6.1 (Group Risk: Insurance Groups) an <i>undertaking</i> in (1) and an <i>ancillary insurance services undertaking</i>.</p>
<p><i>announceable information</i> FCA PRA</p>	<p>(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the exercise of an <i>overallotment facility</i> or of a <i>greenshoe option</i> by <i>investment firms</i> or <i>credit institutions</i>, in the context of a <i>significant distribution</i> of <i>relevant securities</i>, exclusively for facilitating <i>stabilisation</i> activity.</p> <p>information which is usually the subject of a public announcement, although not subject to any formal disclosure requirement.</p>
<p><i>annual accounting period</i> FCA PRA</p>	<p>(1) [deleted]</p> <p>(2) (in <i>COLL</i>): the period determined in accordance with ■ COLL 6.8.2 R (3) to ■ COLL 6.8.2 R (7) (Accounting periods).</p>
<p><i>Annual Accounts</i> FCA PRA</p>	<p>(1) the Council Directive of 19 December 1991 concerning the annual accounts and consolidated accounts of <i>insurance undertakings</i> (No. 91/674/EEC).</p> <p>(2) (in <i>UPRU</i>) accounts prepared to comply with :</p> <ul style="list-style-type: none"> (a) the Companies Acts 1985 to 1989, and their equivalent in Northern Ireland, where these provisions are applicable; or (b) the Companies Act 2006; or (c) other statutory obligations.
<p><i>annual audited fixed expenditure</i> FCA PRA</p>	<p>(in <i>UPRU</i>) has the meaning given in ■ UPRU 2.1.3 R (Annual audited fixed expenditure).</p>
<p><i>annual bonus</i> FCA PRA</p>	<p>(in relation to a <i>with-profits insurance contract</i>) a discretionary addition to <i>policy</i> benefits under a <i>with-profits insurance contract</i> made by a <i>long-term insurer</i> as a result of the annual <i>actuarial investigation</i>.</p>
<p><i>annual budget</i> FCA PRA</p>	<p>the annual budgeted costs of operating the <i>Financial Ombudsman Service</i>.</p>
<p><i>annual eligible income</i></p>	<p>(in <i>FEES</i>) (in relation to a <i>firm</i> and a <i>class</i>) the annual income (as described in ■ FEES 6 Annex 3 R) for the <i>firm's</i> last financial year ended in the year to 31</p>

FCA PRA

December preceding the date for submission of the information under ■ FEES 6.5.13 R attributable to that *class*. A *firm* must calculate *annual eligible income* from such annual income in one of the following ways:

- (a) only include such annual income if it is attributable to business conducted with or for the benefit of *eligible claimants* and is otherwise attributable to compensatable business; or
- (b) include all such annual income.

annual financial statements

FCA PRA

the financial statements in respect of the year ending on the *firm's* annual accounting reference date, which is the date to which a corporate *firm's* accounts are prepared for the purposes of the Companies Acts, or, where the *firm* is not subject to the Companies Acts, the equivalent date chosen by the *firm* and notified to the FCA or PRA as the case may be .

annual income

FCA PRA

(in MIPRU)
the income referred to in ■ MIPRU 4.3

annual income allocation date

FCA PRA

the date in any year stated in the most recently published *prospectus* as the date on or before which, in respect of each *annual accounting period*, an allocation of income is to be made.

annual percentage rate

FCA PRA

the annual percentage rate of charge for a contract as calculated in accordance with ■ MCOB 10 (Annual percentage rate).

annual report and accounts

FCA PRA

- (a) (in relation to a *company* incorporated in the *United Kingdom*) an annual report and annual accounts as those terms are defined in:
 - (i) section 262(1) of the Companies Act 1985, together with an auditor's report prepared in relation to those accounts under section 235 of the same Act where these provisions are applicable; or
 - (ii) section 471 of the Companies Act 2006 together with an auditor's report prepared in relation to those accounts under sections 495 to 497 of the same Act;

- (b) (in relation to any other body) any similar or analogous *documents* which it is required to prepare whether by its constitution or by the law under which it is established.

annual statement provisions

FCA PRA

- (in MCOB) in relation to a:
- (a) *regulated mortgage contract*, ■ MCOB 7.5;
 - (b) *home purchase plan*, ■ MCOB 7.8.3 R to ■ MCOB 7.8.6 R; and
 - (c) *instalment reversion plan*, ■ MCOB 9.9.1 R to ■ MCOB 9.9.3 R (2)(c).

annualised net written premiums

FCA PRA

(for the purposes of ■ INSPRU 1.4) in relation to a *financial year*, the *net written premiums* received during that *financial year*, except that in relation to a *financial year* that has been validly extended beyond, or shortened from, a period of 12 months, the amount of *net written premiums* is the amount determined in accordance with the formula: $NWP \times 365/D$ where:

- (1) NWP is the amount of *net written premiums* received in the financial year; and
- (2) D is the number of days in that *financial year*.

APER

FCA PRA

the part of the *Handbook* in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons.

applicable asset

FCA PRA

- (a) in relation to *MiFID business*, a *financial instrument*; or
- (b) in relation to *safeguarding and administering investments* that is not *MiFID business*, a *designated investment*.

applicable provisions

FCA PRA

the *Host State* rules with which:

- (a) an *incoming EEA firm* is required to comply when carrying on a *permitted activity* through a *branch* or by providing services (as applicable) in the *United Kingdom*, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the *Act* (Exercise of passport rights by EEA firms); or
- (b) a *UK firm* is required to comply when conducting business through a *branch* (in accordance with paragraph 19(13) of Part III of Schedule 3 to the *Act* (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another *EEA State*.

applicable sectoral consolidation rules

FCA PRA

(in respect of a *financial sector* and in accordance with paragraph 6.9 of ■ GENPRU 3 Annex 1 R (Applicable sectoral consolidation rules)) the *appropriate regulator's sectoral rules* about capital adequacy and solvency on a consolidated basis applicable to that *financial sector* under the table in paragraph 6.10 of ■ GENPRU 3 Annex 1 R.

applicable sectoral rules

FCA PRA

(in respect of a *financial sector*) *applicable sectoral consolidation rules* for that *financial sector* and the *appropriate regulator's sectoral rules* about capital adequacy and solvency for:

- (a) the *banking and investment services sector* as set out in paragraph 6.2 of ■ GENPRU 3 Annex 1 R; or
- (b) *insurance undertakings*;

which of those sets of *rules* apply for the purpose of a particular calculation depends on the nature of that calculation.

applicant

FCA PRA

- (1) (in *LR*) an *issuer* which is applying for *admission* of *securities*.
- (2) (in *PR*) an applicant for approval of a *prospectus* or *supplementary prospectus* relating to *transferable securities*.

appointed representative

FCA PRA

(in accordance with section 39 of the *Act* (other than an *authorised person*) who:

- (a) is a party to a contract with an *authorised person* (his *principal*) which:
- (i) permits or requires him to carry on business of a description prescribed in the *Appointed Representatives Regulations*; and
 - (ii) complies with such requirements as are prescribed in those *Regulations*; and

- (b) is someone for whose activities in carrying on the whole or part of that business his *principal* has accepted responsibility in writing;

and who is therefore an *exempt person* in relation to any *regulated activity* comprised in the carrying on of that business for which his *principal* has accepted responsibility.

Appointed Representatives Regulations

the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (SI 2001/1217).

FCA PRA

apportionment and oversight function

FCA controlled function CF8 in Parts 1 and Part 2 of the *table of FCA controlled functions*, described more fully in ■ SUP 10A.7.1 R .

FCA PRA

appropriate actuary

an *actuary* appointed under ■ SUP 4.4.1 R (Appointment of an appropriate actuary).

FCA PRA

appropriate charges information

(in *COBS*) information about charges which is calculated and presented in accordance with the *charges rules* in ■ COBS 13.4.1 R and ■ COBS 13 Annexes 3 or ■ 4.

FCA PRA

appropriate position risk adjustment

- (1) (in relation to a *position* treated under ■ BIPRU 7.6 (Option PRR)) the percentage figure applicable to that *position* under the table in ■ BIPRU 7.6.8 R (Appropriate Position Risk Adjustment);
- (2) (for any other purpose and in relation to a *position*) the *position risk adjustment* applicable to that position under BIPRU 7 (Market risk).

FCA PRA

appropriate regulator

- (1) in the *FCA Handbook*, the *FCA*; and in the *PRA Handbook*, the *PRA*;
- (2)
- (a) in ■ SUP 11 "appropriate regulator" has the meaning given in section 178 of the *Act*, and
- (b) in ■ SUP 18 "appropriate regulator" has the meaning given in section 103A of the *Act*.

FCA PRA

appropriate UK regulator

- (1) in relation to an *EEA firm* (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the *Act*), whichever of the *FCA* or *PRA* is the *competent authority* for the purposes of the relevant *Single Market Directive*;
- (2) in relation to a *UK firm* (in accordance with Schedule 3 paragraph 18A to the *Act*),
- (a) the *PRA*, where the *firm* is a *PRA-authorised person*; and
- (b) in any other case, the *FCA*.
- (3) in relation to a *Treaty firm* (in accordance with section 35(2A) of the *Act*),
- (a) in the case of a *PRA-authorised person*, the *PRA*; and
- (b) in any other case, the *FCA*.

FCA PRA

appropriate valuer

(in *COLL*) a *person* who complies with the *requirements* of ■ COLL 5.6.18 R (7) (Investment in property) or ■ COLL 8.4.11 R (4) (Investment in property) .

FCA PRA

approve

(in relation to a *financial promotion*) approve the content of the *financial promotion* for the purposes of section 21 of the *Act* (Restrictions on financial promotion).

FCA PRA

backtesting exception

FCA PRA

(in ■ BIPRU 7.10 (Use of a value at risk model)) an exception (excluding a *specific risk backtesting exception*) arising out of backtesting a *VaR model* as more fully defined in ■ BIPRU 7.10.103 R.

backwardation

FCA PRA

a situation in which *futures* prices are lower than cash prices.

balance

FCA PRA

(in relation to a *person's account*) has the meaning given in section 8 of the Dormant Bank and Building Society Accounts Act 2008, which is in summary the amount owing to the *person* in respect of the *account* at any particular time, after the appropriate adjustments have been made for such things as interest due and fees and charges payable. In relation to a time after a transfer of the *balance* to a *dormant account fund operator*, the adjustments include those that would fall to be made but for the transfer or transfers.

balancing amount

FCA PRA

in respect of a *syndicate*, any part of the *capital resources* that:

- (a) the *managing agent* of the *syndicate* has assessed to be necessary to support the *insurance business* carried on by the *members* of the *syndicate* through the *syndicate*, including those *capital resources* required to support the risks arising at *syndicate* level that affect that business; but
- (b) are not managed by or at the direction of the *managing agent* of the *syndicate*.

Balancing and Settlement Code

FCA PRA

the document designated by the Secretary of State and adopted by the National Grid Company plc as the Balancing and Settlement Code as modified from time to time in accordance with the terms of the transmission licence granted under section 6(1)(b) of the Electricity Act 1989 in respect of England and Wales, or any subsequent similar instrument or arrangements.

bank

FCA PRA

(a) a *firm* with a *Part 4A permission* which includes *accepting deposits*, and:

- (i) which is a *credit institution*; or
- (ii) whose *Part 4A permission* includes a *requirement* that it comply with the rules in *GENPRU* and *BIPRU* relating to *banks* ;

but which is not a *building society*, a *friendly society* or a *credit union*;

(b) an *EEA bank* which is a *full credit institution*.

Bank Accounts Directive

FCA PRA

Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions.

banking and investment group

FCA PRA

a group of *persons* (at least one of which is an *EEA regulated entity* that is a *credit institution* or an *investment firm*) who:

(a) form a group in respect of which the consolidated capital adequacy requirements for the *banking sector* or the *investment services sector* under:

- (i) the *appropriate regulator's sectoral rules*; or
- (ii) the *sectoral rules* of another *competent authority*; apply; or

(b) would form such a group if the scope of those *sectoral rules* were amended as described in paragraph 3.1 of ■ GENPRU 3 Annex 2 R (removing restrictions relating to place of incorporation or head office of members of those *financial sectors*).

banking and investment services conglomerate

FCA PRA

a *financial conglomerate* that is identified in paragraph 4.3 of ■ GENPRU 3 Annex 1 R (Types of financial conglomerate) as a *banking and investment services conglomerate*.

banking and investment services sector

FCA PRA

(in relation to a *financial sector* in a *consolidation group* or a *financial conglomerate* and in accordance with ■ GENPRU 3.1 (Cross sector groups)), the *investment services sector* and the *banking sector* taken together.

Banking Consolidation Directive

FCA PRA

the Directive of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (No 2006/48/EC).

banking customer

FCA PRA

(in BCOBS):

- (a) a *consumer*;
- (b) a *micro-enterprise*; or
- (c) a *charity* which has an annual income of less than £1 million.

A natural person acting in a capacity as a trustee is a *banking customer* if he is acting for purposes outside his trade, business or profession.

Banking Ombudsman scheme

FCA PRA

the *former scheme* set up, on a voluntary basis, to handle complaints against those banks which subscribed to it.

banking sector

FCA PRA

a sector composed of one or more of the following entities:

- (a) a *credit institution*;
- (b) a *financial institution*; and
- (c) an *ancillary services undertaking* that is not an *ancillary insurance services undertaking*.

base capital resources requirement

FCA PRA

an amount of *capital resources* that an *insurer* must hold as set out in ■ GENPRU 2.1.30 R (Table: Base capital resources requirement for an insurer) or a *BIPRU firm* must hold under ■ GENPRU 2.1.41 R (Base capital resources requirement for a BIPRU firm) and ■ GENPRU 2.1.48 R (Table: Base capital resources requirement for a BIPRU firm) or, as the case may be, ■ GENPRU 2.1.60 R (Calculation of the base capital resources requirement for banks authorised before 1993).

base costs

FCA PRA

management expenses which are not attributable to any particular *class*.

base costs levy

FCA PRA

a levy, forming part of the *management expenses levy*, to meet the *base costs* in the financial year of the *compensation scheme* to which the levy relates, each *participant firm's* share being calculated in accordance with ■ FEES 6.4.5 R.

certain securities

FCA PRA

(a) in respect of any *share, debenture, alternative debenture, government and public security* or *warrant* held by a *person* other than the *person* on whom the rights are conferred by the certificate or instrument; and

(b) the transfer of which may be effected without requiring the consent of that *person*;

but excluding any certificate or other instrument which confers rights in respect of two or more *investments* issued by different *persons* or in respect of two or more different *government and public securities* issued by the same *person*.

certificate representing debt securities

FCA PRA

(in LR) a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *debentures, alternative debentures, or government and public securities*.

certificate representing equity securities

FCA PRA

(in LR) a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *equity securities*.

certificate representing shares

FCA PRA

(in LR) a *certificate representing certain securities* where the certificate or other instrument confers rights in respect of *equity shares*.

CESR's guidelines on a common definition of European money market funds

FCA PRA

the Committee of European Securities Regulators' guidelines on a common definition of European money market funds: 19 May 2010 (CESR/10-049). These are available at www.esma.europa.eu

CESR's UCITS eligible assets guidelines

FCA PRA

The Committee of European Securities Regulators' guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044). These are available at http://www.fsa.gov.uk/pages/Library/Other_publications/EU/eu_docs/index.shtml

CF Arch cru payment scheme

the requirements included in the *permissions* of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the *Act* on 31 August 2011.

CFD

FCA PRA

contract for differences.

CFEB

FCA PRA

the consumer financial education body originally established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc) (as it had effect before the passing of the Financial Services Act 2012) and having the name Money Advice Service.

CFEB levy

FCA PRA

the levy payable to the FCA pursuant to ■ FEES 7.2.1 R by the *persons* listed in ■ FEES 1.1.2R(5).

CFPPFM

FCA PRA

the consumer-friendly version of a *firm's* PPFM, which must be produced pursuant to ■ COBS 20.4.5 R .

CFTC

FCA PRA

the Commodity Futures Trading Commission.

charge

FCA PRA

(1) (In *LR*) (in relation to *securitised derivatives*) means any payment identified under the terms and conditions of the *securitised derivatives*

(2) (except in *LR*) any *fee* or charge made to:

(a) a *client* in connection with *designated investment business*;
or

(b) a *customer* in connection with any *insurance mediation activities* in respect of a *non-investment insurance contract*;

whether levied by the *firm* or any other *person*, including a *mark-up* or *mark-down*.

chargeable case

FCA PRA

any *complaint* referred to the *Financial Ombudsman Service*, except where:

(a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

(i) the complainant is not an *eligible complainant* in accordance with ■ DISP 2; or

(ii) the *complaint* does not fall within the jurisdiction of the *Financial Ombudsman Service* (as described in ■ DISP 2); or

(iii) the *Ombudsman* considers that the *complaint* should be dismissed without consideration of its merits under ■ DISP 3.3 (Dismissal of complaints without consideration of the merits and test cases); or

(b) the *Ombudsman* considers, at any stage, that the *complaint* should be dismissed under DISP 3.3.4R(2) on the grounds that it is frivolous or vexatious.

chargeable case (general)

FCA

a *chargeable case* that is not a *chargeable case (PPI)*.

chargeable case (PPI)

FCA

a *chargeable case* that, in the *Ombudsman's* opinion, falls wholly or partly within the scope of ■ DISP App 3 (Handling Payment Protection Insurance Complaints).

charging group

FCA

as defined in ■ FEES 5 Annex 3R Part 3.

<p>of gathering information in order to make <i>benchmark submissions</i>, and sets out the process to manage such conflicts.</p>	
<p><i>conglomerate capital resources</i> FCA PRA</p>	<p>(in relation to a <i>financial conglomerate</i> with respect to which ■ GENPRU 3.1.29 R (Application of method 1 or 2 from Annex I of the <i>Financial Groups Directive</i>) applies) capital resources as defined in whichever of paragraphs 1.1 or 2.1 of ■ GENPRU 3 Annex 1 R (Capital adequacy calculations for financial conglomerates) applies with respect to that <i>financial conglomerate</i>.</p>
<p><i>conglomerate capital resources requirement</i> FCA PRA</p>	<p>(in relation to a <i>financial conglomerate</i> with respect to which ■ GENPRU 3.1.29 RR (Application of method 1 or 2 from Annex I of the <i>Financial Groups Directive</i>) applies) the capital resources requirement defined in whichever of paragraphs 1.3 or 2.4 of ■ GENPRU 3 Annex 1 R (Capital adequacy calculations for financial conglomerates) applies with respect to that <i>financial conglomerate</i>.</p>
<p><i>connected client</i> FCA PRA</p>	<p>(in LR) in relation to a <i>sponsor</i> or securities house, any client of the <i>sponsor</i> or securities house who is:</p> <ul style="list-style-type: none"> (a) a partner, <i>director</i>, employee or controller (as defined in section 422 of the <i>Act</i>) of the <i>sponsor</i> or securities house or of an undertaking described in paragraph (d); or (b) the spouse, civil partner or child of any individual described in paragraph (a); or (c) a <i>person</i> in his capacity as a trustee of a private trust (other than a pension scheme or an <i>employees' share scheme</i>) the beneficiaries of which include any <i>person</i> described in paragraph (a) or (b); or (d) an undertaking which in relation to the <i>sponsor</i> or securities house is a group undertaking.
<p><i>connected contract</i> FCA PRA</p>	<p>a <i>non-investment insurance contract</i> which:</p> <ul style="list-style-type: none"> (a) is not a contract of long-term insurance (as defined by article 3 of the <i>Regulated Activities Order</i>); (b) has a total duration (including <i>renewals</i>) of five years or less; (c) has an annual <i>premium</i> (or the equivalent of annual <i>premium</i>) of €500 or less; (d) covers the risk of: <ul style="list-style-type: none"> (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or (ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider ("travel risks"); in circumstances where: <ul style="list-style-type: none"> (A) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or (B) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation; (e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract);

(f) is complementary to the non-motor goods being supplied or service being provided by the provider; and

(g) is of such a nature that the only information that a person requires in order to carry on one of the *insurance mediation activities* is the cover provided by the contract.

In this definition:

(h) the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not:

(i) a hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974; or

(ii) any other agreement which contemplates that the property in those goods will also pass at some time in the future;

is the provision of a service related to travel, not a supply of goods;

(i) "small business" means a sole trader, *body corporate*, *partnership* or an unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where the small business is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section, within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group);

(j) "turnover" means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.

(in accordance with ■ GENPRU 2.2.222 R (Deductions from tiers one and two: Connected lending of a capital nature)) all lending within ■ GENPRU 2.2.227 R or ■ GENPRU 2.2.229 R and guarantees within ■ GENPRU 2.2.231 R or ■ GENPRU 2.2.233 R.

*connected
lending of a
capital nature*

FCA PRA

*connected
person*

FCA PRA

(1) (in relation to the *FCA* or *PRA*'s consideration of an application for, or of whether to vary or cancel, a *Part 4A permission*) (in accordance with section 55R of the *Act* (Persons connected with an applicant)) any *person* appearing to the regulator concerned to be, or likely to be, in a relationship with the applicant or *person* given *permission*, which is relevant.

(2) (in relation to the *FCA* or *PRA*'s power to gather information under section 165 of the *Act* (Regulators' power to require information)) (in accordance with section 165(11) of the *Act*) a *person* who has, or has at any relevant time had, the following relationship with another person ("A"):

(a) he is a member of A's *group*;

(b) he is a *controller* of A;

(c) he is a member of a *partnership* of which A is a member;

(d) he is or has been an employee of A;

(e) if A is a *body corporate*, he is or has been an *officer*, or *manager* or agent of A or of a *parent undertaking* of A;

(f) if A is a *partnership*, he is or has been a member, *manager* or agent of A;

<p>(i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or</p> <p>(ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or</p> <p>(iii) without prejudice to (ii), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.</p> <p>(2) (in <i>COMP</i>) the <i>investment</i> within (1), but including a sum of money that would otherwise be excluded:</p> <p style="padding-left: 40px;">(a) by article 6(1)(a)(ii) of the <i>Regulated Activities Order</i>, where the <i>person</i> making the payment is a <i>credit union</i> (unless the <i>person</i> receiving the payment is also a <i>credit union</i>); or</p> <p style="padding-left: 40px;">(b) by article 6(1)(d) of the <i>Regulated Activities Order</i>, where the <i>person</i> receiving it is a <i>credit union</i> ; or</p> <p style="padding-left: 40px;">(c) by article 6 of the <i>Regulated Activities Order</i>, where the <i>person</i> paying it is an <i>eligible claimant</i>.</p>	<p>(i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or</p> <p>(ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or</p> <p>(iii) without prejudice to (ii), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.</p> <p>(2) (in <i>COMP</i>) the <i>investment</i> within (1), but including a sum of money that would otherwise be excluded:</p> <p style="padding-left: 40px;">(a) by article 6(1)(a)(ii) of the <i>Regulated Activities Order</i>, where the <i>person</i> making the payment is a <i>credit union</i> (unless the <i>person</i> receiving the payment is also a <i>credit union</i>); or</p> <p style="padding-left: 40px;">(b) by article 6(1)(d) of the <i>Regulated Activities Order</i>, where the <i>person</i> receiving it is a <i>credit union</i> ; or</p> <p style="padding-left: 40px;">(c) by article 6 of the <i>Regulated Activities Order</i>, where the <i>person</i> paying it is an <i>eligible claimant</i>.</p>
<p><i>deposit back arrangement</i></p> <p>FCA PRA</p>	<p>(in relation to any contract of <i>reinsurance</i>) an arrangement whereby an amount is deposited by the <i>reinsurer</i> with the cedant.</p>
<p><i>Deposit Guarantee Directive</i></p> <p>FCA PRA</p>	<p>the Council Directive of 13 May 1994 on deposit-guarantee schemes (No 94/19/EC).</p>
<p><i>depository</i></p> <p>FCA PRA</p>	<p>(1) (except in <i>LR</i>):</p> <p style="padding-left: 40px;">(a) (in relation to an <i>ICVC</i>) the <i>person</i> to whom is entrusted the safekeeping of all of the <i>scheme property</i> of the <i>ICVC</i> and who has been appointed for this purpose in accordance with regulation 5 (Safekeeping of scheme property by depository) of and Schedule 1 (Depositaries) to the <i>OEIC Regulations</i>;</p> <p style="padding-left: 40px;">(b) (in relation to an <i>AUT</i>) the <i>trustee</i>;</p> <p style="padding-left: 40px;">(c) (in relation to any other <i>unit trust scheme</i>) the <i>person</i> holding the property of the <i>scheme</i> on trust for the <i>participants</i>;</p> <p style="padding-left: 40px;">(ca) (in relation to an <i>EEA UCITS scheme</i>) the <i>person</i> fulfilling the function of a depository in accordance with article 2(1)(a) of the <i>UCITS Directive</i>;</p> <p style="padding-left: 40px;">(d) (in relation to any other <i>collective investment scheme</i>) any <i>person</i> to whom the property subject to the <i>scheme</i> is entrusted for safekeeping.</p> <p>(2) (in <i>LR</i>) a <i>person</i> that issues <i>certificates representing certain securities</i> that have been <i>admitted to listing</i> or are the subject of an application for <i>admission to listing</i> .</p>
<p><i>deposit-based stakeholder product</i></p>	<p>the <i>stakeholder product</i> specified by regulation 4 (certain deposit accounts) of the <i>Stakeholder Regulations</i>;</p>

FCA PRA

*deposit-taking firm*a *firm* which is a *bank, building society or credit union*.

FCA PRA

DEPP

the Decision Procedure and Penalties manual.

FCA PRA

*derivative*a *contract for differences, a future or an option*.(see also *securitised derivative*.)

FCA PRA

*designated clearing house*one of the following *clearing houses*:

FCA PRA

- (a) ASX Settlement and Transfer Corporation Pty Ltd (ASTC);
- (b) Austrian Kontroll Bank (OKB);
- (c) Board of Trade Clearing Corporation;
- (d) Cassa di Compensazione e Garanzia S.p.A (CCG);
- (e) Commodity Clearing Corporation;
- (f) Emerging Markets Clearing Corporation;
- (g) FUTOP Clearing Centre (FUTOP Clearing Centralen A/S);
- (h) Hong Kong Futures Exchange Clearing Corporation Ltd;
- (i) Hong Kong Securities Clearing Company Ltd;
- (j) Kansas City Board of Trade Clearing Corporation;
- (k) Norwegian Futures & Options Clearing House (Norsk Opsjonsentral A.S. (NOS));
- (l) N.V. Nederlandse Liquidatiekas (NLKKAS);
- (m) OM Stockholm Exchange;
- (n) Options Clearing Corporation;
- (o) Options Clearing House Pty Ltd (OCH);
- (p) Sydney Futures Exchange Clearing House (SFECH Ltd); and
- (q) TNS Clearing Pty Ltd (TNSC).

*designated client bank account*a *client bank account* with the following characteristics:

FCA PRA

- (a) the account holds the money of one or more *clients*;
- (b) the account includes in its title the word "designated";
- (c) the *clients* whose *money* is in the account have each consented in writing to the use of the bank with which the *client money* is to be held; and
- (d) in the event of the *failure* of that bank, the account is not pooled with any other type of account unless a *primary pooling event* occurs.

EEA firm

FCA PRA

(in accordance with paragraph 5 of Schedule 3 to the *Act* (EEA Passport Rights)) any of the following, if it does not have its relevant office in the *United Kingdom*:

- (a) an investment firm (as defined in article 4(1) of *MiFID*) which is authorised (within the meaning of article 5) by its *Home State regulator*;
- (b) a *credit institution* (as defined in article 4(1) of the *Banking Consolidation Directive*)
- (c) a financial institution (as defined in article 4(5) of the *Banking Consolidation Directive*) which is a subsidiary of the kind mentioned in article 24 and which fulfils the conditions in articles 23 and 24 ;
- (d) an undertaking pursuing the activity of direct insurance (within the meaning of article 2 of the *Consolidated Life Directive* (No. 2002/83/EC) or of Article 1 of the *First Non-Life Directive* (No. 73/239/EEC)) which has received authorisation under Article 4 of the *Consolidated Life Directive* or Article 6 of the *First Non-Life Directive* from its *Home State regulator*;
- (e) an *IMD insurance intermediary* or an *IMD reinsurance intermediary* (as defined in article 2 of the *IMD*) which has registered under article 3 of that directive with its *Home State regulator*;
- (f) (from 1 July 2011) a *management company*;
- (g) an *undertaking* pursuing the activity of reinsurance (within the meaning of article 1 of the *Reinsurance Directive*) which has received authorisation under article 3 of the *Reinsurance Directive* from its *Home State Regulator* ;
- (h) a *person* who has received authorisation under article 18 of the *auction regulation*;

in this definition, relevant office means:

- (i) in relation to a *firm* falling within sub-paragraph (e), which has a registered office, its registered office;
- (ii) in relation to any other *firm* falling within any other paragraph, its head office.

EEA insurance parent undertaking

FCA PRA

an *insurance parent undertaking* that has its head office in the *United Kingdom* or another *EEA State*.

EEA insurer

FCA PRA

an *insurer*, other than a *pure reinsurer* or a *non-directive insurer*, whose head office is in any *EEA State* except the *United Kingdom* and which has received *authorisation* under article 6 of the *First Life Directive* or article 4 of the *Consolidated Life Directive* or article 6 of the *First Non-Life Directive* from its *Home State Regulator*.

EEA ISPV

FCA PRA

an *ISPV* (including a *UK ISPV*) whose head office is in any *EEA State* and which has received *authorisation* pursuant to article 46 of the *Reinsurance Directive* from its *Home State Regulator*.

EEA key investor information document

FCA PRA

a *document* that:

- (a) relates to an *EEA UCITS scheme*;
- (b) complies with the requirements of the *KII Regulation*; and
- (c) is provided in a language stipulated by article 94(1)(b) of the *UCITS Directive*.

EEA market operator

FCA **PRA**

(in REC) a person who is a *market operator* whose *home state* is an EEA State other than the *United Kingdom*.

EEA MCR

FCA **PRA**

the MCR in relation to business carried on in all EEA States, taken together, calculated by a *UK-deposit insurer* in accordance with INSPRU 1.5.46R.

EEA MiFID investment firm

FCA **PRA**

a *MiFID investment firm* whose *Home State* is not the *United Kingdom*.

EEA parent financial holding company

FCA **PRA**

(in accordance with Article 4(17) of the *Banking Consolidation Directive* (Definitions) and Article 3 of the *Capital Adequacy Directive* (Definitions)) a *parent financial holding company in a Member State* which is not a *subsidiary undertaking* of an *institution* authorised in any EEA State or of another *financial holding company* or *mixed financial holding company* established in any EEA State.

EEA parent institution

FCA **PRA**

(in accordance with Article 4(16) of the *Banking Consolidation Directive* and Article 2 of the *Capital Adequacy Directive* (Definitions)) a *parent institution in a Member State* which is not a *subsidiary undertaking* of another *institution* authorised in any EEA State, or of a *financial holding company* or *mixed financial holding company* established in any EEA State.

EEA parent mixed financial holding company

FCA **PRA**

(in accordance with Article 4(17a) of the *Banking Consolidation Directive* (Definitions)) a *parent mixed financial holding company in a Member State* which is not a *subsidiary undertaking* of an *institution* authorised in any EEA State or of another *financial holding company* or *mixed financial holding company* established in any EEA State.

EEA Passport Rights Regulations

FCA **PRA**

the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).

EEA prudential sectoral legislation

FCA **PRA**

(in relation to a *financial sector*) requirements applicable to *persons* in that *financial sector* in accordance with EEA legislation about prudential supervision of *regulated entities* in that *financial sector* and so that:

(a) (in relation to the *banking sector* and the *investment services sector*) in particular this includes the requirements laid down in the *Banking Consolidation Directive* and the *Capital Adequacy Directive*; and

(b) (in relation to the *insurance sector*) in particular this includes requirements laid down in the *First Non-Life Directive*, the *Consolidated Life Directive* and the *Insurance Groups Directive*.

EEA pure reinsurer

FCA **PRA**

a *reinsurance undertaking* (other than an *ISPV*) whose head office is in any EEA State except the *United Kingdom* and which has received (or is deemed to have received) authorisation under article 3 of the *Reinsurance Directive* from its *Home State Regulator*.

EEA registered tied agent
FCA PRA
 a *tied agent* of a UK MiFID investment firm that is not an *appointed representative* and would have been an *FCA registered tied agent* but for the fact that it does business in an *EEA State* that permits *investment firms* authorised by the *competent authority* of that state to appoint *tied agents*.

EEA regulated entity
FCA PRA
 a *regulated entity* that is an *EEA firm* or a *UK firm*.

EEA regulator
FCA PRA
 (1) a *competent authority* for the purposes of any of the *Single Market Directives* or the *auction regulation*.
 (2) (in **■ DEPP 7**) (as defined in section 131FA of the *Act*) the *competent authority* of an *EEA State* other than the *United Kingdom* for the purposes of the *short selling regulation*.

EEA right
FCA PRA
 (in accordance with paragraph 7 of Schedule 3 to the *Act* (EEA Passport Rights)) the entitlement of a *person* to establish a *branch* or provide services in an *EEA State* other than that in which he has his relevant office:
 (a) in accordance with the *Treaty* as applied in the *European Economic Area*; and
 (b) subject to the conditions of the relevant *Single Market Directive* or the *auction regulation*.

in this definition, relevant office means:

- (i) in relation to a *person* who has a registered office and whose entitlement is subject to the conditions of the *Insurance Mediation Directive*, his registered office; and
- (ii) in relation to any other *person*, his head office.

EEA simplified prospectus
FCA PRA
 a marketing *document* which meets the requirements of Article 28 of the UCITS Directive (No 85/611/EEC) (as at 30 June 2011).

EEA simplified prospectus scheme
FCA PRA
 an *EEA UCITS scheme* which is a *recognised scheme* under section 264 of the *Act* (Schemes constituted in other EEA States) and which is permitted by the laws and regulations of its *Home State* to market its *units* on the basis of an *EEA simplified prospectus*.

EEA State
FCA PRA
 (in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -
 (a) a state which at that time is a member State; or
 (b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an *EEA State* include references to Gibraltar as appropriate].

EEA territorial scope rule
FCA PRA
■ COBS 1 Annex 1, Part 2 paragraph 1(1) (which provides that the territorial scope of COBS is modified to the extent necessary to be compatible with European law).

<p><i>EEA tied agent</i> FCA PRA</p>	<p>a <i>tied agent</i> who is an <i>FCA registered tied agent</i> or an <i>EEA registered tied agent</i>.</p>
<p><i>EEA UCITS management company</i> FCA PRA</p>	<p>any <i>incoming EEA firm</i> that is a <i>management company</i>.</p>
<p><i>EEA UCITS scheme</i> FCA PRA</p>	<p>a <i>collective investment scheme</i> established in accordance with the <i>UCITS Directive</i> in an <i>EEA State</i> other than the <i>United Kingdom</i>.</p>
<p><i>EEA-deposit insurer</i> FCA PRA</p>	<p>a <i>non-EEA insurer</i> that has made a deposit in an <i>EEA State</i> (other than the <i>United Kingdom</i>) under article 23 of the <i>First Non-Life Directive</i> (as amended) in accordance with article 26 of that Directive or under article 51 of the <i>Consolidated Life Directive</i> in accordance with article 56 of that Directive.</p>
<p><i>effecting contracts of insurance</i> FCA PRA</p>	<p>the <i>regulated activity</i>, specified in article 10(1) of the <i>Regulated Activities Order</i> (Effecting and carrying out contracts of insurance), of effecting a <i>contract of insurance</i> as principal.</p>
<p><i>effective EE</i> FCA PRA</p>	<p><i>effective expected exposure</i>.</p>
<p><i>effective EPE</i> FCA PRA</p>	<p><i>effective expected positive exposure</i>.</p>
<p><i>effective expected exposure</i> FCA PRA</p>	<p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions) and as at a specific date) the maximum <i>expected exposure</i> that occurs at that date or any prior date; alternatively, it may be defined for a specific date as the greater of the <i>expected exposure</i> at that date, or the <i>effective exposure</i> at the previous date.</p>
<p><i>effective expected positive exposure</i> FCA PRA</p>	<p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions)) the weighted average over time of <i>effective expected exposure</i> over the first year, or, if all the contracts within the <i>netting set</i> mature before one year, over the time period of the longest maturity contract in the <i>netting set</i>, where the weights are the proportion that an individual <i>expected exposure</i> represents of the entire time interval.</p>
<p><i>effective maturity</i> FCA PRA</p>	<p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions), for the purpose of the <i>CCR internal model method</i> and with respect to a <i>netting set</i> with maturity greater than one year) the ratio of the sum of <i>expected exposure</i> over the life of the transactions in the <i>netting set</i> discounted at the risk-free rate of return divided by the sum of <i>expected exposure</i> over one year in a <i>netting set</i> discounted at the risk-free rate; this effective maturity may be adjusted to reflect <i>rollover risk</i> by replacing <i>expected exposure</i> with <i>effective expected exposure</i> for forecasting horizons under one year.</p>

efficient portfolio management

FCA **PRA**

(in *COLL* and in accordance with article 11 of the *UCITS eligible assets Directive*) techniques and instruments which relate to *transferable securities* and *approved money-market instruments* and which fulfil the following criteria:

- (a) they are economically appropriate in that they are realised in a cost effective way;
- (b) they are entered into for one or more of the following specific aims:
 - (i) reduction of risk;
 - (ii) reduction of cost;
 - (iii) generation of additional capital or income for the *scheme* with a risk level which is consistent with the risk profile of the *scheme* and the risk diversification rules laid down in *COLL*.

EG

FCA **PRA**

the Enforcement Guide.

EIS

FCA **PRA**

Enterprise Investment Scheme.

EIS fund

FCA **PRA**

an arrangement, specified in paragraph 2 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062), which is in summary: an arrangement in relation to *EIS shares* that would have been a *collective investment scheme* if the scheme arrangements had not provided that:

- (a) the *operator* will, so far as practicable, make investments which, subject to each participant's individual circumstances, qualify for relief under Chapter III of Part VII of the Income and Corporation Taxes Act 1988; and
- (b) the minimum subscription to the arrangements by each participant must be not less than £2,000.

EIS managed portfolio

FCA **PRA**

a managed portfolio which is, or is to be, invested wholly or mainly in *EIS shares*.

EIS manager

FCA **PRA**

- (a) (in relation to an *EIS managed portfolio*) the investment manager;
- (b) (in relation to an *EIS fund*) the manager of the fund.

EIS particulars

FCA **PRA**

a *document* containing particulars of an *Enterprise Investment Scheme*.

EIS share

FCA **PRA**

a *share* in respect of which the beneficial owner may, subject to his individual circumstances, be qualified, or has been qualified, for relief under Chapter III of Part VII of the Income and Corporation Taxes Act 1988.

EIS subscription

FCA **PRA**

any *money* which is subscribed:

- (a) in the case of an *EIS managed portfolio*, by the *client* of the *EIS manager* whose portfolio it is;
- (b) in the case of an *EIS fund*, by the participants in the *EIS*.

EL

expected loss.

FCA PRA

Electing Participants Order

the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (SI 2001/1783).

FCA PRA

Electing Participants Regulations

the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (SI 2001/1783).

FCA PRA

elective eligible counterparty

a *client* categorised as an elective eligible counterparty in accordance with ■ COBS 3.6 (Eligible counterparties).

FCA PRA

elective professional client

a *client* categorised as an elective professional client in accordance with ■ COBS 3.5 (Professional clients).

FCA PRA

electricity

(a) electricity in any form, including electricity as deliverable through the *Balancing and Settlement Code*;

(b) any right that relates to electricity, for example the right under a contract or otherwise to require a person to take any action in relation to electricity, including:

(i) supplying electricity to any person or accepting supply of electricity; or

(ii) providing any information or notice in relation to electricity; or

(iii) making any payment in relation to the supply or nonsupply, or acceptance or non-acceptance of supply, of electricity.

FCA PRA

electronic commerce activity

an activity which:

(a) consists of the provision of an *information society service* from an *establishment* in an *EEA State*; and

(b) is, or but for article 72A (Information society services) of the *Regulated Activities Order* (Information society services) (and irrespective of the effect of article 72 of that Order (Overseas persons)) would be, a *regulated activity*.

FCA PRA

electronic commerce activity direction

a direction made, or proposed to be made, by the *FCA* under regulation 6 of the *ECD Regulations*.

FCA PRA

electronic commerce communication

(in accordance with article 6 of the *Financial Promotion Order*) a communication, the making of which constitutes the provision of an *information society service*.

FCA PRA

electronic communication

has the meaning given in section 15(1) of the Electronic Communications Act 2000.

FCA PRA

electronic means

are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio optical technologies, or any other electromagnetic means.

FCA PRA

electronic money

electronically (including magnetically) stored monetary value as represented by a claim on the *electronic money issuer* which is:

FCA PRA

(a) issued on receipt of funds for the purpose of making payment transactions as defined in Article 4(5) of the *Payment Services Directive*; and

(b) accepted by a *person* other than the *electronic money issuer*;

but does not include:

(c) monetary value stored on instruments that can be used to acquire goods or services only:

(i) in or on the *electronic money issuer's* premises; or

(ii) under a commercial agreement with the *electronic money issuer*, either within a limited network of service providers or for a limited range of goods or services; or

(d) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

Electronic Money Directive

Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

FCA PRA

electronic money institution

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) an *authorised electronic money institution* or a *small electronic money institution*.

FCA PRA

electronic money issuer

(1) (except in *DISP*) any of the following *persons* when they issue *electronic money*:

FCA PRA

(a) *authorised electronic money institutions*;

(b) *small electronic money institutions*;

(c) *EEA authorised electronic money institutions*;

(d) *credit institutions*;

(e) the Post Office Limited;

<p><i>Electronic Money Regulations</i> FCA PRA</p>	<p>(f) the Bank of England, the European Central Bank and the national central banks of <i>EEA States</i> other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;</p> <p>(g) government departments and local authorities when acting in their capacity as public authorities;</p> <p>(h) <i>credit unions</i>;</p> <p>(i) municipal banks;</p> <p>(j) the National Savings Bank.</p> <p>[Note: article 2(3) of the <i>Electronic Money Directive</i>]</p> <p>(2) (in <i>DISP</i> and ■ FEES 5.5A) as in (1) but:</p> <p>(a) excluding <i>credit institutions</i>, <i>credit unions</i> and municipal banks; and</p> <p>(b) including a <i>person</i> who meets the conditions set out in regulation 75(1) or regulation 76(1) of the <i>Electronic Money Regulations</i>.</p> <p>the Electronic Money Regulations 2011 (SI 2011/99).</p>
<p><i>electronic SCV rules</i> FCA PRA</p>	<p>(in <i>COMP</i>) ■ COMP 17.2.1 R(2), ■ COMP 17.2.3 R(3) and ■ COMP 17.2.5 R, the application of which is determined by ■ COMP 17.1 and ■ COMP 17.2.7 R.</p>
<p><i>eligible</i> FCA PRA</p>	<p>(in <i>COLL</i>) (in relation to a <i>securities</i> or a <i>derivatives</i> market) a market that satisfies the requirements in ■ COLL 5.2.10 R (Eligible markets: requirements) in relation to schemes falling under ■ COLL 5 .</p>
<p><i>eligible claimant</i> FCA PRA</p>	<p>a <i>person</i> who is eligible to bring a <i>claim</i> for compensation under ■ COMP 4.2.1 R.</p>
<p><i>eligible complainant</i> FCA PRA</p>	<p>a <i>person</i> eligible to have a <i>complaint</i> considered under the <i>Financial Ombudsman Service</i>, as defined in ■ DISP 2.7 (Is the complainant eligible?).</p>
<p><i>eligible counterparty</i> FCA PRA</p>	<p>(1) (for the purposes other than those set out in (2)) (in accordance with ■ COBS 3.6.1 R) a <i>client</i> that is either a <i>per se eligible counterparty</i> or an <i>elective eligible counterparty</i>.</p> <p>(2) (for the purposes of <i>PRIN</i>, in relation to activities other than <i>designated investment business</i>) a <i>client</i> categorised as an <i>eligible counterparty</i> in accordance with ■ PRIN 1 Annex 1 R.</p>
<p><i>eligible counterparty business</i> FCA PRA</p>	<p>the following services and activities carried on by a <i>firm</i>:</p> <p>(a) <i>dealing on own account</i>, <i>execution of orders on behalf of clients</i> or reception and transmission of orders; or</p>

(b) any *ancillary service* directly related to a service or activity referred to in (a); or

(c) *arranging* in relation to business which is not *MiFID* or *equivalent third country firm business*;

but only to the extent that the service or activity is carried on with or for an *eligible counterparty*.

eligible ECAI

FCA **PRA**

an *ECAI*:

(a) (for *exposure risk weighting* purposes other than those in (b)) recognised by the *appropriate regulator* under regulation 22 of the *Capital Requirements Regulations 2006* (Recognition for exposure risk-weighting purposes); or

(b) (for *securitisation risk weighting* purposes) recognised by the *appropriate regulator* under regulation 23 of the *Capital Requirements Regulations 2006* (Recognition for securitisation risk-weighting purposes).

eligible institution

FCA **PRA**

(in *COLL*)

(a) a *BCD credit institution* authorised by its *Home State regulator*;

(b) an *MiFID investment firm* authorised by its *Home State regulator*.

eligible LLP members' capital

FCA **PRA**

members' capital of a *limited liability partnership* that meets the conditions in *IPRU(INV) Annex A* or, for a *BIPRU firm*, the requirements of ■ [GENPRU 2.2.94 R](#) (Core tier one capital: Eligible LLP members' capital).

eligible partnership capital

FCA **PRA**

(in relation to a *BIPRU firm*) has the meaning in ■ [GENPRU 2.2.93 R](#).

EMIR

Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, sometimes referred to as the "European Markets Infrastructure Regulation".

EMIR requirements

FCA

requirements imposed under *EMIR* and any regulation made under it.

emissions allowance

FCA **PRA**

an 'allowance', within the meaning of article 3(a) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

emissions auction product

FCA **PRA**

the *investment* specified in article 82A of the *Regulated Activities Order* (Greenhouse gas *emissions allowances*), which is in summary an *emissions allowance* offered for sale on an *auction platform* as a *financial instrument* or a *two-day emissions spot*.

employee

FCA PRA

(1) (for all purposes except those in (2)) an individual:

(a) who is employed or appointed by a *person* in connection with that *person's* business, whether under a contract of service or for services or otherwise; or(b) whose services, under an arrangement between that *person* and a third party, are placed at the disposal and under the control of that *person*;but excluding an *appointed representative* or a *tied agent* of that *person*.

(2) (for the purposes of:

(a) ■ COBS 11.7 (Personal account dealing);

(aa) ■ GEN 4 (Statutory status disclosure);

(ab) ■ GEN 6.1 (Payment of financial penalties);

(b) ■ SUP 12 (Appointed representatives); and

(c) TC)

an individual:

(i) within (1); or

(ii) who is:

(A) an *appointed representative* or, where applicable, a *tied agent* of the *person* referred to in (1); or(B) employed or appointed by an *appointed representative* or, where applicable, a *tied agent* of that *person*, whether under a contract of service or for services or otherwise, in connection with the business of the *appointed representative* or *tied agent* for which that *person* has accepted responsibility.a *person* that gives advice, or provides services to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* provided, or to be provided, by the employer for the benefit of its employees.*employee benefit consultant*

FCA PRA

has the same meaning as in section 1166 of the Companies Act 2006.

employees' share scheme

FCA PRA

employers' liability insurance

FCA PRA

a *contract of insurance* against risks of the *persons* insured incurring liabilities to their employees.

EMPS

FCA PRA

the Handbook Guide for energy market participants.

endowment assurance

FCA PRA

a *life policy* which pays a sum of *money* on the survival of the life assured to a specific date or on his earlier death.

energy

FCA PRA

coal, *electricity*, *natural gas* (or any by-product or form of any of them) , *oil* or *biofuel*.

energy collective investment scheme

FCA PRA

a *collective investment scheme*, the property of which consists only of *energy*, energy investments, *emissions allowances* , *tradable renewable energy credits* or cash awaiting investment.

energy investment

FCA PRA

any of the following:

- (a) a *unit* in an *energy collective investment scheme*;
- (b) an *option* to acquire or dispose of an *energy investment*;
- (c) a *future* or a *contract for differences* where the commodity or property of any other description in question is:
 - (i) *energy*; or
 - (ii) an *energy investment*; or
 - (iii) an *emissions allowance* ; or
 - (iv) a *tradable renewable energy credit*;
- (d) a *contract for differences* where the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of any of (c)(i) to (iv) (including any prices or charges in respect of imbalances under the *Network Code* or the *Balancing and Settlement Code*);
- (e) a *weather derivative*;
- (f) an *emissions allowance*, if it is a *specified investment*;
- (g) a *tradable renewable energy credit*, if it is a *specified investment*;
- (h) *rights to or interests in investments* in (a)-(g).

energy market activity

FCA PRA

(a) any *regulated activity* other than *bidding in emissions auctions* in relation to an *energy investment* or to *energy* , or in relation to a *biomass investment* or *biomass* that is ancillary to activities related to *energy investments* or *energy*, which:

- (i) is the *executing of own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or
- (ii) if it is not the *executing of transactions* on such exchanges, is performed in connection with or for persons who are not *retail clients* ;

(b) *establishing, operating or winding up a collective investment scheme* which is an *energy collective investment scheme* in which *retail clients* do not participate.

energy market participant

FCA **PRA**

a *firm*:

(a) whose permission:

(i) includes a *requirement* that the firm must not carry on any *designated investment business* other than *energy market activity*;

(ii) does not include a *requirement* that it comply with **■** IPRUINV link 5 (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an *authorised professional firm*, *bank*, *BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*), *building society*, *credit union*, *friendly society*, *ICVC*, *insurer*, *MiFID investment firm* (unless it is an *exempt BIPRU commodities firm*), *media firm*, *oil market participant*, *service company*, *insurance intermediary*, *home finance administrator*, *home finance provider*, *incoming EEA firm* (without a *top-up permission*), or *incoming Treaty firm* (without a *top-up permission*).

engage in investment activity

FCA **PRA**

(as defined in section 21(8) of the *Act*) (Restrictions on financial promotion):

(a) enter or offer to enter into an agreement the making or performance of which by either party constitutes a *controlled activity*; or

(b) exercise any rights conferred by a *controlled investment* to acquire, dispose of, underwrite or convert a *controlled investment*.

enhanced capital requirement

FCA **PRA**

(1) (in relation to a *firm* carrying on *general insurance business*) the amount calculated in accordance with INSPRU 1.1.72CR.

(2) (in relation to a *firm* carrying on *long-term insurance business*) an amount of *capital resources* that a *firm* must hold as set out in GENPRU 2.1.38R.

entering as provider into a funeral plan contract

FCA **PRA**

the *regulated activity*, specified in article 59 of the *Regulated Activities Order* (Funeral plan contracts) which comes into force on 1 January 2002, of entering as provider into a *funeral plan contract*.

entering into a home finance transaction

FCA **PRA**

any of the *regulated activities* of *entering into a regulated mortgage contract*, *entering into a home purchase plan*, *entering into a home reversion plan* or *entering into a regulated sale and rent back agreement*.

entering into a home purchase plan

FCA **PRA**

the *regulated activity*, specified in article 63F(1) of the *Regulated Activities Order*, which is in summary: entering into a *home purchase plan* as provider.

entering into a home reversion plan

FCA **PRA**

the *regulated activity*, specified in article 63B(1) of the *Regulated Activities Order*, which is in summary: entering into a *home reversion plan* as provider, or acquiring any obligations or rights (including his interest in land) of the plan provider under a *home reversion plan* entered into by him on or after 6 April 2007.

entering into a regulated

the *regulated activity*, specified in article 61(1) of the *Regulated Activities Order*, which is in summary: entering into a *regulated mortgage contract* as lender.

mortgage contract

FCA **PRA**

entering into a regulated sale and rent back agreement

FCA **PRA**

the *regulated activity*, specified in article 63J(1) of the *Regulated Activities Order*, which is in summary entering into a *regulated sale and rent back agreement* as an agreement provider, including acquiring any obligations or rights of the agreement provider, including the agreement provider's interest in land or interests under one or more such *agreements*.

Enterprise Investment Scheme

FCA **PRA**

an arrangement which is an *EIS managed portfolio* or an *EIS fund*.

Enterprise Zone Property Unit Trust

FCA **PRA**

an *unregulated collective investment scheme* of which the underlying assets are industrial and commercial buildings in an Enterprise Zone in accordance with section 749(2) of the Finance Act 1980.

EPE

FCA **PRA**

expected positive exposure.

equalisation provision

FCA **PRA**

a provision required to be established under the *rules* in INSPRU 1.4 .

equity

FCA **PRA**

(for the purposes of **■** BIPRU 7) a *share*.

equity exposure

FCA **PRA**

(in relation to the *IRB approach*) an exposure falling into the *IRB exposure class* referred to in **■** BIPRU 4.3.2 R (5) (equity exposures).

equity market adjustment ratio

FCA **PRA**

(1) (in relation to the *resilience capital requirement*) has the meaning set out in INSPRU 3.1.19R.

(2) (in relation to the *market risk* scenario for the *risk capital margin* of a *with-profits fund*) has the meaning set out in INSPRU 1.3.71R.

equity PRR

FCA **PRA**

the part of the *market risk capital requirement* calculated in accordance with **■** BIPRU 7.3 (Equity PRR and basic interest rate PRR for equity derivatives) but so that:

(a) the *equity PRR* excludes the part of the *market risk capital requirement* calculated under **■** BIPRU 7.3.45 R (Basic interest rate PRR for equity derivatives); and

(b) in relation to a particular *position*, it means the portion of the overall *equity PRR* attributable to that *position*.

equity release activity

FCA **PRA**

any *regulated mortgage activity* carried on in relation to a *lifetime mortgage*, or a *reversion activity*.

equity release adviser

FCA **PRA**

a *firm* with *permission* (or which ought to have *permission*) for:

- (a) *advising on regulated mortgage contracts* (when carried on in relation to a *lifetime mortgage*); or
- (b) *advising on a home reversion plan*.

equity release arranger

FCA **PRA**

a *firm* with *permission* (or which ought to have *permission*) for *arranging* a:

- (a) *regulated mortgage contract* (when carried on in relation to a *lifetime mortgage*); or
- (b) *home reversion plan*.

equity release intermediary

FCA **PRA**

a *firm* with *permission* (or which ought to have *permission*) to carry on *equity release mediation activity*.

equity release mediation activity

FCA **PRA**

any of the *regulated activities* of:

- (a) *arranging a regulated mortgage contract* (when carried on in relation to a *lifetime mortgage*) or a *home reversion plan*;
- (b) *advising on a regulated mortgage contract* (when carried on in relation to a *lifetime mortgage*) or a *home reversion plan*; or
- (c) *agreeing to carry on a regulated activity* in (a) or (b).

equity release provider

FCA **PRA**

a *firm* with *permission* (or which ought to have *permission*) for:

- (a) *entering into a regulated mortgage contract* (when carried on in relation to a *lifetime mortgage*); or
- (b) *entering into a home reversion plan*.

equity release transaction

FCA **PRA**

a *lifetime mortgage* or a *home reversion plan*.

equity security

FCA **PRA**

- (1) (in *LR*) *equity shares* and *securities* convertible into *equity shares*; and
- (2) (in *PR*) (as defined in Article 2.1(b) of the *prospectus directive*) shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer.

equity share

FCA **PRA**

shares comprised in a *company's equity share capital*.

equity share capital

FCA **PRA**

(for a *company*), its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

equity stake

FCA **PRA**

(in relation to a *company*) any kind of equity stake in that *company*, including *shares* in it (including non-voting and non-equity *shares*, *debt securities* that are convertible or exchangeable into such *shares*, a call *option* on such *shares* or an in-the-money put *option* on such *shares*, but excluding a *contract for differences* or other *investment* that provides merely an economic exposure to movement in the price of the company's shares).

equivalent

FCA **PRA**

see *commission equivalent*.

equivalent
business of a
third country
investment
firm

FCA **PRA**

the business of a *third country investment firm* carried on from an establishment in the *United Kingdom* that would be *MiFID business* if that firm were a *MiFID investment firm*.

equivalent
document

FCA **PRA**

(in *LR* and *FEES*) a document containing information equivalent to a *prospectus* for the purposes of ■ PR 1.2.2 R (2) or ■ (3) or ■ PR 1.2.3 R (3) or ■ (4).

ESMA

FCA **PRA**

European Securities and Markets Authority.

ESMA
recommendations

the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the European Securities and Markets Authority (ESMA/2011/81).

established
surplus

FCA **PRA**

has the meaning in ■ IPRU-INS 3.3(4).

establishing,
operating or
winding up a
collective
investment
scheme

FCA **PRA**

the *regulated activity*, specified in article 51(1)(a) of the *Regulated Activities Order* (Establishing etc a collective investment scheme), of establishing, operating or winding up a *collective investment scheme*.

establishing,
operating or
winding up a
personal
pension scheme

FCA **PRA**

the *regulated activity*, specified in article 52(b) of the *Regulated Activities Order* (Establishing etc. a pension scheme), of establishing, operating or winding up a *personal pension scheme*.

establishing,
operating or
winding up a
regulated

establishing, operating or winding up a collective investment scheme if the *scheme* is a *regulated collective investment scheme*.

collective investment scheme

FCA **PRA**

establishing, operating or winding up a stakeholder pension scheme

FCA **PRA**

establishing, operating or winding up an unregulated collective investment scheme

FCA **PRA**

establishment

FCA **PRA**

establishment conditions

FCA **PRA**

the *regulated activity*, specified in article 52 (a) of the *Regulated Activities Order* (Establishing etc. a pension scheme), of establishing, operating or winding up a *stakeholder pension scheme*.

establishing, operating or winding up a collective investment scheme if the scheme is an *unregulated collective investment scheme*.

(in relation to an *information society service*) the place at which the provider of the service effectively pursues an economic activity for an indefinite period; in this definition:

(a) the presence or use in a particular place of equipment or other technical means of providing an *information society service* does not, of itself, constitute that place as an establishment; and

(b) where it is unclear from which of a number of establishments a particular *information society service* is provided, that service is to be regarded as provided from the establishment where the provider has the centre of his activities relating to the service.

(in relation to the establishment of a *branch* in the *United Kingdom*) the conditions specified in paragraph 13 of Schedule 3 to the *Act* (EEA Passport Rights), which are that:

(a) if the *firm* falls within paragraph (a), (b), (c), (d) or (f) in the definition of "*EEA firm*":

(i)...

(b) if the *firm* falls within paragraph (e) in the definition of "*EEA firm*":

(i) the *EEA firm* has given its *Home State regulator* notice of its intention to establish a *branch* in the *United Kingdom*;

(ii) the *FCA* or *PRA* (as the case may be) has received notice ("a regulator's notice") from the firm's *Home State regulator* that the firm intends to establish a *branch* in the *United Kingdom*;

(iii) the *EEA firm's Home State regulator* has informed it that the regulator's notice has been sent to the *FCA* or *PRA* (as the case may be); and

(iv) one *month* has elapsed beginning with the date on which the *EEA firm's Home State regulator* informed the *firm* that it had sent the regulator's notice to the *FCA* or *PRA* (as the case may be) .

establishment costs

FCA PRA

(c) the *EEA firm* has been informed of the *applicable provisions* or two *months* have elapsed beginning with the date when the *FCA* or *PRA* (as the case may be) received the consent notice.

(1) (in ■ FEES 6) the costs of establishing the *compensation scheme*.

(2) (in ■ FEES 5) the costs of establishing the *Financial Ombudsman Service*.

EU

FCA PRA

the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7 February 1992 (as amended).

EU Cross-Border Regulation

FCA PRA

Regulation (EC) No. 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community.

European Economic Area

FCA PRA

the area established by the agreement on the European Economic Area signed at Oporto on 2 May 1992, as it has effect for the time being and which consists of the *EEA States*.

evidential provision

FCA PRA

a *rule*, contravention of which does not give rise to any of the consequences provided for by other provisions of the *Act*; and which provides, in accordance with section 138C of the *Act*, that:

(a) contravention may be relied on as tending to establish contravention of such other *rule* as may be specified; or

(b) compliance may be relied on as tending to establish compliance with such other *rule* as may be specified; or

(c) both (a) and (b).

excepted contract

FCA PRA

(in *BCOBS*) has the same meaning as in the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334).

excess LLP members' drawings

FCA PRA

the amount by which the aggregate of the amounts withdrawn by a *limited liability partnership's* members exceeds the profits of that *firm*, as calculated in accordance with *IPRU(INV)* Annex A 2.5R (Limited liability partnership excess drawings).

excess spread

FCA PRA

(for the purposes of ■ BIPRU 9 (Securitisation), in relation to a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)) finance charge collections and other fee income received in respect of the *securitised exposures* net of costs and expenses.

excess surplus

FCA PRA

a *firm* will have an excess surplus in a *with-profits fund* if, and to the extent that:

(a) the *regulatory surplus* (or, in the case of a *realistic basis life firm*, the excess of *realistic value of assets* over *realistic value of liabilities*) in that *with-profits fund*; and

<p><i>excess trading book position</i></p> <p>FCA PRA</p> <p><i>exchange traded</i></p> <p>FCA PRA</p> <p><i>exchange traded fund</i></p> <p>FCA PRA</p> <p><i>excluded communication</i></p> <p>FCA PRA</p>	<p>(b) any other financial resources applied to, or expected to be applied to, that <i>with-profits fund</i>;</p> <p>exceed:</p> <p>(c) the amount required to meet the higher of any regulatory capital requirement or the <i>firm's individual capital assessment</i> (at the <i>firm's</i> own risk appetite) for existing business; and</p> <p>(d) any further amount necessary to support the new business plans of that <i>with-profits fund</i>.</p> <p>has the meaning in ■ GENPRU 2.2.264 R (Deductions from total capital: Excess trading book position).</p> <p>(in IPRU(INV) 13) listed or traded on a <i>recognised or designated investment exchange</i>.</p> <p>a fund:</p> <p>(a) which is an <i>open-ended investment company</i>; and</p> <p>(b) the <i>units</i> of which are traded on a <i>regulated market or designated investment exchange</i>.</p> <p>the following types of <i>financial promotion</i> (a <i>firm</i> may rely on more than one of the paragraphs in relation to the same <i>financial promotion</i>):</p> <p>(a) a <i>financial promotion</i> that would benefit from an exemption in the <i>Financial Promotion Order</i> if it were <i>communicated</i> by an <i>unauthorised person</i>, or which originates outside the <i>United Kingdom</i> and is not capable of having an effect in the <i>United Kingdom</i> (within the meaning of s.21(3) of the <i>Act</i>);</p> <p>(b) a <i>financial promotion</i> from outside the <i>United Kingdom</i> that would be exempt under articles 30, 31, 32 or 33 of the <i>Financial Promotion Order</i> (Overseas communicators) if the office from which the <i>financial promotion</i> is <i>communicated</i> were a separate <i>unauthorised person</i>;</p> <p>(c) a <i>financial promotion</i> that is subject to, or exempted from, the <i>Takeover Code</i> or to the requirements relating to takeovers or related operations in another <i>EEA State</i>;</p> <p>(d) a personal quotation or illustration form;</p> <p>(e) a "one-off" <i>financial promotion</i> that is not a <i>cold call</i>. If the conditions set out in (i) to (iii), below, are satisfied, a <i>financial promotion</i> is "one-off". If not, the fact that any one or more of these conditions is met is to be taken into account in determining if a <i>financial promotion</i> is "one-off". However, a <i>financial promotion</i> may be regarded as "one-off" even if none of the conditions are met. The conditions are that:</p> <p>(i) the <i>financial promotion</i> is <i>communicated</i> only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;</p> <p>(ii) the identity of the product or service to which the <i>financial promotion</i> relates has been determined having regard to the particular circumstances of the recipient;</p> <p>(iii) the <i>financial promotion</i> is not part of an organised marketing campaign; or</p>
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<p><i>excluded material</i></p> <p>FCA PRA</p>	<p>(f) a communication that is exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.</p> <p>(in relation to access to <i>appropriate regulator</i> material) (as defined in section 394(7) of the <i>Act</i> (Access to FCA or PRA material)) material which:</p> <p>(a) has been intercepted in obedience to a warrant issued under any enactment relating to the interception of communications; or</p> <p>(b) indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant; or</p> <p>(c) is a <i>protected item</i>.</p>
<p><i>execute</i></p> <p>FCA PRA</p>	<p>(in relation to a transaction) carry into effect or perform the transaction, whether as <i>principal</i> or as agent, including instructing another <i>person</i> to execute the transaction.</p>
<p><i>execution criteria</i></p> <p>FCA PRA</p>	<p>the criteria set out in ■ COBS 11.2.6 R, that is:</p> <p>(a) the characteristics of the <i>client</i> including the categorisation of the <i>client</i> as retail or professional;</p> <p>(b) the characteristics of the <i>client</i> order;</p> <p>(c) the characteristics of <i>financial instruments</i> that are the subject of that order;</p> <p>(d) the characteristics of the <i>execution venues</i> to which that order can be directed; and</p> <p>(e) for a <i>management company</i>, the objectives, investment policy and risks specific to the <i>UCITS scheme</i> or <i>EEA UCITS scheme</i>, as indicated in its <i>prospectus</i> or <i>instrument constituting the scheme</i>.</p>
<p><i>execution factors</i></p> <p>FCA PRA</p>	<p>price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.</p>
<p><i>execution of orders on behalf of clients</i></p> <p>FCA PRA</p>	<p>acting to conclude agreements to buy or sell one or more <i>financial instruments</i> on behalf of <i>clients</i>.</p> <p>[Note: article 4 (1)(5) of <i>MiFID</i>]</p>
<p><i>execution venue</i></p> <p>FCA PRA</p>	<p>for the purposes of the provisions relating to best execution in ■ COBS 11.2 and in <i>COLL</i>, execution venue means a <i>regulated market</i>, an <i>MTF</i>, a <i>systematic internaliser</i>, or a <i>market maker</i> or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.</p> <p>[Note: article 44(1) of the <i>MiFID implementing Directive</i>]</p>
<p><i>execution-only transaction</i></p> <p>FCA PRA</p>	<p>a transaction <i>executed</i> by a <i>firm</i> upon the specific instructions of a <i>client</i> where the <i>firm</i> does not give <i>advice on investments</i> relating to the merits of the transaction and in relation to which the <i>rules</i> on assessment of appropriateness (■ COBS 10) do not apply .</p>
<p><i>executive procedures</i></p>	<p>the procedures relating to the giving of warning notices, decision notices and <i>supervisory notices</i> that are described in ■ DEPP 4 (Decisions by <i>FCA</i> staff under executive procedures) .</p>

FCA PRA

exempt activity

FCA PRA

(in relation to a *recognised body*) any *regulated activity* in respect of which the body is exempt from the *general prohibition* as a result of section 285(2) or (3) of the *Act* (Exemption for recognised investment exchanges and clearing houses).

exempt BIPRU commodities firm

FCA PRA

a *BIPRU firm* to which the exemption in ■ BIPRU TP 15.6R (Exemption for a BIPRU firm whose main business relates to commodities) applies.

exempt CAD firm

FCA PRA

(1) (except in SYSC and IPRU(INV)) has the meaning set out in ■ BIPRU 1.1.16 R (Types of investment firm: exempt CAD firm) which is in summary an *investment firm* that satisfies certain specified conditions.

(2) (in SYSC and IPRU(INV)) a *firm* in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.

exempt full scope BIPRU investment firm

FCA PRA

a *full scope BIPRU investment firm* falling into BIPRU 12.1.4R.

exempt insurance intermediary

FCA PRA

an *insurance intermediary*:

- (a) whose *Part 4A permission* is limited to or includes *insurance mediation activity*;
- (b) which, in relation to *insurance mediation activity* (but disregarding *money* or other assets held in relation to other activities) either:
 - (i) does not hold any *client money* or other *client* assets in any form; or
 - (ii) holds *client money* as trustee under a statutory trust imposed by ■ CASS 5.3 (statutory trust) but does not otherwise hold *client money*; and
- (c) which (when aggregating the amount calculated in accordance with ■ CASS 5.5.65 R) does not in relation to *insurance mediation activity* hold *client money* in excess of £30,000 at any time during a *financial year*.

exempt person

FCA PRA

(1) (as defined in section 417(1) of the *Act* (Definitions)) (in relation to a *regulated activity*) a *person* who is exempt from the *general prohibition* in respect of that activity as a result of:

- (a) the *Exemption Order*; or
- (b) being an *appointed representative*; or
- (c) section 285(2) or (3) of the *Act* (Exemption for recognised investment exchanges and clearing houses) ;

and

(2) a *person* who is exempt from the general prohibition as a result of section 312A(2) of the *Act*.

exempt professional firm

FCA **PRA**

a person to whom, under section 327 of the *Act*, the *general prohibition* does not apply; guidance is given in ■ PROF 2.1 (*Exempt regulated activities*).

exempt regulated activity

FCA **PRA**

(as defined in section 325(2) of the *Act* (FCA's general duty)) a *regulated activity* which may, as a result of Part XX of the *Act* (Provision of Financial Services by Members of the Professions), be carried on by *members* of a profession which is supervised and regulated by a *designated professional body* without breaching the *general prohibition*.

Exemption Order

FCA **PRA**

the Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201).

exercise notice

FCA **PRA**

(in *LR*) (in relation to *securitised derivatives*), a document that notifies the *issuer* of a holder's intention to exercise its rights under the *securitised derivative*.

exercise price

FCA **PRA**

(in *LR*) (in relation to *securitised derivatives*), the price stipulated by the *issuer* at which the holder can buy or sell the *underlying instrument* from or to the *issuer*.

exercise time

FCA **PRA**

(in *LR*) (in relation to *securitised derivatives*), the time stipulated by the *issuer* by which the holder must exercise their rights.

expected exposure

FCA **PRA**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the average of the distribution of *exposures* at any particular future date before the longest maturity transaction in the *netting set* matures.

expected loss

FCA **PRA**

(in accordance with Article 4(29) of the *Banking Consolidation Directive* (Definitions) and for the purposes of the *IRB approach* and the *standardised approach* to credit risk) the ratio of the amount expected to be lost on an *exposure* from a potential *default* of a counterparty or dilution over a one year period to the amount outstanding at default.

expected positive exposure

FCA **PRA**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the weighted average over time of *expected exposures* where the weights are the proportion that an individual *expected exposures* represents of the entire time interval; when calculating the minimum capital requirement, the average is taken over the first year or, if all the contracts within the *netting set* mature before one year, over the time period of the longest-maturity contract in the *netting set*.

expiration date

FCA **PRA**

(in *LR*) (in relation to *securitised derivatives*), the date stipulated by the *issuer* on which the holder's rights in respect of the *securitised derivative* ends.

exposure

FCA PRA

(1) (in relation to a *firm* but subject to (2) and (3)) the maximum loss which the firm might suffer if:

(a) a counterparty or a group of connected counterparties fail to meet their obligations; or

(b) it realises assets or off-balance sheet positions

(2) (in accordance with Article 77 of the *Banking Consolidation Directive* and for the purposes of the calculation of the *credit risk capital component* and the *counterparty risk capital component* (including ■ BIPRU 3 (Standardised credit risk), ■ BIPRU 4 (The IRB approach), ■ BIPRU 5 (Credit risk mitigation) and ■ BIPRU 9 (Securitisation) an asset or off-balance sheet item.

(3) (for the purposes of ■ BIPRU 10 (Large exposures requirements)) has the meaning in ■ BIPRU 10.2 (Identification of exposures and recognition of credit risk mitigation).

ex-section 43 firm

FCA PRA

a *firm* that was a listed institution, as defined in section 43 of the Financial Services Act 1986, immediately before *commencement*.

ex-section 43 lead regulated firm

FCA PRA

an *ex-section 43 firm* for which the FSA (in its capacity as the regulatory body under section 43 of the Financial Services Act 1986) was lead regulator for financial supervision purposes, and that was subject to the *section 43 capital requirements*, immediately before *commencement*.

external management company

FCA PRA

(in LR and PR) has the meaning in ■ PR 5.5.3A R.

extraction

FCA PRA

(in relation to *mineral companies*), includes mining, production, quarrying or similar activities and the reworking of mine tailings or waste dumps.

extraordinary resolution

FCA PRA

(in COLL) a resolution passed by a majority of not less than three-quarters of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at a general meeting or (as the case may be) *class meeting* of holders, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

EZPUT

FCA PRA

Enterprise Zone Property Unit Trust.

- (i) a single *qualifying master scheme*; or
- (ii) a single *sub-fund* of a *qualifying master scheme* that is an *umbrella*; and

which, in the case of either (i) or (ii), is:

- (A) a *UCITS*; or
- (B) a *non-UCITS retail scheme*; or
- (C) a *recognised scheme*.

feeder UCITS

FCA **PRA**

(in accordance with article 58(1) of the *UCITS Directive*):

- (a) a *UCITS scheme* or a *sub-fund* of a *UCITS scheme* which has been approved by the *FCA*; or
- (b) an *EEA UCITS scheme* or a *sub-fund* of an *EEA UCITS scheme* which has been approved by the *competent authority* of the *UCITS Home State*;

to invest at least 85% of its assets in the *units* of a single *master UCITS*.

fee-paying electronic money issuer

FCA **PRA**

any of the following when they issue *electronic money*:

- (a) an *authorised electronic money institution*;
- (b) a *small electronic money institution*;
- (c) an *EEA authorised electronic money institution*;
- (d) a *full credit institution*, including a branch of the *full credit institution* within the meaning of article 4(3) of the *BCD* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 38 of the *BCD*;
- (e) the Post Office Limited;
- (f) the Bank of England, when not acting in its capacity as a monetary authority or carrying out functions of a public nature;
- (g) government departments and local authorities, when carrying out functions of a public nature;
- (h) a *credit union*;
- (i) a municipal bank; and
- (j) the National Savings Bank.

A *full credit institution* that is an *EEA firm* is only a *fee-paying electronic money issuer* if it is exercising an *EEA right* in accordance with Part II of Schedule 3 to the *Act* (Exercise of passport rights by EEA firms) to issue *electronic money* in the *United Kingdom*. An *EEA authorised electronic money institution* is only a *fee-paying electronic money issuer* if it is exercising a right under Article 3 of the *Electronic Money Directive* to issue *electronic money* in the *United Kingdom*.

fee-paying payment service provider

FCA **PRA**

any of the following when they provide *payment services*:

- (a) a *payment institution*;
- (b) a *full credit institution*;
- (c) an *electronic money issuer* (except where it is an *electronic money issuer* whose only *payment service* activities are those relating to the issuance of *electronic money* by itself or if it is a *credit union*, a municipal bank or the National Savings Bank);
- (d) the Post Office Limited;
- (e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and

	(f) government departments and local authorities, other than when carrying out functions of a public nature.
	<i>A full credit institution</i> that is an <i>EEA firm</i> is only a <i>fee-paying payment service provider</i> if it is exercising an <i>EEA right</i> in accordance with Part 2 of Schedule 3 to the <i>Act</i> (exercise of passport rights) to provide <i>payment services</i> in the <i>United Kingdom</i> . An <i>EEA authorised payment institution</i> or an <i>EEA authorised electronic money institution</i> is only a <i>fee-paying payment service provider</i> if it is exercising a right under Article 25 of the <i>Payment Services Directive</i> or Article 3 of the <i>Electronic Money Directive</i> to provide <i>payment services</i> in the <i>United Kingdom</i> .
FEES FCA PRA	the <i>FEES</i> manual.
FICOD 1 FCA PRA	the European Parliament and Council Directive amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC regarding the supplementary supervision of financial entities in a financial conglomerate (No 2011/89/EU).
field representative FCA PRA	an <i>appointed representative</i> or, where applicable, a <i>tied agent</i> , or an <i>employee</i> of the <i>firm</i> (or of its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>), whose normal fixed place of business is not a business address of the <i>firm</i> which appears on the <i>firm's</i> stationery.
final bonus FCA PRA	(in relation to a <i>with-profits insurance contract</i>) a discretionary payment which might be made by a <i>long-term insurer</i> , in addition to the guaranteed benefits, when the benefits under the <i>with-profits insurance contract</i> become payable.
final notice FCA PRA	a notice given by the <i>appropriate regulator</i> under section 390 of the <i>Act</i> (Final notices).
final response FCA PRA	(1) (in ■ CREDS 9) a written response from the <i>firm</i> which: <ul style="list-style-type: none"> (a) accepts the complaint, and, where appropriate, offers redress; or (b) offers redress without accepting the complaint; or (c) rejects the complaint 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. <p>(2) [deleted]</p> <p>(3) (in <i>DISP</i>) has the meaning given in ■ DISP 1.6.2 R (1).</p>
final terms FCA PRA	(in <i>LR</i>) the document containing the final terms of each issue which is intended to be <i>listed</i> .
Financial Action Task Force FCA PRA	the inter-governmental body responsible for developing and promoting policies, both nationally and internationally, to combat money laundering.

financial adviser

FCA **PRA**

(a) an individual appointed by an independent intermediary or by its *appointed representative* or where applicable, *tier agent*, to provide any or all of the following services:

- (i) giving advice on *investments* to *clients*;
- (ii) *arranging (bringing about) deals in investments* or *executing transactions* involving, in each case, *designated investments* with or for *clients*;
- (iii) *managing investments*;
- (iv) receiving or holding *client money* or other *client assets*;
- (v) *safeguarding and administering investments*.

(b) For the purposes of this definition, an independent intermediary is a *firm* acting as an intermediary but excluding:

- (i) a *firm* which is a member of a *marketing group*;
- (ii) a *product provider* which *sells* its own *packaged products*.

financial analyst

FCA **PRA**

a *relevant person* who produces the substance of *investment research*.

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

financial collateral comprehensive method

FCA **PRA**

the method for calculating the effects of credit risk mitigation described in those parts of ■ BIPRU 5.4 (Financial collateral) that are expressed to apply to that method.

Financial Collateral Directive

FCA **PRA**

the Council Directive of 6 June 2002 relating to financial collateral arrangements (No. 2002/47/EC).

financial collateral simple method

FCA **PRA**

the method for calculating the effects of credit risk mitigation described in those parts of ■ BIPRU 5.4 (Financial collateral) that are expressed to apply to that method.

financial conglomerate

FCA **PRA**

(in accordance with Article 2(14) of the *Financial Groups Directive* (Definitions)) a *consolidation group* that is identified as a *financial conglomerate* by the *financial conglomerate definition decision tree*.

financial conglomerate definition decision tree

FCA **PRA**

the decision tree in GENPRU 3 Ann 4R.

financial crime

FCA PRA

(in accordance with section 1H of the *Act*) any kind of criminal conduct relating to money or to financial services or markets, including any offence involving:

- (a) fraud or dishonesty; or
- (b) misconduct in, or misuse of information relating to, a financial market; or
- (c) handling the proceeds of crime; or
- (d) the financing of terrorism;

in this definition, "offence" includes an act or omission which would be an offence if it had taken place in the *United Kingdom*.

financial derivative instrument

FCA PRA

has the meaning in ■ BIPRU 13.3.3 R (Definition of a financial derivative instrument); the definition is adjusted for the purposes of the definition of *counterparty risk capital component* in accordance with ■ BIPRU 14.2.3 R (Credit derivatives).

Financial Groups Directive

FCA PRA

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

Financial Groups Directive Regulations

FCA PRA

the Financial Conglomerates and Other Financial Groups Regulations 2004 (SI 2004/1862).

financial holding company

FCA PRA

a *financial institution* that fulfils the following conditions:

- (a) its *subsidiary undertakings* are either exclusively or mainly *credit institutions*, *investment firms* or *financial institutions*;
- (b) at least one of those *subsidiary undertakings* is a *credit institution* or an *investment firm*; and
- (c) it is not a *mixed financial holding company*.

financial information table

FCA PRA

(in *LR*) financial information presented in tabular form that covers the reporting period set out in ■ LR 13.5.13 R in relation to the entities set out in ■ LR 13.5.14 R, and to the extent relevant ■ LR 13.5.17A R.

financial institution

FCA PRA

(1) (in accordance with paragraph 5(c) of Schedule 3 to the *Act* (EEA Passport Rights: EEA firm) and article 4 (5) of the *Banking Consolidation Directive* (Definitions)), but not for the purposes of *GENPRU*, *BIPRU* and *INSPRU*), an undertaking, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities listed in points 2 to 12 and 15 of Annex I to the *BCD*, which is a subsidiary of the kind mentioned in article 24 of the *BCD* and which fulfils the conditions in that article.

(2) for the purposes of *GENPRU*, *BIPRU* and *INSPRU* and in accordance with Articles 1(3) (Scope) and 4(5) (Definitions) of the *Banking Consolidation Directive*) the following :

financial
instrument

FCA PRA

(a) an *undertaking*, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the *listed activities* listed in points 2 to 12 and 15 of Annex I to the *Banking Consolidation Directive* including the services and activities provided for in Sections A and B of Annex I of the *MIFID* when referring to the financial instruments provided for in Section C of Annex I of that Directive ;

(b) (for the purposes of consolidated requirements) those institutions permanently excluded by Article 2 of the *Banking Consolidation Directive* (Scope), with the exception of the *central banks* of *EEA States*

(1) (other than in (2)) instruments specified in Section C of Annex I of *MiFID*, that is:

(a) *transferable securities*;

(b) *money-market instruments*;

(c) units in collective investment undertakings;

(d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;

(e) options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

(f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market* and/or an *MTF*;

(g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the *MiFID Regulation*);

(h) derivative instruments for the transfer of credit risk;

(i) financial contracts for differences; and

(j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to

(i) climatic variables;

(ii) freight rates;

(iii) emission allowances;

(iv) inflation rates or other official economic statistics;

(v) telecommunications bandwidth;

(vi) commodity storage capacity;

(vii) transmission or transportation capacity relating to commodities, whether cable, pipeline or other means;

(viii) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(ix) a geological, environmental or other physical variable;

(x) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(xi) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where the conditions in Articles 38(3) and (4) of the *MiFID Regulation* are met.

[Note: article 4(1)(17) and section C of Annex I to *MiFID* and articles 38 and 39 of the *MiFID Regulation*]

(2) (in ■ MAR 1 and ■ MAR 2, ■ DTR 1, ■ 2 and ■ 3 and otherwise where used in relation to the *Market Abuse Directive*) (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

(a) transferable securities as defined in the *ISD*;

(b) units in collective investment undertakings;

(c) money-market instruments;

(d) financial-futures contracts, including equivalent cash-settled instruments;

(e) forward interest-rate agreements;

(f) interest-rate, currency and equity swaps;

(g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;

(h) derivatives on commodities; and

(i) any other instrument admitted to trading on a *regulated market* in an *EEA State* or for which a request for admission to trading on such a market has been made.

*Financial
Ombudsman
Service*

FCA PRA

the scheme provided under Part XVI of the *Act* (The Ombudsman Scheme) under which certain disputes may be resolved quickly and with minimum formality by an independent *person*.

*Financial
Ombudsman
Service Limited*

FCA PRA

the *body corporate* established by the *FSA* under paragraph 2(1) of Schedule 17 to the *Act* (The Scheme Operator) (as originally enacted) to administer the *Financial Ombudsman Service*.

*financial
promotion*

FCA PRA

(1) an invitation or inducement to *engage in investment activity* that is communicated in the course of business;

[Note: section 21 of the *Act* (Restrictions on financial promotion)]

(2) (in relation to ■ COBS 3.2.1 R (3), ■ COBS 4.3.1 R, ■ COBS 4.5.8 R and ■ COBS 4.7.1 R) (in addition to (1)) a marketing communication within

Financial Promotion Order

FCA PRA

the meaning of *MiFID* made by a *firm* in connection with its *MiFID* or *equivalent third country business*.

the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529).

financial promotion rules

FCA PRA

(1) (in relation to *COBS*) any or all of the *rules* in ■ *COBS* 4 that impose requirements in relation to a *financial promotion* but only to the extent that they apply to a *financial promotion*.

(2) (in relation to *ICOBS*) ■ *ICOBS* 2.2 .

(3) (in relation to *MCOB*) ■ *MCOB* 3.

(4) (in relation to *BCOBS*) all or any of the *rules* in ■ *BCOBS* 2 that impose requirements in relation to a *financial promotion* but only to the extent that they apply to a *financial promotion*.

financial resources

FCA PRA

(in *UPRU*) the financial resources calculated in accordance with ■ *UPRU* 2.2.1 R (Financial resources) that a *UCITS firm* needs to meet its *financial resources requirement*.

financial resources requirement

FCA PRA

(in *UPRU*) has the meaning given in ■ *UPRU* 2.1.2 R.

financial return

FCA PRA

(in *UPRU*) means *annual financial return*, *quarterly financial return* or *monthly financial return* as the case may be.

financial sector

FCA PRA

(1) (subject to (2)) one of the *banking sector*, the *insurance sector* or the *investment services sector*.

(2) (for the purposes of the definition of *financial conglomerate* and for any other provision of *GENPRU* 3 that treats the *banking sector* and the *investment services sector* as one) one of the *banking and investment services sector* or the *insurance sector*.

Financial Services Compensation Scheme Limited

FCA PRA

the *body corporate* established by the *FSA* under section 212 of the *Act* (The scheme manager) (as originally enacted) to administer the *compensation scheme*.

Financial Services Register

FCA PRA

the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The register of certain payment service providers) and regulation 4 of the *Electronic Money Regulations*, of every:

(a) *authorised person*

(aa) *authorised payment institution* and its *EEA branches*;

(ab) *small payment institution*;

<p>(ac) <i>agent of an authorised payment institution or small payment institution;</i></p> <p>(aca) <i>authorised electronic money institution and an EEA branch of an authorised electronic money institution;</i></p> <p>(acb) <i>small electronic money institution;</i></p> <p>(acc) <i>agent of an authorised electronic money institution or small electronic money institution;</i></p> <p>(ad) <i>credit union, municipal bank and the National Savings Bank where such persons provide a payment service; or issue electronic money;</i></p> <p>(b) <i>AUT;</i></p> <p>(c) <i>ICVC;</i></p> <p>(d) <i>recognised scheme;</i></p> <p>(e) <i>recognised investment exchange;</i></p> <p>(f) <i>[deleted]</i></p> <p>(g) <i>individual to whom a prohibition order relates;</i></p> <p>(h) <i>approved person; and</i></p> <p>(i) <i>person within such other class (if any) as the FCA may determine; except as provided by any transitional provisions.</i></p>	<p>the <i>PRA's power under section 165A of the Act (PRA's power to require information: financial stability) which, in summary, is a power to require a person to provide information or documents relevant to the stability of one or more aspects of the UK financial system.</i></p>
<p><i>financial stability information power</i></p> <p>FCA PRA</p>	<p>a requirement imposed on a <i>person</i> by the <i>PRA</i> using the <i>financial stability information power</i> or the <i>overseas financial stability information power</i>.</p>
<p><i>financial stability information requirement</i></p> <p>FCA PRA</p>	<p>(1) (in <i>DISP</i> and FEES 5) the 12 <i>months</i> ending with 31 March.</p> <p>(3) (in <i>GENPRU</i> and <i>INSPRU</i>) the period at the end of which the balance of the accounts of the <i>insurer</i> is struck, or, if no balance is struck, the calendar year.</p>
<p><i>financial year</i></p> <p>FCA PRA</p>	<p>(for the purposes of <i>INSPRU 1.1</i> and of the definition of <i>non-directive insurer</i>) the last <i>financial year</i> to end before the date on which the latest accounts of the <i>insurer</i> are required to be deposited with the <i>appropriate regulator</i>; the preceding <i>financial year</i> and previous <i>financial years</i> are construed accordingly.</p>
<p><i>financial year in question</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>share, debenture</i> or other investment in, or external contribution to the capital of, a <i>firm</i>) an amount that represents a reasonable estimate of the part of the <i>coupon</i> on that instrument that reflects the cost of financing generally but excludes costs reflecting factors relating to the issuer, guarantor or other person to whom the instrument creates an exposure.</p>
<p><i>financing cost amount</i></p> <p>FCA PRA</p>	<p>the Financial Stability and Market Confidence sourcebook.</p>
<p><i>FINMAR</i></p> <p>FCA PRA</p>	

fire and natural forces

FCA PRA

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 8 of Part I of Schedule 1 to the *Regulated Activities Order* (Contracts of general insurance), against loss of or damage to property (other than property to which paragraphs 3 to 7 of Part I of Schedule 1 to the *Regulated Activities Order* (Land vehicles; railway rolling stock; aircraft; ships; goods in transit) relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.

firm

FCA PRA

(1) in the *FCA Handbook*, an *authorised person*, but not a *professional firm* unless it is an *authorised professional firm* (see also ■ GEN 2.2.18 R for the position of an authorised partnership or unincorporated association which is dissolved).

(1A) in the *PRA Handbook*, a *PRA-authorised person*.

(2) (in ■ DISP 2 and ■ 3) includes, in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.

(3) (in ■ DISP 2 and ■ 3) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, former *firms* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.

(4) (in ■ DISP 2 and ■ 3) includes, as a result of the *insurance market direction* given in ■ DISP 2.1.7 D under section 316 of the *Act* (Direction by a regulator), *members* of the *Society of Lloyd's*.

(5) (in ■ FEES 3, ■ FEES 4, ■ FEES 5 and ■ FEES 7) includes a *fee-paying payment service provider* and a *fee-paying electronic money issuer* in accordance with ■ FEES 3.1.1A R, ■ FEES 4.1.1A R, ■ FEES 5.1.1A R and ■ FEES 7.1.1 R.

(6) (in *CONRED*):

(a) an *authorised person*; or

(b) a *person* who was an *authorised person* when the relevant activity took place but has since ceased to be one.

firm in run-off

FCA PRA

a *firm* whose *Part 4A permission* has been varied so as to remove the *regulated activity of effecting contracts of insurance*.

firm type

FCA PRA

one of a list of firm types set out in ■ SUP 16 Annex 17 G used for the purposes of checking and correcting *standing data* under ■ SUP 16.10.4 R.

firm-specific liquidity stress

FCA PRA

(in relation to a *firm* and any reporting obligations under ■ SUP 16 (Reporting requirements)):

(a) (in the case of reporting obligations on a solo basis (including on the basis of the *firm's UK branch*) the *firm* failing to meet, not complying with or being in breach of:

(i) the liquidity resources requirement calculated by that *firm* as adequate in its current *Individual Liquidity Adequacy Assessment* or *Individual Liquidity Systems Assessment*; or

(ii) the level of its liquid assets buffer advised in any current *individual liquidity guidance* that the *firm* has accepted; or

(iii) its funding profile advised in any current *individual liquidity guidance* that the *firm* has accepted; or

(iv) the *overall liquidity adequacy rule*; or

<p>(v) BIPRU 12.2.8R (<i>ILAS BIPRU firm</i> adequate buffer of high quality, unencumbered assets) or BIPRU 12.2.11R (liquid assets buffer is at least equal to the <i>simplified buffer requirement</i>); or</p> <p>(vi) the <i>simplified buffer requirement</i> (taking into account ■ BIPRU TP 29 (Liquid assets buffer scalar: simplified ILAS BIPRU firms) unless this has been superseded by <i>individual liquidity guidance</i> that it has accepted; or</p> <p>(vii) any requirement imposed by or under the <i>regulatory system</i> under which the <i>firm</i> must hold a specified level of liquidity resources;</p> <p>or it being likely that the <i>firm</i> will do so;</p> <p>(b) (in the case of reporting obligations with respect to the <i>firm</i> and a group of other <i>persons</i>) has the same meaning as in (a) except that references to any <i>rule</i> or other requirement, <i>Individual Liquidity Adequacy Assessment</i>, <i>Individual Liquidity Systems Assessment</i> or <i>individual liquidity guidance</i> are to any such thing so far as it applies to the <i>firm</i> and that group considered together.</p>	<p>the Council Directive of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No 79/267/EEC).</p>
<p><i>First Life Directive</i> FCA PRA</p>	
<p><i>First Non-Life Directive</i> FCA PRA</p>	<p>the Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance (No 73/239/EEC).</p>
<p><i>FIT</i> FCA PRA</p>	<p>the part of the <i>Handbook</i> in High Level Standards which has the title the Fit and Proper test for Approved Persons.</p>
<p><i>fixed overheads requirement</i> FCA PRA</p>	<p>the part of the <i>capital resources requirement</i> calculated in accordance with ■ GENPRU 2.1.53 R (Calculation of the fixed overheads requirement).</p>
<p><i>fixed-sum credit</i> FCA PRA</p>	<p>(in accordance with section 10(1)(b) of the Consumer Credit Act 1974) any facility under a contract, other than <i>running-account credit</i>, by which the <i>customer</i> is enabled to receive credit (whether in one amount or by instalments).</p>
<p><i>flat rate benefits business friendly society</i> FCA PRA</p>	<p>a <i>friendly society</i> whose <i>insurance business</i> is restricted to the provision of benefits which vary according to the resources available and in which the contributions of members are determined on a flat rate basis.</p>
<p><i>foreign currency</i> FCA PRA</p>	<p>(in <i>GENPRU</i> and <i>BIPRU</i>) (in relation to a <i>firm</i>) any currency other than the <i>base currency</i>.</p>

*foreign
currency PRR*

FCA **PRA**

the part of the *market risk capital requirement* calculated in accordance with **■** BIPRU 7.5 (Foreign currency PRR) or, in relation to a particular position, the portion of the overall *foreign currency PRR* attributable to that *position*.

*foreign law
contract*

FCA **PRA**

any contract other than a contract:

- (a) governed by the laws of any part of the *United Kingdom*; and
- (b) whose parties agree to the exclusive jurisdiction of the courts of any part of the *United Kingdom*.

former member

FCA **PRA**

a *person* who has ceased to be a *member*, whether by resignation or otherwise, in accordance with Lloyd's Act 1982 and any *byelaw* made under it.

*former
Ombudsman*

FCA **PRA**

an ombudsman, arbitrator or independent investigator appointed under a *former scheme*.

former scheme

FCA **PRA**

(1) (except in relation to a *relevant transitional complaint*) any of the following:

- (a) the *Banking Ombudsman scheme*;
- (b) the *Building Societies Ombudsman scheme*;
- (c) the *FSA scheme*;
- (d) the *IMRO scheme*;
- (e) the *Insurance Ombudsman scheme*;
- (f) the *Personal Insurance Arbitration Service*;
- (g) the PIA Ombudsman scheme;
- (h) the *SFA scheme*;

(2) (in relation to a *relevant transitional complaint*)

- (a) the *GISC facility*; or
- (b) the *MCAS scheme*.

*former
underwriting
member*

FCA **PRA**

(as defined in section 324(1) of the *Act* (Interpretation of Part XIX: Lloyd's)) a *person* ceasing to be an *underwriting member* on, or at any time after, 24 December 1996.

forward

FCA **PRA**

a contract to buy or sell where the date for settlement has been agreed as a particular date in the future but excluding a *future*.

forward price

FCA **PRA**

(in relation to *units*) a *price* calculated by reference to the *valuation point* next following the *authorised fund manager's* agreement to *sell* or, as the case may be, to redeem the *units* in question.

*forward rate
agreement*

FCA **PRA**

an agreement under which one party agrees to pay another an amount of interest based on an agreed interest rate for a specified period from a specified settlement date applied to an agreed principal amount but under which no commitment is made by either party to lend or borrow the principal amount.

FOS Ltd

FCA PRA

Financial Ombudsman Service Limited.

foundation
IRB approach

FCA PRA

one of the following:

(a) (in relation to the *sovereign, institutional and corporate IRB exposure class*) the approach under the *IRB approach*, described in ■ BIPRU 4.4 (The IRB approach: Exposures to corporates, institutions and sovereigns) under which a *firm* uses the values for *LGD* and *conversion factors* set out in ■ BIPRU 4.4 rather than supplying its own estimates;

(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ BIPRU 8 (Group risk - consolidation); or

(c) when the reference is to the rules of or administered by a *regulatory body* other than the *appropriate regulator*, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.

Fourth
Company Law
Directive

FCA PRA

Council Directive 78/660/EEC on the annual accounts of certain types of companies as amended by, amongst other instruments, Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006.

FRA

FCA PRA

forward rate agreement.framework
contract

FCA PRA

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a contract for *payment services* which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account.[Note: article 4(12) of the *Payment Services Directive*]

free delivery

FCA PRA

a transaction of the type set out in ■ BIPRU 14.4.2 R (Requirement to hold capital resources with respect to free deliveries) which, in summary, is a transaction under which a *person*:

(a) has paid for *securities, foreign currencies* or *commodities* before receiving them or it has delivered *securities, foreign currencies* or *commodities* before receiving payment for them; and

(b) in the case of cross-border transactions, one day or more has elapsed since it made that payment or delivery.

friendly society

FCA PRA

an *incorporated friendly society* or a *registered friendly society*.front end
loaded

FCA PRA

(in relation to an *investment*) one where deductions for *charges* and expenses are loaded disproportionately on the early years.

FSA

FCA PRA

the Financial Services Authority.

<p><i>FSA scheme</i> FCA PRA</p>	<p>the <i>former scheme</i> operated by the <i>FSA</i> under paragraph 4 of Schedule 7 to the Financial Services Act 1986 for the investigation of complaints arising out of the conduct of investment business.</p>
<p><i>FSAVC</i> FCA PRA</p>	<p>an arrangement which allows a member of an <i>occupational pension scheme</i> to make <i>AVCs</i> to a private <i>pension policy</i> or <i>pension contract</i>, where the policy or contract is separate from, but associated with, an <i>occupational pension scheme</i> which is a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.</p>
<p><i>FSB Compensation Standards</i> FCA PRA</p>	<p>the Implementation Standards for Principles for Sound Compensation Practices issued by the Financial Stability Board on 25 September 2009.</p>
<p><i>FSCS</i> FCA PRA</p>	<p><i>Financial Services Compensation Scheme Limited.</i></p>
<p><i>full BCD credit institution</i> FCA PRA</p>	<p>a <i>BCD credit institution</i> that falls within paragraph (1) (a) of the definition of <i>credit institution</i>.</p>
<p><i>full credit institution</i> FCA PRA</p>	<p>a <i>credit institution</i> that falls within paragraph (1) (a) of the definition of <i>credit institution</i>.</p>
<p><i>full scope BIPRU investment firm</i> FCA PRA</p>	<p>has the meaning in BIPRU ■ BIPRU 1.1.17 R (Types of BIPRU investment firm) which is in summary a <i>CAD full scope firm</i> that satisfies the following conditions:</p> <ul style="list-style-type: none"> (a) it is a <i>firm</i>; and (b) its head office is in the <i>United Kingdom</i> and it is not otherwise excluded from the definition of <i>BIPRU firm</i> under ■ BIPRU 1.1.17 R (Exclusion of certain types of firm from the definition of BIPRU firm).
<p><i>fund application rules</i> FCA PRA</p>	<p>(in <i>COLL</i> and <i>SUP</i>) the rules set out in ■ COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a <i>UCITS scheme</i> and that an <i>EEA UCITS management company</i> must comply with when acting as the <i>operator</i> of the <i>UCITS scheme</i>, whether from a <i>branch</i> in the <i>United Kingdom</i> or under the freedom to provide <i>cross border services</i>, as required by article 19(3) of the <i>UCITS Directive</i>.</p>
<p><i>fund of alternative investment funds</i> FCA PRA</p>	<p>a <i>non-UCITS retail scheme</i>, or a <i>sub-fund</i> of a <i>non-UCITS retail scheme</i> which is an <i>umbrella</i> whose <i>authorised fund manager</i> operates, or proposes to operate, it in accordance with the investment and borrowing powers in ■ COLL 5.7 (Investment powers and borrowing limits for <i>NURS</i> operating as <i>FAIFs</i>).</p>
<p><i>funded credit protection</i> FCA PRA</p>	<p>(in accordance with Article 4(31) of the <i>Banking Consolidation Directive</i> (Definitions)) a technique of <i>credit risk mitigation</i> where the reduction of the credit risk on the <i>exposure</i> of an undertaking derives from the right of the <i>undertaking</i>, in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to</p>

*funds at
Lloyd's*

FCA **PRA**

reduce the amount of the *exposure* to, or to replace it with, the amount of the difference between the amount of the *exposure* and the amount of a claim on the *undertaking*.

assets (not being *syndicate assets*) provided by or on behalf of a *member* to meet the liabilities arising from the *member's insurance business* at Lloyd's which are held in a *Lloyd's trust fund* and managed by the *Society* as trustee.

*funds under
management*

FCA **PRA**

(in *UPRU* and *GENPRU*)

(1) *collective investment schemes* other than *OEICs managed* by the *firm* including *schemes* where it has delegated the management function but excluding *schemes* that it is *managing* as delegate; and

(2) *OEICs* for which the *firm* is the designated management company.

*funeral plan
contract*

FCA **PRA**

the *investment*, specified in articles 59(2), 60 and 87 of the *Regulated Activities Order* which come into force on 1 January 2002, which is in summary: rights under a contract under which:

(a) a *person* ("the customer") makes one or more payments to another *person* ("the provider"); and

(b) the provider undertakes to provide, or secure that another *person* provides, a funeral in the *United Kingdom* for the customer (or some other *person* who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums paid will be applied towards a *contract of insurance* or will be held on trust.

future

FCA **PRA**

the *investment*, specified in article 84 of the *Regulated Activities Order* (Futures), which is in summary: rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.

*future
policy-related
liabilities*

FCA **PRA**

(in relation to a *with-profits fund*) the future policy-related liabilities of the *with-profits fund* calculated in accordance with the *rules* in ■ PRU 7.4.137 R to ■ PRU 7.4.189 G.

<p><i>gross adjusted premiums amount</i></p> <p>FCA PRA</p>	<p>(for the purposes of INSPRU 1.1) an amount as defined in INSPRU 1.1.56R to INSPRU 1.1.59G, used in calculating the <i>premiums amount</i>.</p>
<p><i>gross earned premiums</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>financial year</i>) such proportion of <i>gross written premiums</i> as is attributable to risk borne by the <i>insurer</i> during that <i>financial year</i>.</p>
<p><i>gross leverage</i></p> <p>FCA PRA</p>	<p>the ratio of total assets to total equity.</p>
<p><i>gross written premiums</i></p> <p>FCA PRA</p>	<p>the amounts required by the <i>insurance accounts rules</i> to be shown in the profit and loss account of an <i>insurer</i> :</p> <p>(a) (for <i>general insurance business</i>) at general business technical account item I.1.(a); and</p> <p>(b) (for <i>long-term insurance business</i>) at long term business technical account item II.1.(a).</p>
<p><i>group</i></p> <p>FCA PRA</p>	<p>(1) (except in relation to an <i>ICVC</i> and except for the purposes of ■ SYSC 12 (Group risk systems and controls requirement) and <i>LR</i>) as defined in section 421 of the <i>Act</i> (Group) (in relation to a <i>person</i> ("A")) A and any <i>person</i> who is:</p> <p>(a) a <i>parent undertaking</i> of A;</p> <p>(b) a <i>subsidiary undertaking</i> of A;</p> <p>(c) a <i>subsidiary undertaking</i> of a <i>parent undertaking</i> of A;</p> <p>(d) a <i>parent undertaking</i> of a <i>subsidiary undertaking</i> of A;</p> <p>(e) an <i>undertaking</i> in which A or an <i>undertaking</i> in (a) to (d) has a participating interest;</p> <p>(f) if A or an <i>undertaking</i> in (a) or (d) is a <i>building society</i>, an associated undertaking of that <i>building society</i>;</p> <p>(g) if A or an <i>undertaking</i> in (a) or (d) is an <i>incorporated friendly society</i>, a <i>body corporate</i> of which that <i>friendly society</i> has joint control (as defined in section 13(9)(c) or (cc) of the Friendly Societies Act 1992); in this definition:</p> <p style="padding-left: 40px;">(i) "participating interest" has the same meaning as in:</p> <p style="padding-left: 80px;">(A) Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986, where these provisions are applicable; or</p> <p style="padding-left: 80px;">(B) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or</p> <p style="padding-left: 80px;">(C) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or</p>

(D) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or

(E) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable;

In (A) to (E), the meaning also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were an *undertaking*.

(ii) "associated undertaking" has the meaning given in section 119(1) of the Building Societies Act 1986.

(2) (in relation to an *ICVC*) a group as in (1) but (in *SYSC*) including also the *ICVC's authorised corporate director* (if any). (see also *immediate group*)

(3) (for the purposes of ■ *SYSC 12* (Group risk systems and controls requirement), ■ *SYSC 20* (Reverse stress testing) and ■ *GENPRU 1.2* (Adequacy of financial resources) and in relation to a *person "A"*) A and any *person*:

(a) who falls into (1);

(b) who is a member of the same *financial conglomerate* as A;

(c) who has a *consolidation Article 12(1) relationship* with A;

(d) who has a *consolidation Article 12(1) relationship* with any *person* in (3)(a);

(e) who is a *subsidiary undertaking* of a person in (3)(c) or (3)(d); or

(f) whose omission from an assessment of the risks to A of A's connection to any *person* coming within (3)(a)-(3)(e) or an assessment of the financial resources available to such *persons* would be misleading.

(4) (in *LR*):

(a) (except in ■ *LR 6.1.19 R* and ■ *LR 8.7.8R (10)*) an *issuer* and its *subsidiary undertakings* (if any); and

(b) in ■ *LR 6.1.19 R* and ■ *LR 8.7.8R (10)*, as defined in section 421 of the *Act*.

(5) (in relation to a *common platform firm*) means the group of which that *firm* forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC on consolidated accounts.

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

in relation to an *undertaking* in *INSPRU 6.1.17R*, that *undertaking's* group capital resources as calculated in accordance with *INSPRU 6.1.36R*.

group capital
resources

FCA PRA

insurance holding company

FCA **PRA**

(1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:

(a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and

(b) at least one of those *subsidiary undertakings* is an *insurer* or an *EEA firm* that is a *regulated insurance entity* or a *reinsurance undertaking*;

a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1) (a) and (b) of this definition is not an *insurance holding company* if:

(c) it is a *mixed financial holding company*; and

(d) notice has been given in accordance with Article 4(2) of the *Financial Groups Directive* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.

(2) For the purposes of:

(a) the definition of the *insurance sector*;

(b) [deleted]

(c) the definition of *material insurance holding*; paragraph (1)(b) of this definition does not apply.

Insurance Intermediaries Order

FCA **PRA**

the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) (Insurance Intermediaries) Order 2003 (SI 2003/1476).

insurance intermediary

FCA **PRA**

a *firm* carrying on *insurance mediation activity* other than an *insurer*.

Insurance market activity

FCA **PRA**

means a *regulated activity* relating to *contracts of insurance* written at Lloyd's.

Insurance market direction

FCA **PRA**

a direction made by the *appropriate regulator* under section 316(1) of the *Act* (Direction by a regulator).

insurance market risk capital component

FCA **PRA**

one of the components of the *long-term insurance capital requirement* as set out in ■ INSPRU 1.1.89 R.

insurance mediation

FCA **PRA**

(as defined in article 2(3) of the *IMD*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These

insurance mediation activity

FCA PRA

activities when undertaken by an *IMD insurance undertaking* or an employee of an *IMD insurance undertaking* who is acting under the responsibility of the *IMD insurance undertaking* shall not be considered as *insurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an *IMD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *insurance mediation*.

any of the following *regulated activities* carried on in relation to a *contract of insurance* or rights to or interests in a life policy:

- (a) *dealing in investments as agent* (article 21);
- (b) *arranging (bringing about) deals in investments* (article 25(1));
- (c) *making arrangements with a view to transactions in investments* (article 25(2));
- (d) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (e) *advising on investments* (article 53);
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

Insurance Mediation Directive

FCA PRA

the European Parliament and Council Directive of 9 December 2002 on insurance mediation (No 2002/92/EC).

Insurance Ombudsman scheme

FCA PRA

the former scheme set up, on a voluntary basis, to handle complaints against those insurance companies which subscribed to it.

insurance parent undertaking

FCA PRA

a *parent undertaking* which is:

- (a) a *participating insurance undertaking* which has a *subsidiary undertaking* that is an *insurance undertaking*; or
- (b) an *insurance holding company* which has a *subsidiary undertaking* which is an *insurer*; or
- (c) an *insurance undertaking* (not within (a)) which has a *subsidiary undertaking* which is an *insurer*.

insurance sector

FCA PRA

a sector composed of one or more of the following entities:

- (a) an *insurance undertaking*;
- (b) an *insurance holding company*; and
- (c) (in the circumstances described in ■ GENPRU 3.1.39 R (The financial sectors: Asset management companies and alternative investment fund managers)) an *asset management company* or an *alternative investment fund manager*.

insurance special purpose vehicle

FCA PRA

an *undertaking*, other than an *insurance undertaking* or *reinsurance undertaking* which has received an official authorisation in accordance with article 6 of the *First Non-Life Directive*, article 4 of the *Consolidated Life Directive* or article 3 of the *Reinsurance Directive*:

<p><i>insurance undertaking</i></p> <p>FCA PRA</p>	<p>(a) which assumes risks from such <i>insurance undertakings</i> or <i>reinsurance undertakings</i>; and</p> <p>(b) which fully funds its exposures to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the <i>undertaking's reinsurance</i> obligations.</p> <p>(1) (except in COBS) an undertaking, or (in ■ CASS 5 and <i>COMP</i>) a <i>member</i>, whether or not an <i>insurer</i>, which carries on <i>insurance business</i>.</p> <p>(2) (in COBS) an undertaking or a <i>member</i> which carries on <i>insurance business</i>.</p>
<p><i>insurance-related capital requirement</i></p> <p>FCA PRA</p>	<p>a component of the calculation of the <i>ECR</i> for a <i>firm</i> carrying on <i>general insurance business</i> as set out in ■ INSPRU 1.1.76 R to ■ INSPRU 1.1.79 R.</p>
<p><i>insurer</i></p> <p>FCA PRA</p>	<p>a <i>firm</i> with <i>permission</i> to <i>effect</i> or <i>carry out contracts of insurance</i> (other than a <i>UK ISPV</i>).</p>
<p><i>interdict</i></p> <p>FCA PRA</p>	<p>a Scottish court order made by the Court of Session that prohibits a <i>person</i> from doing or continuing to do a certain act or requires a <i>person</i> to carry out a certain act.</p>
<p><i>interest rate duration method</i></p> <p>FCA PRA</p>	<p>the method of calculating the part of the <i>interest rate PRR</i> that relates to <i>general market risk</i> set out in ■ BIPRU 7.2.63 R (General market risk calculation: Duration method).</p>
<p><i>interest rate maturity method</i></p> <p>FCA PRA</p>	<p>the method of calculating the part of the <i>interest rate PRR</i> that relates to <i>general market risk</i> set out in ■ BIPRU 7.2.59 R (General market risk calculation: The maturity method).</p>
<p><i>interest rate PRR</i></p> <p>FCA PRA</p>	<p>the part of the <i>market risk capital requirement</i> calculated in accordance with ■ BIPRU 7.2 (Interest rate PRR) or ■ BIPRU 7.3.45 R (Basic interest rate PRR for equity derivatives) or, in relation to a particular <i>position</i>, the portion of the overall <i>interest rate PRR</i> attributable to that <i>position</i>.</p>
<p><i>interest rate simplified maturity method</i></p> <p>FCA PRA</p>	<p>the method of calculating the part of the <i>interest rate PRR</i> that relates to <i>general market risk</i> set out in ■ BIPRU 7.2.56 R (General market risk calculation: Simplified maturity method).</p>
<p><i>interested party</i></p> <p>FCA PRA</p>	<p>(in relation to an application made under section 60 of the <i>Act</i> (Applications for approval)):</p> <p>(a) the <i>firm</i> making the application;</p> <p>(b) the <i>person</i> in respect of whom the application is being made ("A"); and</p> <p>(c) the <i>person</i> by whom A's services are to be retained, if not the <i>firm</i> making the application.</p>

interest-only mortgage

FCA **PRA**

a *regulated mortgage contract* other than a *repayment mortgage*.

interim accounting period

FCA **PRA**

(in *COLL*) a period within an *annual accounting period* in respect of which an allocation of income is to be made.

interim income allocation date

FCA **PRA**

any date specified in the *prospectus* of an *authorised fund* as the date on or before which an allocation of income will be made.

intermediaries offer

FCA **PRA**

(1) (in *LR*) a marketing of *securities* already or not yet in issue, by means of an offer by, or on behalf of, the *issuer* to intermediaries for them to allocate to their own clients.

(2) (for the purposes of the *Code of Market Conduct* (■ **MAR 1**)) a marketing of *securities* not yet in issue, by means of an offer by, or on behalf of, the *issuer* to intermediaries for them to allocate to their own clients.

intermediate broker

FCA **PRA**

(in relation to a transaction in a *contingent liability investment*) any *person* acting in the capacity of an intermediary through whom the *firm* undertakes that transaction.

intermediate customer

FCA **PRA**

(for the purposes only of ■ **COBS TP 1** (Transitional Provisions in relation to Client Categorisation)):

(1) (except in ■ **COB 3**) a *client* who is not a *market counterparty* and who is:

- (a) a local authority or public authority;
- (b) a *body corporate* whose *shares* have been *listed* or admitted to trading on any *EEA* exchange;
- (c) a *body corporate* whose *shares* have been *listed* or admitted to trading on the primary board of any *IOSCO* member country official exchange;
- (d) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);
- (e) a *special purpose vehicle*;
- (f) a *partnership* or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited *partnership* without deducting loans owing to any of the *partners*;
- (g) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value

(c) any other *person*:

(i) whose ordinary activities involve him in carrying on the *controlled activity* to which the *financial promotion* relates for the purposes of a business carried on by him; or

(ii) who it is reasonable to expect will carry on that activity for the purposes of a business carried on by him;

(d) a government, a local authority (whether in the *United Kingdom* or elsewhere) or an international organisation;

(e) a *person* ("A") who is a *director, officer* or employee of a *person* ("B") falling within any of (a) to (d) where the *financial promotion* is made to A in that capacity and where A's responsibilities when acting in that capacity involve him in the carrying on by B of *controlled activities*.

investment research

FCA PRA

research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several *financial instruments* or the issuers of *financial instruments*, including any opinion as to the present or future value or price of such instruments, intended for *distribution channels* or for the public, and in relation to which the following conditions are met:

(a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;

(b) if the recommendation in question were to be made by an *investment firm* to a *client*, it would not constitute the provision of a *personal recommendation*.

[Note: article 24(1) of the *MiFID implementing Directive*]

investment service

FCA PRA

any of the following involving the provision of a service in relation to a *financial instrument*:

(a) reception and transmission of orders in relation to one or more *financial instruments*;

(b) execution of orders on behalf of *clients*;

(c) *dealing on own account*;

(d) *portfolio management*;

(e) the making of a *personal recommendation*;

(f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;

(g) placing of *financial instruments* without a firm commitment basis;

(h) operation of *multilateral trading facilities*.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

investment services and/or activities

FCA PRA

any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument* , that is:

(a) reception and transmission of orders in relation to one or more *financial instruments*;

(b) execution of orders on behalf of *clients*;

(c) *dealing on own account*;

(d) *portfolio management*;

(e) the making of a *personal recommendation*;

Investment Services Directive

FCA PRA

investment services or activities

FCA PRA

investment services sector

FCA PRA

investment transaction

FCA PRA

investment trust

FCA PRA

(f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;

(g) placing of *financial instruments* without a firm commitment basis;

(h) operation of *multilateral trading facilities*.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

the Council Directive of 10 May 1993 on investment services in the securities field (No 93/22/EEC).

any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument* , that is:

(a) reception and transmission of orders in relation to one or more *financial instruments*;

(b) execution of orders on behalf of *clients*;

(c) *dealing on own account*;

(d) *portfolio management*;

(e) the making of a *personal recommendation*;

(f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;

(g) placing of *financial instruments* without a firm commitment basis;

(h) operation of *multilateral trading facilities*.

[Note: article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

a sector composed of one or more of the following entities:

(a) an *investment firm*;

(b) a *financial institution*; and

(c) (in the circumstances described in ■ GENPRU 3.1.39 R (The financial sectors: Asset management companies and alternative investment fund managers)) an *asset management company* or an *alternative investment fund manager*.

a transaction to *buy, sell, subscribe for or underwrite a security or contractually based investment*.

a *company listed* in the *United Kingdom* or another *EEA State* which:

(a) is approved by the Commissioners for HM Revenue and Customs under section 842 of the Income and Corporation Taxes Act 1988 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or

(b) is resident in an *EEA State* other than the *United Kingdom* and would qualify for such approval if resident and *listed* in the *United Kingdom*.

<i>investment trust savings scheme</i> FCA PRA	<p>(a) a <i>dealing</i> service (whether or not held within a <i>pension contract</i>) dedicated to the <i>securities</i> of one or more <i>investment trusts</i>;</p> <p>(b) <i>securities</i> to be acquired through an investment trust savings scheme in (a).</p>
<i>Investor Compensation Directive</i> FCA PRA	<p>the Council Directive of 3 March 1997 on investor compensation schemes (No 97/9/EC).</p>
<i>IOSCO</i> FCA PRA	<p>the International Organisation of Securities Commissions.</p>
<i>IPA</i> FCA PRA	<p>individual pension account.</p>
<i>IPA eligible investment</i> FCA PRA	<p>a type of investment specified in regulation 2(2) (condition 5) of the Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Scheme and Open-ended Investment Company) Regulations 2001 (SI 2001/964) .</p>
<i>IPRU</i> FCA PRA	<p>the Interim Prudential sourcebook, comprising ■ IPRU(BANK), ■ IPRU(BSOC), ■ IPRU(FSOC), ■ IPRU(INS) and ■ IPRU(INV), or according to the context one of these Interim Prudential sourcebooks.</p>
<i>IPRU(BANK)</i> FCA PRA	<p>the Interim Prudential sourcebook for Banks.</p>
<i>IPRU(BSOC)</i> FCA PRA	<p>the Interim Prudential sourcebook for Building Societies.</p>
<i>IPRU(FSOC)</i> FCA PRA	<p>the Interim Prudential sourcebook for Friendly Societies.</p>
<i>IPRU(INS)</i> FCA PRA	<p>the Interim Prudential Sourcebook for Insurers.</p>
<i>IPRU(INV)</i> FCA PRA	<p>the Interim Prudential sourcebook for Investment Businesses.</p>
<i>IRB approach</i> FCA PRA	<p>one of the following:</p> <p>(a) the adjusted method of calculating the <i>credit risk capital component</i> set out in ■ BIPRU 4 (IRB approach) and ■ BIPRU 9.12 (Calculation of risk weighted exposure amounts under the internal ratings based approach), including that approach as applied under ■ BIPRU 14 (Capital requirements for settlement and counterparty risk);</p>

<p><i>IRB exposure class</i></p> <p>FCA PRA</p>	<p>(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ BIPRU 8 (Group risk - consolidation); or</p> <p>(c) when the reference is to the rules of or administered by a <i>regulatory body</i> other than the <i>appropriate regulator</i>, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.</p>
<p><i>IRB permission</i></p> <p>FCA PRA</p>	<p>(in relation to the <i>IRB approach</i>) one of the classes of <i>exposure</i> set out in ■ BIPRU 4.3.2 R (exposure classes).</p>
<p><i>ISA</i></p> <p>FCA PRA</p>	<p>an <i>Article 129 implementing measure</i>, a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or an <i>institution</i> to use the <i>IRB approach</i>.</p>
<p><i>ISA manager</i></p> <p>FCA PRA</p>	<p>an <i>individual savings account</i>.</p>
<p><i>ISA Regulations</i></p> <p>FCA PRA</p>	<p>a <i>person</i> who is approved by HM Revenue and Customs for the purposes of the <i>ISA Regulations</i> as an account manager.</p>
<p><i>ISA transfer</i></p> <p>FCA PRA</p>	<p>the Individual Savings Account Regulations 1998 (SI 1998/1870).</p>
<p><i>ISD</i></p> <p>FCA PRA</p>	<p>a transaction resulting from a decision, made with or without advice from a <i>firm</i>, by a <i>customer</i> who is an individual, to transfer the <i>investments</i> (or their value) held in his existing <i>ISA</i> in favour of another <i>ISA</i> which may or may not be managed by the same <i>ISA manager</i>.</p>
<p><i>ISPV</i></p> <p>FCA PRA</p>	<p><i>Investment Services Directive</i>.</p>
<p><i>issue</i></p> <p>FCA PRA</p>	<p>an <i>insurance special purpose vehicle</i>.</p>
<p><i>issue price</i></p> <p>FCA PRA</p>	<p>(in relation to <i>units</i>):</p> <p>(1) (except in ■ EG 14) the issue of new <i>units</i> by the <i>trustee</i> of an <i>AUT</i> or by an <i>ICVC</i>;</p> <p>(2) (in ■ EG 14):</p> <p>(a) an issue in accordance with (1); and</p> <p>(b) the sale of <i>units</i>.</p>
<p><i>issue price</i></p> <p>FCA PRA</p>	<p>(in relation to the <i>issue</i> of <i>units</i> of a <i>dual-priced authorised fund</i>) the <i>price</i> for each <i>unit</i> payable by the <i>authorised fund manager</i> to the <i>depository</i> on that <i>issue</i>.</p>

issuer

FCA PRA

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

- (a) (in relation to any *security*) (other than a *unit* in a *collective investment scheme*) the *person* by whom it is or is to be issued;
- (b) (in relation to a *unit* in a *collective investment scheme*) the *operator* of the *scheme*;
- (c) (in relation to an interest in a limited *partnership*) the *partnership*;
- (d) (in relation to *certificates representing certain securities*) the *person* who issued or is to issue the *security* to which the certificate or other instrument relates ; or
- (e) an entity which issues *transferable securities* and, where appropriate, other *financial instruments*.

[Note: article 2(2) of the MiFID Regulation]

(2) (in chapters 1, 2 and 3 of DTR and FEES in relation to DTR) any *company* or other legal person or undertaking (including a *public sector issuer*), any class of whose *financial instruments*:

- (a) have been *admitted to trading* on a *regulated market*; or
- (b) are the subject of an application for *admission to trading* on a *regulated market*;

other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a *regulated market*.

(2A) (in chapters 1A, 1B, 4, 6 and 7 of DTR) a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a *regulated market*, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;

(2B) (in chapter 5 of DTR) :

- (a) a legal entity governed by private or public law, including a State whose *shares* are admitted to trading on a *regulated market*, the issuer being in the case of depository receipts representing securities, the issuer of the *shares* represented; or
- (b) a public company within the meaning of section 4(2) of the Companies Act 2006 and any other body corporate incorporated in and having a principal place of business in the *United Kingdom*, whose *shares* are admitted to trading on a market which (not being a *regulated market*) is a *prescribed market*.

(3) (in LR and FEES in relation to LR) any *company* or other legal person or undertaking (including a *public sector issuer*), any *class* of whose *securities* has been *admitted to listing* or is the subject of an application for *admission to listing*.

(4) (in PR and FEES in relation to PR) (as defined in section 102A of the Act) a legal person who issues or proposes to issue the *transferable securities* in question.

(5) (in RCB and ■ FEES 1 to ■ FEES 4, where applicable) (as defined in Regulation 1(2) of the RCB Regulations) a person which issues a *covered bond*.

the activity specified in article 9B of the *Regulated Activities Order* (Issuing electronic money), which is the activity of issuing *electronic money* by:

- (a) a *credit institution*, a *credit union* or a municipal bank; or
- (b) a person who is deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations* or who falls within regulation 76(1) of the *Electronic Money Regulations*.

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issuing
electronic
money

FCA PRA

limited liability partnership

FCA PRA

(a) a *body corporate* incorporated under the Limited Liability Partnerships Act 2000;

(b) a *body corporate* incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.

limited licence firm

FCA PRA

has the meaning set out in ■ BIPRU 1.1.12 R (Types of investment firm: Limited licence firms).

limited price indexation

FCA

in relation to transfer value analysis, benefits which increase in line with a recognised index but subject to a minimum and/or maximum rate.

limited redemption arrangements

FCA PRA

the arrangements operated by an *authorised fund manager* for the *redemption* of *units* in an *authorised fund* where the *authorised fund manager* holds himself out to redeem units in that *scheme* less frequently than twice in a calendar *month* in accordance with ■ COLL 6.2.19 R (Limited redemption).

linked assets

FCA PRA

index-linked assets or *property-linked assets*.

linked benefit

FCA PRA

(1) (in ■ COBS 21 (Permitted Links)) *property-linked benefits* or *index-linked benefits*.

(2) (other than in ■ COBS 21) a benefit payable under a *life policy* or a *regulated collective investment scheme* the amount of which is determined by reference to:

- (a) the value of the property of any description (whether specified or not); or
- (b) fluctuations in the value of any such property; or
- (c) income from such property; or
- (d) fluctuations in an index of the value of such property.

linked borrowing

FCA PRA

additional credit facilities (which may be secured, unsecured, or both) that are integral to a *regulated mortgage contract* but which may be the subject of a separate contract.

linked deposits

FCA PRA

additional facilities (which may be a current account, a savings account, or both) that are linked to a *regulated mortgage contract* but which may be the subject of a separate contract.

linked fund

FCA PRA

a real or notional account to which an *insurer* appropriates *linked assets* for the purposes of their being *permitted links*, and which may be subdivided into units, the value of each of which is determined by the *insurer* by reference to the value of those *linked assets*.

linked liabilities

FCA PRA

property-linked liabilities or *index-linked liabilities*.

linked life stakeholder product

FCA **PRA**

the *stakeholder product* specified by regulations 6 and 7 (rights under certain linked long-term contracts) of the *Stakeholder Regulations*;

linked long-term

FCA **PRA**

(in relation to a *contract of insurance*) a *long-term insurance contract* where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

linked policyholders

FCA **PRA**

policyholders under a *linked long-term* contract.

liquidity facility

FCA **PRA**

(for the purposes of ■ BIPRU 9 (Securitisation), in relation to a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)) the *securitisation position* arising from a contractual agreement to provide funding to ensure timeliness of cash-flows to investors.

liquidity risk

FCA **PRA**

(1) (in *COLL* and in accordance with article 3(8) of the *UCITS implementing Directive*) the risk that a position in a *UCITS*' portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short timeframe and that the ability of the *scheme* to comply at any time with ■ COLL 6.2.16 R (Sale and redemption) or, in the case of an *EEA UCITS scheme*, article 84(1) of the *UCITS Directive* is thereby compromised.

(2) (except in *COLL*) the risk that a *firm*, although solvent, either does not have available sufficient financial resources to enable it to meet its obligations as they fall due, or can secure such resources only at excessive cost.

list of sponsors

FCA **PRA**

(in *LR*) the list of sponsors maintained by the *FCA* in accordance with section 88(3)(a) of the *Act*.

listed

FCA **PRA**

(1) (except in *LR*, *INSPRU* and *IPRU(INS)*) included in an *official list*.

(2) (in *INSPRU* and *IPRU(INS)*):

(a) included in an *official list*; or

(b) in respect of which facilities for *dealing* on a *regulated market* have been granted.

(3) (in *LR*) admitted to the *official list* maintained by the *FCA* in accordance with section 74 of the *Act*.

listed activity

FCA **PRA**

an activity listed in Annex 1 to the *Banking Consolidation Directive*.

listed company

FCA **PRA**

(in *LR* and *DEPP*) a *company* that has any *class* of its *securities listed*.

listed security

any *security* that is admitted to an *official list*.

	made for reasons other than the individual termination of membership, that the <i>appropriate regulator</i> must be notified at least one month in advance of the intended date of such payments; and
	(c) the <i>appropriate regulator</i> must be notified of any amendment to the relevant provisions of the memorandum and articles of association or other constitutional documents.
<i>member society</i> FCA PRA	(as defined in article 2(2) of the <i>compensation transitionals order</i>) a person who at any time before <i>commencement</i> was a member society within the rules of the Friendly Societies Protection Scheme established in accordance with section 141 of the Financial Services Act 1986.
<i>members' adviser</i> FCA PRA	a <i>firm</i> whose <i>permission</i> includes <i>advising on syndicate participation at Lloyd's</i> , but which is not an <i>underwriting agent</i> .
<i>members' agent</i> FCA PRA	an <i>underwriting agent</i> who carries on the <i>regulated activity</i> of <i>advising on syndicate participation at Lloyd's</i> .
<i>membership of a Lloyd's syndicate</i> FCA PRA	the <i>investment</i> , specified in article 86(2) of the <i>Regulated Activities Order</i> , which is a <i>person's</i> membership (or prospective membership) of a Lloyd's <i>syndicate</i> .
<i>merging UCITS</i> FCA PRA	(in <i>COLL</i>) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> , <i>EEA UCITS scheme</i> or <i>sub-fund</i> of such a <i>scheme</i> , that under the proposed arrangements will be transferring all its assets and liabilities to the <i>receiving UCITS</i> .
<i>MERS levy</i> FCA PRA	a levy (management expenses in respect of relevant schemes levy) imposed by the <i>FSCS</i> on <i>participant firms</i> to meet the management expenses incurred by the <i>FSCS</i> in connection with acting on behalf of the <i>manager of the relevant scheme</i> in accordance with Part 15A of the <i>Act</i> .
<i>mesothelioma regulations</i> FCA PRA	The Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (SI 2006/3259).
<i>mesothelioma victim</i> FCA PRA	(in accordance with section 3 (1) of the Compensation Act 2006) a <i>person</i> who has contracted mesothelioma as a result of exposure to asbestos by a <i>responsible person</i> .
<i>mezzanine securitisation positions</i> FCA PRA	for the purposes of ■ BIPRU 9.3.7 R, ■ BIPRU 9.4.11 R and ■ BIPRU 9.5.1 R (6), <i>securitisation positions</i> to which a <i>risk weight</i> lower than 1250% applies and which are more junior than the most senior position in the relevant <i>securitisation</i> and more junior than any <i>securitisation</i> position in the relevant <i>securitisation</i> to which: <ul style="list-style-type: none"> (a) in the case of a <i>securitisation position</i> subject to the <i>standardised approach</i> to <i>securitisation</i> set out in ■ BIPRU 9.11.1 R and ■ BIPRU 9.11.2 R, a <i>credit quality step 1</i> is assigned; or (b) in the case of a <i>securitisation position</i> subject to the <i>IRB approach</i> to <i>securitisation</i> set out in ■ BIPRU 9.12.10 R and ■ BIPRU 9.12.11 R, a <i>credit quality</i>

<p>MFHC conglomerate FCA PRA</p>	<p>step 1 or 2 is assigned under ■ BIPRU 9.7.2 R , ■ BIPRU 9.8.2 R to ■ BIPRU 9.8.7 R and regulation 23 of the <i>Capital Requirements Regulations 2006</i>.</p> <p>[Note: BCD, Annex IX, Part 2, Point 1, paragraph 1b]</p> <p>a <i>financial conglomerate</i> which is headed by a <i>mixed financial holding company</i>.</p>
<p>micro-enterprise FCA PRA</p>	<p>an enterprise which:</p> <p>(a) employs fewer than 10 <i>persons</i>; and</p> <p>(b) has a turnover or annual balance sheet that does not exceed €2 million.</p> <p>In this definition, "enterprise" means any <i>person</i> engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed <i>persons</i> and family businesses engaged in craft or other activities, and <i>partnerships</i> or associations regularly engaged in an economic activity.</p> <p>[Note: article 4(26) of the <i>Payment Services Directive</i> and the Annex to the <i>Micro-enterprise Recommendation</i>]</p>
<p>Micro-enterprise Recommendation FCA PRA</p>	<p>Recommendation 2003/361/EC of the Commission of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.</p>
<p>MiFID FCA PRA</p>	<p>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).</p> <p>See also <i>MiFID Regulation</i> and <i>MiFID implementing Directive</i>.</p>
<p>MiFID business FCA PRA</p>	<p><i>investment services and activities</i> and, where relevant, <i>ancillary services</i> carried on by a <i>MiFID investment firm</i>.</p>
<p>MiFID business bidding FCA PRA</p>	<p>the <i>regulated activity</i> of <i>bidding in emissions auctions</i> where it is carried on by a <i>MiFID investment firm</i> (other than a <i>UCITS investment firm</i>) in relation to a <i>financial instrument</i>.</p>
<p>MiFID client money (minimum implementing) rules FCA PRA</p>	<p>■ CASS 7.3.1 R, ■ CASS 7.3.2 R, ■ CASS 7.4.1 R, ■ CASS 7.4.5 R, ■ CASS 7.4.7 R, ■ CASS 7.4.8 R, ■ CASS 7.4.11 R, ■ CASS 7.6.1 R, ■ CASS 7.6.2 R and ■ CASS 7.6.9 R.</p>
<p>MiFID implementing Directive FCA PRA</p>	<p>Commission Directive No. 2006/73/EC 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.</p>

MiFID implementing requirement

FCA **PRA**

(1) (in relation to a *UK RIE*) any of the requirements applicable to that body under the *MiFID Regulation*.

(2) (in relation to a body applying for recognition as a *UK RIE*) any of the requirements under the *MiFID Regulation* which, if its application were successful, would apply to it.

MiFID investment firm

FCA **PRA**

(in summary) a *firm* to which *MiFID* applies including, for some purposes only, a *credit institution* and *UCITS investment firm*.

(in full) a *firm* which is:

(1) an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office);

(2) a *BCD credit institution* (only when providing an *investment service* or *activity* in relation to the *rules* implementing the Articles referred to in Article 1(2) of *MiFID*);

(3) a *UCITS investment firm* (only when providing the services referred to in Article 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in Article 6(4) of that Directive);

unless, and to the extent that, *MiFID* does not apply to it as a result of Article 2 (Exemptions) or Article 3 (Optional exemptions) of *MiFID*.

MiFID business or the *equivalent business of a third country investment firm*.

MiFID or equivalent third country business

FCA **PRA**

MiFID outsourcing rules

FCA **PRA**

■ SYSC 8.1.1 R to ■ SYSC 8.1.11 R.

MiFID Regulation

FCA **PRA**

Commission Regulation (EC) 1287/2006 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.

MIIC

FCA **PRA**

the *Motor Insurers' Information Centre*.

mineral company

FCA **PRA**

(in *LR*) a *company* or *group*, whose principal activity is, or is planned to be, the *extraction of mineral resources* (which may or may not include exploration for *mineral resources*).

mineral expert's report

FCA **PRA**

(in *LR*) a report prepared in accordance with the *ESMA recommendations*.

mineral resources

FCA **PRA**

(in *LR*) include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.

mini-ISA

FCA PRA

an *ISA* which contains only one of the following *qualifying investments*:

- (a) a *stocks and shares component*;
- (b) a *cash component*;
- (c) an *insurance component*;

as prescribed in paragraph 7, 8 or 9 respectively of the *ISA Regulations*.

minimum capital requirement

FCA PRA

an amount of capital resources that a *firm* must hold as set out in

■ GENPRU 2.1.24 R and ■ GENPRU 2.1.25 R.

minimum IRB standards

FCA PRA

(in relation to the IRB approach) ■ BIPRU 4.3.9 R,
 ■ BIPRU 4.3.11 R-■ BIPRU 4.3.29 R, ■ BIPRU 4.3.33 R-■ BIPRU 4.3.40 R,
 ■ BIPRU 4.3.43 R-■ BIPRU 4.3.44 R, ■ BIPRU 4.3.46 R-■ BIPRU 4.3.48 R,
 ■ BIPRU 4.3.50 R-■ BIPRU 4.3.51 R, ■ BIPRU 4.3.54 R,
 ■ BIPRU 4.3.56 R-■ BIPRU 4.3.57 R, ■ BIPRU 4.3.63 R,
 ■ BIPRU 4.3.70 R-■ BIPRU 4.3.71 R, ■ BIPRU 4.3.73 R-■ BIPRU 4.3.74 R,
 ■ BIPRU 4.3.83 R-■ BIPRU 4.3.85 R, ■ BIPRU 4.3.88 R,
 ■ BIPRU 4.3.90 R-■ BIPRU 4.3.92 R, ■ BIPRU 4.3.94 R, ■ BIPRU 4.3.99 R,
 ■ BIPRU 4.3.103 R, ■ BIPRU 4.3.116 R-■ BIPRU 4.3.123 R,
 ■ BIPRU 4.3.125 R-■ BIPRU 4.3.131 R ■ BIPRU 4.4.6 R-■ BIPRU 4.4.9 R,
 ■ BIPRU 4.4.11 R-■ BIPRU 4.4.13 R, ■ BIPRU 4.4.15 R-■ BIPRU 4.4.18 R,
 ■ BIPRU 4.4.21 R-■ BIPRU 4.4.22 R, ■ BIPRU 4.4.24 R-■ BIPRU 4.4.25 R,
 ■ BIPRU 4.4.27 R-■ BIPRU 4.4.28 R, ■ BIPRU 4.4.30 R-■ BIPRU 4.4.31 R,
 ■ BIPRU 4.4.48 R-■ BIPRU 4.4.51 R, ■ BIPRU 4.4.53 R, ■ BIPRU 4.4.54 R,
 ■ BIPRU 4.5.5 R, ■ BIPRU 4.6.6 R-■ BIPRU 4.6.9 R, ■ BIPRU 4.6.11 R-■ BIPRU 4.6.12 R,
 ■ BIPRU 4.6.14 R, ■ BIPRU 4.6.18 R, ■ BIPRU 4.6.20 R-■ BIPRU 4.6.21 R,
 ■ BIPRU 4.6.24 R-■ BIPRU 4.6.34 R, ■ BIPRU 4.6.37 R-■ BIPRU 4.6.39 R,
 ■ BIPRU 4.7.19 R, ■ BIPRU 4.7.27 R-■ BIPRU 4.7.35 R,
 ■ BIPRU 4.8.5 R-■ BIPRU 4.8.9 R, ■ BIPRU 4.8.11 R-■ BIPRU 4.8.15 R,
 ■ BIPRU 4.10.40 R-■ BIPRU 4.10.48 R.

minimum levy

FCA PRA

(in *DISPFEEES*) the fixed minimum *general levy* payable by a *firm*.

minimum multiplication factor

FCA PRA

(in ■ BIPRU 7.10 (Use of a value at risk model)) has the meaning in ■ BIPRU 7.10.119 R (Capital calculations: Multiplication factors), which is in summary the number three or any higher amount the *VaR model permission* defines it as.

MIPRU

FCA PRA

the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries

miscellaneous financial loss

FCA PRA

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 16 of Part I of Schedule 1 to the *Regulated Activities Order* (*General contracts of insurance*), against any of the following risks:

- (a) risks of loss to the *persons* insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;

miscellaneous securities	<p>(b) risks of loss to the <i>persons</i> insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts within paragraph 18 of Part I of Schedule 1 to the <i>Regulated Activities Order</i> (Assistance));</p> <p>(c) risks which do not fall within paragraphs (a) or (b) and which are not of such a kind that <i>contracts of insurance</i> against them fall within any other provision of Schedule 1 to the <i>Regulated Activities Order</i>.</p> <p>(in LR) <i>securities</i> which are not:</p> <p>(a) <i>shares</i>; or</p> <p>(b) <i>debt securities</i>; or</p> <p>(c) <i>asset backed securities</i>; or</p> <p>(d) <i>certificate representing debt securities</i>; or</p> <p>(e) <i>convertible securities</i> which convert to <i>debt securities</i>; or</p> <p>(f) <i>convertible securities</i> which convert to <i>equity securities</i>; or</p> <p>(g) <i>convertible securities</i> which are exchangeable for <i>securities</i> of another <i>company</i>; or</p> <p>(h) <i>certificate representing certain securities</i>; or</p> <p>(i) <i>securitised derivatives</i>.</p>
misleading statements and practices offence	[deleted]
mixed financial holding company	<p>(in accordance with Article 2(15) of the <i>Financial Groups Directive</i> (Definitions)) a <i>parent undertaking</i>, other than a <i>regulated entity</i>, which meets the following conditions:</p> <p>(a) it, together with its <i>subsidiary undertakings</i>, at least one of which is an <i>EEA regulated entity</i>, and other entities, constitutes a <i>financial conglomerate</i>;</p> <p>(b) it has been notified by its <i>coordinator</i> that its group is a <i>financial conglomerate</i> in accordance with Article 4(2) of the <i>Financial Groups Directive</i>; and</p> <p>(c) it has not been notified that its <i>coordinator</i> and other <i>relevant competent authorities</i> have agreed not to treat the group as a <i>financial conglomerate</i> in accordance with Article 3(3) or Article 3(3a) of the <i>Financial Groups Directive</i>.</p>
mixed insurer	<p>an <i>insurer</i> (other than a <i>pure reinsurer</i>) which carries on <i>reinsurance</i> business and where one or more of the following conditions is met in respect of its <i>reinsurance</i> acceptances:</p> <p>(a) the <i>premiums</i> collected in respect of those acceptances during the previous <i>financial year</i> exceeded 10% of its total <i>premiums</i> collected during that year;</p> <p>(b) the <i>premiums</i> collected in respect of those acceptances during the previous <i>financial year</i> exceeded €50 million; and</p> <p>(c) the <i>technical provisions</i> in respect of those acceptances at the end of the previous <i>financial year</i> exceeded 10% of its total <i>technical provisions</i> at the end of that year.</p>
mixed remittance	a remittance that is part <i>client money</i> and part other <i>money</i> .

FCA PRA

FCA PRA

FCA PRA

FCA PRA

mixed-activity holding company

FCA PRA

one of the following:

(a) (in accordance with Article 4(20) of the *Banking Consolidation Directive* (Definitions)) a *parent undertaking*, other than a *financial holding company*, a *credit institution* or a *mixed financial holding company*, the *subsidiary undertakings* of which include at least one *credit institution*; or

(b) (in accordance with Article s 2(2) and 37(1) of the *Capital Adequacy Directive* (Supervision on a consolidated basis) and in relation to a *banking and investment group* without any *credit institutions* in it) a *parent undertaking*, other than a *financial holding company*, an *investment firm* or a *mixed financial holding company*, the *subsidiary undertakings* of which include at least one *investment firm*.

mixed-activity insurance holding company

FCA PRA

(in accordance with Article 1(j) of the *Insurance Groups Directive* (Definitions)) a *parent undertaking*, other than an *insurance undertaking*, an *insurance holding company* or a *mixed financial holding company*, the *subsidiary undertakings* of which include at least one *insurance undertaking*.

MLAR

FCA PRA

(in *SUP*) a Mortgage Lending and Administration Return containing data specified in ■ SUP 16 Annex 19A R and relevant to the *firm's* type and *regulated activities*.

MLRO

FCA PRA

money laundering reporting officer.

Model Code

FCA PRA

The Model Code on directors' dealings in securities set out in ■ LR 9 Annex 1 R.

model PRR

FCA PRA

the part of the *market risk capital requirement* calculated under a *VaR model permission* as more fully defined in ■ BIPRU 7.10 (Use of a Value at Risk Model).

modified CIU look through method

FCA PRA

the method for calculating *PRR* for a *CIU* set out in ■ BIPRU 7.7.4 R, ■ BIPRU 7.7.7 R to ■ BIPRU 7.7.8 R and ■ BIPRU 7.7.11 R to ■ BIPRU 7.7.12 R

modified report

FCA PRA

(in *LR*) an accountant's or auditor's report:

- (a) in which the opinion is modified; or
- (b) which contains an emphasis-of-matter paragraph.

money

FCA PRA

any form of money, including cheques and other payable orders.

Money Advice Service

FCA PRA

the consumer financial education body (*CFEB*) originally established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of

money
laundering

FCA **PRA**

financial matters etc) (as it had effect before the passing of the Financial Services Act 2012) .

any act which:

- (a) constitutes an offence under section 18 (Money laundering) of the Terrorism Act 2000; or
- (b) constitutes an offence under section 327 (Concealing etc), section 328 (Arrangements) or section 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002; or
- (c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (b); or
- (d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (b); or
- (e) would constitute an offence specified in paragraph (b), (c), or (d) if done in the *United Kingdom*.

Money
Laundering
Directive

FCA **PRA**

the Council Directive of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (91/308/EEC) as amended by the Council Directive of 4 December 2001 (2001/97/EEC).

Money
Laundering
Regulations

FCA **PRA**

the Money Laundering Regulations 2007 (SI 2007/2157).

money
laundering
reporting
function

FCA **PRA**

(in the *FCA Handbook*) *FCA controlled function* CF11 in Parts 1 and 2 of the *table of FCA controlled functions*, described more fully in ■ SUP 10A.7.10 R.

money
laundering
reporting
officer

FCA **PRA**

the individual appointed by a *firm* in accordance with ■ SYSC 3.2.6I R or ■ SYSC 6.3.9 R.

money market
fund

FCA **PRA**

an *authorised fund* or, in the case of an *umbrella*, a *sub-fund* (if it were a separate fund) which satisfies the conditions in ■ COLL 5.9.5 R (Investment conditions: money market funds) and is not a *qualifying money market fund*.

money market
instrument
activity

FCA **PRA**

an activity in respect of a transaction:

- (a) which involves any of the following *investments* and is not regulated by the rules of a *recognised investment exchange*:
 - (i) a *debenture* which is issued on terms requiring repayment not later than five years from the date of issue;
 - (ii) any *government and public security* which is issued on terms requiring repayment not later than one year or, if issued by a local

authority in the *United Kingdom*, five years from the date of issue; or

(iii) a *warrant* which entitles the holder to subscribe for an *investment* within (a)(i) or (a)(ii);

(b) which involves any of the following *investments* and is not made on a *recognised investment exchange* or expressed to be so made:

(i) a *certificate representing certain securities* or rights to or interests in *investments* relating, in either case, to an *investment* within (a)(i) or (a)(ii);

(ii) an *option* relating to:

(A) an instrument in (a)(i) or (a)(ii); or

(B) currency of the *United Kingdom* or of any other country or territory; or

(C) gold or silver;

(iii) a *future* for the sale of:

(A) an instrument in (a)(i) or (a)(ii); or

(B) currency of the *United Kingdom* or of any other country or territory; or

(C) gold or silver;

(iv) a *contract for differences* by reference to fluctuations in:

(A) the value or price of any instrument within any of (a)(i) to (a)(iii) or (b)(i) to (b)(iii); or

(B) currency of the *United Kingdom* or of any other country or territory; or

(C) the rate of interest on loans in any such currency or any index of such rates; or

(v) an *option* to acquire or dispose of an instrument within (b)(ii), (b)(iii) or (b)(iv); or

(c) where one of the parties agrees to sell or transfer a *debenture* or *government and public security* and by the same or a collateral agreement that party agrees, or acquires an option, to buy back or re-acquire that *investment* or an equivalent amount of a similar *investment* within twelve *months* of the sale or transfer.

For the purposes of (c) *investments* are regarded as similar if they entitle their holders to the same rights against the same *persons* as to capital and interest and the same remedies for the enforcement of those rights.

money purchase scheme

FCA PRA

in relation to a *director*, means a pension scheme under which all of the benefits that may become payable to or in respect of the *director* are money purchase benefits.

money remittance

FCA PRA

(in accordance with regulation 2(1) of the *Payment Service Regulations*) a service for the transmission of money (or any representation of monetary value), without any payment accounts being created in the name of the payer or the payee, where:

(a) funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another *payment service provider* acting on behalf of the payee; or

money service business

FCA PRA

(b) funds are received on behalf of, and made available to, the payee.
 [Note: article 4(13) of the *Payment Services Directive*]

carrying on by way of business the activity of:

- (a) operating a bureau de change; or
- (b) transmitting money, or any representation of monetary value, by any means; or
- (c) cashing cheques which are made payable to customers.

money service operator

FCA PRA

a *person* who carries on *money service business* other than a *firm*, a *BCD credit institution* or a *financial institution*.

money-market instrument

FCA PRA

(1) any of the following *investments*:

- (a) a *debenture* which is issued on terms requiring repayment not later than five years from the date of issue;
- (b) any *government and public security* which is issued on terms requiring repayment not later than one year or, if issued by a local authority in the *United Kingdom*, five years from the date of issue;
- (c) a *warrant* which entitles the holder to subscribe for an *investment* within (a) or (b);
- (d) a *certificate representing certain securities or rights to or interests in investments* relating, in either case, to an *investment* within (a) or (b);
- (e) an *option* relating to:
 - (i) an instrument in (a) or (b); or
 - (ii) currency of the *United Kingdom* or of any other country or territory; or
 - (iii) gold or silver;
- (f) a *future* for the sale of:
 - (i) an instrument in (a) or (b); or
 - (ii) currency of the *United Kingdom* or of any other country or territory; or
 - (iii) gold or silver;
- (g) a *contract for differences* by reference to fluctuations in:
 - (i) the value or price of any instrument within any of (a) to (f); or
 - (ii) currency of the *United Kingdom* or of any other country or territory; or
 - (iii) the rate of interest on loans in any such currency or any index of such rates;
- (h) an *option* to acquire or dispose of an instrument within (e), (f) or (g).

(2) those classes of *financial instruments* which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

[Note: article 4(1)(19) of *MiFID*]

money-market instruments

FCA PRA

those classes of *financial instruments* which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

[Note: article 4(1)(19) of *MiFID*]

money-purchase benefits

FCA PRA

(1) (except in *COMP*) (in relation to an *occupational pension scheme*) benefits the rate or amount of which are calculated by reference to a payment or payments made by a member of the scheme.

(2) (in *COMP*) in relation to a member of a *personal pension scheme* or an *occupational pension scheme* or the widow or widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other *person* in respect of the member and which are not average salary benefits.

money-purchase occupational scheme

FCA PRA

an *occupational pension scheme* which provides *money-purchase benefits*.

month

FCA PRA

(in accordance with the Interpretation Act 1978) a calendar month.

monthly financial return

FCA PRA

(in *UPRU*) means the return referred to in *SUP*.

mortgage administrator

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for *administering a regulated mortgage contract*.

mortgage adviser

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for *advising on regulated mortgage contracts*.

Mortgage and General Insurance Complaints Transitional Order

FCA PRA

The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454).

mortgage arranger

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for *arranging* (see also *arranging (bringing about) regulated mortgage contracts* and *making arrangements with a view to regulated mortgage contracts*).

mortgage credit card

FCA PRA

a *plastic card* which is a credit card issued under a *regulated mortgage contract* and not regulated by the Consumer Credit Act 1974.

<p><i>mortgage intermediary</i></p> <p>FCA PRA</p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i>) to carry on <i>mortgage mediation activity</i>.</p>
<p><i>mortgage lender</i></p> <p>FCA PRA</p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i>) for <i>entering into a regulated mortgage contract</i>.</p>
<p><i>mortgage mediation activity</i></p> <p>FCA PRA</p>	<p>(as defined in article 26 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475)) any of the following <i>regulated activities</i>:</p> <ul style="list-style-type: none"> (a) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1)); (b) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25A(2)); (c) <i>advising on regulated mortgage contracts</i> (article 53A); (d) <i>agreeing to carry on a regulated activity</i> in (a) to (c) (article 64).
<p><i>most important financial sector</i></p> <p>FCA PRA</p>	<p>(in relation to a financial sector in a <i>consolidation group</i> or a <i>financial conglomerate</i> and in accordance with ■ GENPRU 3.1 (Cross sector groups)) the <i>financial sector</i> with the largest average referred to in the box titled Threshold Test 2 in the <i>financial conglomerate definition decision tree</i> (10% ratio of balance sheet size and solvency requirements); and so that the investment services sector and the banking sector are treated as one for the purpose of the definition of <i>financial conglomerate</i> and for any other purpose that GENPRU 3.1 (Cross sector groups) says they are.</p>
<p><i>Motor Insurers' Information Centre</i></p> <p>FCA PRA</p>	<p>the information centre appointed to meet the <i>United Kingdom's</i> obligations under article 23 of the <i>Consolidated Motor Insurance Directive</i> (Information Centres).</p>
<p><i>motor vehicle liability</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>class of contract of insurance</i>) the <i>class of contract of insurance</i>, specified in paragraph 10 of Part I of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of general insurance), against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.</p>
<p><i>motor vehicle liability insurance business</i></p> <p>FCA PRA</p>	<p><i>general insurance business</i> of class 10, other than:</p> <ul style="list-style-type: none"> (a) carrier's liability; (b) pure reinsurance of that class.
<p><i>motor vehicle liability insurer</i></p> <p>FCA PRA</p>	<ul style="list-style-type: none"> (a) a <i>firm</i> with <i>permission</i> to carry on <i>motor vehicle liability insurance business</i>; (b) any <i>person</i> carrying on the <i>regulated activity</i> of managing the <i>underwriting capacity of a Lloyd's syndicate</i> in respect of <i>members</i> whose insurance business at Lloyd's includes <i>motor vehicle liability insurance business</i>.
<p>MTF</p> <p>FCA PRA</p>	<p>a <i>multilateral trading facility</i>.</p>

MTF transaction

FCA PRA

a transaction concluded by a *firm* under the rules governing an *MTF* with another member or participant of that *MTF*.

multilateral development bank

FCA PRA

- (a) any of the following:
- (i) African Development Bank ;
 - (ii) Asian Development Bank ;
 - (iii) Caribbean Development Bank ;
 - (iv) Council of Europe Development Bank;
 - (v) European Bank for Reconstruction & Development ;
 - (vi) European Investment Bank ;
 - (vii) European Investment Fund ;
 - (viii) Inter-American Development Bank ;
 - (ix) International Bank for Reconstruction and Development ;
 - (x) International Finance Corporation;
 - (xa) International Finance Facility for Immunisation;
 - (xb) Islamic Development Bank;
 - (xi) Multilateral Investment Guarantee Agency ; and
 - (xii) Nordic Investment Bank ;
- (b) for the purposes of the *standardised approach* to credit risk the following are considered to be a multilateral development bank:
- (i) the Inter-American Investment Corporation;
 - (ii) the Black Sea Trade and Development Bank; and
 - (iii) the Central American Bank for Economic Integration

multilateral trading facility

FCA PRA

a multilateral system, operated by an *investment firm* or a *market operator*, which brings together multiple third-party buying and selling interests in *financial instruments* - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with the provisions of Title II of *MiFID*.

[Note: article 4(1)(15) of *MiFID*]

multiplication factor

FCA PRA

(in ■ BIPRU 7.10 (Use of a value at risk model)) a multiplication factor applied to a *VaR measure* for the purpose of calculating the *model PRR* made up of the *minimum multiplication factor* as increased by the *plus factor*, all as more fully defined in ■ BIPRU 7.10.118 R (Capital calculations: Multiplication factors).

mutual

FCA PRA

an *insurer* which:

- (a) if it is a *body corporate* has no *share capital* (except a wholly owned *subsidiary* with no *share capital* but limited by guarantee); or
- (b) is a *registered friendly society* or *incorporated friendly society*; or
- (c) is a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies (Northern Ireland) Act 1969.

packaged bank account

FCA PRA

an arrangement under which a *firm* provides a *retail banking service* as part of a package which includes access to other goods or services, whether or not a fee is charged.

packaged product

FCA PRA

- (a) a *life policy*;
- (b) a *unit* in a *regulated collective investment scheme*;
- (c) an interest in an *investment trust savings scheme*;
- (d) a *stakeholder pension scheme*;
- (e) a *personal pension scheme*;

whether or not (in the case of (a), (b) or (c)) held within an *ISA* or a *CTF* and whether or not the *packaged product* is also a *stakeholder product*.

parent financial holding company in a Member State

FCA PRA

(in accordance with Article 4(15) of the *Banking Consolidation Directive* (Definitions) and Article 3 of the *Capital Adequacy Directive* (Definitions)) a *financial holding company* which is not itself a *subsidiary undertaking* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* established in the same *EEA State*.

parent institution in a Member State

FCA PRA

(in accordance with Article 4(14) of the *Banking Consolidation Directive* and Article 3 of the *Capital Adequacy Directive* (Definitions)) an *institution* which has an *institution* or a *financial institution* as a *subsidiary undertaking* or which holds a *participation* in such an *institution*, and which is not itself a *subsidiary undertaking* of another *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* established in the same *EEA State*.

parent mixed financial holding company in a Member State

FCA PRA

(in accordance with Article 4(15a) of the *Banking Consolidation Directive* (Definitions)) a *mixed financial holding company* which is not itself a *subsidiary undertaking* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* established in the same *EEA State*.

parent undertaking

FCA PRA

(1) (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section 1162 of the *Companies Act 2006* (Parent and subsidiary undertakings)):

(a) (in relation to whether an *undertaking*, other than an *incorporated friendly society*, is a *parent undertaking* and except for the purposes described in (c)) an *undertaking* which has the following relationship to another *undertaking* ("S"):

- (i) it holds a majority of the voting rights in S; or
- (ii) it is a member of S and has the right to appoint or remove a majority of its board of directors; or
- (iii) it has the right to exercise a dominant influence over S through:
 - (A) provisions contained in S's memorandum or articles; or
 - (B) a control contract; or

(iv) it is a member of S and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in S; or

(v)

(A) it has the power to exercise, or actually exercises, dominant influence or control over S; or

(B) it and S are managed on a unified basis; or

(vi) it is a *parent undertaking* of a *parent undertaking* of S; or

(vii) (except in *REC* or for the purposes of the *rules* in *GENPRU* and *INSPRU* as they apply to *members* of the *Society* of Lloyd's or to the *Society* or *managing agents* in respect of *members*) he is an individual and would be a *parent undertaking* if he were an *undertaking*; or

(viii) (except in *REC* or for the purposes of *rules* in *GENPRU* and *INSPRU* as they apply to *members* of the *Society* of Lloyd's or to the *Society* or *managing agents* in respect of *members*) it is incorporated in or formed under the law of another *EEA State* and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the Seventh Company Law Directive;

in relation to (ii) and (iv); the *undertaking* will be treated as a member of S if any of its *subsidiary undertakings* is a member of S, or if any shares in S are held by a *person* acting on behalf of the *undertaking* or any of its *subsidiary undertakings*; the provisions of Schedule 7 to the Companies Act 2006 (Parent and subsidiary undertakings: supplementary provisions) explain the expressions used in and supplement paragraphs (i) to (vi);

(b) (in relation to whether an incorporated friendly society is a *parent undertaking* and except for the purposes described in (c)) an *incorporated friendly society* which has the following relationship to a *body corporate* ("S"):

(i) it holds a majority of the voting rights in S; or

(ii) it is a member of S and has the right to appoint or remove a majority of S's board of directors; or

(iii) it is a member of S and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in S; or

(iv) it is the *parent undertaking* of a *body corporate* which has the relationship in (i), (ii) or (iii) to S.

(c) (for the purposes of *BIPRU*, *GENPRU* and *INSPRU* as they apply on a consolidated basis, for the purposes of ■ *BIPRU* 10 (Large exposures requirements) and for the purposes of ■ *SYSC* 12 (Group risk systems and controls requirement) and ■ *SYSC* 19A (Remuneration Code) and in relation to whether an *undertaking* is a *parent undertaking*) an *undertaking* which has the following relationship to another *undertaking* ("S"):

(i) a relationship described in (a) other than (a)(vii); or

(ii) it effectively exercises a dominant influence over S;

and so that (a)(v) does not apply for the purpose of *BIPRU* as it applies on a consolidated basis (including *BIPRU* 8 (Group risk - consolidation)) or *BIPRU* 10 .

(2) a *parent undertaking* within the meaning of (1) of a *controlled undertaking*.

parental responsibility

FCA PRA

(as defined in section 3(9) of the Child Trust Fund Act 2004):

- (a) parental responsibility within the meaning of the Children Act 1989 or the Children (Northern Ireland) Order 1995 (SI 1995/755 (N.I. 2)); or
- (b) parental responsibilities within the meaning of the Children (Scotland) Act 1995.

Part 30 exemption order

FCA PRA

an order under regulation 30.10 of the General Regulations under the US Commodity Exchange Act, issued by the Commodity Futures Trading Commission on 15 May 1989, granting a *person* exemption from the registration requirement contained in Part 30 of those General Regulations.

Part 4A permission

FCA PRA

(as defined in section 55A of the Act (Application for *permission*)) a *permission* given by the FCA or PRA under Part 4A of the Act (Permission to carry on regulated activities), or having effect as if so given.

Part 6 rules

FCA PRA

(as defined in section 73A of the Act) *rules* made for the purposes of Part VI of the Act.

Part XX exemption

FCA PRA

the exemption from the *general prohibition* conferred on an *exempt professional firm* by section 327 of the Act (Exemption from the *general prohibition*).

participant

FCA PRA

(in accordance with section 235(2) of the Act (*Collective investment schemes*)) a *person* who participates in a *collective investment scheme*.

participant firm

FCA PRA

(1) (except in ■ FEES 1 and ■ FEES 6) a *firm* or a *member* other than:

(a) (in accordance with section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is:

- (i) a *credit institution* ;
- (ii) a *MiFID investment firm* ; or
- (iii) [deleted]
- (iv) both (i) and (ii); or
- (v) an *IMD insurance intermediary* or an *IMD reinsurance intermediary* which is neither (i) or (ii);

in relation to its *passport activities*, unless it has *top-up cover*;

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

- (i) *collective portfolio management* for a *UCITS scheme*; or
- (ii) *managing investments* (other than of a *collective investment scheme*), *advising on investments* or

safeguarding and administering investments (the services referred to in article 6(3) of the *UCITS Directive*), but only if it has top-up cover;

(b) a service company;

(c) [deleted]

(d) [deleted]

(e) an *underwriting agent*, or *members' adviser*, in respect of *advising on syndicate participation at Lloyd's* or managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;

(f) an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland and with respect to its *regulated activities* participates in the relevant society's compensation scheme;

(g) an *ICVC*;

(h) a UCITS qualifier;

(i) [deleted]

(j) in respect of the carrying on of *bidding in emissions auctions*, a *firm* that is exempt from *MiFID* under article 2(1)(i).

(2) (in ■ FEES 1 and ■ FEES 6) a *firm* specified in paragraph (1) above that is not a *member*.

participating deposit-taker

FCA PRA

(as defined in article 2(2) of the *compensation transitionals order*) a *person* who was at any time before *commencement*:

(a) a UK institution, participating institution, former UK institution or former participating institution as defined in section 52(6) of the Banking Act 1987; or

(b) a former authorised institution (as defined in section 106(1) of the Banking Act 1987 (other than a former UK institution or former participating institution as defined in section 52(6) of that Act), which was not a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979.

participating institution

FCA PRA

(as defined in article 2(2) of the *compensation transitionals order*) a *person* who was at any time before *commencement* a participating institution within the meaning of section 24(4) of the Building Societies Act 1986.

participating insurance undertaking

FCA PRA

an insurer which:

(a) has a *subsidiary undertaking* that is an *insurance undertaking*; or

(b) holds a *participation* in an *insurance undertaking*; or

(c) is linked to an *insurance undertaking* by a *consolidation Article 12(1) relationship*.

participating security

FCA PRA

a participating security as defined in regulation 3 of the Uncertificated Securities Regulations 1995 (SI 1995/3272), which enable title to participating securities to be evidenced otherwise than by a certificate and transferred otherwise than by a written instrument.

participation

FCA PRA

(for the purposes of *UPRU* and *GENPRU* and for the purposes of *BIPRU* and *INSPRU* as they apply on a consolidated basis):

(a) a participating interest may be defined according to:

(i) section 421A of the *Act* where applicable; or

(ii) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or

(iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or

(iv) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or

(v) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(b) (otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*;

but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.

partner

FCA PRA

(in relation to a *firm* which is a *partnership*) any *person* appointed to direct its affairs, including:

(a) a *person* occupying the position of a partner (by whatever name called); and

(b) a *person* in accordance with whose directions or instructions (not being advice given in a professional capacity) the partners are accustomed to act.

partner function

FCA PRA

(1) (in the *FCA Handbook*) *FCA controlled function* CF4 in Part 1 of the *table of FCA controlled functions*, described more fully in ■ SUP 10A.6.23 R to ■ SUP 10A.6.27 R.

(2) (in the *PRA Handbook*) *PRA controlled function* CF4 in the *table of PRA controlled functions*, described more fully in ■ SUP 10B.6.12 R to ■ SUP 10B.6.14 R.

partnership

FCA PRA

(in accordance with section 417(1) of the *Act* (Definitions)) any partnership, including a partnership constituted under the law of a country or territory outside the *United Kingdom*, but not including a *limited liability partnership*.

passport right

FCA PRA

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) the entitlement of a *person* to establish a branch or provide services in an *EEA State* other than that in which they are authorised to provide *electronic money* issuance services:

(a) in accordance with the Treaty on the Functioning of the European Union as applied in the *EEA*; and

(b) subject to the conditions of the *Electronic Money Directive*.

an activity carried on by an *EEA firm*, or by a *UK firm*, under an *EEA right*.

passport activity

FCA PRA

<p><i>payment holiday</i></p> <p>FCA PRA</p>	<p>a feature of a <i>regulated mortgage contract</i> under which the <i>mortgage lender</i> permits the customer to make no payments for a specified period without being in <i>arrears</i>.</p>
<p><i>payment information</i></p> <p>FCA PRA</p>	<p>the information described in COBS 7.3.4R, that is, the amount and nature of any payments that the <i>client</i> will have to make, directly or indirectly, for the <i>personal recommendation</i>.</p>
<p><i>payment institution</i></p> <p>FCA PRA</p>	<p>an <i>authorised payment institution</i>, an <i>EEA authorised payment institution</i> or a <i>small payment institution</i>.</p> <p>[Note: articles 4(4) and 26(3) of the <i>Payment Services Directive</i>]</p>
<p><i>payment instrument</i></p> <p>FCA PRA</p>	<p>(in <i>BCOBS</i>) any personalised device or personalised set of procedures agreed between the <i>banking customer</i> and the <i>firm</i> used by the <i>banking customer</i> to initiate an instruction or request by the <i>banking customer</i> to the <i>firm</i> to make a payment.</p>
<p><i>payment leg</i></p> <p>FCA PRA</p>	<p>(for the purposes of the <i>CCR standardised method</i> and as more fully defined in ■ BIPRU 13.5.2 R (Derivation of risk position: payment legs) the contractually agreed gross payments under a <i>financial derivative instrument</i>, including the notional amount of the transaction.</p>
<p><i>payment protection contract</i></p> <p>FCA PRA</p>	<p>A <i>non-investment insurance contract</i> which has elements of a <i>general insurance contract</i> and the benefits of which are described as enabling a <i>policyholder</i> to protect his ability to continue to make payments due to third parties, or can reasonably be expected to be used in this way.</p>
<p><i>payment routing information</i></p> <p>FCA PRA</p>	<p>a combination of letters, numbers or symbols specified by a <i>firm</i> to be provided when instructing or requesting the <i>firm</i> to make a payment from an account of a <i>banking customer</i> for the purpose of routing the payment to the correct destination and intended recipient.</p>
<p><i>payment service</i></p> <p>FCA PRA</p>	<p>(in accordance with regulation 2(1) of, and Schedule 1 to, the <i>Payment Services Regulations</i>):</p> <p>(a) Any of the following activities when carried out as a regular occupation or business activity:</p> <ul style="list-style-type: none"> (i) services enabling cash to be placed on a payment account and all of the operations required for operating a payment account; (ii) services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account; (iii) execution of the following types of payment transaction: <ul style="list-style-type: none"> (A) direct debits, including one-off direct debits; (B) payment transactions executed through a payment card or a similar device; (C) credit transfers, including standing orders; (iv) execution of the following types of payment transaction where the funds are covered by a credit line for the <i>payment service user</i>: <ul style="list-style-type: none"> (A) direct debits, including one-off direct debits;

- (B) payment transactions executed through a payment card or a similar device;
 - (C) credit transfers, including standing orders;
 - (v) issuing payment instruments or acquiring payment transactions;
 - (vi) *money remittance*;
 - (vii) execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the *payment service user* and the supplier of the goods or services.
- (b) The following activities do not constitute payment services:
- (i) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
 - (ii) payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
 - (iii) the professional physical transport of banknotes and coins, including their collection, processing and delivery;
 - (iv) payment transactions consisting of non-professional cash collection and delivery as part of a not-for-profit or charitable activity;
 - (v) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payer immediately before the execution of the payment transaction;
 - (vi) money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account;
 - (vii) payment transactions based on any of the following documents drawn on the *payment service provider* with a view to placing funds at the disposal of the payee:
 - (A) paper cheques of any kind, including traveller's cheques;
 - (B) bankers' drafts;
 - (C) paper-based vouchers;
 - (D) paper postal orders;
 - (viii) payment transactions carried out within a payment or securities settlement system between *payment service providers* and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;
 - (ix) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by *persons* referred to in (h) or by investment firms, *full credit institutions*, collective investment undertakings, asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;
 - (x) services provided by technical service providers, which support the provision of *payment services*, without the provider entering at any time into possession of the funds to be transferred, including:
 - (A) the processing and storage of data;
 - (B) trust and privacy protection services;

- (C) data and entity authentication;
- (D) information technology;
- (E) communication network provision; and
- (F) the provision and maintenance of terminals and devices used for *payment services*;

(xi) services based on instruments that can be used to acquire goods or services only:

- (A) in or on the issuer's premises; or
- (B) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services,

and for these purposes the "issuer" is the person who issues the instrument in question;

(xii) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the *payment service user* and the supplier of the goods and services;

(A) payment transactions carried out between *payment service providers*, or their agents or *branches*, for their own account;

(B) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a *payment service provider* other than an undertaking belonging to the same group;

(C) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the *framework contract* with the customer withdrawing money from a payment account, where no other *payment service* is conducted by the provider.

[Note: articles 3 and 4(3) of, and the Annex to, the *Payment Services Directive*]

payment service provider

FCA PRA

(1) (except in *DISP*) (in accordance with regulation 2(1) of the *Payment Service Regulations*) any of the following *persons* when they carry out a *payment service*:

- (a) an *authorised payment institution*;
- (b) a *small payment institution*;
- (c) an *EEA authorised payment institution*;
- (d) a *full credit institution*;
- (e) an *electronic money issuer*;
- (f) the Post Office Limited;

(g) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the *United Kingdom*, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and

<p>(h) government departments and local authorities, other than when carrying out functions of a public nature.</p> <p>[Note: article 1(1) of the <i>Payment Services Directive</i>]</p> <p>(2) (in <i>DISP</i> and ■ FEES 5.5) as in (1) but excluding a <i>full credit institution</i></p>	<p><i>payment service user</i></p> <p>FCA PRA</p>	<p><i>Payment Services Directive</i></p> <p>FCA PRA</p>	<p><i>Payment Services Regulations</i></p> <p>FCA PRA</p>	<p>PD</p> <p>FCA PRA</p>	<p>PD Regulation</p> <p>FCA PRA</p>	<p>PD/LGD approach</p> <p>FCA PRA</p>	<p><i>peak exposure</i></p> <p>FCA PRA</p>	<p><i>pending application</i></p> <p>FCA PRA</p>	<p><i>penny share</i></p> <p>FCA PRA</p>	<p>(in accordance with regulation 2(1) of the <i>Payment Services Regulations</i>) a <i>person</i> when making use of a <i>payment service</i> in the capacity of either payer or payee, or both.</p> <p>[Note: article 4(10) of the <i>Payment Services Directive</i>]</p> <p>Directive 2007/64/EC of the European Parliament and of the Council of 13th November 2007 on payment services in the internal market.</p> <p>the Payment Services Regulations 2009 (SI 2009/209).</p> <p>(1) (except in <i>GENPRU</i> and <i>BIPRU</i>) Prospectus Directive.</p> <p>(2) (in <i>GENPRU</i> , <i>BIPRU</i> and <i>BSOCS</i>) <i>probability of default</i>.</p> <p>the Prospectus Directive Regulation (No 2004/809/EC).</p> <p>the method for treating <i>equity exposures</i> under the <i>IRB approach</i> set out in ■ BIPRU 4.7.14 R-■ BIPRU 4.7.22 R.</p> <p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a high percentile of the distribution of exposures at any particular future date before the maturity date of the longest transaction in the <i>netting set</i>.</p> <p>(as defined in article 3(1) of the <i>compensation transitionals order</i>):</p> <p>(a) an application for compensation made under an <i>investment business compensation scheme</i> before <i>commencement</i> in relation to which a <i>terminating event</i> did not occur before <i>commencement</i>; and</p> <p>(b) an application made to the <i>FSCS</i> after <i>commencement</i> under an <i>investment business compensation scheme</i>, even if at the time of application that scheme had otherwise ceased to exist.</p> <p>a <i>readily realisable security</i> in relation to which the bid-offer spread is 10 per cent or more of the offer price, but not:</p> <p>(a) a <i>government and public security</i>; or</p> <p>(b) a <i>share</i> in a <i>company</i> quoted on The Financial Times Stock Exchange 100 Index; or</p>
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<p><i>pension annuity</i></p> <p>FCA PRA</p>	<p>(c) a <i>security</i> issued by a <i>company</i> which, at the time that the firm <i>deals</i> or recommends to the <i>client</i> to <i>deal</i> in the <i>investment</i>, has a market capitalisation of £100 million or more (or its equivalent in any other currency at the relevant time).</p>
<p><i>pension buy-out contract</i></p> <p>FCA PRA</p>	<p>an <i>investment</i> purchased with the sums derived from the vesting (partial or full) of a <i>pension policy</i> or <i>pension contract</i>, for the purposes of securing the beneficiary's entitlement to immediate or future benefits.</p>
<p><i>pension contract</i></p> <p>FCA PRA</p>	<p>a <i>pension policy</i> bought from an <i>insurer</i> using funds from:</p> <p>(a) a scheme that was approved under Chapter 1 of Part 14 of the Income and Corporation Taxes Act 1988 when that chapter was in force; or</p> <p>(b) a scheme that is a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.</p>
<p><i>pension fund management</i></p> <p>FCA PRA</p>	<p>a contract under which rights to benefits are obtained by the making of contributions to an <i>occupational pension scheme</i> or to a <i>personal pension scheme</i>, where the contributions are paid to a <i>regulated collective investment scheme</i>.</p>
<p><i>pension fund management contract</i></p> <p>FCA PRA</p>	<p>(in relation to a class of contract of insurance) the class of contract of insurance specified in paragraph VII of Part II of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of long-term insurance) namely:</p> <p>(a) pension fund management contracts; and</p> <p>(b) pension fund management contracts which are combined with <i>contracts of insurance</i> covering either conservation of capital or payment of a minimum interest;</p> <p>where effected or carried out by a <i>person</i> who does not carry on a banking business, and otherwise carries on <i>insurance business</i>.</p>
<p><i>pension fund management contract</i></p> <p>FCA PRA</p>	<p>(as defined in article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) a contract to manage the <i>investments</i> of pension funds (other than funds solely for the benefit of the officers or employees of the <i>person</i> effecting or carrying out the contract and their dependants or, in the case of a <i>company</i>, partly for the benefit of officers and employees of its subsidiary or holding company or a subsidiary of its holding company and their dependants; in this definition "subsidiary" and "holding company" mean either <i>subsidiary</i> and <i>holding company</i>, or <i>subsidiary</i> and <i>holding company</i> defined in accordance with article 4 of the Companies (Northern Ireland) Order 1986 (SI 1986) No 1032 (NI 6)) as amended by article 62 of the Companies (No 2) (Northern Ireland) Order 1990 (SI 1990 No 1504 (NI 10)).</p>
<p><i>pension opt-out</i></p> <p>FCA PRA</p>	<p>a transaction, resulting from the decision of a <i>retail client</i> who is an individual, to:</p> <p>(a) opt out of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and of which he is a member; or</p> <p>(b) decline to become a member of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and of which he is eligible to join, or will be eligible to join at the end of a waiting period;</p> <p>in favour of a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i>.</p>
<p><i>pension policy</i></p> <p>FCA PRA</p>	<p>a contract under which a right to benefits results from contributions made to an <i>occupational pension scheme</i> or to a <i>personal pension scheme</i>, where the contributions are paid to a <i>long-term insurer</i>.</p>

<p><i>pension scheme</i> FCA PRA</p>	<p>a scheme under which a right to benefits results from contributions made under a <i>pension contract</i> or <i>pension policy</i>.</p>
<p><i>pension term assurance policy</i> FCA PRA</p>	<p>a <i>personal pension policy</i> which is a <i>pure protection contract</i> and in connection with which tax relief is available under Chapter 4 of Part 4 of the Finance Act 2004.</p>
<p><i>pension transfer</i> FCA PRA</p>	<p>a transaction , resulting from the decision of a <i>retail client</i> who is an individual, to transfer deferred benefits from:</p> <ul style="list-style-type: none"> (a) an <i>occupational pension scheme</i>; (b) an individual pension contract providing fixed or guaranteed benefits that replaced similar benefits under a <i>defined benefits pension scheme</i>; or (c) (in the cancellation rules (■ COBS 15)) a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i> , <p>to:</p> <ul style="list-style-type: none"> (d) a <i>stakeholder pension scheme</i>; (e) a <i>personal pension scheme</i>; or (f) a deferred annuity <i>policy</i> , where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment.
<p><i>pension transfer specialist</i> FCA PRA</p>	<p>an individual appointed by a <i>firm</i> to check the suitability of a <i>pension transfer</i> or <i>pension opt-out</i> who has passed the required examinations asspecified in TC.</p>
<p><i>pension wrapper</i> FCA PRA</p>	<p>(in the cancellation rules (■ COBS 15)) a <i>SIPP</i>, <i>pension contract</i> or <i>personal pension product</i>.</p>
<p><i>per se eligible counterparty</i> FCA PRA</p>	<p>a <i>client</i> categorised as a per se eligible counterparty in accordance with ■ COBS 3.6.</p>
<p><i>per se professional client</i> FCA PRA</p>	<p>a <i>client</i> categorised as a per se professional <i>client</i> in accordance with ■ COBS 3.5.</p>
<p><i>percentage ratio</i> FCA PRA</p>	<p>(in LR) (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a <i>class test</i> to the transaction.</p>
<p>PERG FCA PRA</p>	<p>the Perimeter Guidance manual.</p>

periodic information

FCA PRA

the information identified in the table in ■ COBS 16 Annex 2R R, and if the *client* has not elected to receive *trade confirmation information* on a transaction by transaction basis under ■ COBS 16.3.3 R, the information identified in column 2 of ■ COBS 16 Annex 1R R.

periodic statement

FCA PRA

a report which a *firm* is required to provide to a *client* under ■ COBS 16.3 (Periodic reporting).

permanent health

FCA PRA

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph IV of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that:

- (a) are expressed to be in effect for a period of not less than five years, or until the normal retirement age of the persons concerned, or without limit of time; and
- (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

permanent health reinsurance business

FCA PRA

reinsurance acceptances which are *contracts of insurance* falling within *long-term insurance business class IV*.

permanent interest bearing shares

FCA PRA

any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which are issued as permanent interest-bearing shares and on terms which qualify them as own funds for the purposes of the *Banking Consolidation Directive*.

permanent share capital

FCA PRA

an item of capital that is stated in GENPRU 2.2.83R (Core tier one capital: permanent share capital) to be permanent share capital.

permission

FCA PRA

permission to carry on *regulated activities*; that is, any of the following:

- (a) a *Part 4A permission*;
- (b) the permission that an *incoming EEA firm* has, under paragraph 15(1) or paragraph 15A(1), (3) or (4) of Schedule 3 to the *Act* (EEA Passport Rights), on qualifying for *authorisation* under paragraph 12 of that Schedule;
- (c) the permission that an *incoming Treaty firm* has, under paragraph 4(1) of Schedule 4 to the *Act* (Treaty Rights), on qualifying for *authorisation* under paragraph 2 of that Schedule;
- (d) the permission that a *UCITS qualifier* has, under paragraph 2(1) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes);
- (e) the permission that an *ICVC* has, under paragraph 2(2) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes);

permitted activity

FCA **PRA**

(f) the permission that the Society of Lloyd's has, under section 315(2) of the *Act* (The Society: authorisation and permission), which is to be treated as a *Part IV permission* for the purposes of *Part 4A* of the *Act* (Permission to carry on regulated activities) in accordance with section 315(3) of the *Act*.

(1) (except in **■ SUP 13A** and **■ SUP 14**) a *regulated activity* which a *firm* has *permission* to carry on.

(2) (in **■ SUP 13A** and **■ SUP 14**) an activity identified in a consent notice, a regulator's notice or, where none is required, a notice of intention.

permitted business

FCA **PRA**

(in *UPRU*) means *permitted activity*.

permitted deposits

FCA **PRA**

in relation to *permitted links*, *deposits* with any of the following:

(a) an *approved credit institution*; or

(b) an *approved financial institution*; or

(c) an approved *investment firm*.

permitted derivatives contract

FCA **PRA**

in relation to *permitted links*, a contract involving a *derivative* or *quasi-derivative* that satisfies **■ INSPRU 3.2.5 R** to **■ INSPRU 3.2.35A G** with the exception of **■ INSPRU 3.2.18 R**, as applied in relation to assets covering liabilities in respect of *linked long-term* contracts of insurance.

permitted immovable

FCA **PRA**

any interest in land or buildings which falls within **■ COLL 5.6.18 R (2)** and **■ COLL 5.6.18 R (6)** (Investment in property) and which, being a leasehold interest or its equivalent, has an unexpired term of at least 20 years, but excluding, in relation to an *ICVC*, immovable property that is necessary for the direct pursuit of its business .

permitted land and property

FCA **PRA**

in relation to *permitted links*, any interest in land (and any buildings situated on it) provided that:

(a) it is considered by the *firm* to be located in a territory with a properly functioning market, indicated by the following criteria:

(i) a lack of artificial barriers, including barriers to foreign ownership and repatriation of capital;

(ii) fair and accurate valuation;

(iii) suitably qualified and independent surveyors;

(iv) accurate financial information;

(v) enforceable contractual and other property rights;

(vi) clarity of taxation;

(vii) availability of reliable economic and property market data;

(viii) ethical transaction standards; and

(b) it is:

(i) owned directly by the *firm*; or

(ii) held in a structure, or a series of structures, that do not pose a materially greater risk to *linked policyholders* than a direct holding; and

<p><i>permitted links</i> FCA PRA</p>	<p>(c) it is not geared in excess of 10% of the gross asset value of the <i>linked fund</i> excluding any amounts represented by holdings in property detailed in <i>permitted scheme interests</i> (b) (i) to (iv). But this percentage restriction does not apply if the relevant <i>policyholder</i> or trustee or operator acting on behalf of an individual beneficiary requests, directly or indirectly, the <i>firm</i> to hold those investments based on the risk profile and objectives, stipulated by and specific for that individual under an investment management agreement with that individual.</p>
<p><i>permitted loans</i> FCA PRA</p>	<p>the property in ■ COBS 21.3.1 R that an insurer may use for the purposes of determining <i>property-linked benefits</i> or <i>index-linked benefits</i> under <i>linked long-term</i> contracts of insurance.</p> <p>in relation to <i>permitted links</i>, a loan with any of the following:</p> <ul style="list-style-type: none"> (a) an <i>approved credit institution</i>; or (b) an <i>approved financial institution</i>; or (c) an <i>approved investment firm</i>; or (d) any person, provided that the loan: <ul style="list-style-type: none"> (i) is documented in a written agreement setting out the rate of interest and the amount of, and due dates for, repayments; and (ii) is fully secured by a mortgage or charge on <i>permitted land and property</i> that, if made to someone other than a body corporate, is not used wholly or mainly for domestic purposes.
<p><i>permitted scheme interests</i> FCA PRA</p>	<p>(a) in respect of a firm's business with <i>institutional linked policyholders</i> only, any of the following:</p> <ul style="list-style-type: none"> (i) a <i>qualified investor scheme</i> or its <i>EEA</i> equivalent; (ii) any <i>unregulated collective investment scheme</i> that invests only in <i>permitted links</i> and publishes its prices regularly; (iii) any of the interests set out in (b)(i) to (b)(iv); <p>(b) in respect of a firm's business with <i>linked policyholders</i> other than those described in (a), any of the following:</p> <ul style="list-style-type: none"> (i) an <i>authorised fund</i>; (ii) a <i>recognised scheme</i>; (iii) a scheme falling within the <i>UCITS Directive</i>; (iv) a <i>non-UCITS retail scheme</i>; (v) a <i>qualified investor scheme</i> or its <i>EEA</i> equivalent or any <i>unregulated collective investment scheme</i> that invests only in <i>permitted links</i> and publishes its prices regularly, provided that no more than 20% of the gross assets of the <i>linked fund</i> are so invested.
<p><i>permitted stock lending</i> FCA PRA</p>	<p>in relation to <i>permitted links</i>, a <i>stock lending</i> transaction (including a <i>repo</i> transaction) that satisfies ■ INSPRU 3.2.36A R to ■ INSPRU 3.2.42 G (inclusive).</p>
<p><i>permitted third party</i> FCA PRA</p>	<p>a third party who is:</p> <ul style="list-style-type: none"> (a) an <i>authorised person</i>; or (b) an <i>exempt person</i> for whom an <i>authorised person</i> is accepting responsibility; or

permitted units

FCA **PRA**

(c) a *person* lawfully carrying on a *regulated activity* in another *EEA State*.
in relation to *permitted links*, units or beneficial interests in any real or notional fund that invests only in *permitted links* and is managed either:

- (a) wholly by the *insurer*; or
- (b) wholly or partly by:
 - (i) an agent on behalf of the *insurer*; or
 - (ii) a *reinsurer* in relation to a *reinsurance contract* with the *insurer*;
for whom the *insurer* retains all responsibility towards its *linked policyholders*.

permitted unlisted securities

FCA **PRA**

in relation to *permitted links*, means any investment (including a *share*, *debt security*, Treasury Bill, Tax Reserve Certificate or Certificate of Tax Deposit) that is not a *listed security*, but provided always that it is realisable in the short term.

person

FCA **PRA**

(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a *partnership*).

person discharging managerial responsibilities

FCA **PRA**

(in accordance with section 96B(1) of the *Act*):

- (a) a *director* of an *issuer*:
 - (i) registered in the *United Kingdom* that has requested or approved admission of its *shares* to trading on a *regulated market*; or
 - (ii) not registered in the *United Kingdom* or any other *EEA State* but has requested or approved admission of its shares to trading on a *regulated market* and for whom the *United Kingdom* is its *Home Member State* ; or
- (b) a senior executive of such an *issuer* who:
 - (i) has regular access to *inside information* relating, directly or indirectly, to the *issuer*; and
 - (ii) has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

person exercising significant influence

FCA **PRA**

(in *LR*) in relation to a *listed company*, a *person* or entity which exercises significant influence over that *listed company* .

person with whom a relevant person has a family relationship

FCA **PRA**

any of the following:

- (a) the spouse of the *relevant person* or any partner of that person considered by national law as equivalent to a spouse;
- (b) a child or stepchild of the *relevant person*;
- (c) any other relative of the *relevant person* who has shared the same household as that person for at least one year on the date of the personal transaction concerned.

[Note: article 2(7) of the *MiFID implementing Directive*]

*Personal
Insurance
Arbitration
Service*

FCA **PRA**

the *former scheme* set up on a voluntary basis and run by the Chartered Institute of Arbitrators to handle complaints against those insurance companies which subscribed to it.

*personal
investment
firm*

FCA **PRA**

(subject to **■ BIPRU TP 1** (Revised definition of personal investment firm for certain transitional purposes)) a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *BIPRU investment firm*, building society, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming *EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with **■ IPRU(INV) 3** (Securities and futures firms) or **5** (Investment management firms), and which is within (a), (b) or (c):

(a) a *firm*:

(i) which was a member of PIA immediately before *commencement*; and

(ii) which was not, immediately before *commencement*, subject to the financial supervision requirements of the FSA (under section 43 of the Financial Services Act 1986), or *IMRO* or *SFA* (under lead regulation arrangements);

(b) a *firm* whose *permission* includes a *requirement* that it comply with **■ IPRU(INV) 13** (Personal investment firms);

(c) a *firm*:

(i) which was given a *Part 4A permission* after *commencement*, or which was authorised under section 25 of the Financial Services Act 1986 immediately before *commencement* and not a member of *IMRO*, *PIA* or *SFA*; and

(ii) for which the most substantial part of its gross income (including *commissions*) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the *Act*):

(A) *advising on investments*, *arranging (bringing about) deals in investments* or *making arrangements with a view to transactions in investments*, in relation to *packaged products*;

(B) *managing investments* for *retail clients*.

*personal
pension
contract*

FCA **PRA**

a *pension contract* under which contributions (single or regular) are paid to a *personal pension scheme*.

*personal
pension deposit*

a contract under which rights to benefits are obtained by making contributions to a *personal pension scheme* operated by a *deposit-taking firm*.

FCA PRA

personal pension policy

a *pension policy* under which contributions (single or regular) are paid to a *personal pension scheme*.

FCA PRA

personal pension product

a contract under which rights to benefits are obtained by making contributions to a *personal pension scheme* other than a *personal pension policy*, a *personal pension contract*, a *personal pension deposit* or a *SIPP*.

FCA PRA

personal pension scheme

a scheme or arrangement which is not an *occupational pension scheme* or *stakeholder pension scheme* and which is comprised in one or more instruments or agreements having or capable of having effect so as to provide benefits to or in respect of people:

- (a) on retirement; or
- (b) on having reached a particular age; or
- (c) on termination of service in an employment.

personal projection

a *projection* that reflects the terms of a particular contract with, or to be offered to, a particular *client*.

FCA PRA

personal recommendation

(except in *CONRED*) a recommendation that is *advice on investments*, or *advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

FCA PRA

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

[Note: article 52 of the *MiFID implementing Directive*]

(in *CONRED*) a recommendation which is *advice on investments* and:

- (a) where given on or before 31 October 2007, was given to a specific *person*; or
- (b) where given on or after 1 November 2007, was presented as suitable for the *person* to whom the recommendation was made, or was based on a consideration of the circumstances of that *person*, other than a recommendation issued exclusively through distribution channels or to the public.

personal transaction

a trade in a *designated investment* effected by or on behalf of a *relevant person*, where at least one of the following criteria are met:

FCA PRA

- (1) that *relevant person* is acting outside the scope of the activities he carried out in that capacity;
- (2) the trade is carried out for the account of any of the following *persons*:
 - (a) the *relevant person*;
 - (b) the spouse or civil partner of the *relevant person* or any partner of that *person* considered by national law as equivalent to a spouse;
 - (c) a dependent child or stepchild of the *relevant person*;

	<p>(d) any other relative of the <i>relevant person</i> who has shared the same household as that <i>person</i> for at least one year on the date of the <i>personal transaction</i> concerned;</p> <p>(e) any <i>person</i> with whom he has <i>close links</i>;</p> <p>(f) a <i>person</i> whose relationship with the <i>relevant person</i> is such that the <i>relevant person</i> has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.</p>
	[Note: article 2(7) and article 11 of the <i>MiFID implementing Directive</i>]
<i>physical commodities</i>	a physical holding of a <i>commodity</i> , or documents evidencing title to a <i>commodity</i> .
FCA PRA	
<i>PIA</i>	the Personal Investment Authority Limited.
FCA PRA	
<i>PIA Ombudsman scheme</i>	the <i>former scheme</i> set up by <i>PIA</i> under the Financial Services Act 1986 and operated by the <i>PIA Ombudsman Bureau Ltd</i> to handle complaints against members of <i>PIA</i> .
FCA PRA	
<i>PIBS</i>	<i>permanent interest bearing shares</i> .
FCA PRA	
<i>placing</i>	(in <i>LR</i>) a marketing of <i>securities</i> already in issue but not <i>listed</i> or not yet in issue, to specified <i>persons</i> or clients of the <i>sponsor</i> or any securities house assisting in the placing, which does not involve an offer to the public or to existing holders of the <i>issuer's securities</i> generally.
FCA PRA	
<i>plan investor</i>	a <i>person</i> entered in the <i>plan register</i> under ■ COLL 6.4.9 R (Plan registers) .
FCA PRA	
<i>plan manager</i>	in relation to:
FCA PRA	<p>(a) [deleted]</p> <p>(b) a <i>group ISA</i> , the <i>ISA manager</i> ;</p> <p>(c) a <i>group savings plan</i>, the <i>person</i> primarily responsible for that <i>group savings plan</i>.</p>
<i>plan register</i>	<p>(1) (in relation to an <i>ICVC</i>) a record of <i>persons</i> who subscribe to a <i>group plan</i> and for whom <i>shares</i> in the <i>ICVC</i> are held for the purposes of the <i>group plan</i> by the <i>plan manager</i> or a nominee (other than a record for the establishment or maintenance of which no payments are to be made out of the <i>scheme property</i>).</p> <p>(2) (in relation to an <i>AUT</i>) a sub- <i>register</i> to the <i>register</i>, which sub-<i>register</i> records <i>persons</i> who subscribe to a <i>group plan</i> and for whom <i>units</i> in the <i>AUT</i> are held for the purposes of the plan by the <i>plan manager</i> or a nominee (other than any sub- <i>register</i> that has not been established and maintained in accordance with ■ COLL 6.4.4 R (Register: general requirements and contents) or for the establishment of which no payments are to be made out of the <i>scheme property</i>).</p>
FCA PRA	

plastic card

FCA **PRA**

a card, or a token with an equivalent function, which a *customer* can use to pay for goods and services, or to obtain cash or both, such as a credit card, charge card, debit card, cash card or electronic purse.

platform service

FCA **PRA**

a service which:

- (a) involves *arranging* and *safeguarding and administering investments*; and
- (b) distributes *retail investment products* which are offered to *retail clients* by more than one product provider;

but is neither:

- (c) solely paid for by *adviser charges*; nor
- (d) ancillary to the activity of *managing investments* for the *retail client*.

[*Note*: This definition applies only within the *FCA Handbook*.]

platform service provider

FCA **PRA**

a *firm* providing a *platform service*.

PLC Safeguards Directive

FCA **PRA**

the Second Council Directive of 13 December 1976 on coordination of safeguards for the protection of the interests of members and others in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (No 77/91/EEC).

plus factor

FCA **PRA**

(in ■ BIPRU 7.10 (Use of a value at risk model)) an increase to the *minimum multiplication factor* based on *backtesting exceptions* as more fully defined in ■ BIPRU 7.10.124 R (Capital calculations: Multiplication factors).

policy

FCA **PRA**

(as defined in article 2 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)) as the context requires:

- (a) a *contract of insurance*, including one under which an existing liability has already accrued; or
- (b) any instrument evidencing such a contract.

policy summary

FCA **PRA**

a summary of a *non-investment insurance contract* in the format and containing the information specified in ■ ICOBS 6 Annex 2.

policyholder

FCA **PRA**

(as defined in article 3 of the Financial Services and Markets Act 2000 (Meaning of "Policy and "Policyholder") Order 2001 (SI 2001/2361)) the *person* who for the time being is the legal holder of the *policy*, including any *person* to whom, under the *policy*, a sum is due, a periodic payment is payable or any other benefit is to be provided or to whom such a sum, payment or benefit is contingently due, payable or to be provided.

PAGE
P19

policyholder advocate

FCA **PRA**

the *person* appointed under ■ COBS 20.2.42 R to negotiate with a *firm* on its proposals for making a *retribution* of its *inherited estate*.

port

means, in respect of the assets and positions recorded in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an

<p><i>portfolio management</i> FCA PRA</p>	<p><i>authorised central counterparty</i>, action taken by that <i>authorised central counterparty</i> to transfer those assets and positions in accordance with article 48 of <i>EMIR</i> to another clearing member designated by the individual <i>client</i> (in the case of an <i>individual client account</i>) or designated by all of the <i>clients</i> for whom the account is held (in the case of an <i>omnibus client account</i>).</p>
<p><i>portfolio trade</i> FCA PRA</p>	<p>managing portfolios in accordance with mandates given by <i>clients</i> on a discretionary <i>client-by-client</i> basis where such portfolios include one or more <i>financial instruments</i>.</p> <p>[Note: article 4(1)(9) of <i>MiFID</i>]</p>
<p>POS Regulations FCA PRA</p>	<p>a transaction in more than one security where those securities are grouped and traded as a single lot against a specific reference price.</p> <p>[Note: article 2(6) of the <i>MiFID Regulation</i>]</p>
<p><i>position</i> FCA PRA</p>	<p>the Public Offers of Securities Regulations 1995 (SI 1995/1537).</p>
<p><i>position risk adjustment</i> FCA PRA</p>	<p>(in accordance ■ BIPRU 1.2.4 R (Definition of the trading book: Positions)) includes proprietary positions and positions arising from client servicing and market making.</p>
<p><i>position risk requirement</i> FCA PRA</p>	<p>a percentage applied to a <i>position</i> as part of the process of calculating the <i>PRR</i> in relation to that <i>position</i> as set out in the tables in ■ BIPRU 7.2.44 R (Specific risk position risk adjustments), ■ BIPRU 7.2.57 R (General market risk position risk adjustments), ■ BIPRU 7.3.30 R (Simplified equity method position risk adjustments), ■ BIPRU 7.3.34 R (Position risk adjustments for specific risk under the standard equity method) and ■ BIPRU 7.6.8 R (The appropriate position risk adjustment) and also as set out in ■ BIPRU 7.2.48A R to ■ BIPRU 7.2.48L R.</p>
<p><i>post</i> FCA PRA</p>	<p>a capital requirement applied to a position treated under ■ BIPRU 7 (Market risk) as part of the calculation of the <i>market risk capital requirement</i> or, if the relevant provision of the <i>Handbook</i> distinguishes between <i>general market risk</i> and <i>specific risk</i>, the portion of that capital requirement with respect to whichever of <i>general market risk</i> or <i>specific risk</i> is specified by that provision.</p>
<p><i>Post-BCCI Directive</i> FCA PRA</p>	<p>(in relation to sending a <i>document</i> by post) sending pre-paid by a postal service which seeks to deliver <i>documents</i> by post within the <i>United Kingdom</i> no later than the next working day in all or the majority of cases, and to deliver by post outside the <i>United Kingdom</i> within such a period as is reasonable in all the circumstances.</p>
<p><i>potential tier one instrument</i> FCA PRA</p>	<p>the European Parliament and Council Directive of 29 June 1995 amending certain directives with a view to reinforcing prudential supervision (No 95/26/EC).</p>
<p><i>power of intervention</i> FCA PRA</p>	<p>an item of capital that falls into GENPRU 2.2.62R (Tier one capital: General)</p>
	<p>the power conferred on the <i>FCA</i> or the <i>PRA</i> under section 196 of the <i>Act</i> (The Power of Intervention) to impose a requirement on an <i>incoming firm</i>.</p>

PPFM FCA PRA	<i>Principles and Practices of Financial Management.</i>
PPFM guidance table FCA PRA	the table in ■ COBS 20.3.8 G (Guidance on with-profits principles and practices).
PPFM issues table FCA PRA	The table in ■ COBS 20.3.6 R (Issues to be covered in PPFM).
PR FCA PRA	the Prospectus Rules sourcebook.
PRA FCA PRA	Prudential Regulation Authority.
PRA chief executive function FCA PRA	(in the <i>FCA Handbook</i>) PRA controlled function CF3 in the <i>table of PRA controlled functions</i> .
PRA controlled function FCA PRA	a <i>controlled function</i> which is specified by the PRA under section 59 of the <i>Act</i> (Approval for particular arrangements) in the <i>table of PRA controlled functions</i> .
PRA director function FCA PRA	(in the <i>FCA Handbook</i>) PRA controlled function CF1 in the <i>table of PRA controlled functions</i> .
PRA governing function FCA PRA	any of the <i>PRA controlled functions</i> CF1 to CF6 in the <i>table of PRA controlled functions</i> .
PRA Handbook FCA PRA	the PRA's Handbook of rules and guidance.
PRA required functions FCA PRA	any of the <i>PRA controlled functions</i> CF12 to CF12B in the <i>table of PRA controlled functions</i> .
PRA's SCV requirements FCA PRA	(in <i>COMP</i>) the PRA's requirements with respect to <i>single customer view</i> .

<p><i>PRA-approved person</i> FCA PRA</p>	<p>an <i>approved person</i> in relation to whom the <i>PRA</i> has given its approval under section 59 of the <i>Act</i> (Approval for particular arrangements) for the performance of a <i>PRA controlled function</i>.</p>
<p><i>PRA-authorised person</i> FCA PRA</p>	<p>as defined in section 2B(5) of the <i>Act</i>, an <i>authorised person</i> who has permission:</p> <ul style="list-style-type: none"> (a) given under Part 4A of the <i>Act</i>; or (b) resulting from any other provision of the <i>Act</i>; <p>to carry on <i>regulated activities</i> that consist of or include one or more <i>PRA-regulated activities</i>.</p>
<p><i>PRA-regulated activity</i> FCA PRA</p>	<p>a <i>regulated activity</i> specified in an order made under section 22A of the <i>Act</i> or specified pursuant to a power granted in such an order.</p>
<p><i>precious metals</i> FCA PRA</p>	<p>(in <i>COLL</i>) gold, silver or platinum.</p>
<p><i>predecessor scheme</i> FCA PRA</p>	<p>any of the following:</p> <ul style="list-style-type: none"> (a) The Office of the Banking Ombudsman; (b) The Office of the Building Societies Ombudsman; (c) The Insurance Ombudsman Bureau; (d) The Office of the Investment Ombudsman; (e) The Personal Investment Authority Ombudsman Bureau; (f) The Personal Insurance Arbitration Service; (g) The Securities and Futures Authority Complaints Bureau and Arbitration Service; (h) The FSA Complaints Unit and Independent Investigator.
<p><i>preference share</i> FCA PRA</p>	<p>a <i>share</i> conferring preference as to income or return of capital which does not form part of the <i>equity share capital</i> of a <i>company</i>.</p>
<p><i>preliminary charge</i> FCA PRA</p>	<p>a <i>charge</i> upon a <i>sale of units</i> by an <i>authorised fund manager</i> whether or not acting as <i>principal</i>.</p>
<p><i>premium</i> FCA PRA</p>	<p>(1) (except in <i>ICOBS</i> and ■ <i>CASS 5</i>) (in relation to a <i>general insurance contract</i>) the consideration payable under the contract by the <i>policyholder</i> to the <i>insurer</i>.</p> <p>(2) (except in <i>ICOBS</i> and ■ <i>CASS 5</i>) (in relation to a <i>long-term insurance contract</i>) the consideration payable under the contract by the <i>policyholder</i> to the <i>insurer</i> ; (except in ■ <i>SUP 16.8</i> (Persistency reports from insurers)) a premium is a regular premium if it is one of a series of payments under the contract:</p> <ul style="list-style-type: none"> (a)

private
customer

FCA PRA

land, an obligation to pay rent under a tenancy, or an obligation to make payment under a licence to occupy land); or

(ii) the *consumer's* essential goods or services (for example, an obligation to pay under a hire purchase, conditional sale or hire agreement that relates to, or an obligation to pay secured by a charge on, the *consumer's* cooker, refrigerator, or the means to travel to work); or

(b) where that obligation arises out of an order of the court, an Act or secondary legislation (for example, an obligation to pay council tax, child support maintenance, income tax or court fines); or

(c) where that obligation arises under a contract for the provision of utility supplies (for example, water, gas or electricity).

(for the purposes only of ■ COBS TP 1 (Transitional Provisions in relation to Client Categorisation)):

(1) (except in ■ COB 3, ■ COB 4.2 and ■ COB 6.4) subject to (h), a *client* who is not a market counterparty or an *intermediate customer*, including:

(a) an individual who is not a *firm* ;

(b) an overseas individual who is not an *overseas financial services institution*;

(c) [deleted]

(d) (except for the purposes of *DISP*) a *client* when he is classified as a *private customer* in accordance with ■ COB 4.1.14 R (Client classified as a private customer);

(e) a *person* to whom a *firm* gives *basic advice* ;

(f) (in ■ COB 6.1 to ■ 6.5) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF*) relates to a *CTF* and there is no *registered contact*, the *person* to whom the statement must be sent in accordance with Regulation 10 of the *CTF* Regulations;

(g) (in ■ COB 6.7) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF*) relates to a *CTF* and there is no *registered contact*, the child, via the person to whom the statement must be sent in accordance with Regulation 10 of the *CTF* Regulations;

(h) a *client* who would otherwise be excluded as a market counterparty or *intermediate customer* if the *client* is within (e), (f) or (g);

but excluding a *client*, who would otherwise be a *private customer*:

(i) when he is classified as an *intermediate customer* in accordance with ■ COB 4.1.9 R (Expert private customer classified as an intermediate customer); or

(ii) when the *regulated activity* relates to a *CTF*, any *person* other than (e), (f), (g) or (h).

(2) (in ■ COB 3) a *person* in (1) or a *person* excluded under (1)(h)(ii) or a *person* who would be such a *person* if he were a *client*. (in ■ COB 4.2 and 6.1 to 6.5) a *person* in (1) and, in relation to the conclusion of a *distance contract*, a *consumer*.

(3) (in ■ COB 4.2 and ■ 6.1 to ■ 6.5) a *person* in (1) and, in relation to the conclusion of a *distance contract*, a *consumer*.

private person

FCA PRA

(as defined in article 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2000 (SI 2001/2256)):

(a) any individual, unless he suffers the loss in question in the course of carrying on:

(i) any *regulated activity*; or

(ii) any activity which would be a *regulated activity* apart from any exclusion made by article 72 of the *Regulated Activities Order* (Overseas persons); and

(b) any *person* who is not an individual, unless he suffers the loss in question in the course of carrying on business of any kind;

but not including a government, a local authority (in the *United Kingdom* or elsewhere) or an international organisation; for the purposes of (a), an individual who suffers loss in the course of *effecting or carrying out contracts of insurance* written at Lloyd's is not to be taken to suffer loss in the course of carrying on a *regulated activity*; in this definition:

(A) "government" means:

(I) the government of the *United Kingdom*; or

(II) the Scottish Administration; or

(III) the Executive Committee of the Northern Ireland Assembly; or

(IV) the National Assembly for Wales; or

(V) the government of any country or territory outside the *United Kingdom*;

(B) "international organisation" means any international organisation the members of which include the *United Kingdom* or any other State;

(C) "local authority", in relation to the *United Kingdom*, means:

(I) in England and Wales, a local authority as defined in the Local Government Act 1972, the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(II) in Scotland, a local authority as defined in the Local Government (Scotland) Act 1973; and

(III) in Northern Ireland, a district council as defined in the Local Government Act (Northern Ireland) 1972.

probability of default

FCA PRA

(in accordance with Article 4(25) of the *Banking Consolidation Directive* (Definitions)) the probability of default of a counterparty over a one year period; for the purposes of the *IRB approach*, default has the meaning in the definition of *default*.

probable reserves

FCA PRA

(in *LR*):

(a) in respect of *mineral companies* primarily involved in the *extraction* of oil and gas resources, those reserves which are not yet *proven* but which, on the available evidence and taking into account technical and economic factors, have a better than 50% chance of being produced; and

(b) in respect of *mineral companies* other than those primarily involved in the *extraction* of oil and gas resources, those measured and/or indicated mineral resources, which are not yet *proven* but of which detailed technical and economic studies have demonstrated that *extraction* can be justified at the time of the determination and under specified economic conditions.

FCA PRA

protection buyer

(in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)) the *person* who transfers credit risk.

FCA PRA

protection seller

(in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)) the *person* who assumes the credit risk.

FCA PRA

proven reserves

(in LR):

FCA PRA

(a) in respect of *mineral companies* primarily involved in the *extraction* of oil and gas resources, those reserves which, on the available evidence and taking into account technical and economic factors, have a better than 90% chance of being produced; and

(b) in respect of *mineral companies* other than those primarily involved in the *extraction* of oil and gas resources, those measured mineral resources of which detailed technical and economic studies have demonstrated that *extraction* can be justified at the time of the determination, and under specified economic conditions.

providing information in relation to a specified benchmark

The *regulated activity*, specified in article 63O(1)(a) of the *Regulated Activities Order*, which in summary means making *benchmark submissions*.

FCA

providing qualifying credit

the *controlled activity*, specified in paragraph 10 of Schedule 1 to the *Financial Promotion Order*, of providing *qualifying credit*.

FCA PRA

proxy capital resources requirement

the *minimum capital requirement* to which an *undertaking* would have been subject if it had *permission* for each activity it carries on anywhere in the world, so far as that activity is a *regulated activity*.

FCA PRA

PRR

position risk requirement.

FCA PRA

PRR charge

one of the following:

FCA PRA

- (a) the *interest rate PRR*;
- (b) the *equity PRR*;
- (c) the *commodity PRR*;
- (d) the *foreign currency PRR*;
- (e) the *option PRR*;

PRR identical product netting rules

FCA **PRA**

PRR item

FCA **PRA**

PRU

FCA **PRA**

prudential context

FCA **PRA**

PSE

FCA **PRA**

public announcement

FCA **PRA**

- (f) the *collective investment undertaking PRR*; and
- (g) (if the context requires) the *model PRR*.

the following:

- (a) ■ BIPRU 7.2.37 R (Deriving the net position in each debt security: Netting positions in the same debt security);
- (b) ■ BIPRU 7.2.40 R (Deriving the net position in each debt security: Netting zero-specific-risk securities with different maturities);
- (c) ■ BIPRU 7.3.23 R (Deriving the net position in each equity);
- (d) ■ BIPRU 7.4.20 R and ■ BIPRU 7.4.22 R (Calculating the PRR for each commodity: General);
- (e) ■ BIPRU 7.5.19 R (1) (Open currency position); and
- (f) the obligation under ■ BIPRU 7.5.20 R (Net gold position) to calculate a separate *foreign exchange PRR* charge for gold).

a *commodity* or a *CRD financial instrument*.

the Integrated Prudential Sourcebook

- (1) For the *FCA*, in relation to activities carried on by a *firm*, the context in which the activities have, or might reasonably be regarded as likely to have, a negative effect on:

- (a) the integrity of the *UK financial system*; or
- (b) the ability of the *firm* to meet either:

- (i) the "fit and proper" test in *threshold condition 5* (Suitability); or
- (ii) the applicable requirements and standards under the *regulatory system* relating to the *firm's* financial resources.

- (2) For the *PRA*, in relation to activities carried on by a *firm*, the context in which the activities have, or might reasonably be regarded as likely to have, a negative effect on:

- (a) the safety and soundness of *PRA-authorised persons*; or
- (b) the ability of the *firm* to meet either:

- (i) the "fit and proper" test in *threshold condition 5* (Suitability); or
- (ii) the applicable requirements and standards under the *regulatory system* relating to the *firm's* financial resources.

a *public sector entity*.

any communication made by or on behalf of the *issuer* or the *stabilising manager* being a communication made in circumstances in which it is likely that members of the public will become aware of the communication.

(r) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);

(s) *arranging deals in contracts of insurance written at Lloyd's* (article 58);

(sa) *entering into a regulated mortgage contract* (article 61(1));

(sb) *administering a regulated mortgage contract* (article 61(2));

(sc) *entering into a home reversion plan* (article 63B(1));

(sd) *administering a home reversion plan* (article 63B(2));

(se) *entering into a home purchase plan* (article 63F(1));

(sf) *administering a home purchase plan* (article 63F(2));

(sg) *entering into a regulated sale and rent back agreement* (article 63J(1));

(sh) *administering a regulated sale and rent back agreement* (article 63J(2));

(si) *meeting of repayment claims* (article 63N(1)(a));

(sj) *managing dormant account funds (including the investment of such funds)* (article 63N(1)(b));

(t) *entering as provider into a funeral plan contract* (article 59);

(B) in the FCA Handbook:

as in (A) with the addition of:

(ta) *providing information in relation to a specified benchmark;*

(tb) *administering a specified benchmark;*

which is carried on by way of business and, except for (ta) and (tb), relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

(u) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

regulated activity debt

FCA PRA

an obligation to pay a sum due and payable under an agreement, the making or performance of which constitutes or is part of a *regulated activity* carried on by an individual who:

(a) is, or has been, an *authorised person*; or

(b) is carrying on, or has carried on, a *regulated activity* in contravention of the *general prohibition*.

regulated activity group

FCA PRA

A set of one or more *regulated activities* (with associated *investment types* and *customer types*) referred to in ■ SUP 16 to determine a *firm's* or other regulated person's *data item submission* requirements.

regulated collective investment scheme

FCA PRA

(a) an *ICVC*; or

(b) an *AUT*; or

(c) a *recognised scheme*;

whether or not the *units* are held within an *ISA* or *personal pension scheme*.

regulated consumer

in accordance with section 8 of the Consumer Credit Act 1974 (as amended) an agreement between an individual "the debtor" and any other person "the

credit agreement

FCA **PRA**

creditor" by which the creditor provides the debtor with credit of any amount and which is not an exempt agreement for the purposes of that Act; and expressions used in that Act have the same meaning in this definition.

regulated consumer hire agreement

FCA **PRA**

in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual "the hirer" for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which

- (a) is not a hire-purchase agreement, and
- (b) is capable of subsisting for more than three months, and
- (c) is not an exempt agreement;

and expressions used in that Act have the same meaning in this definition.

regulated covered bond

FCA **PRA**

(in RCB) (as defined in Regulation 1(2) of the RCB Regulations) a covered bond or programme of covered bonds, as the case may be, which is admitted to the register of regulated covered bonds maintained under Regulation 7(1)(b) of the RCB Regulations.

regulated entity

FCA **PRA**

one of the following:

- (a) a credit institution; or
- (b) a regulated insurance entity; or
- (c) an investment firm;

whether or not it is incorporated in, or has its head office in, an EEA State.

An asset management company is treated as a regulated entity for the purposes described in

GENPRU 3.1.39R (The financial sectors: asset management companies).

An alternative investment fund manager is treated as a regulated entity for the purposes described in ■ GENPRU 3.1.39 R (The financial sectors: alternative investment fund managers).

regulated information

FCA **PRA**

all information which an issuer, or any other person who has applied for the admission of financial instruments to trading on a regulated market without the issuer's consent, is required to disclose under:

- (a) the Transparency Directive;
- (b) article 6 of the Market Abuse Directive; or
- (c) LR, and DTR.

Regulated Information Service

FCA **PRA**

a Regulated Information Service that is approved by the FCA as meeting the Criteria for Regulated Information Services and that is on the list of Regulated Information Services maintained by the FCA .

regulated institution

FCA **PRA**

any of the following:

- (a) an EEA insurer or UK insurer; or
- (b) an approved credit institution; or
- (c) a friendly society (not within (a)) which is authorised to carry on insurance business; or
- (d) a firm whose permission includes dealing in investments as principal with respect to derivatives which are not listed; or

regulated
insurance
entity

FCA PRA

(e) a *MiFID investment firm* whose authorisation (as referred to in article 5 of *MiFID*) authorises it to carry on activities of the kind referred to in (d).

an insurance undertaking within the meaning of Article 4 of the *Consolidated Life Directive*, Article 6 of the *First Non-Life Directive* or Article 1(b) of the *Insurance Groups Directive*.

regulated
lifetime
mortgage
contract

FCA PRA

a *regulated mortgage contract* which is a *lifetime mortgage*.

regulated
market

FCA PRA

(1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of *MiFID*.

[Note: article 4(1)(14) of *MiFID*]

(2) (in addition, in *INSPRU* and *IPRU(INS)* only) a market situated outside the *EEA States* which is characterised by the fact that:

- (a) it meets comparable requirements to those set out in (1); and
- (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the United Kingdom.

regulated
market
transaction

FCA PRA

a transaction concluded by a *firm* on a *regulated market* with another member or participant of that *regulated market*.

regulated
mortgage
activity

FCA PRA

any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (b) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (c) *advising on regulated mortgage contracts* (article 53A);
- (d) *entering into a regulated mortgage contract* (article 61(1));
- (e) administering a regulated mortgage contract (article 61(2));
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

(a) (in relation to a contract) a contract which:

(i) (in accordance with article 61(3) of the *Regulated Activities Order*) at the time it is entered into, meets the following conditions:

- (A) a lender provides credit to an individual or to trustees (the 'borrower'); and
- (B) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare)

regulated
mortgage
contract

FCA PRA

regulated
related
undertaking

FCA PRA

regulated sale
and rent back
activity

FCA PRA

regulated sale
and rent back
agreement

FCA PRA

accommodation) in the *United Kingdom*, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a *person* who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:

(I) that *person's* spouse or civil partner; or

(II) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristics of the relationship between husband and wife; or

(III) that *person's* parent, brother, sister, child, grandparent or grandchild ; and

(ii) is not a *home purchase plan*.

(b) (in relation to a *specified investment*) the *investment*, specified in article 88 of the *Regulated Activities Order*, which is rights under a *regulated mortgage contract* within (a).

a *related undertaking* that is any of the following:

(a) a *regulated entity*; or

(b) an *insurance undertaking* which is not a *regulated insurance entity*; or

(c) an *asset management company*; or

(d) a *financial institution* which is neither a *credit institution* nor an *investment firm*; or

(e) a *financial holding company*; or

(f) an *insurance holding company* ; or

(g) a *mixed financial holding company*.

any of the following *regulated activities*:

(a) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));

(b) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));

(c) *advising on a regulated sale and rent back agreement* (article 53D);

(d) *entering into a regulated sale and rent back agreement* (article 63J(1));

(e) *administering a regulated sale and rent back agreement* (article 63J(2)); or

(f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

(in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

(a) the arrangement is one under which a *person* (an agreement provider), buys all or part of the *qualifying interest in land* in the *United Kingdom* from an individual or trustees (the "agreement seller"); and

regulated sale and rent back firm

FCA **PRA**

(b) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

a *firm* that carries on any *regulated sale and rent back activity*.

regulated sale and rent back mediation activity

FCA **PRA**

any of the following *regulated activities*:

(a) *arranging (bringing about) regulated sale and rent back agreements* (article 25E(1));

(b) *making arrangements with a view to regulated sale and rent back agreements* (article 25E(2));

(c) *advising on regulated sale and rent back agreements* (article 53D);

(d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

regulated sale and rent back transaction

FCA **PRA**

a transaction involving a *regulated sale and rent back agreement* under which a *SRB agreement seller*, in return for the sale of a *qualifying interest in land* in whole or in part to a *SRB agreement provider*, is granted, or any member of his family is granted, a right to occupy the land in question as, or in connection with, a dwelling, and intends so to occupy it.

regulatory basis only life firm

FCA **PRA**

a *firm* carrying on *long-term insurance business* which is not a *realistic basis life firm*.

regulatory body

FCA **PRA**

any authority, body or *person* having, or who has had, responsibility for the supervision or regulation of any *regulated activities* or other financial services, whether in the *United Kingdom* or overseas.

regulatory costs

FCA **PRA**

the periodic fees payable to the *appropriate regulator* by a *participant firm* in accordance with ■ FEES 4 (Periodic fees) .

regulatory current liabilities

FCA **PRA**

(in relation to a *with-profits fund*) the regulatory current liabilities of the *with-profits fund* calculated in accordance with INSPRU 1.1.30R.

Regulatory Decisions Committee

FCA **PRA**

a committee of the Board of the *FCA*, described in ■ DEPP 3.1 (The nature and procedure of the RDC).

<p><i>regulatory excess capital</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>with-profits fund</i>) has the meaning set out in INSPRU 1.3.32R .</p>
<p><i>regulatory function</i></p> <p>FCA PRA</p>	<p>(as defined in section 291 of the <i>Act</i> (Liability in relation to <i>recognised body's</i> regulatory functions)) any function of a <i>recognised body</i> so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of the <i>Act</i> and (for an <i>RAP</i>) under the <i>RAP recognition requirements</i> .</p>
<p><i>regulatory high risk category</i></p> <p>FCA PRA</p>	<p>(for the purposes of the <i>standardised approach</i> to credit risk) an item that falls into ■ BIPRU 3.4.104 R (Items belonging to regulatory high risk categories under the standardised approach to credit risk).</p>
<p><i>regulatory information service or RIS</i></p> <p>FCA PRA</p>	<p>either:</p> <p>(a) a <i>Regulated Information Service</i>; or</p> <p>(b) an incoming <i>information society service</i> that has its <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> and that disseminates <i>regulated information</i> in accordance with the minimum standards set out in [article 12 of the <i>TD implementing Directive</i>].</p>
<p><i>regulatory objectives</i></p>	<p>[deleted]</p>
<p><i>regulatory provisions</i></p> <p>FCA PRA</p>	<p>any rules, guidance, arrangements or policy issued by the investment exchange in connection with its business as an investment exchange or in connection with the provision by it of <i>clearing facilitation services</i>.</p>
<p><i>regulatory surplus</i></p> <p>FCA PRA</p>	<p>(in relation to a long-term business fund, or sub-fund) the excess, if any, of the <i>regulatory value of assets</i> for the <i>with-profits fund</i> over the <i>regulatory value of liabilities</i> for that fund.</p>
<p><i>regulatory surplus value</i></p> <p>FCA PRA</p>	<p>has the meaning set out in GENPRU 1.3.48R.</p>
<p><i>regulatory system</i></p> <p>FCA PRA</p>	<p>the arrangements for regulating a <i>firm</i> or other <i>person</i> in or under the <i>Act</i>, including the <i>threshold conditions</i>, the <i>Principles</i> and other <i>rules</i>, the <i>Statements of Principle</i>, codes and <i>guidance</i> and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the <i>MiFID implementing Directive</i> and the <i>MiFID Regulation</i> .</p>
<p><i>regulatory value of assets</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>with-profits fund</i>) has the meaning set out in INSPRU 1.3.24R.</p>
<p><i>regulatory value of liabilities</i></p> <p>FCA PRA</p>	<p>(in relation to a <i>with-profits fund</i>) has the meaning set out in INSPRU 1.3.29R.</p>

rehabilitation exceptions orders

FCA **PRA**

the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.

reinsurance

FCA **PRA**

includes retrocession.

reinsurance contract

FCA **PRA**

(in ■ COBS 21, ICOBS, ■ CASS 5 and COMP) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

Reinsurance Directive

FCA **PRA**

the Directive of 16 November 2005 of the European Parliament and of the Council (No 2005/68/EC) on reinsurance and amending the *First Non-Life Directive* and the *Third Non-Life Directive* as well as the *Insurance Groups Directive* and the *Consolidated Life Directive*.

reinsurance mediation

FCA **PRA**

(as defined in article 2.4 of the *Insurance Mediation Directive*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by a *IMD reinsurance undertaking* or an employee of a *IMD reinsurance undertaking* who is acting under the responsibility of the *IMD reinsurance undertaking* shall not be considered as *reinsurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a *IMD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *reinsurance mediation*.

reinsurance to close

FCA **PRA**

(a) an agreement under which members of a *syndicate* in one *syndicate year* ("the reinsured members") agree with the members of that *syndicate* in a later *syndicate year* or the members of another *syndicate* ("the reinsuring members") that the reinsuring members will discharge, or procure the discharge of, or indemnify the reinsured members against, all known and unknown *insurance business* liabilities of the reinsured members arising out of the *insurance business* carried on by the reinsured members in that *syndicate year*; or

(b) a similar reinsurance agreement or arrangement that has been approved by the *Council* as a reinsurance to close.

reinsurance undertaking

FCA **PRA**

an *insurance undertaking* whose *insurance business* is restricted to *reinsurance*.

reinsurer

FCA **PRA**

an *insurance undertaking* whose business includes *effecting* or *carrying out* contracts of *reinsurance*; includes a retrocessionaire.

related designated investment

FCA **PRA**

(in relation to a *designated investment* (the "first investment")) a *designated investment* whose value might reasonably be expected to be directly affected by:

(a) any fluctuation in the value of the first investment; or

(b) any *published recommendation* that concerns the first investment.

related financial instrument

FCA PRA

means a *financial instrument*, the price of which is closely affected by price movements in another *financial instrument* which is the subject of *investment research*, and includes a derivative on that other *financial instrument*.

[Note: article 25(2) of the *MiFID implementing Directive*]

related investment

FCA PRA

(as defined in section 130A(3) of the *Act*) in relation to a *qualifying investment*, means an investment whose price or value depends on the price or value of the *qualifying investment*.

related party

FCA PRA

(1) (in *LR*) as defined in ■ LR 11.1.4 R;

(2) (in relation to an agreement seller under a *regulated sale and rent back agreement* or, where the agreement seller is a trustee, a beneficiary of the trust):

(a) that *person's* spouse or civil partner; or

(b) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristic of the relationship between husband and wife; or

(c) that *person's* parent, brother, sister, child, grandparent or grandchild.

related party circular

FCA PRA

(in *LR*) a *circular* relating to a *related party transaction*.

related party transaction

FCA PRA

(in *LR*) as defined in ■ LR 11.1.5 R.

related undertaking

FCA PRA

in relation to an *undertaking* ("U"):

(a) any *subsidiary undertaking* of U; or

(b) any *undertaking* in which U or any of U's *subsidiary undertakings* holds a participation; or

(c) any *undertaking* linked to U by a *consolidation Article 12(1) relationship*; or

(d) any *undertaking* linked by a *consolidation Article 12(1) relationship* to an *undertaking* in (a), (b) or (c).

relevant articles

FCA PRA

(in *REC*):

(1) Article 6.1 to 6.4 of the *Market Abuse Directive*;

(2) Articles 3, 5, 7, 8, 10, 14 and 16 of the *Prospectus Directive*;

(3) Articles 4 to 6, 14, 16 to 19 and 30 of the *Transparency Directive*; and

(4) *EU* legislation made under the provisions mentioned in (1) to (3).

relevant asset pool

FCA PRA

(in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) in relation to a *regulated covered bond* the *asset pool* from which the claims attaching to that bond are guaranteed to be paid by the *owner* of that pool in the event of the failure of the *issuer*.

against or with:

(c) any sum payable by the *firm* to the *consumer*; or

(d) any credit balance on an account held by the *consumer*;

that has the effect of reducing, discharging or extinguishing the *firm's* liability to the *consumer* or the credit balance on the account held by the *consumer*.

rights issue

FCA PRA

(in LR and ■ DTR 5) an offer to existing *security* holders to subscribe or purchase further *securities* in proportion to their holdings made by means of the issue of a renounceable letter (or other negotiable document) which may be traded (as "nil paid" rights) for a period before payment for the *securities* is due.

rights to or interests in investments

FCA PRA

the *investment*, specified in article 89 of the *Regulated Activities Order* (Rights to or interests in investments), which is in summary: any right to or interest in any other *specified investment*, but excluding:

(a) interests under the trusts of an *occupational pension scheme*;

(b) rights to or interests in a *contract of insurance* of the kind referred to in paragraph (1)(a) of article 60 of the *Regulated Activities Order* (Plans covered by insurance or trust arrangements), or interests under a trust of the kind referred to in paragraph 1(b) of article 60 of the *Regulated Activities Order* (Plans covered by insurance or trust arrangements);

(c) any other *specified investment*.

risk capital margin

FCA PRA

the risk capital margin for a *with-profits fund* calculated in accordance with the rules in INSPRU 1.3.43R to INSPRU 1.3.103G.

risk capital requirement

FCA PRA

(1) (in relation to the *appropriate regulator's rules*) one of the following:

(a) the *credit risk capital requirement*;

(b) the *fixed overheads requirement*;

(c) the *market risk capital requirement*; or

(d) the *operational risk capital requirement*; or

(2) (in relation to the rules of another *regulatory body*) whatever corresponds to the items in (1) under the rules of that *regulatory body*.

risk concentration

FCA PRA

(in accordance with Article 2(19) of the *Financial Groups Directive* (Definitions)) all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the *regulated entities* in the *financial conglomerate*, whether such exposures are caused by counterparty risk /credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

risk factors

FCA PRA

(in PR) (as defined in the *PD Regulation*) a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions.

risk limit system

FCA PRA

(in COLL and in accordance with article 40(2)(d) of the *UCITS implementing Directive*) a documented system of internal limits concerning the measures used by a *management company* to manage and control the relevant risks for each *UCITS* it manages, taking into account all the risks which may be material to the *UCITS*, as referred to in the second paragraph of article 38(1) of the *UCITS implementing Directive* and ensuring consistency with the *UCITS'* risk profile.

risk position

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty

FCA PRA

risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a risk number that is assigned to a transaction under the *CCR standardised method* following a predetermined algorithm.

risk weight

FCA PRA

(in relation to an *exposure*) a degree of risk expressed as a percentage assigned to that *exposure* in accordance with whichever is applicable of the *standardised approach* to credit risk and the *IRB approach*, including (in relation to a *securitisation position*) under ■ ■ BIPRU 9 (Securitisation).

risk weighted exposure amount

FCA PRA

(in relation to an *exposure*) the value of an *exposure* for the purposes of the calculation of the *credit risk capital component* after application of a *risk weight*.

RMAR

FCA PRA

(in *SUP*) a Retail Mediation Activities Return, containing data specified in ■ SUP 16 Annex 18A R and relevant to the *firm's* type and *regulated activities*.

ROIE

FCA PRA

recognised overseas investment exchange.

rolling spot forex contract

FCA PRA

either of the following:

(a) a *future*, other than a *future* traded or expressed to be as traded on a *recognised investment exchange*, where the property which is to be sold under the contract is foreign exchange or sterling; or

(b) a *contract for differences* where the profit is to be secured or loss avoided by reference to fluctuations in foreign exchange; and

in either case where the contract is entered into for the purpose of speculation.

rollover risk

FCA PRA

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the amount by which *expected positive exposure* is understated when future transactions with a counterparty are expected to be conducted on an ongoing basis; the additional *exposure* generated by those future transactions is not included in calculation of *expected positive exposure*.

roll-up of interest mortgage

FCA PRA

a *regulated mortgage contract* where no payment of interest on the amount borrowed (other than interest charged when all or part of the amount borrowed is repaid voluntarily by the *customer*), is due or capable of becoming due while the *customer* continues to occupy the mortgaged property as his main residence and fulfil his obligations under the *regulated mortgage contract*.

RPI

FCA

the Retail Prices Index.

RPPD

FCA PRA

the Regulatory Guide which contains a statement of the responsibilities of providers and distributors for the fair treatment of *customers*.

RSRB permission

(in *FEES*) an *authorisation* to carry on one or more *regulated sale and rent back activities*.

FCA **PRA**

rule

FCA **PRA**

(in accordance with section 417(1) of the *Act* (Definitions)) a rule made by the *FCA* or the *PRA* under the *Act*, including:

- (a) a *Principle*; and
- (b) an *evidential provision*.

rule on use of dealing commission

FCA **PRA**

■ COBS 11.6.3 R.

running-account credit

FCA **PRA**

(in accordance with section 10(1)(a) of the Consumer Credit Act 1974) a facility under a contract by which the *customer* is enabled to receive from time to time (whether in his own person, or by another person) from the *firm* or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the customer, the credit limit (if any) is not at any time exceeded.

<p>FCA PRA</p> <p>UK MiFID investment firm</p> <p>FCA PRA</p> <p>UK parent financial holding company in a Member State</p> <p>FCA PRA</p> <p>UK pure reinsurer</p> <p>FCA PRA</p> <p>UK RCH</p> <p>FCA PRA</p> <p>UK recognised body</p> <p>FCA PRA</p> <p>UK regulated EEA financial conglomerate</p> <p>FCA PRA</p> <p>UK RIE</p> <p>FCA PRA</p> <p>UK UCITS management company</p> <p>FCA PRA</p> <p>UK-deposit insurer</p> <p>FCA PRA</p> <p>UKLA</p>	<p><i>general insurer</i>) in relation to business carried on by the <i>firm</i> in the <i>United Kingdom</i>.</p> <p>a <i>MiFID investment firm</i> whose <i>Home State</i> is the <i>United Kingdom</i> (this may include a natural <i>person</i> provided the conditions set out in Article 4(1)(1) of <i>MiFID</i> are satisfied).</p> <p>a <i>parent financial holding company in a Member State</i> where the <i>EEA State</i> in question is the <i>United Kingdom</i>.</p> <p>a <i>pure reinsurer</i> whose head office is in the <i>United Kingdom</i>.</p> <p>a <i>clearing house</i> which is declared by an order made by the Bank of England under section 290 of the <i>Act</i> and for the time being in force to be a recognised clearing house.</p> <p>a UK RIE or RAP.</p> <p>a <i>financial conglomerate</i> (other than a <i>third-country financial conglomerate</i>) that satisfies one of the following conditions:</p> <p style="margin-left: 20px;">(a) ■ GENPRU 3.1.29 R (Capital adequacy calculations for <i>financial conglomerates</i>) applies with respect to it; or</p> <p style="margin-left: 20px;">(b) a <i>firm</i> that is a member of that <i>financial conglomerate</i> is subject to obligations imposed through its <i>Part 4A permission</i> to ensure that <i>financial conglomerate</i> meets levels of capital adequacy based or stated to be based on Annex I of the <i>Financial Groups Directive</i>.</p> <p>an RIE that is not an ROIE.</p> <p>a <i>management company</i> that is established in the <i>United Kingdom</i> and is <i>authorised</i> and regulated by the <i>FCA</i> .</p> <p>a <i>non-EEA insurer</i> that has made a deposit in the <i>United Kingdom</i> under article 23 of the <i>First Non-Life Directive</i> in accordance with article 26 of that Directive or under article 51 of the <i>Consolidated Life Directive</i> in accordance with article 56 of that Directive.</p> <p>the <i>FCA</i> acting in its capacity as the <i>competent authority</i> for the purposes of Part VI of the <i>Act</i> (Official Listing).</p>
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FCA PRA

ultimate EEA insurance parent undertaking

an *EEA insurance parent undertaking* that is not itself the *subsidiary undertaking* of another *EEA insurance parent undertaking*.

FCA PRA

ultimate EEA mixed financial holding company

a *mixed financial holding company* which has its head office in an *EEA State* and which is not itself the *subsidiary undertaking* of another *mixed financial holding company*, *insurance parent undertaking* or *financial holding company* which has its head office in an *EEA State*.

FCA PRA

ultimate insurance parent undertaking

an *insurance parent undertaking* that is not itself the *subsidiary undertaking* of another *insurance parent undertaking*.

FCA PRA

ultimate mixed financial holding company

a *mixed financial holding company* which is not itself the *subsidiary undertaking* of another *mixed financial holding company*, *insurance parent undertaking*, or *financial holding company*.

FCA PRA

ultimate parent undertaking

(in relation to an *insurer*) a *parent undertaking* of the *insurer* that is not itself the *subsidiary undertaking* of another *undertaking*.

FCA PRA

umbrella

FCA PRA

(in *FEES*, *COLL* and *COBS*) a *collective investment scheme* whose *instrument constituting the scheme* provides for such pooling as is mentioned in section 235(3)(a) of the *Act* (Collective investment schemes) in relation to separate parts of the *scheme property* and whose *unitholders* are entitled to exchange rights in one part for rights in another.

umbrella collective investment scheme

FCA PRA

(in *PR*) (as defined in the *PD Regulation*) a collective investment undertaking invested in one or more collective investment undertakings, the asset of which is composed of separate class(es) or designation(s) of securities.

unattached shares

FCA PRA

(in *CREDS*) means the total shares in the *credit union* other than any *attached shares* or *deferred shares*.

unauthorised person

FCA PRA

a *person* who is not an *authorised person*.

unauthorised reversion provider

FCA **PRA**

a *person* who carries on, or proposes to carry on, the activity specified in article 63B(1) of the *Regulated Activities Order* which is entering into a *home reversion plan* as plan provider, and who does not have *permission* for, and is not an *exempt person* in relation to, *entering into a home reversion plan*.

unauthorised SRB agreement provider

FCA **PRA**

a *person* who carries on, or proposes to carry on, the activity specified in article 63J(1) of the *Regulated Activities Order* which is entering into a *regulated sale and rent back agreement* as agreement provider, and who does not have *permission* for, and is not an *exempt person* in relation to, *entering into a regulated sale and rent back agreement*; and in this definition references to an agreement provider include a *person* who acquires obligations or rights under a *regulated sale and rent back agreement*.

underlying instrument

FCA **PRA**

(in LR) (in relation to *securitised derivatives*) means either:

- (a) if the *securitised derivative* is an *option* or *debt security* with the characteristics of an *option*, any of the underlying investments listed in article 83 of the *Regulated Activities Order*; or
- (b) if the *securitised derivative* is a *contract for differences* or *debt security* with the characteristics of a *contract for differences*, any factor by reference to which a profit or loss under article 85 of the *Regulated Activities Order* can be calculated.

undertaking

FCA **PRA**

(as defined in section 1161(1) of the Companies Act 2006 (Meaning of "undertaking" and related expressions)):

- (a) a *body corporate* or *partnership*; or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit.

underwrite

FCA **PRA**

(for the purposes of ■ BIPRU 7 (Market risk)) to undertake a firm commitment to buy a specified quantity of new *securities* on a given date and at a given price if no other has purchased or acquired them; and so that:

- (a) new is defined in BIPRU 7.8.12R (New securities);
- (b) a *firm* still underwrites *securities* at a time before the exact quantity of *securities* being underwritten or their price has been determined if it is committed at that time to underwrite them when the quantity and price is fixed;
- (c) (in the case of provisions of the *Handbook* that distinguish between *underwriting* and sub-*underwriting*) *underwriting* does not include sub-*underwriting*; and
- (d) (in any other case) *underwriting* includes sub-*underwriting*.

underwriting agent

FCA **PRA**

a *firm* permitted by the *Council* to act as an underwriting agent at Lloyd's.

underwriting capacity of a Lloyd's syndicate

FCA **PRA**

the *investment*, specified in article 86(1) of the *Regulated Activities Order*, which is the underwriting capacity of a *syndicate*.

underwriting member

a *person* admitted to the *Society* as an underwriting member.

FCA PRA

unearned premium

FCA PRA

the amount set aside by a *firm* at the end of its *financial year* out of *premiums* in respect of risks to be borne by the *firm* after the end of the *financial year* under *contracts of insurance* entered into before the end of that year.

Unfair Terms Regulations

FCA PRA

the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), as amended by SI 2001/1186 and SI 2001/3649.

UNFCOG

FCA PRA

the Unfair Contract Terms Regulatory Guide.

unfunded credit protection

FCA PRA

(in accordance with Article 4(32) of the *Banking Consolidation Directive* (Definitions)) a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an undertaking derives from the *undertaking* of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

unit

FCA PRA

the investment, specified in article 81 of the *Regulated Activities Order* (Units in a collective investment scheme) and defined in section 237(2) of the *Act* (Other definitions)), which is the right or interest (however described) of the *participants* in a *collective investment scheme*; this includes:

- (a) (in relation to an *AUT*) a unit representing the rights or interests of the *unitholders* in the *AUT*;
- (b) (in relation to an *ICVC*) a *share* in the *ICVC*.

unit trust scheme

FCA PRA

(as defined in section 237(1) of the *Act* (Other definitions)) a *collective investment scheme* under which the property in question is held on trust for the *participants*.

United Kingdom

FCA PRA

England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

unitholder

FCA PRA

- (a) (in relation to an *ICVC* or an *AUT* as appropriate, and subject to ■ COLL 4.4.4 R (Special meaning of unitholder in ■ COLL 4.4)):
 - (i) (in relation a *unit* which is represented by a *bearer certificate*) the *person* who holds that certificate; or (ii) (in relation to a *unit* that is not represented by a *bearer certificate*) the *person* whose name is entered on the *register* in relation to that *unit*; or
- (b) (in relation to a *unit* in *collective investment scheme* not within (a)):
 - (i) the holder of the *bearer certificate* representing that *unit*; or
 - (ii) the *person* who entered on the *register* of the *scheme* as the holder of that *unit*.

unitisation

FCA **PRA**

arrangements for a newly formed *AUT* under which:

(a) the whole or part of the property of a *body corporate* (or a *collective investment scheme*) becomes the first property to be held on the trusts of the *AUT*; and

(b) the *holders* of:

(i) *shares* in the *body corporate* being wound up; or

(ii) *units* in the *collective investment scheme*, the property of which is being transferred;

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

units of a collective investment scheme

FCA **PRA**

(in *PR*) (as defined in Article 2.1(p) of the *prospectus directive*) securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets.

unpaid initial fund

FCA **PRA**

part of the *initial fund* of a *mutual* which the *mutual* is prevented from including in its *tier one capital resources* as *permanent share capital* by reason of GENPRU 2.2.64R because it is not fully paid.

unrated position

FCA **PRA**

(for the purposes of BIPRU 9 (Securitisation), in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions) and in relation to a *securitisation position*) describes a *securitisation position* which does not have an eligible credit assessment by an *eligible ECAI*.

unrecognised scheme

FCA **PRA**

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

unregulated activity

FCA **PRA**

an activity which is not a *regulated activity*.

unregulated collective investment scheme

FCA **PRA**

a *collective investment scheme* which is not a *regulated collective investment scheme*.

unsecured debt

FCA **PRA**

debt that does not fall within the definition of *secured debt*.

unsecured lending

FCA **PRA**

lending where the *mortgage lender* does not take a mortgage or other form of security in respect of the credit provided to the *customer*.

<p><i>unsolicited real time financial promotion</i></p> <p>FCA PRA</p>	<p>(in accordance with article 8 of the <i>Financial Promotion Order</i>) a <i>real time financial promotion</i> which is not a <i>solicited real time financial promotion</i>.</p>
<p><i>upper tier three capital</i></p> <p>FCA PRA</p>	<p>an item of capital that is specified in stage O of the <i>capital resources table</i> (Upper tier three).</p>
<p><i>upper tier three capital resources</i></p> <p>FCA PRA</p>	<p>the sum calculated at stage O of the <i>capital resources table</i> (Upper tier three).</p>
<p><i>upper tier three instrument</i></p> <p>FCA PRA</p>	<p>an item of capital that meets the conditions in GENPRU 2.2.242R (Tier three capital: upper tier three capital resources) and is eligible to form part of a <i>firm's upper tier three capital resources</i>.</p>
<p><i>upper tier two capital</i></p> <p>FCA PRA</p>	<p>(1) [deleted]</p> <p>(2) (in <i>BIPRU</i>, <i>GENPRU</i> and <i>INSPRU</i>) an item of capital that is specified in stage G of the <i>capital resources table</i> (Upper tier two capital) .</p>
<p><i>upper tier two capital resources</i></p> <p>FCA PRA</p>	<p>the sum calculated at stage G of the calculation in the <i>capital resources table</i> (Upper tier two capital) .</p>
<p><i>upper tier two instrument</i></p> <p>FCA PRA</p>	<p>a <i>capital instrument</i> that meets the conditions in ■ GENPRU 2.2.177 R (Upper tier two capital: General) and is eligible to form part of a <i>firm's upper tier two capital resources</i>.</p>
<p>UPRU</p> <p>FCA PRA</p>	<p>the Prudential sourcebook for UCITS Firms.</p>

Senior Management Arrangements, Systems and Controls

Effect of rules

10.2.3

G

FCA PRA

■ SYSC 10.2.2 R is made under section 137P of the *Act* (Control of information rules). It has the following effect:

- (1) acting in conformity with ■ SYSC 10.2.2 R (1) provides a defence against proceedings brought under sections 89(2) and 90(1) of the Financial Services Act 2012 (Misleading statements and Misleading impressions) - see sections 89(3)(b) and 90(9)(c).
- (2) behaviour in conformity with ■ SYSC 10.2.2 R (1) does not amount to *market abuse* (see ■ SYSC 10.2.2 R (4)); and
- (3) acting in conformity with ■ SYSC 10.2.2 R (1) provides a defence for a firm against *FCA* enforcement action, or an action for damages under section 138D of the *Act*, based on a breach of a relevant requirement to disclose or use this information.

Attribution of knowledge

10.2.4

R

FCA PRA

When any of the *rules* of *COBS* or *CASS* apply to a *firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under ■ SYSC 10.2.2 R.

10.2.5

G

FCA PRA

When a *firm* manages a conflict of interest using the arrangements in ■ SYSC 10.2.2 R which take the form of a *Chinese wall*, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the *Chinese wall*.

General Provisions



1.2 Referring to approval by the appropriate regulator

1.2.1

FCA PRA

G

The purpose of ■ GEN 1.2.2 R is to prevent *clients* being misled about the extent to which the *appropriate regulator* has approved a *firm's* affairs.

1.2.2

FCA PRA

R

- (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *appropriate regulator* or another competent authority .
- (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
 - (a) the *firm* is an *authorised person*;
 - (b) the *firm* has *permission* to carry on a specific activity;
 - (c) an *authorisation order* has been made in relation to an *AUT*, *ACS* or *ICVC*;
 - (d) a *recognised scheme* has that status;
 - (e) the *firm's approved persons* have been approved by the *appropriate regulator* for the purposes of section 59 of the *Act* (Approval for particular arrangements);
 - (f) the *firm* has been given express written approval by the *appropriate regulator* in respect of a specific aspect of the *firm's* affairs.
- (3) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.

1.2.3

FCA PRA

G

■ GEN 1.2.2 R (2)(f) is confined to written approval because of the need for clarity as to the scope of any approval given by the *appropriate regulator* .

1.3 Emergency

1.3.1

FCA PRA

G

The *appropriate regulator* recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules*, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of ■ GEN 1.3.2 R is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

1.3.2

FCA PRA

R

- (1) If any emergency arises which:
 - (a) makes it impracticable for a *person* to comply with a particular *rule* in the *Handbook*;
 - (b) could not have been avoided by the *person* taking all reasonable steps; and
 - (c) is outside the control of the *person*, its *associates* and agents (and of its and their *employees*);

the *person* will not be in contravention of that *rule* to the extent that, in consequence of the emergency, compliance with that *rule* is impracticable.
- (2) Paragraph (1) applies only for so long as:
 - (a) the consequences of the emergency continue; and
 - (b) the *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the *rule*, and to mitigate losses and potential losses to its *clients* (if any).
- (3) The *person* must notify the *appropriate regulator* as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.
- (4) A notification under (3) must be given to or addressed and delivered in accordance with ■ SUP 15.7 (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of: Firm Contact Centre, The Financial Conduct

Section 234 (Industry funding)

Section 238(5) (Restrictions on promotion)

Section 239 (Single property schemes)

Section 242 (Applications for authorisation of unit trust schemes)

Section 247 (Trust scheme rules)

Section 248 (Scheme particulars rules)

Section 261C (Applications for authorisation of contractual schemes)

Section 261I (Contractual scheme rules)

Section 261J (Contractual scheme particulars rules)

Section 278 (Rules etc as to scheme particulars)

Section 283(1) (Facilities and information in UK)

Section 286(4F) (Qualification of recognition)

Section 293 (Notification requirements)

Section 295 (Notification: overseas investment exchanges and overseas clearing houses)

Section 300B (Duty to notify proposal to make regulatory provision)

Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)

Section 340 (Appointment)

Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority)

Paragraph 12 (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body)

Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)

Paragraphs 7(3) (Annual reports), 13 (Authority's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme)

Regulation 6 (FCA rules) of the *OEIC Regulations*

Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the *Ombudsman Transitional Order*

Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the *compensation transitionals order*

Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775)

Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the *Mortgage and General Insurance Complaints Transitional Order*

Sch 4.3 G**FCA**

The following additional powers have been exercised by the *FCA* to make the *rules* in *GEN*:

Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221)

Regulations 82 (Reporting requirements), 86 (Proposal to take disciplinary measures) and 92 (Costs of supervision) of and paragraph 1 of Schedule 5 (Disciplinary powers) to the *Payment Services Regulations*

Regulations 49 (Reporting requirements) and 59 (Costs of supervision) of the *Electronic Money Regulations*

Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24 (Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the *RCB Regulations*

Sch 4.4 G

FCA

The following powers and related provisions in the *Act* have been exercised by the *FCA* to issue the parts of the codes in *GEN*:

Section 64(2) (Conduct: statements and codes)

Section 119 (The code)

Section 120 (Provisions included in the Authority's code by reference to the City Code)

Section 121 (Codes: procedure)

Sch 4.5 G

FCA

The following powers and related provisions in the *Act* have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

Section 63C(1) (Statement of policy)

Section 64 (Conduct: statements and codes)

Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the *Payment Services Regulations* and paragraph 1 of Schedule 3 to the *Electronic Money Regulations*)

Section 88C (Action under section 88A: statement of policy)

Section 89S (Action under section 89Q: statement of policy)

Section 93 (Statement of policy)

Section 124 (Statement of policy)

Section 131J(1) (Statement of policy)

Section 138N (Temporary product intervention rules: statement of policy)

Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the *Payment Services Regulations* and paragraph 3 of Schedule 3 to the *Electronic Money Regulations*)

Section 192H (Statement of policy: directions under section 192C)

Section 192N (Imposition of penalties under section 192K: statement of policy)

Section 210 (Statements of policy) (including as applied by regulation 86(6) of the *Payment Services Regulations* and regulation 53 (6) of the *Electronic Money Regulations*)

Section 312J (Statement of policy under section 312F)

Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph 7 of Schedule 5 to the *Payment Services Regulations* and paragraph 8 of Schedule 3 to the *Electronic Money Regulations*)

Section 404(3) (Consumer redress schemes)

Section 404A (Rules under s404: supplementary)

Sch 4.6 G

FCA

The following additional powers and related provisions have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 44 (Warning notices and decision notices) of the *RCB Regulations*

Regulation 93 (Guidance) of the *Payment Services Regulations*

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Section 80 (Statement of policy under sections 73 to 79) of the Financial Services Act 2012

Sch 4.7 G

FCA

The following powers and related provisions in the *Act* have been exercised by the *FCA* in *GEN* to direct, require or specify:

Section 55U (Applications under this Part)

Section 60 (Applications for approval)

Section 137S (Financial promotion rules: directions given by FCA)

Section 138A (Modification or waiver of rules)

Section 179 (Requirements for section 178 notices)

Section 218A (Authority's power to require information)

Section 242 (Applications for authorisation of unit trust schemes)

Section 250 (Modification or waiver of rules)

Section 270(6)(b) (Schemes authorised in designated countries or territories)

Section 274 (Applications for recognition of individual schemes)

Section 279 (Revocation of recognition)

Section 287 (Application by an investment exchange)

Section 293A (Information: compliance with EU requirements)

Section 294 (Modification or waiver of rules)

Section 316 (Direction by Authority)

Section 317 (The core provisions)

Section 318 (Exercise of powers through Council)

Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)

Regulations 7(3) and (4) (Modification or waiver of FSA rules) and 12 (Application for authorisation) of the *OEIC Regulations*

Sch 4.7A G**Sch 4.8 G****FCA**

The following additional powers and related provisions have been exercised by the *FCA* in *GEN* to direct, require or specify:

Regulation 49 (Reporting requirements) of the *Electronic Money Regulations*

Sch 4.9 G**FCA**

The following power has been exercised by the *FCA* to make the complaints scheme in *GEN*:

Part 6 of the Financial Services Act 2012

Sch 4.10 G**FCA**

The following powers in or under the *Act* have been exercised by the *FCA* to give the guidance in *GEN*:

Section 139A (Power of the FCA to give guidance)

Section 234G (Guidance)

Sch 4.11 G**FCA**

The following additional powers have been exercised by the *FCA* to give the other *guidance* in *GEN*:

Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)

Articles 9D (Applications for certificates), 9F (Revocation of certificate on request), 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the *Regulated Activities Order*

Regulation 93 (Guidance) of the *Payment Services Regulations*

Section 123 of the Banking Act 2009

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Regulation 15 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122)

Sch 4.12 G**FCA**

GEN 2.1.8 R is made by *FOS Ltd* in exercise of its powers referred to in Schedule 4 to *DISP*.

Fees Manual

- 3.1.5B** G Application fees for *recognised bodies* are calculated from a tariff structure intended to reflect the estimated cost of processing an application of that type and complexity.
FCA
- 3.1.6** G Applications for *Part 4A permission* (and exercises of *Treaty rights*) are categorised by the *appropriate regulator* for the purpose of fee raising as complex, moderately complex and straightforward as identified in ■ FEES 3 Annex 1 R. This differentiation is based on the *permitted activities* sought and does not reflect the *appropriate regulator's* risk assessment of the applicant (or *Treaty firm*).
FCA PRA
- 3.1.6A** G Application fees for authorisation or registration under the *Payment Services Regulations* are set out in ■ FEES 3 Annex 8R . The fee depends on the type of *payment services* a *firm* wishes to provide and whether it will be a *small payment institution* or an *authorised payment institution*. The fee may also depend on the number of *agents* it has.
FCA
- 3.1.6B** G Application fees for authorisation or registration under the *Electronic Money Regulations* are set out in ■ FEES 3 Annex 10 R. The fee depends on whether the firm is an *authorised electronic money institution* or a *small electronic money institution*.
FCA
- 3.1.7** G A potential applicant for *Part 4A permission* (or *Treaty firm*) has the opportunity to discuss its proposed application (or exercise of *Treaty rights*) with the *appropriate regulator* before submitting it formally. If an applicant for *Part 4A permission* (or *Treaty firm*) does so, the *appropriate regulator* will be able to use that dialogue to make an initial assessment of the fee categorisation and therefore indicate the authorisation fee that should be paid.
FCA PRA
- 3.1.8** G [Deleted]

3.2 Obligation to pay fees

General

3.2.1

FCA PRA

R

A *person* in column (1) of the table in ■ FEES 3.2.7 R and, if applicable, ■ FEES 3.2.7A R as the relevant fee payer for a particular activity must pay to the *FCA* (in its own capacity or, if the fee is payable to the *PRA*, in its capacity as collection agent for the *PRA*) a fee for each application or request for vetting, or request for support relating to compatibility of its systems with *appropriate regulator* systems, or admission approval made, or notification or notice of exercise of a *Treaty right* given, or other matter as is applicable to it, as set out or calculated in accordance with the provisions referred to in column (2) of the appropriate table:

- (1) in full and without deduction; and
- (2) on or before the date given in column (3) of that table.

3.2.2

FCA PRA

G

If an application for a *Part 4A permission* (or exercise of a *Treaty right*) falls within more than one category set out in ■ FEES 3 Annex 1 R, only one fee is payable. That fee is the one for the category to which the highest fee tariff applies.

Method of payment

3.2.3

FCA PRA

R

- (1) Unless (2) or (3) applies, the sum payable under ■ FEES 3.2.1 R must be paid by bankers draft, cheque or other payable order.
- (2) The *FCA* does not specify a method of payment for a *person* seeking to:
 - (a) become a *recognised body* or a *designated professional body*; or
 - (b) be added to the list of *designated investment exchanges* or *accredited bodies*.
- (3) The sum payable under ■ FEES 3.2.1 R by a *firm* applying for a variation of its *Part 4A permission* (■ FEES 3.2.7 R(p) and, if applicable, ■ FEES 3.2.7A R (c)) must be paid by any of the methods described in (1) or by Maestro, Visa Debit or credit

card (Visa/Mastercard only). Any payment by a permitted credit card must include an additional 2% of the sum paid.

3.2.4

FCA

G

The FCA expects that a *person* seeking to become a *recognised body* or a *designated professional body* or to be added to the list of *designated investment exchanges* or *accredited bodies* will generally pay their respective fees by electronic credit transfer.

3.2.5

FCA PRA

G

- (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission* or authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*. Any application received by the *appropriate regulator* without the accompanying appropriate fee, in full and without deduction (see ■ FEES 3.2.1 R), will not be treated as an application made, incomplete or otherwise, in accordance with section 55U(4), or section 55H or 55I (as the case may be), of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations*. Where this is the case, the *appropriate regulator* will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.
- (2) With the exception of *persons* seeking to become a *designated professional body*, all applications, notifications, requests for vetting or admission approval will be treated as incomplete until the relevant fee is fully paid and the *appropriate regulator* will not consider an application, notification, request for vetting or admission approval until the relevant fee is fully paid. *Persons* seeking to become a *designated professional body* have 30 days after the designation order is made to pay the relevant fee.

3.2.6

FCA PRA

G

Fees paid under this chapter are not refundable.

3.2.7

FCA

R

Table Table of application, notification and vetting fees payable to the FCA

(1) Fee payer	(2) Fee payable	Due date
(a) Any applicant for <i>Part 4A permission</i> (including an <i>incoming firm</i> applying for <i>top-up permission</i>) whose fee is not payable pursuant to sub-paragraph (ga) of this table	(1) Unless (2) applies, in respect of a particular application, the highest of the tariffs set out in FEES 3 Annex 1 R part 1 which apply to that application (2) In respect of a particular application which is: (i) a straightforward or moderately complex case for the purposes of	On or before the application is made

(1) Fee payer	(2) Fee payable	Due date
	<p>FEES 3 Annex 1 R part 1, and</p> <p>(ii) only involves a simple change of legal status as set out in FEES 3 Annex 1 R part 6,</p> <p>the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 1 R part 1</p>	
<p>(b) Any <i>Treaty firm</i> that wishes to exercise a <i>Treaty right</i> to qualify for <i>authorisation</i> under Schedule 4 to the <i>Act</i> (Treaty rights) in respect of <i>regulated activities</i> for which it does not have an <i>EEA right</i>, except for a firm providing <i>cross border services</i> only</p>	<p>(1) Where no certificate has been issued under paragraph 3(4) of Schedule 4 to the <i>Act</i> the fee payable is, in respect of a particular exercise, set out in FEES 3 Annex 1 R, part 4</p> <p>(2) Where a certificate in (i) has been issued no fee is payable</p>	<p>On or before the notice of exercise is given</p>
<p>(c) Any applicant for a certificate under article 54 of the Regulated Activities Order</p>	<p>2,000</p>	<p>On or before the application is made</p>
<p>(d) Applicants for an <i>authorisation order</i> for, or recognition of, a <i>collective investment scheme</i></p>	<p>FEES 3 Annex 2 R, part 1</p>	<p>On or before the application is made</p>
<p>(e) The <i>operator</i> of a scheme making a notification under section 264 or section 270 of the <i>Act</i></p>	<p>FEES 3 Annex 2 R, part 2</p>	<p>On or before the date the application is made</p>
<p>(f) Any <i>person</i> seeking an order under section 326(1) of the <i>Act</i> to become a <i>designated professional body</i>.</p>	<p>10,000</p>	<p>30 days after the order is granted</p>

Application and notification fees payable in relation to collective investment schemes

FCA

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella factor (note 1)
Part 1 [deleted]				
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Part 2 Application fees payable for firms to be subject to <i>COLL</i>				
Regulation 12 of the <i>OEIC Regulations</i>	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i>, where the <i>scheme</i> is:	An applicant		2
	<i>UCITS scheme</i>		1,200	
	<i>Non-UCITS retail scheme</i>		1,500	
	<i>Qualified investor scheme</i>		2,400	
Section 242 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be an <i>AUT</i>, where the <i>scheme</i> is:	An applicant		2
	<i>UCITS scheme</i>		1,200	
	<i>Non-UCITS retail scheme</i>		1,500	
	<i>Qualified investor scheme</i>		2,400	
Section 261C of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be an <i>ACS</i>, whether it is established as a <i>co-ownership scheme</i> or a <i>limited partnership scheme</i>, where the <i>scheme</i> is a:	An applicant		2
	<i>UCITS scheme</i>		£1,200	
	<i>non-UCITS retail scheme</i>		£1,500	
	<i>qualified investor scheme</i>		£2,400	

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee	Umbrella factor (note 1)
Section 272 of the Act	On application for an order declaring a <i>scheme</i> to be an individually recognised overseas <i>scheme</i>	An applicant	14,000	2
Part 3 (notifications)				
Section 264 of the Act	On giving notice under section 264 of the Act	The operator	600	2
Section 270 of the Act	On giving notice under section 270 of the Act	The operator	600	2

Notes:

.1 For an *umbrella* the fee is multiplied by the factor shown in the final column of the table.

Document vetting and approval fees in relation to listing and prospectus rules

FCA

Part 1

Fee type	Fee amount £
Transaction vetting fees	
Transaction vetting fees relate to specific events or transactions that an <i>issuer</i> might be involved in during the year.	
Eligibility	New applicants for:
	<i>standard listings</i> and, in respect of <i>companies</i> which satisfy the requirements of LR 6.1.1A R , <i>premium listings</i> ;
	<i>premium listings</i> in respect of <i>companies</i> which do not meet the requirements of LR 6.1.1A R
Category 1	<i>Class 1 transactions</i> 6,270
Category 2	<i>Listing particulars for issuers of specialist securities</i> (excluding Depository Receipts) 2,750
Category 3	All other vetting only transactions 2,750
Category 4	<i>Supplementary listing particulars</i> 550
Note: The <i>standard listing</i> eligibility fee applies to all <i>standard listings</i> including Depository Receipts and new <i>issuers</i> of <i>debt securities</i> as well as <i>shares</i> .	

Part 2

These fees relate to approval or vetting of the documents referred to in the second column of this table arising in relation to specific events or transactions that an *issuer*, *offeror* or *person* requesting admission might be involved in during the year.

Category 1	Equity <i>prospectus</i> or <i>listing particulars</i>	6,270
	<i>Equivalent document</i> referred to in PR 1.2.2R(2) or (3) or PR 1.2.3R(3) or (4)	
	Depository Receipt <i>prospectus</i> or <i>listing particulars</i>, or	
	<i>convertible securities</i> or <i>asset backed security prospectus</i> or <i>listing particulars</i>	
Category 2	Equity <i>registration document</i>	3,520
Category 3	Equity <i>securities note</i> and <i>summary</i>	2,750
	Summary document referred to in PR 1.2.3R(8)	
Category 4	Non-equity <i>prospectus</i> or <i>base prospectus</i>	2,750
	Equivalent document referred to in PR 1.2.2R(2) or (3) or PR 1.2.3R(3) or (4)	
Category 5	Non-equity <i>registration document</i>	1,925
Category 6	Non-equity <i>securities note</i> and <i>summary</i>	825
	Summary document referred to in PR 1.2.3R(8)	
Category 7	<i>Supplementary prospectus</i> and any details produced in a document in relation to LR 16.3.6 R.	550

For the purposes of categories 1-3 of this fee schedule, equity does not include convertible securities or depository receipts. These are treated as non-equity.

Where a fee in category 6 or 8 of this fee schedule is payable, the listing application fee under ■ FEES 3 Annex 4 R Part 1 does not apply.

Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.

Certain transactions may come within the category of super or significant transactions and thus attract a higher fee, as set out in ■ FEES 3.2.7 R(q) and ■ FEES 3.2.7 R(v) .

Chapter 4

Periodic fees



4.1 Introduction

Application

4.1.1 **R** This chapter applies to every *person* set out in **■ FEES 1.1.2 R (2)**.

FCA **PRA**

4.1.1A **R** A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.

FCA

Purpose

4.1.2 **G** The purpose of this chapter is to set out the requirements on *firms* and others to pay periodic fees and transaction reporting fees in certain circumstances.

FCA **PRA**

Background

4.1.3 **G** Most of the detail of the periodic fees that are payable by *firms* is set out in **■ FEES 4 Annexes 1A to 11**. **■ FEES 4 Annex 12 G** provides guidance on the calculation of certain tariffs. Most of the provisions of the Annexes will vary from one *fee year* to another. Accordingly fresh **■ FEES 4 Annexes** will come into force, following consultation, for each *fee year*.

FCA **PRA**

4.1.4 **G** (1) The periodic fees for *collective investment schemes* reflect the estimated costs to the *FCA* of considering proposals to change *regulated collective investment schemes*, maintaining up to date records about them, and related policy work.

FCA

(2) [deleted]

(3) The periodic fees for *fee-paying payment service providers*, *fee-paying electronic money issuers* and *issuers of regulated covered bonds* are set out in **■ FEES 4 Annex 11 R**. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

4.1.5 **G** The *Society of Lloyd's*, which has *permission*, has its own fee block.

FCA **PRA**

4.1.6 **G** [deleted]

4.1.7 **G** In the case of periodic fees for *firms*, fees are calculated individually for each *firm*, but they may be paid on a *group* basis, if the *group* so wishes.

FCA **PRA**



4.2 Obligation to pay periodic fees

General

4.2.1

FCA PRA

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A *person* shown in column (1) of the table in ■ FEES 4.2.11 R and, if applicable, ■ FEES 4.2.11AR as the relevant fee payer must pay each periodic fee applicable to it, calculated in accordance with the provisions referred to in column (2) of the applicable table, as adjusted by any relevant provision in this chapter:

- (1) in full and without deduction (unless permitted or required by a provision in *FEES*); and
- (2) on or before the date given in column (3) of that table, unless ■ FEES 4.2.10 R applies.

4.2.2

FCA PRA

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- (1) A relevant fee payer will be required to pay a periodic fee for every year during which they have the status in column 1 of the table in ■ FEES 4.2.11 R and/or ■ FEES 4.2.11AR (or in relation to collective investment schemes, for every year during which it is a regulated collective investment scheme) subject to any reductions or exemptions applicable under this chapter. If a *person* is the relevant fee payer for more than one status listed in column 1 of the table in ■ FEES 4.2.11 R and/or ■ FEES 4.2.11AR (or in relation to collective investment schemes, the relevant fee payer for more than one regulated collective investment scheme) he will be required to pay a fee in relation to each.

- (2) [deleted]

4.2.2A

FCA

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A *recognised body* may also have obligations to pay fees to the *FCA* under other *rules* arising from legislation other than the *Act*. For example a *recognised body* may have an obligation to pay a fee as an approved operator of a relevant system under the Uncertificated Securities Regulations 1995 (SI 1995/3272).

4.2.3

FCA PRA

G

The *FCA* will issue invoices in respect of the *FCA* and *PRA* to *firms* and other fee payers and expects to do so at least 30 *days* before the dates on which payments fall due under ■ FEES 4.2.1 R.

Method of payment

4.2.4
FCA PRA

R

(1) A periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

(2) [deleted]

4.2.4A
FCA

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The FCA does not specify a method of payment for a *recognised body* or a *designated professional body*.

4.2.5
FCA

G

The FCA expects a *recognised body* or a *designated professional body* will generally pay their respective fees by electronic credit transfer.

Modifications for persons becoming subject to periodic fees during the course of a fee year

4.2.6
FCA PRA

R

(1) Unless (2) applies, if the event, as described in column 4 of the table in ■ FEES 4.2.11 R and/or ■ FEES 4.2.11AR, giving rise to, or giving rise to an increase in, the fee payable in ■ FEES 4.2.1 R, occurs on or after 1 July of the relevant *fee year*, the periodic fee required under ■ FEES 4.2.1 R is modified for:

- (a) *firms* (other than *ICVCs* and *UCITS qualifiers*) in accordance with ■ FEES 4.2.7 R and ■ FEES 4.2.8 R;
- (b) for all other fee payers in column (1) of the table in ■ FEES 4.2.11 R or ■ FEES 4.2.11A R, in accordance with the table below.

Period in which event (in column 4 of the table in FEES 4.2.11 R or FEES 4.2.11AR) occurs	Proportion of periodic fee payable
Fees payable to the FCA	
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 31 March inclusive	25%
Fees payable to the PRA for <i>fee year</i> 2013/14	
1 April to 30 June inclusive	100%
1 July to 30 September inclusive	75%
1 October to 31 December inclusive	50%
1 January to 28 February inclusive	25%

- (2) For *recognised bodies*, if the recognition order is made during the course of the relevant *fee year*, the periodic fee required is set out in Column (4) of the table in ■ FEES 4.2.11 R.

4.2.7

FCA PRA

R

A *firm* (other than an *ICVC* or *UCITS qualifier*) which becomes authorised or registered, or whose *permission* and/or *payment service* activities are extended, during the course of the *fee year* must pay a fee which is calculated by:

- (1) identifying each of the tariffs set out in Part 1 of ■ FEES 4 Annex 2AR, Part 1 of ■ FEES 4 Annex 2BR and/or Part 1 of ■ FEES 4 Annex 11 R as appropriate for the relevant *fee year* that apply to the *firm* only after the *permission* is received or extended or *payment service* activities are authorised or registered or extended or *electronic money* issuance activities are authorised or registered under the *Electronic Money Regulations*, but ignoring:
 - (a) the A.13 activity group if, before the variation, the A.12 activity group applied to the *firm's* business; or
 - (b) the A.12 activity group if, before the variation, the A.13 activity group applied to the *firm's* business;
- (2) calculating the amount for each of the applicable tariffs which is the higher of:
 - (a) any applicable minimum fee specified in relation a particular tariff in ■ FEES 4 Annex 2AR or ■ FEES 4 Annex 2BR (but note, for the avoidance of doubt, that these are not the A.0 or PA.0 minimum fees set out under Part 2 of ■ FEES 4 Annex 2AR and Part 2 of ■ FEES 4 Annex 2BR); and
 - (b) the result of applying the tariff to the projected valuation, for its first year (as provided in the course of the *firm's* application), of the business to which the tariff relates;
- (3) adding together the amounts calculated under (2) in relation to fees payable to the *FCA* and, if applicable, separately adding together the amounts calculated under (2) in relation to the fees payable to the *PRA*;
- (4) working out whether an A.0 or a PA.0 minimum fee is payable under Part 2 of ■ FEES 4 Annex 2AR or Part 2 of ■ FEES 4 Annex 2BR (except that that minimum fee is not payable again by a *firm* whose *permission* is extended if the fee was already payable before the extension);
- (4A) working out whether an AP.0 *FCA* prudential fee is payable under Part 2 of ■ FEES 4 Annex 2AR and if so how much;

- (4B) working out whether a PT.1 PRA transitional fee is payable under Part 2 of ■ FEES 4 Annex 2BR and if so how much;
- (5) adding together the amounts calculated under (3) , (4) and (4A) that relate to fees payable to the FCA and then adding this sum to any applicable flat rate fee, and, if applicable, separately adding together the amounts calculated under (3), (4) and (4B) that relate to fees payable to the PRA and then adding this sum to any applicable flat rate fee; and
- (6) modifying the result for the FCA and, if applicable, the PRA as indicated by the table in ■ FEES 4.2.6 R(except that ■ FEES 4 Annex 10(Periodic fees for MTF operators) deals with a firm that receives *permission* for *operating a multilateral trading facility* or has its *permission* extended to include this activity during the course of the relevant *fee year* and ■ FEES 4.2.6 R does not apply).

4.2.7A

FCA PRA

G

Projected valuations for a *firm's* first year will be collected for the 12 month period beginning with the date a *firm* becomes authorised or registered , or the date its *permission* and/or *payment service* activities are extended. That information will be used to calculate the periodic fee for the remainder of the *fee year* in which the *firm* was authorised or registered or its *permission* and/or payment service activities were extended (adjusted in accordance with ■ FEES 4.2.7 R) and to calculate the periodic fee for the following *fee year* . Projected valuations are not relevant for those fee payers that are only required to pay fixed fees.

4.2.7B

FCA PRA

R

- (1) This *rule* deals with the calculation of:
- (a) a *firm's* fees for its second and subsequent *fee year*. These are the *fee years* years following the *fee year* in which it was given *permission* and/or was authorised or registered under the *Payment Services Regulations* or the *Electronic Money Regulations* or had its *permission* and/or *payment services* activities extended (the relevant permissions); and
- (b) the tariff base for the fee block or fee blocks that relate to each of the relevant permissions.
- (2) The starting point for calculating the fees referred to in (1)(a) is determining whether or not the *firm's* tariff base for the relevant *fee year* can be calculated using data from a complete period (as specified in Part 5 of ■ FEES 4 Annex 1AR, Part 5 of ■ FEES 4 Annex 1BR or Part 4 of ■ FEES 4 Annex 11 R) that begins on or after the date that the *firm* obtained the relevant *permission* to which that tariff base relates.
- (a) If it can, the *firm* must use that data for calculating its tariff base.

(b) If it cannot, the tariff base must be calculated using the projected valuations for its first year of the business to which the tariff relates (as provided in the course of the *firm's* application), unless (5)(b) or 5(c) applies.

(3) This *rule* does not apply to a *firm* with a *permission* for operating a *multilateral trading facility*.

(4) [deleted]

(5) (a) [deleted]

(b) If a *firm*:

(i) receives a relevant permission between 1 April and 31 December inclusive; and

(ii) is, but for this *rule*, required to calculate its tariff base for that relevant permission by reference to the average of its modified eligible liabilities for October, November and December;

it must calculate that tariff base as at the December before the start of the *fee year* .

(c) If a *firm*:

(i) is, but for this *rule*, required to calculate its tariff base for the relevant permission by reference to the *firm's* financial year ended in the calendar year ending on the 31 December before the start of the *fee year* and, since obtaining the relevant permission, the *firm* has yet to complete a full financial year ended in the calendar year ending on the 31 December before the start of the *fee year*; or

(ii) is, but for this *rule*, required to calculate its tariff base by reference to the twelve *months* ending on the 31 December before the start of the *fee year* and, since obtaining the relevant permission, the *firm* has yet to complete a full twelve *months* ending on the 31 December before the start of the *fee year*;

it must calculate the tariff base under (d) below unless it is in its second *fee year* and was authorised between 1 January and 1 April (in which case it must use the projected valuations provided for in (2)(b) above).

(d) If a *firm* satisfies either of the conditions in (c) it must calculate its tariff base as follows:

(i) it must use actual data in relation to the business to which the tariff relates rather than projected valuations;

(ii) in respect of firms satisfying condition (5)(c)(i), the tariff is calculated by reference to the period beginning on the date it acquired the relevant permission relating to the tariff, and ending on either the 31 December before the start of the *fee year* or, if earlier, the start date of the *firm's* financial year; and

in respect of *firms* satisfying condition (5)(c)(ii), the tariff is calculated by reference to the period beginning on the date on which it acquired the relevant permission, and ending on the 31 December before the start of the *fee year*

(iii) the figures are annualised by increasing them by the same proportion as the period of 12 months bears to the period starting from when the *firm* received its relevant permission to to the relevant period end date specified in (ii).

(e) Where a *firm* is required to use the method in (d) it must notify the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) of this by the date specified in ■ FEES 4.4 (Information on which Fees are calculated).

(f) Where a *firm* is required to use actual data under this *rule* ■ FEES 4 Annex 1AR Part 5, ■ FEES 4 Annex 1BR Part 5 and ■ FEES 4 Annex 11 R Part 4, are modified, where applicable, in relation to the calculation of that *firm's* valuation date in the *fee years* to which this *rule* applies.

Application of FEES 4.2.7BR

4.2.7C

FCA PRA

G

The table below sets out the period within which a *firm's* tariff base is calculated (the data period) for second year fees calculated under ■ FEES 4.2.7BR. The example is based on a *firm* that acquires *permission* on 1 November 2009 and has a financial year ending 31 March. Where valuation dates fall before the *firm* receives *permission* it should use projected valuations in calculating its fees.

References in this table to dates or months are references to the latest one occurring before the start of the *appropriate regulator's fee year* unless otherwise stated.

Type of permission acquired on 1 November	Tariff base	Valuation date but for FEES 4.2.7BR	Data period under FEES 4.2.7BR
<i>Accepting deposits</i> (monthly reporting <i>firms</i>)	Modified eligible liabilities (MELs)	Average of the MELs for October, November, December - so projected valuations will be used	MELs for December 2009.

<i>Accepting deposits (quarterly reporting firms)</i>	MELs	December 2009	December 2009.
<i>Entering into a home finance transaction</i>	Number of mortgages, home purchase plans or home reversion plans entered into	12 months ending 31 December 2009 - so projected valuations will be used	1 November to 31 December 2009.
<i>Effecting contracts of insurance</i> (Insurers - general)	Gross premium income and gross technical liabilities	31 March 2009 - so projected valuations will be used	1 November to 31 December 2009.

4.2.7D

FCA

R

If an *issuer* of a *regulated covered bond* becomes registered after 31 December its valuation date will be calculated in the manner described in ■ 1 R Part 4.

4.2.8

FCA PRA

R

In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of ■ FEES 4.2.7 R apply only in relation to the relevant *regulated activities* of the *firm*, which are *passport activities* or *Treaty activities* and which are carried on in the *United Kingdom*, and which are not provided on a *cross border services* basis. For *payment services* and *electronic money* issuance, the adjustment only applies to the business to which the calculation made in ■ FEES 4.3.12A R relates.

Fee payers ceasing to hold relevant status or reducing the scope of their permission after start of relevant period

4.2.9

FCA PRA

G

The *appropriate regulator* will not refund periodic fees if, after the start of the period to which they relate:

- (1) a fee payer ceases to have the status set out in column (1) of the table in ■ FEES 4.2.11 R or ■ FEES 4.2.11AR; or
- (2) a *firm* reduces its *permission* or *payment services* activities so that it then falls out of the fee-block previously applied to it ;

(but see ■ FEES 2.3 (Relieving Provisions) and ■ FEES 4.3.13 R (Firms Applying to Cancel or Vary Permission Before Start of Period)).

Extension of Time

4.2.10

FCA PRA

R

A *person* need not pay a periodic fee on the date on which it is due under the relevant provision in ■ FEES 4.2.1 R, if:

- (1) that date falls during a period during which circumstances of the sort set out in ■ GEN 1.3.2 R (Emergencies) exist, and that *person* has reasonable grounds to believe that those circumstances impair its ability to pay the fee, in which case he must pay it on or before the fifth *business day* after the end of that period; or

(2) unless ■ FEES 4.3.6 R (3) , ■ FEES 4.3.6 R (4) or ■ FEES 4.3.6 R (4A) (Time and method for payment) applies, that date would otherwise fall on or before the 30th *day* after the date on which the *FCA* (in its own capacity or in its capacity as agent for the *PRA*) has sent written notification to that *person* of the fee payable on that date, in which case he must pay on or before the 30th *day* after the date on which the *FCA* sends the notification.

4.2.11

FCA

R

Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS</i> qualifier)	As specified in FEES 4.3.1 R in relation to FEES 4 Annex 2AR and FEES 4 Annex 11 R	(1) Unless (2) or (3) apply , on or before the relevant dates specified in FEES 4.3.6 R. (2) Unless (3) applies, if an event specified in column 4 occurs during the course of a <i>fee year</i> , 30 <i>days</i> after the occurrence of that event, or if later the dates specified in FEES 4.3.6 R. (3) Where the <i>permission</i> is for <i>operating a multi-lateral trading facility</i> , the date specified in FEES 4 Annex 10 (Periodic fees for MTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
<i>Persons</i> who hold a certificate is-	£1,000	(1) Unless (2) applies, on or be-	Certificate issued to <i>person</i> by <i>FCA</i>

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p>sued by the <i>FCA</i> under article 54 of the <i>Regulated Activities Order</i> (Advice given in newspapers etc.)</p>		<p>fore 1 August or, if later, within 30 days of the date of the invoice</p>	<p>under Article 54 RAO</p>
<p>Any <i>manager of an AUT</i>;</p>	<p>In relation to each unit trust the amount specified in FEES 4 Annex 4 R</p>	<p>(2) If an event in column 4 occurs during the course of a <i>fee year</i>, 30 days after the occurrence of that event</p>	<p><i>Authorisation order</i> is made in relation to the relevant <i>scheme</i></p>
<p>Any <i>authorised fund manager of an authorised contractual scheme</i>;</p>	<p>In relation to each <i>authorised contractual scheme</i> the amount specified in FEES 4 Annex 4 R</p>		
<p>Any <i>ACD of an ICVC</i>; and</p>	<p>In relation to each <i>ICVC</i> the amount specified in FEES 4 Annex 4 R</p>		
<p><i>Persons</i> who, under the constitution or founding arrangements of a <i>recognised scheme</i>, is responsible for the management of the property held for or within the <i>scheme</i>;</p>	<p>In relation to each <i>recognised scheme</i> the amount specified in FEES 4 Annex 4 R</p>	<p>The relevant <i>scheme</i> becomes a recognised collective investment scheme</p>	
<p><i>Designated professional body</i></p>	<p>FEES 4 Annex 5 R</p>	<p>On or before the relevant dates specified in FEES 4.3.6 R</p>	<p>Not applicable</p>

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p><i>UK recognised body</i></p>	<p>FEES 4 Annex 6 R, part 1 for a <i>UK RIE</i> ; and</p> <p>FEES 4 Annex 6 R, part 1A for a <i>UK RIE</i> that is also an <i>RAP</i></p>	<p>(1) On or before the relevant dates specified in FEES 4.3.6 R</p> <p>(2) If the event in column 4 occurs during the course of a <i>fee year</i>, 30 days after the occurrence of that event</p>	<p><i>Recognition order</i> is made.</p> <p>The modified periodic fee is specified in FEES 4 Annex 6 R, Part 1 and (in the case of an <i>RAP</i>) Part 1A.</p>
<p><i>ROIE</i></p>	<p>FEES 4 Annex 6 R, part 2</p>	<p>(1) On or before the relevant dates specified in FEES 4.3.6 R</p> <p>(2) If the event in column 4 occurs during the course of a <i>fee year</i>, 30 days after the occurrence of that event.</p>	<p><i>Recognition order</i> is made.</p> <p>The modified periodic fee is specified in FEES 4 Annex 6 R, Part 2.</p>
<p><i>Listed issuers (in LR) of shares, depositary receipts and securitised derivatives (in LR), unless the conditions set out below apply.</i></p> <p>The first condition is that the <i>listed issuer</i>, or a related entity, has already paid a periodic fee in respect of the pe-</p>	<p>FEES 4 Annex 7 R</p>	<p>Within 30 days of the date of the invoice</p>	<p><i>Listed issuer (in LR)</i> becomes subject to <i>listing rules</i></p>

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p>riod concerned. The second condition is that the <i>listed issuer</i> is subject to <i>listing rules</i> as a result of a reverse takeover, or that the <i>listed issuer</i> is a newly formed entity, created as a result of a restructuring.</p>			
<p><i>Sponsors</i></p>	<p>£25,000 per year for the period from 1 April to 31 March the following year (see Note)</p>	<p>Within 30 days of the date of the invoice</p>	<p>(1) Approval of <i>sponsor</i> , unless (2) applies. (2) In the case of approval of a <i>sponsor</i> following a change of legal status in accordance with FEES3 Annex 1 R Part 7, the balance of the fee otherwise due from the original <i>sponsor</i>. Where a payment is made in accordance with (2) the original <i>sponsor's</i> obligation to pay that fee ceases.</p>
<p>All non-listed <i>issuers</i> (in <i>DTR</i>) of <i>shares</i>, depositary receipts and <i>securitised derivatives</i>.</p>	<p>FEES 4 Annex 8 R</p>	<p>Within 30 days of the date of the invoice</p>	<p>Non-listed <i>issuer</i> (in <i>DTR</i>) becomes subject to <i>disclosure rules</i> and <i>transparency rules</i></p>

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p>All firms reporting transactions in securities derivatives to the FCA in accordance with SUP 17, and market operators who provide facilities for trading in securities derivatives.</p>	<p>FEES 4 Annex 9 R</p>	<p>Within 30 days of the date of the invoice</p>	<p>Not applicable</p>
<p>Any issuer of a regulated covered bond.</p>	<p>1 R</p>	<p>(1) Unless (2) applies, on or before the relevant dates specified in FEES 4.3.6 R</p> <p>(2) If an event specified in column 4 occurs during the course of a fee year, 30 days after the occurrence of that event or, if later, the dates specified in FEES 4.3.6 R</p>	<p>A person becomes registered as an issuer of a regulated covered bond</p>

Note: *Sponsors* on the list of approved *sponsors* as at 1 April each year will be liable for the full year's annual fee unless ■ FEES 4.3.13 R applies.

4.2.11A

PRA

R

Table of periodic fees payable to the PRA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
<p>Any firm</p>	<p>As specified in FEES 4.3.1 R in re-</p>	<p>(1) Unless (2) applies, on or be-</p>	<p>Firm receives permission; or</p>

**lation to FEES 4
Annex 2BR**

**fore the relevant *firm extends per-*
dates specified in *mission*
FEES 4.3.6 R.**

**(2) if an event
specified in col-
umn 4 occurs
during the course
of a *fee year*, 30
days after the oc-
currence of that
event, or if later
the dates specified
in FEES 4.3.6 R.**

4

4.3 Periodic fee payable by firms (other than ICVCs and UCITS qualifiers)

4.3.1

FCA **PRA**

R

The periodic fee payable by a *firm* (except an *ICVC* or a *UCITS qualifier*) is:

- (1) each periodic fee applicable to it calculated in accordance with
 - FEES 4.3.3 R, using information obtained in accordance with
 - FEES 4.4; plus
- (1A) any periodic fee applicable to it calculated in accordance with
 - FEES 4.3.3A R using information relating to its *UK* business obtained in accordance with ■ FEES 4.4 (or by other means in the case of the Bank of England); less
- (2) any deductions from the periodic fee specified in Part 2 of
 - FEES 4 Annex 2AR, ■ FEES 4 Annex 2BR or Part 7 of
 - FEES 4 Annex 11 R.

4.3.2

FCA **PRA**

G

- (1) The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities* or *payment services* it is engaged in (fee-blocks) and whether it is issuing *electronic money*, and on the amount of business it conducts in each category (tariff base). The fee-blocks and tariffs are identified in ■ FEES 4 Annex 1AR in respect of the *FCA* and ■ FEES 4 Annex 1BR in respect of the *PRA* (and guidance on calculating certain of the tariffs is at ■ FEES 4 Annex 12 G), while ■ FEES 4 Annex 2AR in respect of the *FCA* and ■ FEES 4 Annex 2BR in respect of the *PRA* set out the tariff rates for the relevant *fee year*. In the case of *firms* that provide *payment services* and/or issue *electronic money*, the relevant fee blocks, tariffs and rates are set out in ■ FEES 4 Annex 11 R.
- (2) *Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions* and *EEA authorised electronic money institutions* receive a discount to reflect the reduced scope of the *appropriate regulator's* responsibilities in respect of them. The level of the discount varies from fee-block to fee-block, according to the division of responsibilities between the *appropriate regulator* and *Home state regulators* for *firms* in each fee-block (see ■ FEES 4.3.11 G, ■ FEES 4.3.12 R and ■ FEES 4.3.12A R).

4.3.3

FCA PRA

R

Calculation of periodic fee (excluding fee-paying payment service providers and fee-paying electronic money issuers)

The periodic fee referred to in ■ FEES 4.3.1 R is (except in relation to the *Society*, *fee-paying payment service providers* and *fee-paying electronic money issuers*) calculated as follows:

- (1) identify each of the tariffs set out in Part 1 of ■ FEES 4 Annex 2AR and Part 1 of ■ FEES 4 Annex 2BR which apply to the business of the *firm* for the period specified in that annex;
- (2) for each of the applicable tariffs, calculate the sum payable in relation to the business of the *firm* for that period;
- (3) add together the amounts calculated under (2) in relation to fees payable to the *FCA* and, if applicable, separately add together the amounts calculated under (2) in relation to the fees payable to the *PRA*;
- (4) work out whether an A.0 or a PA.0 minimum fee is payable under Part 2 of ■ FEES 4 Annex 2AR and Part 2 of ■ FEES 4 Annex 2BR and if so how much (except that that minimum fee is not payable again by a *firm* whose *permission* is extended if the fee was already payable before the extension) ;
 - (a) work out whether an AP.0 *FCA* prudential fee is payable under Part 2 of ■ FEES 4 Annex 2AR and if so how much;
 - (b) work out whether a PT.1 *PRA* transitional fee is payable under Part 2 of ■ FEES 4 Annex 2BR and if so how much;
- (5) add together the amounts calculated under (3), (4) and (4A) that relate to fees payable to the *FCA* and, if applicable, separately adding together the amounts calculated under (3), (4) and (4B) that relate to fees payable to the *PRA*; and
- (6) apply any applicable payment charge specified in ■ FEES 4.2.4 R, provided that:
 - (a) for payment by direct debit, successful collection of the amount due is made at the first attempt by the *FCA* (in its own capacity and, if applicable, in its capacity as agent for the *PRA*) ; or
 - (b) for payment by credit transfer, the amount due is received by the *FCA* (in its own capacity and, if applicable, in its capacity as agent for the *PRA*) on or before the due date.

Calculation of periodic fee for fee-paying payment service providers and fee-paying electronic money issuers

4.3.3A

FCA

R

The periodic fee referred to in ■ FEES 4.3.1 R in relation to *fee-paying payment service providers* and *fee-paying electronic money issuers* is calculated in accordance with ■ 1 R .

Modification for firms with new or extended permissions

4.3.4

FCA PRA

G

- (1) A *firm* which becomes authorised or registered during the course of a *fee year* will be required to pay a proportion of the periodic fee which reflects the proportion of the year for which it will have a *permission* or the right to provide particular *payment services* or the right to issue *electronic money* - see ■ FEES 4.2.5 G and ■ FEES 4.2.6 R.
- (2) Similarly a *firm* which extends its *permission* or its right to provide particular *payment services* so that its business then falls within additional fee blocks will be required to pay a further periodic fee under this section for those additional fee blocks, but discounted to reflect the proportion of the year for which the *firm* has the extended permission or *payment services* activity - see ■ FEES 4.2.6 R and ■ FEES 4.2.7 R.
- (3) These provisions apply (with some changes) to *incoming EEA firms* , *incoming Treaty firms*, *EEA authorised payment institutions* and *EEA authorised electronic money institutions*.
- (4) These provisions do not apply to a *firm's* periodic fees in relation to its *permission* for *operating a multilateral trading facility* obtained from the FCA during the course of a *fee year*.

Amount payable by the Society of Lloyd's

4.3.5

FCA PRA

R

The periodic fee referred to in ■ FEES 4.3.1 R in relation to the *Society* is specified against its name in ■ FEES 4 Annex 2AR and ■ FEES 4 Annex 2BR .

Time of payment

4.3.6

FCA PRA

R

- (1) Subject to ■ FEES TP 8, if the *firm's*, *designated professional body's*, *recognised investment exchange's*, or *regulated covered bond issuer's* periodic fee for the previous *fee year* was at least £50,000, it must pay the FCA:
 - (a) an amount equal to 50% of the FCA periodic fee payable for the previous *fee year*, by 30 April or, if later, within 30 *days* of the date of the invoice, in the *fee year* to which the sum due under ■ FEES 4.2.1 R relates; and
 - (b) the balance of the FCA periodic fee due for the current *fee year* by 1 September or, if later, within 30 *days* of the date of the invoice, in the *fee year* to which that sum relates.
- (1A) Subject to ■ FEES TP 8, if the *firm* is also a *PRA-authorised person* and its periodic fee for the previous *fee year* was at least

50,000, it must pay the *PRA* (through the *FCA* acting as its collection agent):

- (a) an amount equal to 50% of the *PRA* periodic fee payable for the previous *fee year*, by 30 April in the *fee year* to which the sum due under ■ FEES 4.2.1 R relates; and
 - (b) the balance of the *PRA* periodic fee due for the current *fee year* by 1 September or, if later, within 30 *days* of the date of the invoice, in the *fee year* to which that sum relates.
- (1B) If the *firm* paid periodic fees to both the *FCA* and the *PRA* in the previous *fee year*, ■ FEES 4.3.6R (1) and (1A) only apply if the *firm's* combined *FCA* and *PRA* periodic fees for that *fee year* were at least £50,000.
- (2) If the *firm's*, *designated professional body's*, *recognised investment exchange's*, or *regulated covered bond issuer's* periodic fee for the previous *fee year* was less than £50,000, it must pay the periodic fee due in full by 1 August or, if later, within 30 *days* of the date of the invoice in the *fee year* to which that sum relates.
- (3) If a *firm* has applied to cancel its *Part 4A permission* in the way set out in ■ SUP 6.4.5 D (Cancellation of permission), or its status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), then (1) and (2) do not apply but it must pay the total amount due when the application is made.
- (4) If the *appropriate regulator* has exercised its *own-initiative powers* to cancel a *firm's Part 4A permission*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.
- (4A) If the *FCA* has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 10 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 10 as applied by regulation 15 of the *Electronic Money Regulations*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.
- (5) [deleted]

- (5A) (In relation to *PRA-authorised persons* only) paragraphs (1A) and (2) do not apply to any Solvency 2 Special Project fee or Solvency 2 Implementation fee (as defined in ■ FEES 4 Annex 2B R) and such fees are not taken into account for the purposes of the split in (1A). Instead any Solvency 2 Special Project fee or Solvency 2 Implementation fee is payable on the date specified in (1A)(b) or (2) (depending on which applies to the rest of its periodic fee) or any earlier date required by (3) or (4).
- (6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a *firm's permission for operating a multilateral trading facility* and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this *permission* is payable on the date specified in ■ FEES 4 Annex 10 (Periodic fees for MTF operators).

Groups of firms

4.3.7

FCA PRA

R

A *firm* which is a member of a *group* may pay all of the amounts due from other *firms* in the same *group* under ■ FEES 4.2.1 R, if:

- (1) it notifies the *FCA* (in its own capacity and, if applicable, in its capacity as agent for the *PRA*) in writing of the name of each other *firm* within the *group* for which it will pay; and
- (2) it pays the fees, in accordance with this chapter, as a single amount as if that were the amount required from the *firm* under ■ FEES 4.2.1 R.

4.3.8

FCA PRA

G

A notification under ■ FEES 4.3.7 R (1) should be made in accordance with ■ SUP 15.7 (Form and method of notification).

4.3.9

FCA PRA

G

If the payment made does not satisfy in full the periodic fees payable by all of the members of the *group* notified to the *FCA* under ■ FEES 4.3.7 R, the *FCA* (in its own capacity and, if applicable, in its capacity as agent for the *PRA*) will apply the sum received among the *firms* which have been identified in the notification given under ■ FEES 4.3.7 R (1) in proportion to the amounts due from them. Each *firm* will remain responsible for the payment of the outstanding balance attributable to it.

4.3.10

FCA PRA

G

If a *firm* pays its fees through an agent outside the scope of ■ FEES 4.3.7 R, the *firm* is responsible for ensuring that the *FCA* (in its own capacity and, if applicable, in its capacity as agent for the *PRA*) is informed that the sum being paid is for that *firm's* periodic fees.

Incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions

4.3.11

FCA PRA

G

The *appropriate regulator* recognises that its responsibilities in respect of an *incoming EEA firm*, an *incoming Treaty firm*, an *EEA authorised payment institution* or an *EEA authorised electronic money institution* are reduced compared with a *firm* which

is incorporated in the *United Kingdom*. Accordingly the periodic fees which would otherwise be applicable to *incoming EEA firms*, *incoming Treaty firms*, *EEA authorised payment institutions* and *EEA authorised electronic money institutions* are reduced.

4.3.12

FCA PRA

R

For an *incoming EEA firm*, (excluding *MTF operators*), or an *incoming Treaty firm*, the calculation required by ■ FEES 4.3.3 R is modified as follows:

- (1) the tariffs set out in Part 1 of ■ FEES 4 Annex 2AR and, if applicable, Part 1 of ■ FEES 4 Annex 2BR are applied only to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*; and
- (2) those tariffs are modified in accordance with Part 3 of ■ FEES 4 Annex 2AR and, if applicable, Part 3 of ■ FEES 4 Annex 2BR.

4.3.12A

FCA

R

For:

- (-1) (a) a *full credit institution* which is a *fee-paying payment service provider* and an *EEA firm*; or
- (b) a *full credit institution* which is a *fee-paying electronic money issuer* and an *EEA firm*; or
- (c) an *EEA authorised payment institution*; or
- (d) an *EEA authorised electronic money institution*;

the calculation required by ■ FEES 4.3.3A R is modified as follows:

- (1) the tariffs set out in Part 5 of ■ FEES 4 Annex 11 R are only applied to the *payment services* or *electronic money issuance* of the *firm* carried on from an establishment in the *United Kingdom*, including any *payment services* carried on through any of its *agents* established in the *United Kingdom*; and
- (2) those tariffs are modified in accordance with Part 7 of ■ FEES 4 Annex 11 R.

Firms Applying to Cancel or Vary Permission Before Start of Period

4.3.13

FCA PRA

R

- (1) If:
 - (a) a *firm* makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in ■ SUP 6.3.15 D (3) (Variation of permission) and ■ SUP 6.4.5 D (Cancellation of permission), or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*) or applies to cancel its authorisation or registration (regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*); an

issuer makes an application for de-listing; or a *sponsor* notifies the *FCA* of its intention to be removed from the list of approved *sponsors*; and

- (b) the *firm*, *issuer* or *sponsor* makes the application or notification referred to in (a) before the start of the *fee year* to which the fee relates;

■ FEES 4.2.1 R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the *fee year* to which the fee relates.

- (2) But (1) does not apply if, due to the continuing nature of the business, the variation, cancellation, de-listing or removal is not to take effect on or before 30 June of the *fee year* to which the fee relates .

4.3.14

FCA PRA

G

Where a *firm* has applied to cancel its *Part 4A permission*, or its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, or the *appropriate regulator* has exercised its *own-initiative powers* to cancel a *firm's Part 4A permission* or the *appropriate regulator* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* or the *appropriate regulator* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*, the due dates for payment of periodic fees are modified by

■ FEES 4.3.6 R (3), ■ FEES 4.3.6 R (4) and ■ FEES 4.3.6 R (4A) respectively.

Firms acquiring businesses from other firms

4.3.15

FCA PRA

R

- (1) This *rule* applies if:

- (a) a *firm* (A) acquires all or a part of the business of another *firm* (B), whether by merger, acquisition of goodwill or otherwise, in relation to which a periodic fee would have been payable by B, unless no periodic fee was payable by A in the financial year that the business was acquired from B; or
- (b) A became authorised or registered as a result of B's simple change of legal status (as defined in ■ FEES 3 Annex 1 R Part 6).

- (2) If, before the date on which A acquires the business, B had paid any periodic fee payable for the period in which the acquisition occurred, ■ FEES 4.2.6 R to ■ FEES 4.2.7 R do not apply to A in relation to the business acquired from B.

(3) If the acquisition occurs after the valuation date applicable to the business (as set out in ■ FEES 4 Annex 1AR, ■ FEES 4 Annex 1BR and ■ FEES 4 Annex 11 R) which A acquired from B, for the period following that in which the acquisition occurred, ■ FEES 4.2.1 R applies to A, in relation to that following period, as if the acquisition had occurred immediately before the relevant valuation date.

4.3.16

R

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

4

4.4 Information on which Fees are calculated

- 4.4.1** **R** A *firm* (other than the *Society*) must notify to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of **■ FEES 4 Annex 1AR** in relation to fees payable to the *FCA* or Part 5 of **■ FEES 4 Annex 1BR** in relation to fees payable to the *PRA*) of each element of business on which the periodic fee payable by the *firm* is to be calculated.
- 4.4.2** **R** A *firm* (other than the *Society*) must send to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) in writing the information required under **■ FEES 4.4.1 R** as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 5 of **■ FEES 4 Annex 1AR** in relation of fees payable to the *FCA* or Part 5 of **■ FEES 4 Annex 1B R** in relation to fees payable to the *PRA* (or **■ FEES 4.2.7B R** where applicable).
- 4.4.3** **R** To the extent that a *firm* has provided the information required by this section to the *appropriate regulator* as part of its compliance with another provision of the *Handbook*, it is deemed to have complied with the provisions of this section.
- 4.4.4** **G** In most cases a *firm* will provide the information required by this section as part of its compliance with the provisions of *SUP*. To the extent that the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*), does not obtain sufficient, or sufficiently detailed, information the *FCA* or the *PRA*, as appropriate, may seek this by using the general information gathering powers (see **■ SUP 2** (Information gathering by the *appropriate regulator* on its own initiative)).
- 4.4.5** **R** For an *incoming EEA firm* or an *incoming Treaty firm*, the information required under **■ FEES 4.4** is limited to the *regulated activities* of the *firm* which are carried on in the *United Kingdom*, except those provided on a *cross border services* basis.
- 4.4.6** **R** The obligations of a *firm* to supply information as set out in **■ FEES 4.4.1 R** and **■ FEES 4.4.2 R** do not apply in respect of any of its *payment services* business.

A.7 Fund managers (1) its *permission* includes *managing investments* (a *firm* falling within this category is a class (1) *firm*);

OR

(2) its *permission* includes

ONLY either one or both of:

safeguarding and administering of investments (without arranging); and

arranging safeguarding and administration of assets (a *firm* falling within this category is a class (2) *firm*);

OR

(3) the *firm* is a *venture capital firm* (a *firm* falling within this category is a class (3) *firm* if it is not a class (1) or (2) *firm*).

Class (1) firms are subdivided into three classes:

- class (1)A, where the funds managed by the *firm* belong to one or more *occupational pension schemes*;

- class (1)B, where:

(a) the *firm* is not a class (1)A *firm*; and

(b) the *firm* permission includes **NEITHER** of the following:

safeguarding and administering investments (without arranging);

arranging safeguarding and administration of assets; and (c) the *firm* **EITHER**:

has a *requirement* that prohibits the *firm* from holding or controlling *client money*, or both; OR

if it does not have such a *requirement*, only holds or controls *client money* (or both), arising from an agreement under which *commission* is rebated to a *client*; and

- class (1)C, where the *firm* is not within class (1)A or class (1)B.

A.9 Opera- (1) *its permission:*
tors,

Trustees (a) includes one or more of the following:

and Depos-

itaries of *establishing, operating or winding up a regulated collective investment scheme;*

collective

investment *establishing, operating or winding up an unregulated collective investment scheme;*

schemes

and Opera- *acting as trustee of an authorised unit trust scheme; acting as the depositary of an au-*

tors of per- *thorised contractual scheme; acting as the depositary or sole director of an open-ended*

sonal pen- *investment company;*

sion

schemes or *establishing, operating or winding up a personal pension scheme or a stakeholder*

stakehold- *pension scheme (but only if the firm does not fall within activity group A1 or A4);*

er pension

schemes AND

(b) PROVIDED the *firm* is NOT one of the following:

a corporate finance advisory firm;

a firm in which the above activities are limited to carrying out corporate finance business;

a venture capital firm;

OR

(2) if the fee-payer has none of the *regulated activities* above within its *permission*, but ALL the remaining *regulated activities* in its *permission* are limited to carrying out trustee activities.

AND

(d) PROVIDED the fee-payer is NOT any of the following:

a corporate finance advisory firm;

a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;

a firm whose activities are limited to carrying out venture capital business;

a firm whose activities are limited to acting as an operator of a regulated collective investment scheme;

a firm whose activities are limited to carrying out trustee activities;

a service company.

A firm falling within (2) and not (1) is a class 2 firm.

A.14 Corporate finance advisers

the *firm* is carrying on *corporate finance business* PROVIDED the fee-payer is NOT a *venture capital firm*.

A.18 Home finance providers, advisers and arrangers

its *permission* includes a *regulated activity* within one or more of the following:

entering into a home finance transaction; or

arranging (bringing about) a home finance transaction ; or

making arrangements with a view to a home finance transaction; or

advising on a home finance transaction; or

agreeing to carry on a regulated activity which is within any of the above.

A.19 General insurance mediation

its *permission* includes one or more of the following in relation to a *non-investment insurance contract*:

dealing in investments as agent; or

arranging (bringing about) deals in investments; or

making arrangements with a view to transactions in investments; or

assisting in the administration and performance of a contract of insurance; or

advising on investments; or

agreeing to carry on a regulated activity which is within any of the above.

B. Market operators	<i>firms</i> that have been prescribed as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996).
B. Service companies	it is a <i>service company</i> .
B. MTF operators	its <i>permission</i> includes <i>operating a multilateral trading facility</i> .
B. Benchmark administrators	It is a <i>benchmark administrator</i>

Part 2

This table sets out the activity groups (fee blocks) in relation to (i) the minimum fee payable to the *FCA* and (ii) the prudential fee payable to the *FCA*.

Activity group	Fee payer falls into the fee-block if
A.0 FCA minimum fee	(1) it is in at least one of the fee blocks under Part 1; and (2) it is not: (a) a <i>UK ISPV</i> ; or (b) a <i>firm</i> whose only <i>permission</i> is <i>operating a dormant fund account</i> .
AP.0 FCA prudential fee	(1) it is an <i>FCA authorised person</i> ; and (2) the periodic fee it pays to the <i>FCA</i> is not limited to the A.0 FCA minimum fee.

Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

The tariff base in this Part is the means by which the *FCA* measures the amount of business conducted by a *firm* for the purposes of calculating the annual periodic fees payable to the *FCA* by that *firm*.

Activity group	Tariff base
----------------	-------------

(2) The *firm* must include in its income calculation, on the same basis as above, earnings from those who will become its *appointed representatives* immediately after *authorisation*.

(3) Reference to a "*firm* " above also includes reference to any *person*, including a *connected travel insurance intermediary*, who carried out activities which would be *insurance mediation activity* (in respect of *general insurance contracts* or *pure protection contracts*) if they had been carried out after 13 January 2005 or, in relation to *connected travel insurance contracts*, from 1 January 2009.

(4) The same *firm* may receive income under (A) and (C).

(5) A *firm* must include in (A) any income it receives from *insurance mediation activity* carried on by another *person* with respect to any *general insurance contracts* or *pure protection contracts* into which the *firm* has entered as insurer.

(6) In calculating the net amount retained, a *firm* may not deduct amounts that it rebates to a *person* other than another *firm*, a *person* falling within the extended definition of *firm* in Note (4) or the *firm's* customer.

(7) A *firm* may only deduct amounts under (A) in calculating its net amount retained if the amount is to be deducted from income that the *firm* must include under (A). Therefore for example:

(a) if an insurer (Firm A) pays a *firm* commission for arranging a *general insurance contract* or *pure protection contract* under which Firm A is the *insurer*, Firm A may not take that expense into account in calculating its annual income if Firm A does not receive a fee from the insured or another *person* in respect of that contract; and

(b) if an insurer (Firm A) pays a *firm* (Firm B) commission for arranging a *general insurance contract* or *pure protection contract* under which Firm A is the *insurer*, Firm A receives a payment from the insured under that transaction and the amount payable to Firm B exceeds the amount payable by the insured, Firm A may not take that excess into account in calculating its annual income and must instead net the sum payable by the insured to zero.

B. Market operators Not applicable.

B. Service companies Not applicable.

B. MTF operators Not applicable.

B. Benchmark administrators Not applicable.

This table indicates the tariff base for each fee block set out in Part 2.

The tariff base in this Part is the means by which the *FCA* measures the amount of business conducted by a *firm* for the purposes of calculating the annual periodic fees payable to the *FCA* by that *firm*.

Activity Group	Tariff base
A.0	Not applicable because the minimum fee is a specified amount.
AP.0	The total periodic fees payable as a result of fee blocks A.2 and A.7 to A.19 in Part 1 of FEES 4 Annex 2A R excluding any periodic fee for <i>operating a dormant fund account</i> .

Part 5

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of fees payable to the *FCA* by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
----------------	----------------

IN THIS TABLE, REFERENCES TO SPECIFIC DATES OR MONTHS ARE REFERENCES TO THE LATEST ONE OCCURRING BEFORE THE START OF THE PERIOD TO WHICH THE FEE APPLIES, UNLESS OTHERWISE SPECIFIED - E.G. FOR 2013/14 FEES (1 APRIL 2013 TO 31 MARCH 2014), A REFERENCE TO DECEMBER MEANS DECEMBER 2012.

Where a *firm's* tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation date.

A.1 For banks:

Modified eligible liabilities (MELs), valued at:

for a *firm* which reports monthly, the average of the MELs for October, November and December;

for a *firm* which reports quarterly, the MELs for December. For *credit unions*:

For *credit unions*:

MELs, valued at December or as disclosed by the most recent annual return made prior to that date.

For *building societies*:

MELs, valued at the average of the MELs for October, November and December.

- A.2** Number of mortgages, *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements* entered into in the twelve months ending 31 December.
- AND
- Number of mortgages, *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements* being administered on 31 December.
- A.3** Annual gross *premium* income (GPI), for the financial year ended in the calendar year ending 31 December.
- AND
- Gross technical liabilities (GTL) valued at the end of the financial year ended in the calendar year ending 31 December.
- A.4** Adjusted annual gross *premium* income (AGPI) for the financial year ended in the calendar year ending 31 December.
- AND
- Mathematical reserves (MR) valued at the end of the financial year ended in the calendar year ending 31 December.
- A.5** Active capacity (AC), in respect of the Underwriting Year (as reported to the *Society of Lloyd's*) which is current at the beginning of the period to which the fee relates.
- [Note: this is the Underwriting Year which is already in progress at the start of the fee period - e.g. for 2013/14 fees, the fee period will begin on 1 April 2013, which is in the 2013 Underwriting Year, so the AC for that Underwriting Year is the relevant measure.]
- A.6** Not applicable.
- A.7** Funds under management (FuM), valued at 31 December.
- A.9** Annual gross income (GI), valued at the most recent financial year ended before 31 December.
- A.10** Number of traders as at 31 December.
- A.12** Annual income for the financial year ended in the calendar year ending 31 December.
- A.13** Annual income for the financial year ended in the calendar year ending 31 December.
- A.14** Annual income for the financial year ended in the calendar year ending 31 December.
- A.18** Annual income (AI) for the financial year ended in the calendar year ending 31 December.
- A.19** Annual income (AI) for the financial year ended in the calendar year ending 31 December.
- B. Market operators** Not applicable.

B. Service companies Not applicable.

B. MTF operators Not applicable.

B. Benchmark administrators Not applicable

FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2013 to 31 March 2014

FCA

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of FEES 4 Annex 1A R.

- (1) For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the *firm's* business, calculated by multiplying the value of the *firm's* tariff base by the rate applicable to each tranche of the tariff base, as indicated.
- (2) A *firm* may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:
 - (a) it has reasonable grounds for believing that the costs of identifying the *firm's* UK business separately from its non-UK business in the way described in Part 3 of FEES 4 Annex 1A R are disproportionate to the difference in fees payable; and
 - (b) it notifies the FCA in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
- (3) For a *firm* which has not complied with FEES 4.2.2 G (Information on which fees are calculated) for this period:
 - (a) the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;
 - (b) an additional fee of £250 is payable, unless the *firm* is a PRA-*authorised person* in which case an additional fee of £125 is payable instead; and
 - (c) The minimum total fee (including the administrative fee in (b)) is £430, unless the *firm* is a PRA-*authorised person* in which case the total minimum total fee (including the administrative fee in (b)) is £215.

Activity group	Fee payable
A.1	Band width (£million of Modified Eligible Liabilities (MELs))
	Fee (£/£m or part £m of MELs)
	General Periodic fee
	>10 - 140
	14.13
	>140 - 630
	14.13

>630 - 1,580 14.13

>1,580 - 13,400 17.66

>13,400 23.31

The tariff rates in A.1 are not relevant for the *permissions* relating to *operating a dormant account fund*. Instead a flat fee of 6,000 is payable in respect of these *permissions*

A.2 Band width (No. of mortgages and/or home finance transactions) Fee (£/mortgage)

>50 2.07

A.3 Gross premium income (GPI) Periodic fee

Band Width (£million of GPI) Fee (£/m or part m of GPI)

>0.5 322.00

PLUS

Gross technical liabilities (GTL) General Periodic fee

Band Width (£million of GTL) Fee (£/£m or part £m of GTL)

>1 16.97

For *UK ISPV's* the tariff rates are not relevant and a flat fee of 430 is payable in respect of each *FCA* financial year (the 12 *months* ending 31 March).

A.4 Adjusted annual gross premium income (AGPI) General Periodic fee

Band Width (£million of AGPI) Fee (£/£m or part £m of AGPI)

>1 473.00

PLUS

Mathematical reserves (MR) General Periodic fee

Band Width (£million of MR) Fee (£/£m or part £m of MR)

>1 10.64

A.5 Band Width (£million of Active Capacity (AC)) Fee (£/£m or part £m of AC)

>50 8.31

A.6 Flat fee (£) 297,642

A.7 For class 1(C), (2) and (3) *firms*:

Band Width (£million of Funds under Management (FuM)) Fee (£/£m or part £m of FuM)

>10 8.54

For class 1(B) *firms*: the fee calculated as for class 1(C) *firms* above, less 15%. For class 1(A) *firms*: the fee calculated as for class 1(C) *firms* above, less 50%.

A.9 Band Width (£million of Gross Income (GI)) Fee (£/£m or part £m of GI)

>1 1,309.00

A.10 Band Width (No. of traders) Fee (£/person)

	>1	5,018.00
	For firms carrying on <i>auction regulation bidding</i> , the fee in A.10 is calculated as above less 20% for each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding</i> or <i>dealing in investments as principal</i> .	
A.12	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	2.39
A.13	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	6.89
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	2.85
A.18	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	17.40
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	1.76
B. Market operators		£45,000
B. Service companies	Bloomberg LP	£58,000
	LIFFE Services Ltd	£45,000
	OMGEO Ltd	£45,000
	Reuters Ltd	£58,000
	Swapswire Ltd	£45,000
	Plus Derivative Exchange Ltd	£45,000
	DTCC Derivatives Repository Limited	£45,000
	Avelo Portal Limited	£45,000
	Calestone Ltd	£45,000
	Xtracter Ltd	£45,000
	Pirum Systems Limited	£45,000
	Fidessa	£45,000
B. Benchmark administrators	£175,000	

B. MTF operators As set out in FEES 4 Annex 10 (Periodic fees for MTF operators).

Part 2

This table shows the tariff rates applicable to each of the fee blocks set out in Part 2 of FEES 4 Annex 1A R.

- A.0** (1) £1,000 unless:
- (a) It is a *credit union* that meets the conditions in (2), in which case the minimum fee payable is as set out in (2);
 - (b) it is a *non-directive friendly society* that falls into the A.3 activity group but not the A.4 activity group and meets the conditions set out in (3)(a), in which case the minimum fee payable is £430; or
 - (c) it is a *non-directive friendly society* that falls into the A.4 activity group but not the A.3 activity group and meets the conditions in (3)(b), in which case the minimum fee payable is £430; or
 - (d) it is a *non-directive friendly society* that falls into the A.3 and A.4 activity groups and meets the conditions in (3)(a) and (3)(b), in which case the minimum fee payable is £430.
- (2) The conditions referred to in (1)(a) are that the *credit union* has a tariff base (Modified Eligible Liabilities) of:
- (a) 0 to 0.5million, in which case a minimum fee of £160is payable; or
 - (b) greater than 0.5million but less than 20 million, in which case a minimum fee of [tbc] £540is payable.
- (3) The conditions referred to in (1) are that:
- (a) the *non-directive friendly society* falls into the A.3 activity group and has, for that activity, 0.5 million or less in gross *premium* income and holds gross technical liabilities of 1.0 million or less;
 - (b) the *non-directive friendly society* falls into the A.4 activity group and has, for that activity, written 1.0 million or less in adjusted gross *premium* income and holds mathematical reserves of 1.0 million or less.
- The figures for gross *premium* income, gross technical liabilities, adjusted gross *premium* income and mathematical reserves are the same as used for Part 1 of this Annex.
- (4) For *PRA-authorized persons*, the minimum fee is 50% of any fee stated in (1) or (2) above.

AP.0 Periodic fees payable under fee blocks A.2 and A.7 to A.19 in Part 1 multiplied by rate £0.078

Part 3

This table shows the modifications to fee tariffs that apply in respect of the *FCA* to *incoming EEA firms* and *incoming Treaty firms* which have established branches in the UK.

Activity Group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>
A.1	10%
A.3	10%
A.4	10%
A.7	10%
A.9	10%
A.10	In relation to each trader that carries on <i>auction regulation bidding</i> but not <i>MiFID business bidding</i> or <i>dealing in investments as principal</i> , 100%. In relation to all other traders, 10%.
A.12	10%
A.13	10%
A.19	50%
B. MTF operators	Not applicable
AP.0	100%
Note 1	The modifications to fee tariffs payable by an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> which has established a branch in the UK apply only in relation to the relevant <i>regulated activities</i> of the firm which are passported activities or <i>Treaty activities</i> and which are carried on in the <i>UK</i> .
Note 2	The <i>FCA</i> minimum fee described in Part 2 of FEES 4 Annex 2A R applies in full and the modifications in this Part do not apply to it.

PRA fee rates and EEA/Treaty firm modifications for the period from 1 April 2013 to 28 February 2014

PRA

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of FEES 4 Annex 1B R.

- (1) For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the *firm's* business, calculated by multiplying the value of the *firm's* tariff base by the rate applicable to each tranche of the tariff base, as indicated.
- (2) A *firm* may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:
 - (a) it has reasonable grounds for believing that the costs of identifying the *firm's* UK business separately from its non-UK business in the way described in Part 3 of FEES 4 Annex 1B R are disproportionate to the difference in fees payable; and
 - (b) it notifies the FCA (acting as the collecting agent of the PRA) in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
- (3) For a *firm* which has not complied with FEES 4.4.2 R (Information on which fees are calculated) for this period:
 - (a) the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;
 - (b) an additional administrative fee of 125 is payable; and
 - (c) the minimum total fee (including the administrative fee in (b)) is 215.

Note In the case of activity groups A.3 and A.4 there are three tariff rates. The rate in column 1 applies to all *firms* in their respective fee-blocks. The rate in column 2 relates to the Solvency 2 Implementation fee and *firms* must determine their obligation to pay this fee by reference to Part 5 of this Annex. The rate in Column 3 relates to the Solvency 2 Special Project fee and *firms* must determine their obligation to pay this fee by reference to Part 4 of this annex. The total periodic fee for each of these fee-blocks is determined by adding the amounts obtained under all three columns, as applicable.

Activity
group

Fee payable

A.1	Band width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)		
		General Periodic fee		
	>10 - 140	33.38		
	>140 - 630	33.38		
	>630 - 1,580	33.38		
	>1,580 - 13,400	41.73		
	>13,400	55.08		
A.3	Gross premium income (GPI)	Column 1	Column 2	Column 3
		General periodic fee	Solvency 2 implementation fee	Solvency 2 special project fee
	Minimum fee (£)	Not applicable	25.00	25.00
	Band Width (£ million of GPI)	Fee (£/£m or part £m of GPI)		
	>0.5 - 10.5	370.25	-27.03	20.84
	>10.5 - 30	370.25	-27.03	20.84
	>30 - 245	370.25	-27.03	20.84
	>245 - 1,900	370.25	-27.03	20.84
	>1,900	370.25	-27.03	20.84
	Plus			
	Gross technical liabilities (GTL)	Column 1	Column 2	Column 3
		General periodic fee	Solvency 2 implementation fee	Solvency 2 special project fee
	Band Width (£ million of GTL)	Fee (£/£m or part £m of GTL)		
	>1 - 12.5	19.93	-1.41	1.22
	>12.5 - 70	19.93	-1.41	1.22
	>70 - 384	19.93	-1.41	1.22
	>384 - 3,750	19.93	-1.41	1.22
	>3,750	19.93	-1.41	1.22
	For UK ISPVs the tariff rates are not relevant and a flat fee of £430.00 is payable in respect of each <i>fee year</i>.			

A.4	Adjusted annual gross premium income (AGPI)	Column 1	Column 2	Column 3
		General periodic fee	Solvency 2 implementation fee	Solvency 2 special project fee
	Minimum fee (£)	Not applicable	25.00	25.00
	Band Width (£ million of AGPI)	Fee (£/£m or part £m of AGPI)		
	>1 - 5	360.32	-38.31	20.39
	>5 - 40	360.32	-38.31	20.39
	>40 - 260	360.32	-38.31	20.39
	>260 - 4,000	360.32	-38.31	20.39
	>4,000	360.32	-38.31	20.39
		PLUS		
A.4	Mathematical reserves (MR)	Column 1	Column 2	Column 3
		General periodic fee	Solvency 2 implementation fee	Solvency 2 special project fee
	Minimum fee (£)	Not applicable	25.00	25.00
	Band Width (£ million of MR)	Fee (£/£m or part £m of MR)		
	>1 - 20	8.06	-0.86	0.44
	>20 - 270	8.06	-0.86	0.44
	>270 - 7,000	8.06	-0.86	0.44
	>7,000 - 45,000	8.06	-0.86	0.44
	>45,000	8.06	-0.86	0.44
	A.5	Band Width (£ million of Active Capacity (AC))	Fee (£/£m or part £m of AC)	
>50 - 150		54.36		
>150 - 250		54.36		
>250 - 500		54.36		
>500 - 1,000		54.36		
>1,000		54.36		

A.6	Flat fee	1,394,436.00
	Solvency 2 Special Project Flat Fee (£)	272,293.06
	Solvency 2 Implementation Flat Fee (£)	-92,775.96
A.10	Band Width (No. of traders)	Fee (£/trader)
	2 - 3	4,507.98
	4 - 5	4,507.98
	6 - 30	4,507.98
	31 - 180	4,507.98
	>180	4,507.98

Part 2

This table sets out the tariff rate applicable to each of the fee blocks set out in Part 2 of FEES 4 Annex 1B R

- PA.0 (1) The minimum fee payable by any *firm* referred to in (3) is 500 unless:
- it is a *credit union* that meets the conditions in (2), in which case the minimum fee payable is as set out in (2); or
 - it is a *non-directive friendly society* that falls into the A.3 activity group but not the A.4 activity group and meets the conditions set out in (3)(a), in which case the minimum fee payable is 215; or
 - it is a *non-directive friendly society* that falls into the A.4 activity group but not the A.3 activity group and meets the conditions in (3)(b), in which case the minimum fee payable is 215; or
 - it is a *non-directive friendly society* that falls into the A.3 and A.4 activity groups and meets the conditions in (3)(a) and (3)(b), in which case the minimum fee payable is 215;
- (2) The conditions referred to in (1)(a) are that the *credit union* has a tariff base (Modified Eligible Liabilities) of:
- 0 to 0.5million, in which case a minimum fee of 80 is payable; or
 - greater than 0.5million but less than 2.0million, in which case a minimum fee of 270 is payable.
- (3) The conditions referred to in (1) are that:
- the *non-directive friendly society* falls into the A.3 activity group and has, for that activity, 0.5 million or less in gross *premium* income and holds gross technical liabilities of 1.0 million or less;

- (b) the *non-directive friendly society* falls into the A.4 activity group and has, for that activity, written 1.0 million or less in adjusted gross *premium* income and holds mathematical reserves of 1.0 million or less.

The figures for gross *premium* income, gross technical liabilities, adjusted gross *premium* income and mathematical reserves are the same as used for Part 1 of this Annex.

PT.1 Periodic fees payable under Part 1 multiplied by rate £0.0745

Part 3

This table shows the modifications to fee tariffs that apply to *incoming EEA firms* and *incoming Treaty firms* which have established branches in the UK.

Activity Group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>
A.1	50%
A.3	90%
A.4	90%
PT.1	100%
Note 1	The modifications to fee tariffs payable by an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i> which has established a branch in the UK apply only in relation to the relevant regulated activities of the firm which are <i>passported activities</i> or <i>Treaty activities</i> and which are carried on in the UK.
Note 2	The <i>PRA</i> minimum fee described in Part 2 of FEES 4 Annex 2B R applies in full and the modifications in this Part do not apply to it.

Part 4

This part sets out when a Solvency 2 Special Project fee is due for *firms* falling into fee block A.3 or A.4.

- (1) The Solvency 2 Special Project fee forms part of the periodic fee payable under fee blocks A.3 and A.4.
- (2) The Solvency 2 Special Project fee is only payable by a *firm* if it meets the conditions in Part 5 and the condition set out in paragraph (3) of this Part.
- (3) The condition is that before 1 June 2013 the *firm*, or a member of the group of which the *firm* is also a member (in either case, the recipient), received a written communication from the *FSA* or, on or after 1 April 2013, the *PRA* that it has met the criteria for entry into pre-Internal Model Approval Process status (pre-IMAP) and the recipient remains in pre-IMAP status on 1 June 2013.
- (4) For the purposes of (3), the recipient will be deemed to remain in pre-IMAP status unless, before 1 June 2013:
 - (a) the recipient informs the *FSA* or, on or after 1 April 2013, the *PRA* in writing that it wishes to withdraw from pre-IMAP status; or

- (b) the recipient has been informed by the *FSA* or, on or after the 1 April 2013, the *PRA* in writing that it is no longer in pre-IMAP status.
- (5) For the purposes of this Part, a reference to pre-IMAP means the status achieved by the recipient by joining the process established by the *FSA* whereby the *FSA* or, on or after 1 April 2013, the *PRA* and the recipient engage with a view to the *FSA* or, on or after 1 April 2013, the *PRA* establishing whether an internal model developed by the recipient is likely to meet the tests and standards specified in the *Solvency 2 Directive*.
- (6) FEES 4.2.6 R and FEES 4.2.7 R do not apply to the Solvency 2 Special Project Fee.

Part 5

This Part sets out when a Solvency 2 Implementation fee is due for *firms* in the A.3 and A.4 fee blocks.

- (1) The Solvency 2 Implementation fee is only payable by a *firm* if it meets all the conditions in (2) and neither of the conditions in (3).
- (2) The conditions in this paragraph are:
 - (a) FEES 4.3.13 R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the relevant fee blocks;
 - (b) the *firm* has not notified the *FSA* before the start of the 2013/2014 fee year that it intends to migrate out of the *United Kingdom* for regulatory purposes before the *Solvency 2 Directive* is implemented;
 - (c) it meets either of the following conditions:
 - (i) its gross premium income or adjusted gross premium income, as appropriate, referred to in FEES 4 Annex 1 R Part 2, exceeds EUR 5 million at the end of the financial year ended in the calendar year ending 31 December prior to the 2013/2014 *fee year*; or
 - (ii) its gross technical liabilities or mathematic reserves, as appropriate, referred to in FEES 4 Annex 1 R Part 2, exceed EUR 25 million at the end of the financial year ended in the calendar year ending 31 December prior to the 2013/2014 *fee year*;
 - (d) it was in one or both of the insurance fee blocks at the start of the 2013/2014 *fee year*;
 - (e) it is not an *incoming EEA firm* or an *incoming Treaty firm*;
- (3) The conditions in this paragraph are:
 - (a) the *firm* is a *reinsurance undertaking* that has, by 10 December 2007, ceased to conduct a new *insurance business* and only administers its existing portfolio in order to terminate its activity as a *reinsurance undertaking*;
 - (b) it is a *reinsurance undertaking* whose *insurance business* is conducted or fully guaranteed by the *United Kingdom* government for reasons of substantial public interest in the capacity of the *reinsurer* of last resort.
- (4) Where a *firm* has notified the *FSA* or, on or after 1 April 2013, the *PRA* that it intends to migrate out of the *United Kingdom* for regulatory purposes before the *Solvency 2 Directive* is implemented in the *United Kingdom* but when the *Solvency 2 Directive* is implemented

that *firm* remains in the *United Kingdom* for regulatory purposes, it must pay the Solvency 2 Implementation fee for each *FSA* financial year and each *PRA fee year* commencing 1 April 2013 for which the Solvency 2 Implementation fee would have applied to the *firm* but for the *firm* notifying the *FSA* or the *PRA* of its intention to migrate.

- (5) Where a *firm* is required to pay a Solvency 2 Implementation fee because of the circumstances described in (4) it must pay this fee within 30 *days* of the date of the invoice.
- (6) For the purposes of this Part, the exchange rate from the Euro to the pound sterling is calculated as at the last day of October preceding the financial year of the *FSA* or, on or after 1 April 2013, the *PRA fee year* in question for which the exchange rates for the currencies of all European Union member states were published in the Official Journal of the European Union.
- (7) FEES 4.2.6 R and FEES 4.2.7 R do not apply to the Solvency 2 Implementation fee.

Periodic fees in relation to collective investment schemes payable for the period 1 April 2013 to 31 March 2014

FCA

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
ICVC,	680	1-2	1	680
AUT,		3-6	2.5	1,700
ACS,		7-15	5	3,400
Section 264 of the Act,		16-50	11	7,480
		>50	22	14,960
Section 270 of the Act				
Section 272 of the Act	2,770	1-2	1	2,770
		3-6	2.5	6,925
		7-15	5	13,850
		16-50	11	30,470
		>50	22	60,940

Fees are charged according to the number of funds or *sub-funds* operated by a *firm* as at 31 March 2012 . Where a new *collective investment scheme* becomes authorised during a year, fees are charged according to the number of funds or *sub-funds* operated by a *firm* as at the date of authorisation. Where more than one fund or *sub-fund* is operated, the number of funds (not including the *umbrella* or parent fund) produces a 'fund factor' in accordance with the table above, which is then applied to a basic fee to produce one total fee per *operator* . Fund factors are applied per *operator* rather than per *scheme* so that the fees relate to the number of funds rather than the number of *schemes*. This means that, for example, an *authorised fund manager* of three *schemes* pays the same as an *operator* or *authorised fund manager* of one *scheme* with three *sub-funds* (as only the *sub-funds* are counted).

Schemes set up under section 264 of the Act are charged according to the number of funds or *sub-funds* which a *firm* is operating and *marketing* into the UK as at 31 March immediately

before the start of the period to which the fee applies. For example, for 2010/11 fees a reference to 31 March means 31 March 2010.

Periodic fees for designated professional bodies payable in relation to the period 1 April 2013 to 31 March 2014

FCA

Table of fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable
The Law Society of England & Wales	£81,930
The Law Society of Scotland	£14,450
The Law Society of Northern Ireland	£13,510
The Institute of Actuaries	£10,130
The Institute of Chartered Accountants in England and Wales	£26,180
The Institute of Chartered Accountants of Scotland	£11,380
The Institute of Chartered Accountants in Ireland	£10,730
The Association of Chartered Certified Accountants	£18,030
The Council for Licensed Conveyancers	£11,470
Royal Institution of Chartered Surveyors	£14,410

Notes

(1) The *Financial Services Register* includes details of *exempt professional firms* carrying out *insurance mediation activity*.

Periodic fees for recognised investment exchanges, and recognised auction platforms payable in relation to the period 1 April 2013 to 31 March 2014

FCA

In this Annex:

- the term *recognised body* includes a body which was a recognised investment exchange recognised under the Financial Services Act 1986 and which is a *recognised body* as a result of Regulation 9 of the *Recognition Requirements Regulations*;
- the term recognition order includes a recognition order made by the *FCA* under section 37 of the Financial Services Act 1986 or a recognition order made by the Treasury under section 40 of the Financial Services Act 1986 in relation to overseas investment exchanges .

Part 1 - Periodic fees for UK recognised investment exchanges

Name of UK recognised body	Amount payable
ICE Futures Europe Ltd	£690,000
LIFFE Administration and Management	£995,000
London Metal Exchange	£610,000
London Stock Exchange plc	£825,000
ICAP Securities & Exchange Limited (RIE)	£300,000
BATS Trading Limited	£300,000
Any other recognised as such by a made in the <i>fee year</i>	£300,000

Part 1A - Periodic fees for recognised auction platforms

Name of recognised auction platform	Amount payable
An recognised as such by a made in the <i>fee year</i>	£50,000

Part 2 - Periodic fees for overseas recognised bodies

The Chicago Mercantile Exchange (CME) (ROIE)	£56,000
Chicago Board of Trade	£56,000
EUREX (Zurich)	£56,000
National Association of Securities and Deals Automated Quotations (NASDAQ)	£56,000
New York Mercantile Exchange Inc.	£56,000
The Swiss Stock Exchange	£56,000

Sydney Futures Exchange Limited	£56,000
ICE Futures US Inc	£56,000
NYSE Liffe US	£56,000
Any other recognised as such by a made in the <i>fee year</i>	£56,000

Periodic fees in relation to the Listing Rules for the period 1 April 2013 to 31 March 2014

FCA

Fee type	Fee amount
Annual fees for the period 1 April 2013 to March 2014	
<p>Annual Issuer Fees - all <i>listed issuers</i> of <i>shares</i>, <i>depository receipts</i> and <i>securitised derivatives</i>. This fee represents the total annual fee for a <i>listed issuer</i> - no additional annual fee is due under the <i>disclosure rules</i> and <i>transparency rules</i>.</p>	<p>(1) For all <i>issuers</i> of <i>securitised derivatives</i>, the fees payable are set out in Table 1.</p> <p>(2) For all other <i>issuers</i>, fees to be determined according to market capitalisation, as at the last <i>business day</i> of the November prior to the <i>fee year</i> in which the fee is payable, are as set out in Table 1A for <i>issuers</i> of global depository receipts and Table 2 for other <i>issuers</i>. The fee is calculated as follows:</p> <p>(a) the relevant minimum fee; plus</p> <p>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.</p> <p>(3) Notwithstanding (2), <i>overseas issuers</i> with a <i>listing of equity securities</i> which is not a <i>premium listing</i> will only pay 80% of the fee otherwise payable under (2).</p>
<p>No fee is due under this annex in relation to <i>regulated covered bonds</i>. 1 R sets out the fees due in relation to <i>regulated covered bonds</i>.</p> <p>Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year. For fees purposes <i>issuers</i> should take into account only equity ordinary <i>shares</i>, including those issued by suspended <i>issuers</i>.</p>	

Table 1

PAGE
1

The annual fee for issuers of *securitised derivatives* is 4,750.

Table 1A

Tiered annual fees for issuers of global depository receipts

Fee payable	
Minimum fee (£)	3,800
£ million of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>fee year</i> in which the fee is payable	Fee (£/£m of part £m of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>fee year</i> in which the fee is payable)
0 - 100	0
> 100 - 250	22.879515
> 250 - 1,000	9.15119
> 1,000 - 5,000	5.632939
> 5,000 - 25,000	0.137405
> 25,000	0.044392

Table 2

Tiered annual fees for all other issuers

Fee payable	
Minimum fee (£)	£4,750
£ million of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>fee year</i> in which the fee is payable	Fee (£/£m or part £m of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>fee year</i> in which the fee is payable)
0 - 100	0
>100 - 250	28.599394
>250 - 1,000	11.438999
>1,000 - 5,000	7.041173
>5,000 - 25,000	0.171756
>25,000	0.055490

Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April 2013 to 31 March 2014

FCA

Annual fees for the period 1 April 2013 to 31 March 2014

All non-listed *issuers* of shares, depositary receipts and securitised derivatives. Annual fees for listed *issuers* in respect of *Disclosure Rules* and *Transparency Rules* obligations are incorporated in the annual fee for listed *issuers* under the Listing Rules.

(1) For all non-listed *issuers* of securitised derivatives, depositary receipts and global depositary receipts the fees payable are set out in Table 1.

(2) For all other non-listed *issuers*, fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:

(a) the relevant minimum fee; plus

(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the *firm's* market capitalisation by the rate indicated for that tranche.

Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.

Table 1

Annual fees for non-listed issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£3,800
<i>Issuers of depositary receipts and global depositary receipts</i>	£3,040

Table 2

Fee payable	
Minimum fee (£)	3,800
£ million of Market Capitalisation as at the last <i>business day</i> of the November prior to the <i>FCA</i> financial year in which the fee is payable	Fee (£/£m or part £m of Market Capitalisation) as at the last <i>business day</i> of the November prior to the <i>FCA</i> financial year in which the fee is payable)
0 - 100	0

Fee payable

>100 - 250	22.879515
>250 - 1,000	9.151199
>1,000 - 5,000	5.632939
>5,000 - 25,000	0.137405
>25,000	0.044392

[Deleted]

Periodic fees for MTF operators payable in relation to the period 1 April 2013 to 31 March 2014

FCA

Name of MTF operator (see Note below)	Fee payable (£)	Due date
		1 August 2013 or, if later, 30 days from the date of the invoice
Barclays Bank Plc	15,000	
Baltic Exchange Derivatives Trading Ltd	20,000	
BATS Trading Ltd	150,000	
BGC Brokers L.P	50,000	
EuroMTS Limited	50,000	
GFI Brokers Limited	15,000	
GFI Securities Limited	50,000	
ICAP Electronic Broking Limited	50,000	
ICAP Energy Limited	15,000	
ICAP Europe Limited	15,000	
ICAP Shipping Tanker Derivatives Limited	15,000	
ICAP Securities Limited	50,000	
ICAP WCLK Limited	15,000	
J.P.Morgan Cazenove Limited	15,000	
Liquidnet Europe Limited	35,000	
My Treasury Limited	15,000	
iSWAP Euro Ltd	15,000	
Nomura International Plc	15,000	
Credit Agricole Cherveux International	15,000	
SmartPool Trading Limited	20,000	
TFS-ICAP Limited	15,000	

Name of <i>MTF</i> operator (see Note below)	Fee payable (£)	Due date	
Tradeweb Europe Limited	50,000	1 August 2013 or, if later, 30 days from the date of the invoice	
Tradition (UK) Limited	15,000		
Tradition Financial Services Limited	15,000		
Tullett Prebon (Europe) Limited	15,000		
Tullett Prebon (Securities) Limited	50,000		
Turquoise Global Holdings Ltd	85,000		
Goldman Sachs International	15,000		
UBS Ltd	15,000		
Any other <i>firm</i> whose <i>permission</i> includes <i>operating a multilateral trading facility</i>, including:	In the case of an <i>EEA firm</i> that: (a) has not carried on the activity of <i>operating a multilateral trading facility</i> in the UK at any time in the calendar year ending 31 December 2012 ; and		In the case of a <i>firm</i> that, during the course of the relevant financial year, receives <i>permission</i> for <i>operating a multilateral trading facility</i> or whose <i>permission</i> is extended to include this activity, within 30 days of receiving that <i>permission</i> or extension.
(a) an <i>EEA firm</i>; or (b) a <i>firm</i> that, during the course of the relevant financial year, receives <i>permission</i> for <i>operating a multilateral trading facility</i> or whose <i>permission</i> is extended to include this activity.	(b) notifies the <i>FCA</i> of that fact by the end of March 2013 ; the fee is zero.		In any other case, 1 August 2013
	Information required under (b) is to be treated as information required under FEES 4.4 (Information on which Fees are calculated)		
	In any other case: £15,000		
Note: subject to FEES 4.3.13 R, this table applies to all <i>MTF</i> operators with <i>permission</i> to operate an <i>MTF</i> as at 1 April of the applicable <i>fee year</i>; irrespective of whether, and if so when, their <i>permission</i> to operate an <i>MTF</i> was subsequently cancelled during that <i>fee year</i>.			

in the *FCA* financial year (the 12 months ending 31 March).

(2) For subsequent *FCA* financial years, 31 December unless (3) applies.

(3) If the issuer became registered as an *issuer* between 1 January and 31 March inclusive, 31 March in respect of the *FCA* financial year immediately following the *FCA* financial year during which it became registered and 31 December in respect of all further *FCA* financial years.

A reference to a financial quarter in this box means any of the following periods: 1 April to 30 June inclusive, 1 July to 30 September inclusive, 1 October to 31 December inclusive or 1 January to 31 March inclusive.

4

Part 5 - Tariff rates

Activity group	Fee payable in relation to 2013/14	
G.2	Minimum fee (£)	400
	£ million or part £m of Modified Eligible Liabilities (MELS)	Fee (£/£m or part £m of MELS)
	> 0.1	0.27200
G.3	Minimum fee (£)	400
	£ thousands or part thousand of Relevant Income	Fee (£/£thousand or part £thousand of Relevant Income)
	> 100	0.18300
G.4	Flat fee (£)	£400
G.5	As in G.3.	
G.10	Minimum fee (£)	1,500
	£ million or part m of average outstanding electronic money (AOEM)	Fee (£/£, or part m of AOEM)
	>5.0	200.00
G.11	Flat fee (£)	£1,000
G.15	Minimum fee for the first registered <i>programme</i> (£)	68,271
	Minimum fee for all subsequent registered <i>programmes</i>	75% of minimum fee for first registered <i>programme</i>

<p>million or part m of <i>regulated covered bonds</i> issued in the 12 months ending on the valuation date.</p>	<p>Fee (/m or part m of <i>regulated covered bonds</i> issued in the 12 months ending on the valuation date)</p>
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<p>>0.00</p>	<p>10.13</p>
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For the purposes of calculating fees, any *regulated covered bonds* denominated in a currency other than sterling must be converted into sterling at the applicable exchange rate set out below.

Where an exchange rate hedging agreement was entered into in connection with the issuance of *regulated covered bonds* denominated in a currency other than sterling, the applicable exchange rate for those *regulated cover bonds* is the exchange rate stipulated in the exchange rate hedging agreement.

An exchange rate hedging agreement is any agreement entered into to hedge the market risk relating to fluctuations in exchange rates.

In all other cases, the applicable exchange rate is the daily spot rate available on the Bank of Englands Statistical Interactive Database (the Bank of England exchange rate) applying on the valuation date. If the valuation date is not a *business day*, then the applicable exchange rate is the Bank of England exchange rate applying on the first *business day* following the valuation date.

%
%
%
%
%
%

Part 7 - This table shows the modifications to fee tariffs that apply to *EEA authorised payment institutions, EEA authorised electronic money institutions, and full credit institutions that are EEA firms* .

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable
G.2	40%	
G.3	40%	

G.10	40%
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Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2013/14

FCA

Introduction: annual budget

1. The *annual budget* for 2013/14 approved by the FSA is £283.6m.
2. The total amount expected to be raised through the *general levy* in 2013/14 will be £ 23m (net of £ 2.3m to be raised from consumer credit firms).

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> , <i>home finance administrators</i> (excluding <i>firms</i> in block 14) and <i>dormant account fund operators</i>	Number of accounts relevant to the activities in DISP 2.6.1 R as at 31 December In the case of <i>dormant account fund operators</i> , the tariff base is the number of eligible activated accounts (8).	£0.04309 per relevant account, subject to a minimum levy of £100
2-Insurers - general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.1306 per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	Not applicable	£25,989 to be allocated by the <i>Society</i>
4-Insurers - life (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.01663 per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £130
5-Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	Flat fee	Levy of £270
6-Operators, trustees and depositaries of collective investment schemes and operators of personal pension schemes or stakeholder pension schemes	Flat fee	Levy of £65
7-Dealers as principal	Flat fee	Levy of £75

Industry block	Tariff base	General levy payable by firm
8-Advisors, <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	Annual income as defined in FEES 4 Annex 11A R relating to <i>firm's relevant business</i> .	£0.15282 per £1,000 of annual income subject to a minimum fee of £45
9-Advisors, <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	Annual income as defined in FEES 4 Annex 11A R relating to <i>firm's relevant business</i> .	£0.1170 per £1,000 of annual income subject to a minimum fee of £45
10-Corporate finance advisers	Flat fee	Levy of £55
11-fee-paying payment service providers (but excluding firms in any other Industry block except Industry block 18)	For <i>authorised payment institutions, electronic money issuers</i> (except for <i>small electronic money institutions</i>), the Post Office Limited, the Bank of England, government departments and local authorities, and <i>EEA authorised payment institutions</i> relevant income as described in FEES 4 Annex 11 R Part 3 For <i>small payment institutions</i> and <i>small electronic money institutions</i> a flat fee	£0.0046 per £1,000 of relevant income subject to a minimum levy of £75 Levy of £35
12-	N/A for 2013/14	
13-Cash plan health providers	Flat fee	Levy of £65
14- <i>Credit unions</i>	Flat fee	Levy of £55
15- <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £65
16- <i>Home finance providers, advisers and arrangers</i> (excluding firms in blocks 13, 14 & 15)	Flat fee	Levy of £85
17 - General insurance mediation (excluding firms in blocks 13, 14 & 15)	<i>Annual income</i> (as defined in MIPRU 4.3) relating to <i>firm's relevant business</i>	£0.4871 per £1,000 of <i>annual income</i> (as defined in MIPRU 4.3) relating to <i>firm's relevant business</i> subject to a minimum levy of £100
18 - fee-paying electronic money issuers	For all <i>fee-paying electronic money issuers</i> except for <i>small electronic money institutions</i> , average outstanding <i>electronic</i>	£0.0020 per £ 1,000 of average outstanding electronic money subject to a minimum levy of £75

Industry block	Tariff base	General levy payable by firm
	<p><i>money, as described in FEES 4 Annex 11 R Part 3.</i></p> <p><i>For small electronic money insti- tutions, a flat fee</i></p>	<p>Levy of £50</p>

Notes

- 4** [not used]
- 5** The *industry blocks* in the table are based on the equivalent activity groups set out in Part 1 of FEES 4 Annex 1A R and Part 2 and Part 2A of FEES 4 Annex 11 R.
- 6** Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 3 of FEES 4 Annex 1A R or Part 3 of FEES 4 Annex 11 R, it must be calculated in the same way as that tariff base - taking into account only the *firm's relevant business*.
- 7** [deleted]
- 8** Eligible activated accounts are the number of *repayment claims* met by the *dormant account fund operator* as at the 31 December.

General Insurance

Appendix 10 of *IPRU(FSOC)* (total mathematical reserves after distribution of surplus) in relation to the most recent financial year of the *firm* (as at the applicable reporting date under FEES 6.5.13 R for which the *firm* is required to have reported that information to the *PRA* under *IPRU(FSOC)*). A *non-directive friendly society* must disregard for this purpose such amounts as are not required to be included by reason of a *waiver* or a written concession carried forward as an amendment to the *rule* to which it relates under SUP TP.

(7) The provisions relating to pension fund management business in Part 2 of FEES 4 Annex 1B R do not apply. A *firm* undertaking such business that does not carry out any other activities within *class C1* (ignoring any activities that would have a wholly insignificant effect on the calculation of its tariff base for *class C1*) must use its Long-term insurance capital requirement instead of gross technical liabilities. The Long-term insurance capital requirement means the amount that it is required to show as its Long-term insurance capital requirement in Form 2 Line 31 (Statement of solvency - Long-term insurance business) in relation to the most recent financial year of the *firm* (as at the applicable reporting date under FEES 6.5.13 R) for which the *firm* is required to have reported that information to the *PRA*.

(8) The split in the levy between *relevant net premium income* and eligible mathematical reserves does not apply to a partnership pension society (as defined in Chapter 7 of *IPRU(FSOC)* (Definitions)). Instead the levy is only calculated by reference to *relevant net premium income*.

Class C2: *annual eligible income* where *annual eligible income* means annual income adjusted in accordance with this table. Annual income is calculated as the sum of (a) and (b):

(a) the net amount retained by the *firm* of all brokerages, fees, commissions and other related income (for example, administration charges, overrides and profit shares) due to the *firm* in respect of or in relation to *class C2* activities including any income received from an *insurer*; and

(b) if the *firm* is a life and pensions *firm*, in relation to *class C2* activities, the amount of *premiums* or commission receivable on its life and pensions contracts multiplied by 0.07, excluding those life and pensions contracts which result from *class C2* activities carried out by another *firm*, where a payment has been made by the life and pensions *firm* to that other *firm* and that payment is of a type that falls under (a).

Notes relating to the calculation of the tariff base for *class C2*:

(1) Life and pensions contracts mean *long-term insurance contracts* (including *pure protection contracts*) and rights under a *stakeholder pension scheme* or a *personal pension scheme*.

General Insurance

(2) Life and pensions *firm* means an *insurer*. It also means a *firm* that provides *stakeholder pension schemes* or *personal pension schemes* if those activities fall into *class D1*.

(3) The calculation is adjusted in accordance with the definition of *annual eligible income*.

(4) Net amount retained means all the commission, fees, etc. in respect of *class C2* activities that the *firm* has not rebated to customers or passed on to other *firms* (for example, where there is a commission chain). Items such as general business expenses (for example, employees' salaries and overheads) must not be deducted.

(5) *Class C2* activities mean activities that fall within *class C2*. They also include activities that now fall within *class C2* but that were not *regulated activities* when they were carried out.

(6) A reference to a *firm* also includes a reference to any *person* who carried out activities that would now fall into *class C2* but which were not at the time *regulated activities*.

Investment

Class D1

Firms with permission for:

Investment provision

Any of the following:
managing investments;

establishing, operating or winding up a regulated collective investment scheme;

establishing, operating or winding up an unregulated collective investment scheme;

acting as trustee of an authorised unit trust scheme;

acting as the depositary of an authorised contractual scheme;

acting as the depositary or sole director of an open-ended investment company;

establishing, operating or winding up a stakeholder pension scheme;

establishing, operating or winding up a personal pension scheme;

agreeing to carry on a regulated activity which is within any of the above.

Class D2

Firms with permission for:

Investment Intermediation

Any of the following activities in relation to *designated investment business*:
dealing in investments as principal;

dealing in investments as agent;
MiFID business bidding;
arranging (bringing about) deals in investments;
making arrangements with a view to transactions in investments;
advising on investments;
providing basic advice on a stakeholder product;
safeguarding and administering investments;
arranging safeguarding and administering of assets;
operating a multilateral trading facility;
agreeing to carry on a regulated activity which is within any of the above;

BUT excluding activities that relate to *long-term insurance contracts* or rights under a *stakeholder pension scheme* or a *personal pension scheme*.

Tariff base

Class D1: *annual eligible income* where *annual eligible income* means annual income adjusted in accordance with this table. Annual income is equal to the net amount retained by the *firm* of all income due to the *firm* in respect of or in relation to activities falling within *class D1*.

Class D2: *annual eligible income* where *annual eligible income* means annual income adjusted in accordance with this table. Annual income is equal to the net amount retained by the *firm* of all income due to the *firm* in respect of or in relation to activities falling within *class D2*.

Notes on *annual eligible income* for classes D1 and D2:

(1) For the purposes of calculating annual income, net amount retained means all the commission, fees, etc. in respect of activities falling within *class D1* or *D2*, as the case may be, that the *firm* has not rebated to customers or passed on to other *firms* (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) must not be deducted.

(2) The calculation is adjusted in accordance with the definition of *annual eligible income*.

(3) Box management profits are excluded from the calculation of annual income.

Home Finance

Class E2

Home Finance Intermediation

Firms with permission for:

Any of the following activities:
arranging (bringing about) a home finance transaction;

Home Finance

making arrangements with a view to a home finance transaction;
advising on home finance transaction;
the activities of a *home finance provider* which would be arranging but for article 28A of the *Regulated Activities Order* (Arranging contracts or plans to which the arranger is party);
agreeing to carry on a regulated activity which is within any of the above.

Tariff base

Class: E2: *annual eligible income* where the annual income is calculated in accordance with fee-block A18 in part 2 of FEES 4 Annex 1A R.

Class F

Deposit acceptor's contribution

Firms with permission for:

accepting deposits and/or *operating a dormant account fund*. BUT does not include any fee payer who either effects or carries out *contracts of insurance*.

Class G

Insurers - life contribution

Firms with permission for:

effecting contracts of insurance; and/or
carrying out contracts of insurance;
in respect of specified investments including *life policies;* *entering as provider into a funeral plan contract*.

-

Class H

Insurers - general contribution

Firms with permission for:

effecting contracts of insurance; and/or
carrying out contracts of insurance;
in respect of *specified investments* that are:
- *general insurance contracts;* or
- *long-term insurance contracts other than life policies.*

Class I

Home finance provision

Firms with permission for:

Any of the activities below:
entering into a home finance transaction;
administering a home finance transaction;
agreeing to carry on a regulated activity which is within any of the above.

Notes

(1) Any reference in this annex to a *specified investment* includes a reference to *rights to or interests in investments* in that *specified investment*.

(2) In calculating *annual eligible income* a *firm* must apportion income between different *classes* and between income that falls within the definition of *annual eligible income* and income that does not in a reasonable and consistent way and on the basis of clear policies.

(3) The question of whether a *person* is an *eligible claimant* or not or whether a *contract of insurance* is a *protected contract* or not or whether business is compensatable business or not must be judged at whichever of the following dates the *firm* chooses:

(a) (for a *person* who has become a new *client* during the period by reference to which the *firm's* tariff base is being calculated) the date on which the *person* becomes a client;

(b) (for a *person* who has ceased to be a *client* during that period) the date on which the *person* ceases to be a *client*; or

(c) (in any other case) the date to which the most recent information supplied by the *firm* under FEES 6.5.13 R is prepared.

However this does not apply for the purpose of calculating the tariff base for *class A (Deposits)* so far as it relates to *protected deposits*.

(4) For classes G to I (inclusive) the tariff base is not set out in this Annex: see FEES 6.4.7 R (3), FEES 6.5.6 R (3) and FEES 6.5A.6 R

CFEB levies for the period from 1 April 2013 to 31 March 2014

Part 1

FCAThis table shows the *CFEB levies* applicable to each activity group (fee-block)

Activity Group	<i>CFEB levy payable</i>			
A.1	Column 1		Column 2	
	Money advice levy		Debt advice levy	
			(Notes 3 - 6)	
	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fixed sum (£/£m or part m of MELs)	Bandwidth (£ million of unsecured debt)	Fixed sum (£/£m or part £m of unsecured debt)
	>10	5.08	>0	55.37
A.2	Column 1		Column 2	
	General levy		Debt advice levy	
			(Notes 5 -6)	
	Band Width (no. of mortgages and/or home finance transactions)	Fixed sum (£/mortgage)	Bandwidth (million of secured debt)	Fixed sum (£/£m or part £m of secured debt)
	>50	0.57	>0	24.30
A.3	Gross premium income (GPI)			
	Band Width (£ million of GPI)		Fixed sum (£/£m or part £m of GPI)	
	>0.5		39.42	
	PLUS			
	Gross technical liabilities (GTL)			
	Band Width (£ million of GTL)		Fixed sum (£/£m of part £m of GTL)	

	>1	2.08
A.4	Adjusted annual gross premium income (AGPI)	
	Band Width (£ million of AGPI)	Fixed sum (£/£m or part £m of AGPI)
	>1	66.59
	PLUS	
	Mathematical reserves (MR)	
	Band Width (£ million of MR)	Fixed sum (£/£m or part £m of MR)
	>1	1.50
A.5	Band Width (£ million of Active Capacity (AC))	Fixed sum ((£/£m or part £m of AC)
	>50	3.89
A.6	Flat levy	£85,716.00
A.7	For class 1(C), (2) and (3) firms:	
	Band Width (£ million of Funds under Management (FuM))	Fixed sum (£/£m of part £m of FuM)
	>10	0.81
	For class 1(B) firms: the fee calculated as for class 1(C) firms above, less 15%.	
	For class 1(A) firms: the fee calculated as for class 1(C) firms above, less 50%.	
	Class 1(A), (B) and (C) firms are defined in FEES 4 Annex 1A R	
A.9	Band Width (£ million of Gross Income (GI))	Fixed sum (£/£m of part £m of GI)
	>1	104.36
A.10	Band Width (no. of traders)	Fixed sum (£ /trader)
	>1	356.87
A.12	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	0.1

	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) firms	
	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	0.48
	For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.	
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	> 100	0.13
A.18	Band Width (£ thousands of Annual Income (AI))	Fixed sum ((£/£ thousand or part £ thousand of AI)
	>100	1.18
A.19	Band Width (£ thousands of Annual Income (AI))	Fixed sum (£/£ thousand or part £ thousand of AI)
	>100	0.146
G.3	Minimum fee (£)	10
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	0.027
G.4	Flat fee (£)	10
G.10	Minimum fee (£)	10
	£ million or part £m of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	> 5.0	8.38
G.11	Flat fee (£)	10

Notes

(1) The definitions of fee-blocks G5 and G10 under Part 2 and Part 2A of FEES 4 Annex 11 R are modified, for the purposes of FEES 7, so that they exclude the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank.

(2) The definitions of those fee-blocks are further amended to exclude EEA and those which hold a .

(3) The tariff base for column 2 in activity group A.1:

for *credit unions*:

the total sterling value of all loans LESS total sterling value of any residential loans.

for *banks and building societies*:

the sterling value of all outstanding loans to individuals in the *UK*, excluding bridging loans and loans secured on dwellings and land.

The *firm* must include:

(a) any credit card lending;

(b) any charge card lending, even if the outstanding balance has to be paid off in full at the end of each charging period;

(c) any other loans and advances to individuals that are not bridging loans or secured on dwellings or land;

provided that the *firm* only includes data that it is required to include in entries 29DB3A3 and 29DB3A4 of Form BE (that is, the Additional Sectoral Details Return that is completed to provide information by banks and building societies to the Bank of England).

(4) The valuation date for column 2 in activity group A.1 is the 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the Form BE or other annual return made in the calendar year prior to the 31 December.

(5) The tariff base for column 2 in activity group A.2 is the sterling value of any residential loans to individuals being the sum of gross unsecuritised and securitised balances (applying the definitions of Unsecuritised balances and Securitised balances set out in SECTION A: BALANCE SHEET of SUP 16 Annex 19B G).

(6) The valuation date for column 2 in activity group A.2 is the 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the annual return made in the calendar year prior to the 31 December.

Part 2

(1)	This Part sets out the minimum <i>CFEB levy</i> applicable to the <i>firms</i> specified in (3) below.
(2)	The minimum <i>CFEB levy</i> payable by any <i>firm</i> referred to in (3) is 10.
(3)	A <i>firm</i> is referred to in this paragraph if it falls within the following activity groups: A.1; A.2; A.3 (excluding <i>UK ISPVs</i>); A.4; A.5; A.7; A.9; A.10; A.12; A.13; A.14; A.18; A.19; G.3 and G.10.

Method of payment

App 1.3.3 **R** Application fees must be paid by the method specified in ■ FEES App 1 Annex 1A.
FCA

Due dates

App 1.3.4 **R** A *person* making an application or submitting a proposal for the registration of a society must pay the application fee on, or before, making the application.
FCA

App 1.3.5 **R** A ■ sponsoring body must pay the application fee for a new set of ■ model rules on or before making the application.
FCA

App 1.3.6 **G** The *FCA* may require the fee to be paid by the *person* making the application before the *FCA* undertakes any preliminary consideration of the proposed application or rules.
FCA

Refunds

App 1.3.7 **G** The *FCA* will not refund application fees under any circumstances.
FCA

App 1.3.8 **G** Paragraph 1.3.7G applies also in the case of applications that are not proceeded with where a fee has been paid in advance.
FCA

1
ANNEX
 1

Periodic Fees payable for the period 1 April 2013 to 31 March 2014

FCA **R** Part 1 Periodic fee payable by Registered Societies (on 30 June 2013)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic fee	0 to 50	55
	> 50 to 100	110
	> 100 to 250	180
	> 250 to 1,000	235
	> 1,000	425

Part 2 Methods of payment of periodic fees

A periodic fee must be paid using either direct debit, Maestro, Visa Debit, credit transfer (BACS/CHAPS), cheque, switch or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

1
ANNEX
1A

Application Fees payable

FCA

R

Part 1 Application fees payable to register a new society other than a credit union

Transaction	Amount payable (£)
Application using model rules without any amendment to the model	40
Application using model rules with between 1 and 6 amendments to the model	120
Application using model rules with between 7 and 10 amendments to the model	350
Application using model rules with 11 or more amendments to the model, or using free draft rules	950

Part 2 Application fees payable by sponsoring bodies

This fee is not payable by sponsoring bodies in respect of the model rules of credit unions.

Transaction	Amount payable (£)
Application for a new set of model rules	950

Part 3 Method of payment of application fees

Payment method	Additional amount or discount applicable
Cheque	None

1
ANNEX
2

Further information on fees

FCA

G

	Purpose
1	The purpose of this annex is to set out further information on fees applicable to registered societies which form the registrant-only fee block (Category F).
	Background
2	Paragraph 23 of Schedule 1ZA to the <i>Act</i> enables the <i>FCA</i> to charge fees to cover its expenses in carrying out its functions.

General Prudential sourcebook

Guidance on applications for waivers relating to Implicit items

PRA

G Implicit items under the Act

- 1 The *capital resources table* does not permit *implicit items* to be included in the calculation of a *firm's capital resources*, except subject to a *waiver* under section 138A of the *Act*. Article 27(4) of the *Consolidated Life Directive* states that *implicit items* can be included in the calculation of a *firm's capital resources*, within limits, provided that the supervisory authority agrees. Certain *implicit items*, however, are not eligible for inclusion beyond 31 December 2009 (see paragraph 5). The *appropriate regulator* may be prepared to grant a *waiver* from the *capital resources table* to allow *implicit items*, in line with the purpose of the *Consolidated Life Directive*, and provided the conditions as set out in article 27(4) of the *Consolidated Life Directive* are met. Such a *waiver* would allow an *implicit item* to count towards the *firm's capital resources* available to count against its *capital resources requirement (CRR)* set out for *realistic basis life firms* in GENPRU 2.1.18 R and for *regulatory basis only life firms* in GENPRU 2.1.23 R. An *implicit item* may potentially count as *tier one capital* (but not *core tier one capital*) or *tier two capital*. Where a *waiver* is granted allowing an *implicit item* as *tier one capital*, the value of the *implicit item* so allowed must be included at stage B of the *capital resources table*. If the application of the value of the *implicit item* is restricted by GENPRU 2.2.29 R, which requires that at least 50% of a *firm's tier one capital resources* must be accounted for by *core tier one capital*, the remainder may be included at stage G of the calculation in the *capital resources table*, subject to GENPRU 2.2.31 G. An *implicit item* treated as *tier two capital* will also be included at stage G of the calculation, again subject to GENPRU 2.2.81 R. Article 29(1) of the *Consolidated Life Directive* requires that *implicit items* be excluded from the capital eligible to cover the *guarantee fund*. Under GENPRU 2.2.33 R a *firm* must meet the *guarantee fund* from the sum of the items listed at stages A, B, G and H of the *capital resources table* less the sum of the items listed at stage E of the *capital resources table*. The *appropriate regulator* will only grant an *implicit items waiver* if the *waiver* includes a modification to GENPRU 2.2.33 R to ensure that the *implicit item* does not count towards meeting the *guarantee fund*.
- 2 Under section 138A of the *Act*, the *appropriate regulator* may, on the application of a *firm*, grant a *waiver* from *PRU*. There are general requirements that must be met before any *waiver* can be granted. As explained in SUP 8, the *appropriate regulator* may not give a *waiver* unless the *appropriate regulator* is satisfied that:
 - (1) compliance by the *firm* with the *rules* will be unduly burdensome, or would not achieve the purpose for which the *rules* were made; and
 - (2) the *waiver* would adversely affect the advancement of any of the *appropriate regulator's* objectives
- 3 The *appropriate regulator* will assess compliance with the requirements in the light of all the relevant circumstances. This will include consideration of the costs incurred by compliance with a particular *rule* or whether a *rule* is framed in a way that would make compliance difficult in view of the *firm's* circumstances. For example, the *firm* may demonstrate that if an *implicit item* were not allowed, the *firm* would either have to suffer increased (and unwarranted) costs in injecting further *capital resources* or operate with a lower equity backing ratio (see case studies in paragraph 43). Even if a *firm* can demonstrate a case for an *implicit item waiver*, it should not assume that the *appropriate regulator* will grant the *waiver* requested, or that any *waiver* will be granted for the full amount of the *implicit item* which could be granted, as set out in this annex. The *appropriate regulator* will consider each application on its own merits, and taking into account all relevant circumstances, including the financial situation and business prospects of the *firm*.

4 *Implicit items* are economic reserves which are contained within the long-term insurance business provisions. Article 27(4) of the *Consolidated Life Directive* identifies three types of *implicit item*, in respect of: future profits, *zillmerisation* and hidden reserves. This annex is intended to amplify the *guidance* in SUP 8 relating to the granting of *waivers* for *implicit items* and to provide *guidance* on other aspects. Whilst this *guidance* applies to applications for *waivers* for *implicit items* generally, for a *realistic basis life firm*, to the extent that an *implicit item* is allocated to a *with-profits fund*, this *guidance* relates to *implicit items* for the purposes of determining the *regulatory value of assets* (see INSPRU 1.4.24 R).

5 The *Consolidated Life Directive* (reflecting the changes introduced by the Solvency 1 Directive) requires member states to end a *firm's* ability to take into account future profits *implicit items* by (at the latest) 31 December 2009. Until then, the maximum amount of the *implicit item* relating to future profits permitted under the *Consolidated Life Directive* is limited to 50% of the product of the estimated annual profits and the average period to run (not exceeding six years) on the *policies* in the portfolio. The *Consolidated Life Directive* further limits the maximum amount of these economic reserves that can be counted to 25% of the lesser of the available solvency margin and the required solvency margin. The changes introduced by the *Solvency 1 Directive* take effect for financial years beginning on or after 1 January 2004. However, the *Consolidated Life Directive* allows for a transitional period of five years, which runs from 20 March 2002 (the publication date of the *Solvency 1 Directive*), for *firms* to become fully compliant with these new requirements. *firms* will need to consider the potential impact of these changes when engaging in future capital planning. When applying for an *implicit item waiver* a *firm* should provide the appropriate regulator with a plan showing how the *firm* intends to maintain its capital adequacy over the period to 31 December 2009. *firms* should also be aware that the appropriate regulator will typically only grant *waivers* for a maximum of 12 months.

Future Profits

6 The future profits *implicit item* allows *firms* to take credit for margins in the *mathematical reserves* to the extent that these are expected to emerge from in force business. The future profit from in force business should be assessed, in the first instance, on prudent assumptions, to demonstrate that there is an 'economic reserve'. Having demonstrated that it exists, the amount should be limited to an amount calculated using a formula that takes into account the actual profit which has emerged over the last five years (see paragraph 28).

Zillmerisation

7 *Zillmerisation* is an allowance for acquisition costs that are expected, under prudent assumptions, to be recoverable from future *premiums*. *firms* can make a direct adjustment to their reserves for *zillmerisation*, subject to the *rules* on *mathematical reserves*. However, where no such adjustment has been made, the appropriate regulator will consider an application for a *waiver* to take into account an *implicit item*.

Hidden reserves

8 Hidden reserves are reserves resulting from the underestimation of assets (other than *mathematical reserves*).

Process for applying for a waiver, including limits applicable when a waiver is granted

9 This annex sets out the procedures to be followed and the form of calculations and data which should be submitted by *firms* to the appropriate regulator. This *guidance* should also be read in conjunction with the general requirements relating to the *waiver* process described in SUP 8. The appropriate regulator expects that applications for *waivers* in respect of future profits and *zillmerising* will not normally be considered to pass the "not result in undue risk to persons whose interests the *rules* are intended to protect" test unless the relevant criteria set out in this *guidance* have been satisfied and an application for such a *waiver* may require further criteria to be satisfied for this test to be passed. As set out below, *waivers* in respect of either *zillmerising* or hidden reserves will not normally be given except in very exceptional circumstances.

Timing

- 10 *A long-term insurer* may apply to the appropriate regulator for a *waiver* in respect of *implicit items*. A *waiver* will not apply retrospectively (see SUP 8.3.6 G). Consequently, applications intended for a particular accounting reference date will normally need to be made well before that reference date. Applications by *firms* must be made to the appropriate regulator in writing and include the relevant details specified under SUP 8.3.3 D. Given the uncertainty in predicting the future, *waivers* will normally be granted for a maximum of 12 months at a time and any further applications will need to be made accordingly.
- 11 The information that will be required to enable an application to be considered as set out below, should normally include a demonstration of how the *capital resources requirement* is to be met, with and without the *waiver*. Clearly, up-to-date information may not be available before the *financial year-end*. In some cases information from the previous year-end's *return* may be used, as long as any known significant changes in the structure of the *firm*, or the assumptions used, have been taken into account.
- 12 If the application for a *waiver* is granted, when a *firm* submits its next *return* the amount of the *implicit item* shown should not exceed that supported by the *firm's* calculations as at the valuation date. In the event that the amount of the future profits item calculated by the *firm* based on these updated assumptions is less than the amount calculated at the time of the *firm's waiver* application, the lower figure should be used in the *return*.
- 13 An *implicit item* in respect of *zillmerising* or hidden reserves is related to the basis on which liabilities or assets have been valued. In the case of hidden reserves, as explained below, the granting of a *waiver* will be dependent on the overall *capital resources* of the *firm*. *Waivers* in respect of these *implicit items* will, therefore, only be made in relation to the position shown in a particular set of *returns* and it will be essential for *firms* to submit applications to the appropriate regulator well in advance of the latest date for the submission of the relevant *return*.
- 14 *Waivers* may be withdrawn by the appropriate regulator at any time (e.g. where the appropriate regulator considers the amount in respect of which a *waiver* has been given can no longer be justified). This may be as a result of changes in the *firm's* position or as a result of queries arising on scrutiny of the *returns*.
- Information to be submitted
- 15 An application for a *capital resources* (which includes an application for an extension to or other variation of a *waiver*) should be prepared using the standard application form for a *waiver* (see SUP 8 Annex 2 D). In addition, the application should be accompanied by full supporting information to enable the appropriate regulator to arrive at a decision on the merits of the case. In particular, the application should state clearly the nature and the amounts of the *implicit items* that a *firm* wishes to count against its *capital resources requirement* and whether it proposes to treat the *implicit item* as *tier one capital* or *tier two capital*. In order to assess an application, the appropriate regulator needs information as to the make-up of the *firm's capital resources*, the quality of the capital items which have been categorised into each tier of capital and a breakdown of capital both within and outside the *firm's long-term insurance fund* or *funds* and between the *firm's with-profits funds* and *non-profit funds*. An explanation as to the appropriateness of the proposed treatment of the *implicit item* under the *capital resources table* should also be provided, including a demonstration that, in allowing for *implicit items*, there has been no double counting of future margins and that the basis for valuing such margins is prudent.
- 16 The *PRA* recognises that the assessment of the insurance *technical provisions* reflects the contractual obligations of the *firm*. *Implicit items* are therefore margins over and above an economic assessment in these *technical provisions* only. Non-contractual "constructive" obligations arising from a *firm's* regulatory duty (as regulated by the *FCA*) to treat *customers* fairly e.g. regarding future terminal bonuses, are not fully captured by the *technical provisions*. A *firm* must instead be satisfied that it has sufficient *capital resources* at all times to meet its obligations under the *FCA's* Principle 6. The granting of a *waiver* for an *implicit item* does not in any way detract from this requirement and a *firm* will need to be satisfied that this condition is still met.
- 17 As a minimum, applications for a future profits *implicit item* should be supported by the information contained in Forms 13, 14, 18, 19, 40, 41, 42, 48, 49, the answers to questions 1 to 12 of the abstract

of the valuation report, Appendix 9.4 of *IPRU(INS)*, the abstract of the valuation report for the realistic valuation, Appendix 9.4A of *IPRU(INS)* and Forms 51, 52, 53, 54 and 58. For a *zillmerisation* implicit item, only those items noted above forming part of the abstract valuation report will normally be needed. Applications for a *waiver* in respect of a hidden reserves *implicit item* will normally be considered only if accompanied by the information which is contained in the annual regulatory *returns*. In particular, the balance sheet forms, *long-term insurance business* revenue accounts, and abstract of the valuation report as set out in Appendices 9.1, 9.3 and 9.4 of *IPRU(INS)* should be provided. This is not to say that a full regulatory *return* must be provided in the specified format, simply that the information contained in these forms should be provided. Where appropriate, the information may be summarised.

- 18 The following supporting information relating to the calculation of the amounts claimed should be supplied for each type of *implicit item* in respect of which a *waiver* is sought: Future profits: in addition to information related to the prospective calculation and retrospective calculation described below, the profits reported in each of the last five *financial years* up to the date of the most recent available valuation under *rule 9.4* of *IPRU(INS)* which has been submitted to the appropriate regulator prior to, or together with, the application, and the amounts and nature of any exceptional items left out of account; the method used for calculating the average period to run and the results for each of the main categories of business, both before and after allowing for premature termination (where the calculation has been made in two stages); and the basis on which this allowance has been made. *Zillmerising*: the categories of contracts for which an item has been calculated and the percentages of the *relevant capital sum* in respect of which an adjustment has been made. Hidden reserves: particulars, with supporting evidence, of the undervaluation of assets for which recognition is sought.

Continuous monitoring by firms

- 19 *Firms* should take into account any material changes in financial conditions or other relevant circumstances that may have an impact on the level of future profits that can prudently be taken into account. *firms* should also re-evaluate whether an application to vary an *implicit item waiver* should be made whenever circumstances have changed. In the event that circumstances have changed such that an amendment is appropriate, the *firm* must contact the appropriate regulator as quickly as possible in accordance with Principle 11. (See SUP 8.5.1 R). In this context, the appropriate regulator would expect notice of any matter that materially impacts on the *firm's* financial condition, or any *waivers* granted.

Future profits - factors to take into account when submitting calculations to support waiver applications

- 20 Where an application is made in respect of a *firm* which has separate *with-profits funds* and *non-profit funds*, the *firm* should ensure that the *capital resources requirement* in respect of the *non-profit fund* is not covered by future profits attributable to *policyholders* arising in the *with-profits fund*. Furthermore, for a *realistic basis life firm* the amount of the *implicit item* allocated to each *with-profits fund* should be calculated separately, as the amount allocated to each *with-profits fund* will be taken into consideration in the calculation of the *with-profits insurance capital component* (see INSPRU 1.4.24 R).
- 21 *firms* need to assess prospective future profit (i.e. how much can reasonably be expected to arise) and compare this to maximum limits (in article 27(4) of the *Consolidated Life Directive*), which relate to past profits.

Future profits - prospective calculation

- 22 The application for a *waiver* should be supported by details of a prospective calculation of future profits arising from in-force business. The information supplied to the appropriate regulator should include a description of the method used in the calculation and of the assumptions made, together with the results arising. From 31 December 2009 at the latest, future profits *implicit items* will no longer be permitted under the *Consolidated Life Directive*. Where a *firm* first applies for an *implicit item waiver* after GENPRU 2.2 comes into effect, under the prospective calculation a *firm* should only take into consideration future profits that are expected to emerge in the period up to 31 December 2009. *Implicit item waivers* granted before GENPRU 2.2 comes into effect will continue to operate under the terms of those *waivers*, but an application to vary the terms of such a

waiver, for example to extend the effective period, is an application for a new *waiver* for which a *firm* should usually only take into consideration future profits that are expected to emerge in the period up to 31 December 2009.

Assumptions

23

The assumptions made should be prudent, rather than best estimate, assumptions of future experience (that is, the prudent assumptions should allow for the fair market price for assuming that risk including associated expenses). In particular, it would not normally be considered appropriate for the projected return on any asset to be taken to be higher than the risk-free yield (that is, assessed by reference to the yield arrived at using a model of future risk free yields properly calibrated from the forward gilts market). It may also be appropriate to bring future withdrawals into account on a suitably prudent basis. For *with-profits business*, the assumptions for future investment returns should not capitalise future bonus loadings except where the *with-profits policyholders* share in risks other than the investment performance of the fund. Furthermore, the rate at which future profits are discounted should include an appropriate margin over a risk free rate of return. Calculations should also be carried out to demonstrate that the prospective calculation of the future profits arising from the in-force business supporting the application for the *implicit item* would be sufficient to support the amount of the *implicit item* under each scenario described for use in determining the *resilience capital requirement* - where the *waiver* relates to an *implicit item* allocated to more than one fund, this should be demonstrated separately for that element of the *implicit item* allocated to each fund. For an *implicit item* allocated to a *with-profits fund*, proper allowance should be made for any shareholder transfers to ensure that the *implicit item* is not supported by future profits which will be required to support those transfers. To the extent, if any, that future profits are dependent on the levying of explicit expense related charges (for example as in the case of unit-linked business) the documentation submitted should include a demonstration of the prudence of the assumptions made as to the level at which future charges will be levied and expenses incurred.

Other limitations on the extent to which waivers for implicit items will be granted to a realistic basis life firm

24

Where a *waiver* in respect of an *implicit item* is granted to a *realistic basis life firm* additional limits may apply by reference to a comparison of *realistic excess capital* and *regulatory excess capital* including allowance for the effect of the *waiver*. Where the *capital resources* relates to an *implicit item* allocated partly or entirely to a *with-profits fund*, the *waiver* will contain a limitation to the effect that the *regulatory excess capital* for that *with-profits fund*, allowing for the effect of the *waiver*, may not exceed that fund's *realistic excess capital*. This limitation will apply on an ongoing basis so that, for example, in the case of an *implicit item* allocated to a *with-profits fund*, the amount of the *implicit item* would be limited to zero whenever the *regulatory excess capital* exceeded the *realistic excess capital* of that fund.

Other charges to future profits

25

To avoid double counting, no account should be taken of any future surplus arising from assets corresponding to explicit items which have been counted towards the *capital resources requirement* such as shareholders funds, surplus carried forward or investment reserves. Deductions should be made in the calculation of future surpluses for the impact of any other arrangements which give rise to a charge over future surplus emerging (e.g. financial *reinsurance* arrangements, subordinated loan capital or contingent loan agreements). Deductions should also be made to the extent that any credit has been taken for the purposes of INSPRU 1.4.45 R (2) for the present value of future profits relating to non-profit business written in a *non-profit fund*. The information supplied to the appropriate regulator should identify the amount and reason for any adjustments made to the calculation of the prospective amount of future profits.

PAGE
5

26

The *firm* should confirm to the appropriate regulator that the calculations have been properly carried out and that there are no other factors that should be taken into account.

Future profits - retrospective calculation

Overriding limit

27

The maximum amount of the *implicit item* relating to future profits permitted under the *Consolidated Life Directive* is 50% of the product of the estimated annual profit and the average period

to run (not exceeding six years (ten years during the transitional period referred to in paragraph 5)) on the *policies* in the portfolio. Article 27(4) of the *Consolidated Life Directive* also imposes a further limit on the amount of the *implicit item* equal to 25% of the lower of:

- (1) the *firm's capital resources*; and
- (2) the higher of its *base capital resources requirement for long-term insurance business* and its *long-term insurance capital requirement*.

Once the transitional period set out in article 71(1) of the *Consolidated Life Directive* has expired in 2007 (see paragraph 5), the appropriate regulator will not allow a *capital resources* for more than the amount permitted by article 27(4) of the Directive.

Definition of profits

28 The estimated annual profit should be taken as the average annual surplus arising in the *long-term insurance fund* over the last five *financial years* up to the date of the most recent available valuation which has been submitted to the appropriate regulator prior to, or together with, the application. For this purpose, deficiencies arising should be treated as negative surpluses. Where a *firm's financial year* has altered, the surplus arising in a period falling partly outside the relevant five year period should be assumed to accrue uniformly over the period in question for the purpose of estimating the profits arising within the five year period. When there has been a transfer of a block of business into the *firm* (or out of the *firm*) during the period, surplus arising from the transferred block should be included (or excluded) for the full five year period. Where a portion of a block of business is transferred, the surplus included (or excluded) should be a reasonable estimate of the surplus arising from the portion transferred.

29 Where a *firm* has been carrying on *long-term insurance business* for less than 5 years, the total profits made during the past five years should be taken to be the aggregate of any surpluses that have arisen during the period in which *long-term insurance business* has been carried on less any deficiencies that may have arisen during that period. The resulting total should still be divided by five to obtain the estimated annual profit.

Exceptional items

30 Substantial items of an exceptional nature should be excluded from the calculation of the estimated annual profit. Such items include profits arising from an exceptional change in the value at which assets are brought into account, where this is not reflected in a similar change in the amount of the liabilities, and profits arising from a change in the overall valuation approach between one year and another. An exceptional loss (i.e. a reduction of an exceptional nature in the surplus arising) may be excluded from the calculation only to the extent that it can be set against a profit or profits up to the amount of the loss and arising from a similar cause. It is not intended, however, that any adjustment should be made for the effect on surplus of a net strengthening of reserves for costs associated with an expansion of the business or for special capital expenditure, such as the purchase of computer systems.

Double counting

31 The inclusion of investment income arising from the assets representing the explicit components of *capital resources* (as part of the estimated annual profit for the purpose of determining the future profits *implicit item*) would result in double-counting. If those assets were required to meet the effects of adverse developments, this would automatically result in the cessation of the contribution to profits from the associated investment income. It would clearly not be appropriate for the appropriate regulator to grant a *capital resources* which would enable a *firm* to meet the *capital resources requirement* on the basis of counting both the capital values of the assets and the value of the income flow which they can be expected to generate.

32 The definition of the estimated annual profit as the surplus arising in the *long-term insurance fund* ensures that any contribution to surplus arising from transfers from the profit and loss account, including investment income on shareholders' assets, is not included in the estimated annual profit. Thus double-counting should not arise in respect of shareholders' assets. Double-counting may arise, however, in respect of the investment income from the assets representing the explicit components of *capital resources* carried within the *long-term insurance fund* (e.g. surplus carried

forward or investment reserves), but the amount of such investment income is not separately identified in the *return*.

- 33 Where there is reason to suspect that the elimination of any such double-counting would reduce a *firm's capital resources* to close to or below the required level, or would otherwise be significant, the appropriate regulator will request this information with a view to taking account of this factor in determining the amount of the *implicit item*. Additional information concerning investment income should be furnished with an application for a *waiver*, if a *firm* believes that any double-counting would fall into one of the categories mentioned above.

Average period to run

- 34 The average number of years remaining to run on *policies* should be calculated on the basis of the weighted average of the periods for individual *contracts of insurance*, using as weights the actuarial present value of the benefits payable under the contracts. A separate weighted average should be calculated for each of the various categories of contract and the results combined to obtain the weighted average for the portfolio as a whole. Approximate methods of calculation, which the *firm* considers will give results similar to the full calculation, will be accepted. In particular, the appropriate regulator will normally accept the calculation of an average period to run for a specific category of contract on the basis of the average valuation factor for future benefits derived from data contained in the abstract of the valuation report in the regulatory *returns*. A *firm* will be asked to demonstrate the validity of the method adopted only where an abnormal distribution of the business in force gives grounds for doubt about its accuracy.

- 35 Calculations will normally be requested only for the main categories of *insurance business*, accounting for not less than 90% of the *mathematical reserves*, except where there are grounds for expecting that the exclusion of certain categories of *policies* under this provision might have a significant effect on the resulting average period to run. Detailed calculations will not be required where a *waiver* is sought in respect of a low multiple of the annual profits, well within the average period to run for the *firm*.

- 36 Where, for a particular category of business, a method of valuation is used which does not involve the calculation of the value of future benefits and which is significant for the *firm* in question, the calculation of the average period to run should be based on estimates of the value of future benefits.

Premature termination of contracts

- 37 Allowance should be made for the premature termination of *contracts of insurance*, based on the actual experience of the *firm* over the last five years, or other appropriate period, and taking into account specific features of contracts such as options which can be expected to lead to premature termination (e.g. guaranteed surrender values on income bonds written as *long-term insurance contracts* and option dates on flexible whole-life contracts). The adjustment should be made separately for each of the main categories of business. The use of industry-wide rates of termination will be acceptable where a *firm* is satisfied that this will result in sufficient allowance being made having regard to the *firm's* own experience. Methods of calculation that involve a degree of approximation will be permitted.

- 38 For certain types of contract, where the period left to run is most naturally defined as the term to a fixed maturity or expiry date, the allowance for premature termination should also take into account terminations resulting from death.

Overall limit

- 39 The overall average period left to run calculated as described above should be limited to a maximum of six years under article 27(4) of the *Consolidated Life Directive* (or a maximum of ten years during the transitional period referred to in paragraph 5) before applying it to the estimated annual profit in order to determine the maximum value of the future profits *implicit item*.

Definition of period to run

- 40 The definition of the period to run and the basis of the allowance for early termination should clearly be considered together. For certain types of contracts (e.g. pension contracts with a range of retirement ages or other options), there is inherent uncertainty about the likely term to run. In such circumstances any estimate for determining the amount of the future profits *implicit item*

for which a *waiver* is sought should be based on prudent assumptions tending, if anything, to underestimate the average period to run.

Zillmerising

41 The appropriate regulator does not normally expect to grant *waivers* permitting *implicit items* due to *zillmerisation* except in very exceptional circumstances. *Zillmerisation* is an allowance for acquisition costs that are expected, under prudent assumptions, to be recoverable from future *premiums*. *Firms* can make a direct adjustment to their reserves for *zillmerisation*, subject to the requirements on *mathematical reserves* set out in INSPRU 1.3.43 R, and this is the usual approach. However, where no such adjustment has been made, or where the maximum adjustment has not been made in the *mathematical reserves*, the appropriate regulator will consider an application for an *implicit item*, if the amount is consistent with the amount that would have been allowed as an adjustment to *mathematical reserves* under INSPRU 1.3.43 R.

Hidden reserves

42 The appropriate regulator will grant *waivers* permitting *implicit items* due to hidden reserves only in very exceptional circumstances. These items relate to hidden reserves resulting from the underestimation of assets. The *rules* for the valuation of assets and liabilities (see GENPRU 1.3) which apply to assets and liabilities other than *mathematical reserves* are based on the valuation used by the *firm* for the purposes of its external accounts, with adjustments for regulatory prudence such as concentration limits for large holdings, and would not normally be expected to contain hidden reserves.

Case studies on "unduly burdensome"

43 Some examples of situations where the existing *rules* might be considered to be unduly burdensome are given below:

- A *firm* writes *with-profits business*. The *firm's* investment policy is affected by its published financial position. Application of the *rules* without an *implicit item* would result in the *firm* adopting a lower equity backing ratio. It may be possible to demonstrate that, in the circumstances, it would be unduly burdensome to require the *firm* to incur costs (which might prejudice *policyholders*) resulting from the lower equity backing ratio, rather than take allowance for an *implicit item*.
- A *firm* has purchased a block of in-force business, on which the future profits may be reasonably estimated. However, this asset is given no value under the *rules*. It may be possible to demonstrate that it is unduly burdensome for the *firm* to recognise the cost of acquiring the assets whilst giving no value to the asset acquired.
- A *firm* has a block of in-force business, on which the future profits may be reasonably estimated. Application of the *rules* without an *implicit item* would result in a need to obtain additional capital. It may be possible to demonstrate that it is unduly burdensome, having regard to the particular circumstances of the *firm*, to require it to incur the costs involved in the injection of further capital rather than take allowance for an *implicit item*.
- A *firm* has purchased matching assets for guaranteed annuity liabilities. The operation of the asset and liability valuation *rules* leads to statutory losses in certain circumstances in spite of good matching of assets and liabilities on a realistic basis of assessment. It may be possible to demonstrate that it is unduly burdensome to require the *firm* to incur the costs involved in the injection of further capital rather than take allowance for an *implicit item*.

Conditions which will typically be applied to implicit items waivers

Limits

44 Where *implicit items waivers* are granted, the value cannot exceed (and will normally be less than) the monetary limits described in paragraph 27, except that during the transitional period the pre-Solvency I limits will apply. In addition, time limits will apply and *waivers* will normally only last for 12 months.

Publicity

45

The appropriate regulator will publish the *waiver* (see SUP 8.6 and SUP 8.7). Public disclosure is standard practice unless the appropriate regulator is satisfied that publication is inappropriate or unnecessary (see section 138A of the *Act*). Any request that a direction not be published should be made to the appropriate regulator in writing with grounds in support, as set out in SUP 8.6. Disclosure of a *waiver* will normally be required in the *firm's* annual *returns*.

2

Chapter 3

Cross sector groups

3.1 Application

3.1.1

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- (1) ■ GENPRU 3.1 applies to every *firm* that is a member of a *financial conglomerate* other than:
 - (a) an *incoming EEA firm*;
 - (b) an *incoming Treaty firm*;
 - (c) a *UCITS qualifier*; and
 - (d) an *ICVC*.
- (2) ■ GENPRU 3.1 does not apply to a *firm* with respect to a *financial conglomerate* of which it is a member if the interest of the *financial conglomerate* in that *firm* is no more than a *participation*.
- (3) ■ GENPRU 3.1.25 R (Capital adequacy requirements: high level requirement), and ■ GENPRU 3.1.35 R (Risk concentration and intra group transactions: the main rule) do not apply with respect to a *third-country financial conglomerate*.

Purpose

3.1.2

FCA PRA

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■ GENPRU 3.1 implements the *Financial Groups Directive*. However, material on the following topics is to be found elsewhere in the *Handbook* as follows:

- (1) further material on *third-country financial conglomerates* can be found in ■ GENPRU 3.2;
- (2) ■ SUP 15.9 contains notification *rules* for members of *financial conglomerates*;
- (3) material on reporting obligations can be found in ■ SUP 16.12.32 R and ■ SUP 16.12.33 R ; and
- (4) material on systems and controls in *financial conglomerates* can be found in ■ SYSC 12.

3.1.3

FCA PRA

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Introduction: identifying a financial conglomerate

- (1) In general the process in (2) to (8) applies for identifying *financial conglomerates*.
- (2) *Competent authorities* that have authorised *regulated entities* should try to identify any *consolidation group* that is a *financial conglomerate*. If a *competent authority* is of the opinion that a *regulated entity* authorised by that *competent authority* is a member of a *consolidation group* which may be a *financial conglomerate* it should communicate its view to the other *competent authorities* concerned.
- (3) A *competent authority* may start (as described in (2)) the process of deciding whether a group is a *financial conglomerate* even if it would not be the *coordinator*.
- (4) A member of a group may also start that process by notifying one of the *competent authorities* that have authorised group members that its group may be a *financial conglomerate*, for example by notification under ■ SUP 15.9.
- (5) If a group member gives a notification in accordance with (4), that does not automatically mean that the group should be treated as a *financial conglomerate*. The process described in (6) to (9) still applies.
- (6) The *competent authority* that would be *coordinator* will take the lead in establishing whether a group is a *financial conglomerate* once the process has been started as described in (2) and (3).
- (7) The process of establishing whether a group is a *financial conglomerate* will normally involve discussions between the *financial conglomerate* and the *competent authorities* concerned.
- (8) A *financial conglomerate* should be notified by its *coordinator* that it has been identified as a *financial conglomerate* and of the appointment of the *coordinator*. The notification should be given to the *parent undertaking* at the head of the group or, in the absence of a *parent undertaking*, the *regulated entity* with the largest balance sheet total in the *most important financial sector*. That notification does not of itself make a group into a *financial conglomerate*; whether or not a group is a *financial conglomerate* is governed by the definition of *financial conglomerate* as set out in ■ GENPRU 3.1.
- (9) ■ GENPRU 3 Annex 3 G is a questionnaire (together with its explanatory notes) that the *appropriate regulator* asks groups that may be *financial conglomerates* to fill out in order to decide whether or not they are.
- (10) If a *mixed financial holding company* is subject to equivalent provisions under ■ BIPRU 8 (Group risk consolidation) and under ■ GENPRU 3 (Cross sector groups) and the *appropriate regulator* is the *coordinator*, the *appropriate regulator* may, on application by a *firm* and after consulting other *competent authorities* responsible for the supervision of subsidiaries, disapply such provisions of ■ BIPRU 8 with regard to the *mixed financial holding company* and apply only the relevant provisions of ■ GENPRU 3 to the *mixed financial holding company*.

3.1.4

FCA PRA

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Introduction: The role of other competent authorities

A lead supervisor (called the *coordinator*) is appointed for each *financial conglomerate*. Article 10 of the *Financial Groups Directive* describes the criteria for deciding which *competent authority* is appointed as *coordinator*. Article 11 of the *Financial Groups Directive* sets out the tasks of the *coordinator*.

3.1.5

FCA PRA

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Definition of financial conglomerate: basic definition

A *financial conglomerate* means a *consolidation group* that is identified as a *financial conglomerate* in accordance with the decision tree in

■ GENPRU 3 Annex 4 R.

3.1.6

FCA PRA

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Definition of financial conglomerate: sub-groups

A *consolidation group* is not prevented from being a *financial conglomerate* because it is part of a wider:

- (1) *consolidation group*; or
- (2) *financial conglomerate*; or
- (3) group of persons linked in some other way.

3.1.7

FCA PRA

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Definition of financial conglomerate: the financial sectors: general

For the purpose of the definition of *financial conglomerate*, there are two *financial sectors* as follows:

- (1) the *banking sector* and the *investment services sector*, taken together; and
- (2) the *insurance sector*.

3.1.8

FCA PRA

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- (1) This *rule* applies for the purpose of the definition of *financial conglomerate* and the *financial conglomerate definition decision tree*.
- (2) Any *mixed financial holding company* is considered to be outside the *overall financial sector* for the purpose of the tests set out in the boxes titled Threshold Test 1, Threshold Test 2 and Threshold Test 3 in the *financial conglomerate definition decision tree*.
- (3) Determining whether the tests set out in the boxes titled Threshold Test 2 and Threshold Test 3 in the *financial conglomerate definition decision tree* are passed is based on considering the consolidated and/or aggregated activities of the members of the *consolidation group* within the *insurance sector* and the consolidated and/or aggregated activities of the members of the *consolidation group* within the *banking sector* and the *investment services sector*.

3.1.9

FCA PRA

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Definition of financial conglomerate: adjustment of the percentages

Once a *financial conglomerate* has become a *financial conglomerate* and subject to supervision in accordance with the *Financial Groups Directive*, the figures in the *financial conglomerate definition decision tree* are altered as follows:

- (1) the figure of 40% in the box titled Threshold Test 1 is replaced by 35%;
- (2) the figure of 10% in the box titled Threshold Test 2 is replaced by 8%; and
- (3) the figure of six billion Euro in the box titled Threshold Test 3 is replaced by five billion Euro.

3.1.10

FCA PRA

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The alteration in ■ GENPRU 3.1.9 R only applies to a *financial conglomerate* during the period that:

- (1) begins when the *financial conglomerate* would otherwise have stopped being a *financial conglomerate* because it does not meet one of the unaltered thresholds referred to in ■ GENPRU 3.1.9 R; and
- (2) covers the three years following that date.

Definition of financial conglomerate: balance sheet totals

3.1.11

FCA PRA

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The calculations referred to in the *financial conglomerate definition decision tree* regarding the balance sheet must be made on the basis of the aggregated balance sheet total of the members of the *consolidation group*, according to their annual accounts. For the purposes of this calculation, *undertakings* in which a *participation* is held must be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the *consolidation group*. However, where consolidated accounts are available, they must be used instead of aggregated accounts.

Definition of financial conglomerate: solvency requirement

3.1.12

FCA PRA

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The solvency and capital adequacy requirements referred to in the *financial conglomerate definition decision tree* must be calculated in accordance with the provisions of the relevant *sectoral rules*.

Definition of financial conglomerate: discretionary changes to the definitionPAGE
5

3.1.13

FCA PRA

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Articles 3(3) to 3(6), Article 5(4) and Article 6(5) of the *Financial Groups Directive* allow *competent authorities*, on a case by case basis, to:

- (1) change the definition of *financial conglomerate* and the obligations applying with respect to a *financial conglomerate* (which would include, where the *appropriate regulator* would be the *coordinator* under ■ GENPRU 3.1.3 G (6), permitting *firms* to apply, on an annual basis and subject to publication and

notification to the *relevant competent authorities*, for a group of which it is a member not to be regarded as a *financial conglomerate* on the basis of Article 3(3) of the *Financial Groups Directive* (for a group that, in terms of the tests in ■ GENPRU 3 Annex 4 R, does not meet Threshold Test 2 but meets Threshold Test 3) or Article 3(3a) of the *Financial Groups Directive* (for a group that, in terms of the tests in ■ GENPRU 3 Annex 4 R, meets Threshold Test 2 but not Threshold Test 3);

- (2) apply the scheme in the *Financial Groups Directive* to *EEA regulated entities* in specified kinds of group structures that do not come within the definition of *financial conglomerate*; and
- (3) exclude a particular entity in the scope of capital adequacy requirements that apply with respect to a *financial conglomerate*.

Capital adequacy requirements: introduction

3.1.14 G
FCA PRA

The capital adequacy provisions of ■ GENPRU 3.1 are designed to be applied to EEA-based *financial conglomerates*.

3.1.15 G
FCA PRA

■ GENPRU 3.1.25 R is a high level capital adequacy *rule*. It applies whether or not the *appropriate regulator* is the *coordinator* of the *financial conglomerate* concerned.

3.1.16 G
FCA PRA

■ GENPRU 3.1.26 R to ■ GENPRU 3.1.31 R and ■ GENPRU 3 Annex 1 R implement the detailed capital adequacy requirements of the *Financial Groups Directive*. They only deal with a *financial conglomerate* for which the *appropriate regulator* is the *coordinator*. If another *competent authority* is *coordinator* of a *financial conglomerate*, those *rules* do not apply with respect to that *financial conglomerate* and instead that *coordinator* will be responsible for implementing those detailed requirements.

3.1.17 G
FCA PRA

Annex I of the *Financial Groups Directive* lays down three methods for calculating capital adequacy at the level of a *financial conglomerate*. Those three methods are implemented as follows:

- (1) Method 1 calculates capital adequacy using accounting consolidation. It is implemented by ■ GENPRU 3.1.29 R to ■ GENPRU 3.1.31 R and Part 1 of ■ GENPRU 3 Annex 1 R.
- (2) Method 2 calculates capital adequacy using a deduction and aggregation approach. It is implemented by ■ GENPRU 3.1.29 R to ■ GENPRU 3.1.31 R and Part 2 of ■ GENPRU 3 Annex 1 R.
- (3) [deleted]
- (4) Method 3 consists of a combination of Methods 1 and 2 from Annex I of the *Financial Groups Directive* and would be implemented by means of a *requirement*.

3.1.18 G
FCA PRA

[deleted]

3.1.19 FCA PRA G Paragraph 5.7 of ■ GENPRU 3 Annex 1 R (Capital adequacy calculations for financial conglomerates) deals with a case in which there are no capital ties between entities in a *financial conglomerate*. In particular, the *appropriate regulator* , after consultation with the other *relevant competent authorities* and in accordance with Annex I of the *Financial Groups Directive*, will determine which proportional share of a solvency deficit in such an entity will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

3.1.20 FCA PRA G (1) [deleted]
(2) [deleted]

3.1.21 FCA PRA G The Annex I method to be applied may be decided by the *coordinator* after consultation with the *relevant competent authorities* and the *financial conglomerate* itself. Where the *appropriate regulator* acts as *coordinator*, the *financial conglomerate* itself may choose which of Method 1 or Method 2 from Annex I it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a particular method.

3.1.22 FCA PRA G [deleted]

3.1.23 FCA PRA G [deleted]

3.1.24 FCA PRA G [deleted]

Capital adequacy requirements: high level requirement

3.1.25 FCA PRA R (1) **A *firm* that is a member of a *financial conglomerate* must at all times have capital resources of such an amount and type that results in the capital resources of the *financial conglomerate* taken as a whole being adequate.**

(2) **This *rule* does not apply with respect to any *financial conglomerate* until notification has been made that it has been identified as a *financial conglomerate* as contemplated by Article 4(2) of the *Financial Groups Directive*.**

3.1.26 FCA PRA R [deleted]

3.1.27 FCA PRA R [deleted]

3.1.28 FCA PRA R (1) [deleted]
(2) [deleted]

Capital adequacy requirements: application of Method 1 or 2 from Annex I of the Financial Groups Directive

3.1.29 FCA PRA R If , with respect to a *firm* and a *financial conglomerate* of which it is a member, this *rule* applies under ■ GENPRU 3.1.29A R to the *firm* with respect

to that *financial conglomerate* as described in ■ GENPRU 3.1.30 R, the *firm* must at all times have capital resources of an amount and type that ensures that the *conglomerate capital resources* of that *financial conglomerate* at all times equal or exceed its *conglomerate capital resources requirement*.

3.1.29A

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■ GENPRU 3.1.29 R applies to a *firm* with respect to the *financial conglomerate* of which it is a member if notification has been made in accordance with regulation 2 of the *Financial Groups Directive Regulations* that the *financial conglomerate* is a *financial conglomerate* and that the *appropriate regulator* is *coordinator* of that *financial conglomerate*.

Capital adequacy requirements: use of requirement to apply Annex I of the Financial Groups Directive

3.1.30

FCA PRA

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If ■ GENPRU 3.1.29 R (application of Method 1 or 2 from Annex I of the *Financial Groups Directive*) applies to a *firm* with respect to the *financial conglomerate* of which it is a member, then with respect to the *firm* and the *financial conglomerate*:

- (1) the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of ■ GENPRU 3 Annex 1 R the *firm* has indicated to the *appropriate regulator* it will apply, unless the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of ■ GENPRU 3 Annex 1 R, in which case ■ GENPRU 3.1.31 R will apply; and
- (2) the *firm* must indicate to the *appropriate regulator* in advance which Part of ■ GENPRU 3 Annex 1 R the *firm* intends to apply.

3.1.31

FCA PRA

R

If ■ GENPRU 3.1.29 R (application of Method 1 or 2 from Annex I of the *Financial Groups Directive*) applies to a *firm* with respect to a *financial conglomerate* of which it is a member, and the *firm* is subject to a *requirement* obliging the *firm* to apply a specific part of ■ GENPRU 3 Annex 1 R, the definitions of *conglomerate capital resources* and *conglomerate capital resources requirement* that apply for the purposes of that *rule* are the ones from whichever of Part 1 or Part 2 of ■ GENPRU 3 Annex 1 R is specified in the *requirement*.

Risk concentration and intra-group transactions: introduction

3.1.32

FCA PRA

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■ GENPRU 3.1.35 R implements Article 7(4) and Article 8(4) of the *Financial Groups Directive*, which provide that where a *financial conglomerate* is headed by a *mixed financial holding company*, the *sectoral rules* regarding *risk concentration* and *intra-group transactions* of the *most important financial sector* in the *financial conglomerate*, if any, shall apply to that sector as a whole, including the *mixed financial holding company*.

3.1.33

FCA PRA

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Articles 7(3) (Risk concentration) and 8(3) (Intra-group transactions) and Annex II (Technical application of the provisions on intra-group transactions and risk concentration) of the *Financial Groups Directive* say that Member States may apply at the level of the *financial conglomerate* the provisions of the *sectoral rules* on *risk concentrations* and *intra-group transactions*. ■ GENPRU 3.1 does not take up that option, although the *appropriate regulator* may impose such obligations on a case by case basis.

Risk concentration and intra-group transactions: application

3.1.34

FCA PRA

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■ GENPRU 3.1.35 R applies to a *firm* with respect to a *financial conglomerate* of which it is a member if:

- (1) the condition in Articles 7(4) and 8(4) of the *Financial Groups Directive* is satisfied (the *financial conglomerate* is headed by a *mixed financial holding company*); and
- (2) that *financial conglomerate* is a *UK regulated EEA financial conglomerate*.

Risk concentration and intra group transactions: the main rule

3.1.35

FCA PRA

R

A *firm* must ensure that the *sectoral rules* regarding *risk concentration* and *intra-group transactions* of the *most important financial sector* in the *financial conglomerate* referred to in ■ GENPRU 3.1.34 R are complied with with respect to that *financial sector* as a whole, including the *mixed financial holding company*. The *appropriate regulator's sectoral rules* for these purposes are those identified in the table in ■ GENPRU 3.1.36 R.

Risk concentration and intra-group transactions: Table of applicable sectoral rules

3.1.36

FCA PRA

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Table: application of sectoral rules

This table belongs to ■ GENPRU 3.1.35 R

The most important financial sector	Applicable sectoral rules	
	Risk concentration	Intra-group transactions
<i>Banking and investment services sector</i>	BIPRU 8.9A (Consolidated large exposure requirements) including BIPRU TP as it applies to a UK consolidation group.	BIPRU 10 (Large exposures requirements) including BIPRU TP as it applies on a solo basis and relates to BIPRU 10.
<i>Insurance sector</i>	None	Rule 9.39 of IPRU(INS)
Note	Any waiver granted to a member of the <i>financial conglomerate</i> , on a solo or consolidated basis, shall	

The most important financial sector	Applicable sectoral rules	
	Risk concentration	Intra-group transactions
	not apply in respect of the <i>financial conglomerate</i> for the purposes of GENPRU 3.1.36 R.	

3.1.37 R
FCA PRA

- (1) Where the *rules* for the *banking and investment services sector* are being applied, a *mixed financial holding company* must be treated as being a *financial holding company*.
- (2) Where the *rules* for the *insurance sector* are being applied, a *mixed financial holding company* must be treated as being an *insurance holding company*.

3.1.38 R
FCA PRA

- (1) This *rule* applies for the purposes of the definitions of:
 - (a) a *core concentration risk group counterparty*; and
 - (b) a *non-core concentration risk group counterparty*;
 as they apply for the purposes of the *rules* for the *banking and investment services sector* as applied by ■ GENPRU 3.1.36 R.
- (2) For the purposes of ■ BIPRU 10.9A.4 R (1) and ■ BIPRU 10.9A.4 R (2) (as they apply to the definitions in ■ GENPRU 3.1.38R (1)), the conditions are also satisfied if the *counterparty* and the *firm* are included within the scope of consolidated supervision on a full basis with respect to the same *financial conglomerate* under ■ GENPRU 3.1 or the relevant implementation measures in another *EEA State* for the *Financial Groups Directive*.
- (3) [deleted]
- (4) [deleted]

The financial sectors: asset management companies and alternative investment fund managers

3.1.39 R
FCA PRA

- (1) In accordance with Articles 30 and 30a of the *Financial Groups Directive* (Asset management companies and Alternative investment fund managers), this *rule* deals with the inclusion of an *asset management company* or an *alternative investment fund manager* that is a member of a *financial conglomerate* in the scope of regulation of *financial conglomerates*.
- (2) An *asset management company* or an *alternative investment fund manager* is in the *overall financial sector* and is a *regulated entity* for the purpose of:

- (a) ■ GENPRU 3.1.29 R to ■ GENPRU 3.1.36 R;
 - (b) ■ GENPRU 3 Annex 1 R (Capital adequacy calculations for financial conglomerates) and ■ GENPRU 3 Annex 2 R (Prudential rules for third country groups); and
 - (c) any other provision of the *Handbook* relating to the supervision of *financial conglomerates*.
- (3) In the case of a *financial conglomerate* for which the *appropriate regulator* is the *coordinator*, all *asset management companies* and all *alternative investment fund managers* must be allocated to one *financial sector* to which they belong for the purposes in (2), being either the *investment services sector* or the *insurance sector*. But if that choice has not been made in accordance with (4) and notified to the *appropriate regulator* in accordance with (4)(d), an *asset management company* or an *alternative investment fund manager* must be allocated to the smallest *financial sector*.
- (4) The choice in (3):
- (a) must be made by the *undertaking* in the *financial conglomerate* holding the position referred to in Article 4(2) of the *Financial Groups Directive* (group member to whom notice must be given that the group has been found to be a *financial conglomerate*);
 - (b) applies to all *asset management companies* and all *alternative investment fund managers* that are members of the *financial conglomerate* from time to time;
 - (c) cannot be changed; and
 - (d) must be notified to the *appropriate regulator* as soon as reasonably practicable after the notification in (4)(a).
- (5) This *rule* applies even if:
- (a) a *UCITS management company* is a *BIPRU investment firm*;
or
 - (b) an *asset management company* is an *investment firm*.

3.2 Third-country groups

Application

3.2.1

FCA PRA

R

■ GENPRU 3.2 applies to every *firm* that is a member of a *third-country group*. But it does not apply to:

- (1) an *incoming EEA firm*; or
- (2) an *incoming Treaty firm*; or
- (3) a *UCITS qualifier*; or
- (4) an *ICVC*.

Purpose

3.2.2

FCA PRA

G

■ GENPRU 3.2 implements in part Article 18 of the *Financial Groups Directive* and Article 143 of the *Banking Consolidation Directive*.

Equivalence

3.2.3

FCA PRA

G

The first question that must be asked about a *third-country financial group* is whether the *EEA regulated entities* in that *third-country group* are subject to supervision by a *third-country competent authority*, which is equivalent to that provided for by the *Financial Groups Directive* (in the case of a *financial conglomerate*) or the *EEA prudential sectoral legislation* for the *banking sector* or the *investment services sector* (in the case of a *banking and investment group*). Article 18(1) of the *Financial Groups Directive* sets out the process for establishing equivalence with respect to *third-country financial conglomerates* and Article 143 (1) and (2) of the *Banking Consolidation Directive* does so with respect to *third-country banking and investment groups*.

Other methods: General

3.2.4

FCA PRA

G

If the supervision of a *third-country group* by a *third-country competent authority* does not meet the equivalence test referred to in ■ GENPRU 3.2.3 G, *competent authorities* may apply other methods that ensure appropriate supervision of the *EEA regulated entities* in that *third-country group* in accordance with the aims of supplementary supervision under the *Financial Groups Directive* or consolidated supervision under the applicable *EEA prudential sectoral legislation*.

Supervision by analogy: introduction

3.2.5

FCA PRA

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If the supervision of a *third-country group* by a *third-country competent authority* does not meet the equivalence test referred to in ■ GENPRU 3.2.3 G, a *competent authority* may, rather than take the measures described in ■ GENPRU 3.2.4 G, apply, by analogy, the provisions concerning supplementary supervision under the *Financial Groups Directive* or, as applicable, consolidated supervision under the applicable *EEA prudential sectoral legislation*, to the *EEA regulated entities* in the *banking sector*, *investment services sector* and (in the case of a *financial conglomerate*) *insurance sector*.

3.2.6

FCA PRA

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The *appropriate regulator* believes that it will only be right to adopt the option in ■ GENPRU 3.2.5 G in response to very unusual group structures.

3.2.7

FCA PRA

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■ GENPRU 3.2.8 R and ■ GENPRU 3.2.9 R and ■ GENPRU 3 Annex 2 R set out *rules* to deal with the situation covered in ■ GENPRU 3.2.5 G. Those *rules* do not apply automatically. Instead, they can only be applied with respect to a particular *third-country group* through the *Part 4A permission* of a *firm* in that *third-country group*. Broadly speaking the procedure described in ■ GENPRU 3.1.22 G also applies to this process.

Supervision by analogy: rules for third-country conglomerates

3.2.8

FCA PRA

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If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country financial conglomerate* of which it is a member, it must comply, with respect to that *third-country financial conglomerate*, with the *rules* in Part 1 of ■ GENPRU 3 Annex 2 R, as adjusted by Part 3 of that annex.

Supervision by analogy: rules for third-country banking and investment groups

3.2.9

FCA PRA

R

If the *Part 4A permission* of a *firm* contains a *requirement* obliging it to comply with this *rule* with respect to a *third-country banking and investment group* of which it is a member, it must comply, with respect to that *third-country banking and investment group*, with the *rules* in Part 2 of ■ GENPRU 3 Annex 2 R, as adjusted by Part 3 of that annex.

Capital adequacy calculations for financial conglomerates (GENPRU 3.1.29R)

FCA **PRA**

1 Table: PART 1: Method of Annex I of the Financial Groups Directive (Accounting Consolidation Method)

Capital resources	1.1	The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are the capital of that <i>financial conglomerate</i> , calculated on an accounting consolidation basis, that qualifies under paragraph 1.2.
	1.2	The elements of capital that qualify for the purposes of paragraph 1.1 are those that qualify in accordance with the <i>applicable sectoral rules</i> , in accordance with the following: <ol style="list-style-type: none"> (1) the <i>conglomerate capital resources requirement</i> is divided up in accordance with the contribution of each <i>financial sector</i> to it; and (2) the portion of the <i>conglomerate capital resources requirement</i> attributable to a particular <i>financial sector</i> must be met by capital resources that are eligible in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i>.
	1.3	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the capital adequacy and solvency requirements for each <i>financial sector</i> calculated in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .
Consolidation	1.4	The information required for the purpose of establishing whether or not a <i>firm</i> is complying with GENPRU 3.1.29 R (insofar as the definitions in this Part are applied for the purpose of that <i>rule</i>) must be based on the consolidated accounts of the <i>financial conglomerate</i> , together with such other sources of information as appropriate.
	1.5	The <i>applicable sectoral rules</i> that are applied under this Part are the <i>applicable sectoral consolidation rules</i> . Other <i>applicable sectoral rules</i> must be applied if required.
Capital resources re-quirement	1.3	The <i>conglomerate capital resources requirement</i> of a <i>financial conglomerate</i> calculated in accordance with this Part is equal to the sum of the capital adequacy and solvency requirements for each <i>financial sector</i> calculated in accordance with the <i>applicable sectoral rules</i> for that <i>financial sector</i> .

PAGE
1

2 Table: PART 2: Method 2 of Annex I of the Financial Groups Directive (Deduction and aggregation Method)

Capital resources	2.1	The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are equal to the sum of the following amounts (so far as they qualify under paragraph 2.3) for each member of the <i>overall financial sector</i> :
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- (1) (for the *person* at the head of the *financial conglomerate*) its *solo capital resources*;
- (2) (for any other member):
 - (a) its *solo capital resources*; less
 - (b) the book value of the *financial conglomerate's* investment in that member , to the extent not already deducted in the calculation of the *solo capital resources* for:
 - (i) the *person* at the head of the *financial conglomerate*; or
 - (ii) any other member.

2.2 The deduction in paragraph 2.1(2) must be carried out separately for each type of capital represented by the *financial conglomerate's* investment in the member concerned.

2.3 The elements of capital that qualify for the purposes of paragraph 2.1 are those that qualify in accordance with the *applicable sectoral rules*. In particular, the portion of the *conglomerate capital resources requirement* attributable to a particular member of a *financial sector* must be met by capital resources that would be eligible under the *sectoral rules* that apply to the calculation of its *solo capital resources*.

Capital resources requirement 2.4 The *conglomerate capital resources requirement* of a *financial conglomerate* calculated in accordance with this Part is equal to the sum of the *solo capital resources requirement* for each member of the *financial conglomerate* that is in the *overall financial sector*.

Partial inclusion 2.5 The capital resources and capital resources requirements of a member of the *financial conglomerate* in the *overall financial sector* must be included proportionally. If however the member is a *subsidiary undertaking* and it has a *solvency deficit*, they must be included in full.

Accounts 2.6 The information required for the purpose of establishing whether or not a *firm* is complying with **GENPRU 3.1.29 R** (insofar as the definitions in this Part are applied for the purpose of that *rule*) must be based on the individual accounts of members of the *financial conglomerate*, together with such other sources of information as appropriate.

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6 Table

Types of financial con- 4.3 (1) This paragraph sets out how to determine the category of *financial conglomerate* .
glomerate

(2) If there is an *EEA regulated entity* at the head of the *financial conglomerate*, then:

(a) if that entity is in the *banking sector* or the *investment services sector*, the *financial conglomerate* is a *banking and investment services conglomerate*; or

(b) if that entity is in the *insurance sector*, the *financial conglomerate* is an *insurance conglomerate*.

(3) If (2) does not apply and the *most important financial sector* is the *banking and investment services sector*, it is a *banking and investment services conglomerate*.

(4) If (2) and (3) does not apply, it is an *insurance conglomerate*.

7 Table

A mixed financial holding company	4.4	<p>A <i>mixed financial holding company</i> must be treated in the same way as:</p> <p>(1) a <i>financial holding company</i> (if the rules in BIPRU 8) are applied; or</p> <p>(2) an <i>insurance holding company</i> (if the rules in INSPRU 6.1 are applied).</p>
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8 Table: PART 5: Principles applicable to all methods

Transfer-ability of capital	5.1	<p>Capital may not be included in:</p> <p>(1) a <i>firm's conglomerate capital resources</i> under GENPRU 3.1.29 R; or</p> <p>(2) in the capital resources of the <i>financial conglomerate</i> for the purposes of GENPRU 3.1.26 R;</p> <p>if the effectiveness of the transferability and availability of the capital across the different members of the <i>financial conglomerate</i> is insufficient, given the objectives (as referred to in the third unnumbered sub-paragraph of paragraph 2(ii) of Annex I of the <i>Financial Groups Directive</i> (Technical principles)) of the capital adequacy rules for <i>financial conglomerates</i>.</p>
Double counting	5.2	<p>Capital must not be included in:</p> <p>(1) a <i>firm's conglomerate capital resources</i> under GENPRU 3.1.29 R; or</p> <p>(2) the capital resources of the <i>financial conglomerate</i> for the purposes of GENPRU 3.1.26 R;</p> <p>if:</p>

Cross sectoral capital 5.3

- (3) it would involve double counting or multiple use of the same capital; or
- (4) it results from any inappropriate intra-group creation of capital.

In accordance with the second sub-paragraph of paragraph 2(ii) of Section I of Annex I of the *Financial Groups Directive* (Other technical principles and insofar as not already required in Parts 1-3):

- (1) the solvency requirements for each different *financial sector* represented in a *financial conglomerate* required by GENPRU 3.1.26 R or, as the case may be, GENPRU 3.1.29 R must be covered by own funds elements in accordance with the corresponding *applicable sectoral rules*; and
- (2) if there is a deficit of own funds at the *financial conglomerate* level, only cross sectoral capital (as referred to in that sub-paragraph) shall qualify for verification of compliance with the additional solvency requirement required by GENPRU 3.1.26 R or, as the case may be, GENPRU 3.1.29 R.

Application of sectoral rules: General 5.4

The following adjustments apply to the *applicable sectoral rules* as they are applied by the *rules* in this annex.

- (1) The scope of those *rules* will be extended to cover any *mixed financial holding company* and each other member of the *overall financial sector*.
- (2) If any of those *rules* would otherwise not apply to a situation in which they are applied by GENPRU 3 Annex 1 R, those *rules* nevertheless still apply (and in particular, any of those *rules* that would otherwise have the effect of disapplying consolidated supervision (or, in the case of the *insurance sector*, supplementary supervision) do not apply).
- (3) (If it would not otherwise have been included) an *ancillary insurance services undertaking* is included in the *insurance sector*.
- (4) The scope of those *rules* is amended so as to remove restrictions relating to where members of the *financial conglomerate* are incorporated or have their head office, so that the scope covers every member of the *financial conglomerate* that would have been included in the scope of those *rules* if those members had their head offices in an *EEA State*.
- (5) (For the purposes of Parts 1 to 3) those *rules* must be adjusted, if necessary, when calculating the capital resources, capital resources requirements or solvency requirements for a particular *financial sector* to exclude those for a member of another *financial sector*.
- (6) Any *waiver* granted to a member of the *financial conglomerate* under those *rules* does not apply for the purposes of this annex.

**Application of sectoral 5.5
rules: Insurance sector**

(1) This *rule* applies an adjustment to the *applicable sectoral rules* for the *insurance sector* as they are applied by the *rules* in this annex.

(2) To the extent that:

- (a) those *rules* merely require a report on whether or not a specified level of solvency is met (a soft limit); or
- (b) the requirements in those *rules* concern having certain net assets of an amount at or above certain levels;

those requirements are restated so as to include an obligation at all times actually to have capital at or above that level (a hard limit), thereby turning a soft limit into a hard limit and turning a limit drafted by reference to assets and liabilities into a requirement that the level of capital be maintained at or above a specified level. If those *rules* apply both a hard and a soft limit, and the level of the soft limit is higher, that soft limit is applied under this annex, but translated into a hard limit in accordance with the earlier provisions of this *rule*.

**Application of sectoral 5.6
rules: Banking sector
and investment ser-
vices sector**

The following adjustments apply to the *applicable sectoral rules* for the *banking sector* and the *investment services sector* as they are applied by the *rules* in this annex.

(1) References in those *rules* to *non-EEA sub-groups* do not apply.

(2) (For the purposes of Parts 1 and 2), where those *rules* require a group to be treated as if it were a single *undertaking*, those *rules* apply to the *banking sector* and *investment services sector* taken together.

(3) Any *investment firm consolidation waivers* granted to members of the *financial conglomerate* do not apply.

(4) (For the purposes of Part 3), without prejudice to the application of requirements in BIPRU 8 preventing the use of an *advanced prudential calculation approach* on a consolidated basis, any *advanced prudential calculation approach permission* that applies for the purpose of BIPRU 8 does not apply.

(5) (For the purposes of Part 3), BIPRU 8.5.9 R and BIPRU 8.5.10 R do not apply.

(6) (For the purposes of Part 3), where the *financial conglomerate* does not include a *credit institution*, the method in GENPRU 2 Annex 4 R must be used for calculating the capital resources and BIPRU 8.6.8 R does not apply.

No capital ties 5.7

(1) This *rule* deals with a *financial conglomerate* in which some of the members are not linked by capital ties at the time of the notification referred to in GENPRU 3.1.28 R (1) (Capital adequacy requirements: Application of Annex I of the Financial Groups Directive).

(2) If:

(a) GENPRU 3.1.26 R (Capital adequacy requirements: Application of Annex I of the Financial Groups Directive) would otherwise apply with respect to a *financial conglomerate* under GENPRU 3.1.28 R; and

(b) all members of that *financial conglomerate* are linked directly or indirectly with each other by capital ties except for members that collectively are of negligible interest with respect to the objectives of supplementary supervision of *regulated entities* in a *financial conglomerate* (the "peripheral members");

GENPRU 3.1.28 R continues to apply. Otherwise GENPRU 3.1.28 R does not apply with respect to a *financial conglomerate* falling into (1).

(3) If GENPRU 3.1.28 R applies with respect to a *financial conglomerate* in accordance with (2) the peripheral members must be excluded from the calculations under GENPRU 3.1.26 R.

(4) If:

(a) GENPRU 3.1.26 R applies with respect to *financial conglomerate* falling into (1) under GENPRU 3.1.27 R (2) (Use of Part 4A permission to apply Annex I of the *Financial Groups Directive*); or

(b) GENPRU 3.1.29 R (Capital adequacy requirements: Application of Methods 1, 2 or 3 from Annex I of the *Financial Groups Directive*) applies with respect to a *financial conglomerate* falling into (1);

then:

(c) the treatment of the links in (1) (including the treatment of any *solvency deficit*) is as provided for in the *requirement* referred to in GENPRU 3.1.30 R; and

(d) GENPRU 3.1.26 R or GENPRU 3.1.29 R, as the case may be, apply even if the *applicable sectoral rules* do not deal with how *undertakings* not linked by capital ties are to be dealt with for the purposes of consolidated supervision (or, in the case of the *insurance sector*, supplementary supervision).

(5) Once GENPRU 3.1.26 R applies to a *firm* with respect to a *financial conglomerate* of which it is a member under GENPRU 3.1.27 R (1) (automatic application of Method 4 from Annex I of the *Financial Groups Directive* on satisfaction of the condition in GENPRU 3.1.28 R), the disapplication of GENPRU 3.1.28 R under (2) ceases to apply with respect to that *financial conglomerate*.

9 Table: PART 6: Definitions used in this Annex

Defining the financial sectors 6.1

For the purposes of Parts 1 and 2 of this annex:

- (1) an *asset management company* is allocated in accordance with GENPRU 3.1.39 R;
- (2) an *alternative investment fund manager* is allocated in accordance with GENPRU 3.1.39 R; and
- (3) a *mixed financial holding company* must be treated as being a member of the *most important financial sector*.

Solo capital resources requirement: Banking sector and investment service sector 6.2

(1) The *solo capital resources requirement* of an *undertaking* in the *banking sector* or the *investment services sector* must be calculated in accordance with this *rule*, subject to paragraphs 6.5 and 6.6.

(2) The *solo capital resources requirement* of a *building society* is its *CRR*.

(3) The *solo capital resources requirement* of an *electronic money institution* is the capital resources requirement that applies to it under the *Electronic Money Regulations*.

(4) If there is a *credit institution* in the *financial conglomerate*, the *solo capital resources requirement* for any *undertaking* in the *banking sector* or the *investment services sector* is, subject to (2) and (3), calculated in accordance with the *rules* for calculating the *CRR* of a *bank* that is a *BIPRU firm*.

(5) If:

(a) the *financial conglomerate* does not include a *credit institution*;

(b) there is at least one *CAD investment firm* in the *financial conglomerate*; and

(c) all the *CAD investment firms* in the *financial conglomerate* are *limited licence firms* or *limited activity firms*;

the *solo capital resources requirement* for any *undertaking* in the *banking sector* or the *investment services sector* is calculated in accordance with the *rules* for calculating the *CRR* of:

(d) (if there is a *limited activity firm* in the *financial conglomerate*), a *BIPRU limited activity firm*; or

(e) (in any other case), a *BIPRU limited licence firm*.

(6) If:

(a) the *financial conglomerate* does not include a *credit institution*; and

(b) (5) does not apply;

the *solo capital resources requirement* for any *undertaking* in the *banking sector* or the *investment services sector* is calculated in accordance with the *rules* for calculating the *CRR* of a *full scope BIPRU investment firm*.

(7) Any *CRR* calculated under a *BIPRU TP* may be used for the purposes of the *solo capital resources requirement* in

Solo capital resources 6.3
requirement: applica-
tion of rules

this rule in the same way that the *CRR* can be used under *BIPRU 8*.

Solo capital resources 6.4
requirement: Insur-
ance sector

Any exemption that would otherwise apply under any *rules* applied by paragraph 6.2 do not apply for the purposes of this Annex.

(1) The *solo capital resources requirement* of an *undertaking* in the *insurance sector* must be calculated in accordance with this rule.

(2) Subject to (3), the *solo capital resources requirement* of an *undertaking* in the *insurance sector* is the capital resources requirement identified in *INSPRU 6.1.34 R (1) to (8)* as applying to that *undertaking*.

(3) *INSPRU 6.1.34 R (1)(b)* does not apply for the purposes of this annex.

Solo capital resources 6.5
requirement: EEA
firms in the banking
sector or investment
services sector

The *solo capital resources requirement* for an *EEA regulated entity* (other than a *BIPRU firm*, an *insurer* or an *EEA insurer*) that is subject to the solo capital adequacy *sectoral rules* for its *financial sector* of the *competent authority* that authorised it is equal to the amount of capital it is obliged to hold under those *sectoral rules* provided that the following conditions are satisfied:

(1) (for the purposes of the *banking sector* and the *investment services sector*) those *sectoral rules* must correspond to the *appropriate regulator's sectoral rules* identified in paragraph 6.2 as applying to that *financial sector*;

(2) the entity must be subject to those *sectoral rules* in (1); and

(3) paragraph 6.3 applies to the entity and those *sectoral rules*.

Solo capital resources 6.6
requirement: non-EEA
firms subject to equiva-
lent regimes in the
banking sector or in-
vestment services sec-
tor

The *solo capital resources requirement* for a *recognised third country credit institution* or a *recognised third country investment firm* is the amount of capital resources that it is obliged to hold under the *sectoral rules* for its *financial sector* that apply to it in the state or territory in which it has its head office provided that:

(1) there is no reason for the *firm* applying the *rules* in this annex to believe that the use of those *sectoral rules* would produce a lower figure than would be produced under paragraph 6.2; and

(2) paragraph 6.3 applies to the entity and those *sectoral rules*.

Solo capital resources 6.7
requirement: mixed fi-
nancial holding compa-
ny

The *solo capital resources requirement* of a *mixed financial holding company* is a notional capital requirement. It is the capital adequacy requirement that applies to *regulated enti-*

ties in the most important financial sector under the table in paragraph 6.10.

10 Table

Solo capital resources requirement: the insurance sector	6.8	References to capital requirements in the provisions of GENPRU 3 Annex 1 R defining <i>solo capital resources requirement</i> must be interpreted in accordance with paragraph 5.4.
Applicable sectoral consolidation rules	6.9	The <i>applicable sectoral consolidation rules</i> for a <i>financial sector</i> are the <i>appropriate regulator's sectoral rules</i> about capital adequacy and solvency on a consolidated basis that are applied in the table in paragraph 6.10.

11 Table: Paragraph 6.10: Application of sectoral consolidation rules

Financial sector	Appropriate regulator's sectoral rules
<i>Banking sector</i>	BIPRU 8 and <i>BIPRU TP</i> , as adjusted under paragraph 4.5
<i>Insurance sector</i>	INSPRU 6.1.
<i>Investment services sector</i>	BIPRU 8 and <i>BIPRU TP</i>

12 Table:

Part 5	1	This Part 6 is subject to Part 5 of this Annex.
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Prudential sourcebook for Banks, Building Societies and Investment Firms

1.3 Applications for advanced approaches and waivers

Application

1.3.1

R

FCA PRA

This section of the *Handbook* applies to every *BIPRU firm* that wishes to apply for a permission to use any of the approaches set out in

■ BIPRU 1.3.2 G.

Purpose

1.3.2

G

FCA PRA

- (1) A *firm* may apply for an *Article 129 permission* or a *waiver* in respect of:
 - (a) the *IRB approach*;
 - (b) the *advanced measurement approach*;
 - (c) the *CCR internal model method*; and
 - (d) the *VaR model approach*.
- (2) A *firm* should apply for a *waiver* if it wants to:
 - (a) apply the *CAD 1 model approach*; or
 - (b) apply the *master netting agreement internal models approach*; or
 - (c) disapply consolidated supervision under ■ BIPRU 8 for its *UK consolidation group* or *non-EEA sub-group*; or
 - (d) apply the treatment in ■ BIPRU 2.1 (Solo-consolidation waiver); or
 - (da) apply the treatment for a *core UK group* in ■ BIPRU 3.2.25 R (Zero risk-weighting for intra-group exposures) or in ■ BIPRU 10.8A (Intra-group exposures: core UK group); or
 - (e) apply the treatment for a *non-core large exposures group* in ■ BIPRU 10.9A (Intra-group exposures: non-core large exposures group); or
 - (f) apply the treatment in ■ BIPRU 10.6.35 R (Sovereign large exposure waiver).

Article 129

1.3.3

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FCA PRA

An *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of its *EEA parent financial holding company* or the *subsidiary undertakings* of its *EEA parent mixed financial holding company* that wish to use any of the approaches listed in ■ BIPRU 1.3.2 G (1) in respect of its group, including members of its group that are *BIPRU firms*, may apply for an *Article 129 permission*.

1.3.4 FCA PRA G The *Article 129 procedure* allows an *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of its *EEA parent financial holding company* or the *subsidiary undertakings* of its *EEA parent mixed financial holding company* to apply for permission to use the approaches in ■ BIPRU 1.3.2 G (1) without making separate applications to the *competent authority* of each *EEA State* where members of a *firm's* group are authorised.

1.3.5 FCA PRA G The *Capital Requirements Regulations 2006* set out the *Article 129 procedure*.

1.3.6 FCA PRA G Where a *firm* or its group has been granted an *Article 129 permission*, each *competent authority*, including the lead *competent authority*, will need to take action to apply that *Article 129 permission* to the *institutions* that they authorise. Part 3 of the *Capital Requirements Regulations 2006* governs how the *appropriate regulator* will take that action, whether or not the *appropriate regulator* is the lead *competent authority*.

Article 129 permissions and waivers - specific conditions

1.3.7 FCA PRA D When an *advanced measurement approach* is intended to be used by an *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of an *EEA parent financial holding company*, the application of a *firm* in accordance with ■ BIPRU 1.3.14 D must include the elements listed in ■ BIPRU 6.5.5 R (Minimum standards for the advanced measurement approach).

[Note:BCD Article 105(2)]

1.3.8 FCA PRA D When an *advanced measurement approach* is intended to be used by an *EEA parent institution* and its *subsidiary undertakings* or the *subsidiary undertakings* of an *EEA parent financial holding company* or an *EEA parent mixed financial holding company*, the application of a *firm* must include a description of the methodology used for allocating *operational risk* capital between the different entities of the group.

[Note: BCD AnnexX Part 3 point 30]

1.3.9 FCA PRA D For the purposes of ■ BIPRU 1.3.8 D, the application of a *firm* must indicate whether and how diversification effects are intended to be factored in the risk measurement system.

[Note: BCD annex X Part 3 point 31]

Waiver - general

1.3.10 FCA PRA G As explained in ■ SUP 8, under sections 138A and 138B of the *Act*, the *appropriate regulator* may not grant a *waiver* to a *firm* unless it is satisfied that:

- (1) compliance by the *firm* with the *rules*, or with the *rules* as modified, would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
- (2) the *waiver* would not result in undue risk to *persons* whose interests the *rules* are intended to protect objects.

1.3.11 FCA PRA G The conditions relating to the use of an approach listed in ■ BIPRU 1.3.2 G referred to in the relevant chapter of *BIPRU* are minimum standards. Satisfaction of those conditions does not automatically mean the *appropriate regulator* will grant a *waiver* referred to in those paragraphs. The *appropriate regulator* will in addition also apply the tests in section 138A of the *Act*.

1.3.12 FCA PRA G In the *appropriate regulator's* view, if the minimum standards referred to in ■ BIPRU 1.3.11 G are satisfied, the conditions referred to in ■ BIPRU 1.3.10 G (1) will generally be met.

Forms and method of application

1.3.13 FCA PRA D Subject to ■ BIPRU 1.3.14 D to ■ BIPRU 1.3.20 D, if a *firm* wishes to apply for a *waiver* to apply an approach set out in ■ BIPRU 1.3.2 G, it must comply with ■ SUP 8.3.3 D.

1.3.14 FCA PRA D If a *firm* wishes to apply for a *waiver* or an *Article 129 permission* to use the *advanced measurement approach*, it must complete and submit the form in ■ BIPRU 1 Annex 1D D.

1.3.15 FCA PRA D If a *firm* wishes to apply for a *waiver* or an *Article 129 permission* to use the *IRB approach*, it must complete and submit the form in ■ BIPRU 1 Annex 2D D.

1.3.16 FCA PRA D If a *firm* wishes to apply for a *waiver* or an *Article 129 permission* to use the *CCR internal model method*, it must complete and submit the form in ■ BIPRU 1 Annex 3D D.

1.3.17 FCA PRA D Where a *firm* makes an application in accordance with ■ BIPRU 1.3.14 D, ■ BIPRU 1.3.15 D or ■ BIPRU 1.3.16 D, the *firm* must state on the application whether it is making an application for a *waiver* or an *Article 129 permission*.

1.3.18 FCA PRA D Where a *firm* applies for a *VaR model permission*, the *firm* must state whether it is making an application for a *waiver* or an *Article 129 permission*.

1.3.19 FCA PRA G In respect of the application for *waivers* to apply the approaches set out in ■ BIPRU 1.3.2 G (1), the *appropriate regulator* will aim to give decisions on applications as soon as practicable. However, the *appropriate regulator* expects that it will take a significant period to determine and give a decision due to the complexity of the issues raised by the applications. Details of timelines for applications for waivers to use advanced approaches and under the *Article 129 procedure* are set out on the *appropriate regulator* website.

1.3.20 FCA PRA D Where a *firm* applies for a *solo consolidation waiver*, it must demonstrate how each of the conditions set out in ■ BIPRU 2.1.20 R to ■ BIPRU 2.1.24 R are met and address the criteria set out in the *guidance* in ■ BIPRU 2.1.25 G as part of its application in accordance with ■ BIPRU 1.3.13 D.

1.3.21 FCA PRA G Before sending in an application for a *waiver* or *Article 129 permission*, a *firm* may find it helpful to discuss the application with its usual supervisory contact at the *appropriate regulator*. However, the *firm* should still ensure that all relevant information is included in the application.



1.4 Actions for damages

1.4.1

FCA PRA

R

A contravention of the *rules* in *BIPRU* does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

■ BIPRU 3.2.20 R (Calculation of risk weighted exposures amounts under the standardised approach) in the case of the *exposures* of the *firm* to a counterparty which is its *parent undertaking*, its *subsidiary undertaking* or a *subsidiary undertaking* of its *parent undertaking* provided that the following conditions are met:

- (a) the counterparty is
 - (i) a *core concentration risk group counterparty*; and
 - (ii) an *institution*, *financial holding company*, *mixed financial holding company*, *financial institution*, *asset management company* or *ancillary services undertaking* subject to appropriate prudential requirements;
 - (b) [deleted]
 - (ba) (in relation to a *subsidiary undertaking*) 100% of the voting rights attaching to the *shares* in the counterparty's capital is held by the *firm* or a *financial holding company* (or a *subsidiary undertaking* of the *financial holding company*), whether individually or jointly, and that the *firm* or *financial holding company* (or its *subsidiary undertaking*) must have the right to appoint or remove a majority of the members of the board of *directors*, committee of management or other governing body of the counterparty;
 - (c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the *firm*;
 - (d) the counterparty is incorporated in the *United Kingdom*; and
 - (e) there is no current or foreseen material practical or legal impediment to the prompt transfer of *capital resources* or repayment of liabilities from the counterparty to the *firm*.
- (2) Where a *firm* chooses under (1) not to apply ■ BIPRU 3.2.20 R, it must assign a *risk weight* of 0% to the *exposure*.
- (3) A *firm* need not apply the treatment in (1) and (2) to every *exposure* that is eligible for that treatment.

[Note: BCD Article 80(7)]

- (1) *Firms* are referred to ■ BIPRU 10.8A (Intra-group exposures: core UK group) under which *exposures* within the *core UK group* are exempt from the limits described in ■ BIPRU 10.5 (Limits on exposures) if they would be assigned a *risk weight* of 0% under ■ BIPRU 3.2.25 R.
- (2) Therefore, a *firm* that is applying for a *core UK group waiver* should demonstrate that it meets the conditions in ■ BIPRU 3.2.25 R and ■ BIPRU 10.8A for establishing a *core UK group*. A *firm* that is granted a *core UK group waiver* may rely on it for the purpose of assigning a *risk weight* of 0% to *exposures* within its *core*

3.2.25A

FCA PRA

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UK group and for the purpose of exempting the *exposures* within the *core UK group* from the 25% *large exposure* limit.

3.2.26

FCA PRA

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A *firm* must not apply the treatment in ■ BIPRU 3.2.25 R to *exposures* giving rise to liabilities in the form of any of the following items:

- (1) in the case of a *BIPRU firm*, any *tier one capital* or *tier two capital*; and
- (2) in the case of any other *undertaking*, any item that would be *tier one capital* or *tier two capital* if the *undertaking* were a *BIPRU firm*.

[Note: BCD Article 80(7), part]

3.2.27

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- (1) [deleted]
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]
- (2) [deleted]

3.2.27A

FCA PRA

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- (1) For the purpose of ■ BIPRU 3.2.25R (1)(e), a *firm* must be able on an ongoing basis to demonstrate fully to the *appropriate regulator* the circumstances and arrangements, including legal arrangements, by virtue of which there are no material practical or legal impediments, and none are foreseen, to the prompt transfer of *capital resources* or repayment of liabilities from the counterparty to the *firm*.
- (2) In relation to a counterparty that is not a *firm*, the arrangements referred to in (1) must include a legally binding agreement with each *firm* that is a member of the *core UK group* that it will promptly on demand by the *firm* increase the *firm's capital resources* by an amount required to ensure that the *firm* complies with ■ GENPRU 2.1 (Calculation of capital resources requirements), ■ BIPRU 10 (Large exposures) and any other requirements relating to *capital resources* or concentration risk imposed on a *firm* by or under the *regulatory system*.

3.2.28

FCA PRA

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For the purpose of ■ BIPRU 3.2.25 R (1)(c) it is the risk management functions of the group that should be integrated, rather than the group's operational management. A *firm* should ensure that if risk management functions are integrated in this way it should be possible for the *appropriate regulator* to undertake qualitative supervision of the management of the integrated risk management function.

4.2 The IRB approach: High level material

Application

4.2.1

R

This section applies to all *exposures* treated under the *IRB approach*.

FCA PRA

General approach to granting an IRB permission

4.2.2

R

A *firm's* systems for the management and rating of credit risk *exposures* must be sound and implemented with integrity and, in particular, they must meet the following standards in accordance with the *minimum IRB standards*:

FCA PRA

- (1) the *firm's rating systems* provide for a meaningful assessment of obligor and transaction characteristics, a meaningful differentiation of risk and accurate and consistent quantitative estimates of risk;
- (2) internal ratings and *default* and *loss* estimates used in the calculation of capital requirements and associated systems and processes play an essential role in the risk management and decision-making process, and in the credit approval, internal capital allocation and corporate governance functions of the *firm*;
- (3) the *firm* has a credit risk control unit responsible for its *rating systems* that is appropriately independent and free from undue influence;
- (4) the *firm* collects and stores all relevant data to provide effective support to its credit risk measurement and management process; and
- (5) the *firm* documents its *rating systems*, the rationale for their design and validates its rating systems.

[Note: BCD Article 84(2) (part)]

4.2.3

R

Where an *EEA parent institution* and its *subsidiary undertakings* or an *EEA parent financial holding company* and its *subsidiary undertakings* or an *EEA parent mixed financial holding company* and its *subsidiary undertakings* use the *IRB approach* on a unified basis, the question whether the *minimum IRB standards* are met is answered by considering the *parent*

FCA PRA

undertaking and its *subsidiary undertakings* together, unless the *firm's IRB permission* specifies otherwise.

[Note: BCD Article 84(2) (part)]

Outsourcing

4.2.4

FCA PRA

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- (1) This *guidance* sets out the basis on which a *firm* may rely upon a *rating system* or data provided by another member of its *group*.
- (2) A *firm* may rely upon a *rating system* or data provided by another member of its *group* if the following conditions are satisfied:
 - (a) the *firm* only does so to the extent that it is appropriate, given the nature and scale of the *firm's* business and portfolios and the *firm's* position within the *group*;
 - (b) the *group* is an *EEA banking and investment group*;
 - (c) the integrity of the *firm's* systems and controls is not adversely affected;
 - (d) the outsourcing of these functions meets the requirements of SYSC; and
 - (e) (if the provision of the *rating system* or data is not carried out in the *United Kingdom* or in the jurisdiction of the *competent authority* that is the lead regulator of the *group*) the *firm* can demonstrate to the *appropriate regulator* that the ability of the *appropriate regulator* and that lead regulator to carry out their responsibilities under the *Handbook*, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* are not adversely affected.
- (3) If a *firm* does use a *rating system* or data provided by another member of its *group*, the requirements in ■ BIPRU 4 continue to apply to that *firm* in respect of that *rating system* and data. A *firm* cannot absolve itself of the responsibility for complying with those requirements by claiming that any breach is caused by the actions of a third party to which the *firm* has delegated tasks. The *rating system* and data provision are still those of the *firm*, even though personnel elsewhere in the *firm's* group are carrying out these functions on its behalf. So any references in *BIPRU* to what a *firm*, its personnel and its management should and should not do still apply.
- (4) If a *firm* does use a *rating system* or data provided by another *group* member, the *firm's governing body* should formally delegate those functions to the *persons* or bodies that are to carry them out.
- (5) Before delegating the provision of a *rating system* or data to another *group* member, the *firm's governing body* should have explicitly considered the arrangement and decided that it is appropriate and that it enables the *firm* to meet the conditions in (2).

Assessment and estimation

4.2.5

FCA PRA

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- (1) This paragraph provides *guidance* on ■ BIPRU 4.2.2 R and in particular ■ BIPRU 4.2.2 R (1).
- (2) The information that a *firm* produces or uses for the purpose of the *IRB approach* should be reliable and take proper account of the different users

or business units that are yet to be included in the *IRB approach* or in the use of own estimates of *LGDs* and *conversion factors*.

[Note: *BCD Article 85(2)*]

4.2.21

FCA PRA

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- (1) A *firm* should achieve full roll-out of the *IRB approach* to all its *exposures*, subject to the exemptions outlined in ■ BIPRU 4.2.26 R, within the period specified in its *IRB permission*. A *firm* should not retain a permanent mix of portfolios on the *standardised approach* and the *IRB approach*, on the *foundation IRB approach* and the *advanced IRB approach* or on a mixture of all approaches with the exception of portfolios covered by those exemptions.
- (2) This applies to a move:
 - (a) from the *standardised approach* to the *IRB approach*;
 - (b) from the *foundation IRB approach* to the *advanced IRB approach*; and
 - (c) from the *transitional rules and guidance for BIPRU* to the *IRB approach*.
- (3) The period referred to in ■ BIPRU 4.2.20 R (1) will generally be not more than three years of starting use of the *IRB approach* or the *advanced IRB approach* as applicable.

4.2.22

FCA PRA

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A *firm* using the *IRB approach* for any *IRB exposure class* must at the same time use the *IRB approach* for the *equity exposure class*.

[Note: *BCD Article 85(3)*]

4.2.23

FCA PRA

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Subject to ■ BIPRU 4.2.17 R - ■ BIPRU 4.2.20 R, ■ BIPRU 4.2.22 R and ■ BIPRU 4.2.26 R, a *firm* that has an *IRB permission* must not use the *standardised approach* for the calculation of *risk weighted exposure amounts* for the *exposures* to which the *IRB approach* applies under the *IRB permission*.

[Note: *BCD Article 85(4)*]

4.2.24

FCA PRA

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Subject to ■ BIPRU 4.2.17 R - ■ BIPRU 4.2.22 R and ■ BIPRU 4.2.26 R, a *firm* whose *IRB permission* provides for the use of the *advanced IRB approach* for the calculation of *LGDs* and *conversion factors* for the *sovereign, institution and corporate IRB exposure class* must not use the *LGD values* and *conversion factors* applicable to the *foundation IRB approach* for the *exposures* to which the *advanced IRB approach* applies under the *IRB permission*.

[Note: *BCD Article 85(5)*]

4.2.25

FCA PRA

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The *appropriate regulator* will not agree to a *firm's* request to revoke or vary its *IRB permission* so as to permit the *firm* to revert to the *standardised approach* except for demonstrated good cause. Likewise, the *appropriate regulator* will not agree to a *firm's* request to revoke or vary its *IRB permission* so as to permit the *firm* to revert to the

foundation IRB approach if the *IRB permission* provides for it to use the *advanced IRB approach*, except for demonstrated good cause.

Combined use of methodologies: Basic provisions

4.2.26

FCA PRA

R

- (1) To the extent that its *IRB permission* permits this, a *firm* permitted to use the *IRB approach* in the calculation of *risk weighted exposure amounts* and *expected loss* amounts for one or more *IRB exposure classes* may apply the *standardised approach* in accordance with this *rule*.
- (2) A *firm* may apply the *standardised approach* to the *IRB exposure class* referred to in ■ BIPRU 4.3.2 R (1) (Sovereigns) where the number of material counterparties is limited and it would be unduly burdensome for the *firm* to implement a *rating system* for these counterparties. A *firm* may include in this treatment an *exposure* of the type described in ■ BIPRU 3.4.18 R (Exposures to churches or religious communities) that would fall within ■ BIPRU 3.4.15 R or ■ BIPRU 3.4.17 R (Exposure to a regional government or local authority) if those provisions had not been excluded by ■ BIPRU 3.4.18 R.
- (3) A *firm* may apply the *standardised approach* to the *IRB exposure class* referred to in ■ BIPRU 4.3.2 R (2) (Institutions), where the number of material counterparties is limited and it would be unduly burdensome for the *firm* to implement a *rating system* for these counterparties.
- (4) A *firm* may apply the *standardised approach* to *exposures* in non-significant business units as well as *IRB exposure classes* that are immaterial in terms of size and perceived risk profile.
- (5) A *firm* may apply the *standardised approach* to *exposures* to the central governments of *EEA States* and their regional governments, local authorities and administrative bodies, provided that:
 - (a) there is no difference in risk between the *exposures* to the central government and those other *exposures* because of specific public arrangements; and
 - (b) *exposures* to the central government are assigned a 0% *risk weight* under the *standardised approach*.
- (6) A *firm* may apply the *standardised approach* to *exposures* of a *firm* to a counterparty which is its *parent undertaking*, its *subsidiary undertaking* or a *subsidiary undertaking* of its *parent undertaking* provided that the counterparty is an *institution*, a *financial holding company*, a *mixed financial holding company*, a *financial institution*, an *asset management*

company or an *ancillary services undertaking* subject to appropriate prudential requirements.

- (7) A *firm* may apply the *standardised approach* to *equity exposures* to entities whose credit obligations qualify for a 0% *risk weight* under the *standardised approach* (including those publicly sponsored entities where a zero *risk weight* can be applied).
- (8) A *firm* may apply the *standardised approach* to *equity exposures* incurred under legislative programmes to promote specified sectors of the economy that provide significant subsidies for the investment to the *firm* and involve some form of government oversight and restrictions on the *equity* investments. This exclusion is limited to an aggregate of 10% of *capital resources*.
- (9) A *firm* may apply the *standardised approach* to the *exposures* identified in ■ BIPRU 3.4.48 R (Exposures in the form of minimum reserves required by the European Central Bank or by the central bank of an *EEA State*) meeting the conditions specified therein.
- (10) A *firm* may apply the *standardised approach* to state and state-reinsured guarantees pursuant to ■ BIPRU 5.7.12 R (Conditions for state and state-reinsured guarantees).

[Note: BCD Article 89(1)]

Combined use of methodologies: Documentation

4.2.27

FCA PRA

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As part of the application for an *IRB permission*, a *firm* should have a well documented policy explaining the basis on which *exposures* are to be selected for permanent exemption from the *IRB approach* and for treatment under the *standardised approach*. The *firm's* roll out plan should also contain provisions for the continuing application of that policy on a consistent basis over time.

Combined use of methodologies: Sovereign and institutional, exposures

4.2.28

FCA PRA

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A *firm* intending to make use of ■ BIPRU 4.2.26 R (2) or ■ BIPRU 4.2.26 R (3) should demonstrate to the *appropriate regulator* when applying for an *IRB permission* that it meets the requirements of those provisions with respect to its sovereign or, as the case may be, institutional, *exposures*.

Combined use of methodologies: Meaning of non-significance and immateriality

4.2.29

FCA PRA

R

For the purposes of ■ BIPRU 4.2.26 R (4), the *equity exposure IRB exposure class* of a *firm* must be considered material if its aggregate value, excluding *equity exposures* incurred under legislative programmes as referred to in ■ BIPRU 4.2.26 R (8) but including *exposures* in a *CIU* treated as *equity exposures* in accordance with ■ BIPRU 4.9.11 R to ■ BIPRU 4.9.15 R, exceeds, on average over the preceding year, 10% of the *firm's capital resources*.

If the number of those *equity exposures* is less than 10 individual holdings, that threshold is 5% of the *firm's capital resources*.

[Note: BCD Article 89(2)]

4.2.30

FCA PRA

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- (1) This *rule* sets out what must be treated as being non-significant business or immaterial for the purposes of ■ BIPRU 4.2.26 R (4), for *exposures* that do not fall within the *equity exposure IRB exposure class*.
- (2) A *firm* may elect permanently to exclude *exposures* from the *IRB approach* and apply the *standardised approach*. However a *firm* may only make use of this exemption to the extent that:
 - (a) the *consolidated credit risk requirement* (adjusted under (6)) so far as it is attributable to the excluded *exposures*; would be no more than 15% of:
 - (b) the *consolidated credit risk requirement* (adjusted under (6)) with respect to all *exposures* (including the ones dealt with under (a)).
- (3) *Exposures* excluded under ■ BIPRU 4.2.29 R or ■ BIPRU 4.2.26 R (2), ■ BIPRU 4.2.26 R (3) and ■ BIPRU 4.2.26 R (5)-■ BIPRU 4.2.26 R (7) must not be included in (a) or (b).
- (4) The calculation in (2)(a) is based on the *standardised approach*.
- (5) The calculation in (2)(b) is based on whichever of the *standardised approach* and the *IRB approach* would apply to the *exposures* referred to in (2)(b) at the time when the calculation is being made.
- (6) The *consolidated credit risk requirement* is adjusted for the purposes of this *rule* as follows:
 - (a) the element based on the *concentration risk capital component* is excluded, with only the elements based on the *credit risk capital component* and the *counterparty risk capital component* being taken into account; and
 - (b) the calculation is carried out with respect to the group of *undertakings* referred to in ■ BIPRU 4.2.17 R.
- (7) If a group with respect to which the calculation in this *rule* is being carried out is not required to calculate the *consolidated credit risk requirement*, the calculations in this *rule* must be carried out as if it were.

- (c) mismatches in coverage of insurance policies; and
- (d) the uncertainty of payment.

(9) The capital alleviation arising from the recognition of insurances and other risk transfer mechanisms must not exceed 20% of the capital requirement before the recognition of risk mitigation techniques.

[Note: BCD Annex X Part 3 points 27 to 29]

6.5.28

FCA PRA

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For the purposes of ■ BIPRU 6.5.27 R (7), a *firm* should be able to demonstrate that the mitigating effect of the insurance is appropriate and relevant to the *firm's* business.

6.5.29

FCA PRA

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For the purposes of ■ BIPRU 6.5.27 R (9), a *firm* should be able to set out clearly how it made its assessment of the appropriate level of capital alleviation, including any assumptions made by the *firm* and how the insurances and other risk transfer mechanisms have been factored into the *firm's* risk measurement system.

6.5.30

FCA PRA

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A *firm* may recognise a risk transfer mechanism other than insurance to the extent that a noticeable risk mitigating effect is achieved and the risk transfer mechanism is included in the *firm's* AMA permission.

[Note: BCD Annex X Part 3 point 25]

6.5.30A

FCA PRA

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A *firm* that recognises the impact of insurance and operational risk mitigation techniques for the purposes of its *operational risk* measurement system should be able to show that it has considered the Commission of European Banking Supervisors' guidelines on operational risk mitigation techniques published in December 2009. This can be found at <http://www.c-eps.org/documents/Publications/Standards---Guidelines/2009/Operational-risk-mitigation-techniques/Guidelines.aspx>.

Use of an advanced measurement approach on a groupwide basis

6.5.31

FCA PRA

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Where an EEA parent institution and its subsidiary undertakings or an EEA parent financial holding company and its subsidiary undertakings or an EEA parent mixed financial holding company and its subsidiary undertakings use an advanced measurement approach on a unified basis for the parent undertaking and its subsidiary undertakings, the qualifying criteria set out in ■ BIPRU 6.5 may be met by the parent undertaking and its subsidiary undertakings considered together where permitted by the AMA permission.

[Note: BCD Article 105(4)]

6.5.32

FCA PRA

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Where the *AMA* is used on a unified basis for the *parent undertaking* and its *subsidiary undertakings*, and approval and reporting of the *AMA* are carried out at the group level, the qualifying criteria in ■ BIPRU 6.5 may be met if:

- (1) the *subsidiary undertakings* have delegated to the *governing body* or *designated committee* of the *EEA parent institution* or *EEA parent financial holding company* or *EEA parent mixed financial holding company* responsibility for approval of the *AMA*;
- (2) the *governing body* or *designated committee* of the *EEA parent institution* or *EEA parent financial holding company* or *EEA parent mixed financial holding company* approves either:
 - (a) all aspects of the *AMA*, and material changes; or
 - (b) all aspects of the *AMA* that are material in the context of the group, and material changes to those, and a policy statement defining the overall approach to the *AMA*.

7.10 Use of a Value at Risk Model

Application

7.10.1

R

■ BIPRU 7.10 applies to a *firm* with a *VaR model permission*.

FCA PRA

Introduction and purpose

7.10.2

G

■ BIPRU 7.10 provides details of when the *appropriate regulator* expects to allow a *firm* to use a *VaR model* (value at risk model) for the purpose of calculating part or all of its *PRR*. It introduces the concept of a *VaR model*, the methodology behind it and the link to the *standard market risk PRR rules*. It then goes on to detail the application and review process. The bulk of ■ BIPRU 7.10 specifies the model standards and risk management standards that *firms* will be required to meet in order to use a *VaR model*. It further stipulates requirements for stress testing, backtesting, capital calculations and finally the reporting standards expected by the *appropriate regulator*.

FCA PRA

7.10.3

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The models described in ■ BIPRU 7.10 are described as *VaR models* in order to distinguish them from *CAD 1 models*, which are dealt with in ■ BIPRU 7.9 (Use of a *CAD 1 model*). A *VaR model* is a risk management model which uses a statistical measure to predict profit and loss movement ranges with a confidence interval. From these results *PRR charges* can be calculated. The standards described in ■ BIPRU 7.10, and which will be applied by the *appropriate regulator*, are based on and implement Annex V of the *Capital Adequacy Directive*.

FCA PRA

7.10.4

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The aim of the *VaR model approach* is to enable a *firm* with adequate risk management systems to be subject to a *PRR* requirement that is more closely aligned with the risks to which it is subject than the *PRR* requirements generated by the *standard market risk PRR rules*. This provides a *firm* with an incentive to measure market risks as accurately and comprehensively as possible. It is crucial that those responsible for managing *market risk* at a *firm* should be aware of the assumptions and limitations of the *firm's VaR model*.

FCA PRA

7.10.5

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There are a number of general methodologies for calculating *PRR* using a *VaR model*. The *appropriate regulator* does not prescribe any one method of computing *VaR measures*. Moreover, it does not wish to discourage any *firm* from developing alternative risk measurement techniques. A *firm* should discuss the use of any alternative techniques used to calculate *PRR* with the *appropriate regulator*.

FCA PRA

7.10.6

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A *firm* should not use the *VaR model approach* to calculate *PRR* unless it has a *VaR model permission*. If a *firm* does not have such a permission it should use the *standard market risk PRR rules*. Therefore, a *firm* needs to apply for a *VaR model permission* in

FCA PRA

order to calculate its *PRR* using a *VaR model* instead of (or in combination with) the *standard market risk PRR rules*.

Conditions for granting a VaR model permission

7.10.7

FCA PRA

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A *waiver* or other permission allowing the use of models in the calculation of *PRR* will not be granted if that would be contrary to the *Capital Adequacy Directive* and any *VaR model permission* which is granted will only be granted on terms that are compatible with the *Capital Adequacy Directive*. Accordingly, the *appropriate regulator* is likely only to grant a *waiver* or other permission allowing the use of models in the calculation of *PRR* if it is a *VaR model permission* or a *CAD 1 model waiver*.

7.10.8

FCA PRA

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■ BIPRU 7.10 sets out the minimum standards that the *appropriate regulator* expects *firms* to meet before granting a *VaR model permission*. The *appropriate regulator* will not grant a *VaR model permission* unless it is satisfied that the requirements of ■ BIPRU 7.10 are met and it is satisfied about the procedures in place at a *firm* to calculate the *model PRR*. In particular the *appropriate regulator* will not normally grant a *VaR model permission* unless it is satisfied about the quality of:

- (1) the internal controls and risk management relating to the *VaR model* (see ■ BIPRU 7.10.56G - ■ BIPRU 7.10.82R);
- (2) the *VaR model* standards (see ■ BIPRU 7.10.24R- ■ BIPRU 7.10.55G); and
- (3) stress testing and backtesting procedures relating to a *VaR model* (see, in addition to (2), ■ BIPRU 7.10.83R - ■ BIPRU 7.10.112G).

7.10.9

FCA PRA

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The *appropriate regulator* recognises that the nature of *VaR models* will vary between *firms*. The scope of and the requirements and conditions set out in a *VaR model permission* may therefore differ in substance or detail from ■ BIPRU 7.10 in order to address individual circumstances adequately. However any differences will only be allowed if they are compliant with the *Capital Adequacy Directive*. A *VaR model permission* will implement any such variation by modifying ■ BIPRU 7.10. A *VaR model permission* may also include additional conditions to meet the particular circumstances of the *firm* or the model.

The VaR model permission application and review process

7.10.10

FCA PRA

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Details of the general process for applying for a *VaR model permission* are set out in ■ BIPRU 1.3 (Applications for advanced approaches). Because of the complexity of a *VaR model permission*, it is recommended that a *firm* discuss its proposed application with its usual contact at the *appropriate regulator* before it makes the application.

7.10.11

FCA PRA

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In order for a *VaR model permission* to be granted, the *appropriate regulator* is likely to undertake a review to ensure that it is adequate and appropriate for the *PRR* calculation.

7.10.12

FCA PRA

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The *VaR model* review process may be conducted through a series of visits covering various aspects of a *firm's* control and IT environment. Before these visits the *appropriate regulator* may ask the *firm* to provide some information relating to the *firm's VaR model permission* request accompanied by some specified background

- 8.1.7** FCA PRA G ■ BIPRU 8.5 sets out the basis for including and excluding *undertakings* within the group for the purposes of consolidation.
- 8.1.8** FCA PRA G ■ BIPRU 8.6 sets out the calculation of the *consolidated capital resources* of a group and the limits that apply.
- 8.1.9** FCA PRA G ■ BIPRU 8.7 sets out the calculation of the *consolidated capital resources requirement* of a group.
- 8.1.10** FCA PRA G ■ BIPRU 8.8 deals with the application of *advanced prudential calculation approach* on a consolidated basis.
- 8.1.11** FCA PRA G ■ BIPRU 8.9 sets out consolidated concentration risk requirements.
- Consolidation requirements for BIPRU firms elsewhere in the Handbook**
- 8.1.12** FCA PRA G ■ SYSC 12 (Group risk systems and controls requirement) deals with systems and controls requirements for groups.
- 8.1.13** FCA PRA G ■ GENPRU 1.2 (Adequacy of financial resources) deals with the detail about how
 ■ GENPRU 1.2 applies on a consolidated basis although the underlying requirement to apply it on a consolidated basis is in ■ BIPRU 8.2 and ■ BIPRU 8.3.
- 8.1.14** FCA PRA G ■ BIPRU 11 (Disclosure) itself deals with how that chapter is applied on a consolidated basis.
- 8.1.15** FCA PRA G ■ GENPRU 3.1 (Cross sector groups) deals with *financial conglomerates*.
- 8.1.16** FCA PRA G ■ GENPRU 3.2 (Prudential rules for third country groups) deals, amongst other things, with banking and investment services groups headed by a *parent undertaking* outside the *EEA*.

8.2 Scope and basic consolidation requirements for UK consolidation groups

Main consolidation rule for UK consolidation groups

8.2.1

FCA PRA

R

A *firm* that is a member of a *UK consolidation group* must comply, to the extent and in the manner prescribed in ■ BIPRU 8.5, with the obligations laid down in ■ GENPRU 1.2 (Adequacy of financial resources), the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) and ■ BIPRU 10 (Large exposures requirements) on the basis of the consolidated financial position of:

- (1) where either Test 1A or Test 1B in ■ BIPRU 8 Annex 1 R (Decision tree identifying a UK consolidation group) apply, the *parent institution in a Member State in the UK consolidation group*; or
- (2) where either Test 1C or Test 1D in ■ BIPRU 8 Annex 1 R apply, the *parent financial holding company in a Member State* or the *parent mixed financial holding company in a Member State*.

8.2.2

FCA PRA

R

Further to ■ BIPRU 8.2.1 R, a *firm* that is a member of a *UK consolidation group* must at all times ensure that the *consolidated capital resources* of the *UK consolidation group* are equal to or exceed its *consolidated capital resources requirement*.

8.2.3

FCA PRA

G

The *base capital resources requirement* does not apply on a consolidated basis.

Definition of UK consolidation group

8.2.4

FCA PRA

R

A *firm's UK consolidation group* means a group that is identified as a *UK consolidation group* in accordance with the decision tree in ■ BIPRU 8 Annex 1 R (Decision tree identifying a UK consolidation group); the members of that group are:

- (1) where either Test 1A or Test 1B in ■ BIPRU 8 Annex 1 R apply, the members of the *consolidation group* made up of the *sub-group* of the *parent institution in a Member State* identified in ■ BIPRU 8 Annex 1 R together with any other *person* who is a

member of that *consolidation group* because of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*; or

- (2) where either Test 1C or Test 1D in ■ BIPRU 8 Annex 1 R apply, the members of the *consolidation group* made up of the *sub-group* of the *parent financial holding company in a Member State* or the *parent mixed financial holding company in a Member State* identified in ■ BIPRU 8 Annex 1 R together with any other *person* who is a member of that *consolidation group* because of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*;

in each case only *persons* included under ■ BIPRU 8.5 (Basis of consolidation) are included in the *UK consolidation group*.

8.2.5

FCA PRA

R

For the purposes of this chapter, what would otherwise be a *UK consolidation group* is not a *UK consolidation group* if all the members of that *UK consolidation group* wholly form part of another *UK consolidation group*.

8.2.6

FCA PRA

G

■ BIPRU 8 Annex 2 G (Examples of how to identify a UK consolidation group) sets out examples of how to identify a *UK consolidation group*.

8.2.7

FCA PRA

G

■ BIPRU 8 Annex 1 R (Decision tree identifying a UK consolidation group) shows that Articles 125 and 126 of the *Banking Consolidation Directive* are important in deciding whether the *appropriate regulator* is obliged to supervise a group or part of a group and hence whether that group or part of a group is a *UK consolidation group*. ■ BIPRU 8 Annex 4 G (Text of Articles 125 and 126 of the *Banking Consolidation Directive*) sets out these articles together with an explanation of how those articles should be read in the case of a group which also contains *CAD investment firms*.

8.3 Scope and basic consolidation requirements for non-EEA sub-groups

Main consolidation rule for non-EEA sub-groups

8.3.1

FCA PRA

R

- (1) A *BIPRU firm* that is a *subsidiary undertaking* of a *BIPRU firm* or of a *financial holding company* or of a *mixed financial holding company* must apply the requirements laid down in ■ GENPRU 1.2 (Adequacy of financial resources), the *main BIPRU firm Pillar 1 rules* (but not the *base capital resources requirement*) and ■ BIPRU 10 (Large exposures requirements) on a sub-consolidated basis if the *BIPRU firm*, or the *parent undertaking* where it is a *financial holding company* or a *mixed financial holding company*, have a *third country banking or investment services undertaking* as a *subsidiary undertaking* or hold a *participation* in such an *undertaking*.
- (2) (1) only applies if the *appropriate regulator* is required by the *Banking Consolidation Directive* or the *Capital Adequacy Directive* to supervise the group established under (1) under Article 73(2) of the *Banking Consolidation Directive* (Non-EEA sub-groups).

8.3.2

FCA PRA

R

Further to ■ BIPRU 8.3.1 R, a *firm* that is a member of a *non-EEA sub-group* must at all times ensure that the *consolidated capital resources* of that *non-EEA sub-group* are equal to or exceed its *consolidated capital resources requirement*.

8.3.3

FCA PRA

G

The *base capital resources requirement* does not apply on a consolidated basis.

8.3.4

FCA PRA

G

The *sub-group* identified in ■ BIPRU 8.3.1 R is called a *non-EEA sub-group*.

How to identify a non-EEA sub-group

8.3.5

FCA PRA

G

■ BIPRU 8 Annex 3 G (Examples of how to identify a non-EEA sub-group) sets out examples of how to identify a *non-EEA sub-group*.

8.3.6

FCA PRA

G

The remainder of this section sets out a process for identifying a *non-EEA sub-group* in straightforward cases.

8.5 Basis of consolidation

Undertakings to be included in consolidation

8.5.1

FCA PRA

R

A *firm* must include only the following types of *undertaking* in a *UK consolidation group* or *non-EEA sub-group* for the purposes of this chapter:

- (1) a *BIPRU firm*;
- (2) an *institution*;
- (3) a *financial institution*;
- (4) an *asset management company*;
- (5) a *financial holding company*;
- (6) a *mixed financial holding company*; and
- (7) an *ancillary services undertaking*.

8.5.2

FCA PRA

G

Although an *undertaking* falling outside ■ BIPRU 8.5.1 R will not be included in a *UK consolidation group* or *non-EEA sub-group* it may be relevant in deciding whether one *undertaking* in the *banking sector* or the *investment services sector* is a *subsidiary undertaking* of another with the result that they should be included in the same *UK consolidation group* or *non-EEA sub-group*.

8.5.3

FCA PRA

G

An example of ■ BIPRU 8.5.2 G is as follows. Say that the *undertaking* at the head of a *bank's UK group* is a *parent financial holding company in a Member State*. One of its *subsidiary undertakings* is the *bank*. The *parent financial holding company in a Member State* also has an *insurer* as a *subsidiary undertaking*. That *insurer* has several *investment firms* as *subsidiary undertakings*. Say that the *UK group* is not a *financial conglomerate*. The *UK consolidation group* will include the *parent financial holding company in a Member State* and the *bank*. It will also include the *investment firms* that are *subsidiary undertakings* of the *insurer*. This is because the *investment firms* are *subsidiary undertakings* of the *parent financial holding company in a Member State* through the *parent financial holding company in a Member State's* holding in the *insurer*. However it will not include the *insurer* itself.

Basis of inclusion of undertakings in consolidation

8.5.4

FCA PRA

R

A *firm* must include any *subsidiary undertaking* in the *UK consolidation group* or *non-EEA sub-group* in full in the calculations in this chapter.

8.5.5

FCA PRA

R

In carrying out the calculations for the purposes of this chapter a *firm* must only include the relevant proportion of an *undertaking* that is a member of the *UK consolidation group* or *non-EEA sub-group*:

- (1) by virtue of a *consolidation Article 12(1) relationship*;
- (2) by virtue of an *Article 134 relationship*; or
- (3) because the group holds a *participation* in it.

8.5.6

FCA PRA

R

In ■ BIPRU 8.5.5 R, the relevant proportion is either:

- (1) (in the case of a *participation*) the proportion of *shares* issued by the *undertaking* held by the *UK consolidation group* or the *non-EEA sub-group*; or
- (2) (in the case of a *consolidation Article 12(1) relationship* or an *Article 134 relationship*), such proportion (if any) as stated in the *Part 4A permission* of the *firm*.

Basis of inclusion of UCITS investment firms in consolidation

8.5.7

FCA PRA

R

■ GENPRU 2.1.46 R (Adjustment of the variable capital requirement calculation for UCITS investment firms) does not apply for the purpose of this chapter.

8.5.8

FCA PRA

G

In general a *UCITS investment firm* only calculates its capital and concentration risk requirements in relation to its *designated investment business* and does not calculate them with respect to *scheme management activity*. The effect of ■ BIPRU 8.5.7 R is that this does not apply on a consolidated basis. For the purpose of this chapter the calculations are carried with respect to the whole of the activities of a *UCITS investment firm*.

Exclusion of undertakings from consolidation: Balance sheet size

8.5.9

FCA PRA

R

A *firm* may, having first notified the *appropriate regulator* in writing in accordance with ■ SUP 15.7 (Form and method of notification), exclude an *institution*, *asset management company*, *financial institution* or *ancillary services undertaking* that is a *subsidiary undertaking* in, or an *undertaking* in which a *participation* is held by, the *UK consolidation group* or *non-EEA sub-group* if the balance sheet total of that *undertaking* is less than the smaller of the following two amounts:

- (1) 10 million Euros;

- (2) 1% of the balance sheet total of the *parent undertaking* or the *undertaking* that holds the *participation*.

8.5.10

FCA PRA

R

A *firm* must include *undertakings*, to which ■ BIPRU 8.5.9 R would otherwise apply, if the balance sheet total of those *undertakings* taken together breaches the limit in ■ BIPRU 8.5.9 R.

Exclusion of undertakings from consolidation: Other reasons

8.5.11

FCA PRA

G

Article 73(1) of the *Banking Consolidation Directive* allows the *appropriate regulator* to decide to exclude an *institution*, *financial institution*, *asset management company* or *ancillary services undertaking* that is a *subsidiary undertaking* in, or an *undertaking* in which a *participation* is held by, the *UK consolidation group* or *non-EEA sub-group* for the purposes of this chapter in the following circumstances:

- (1) where the head office of the *undertaking* concerned is situated in a country outside the *EEA* where there are legal impediments to the transfer of the necessary information; or
- (2) where, in the opinion of the *appropriate regulator*, the *undertaking* concerned is of negligible interest only with respect to the objectives of monitoring *institutions*; or
- (3) where, in the opinion of the *appropriate regulator*, the consolidation of the financial situation of the *undertaking* concerned would be inappropriate or misleading as far as the objectives of the supervision of *institutions* are concerned.

8.5.12

FCA PRA

G

If a *firm* wishes to exclude an *undertaking* on the basis of any of the grounds set out in ■ BIPRU 8.5.11 G it should apply to the *appropriate regulator* for a *waiver*. The *appropriate regulator* will consider such applications in the light of the criteria in Section 138A of the *Act*.

8.5.13

FCA PRA

G

If several *undertakings* meet the criteria in ■ BIPRU 8.5.11 G (2), the *appropriate regulator* will not agree to a *waiver* to exclude them all from consolidation where collectively they are of non-negligible interest with respect to the objectives of the supervision of *institutions*.

Information about excluded undertakings

8.5.14

FCA PRA

G

The *appropriate regulator* may require a *firm* to provide information about the *undertakings* excluded from consolidation of the *UK consolidation group* or *non-EEA sub-group* pursuant to this section.

8.6 Consolidated capital resources

General

8.6.1

FCA PRA

R

A *firm* must calculate the *consolidated capital resources* of its *UK consolidation group* or its *non-EEA sub-group* by applying ■ GENPRU 2.2 (Capital resources) to its *UK consolidation group* or *non-EEA sub-group* on an accounting consolidation basis, treating the *UK consolidation group* or *non-EEA sub-group* as a single *undertaking*. The *firm* must adjust ■ GENPRU 2.2 in accordance with this section for this purpose.

Notification of issuance of capital instruments

8.6.1A

FCA PRA

R

This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group*.

8.6.1B

FCA PRA

R

A *firm* must notify the *appropriate regulator* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital instrument* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* as soon as it becomes aware of the intention of the *group undertaking* to issue the *capital instrument*. When giving notice, a *firm* must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the inclusion of the issue within *capital resources* or *consolidated capital resources* that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and

Text of Articles 125 and 126 of the Banking Consolidation Directive**FCA PRA**

Article 125

1. Where a parent undertaking is a parent credit institution in a Member State or an EU parent credit institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorised it under Article 6.
2. Where the parent of a credit institution is a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that authorised that credit institution under Article 6.

Article 126

1. Where credit institutions authorised in two or more Member States have as their parent the same parent financial holding company in a Member State, the same mixed parent financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company or mixed financial holding company is established.

Where the parents of credit institutions authorised in two or more Member States comprise more than one financial holding company or mixed financial holding company which have their head offices in different Member States and there is a credit institution in each of these States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.
2. Where more than one credit institution authorised in the Union has as its parent the same financial holding company or the same mixed financial holding company and none of these credit institutions has been authorised in the Member State in which the financial holding company or the mixed financial holding company is established, supervision on a consolidated basis shall be exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.
3. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In these cases, before taking their decision, the competent authorities shall give the EU parent credit institution, EU parent financial holding company, the EU parent mixed financial holding company, or credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.
4. [Omitted]

Note

The *Capital Adequacy Directive* says that generally references in Articles 125 and 126 of the *Banking Consolidation Directive* to *credit institution* should be read as including ones to *CAD investment firms*. Also, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* apply to the *EEA*. Therefore for the purposes of BIPRU 8 Articles 125 and 126 of the *Banking Consolidation Directive* should be read with the following adjustments:

- (1) a reference to a credit institution should be read as being one to a *credit institution* or *CAD investment firm*;
- (2) a reference to a parent credit institution in a Member State should be read as being one to a *parent institution in a Member State*;
- (3) a reference to a EU parent credit institution should be read as being one to an *EEA parent institution*;
- (4) a reference to a EU parent financial holding company should be read as being one to an *EEA parent financial holding company*;
- (4a) a reference to a EU parent mixed financial holding company should be read as being one to an *EEA parent mixed financial holding company*;
- (5) a reference to a Member State should be read as being one to an *EEA State*;
- (6) a reference to a credit institution authorised in the Community should be read as being to a *credit institution* or *CAD investment firm* authorised in an *EEA State*.

Parent financial holding company in a Member State, financial holding company, parent mixed financial holding company in a Member State and mixed financial holding company have the same meaning as they do in the *Glossary*.

9.15 Requirements for investors

Application

9.15.1

PRA

R

Subject to ■ BIPRU 9.15.1A R, ■ BIPRU 9.15 applies to:

- (1) new *securitisations* issued on or after 1 January 2011; and
- (2) from 31 December 2014, to existing *securitisations* where new underlying *exposures* are added or substituted after that date.

[Note: BCD, Article 122a, paragraph 8]

9.15.1A

PRA

R

■ BIPRU 9.15.16A R and ■ BIPRU 9.15.16B R only apply to:

- (1) new *securitisations* issued on or after 31 December 2011; and
- (2) from 31 December 2014, to existing *securitisations* where new underlying *exposures* are added or substituted after that date.

9.15.1B

PRA

G

A *credit institution* should have regard to the Committee of European Banking Supervisors Guidelines to Article 122a of the *Banking Consolidation Directive* when considering its obligations under ■ BIPRU 9.3.15 R to ■ BIPRU 9.3.20 R and ■ BIPRU 9.15. The Guidelines can be found at <http://www.eba.europa.eu/Publications/Standards-Guidelines.aspx>.

Purpose

9.15.2

PRA

G

The purpose of ■ BIPRU 9.15 is to implement Article 122a of the *Banking Consolidation Directive*, with the exception of those parts of Article 122a that are implemented through the *rules* in ■ BIPRU 9.3.

Exposures to transferred credit risk

9.15.3

PRA

R

Subject to ■ BIPRU 9.15.9 R and ■ BIPRU 9.15.10R, a *credit institution*, other than when acting as an *originator*, a *sponsor* or original lender, will be exposed to the credit risk of a *securitisation position* in its *trading book* or *non-trading book* only if the *originator*, *sponsor* or original lender has explicitly disclosed to the *credit institution* that it will retain, on an *ongoing basis*, a material net economic interest which, in any event, must not be less than 5%.

[Note: *BCD*, Article 122a, paragraphs 1 and 3]

Retention of net economic interest

9.15.4

PRA

R

Retention of net economic interest means any of the following:

- (1) retention of no less than 5% of the nominal value of each of the *tranches* sold or transferred to the investors;
- (2) in the case of *securitisations of revolving exposures*, retention of the *originator's* interest of no less than 5% of the nominal value of the *securitised exposures*;
- (3) retention of randomly selected *exposures*, equivalent to no less than 5% of the nominal amount of the *securitised exposures*, where those *exposures* would otherwise have been *securitised* in the *securitisation* provided that the number of potentially *securitised exposures* is no less than 100 at origination;
- (4) retention of the first loss *tranche* and, if necessary, other *tranches* having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5% of the nominal value of the *securitised exposures*.

[Note: *BCD*, Article 122a, paragraph 1]

9.15.5

PRA

R

Net economic interest is measured at the origination and must be maintained on an *ongoing basis*. It must not be subject to any *credit risk mitigation* or any short positions or any hedge. The net economic interest must be determined by the notional value for off-balance sheet items.

[Note: *BCD*, Article 122a, paragraph 1]

9.15.6

PRA

R

Multiple applications of the retention of net economic interest requirements for any given *securitisation* are not required.

[Note: *BCD*, Article 122a, paragraph 1]

9.15.7

PRA

R

Subject to ■ BIPRU 9.15.8R, where an *EEA parent credit institution*, an *EEA parent financial holding company* or an *EEA parent mixed financial holding company*, or one of its *subsidiaries*, as an *originator* or a *sponsor*, *securitises exposures* from several *credit institutions*, *investment firms* or other *institutions* which are included within the scope of supervision on a consolidated basis, the requirement to retain a net economic interest referred to in ■ BIPRU 9.15.3R may be satisfied on the basis of the consolidated situation of the related *EEA parent credit institution*, *EEA parent financial holding company* or *EEA parent mixed financial holding company*.

9.15.8

PRA

R

[Note: BCD, Article 122a, paragraph 2]

■ BIPRU 9.15.7R only applies where the *credit institutions, investment firms or institutions* which created the *securitised exposures* have committed themselves to adhere to the requirements in ■ BIPRU 9.3.15R to ■ BIPRU 9.3.17R and deliver, in a timely manner, to the *originator or sponsor* and to the *EEA parent credit institution or an EEA parent financial holding company or an EEA parent mixed financial holding company* the information needed to satisfy ■ BIPRU 9.3.18R to ■ BIPRU 9.3.20R.

[Note: BCD, Article 122a, paragraph 2]

9.15.9

PRA

R

■ BIPRU 9.15.3R does not apply where the *securitised exposures* are claims or contingent claims on, or fully, unconditionally and irrevocably guaranteed by:

- (1) central governments or *central banks*;
- (2) regional governments, local authorities and public sector entities of *EEA States*;
- (3) *institutions* to which a 50% *risk weight* or less is assigned under ■ BIPRU 3.4.31 R to ■ BIPRU 3.4.46 R; or
- (4) *multilateral development banks*.

[Note: BCD, Article 122a, paragraph 3]

9.15.10

PRA

R

The requirements in ■ BIPRU 9.15.3R do not apply with respect to the following:

- (1) transactions based on a clear, transparent and accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than *securitisation positions*; or
- (2) syndicated loans, purchased receivables or credit default swaps where these instruments are not used to package and/or hedge a *securitisation* that is within the scope of ■ BIPRU 9.15.3 R.

[Note: BCD, Article 122a, paragraph 3]

Investor due diligence

9.15.11

PRA

R

Before investing, and as appropriate thereafter, a *credit institution* must be able to demonstrate to the *PRA* for each of its individual *securitisation positions*, that it has a comprehensive and thorough understanding of, and has implemented, formal policies and procedures appropriate to its *trading and non-trading book* and commensurate with the risk profile of its investments in *securitised positions* for analysing and recording:

- (1) information disclosed under ■ BIPRU 9.15.3R, by *originators* or *sponsors* to specify the net economic interest that they maintain, on an *ongoing basis*, in the *securitisation*;
- (2) the risk characteristics of the individual *securitisation position*;
- (3) the risk characteristics of the *exposures* underlying the *securitisation position*;
- (4) the reputation and loss experience in earlier *securitisations* of the *originators* or *sponsors* in the relevant *exposure* classes underlying the *securitisation position*;
- (5) the statements and disclosures made by the *originators* or *sponsors*, or their agents or advisors, about their due diligence on the *securitised exposures* and, where applicable, on the quality of the collateral supporting the *securitised exposures*;
- (6) where applicable, the methodologies and concepts on which the valuation of collateral supporting the *securitised exposures* is based and the policies adopted by the *originator* or *sponsor* to ensure the independence of the valuer; and
- (7) all the structural features of the *securitisation* that can materially impact the performance of the *credit institution's securitisation position*.

[Note: BCD, Article 122a, paragraph 4]

9.15.12

PRA

R

A *credit institution* must regularly perform its own stress tests appropriate to its *securitisation positions*.

[Note: BCD, Article 122a, paragraph 4]

9.15.13

PRA

R

For the purposes of ■ BIPRU 9.15.12R, a *credit institution* may rely on financial models developed by an *ECAI* provided that the *credit institution* can demonstrate, when requested by the *PRA*, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

[Note: BCD, Article 122a, paragraph 4]

9.15.14

PRA

R

Monitoring requirements

A *credit institution*, other than when acting as *originator* or *sponsor* or original lender, must establish formal procedures appropriate to its *trading* and *non-trading book*, and commensurate with the risk profile of its investments in *securitised positions*, to monitor, on an *ongoing basis* and in a timely manner, performance information on the *exposures* underlying its *securitisation positions*.

10.8A Intra-group exposures: core UK group

Application

10.8A.1

R

FCA PRA

This section applies to a *firm* if:

- (1) it is a member of a *core UK group* (under ■ BIPRU 3.2.25 R and this section); and
- (2) it has a *core UK group waiver*.

Definition of core UK group

10.8A.2

R

FCA PRA

An *undertaking* is a member of a *firm's core UK group* if, in relation to the *firm*, that *undertaking* satisfies the following conditions:

- (1) it is a *core concentration risk group counterparty*;
- (2) it is an *institution, financial holding company, financial institution, asset management company, ancillary services undertaking or mixed financial holding company*;
- (3) (in relation to a *subsidiary undertaking*) 100% of the voting rights attaching to the *shares* in its capital is held by the *firm, financial holding company or mixed financial holding company* (or a *subsidiary undertaking of the financial holding company or mixed financial holding company*), whether individually or jointly, and that *firm, financial holding company or mixed financial holding company* (or its *subsidiary undertaking*) must have the right to appoint or remove a majority of the members of the board of *directors, committee of management or other governing body of the undertaking*;
- (4) it is subject to the same risk evaluation, measurement and control procedures as the *firm*;
- (5) it is incorporated in the *United Kingdom*; and

(6) **there is no current or foreseen material practical or legal impediment to the prompt transfer of *capital resources* or repayment of liabilities from the *counterparty* to the *firm*.**

10.8A.3
FCA PRA

G

In relation to ■ BIPRU 10.8A.2R (3), a *subsidiary undertaking* should generally be 100% owned and controlled by a single shareholder. However, if a *subsidiary undertaking* has more than one shareholder, that *undertaking* may be a member of the *core UK group* if all its shareholders are also members of that same *core UK group*.

10.8A.4
FCA PRA

G

If a *core concentration risk group counterparty* is of a type that falls within the scope of the Council Regulation of 29 May 2000 on insolvency proceedings (Regulation 1346/2000/EC) and it is established in the *United Kingdom* other than by incorporation, a *firm* wishing to include that *counterparty* in its *core UK group* may apply to the *appropriate regulator* for a *waiver* of ■ BIPRU 10.8A.2R (5) if it can demonstrate fully to the *appropriate regulator* that the *counterparty's* centre of main interests is situated in the *United Kingdom* within the meaning of that Regulation.

Minimum standards

10.8A.5
FCA PRA

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- (1) For the purpose of ■ BIPRU 10.8A.2R (6), a *firm* must be able to demonstrate fully to the *appropriate regulator* the circumstances and arrangements, including legal arrangements, by virtue of which there are no material practical or legal impediments, and none are foreseen, to the prompt transfer of *capital resources* or repayment of liabilities from the *counterparty* to the *firm*.
- (2) In relation to a *counterparty* that is not a *firm*, the arrangements referred to in (1) must include a legally binding agreement with each *firm* that is a member of the *core UK group* that it will promptly on demand by the *firm* increase that *firm's capital resources* by an amount required to ensure that the *firm* complies with ■ GENPRU 2.1 (Calculation of capital resources requirements), ■ BIPRU 10 (Large exposures requirements) and any other requirements relating to *capital resources* or concentration risk imposed on a *firm* by or under the *regulatory system*.

10.8A.6
FCA PRA

G

The *appropriate regulator* will consider the following criteria when assessing whether the condition in ■ BIPRU 10.8A.2R (6) is going to be met:

- (1) the speed with which funds can be transferred or liabilities repaid to the *firm* and the simplicity of the method for the transfer or repayment;
- (2) whether there are any interests other than those of the *firm* in the *core concentration risk group counterparty* and what impact those other interests may have on the *firm's* control over the *core group concentration risk group counterparty* and the ability of the *firm* to require a transfer of funds or repayment of liabilities;

- (3) whether there are any tax disadvantages for the *firm* or the *core concentration risk group counterparty* as a result of the transfer of funds or repayment of liabilities;
- (4) whether the purpose of the *core concentration risk group counterparty* prejudices the prompt transfer of funds or repayment of liabilities;
- (5) whether the legal structure of the *core concentration risk group counterparty* prejudices the prompt transfer of funds or repayment of liabilities;
- (6) whether the contractual relationships of the *core concentration risk group counterparty* with the *firm* and other third parties prejudices the prompt transfer of funds or repayment of liabilities; and
- (7) whether past and proposed flows of funds between the *core concentration risk group counterparty* and the *firm* demonstrate the ability to make prompt transfer of funds or repayment of liabilities.

10.8A.7

FCA PRA

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- (1) *Firms* are referred to the guidance relating to 0% *risk weights* for *exposures* within a *core UK group* under the *standardised approach* as follows:
 - (a) ■ BIPRU 3.2.28 G in respect of ■ BIPRU 10.8A.2R (3) on same risk evaluation, measurement and control procedures; and
 - (b) ■ BIPRU 3.2.30 G and ■ BIPRU 3.2.31 G in respect of ■ BIPRU 10.8A.2R (6) on prompt transfer of *capital resources* and repayment of liabilities.
- (2) For the purpose of ■ BIPRU 10.8A.5R (2), the obligation to increase the *firm's capital resources* may be limited to capital resources available to the *counterparty* and may reasonably exclude such amount of capital resources that, if transferred to the *firm*, would cause the *counterparty* to become balance sheet insolvent in the manner contemplated in section 123(2) of the Insolvency Act 1986.

Exemption for a core UK group

10.8A.8

FCA PRA

R

If this section applies, *exposures* between members of the *core UK group* are exempt from the limits described in ■ BIPRU 10.5 (Limits on exposures).

10.8A.9

FCA PRA

G

The *appropriate regulator* will expect a *firm* to which this section applies not to use any member of its *core UK group* which is not a *firm* to route lending or to have *exposures* to any third party in excess of the limits in ■ BIPRU 10.5 (Limits on exposures).

Calculation of capital resources for a core UK group

10.8A.10

FCA PRA

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For the purposes of this section, a *firm* must calculate the capital resources of the *core UK group* in accordance with ■ GENPRU 3 Annex 1 R Part 2 (Method 2 of Annex 1 of the Financial Groups Directive (Deduction and aggregation Method)) and apply the limits set out in this section to those capital resources rather than the *capital resources* of the *firm*. For these purposes the definition of *solo capital resources* is adjusted so that the *rules* on which the calculation for each member of the *core UK group* is

based are the ones that would apply under the procedure in ■ BIPRU 8.6.6 R to ■ BIPRU 8.6.9 R (Consolidated capital resources).

10.8A.11
FCA PRA

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The calculation of capital resources under ■ GENPRU 3 Annex 1 R Part 2 (Method 2 of Annex 1 of the Financial Groups Directive (Deduction and aggregation Method) is based on the *solo capital resources* of members of a *financial conglomerate*. The definition of *solo capital resources* depends on what type of *undertakings* the *financial conglomerate* contains. For example, if a *financial conglomerate* contains a bank the *solo capital resources* calculation for every group member in the *banking sector* and the *investment services sector* is based on the *capital resources* calculation for *banks*. The purpose of ■ BIPRU 10.8A.10R is to apply the corresponding procedure that applies under ■ BIPRU 8.6 (Calculation of capital resources on a consolidated basis for BIPRU firms).

Notification

10.8A.12
FCA PRA

R

A *firm* must immediately notify the *appropriate regulator* in writing if it becomes aware that any *exposure* that it has treated as exempt under this section or any *counterparty* that it has been treating as a member of its *core UK group* has ceased to meet the conditions for application of the treatment in this section.

11.2 Basis of disclosures

Disclosure on an individual basis

11.2.1

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FCA PRA

The following must comply with the obligations laid down in ■ BIPRU 11.3 on an individual basis:

- (1) a *firm* which is neither a *parent undertaking* nor a *subsidiary undertaking*;
- (2) a *firm* which is excluded from a *UK consolidation group* or *non-EEA sub-group* pursuant to ■ BIPRU 8.5; and

[Note: BCD Article 68(3)]

- (3) a *firm* which is part of a *group* which has been granted an *investment firm consolidation waiver* under ■ BIPRU 8.4;

[Note: CAD.Article 23]

EEA parent institutions

11.2.2

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FCA PRA

A *firm* which is an *EEA parent institution* must comply with the obligations laid down in ■ BIPRU 11.3 on the basis of its consolidated financial situation.

[Note: BCD Article 72(1)]

11.2.3

R

FCA PRA

A *firm* which is a significant subsidiary of an *EEA parent institution* must disclose the information specified in ■ BIPRU 11.4.5 R on an individual or sub-consolidated basis.

Firms controlled by an EEA parent financial holding company

11.2.4

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FCA PRA

A *firm* controlled by an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* must comply with the obligations laid down in ■ BIPRU 11.3 on the basis of the consolidated financial situation of that *EEA parent financial holding company* or *EEA parent mixed financial holding company*.

[Note: BCD Article 72(2)]

11.2.5

FCA PRA

R

A *firm* which is a significant subsidiary of an *EEA parent financial holding company* or an *EEA parent mixed financial holding company* must disclose the information specified in ■ BIPRU 11.4.5 R on an individual or sub-consolidated basis.

Waiver: Comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country

11.2.6

FCA PRA

G

A *firm* which is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in an *EEA State* may apply for a *waiver* from the relevant disclosure requirements in ■ BIPRU 11.2.2 R - ■ BIPRU 11.2.5 R. The *appropriate regulator's* approach to granting *waivers* is set out in the Supervision manual (see ■ SUP 8).

[Note: BCD Article 72(3)]

11.2.7

FCA PRA

G

A *firm* applying for a *waiver* from one or more of the disclosure requirements in ■ BIPRU 11.2.2 R - ■ BIPRU 11.2.5 R will need to:

- (1) satisfy the *appropriate regulator* that it is included within comparable disclosures provided on a consolidated basis by a *parent undertaking* whose head office is not in an *EEA State*; and
- (2) notify the *appropriate regulator* of the location where the comparable disclosures are provided.

(f) participation in payment, settlement and clearing systems.

(2) In making its assessment under (1) a *firm* must pay particular attention to the possible need for more frequent disclosure of:

- (a) items of information laid down in ■ BIPRU 11.5.3 R (2) and ■ BIPRU 11.5.3 R (5), and ■ BIPRU 11.5.4 R (2) - ■ BIPRU 11.5.4 R (5);
- (b) information on risk exposure and other items prone to rapid change.

[Note: BCD Annex XII Part 1 point 4]

Disclosures: Significant subsidiaries

11.4.5

FCA PRA

R

A *firm* which is a significant subsidiary of:

- (1) an *EEA parent institution*; or
- (2) an *EEA parent financial holding company*; or
- (3) an *EEA parent mixed financial holding company*;

must disclose the information specified in ■ BIPRU 11.5.3 R to ■ BIPRU 11.5.4 R on an individual or sub-consolidated basis.

[Note: BCD Annex XII Part 1 point 5]

11.5 Technical criteria on disclosure: General requirements

Disclosure: Risk management objectives and policies

11.5.1

FCA PRA

R

A *firm* must disclose its risk management objectives and policies for each separate category of risk, including the risks referred to under ■ BIPRU 11.5.1 R to ■ BIPRU 11.5.17 R. These disclosures must include:

- (1) the strategies and processes to manage those risks;
- (2) the structure and organisation of the relevant risk management function or other appropriate arrangements;
- (3) the scope and nature of risk reporting and measurement systems; and
- (4) the policies for hedging and mitigating risk, and the strategies and processes for monitoring the continuing effectiveness of hedges and mitigants.

[Note: BCD Annex XII Part 2 point 1]

Disclosure: Scope of application of directive requirements

11.5.2

FCA PRA

R

A *firm* must disclose the following information regarding the scope of application of the requirements of the *Banking Consolidation Directive*:

- (1) the name of the *firm* which is the subject of the disclosures;
- (2) an outline of the differences in the basis of consolidation for accounting and prudential purposes, with a brief description of the entities that are:
 - (a) fully consolidated;
 - (b) proportionally consolidated;
 - (c) deducted from *capital resources*;
 - (d) neither consolidated nor deducted;

Prudential sourcebook for Insurers

Chapter 6

Group Risk: Insurance Groups



6.1 Application

6.1.1

PRA

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■ INSPRU 6.1 applies to an *insurer* that is either:

- (1) a *participating insurance undertaking*; or
- (2) a member of an *insurance group* or an *MFHC conglomerate* which is not a *participating insurance undertaking* and which is not:
 - (a) a *non-EEA insurer*; or
 - (b) a *friendly society*.

6.1.2

PRA

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■ INSPRU 6.1 does not apply to:

- (1) a *non-directive friendly society*; or
- (2) a *Swiss general insurer*; or
- (3) an *EEA-deposit insurer*; or
- (4) an *incoming EEA firm*; or
- (5) an *incoming Treaty firm*.

6.1.3

PRA

G

■ INSPRU 6.1 applies to a *firm*:

- (1) on a solo basis, as an adjusted solo calculation, where that *firm* is a *participating insurance undertaking*; and
- (2) on a group basis where that *firm* is a member of an *insurance group* or *MFHC conglomerate*.

6.1.4

PRA

G

For the purposes of ■ INSPRU 6.1, an *insurer* includes a *friendly society* (other than a *non-directive friendly society*) and a *non-EEA insurer*.

Purpose

6.1.5
PRA

G

The purpose of this section is to implement the *Insurance Groups Directive* on supplementary supervision of *firms* in an *insurance group*, as amended by the *Financial Groups Directive*, the *Reinsurance Directive* and *FICOD 1*.

6.1.5A
PRA

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Notwithstanding the provisions of this Chapter, where a *firm* is subject to provisions under this Chapter in respect of an *undertaking* in ■ INSPRU 6.1.17R (1)(bA) or ■ (bB) and the *PRA* is the *coordinator*, the *PRA* may, on application by the *firm* and after consulting other *relevant competent authorities*, disapply such provisions of this Chapter with regard to that *undertaking* which are considered by the *PRA* as equivalent to those applying to the *firm* under ■ GENPRU 3.1.

6.1.6
PRA

G

■ INSPRU 6.1 sets out the *sectoral rules* for *insurers* for:

- (1) *firms* that are *participating insurance undertakings* carrying out an adjusted solo calculation as contemplated by ■ GENPRU 2.1.13 R (2)
- (2) *insurance groups*;
- (3) *insurance conglomerates* ; and
- (4) *MFHC conglomerates*.

6.1.6A
PRA

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In accordance with the definition, an *insurance holding company* ceases to be an *insurance holding company* if:

- (1) it is a *mixed financial holding company*; and
- (2) notice has been given in accordance with Article 4(2) of the *Financial Groups Directive* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*;

otherwise it remains an *insurance holding company* for the purposes of this chapter.

6.1.7
PRA

G

For a *firm* that is a *participating insurance undertaking*, the *rules* in ■ INSPRU 6.1 out the minimum capital adequacy requirements for the *firm* itself. A *firm* that satisfies the test in ■ INSPRU 6.1.9 R in relation to its *group capital resources* is deemed by ■ GENPRU 2.1.13 R (2) to be in compliance with the capital adequacy requirement set out in ■ GENPRU 2.1.13 R (1).

Requirement to calculate GCR and GCRR

6.1.8
PRA

R

A *firm* must on a regular basis calculate the *group capital resources (GCR)* and *group capital resources requirement (GCRR)* of each *undertaking* referred to in ■ INSPRU 6.1.17 R.

Requirement to maintain group capital

6.1.9
PRA

R

Where a *firm* is the *undertaking* referred to in ■ INSPRU 6.1.17 R (1)(c) or ■ INSPRU 6.1.17 R (2), it must maintain at all times *tier one capital resources*

and *tier two capital resources* of such an amount that its *group capital resources* are equal to or exceed its *group capital resources requirement*.

6.1.10

PRA

R

A *firm* that is both:

- (1) a *composite firm*; and
- (2) an *undertaking* referred to in ■ INSPRU 6.1.17 R (1)(c) or ■ INSPRU 6.1.17 R (2);

must comply with ■ INSPRU 6.1.9 R separately in respect of its *long-term insurance business* and its *general insurance business*.

6.1.11

PRA

R

For the purposes of ■ INSPRU 6.1.10 R, a *firm* must include in the calculation of the *group capital resources* and *group capital resources requirement* of its *long-term insurance business* the *regulated related undertakings* and *ancillary services undertakings* that are *long-term insurance assets*.

6.1.12

PRA

G

■ INSPRU 1.5 sets out the detailed requirements for the separation of *long-term* and *general insurance business*.

6.1.13

PRA

G

In order to comply with ■ INSPRU 6.1.10 R, a *composite firm* will need to:

- (1) establish the *group capital resources requirement* of its *general insurance business* and its *long-term insurance business* separately; and
- (2) allocate its *group capital resources* between its *general insurance business* and its *long-term insurance business* so that:
 - (a) the *group capital resources* allocated to its *general insurance business* are equal to or in excess of the *group capital resources requirement* of its *general insurance business*; and
 - (b) the *group capital resources* allocated to its *long-term insurance business* are equal to or in excess of the *group capital resources requirement* of its *long-term insurance business*.

6.1.14

PRA

G

Surplus *group capital resources* in the *long-term insurance business* cannot be used towards meeting the requirements of the *general insurance business* (see ■ INSPRU 6.1.41 R) but surplus *group capital resources* in the *general insurance business* may be used towards meeting the amount of the *group capital resources requirement* that relates to the *long-term insurance business*.

6.1.15

PRA

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- (1) Subject to ■ INSPRU 6.1.27 R, a *firm* must ensure that at all times its *capital resources* are of such an amount that the *group capital resources* of each *undertaking* referred to in ■ INSPRU 6.1.17 R (excluding those referred to in ■ INSPRU 6.1.9 R) are equal to or exceed that *undertaking's group capital resources requirement*

- (2) (1) does not apply to a *pure reinsurer* which became a *firm in run-off* before 10 December 2007 and whose *Part 4A permission* has not subsequently been varied to add back the *regulated activity of effecting contracts of insurance*.

6.1.16

PRA

G

Principle 4 requires a *firm* to maintain adequate financial resources, taking into account any activity of other members of the *group* of which the *firm* is a member. ■ INSPRU 6.1 sets out provisions that deal specifically with the way the activities of other members of the *group* should be taken into account. This results in the *firm* being required to hold sufficient capital resources so that the *group capital resources* are at least equal to the *group capital resources requirement*. However, the adequacy of the *group capital resources* needs to be assessed both by the *firm* and the *PRA*. *Firms* are required to carry out an assessment of the adequacy of their financial resources under the *overall financial adequacy rule*, the *overall Pillar 2 rule* and ■ GENPRU 1.2.39 R, and the *PRA* will review this and may provide individual guidance on the amount and quality of *capital resources* the *PRA* considers adequate. As part of such reviews, the *PRA* may also form a view on the appropriateness of the *group capital resources requirement* and *group capital resources*. Where necessary, the *PRA* may also give individual *guidance* on the *capital resources* a *firm* should hold in order to comply with *Principle 4* expressed by reference to ■ INSPRU 6.1.9 R and ■ INSPRU 6.1.15 R.

6.1.17

PRA

R

Scope - undertakings whose group capital is to be calculated and maintained

The *undertakings* referred to in ■ INSPRU 6.1.8 R, ■ INSPRU 6.1.9 R, ■ INSPRU 6.1.10 R and ■ INSPRU 6.1.15 R are:

- (1) for any *firm* that is not within (2), each of the following:
- (a) its *ultimate insurance parent undertaking*;
 - (b) its *ultimate EEA insurance parent undertaking* (if different to (a));
 - (ba) the ultimate *mixed financial holding company* at the head of a *MFHC conglomerate* of which the *firm* is a member;
 - (bb) the *ultimate EEA mixed financial holding company* at the head of a *MFHC conglomerate* of which the *firm* is a member (if different from (ba)); and
 - (c) the *firm* itself, if it is a *participating insurance undertaking*; and
- (2) the *firm* itself, where the *firm* is a *participating insurance undertaking* and is:
- (a) a *non-EEA insurer*; or
 - (b) a *friendly society*.

6.1.18
PRA

G

Article 3(3) of the *Insurance Groups Directive* allows an *undertaking* to be excluded from supplementary supervision if:

- (1) its head office is in a non-EEA State where there are legal impediments to the transfer of the necessary information; or
- (2) in the opinion of the *competent authority* responsible for exercising supplementary supervision, having regard to the objectives of supplementary supervision:
 - (a) its inclusion would be inappropriate or misleading; or
 - (b) it is of negligible interest.

6.1.19
PRA

G

If an application is made for a *waiver* contemplated by Article 3(3) of the *Insurance Groups Directive*, it is the policy of the PRA to consider the effect, in the circumstances described in ■ INSPRU 6.1.18 G, of granting a *waiver* allowing the exclusion of a *related undertaking* from the calculation of *group capital resources* and the *group capital resources requirement* required by ■ INSPRU 6.1.8 R.

6.1.20
PRA

G

Examples of *related undertakings* which may be excluded from supplementary supervision by Article 3(3) of the *Insurance Groups Directive* include *insurance holding companies* in the *insurance group* that are not the *ultimate insurance parent undertaking* or, if different, the *ultimate EEA insurance parent undertaking* of a *firm*.

6.1.21
PRA

G

If more than one member of the *insurance group* is to be excluded in the circumstances described in ■ INSPRU 6.1.18 G (2)(b), they may only be excluded if, considered together, they are of negligible interest in the context of the *insurance group*.

6.1.22
PRA

G

When giving a *waiver* in the circumstances described in ■ INSPRU 6.1.18 G, the PRA may impose a condition requiring the *firm* to provide information about any member of the *insurance group* excluded pursuant to a *waiver* granted in the circumstances described in ■ INSPRU 6.1.18 G.

Optional alternative method of calculation for firms subject to supplementary supervision by another EEA competent authority

6.1.23
PRA

R

If the *competent authority* in an EEA State other than the *United Kingdom* has agreed to be the *competent authority* responsible for exercising supplementary supervision of an *insurance group* or an *MFHC conglomerate* of which a *firm* is a member under Article 4(2) of the *Insurance Groups Directive*, the *firm* may prepare the calculations required under ■ INSPRU 6.1.8 R in relation to the *ultimate EEA insurance parent undertaking* or *ultimate EEA mixed financial holding company* in accordance with the requirements of supplementary supervision in that EEA State.

6.1.24
PRA

G

The PRA will notify the *firm* if it has reached agreement with the *competent authority* in an EEA State other than the *United Kingdom* in accordance with Article 4(2) of the *Insurance Groups Directive*.

Non-EEA ultimate insurance parent undertakings or non-EEA ultimate mixed financial holding companies

6.1.25

PRA

R

Where the *ultimate insurance parent undertaking* or *ultimate mixed financial holding company* of a *firm* has its head office in a non-EEA State, the *firm* may:

- (1) calculate the *group capital resources* and the *group capital resources requirement* of its *ultimate insurance parent undertaking* or *ultimate mixed financial holding company* in accordance with accounting practice applicable for the purposes of the regulation of *insurance undertakings* in the state or territory of the head office of the *ultimate insurance parent undertaking* or *ultimate mixed financial holding company* adapted as necessary to apply the general principles set out in Annex I (1) paragraphs B, C and D of the *Insurance Groups Directive*; and
- (2) elect (see ■ INSPRU 6.1.26 R) to carry out the calculation referred to in (1) in accordance with the accounting consolidation method set out in Annex I (3) of the *Insurance Groups Directive*.

6.1.26

PRA

R

A *firm* may elect to use the calculation method referred to in ■ INSPRU 6.1.25 R (2) if it has made the election by written notice to the PRA in a way that complies with the requirements for written notice in ■ SUP 15.7.

6.1.27

PRA

R

■ INSPRU 6.1.15 R does not apply :

- (1) in respect of the *group capital resources* of a *firm's ultimate insurance parent undertaking* if that *ultimate insurance parent undertaking* has its head office in a non-EEA State; or
- (2) in respect of the *group capital resources* of the *ultimate mixed financial holding company* at the head of the *MFHC conglomerate* of which the *firm* is a member if that *ultimate mixed financial holding company* has its head office in a non-EEA State.

Proportional holdings

6.1.28

PRA

R

Subject to ■ INSPRU 6.1.30 R and ■ INSPRU 6.1.31 R, when calculating *group capital resources* and the *group capital resources requirement* of an *undertaking* in ■ INSPRU 6.1.17 R, a *firm* must take only the relevant proportion of the following items ("calculation items") into account:

- (1) the *solo capital resources* of a *regulated related undertaking*;
- (2) the assets of a *regulated related undertaking* which are required to be deducted as part of the calculation of *group capital resources*; and

- (3) the *individual capital resources requirement* of a *regulated related undertaking*.

6.1.29

PRA

R

In ■ INSPRU 6.1.28 R, the relevant proportion is either:

- (1) the proportion of the total number of issued *shares* in the *regulated related undertaking* held, directly or indirectly, by the *undertaking* in ■ INSPRU 6.1.17 R; or
- (2) where a *consolidation Article 12(1) relationship* exists between *related undertakings* within the *insurance group* or *MFHC conglomerate*, such proportion as the *PRA* determines in accordance with Article 28(5) of the *Financial Groups Directive* and Regulation 15 of the *Financial Groups Directive Regulations*.

6.1.30

PRA

R

Where the *undertaking* in ■ INSPRU 6.1.17 R is a *firm*, if the *individual capital resources requirement* of a *regulated related undertaking* that is a *subsidiary undertaking* and not an *insurer* exceeds the *solo capital resources* of that *undertaking* less the amount calculated in ■ INSPRU 6.1.74 R (if any), the full amount of the calculation items of that *regulated related undertaking* less the amount in ■ INSPRU 6.1.74 R (3) must be taken into account in the calculation of *group capital resources* and the *group capital resources requirement*.

6.1.31

PRA

R

Except where ■ INSPRU 6.1.30 R applies, if the *individual capital resources requirement* of a *regulated related undertaking* that is a *subsidiary undertaking* of the *undertaking* in ■ INSPRU 6.1.17 R exceeds its *solo capital resources*, the full amount of the calculation items of that *regulated related undertaking* must be taken into account in the calculation of *group capital resources* and the *group capital resources requirement*.

6.1.32

PRA

R

For the purposes of ■ INSPRU 6.1.10 R, where a *composite firm* that is an *undertaking* in ■ INSPRU 6.1.17 R (1)(c) or (2):

- (1) holds directly or indirectly *shares* in a *regulated related undertaking*; and
- (2) the *shares* in (1) are held partly by its *long-term insurance business* and partly by its *general insurance business*;
- (3) the relevant proportion of the calculation items calculated in accordance with ■ INSPRU 6.1.29 R, subject to ■ INSPRU 6.1.30 R and ■ INSPRU 6.1.31 R, must be allocated between the *long-term insurance business* and *general insurance business* in proportion to their respective holdings, directly or indirectly, in the *shares* in that *regulated related undertaking*.

Calculation of the GCRR

6.1.33

PRA

R

Subject to ■ INSPRU 6.1.23 R and ■ INSPRU 6.1.25 R, a *firm* must calculate the *group capital resources requirement* of an *undertaking* in ■ INSPRU 6.1.17 R as the sum of the *individual capital resources requirement* of that *undertaking* and the *individual capital resources requirement* of each of its *regulated related undertakings*.

6.1.34

PRA

R

For the purposes of ■ INSPRU 6.1, an *individual capital resources requirement* is:

- (1) in respect of any *insurer*:
 - (a) its *capital resources requirement* calculated in accordance with ■ GENPRU 2.1; less
 - (b) where the *capital resources requirements* of both the *insurer* and its *insurance parent undertaking* that is an *insurer* include *with-profits insurance capital components*, any element of double-counting that may arise from the aggregation of the *individual capital resources requirements* for the purposes of ■ INSPRU 6.1.33 R;
- (2) in respect of an *EEA insurer* or an *EEA pure reinsurer*, the equivalent of the *capital resources requirement* as calculated in accordance with the applicable requirements in its *Home State*;
- (3) in respect of an *EEA ISPV*, the solo capital resources requirement that applies to the *ISPV* under the *sectoral rules* for the *insurance sector* of the member State of the *competent authority* that authorised the *ISPV*;
- (4) in respect of an *insurance undertaking* that is not within (1), (2) or (3) and whose head office is in a *designated State or territory*, either:
 - (a) its *proxy capital resources requirement*; or
 - (b) the solo capital resources requirement that applies to it under the *sectoral rules* for the *insurance sector* of the *designated State or territory*;
- (5) in respect of an *insurance undertaking* within (4) which is not subject to a solo capital resources requirement under the *sectoral rules* for the *insurance sector* of that *designated State or territory*, its *proxy capital resources requirement*;
- (6) in respect of an *insurance undertaking* that is not within (1) to (5), its *proxy capital resources requirement*;

- (7) in respect of an *insurance holding company* or *mixed financial holding company*, zero;
- (8) [intentionally blank]
- (9) in respect of a *regulated entity* (excluding an *insurance undertaking*), its *solo capital resources requirement*;
- (10) in respect of an *asset management company*, the *solo capital resources requirement* that would apply to it if, in connection with its activities, it were treated as being in the *investment services sector*; ;and
- (11) in respect of a *financial institution* that is not a *regulated entity* (including a *financial holding company*), the *solo capital resources requirement* that would apply to it if, in connection with its activities, it were treated as being within the *banking sector*.
- (12) [deleted]

6

6.1.34A

PRA

G

For the purposes of ■ INSPRU 6.1.34 R (4)(b), where the solo capital resources requirement under the *sectoral rules* for the *insurance sector* in a *designated State or territory* is ascertained by reference to the trigger for regulatory intervention, the PRA considers that the solo capital resources requirement of the *insurance undertaking* in such a *designated State or territory* will generally correspond to the highest point at which any regulatory or corrective action is triggered or which is at least comparable to the *capital resources requirement* which would apply if the *insurance undertaking* were an *insurer*.

6.1.35

PRA

G

■ INSPRU 6.1.34R sets out the rules for calculating an *insurer's individual capital resources requirement*. Among other things, this allows the use of local rules for related entities in designated states and territories. Paragraphs 6.5 and 6.6 of ■ GENPRU 3 Annex 1R include the equivalent provisions for *related undertakings* in the *banking sector* and *investment services sector*. The provisions of paragraphs 6.4 to 6.6 extend to the calculation of *solo capital resources*, with the references to *sectoral rules* in paragraphs 1.2, 2.3 and 3.2 of ■ GENPRU 3 Annex 1R (that is, the capital resources requirement of a *related undertaking* must be met by capital resources that are eligible under the relevant *sectoral rules*).

Calculation of GCR

6.1.36

PRA

R

For the purposes of ■ INSPRU 6.1.8 R and subject to ■ INSPRU 6.1.23 R and ■ INSPRU 6.1.25 R, a *firm* must calculate the group capital resources of an *undertaking* in ■ INSPRU 6.1.17 R in accordance with the table in ■ INSPRU 6.1.43 R, subject to the limits in ■ INSPRU 6.1.45 R.

6.1.37

PRA

R

For the purposes of ■ INSPRU 6.1, the following expressions when used in relation to either an *undertaking* in ■ INSPRU 6.1.17 R or a *regulated related undertaking* which is not subject to the *capital resources table*,

are to be construed as if that *undertaking* were required to calculate its capital resources in accordance with the *capital resources table*, but with such adjustments being made to secure that the *undertaking's* calculation of its *solo capital resources* complies with the relevant *sectoral rules* applicable to it:

- (1) *tier one capital resources*;
- (2) *tier two capital resources*;
- (3) *upper tier two capital resources*;
- (4) *lower tier two capital resources*;
- (5) *innovative tier one capital resources*; and
- (6) *core tier one capital*.

6.1.38

PRA

R

For the purposes of ■ INSPRU 6.1.37 R, the *sectoral rules* applicable to:

- (1) an *insurance holding company* whose main business is to acquire and hold participations in *subsidiary undertakings* which are either exclusively or mainly *reinsurance undertakings* are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as a *pure reinsurer*;
- (2) an *insurance holding company* not within (1) or a *mixed financial holding company*, are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as an *insurer*;
- (3) an *asset management company* are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as an *investment firm*; and
- (4) subject to ■ INSPRU 6.1.39 R, a *financial institution*, that is not a *regulated entity*, are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as being within the *banking sector*.

6.1.39

PRA

R

Where a *financial institution*, that is not a *regulated entity*, has invested in *tier one capital* or *tier two capital* issued by a *parent undertaking* that is:

- (1) an *insurance holding company*; or
- (1A) a *mixed financial holding company*; or
- (2) an *insurer*;

the *sectoral rules* that apply to that *financial institution* are the *sectoral rules* for the *insurance sector*.

6.1.40

PRA

R

For the purposes of ■ INSPRU 6.1.36 R, the capital resources of a *financial institution* within ■ INSPRU 6.1.39 R that can be included in the calculations in ■ INSPRU 6.1.48 R (2), ■ INSPRU 6.1.50 R (2), ■ INSPRU 6.1.53 R (2), ■ INSPRU 6.1.55 R (2) and ■ INSPRU 6.1.57 R (2) are:

- (1) the issued *tier one capital* or *tier two capital* of that *financial institution* held, directly or indirectly, by its *parent undertaking* referred to in ■ INSPRU 6.1.39 R; and
- (2) the lower of:
 - (a) the *tier one capital* or *tier two capital* issued by the *parent undertaking* referred to in ■ INSPRU 6.1.39 R pursuant to the investment by the *financial institution*; and
 - (b) the *tier one capital* or *tier two capital* issued by the *financial institution* to raise funds for its investment in the capital resources of the *parent undertaking* referred to in (a).

6.1.41

PRA

R

- (1) In calculating *group capital resources*, a *firm* must exclude the restricted assets of a *regulated related undertaking* except insofar as those assets are available to meet the *individual capital resources requirement* of that *regulated related undertaking*.
- (2) In (1), "restricted assets" means assets of a *regulated related undertaking* which are subject to a legal restriction or other requirement having the effect that those assets cannot be transferred or otherwise made available to another *regulated related undertaking* for the purposes of meeting its *individual capital resources requirement* without causing a breach of that legal restriction or requirement.

6.1.42

PRA

G

For the purposes of ■ INSPRU 6.1.41 R, in respect of an *insurance undertaking* that is a member of an *insurance group* or *MFHC conglomerate*, the assets of a *long-term insurance fund* are restricted assets within the meaning of ■ INSPRU 6.1.41 R. Any excess of assets over liabilities in the *long-term insurance fund* may only be included in the calculation of the *group capital resources* up to the amount of the *undertaking's individual capital resources requirement* which relates to the *long-term insurance business* in respect of which that *long-term insurance fund* is held.

6.1.42A

PRA

R

For the purposes of calculating *group capital resources*, a *firm* must exclude:

- (1) the book value of any investment by a *related undertaking* of the *undertaking* in ■ INSPRU 6.1.17 R in shares of, or loans to, an *undertaking* that is not a *related undertaking*, where that

undertaking has invested in the *capital resources* of a *regulated related undertaking* of the *undertaking* in ■ INSPRU 6.1.17 R; and

- (2) any item of capital not in (1) to the extent that it is the result of or otherwise attributable to reciprocal financing arrangements entered into by the *undertaking* in ■ INSPRU 6.1.17 R or by a *related undertaking* of an *undertaking* in ■ INSPRU 6.1.17 R.

6.1.42B

PRA

G

The *Insurance Groups Directive* gives an example of reciprocal financing as when an *insurance undertaking*, or any of its *related undertakings*, holds shares in, or makes loans to, another *undertaking* which, directly or indirectly, holds an element eligible for the solvency margin of the first undertaking. However, there are other instances of reciprocal financing, for example where a *group undertaking* provides a guarantee to an *undertaking* outside the *group*, in whole or partial reliance on which the non-*group undertaking* invests in or provides any kind of financial accommodation to support the *capital resources* of a *group undertaking* whose *capital resources* are relevant to the *group capital resources* calculation. ■ INSPRU 6.1.42AR (2) requires that *firms* exclude from *group capital resources* those items of capital resulting from or attributable to such reciprocal financing arrangements.

6.1.43

PRA

R

Table: Group capital resources

	Stage	Related text
Total group tier one capital	A	INSPRU 6.1.48 R
Total group tier two capital	B	INSPRU 6.1.50 R
Group capital resources before deductions	C=(A+B)	
Total deductions of inadmissible assets	D	INSPRU 6.1.59 R
Total deductions under the requirement deduction method from group capital resources	E	INSPRU 6.1.62 R
Total deductions of ineligible surplus capital*	F	INSPRU 6.1.65 R
Deduction of assets in excess of market risk and counterparty exposure limits*	G	INSPRU 6.1.70 R
Group capital resources	H=(C-(D+E+F*+G*))	

* = section (F) of the table (the deductions for ineligible surplus capital) and section (G) of the table (assets in excess of market risk and counterparty exposure limits) only apply and are required to be calculated for the pur-

Stage	Related text
	poses of the adjusted solo calculation of an <i>undertaking</i> in INSPRU 6.1.17 R that is a <i>participating insurance undertaking</i> .

Notification of issuance of capital instruments

6.1.43A
PRA

R This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *group capital resources* of the *firm* or its *ultimate EEA insurance parent undertaking*.

6.1.43B
PRA

R A *firm* must notify the *PRA* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital instrument* which it intends to include within its *group capital resources*, or the *group capital resources* of its *ultimate EEA insurance parent undertaking*, as soon as it becomes aware of the intention of the *group undertaking*. When giving notice, a *firm* must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the inclusion of the issue within *group capital resources* that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and
- (4) provide details of any features of the *capital instrument* which are novel, unusual or different from a *capital instrument* of a similar nature previously issued by the *firm* or widely available in the market or not specifically contemplated by ■ GENPRU 2.2.

This *rule* does not apply to a *firm* if a *group undertaking* intends to issue a *capital instrument* listed in ■ INSPRU 6.1.43E R.

6.1.43C
PRA

R A *firm* must provide a further notification to the *PRA* in writing including all the information required in ■ INSPRU 6.1.43BR (1) to ■ (4) as soon as any changes are proposed to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the *capital instrument* to that previously notified to the *PRA* .

6.1.43D
PRA

R If a *group undertaking* proposes to establish a debt securities program for the issue of *capital instruments* which the *firm* intends to include within its *group capital resources* or the *group capital resources* of its *ultimate EEA insurance parent undertaking*, it must:

6.1.43E
PRA

R

- (1) notify the *PRA* of the establishment of the program; and
- (2) provide the information required by ■ INSPRU 6.1.43BR (1) to ■ (4) as soon as it becomes aware of the proposed establishment. The *PRA* must be notified of any changes, in accordance with ■ INSPRU 6.1.43C R.

The *capital instruments* to which ■ INSPRU 6.1.43B R does not apply are;

- (1) ordinary *shares* issued by a *group undertaking* which
 - (a) are the most deeply subordinated *capital instrument* issued by that *group undertaking*;
 - (b) meet the criteria set out in ■ GENPRU 2.2.83 R (2) and ■ (3); and
 - (c) are the same as ordinary *shares* previously issued by that *group undertaking*;
- (2) debt instruments issued from a debt securities program established by a *group undertaking*, provided that program was notified to the *PRA* prior to its first draw down in accordance with ■ INSPRU 6.1.43D R; and
- (3) *capital instruments* which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to *capital instruments* previously issued by that *group undertaking* and included in the *group capital resources* of the *firm* or the *group capital resources* of its *ultimate EEA insurance parent undertaking*.

6.1.43F
PRA

R

A *firm* must notify the *PRA* in writing, no later than the date of issue, of the intention of a *group undertaking* to issue a *capital instrument* listed in ■ INSPRU 6.1.43E R which the *firm* intends to include within its *group capital resources* or the *group capital resources* of its *ultimate EEA insurance parent undertaking*. When giving notice a *firm* must

- (1) provide the information set out at ■ INSPRU 6.1.43BR (1) to ■ (3); and
- (2) confirm that the terms of the *capital instrument* have not changed since the previous issue of that type of *capital instrument* by that *group undertaking*.

Calculation of GCR - Limits on the use of different forms of capital

As the various components of capital differ in the degree of protection that they offer the *insurance group* or *MFHC conglomerate*, restrictions are placed on the extent to which certain types of capital are eligible for inclusion in the *group capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R. These restrictions are set out in ■ INSPRU 6.1.45 R.

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15

6.1.44
PRA

G

6.1.45

PRA

R

(1) For the purposes of ■ INSPRU 6.1.9 R, ■ INSPRU 6.1.10 R and ■ INSPRU 6.1.15 R, a *firm* must ensure that at all times its *tier one capital resources* and *tier two capital resources* are of such an amount that the *group capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R comply with the following limits:

- (a) $(P - Q) \geq \frac{1}{2} (R - S)$;
- (b) $(P - Q + T - W) \geq \frac{3}{4} (R - S)$;
- (c) $V \geq \frac{1}{2} P$;
- (d) $Q \leq 15\%$ of P;
- (e) $T \leq P$; and
- (f) $W \leq \frac{1}{2} P$

(2) For the purposes of ■ INSPRU 6.1.9 R and ■ INSPRU 6.1.10 R, a *firm* must ensure that at all times its *tier one capital resources* and *tier two capital resources* are of such an amount that its *group capital resources* comply with the following limit, subject to (4)

$$(P - Q + T) = \frac{1}{3} X + (R - S - U - X).$$

(3) For the purposes of (1) and (2):

- (a) P is the *total group tier one capital* of the *undertaking* in ■ INSPRU 6.1.17 R;
- (b) Q is the sum of the *innovative tier one capital resources* calculated in accordance with ■ INSPRU 6.1.53 R;
- (c) R is the *group capital resources requirement* of the *undertaking* in ■ INSPRU 6.1.17 R;
- (d) S is the sum of all the *with-profits insurance capital components* of an *undertaking* in ■ INSPRU 6.1.17 R that is an *insurer* and each of its *regulated related undertakings* that is an *insurer*;
- (e) T is the *total group tier two capital* of the *undertaking* in ■ INSPRU 6.1.17 R;
- (f) U is the sum of all the *resilience capital requirements* of an *undertaking* in ■ INSPRU 6.1.17 R that is an *insurer* and each of its *regulated related undertakings* that is an *insurer*;
- (g) V is the sum of all the *core tier one capital* calculated in accordance with ■ INSPRU 6.1.55 R;
- (h) W is the sum of the *lower tier two capital resources* calculated in accordance with ■ INSPRU 6.1.57 R; and

- (i) X is the *MCR* of the *firm* less its *resilience capital requirement*, if any.
- (4) For the purposes of (2):
 - (a) ■ INSPRU 6.1.45 R (1)(a) does not apply;
 - (b) the *innovative tier one capital* of the *firm* or its *regulated related undertakings* that meets the conditions for it to be *upper tier two capital* may be included as *upper tier two capital* for the purpose of the calculation in ■ INSPRU 6.1.50 R; and
 - (c) the *firm* must exclude from the calculation of (P - Q + T) in (2) the higher of:
 - (i) any amount by which the *total group tier two capital* exceeds the *group capital resources* of the *firm* less any *innovative tier one capital* excluded by (b); and
 - (ii) any amount by which the sum of *lower tier two capital resources* calculated in accordance with ■ INSPRU 6.1.57 R exceeds one third of the *group capital resources* of the *firm* less any *innovative tier one capital* excluded by (b).

6.1.46
PRA

G

The amount of any capital item excluded from *group capital resources* under ■ INSPRU 6.1.45 R (1)(d) may form part of *total group tier two capital* calculated in accordance with ■ INSPRU 6.1.50 R subject to the limits in ■ INSPRU 6.1.45 R (1)(e) and ■ INSPRU 6.1.45R (1)(f).

6.1.47
PRA

R

For the purposes of ■ INSPRU 6.1.10 R, a *firm* must ensure that the *tier one capital resources* and *tier two capital resources* of each of its *long-term insurance business* and its *general insurance business* are of such an amount that the *group capital resources* of each its *long-term insurance business* and its *general insurance business* comply with the limits in ■ INSPRU 6.1.45 R separately for each type of business.

Calculation of GCR - Total group tier one capital

6.1.48
PRA

R

For the purposes of ■ INSPRU 6.1.43 R, the *total group tier one capital* of an *undertaking* in ■ INSPRU 6.1.17 R is the sum of:

- (1) the *tier one capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R; and
- (2) subject to ■ INSPRU 6.1.40 R, the *tier one capital resources* of each of the *related undertakings* of that *undertaking* that is a *regulated related undertaking* after the deduction in ■ INSPRU 6.1.49 R.

6.1.49

PRA

R

The deduction referred to in ■ INSPRU 6.1.48 R is the sum of:

- (1) the book value of the investment by the *undertaking* in ■ INSPRU 6.1.17 R in the *tier one capital resources* of each of its *related undertakings* that is a *regulated related undertaking*; and
- (2) the book value of the investments by *related undertakings* of the *undertaking* in ■ INSPRU 6.1.17 R in the *tier one capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *related undertakings* that is a *regulated related undertaking*.

Calculation of GCR - Total group tier two capital

6.1.50

PRA

R

For the purposes of ■ INSPRU 6.1.43 R, the *total group tier two capital* of an *undertaking* in ■ INSPRU 6.1.17 R is the sum of:

- (1) the *upper tier two capital resources* and the *lower tier two capital resources* of that *undertaking*; and
- (2) subject to ■ INSPRU 6.1.40 R, the *upper tier two capital resources* and the *lower tier two capital resources* of each of the *related undertakings* of that *undertaking* that is a *regulated related undertaking* after the deduction in ■ INSPRU 6.1.51 R.

6.1.51

PRA

R

The deduction referred to in ■ INSPRU 6.1.50 R is the sum of:

- (1) the book value of the investments by the *undertaking* in ■ INSPRU 6.1.17 R in the *upper tier two capital resources* and the *lower tier two capital resources* of each of its *related undertakings* that is a *regulated related undertaking*; and
- (2) the book value of the investments by *related undertakings* of the *undertaking* in ■ INSPRU 6.1.17 R in the *upper tier two capital resources* and the *lower tier two capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *related undertakings* that is a *regulated related undertaking*.

6.1.52

PRA

G

For the purposes of ■ INSPRU 6.1.50 R (2), the limits in ■ GENPRU 2.2.37 R apply to the *upper tier two capital resources* and the *lower tier two capital resources* of any *regulated related undertaking* that is an *insurer*. Similar limits may apply to other *regulated related undertakings* under the relevant *sectoral rules*.

Calculation of GCR - Innovative tier one capital resources, lower tier two capital resources and core tier one capital

6.1.53

PRA

R

For the purposes of ■ INSPRU 6.1.45 R (4)(b), the *innovative tier one capital resources* is the sum of:

- (1) the *innovative tier one capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R; and
- (2) subject to ■ INSPRU 6.1.40 R, the *innovative tier one capital resources* of each of the *related undertakings* of that *undertaking* that is a *regulated related undertaking* after the deduction in ■ INSPRU 6.1.54 R.

6.1.54

PRA

R

The deduction referred to in ■ INSPRU 6.1.53 R is the sum of:

- (1) the book value of the investments by the *undertaking* in ■ INSPRU 6.1.17 R in the *innovative tier one capital resources* of each of its *related undertakings* that is a *regulated related undertaking*; and
- (2) the book value of the investments by *related undertakings* of the *undertaking* in ■ INSPRU 6.1.17 R in the *innovative tier one capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *related undertakings* that is a *regulated related undertaking*.

6.1.55

PRA

R

For the purposes of ■ INSPRU 6.1.45 R (3)(g), the *core tier one capital* is the sum of:

- (1) the *core tier one capital* of the *undertaking* of ■ INSPRU 6.1.17 R; and
- (2) subject to ■ INSPRU 6.1.40 R, the *core tier one capital* of each of the *related undertakings* of that *undertaking* that is a *regulated related undertaking* after the deduction in ■ INSPRU 6.1.56 R.

6.1.56

PRA

R

The deduction referred to in ■ INSPRU 6.1.55 R is the sum of:

- (1) the book value of the investments by the *undertaking* in ■ INSPRU 6.1.17 R in the *core tier one capital* of each of its *related undertakings* that is a *regulated related undertaking*; and
- (2) the book value of the investments by *related undertakings* of the *undertaking* in ■ INSPRU 6.1.17 R in the *core tier one capital* of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *related undertakings* that is a *regulated related undertaking*.

6.1.57
PRA

R For the purposes of ■ INSPRU 6.1.45 R (3)(h), the *lower tier two capital resources* is the sum of:

- (1) the *lower tier two capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R; and
- (2) subject to ■ INSPRU 6.1.40 R, the *lower tier two capital resources* of each of the *related undertakings* of that *undertaking* that is a *regulated related undertaking* after the deduction in ■ INSPRU 6.1.58 R.

6.1.58
PRA

R The deduction referred to in ■ INSPRU 6.1.57 R is the sum of:

- (1) the book value of the investments by the *undertaking* in ■ INSPRU 6.1.17 R in the *lower tier two capital resources* of each of its *related undertakings* that is a *regulated related undertaking*; and
- (2) the book value of the investments by *related undertakings* of the *undertaking* in ■ INSPRU 6.1.17 R in the *lower tier two capital resources* of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *related undertakings* that is a *regulated related undertaking*.

Calculation of GCR - Inadmissible assets

6.1.59
PRA

R For the purpose of ■ INSPRU 6.1.43 R, a *firm* must deduct from the group capital resources before deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) of the *undertaking* in ■ INSPRU 6.1.17 R, the value of all assets of the *undertaking* in ■ INSPRU 6.1.17 R and each of its *regulated related undertakings* that are not admissible assets as set out in ■ INSPRU 6.1.60 R.

6.1.60
PRA

R For the purposes of ■ INSPRU 6.1.59 R, an asset is not an admissible asset if:

- (1) in respect of a *regulated related undertaking* or *undertaking* in ■ INSPRU 6.1.17 R that is an *insurer* (other than a *pure reinsurer*), it is not an *admissible asset* as listed in ■ GENPRU 2 Annex 7 R;
- (2) in respect of a *regulated related undertaking* or *undertaking* in ■ INSPRU 6.1.17 R that is a *pure reinsurer*, the holding of the asset is inconsistent with compliance by that *undertaking* with ■ INSPRU 3.1.61A R; or
- (3) in respect of a *regulated related undertaking* or *undertaking* in ■ INSPRU 6.1.17 R that is not an *insurer*, it is an asset of the *undertaking* that is not admissible for the purpose of calculating that *undertaking's solo capital resources* in accordance with the *sectoral rules* applicable to it.

- 6.1.61 PRA R For the purposes of ■ INSPRU 6.1.60 R (3), the *sectoral rules* applicable to:
- (1) an *asset management company* are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as an *investment firm*; and
 - (2) a *financial institution* that is not a *regulated entity* are the *sectoral rules* that would apply to it if, in connection with its activities, it were treated as being within the *banking sector*.

Calculation of GCR - Deductions under requirement deduction method from group capital resources

- 6.1.62 PRA R For the purposes of ■ INSPRU 6.1.43 R, a *firm* must deduct from the group capital resources before deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) of an *undertaking* in ■ INSPRU 6.1.17R (1)(a)■ (b) or ■ (c) or ■ (2) , the sum of the value of the direct or indirect investments by the *undertaking* in ■ INSPRU 6.1.17R (1)(a)■ (b) or ■ INSPRU 6.1.17R (1)(c) or ■ (2) in each of its *related undertakings* which is an *ancillary services undertaking*, calculated in accordance with ■ INSPRU 6.1.63 R.

- 6.1.63 PRA R The value of an investment in an *undertaking* referred to in ■ INSPRU 6.1.62 R is the higher of the book value of the direct or indirect investment by the *undertaking* in ■ INSPRU 6.1.17R (1)(a)■ (b) or ■ (c) or ■ (2) and the notional capital resources requirement of that *undertaking*.

- 6.1.64 PRA R For the purposes of ■ INSPRU 6.1.63 R, the notional capital resources requirement is:
- (1) for an *ancillary insurance services undertaking*, zero;
 - (2) for any other *ancillary services undertaking*, the *capital resources requirement* that would apply to that *undertaking*, if it were a *regulated related undertaking*, in accordance with the *sectoral rules* applicable to a *regulated related undertaking* whose activities are closest in nature and scope to the activities of that *undertaking*.

- 6.1.64A PRA R For the purposes of ■ INSPRU 6.1.43 R, in calculating the *group capital resources* of an *undertaking* in ■ INSPRU 6.1.17R (1)(bA) or ■ (bB) or in applying the provisions of ■ INSPRU 6.1 for the purposes of calculating the *conglomerate capital resources* of a *financial conglomerate* under the provisions of ■ GENPRU 3.1, a *firm* must, in accordance with ■ GENPRU 3.1.30 R but subject to ■ GENPRU 3.1.31 R, apply Method 2 (Deduction and Aggregation Method) or Method 1 (Accounting Consolidation Method) as set out in ■ GENPRU 3 Annex 1 R to reflect direct or indirect investments by the *undertaking* in ■ INSPRU 6.1.17R (1)(bA) or ■ (bB) or by members of the *financial conglomerate* in each *related undertaking* which is an *ancillary services undertaking*.

Calculation of GCR - Deductions of ineligible surplus capital

6.1.65
PRA

R

Where the *undertaking* in ■ INSPRU 6.1.17 R is a *participating insurance undertaking*, the *firm* must, for the purposes of ■ INSPRU 6.1.43 R, deduct from its group capital resources before deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) the sum of the ineligible surplus capital of each of its *regulated related undertakings* that is an *insurance undertaking*, calculated in accordance with ■ INSPRU 6.1.67 R.

6.1.66
PRA

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The purpose of ■ INSPRU 6.1.65 R is to ensure that, where the *undertaking* in ■ INSPRU 6.1.17 R is a *firm*, *group capital resources* are not overstated by the inclusion of capital that, although surplus to the requirements of the relevant *regulated related undertaking* that is an *insurance undertaking*, cannot practically be transferred to support requirements arising elsewhere in the group. Therefore, ineligible surplus capital in a *regulated related undertaking* that is an *insurance undertaking* is deducted in arriving at *group capital resources*. Surplus capital in such a *regulated related undertaking* is regarded as transferable only to the extent that:

- (1) it can be transferred without the *regulated related undertaking* breaching its own limits on the use of different forms of capital;
- (2) it does not contain assets that are restricted within the meaning of ■ INSPRU 6.1.41 R; and
- (3) in the case of a *regulated related undertaking* that has a *long-term insurance business*, it does not contain any assets allocated to the *capital resources* of that *undertaking* for the purposes of the *capital resources* of its *long-term insurance business* meeting the *capital resources requirement* of its *long-term insurance business*.

6.1.67
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- (1) For the purposes of ■ INSPRU 6.1.65 R, the ineligible surplus capital of a *regulated related undertaking* that is an *insurance undertaking* is calculated by deducting B from A where:
 - (a) A is the *regulatory surplus value* of that *insurance undertaking* less any restricted assets of the *insurance undertaking* that have been excluded under ■ INSPRU 6.1.41 R; and
 - (b) B is the transferable capital of that *undertaking*.

- (2) If A minus B is negative, the ineligible surplus capital is zero.

6.1.68
PRA

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For the purposes of ■ INSPRU 6.1.67 R (1)(b), the transferable capital is calculated by deducting the sum of the following from the *tier one capital resources* of the *regulated related undertaking* that is an *insurance undertaking*:

- (1) any restricted assets of that *insurance undertaking* that have been excluded under ■ INSPRU 6.1.41 R;

- (2) any *tier one capital resources* of that *insurance undertaking* that have been allocated towards meeting the *individual capital resources requirement* of its *long-term insurance business*; and
- (3) the higher of:
 - (a) 50% of the *individual capital resources requirement* of the *general insurance business* of that *insurance undertaking*; and
 - (b) the *individual capital resources requirement* of the *general insurance business* of that *insurance undertaking* less the difference between E and F where:
 - (i) E is its *tier two capital resources*; and
 - (ii) F is the amount of its *tier two capital resources* that have been allocated towards meeting the *individual capital resources requirement* of its *long-term insurance business*.

Examples of transferable and ineligible surplus capital:

6.1.69

PRA

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Example 1

Share capital	Audited reserves	FFA	Tier two	Requirement
30	20	0	40	50

- (i) Under ■ INSPRU 6.1.68 R, transferable capital = *tier one capital resources* of 50, less the sum of:
 - (1) restricted assets excluded under ■ INSPRU 6.1.41 R = (none);
 - (2) *tier one capital resources* allocated to the *long-term insurance business* = (none); and
 - (3) higher of (50% of 50 = 25 and 50 - 40 = 10) = (25) = (50 - 25) = 25
- (ii) Under ■ INSPRU 6.1.67 R, ineligible surplus capital = *regulatory surplus value* (40) less restricted assets excluded under ■ INSPRU 6.1.41 R (0) less transferable capital (25) = 15.

Example 2

Share capital	Audited reserves	FFA (of which 5 is restricted)	Tier two	Requirement (of which 4 relates to the <i>long-term insurance business</i>)
30	20	10	40	50

- (i) Under ■ INSPRU 6.1.68 R, transferable capital = *tier one capital resources* of 60, less the sum of:
 - (1) restricted assets excluded under ■ INSPRU 6.1.41 R = (5);

6

- (2) *tier one capital resources* allocated to the *long-term insurance business* = (5); and
- (3) the higher of (50% of 45 = 22.5; and 45 - 40 = 5) = (22.5) = 60 - 32.5 = 27.5

(ii) Under I ■ INSPRU 6.1.67 R, ineligible surplus capital = *regulatory surplus value* (50) - restricted assets excluded under ■ INSPRU 6.1.41 R of (5) - transferable capital (27.5) = 17.5.

Example 3

Share capital	Audited reserves	FFA (of which 0 is restricted)	Tier two (40, of which 5 is excluded at the solo level - see below)	Requirement (of which 25 relates to the long-term insurance business)
20	10	20	35	50

The requirement relating to the *long-term insurance business* is met by the FFA of 20 and *tier two capital resources* of 5. Of the remaining *tier two capital resources* of 35, 5 is excluded at the solo level because the *tier one capital resources* allocated to the *general insurance business* are 30.

- (i) Under ■ INSPRU 6.1.68 R, transferable capital = *tier one capital resources* of 50, less the sum of:
 - (1) restricted assets excluded under ■ INSPRU 6.1.41 R = (none);
 - (2) *tier one capital resources* allocated to the *long-term insurance business* = (20); and
 - (3) the higher of (50% of 25 = 12.5; and 25 - (35 - 5) = -5) = (12.5) = 50 - 32.5 = 17.5.
- (ii) Under ■ INSPRU 6.1.67 R, ineligible surplus capital = *regulatory surplus value* (35) - restricted assets excluded under ■ INSPRU 6.1.41 R of (0) - transferable capital (17.5) = 17.5.

Calculation of GCR - Assets in excess of market risk and counterparty exposure limits

6.1.70
PRA

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Subject to ■ INSPRU 6.1.70A R, where the *undertaking* in ■ INSPRU 6.1.17 R is a *participating insurance undertaking*, the *firm* must deduct from its group capital resources before deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) the assets in excess of *market risk* and *counterparty* exposure limits calculated in accordance with ■ INSPRU 6.1.74 R.

6.1.70A
PRA

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Where the *undertaking* in ■ INSPRU 6.1.17 R is a *pure reinsurer* that is a *participating insurance undertaking*, the *firm* must calculate assets in

6.1.71

PRA

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accordance with ■ INSPRU 6.1.74A R and deduct from its group capital resources before deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) those assets the holding of which is inconsistent with compliance by that *undertaking* with ■ INSPRU 3.1.61A R.

For the purposes of ■ INSPRU 6.1.43 R, where the *undertaking* in ■ INSPRU 6.1.17 R is a *participating insurance undertaking*, the investments referred to in ■ INSPRU 6.1.48 R and ■ INSPRU 6.1.50 R are not subject to the *market risk* and *counterparty* exposure limits.

6.1.72

PRA

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The *firm* (A) must, subject to ■ INSPRU 6.1.73 R, include in the calculation in ■ INSPRU 6.1.74 R or, where A is a *pure reinsurer*, ■ INSPRU 6.1.74A R each *related undertaking* (B) that is:

- (1) a *regulated related undertaking* that is a *subsidiary undertaking*; or
- (2) a *related undertaking* where the *firm* has elected to value the *shares* held in that *undertaking* by the *firm* in accordance with ■ GENPRU 1.3.47 R for the purposes of calculating the *tier one capital resources* of the *firm*.

6.1.73

PRA

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The *related undertakings* in ■ INSPRU 6.1.72 R need only be included in the calculation in ■ INSPRU 6.1.74 R or ■ INSPRU 6.1.74A R if:

- (1) where B is a *regulated related undertaking*, the *solo capital resources* of that *undertaking* exceed its *individual capital resources requirement*; or
- (2) where B is an *undertaking* in ■ INSPRU 6.1.72 R (2), its assets that fall within one or more of the categories in ■ GENPRU 2 Annex 7 R exceed its accounting liabilities.

6.1.74

PRA

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A's assets in excess of the *market risk* and *counterparty* exposure limits are calculated as follows:

- (1) Subject to (2), a *firm* must apply the *market risk* and *counterparty* exposure limits in ■ INSPRU 2.1.22 R (3) to:
 - (a) where B is an *insurer* (other than a *pure reinsurer*) , the *admissible assets* of B;
 - (b) where B is a *pure reinsurer*, the assets of that *undertaking* less those assets identified in ■ INSPRU 6.1.60 R (2) as not being admissible; and
 - (c) where B is a *regulated related undertaking* that is not an *insurer*, the assets of that *undertaking* less those assets identified in ■ INSPRU 6.1.60 R (3) as not being admissible assets.

- (2) The *market risk* and *counterparty* exposure limits do not need to be applied to an *undertaking* in ■ INSPRU 6.1.72 R (2).
- (3) Where the assets of B in ■ INSPRU 6.1.74 R (1) exceed the limits in ■ INSPRU 2.1.22 R (3), the assets of B in excess of the limits must be deducted by the *firm* from B's *solo capital resources* for the purposes of ■ INSPRU 6.1.30 R.
- (4) After the application of (1) and (2), the surplus assets of B are aggregated with the *admissible assets* of A, where the surplus assets of B are:
 - (a) where B is a *firm* (other than a *pure reinsurer*), the *admissible assets* of B that represent the amount by which the *capital resources* of B exceed its *capital resources requirement*, subject to ■ INSPRU 6.1.77 R, and limited to the amount of transferable capital calculated in accordance with ■ INSPRU 6.1.68 R;
 - (b) where B is a *regulated related undertaking* that is not in (a), the assets of the *undertaking* in ■ INSPRU 6.1.74 R (1)(b) or ■ INSPRU 6.1.74 R (1)(c) that represent the amount by which the *solo capital resources* of B exceed its *individual capital resources requirement* and, where B is an *insurance undertaking* that is not in (a), limited to the amount of transferable capital calculated in accordance with ■ INSPRU 6.1.68 R; and
 - (c) where B is an *undertaking* in ■ INSPRU 6.1.72 R (2), the assets of the *undertaking* which represent those assets that fall within one or more of the categories in ■ GENPRU 2 Annex 7 R which exceed its accounting liabilities.
- (5) The *market risk* and *counterparty* exposure limits are then applied to the aggregate of A's *admissible assets* and the surplus assets in ■ INSPRU 6.1.74 R (4).

6.1.74A
PRA

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A must apply ■ INSPRU 3.1.61A R to the aggregate of:

- (1) the assets of A, less any assets already identified in ■ INSPRU 6.1.60 R (2) as not being admissible; and
- (2) the surplus assets of B calculated in accordance with ■ INSPRU 6.1.74 R (1) to ■ INSPRU 6.1.74 R (4) as if that *rule* applied to B.

6.1.75
PRA

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- (1) Subject to (2), A must then deduct the amount by which the *admissible assets* aggregated in accordance with ■ INSPRU 6.1.74 R (5) exceed the *market risk* and *counterparty* exposure limits from A's group capital resources before

deduction (calculated at stage C in the table in ■ INSPRU 6.1.43 R) in accordance with ■ INSPRU 6.1.70 R.

- (2) Where A is a *pure reinsurer*, A must then deduct the amount of any assets identified by ■ INSPRU 6.1.74A R as not complying with ■ INSPRU 3.1.61A R in accordance with ■ INSPRU 6.1.70A R.

6.1.76
PRA

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In relation to any of its *regulated related undertakings* that is not an *insurer*, A may modify the calculation in ■ INSPRU 6.1.74 R by:

- (1) omitting the calculation in ■ INSPRU 6.1.74 R (1) and ■ INSPRU 6.1.74 R (3); and
- (2) aggregating all of the assets of B identified in ■ INSPRU 6.1.74R (1)(c) as admissible assets with the *admissible assets* of A in ■ INSPRU 6.1.74 R (4).

6.1.77
PRA

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The *admissible assets* of either A or B that are part of a *long-term insurance fund* of A or B are excluded for the purposes of the calculation in ■ INSPRU 6.1.74 R and ■ INSPRU 6.1.74A R except insofar as those assets are available to meet the liabilities and *capital resources requirement* of that *long-term insurance fund*.

6.1.78
PRA

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If B is itself either a *participating insurance undertaking* or an *insurance parent undertaking* or *mixed financial holding company*, the *admissible assets* of B for the purposes of ■ INSPRU 6.1.74 R (1) must be calculated as in ■ INSPRU 6.1.75 R but as if B were A.

Prudential sourcebook for UCITS Firm

Prudential sourcebook for UCITS Firm

Schedule 6 Rules that can be waived

Sch 6.1 G

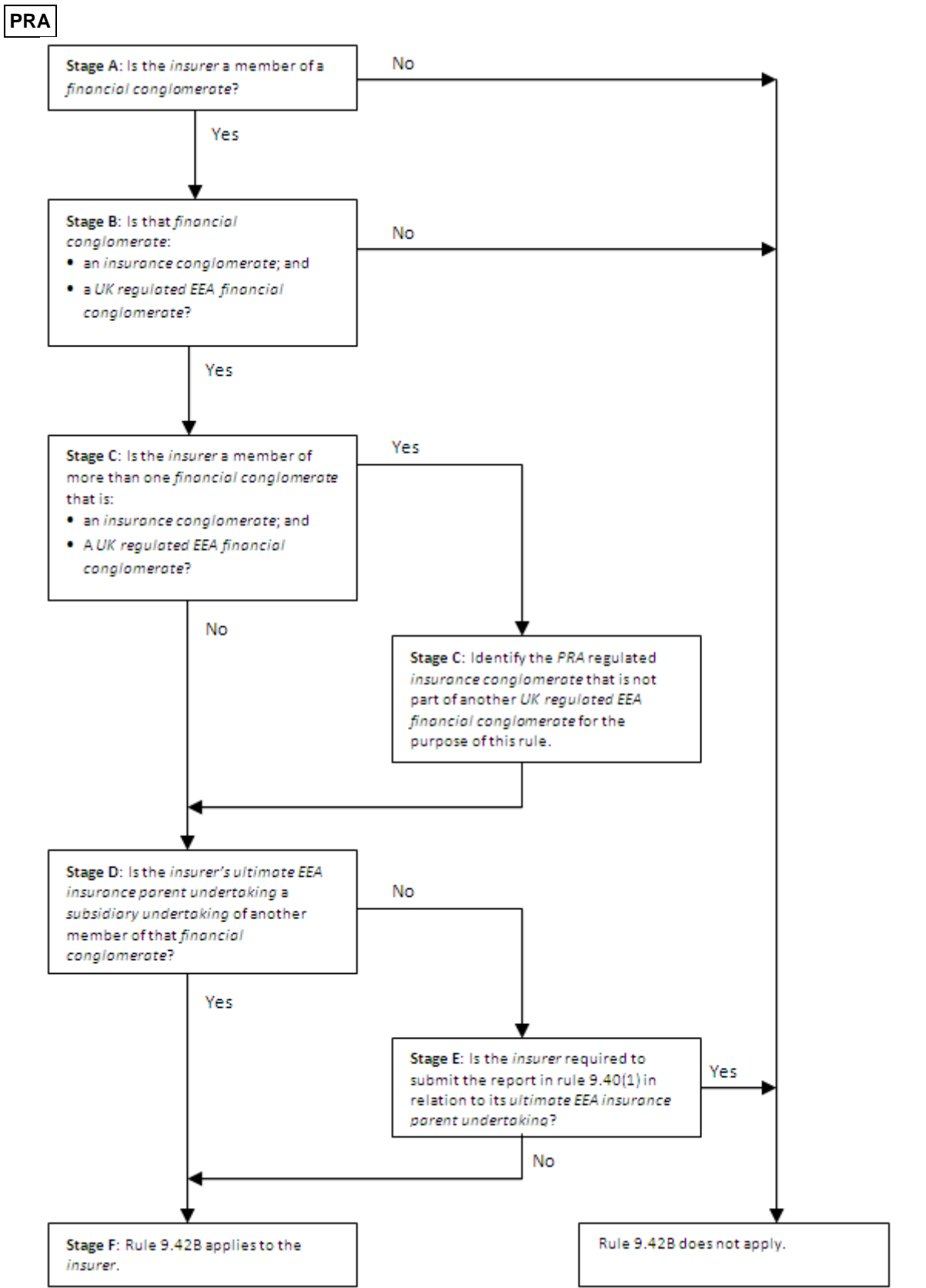
FCA

1. The rules in this sourcebook can be *waived* by the *FCA* under Sections 138A and 138B , 250 or 261L of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (Modification or waiver of FCA rules).
2. Although the *FCA* has the formal power of *waiver* under the *Act* in relation to these *rules*, much of this sourcebook implements the requirements of the *UCITS Directive* by ensuring that *UCITS firms* as *UCITS management companies* 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.

Interim Prudential Sourcebook Insurers

9.42C

The decision tree determining application of 9.42B.



9.42D

PRA

- (1) An *insurer* must provide the following information from the report prepared in accordance with *SUP 16.12.33R* in respect of the *financial year in question* of the *financial conglomerate* identified at Stage C of the decision tree in rule 9.42C:
- (a) the capital resources and capital resources requirement identified in (2) of the *financial conglomerate*;
 - (b) the difference between the capital resources and capital resources requirement of the *financial conglomerate* referred to in (a);
 - (c) where the *parent undertaking* in the *financial conglomerate* that is not a *subsidiary* of another member of the *financial conglomerate* has published annual consolidated accounts prepared in accordance with accounting standards, policies and legislation applicable to it, a reconciliation between:
 - (i) the amount of capital resources of the *financial conglomerate* in (2); and
 - (ii) the shareholders' funds, subordinated liabilities and other relevant amounts included in the published annual consolidated accounts of that *parent undertaking*; and
 - (d) where the *parent undertaking* in the *financial conglomerate* that is not a *subsidiary undertaking* of another member of the *financial conglomerate* includes a capital statement in the form prescribed by the Accounting Standards Board's Financial Reporting Standard 27, an explanation of any differences between:
 - (i) the capital resources of the *financial conglomerate* in (2); and
 - (ii) the amounts included in that capital statement.
- (2) The capital resources and capital resources requirement of the *financial conglomerate* identified at Stage C of the decision tree in rule 9.42C are:
- (a) where *GENPRU 3.1.26R* applies to the *financial conglomerate*, the capital resources of the *financial conglomerate* and the minimum amount of capital resources that the *financial conglomerate* must have to meet the requirement in *GENPRU 3.1.26R*; or
 - (b) where *GENPRU 3.1.29R* applies to the *financial conglomerate*, its *conglomerate capital resources* and

its conglomerate capital resources requirement.

- 9.42E R (1) Rules 9.40(1), 9.40(1A), 9.40(3), 9.40(4), 9.41 and 9.42 of *IPRU(INS)* also apply to an *insurer* subject to *INSPRU* 6.1 in respect of the *ultimate mixed financial holding* and *ultimate EEA mixed financial holding company* (if different) of a *MFHC conglomerate* of which the *firm* is a member, with references therein to “*insurance group*” being read as “*MFHC conglomerate*” and to “*ultimate insurance parent undertaking*” and “*ultimate EEA parent undertaking*” being read as “*ultimate mixed financial holding company*” and “*ultimate EEA mixed financial holding company*” respectively.
- PRA
- (2) Where the *PRA* is the *coordinator*, no report is required under (1) to the extent determined by the *PRA*, on application by the *insurer* and after consulting other *relevant competent authorities*, on the basis that, in the opinion of the *PRA*, equivalent reporting requirements with regard to the relevant *mixed financial holding company* apply to the *insurer* as a member of a *financial conglomerate*.

Guidance

- 9.43 (1) An *insurer* may use Appendix 9.9 Form 95 for the purposes of the report required by rule 9.40(1).
- PRA
- (2) The reports required by rule 9.40 do not form part of the *insurer's return*.
- (3) Where several *insurers* to which rule 9.40 applies have the same *ultimate insurance parent undertaking*, *ultimate EEA insurance parent undertaking*, *ultimate mixed financial holding company*, *ultimate EEA mixed financial holding company* or any combination of those *parent undertakings*, rule 9.40 applies to all of them. In these circumstances one *insurer* may submit the reports in rule 9.40 on behalf of the other *insurers* in the relevant *group* as set out in rule 9.40(4). This should consist of one package of the relevant information with confirmation that the *insurer* submitting the information has made it available to the boards of directors of the other *insurers* in the relevant *group*. The purpose of this requirement is to ensure that all the *insurers* in the relevant *group* are aware of the relevance of the group information to themselves.
- (4) Where an *insurance group* consists of an *ultimate insurance parent undertaking* or *ultimate EEA insurance parent undertaking* which is itself an *insurer* whose head office is in the *United Kingdom* and which has a *United Kingdom insurance subsidiary* or *subsidiaries* which is or are themselves *insurers*, the reports in 9.40(1) and 9.40(1A) will cover the same *group undertakings*. The subsidiary *insurer* need not in these circumstances deposit the reports in 9.40(1) and 9.40(1A). However, this does not affect the requirement to provide information under rule 9.41.

PART VI

ENHANCED CAPITAL REQUIREMENT

9.44 (1) An *insurer* to which *INSPRU* 1.1.72BR applies must, in respect of each *financial year*, report its *enhanced capital requirement* (calculated in accordance with *INSPRU* 1.1.72CR) as at the end of that *financial year*.
PRA

(2) The report must be in the form of ECR1 set out in Appendix 9.10.

(3) An *insurer* must deposit a printed copy of the report with the *PRA* within 2 months and 15 days of the *financial year* end unless, in addition to depositing a printed copy, an *insurer* also deposits an electronic copy, then the period for deposit is within 3 months of the *financial year* end. The copies must be sent to the appropriate addresses set out in rule 9.6(2) above.

If the due date for deposit of documents required by (1) falls on a day which is not a *business day*, the documents must be submitted no later than the first *business day* after the due date.

(4) The printed copy of the report must be signed by the persons described in *IPRU(INS)* 9.33(1).

(5) The electronic copy deposited under (3) above must be in an electronic form which may be readily used or translated by the *PRA* and must be sent by email to the appropriate address set out in rule 9.6(2) above. The title of the email must be:

<firm name> Form ECR1 <dd/mm/yyyy>.

Guidance

9.45 The report required by rule 9.44(1) does not form part of the *insurer's return*.

PRA

9.46 An electronic copy that is not completed Form ECR1 spreadsheet file template from the *PRA* website that can be accessed by Microsoft Excel is unlikely to be readily used or translated by the *PRA*.
PRA

Part VII

LLOYD'S OF LONDON

Application

9.47 PART VII of *IPRU(INS)* chapter 9 applies to the *Society* and to *managing agents*.

FCA PRA

Requirement to report to the PRA

9.48

PRA

- (1) The **Society** must report to the **PRA** within 6 months of the end of each *financial year* on its financial situation and solvency and on the whole of the *insurance business* carried on by *members*.
- (2) The report in *IPRU(INS)* 9.48 (1) must be prepared in accordance with GENPRU 1.3.4 R and this chapter.
- (3) The report in *IPRU(INS)* 9.48 (1) must include:
 - (a) the *Lloyd's Return* which comprises a completed set of the forms set out in *IPRU(INS)* Appendix 9.11, together with any statements, notes, reports or certificates required by this chapter; and
 - (b) a copy of the *syndicate* accounts for each *syndicate* that is required by *byelaw* to prepare accounts for the *financial year*.
- (4) With the exception of the statements required to be annexed to the *Lloyd's Return* by *IPRU(INS)* 9.49 (6), the *Lloyd's Return* must be examined and reported on by the auditors appointed to audit the affairs of the *Society*.
- (5) The *Society* must provide a printed copy of the *Lloyd's Return* to the **PRA**, with Form 1 signed by three signatories who are senior officers of the *Society* each duly authorised by the *Council* to sign the *Lloyd's Return* on behalf of the *Society*.
- (6) If the **PRA** notifies the *Society* that any part of the *Lloyd's Return* is not in conformity with this chapter, the *Society* must promptly make any appropriate corrections or adjustments and if necessary re-submit the *Lloyd's Return* (or relevant part of it).

Content and form of the Lloyd's Return

9.49

PRA

- (1) In preparing the *Lloyd's Return*, the *Society* must:
 - (a) complete the forms in *IPRU(INS)* Appendix 9.11, following the requirements of and making the disclosures required under Appendices 9.1, 9.2, 9.3 and 9.4 of *IPRU(INS)* as if in the documents referred to in those Appendices references to an *insurer* were references to the *Society* and *members*, and adapting the requirements in those Appendices where necessary;
 - (b) complete the forms in *IPRU(INS)* Appendix 9.11 using standard accounting *classes* as set out in *IPRU(INS)* Appendix 9.16 where the forms require reporting by accounting class;
 - (c) report treaty reinsurance general business falling in accounting *classes* 9 to 10 as set out in *IPRU(INS)*

Appendix 9.16 in Forms 28 and 29 in *IPRU (INS)*
Appendix 9.11 by reference to the categories in the
underlying accounting classes; and

- (d) complete forms 13, 14, 40-60 in *IPRU(INS)* Appendix 9.11 for each *long-term insurance business syndicate*.
- (2)
- (a) Where a reinsurance contract in *IPRU(INS)* 9.49 (1)(c) covers more than one underlying accounting class as set out in *IPRU(INS)* Appendix 9.16 it must be apportioned between accounting classes in the way that best reflects its underlying composition.
 - (b) However, where the apportionment in (a) cannot be made with reasonable accuracy or without disproportionate effort, then the contract must be allocated to the accounting class as set out in *IPRU (INS)* Appendix 9.16 that most closely reflects its underlying composition.
 - (c) Whether apportioned under (a) or allocated under (b), a consistent approach must be taken to reporting:
 - (i) the progress of a treaty in subsequent years; and
 - (ii) substantially similar *insurance business* in subsequent years.
 - (d) Where a different policy is subsequently followed a suitable explanatory note must be provided.
- (3) If, during the financial year in question, the *Society* has agreed to, or carried out, a material connected party transaction, it must provide a brief description of that transaction by way of a supplementary note to the *Lloyd's Return*.
- (4) The description to be provided under *IPRU(INS)* 9.49 (3) must state:
- (a) the names of the transacting parties;
 - (b) a description of the connection between the parties;
 - (c) a description of the transaction;
 - (d) the amounts involved;
 - (e) any other elements of the transaction needed for an understanding of its effect or potential effect upon the financial position of the *Society*; and
 - (f) amounts written off in the period in respect of debts due to or from transacting parties which are connected

parties.

- (5) Transactions with the same connected party may be disclosed on an aggregated basis unless separate disclosure is needed for a proper understanding of the effect of the transactions upon the financial position of the *Society*.
- (6) The *Society* must annex to the *Lloyd's Return* a copy of each statement completed by a *managing agent* under *IPRU(INS)* 9.60 (7).
- (7) For the purposes of the *Lloyd's Return* and *IPRU(INS)* 9.49 (6), the *Society* must, for each statement annexed, identify the *syndicate* to which the *contract of insurance* or 'financing arrangement' relates.

Risk groups for general insurance business

9.50

PRA

- (1) The *Society* must for the purposes of reporting under this chapter:
 - (a) classify the direct and facultative *general insurance business of members* according to appropriate risk groups; and
 - (b) where the risks are material, complete a separate Form 34 in *IPRU(INS)* Appendix 9.11 for each group.
- (2) The *Society* must not include:
 - (a) policies falling within *classes* 14, 15, 16, 17 or 18 within the same risk group as policies falling within any other *class*, except that policies falling within *class* 14 may be included in the same risk group as policies falling within *class* 15; or
 - (b) policies in respect of private motor car risks, within the same risk group as policies in respect of other risks falling within accounting class 2 as set out in *IPRU(INS)* Appendix 9.16; or
 - (c) policies in respect of comprehensive private motor car risks, within the same risk group as policies in respect of non-comprehensive private motor car risks; or
 - (d) policies transferred to *members* by way of a transfer under section 111 of the Act (Sanction of the court for business transfer schemes), within the same risk group as other policies.
- (3) The *Society* must give the *PRA* notice of proposed changes to the definition or classification of the risk groups in *IPRU(INS)* 9.50 (1), sufficient to allow the *PRA* properly to assess the implications of the proposals.

Major treaty reinsurers

9.51

PRA

- (1) The Society must, in connection with the *general insurance business* carried on by *members*, include in the *Lloyd's Return* a statement of major treaty reinsurers.
- (2) A major treaty reinsurer is any insurance company to which in the *financial year* in question or any of the five preceding *financial years*:
 - (a) in the case of proportional reinsurance, 2% or more of the gross premiums receivable in respect of *general insurance business* of the *members* in aggregate has been ceded; or
 - (b) in the case of non-proportional reinsurance, 5% or more of the gross premiums receivable in respect of *general insurance business* has been ceded.
- (3) The statement required under *IPRU(INS) 9.51 (1)* must include:
 - (a) the full name of each major treaty reinsurer;
 - (b) the amount of the reinsurance premiums payable in the *financial year* to each such reinsurer;
 - (c) whether and if so how the reinsurer was connected to any *member* or any *managing agent*;
 - (d) the amount of any debt of each such reinsurer included at line 75 of Form 13 in *IPRU(INS) Appendix 9.11*;
 - (e) the amount of any deposit received from each such reinsurer under reinsurance treaties included at line 31 of Form 15 in *IPRU(INS) Appendix 9.11*; and
 - (f) the reinsurers' share of *technical provisions* shown on Form 13 in *IPRU(INS) Appendix 9.11* except that in respect of claims incurred but not reported, such recoveries need only be included to the extent that they are in respect of specific occurrences for which provisions have been allocated;

or, as the case may be, a statement that having aggregated the reinsurance ceded by *members* no reinsurer is a major treaty reinsurer.
- (4) The requirements of *IPRU(INS) 9.51 (1)*, *IPRU(INS) 9.52 (1)* and *IPRU(INS) 9.53 (1)* may be satisfied by giving a fair view and making use of an appropriate degree of approximation. The Society may employ any reasonable methods to establish the information required.

Major facultative reinsurers

9.52

- (1) The Society must, in connection with the *general insurance business* carried on by *members*, include in the *Lloyd's Return* a statement of

PRA

major facultative reinsurers.

- (2) A major facultative reinsurer is an insurance company to which or with respect to which:
 - (a) 0.5% or more of the gross premiums *receivable* in respect of *general insurance business* of the *members* in aggregate has been ceded; or
 - (b) the addition of the amounts in items (d) and (e) of *IPRU(INS) 9.51 (3)* produces an amount exceeding 1% of the aggregate gross assets of *members*.
- (3) The statement required under *IPRU(INS) 9.52 (1)* must include the matters listed in *IPRU(INS) 9.51 (3)*, with appropriate amendments.

Major reinsurance cedants

9.53

PRA

- (1) The *Society* must, in connection with the *general insurance business* carried on by *members*, include in the *Lloyd's Return* a statement of major reinsurance cedants.
- (2) A major reinsurance cedant is an insurance company which in the *financial year* in question or any of the three preceding *financial years*:
 - (a) cedes an amount which exceeds 5% of the gross premiums *receivable* by *members* in respect of *general insurance business* accepted under reinsurance treaties; and
 - (b) cedes an amount which exceeds 2% of the gross premiums *receivable* by *members* in respect of *general insurance business*.
- (3) The statement required under *IPRU(INS) 9.53 (1)* must include the matters listed in *IPRU(INS) 9.51 (3)*, with appropriate amendments.

Derivative contracts

9.54

PRA

- (1) The *Society* must annex a statement to the *Lloyd's Return* comprising a brief description of:
 - (a) any *byelaws* and guidelines issued by the *Society* governing the use of *derivative* contracts;
 - (b) any provision in those guidelines governing the use of contracts under which *members* have a right or obligation to acquire or dispose of assets which was not, at the time when the contract was entered into, reasonably likely to be exercised and the circumstances in which, pursuant to that provision, such contracts may be used;

- (c) the extent to which *members* were during the *financial year* a party to any contracts of the kind described in (b);
 - (d) the extent to which any of the amounts recorded in Form 13 would be changed if assets which *members* had a right or obligation to acquire or dispose of under *derivative* contracts outstanding at the end of the *financial year* (being, in the case of *options*, only those *options* which it would have been prudent to assume would be exercised) had been acquired or disposed of;
 - (e) the difference between (d) and the amount which would result under (d) if such *options* had been exercised and this were reflected in Form 13 to the maximum extent;
 - (f) how different the information provided pursuant to (d) and (e) would have been if, instead of applying to contracts outstanding at the end of the *financial year*, (d) and (e) had applied to *derivative* contracts outstanding at such other time during the *financial year* as would have changed the amounts in Form 13 to the maximum extent;
 - (g) the maximum loss which would be incurred by *members* on the failure by any one other person to fulfil its obligations under *derivative* contracts outstanding at the end of the *financial year*, both under existing market conditions and in the event of other foreseeable market conditions, together with an assessment of whether such maximum loss would have been materially different at any other time during the *financial year*;
 - (h) the circumstances surrounding the use of any *derivative* contract held at any time during the *financial year* which did not fulfil the criteria in *INSPRU* 4.2.5 R; and
 - (i) the total value of any fixed consideration received by *members* (whether in cash or otherwise) during the *financial year* in return for granting rights under *derivative* contracts and a summary of contracts under which such rights have been granted.
- (2) For the purposes of *IPRU(INS)* 9.54 (1), if *members* are a party to:
- (a) a *contract for differences*; or
 - (b) any other contract which is to be, or may be, settled in cash they must be treated as having a right or obligation to acquire or dispose of the assets

underlying the contract.

General insurance business ceded

9.55 (1) The Society must annex to the *Lloyd's Return* a statement:

PRA

- (a) of each major treaty reinsurer and major facultative reinsurer; and
- (b) for each of the realistic disaster scenarios set by the Society when fulfilling its obligations under *INSPRU* and *GENPRU* to monitor aggregation of risk within the Lloyd's market of the contribution it is assumed each such reinsurer would provide in the event of that disaster occurring.

The Society

9.56 (1) The Society must annex to the *Lloyd's Return* a statement naming each individual who has served:

PRA

- (a) on the *Council*;
- (b) as Chairman of the *Council*; and
- (c) as Chief Executive Officer of the *Society*;

at any time during the *financial year*, including in each case the dates of commencement or end of service (as the case may be) of any individual who has not served for the entire year.

Capacity controlled

9.57 (1) The Society must annex to the *Lloyd's Return* a statement identifying any *members, members' agents or managing agents* that control a significant share of the underwriting capacity of the *Society*.

PRA

(2) To control a significant share means:

- (a) in relation to a *managing agent*, managing, directing through one or more Members' Agent Pooling Arrangements or owning, whether directly or in conjunction with *connected persons*, capacity which in aggregate is greater than 5% of the total underwriting capacity of the *Society*;
- (b) in relation to a *members' agent*, directing through one or more Members' Agent Pooling Arrangements or owning, whether directly or in conjunction with *connected persons*, underwriting capacity which in aggregate is greater than 2.5% of the total underwriting capacity of the *Society*; and
- (c) in relation to a member, owning, whether directly or in conjunction with *connected persons*, underwriting

capacity which, in aggregate, is greater than 2.5% of the total underwriting capacity of the Society.

Certificates and audit report

9.58

(1) Certificates

PRA

The Society must annex to the *Lloyd's Return*:

- (a) a certificate from the *Council*, including the statements required by *IPRU (INS)* Appendix 9.12;
- (b) a statement from the *Lloyd's actuary*, including the statements required by *IPRU (INS)* Appendix 9.13;
- (c) a certificate from the *syndicate actuary* of each *syndicate* which carries on *long-term insurance business*, including the statements required by *IPRU (INS)* Appendix 9.14, and;
- (d) an abstract from the *syndicate actuary* of each *syndicate* which carries on *long-term insurance business* of the *actuary's* report made under *SUP* 4.6.14G.

(2) Audit report

The Society must ensure that the *Lloyd's Return* and every document annexed to or provided with it has been examined by the Society's auditors and must provide with the *Lloyd's Return* an audit certificate in respect of that examination.

(3) The certificate in *IPRU(INS)* 9.58 (2) must be in the form set out in *IPRU(INS)* Appendix 9.15.

Public disclosure

9.59

(1) The Society must provide within a period not exceeding 30 days:

PRA

- (a) on demand to any *member* or policyholder a copy of the *Lloyd's Return* and the *global account* most recently submitted to the *PRA*; and
- (b) if specifically requested by a *member* or policyholder, a copy of any *syndicate* account submitted to the *PRA*.

Syndicate-level reporting

9.60

(1) Each *managing agent* must:

PRA

- (a) prepare a return for each *financial year* in respect of the *insurance business* carried on through each *syndicate* managed by it; and

- (b) provide the return in (a) to the *Society* as soon as practicable after the end of the financial year but in any event in time to enable the *Society* to report to the *PRA* in accordance with *IPRU(INS)* 9.48 (1).
- (2) The *Society* must:
- (a) issue instructions to *managing agents* setting out the form and content of the return under *IPRU(INS)* 9.60 (1); and
- (b) issue the instructions in (a) as soon as practicable but in any event in time to enable *managing agents* to comply with *IPRU(INS)* 9.60 (1).
- (3) A *managing agent* must annex to each return which it prepares under *IPRU(INS)* 9.60 (1), a certificate signed by the persons referred to in *IPRU(INS)* 9.60 (4), including the statements required by *IPRU(INS)* Appendix 9.17.
- (4) The certificate in *IPRU(INS)* 9.60 (3) must be signed by:
- (a) where there are more than two *directors* of the *managing agent*, at least two of those *directors* and, where there are not more than two *directors*, all the *directors*; and
- (b) a *chief executive*, if any, of the *managing agent* or (if there is no *chief executive*) the secretary.
- (5) A *managing agent* must ensure for each *syndicate* managed by it that the return required under *IPRU(INS)* 9.60 (1) is examined and reported on by the *syndicate* auditor.
- (6) A *managing agent* must annex to each return required under *IPRU(INS)* 9.60 (1) an audit certificate provided by the *syndicate* auditor including the statements required by *IPRU(INS)* Appendix 9.18.
- (7) A *managing agent* must annex to each return which it prepares under *IPRU(INS)* 9.60 (1) a statement of the information required by *IPRU(INS)* rule 9.32A, as if in that rule references to:
- (a) ‘*insurer*’ were to the *members* carrying on *insurance business* through the relevant *syndicate*;
- (b) the ‘*return*’ were to the return required to be prepared by it in respect of the business carried on through the relevant *syndicate* under *IPRU(INS)* 9.60 (1)
- (c) the ‘*insurer*’s balance sheet’ were to the *syndicate* balance sheet;
- (d) the ‘*insurer*’s *capital resources*’ were to the *capital resources* managed by or at the direction of the

managing agent in respect of the *insurance business* carried on through the relevant *syndicate*; and

- (e) the 'insurer's total technical provisions' were to the technical provisions in respect of the insurance business carried on through the relevant *syndicate*.

The Central Fund

9.61

PRA

- (1) The *Society* must give the *PRA* a report on the *Central Fund* as at the end of each calendar quarter.
- (2) The report referred to in *IPRU(INS)* 9.61 (1) must reach the *PRA* within two weeks of the end of each calendar quarter and must include information on:
 - (a) the net market value of the *Central Fund*;
 - (b) payments made from the *Central Fund* in that quarter;
 - (c) the types of investment in which the *Central Fund* is held;
 - (d) the commencement or cessation of, or any changes in the terms of, any insurance policy taken out to protect the *Central Fund*; and
 - (e) any claim made, or circumstances notified that are likely to lead to a claim, under any insurance policy taken out to protect the *Central Fund*.

Information about the capacity transfer market

9.62

FCA

- (1) The *Society* must give the *FCA* a report as at the end of each calendar quarter in which any capacity is transferred.
- (2) The report referred to in (1) must reach the *FCA* within one month of the end of the relevant calendar quarter and must include information on:
 - (a) the total capacity in *syndicates* transferred during the quarter, analysed by *syndicate* and method of transfer;
 - (b) the number, and nature, of all investigations by the *Society* into conduct in the *capacity transfer market* undertaken or continued during the quarter; and
 - (c) the number, and nature, of all complaints received during the quarter about the operation of the *capacity transfer market*.

Guidance

9.63

- (1) *IPRU(INS)* Chapter 9 Part VII requires the *Society* to report on the *insurance business* carried on by *members* and on the assets and

PRA

liabilities of *members* and the *Society*, and requires reports from the *Society* on the *Central Fund* and the *capacity transfer market*. It also requires *managing agents* to report on the *insurance business* carried on through each *syndicate* they manage. Reporting at *syndicate level* is required to enable the *Society* to prepare the *Lloyd's Return*. The statements required to be annexed to the return by *IPRU(INS) 9.60 (7)* should not be included in the audit under *IPRU(INS) 9.49 (6)*.

- (2) The *Lloyd's Return* is made annually and contains the statement required from the *Society* that *capital resources* at least equal to the *capital resources requirements* for *general insurance business* and *long-term insurance business* under *GENPRU 2* have been maintained at all times throughout the *financial year*.
- (3) For *general insurance business*, the *capital resources requirement* for the *Society* is the higher of the aggregate of the *members' capital resources requirements* for *general insurance business*, calculated in accordance with *GENPRU 2.3.5 R*, and the *Society GICR*. For *long-term business*, the *capital resources requirement* for the *Society* is the aggregate of the *members' capital resources requirements*, calculated in accordance with *GENPRU 2.3.7 R*. The *Society* is required to ensure that each *member's capital resources requirement* is covered by that *member's capital resources*, or, where there is a shortfall in the *member's capital resources*, by the *Society's own capital resources*. For *general insurance business*, the *Society* must ensure that the *Society GICR* is covered by the aggregate *capital resources* supporting the *insurance business* of all the *members*.
- (4) Where appropriate, the *Society* is also required to modify prudential reporting to make it more like that of an *insurer*. This is to aid comparisons between *Lloyd's* and *insurers*.

9.64

PRA

The *Society* should make the report referred to in *IPRU(INS) 9.48 (1)*, including amendments and corrections, and amalgamated *syndicate* accounts available at its head office for inspection by policyholders and potential policyholders and *members*.

9.65

PRA

- (1) In assessing what are appropriate risk groups for reporting purposes the *Society* should ensure where possible that:
 - (a) each risk group should include only risks from within a single accounting class and in relation to a single country;
 - (b) policies are not included in the same risk group where, having regard to the patterns of risk, *claims* incurrence and settlement patterns, it is necessary to group them separately for the purposes of applying statistical methods in calculating the provision for *claims* outstanding in accordance with generally accepted accounting practice; and

- (c) claims-made policies are not included in the same risk group as policies which are not claims-made policies, except:
 - (i) where this is not possible without disproportionate expense; and
 - (ii) where the policies within the risk group do not exhibit materially different characteristics.
- (2) Subject to *IPRU(INS) 9.50 (2)(a)* and *IPRU(INS) 9.50 (2)(b)* and *IPRU (INS) 9.65 (1)(c)*, the *Society* may in respect of any accounting class include all *insurance business* carried on by *members* in any country in any *financial year* as a single risk group.
- (3) Notwithstanding the provisions of *IPRU(INS) 9.50 (2)(a)* and *IPRU(INS) 9.50 (2)(b)* and *IPRU(INS) 9.65 (1)(c)*, the *Society* may classify all *insurance business* carried on by *members* in any country in respect of any accounting class in any *financial year* as a single risk group, as long as gross premiums written for that year in respect of that *insurance business* are less than 5% of the world-wide gross premiums written for all accounting *classes* for that year.
- (4) The requirements to report a separate risk group in *IPRU(INS) 9.50 (2)(a)* do not apply where, in the case of any *financial year*, the gross premiums receivable for that year in respect of that risk group would be less than £1million.

9.66 The *Society* should be treated as if it were a major treaty reinsurer when *intersyndicate reinsurance* in aggregate exceeds the amounts set out in *IPRU(INS) 9.51 (2)*

PRA

9.67 The *Society* should be treated as if it were a major facultative reinsurer when *inter-syndicate reinsurance* in aggregate exceeds the amounts set out in *IPRU (INS) 9.52 (2)*.

PRA

9.68 The *Society* should be treated as if it were a major reinsurance cedant when *inter-syndicate cessions* in aggregate exceed the amounts set out in *IPRU (INS) 9.53 (2)*.

PRA

9.69 In relation to required disclosures of *derivative* contracts in *IPRU(INS) 9.54 (1)*, references to a *derivative* contract and related expressions should be taken to include:

PRA

- (1) any *derivative* contract entered into by a *managing agent* on behalf of a *member* as part of that *member's insurance business*; and
- (2) any *derivative* contract entered into by the *Society*.

9.70 Contracts that are *quasi-derivative contracts* should be treated as *derivative* contracts.

PRA

9.71 The requirements of *IPRU(INS) 9.55(1)* may be satisfied by giving a fair view and may make use of an appropriate degree of approximation. The *Society* may employ any reasonable methods to establish the information required. The *Society* may also include such explanation as it considers to be necessary to allow a reasonable interpretation to be put on this statement.

PRA

9.72 (1) Because of the significance of the *Central Fund* in the protection of policyholders, the *Society* should notify the *appropriate regulator* under *IPRU(INS) 9.61 (2)(e)* of all matters relevant to any actual or potential claim. These include but are not limited to the facts on which that claim is based, the circumstances under which those facts arose and any relevant response to the claim from any *insurer* or reinsurer concerned.

PRA

(2) The report referred to in *IPRU(INS) 9.61 (1)* must be submitted in writing in accordance with *SUP 16.3.7* to *SUP 16.3.10* (see *SUP 16.3.6*).

Interim Prudential Sourcebook

Investment Businesses

	settlement of those transactions;
<i>investment</i>	means a <i>designated investment</i> ;
<i>investment agreement</i>	means any agreement the making or performance of which by either party constitutes an activity which is <i>investment business</i> ;
<i>investment business</i>	means any of the following regulated activities specified in Part II of the Regulated Activities Order and which is carried on by way of business: <ul style="list-style-type: none"> (a) dealing in investments as principal (article 14), but disregarding the exclusion in article 15 (Absence of holding out etc); (b) dealing in investments as agent (article 21); (ba) <i>auction regulation bidding</i> (part of <i>bidding in emissions auctions</i>) (article 24A); (c) arranging deals in investments for another person (article 25(1)) but only in relation to <i>investments</i>; (d) making arrangements for deals in investments (article 25(2)) but only in relation to <i>investments</i>; (e) managing investments (article 37); (f) safeguarding and administration of assets (article 40); (g) sending dematerialised instructions (article 45(1)); (h) causing dematerialised instructions to be sent (article 45(2)); (i) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); (j) acting as trustee of an authorised unit trust scheme (article 51(1)(b)) or acting as the depository of an authorised contractual scheme (article 51(1)(bb)); (k) acting as the depository or sole director of an open-ended investment company (article 51(1)(c)); (l) advising on investments (article 53); (m) agreeing to carry on the activities in (a) to (h) and (l) (article 64);ⁱ
<i>investment manager</i>	means a person who, acting only on behalf of a <i>customer</i> , either - <ul style="list-style-type: none"> (a) manages an account or portfolio in the exercise of discretion; or (b) has accepted responsibility on a continuing basis for advising on the composition of the account or portfolio;
<i>investment services</i>	means - <ul style="list-style-type: none"> (a) activities undertaken in the course of carrying on investment business; and

	(b) activities undertaken in connection with an ISA where those activities do not constitute investment business;
<i>launch</i>	means the time when any announcement, specifying the issuer or the guarantor of and indicating the final <i>pricing terms</i> of the <i>offering</i> is made for the first time to the public or the press or any <i>exchange</i> or <i>approved exchange</i> or information service;
<i>margin requirement</i>	means, in relation to a <i>counterparty</i> , the value of any amounts which the <i>firm</i> or <i>intermediate broker</i> would be required to pay under the rules of an <i>exchange</i> or <i>clearing house</i> to - <ul style="list-style-type: none"> (a) meet any <i>marked to market</i> losses occurring on contracts undertaken for that <i>counterparty</i> at that time; or (b) as an initial margin fidelity deposit in respect of all the <i>counterparty's</i> open positions at that time, <p>on the assumption that those transactions were the only transactions undertaken on the <i>exchange</i> or <i>clearing house</i> by the <i>firm</i> or <i>intermediate broker</i> at that time;</p>
<i>marginised transaction</i>	means a transaction effected by a <i>firm</i> with or for a <i>customer</i> relating to an <i>investment</i> of any description referred to in articles 83, 84 and 85 of the Regulated Activities Order (or any right or any interest in such an <i>investment</i>) under the terms of which the <i>customer</i> will or may be liable to make a deposit in cash or collateral to secure performance of obligations which he may have to perform when the transaction falls to be completed or upon the earlier closing out of his position;
<i>mark to market</i>	means to value an <i>investment</i> at its current market value in accordance with rule 3-41(9);
<i>marketable investment</i>	means - <ul style="list-style-type: none"> (a) an <i>investment</i> which is traded on or under the rules of an <i>exchange</i> or an <i>approved exchange</i>; (b) a debt instrument which may be transferred without the consent of the issuer or any other person (including a collateralised mortgage obligation); (c) a <i>physical commodity</i>; (d) a <i>warrant</i>, <i>option</i>, <i>future</i> or other instrument which entitles the holder to subscribe for or acquire - <ul style="list-style-type: none"> (i) an <i>investment</i> or <i>physical commodity</i> which falls under (a) to (c) above; (ii) any currency; or (iii) any combination of (i) and (ii) above; (e) a <i>contract for differences</i> (including interest rate and currency <i>swaps</i>) relating to fluctuations in -

	(i)	the value or price of an <i>investment</i> or <i>physical commodity</i> in (a) to (d) above;
	(ii)	any currency;
	(iii)	the rate of interest in any currency or any index of such rates;
	(iv)	the level of any index which is derived from the prices of an <i>investment</i> or <i>physical commodity</i> in (a) to (c) above; or
	(v)	any combination of (i) to (iv) above;
	(f)	<i>warrants, options, futures</i> or other instruments entitling the holder to obtain the rights of those contracts in (d) or (e) above; and
	(g)	a unit in a <i>regulated collective investment scheme</i> ;
<i>model A clearing firm</i>		means a <i>regulated clearing firm</i> which uses its own money for settlement but is reimbursed on a daily basis by the non-clearing firms it settles for;
<i>money broker</i>		means a <i>firm</i> for which the total value of <i>repurchase, securities lending and sale and buy back agreements</i> is or has been at any time during the previous year, at least 25% of its total assets; ⁱⁱ
<i>new securities</i>		means, in relation to a particular <i>offering, securities</i> which are issued pursuant or with a view to an <i>offering</i> ;
<i>new to the market</i>		means, in relation to an <i>offering, securities</i> which are not already <i>exchange traded</i> ;
<i>non clearing floor member</i>		means a <i>firm</i> which:
	(a)	is authorised to trade on the floor of a <i>recognised investment exchange</i> which permits this category;
	(b)	is not prohibited by the rules of that exchange from dealing with <i>customers</i> ;
	(c)	has entered in to an agreement with a <i>clearing firm</i> which accepts full responsibility for every deal entered into by the non clearing floor member; and
	(d)	is not authorised to handle <i>client money</i> ;
<i>non recourse loan</i>		means a loan to a <i>firm</i> secured on specific land or buildings, under the terms of which the lender has no claim on the other assets of the <i>firm</i> nor on assets for which the <i>firm</i> is accountable in any circumstances (including a winding up);
<i>note issuance facility</i>		means an arrangement under the terms of which a borrower is able to issue short term notes in its own name with a guarantor, or consortium of guarantors ensuring the availability of funds to the borrower by agreeing to purchase any unsold notes, and which includes for example revolving underwriting facilities, note purchase facilities, euronote facilities and similar arrangements;
<i>offering</i>		means an offering of <i>securities</i> which are -

	(a) issued for the purpose of the offering;
	(b) <i>new to the market</i> , or
	(c) existing <i>securities</i> which are <i>exchange traded</i> subject to the purchase of those <i>securities</i> having the same characteristics as an <i>offering of new securities</i> , or <i>securities</i> which are <i>new to the market</i> ;
<i>open-priced deal</i>	means an <i>international offering</i> which is not a <i>bought deal</i> or pre-priced deal;
<i>option</i>	(for the purposes of rule 3-173B) means a contract which confers the right to buy or sell a security, contractually based investment, currency, gold or commodity at a given price on or before a given date. (NB: the definition of an option used for this purposes deliberately differs from that in the main Handbook Glossary);
<i>out of the money</i>	means those <i>options</i> and <i>warrants</i> which are not <i>in the money</i> ;
<i>pari passu security</i>	means a <i>security</i> which is the same as another <i>security</i> , except only in respect of payment, entitlement to initial dividend and the nature of <i>documents of title</i> ;
<i>passport institution</i>	means an <i>incoming EEA firm</i> ;
<i>percentage risk addition</i>	means a percentage to be applied to the value of positions in investments held by the firm to determine its <i>PRR</i> ;
<i>perfectly matching contracts</i>	mean certain <i>OTC derivatives</i> contracts which are included in a legally binding netting agreement that are equal and exact opposites and perfectly matching in all material respects;
<i>physical commodities method</i>	means the method of calculating <i>PRR</i> under rules 3-166 to 3-169B;
<i>physical commodity</i>	means the actual commodity, <i>documents of title</i> to actual commodities or shipping documents conveying title to actual commodities;
<i>preference security</i>	means a <i>share</i> with rights, in respect of capital or dividends, superior to those of ordinary equity;
<i>pre-priced deal</i>	means an <i>international offering</i> other than a <i>bought deal</i> all the <i>pricing terms</i> of which have been fixed;
<i>pricing terms</i>	means, in relation to an <i>offering</i> , the amount of currency, maturity, <i>offering price</i> , rate of or means of calculating interest and any prices at which <i>securities</i> may be redeemed or converted or exchanged into other <i>securities</i> ;
<i>primary requirement</i>	is the primary requirement calculated in accordance with Table 3-61;
<i>profit share</i>	means an appropriation of profit before tax on a predetermined basis for the benefit of management or <i>employees</i> ;
<i>property fund</i>	means a scheme dedicated to permitted immovables and property related assets, whether with or without other transferable securities;
<i>PRR</i>	means the position risk requirement of a firm as calculated in accordance with rules 3-80 to 3-169B;

(c) [deleted]

(d) [deleted]

5.2.2 FINANCIAL RESOURCES

Own funds

5.2.2(1) R A *firm* must calculate its *own funds* in accordance with Table 5.2.2(1).

FCA

Liquid capital

5.2.2(2) R A *firm* must calculate its *liquid capital* in accordance with Table 5.2.2(1).

FCA

5.2.3 FINANCIAL RESOURCES REQUIREMENT

Determination of requirement

5.2.3(1)(a) R The *financial resources requirement* for a *firm* is a *liquid capital requirement*, determined in accordance with paragraph (a) of rule 5.2.3(4), unless the *firm* falls within any of the exceptions in rule 5.2.3(2).

FCA

(b) R [deleted]

(c) R [deleted]

Exceptions from the liquid capital requirement

5.2.3(2) R The *financial resources requirement* is an *own funds requirement* determined in accordance with paragraph (a) of rule 5.2.3(3) for a *firm* if its *permitted business* does not include *establishing, operating or winding up a personal pension scheme* and which:

FCA

(i) is an *exempt CAD firm* which is also an *operator* of a *collective investment scheme* and that scheme only invests in *venture capital investments* for *non-retail clients*; or

(ii) is not an *exempt CAD firm* if:

(a) the *firm's permitted business* does not include the holding of *customers' monies* or assets and it neither executes transactions (or otherwise arranges deals) in *investments* nor has such transactions executed for itself or its *customers*; or

(b) the *firm's permitted business* includes the activities as in (a) above, but only in respect of *venture capital investments* for *non-retail clients*; or

- (c) the *firm* is a *trustee* of an *authorised unit trust scheme* whose *permitted business* consists only of trustee activities and does not include any other activity constituting *specified trustee business* or the *firm* is a *depository* of an *ICVC* or *ACS* whose *permitted business* consists only of *depository* activities.
- (d) the *firm's permitted business* limits it to acting as the *operator* of a *collective investment scheme* whose main purpose is to invest in *permitted immovables* whether in the *UK* or abroad.

Own funds requirement

5.2.3(3)(a) R The *own funds requirement* for a *firm* subject to rule 5.2.3(2) is:

FCA

- (i) £4,000,000 for a *firm* which is a *trustee* of an *authorised unit trust scheme* or a *depository* of an *ICVC* or *ACS*;
- (ii) £5,000 for any other *firm*.

(b) R [deleted]

Liquid capital requirement

5.2.3(4)(a) R The *liquid capital requirement* for a *firm* subject to paragraph (a) of rule 5.2.3(1) is the greater of:

FCA

- (i) £5,000; and
- (ii) its *total capital requirement* calculated in accordance with rule 5.2.3(5).

(b) R [deleted]

(c) R [deleted]

Total capital requirement

5.2.3(5) R A *firm's* total capital requirement is the sum of its:

FCA

- (a) *expenditure based requirement* calculated in accordance with Table 5.2.3(5)(a);
- (b) *position risk requirement* calculated in accordance with Table 5.2.3(5)(b);
- (c) *counterparty risk requirement* calculated in accordance with Table 5.2.3(5)(c);

(d) **foreign exchange requirement** calculated in accordance with Table 5.2.3(5)(d); and

(e) **other assets requirement** calculated in accordance with Table 5.2.3(5)(e).

5.2.3(6) G A *firm* which discloses clients' money or assets on its balance sheet need not calculate the requirements under paragraphs (b) to (e) of rule 5.2.3(5) on such items where these do not represent assets or liabilities of the *firm* itself.

FCA

5.2.4 ANNUAL EXPENDITURE

Determination

5.2.4(1) R **Annual expenditure** is:

FCA

(a) the sum of the amounts described as total expenditure in the four *quarterly financial returns* up to (and including) that prepared at the *firm's* most recent *accounting reference date*, less the following items (if they are included within such expenditure):

- (i) staff bonuses, except to the extent that they are guaranteed;
- (ii) *employees'* and *directors'* shares in profits, except to the extent that they are guaranteed;
- (iii) other appropriations of profits;
- (iv) shared commission and fees payable which are directly related to commission and fees receivable which are included within total revenue;
- (v) interest charges in respect of borrowings made to finance the acquisition of the *firm's* *readily realisable investments*;
- (vi) interest paid to *customers* on *client money*;
- (vii) interest paid to counterparties;
- (viii) fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions;
- (ix) foreign exchange losses; or

(b) where the previous accounting period does not include twelve months' trading, an amount calculated in accordance with paragraph (a) above prorated to an equivalent annual

amount; or

- (c) where a *firm* has not prepared four *quarterly financial returns* since the commencement of its *permitted business*, an amount based on forecast expenditure included in its budget for the first twelve months' trading, as submitted with its application for membership.

5.2.4(2) G A *firm's financial resources requirement* will be recalculated annually when its fourth *quarterly financial return* is prepared. The *firm* must maintain *financial resources* sufficient to meet its new *financial resources requirement* from the date on which the fourth *quarterly financial return* is prepared and no later than 80 business days after the *firms' accounting reference date*. The *expenditure based requirement* applicable at the *accounting reference date* will be based on the four *quarterly financial returns* prepared up to and on that date.

FCA

5.2.4(3) R [deleted]

5.2.5 QUALIFYING SUBORDINATED LOANS

Characteristics of Long Term Qualifying Subordinated Loans

5.2.5(1) R A long term *qualifying subordinated loan* (item 11 of Table 5.2.2(1)) must have the following characteristics:

FCA

- (a) the loan is repayable only on maturity or on the expiration of a period of notice in accordance with paragraph (c) below or on the winding up of the *firm*;
- (b) in the event of the winding up of the *firm*, the loan ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;
- (c) either:
- (i) the minimum original maturity of the loan is 5 years; or
 - (ii) the loan does not have a minimum or fixed maturity but requires 5 years notice of repayment; and
- (d) the loan is fully paid-up.

Amount allowable in the calculation of own funds

5.2.5(2) R A *firm* may only take into account the paid-up amount of a long term *qualifying subordinated loan* in the calculation of its *own funds*. This amount must be amortised on a straight-line basis over the five years prior to the date of repayment.

FCA

Requirements applicable to short-term qualifying subordinated loans

5.2.5(3)(a) R A short term *qualifying subordinated loan* (item 15 of Table 5.2.2(1)) must have the characteristics set out in rule 5.2.5(1) save that the minimum period set out in paragraph (c) of rule 5.2.5(1) shall be two years.

FCA

(b) R A *firm* must not make any payment of principal or interest which would result in a breach of rule 5.2.1(2).

Form of qualifying subordinated loan agreement

5.2.5(4) R A *qualifying subordinated loan* must be in the form prescribed by *the FCA* for the purposes of this rule.

FCA

5.2.5(5) G *Firms* wishing to initiate a subordinated loan agreement other than in the prescribed form are advised to contact *the FCA*.

FCA

Conditions applicable to qualifying subordinated loans

5.2.5(6) R A *firm* wishing to include a *qualifying subordinated loan* in its calculation of *liquid capital* must:

FCA

- (a) provide *the FCA* with a copy of the agreement not less than 10 business days before the loan is to be made; and
- (b) certify to the FCA that the loan agreement complies with the FCA's prescribed subordinated loan agreement.

Requirements on a firm in relation to qualifying subordinated loans

5.2.5(7) R A *firm* including a qualifying subordinated loan in its calculation of *liquid capital* must not:

FCA

- (a) secure all or any part of the loan;
- (b) redeem, purchase or otherwise acquire any of the liabilities of the borrower in respect of the loan;
- (c) amend or concur in amending the terms of the loan agreement;
- (d) repay all or any part of the loan otherwise than in accordance with the terms of the loan agreement; or
- (e) take or omit to take any action whereby the subordination of the loan or any part thereof might be terminated, impaired or adversely affected.

5.2.6 QUALIFYING PROPERTY AND QUALIFYING UNDERTAKINGS

Qualifying property and qualifying amount defined

- 5.2.6(1) R **Qualifying property** is any freehold or leasehold (or the equivalent tenure in Scotland or other territories) land and buildings purchased or secured by way of a mortgage (or other form of secured long-term arrangement) where the security for the liability is the property (and does not include any other allowable assets). The *qualifying amount* is the lowest of:
- (a) 85 per cent of the current market value of the property (if known);
- (b) 85 per cent of the net book value of the property;
- (c) the amount of the liability outstanding under mortgage or other secured long term arrangement, excluding any part of the liability repayable within one year.

5.2.6(2) G Rule 5.2.6(1) can be illustrated as follows:

FCA	Current market value	£200,000
	Net book value	£100,000
	Mortgage	£70,000, including £5,000 payable within one year
	Qualifying amount is the lowest of:	
	(a) 85% x £200,000 =	£170,000
	(b) 85% x £100,000 =	£85,000
	(c) £70,000 – £5,000 =	£65,000

i.e. £65,000

Qualifying undertakings

- 5.2.6(3) R **A qualifying undertaking** is an arrangement between a *firm* and an *approved bank* which:
- (a) is in the form prescribed by *the FCA* for the purposes of this rule; and
- (b) complies with the appropriate limitations set out in paragraph (7) of Part II to Table 5.2.2(1).

5.2.7(1) G [deleted]

5.2.7(2) R [deleted]

5.2.7(3) R [deleted]

5.2.7(4) R [deleted]

5.2.7(5) R [deleted]

TABLE 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL

FCA

PART I

METHOD OF CALCULATION

A firm must calculate its *own funds* and *liquid capital* as shown below, subject to the detailed requirements set out in Part II.

Financial resources	Category	Part II Para
Tier 1		
(1) Paid-up share capital (excluding preference shares)	A	2
(1A) <i>Eligible LLP members' capital</i>		
(2) Share premium account		
(3) Reserves		2A
(4) Non-cumulative preference shares		
Less: (5) Investments in own shares	B	
(6) Intangible assets		3
(7) Material current year losses		4
(8) Material holdings in credit and financial institutions and, for <i>exempt CAD firms</i> only, <i>material insurance holdings</i> .		5 and 5A
(8A) <i>Excess LLP members' drawings</i>		
Tier 1 capital = (A-B)	C	
Plus: TIER 2		1
(9) Revaluation reserves	D	
(10) Fixed term cumulative preference share capital		1(a)
(11) Long-term Qualifying Subordinated Loans		1(a); 6
(12) Other cumulative preference share capital and debt capital but, for <i>exempt CAD firms</i> , only perpetual cumulative preference share capital and <i>qualifying capital instruments</i>		6A
(13) Qualifying arrangements		7
"Own Funds" = (C+D)	E	
Plus: TIER 3		
(14) Net trading book profits	F	1(b)(i); 8
(15) Short-term Qualifying Subordinated Loans and excess Tier 2 capital		1(b)(ii); 1(c); 9
Less:(16) Illiquid assets	G	10
Add:(17) Qualifying Property		11
"Liquid Capital" = (E+F+G)		

PART II

return a verification report signed by its external auditor which states whether the interim results are fairly stated, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 198 (section 249A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts.

Profits on the sale of capital items or arising from other activities which are not directly related to the *investment business* of the *firm* may also be included within the calculation of *liquid capital*, but (unless the *firm* is exempt as above) only if they can be separately verified by the *firm's* auditors. In such a case, such profits can form part of the *firm's* Tier 1 capital as profits.

9 Short term qualifying subordinated loans (Item 15)

Loans having the characteristics prescribed by rule 5.2.5(3) may be included in item 15 subject to the limits set out in paragraph (1) above. Tier 2 capital which exceeds the ratios prescribed by paragraph (1)(a) and (b) may be included in item 15 subject to paragraph (1) above.

10 Illiquid assets (Item 16)

Illiquid assets comprise:

- (a) tangible fixed assets;

Note

In respect of tangible fixed assets purchased under finance leases the amount to be deducted as an illiquid asset shall be limited to the excess of the asset over the amount of the related liability shown on the balance sheet.

- (b) holdings in, including subordinated loans to, *credit* or *financial institutions* which may be included in the *own funds* of such *institutions* unless they have been deducted under item 8;
- (c) any *investment* in undertakings other than *credit institutions* and other *financial institutions* where such *investments* are not readily realisable;
- (d) any deficiency in net assets of a *subsidiary*;
- (e) deposits not available for repayment within 90 days or less (except for payments in connection with margined futures or options contracts);

Note

Where cash is placed on deposit with a maturity of more than 90 days but is repayable on demand subject to the payment of a penalty, then this is not required to be deducted as an illiquid asset but a deduction is required for the amount of the penalty.

- (f) loans, other debtors and accruals not falling due to be repaid within 90 days or which are more than one month overdue by reference to the contractual payment date;
- (g) physical stocks (except where subject to the *position risk requirement* as set out in Table 5.2.3(5)(b)); and
- (h) prepayments to the extent that the period of prepayment exceeds six weeks in the case of a

firm subject to the 6/52 *expenditure based requirement* or thirteen weeks in the case of a *firm* subject to the 13/52 *expenditure based requirement* or where a *firm* is required to meet the requirement in rule 5.2.3(4)(c)(i).

- (i) if not otherwise covered, any holding in eligible capital instruments of an insurance undertaking, insurance holding company, or reinsurance undertaking that is a *subsidiary* or *participation*. Eligible capital instruments include ordinary share capital, cumulative preference shares, perpetual securities and long-term subordinated loans, that are eligible for insurance undertakings under PRU 2.

Illiquid assets do not include a *defined benefit asset* or a deferred acquisition cost asset.

11 Qualifying property (Item 17)

This item comprises the qualifying amount calculated in accordance with rule 5.2.6(1).

Table 5.2.3(3)(b)

[deleted]

Table 5.2.3(5)(a) EXPENDITURE BASED REQUIREMENT

FCA

PART I

CALCULATION OF REQUIREMENT

A *firm's expenditure based requirement* is a fraction of its *annual expenditure* determined in accordance with Part II of this Table.

PART II

FRACTIONS

1: The fraction is 6/52 where:

- (a) the *firm* is an *authorised unit trust manager*; or
(aa) the *firm* is an *authorised contractual scheme manager*; or
(b) the *firm* acts only as an *authorised corporate director* of an *ICVC*; or
(c) the *firm* is an *investment manager* (including the *operator* of an *unregulated collective investment scheme* in relation to which the *firm* carries on the activity of an *investment manager*), unless paragraph 2 applies.

2: The fraction is 13/52 where the *firm* is an *investment manager* as in paragraph 1(c) above, or is a *custodian*, and the *firm* either:

- (a) itself holds *customers' monies* or assets; or
(b) procures the appointment as *custodian* of its *customers' monies* or assets of an *associate* of the *firm* which is not an *approved bank*.

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

addition, as both or either:

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

Table 5.2.3(5)(b) POSITION RISK REQUIREMENT

FCA

PART I

CALCULATION OF REQUIREMENT

A *firm's* position risk requirement is determined by calculating on a daily mark to market basis, the sum of the weighted value of each position held by the *firm*. The weighted value for each position must be calculated by multiplying its current market value by the appropriate factor set out in Part II.

Note: This requirement does not attach to items deducted in full as illiquid assets.

PART II

WEIGHTINGS

Instrument	Requirement			
A Debt	Maturity	0-2 years	2-5 years	>5 years
Central Government		2%	5%	13%
Qualifying debt securities				
• fixed rate		8%	8%	15%
• floating rate		10%	10%	15%
Non-qualifying debt securities				
• fixed rate		10%	20%	30%
• floating rate		30%	30%	30%
B Equities				
• Traded on a recognised or designated investment exchange.	25%			
• other	100%			
C Stock position in physical commodities				
• Physical positions associated with <i>firm's investment business</i>	30% of realisable value			
D Derivatives				
• Exchange traded futures and written options	4 x initial margin requirement.			
• otc futures and written options	Apply the appropriate percentage shown in Sections A, B, & C above to the market value of the underlying position.			
• Purchased options	Apply the appropriate percentage shown in Sections A, B & C above to the market value of the underlying position but the result			

may be limited to the market value of the option.

- Contracts for differences

20% of the market value of the contract.

E Other investments

- units in regulated collective investment schemes

25% of realisable value (see Section F).

- with profit life policies

20% of surrender value.

- other

100% of the value of investment or underlying instrument.

F Determination of disallowed value of units

The disallowed value of units held in a *UCITS management company's* box is the difference between:

(a) the amount at which stocks of units in the box are valued in the balance sheet; and

(b) the adjusted value of the units, being the value of the units calculated at cancellation prices less the value calculated at cancellation prices of the units multiplied by the following percentages based on the types of *investments* in the individual *UCITS schemes*:

Quoted, fixed or floating rate interest bearing securities: 3%

Equities:

USA, Japan, Canada	5%
Europe	6%
Far East and other	10%

Note

This can be illustrated as follows: 100 units, comprising Far East equities, with unit cancellation price of 100 pence.

	£	£
Balance sheet value		104
Value of cancellation price	100	
Less £100 x 10%	10	90
		<hr/>
Disallowed		14

Note

The percentages in the requirement column are applied to the market value

(unless otherwise stated) of gross positions i.e. both longs and shorts in each category; netting and offsetting are prohibited. The long or short position in a particular instrument is the net of any long or short positions held in that same instrument.

Table 5.2.3(5)(c) COUNTERPARTY RISK REQUIREMENT (CRR)

FCA		
1	Receivables	<p>In the case of receivables due to the <i>firm</i> in the form of fees, commission, interest, dividends and margin in exchange-traded futures or options contracts, which are directly related to items included in the <i>trading book</i>, the CRR is calculated as follows:</p> <p>CRR = A x RF, where</p> <p>A = the amount of the sum due; and</p> <p>RF = the appropriate risk factor derived from Table 5.2.3(5)(c)(ii).</p> <p>Note</p> <p>This requirement attaches only to balances arising from proprietary activity falling within the definition of the <i>trading book</i>.</p> <p>Note</p> <p>This requirement does not attach to items deducted in full as illiquid assets.</p>
2	Delivery of cash against documents	<p>Where a <i>firm</i> enters into a <i>trading book</i> transaction and the transaction is to be settled by delivery of cash against documents, the <i>firm's</i> CRR in respect of that transaction is calculated as follows:</p> <p>CRR = (SP – MV) x RF, where</p> <p>SP = agreed settlement price;</p> <p>MV = current market value;</p> <p>RF = the appropriate risk factors derived from Table 5.2.3(5)(c)(i).</p> <p>The CRR should only be calculated where the difference between SP and MV would involve a loss if borne by the <i>firm</i>.</p>
3	Free deliveries	<p>Where a <i>firm</i> enters into a <i>trading book</i> transaction and the <i>firm</i> pays for the securities before it receives documents of title or delivers documents of title before receiving payment, the CRR in respect of that transaction is calculated as follows:</p> <p>CRR = V x RF, where</p> <p>V =</p> <ul style="list-style-type: none"> (i) the full amount due to the <i>firm</i> (i.e. the contract value) where the <i>firm</i> has delivered securities to a counterparty and has not received payment; or (ii) the market value of the securities, where the <i>firm</i> has made payment to a counterparty for securities and has not received documents of

		title; and
		RF = the appropriate risk factor derived from Table 5.2.3(5)(c)(ii).
4	Settlement outstanding 30 days or more	In the case of trading book transactions entered into by a <i>firm</i> where the <i>firm</i> pays for the securities before it receives documents of title or delivers documents of title before receiving payment and settlement has not been effected within 30 days of falling due, CRR = V.
5	Repos/Stock Lending and Reverse Repos/Stock Borrowing	<p>Where a <i>firm</i> enters into a transaction based on securities included in the trading book under the terms of a repurchase agreement or a securities lending agreement the <i>firm's</i> CRR in respect of that transaction is calculated as follows:</p> <p>CRR = V x RF, where</p> <p>RF = the appropriate risk factor derived from Table 5.2.3(5)(c)(ii); and</p> <p>for repos/stock lending:</p> <p>V = the excess of the market value of the securities over the value of the collateral provided under the agreement, if the net figure is positive; or</p> <p>for reverse repos/stock borrowing:</p> <p>V = the excess of the amount paid or the collateral given for the securities received under the agreement, if the net figure is positive.</p>
6	otc derivatives	<p>In the case of a transaction entered into by a <i>firm</i> as principal in an <i>otc derivative</i> the CRR is calculated as follows:</p> <p>CRR = A x RF, where</p> <p>A = the appropriate credit equivalent amount derived from Table 5.2.3(5)(c)(iii); and</p> <p>RF = the appropriate risk factor derived from Table 5.2.3(5)(c)(ii).</p> <p>This calculation shall not apply to contracts for interest rate and foreign exchange which are traded on a <i>recognised investment exchange</i> or <i>designated investment exchange</i> where they are subject to a daily margin requirement and foreign exchange contracts with an original maturity of 14 calendar days or less.</p> <p>A <i>firm</i> may net off contracts with the same counterparty in the same <i>otc derivative</i> contract for settlement on the same date in the same currency provided that the <i>firm</i> is legally entitled under the terms of the contracts with such a counterparty to net such contracts by novation.</p>

Table 5.2.3(5)(c)(i) COUNTERPARTY RISK FACTOR – CASH SETTLEMENTS

Number of working days after due settlement date	FCA	Risk Factor
0-4		0%

5-15	8%
16-30	50%
31-45	75%
46 or more	100%

Table 5.2.3(5)(c)(ii) COUNTERPARTY RISK REQUIREMENT

		FCA		
Type of counterparty		Risk Weighting	Solvency Ratio	Risk Factor
1	A counterparty which is, or the contract of which is, explicitly guaranteed by a <i>category a body</i> .	NIL	8%	NIL
2	A counterparty which is, or the contract of which is, explicitly guaranteed by a <i>category b body</i> .	20%	8%	1.6%
3	Any other counterparty.	100%	8%	8%

Table 5.2.3(5)(c)(iii) OTC DERIVATIVES CALCULATION OF CREDIT EQUIVALENT AMOUNT

FCA			
A	By attaching current market values to contracts (marking to market), obtain the current replacement cost of all contracts with positive values.		
B	To obtain a figure for potential future credit exposure, the notional principal amounts or values underlying the firm's aggregate positions are multiplied by the following percentages:		
	Residual Maturity	Interest-Rate Contracts	Foreign-Exchange Contracts
	One year or less	nil	1%
C	The credit equivalent amount is the sum of current replacement cost and potential future credit exposure.		
Note			
Except in the case of single-currency "floating/floating interest rate" swaps in which only the current replacement cost will be calculated, bought OTC equity options and covered warrants shall be subject to the treatment accorded to exchange rate contracts.			

Table 5.2.3(5)(d) FOREIGN EXCHANGE REQUIREMENT

FCA	
Calculation of Requirement	
(1)	A firm's foreign exchange requirement is determined by calculating the excess of its <i>foreign exchange position (FEP)</i> above 2 per cent of its <i>own funds</i> and multiplying this excess by 8

per cent.

- (2) The FEP is the greater of:
- (a) the total in the *reporting currency* of the net short positions in each currency other than the *reporting currency*; and
 - (b) the total in the *reporting currency* of the net long positions in each currency other than the *reporting currency*;
- where the conversion to the *reporting currency* is performed using spot rates.

Note

For this purpose, long and short positions in the same currency can be netted to produce the net position.

- (3) In calculating the FEP, a *firm* must include relevant *foreign exchange items*.

EXCHANGE POSITION FOR HEDGING PURPOSES

Any positions which the *firm* has taken in order to hedge against the adverse effect of exchange rates on an item already deducted in the calculation of *liquid capital* may not be excluded from the calculation of net open currency positions

Table 5.2.3(5)(e) OTHER ASSETS REQUIREMENT

FCA

PART I

CALCULATION OF REQUIREMENT

The requirement to be met in respect of the assets set out in Part II of this Table, other than those to which *position risk requirements* and *counterparty risk requirements* apply or which have been deducted in full as illiquid assets, and in respect of off-balance sheet items set out in Part II of this Table, must be calculated as follows:

- A = AV x RF where
- A = the amount of the requirement;
- AV = the current asset value; and
- RF = the appropriate risk factor derived from Part II of this Table.

PART II

RISK FACTORS

Assets and Off-Balance Sheet Items **Risk Factor**

Assets

Cash at bank and in hand and equivalent items NIL

Assets secured by acceptable collateral including deposits and certificates of deposit with lending institutions

Amount due from trustees of authorised unit trusts or depositaries of *authorised contractual schemes* NIL

Note

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

Amount due from *depositories of ICVCs* NIL

Note

This only applies to *firms* who are *authorised corporate directors* in relation to *ICVCs* they operate

Other receivables due from or explicitly guaranteed by or deposits with *category a bodies* NIL

Other receivables due from or explicitly guaranteed by or deposits with *category b bodies* 1.6%

Pre-payments and accrued income (See paragraph 10 of Part II of Table 5.2.2(1)) 8%

Defined benefit asset NIL

Deferred acquisition cost asset NIL

All other assets 8%

OFF-BALANCE SHEET ITEMS

Full Risk Items e.g.

Charges granted against assets 8% x counterparty weight (see Table 5.2.3(5)(c)(ii))

Guarantees given

Medium Risk Items e.g.

Undrawn credit facilities granted by the *firm* with an original maturity of more than one year 4% x counterparty weight (see Table 5.2.3(5)(c)(ii))

Low Risk Items e.g.

Undrawn credit facilities granted by the *firm* with an original maturity of one year or less NIL

Note

(1) In determining the appropriate *other assets requirement* (OAR) for guarantees given in a group context, a *firm* should follow the calculation below:

(a) Categorise the guarantee agreements into:

(i) those with the character of credit substitutes; or

(ii) those not having the character of credit substitutes; or

(iii) agreements to provide guarantees.

(b) Calculate the weighted value.

(i) For guarantees falling under (1)(a)(i), the weighted value will be 100% of the estimated current year liability under the guarantee.

(ii) For guarantees falling under (1)(a)(ii) the weighted value will be 50% of the estimated current year liability under the guarantee.

(iii) For guarantees falling under (1)(a)(iii), the weighted value will be nil.

(c) The OAR is calculated as:

Weighted value x 8% x counterparty weighting (Table 5.2.3(5)(c)(ii))

(2) For the purpose of this requirement, in assessing whether the guarantee has the characteristics of a credit substitute the following factors should be considered:

- (a) do the agreements allow for periodic or ad-hoc calling of funds;
 - (b) have the guarantees been drawn upon on a regular basis;
 - (c) do *firms* in the group rely on such guarantees to meet their working capital or regulatory capital requirements.
- (3) Where a *firm* is part of a group including other *FCA* regulated entities which together have entered into cross group guarantee arrangements which give rise to an OAR, the estimate of the potential liability under the guarantee may be apportioned between the regulated entities for the purpose of calculating each *firm's* OAR.

Appendix 1: Interpretation

FCA

Glossary of terms for Chapter 5 (Former IMRO Firms)

The following words or terms throughout Chapter 5 are to have the meanings given to them below if not inconsistent with the subject or context. If a defined term does not appear in the IPRU(INV) 5 glossary below, the definition appearing in the main Handbook *Glossary* applies.

Term	Meaning
<i>accounting reference date</i>	means: <ul style="list-style-type: none">(a) the date to which a <i>firm's</i> accounts are prepared in order to comply with the relevant Companies Act legislation. In the case of a firm not subject to Companies Act legislation, the equivalent date selected by the <i>firm</i>; and(b) in the case of an <i>OPS firm</i> which is not subject to the relevant Companies Act legislation, the date to which the accounts of the <i>OPS</i> in respect of which the <i>firm</i> acts are prepared.
<i>admission procedures</i>	means the procedures set out in the Authorisation Manual together with any other procedures which the <i>Board</i> resolves, either generally or in relation to any specific case, should apply to the admission of <i>firms</i> and the admission of <i>approved persons</i> .
<i>annual accounts</i>	means accounts prepared to comply with relevant Companies Act legislation and their equivalent in Northern Ireland or other statutory obligations.
<i>Annual expenditure</i>	has the meaning given in rule 5.2.4(1) (Determination).
<i>authorised contractual scheme</i>	a <i>co-ownership scheme</i> or a <i>limited partnership scheme</i> .
<i>authorised contractual scheme manager</i>	means the <i>authorised fund manager</i> of an <i>authorised contractual scheme</i> .
<i>authorised unit trust manager</i>	means the manager of an <i>authorised unit trust scheme</i> .
<i>best execution</i>	in relation to the effecting of a transaction, means the effecting of that transaction in compliance with <i>COBS 11.2</i> .
<i>Board</i>	means the board of <i>directors</i> of the <i>FCA</i> or any duly authorised committee of such board.
<i>category a body</i>	means: <ul style="list-style-type: none">(a) the government or central bank of a <i>zone a country</i>; or(b) <i>EU</i> or Euratom (the European Atomic Energy Community); or(c) the government or central bank of any other country, provided the receivable in question is denominated in that country's national currency.

<i>category b body</i>	means:
	(a) the <i>EIB</i> or a multi-lateral development bank; or
	(b) the regional government or local authority of a <i>zone a country</i> ; or
	(c) an <i>investment firm</i> or <i>credit institution</i> authorised in a <i>zone a country</i> ; or
	(d) a <i>recognised clearing house</i> or <i>exchange</i> ; or
	(e) an <i>investment firm</i> or <i>credit institution</i> authorised in any other country, which applies a financial supervision regime at least equivalent to the <i>Capital Adequacy Directive</i> .
<i>Client Money Rules</i>	CASS 4.1 to 4.3.
<i>company</i>	means a <i>body corporate</i> or an unincorporated association and, where the context permits, includes a partnership.
<i>compliance officer</i>	means the individual from time to time appointed by a <i>firm</i> as responsible for compliance matters.
<i>connected company and connected credit institution</i>	means, in relation to a <i>firm</i> which:
	(a) is a <i>body corporate</i> , a <i>body corporate</i> or <i>credit institution</i> satisfying any of the following conditions:
	(i) the same person is the <i>controller</i> of each <i>body corporate</i> or <i>credit institution</i> ; or
	(ii) if a <i>group</i> of two or more persons are <i>controllers</i> of each <i>body corporate</i> or <i>credit institution</i> , the <i>group</i> either consists of the same persons or could be regarded as consisting of the same persons by treating a member of either <i>group</i> as replaced by:
	(A) that member's <i>close relative</i> ; or
	(B) a person with whom the member is in partnership; or
	(C) a <i>body corporate</i> of which the member is an officer; or
	(iii) both <i>bodies corporate</i> are members of the same <i>group</i> ; or
	(b) is not a <i>body corporate</i> or <i>credit institution</i> which is controlled:
	(i) by the <i>firm</i> ; or
	(ii) by a partner in the <i>firm</i> ; or
	(iii) by a <i>close relative</i> or partner in the <i>firm</i> or, if the <i>firm</i> is a sole trader, by a <i>close relative</i> of the sole trader; or
	(iv) collectively by any of the partners in the <i>firm</i> or their <i>close relatives</i> .
<i>controller</i>	(as defined in section 422 of the <i>Act</i> (Controller))

in relation to a *firm* or other undertaking ("A"), means a person who:

- (a) holds 10% or more of the *shares* in A; or
- (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A; or
- (c) holds 10% or more of the *shares* in a parent undertaking ("P") of A; or
- (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P; or
- (e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A; or
- (f) is able to exercise significant influence over the management of A by virtue of his voting power in A; or
- (g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or
- (h) is able to exercise significant influence over the management of by virtue of his voting power in P.

and in this definition

- (A) "person" means:
 - (a) the person; or
 - (b) any of the person's *associates*; or
 - (c) the person and any of his *associates*.
- (B) "associate", in relation to a person (H) holding shares in an undertaking ("C") or entitled to exercise or control the exercise of voting power in relation to another undertaking ("D") means:
 - 1. the spouse of H
 - 2. a child or stepchild of H (if under 18);
 - 3. the trustee of any settlement under which H has a life interest in possession (or in Scotland a life interest);
 - 4. an undertaking of which H is a *director*;
 - (e) a person who is an *employee* or *partner* of H;
 - (f) if H is an undertaking:
 - (i) a *director* of H;
 - (ii) a *subsidiary* undertaking of H;
 - (iii) a *director* or *employee* of such a *subsidiary* undertaking; and

- (g) if H has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in C or D or under which they undertake to act together in exercising their voting power in relation to C or D, that other person;
- (a) "settlement" includes any disposition or arrangement under which property is held on trust (or subject to a comparable obligation);
- (b) "shares" means;
 - (a) in relation to an undertaking with a share capital, allotted shares;
 - (b) in relation to an undertaking with capital but no share capital, rights to share in the capital of the undertaking;
 - (c) in relation to an undertaking without capital, interests:
 - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
 - (ii) giving rise to any obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

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

corporate finance business means:

- (a) *designated investment business* carried on by a *firm* with or for:
 - (i) any issuer, holder or owner of *designated investments*, if that business relates to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, those *investments*, or any related matter;
 - (ii) any *eligible counterparty* or *professional client*, or other *body corporate*, partnership or supranational organisation, if that business relates to the manner in which, or the terms on which, or the persons by whom, any business, activities or undertakings relating to it, or any *associate*, are to be financed, structured, managed, controlled, regulated or reported upon;
 - (iii) any person in connection with:
 - (A) a proposed or actual *takeover or related operation* by or on behalf of that person, or involving investments issued by that person (being a *body corporate*), its *holding company*, *subsidiary* or *associate*; or
 - (B) a merger, de-merger, reorganisation or reconstruction involving any investments issued by that person (being a *body corporate*), its *holding company*, *subsidiary* or *associate*;
 - (iv) any shareholder or prospective shareholder of a *body corporate* established or to be established for the purpose of effecting a *takeover or related operation*, where that business is in connection

with that *takeover or related operation*;

- (v) any person who, acting as a *principal* for his own account:
 - (A) is involved in negotiations or decisions relating to the commercial, financial or strategic intentions or requirements of a business or prospective business; or
 - (B) (provided he is acting otherwise than solely in his capacity as an investor) assists the interests of another person with or for whom the *firm*, or another *authorised person* or *overseas person*, is undertaking business as specified in (a)(i),(ii),(iii) or (iv), by himself undertaking all or part of any transactions involved in such business;
- (vi) any person undertaking business with or for a person as specified in (a)(i), (ii), (iii), (iv) or (v) in respect of activities described in those sub-paragraphs;
- (b) *designated investment business* carried on by a *firm* as a *principal* for its own account where such *business*:
 - (i) is in the course of, or arises out of, activities undertaken in accordance with (a); and
 - (ii) does not involve transactions with or for, or *advice* to, any other person who is a *retail client* in respect of such business;
- (c) *designated investment business* carried on by a *firm* as *principal* for its own account if such *business*:
 - (i) is in the course of, or arises out of
 - (A) the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, shares, share warrants, *debentures* or debenture warrants issued by the *firm*, or any related matter; or
 - (B) a proposed or actual *takeover or related operation* by or on behalf of the *firm*, or involving shares, share warrants, *debentures* or debenture warrants issued by the *firm*; or
 - (C) a merger, de-merger, reorganisation or reconstruction involving any shares, share warrants, *debentures* or debenture warrants issued by the *firm*; and
 - (ii) does not involve giving *advice on investments* to any person who is a *retail client*;

in this definition, “share warrants” and “debenture warrants” means any *warrant* which relates to shares in the *firm* concerned or, as the case may be, *debentures* issued by the *firm*.

counterparty means any person with or for whom a *firm* carries on *regulated business* or an *ancillary activity*.

counterparty risk requirement has the meaning given in Table 5.2.3(5)(c) (Counterparty risk requirement).

<i>customer</i>	see the meaning given to the term in the <i>Glossary</i>
<i>customer investment</i>	means an <i>investment</i> , or a document of title or a certificate or other record evidencing title to an <i>investment</i> , (other than an <i>investment</i> falling within articles 83, 84 and 85 of the <i>RAO</i>) which is legally or beneficially owned by a <i>customer</i> of a <i>firm</i> .
<i>customer transaction</i>	does not include an <i>own account transaction</i> .
<i>EEA parent</i>	means a <i>firm's</i> direct or indirect <i>parent</i> which has its head office in the <i>EEA</i> .
<i>EIB</i>	means the European Investment Bank.
<i>expenditure based requirement</i>	means the requirement calculated in accordance with Table 5.2.3(5)(a) (Expenditure based requirement).
<i>finance officer</i>	means the most senior individual from time to time directly responsible for the <i>firm's</i> finances and for compliance with the requirements of the Supervision Manual.
<i>financial resources</i>	has the meaning given in rule 5.2.1(3) (Financial resources).
<i>financial resources requirement</i>	has the meaning given in rule 5.2.3(1) (a) to (c) (Determination of requirement).
<i>financial resources rules</i>	has the meaning given in rules 5.2.1 to 5.2.7.
<i>financial return</i>	means <i>quarterly financial return</i> or <i>monthly financial return</i> as the case may be.
<i>foreign exchange position</i>	has the meaning given in Table 5.2.3(5)(d) (Foreign exchange requirement).
<i>funds under management</i>	<p>(1) <i>collective investment schemes</i> other than <i>OEICs managed</i> by the <i>firm</i> including <i>schemes</i> where it has delegated the management function but excluding <i>schemes</i> that it is <i>managing as delegate</i>; and</p> <p>(2) <i>OEICs</i> for which the <i>firm</i> is the designated management company.</p>
<i>Group of connected counterparties</i>	<p>means:</p> <p>(a) two or more natural or legal persons who constitute a single risk because one of them, directly or indirectly, has <i>control</i> over the other or others; or</p> <p>(b) two or more natural or legal persons between whom there is no relationship of <i>control</i> as in (a) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to exercise financial problems, the other or all of the others would be likely to encounter difficulties in performing its or their obligations.</p>
<i>IADB</i>	means the Inter-American Development Bank.
<i>IBRD</i>	means the International Bank for Reconstruction and Development.

<i>IFC</i>	means the International Finance Corporation.
<i>investigation</i>	means an investigation authorised pursuant to the Enforcement Guide.
<i>investment</i>	means a <i>designated investment</i> .
<i>investment business</i>	means <i>designated investment business</i> .
<i>investment firm</i>	has the meaning given to <i>investment firm</i> in the main <i>Glossary</i> except that it excludes persons to which the <i>MiFID</i> does not apply as a result of articles 2 or 3 of <i>MiFID</i> . Note: An <i>investment firm</i> is not necessarily a <i>firm</i> for the purposes of the rules.
<i>investment management firm</i>	see the meaning given to the term in the <i>Glossary</i>
<i>investment manager</i>	means a person who, acting only on behalf of a <i>customer</i> , either: <ul style="list-style-type: none"> (a) manages an account or portfolio in the exercise of discretion; or (b) has accepted responsibility on a continuing basis for advising on the composition of the account or portfolio.
<i>investment services</i>	means activities undertaken in the course of carrying on <i>designated investment business</i> or undertaken as an <i>ISA manager</i> .
<i>ISA cash deposit</i>	means a cash deposit within Regulation 8 of the Individual Savings Account Regulations 1998 (SI 1998/1870) which is held within a cash component ISA.
<i>limited partnership scheme</i>	(as defined in section 235A(5) of the <i>Act</i> (Contractual schemes)) a <i>collective investment scheme</i> which satisfies the conditions in section 235A(6) and which is authorised for the purposes of the <i>Act</i> by an <i>authorisation order</i> .
<i>liquid capital</i>	has the meaning given in rule 5.2.2(1) (Calculation of own funds and liquid capital).
<i>liquid capital requirement</i>	has the meaning given in rule 5.2.3(4) (a) to (c) (Liquid capital requirement).
<i>marketable investment</i>	means: <ul style="list-style-type: none"> (a) an <i>investment</i> which is traded on or under the rules of an exchange; (b) a debt instrument which may be transferred without the consent of the issuer or any other person (including a collateralised mortgage obligation); (c) a commodity; (d) a <i>warrant</i>, option, future or other instrument which entitles the holder to subscribe for or acquire: <ul style="list-style-type: none"> (i) an <i>investment</i> or commodity in (a) to (c); or (ii) any currency; or

- (iii) any combination of (i) and (ii);
- (e) a contract for differences (including interest rate and currency swaps) relating to fluctuations in:
 - (i) the value or price of an *investment* or commodity in (a) to (d); or
 - (ii) any currency; or
 - (iii) the rate of interest in any currency or any index of such rates; or
 - (iv) the level of any index which is derived from the prices of an *investment* or commodity in (a) to (c); or
 - (v) any combination of (i) to (iv);
- (f) *warrants*, options, futures or other instruments entitling the holder to obtain the rights of those contracts in (d) or (e);
- (g) a *unit* in a *regulated collective investment scheme*.

marketing group

means a group of persons:

- (a) who are allied together (either formally or informally) for the purposes of marketing *packaged products* of the group; and
- (b) each of whom, if it holds itself out in the UK as marketing any *packaged products to retail clients*, does so only as an *investment manager* or in relation to those of the *marketing group*.

member state

means a member state of the *EEA*.

monthly financial return

means the return referred to in the Supervision Manual.

non-retail client

means a *professional client* or an *eligible counterparty*.

OPS or occupational pension scheme

means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or respect of earners with qualifying service in an employment of any such description or category.

OPS activity

see the meaning given to the term in the *Glossary*

OPS firm

means:

- (a) a *firm* which:
 - (i) carries on *OPS activity* but not with a view to profit; and
 - (ii) is one or more of the following:
 - (A) a trustee of the *occupational pension scheme* in question;
 - (B) a *company* owned by the trustees of the *occupational*

pension scheme in question;

(C) a *company* which is:

- (I) an employer in relation to the *occupational pension scheme* in question in respect of its employees or former employees or their dependants; or
- (II) a *company* within the *group* which includes an employer within (I); or
- (III) an administering authority subject to the Local Government Superannuation Regulations 1986; or

(b) a *firm* which:

- (i) has satisfied the requirements set out in (a) at any time during the past 12 *months*; but
- (ii) is no longer able to comply with those requirements because of a change in the control or ownership of the employer referred to in (a)(i) during that period.

<i>otc derivative</i>	means interest rate and foreign exchange contracts covered by Annex III to the previous version of the <i>Banking Consolidation Directive</i> (i.e. Directive (2000/12/EC) and off balance sheet contracts based on equities which are not traded on a <i>recognised</i> or <i>designated investment exchange</i> or other exchange where they are subject to daily margin requirements, excluding any foreign exchange contract with an original maturity of 14 calendar days or less.
<i>other assets requirement</i>	has the meaning given in Table 5.2.3(5) (e) (Other assets requirement).
<i>overseas person</i>	see the meaning given to the term in the <i>Glossary</i>
<i>own funds</i>	has the meaning given in rule 5.2.2(1) (Calculation of own funds and liquid capital).
<i>own funds requirement</i>	has the meaning given in rule 5.2.3(3) (a) (Own funds requirement).
<i>parent</i>	means any parent undertaking as defined in section 1162 of the Companies Act 2006 and any undertaking which effectively exercises a dominant influence over another undertaking.
<i>participation</i>	has the meaning given to the term in the <i>Glossary</i> .
<i>permitted business</i>	means <i>regulated activity</i> which a <i>firm</i> has <i>permission</i> to carry on.
<i>plan investment</i>	means an <i>investment</i> included in a <i>PEP</i> or in any <i>ISA</i> component.
<i>position risk requirement</i>	has the meaning given in Table 5.2.3(5)(b) (Position risk requirement).
<i>prescribed subordinated loan agreement</i>	means the subordinated loan agreement prescribed by the <i>appropriate regulator</i> for the purposes of rule 5.2.5(4).

<i>qualifying amount</i>	has the meaning given in the Supervision Manual.
<i>qualifying capital instrument</i>	<p>means that part of a <i>firm's</i> capital which is a security of indeterminate duration, or other instrument, that fulfils the following conditions:</p> <ul style="list-style-type: none"> (a) it may not be reimbursed on the bearer's initiative or without the prior agreement of the <i>appropriate regulator</i>; (b) the debt agreement must provide for the <i>firm</i> to have the option of deferring the payment of interest on the debt; (c) the lender's claims on the <i>firm</i> must be wholly subordinated to those of all non-subordinated creditors; (d) the documents governing the issue of the securities must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the <i>firm</i> in a position to continue trading; and (e) only fully paid-up amounts shall be taken into account.
<i>qualifying capital item</i>	<p>means that part of a <i>firm's</i> capital which has the following characteristics:</p> <ul style="list-style-type: none"> (a) it is freely available to the <i>firm</i> to cover normal banking or other risks where revenue or capital losses have not yet been identified; (b) its existence is disclosed in internal accounting records; and (c) its amount is determined by the management of the <i>firm</i> and verified by independent auditors, and is made known to, and is monitored by, the <i>FCA</i>. <p>Note: Verification by internal auditors will suffice until such time as EU provisions making external auditing mandatory have been implemented.</p>
<i>qualifying property</i>	has the meaning given in rule 5.2.6(1) (Qualifying property and qualifying amount defined).
<i>qualifying subordinated loan</i>	has the meaning given in rule 5.2.5 (1) to (7) (Qualifying subordinated loans).
<i>qualifying undertaking</i>	has the meaning given in rule 5.2.6(3) (Qualifying undertakings).
<i>quarterly financial return</i>	means the return referred to in the Supervision Manual.
<i>readily realisable investment</i>	<p>means a unit in a <i>regulated collective investment scheme</i>, a <i>life policy</i> or any <i>marketable investment</i> other than one which is traded on or under the rules of a <i>recognised</i> or <i>designated investment exchange</i> so irregularly or infrequently:</p> <ul style="list-style-type: none"> (a) that it cannot be certain that a price for that <i>investment</i> will be quoted at all times; or (b) that it may be difficult to effect transactions at any price which may be quoted.
<i>recognised</i>	means an <i>overseas clearing house</i> which is declared by a recognition order

<i>overseas clearing house</i>	made under section 290 or 292 of the <i>Act</i> for the time being in force to be a <i>recognised clearing house</i> .
<i>recognised overseas investment exchange</i>	means an <i>overseas investment exchange</i> which is declared by a recognition order made under section 290 or 292 of the <i>Act</i> for the time being in force to be a <i>recognised investment exchange</i> .
<i>recognised third country investment firm</i>	means an <i>investment firm</i> which is authorised in a country other than a <i>member state</i> and which is subject to and complies with prudential rules equivalent to the requirements of the <i>Capital Adequacy Directive</i> . Note: A <i>recognised third country investment firm</i> is not necessarily a <i>firm</i> for the purposes of the <i>rules</i> . Note: A list of the non-EEA regulators which are approved by <i>the FCA or PRA</i> for the purposes of recognising <i>recognised third country investment firms</i> under the Capital Adequacy Directive is available on request from the <i>FCA</i> .
<i>registered individual</i>	means an <i>approved person</i> .
<i>registrable activity</i>	in relation to a <i>firm</i> , means any one of the following: <ul style="list-style-type: none"> (a) holding the post of <i>director</i> or <i>chief executive</i>; (b) acting as an <i>investment manager</i> in the course of the <i>permitted business</i> of the <i>firm</i>; (c) acting in a senior capacity with responsibility either alone or jointly with one or more other individuals for the management, supervision and control of a part of the <i>firm's permitted business</i> (including the <i>compliance officer</i> and the <i>finance officer</i>); (d) procuring or endeavoring to procure other persons to enter into <i>investment agreements</i>, or giving advice to persons with whom he deals about entering into <i>investment agreements</i> or exercising rights conferred by <i>investments</i>, in the course of the <i>permitted business</i> of the <i>firm</i>; (e) committing the <i>firm</i> or its <i>customers</i> in market dealings or in transactions in <i>securities</i> or in other <i>investments</i> in the course of the <i>firm's permitted business</i>.
<i>regulated activity</i>	see the meaning given to the term in the <i>Glossary</i>
<i>regulated business</i>	means <i>designated investment business</i> .
<i>regulated friendly society</i>	means, as respects <i>investment business</i> carried on for or in connection with any of the purposes mentioned in Schedule 1 to the Friendly Societies Act 1974, or, as the case may be, to the Friendly Societies Act (Northern Ireland) 1970, means a society which is a friendly society within the meaning of section 7(1)(a) of the Friendly Societies Act 1974 and is registered within the meaning of that Act or is a friendly society within the meaning of section 1(1)(a) of the Friendly Societies Act (Northern Ireland) 1970 and is registered or deemed to be registered under that Act; and <ul style="list-style-type: none"> (a) under its rules, has its registered office at a place situated in Great Britain or, as the case may be, Northern Ireland; and

	(b) carries on <i>investment business</i> in the UK.
<i>relevant foreign exchange items</i>	means: <ul style="list-style-type: none"> (a) all assets less liabilities, including accrued interest, denominated in the currency (all investments at market or realisable value); (b) any currency future, at the nominal value of the contract; (c) any forward contract for the purchase or sale of the currency, at the contract value, including any future exchange of principal associated with currency swaps; (d) any foreign currency options at the net delta (or delta-based) equivalent of the total book of such options; (e) any non-currency option, at market value; (f) any irrevocable guarantee; (g) any other off-balance sheet commitment to purchase or sell an asset denominated in that currency.
<i>reporting currency</i>	means the currency in which the <i>firm's</i> books of account are maintained.
<i>specified trustee business</i>	1. means any <i>investment business</i> carried on in the UK by a <i>trustee firm</i> , but excluding each of the following activities: <ul style="list-style-type: none"> (a) Dealing or arranging deals in <i>investments</i> <ul style="list-style-type: none"> (i) where the deal is transacted or arranged by a <i>trustee firm</i> with or through a <i>PTP</i>; or (ii) where the dealing or arranging is done in the course of, or is incidental to, an activity of management falling within paragraph (b) below; or (iii) where the trust is a <i>unit trust scheme</i> and the deal is or the arrangements are made with a view to either an issue or sale of units in such a <i>scheme</i> to, or a redemption or repurchase or conversion of such units or a dealing in investments for such a <i>scheme</i> carried out by with or through, the <i>operator</i> or on the instructions of the <i>operator</i>; or (iv) where the <i>trustee firm</i>, being a bare trustee (or, in Scotland, a nominee) holding <i>investments</i> for another person, is acting on that person's instructions; or (v) where any arrangements do not or would not bring about the transaction in question. (b) Managing Investments <ul style="list-style-type: none"> (i) where the <i>trustee firm</i> has no general authority to effect transactions in <i>investments</i> at discretion; or

- (ii) if and to the extent that all day-to-day decisions in relation to the management of the *investments* or any discrete part of the *investments* are or are to be taken by a *PTP*; or
 - (iii) if and to the extent that investment decisions in relation to the *investments* or any discrete part of the *investments* are or are to be taken substantially in accordance with the advice given by a *PTP*; or
 - (iv) where the *trustee firm* is a personal representative or executor and is acting in that capacity; or
 - (v) where the trust is a *unit trust scheme* and all day-to-day investment decisions in the carrying on of that activity are or are to be taken by the *operator* of the *scheme*.
- (c) **Investment Advice**
- (i) where the relevant advice:
 - (A) does not recommend the entry into any investment transaction or the exercise of any right conferred by any *investment* to acquire, dispose of, underwrite or convert such an *investment*; and
 - (B) is accompanied by a recommendation that independent advice be obtained; or
 - (ii) if and to the extent that the relevant advice is in substance the advice of a *PTP*; or
 - (iii) where the relevant advice is given by the *trustee firm* acting in the capacity of personal representative or executor.
- (d) **Establishing, operating or winding up a *collective investment scheme* including acting as trustee of an *authorised unit trust scheme*** but only to the extent that such activities do not otherwise constitute *specified trustee business*.
- (e) **Any *trustee activity* undertaken as trustee of an issue of debentures or government or public securities**
- (i) where the issue is made by a company listed on a *recognised investment exchange* or on a *designated investment exchange* (or by a wholly-owned subsidiary of such a company); or
 - (ii) where the issue is listed or traded either on a *recognised investment exchange* or on a *designated investment exchange* or on the Société de la Bourse de Luxembourg; or
 - (iii) where the issue is made by a government, local authority or international organisation; or
 - (iv) where the aggregate amounts issued (pursuant to the trust deed or any deed supplemental thereto and ignoring any amounts redeemed, repurchased or converted) exceed the sum of £10,000,000.

2. For the purpose of this definition of “*specified trustee business*”:
- (a) a transaction is entered into through a person if that person:
 - (i) enters into it as agent; or
 - (ii) arranges for it to be entered into as principal or agent by another person and the arrangements are such that they bring about the transaction in question;
 - (b) **investment transaction** means a transaction to purchase, sell, subscribe for or underwrite a particular investment and “investment decision” means a decision relating to an investment transaction;
 - (c) **debentures** means any securities falling within article 77 of the RAO;
 - (d) **government or public securities** means any securities falling within article 78) of the RAO;
 - (e) *government, local authority or international organisation* means:
 - (i) the government of the *United Kingdom*, of Northern Ireland, or of any country or territory outside the United Kingdom;
 - (ii) a local authority in the *United Kingdom* or Anywhere; or
 - (iii) an international organisation the members of which include the *United Kingdom* or another EEA State.
 - (f) in determining the size of an issue of debentures or government or public securities made in a currency other than sterling, the amount of the issue shall be converted into sterling at the exchange rate prevailing in London on the date of issue.

statutory rules means the rules made by the *FCA* under the Act.

total capital requirement has the meaning given in rule 5.2.3(5) (Total capital requirement).

trading book in relation to a *firm’s* business or exposures, means:

- (a) its proprietary positions in financial instruments:
 - (i) which are held for resale and/or are taken on by the *firm* with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices or from other price or interest-rate variations;
 - (ii) arising from matched principal broking;
 - (iii) taken in order to hedge other elements of the *trading book*;
- (b) exposures due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on

securities included in (a)(i) to (iii) above; and

- (c) fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above.

<i>trust beneficiary</i>	means a beneficiary under a trust (not being the settlor) who benefits from the performance by a <i>firm</i> as <i>trustee</i> of <i>investment services</i> relating to the management of the trust assets (in accordance with section 2372 of the <i>Act</i> (Other definitions)).
<i>trustee activity</i>	means, in relation to a <i>firm</i> , any activity undertaken in the course of or incidental to the exercise of any of its powers, or the performance of any of its duties, when acting in its capacity as a trustee.
<i>UCITS qualifier</i>	see the meaning given to the term in the <i>Glossary</i>
<i>unit trust manager</i>	means the manager of a <i>unit trust scheme</i> .
<i>zone a country</i>	see definition of <i>Zone A country</i> in the <i>Glossary</i>
<i>zone b country</i>	means a country which is not a <i>zone a country</i> .

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(3) transmitting orders to other entities for execution;

in relation to a *spread-bet* which is not a *financial instrument*, where the *firm* has not made a *personal recommendation* in relation to that *spread-bet*.

Disapplication of best execution to CIS operators purchasing or selling own units

11.1.7

FCA

R

The section on best execution (■ COBS 11.2) does not apply to a *firm* when, acting in the capacity of *operator* of a *regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.

11.2 Best execution

11.2.1

FCA

R

Obligation to execute orders on terms most favourable to the client

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

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

[Note: The Committee of European Securities Regulators (*CESR*) has issued a Question and Answer paper on best execution under *MiFID*. This paper also incorporates the European Commission's response to *CESR*'s questions regarding the scope of the best execution obligations under *MiFID*. The paper can be found at: http://www.esma.europa.eu/system/files/07_320.pdf]

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

11.2.1A

FCA

R

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

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

Application of best execution obligation

11.2.2

FCA

G

The obligation to take all reasonable steps to obtain the best possible result for its *clients* (see ■ COBS 11.2.1 R) should apply to a *firm* which owes contractual or agency obligations to the *client*.

[Note: recital 33 to *MiFID*]

11.2.3

FCA

G

Dealing on own account with *clients* by a *firm* should be considered as the execution of *client* orders, and therefore subject to the requirements under *MiFID*, in particular, those obligations in relation to best execution.

[Note: first sentence of recital 69 to the *MiFID implementing Directive*]

11.2.4

FCA

G

If a *firm* provides a quote to a *client* and that quote would meet the *firm's* obligations to take all reasonable steps to obtain the best possible result for its *clients* if the *firm* executed that quote at the time the quote was provided, the *firm* will meet those same

14.2 Providing product information to clients

The provision rules

14.2.1

FCA

R

A *firm* that sells:

- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *UCITS scheme, simplified prospectus scheme* or an *EEA UCITS scheme* which is a *recognised scheme*);
- (2) a *life policy* that is not a *reinsurance contract* to a *client*, must provide the *Consolidated Life Directive information* to that *client*;
- (3) the variation of a *life policy* or *personal pension scheme* to a *retail client*, must provide that *client* with sufficient information about the variation for the *client* to be able to understand the consequences of the variation ;
- (3A) [deleted]
- (3B) the variation of a *personal pension scheme* to a *retail client*, which involves an election by the *client* to make *income withdrawals* or a purchase of a *short-term annuity*, must provide that *client* with such information as is necessary for the *client* to understand the consequences of the variation, including where relevant, the information required by ■ COBS 13 Annex 2.2.9 R (Additional requirements: drawdown pensions);
- (4) a *cash-deposit ISA* or *cash-deposit CTF* to a *retail client*, must provide a *key features document* to that *client*;
- (5) a *unit* in a *simplified prospectus scheme* to a *client*, must offer the *scheme's current simplified prospectus* to that *client*. In addition, if the *client* is a *retail client* present in the *EEA*, the *firm* must provide the *simplified prospectus* to the *client* together with:

- (a) enough information for the *client* to be able to make an informed decision about whether to hold the *units* in a *wrapper* (if the *units* will, or may, be held in that way); and
 - (b) information about the three types of *CTF* that are generally available (*stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs*), and the type of *CTF* the *firm* is offering (if the *units* will, or may, be held in a *CTF*);
- (6) [deleted]
- (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:
- (a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and
 - (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by
 - COBS 13.3.1 R (2) (General requirements) and, if that *client* is present in the *EEA*, the information required by (5)(a) and (b);
- (8) where the *operator* of a *non-UCITS retail scheme* has a dispensation from the *FCA* in the form of a general *waiver* by consent under which it may market *units* of the *scheme* on the basis of a *key investor information document* (as modified by the general waiver direction, a "NURS KII document"), rather than on the basis of a *key features document* or *simplified prospectus*, a *firm* that sells *units* in the *scheme* must comply with its obligations under this *rule* by:
- (a) providing the *retail client* with the relevant NURS KII document; and
 - (b) offering any *client* that is not a *retail client* the relevant NURS KII document;

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

[Note: in respect of (2) article 36(1) of, and Annex III to, the *Consolidated Life Directive*]

[Note: in respect of (7), articles 1 and 80 of the *UCITS Directive*]

Provision of key investor information document

- (1) This *rule* applies to an *authorised fund manager* of a *UCITS scheme* that is either an *authorised unit trust*, *authorised*

14.2.1A

FCA

R

contractual scheme or an *ICVC*, and an *ICVC* that is a *UCITS scheme*.

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

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

14.2.1B

FCA

R

When the *rules* in this chapter require the offer or provision of a *key features illustration*, a *firm* may provide a *generic key features illustration* if that *generic key features illustration* has been prepared in accordance with ■ COBS 13.4.2 R.

14.2.1C

FCA

R

A *firm* that arranges to start the facilitation of, or an increase in, an *adviser charge* or *consultancy charge* from an in-force *packaged product*, must provide to the *retail client* sufficient information for the *retail client* to be able to understand the likely effect of that facilitation.

14.2.2

FCA

R

The *documents* or information required to be provided or offered by ■ COBS 14.2.1 R and ■ COBS 14.2.1C R must be in a *durable medium* or made

available on a website (where that does not constitute a *durable medium*) that meets the *website conditions*.

14.2.3

FCA

R

- (1) A *firm* that *personally recommends* that a *retail client* holds a particular asset in a *SIPP* must provide that *client* with sufficient information for the *client* to be able to make an informed decision about whether to buy or invest.
- (2) This *rule* does not apply if the asset is described in
 - COBS 14.2.1 R.

Firm not to cause confusion about the identity of the producer of a product

14.2.4

FCA

R

When a *firm* provides a *document* or information in accordance with the *rules* in this section, it must not do anything that might reasonably cause a *retail client* to be mistaken about the identity of the *firm* that has produced, or will produce, the product.

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

14.2.5

FCA

R

A *firm* is not required to provide:

- (1) a *document*, if the *firm* produces the product and the *rules* in this section require another *firm* to provide the document;
- (2) a *key features document* or *key features illustration* , if another *person* is required to provide the *distance marketing information* by the *rules* of another *EEA State*;
- (3) the *Consolidated Life Directive information*, if another *person* is required to provide that information by the *rules* of another *EEA State*;
- (4) a *simplified prospectus* if:
 - (a) [deleted]
 - (b) (i) the *client* is buying or investing in response to a *direct offer financial promotion* without receiving a *personal recommendation* to buy or invest; and
 - (ii) the *firm* offers an up-to-date copy of the *simplified prospectus* to the *client* and provides materially the same information to the *client* in some other way.

[Note: in respect of (3), article 36(4) of, and Annex III to, the *Consolidated Life Directive*]

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- (3) the language in which the contract is supplied and in which the *firm* will communicate during the course of the *regulated mortgage contract*; and
- (4) if not provided previously:
 - (a) all of the contractual terms and conditions of the *regulated mortgage contract* to which the *offer document* relates; and
 - (b) (i) an appropriate status disclosure statement (compliant with ■ GEN 4) for the *mortgage lender*;
 - (ii) the *mortgage lender's* Firm Reference Number; and
 - (iii) confirmation that the *customer* can check the *Financial Services Register* on the *FCA's* website www.fca.org.uk/firms/systems-reporting/register or by contacting the *FCA* on 0800 111 6768.



6.6 Mortgages: offer documents in place of illustrations

6.6.1

FCA

R

If a *firm* provides a *customer* with an *offer document* in place of an *illustration* in accordance with ■ MCOB 5.5.1 R (3), it must take reasonable steps to ensure that it provides the *offer document* in accordance with the requirements for providing an *illustration* in ■ MCOB 5.4 (Illustrations: general) and ■ MCOB 5.5 (Provision of illustrations).

Client Assets

7.2.8

FCA

R

Money in connection with a "delivery versus payment" transaction

Money need not be treated as *client money* in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that either:

- (1) in respect of a *client's* purchase, *money* from a *client* will be due to the *firm* within one *business day* upon the fulfilment of a delivery obligation; or
- (2) in respect of a *client's* sale, *money* is due to the *client* within one *business day* following the *client's* fulfilment of a delivery obligation;

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the *investments* by the *client*.

7.2.8A

FCA

G

The exclusion from the *client money rules* for delivery versus payment transactions under ■ CASS 7.2.8 R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

7.2.8B

FCA

R

Money need not be treated as *client money* in respect of a delivery versus payment transaction, for the purpose of settling a transaction in relation to *units* in a *regulated collective investment scheme*, if:

- (1) the *authorised fund manager* receives it from a *client* in relation to the *authorised fund manager's* obligation to issue *units*, in an *AUT* or *ACS*, or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*, unless the *price* of those *units* has not been determined by the close of business on the next *business day*:
 - (a) following the date of the receipt of the *money* from the *client*; or
 - (b) if the *money* was received by an *appointed representative* of the *authorised fund manager*, in accordance with ■ CASS 7.4.24 G, following the date of receipt at the specified business address of the *authorised fund manager*; or
- (2) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a *client* within the time specified in *COLL*; when an *authorised fund manager* draws a cheque or other payable order within these time frames the provisions of ■ CASS 7.2.17 R and ■ CASS 7.2.9 R (2) will not apply.

Money due and payable to the firm

7.2.9

FCA

R

- (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.

- (2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a client bank account for reimbursement will become due and payable to the *firm*.

7.2.10

FCA

G

Money held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase money from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

7.2.10A

FCA

G

Firms are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with ■ CASS 7.6.2 R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of *client money* balances, either in accordance with the *standard method of internal client money reconciliation* or a different method which meets the requirements of ■ CASS 7.6.7 R and ■ CASS 7.6.8 R.

7.2.11

FCA

G

When a *client's* obligation or liability, that is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

Commission rebate

7.2.12

FCA

G

When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

7.2.13

FCA

G

When *commission* rebate becomes due and payable to the *client*, the *firm* should:

- (1) treat it as *client money*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.2.15 R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see ■ CASS 7.2.3 R (Title transfer collateral arrangements)).

Interest

7.2.14

FCA

R

Unless a *firm* notifies a *retail client* in writing whether or not interest is to be paid on *client money* and, if so, on what terms and at what

Market Conduct

Chapter 2

Stabilisation

2.1 Application and Purpose

Application

2.1.1

FCA

R

This chapter applies to every *firm*.

2.1.2

FCA

G

This chapter is available to every *person* who wishes to show that he acted in conformity with:

- (1) the *Buy-back and Stabilisation Regulation*, in accordance with section 118A(5)(b) of the *Act*; or
- (2) *rules*, in accordance with section 118A(5)(a) of the *Act*; or
- (3) the *price stabilising rules*, for the purposes of paragraph 5(1) of Schedule 1 to the Criminal Justice Act 1993 (Insider Dealing); or
- (4) the *price stabilising rules*, for the purposes of section 90(9)(b) (Misleading impressions) or section 91(4)(a) (Misleading statements etc in relation to benchmarks) of the Financial Services Act 2012.

2.1.3

FCA

R

This chapter:

- (1) so far as it provides a defence for any *person*, has the same territorial application as the provision which is alleged to have been contravened: and
- (2) in its application to a *firm* for purposes other than those falling within (1), applies to the *firm's* business carried on from an establishment in the *United Kingdom*.

Purpose

2.1.4

FCA

G

The purpose of this chapter is to describe the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse* under the *Buy-back and Stabilisation Regulation* (see ■ MAR 2.2 and ■ MAR 2.3), and to specify by rules the extent to which *stabilisation* activity has the benefit of a "safe harbour" for *market abuse (misuse of information)*, *market abuse (misleading behaviour)* or *market abuse (distortion)* (see ■ MAR 2.2 and ■ MAR 2.4), or for the criminal offences referred to in ■ MAR 2.1.2 G (3) and ■ MAR 2.1.2 G (4) (■ MAR 2.3 - ■ MAR 2.5).

Supervision



8.2 Introduction

Waivers under section 138A of the Act

8.2.1

FCA PRA

G

Under section 138A of the *Act* (Modification or waiver of rules), the *appropriate regulator* may, on the application or with the consent of a *firm*, direct that its *rules* :

- (1) are not to apply to the *firm*; or
- (2) are to apply to the *firm* with such modifications as may be specified.

8.2.1A

FCA PRA

G

■ SUP 8.2.1 G does not apply to:

- (1) *rules* made by either regulator under section 137O of the *Act*;
- (2) *rules* made by the *FCA* under sections 247 or 248 of the *Act*.

8.2.2

FCA PRA

G

The directions referred to in ■ SUP 8.2.1 G (1) and ■ SUP 8.2.1 G (2) are collectively referred to in the *Handbook* as *waivers*.

Waivers of rules in COLL

8.2.3

FCA

G

Sections 250 and 261L of the *Act* and regulation 7 of the *OEIC Regulations* allow the *FCA* to *waive* the application of certain *rules* in *COLL* to:

- (1) a *person*, as respects a particular *AUT*, *ACS* or *ICVC*, on the application or with the consent of that *person*; and
- (2) an *AUT*, *ACS* or *ICVC* on the application or with the consent of the *manager* and *trustee* (in the case of an *AUT*), the *authorised contractual scheme manager* and *depository* (in the case of an *ACS*) or the *ICVC* and its *depository* (in the case of an *ICVC*).

8.2.4

FCA

G

Those *persons* to whom sections 250 and 261L and regulation 7 of the *OEIC Regulations* are relevant, but who are not *firms*, should follow SUP 8 as if they were *firms*.

8.2.5

FCA

G

Sections 250 and 261L of the *Act* and regulation 7 of the *OEIC Regulations* work by giving effect to section 138A of the *Act* in respect of *waivers* given under section 250(2) and (3), section 261L(2) and (3) and regulation 7(1) and (2) of the *OEIC Regulations*.

Rules which can be waived

8.2.6 **G** [deleted]

8.2.7 **G** [deleted]

8.2.8 **G** [deleted]

10B.13.3

PRA

G

A *firm* supplying a reference in accordance with ■ SUP 10B.13.1 R owes a duty to its former *employee* and the recipient *firm* to exercise due skill and care in the preparation of the reference. The reference should be accurate and based on documented fact. The *firm* may give frank and honest views, but only after taking reasonable care both as to factual content, and as to the opinions expressed, and verifying the information upon which they are based.

The need for complete and accurate information

10B.13.4

PRA

G

The obligations to supply information to:

- (1) the *PRA* under either ■ SUP 10B.12.10 R or ■ SUP 10B.12.12 R; or
- (2) another *firm* under ■ SUP 10B.13.1 R;

apply notwithstanding any agreement (for example a 'COT 3' Agreement settled by the Advisory, Conciliation and Arbitration Service (ACAS)) or any other *arrangements* entered into by a *firm* and an *employee* upon termination of the *employee's* employment. A *firm* should not enter into any such arrangements or agreements that could conflict with its obligations under this section.

10B.13.5









PRA

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
Failing to disclose relevant information to the *PRA* may be a criminal offence under section 398 of the Act.

10B.14 How to apply for approval and give notifications




10B.14.1

- (1) This direction applies to an application under Form A or Form E.
- (2) An application by a *firm* other than a *credit union* must be made by submitting the Form online at <http://fshandbook.info/FS/html/PRA/SUP/10B/14> using the form specified on the *FCA*'s and *PRA*'s ONA system.
- (3) An application by a *credit union* must be made using the form in  SUP 10B Annex 4D or  SUP 10B Annex 8D and must be submitted in the way set out in  SUP 15.7.4 R to  SUP 15.7.9 G (Form and method of notification).
- (4) Where a *firm* is obliged to submit an application online under (2), if the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored a *firm* must use the form in  SUP 10B Annex 4D or  SUP 10B Annex 8D and submit it in the way set out in  SUP 15.7.4 R to  SUP 15.7.9 G (Form and method of notification).




10B.14.2

- (1) This *rule* applies to a notification under Form C or Form D.
- (2) A notification must be made in accordance with  SUP 10B.14.1 D except that the annexes to  SUP 10B in which the forms are to be found are  SUP 10B Annex 6R or  SUP 10B Annex 7R rather than the Annexes mentioned in  SUP 10B.14.1 D.

10B.14.3

If the information technology systems used by the *PRA* fail and online submission is unavailable for 24 hours or more, the *FCA* and *PRA* will endeavour to publish a notice on their websites confirming that online submission is unavailable and that the alternative methods of submission set out in  SUP 10B.14.1D (4) and  SUP 15.7.4 R to  SUP 15.7.9 G (Form and method of notification) should be used.

10B.14.4

Where  SUP 10B.14.1D (4) or the equivalent situation under  SUP 10B.14.2 R applies to a *firm*,  GEN 1.3.2 R (Emergency) does not apply.

15.9.4

FCA PRA

R

A *firm* does not have to give notice to the *appropriate regulator* under ■ SUP 15.9.1 R if it or another member of the *consolidation group* has already given notice of the relevant fact to:

- (1) the *appropriate regulator*; or
- (2) (if another *competent authority* is *co-ordinator* of the *financial conglomerate*) that *competent authority*; or
- (3) (in the case of a *financial conglomerate* that does not yet have a *co-ordinator*) the *competent authority* who would be *co-ordinator* under Article 10(2) of the *Financial Groups Directive* (Competent authority responsible for exercising supplementary supervision (the *co-ordinator*)).

15.9.5

FCA PRA

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- (1) A *firm* must, at the level of the *EEA financial conglomerate*, regularly provide the *appropriate regulator* with details on the *financial conglomerate's* legal structure and governance and organisational structure, including all *regulated entities*, non-regulated subsidiaries and significant *branches*.
- (2) A *firm* must disclose publicly, at the level of the *EEA financial conglomerate*, on an annual basis, either in full or by way of references to equivalent information, a description of the *financial conglomerate's* legal structure and governance and organisational structure.
- (3) For the purposes of (1) and (2), where a *firm* is a member of an *EEA financial conglomerate* which is part of a wider *UK regulated EEA financial conglomerate*, reporting applies only at the level of the *EEA parent mixed financial holding company* or *ultimate EEA mixed financial holding company*.



15.10 Reporting suspicious transactions (market abuse)

Application: where

15.10.1

FCA

R

This section applies in relation to activities carried on from an establishment maintained by the *firm* or its *appointed representative* in the *United Kingdom*. [Note: Article 7 2004/72/EC]

Notification of suspicious transactions: general

15.10.2

FCA

R

A *firm* which *arranges* or *executes* a transaction with or for a client in a *qualifying investment* admitted to trading on a *prescribed market* and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the *FCA* without delay. [Note: Article 6(9) *Market Abuse Directive*]

Notification of suspicious transactions: investment firms and credit institutions

15.10.3

FCA

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A *firm*, that is an *investment firm* or a *credit institution*, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves *market abuse*, taking into account the elements constituting *market abuse*. [Note: Articles 1(3) and 7 2004/72/EC]

15.10.4

FCA

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- (1) Notification of suspicious transactions to the *FCA* requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction might constitute *market abuse*. In particular a *firm* will need to be able to explain the basis for its suspicion when notifying the *FCA* (see ■ SUP 15.10). Certain transactions by themselves may seem completely devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [Note: Recital 9 2004/72/EC]
- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct* (■ MAR 1), and some example indications of *market abuse* are set out in ■ SUP 15 Ann 5 G. A fuller set of example indications is published by the Committee of European Securities Regulators (CESR).

Report	Return (note 1)	Frequency (Note 4)	Due date
<p>(1) <i>insurance mediation activity</i>;</p> <p>(2) <i>mortgage mediation activity</i>;</p> <p>(3) <i>retail investment activity</i>;</p> <p>(4) <i>advising on, or arranging deals in, packaged products, or managing investments for private customers where these activities are the authorised professional firm's "main business" as determined by IPRU(INV) 2.1.2 R (3)</i></p>		<p>for larger firms, subject to Note 3 exemptions) (note 2)</p>	<p>quarterly report: 30 business days after quarter end</p>
<p>Adequate information relating to mortgage lending and mortgage administration.</p>	MLAR	Quarterly	20 business days after quarter end
Note 1	<p>When giving the report required, a <i>firm</i> must use the return indicated. The RMAR and MLAR are located at SUP 16 Annex 18A R and SUP 16 Annex 19A R respectively. Guidance on the completion of the <i>data items</i> are located at SUP 16 Annex 18B G and SUP 16 Annex 19B G respectively.</p>		
Note 2	<p>For the purposes of RMAR reporting, a larger <i>firm</i> is a <i>firm</i> whose annual regulated business revenue in its previous financial year was greater than £5m. Annual regulated business revenue for these purposes is a <i>firm's</i> total revenue relating to <i>insurance mediation activity, mortgage mediation activity and retail investment activity</i>.</p>		
Note 3	<p>A <i>firm</i> which submits an MLAR is not required to submit sections A and B of the RMAR.</p>		
Note 4	<p>Reporting dates are calculated from a <i>firm's accounting reference date</i>.</p>		

16.12.32 **R**
 FCA PRA

Financial conglomerates

- (1) A *firm* that is a member of a *financial conglomerate* must submit financial reports to the *appropriate regulator* in accordance with the table in ■ SUP 16.12.33 R if:
 - (a) it is at the head of a *UK-regulated EEA financial conglomerate* ; or
 - (b) its *Part 4A permission* contains a relevant *requirement*.
- (2) In (1)(b), a relevant *requirement* is one which:
 - (a) applies ■ SUP 16.12.33 R to the *firm*; or
 - (b) applies ■ SUP 16.12.33 R to the *firm* unless the *mixed financial holding company* of the to which the *financial conglomerate firm* belongs submits the report required under this *rule* (as if the *rule* applied to it).

16.12.33 **R**
 FCA PRA

Financial reports from a member of a financial conglomerate (see ■ SUP 16.12.32 R)

Content of Report	Form (Note 1)	Frequency	Due Date
Calculation of supplementary capital adequacy requirements in accordance with one of the three technical calculation methods	Note 2	Note 5 Yearly	Note 5
Identification of significant <i>risk concentration</i> levels	Note 3	Yearly	4 months after year end
Identification of significant <i>intra-group transactions</i>	Note 4	Yearly	4 months after year end
Report on compliance with GENPRU 3.1.35 R where it applies	Note 6	Note 5	Note 5
Note 1	When giving the report required, a <i>firm</i> must use the form indicated, if any.		

Content of Report	Form (Note 1)	Frequency	Due Date
<p>Note 2</p>	<p>If Part 1 of GENPRU 3 Annex 1 R (method 1), or Part 2 of GENPRU 3 Annex 1 R (method 2), or Part 3 of GENPRU 3 Annex 1 R (method 3) applies, there is no specific form. Adequate information must be provided, specifying the calculation method used and each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form which this reporting will take and the extent to which verification by an auditor will be required.</p> <p>For the purposes of the above, where relevant to the agreed reporting arrangements, <i>rules 9.40(1), 9.40(1A), 9.40(3) and 9.40(4) of IPRU(INS)</i> apply as they would if the <i>financial conglomerate</i> were an <i>insurance group</i>.</p>		
<p>Note 3</p>	<p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p> <p>When reviewing the <i>risk concentration</i> levels, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interests, the risk of circumvention of sectoral <i>rules</i>, and the level or volume of risks.</p>		
<p>Note 4</p>	<p>For the purposes of this reporting requirement, an <i>intra-group transaction</i> will be presumed to be significant if its amount exceeds 5% of the total amount of capital adequacy requirements at the level of the <i>financial conglomerate</i>.</p> <p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p>		

Content of Report	Form (Note 1)	Frequency	Due Date
<p>Note 5</p>	<p>When reviewing the <i>intra-group transactions</i>, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interest , the risk of circumvention of <i>sectoral rules</i>, and the level or volume of risks.</p>	<p>The frequency and due date will be as follows:</p> <p>(1) <i>banking and investment services conglomerate</i>: frequency is yearly with due date 45 <i>business days</i> after period end;</p> <p>(2) <i>insurance conglomerate</i>: frequency is yearly with due date four months after period end for the capital adequacy return and three months after period end for the report on compliance with GENPRU 3.1.35 R where it applies.</p>	<p>Note 6</p> <p>Adequate information must be added as a separate item to the relevant form for sectoral reporting.</p>

Decision Procedure and Penalties Manual

2.5.13

FCA

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The decisions referred to in ■ DEPP 2.5.12 G are:

- (1) the decision to give a *supervisory notice* pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the *Act*;
- (1A) the decision to give a *supervisory notice* pursuant to section 261Z1(3), (8) or (9)(b) (Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative) of the *Act*;
- (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) of the *Act*;
- (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*; and
- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*.
- (4A) the decision to give a *warning notice* or *decision notice* pursuant to section 255 or 260 of the *Act*;
- (4B) the decision to give a *warning notice* or *decision notice* pursuant to section 261V or 261Z2 of the *Act*;
- (5) [deleted]
- (6) [deleted]

2.5.14

FCA

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

- (1) in relation to an authorised unit trust, the manager and trustee;
- (1A) in relation to an *authorised contractual scheme*, the *authorised contractual scheme manager* and *depository*;
- (2) in relation to an *ICVC*, the directors and the depository;
- (3) in relation to a *recognised scheme*, the *operator* and, if any, the trustee or *depository*.

2.5.15

FCA

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

2.5.16

FCA

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A notice under paragraph 15A(4) of Schedule 3 to the *Act* relating to the application by an *EEA firm* for approval to manage a *UCITS scheme* is not a *warning notice*, but the

FCA will operate a procedure for this notice which will be similar to the procedure for a *warning notice*.

Notices under other enactments

2

2.5.17

FCA

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The FCA expects to adopt a procedure in respect of notices under enactments other than the Act which is similar to that for *statutory notices* under the Act, but which recognises any differences in the legislative framework and requirements.

■ DEPP 2 Annex 1 G and ■ DEPP 2 Annex 2 G therefore identify notices to be given pursuant to other enactments and the relevant FCA decision maker.

2.5.18

FCA

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Some of the distinguishing features of notices given under enactments other than the Act are as follows:

- (1) [deleted]
- (2) [deleted]
- (3) Friendly Societies Act 1992, section 58A : The *warning notice* and *decision notice* must set out the terms of the direction which the FCA proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the Friendly Societies Act 1992 as the action proposed in the *warning notice*. A *final notice* under section 390 of the Act must set out the terms of the direction and state the date from which it takes effect. Section 392 of the Act is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).

Section of the Act	Description	Handbook reference	Decision maker
189(4)/(7)	when the <i>FCA</i> is proposing or deciding to approve a change in <i>control</i> with conditions, following receipt of a <i>section 178 notice</i>	SUP 11	<i>Executive procedures</i>
187(1)/(3) and 188(1)191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person</i> who has acquired or increased control without giving a <i>section 178 notice</i>	SUP 11	<i>Executive procedures</i>
191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's control</i> on the basis of the matters in section 186	SUP 11	<i>Executive procedures</i>
191A(4)/(6)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's control</i> on the grounds that he is in breach of a condition imposed under section 187	SUP 11	<i>Executive procedures</i>
192L(1)	when the <i>FCA</i> is proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*		<i>RDC</i>
192L(4)			
200(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an <i>EEA incoming firm</i>		<i>RDC or executive procedures</i> See DEPP 2.5.6 G
207(1)/ 208(1)	when the <i>FCA</i> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A) . This applies in respect of an <i>authorised person</i> , or an <i>unauthorised person</i> to whom section 404C applies.*		<i>RDC</i>
245(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation</i> order declaring a <i>unit trust scheme</i> to be an <i>AUT</i>	COLL 2	<i>RDC or executive procedures</i> See DEPP 2.5.15 G
249	when the <i>FCA</i> is proposing or deciding to take action against an auditor by exercising the disciplinary powers conferred by section 249*		<i>RDC</i>
345B(1)/(4)			
252(1)/(4)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>trustee</i> or <i>manager</i> of an <i>AUT</i>	COLL 2	<i>Executive procedures</i>
252A(4)(b)/(6)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by the <i>manager</i> of a <i>feeder UCITS</i> to make an alteration to the <i>trust deed</i> to enable the <i>feeder UCITS</i> to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	COLL 11	<i>Executive procedures</i>
255(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 254 revoking the <i>authorisation order</i> of an <i>AUT</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	<i>RDC</i>
256(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>AUT</i>		<i>RDC</i>

Section of the Act	Description	Handbook reference	Decision maker
260(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 257, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<i>RDC</i>
261G(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>scheme</i> to be an <i>ACS</i>	COLL 2	<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.15 G
261R(1)/(4)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal to replace the <i>depository</i> or <i>authorised contractual scheme manager</i> of an <i>ACS</i>	COLL 2	<i>Executive procedures</i>
261S(4)(b)/ (6)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by the <i>authorised contractual scheme manager</i> of an <i>ACS</i> which is a <i>feeder UCITS</i> to make an alteration to the <i>contractual scheme deed</i> to enable the <i>feeder UCITS</i> to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	COLL 11	<i>Executive procedures</i>
261V(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 261U revoking the <i>authorisation order</i> of an <i>ACS</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	<i>RDC</i>
261W(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>ACS</i>		<i>RDC</i>
261Z2(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 261X, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<i>RDC</i>
264(2)/ 265(4)	[deleted]		
269(1)/(2)	when the <i>FCA</i> , on an application under section 267(4) or (5) by an <i>operator</i> of a section 264 <i>recognised scheme</i> to revoke or vary a direction that the promotion of the <i>scheme</i> be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application		<i>RDC</i>
271(1)/(3)	when the <i>FCA</i> is proposing or deciding to refuse approval of a <i>collective investment scheme</i> as a <i>recognised scheme</i> under section 270	COLL 9	<i>Executive procedures</i>
276(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an order declaring a <i>collective investment scheme</i> to be a <i>recognised scheme</i> under section 272	COLL 9	<i>Executive procedures</i>
280(1)/(2)	when the <i>FCA</i> is proposing or deciding to direct that a section 270 <i>recognised scheme</i> is to cease to be recognised or to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<i>RDC</i>

Section of the Act	Description	Handbook reference	Decision maker
301G(3)(b)/(5)	when the <i>FCA</i> is proposing or deciding to object to a proposed acquisition of a <i>UK RIE</i> following receipt of a section 301A notice .	REC 4.2C	<i>Executive procedures</i>
301I(3)/(4)	when the <i>FCA</i> is proposing or deciding to object to a <i>person</i> who has acquired or increased <i>control</i> in a <i>UK RIE</i> without giving a section 301 notice	REC 4.2C	<i>Executive procedures</i>
301I(3)/(4)	when the <i>FCA</i> is proposing or deciding to object to a <i>person's</i> control in a <i>UK RIE</i> on the basis of the approval requirement in section 301F(4)	REC 4.2C	<i>Executive procedures</i>
312G(1)	when the <i>FCA</i> is proposing or deciding to take action against a <i>recognised investment exchange</i> by exercising the disciplinary powers conferred by sections 312E and 312F*		<i>RDC</i>
312H(1)			
313B(9)	[deleted]		
313B(10)/(11)	[deleted]		
313BB(5)/ 313BC(5)	when, upon the application of an institution, the <i>FCA</i> is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant	REC 4.2D	<i>Executive procedures</i>
313BD(5)/ 313BE(4)	when, upon the application of an <i>issuer</i> , the <i>FCA</i> is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions under section 313A or to revoke a requirement imposed on a class of institutions under section 313A in relation to the class apart from one or more specified members of it, or one or more specified members of the class only	REC 4.2D	<i>Executive procedures</i>
331(1)/(3)	when the <i>FCA</i> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327*		<i>RDC</i>
331(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*		<i>RDC</i>
345B(1)	when the <i>FCA</i> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <i>authorised person</i> or class of <i>authorised person</i> or from being the auditor of any <i>AUT</i> , <i>ACS</i> or <i>ICVC</i> *		<i>RDC</i>
345B(4)			
345B(1)	when the <i>FCA</i> is proposing or deciding to disqualify an auditor from being the auditor of any <i>recognised investment exchange</i> or any class of <i>recognised investment exchange</i> *		<i>RDC</i>
345B(4)			
345B(1)	when the <i>FCA</i> is proposing or deciding to take action against an auditor or <i>actuary</i> by exercising the disciplinary powers conferred by sections 345(2)(c) or (d)*		<i>RDC</i>
345B(4)			

Section of the Act	Description	Handbook reference	Decision maker
385(1)/ 386(1)	when the <i>FCA</i> is proposing or deciding to exercise the power under section 384(5) to require a <i>person</i> to pay restitution*		RDC
404A(8)(a)	In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure	CONRED	Executive procedures
404A(8)(a)	In connection with a <i>consumer redress scheme</i> , when the <i>FCA</i> is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a <i>consumer</i> , or what the redress should be in respect of the failure	CONRED	Executive procedures
412B(2)/(3)	when the <i>FCA</i> is proposing/deciding to refuse to approve a relevant system as defined in section 412A(9) of the <i>Act</i>		Executive procedures
412B(4)/(5)	when the <i>FCA</i> is proposing/deciding to suspend or withdraw its approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> *		Executive procedures
412B(8)/(9)	when the <i>FCA</i> is proposing/deciding to refuse an application to cancel the suspension of approval in relation to a relevant system as defined in section 412A(9) of the <i>Act</i> *		Executive procedures
Paragraph 15A(4) of Schedule 3	when the <i>FCA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	SUP 13A See DEPP 2.5.16 G	Executive procedures
Paragraph 15A(5) of Schedule 3	[deleted]		
Paragraph 15B(2) (a) of Schedule 3	when the <i>FCA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	SUP 13A	Executive procedures
Paragraph 19(8)/(12) of Schedule 3	when the <i>FCA</i> is proposing or deciding to refuse to give a <i>consent notice</i> to a <i>UK firm</i> wishing to establish a <i>branch</i> under an <i>EEA right</i>	SUP 13	RDC

Section of the Credit Unions Act 1979	Description	Handbook reference	Decision maker
20	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i>		<i>RDC</i>

Articles of the Credit Unions (Northern Ireland) Order 1985	Description	Handbook reference	Decision maker
60(1), 61(1) and 63	where the <i>FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending the registration of a <i>Northern Ireland credit union</i> , or petitioning for the winding up of a <i>Northern Ireland credit union</i>		<i>RDC</i>

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/(3)(a)	when the <i>FCA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the case may be, the society, or varying such a direction other than at the request of the society*	See DEPP 2.5.18 G (3)	<i>RDC</i>
58A(1)(b)/(3)(b)	when the <i>FCA</i> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> *		<i>RDC</i>
85(4A)	when the <i>FCA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part 4A permission</i> , notifies the successor society of the terms of its <i>Part 4A permission</i>		<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.12 G

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i>	COLL 2	<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.15 G
Regulation 22(1)/(2)/(4)/(5)	when the <i>FCA</i> is proposing to refuse approval of (or, having given a <i>warning notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or director of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21	COLL 2	<i>Executive procedures</i>
Regulation 22A(5)(b)/(8)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of in-</i>	COLL 11	<i>Executive procedures</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 24(1)/(2)	<i>corporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i> when the <i>FCA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		RDC
Regulation 28(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application		RDC
Paragraph 20 of Schedule 5	when the <i>FCA</i> is proposing or deciding to use the disqualification powers under section 249(1)*		RDC

Regulated Activities Order	Description	Handbook reference	Decision maker
Article 95(2)/(3)	when the <i>FCA</i> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	RDC
Article 95(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	RDC

Payment Services Regulations	Description	Handbook reference	Decision maker
Regulations 9(7) and 14	when the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i>
Regulations 9(8)(a) and 14	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC
Regulations 10(2) and 10(3)(a) and 14	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's</i> registration, otherwise than at that institution's own request*		RDC
Regulation 24(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i>
Regulation 24(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i> where no representations are made in response to

Payment Services Regulations	Description	Handbook reference	Decision maker
			a warning notice, otherwise by the RDC
Regulations 24(2) and 24(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch</i> *		RDC
Regulation 29(9)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation 29(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC
Regulations 30(2) and 30(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> *		RDC
Regulations 86(1) and 86(3)	when the <i>FCA</i> is proposing, or deciding, to impose a financial penalty*		RDC
Regulations 86(1) and 86(3)	when the <i>FCA</i> is proposing, or deciding, to publish a statement that a <i>payment service provider</i> has contravened the <i>Payment Services Regulations</i> *		RDC
Regulations 89(1) and 89(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		RDC
Regulation 121(7)	when the <i>FCA</i> is proposing to decide that it has not received the required information or that the required conditions are not met as concerns deemed authorisation		<i>Executive Procedures</i>
Regulation 121(8)	when the <i>FCA</i> is deciding that it has not received the required information or that the required conditions are not met as concerns deemed authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC
Schedule 5 paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Payment Services Regulations</i> (Note 2)		RDC
Schedule 5 paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 3)		RDC

Notes:

(2) The *Payment Services Regulations* do not require third party rights and access to *FCA* material when the *FCA* exercises this power. However, the *FCA* generally intends to allow for third party rights and access to material when exercising this power.

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Payment Services Regulations	Description	Handbook reference	Decision maker
(3) The <i>Payment Services Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			

Regulated Covered Bonds Regulations 2008	Description	Handbook reference	Decision maker
Regulation 13(4)/(5)(a)	when the <i>FCA</i> is proposing or deciding to refuse an application under regulation 8	RCB 6	<i>Executive procedures</i>
Regulation 20(5)/(6)(a)	when the <i>FCA</i> is proposing or deciding not to approve a material change	RCB 6	<i>Executive procedures</i>
Regulation 25(5)/(6)(a)	when the <i>FCA</i> is proposing or deciding not to approve a change of ownership	RCB 6	<i>Executive procedures</i>
Regulation 32(1)(a)/(2)(a)	before the <i>FCA</i> gives a direction under regulation 30 or when it decides to make the direction	RCB 6	<i>Executive procedures</i>
Regulation 32(1)(b)/(2)(b)	before the <i>FCA</i> removes an <i>issuer</i> from the register of <i>issuers</i> under regulation 31 or when it decides to remove the <i>issuer</i> from the register of <i>issuers</i> *	RCB 6	<i>Executive procedures</i>
Regulation 35(1)/(3)	when the <i>FCA</i> is proposing or deciding to impose a penalty on a person under regulation 34*	RCB 6	<i>RDC</i>

Cross-Border Payments in Euro Regulations 2010	Description	Handbook reference	Decision maker
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to impose a financial penalty*		<i>RDC</i>
Regulations 7(1) and 7(3)	when the <i>FCA</i> is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *		<i>RDC</i>
Regulations 10(1) and 10(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)		<i>RDC</i>
Schedule paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 1)		<i>RDC</i>
Note:			

(1) The *Cross-Border Payments in Euro Regulations* do not require third party rights and access to *FCA* material when the *FCA* exercises this power. However, the *FCA* generally intends to allow for third party rights and access to material when exercising this power.

Electronic Money Regulations	Description	Handbook reference	Decision maker
Regulations 9(6) and 15	where the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement, or refuse to vary an authorisation or registration		<i>Executive procedures</i>
Regulations 9(7)(a) and 15	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or impose a requirement or refuse to vary an authorisation or registration		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 10(4), 10(5)(a) and 15	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request *		<i>RDC</i>
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative		<i>RDC</i> or <i>Executive procedures</i> (Note 1)
Regulation 29(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch of an authorised electronic money institution</i>		<i>Executive procedures</i>
Regulation 29(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch of an authorised electronic money institution</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulation 29(2) and Regulation 29(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch of an authorised electronic money institution*</i>		<i>RDC</i>
Regulation 34(9)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>
Regulation 34(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of the <i>electronic money institution</i> *		<i>RDC</i>
Regulations 53(1) and 53(3)	when the <i>FCA</i> is proposing, or deciding, to publish a statement that an <i>electronic money issuer</i> has contravened the <i>Electronic Money Regulations</i> *		<i>RDC</i>

Electronic Money Regulations	Description	Handbook reference	Decision maker
Regulations 53 (1) and 53 (3)	when the <i>FCA</i> is proposing or deciding, to impose a financial penalty *		<i>RDC</i>
Regulations 53(1) and 53(3)	When the <i>FCA</i> is proposing or deciding to suspend the authorisation of an <i>authorised electronic money institution</i> or registration of a <i>small electronic money institution</i> , or to limit or otherwise restrict the carrying on of <i>electronic money issuance or payment services</i> business by an <i>electronic money institution</i> *		<i>RDC</i>
Regulations 56(1) and 56(3)	when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution *		<i>RDC</i>
Regulation 74(7)	when the <i>FCA</i> is proposing to decide not to include a person on the register		<i>Executive procedures</i>
Regulation 74(8) (a)	when the <i>FCA</i> is deciding not to include a person on the register		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Schedule 3, paragraph 1	when the <i>FCA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2)		<i>RDC</i>
Schedule 3, paragraph 1	when the <i>FCA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2)		<i>RDC</i>
Notes:			
(1) The <i>RDC</i> will take the decision to give the notice exercising the <i>FCA's</i> own-initiative power if the action involves:			
(a) removing a type of activity from an authorisation or registration; or			
(b) refusing an application to include a type of activity in an authorisation or registration; or			
(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or			
(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.			
(2) The <i>Electronic Money Regulations</i> do not require third party rights and access to <i>FCA</i> material when the <i>FCA</i> exercises this power. However, the <i>FCA</i> generally intends to allow for third party rights and access to material when exercising this power.			

Recognised Auction Platforms Regulations 2011	Description	Handbook reference	Decision maker
Regulation 5A	where the <i>FCA</i> is proposing or deciding to publish a statement censuring an <i>RAP</i> , or to impose a financial penalty on an <i>RAP</i>	REC 2A.4	<i>RDC</i>

Supervisory notices

FCA

Section of the Act	Description	Handbook reference	Decision maker
55Y(4)	when the <i>FCA</i> is exercising its <i>own-initiative variation power</i> to vary a firm's <i>Part 4A permission</i>	SUP 7	<i>RDC</i> or <i>executive procedures</i>
55Y(7)			See DEPP 2.5.7 G
55Y(8)(b)			
55Y(4)	when the <i>FCA</i> is exercising its <i>own-initiative requirement power</i>		<i>RDC</i> or <i>executive procedures</i>
55Y(7)			See DEPP 2.5.7 G
55Y(8)(b)			
78(2)/(5)	when the <i>FCA</i> is proposing to discontinue or discontinues the <i>listing</i> of a security	LR 5	<i>RDC</i> or <i>executive procedures</i>
			See DEPP 2.5.9 G (4) and DEPP 2.5.10 G
78(2)/(5)	when the <i>FCA</i> is proposing to suspend or suspends the <i>listing</i> of a security	LR 5	<i>Executive procedures</i>
78A(2)/(8)(b)	when the <i>FCA</i> discontinues or suspends the <i>listing</i> of a security on the application of the <i>issuer</i> of the security	LR 5	<i>Executive procedures</i>
87O(2)/(5)	when the <i>FCA</i> is proposing or deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision.	PR 5	<i>Executive procedures</i>
88F(2)/(5)/(6)(b)	when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>sponsor's</i> approval under section 88E		<i>Executive procedures</i>
89V(2)	when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>primary information provider's</i> approval under section 89U		<i>Executive procedures</i>
89V(5)			
89 V(6)(b)			
96C	when the <i>FCA</i> is proposing to suspend or suspends trading in a <i>financial instrument</i>	DTR	<i>Executive procedures</i>
137S(5)	when the <i>FCA</i> gives a direction under section 137S		<i>Executive procedures</i>
137S(8)(a)			

Section of the Act	Description	Handbook reference	Decision maker
191B(1)	when the <i>FCA</i> gives a <i>restriction notice</i> under section 191B		<i>Executive procedures</i>
197(3)/(6)/(7)(b)	when the <i>FCA</i> is exercising its power of intervention in respect of an <i>incoming firm</i>	SUP 14	<i>RDC</i> or <i>executive procedures</i> See DEPP 2.5.7 G and 2.5.7A G
259(3)/(8)/ (9) (b)	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to the <i>manager</i> and <i>trustee</i> of an <i>AUT</i>	COLL	<i>RDC</i>
261Z1	when the <i>FCA</i> gives a direction under section 261X or section 261Z	COLL	<i>RDC</i>
268(3)/ (7)(a) or (9)(a) (as a result of (8)(b)/(13))	when the <i>FCA</i> is proposing or deciding to give or, on its own initiative, to vary a direction to the <i>operator</i> of a <i>recognised scheme</i>	COLL	<i>RDC</i>
282 (3)/(6)/ (7)(b)	when the <i>FCA</i> is exercising its power to give a direction to an <i>operator</i> , <i>trustee</i> or <i>depository</i> of a <i>recognised scheme</i>	COLL	<i>RDC</i>
301J(1)	when the <i>FCA</i> gives a <i>restriction notice</i> under section 301J		<i>Executive procedures</i>
321(2)/(5)	when the <i>FCA</i> is exercising its power to impose a requirement on a former underwriting member of Lloyd's		<i>RDC</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 27	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to an <i>ICVC</i> and its <i>depository</i>	COLL	<i>RDC</i>

Payment Services Regulations	Description	Handbook reference	Decision maker
11(6)	When the <i>FCA</i> is exercising its powers to vary a person's authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i> See also DEPP 3.4 (Note 1)
11(9)			
11(10)(b)			
14			
Notes:			
(1) The <i>RDC</i> will take the decision to give a notice exercising the <i>FCA's</i> own initiative power if the action involves:			
(a) removing a type of activity from an authorisation or registration; or			
(b) refusing an application to include a type of activity in an authorisation or registration; or			

(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or

d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

For all other types of action the decision to give a notice will be taken by *FCA* staff under *executive procedures*.

Consumer Redress Schemes sourcebook

overall that the *personal recommendation* does not comply with the suitability requirements. The template will take into account the suitable part of the investment in the redress section.

9 Causation section

9.1 G The causation section is used to record your assessment of whether or not the *consumer's* loss was caused by the *firm's* failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the *consumer* suffered a loss. Whether or not there was actually a loss is dealt with in the redress section.

9.2 G Complete the causation section where you have concluded that the *firm* has failed to comply with the suitability requirements specified at 5.1R, above.

9.3 R To fill in the causation section you must:

- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the template ("available evidence");
- (2) determine whether the *firm's* failure to comply with the suitability requirements caused the *consumer's* loss; and
- (3) explain your conclusion on causation with reference to the available evidence.

9.4 R In assessing the available evidence, you must have regard to:

- (1) the impact of the *firm* failure(s) on the *consumer's* decision to invest in the Arch cru fund(s) in all the circumstances of the *consumer's* case;
- (2) the position at law that, irrespective of the actions of third parties, the *firm* is responsible for all losses that flow from its failure to comply with the suitability requirements; and
- (3) the position at law that no actions of Capita Financial Managers Limited; Arch Financial Products LLP; cru Investment Management Limited; HSBC Bank plc and BNY Mellon Trust and Depository (UK) Limited break the chain of causation, so that the *firm* is still responsible for all losses that flow from its failure to comply with the suitability requirements.

9.5 E You should conclude "yes" (that the *firm's* failure caused the *consumer's* loss) unless you are satisfied on the basis of the available evidence that the *consumer* did not rely on the *personal recommendation* in making the decision to invest.

10 Redress Section

10.1 R Complete the redress section in each opted-in scheme case where you have determined that the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements at 5.1R, above.

10.2 G The redress section is used to identify and record an investment benchmark to compare the position the *consumer* is in with the position they would have been in if the *firm* had complied with the suitability requirements.

10.3 R For a redress case where a *personal recommendation* resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the *consumer's* investments in Arch cru funds.

- 10.4 R** Take the following steps in each redress case:
- (1) select the Arch cru fund that the consumer invested in;
 - (2) having regard to what investment the *consumer* would have invested if the *firm* had complied with the suitability requirements at 5.1R above, and other requirements applicable to it at the time (referred to in this chapter as a "suitable investment"), either:
 - (a) select investment benchmark "1", "2", or "3"; or
 - (b) select investment benchmark "4" (suitable investment); or
 - (c) select investment benchmark "5" (other);
 - (3) where investment benchmark 4 or 5 is selected:
 - (a) determine what would have been a suitable investment in accordance with the instructions at (for investment benchmark 4) 10.6R, below, and (for investment benchmark 5) 10.7R and 10.8R, below; and
 - (b) record the suitable investment identified and the reasons for selecting it in the 'SI selection justification' box (for investment benchmark 4, this will be the selected Arch cru fund); and
 - (4) submit a redress calculation request to the *FCA* following the instructions at 10.13R, below.
- 10.5 E** For the purposes of paragraph 10.4R(2), above:
- (1) have regard to the investment benchmarks in CONRED 2 Annex 14 R;
 - (2) consider which investment benchmark best reflects the risks and features of a suitable investment;
 - (3) subject to 10.7R, above, select that investment benchmark; and
 - (4) record your reasons for the selection of that investment benchmark in the Comments box.
- 10.6 R** You may select investment 4 (suitable investment) only if you are satisfied on the basis of the information on the *consumer* file, and information received from the *consumer*, that the *consumer* would have made an investment in the Arch cru fund if the *firm* had complied with the suitability requirements.
- 10.7 R** You may select investment benchmark 5 (other) only where you are able to identify a specific investment:
- (1) which would have been a suitable investment; and
 - (2) in which a *consumer* could have made an investment at all times from the date on which the *consumer's* investment was made to the date of calculation.
- 10.8 G** For the purposes of 10.7R, above, a *firm* might be able to identify a specific investment in circumstances where:
- (1) at the time when the *firm* made the *personal recommendation* to the *consumer* to invest in Arch cru funds, the *firm* also recommended other specific investments which would have been suitable for the *consumer*; or
 - (2) the *firm* recommended that a *consumer* disinvest from a specific investment, which was suitable for the Consumer, in order to invest in Arch cru funds.

Compensation

-
- (3) the unexpired portion of any *premium* in relation to *relevant general insurance contracts* which are not *reinsurance contracts*;
or
 - (4) *claims* by *persons* entitled to the benefit of a judgement under section 151 of the Road Traffic Act 1988 or Article 98 of the Road Traffic (Northern Ireland) Order 1981.

5.5 Protected investment business

5.5.1

FCA

R

Protected investment business is:

- (1) *designated investment business* carried on by the *relevant person* with , or for the benefit of, the claimant (so long as that claimant has a *claim*), or as agent on the claimant's behalf;
- (2) the activities of the manager or *trustee* of an *AUT*, provided that the *claim* is made by a *holder*;
- (3) the activities of the *ACD* or *depository* of an *ICVC*, provided that the *claim* is made by a *holder*;
- (4) the activities of the *authorised contractual scheme manager* or *depository* of an *ACS*, provided that the *claim* is made by a *holder*;

provided that the condition in ■ COMP 5.5.2 R is satisfied.

5.5.2

FCA

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■ COMP 5.5.1 R only applies if conditions (1) to (4) are satisfied:

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

and the *claim* is an *ICD claim*; or
 - (c) both (a) and (b); or

- (d) (i) a *UK branch* of an *EEA UCITS management company* or incoming *EEA AIFM*; or
 - (ii) an establishment of such an *EEA UCITS management company* or incoming *EEA AIFM* in its *Home State* from which *cross border services* are being carried on;
- and in either (d)(i) or (ii) the *management company* or *AIFM* is providing *collective portfolio management* services for a *UCITS scheme* or *AIFM management functions* for an *authorised AIF* but only if the *claim* relates to those activities.
- (2) Condition (2) is that, for the activities of *managing an AIF* or *establishing, operating or winding up a collective investment scheme*:
 - (a) the *claim* is in respect of an investment in a *fund* which is either:
 - (i) an *authorised fund*; or
 - (ii) is not an *authorised fund* but has its registered office or head office in the *UK* or is otherwise domiciled in the *UK*; and
 - (b) the *claim* is not in respect of an investment in a *closed-ended corporate AIF*.
 - (3) Condition (3) is that, for the activity of *acting as trustee or depositary of an AIF*, the *claim* is in respect of a *depositary's* activities where appointed to act for the following *AIFs*:
 - (a) an *authorised AIF*; or
 - (b) a *charity AIF* which is not a *closed-ended corporate AIF*;
 - (4) Condition (4) is that, for the activity of *safeguarding and administering assets*, the *claim* is not in respect of a *firm's* activities where appointed to act as a *depositary* for an *unauthorised AIF* managed by a *small authorised UK AIFM* or for a *small registered UK AIFM*.

5.6 Protected home finance mediation

5.6.1

FCA

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Protected *home finance mediation* is:

- (1) *advising on a home finance transaction*; or
- (2) *arranging (bringing about) a home finance transaction*; or
- (3) *making arrangements with a view to a home finance transaction*; or
- (4) *agreeing to carry on a regulated activity in (1) to (3)*; or
- (5) the activities of a *home finance provider* which would be *arranging* but for article 28A of the *Regulated Activities Order* (Arranging contracts or plans to which the arranger is a party);

provided that the condition in ■ COMP 5.6.2 R is satisfied.

5.6.2

FCA

R

■ COMP 5.6.1 R applies only if the *protected home finance mediation* was carried on by a *relevant person*:

- (1) with a *customer* who was a resident in the *United Kingdom*; or
- (2) from an establishment maintained by the *relevant person* (or its *appointed representative*) in the *United Kingdom* with a *customer* who was resident elsewhere in the *EEA*;

at the time the *protected home finance mediation* was carried on.

Collective Investment Schemes

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)* ;
 - (cA) *authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACSs)*; 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* or an *authorised contractual scheme manager* of an *ACS*, which in either case is a *UCITS scheme*. Such

firms should be aware that provisions in this sourcebook that apply to an *ACD*, a *manager* or an *authorised fund manager* of a *UCITS scheme* accordingly apply to them, unless otherwise indicated: see ■ COLL 12.3 (EEA UCITS management companies) for further details.

Purpose

1.1.2
FCA

G

- (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

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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

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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

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

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

Types of authorised fund - explanation

1.2.2
FCA

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- (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 3A.1.6 G (Notification of changes to unit trusts (sections 251 and 252A)) and ■ COLLG 4A.1.3 G (Notification of changes to ICVCs (Regulations 21 and 22A)).

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

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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) , section 242 of the *Act* (Applications for authorisation of unit trust schemes) or section 261C of the *Act* (Applications for authorisation of contractual 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

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

An *EEA UCITS management company* that proposes to act as the *authorised fund manager* of an *AUT*, *ACS* or *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 FCA: 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*, *ACS* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,

where the *AUT*, *ACS* 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*, *AUT* or *ACS*; 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*, *ACS* or *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) a *depository* of an *AUT*, *ACS* or an *ICVC*;
- (4) an *ICVC* ; and
- (5) a *nominated partner*;

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

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

3.2.3

FCA

R

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

3.2.3A
FCA

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The contractual scheme deed for ACSs

An ACS must be constituted by a *contractual scheme deed* made between the *authorised contractual scheme manager* and:

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

3.2.4
FCA

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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

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The instrument constituting the scheme: OEIC Regulations, Contractual Scheme 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*, *Contractual Scheme 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), *Contractual Scheme Regulations* and for the purposes of making the *scheme* eligible under relevant tax, pensions, or charities legislation.

3.2.6
FCA

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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> <ul 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>. <p>Investment powers in eligible markets</p>
2	<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> <p>Unitholder's liability to pay</p>

3 A provision that a *unitholder* in an *AUT, ICVC* or *co-ownership scheme* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* which he holds.

3A A provision that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business.

3B A provision that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business.

Base currency

4 A statement of the *base currency* of the *scheme*.

Valuation and pricing

5 A statement setting out the basis for the valuation and pricing of the *scheme*.

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 depositary of an AUT or ACS

- 11 Where relevant, a statement authorising the *issue* or *cancellation* of *units* to take place through the *ICVC* or *depositary* of an *AUT* or *ACS* 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) for *ICVCs* and *AUTs*, 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 and ACSs: Charges and expenses

- 22 A statement that charges or expenses of the *ICVC* or *ACS* 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.

Co-ownership schemes: umbrella schemes - principle of limited recourse

22B For a *co-ownership scheme* which is an *umbrella*, a statement that the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*.

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 accordance 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*.

ACSS: governing law for a contractual scheme deed

27A A statement that the *contractual scheme deed* is made under and governed by the law of England and Wales, or Scotland or Northern Ireland.

ACSs: contractual scheme deed to be binding and authoritative

27B A statement that the *contractual scheme 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 *depository* and the *authorised contractual manager* to do the things required or permitted of them by its terms.

ACSs: ownership of scheme property

27C A statement that, subject to the provisions of the *contractual scheme deed* and all *rules* made under section 261I of the *Act* (Contractual 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, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*;
- (2) the sums standing to the credit of the *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution); and
- (3) the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*).

ACSs: responsibility for the register

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

ACSs: UCITS and NURS eligible investors

27E For an *ACS* which is a *UCITS scheme* or a *non-UCITS retail scheme*, a statement that *units* may not be *issued* to a *person* other than a:

- (1) *professional ACS investor*;
- (2) *large ACS investor*; or
- (3) *person* who already holds *units* in the *scheme*.

27F A statement that the *authorised contractual scheme manager* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 27E.

ACSs: UCITS and NURS transfer of units

27G (1) A statement whether the transfer of *units* in the *ACS scheme* is either:

- (a) prohibited; or
- (b) allowed

(2) Where transfer of *units* is allowed in accordance with (1)(b), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:

- (a) *professional ACS investor*;
- (b) *large ACS investor*; or
- (c) *person* who already holds *units* in the *scheme*.

(3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

Co-ownership schemes: constitution

27H For a *co-ownership scheme*, a statement that the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*.

Co-ownership schemes: operator's powers

27I A statement that the *operator* of a *co-ownership scheme* is authorised to:

- (1) acquire, manage and dispose of the *scheme property*; and
- (2) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

Co-ownership schemes: winding-up

27J A statement that the *operator* and *depository* of a *co-ownership scheme* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*.

Limited partnership schemes: participants

27K A statement that the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*.

Limited partnership schemes: resignation of limited partners

27L A statement that the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*.

Limited partnership schemes: inability to operate as an umbrella

27M A statement that the *limited partnership scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*.

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

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

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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

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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").

3.3.5A

FCA

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Hedging of unit classes

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

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- (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

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- (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

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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

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- (1) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* 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 *authorised fund manager* of an *AUT* or *ACS* 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

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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 *authorised fund manager* of an *AUT* or *co-ownership scheme* of such an *umbrella* intends to offer additional *sub-funds*, it should ensure that *unitholders* will have the right to switch at all times between two or more *sub-funds* in that *umbrella*.

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

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

Purpose

4.1.2

FCA

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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

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- (1) The *authorised fund manager* of an *AUT*, *ACS* 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*, *ACS* or an *AUT* ;
 - (ba) whether it is a *UCITS scheme* or a *non-UCITS retail scheme*;
 - (bb) a statement that *unitholders* in an *AUT*, *ICVC* or *co-ownership scheme* are not liable for the debts of the *authorised fund*;
 - (bc) a statement that the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
 - (bd) a statement that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
 - (be) a statement that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business;
 - (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;
 - (ca) for an *ACS* that is a *limited partnership scheme*, the address of the proposed principal place of business of the *limited partnership scheme*;
 - (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 or co-ownership schemes

2A The following statements for an *ICVC* or a *co-ownership scheme* which is an *umbrella*:

- (a) for an *ICVC*, a statement that its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
- (aa) for a *co-ownership scheme*, a statement that the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*; and
- (b) for an *ICVC* or a *co-ownership scheme*, a statement that while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*.

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.

5A ACSs: UCITS and NURS eligible investors

- (a) A statement that *units* may not be *issued to a person other than a*:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person who already holds units in the scheme*.
- (b) A statement that the *authorised contractual scheme manager* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 5A(a).

5B ACSs: UCITS and NURS transfer of units

- (a) A statement whether the transfer of *units* in the *ACS scheme* is either:

(i) prohibited; or

(ii) allowed;

by the *instrument constituting the scheme* and *prospectus*.

(b) Where transfer of *units* is allowed by the *instrument constituting the scheme* and *prospectus* in accordance with (a)(ii), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:

(i) *professional ACS investor*; or

(ii) *large ACS investor*; or

(iii) *person* who already holds *units* in the *scheme*.

(c) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

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*;
- (ca) in the case of an *ACS*, a summary of the material provisions of the contracts between:
 - (i) the *authorised fund manager* and the *nominated partner* (if any); and
 - (ii) the *authorised fund manager* and *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 *authorised fund manager* of the *AUT* or *ACS* 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 *depository* of an *AUT* or *ACS* (as appropriate) through the *authorised fund manager* in accordance with COLL 6.2.7R (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 authorised fund manager of an AUT or ACS 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 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 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 authorised fund manager of an AUT or ACS, or which the directors or authorised fund 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

4.2.6

FCA

G

- (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;
 - (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

4.3.1
FCA

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

Explanation

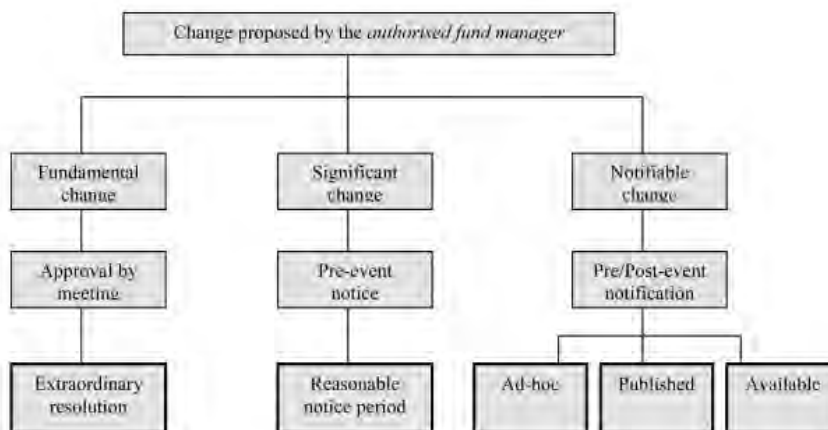
4.3.2
FCA

- G**
- (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), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) 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 *depositary* or a change to the *instrument constituting the scheme*. This should be kept in mind when considering any proposed change.

Diagram: Change event

4.3.3
FCA

G This diagram belongs to ■ COLL 4.3.2 G.



Fundamental change requiring prior approval by meeting

4.3.4
FCA

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

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

4.3.5

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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 authorised fund 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 *authorised fund manager* of an *AUT* or *ACS* who proposes to retire under ■ COLL 6.5.8 R (Retirement of an authorised fund manager of an *UAT* or *ACS*) must, if in either case the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be treated as a significant change in accordance with ■ COLL 4.3.6 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

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- (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*.

Appointment of an AFM without prior written notice to unitholders

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- (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* or *ACS*, the replacement of the *authorised fund manager* under ■ COLL 6.5.7 R (2) (Replacement of an authorised fund manager of an *AUT* or *ACS*);

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

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

Change events relating to feeder UCITS and feeder NURS

4.3.11

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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*.

4.3.13

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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* .

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4.4 Meetings of unitholders and service of notices

Application

4.4.1
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R This section applies to an *authorised fund manager*, a *depository* and any other *director* of an *ICVC*.

General meetings

4.4.2
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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 *depository* of an *AUT* or *ACS*.
 - (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
FCA

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

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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

4.4.8

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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 *authorised fund manager* of an AUT or ACS can be counted in the quorum of, and no such *director* or the *authorised fund manager* of an AUT or ACS 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 *authorised fund manager* of an AUT or ACS 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*.

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- (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.

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* or *ACS*, by the *depository*;
 - (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

4.4.13

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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* or *ACS*, where transfer of title to *units* is to be effected on the authority of an *electronic communication*, the *authorised fund 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.

4.4.15

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Service of notice Regulations

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

4.5.2

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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

4.5.4

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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

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 *authorised fund manager* of an *AUT* or *ACS* 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* or *ACS*, 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 *authorised fund manager* of an *AUT* or *ACS*) 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*, *ACS* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* 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

FCA

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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-

		<p>ner at a reasonable price (liquidity risk);</p> <p>E the risk that the investment's value will be affected by changes in exchange rates (exchange or currency risk);</p> <p>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</p> <p>G risks related to a concentration of assets or markets; and</p> <p>(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:</p> <p>A performance risk, including the variability of risk levels depend-</p>
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		<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

Note:

(vi)

rate, calculated as shown in Annex 2 to this chapter; and

an indication of the existence of fee-sharing agreements and soft commissions;

1.

In explaining the function of the TER to the reader, appropriate wording should be used in the *simplified prospectus*. For example, TER might be explained in the following terms: "The TER shows the annual operating expenses of the *scheme* - it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different *schemes*."

2.

It is the *FCA's* 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 *schemes* where a TER cannot yet be calculated. Where a TER can be calculated for a *simplified prospectus scheme*, 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.

3.

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 *Handbook* . Taking into account current market practice, consideration should be given as to how far the

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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PAGE
65

- (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

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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

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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*, *ACS* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* 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
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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*, *ACS* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* 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*]

Chapter 5

Investment and borrowing powers

5.1.1

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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

- (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

5.1.2

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(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
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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
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- (1) This section applies to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* of an *ICVC*, *AUT* or *ACS* where such *ICVC* , *AUT* or *ACS* 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	Authorised fund manager of an AUT or ACS	Depository of an ICVC, AUT or ACS
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
5.2.10R(3)		X	X	
5.2.10AR to 5.2.10EG		X	X	
5.2.11R to 5.2.21R		X	X	

Rule	ICVC	ACD	Authorised fund manager of an AUT or ACS	Depository of an ICVC, AUT or ACS
5.2.22R	X		X	
5.2.22AG	X	X	X	X
5.2.23R(1)	X	X	X	
5.2.23R(2) to (4)	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"

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.

5.2.3
FCA

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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 *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.

5.2.4
FCA

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Investment powers: general

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
FCA

R

- (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
FCA

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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).

5.2.6A
FCA

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UCITS schemes: permitted types of scheme property

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*.

5.2.7A

FCA

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Investment in transferable securities

- (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:

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- (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*]

5.2.7B
FCA

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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*.

Closed end funds constituting transferable securities

5.2.7C
FCA

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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
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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

5.2.7H
FCA

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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*]

- (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

5.2.7I
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

R

(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;
 - (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

R

- (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

G

- (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
FCA

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- (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*.

Counterparty risk and issuer concentration

5.2.11B
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- (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

- (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.

5.2.12

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- (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

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:

5.2.13

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- (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
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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

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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 is:
 - (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*.

Investment in other group schemes.....

5.2.16

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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.
- (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

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- (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

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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

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FCA

- (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

- (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

5.2.20B
FCA

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- (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.
- (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
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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

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- (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

FCA

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[deleted]

- (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.

5

OTC transactions in derivatives

5.2.23
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A transaction in an *OTC derivative* under ■ COLL 5.2.20 R (1) (b) must be:

- (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

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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

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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

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

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

Investment in deposits

- 5.2.26 **R**
FCA
- 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 **R**
FCA
- (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 authorised fund managers of AUTs or ACSs

5.2.28

FCA

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

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*;

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- (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 authorised fund managers of AUTs or ACSs); 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

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- (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

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FCA

- (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

R

FCA

- (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

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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

R

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

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- (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

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

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

Daily calculation of global exposure

5.3.3B
FCA

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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
FCA

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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

G

- (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

R

- (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 *depository* for the account of the *AUT* or *ACS* on the instructions of the *authorised fund 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
FCA

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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

5.3.9
FCA

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

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

■ COLL 5.2.19 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*]

5.3.10

FCA

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- (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
FCA

R

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*.

Permitted stock lending

5.4.2
FCA

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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
FCA

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

- (a) all the terms of the agreement under which *securities* are to be reacquired by the *depository* for the account of the *ICVC, AUT* or *ACS* are in a form which is acceptable to the *depository* 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

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 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*

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5.4.5
FCA

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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*.

- (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

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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

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- (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)*]



5.5 Cash, borrowing, lending and other provisions

Application

5.5.1
FCA

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

Table of application

5.5.2
FCA

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This table belongs to ■ COLL 5.5.1 R.

Rule	ICVC	ACD	Authorised fund manager of an AUT or ACS	Depository of an ICVC	Depository of an AUT or ACS
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"

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5.5.3
FCA

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Cash and near cash

- (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.

5.5.4
FCA

R

General power to borrow

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund 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 *depository* of an *AUT* or *ACS* 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.

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- (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 *depository* of an AUT or ACS at the request of the *authorised fund 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

G

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.

5.5.8

FCA

R

General power to accept or underwrite placings

- (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* or *ACS*, 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

FCA

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*.

Explanation of ■ COLL 5.6

5.6.2

FCA

G

- (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

FCA

R

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

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■ 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

R

- (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* .

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5.6.9
FCA

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Investment in nil and partly paid securities

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

R

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*.

Investment in associated collective investment schemes

5.6.11

FCA

R

- (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

R

- (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

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- (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 *authorised fund manager* of an *AUT* or *ACS* 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 *authorised fund manager* and *depository* of the *AUT* or *ACS*; 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

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(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

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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

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5.6.19

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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 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

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- (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 *depository* at the outset and upon any vacancy.
- (2) The standing independent valuer in (1) must be:
 - (a) for an *AUT* or *ACS*, independent of the *authorised fund manager* and *depository*; 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*;

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- (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
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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 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

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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

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- (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

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- (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

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- (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

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- (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

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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
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- (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
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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* 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.

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Investment powers: general

5.7.4
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- (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

- (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;

5.7.5
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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).
- (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*

5.7.6

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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
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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*.

5.7.8
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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

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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

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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*.

5.8.2
FCA

R

Permitted types of scheme property

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*]

5.8.3
FCA

R

Balance of scheme property: investment restrictions on a feeder UCITS

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

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- (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*]

5.9.4
FCA

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
FCA

R

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.....

5.9.7

FCA

R

- (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.

- (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

5.9.8
FCA

G

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.

5

Chapter 6

Operating duties and responsibilities



6.1 Introduction and Application

Application

6.1.1
FCA

R

This chapter applies to:

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

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

Purpose

6.1.2
FCA

G

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
FCA

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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* or *ACS*. 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
FCA

R

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

Purpose

6.2.2
FCA

G

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

6.2.3
FCA

R

- (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*.
- (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
FCA

G

- (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.

6.2.5
FCA

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Issue and cancellation of units by an ICVC

- (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.

6.2.6
FCA

R

Issue and cancellation of units in an AUT or ACS

- (1) The *depository* must *issue* or *cancel units* in an *AUT* or *ACS* when instructed by the *authorised fund manager*.
- (2) Any instructions given by the *authorised fund 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 *depository* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancelled* or that to do so would not be in accordance with the *trust deed*, *contractual scheme deed* or *prospectus*, it must notify the *authorised fund manager* of that fact and it is then relieved of the obligation to *issue* or *cancel* those *units*.

Issue and cancellation of units in multiple classes

6.2.6A

FCA

R

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*.

6

Issue and cancellation of units through an authorised fund manager

6.2.7

FCA

R

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

FCA

R

- (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* or *ACS*, when giving instructions to the *depository* 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
FCA

G

- (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* or *ACS*) 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 *depository* of an *AUT* or *ACS* 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

- (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 *depository* of the *AUT* or *ACS* 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

6.2.14

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(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* or *contractual scheme 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

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- (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* of an AUT or ICVC is buying *units* as *principal* on an investment exchange (for an AUT in accordance with a power in the *trust deed*) and settlement will be made in accordance with the rules of that exchange.

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*.

6.2.19
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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
FCA

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The conditions for *limited redemption arrangements* in ■ COLL 6.2.19 R should be considered, for *AUTs* and *ACs* 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
FCA

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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

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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

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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.

6.2.24

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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*.



6.3 Valuation and pricing

Application

6.3.1

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- (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

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- (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

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- (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

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- (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

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- (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

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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

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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

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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

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- (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

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- (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

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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

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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

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

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6.4.4
FCA

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- (1) Either:
 - (a) the *manager* or the *trustee* (as nominated in the *trust deed*);
 - or
 - (b) the *authorised contractual scheme manager* or the *depository* of the *ACS* (as nominated in the *contractual scheme deed*);

must establish and maintain a *register of unitholders* as a *document* in accordance with this section.

- (2) The *manager* or *trustee* or the *authorised fund manager* or *depository* in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
- (3) 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* or the *authorised fund manager* or *depository*, 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* or *authorised fund 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* or *authorised fund manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
- (f) carry out any conversion of *units* allowed for by ■ COLL 6.4.8 R (Conversion of units) after consultation with the *manager* or *trustee* or the *authorised fund manager* or *depository*, as appropriate.

The authorised fund manager as unitholder

6.4.5
FCA

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

6

Transfer of units by act of parties: AUTs and ACSs

6.4.6
FCA

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- (1) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless:
 - (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.
- (1A) Provided:
 - (a) the requirements in ■ COLL 6.4.6A R (Transfer of units in an ACS) are satisfied; and
 - (b) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*;

- every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (2) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
 - (3) In the case of an *AUT* or *ACS*, every 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) In the case of an *AUT* or *ACS*, the details of instruments of transfer must be kept for a period of six years from the date of its registration.
 - (5) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

Transfer of units in an ACS

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 3.2.6 R(27G) (*ACS*s: *UCITS* and *NURS* transfer of units) and ■ COLL 4.2.5 R(5B) (*ACS*s: *UCITS* and *NURS* transfer of units), *units* in an *ACS* may only be transferred to a *person* that is a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or

6.4.6A

FCA

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(c) *person* who already holds *units* in the *scheme*.

6.4.6B

FCA

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

Certificates (including bearer certificates)

6.4.7

FCA

R

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

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* or an *ACS* 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>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</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

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

6.5.4
FCA

R

given by the *depositary* to the *ACD* and to the *ICVC*, following any of the following events:

- (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

R

(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) .

ICVC without a director

6.5.6

FCA

R

If the *ICVC* ceases to have any *directors*, the *depositary* 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 an authorised fund manager of an AUT or ACS

6.5.7

FCA

R

- (1) The *authorised fund manager* of an *AUT* or *ACS* is subject to removal by written notice by the *depositary* upon any of the following events:
 - (a) the calling of a meeting to consider a resolution for winding up the *authorised fund manager*;
 - (b) an application being made to dissolve the *authorised fund manager* or to strike it off the Register of Companies;
 - (c) the presentation of a petition for the winding up of the *authorised fund manager*;
 - (d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the *authorised fund manager's* creditors;
 - (e) the appointment of a receiver to the *authorised fund 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 *authorised fund manager* in a jurisdiction outside the *United Kingdom*;
 - (g) the *depositary* forming the reasonable opinion, and stating in writing, that a change of *authorised fund manager* is desirable in the interest of *unitholders*;
 - (h) a resolution of *unitholders* being passed to remove the *authorised fund 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 *authorised fund manager* or by any *associate* of the *authorised fund manager*) making a request in writing to the *depositary* that the *authorised fund manager* should be removed.

6

- (2) On receipt of a notice by the *depositary* under (1), the *authorised fund manager* of the *AUT* or *ACS* ceases to be the *authorised fund manager*; and the *depositary* must by deed appoint another *person* eligible under the *Act* to be the *authorised fund manager* of the *AUT* or *ACS* upon and subject to that other entering into such deed or deeds as the *depositary* may require.
- (3) If the name of the *AUT* or *ACS* contains a reference to the name of the former *authorised fund manager*, the former *authorised fund manager* is entitled to require the new *authorised fund manager* and the *depositary* immediately on receipt of a notice under (1) to propose a change in the name of the *AUT* or *ACS*.

Retirement of an authorised fund manager of an AUT or ACS

6.5.8
FCA

R

- (1) The *authorised fund manager* of an *AUT* or *ACS* has the right to retire in favour of another *person* eligible under the *Act* and approved in writing by the *depositary* upon:
 - (a) the retiring *authorised fund manager* appointing that *person* by deed as *authorised fund manager* in its place and assigning to that *person* all its rights and duties as such a *authorised fund manager*; and
 - (b) the new *authorised fund manager* entering into such deeds as the *depositary* reasonably considers necessary or desirable to be entered into by that *person* in order to secure the due performance of its duties as the *authorised fund manager* of the *AUT* or *ACS*.
- (2) Upon retirement, the retiring *authorised fund manager*:
 - (a) subject to (3), is released from all further obligations under the *rules* in this sourcebook and under the *trust deed* or *contractual scheme deed* ; and
 - (b) 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 *depositary* or any other *person* in respect of any act or omission on the part of the retiring *authorised fund manager* before his retirement.

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

6.5.9
FCA

R

- (1) Upon the removal or retirement of the *authorised fund manager*, the removed or retiring *authorised fund manager* of an *AUT* or *ACS*:

- (a) is entitled to be recorded in the *register* for those *units* continued to be held or treated as held by it as *principal*; and
 - (b) may require the *depositary* to issue to it a certificate for those *units* (if not previously issued).
- (2) Paragraph (1) is subject to any restriction in the *prospectus* relating to the permitted categories of *unitholders*.

Retirement of the depositary

6.5.10

FCA

R

- (1) The *depositary* of an *authorised fund* may not retire voluntarily except upon the appointment of a new *depositary*.
- (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), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) 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



6.6 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>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
6.6.1R	x	x	x	x	x	x
6.6.3R	x	x		x	x	x
6.6.3AR*					x	
6.6.3BR*					x	
6.6.4R				x		x
6.6.5R		x	x	x	x	x
6.6.5AR*		x			x	
6.6.5BG*		x			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

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
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	
6.6.16G		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 6.6.3A R and COLL 6.6.3B R only apply to <i>authorised contractual scheme managers</i> of ACSs.				
	(3)	* COLL 6.6.5A R and COLL 6.6.5B G only apply to ACDs of ICVCs which are <i>umbrellas</i> and <i>authorised contractual scheme managers</i> of <i>co-ownership schemes</i> which are <i>umbrellas</i> .				
	(4)	* COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).				

6

Functions of the authorised fund manager

6.6.3
FCA

R

- (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:

PAGE
39

- (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* 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 *depository* 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 *authorised fund manager* to the *depository* of the *AUT* or *ACS*; or
 - (v) by the *depository* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*.
- (4) Rectification under (3)(c) need not, unless the *depository* so directs, extend to any such reimbursement or payment where it appears to the *depository* such breach, is of minimal significance.

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

6.6.3A
FCA

R

- (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *UCITS scheme* or a *non-UCITS retail scheme* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a:
 - (a) *professional ACS investor*; or
 - (b) *large ACS investor*; or
 - (c) *person* who already holds *units* in the *scheme*.
- (2) The *authorised contractual scheme manager* of an *authorised contractual scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder*, unless that *person* meets the criteria within (1)(a) to (c).

- (3) The *authorised contractual scheme manager* will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

Redemption of ACS units by an authorised contractual scheme manager

6.6.3B

FCA

R

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

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;

- (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

G

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

R

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

6.6.5A
FCA

R

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

G

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

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* 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:

6

6.6.6A

FCA

R

- (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.
- (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 or ACSs

6.6.8

FCA

R

- (1) The *authorised fund manager* of an *AUT* or *ACS* must, upon any vacancy for the position of auditor for an *AUT* or *ACS*, with the approval of the *depositary*, appoint as auditor for the *AUT* or *ACS* a *person* qualified for appointment as auditor of an *authorised person*.
- (2) The audit fees of the auditor are determined by the *authorised fund manager* with the approval of the *depositary*.
- (3) The *authorised fund manager* of an *AUT* or *ACS* may, with the approval of the *depositary*, at any time, remove the auditor

of an *AUT* or *ACS*; 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

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- (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 *authorised fund manager* of the *AUT* or *ACS* 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

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- (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.

Committees and delegation

6.6.15
FCA

R

- (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

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- (1) This *rule* applies to:
- (a) an *authorised fund manager* (other than an *EEA UCITS management company*) of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* 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

- (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.

6.6.16
FCA

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- (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*.

Conflicts of interest

6.6.17

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- (1) The *authorised fund manager*, any other *director* of an *ICVC* and the *depositary* 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 *depositary* 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 *depositary* 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 *depositary* 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

6

- 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

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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

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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

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- (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

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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

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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

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- (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

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This section applies in accordance with ■ COLL 6.7.2 R (Table of application).

Table of application

6.7.2
FCA

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

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Depository of an ICVC, AUT or ACS</i>	<i>Authorised fund manager of an AUT or ACS</i>
6.7.1R to 6.7.5G	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
6.7.11G		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
6.7.16G		x	x	x
6.7.17R	x	x		x

Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

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6.7.3
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Purpose

- (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.

6.7.4
FCA

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Payments out of scheme property

- (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*.

6.7.5
FCA

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Payments out of scheme property: guidance

- (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.

Performance fees

6.7.6

FCA

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- (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.

Charges on buying and selling units

6.7.7

FCA

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- (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

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(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

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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

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(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*.

Prohibition on promotional payments: guidance

6.7.13
FCA

G

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

R

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

G

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

R

- (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

G

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

R

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

R

- (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

R

- (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*, and section 261D(4) of the *Act* (Authorisation orders) for the *depository* and *authorised fund manager* of an *ACS*. ■ COLL 6.9.3 G to ■ COLL 6.9.5 G give the *FCA's* view of the meaning of independence of these relationships. An *ICVC*, its *directors* and *depository* or a *manager* and a *trustee* of an *AUT* or an *authorised fund manager* and *depository* of an *ACS* are referred to as "relevant parties" in this *guidance*.
- (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* or *ACS*, 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

G

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

G

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

G

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

R

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

G

- (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*, *co-ownership schemes*, *limited partnership 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

R

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

R

- (1) This section applies to:
 - (a) an *authorised fund manager* of a *UCITS scheme*; and
 - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.

- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

Senior personnel responsibilities

6.10.2

FCA

R

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*]



6.11 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*.

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- (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

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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*.

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*]

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*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* of an *AUT* or *ACS*, where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme* in accordance with ■ COLL 7.1.2 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	Authorised fund manager of an AUT or ACS	Depository of an AUT or ACS
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			

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depository of an ICVC</i>	<i>Authorised fund manager of an AUT or ACS</i>	<i>Depository of an AUT or ACS</i>
7.3.9		X				
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
7.4A*					X	X
7.5		X	X	X	X	X
7.6		X	X	X	X	X
7.7	X	X	X	X	X	X
Notes:	(1)	"x" means "applies", but not every paragraph in every rule will necessarily apply.				
	(2)	*COLL 7.4 does not apply to the authorised contractual scheme manager or depository of an ACS.				
	(3)	*COLL 7.4A does not apply to the manager or depository of an AUT.				

Purpose

- (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* , *AUTs* and *co-ownership schemes*. ■ EG 14 (Collective investment schemes) deals with the *FCA's* powers to revoke the authorisation of *authorised funds* otherwise than by consent.

7.1.3
FCA

G



7.2 Suspension and restart of dealings

Requirement

7.2.1

FCA

R

- (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

R

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

G

- (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

- (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

7.3.7
FCA

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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

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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

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- (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

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- (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

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- (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

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(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

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[deleted]

Miscellaneous

7.3.13
FCA

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(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

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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

G

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	COLL rule (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

R

(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

R

- (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.



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

Explanation of COLL 7.4A

7.4A.1
FCA

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- (1) This section deals with the circumstances and manner in which an ACS is to be wound up or a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than by the court as an unregistered company under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (further *rules* regarding *schemes of arrangement* are found in ■ COLL 7.6 (Schemes of arrangement)).
- (2) An ACS may be wound up under this section only if it is solvent. Under section 261W of the *Act* (Requests for revocation of authorisation order), the *authorised contractual scheme manager* or *depository* of an ACS may request the *FCA* to revoke the *authorisation order* in respect of that ACS. The *FCA* may then indicate that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the *FCA* will agree to that request. Section 261X of the *Act* (Directions) gives the *FCA* the power to make certain directions.
- (3) A *sub-fund* of a *co-ownership scheme* may be terminated under this section only if it is solvent. The termination of a *sub-fund* under this section will be subject to section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depository). Termination can only commence once the proposed alterations to the *contractual scheme deed* and *prospectus* have been notified to the *FCA* in writing and permitted to take effect. On termination, the assets of a *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (4) An ACS or a *sub-fund* of a *co-ownership scheme* may also be wound up or terminated in connection with a *scheme of arrangement*. The requirements of section 261Q also apply in relation to a proposal that an ACS or a *sub-fund* of a *co-ownership scheme* be involved in a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (5) ■ COLL 7.4A.3 G gives an overview of the main steps in winding up a solvent ACS or terminating a *sub-fund* of a *co-ownership scheme* under *FCA rules*, assuming *FCA approval*.

7.4A.2

FCA

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Special meanings in this section

- (1) In this section, where a *sub-fund* of a *co-ownership scheme* is being terminated, references to:
 - (a) *units*, are references to *units* of the *class* or *classes* related to the sub-fund to be terminated;
 - (b) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
 - (c) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and
 - (d) *liabilities*, are references to liabilities of the *co-ownership scheme* allocated or attributable to the *sub-fund* to be terminated.

- (2) In this section:
 - (a) a "section 261Q case" refers to:
 - (i) a case where a *sub-fund* of a *co-ownership scheme* is to be terminated otherwise than in connection with a *scheme of arrangement*; or
 - (ii) a case where an ACS or a *sub-fund* of a *co-ownership scheme* is to be wound up or terminated in connection with a *scheme of arrangement*; and

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

7.4A.3

FCA

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Guidance on winding up or termination

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

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

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

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

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period

Step number	Explanation	When	<i>COLL rule</i> , (unless stated otherwise)
1	Commence preparation of solvency statement	N-28 <i>days</i> or R-28 <i>days</i>	7.4A.5R(2)

2	Send audited solvency statement to the <i>FCA</i> with copy to <i>depository</i> .	By N + 21 <i>days</i> or by R + 21 <i>days</i>	7.4A.5R(4) and (5)
3	<p>In a section 261Q case:</p> <ul style="list-style-type: none"> - the <i>authorised contractual scheme manager</i> receiving <i>FCA</i> approval; - or one month having passed after submitting the requisite notice under section 261Q of the <i>Act</i> without the <i>authorised contractual scheme manager</i> or <i>depository</i> having received from the <i>FCA</i> a warning notice under section 261R in respect of the proposal. <p>In a section 261W case, the <i>authorised contractual scheme manager</i> or <i>depository</i> receives an indication from the <i>FCA</i> that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the <i>ACS</i>, the <i>FCA</i> will agree to the request to wind up the <i>ACS</i>.</p>	N + one <i>month</i> or R + one <i>month</i>	<p>Section 261Q of the <i>Act</i> (in a section 261Q case)</p> <p>7.4A.4R(3)(c) to (e) (in a section 261W case)</p>
4	Normal business ceases; notify <i>unitholders</i>	E	7.4A.4R
5	<i>Depository</i> to realise and distribute proceeds	ASAP after E	7.4A.6R(1)-(5)
6	Send annual long report of <i>authorised contractual scheme manager, depository</i> and auditor to the <i>FCA</i>	Within 4 <i>months</i> of FAP	7.4A.9R(7)

7 Request *FCA* to revoke On completion of W/U 7.4A.6R(6) relevant *authorisation order*

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

7.4A.4
FCA

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- (1) Upon the happening of any of the matters or dates referred to in (3), and subject to the requirement of (4) being satisfied, and not otherwise:
 - (a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the ACS or to the *units* and *scheme property* in the case of a *sub-fund* of a *co-ownership scheme*;
 - (b) the *depository* must cease to *issue* and *cancel units*, except in respect of the final *cancellation* under ■ COLL 7.4A.6R (1) or ■ COLL 7.4A.6R (2) (Manner of winding up or termination);
 - (c) the *authorised contractual scheme manager* must cease to *sell* and *redeem units*;
 - (d) the *authorised contractual scheme manager* must cease to arrange the *issue* or *cancellation* of *units* under ■ COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final *cancellation* under ■ COLL 7.4A.6R (1) or ■ (2);
 - (e) no transfer of a *unit* may be registered and no other change to the *register* of *unitholders* may be made without the approval of the *person* responsible for the *register* in accordance with ■ COLL 6.4.4 R (1) (Register: general requirements and contents); and
 - (f) the *depository* must proceed to wind up the ACS or terminate the *sub-fund* in accordance with ■ COLL 7.4A.6 R.

- (2) If the *authorised contractual scheme manager* has not previously notified *unitholders* of the proposal to wind up the ACS or terminate the *sub-fund* of the *co-ownership scheme*, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the *unitholders*.

- (3) The matters referred to in (1) are:
 - (a) the *authorisation order* of the ACS is revoked;
 - (b) alterations to the *co-ownership scheme's contractual scheme deed* and *prospectus* that will be required if the *sub-fund* is terminated taking effect in accordance with section 261Q

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- (Alteration of contractual schemes and changes of operator or depositary) of the *Act*;
- (c) the passing of an *extraordinary resolution* winding up the ACS or terminating the *sub-fund*, provided the FCA's prior consent to the resolution has been obtained by the *authorised contractual scheme manager* or *depositary*;
 - (d) in response to a request to the FCA by the *authorised contractual scheme manager* or the *depositary* for the revocation of the *authorisation order*, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the ACS, the FCA will agree to that request;
 - (e) the expiration of any period specified in the *contractual scheme deed* as the period at the end of which the ACS is to be wound up or the *sub-fund* is to terminate;
 - (f) the effective date of a duly approved *scheme of arrangement*, which is to result in the ACS or *sub-fund* that is subject to the *scheme of arrangement* being left with no property;
 - (g) in the case of a *co-ownership scheme* that is an *umbrella*, the date on which all or the last of its *sub-funds* fall within (f) or have otherwise ceased to hold any *scheme property*, notwithstanding that the *co-ownership scheme* may have assets and liabilities that are not attributable exclusively to any particular *sub-fund*.
- (4) An ACS must not be wound up nor a *sub-fund* terminated under this section unless the requirements of both (a) and (b) are satisfied:
- (a) An ACS must not be wound up nor a *sub-fund* terminated under this section unless and until:
 - (i) in a section 261Q case either:
 - (A) the FCA has given written approval to the proposal; or
 - (B) one *month* has passed since the *authorised contractual scheme manager* gave notice under section 261Q without the *authorised contractual scheme manager* or *depositary* having received from the FCA a warning notice under section 261R in respect of the proposal; or
 - (ii) in a section 261W case, the FCA indicates that, subject to there being no change in any relevant factor, on the conclusion of the winding up of the ACS, the FCA will agree to the request to wind up the ACS.

- (b) In addition an *ACS* must not be wound up nor a *sub-fund* terminated under this section unless a statement has been prepared and sent or delivered to the *FCA* under
 - **COLL 7.4A.5 R** (Solvency statement) and received by the *FCA* prior to the satisfaction of the condition in (a).

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

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

Solvency statement

7.4A.5

FCA

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

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7.4A.6
FCA

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Manner of winding up or termination

- (1) Where ■ COLL 7.4A.4R (3)(f) applies, the *depository* must *cancel* all *units* in issue and wind up the ACS or terminate the *sub-fund* of the *co-ownership scheme* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within ■ COLL 7.4A.4 R:
 - (a) once the ACS falls to be wound up or *sub-fund* terminated, the *depository* must realise the *scheme property*;
 - (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *depository* must *cancel* all *units* in issue and distribute the proceeds of that realisation to the *unitholders* and the *authorised contractual scheme manager* proportionately to their respective interests in the ACS or *sub-fund* as at the date, or the date of the relevant event referred to in ■ COLL 7.4A.4 R; and
 - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *depository* after one year from the date on which they became payable must be paid by the *depository* into court (or, in Scotland, as the court may direct), subject to the *depository* having a right to retain any expenses properly incurred by him relating to that payment.
- (3) For an ACS which is a *relevant pension scheme*, payments must not be made to *unitholders* in the ACS. The realisation proceeds must be paid by the *depository* in accordance with the *contractual scheme deed*.
- (4) Where the *depository* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *depository* must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *depository* for ensuring that that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the matters referred to in ■ COLL 7.4A.4R (3)(c) to ■ (g), the *depository* must notify the FCA in writing and at the same time the *authorised contractual scheme manager* or *depository* must request the FCA to revoke the relevant *authorisation order*.

7.4A.7

FCA

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

- (1) payment or adequate provision being made (by the *depository* after consulting the *authorised contractual scheme manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with
 - COLL 7.4A.6R (5); and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Duty to ascertain liabilities

7.4A.8

FCA

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

Accounting and reports during winding up or termination

7.4A.9

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 *authorised contractual scheme manager* is not required to prepare a short report (■ COLL 4.5.13R (Provision of short report)), provided that it has reasonably determined that the report is not required in the interests of the *unitholders*.
- (2) The *authorised contractual scheme manager* must consult the *depository* before determining that a short report is not required in the interests of *unitholders*.
- (3) Where (1) applies, a copy of the long report must be supplied free of charge to any *unitholder* upon request.

- (4) Where (1) applies, the *authorised contractual scheme manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.
- (5) The *authorised contractual scheme manager* must send a copy of the information required by (4) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with
 - COLL 7.4A.6R (2)(b).
- (6) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.
- (7) Within four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund* of the *co-ownership scheme*, the annual reports of the *authorised contractual scheme manager* and *depository* must be published and sent to the *FCA*.
- (8) The *authorised contractual scheme manager* must, on publication of the annual long report in (7), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free of charge on request.

7.4A.10

FCA

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

Liabilities of the authorised contractual scheme manager

7.4A.11

FCA

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- (1) Except to the extent that the *authorised contractual scheme manager* can show that it has complied with ■ COLL 7.4A.8 R (Duty to ascertain liabilities), the *authorised contractual scheme manager* is personally liable to meet any liability of an ACS or a *sub-fund* of a *co-ownership scheme*, of which it is the *authorised contractual scheme manager*, wound up or terminated under this section (whether or not the winding up of the ACS or the termination of the *sub-fund* has been completed) that was not discharged before the completion of the winding up or termination.

- (2) Where winding up an ACS, if the proceeds of the realisation of the assets attributable or allocated to a particular *sub-fund* of an *umbrella co-ownership scheme* are insufficient to meet the liabilities attributable or allocated to that *sub-fund*, the *authorised contractual scheme manager* must pay to the ACS, for the account of that *sub-fund*, the amount of the deficit, unless and to the extent that the *authorised contractual scheme manager* can show that the deficit did not arise as a result of any failure by the *authorised contractual scheme manager* to comply with the *rules* in COLL.
- (3) The liabilities of the *authorised contractual scheme manager* under this *rule* create an accruing debt (in England and Wales in the nature of a specialty) due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ACS in the circumstances described in (2)).
- (4) The obligations of the *authorised contractual scheme manager* under this *rule* do not affect any other obligation of the *authorised contractual scheme manager* under these *rules* or the law.

Miscellaneous

If:

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

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

7.4A.12

FCA

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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 sections 256 or 261W of the *Act*) or termination of a *sub-fund* will be from *authorised fund managers* and *depositories* who consider that the *AUT*, *ACS*, *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 , 256, 261Q and 261W 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), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) 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 *authorised fund manager* and *depository* of the *AUT* or *ACS* agree that the receipt of the property concerned for the account of the *ICVC*, *AUT* or *ACS*:
 - (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*, *ACS* or *ICVC*, any other *director* of an *ICVC* and the *depository* of any such *scheme* where, in each case, the *AUT*, *ACS* 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

G

- (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

R

In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS*, a *receiving UCITS* or to an *EEA UCITS scheme* include the *sub-fund* of any such *scheme*;
- (2) the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.

[Note: article 37 of the *UCITS Directive*]

UCITS mergers

7.7.4
FCA

R

A *domestic UCITS merger* between two or more *UCITS schemes*, or a *cross-border UCITS merger* between one or more *UCITS schemes* which

is or are the *merging UCITS* and one or more *EEA UCITS schemes*, is permissible provided:

- (1) it is effected in accordance with the requirements of:
 - (a) the *UCITS Regulations 2011*, which include the need for the *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 *authorised fund manager* and *depository* of the *AUT* or *ACS* 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

G

- (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

G

- (1) The requirements and the process which must be followed to give effect to a proposal for a *UCITS merger* as specified by Chapter VI of the *UCITS Directive* (see articles 37 to 48) have been implemented in the *United Kingdom* by the provisions of Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:
 - (a) the different types of merger operation that will be recognised for a *UCITS merger*;
 - (b) the need for the *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) or 261Q (Alteration of contractual schemes and changes of operator or depositary) 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
- (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

G

The *management companies* of the *merging UCITS* and the *receiving UCITS* may decide to include further items in the common draft terms of the *UCITS merger*.

[Note: article 40(2) of the *UCITS Directive*]

Verification by the depositary

7.7.9

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

G

- (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;
 - (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

- (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*]

7.7.14

FCA

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PAGE
45

7

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 *authorised fund manager* of an *AUT* or *ACS* 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

G

- (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

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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, ACS or an ICVC;
 - (b) any other *director* of an ICVC;
 - (c) a *depository* of an AUT, ACS 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

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- (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

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

reasonable for it to rely on relevant information provided by another *person*.

- (3) In addition to (1), the *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that meets the criteria set out in ■ COLL 8 Annex 2 R (ACS Qualified Investor Schemes: eligible investors).

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

8.1.5

FCA

G

Application and notification procedures

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 **R** This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.
FCA

Classes of unit

- 8.2.2 **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*.
FCA

Names of schemes, sub-funds, and classes of units

- 8.2.3 **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.
FCA
- (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 **G** ■ COLL 6.9.6 G (Undesirable or misleading names) contains *guidance* as to names which may be undesirable or misleading.
FCA

Instrument constituting the scheme

- 8.2.5 **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*.
FCA

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*;
 - (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;

- (4B) for a *co-ownership scheme* which is an *umbrella*, the property subject to a *sub-fund* is beneficially owned by the participants in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*;
- (4C) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;
- (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*; and
- (6) for an *ACS*:
 - (a) the *contractual scheme 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;
 - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
 - (iv) states that *units* may not be issued to a *person* other than a *person* that:
 - (A) is a:
 - (i) *professional ACS investor*;
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (B) falls within one or more of the categories set out in COLL 8 Annex 1 R (Qualified Investor Schemes: eligible investors);
 - (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
 - (vi) states that for a *co-ownership scheme*:
 - (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
 - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
 - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power

under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*;

(vii) states:

(A) whether the transfer of *units* in the *ACS* scheme or, for a *co-ownership scheme* which is an *umbrella (sub-funds)* of which pursue differing policies in relation to transfer of *units*, in each particular *sub-fund*, is either:

(i) prohibited; or

(ii) allowed;

(B) where transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* that:

(i) is a:

(1) *professional ACS investor*; or

(2) *large ACS investor*; or

(3) *person* who already holds *units* in the *scheme*; and

(ii) falls within one or more of the categories set out in **COLL 8 Annex 1 R (Qualified Investor Schemes: eligible investors)**; and

(viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;

(b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the *Act* (Contractual scheme rules) and for the time being in force:

(i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according

to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and

- (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 8.5.15 R(Income); and
- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by *FCA* rules does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
 - (i) acquire, manage and dispose of the *scheme property*; and
 - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *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 depositary 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

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 *authorised fund manager* of an *AUT* or *ACS* 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>, <i>ACS</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; (9) the circumstances in which the <i>authorised fund</i> may be wound up under the <i>rules</i> in <i>COLL</i> and a summary of the procedure for, and the rights of <i>unitholders</i> under, such a winding up; and (10) for an <i>ACS</i> that is a <i>limited partnership scheme</i>, the address of the proposed principal place of business of the <i>limited partnership scheme</i>. |
| 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.

5A Issue of units in ACSs: eligible investors

- (1) A statement that *units* may not be *issued* to a *person* other than to a *person* who:
 - (a) is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) falls within one or more of the categories set out in **COLL 8 Annex 1 R(Qualified Investor Schemes: eligible investors)**.
- (2) A statement that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

5B Transfer of units in ACSs

- (1) A statement whether the transfer of *units* in the *ACS scheme* is either:
 - (a) prohibited; or
 - (b) allowed;
 by the *instrument constituting the scheme* and prospectus.
- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the scheme* and *prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* that:

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

(3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

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 *authorised fund 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 *depository* of an *AUT* or *ACS* (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 description 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* or a *co-ownership scheme*, that:
 - (a) for an *ICVC*, 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;
 - (aa) for a *co-ownership scheme*, the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the participants in that *sub-fund*; and
 - (b) for an *ICVC* or a *co-ownership scheme*, while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to

regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*.

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*.

18B Information on authorised contractual schemes

A statement that:

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

19 Additional information

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund 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 *authorised fund manager* of an *AUT* or *ACS* 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

- (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.

8.3.5B

FCA

R

- (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* or *ACS*, 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

R

- (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

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.

Valuation of an OTC derivative

8.4.7A

FCA

R

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*.

Continuing nature of limits and requirements

8.4.8

FCA

R

- (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*.

Permitted stock lending

8.4.9

FCA

R

- (1) The *ICVC*, or the *depository* at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund 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.

General power to borrow

8.4.10

FCA

R

- (1) The *ICVC* or *depository* of an *AUT* or *ACS* (on the instructions of the *authorised fund 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 *authorised fund manager* of an *AUT* or *ACS* 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 *authorised fund manager* of an *AUT* or *ACS* 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 *authorised fund manager* and *depository* of the *AUT* or *ACS*; 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 *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.

8.4.11A

FCA

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8.4.11B

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

8.4.12

FCA

R

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.

Standing independent valuer and valuation

8.4.13

FCA

R

- (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

FCA

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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

FCA

R

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

FCA

R

- (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*;

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- (iii) by the *ICVC* to the *ACD*;
 - (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
 - (v) by the *depository*; (for the account of the *AUT* or *ACS*) to the *authorised fund 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

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

8.5.3A

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Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a *foreign law contract* entered

into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the scheme* of the *ICVC* or *co-ownership scheme* (see ■ COLL 8.2.6 R(2)(4A) and ■ COLL 8.2.6 R(2)(4B)), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* 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.

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

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* 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

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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:
 - (a) that it was reasonable for the delegator to obtain assistance to perform the function in question;
 - (b) that the delegate was and remained competent to provide that assistance; and
 - (c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

Delegation and responsibility for regulatory obligations

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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

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- (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 or ACSs

8.5.8

FCA

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

8

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

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*

8.5.9A

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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

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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.

Issues and cancellations of units

8.5.10

FCA

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- (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 *depository* of the *AUT* or *ACS* to *issue* or *cancel units* where the *authorised fund manager* would otherwise be obliged to *sell* or *redeem* the *units* in the manner set out in the *prospectus*.
- (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*.

Transfer of units in an ACS

8.5.10B

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- (1) Where transfer of *units* in an ACS is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the ACS must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 8.2.6R(2)(6)(a)(vii)(B) (Table: contents of the instrument constituting the scheme) and ■ COLL 8.3.4R(5B)(2) (Table: contents of qualified investor scheme prospectus), *units* in the ACS may only be transferred to a *person* that:
 - (a) is a:
 - (i) *professional ACS investor*; or
 - (ii) *large ACS investor*; or
 - (iii) *person* who already holds *units* in the *scheme*; and
 - (b) falls within one or more of the categories set out in ■ COLL 8 Annex 1 R (Qualified Investor Schemes: eligible investors).

8.5.10C

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The *FCA* recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unit holder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual*

scheme manager is expected to comply with its responsibilities under ■ COLL 8.5.10E R (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those *units*.

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

8.5.10D

FCA

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

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

8.5.10E

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

Sale and redemption

8.5.11

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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

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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

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.

8.5.12B

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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*.

Income

8.5.15

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- (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

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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

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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

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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, 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

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[deleted]

Schemes of arrangement

8.6.5

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FCA

In relation to an *ICVC* , *ACS* 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*.

ACS Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3 R and 8.1.4 G.

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

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

Chapter 11

Master-feeder arrangements under the UCITS Directive

11.1 Introduction

Application

11.1.1
FCA

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This chapter applies to:

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

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

Table of application

11.1.2
FCA

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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>Authorised fund manager</i> of an <i>AUT</i> or <i>ACS</i>	<i>Depository</i> of an <i>ICVC</i> , <i>AUT</i> or <i>ACS</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.

11.1.3

FCA

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Purpose

- (1) This chapter sets out:
 - (a) the notification requirements for a *UCITS scheme* to be approved as a *feeder UCITS* under section 283A (Master-feeder structures) of the *Act*; and
 - (b) the requirements which apply to a *feeder UCITS* where its *master UCITS* is wound up, merges with another *UCITS* or is divided into one or more *UCITS*.
- (2) This chapter also ensures there is a flow of information and *documents* between a *feeder UCITS* and its *master UCITS*. In particular, it allows the *authorised fund manager, depositary* and auditor of a *feeder UCITS* to obtain all information and *documents* necessary to perform their functions.
- (3) ■ COLL 11.5 (Auditors) also imposes requirements on auditors of a *master UCITS* and a *feeder UCITS*.
- (4) In this section references to:
 - (a) a *UCITS scheme, a feeder UCITS, a master UCITS, or EEA UCITS scheme* include the *sub-fund* of any such *scheme* and references to winding up a *scheme* are to be read as also applying to the termination of a *sub-fund*; and
 - (b) the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.

11.2 Approval of a feeder UCITS

Explanation

11.2.1

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

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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

R

FCA

- (1) An *authorised fund manager* of a *feeder UCITS* must monitor effectively the activity of the *master UCITS*.
- (2) In performing this obligation, the *authorised fund manager* of the *feeder UCITS* may rely on information and *documents* received from the *master UCITS*, or where applicable, the *master UCITS' management company*, *depository* or auditor, unless there is a reason for doubting their accuracy.

[Note: article 65(1) of the *UCITS Directive*]

Inducements

11.3.8

R

FCA

Where, in connection with an investment in the *units* of the *master UCITS*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder UCITS*; or
- (2) an *authorised fund manager* of a *feeder UCITS*; or
- (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder UCITS*.

[Note: article 65(2) of the *UCITS Directive*]

Obligations of the master UCITS

11.3.9

R

FCA

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

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FCA

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 and section 261Z4 (Information for home state regulator) of the *Act* and regulation 29A (Information for home state regulator) of the *OEIC Regulations* require the *FCA* to inform the *Home State regulator* of the *feeder UCITS* immediately.

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

11.3.11

FCA

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- (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

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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

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- (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

Section 351A (Disclosure under the UCITS directive) of the *Act* provides that where a *trustee* of an *AUT* or the *depository* of an *ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.

11.4.5

FCA

G



11.5 Auditors

Information-sharing agreement between auditors

11.5.1

FCA

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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 **R** Where a *master UCITS* and one or more of its *feeder UCITS* have different
FCA accounting years, the auditor of the *master UCITS* must make an ad hoc
report on the closing date of the accounting year of each *feeder UCITS*.

[Note: article 62(2) first paragraph second sentence of the *UCITS Directive*]

Disclosure by an auditor

11.5.5 **G** Section 351A of the *Act* provides that where an auditor of an *AUT* or *ACS* which is a
FCA *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure
to comply with rules implementing Chapter VIII of the *UCITS Directive*, that disclosure
is not to be taken as a contravention of any duty to which the *person* making the disclosure
is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions
for auditors of *ICVCs* that are *feeder UCITS* and *master UCITS*.

Responsibility of authorised fund managers

11.5.6 **R** The *authorised fund managers* of a *master UCITS* and a *feeder UCITS*
FCA 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

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- (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the *Act*, in implementation of article 60 of the *UCITS Directive*, provide that where a *master UCITS* is wound up, for whatever reason, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depository* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) 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 or section 261S (Proposal to convert to a non-feeder UCITS) of the *Act* an amendment of the *trust deed* or *contractual scheme deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A(3) and (4) and section 261Z(3) and (4) of the *Act* further provide that where a *master UCITS* merges with another *UCITS* or is divided into two or more *UCITS*, the *FCA* is to direct the *manager* and *trustee* of any *AUT* or the *authorised contractual scheme manager* and *depository* of any *ACS* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) 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 or section 261S of the *Act* an amendment of the *trust deed* or *contractual scheme deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (3) The *OEIC Regulations* (see regulations 33A and 33B respectively) contain corresponding provisions for *feeder UCITS* which are structured as *ICVCs*.

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

11.6.2

FCA

R

- (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and, where applicable, the *competent authorities* of the *feeder UCITS Home State*, informing them of the binding decision to wind up the *master UCITS*.
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding the compulsory liquidation of *AUTs*, *ACs* 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*, section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) 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 or section 261S 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 or section 261Q 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 or section 261Q 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 or section 261Q 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 or section 261S 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 or section 261Q 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

- (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.

11.6.6

FCA

R

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- (2) For the purposes of ■ COLL 11.6.5R (2), a *feeder UCITS* will be considered as becoming a *feeder UCITS* of another *master UCITS* resulting from the merger or division of the *master UCITS* where:
- (a) the *master UCITS* is the *merging UCITS* and, as a result of the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
 - (b) the *feeder UCITS* as a result of the division becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* that is materially different to the *master UCITS*.

[Note: article 22(2) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: merger or division of a master UCITS

11.6.7
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

Where:

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

11.6.10

R

FCA

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11

■ COLL 11.3.2R (3) (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[Note: article 23(6) of the *UCITS implementing Directive No 2*]

11.6.11

FCA

G

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

Requirements following approval by the FCA

11.6.12

FCA

R

Where the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ COLL 11.6.3R (1), ■ COLL 11.6.3R (2), ■ COLL 11.6.5R (1), ■ COLL 11.6.5R (2) or ■ COLL 11.6.5R (3) and has received written notice of any required approvals from the *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*]

Notification by feeder UCITS of intention to be wound up

11.6.13

FCA

R

Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FCA* under section 251 or section 261Q 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*]

Chapter 12

Management company and product passports under the UCITS Directive

12.1 Introduction

Application

12.1.1
FCA

R

- (1) ■ COLL 12.1 (Introduction) - ■ COLL 12.3 (EEA UCITS management companies) apply to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
 - (b) (i) an *EEA UCITS management company* that acts as:
 - (A) the *authorised fund manager* of an *AUT* or *ACS*;
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

G

- (1) This chapter contains *rules* and *guidance* relating to the operation of the *management company* passport under the *UCITS Directive* and explains how the passporting regime applies to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
 - (b) an *EEA UCITS management company* that acts as the *authorised fund manager* of an *AUT*, *ACS* or *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

G

Where an *authorised fund manager* wishes to market the *units* of a *UCITS scheme* it operates in a *Host State*, without establishing a *branch* or pursuing any other activities in that State, a *management company passport* is not required for those *marketing* activities. A *UCITS marketing notification* should be made for the relevant *UCITS scheme* (see ■ COLL 12.4 (UCITS product passport) in order to access the market of the *Host State*. The *marketing* must be carried on in conformity with the laws and regulations of that *Host State* implementing Chapter XI of the *UCITS Directive*.

[Note: article 16(1) second paragraph of the *UCITS Directive*]

12.2 UK UCITS management companies

Application

12.2.1

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

R

Where this section refers to *rules* in any other part of this sourcebook, references in those *rules* and any relevant *guidance* to an *authorised fund manager, AFM* or *operator* of a *UCITS scheme* are to be interpreted as if they are referring to a *UK UCITS management company* of the *EEA UCITS scheme*.

Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

12.2.3

FCA

R

A *UK UCITS management company* that operates an *EEA UCITS scheme* must in relation to that activity comply with the *rules* which relate to:

- (1) the organisation of the *management company*, including delegation arrangements;
- (2) risk-management procedures;
- (3) prudential rules and supervision;
- (4) operating conditions; and
- (5) reporting requirements.

[Note: article 19(1) of the *UCITS Directive*]

Arrangements and organisational decisions

12.2.4

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

G

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

G

- (1) Each *EEA State*, including the *United Kingdom*, is required to implement article 14 of the *UCITS Directive* by drawing up rules of conduct which *management companies* authorised in that State must observe at all times, except as explained in (3).
- (2) *UK UCITS management companies* operating an *EEA UCITS scheme* under the freedom to provide *cross border services* (otherwise than by establishing a *branch* in that State) are advised that, as provided for elsewhere in the *Handbook*, they are required to comply with the following *rules* and *guidance* in relation to such business, as follows:
 - (a) ■ COLL 6.6A.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

G

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

R

This section applies to an *EEA UCITS management company* that provides *collective portfolio management* services in the *United Kingdom* by acting as the *authorised fund manager* of an *AUT*, *ACS* or *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

G

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

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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

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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

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(1) This section applies to:

- (a) an *authorised fund manager* of an *AUT* , *ACS* 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

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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

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(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

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- (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

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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

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

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

UCITS Host State's access to documents and updates of documents

12.4.8
FCA

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- (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*]

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), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) and under regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company).

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

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
COLL 4.5.16 R (1)	Annual and half-yearly long report (or 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>	Copy provided	Upon request by the <i>FCA</i>	Immediate
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 <i>days</i>
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 <i>days</i> 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>Depositary</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 7.4A.5 R (5)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme (Authorised contractual scheme manager)</i>	Solvency statement	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i>	Within 21 <i>days</i> of notice under section 261Q of the <i>Act</i> or within 21 <i>days</i> of request under section 261W of the <i>Act</i> .
COLL 7.4A.6 R (6)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme (Depositary)</i>	Completion of winding up	Winding up	Immediate
COLL 7.4A.9 R (7)	Winding up a solvent <i>ACS</i> or terminating a solvent <i>sub-fund</i> of a <i>co-ownership scheme</i>	Annual reports of <i>authorised contractual scheme manager</i> and <i>depositary</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 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, 250 or 261L 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 R (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

