



# Collective Investment Schemes

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## **Collective Investment Schemes**

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# Chapter 1

## Introduction

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## 1.1 Applications and purpose

### Application

- 1.1.1** **G** (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*; and
  - (c) *managers and trustees of authorised unit trust schemes (AUTs)*.
- (2) **■** COLL 9 applies to *operators of schemes* that are *recognised schemes* and to those seeking to secure recognised status for such *schemes*.

- 1.1.1A** **R** This sourcebook does not apply to an *incoming ECA provider* acting as such.

### Purpose

- 1.1.2** **G** (1) The general purpose of this sourcebook is to contribute to the *FSA* meeting its *regulatory objective* 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 community obligations relevant to *authorised funds*, with other requirements implemented in other parts of the *Handbook*.

### The Collective Investment Schemes Information Guide

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

## 1.2 Types of authorised fund

### Types of authorised fund

1.2.1

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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*; or
- (3) a *qualified investor scheme*.

### Types of authorised fund - explanation

1.2.2

G

- (1) *UCITS schemes* have to comply with the conditions necessary in order to enjoy the rights available under the *UCITS Directive*. Such *schemes* must in particular comply with:
  - (a) ■ COLL 3.2.8 R (UCITS obligations); and
  - (b) the investment and borrowing powers rules for *UCITS schemes* set out in ■ COLL 5.2 to ■ COLL 5.5 .
- (2) *Non-UCITS retail schemes* are schemes that do not comply with all the conditions set out in the *UCITS Directive*. Such *schemes* could become *UCITS schemes* provided they are changed, so as to comply with the conditions set out in the *UCITS Directive*.
- (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 FSA and further information on that process is provided in ■ COLLG 3.1.5 G (Notification of changes to unit trusts (section 251)) and ■ COLLG 4.1.3 G (Notification of changes to ICVCs (Regulation 21)).



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## Chapter 4

# Investor Relations

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## 4.1 Introduction

### Application

4.1.1

**R**

This chapter applies to:

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

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

### Purpose

4.1.2

**G**

This chapter helps in achieving the *regulatory 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 **R** This section applies to an *authorised fund manager*, an *ICVC* and any other *director* of an *ICVC*

### Publishing the prospectus

- 4.2.2 **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.

### Availability of prospectus and long report

- 4.2.3 **R**
- (1) An *ICVC* or the *manager* of an *AUT* must:
    - (a) supply 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 *FSA*.
  - (2) An *ICVC* or the *manager* of an *AUT* which in either case is a *UCITS scheme* intending to market *units* in the territory of another *EEA State* must:

- (a) ensure that the following *documents* are drawn up in the, or one of the, official languages of the *EEA State* or a language approved by the *Host State regulator*:
    - (i) the *prospectus*;
    - (ii) the *instrument constituting the scheme*; and
    - (iii) the latest annual and half-yearly long reports of the *scheme*;
  - (b) supply copies of the most recent version of the *documents* in (a) to any purchaser of *units* free of charge on request, and
  - (c) file copies of the most recent version of the *documents* in (a) with the *competent authority* of each such *Host State*, provided in the language, or one of the, languages of that State or a language approved by the *competent authority* of that State.
- (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*.

#### False or misleading prospectus

4.2.4

**R**

- (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

R

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

##### Document status

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

##### Authorised fund

- 2 A description of the *authorised fund* including:
- (a) its name;

- (b) whether it is an *ICVC* or an *AUT* and that:
  - (i) *unitholders* are not liable for the debts of the *authorised fund*;
  - (ii) for an *ICVC*, a statement that the *sub-funds* of a *scheme* which is an *umbrella* are not 'ring fenced' and in the event of the *umbrella* being unable to meet liabilities attributable to any particular *sub-fund* out of the assets attributable to that *sub-fund*, that the remaining liabilities may have to be met out of the assets attributable to other *sub-funds*;
- (ba) whether it is a *UCITS scheme* or a *non-UCITS retail scheme*;
- (c) for an *ICVC*, the address of its head office and the address of the place in the *United Kingdom* for service on the *ICVC* of notices or other documents required or authorised to be served on it;
- (d) the effective date of the *authorisation order* made by the *FSA* 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; and
- (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

#### 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*;
- (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 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*, 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*;
- (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; and
- (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).

#### Reporting, distributions and accounting dates

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

#### Characteristics of the units

- 5 Information as to:
- (a) where there is more than one *class of unit in issue* or available for *issue*, the name of each such *class* and the rights attached to each *class* in so far as they vary from the rights attached to other *classes*;
  - (b) where the *instrument constituting the scheme* provides for the *issue of bearer certificates*, that fact and what procedures will operate for them;
  - (c) how *unitholders* may exercise their voting rights and what these amount to;

- (d) where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required, in what circumstances it may be required; and
- (e) for an *AUT*, the fact that the nature of the right represented by *units* is that of a beneficial interest under a trust.

#### Authorised fund manager

6 The following particulars of the *authorised fund manager*:

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

#### Directors of an ICVC, other than the ACD

7 Other than for the *ACD*:

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

#### Depositary

8 The following particulars of the *depositary*:

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

#### Investment adviser

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

#### Auditor

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

#### Contracts and other relationships with parties

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

*group of which any director of the ICVC or the manager of the AUT is a member, that fact;*

- (e) a summary of the material provisions of any contract between the *authorised fund manager* or the *ICVC* and any *investment adviser* which may be relevant to *unitholders*;
- (f) if an *investment adviser* retained in connection with the business of the *authorised fund* has the authority of the *authorised fund manager* or the *ICVC* to make decisions on behalf of the *authorised fund manager* or the *ICVC*, that fact and a description of the matters in relation to which it has that authority;
- (g) what functions (if any) the *authorised fund manager* has delegated and to whom; and
- (h) in what capacity (if any), the *authorised fund manager* acts in relation to any other *regulated collective investment schemes* and the name of such *schemes*.

#### Register of unitholders

##### 12 Details of:

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

#### Payments out of scheme property

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

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

#### Allocation of payments

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

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

**Moveable and immovable property (ICVC only)**

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

**Valuation and pricing of scheme property**

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

(a) either:

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

(b) details of:

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

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

**Dealing**

**17** The following particulars:

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

- (i) the *sale* and *redemption* of *units* and the settlement of transactions (including the minimum number or value of *units* which one *person* may hold or which may be subject to any transaction of *sale* or *redemption*) for each *class* of *unit* in the *authorised fund*; and
- (ii) any direct *issue* or *cancellation* of *units* by an *ICVC* or by the *trustee* (as appropriate) through the *authorised fund manager* in accordance with COLL 6.2.7 (2) (Issue and cancellation of units through an authorised fund manager);
- (b) the circumstances in which the *redemption* of *units* may be suspended;
- (c) whether certificates will be issued in respect of registered *units*;
- (d) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for the *issue* or *cancellation* of *units* in specie;
- (e) the investment exchanges (if any) on which *units* in the *scheme* are listed or dealt;
- (f) the circumstances and conditions for issuing *units* in an *authorised fund* which limit the *issue* of any *class* of *units* in accordance with COLL 6.2.21 (Limited issue);
- (g) the circumstances and procedures for the limitation or deferral of *redemptions* in accordance with COLL 6.2.16 (Limited redemption) or COLL 6.3.8 (Deferred redemption); and
- (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*.

### 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*.

#### 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*, 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*;
  - (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*; and
  - (g) if there are *units* for less than two *sub-funds* in issue, the effect of COLL 3.2.7 R (Umbrella scheme with only one sub-fund).

#### 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.

#### Marketing in another EEA state

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

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

- (ii) that a distribution has been declared;
- (iii) of the calling of a meeting of *unitholders*; and
- (iv) of the termination of the *authorised fund* or the revocation of its authorisation.

#### Additional information

27 Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *manager* of an *AUT*, or which the *directors* or *manager* would have obtained by making reasonable enquiries, including but not confined to, the following matters:

- (a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating;
- (b) a clear and easily understandable explanation of any risks which investment in the *authorised fund* may reasonably be regarded as presenting for reasonably prudent investors of moderate means;
- (c) if there is any arrangement intended to result in a particular capital or income return from a holding of *units* in the *authorised fund* or any investment objective of giving protection to the capital value of, or income return from, such a holding:
  - (i) details of that arrangement or protection;
  - (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;
  - (iii) a description of the risks that could affect achievement of that return or protection; and
  - (iv) details of the arrangements by which the *authorised fund manager* will notify *unitholders* of any action required by the *unitholders* to obtain the benefit of the guarantee; and
- (d) whether any notice has been given to *unitholders* of the *authorised fund manager* intention to propose a change to the *scheme* and if so, its particulars.

#### Guidance on contents of the prospectus

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

- 4
- (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 FSA 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 (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).



### 4.3 Approvals and notifications

#### Application

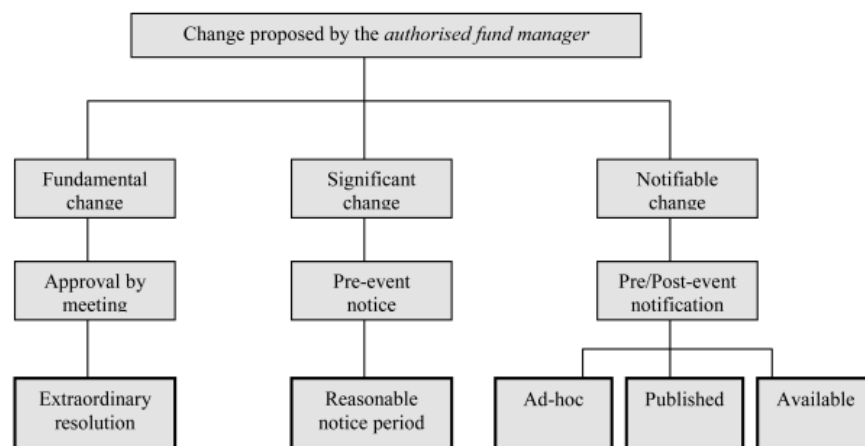
4.3.1 **R** This section applies to an *authorised fund manager*.

#### Explanation

- 4.3.2 **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) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FSA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depository* or a change to the *instrument constituting the scheme*. This should be kept in mind when considering any proposed change.

#### Diagram: Change event

4.3.3 **G** This diagram belongs to ■ COLL 4.3.2 G.



#### Fundamental change requiring prior approval by meeting

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

## 4.3.5

G

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

- (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 4.3.4R (2)(a) to ■ COLL 4.3.4R (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*.

## 4.3.6

R

#### Significant change requiring pre-event notification

- (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*).

#### Guidance on significant changes

4.3.7

G

(1) Changes may be significant depending in each case on their degree of materiality and effect on the *scheme* and its *unitholders*. Consequently the *authorised fund manager* will need to determine whether in each case a particular change is significant in nature or not.

(2) For the purpose of ■ COLL 4.3.6 R a significant change is likely to include:

(a) a change in the method of *price* publication;

(b) a change in any operational policy such as dilution policy or allocation of payments policy;

(c) an increase in the *preliminary charge* where *units* are purchased through a *group savings plan* ; or

(d) a change in the *pricing* arrangements for *units* of the *scheme* so as to cause a *single-priced authorised fund* to become a *dual-priced authorised fund*, or vice versa.

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

#### Notifiable changes

4.3.8

R

(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

4.3.9

G

(1) The circumstances causing a notifiable change may or may not be within the control of the *authorised fund manager*.

- 4
- (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*.

## 4.4 Meetings of unitholders and service of notices

### Application

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

### General meetings

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

### Class meetings

- 4.4.3 **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 **R** (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

R

- (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 4.4.6R (3), should two such *unitholders* not be present after a reasonable time of convening of the meeting.
- (4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.

**Quorum**

4.4.6

**R**

- (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

**R**

- (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 4.4.8R (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

**R**

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

#### Right to demand a poll

4.4.9

R

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

### Proxies

4.4.10

R

- (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

R

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

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

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

#### Notices to unitholders

4.4.12

R

- (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

R

- (1) Any *document* or notice to be served on or information to be given to, any *person*, including the *FSA*, 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) In this sourcebook, any requirement that a *document* be signed may be satisfied by an electronic signature or electronic evidence of assent.

**References to writing and electronic documents**

4.4.14

G

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

**Service of notice Regulations**

4.4.15

G

The provisions in this section relating to the service and delivery of notices and *documents* both to *unitholders* and to the FSA, 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

## 4.5 Reports and accounts

### Application

- 4.5.1 **R** 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 **G** 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

- 4.5.3 **R**
- (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 **G**
- (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*.

**Contents of a short report**

4.5.5

**R**

- (1) The short report for an *authorised fund*, or for a *scheme* which is an *umbrella*, its *sub-fund*, must contain for the relevant period:
  - (a) the name of the *scheme* or *sub-fund*, its stated investment objectives and policy for achieving those objectives, a brief assessment of its risk profile and 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 4.5.10R (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.
- (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).

4.5.6

G

**Significant information to be contained in the short report**

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

- (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 of the *scheme* or the instruments used by it during the period;
- (4) the total expense ratio at the end of the period;
- (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.

4.5.7

R

**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 full 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 full accounts for the *annual accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*;

- (ii) the report of the *authorised fund manager* in accordance with ■ COLL 4.5.9 R; and
  - (iii) the comparative table in accordance with ■ COLL 4.5.10 R;
  - (b) the aggregation of the accounts required by (a)(i) for each *sub-fund*;
  - (c) the report of the *depository* in accordance with ■ COLL 4.5.11 R; and
  - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *directors* of an *ICVC* or the *manager* of an *AUT* must ensure that the accounts referred to in (1)(a) , (2)(a) and (4)(a) give a true and fair view of the net income and the net gains and the 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 full 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.

#### Contents of the half-yearly long report

4.5.8

R

- (1) A half-yearly long report on an *authorised fund*, other than for a *scheme* which is an *umbrella*, must contain:
- (a) the full 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 full 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 full accounts and the report of the *authorised fund manager* that would be required by (1) if the *sub-fund* were a separate *authorised fund*.

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

4.5.8A

G

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 4.5.7R (4) and ■ COLL 4.5.8R (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 4.5.7R (2) and ■ COLL 4.5.8R (2)); and
- (2) to make available and publish the annual and half-yearly long reports for the *umbrella* as a whole (■ COLL 4.5.14 R).

#### Authorised fund manager's report

4.5.9

R

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

- (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 for achieving those objectives;
- (7) a review of the investment activities during the period to which the report relates;
- (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;
- (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 4.5.7R (2) or ■ COLL 4.5.8R (2):
  - (a) (for an *ICVC*), a statement to the effect that, as a *sub-fund* is not a legal entity, if the assets attributable to any *sub-fund* were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other *sub-funds* of the *ICVC*; and
  - (b) 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 4.5.7R (4) or ■ COLL 4.5.8R (3):

- (a) (for an *ICVC*) a statement corresponding to that required by (11)(a) making it clear that if the liability relates to another *sub-fund* of the *umbrella*, the shortfall or any part of it might have to be met out of the assets of the *sub-fund* to which the report relates; and
- (b) 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 4.5.7R (1)(c) (Contents of the annual long report) must set out:

- (1) a performance record over the last five calendar years, or if the *authorised fund* has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
  - (a) the highest and the lowest *price* of a *unit* of each *class* in issue during each of those years; and
  - (b) the net income distributed (or, for *accumulation units*, allocated) for a *unit* of each *class* in issue during each of those years, taking account of any sub-division or consolidation of *units* that occurred during that period;
- (2) as at the end of each of the last three *annual accounting periods* (or all of the *authorised fund's annual accounting periods*, if less than three):
  - (a) the total net asset value of the *scheme property* at the end of each of those years;
  - (b) the net asset value per *unit* of each *class*; and
  - (c) (i) (for a report of the *directors* of an *ICVC*) the number of *units* of each *class* in issue; or
    - (ii) (for a report of the *manager* of an *AUT*) the number of *units* of each *class* in existence or treated as in existence; and
- (3) if, in the period covered by the table:
  - (a) the *authorised fund* has been the subject of any event (such as a *scheme of arrangement*) having a material effect on the size of the *authorised fund*, but excluding any *issue* or *cancellation* of *units* for cash; or
  - (b) there have been changes in the investment objectives of the *authorised fund*;

- (c) an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

#### Report of the depositary

4.5.11

**R**

- (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 the *authorised fund's* income, 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

4.5.12

**R**

The *authorised fund manager* must ensure that the report of the auditor to the *unitholders* must include a statement:

- (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 income and the net gains or losses of 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 4.5.14R (2)(a).

#### Publication and availability of annual and half-yearly long report

4.5.14

R

- (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 4.5.7R (1) to ■ (3) (Contents of the annual long report) and ■ COLL 4.5.8R (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

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in at least one of that other *EEA State's* official languages; and  
(d) be sent to the *FSA*.

## 4.6 Simplified Prospectus provisions

### Application

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

### Production and publication of simplified prospectus

- 4.6.2 **R**
- (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 **R** 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.

4.6.4 **G** It is the FSA'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 FSA would expect a *simplified prospectus* to be updated at least annually.

### Filing requirements

4.6.5 **R** 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 FSA; 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 **R** (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 **G** (1) In translating the *simplified prospectus* from English into the or 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 FSA'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

R

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 be 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; and
  - (c) a statement, where relevant, that the *scheme* is intended to track an index or in-

- 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 *units* 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 *investment* is encashed before the expiry of any related guarantee or protection.**
- (9) the *scheme's* investment policy, including:**
- (a) the main categories of eligible financial instruments which are the object of investment;**
  - (b) whether the *scheme* 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 *scheme* invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements;**
  - (e) if the *scheme* uses financial derivative instruments, an indication of whether this is done in pursuit of the *scheme's* objectives, or for hedging purposes only;**
  - (f) whether the *scheme's* management style makes some reference to a benchmark; and in particular whether the *scheme* has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and**

(g)	<p>whether the <i>scheme's</i> management style is based on a tactical asset allocation with high frequency portfolio adjustments;</p> <p>provided the information is material and relevant;</p>
Note:	<p>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.</p>
(10)	<p>a brief assessment of the <i>scheme's</i> risk profile by investment compartment or sub-fund, including:</p>
(a)	<p>overall structure of the information provided:</p>
(i)	<p>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;</p>
(ii)	<p>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>;</p>
(iii)	<p>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</p>
(b)	<p>details regarding the description (in words) of the following risks:</p>
(i)	<p>specific risks:</p> <p>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 <i>scheme</i> such as:</p>

<b>A</b>	<p><b>the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);</b></p>
<b>B</b>	<p><b>the risk that an issuer or a counterparty will default (credit risk);</b></p>
<b>C</b>	<p><b>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);</b></p>
<b>D</b>	<p><b>the risk that a position cannot be liquidated in a timely manner at a reasonable price (liquidity risk);</b></p>
<b>E</b>	<p><b>the risk that the investment's value will be affected by changes in exchange rates (ex-</b></p>

		<b>change or currency risk);</b>
	<b>F</b>	<b>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</b>
	<b>G</b>	<b>risks related to a concentration of assets or markets; and</b>
<b>(ii)</b>	<b>horizontal risk factors:</b>	
		<b>The description referred to in paragraph (10)(a)(iii) should also mention, where relevant and material, the following factors that may affect the product:</b>
	<b>A</b>	<b>performance risk, including the variability of risk levels depending on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;</b>

	<b>B</b>	risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;
	<b>C</b>	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;
	<b>D</b>	inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;
	<b>E</b>	inflation risk; and
	<b>F</b>	lack of certainty that environmental factors, such as a tax regime, will persist;

		<p>(iii) possible prioritisation of information disclosure:</p> <p>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 <i>scheme</i>;</p>
(11)	<p>the historical performance of the <i>scheme</i> (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the <i>simplified prospectus</i>), including:</p> <p>(a) disclosure of past performance:</p> <p>(i) the <i>scheme's</i> past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years. If the <i>scheme</i> 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</p> <p>(ii) if a <i>scheme</i> 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 <i>scheme</i> 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;</p>	
Note:		<p>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.</p>

	<p>(b) disclosure of cumulative performance:</p> <p>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);</p>
Note:	<p>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.</p>
	<p>(c) exclusion of subscription and redemption fees, subject to appropriate disclosure:</p> <p>A statement should be made that past performance of the <i>scheme</i> does not include the effect of subscription and redemption fees.</p>
Notes:	<p>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.</p> <p>2. The <i>scheme's</i> historical performance may be produced as a separate attachment to the <i>simplified prospectus</i>.</p>
(12)	<p>a profile of the typical investor the <i>scheme</i> is designed for;</p>
	<p><b>Economic information</b></p>
(13)	<p>the <i>scheme's</i> applicable tax regime, including:</p>
	<p>(a) the tax regime applicable to the <i>scheme</i> in the UK; and</p> <p>(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;</p>

**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 rate, calculated as shown in Annex 2 to this chapter; and
  - (vi) an indication of the existence of fee-sharing agreements and soft commissions;

<p>Note:</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p>	<p>In explaining the function of the TER to the reader, appropriate wording should be used in the <i>simplified prospectus</i>. For example, TER might be explained in the following terms: "The TER shows the annual operating expenses of the <i>scheme</i> - it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different <i>schemes</i>."</p> <p>It is the <i>FSA's</i> understanding that the disclosure of a reasonable estimate of expected costs on an ex ante basis, as required by paragraph (14)(a)(ii), only applies to new <i>schemes</i> where a TER cannot yet be calculated. Where a TER can be calculated for a <i>simplified prospectus scheme</i>, there is no need to have to disclose a reasonable estimate of expected costs on an ex ante basis in accordance with paragraph (14)(a)(ii), in addition to the TER.</p> <p>Paragraph (14)(a)(vi) should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the <i>Handbook</i> . Taking into account current market practice, consideration should be given as to how far the <i>scheme's</i> existing fee-sharing agreements and comparable fee arrangements are for the exclusive benefit of the <i>scheme</i>.</p> <p>The <i>simplified prospectus</i> should make a reference to the full <i>prospectus</i> for detailed</p>
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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 receives 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 *FSA* 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*.

#### 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.

- (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 2009, unless remade.

#### Composite documents for several schemes, sub-funds and classes

4.6.10

G

In the FSA'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

G

In the FSA'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

R

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

R

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 Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our

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[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".



## Total expense ratio calculation

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

### Total expense ratio (TER)

1. **Definition of the TER**

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

Total expense ratio (TER)

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

(c)

The total operating costs do not include:

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

## Total expense ratio (TER)

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

## Total expense ratio (TER)

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

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

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## 5. Performance fees:

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

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

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

The synthetic TER is equal to the ratio of:

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

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

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

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

Total expense ratio (TER)

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

7. **Umbrella funds/multiclass funds:**

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

Notes:

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

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

2.

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

## Portfolio turnover calculation

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

### Note:

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

### Portfolio turnover rate

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

Purchases of securities = X

Sales of securities = Y

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

Issues/Subscriptions of units of the scheme = S

Cancellations/Redemptions of units of the scheme = T

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

Reference average of total net assets = M

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

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

### Note

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

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

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(Average Fund Value over 12 months) x 100

- (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**

6.6.18

**G**

- (1) The effect of ■ COBS TP 2.12R is that ■ COB 7.1 (Conflict of interest and material interest) (as it was in force on 31 October 2007) continues to apply for *scheme management activity* and contains *rules* on the fair treatment of *customers* where a *firm* has a conflict of interest in relation to a transaction. ■ COLL 6.6.17 R (1) provides *rules* for specific circumstances where ■ COB 7.1 would not be appropriate for an *authorised fund*.
  
- (2) Regulation 44 of the *OEIC Regulations* (Invalidity of certain transactions involving directors) is relevant to the application of ■ COLL 6.6.17 R.



## 6.7 Payments

### Application

6.7.1 **R** This section applies in accordance with ■ COLL 6.7.2 R (Table of application).

### Table of application

6.7.2 **R** Table of Application. This table belongs to ■ COLL 6.7.1 R.

<i>Rule</i>	ICVC	ACD	<i>Depository of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
6.7.1R to 6.7.5G	x	x	x	x	x
6.7.6G	x	x		x	
6.7.7R		x		x	
6.7.8G		x		x	
6.7.9R		x		x	
6.7.10R		x	x	x	x
6.7.11G		x	x	x	x
6.7.12R	x	x		x	
6.7.13G	x	x		x	
6.7.14R	x				
6.7.15R	x	x	x	x	x
6.7.16G		x	x	x	x
6.7.17R	x	x		x	

Note: "x" means "applies", but not every paragraph in every *rule* will necessarily apply.

### Purpose

6.7.3 **G** (1) This section assists in securing the *regulatory objective* of protecting *consumers* through requirements which govern the payments out of *scheme property* and charges imposed on investors when buying or selling *units*.

- (2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for *unitholders* of any increases in charges and payments to the *authorised fund manager*.
- (3) The *prospectus* should make adequate provision for payments from an *authorised fund*. This section:
  - (a) prohibits, or stipulates the conditions on which, the payments out of the *scheme property* can be made;
  - (b) requires certain payments to be conditional on disclosure in the *prospectus*; and
  - (c) governs the allocation of payments between capital and income.

#### Payments out of scheme property

6.7.4

**R**

- (1) The only payments which may be recovered from the *scheme property* of an *authorised fund* are those in respect of:
  - (a) remunerating the parties operating the *authorised fund*;
  - (b) the administration of the *authorised fund*; or
  - (c) the investment or safekeeping of the *scheme property*.
- (2) No payment under this *rule* can be made from *scheme property* if it is unfair to (or materially prejudices the interests of) any class of *unitholders* or potential *unitholders*.
- (3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the *authorised fund*.

#### Payments out of scheme property: guidance

6.7.5

**G**

- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with ■ COLL 4.2.5R (13) and ■ COLL 4.2.5R (14) (Table: contents of the prospectus).
- (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
- (3) ■ COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.

#### Performance fees

PAGE  
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6.7.6

**G**

- (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

**R**

- (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) and ■ COLL 6.3.8 R (Dilution).

**Charges on buying and selling units: guidance**

- 6.7.8 **G**
- (1) To introduce a new charge for the *sale* or *redemption* of *units*, or any new category of remuneration for its services or increase the rate stated in the *prospectus*, the *authorised fund manager* will need to comply with ■ COLL 4.2.5 R (Table: contents of prospectus) and ■ COLL 4.3 (Approvals and notifications).
  - (2) A *redemption charge* may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the *unitholder* has held the *units* or be calculated on the basis of the *unit price* performance of the *units*. However any *redemption charge* should not be such that it could be reasonably regarded as restricting any right of *redemption*.
  - (3) The *prospectus* should contain a statement as to the determination of the order in which *units* which have been acquired at different times by a *unitholder* are to be taken to be *redeemed* or *cancelled* for the purpose of the imposition of the *redemption charge*.

**Charges for the exchange of units in an umbrella**

- 6.7.9 **R**
- For a *scheme* which is an *umbrella*, an *authorised fund manager* must not make a charge on an exchange of *units* in one *sub-fund* for *units* in another *sub-fund* unless the amount of the charge is not more than the amount stated in the current *prospectus*.

**Allocation of payments to income or capital**

- 6.7.10 **R**
- (1) The *authorised fund manager* must determine whether a payment is to be made from the *income property* or *capital property* of an *authorised fund*, and in doing so the *authorised fund manager* must:
    - (a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the *scheme*; and
    - (b) agree the treatment of any payment with the *depository*.
  - (2) Where, for any *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 **G**
- (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

**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 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

**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 6.7.12R (2)); and
- (3) payments to third parties, for maintaining details of beneficial *unitholders*.

**Movable or immovable property**

6.7.14

**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

**R**

- (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue of units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.
- (2) The *ICVC*, its *depository* or the *trustee* of the *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

- (a) there is nothing in the *instrument constituting the scheme* of the *authorised fund* expressly forbidding the payment; and
- (b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

**Exemptions from liability to account for profits**

6.7.16

**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

**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

**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

**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 with the first *day* of an *annual accounting period* 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 is to run for a period of 12 *months*, beginning on the next *day* after the *accounting reference date*, except where (6) applies.
- (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*.
- (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

**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

**Income allocation and distribution**

6.8.3

**R**

- (1) An *authorised fund* must have an *annual income allocation date*, which must be within four *months* of the *accounting reference date*.
- (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 *income property* is transferred at the end of the relevant accounting period.
- (4) If income is allocated and distributed during an accounting period:
  - (a) with effect from the end of the relevant *accounting period*, the amount of income allocated to *unit classes* 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 distribution 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*.

**Unclaimed, de minimis and joint unitholder distributions**

6.8.4

**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

**G**

■ 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.

Collective Investment Schemes

## Chapter 8

# Qualified investor schemes

PAGE  
1



## 8.1 Introduction

### Application

8.1.1

R

- (1) This chapter applies to:
- (a) an *authorised fund manager* of an AUT or an ICVC;
  - (b) any other *director* of an ICVC;
  - (c) a *depository* of an AUT or an ICVC; and
  - (d) an ICVC,
- which is a *qualified investor scheme*.
- (2) Where this chapter refers to *rules* in any other chapter of this sourcebook, those *rules* and any relevant *guidance* should be applied as if they referred to *qualified investor schemes*.

### Purpose

8.1.2

G

- (1) This chapter assists in achieving the *regulatory 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

R

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

**Qualified investor schemes - explanation**

8.1.4

G

- (1) *Qualified investor schemes* are *authorised funds* which may only be sold to sophisticated investors. Therefore, the *authorised fund manager* must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to the *client* types set out in COLL 8 Annex 1R .
- (2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for retail *schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

**Application and notification procedures**

8.1.5

G

Details of the application procedures in respect of *qualified investor schemes* are contained in ■ COLL 2.1 (Authorised fund applications). COLLG provides details on how notifications may be made to the FSA.



## 8.2 Constitution

### Application

8.2.1 **R** This section applies to an *authorised fund manager* in respect of a *qualified investor scheme*.

### 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*.

### Names of schemes, sub-funds, and classes of units

8.2.3 **R** 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.

### 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.

### 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*.

### Table: contents of the instrument constituting the scheme

8.2.6 **R** This table belongs to **COLL 8.2.5 R**

<b>1</b>	<b>Description of the authorised fund</b>
	<b>Information detailing:</b>
	(1) <b>the name of the <i>authorised fund</i>;</b>
	(2) <b>that the <i>authorised fund</i> is a <i>qualified investor scheme</i>;</b>
	<b>and</b>
	(3) <b>in the case of an <i>ICVC</i>, whether the head office of the <i>company</i> is situated in England and Wales or Wales or Scotland or Northern Ireland.</b>

**This Annex belongs to COLL 8.1.3R (Qualified Investor Schemes: eligible investors).**

**Qualified investor schemes: eligible investors**

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 person**any 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 24 of the Charities Act 1993;  
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*.