

# Glossary



- (i) the *manager*;
- (ii) the *trustee*;
- (iii) any *investment adviser* of the *manager*;
- (iv) any *associate* of any *person* in (b)(i), (ii) or (iii);
- (v) the auditor of the *scheme*.

(c) (in relation to an ACS):

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

*affiliated company*

FCA PRA

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

AFM

FCA PRA

*authorised fund manager*.

*agent*

FCA PRA

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

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

*agreeing to carry on a regulated activity*

FCA PRA

(A) In the PRA Handbook:

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

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

(B) In the FCA Handbook:

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

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

AIF

**FCA** **PRA**

*alternative investment fund*.

AIF custodial  
assets

**FCA**

*financial instruments* of an AIF that can be:

- (a) registered in a *financial instruments* account opened in the *depositary's* books; or
- (b) physically delivered to the *depositary*.

[Note: recital 100 and articles 88 (Financial instruments to be held in custody) and 89(3) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation*.]

AIFM

**FCA** **PRA**

*alternative investment fund manager*.

AIFM  
investment  
firm

**FCA** **PRA**

a *firm* which:

- (a) is:
  - (i) a *full-scope UK AIFM*; or
  - (ii) an *incoming EEA AIFM branch*; and
- (b) has a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) for *managing investments* where:
  - (i) the *investments* managed include one or more *financial instruments*; and
  - (ii) the *permission* is limited to the activities permitted by article 6(4) of *AIFMD*.

<p><i>AIFM investment management functions</i></p> <p><b>FCA</b></p>	<p>investment management functions of an <i>AIFM</i> as set out in 1(a) (portfolio management) or (b) (risk management) of Annex I to <i>AIFMD</i>.</p>
<p><i>AIFM management functions</i></p> <p><b>FCA PRA</b></p>	<p>the management functions of an <i>AIFM</i> listed in Annex I to <i>AIFMD</i>.</p>
<p><i>AIFM qualifier</i></p> <p><b>FCA PRA</b></p>	<p>an <i>EEA AIFM</i> which is <i>marketing</i>, or has <i>marketed</i>, an <i>AIF</i> in the <i>UK</i> by:</p> <ul style="list-style-type: none"> <li>(a) exercising its <i>EEA</i> right to <i>market</i> under Schedule 3 of the <i>Act</i> (<i>EEA Passport Rights</i>); and</li> <li>(b) is not exercising a right to manage a <i>UK AIF</i> under Schedule 3 of the <i>Act</i>.</li> </ul>
<p><i>AIFM Remuneration Code</i></p> <p><b>FCA</b></p>	<p>as set out in ■ SYSC 19B (<i>AIFM Remuneration Code</i>).</p>
<p><i>AIFM Remuneration Code staff</i></p> <p><b>FCA</b></p>	<p>(for an <i>AIFM</i>) has the meaning given in ■ SYSC 19B.1.3 R.</p>
<p><i>AIFM remuneration principles</i></p> <p><b>FCA</b></p>	<p>the principles set out in ■ SYSC 19B.1.5 R to ■ SYSC 19B.1.24 R.</p>
<p><i>AIFMD</i></p> <p><b>FCA PRA</b></p>	<p>Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (<a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:174:0001:0073:EN:PDF</a>)</p>
<p><i>AIFMD host state requirements</i></p> <p><b>FCA PRA</b></p>	<p><i>Handbook rules</i> transposing articles 12 and 14 of <i>AIFMD</i> and which fall under the responsibility of the <i>Host State</i> to supervise where an <i>AIFM</i> manages or markets an <i>AIF</i> through a <i>branch</i> in that <i>EEA State</i>, namely:</p> <ul style="list-style-type: none"> <li>(a) ■ FUND 3.8;</li> <li>(b) ■ SYSC 4.1.2C R;</li> <li>(c) ■ SYSC 10.1.22 R to ■ SYSC 10.1.26 R; and</li> <li>(d) ■ COBS 2.1.4 R.</li> </ul>
<p><i>AIFMD level 2 regulation</i></p> <p><b>FCA PRA</b></p>	<p>Commission delegated regulation (EU) No 231/2013 supplementing Directive 2011/16/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision</p>

	( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:083:0001:0095:en:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:083:0001:0095:en:PDF</a> ) .
<i>AIFMD UK regulation</i> FCA PRA	(A) In the PRA Handbook: the Alternative Investment Fund Managers Regulations 2013 (SI 2013/....) (B) In the FCA Handbook: the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773)
<i>aircraft</i> FCA PRA	(in relation to a <i>class of contract of insurance</i> ) the <i>class of contract of insurance</i> , specified in paragraph 5 of Part I of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of general insurance), upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
<i>aircraft liability</i> FCA PRA	(in relation to a <i>class of contract of insurance</i> ) the <i>class of contract of insurance</i> , specified in paragraph 11 of Part I of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of general insurance), against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.
<i>all price risk measure</i> FCA PRA	(in ■ BIPRU 7.10 (Use of a Value at Risk Model)) has the meaning in ■ BIPRU 7.10.116A R (Capital calculations for VaR models), which is, in relation to a <i>business day</i> , the <i>all price risk measure</i> required under the provisions in ■ BIPRU 7.10 about <i>specific risk</i> for the <i>correlation trading portfolio</i> .
<i>allocation period</i> FCA PRA	a single 24-hour period or, with the agreement of each <i>professional client</i> concerned, a period spanning five consecutive <i>business days</i> , during which an aggregated <i>series of transactions</i> may be <i>executed</i> .
<i>allotment</i> FCA PRA	(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i> ) the process or processes by which the number of <i>relevant securities</i> to be received by investors who have previously subscribed or applied for them is determined.
<i>alternative debenture</i> FCA PRA	the <i>investment</i> specified in article 77A of the <i>Regulated Activities Order</i> (Alternative finance investment bonds).
<i>alternative investment fund</i> FCA PRA	(in accordance with article 4(1)(a) of <i>AIFMD</i> ) a collective investment undertaking, including investment compartments thereof, which: (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) does not require authorisation pursuant to article 5 of the <i>UCITS Directive</i> .
<i>alternative investment fund manager</i> FCA PRA	(1) (in ■ GENPRU 3.1) a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an <i>undertaking</i> which is outside the <i>EEA</i> and which would require authorisation in accordance with Directive 2011/61/EU if it had its registered office within the <i>EEA</i> . (2) (except in ■ GENPRU 3.1 and in accordance with article 4(1)(b) of <i>AIFMD</i> ) a legal person whose regular business is performing <i>AIFM investment management functions</i> for one or more <i>AIF</i> .

*alternative projection*

**FCA** **PRA**

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

*alternative standardised approach*

**FCA** **PRA**

one of the following:

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

AMA

**FCA** **PRA**

the *advanced measurement approach*.

AMA permission

**PRA**

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

*ancillary activity*

**FCA** **PRA**

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

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

*ancillary insurance services undertaking*

**FCA** **PRA**

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

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

*ancillary risk*

**FCA** **PRA**

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

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

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

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

ancillary  
service

FCA PRA

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

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

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

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

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

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

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

(f) services related to underwriting; and

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

(i) commodities;

(ii) climatic variables;

(iii) freight rates;

(iv) emission allowances;

(v) inflation rates or other official economic statistics;

(vi) telecommunications bandwidth;

(vii) commodity storage capacity;

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

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

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

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

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

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

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

(A) In the PRA Handbook

(1) (in accordance with Article 4(21) of the *Banking Consolidation Directive* (Definitions) and subject to (2)) and in relation to an *undertaking*

ancillary  
services  
undertaking

FCA PRA

in a *consolidation group, sub-group* or another group of *persons*) an *undertaking* complying with the following conditions:

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

(2) (for the purpose of ■ GENPRU 1.3 (Valuation) and ■ INSPRU 6.1 (Group Risk: Insurance Groups) an *undertaking* in (1) and an .

(B) In the FCA Handbook

(1) (in accordance with Article 4(21) of the *Banking Consolidation Directive* (Definitions) for the purpose of *GENPRU* (except in ■ GENPRU 3) and *BIPRU* (except in ■ BIPRU 12) and subject to (2)) and in relation to an *undertaking* in a *consolidation group, sub-group* or another group of *persons*) an *undertaking* complying with the following conditions:

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

2) (for the purpose of ■ GENPRU 1.3 (Valuation) and ■ INSPRU 6.1 (Group Risk: Insurance Groups) an *undertaking* in (1) and an .

(3) (except in (1)) has the meaning in article 4(1)(18) of the *EU CRR*.

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the exercise of an *overallotment facility* or of a *greenshoe option* by *investment firms* or *credit institutions*, in the context of a *significant distribution* of *relevant securities*, exclusively for facilitating *stabilisation* activity.

*ancillary stabilisation*

FCA

*announceable information*

FCA PRA

*annual accounting period*

FCA PRA

(1) [deleted]

(2) (in *COLL*): the period determined in accordance with ■ COLL 6.8.2 R (3) to ■ COLL 6.8.2 R (7) (Accounting periods).

*Annual Accounts*

FCA PRA

(1) the Council Directive of 19 December 1991 concerning the annual accounts and consolidated accounts of *insurance undertakings* (No. 91/674/EEC).

<p><i>annual audited fixed expenditure</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(2) (in <i>UPRU</i>) accounts prepared to comply with :</p> <p>(a) the Companies Acts 1985 to 1989, and their equivalent in Northern Ireland, where these provisions are applicable; or</p> <p>(b) the Companies Act 2006; or</p> <p>(c) other statutory obligations.</p>
<p><i>annual bonus</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>UPRU</i>) has the meaning given in ■ <i>UPRU 2.1.3 R</i> (Annual audited fixed expenditure).</p>
<p><i>annual budget</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>with-profits insurance contract</i>) a discretionary addition to <i>policy</i> benefits under a <i>with-profits insurance contract</i> made by a <i>long-term insurer</i> as a result of the annual <i>actuarial investigation</i>.</p>
<p><i>annual eligible income</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the annual budgeted costs of operating the <i>Financial Ombudsman Service</i>.</p>
<p><i>annual financial statements</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>FEES</i>) (in relation to a <i>firm</i> and a <i>class</i>) the annual income (as described in ■ <i>FEES 6 Annex 3 R</i>) for the <i>firm's</i> last financial year ended in the year to 31 December preceding the date for submission of the information under ■ <i>FEES 6.5.13 R</i> attributable to that <i>class</i>. A <i>firm</i> must calculate <i>annual eligible income</i> from such annual income in one of the following ways:</p> <p>(a) only include such annual income if it is attributable to business conducted with or for the benefit of <i>eligible claimants</i> and is otherwise attributable to compensatable business; or</p> <p>(b) include all such annual income.</p>
<p><i>annual income</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the financial statements in respect of the year ending on the <i>firm's</i> annual accounting reference date, which is the date to which a corporate <i>firm's</i> accounts are prepared for the purposes of the Companies Acts, or, where the <i>firm</i> is not subject to the Companies Acts, the equivalent date chosen by the <i>firm</i> and notified to the <i>FCA</i> or <i>PRA</i> as the case may be .</p>
<p><i>annual income allocation date</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>MIPRU</i>)</p> <p>the income referred to in ■ <i>MIPRU 4.3</i></p>
<p><i>annual percentage rate</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the date in any year stated in the most recently published <i>prospectus</i> as the date on or before which, in respect of each <i>annual accounting period</i>, an allocation of income is to be made.</p>
<p><i>annual report and accounts</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the annual percentage rate of charge for a contract as calculated in accordance with ■ <i>MCOB 10</i> (Annual percentage rate).</p>
	<p>(a) (in relation to a <i>company</i> incorporated in the <i>United Kingdom</i>) an annual report and annual accounts as those terms are defined in:</p> <p>(i) section 262(1) of the Companies Act 1985, together with an auditor's report prepared in relation to those accounts under</p>

<p>section 235 of the same Act where these provisions are applicable; or</p> <p>(ii) section 471 of the Companies Act 2006 together with an auditor's report prepared in relation to those accounts under sections 495 to 497 of the same Act;</p> <p>(b) (in relation to any other body) any similar or analogous <i>documents</i> which it is required to prepare whether by its constitution or by the law under which it is established.</p>	<p>section 235 of the same Act where these provisions are applicable; or</p> <p>(ii) section 471 of the Companies Act 2006 together with an auditor's report prepared in relation to those accounts under sections 495 to 497 of the same Act;</p> <p>(b) (in relation to any other body) any similar or analogous <i>documents</i> which it is required to prepare whether by its constitution or by the law under which it is established.</p>
<p><i>annual statement provisions</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in MCOB) in relation to a:</p> <p>(a) <i>regulated mortgage contract</i>, ■ MCOB 7.5;</p> <p>(b) <i>home purchase plan</i>, ■ MCOB 7.8.3 R to ■ MCOB 7.8.6 R; and</p> <p>(c) <i>instalment reversion plan</i>, ■ MCOB 9.9.1 R to ■ MCOB 9.9.3 R (2)(c).</p>
<p><i>annualised net written premiums</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(for the purposes of ■ INSPRU 1.4 ) in relation to a <i>financial year</i>, the <i>net written premiums</i> received during that <i>financial year</i>, except that in relation to a <i>financial year</i> that has been validly extended beyond, or shortened from, a period of 12 months, the amount of <i>net written premiums</i> is the amount determined in accordance with the formula: <math>NWP \times 365/D</math> where:</p> <p>(1) NWP is the amount of <i>net written premiums</i> received in the financial year; and</p> <p>(2) D is the number of days in that <i>financial year</i>.</p>
<p>APER</p> <p><b>FCA</b> <b>PRA</b></p>	<p>the part of the <i>Handbook</i> in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons.</p>
<p><i>applicable asset</i></p> <p><b>FCA</b></p>	<p>(a) in relation to <i>MiFID business</i>, a <i>financial instrument</i>; or</p> <p>(b) in relation to <i>safeguarding and administering investments</i> that is not <i>MiFID business</i>, acting as trustee or depositary of a UCITS, and/or acting as trustee or depositary of an AIF, a <i>designated investment</i>.</p>
<p><i>applicable provisions</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the <i>Host State</i> rules with which:</p> <p>(a) an <i>incoming EEA firm</i> is required to comply when carrying on a <i>permitted activity</i> through a <i>branch</i> or by providing services (as applicable) in the <i>United Kingdom</i>, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the <i>Act</i> (Exercise of passport rights by EEA firms); or</p> <p>(b) a <i>UK firm</i> is required to comply when conducting business through a <i>branch</i> (in accordance with paragraph 19(13) of Part III of Schedule 3 to the <i>Act</i> (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another <i>EEA State</i>.</p>
<p><i>applicable sectoral consolidation rules</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in respect of a <i>financial sector</i> and in accordance with paragraph 6.9 of ■ GENPRU 3 Annex 1 R (Applicable sectoral consolidation rules)) the <i>appropriate regulator's sectoral rules</i> about capital adequacy and solvency on a consolidated basis applicable to that <i>financial sector</i> under the table in paragraph 6.10 of ■ GENPRU 3 Annex 1 R.</p>
<p><i>applicable sectoral rules</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in respect of a <i>financial sector</i>) <i>applicable sectoral consolidation rules</i> for that <i>financial sector</i> and the <i>appropriate regulator's sectoral rules</i> about capital adequacy and solvency for:</p> <p>(a) the <i>banking and investment services sector</i> as set out in paragraph 6.2 of ■ GENPRU 3 Annex 1 R; or</p>

<p><i>applicant</i> FCA PRA</p>	<p>(b) <i>insurance undertakings</i>;</p> <p>which of those sets of <i>rules</i> apply for the purpose of a particular calculation depends on the nature of that calculation.</p> <p>(1) (in <i>LR</i>) an <i>issuer</i> which is applying for <i>admission of securities</i>.</p> <p>(2) (in <i>PR</i>) an applicant for approval of a <i>prospectus</i> or <i>supplementary prospectus</i> relating to <i>transferable securities</i>.</p>
<p><i>appointed representative</i> FCA PRA</p>	<p>(in accordance with section 39 of the <i>Act</i> (other than an <i>authorised person</i>) who:</p> <p>(a) is a party to a contract with an <i>authorised person</i> (his <i>principal</i>) which:</p> <p style="padding-left: 20px;">(i) permits or requires him to carry on business of a description prescribed in the <i>Appointed Representatives Regulations</i>; and</p> <p style="padding-left: 20px;">(ii) complies with such requirements as are prescribed in those <i>Regulations</i>; and</p> <p>(b) is someone for whose activities in carrying on the whole or part of that business his <i>principal</i> has accepted responsibility in writing;</p> <p>and who is therefore an <i>exempt person</i> in relation to any <i>regulated activity</i> comprised in the carrying on of that business for which his <i>principal</i> has accepted responsibility.</p>
<p><i>Appointed Representatives Regulations</i> FCA PRA</p>	<p>the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (SI 2001/1217).</p>
<p><i>apportionment and oversight function</i> FCA PRA</p>	<p><i>FCA controlled function</i> CF8 in Parts 1 and Part 2 of the <i>table of FCA controlled functions</i>, described more fully in ■ SUP 10A.7.1 R .</p>
<p><i>appropriate actuary</i> FCA PRA</p>	<p>an <i>actuary</i> appointed under ■ SUP 4.4.1 R (Appointment of an appropriate actuary).</p>
<p><i>appropriate charges information</i> FCA PRA</p>	<p>(in <i>COBS</i>) information about charges which is calculated and presented in accordance with the charges <i>rules</i> in ■ COBS 13.4.1 R and ■ COBS 13 Annexes 3 or ■ 4.</p>
<p><i>appropriate position risk adjustment</i> FCA PRA</p>	<p>(1) (in relation to a <i>position</i> treated under ■ BIPRU 7.6 (Option PRR)) the percentage figure applicable to that <i>position</i> under the table in ■ BIPRU 7.6.8 R (Appropriate Position Risk Adjustment);</p> <p>(2) (for any other purpose and in relation to a <i>position</i>) the <i>position risk adjustment</i> applicable to that position under BIPRU 7 (Market risk).</p>
<p><i>appropriate regulator</i> FCA PRA</p>	<p>(1) in the <i>FCA Handbook</i>, the <i>FCA</i>; and in the <i>PRA Handbook</i>, the <i>PRA</i>;</p> <p>(2)</p> <p>(a) in ■ SUP 11 "appropriate regulator" has the meaning given in section 178 of the <i>Act</i>, and</p>

(b) in ■ SUP 18 "appropriate regulator" has the meaning given in section 103A of the *Act*.

*appropriate UK regulator*

FCA PRA

(1) in relation to an *EEA firm* (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the *Act*), whichever of the *FCA* or *PRA* is the *competent authority* for the purposes of the relevant *Single Market Directive*;

(2) in relation to a *UK firm* (in accordance with Schedule 3 paragraph 18A to the *Act*),

(a) the *PRA*, where the *firm* is a *PRA-authorised person*; and

(b) in any other case, the *FCA*.

(3) in relation to a *Treaty firm* (in accordance with section 35(2A) of the *Act*),

(a) in the case of a *PRA-authorised person*, the *PRA*; and

(b) in any other case, the *FCA*.

*appropriate valuer*

FCA PRA

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

*approve*

FCA PRA

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

*approved bank*

FCA PRA

(except in *COLL* ) (in relation to a *bank* account opened by a firm):

(a) if the account is opened at a branch in the *United Kingdom*:

(i) the Bank of England; or

(ii) the central bank of a member state of the *OECD*; or

(iii) a *bank*; or

(iv) a *building society* ; or

(v) a bank which is supervised by the central bank or other banking regulator of a member state of the *OECD*; or

(b) if the account is opened elsewhere:

(i) a bank in (a); or

(ii) a *credit institution* established in an *EEA State* other than the *United Kingdom* and duly authorised by the relevant *Home State regulator*; or

(iii) a bank which is regulated in the Isle of Man or the Channel Islands; or

(c) a bank supervised by the South African Reserve Bank; or

(d) any other bank that:

(i) is subject to regulation by a national banking regulator;

(ii) is required to provide audited accounts;

(iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and

(iv) has an annual audit report which is not materially qualified.

(in *COLL* ) any person falling within (a-c).

*approved collateral*

FCA PRA

any form of security for the discharge of any liability arising from a *contingent liability investment* (other than a guarantee) which:

- (a) (in relation to an *on-exchange* transaction) is acceptable under the rules of the relevant exchange or *clearing house*; and
- (b) (in relation to an *OTC* transaction) would be acceptable for a similar transaction to the relevant exchange or *clearing house*.

*approved counterparty*

FCA PRA

any of the following:

- (a) an *approved credit institution*; or
- (b) a *firm* whose *permission* includes *dealing in investments as principal* with respect to *derivatives* which are not *listed*; or
- (c) a *MiFID investment firm* whose authorisation (as referred to in article 5 of *MiFID*) authorises it to carry on activities of the kind referred to in (b); or
- (d) in respect of a transaction involving a new issue of *securities* which are to be *listed*, the *issuer* or a *MiFID investment firm* acting on behalf of the *issuer*.

*approved credit institution*

FCA PRA

(A) In the PRA Handbook:

a *credit institution* recognised or permitted under the law of an *EEA State* to carry on any of the activities set out in Annex 1 to the *CRD*.

(B) In the FCA Handbook:

a *credit institution* recognised or permitted under the law of an *EEA State* to carry on any of the activities set out in Annex 1 to the *CRD*.

*approved depositary*

FCA PRA

any *depositary*:

- (a) which is subject to regulation by a national *regulatory body* in connection with its custody services;
- (b) which is required to prepare audited accounts;
- (c) whose latest annual audit report is not materially qualified; and
- (d) which
  - (i) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has surplus revenue over expenditure for the last two financial years; or
  - (ii) if not, nevertheless has adequate financial resources for its business.

*approved derivative*

FCA PRA

(1) (in *COLL* ) a derivative which is traded or *dealt* in on an eligible derivatives market.

(2) (in *INSPRU*) a *derivative* in respect of which the conditions in ■ *INSPRU 3.2.5 R* are met.

*approved financial institution*

FCA PRA

any of the following:

- (a) the European Central Bank;
- (b) the central bank of an *EEA State*;
- (c) the International Bank for Reconstruction and Development;
- (d) the European Bank for Reconstruction and Development;
- (e) the International Finance Corporation;
- (f) the International Monetary Fund;

- (g) the Inter-American Development Bank;
- (h) the African Development Bank;
- (i) the Asian Development Bank;
- (j) the Caribbean Development Bank;
- (k) the European Investment Bank;
- (l) the *EU*; and
- (m) the European Atomic Energy Community.

*approved index*

**FCA** **PRA**

in relation to *permitted links*:

- (a) an index that is:
  - (i) calculated independently;
  - (ii) published at least once every week;
  - (iii) based on constituents that are *permitted links*; and
  - (iv) calculated on a basis that is made available to the public, and that includes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents; or
- (b) a national index of retail prices published by or under the authority of a government, or by a body recognised under the national legislation, of a *Zone A country*; or
- (c) an index that is:
  - (i) based on constituents that are *permitted links*; and
  - (ii) in respect of which a *derivative* contract is *listed* ; or
- (d) the average earnings index when used for the purposes of orders made under section 148 of the Social Security Administration Act 1992 by the Department for Work and Pensions.

*approved money-market instrument*

**FCA** **PRA**

(in accordance with ■ **COLL 5.2.7F R**) a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

*approved person*

**FCA** **PRA**

a *person* in relation to whom the *FCA* or the *PRA* has given its approval under section 59 of the *Act* (Approval for particular arrangements) for the performance of a *controlled function*.

*approved quasi-derivative*

**FCA** **PRA**

a *quasi-derivative* in respect of which the conditions in ■ **INSPRU 3.2.5 R** are met.

PAGE  
A23

*approved reinsurance to close*

**FCA** **PRA**

- (a) a *reinsurance to close* effected before 1 January 2005; or
- (b) an agreement under which *members* of a *syndicate* in one *syndicate year* ("the reinsured *members*") agree with the *members* of that *syndicate* in a later *syndicate year* or the *members* of one other *syndicate* ("the reinsuring *members*") that the reinsuring *members* will discharge, or procure the discharge of, or indemnify the reinsured *members* against, all known and unknown *insurance business* liabilities of the reinsured *members* arising out

of the *insurance business* carried on by the reinsured *members* in that *syndicate year* that is:

- (i) effected after 1 January 2005; and
  - (ii) not a balance transfer between two *syndicate years* where the *syndicate* has only one *member* and the *member* is the same in each of those years ; or
- (c) an agreement under which *members* of a *syndicate* in one *syndicate year* ("the reinsured *members*") agree with a *subsidiary* of the *Society* that that *subsidiary* will discharge, or procure the discharge of, or indemnify the reinsured *members* against, all known and unknown *insurance business* liabilities of the reinsured *members* arising out of the *insurance business* carried on by the reinsured *members* in that *syndicate year* ("the reinsured liabilities") and where:
- (i) that *subsidiary* is wholly owned by the *Society* and if from time to time the *subsidiary* has an *asset* or cash flow deficiency such that the *subsidiary* is unable to meet any of the liabilities which it has reinsured, the *Society* is legally obliged to pay to the *subsidiary* a sum equal to that deficiency; and
  - (ii) at the effective date of the agreement, the relevant *syndicate year* has been open for at least two years after the date at which it would normally have been closed in accordance with the policies and practices in relation to the *syndicate* concerned.

*approved reporting mechanism*

FCA PRA

a trade-matching or reporting system approved by the *FCA* in accordance with Section 412A of the *Act*.

*approved security*

FCA PRA

(1) (in *COLL* ) a *transferable security* that is admitted to *official listing* in an *EEA State* or is traded on or under the rules of an *eligible securities* market (otherwise than by the specific permission of the market authority).

(2) (in *INSPRU* ) any of the following:

- (a) any *security* issued or guaranteed by, or the repayment of the principal of which, or the interest on which, is guaranteed by, and any loans to or deposits with, any government, public or local authority or nationalised industry or undertaking, which belongs to a *Zone A country*;
- (b) any loan to, or deposit with, an *approved financial institution*;
- (c) any *debenture* issued before 31 December 1994 by the Agricultural Mortgage Corporation Limited or the Scottish Agricultural Securities Corporation Limited.

(3) (in *COBS*) any of the following:

- (a) any *security* issued or guaranteed by, or the repayment of the principal of which, or the interest on which is guaranteed by, and any loan to or deposit with, any government, public or local authority or nationalised industry or undertaking that belongs to *Zone A* as defined in the *Banking Consolidation Directive*; or
- (b) any loan to, or deposit with, an *approved financial institution*; or
- (c) debentures issued before 31 December 1994 by the Agricultural Mortgage Corporation Ltd or the Scottish Agricultural Securities Corporation Ltd.

*approved stock lending transaction*

**FCA** **PRA**

a *stock lending* transaction in respect of which the conditions in ■ INSPRU 3.2.36 R have been met.

APR

**FCA** **PRA**

*annual percentage rate*.

APR rules

**FCA** **PRA**

■ MCOB 10.

*arrangement*

**FCA** **PRA**

(as defined in section 59(10) of the *Act* (Approval for particular arrangements)) any kind of arrangement for the performance of a function of an *authorised person* ("A") which is entered into by A or any contractor of his with another *person*, including, in particular, that other *person's* appointment to an office, his becoming a partner, or his employment (whether under a contract of service or otherwise).

*arranging*

**FCA** **PRA**

(a) (except in relation to a *home finance transaction*) *arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments or agreeing to carry on either of those regulated activities.*

(b) (in relation to a *regulated mortgage contract*) *arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts or agreeing to carry on either of those regulated activities;*

(c) (in relation to a *home purchase plan*) *arranging (bringing about) a home purchase plan, making arrangements with a view to a home purchase plan or agreeing to carry on either of those regulated activities.*

(d) (in relation to a *home reversion plan*) *arranging (bringing about) a home reversion plan, making arrangements with a view to a home reversion plan or agreeing to carry on either of those regulated activities.*

*arranging (bringing about) a home finance transaction*

**FCA** **PRA**

any of the *regulated activities* of *arranging (bringing about) a regulated mortgage contract, arranging (bringing about) a home purchase plan, arranging (bringing about) a home reversion plan or arranging (bringing about) a regulated sale and rent back agreement.*

*arranging (bringing about) a home purchase plan*

**FCA** **PRA**

the *regulated activity*, specified in article 25C(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another person to:

(a) enter into a *home purchase plan* as *home purchaser*; or

(b) vary the terms of a *home purchase plan* entered into by him as *home purchaser* on or after 6 April 2007.

*arranging (bringing about) a home reversion plan*

**FCA** **PRA**

the *regulated activity*, specified in article 25B(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another *person* to:

(a) enter into a *home reversion plan* as *reversion occupier* or as plan provider; or

(b) vary the terms of a *home reversion plan* entered into by him as *reversion occupier* or as plan provider on or after 6 April 2007.

*arranging (bringing about) a regulated sale and rent back agreement*

**FCA** **PRA**

the *regulated activity*, specified in article 25E(1) of the *Regulated Activities Order*, which is in summary making arrangements:

- (a) for another *person* to enter into a *regulated sale and rent back agreement* as an agreement seller or as an agreement provider; or
- (b) for another *person* to vary the terms of a *regulated sale and rent back agreement*, entered into on or after 1 July 2009 by him as agreement seller or agreement provider, in such a way so as to vary his obligations under that *agreement* and in relation to a *person* who acquires obligations or rights under a *regulated sale and rent back agreement*, an activity is a specified kind of activity for the purposes of this part of the definition only if the *agreement* was entered into by the agreement provider (rather than the obligations or rights acquired) on or after 1 July 2009;

including making arrangements with a view to a *person* who participates in the arrangements *entering into a regulated sale and rent back agreement* as agreement seller or agreement provider.

*arranging (bringing about) deals in investments*

**FCA** **PRA**

the *regulated activity*, specified in article 25(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another *person* (whether as *principal* or agent) to *buy, sell, subscribe for or underwrite* a particular *investment* which is:

- (a) a *designated investment*; or
- (b) a *funeral plan contract*; or
- (c) the *underwriting capacity of a Lloyd's syndicate*; or
- (d) *membership of a Lloyd's syndicate*; or
- (da) a *pure protection contract*; or
- (db) a *general insurance contract*; or
- (e) *rights to or interests in investments* in (b), (c) or (d).

*arranging (bringing about) regulated mortgage contracts*

**FCA** **PRA**

the *regulated activity*, specified in article 25A(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another *person* to:

- (a) enter into a *regulated mortgage contract* as borrower; or
- (b) vary the terms of a *regulated mortgage contract* entered into by him as borrower on or after 31 October 2004.

(see also *arranging* (in relation to *regulated mortgage contracts*) and *making arrangements with a view to regulated mortgage contracts*.)

*arranging deals in contracts of insurance written at Lloyd's*

**FCA** **PRA**

the *regulated activity*, specified in article 58 of the *Regulated Activities Order* (Arranging deals in contracts of insurance written at Lloyd's), carried on by the *Society of Lloyd's* of arranging deals in *contracts of insurance* written at Lloyd's.

*arranging qualifying credit*

**FCA** **PRA**

the *controlled activity*, specified in paragraph 10A of Schedule 1 to the *Financial Promotion Order*, of making arrangements:

- (a) for another *person* to enter as borrower into an agreement for the provision of *qualifying credit*; or
- (b) for a borrower under a *regulated mortgage contract*, entered into on or after 31 October 2004, to vary the terms of that contract.

arranging  
safeguarding  
and  
administration  
of assets

FCA PRA

that part of *safeguarding and administering investments* which consists solely of arranging for one or more other *persons* to carry on both:

- (a) the safeguarding of assets belonging to another; and
- (b) the administration of those assets.

arrears

FCA PRA

(in relation to a *regulated mortgage contract* or a *home purchase plan*) either:

- (a) a shortfall (equivalent to two or more regular payments) in the accumulated total payments actually made by the *customer* measured against the accumulated total amount of payments due to be received from the *customer*; or
- (b) remaining in breach, for more than one month, of an agreed borrowing limit or of an obligation to pay or repay where the loan or *home purchase plan* does not have a regular payment or repayment plan.

article 12(1)  
relationship

PRA

(A) (in the PRA Handbook):

means a relationship where *undertakings* are linked by a relationship within the meaning of article 12(1) of Directive 83/349 EEC.

Article 129  
implementing  
measure

FCA PRA

any:

- (a) measure taken by the *appropriate regulator* under regulations 7-9 of the *Capital Requirements Regulations 2006*; or
- (b) corresponding measure taken by another *competent authority* to apply an *Article 129 permission* as referred to in the last paragraph of Article 129(2) of the *Banking Consolidation Directive*.

Article 129  
permission

FCA PRA

a permission of the type referred to in Article 129(2) of the *Banking Consolidation Directive* (permission to apply the *IRB approach*, the *AMA approach* or the *CCR internal model method* on a consolidated basis) or Article 37(2) of the *Capital Adequacy Directive* (permission to apply the *VaR model approach* on a consolidated basis) excluding an *Article 129 implementing measure*.

Article 129  
procedure

FCA PRA

the procedure described in Article 129(2) of the *Banking Consolidation Directive* (permission to apply the *IRB approach*, the *AMA approach* or the *CCR internal model method* on a consolidated basis) or that applies under Article 37(2) of the *Capital Adequacy Directive* (permission to apply the *VaR model approach* on a consolidated basis) for the purpose of applying for and granting or refusing an *Article 129 permission* or the procedure for varying or revoking an *Article 129 permission* in accordance with the *Banking Consolidation Directive* or the *Capital Adequacy Directive*.

Article 134  
relationship

FCA PRA

(in accordance with Article 134 of the *Banking Consolidation Directive*) a relationship of one of the following kinds:

- (a) where a *person* exercises a significant influence over one or more *persons*, but without holding a *participation* or other capital ties in these *persons* and without being a *parent undertaking* of these *persons*; or
- (b) where two or more *persons* are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association.

article 18(5)  
relationship

FCA PRA

(A) (in the PRA Handbook)

the relationship where there are participations or capital ties other than those referred to in article 18(1) and (2) of the *EU CRR* (Methods for prudential consolidation).

article 18(6)  
relationship

FCA

(B) (in the FCA Handbook)

the relationship where there are participations or capital ties other than those referred to in article 18(1) and (4) of the *EU CRR* (Methods for prudential consolidation).

(in accordance with article 18 of the *EU CRR* (Methods for prudential consolidation)) a relationship of one of the following kinds:

(a) where an *institution* exercises a significant influence over one or more *institutions* or *financial institutions*, but without holding a *participation* or other capital ties in these *institutions*; or

(b) where two or more *institutions* or *financial institutions* are placed under single management other than under a contract or clauses of their memoranda or articles of association.

article 9  
default

FCA PRA

(as defined in article 2(2) of the *compensation transitionals order*) any of the following:

(a) the passing of a resolution for the voluntary winding up of an authorised insurance company within the meaning of section 3 of the Policyholders Protection Act 1975 in circumstances falling within section 5(1)(a) of that Act;

(b) the making by the court of an order for the winding up of such a company in accordance with section 5(1)(b) of that Act;

(c) the appointment of a provisional liquidator in the circumstances falling within section 15 of that Act in respect of such a company;

(d) such a company becoming a company in financial difficulties within the meaning of section 16 of that Act;

(e) a *participating deposit-taker* becoming insolvent for the purposes of Part II of the Banking Act 1987;

(f) a *participating institution* becoming insolvent within the meaning of section 25A of the Building Societies Act 1986;

(g) the beginning of a dissolution or transfer of engagements of a *member society* in accordance with rule 9(2) of the Rules of the Friendly Societies Protection Scheme.

assessable  
mutual

FCA PRA

(for the purposes of ■ INSPRU 1.4) a *mutual* where the *insurance business* carried on by the *mutual* is limited to the provision of *insurance business* to its members and whose articles of association, rules or bye-laws provide for the calling of additional contributions from members to meet *claims*.

asset

FCA PRA

(in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) any property, right, entitlement or interest.

asset backed  
commercial  
paper  
programme

FCA PRA

(for the purposes of ■ BIPRU 9 (Securitisation) and in accordance with Part 1 of Annex IX of the *Banking Consolidation Directive* (Securitisation definitions)) a programme of *securitisations* (within the meaning of paragraph (2) of the definition of securitisation) the securities issued by which predominantly take the form of commercial paper with an original maturity of one year or less.

asset backed  
security

FCA PRA

(as defined in the *PD Regulation*) *securities* which:

(a) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets of amounts payable thereunder; or

<p><i>asset identification rules</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(b) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets.</p> <p><i>rules made by the appropriate regulator which require an authorised person who has permission to effecting or carry out contracts of insurance to identify assets which belong to him and which are maintained in respect of a particular aspect of his business.</i></p>
<p><i>asset management company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a management company within the meaning of Article 2(1)(b) of the <i>UCITS Directive</i>, as well as an <i>undertaking</i> the registered office of which is outside the <i>EEA</i> and which would require authorisation in accordance with Article 6(1) of the <i>UCITS Directive</i> if it had its registered office within the <i>EEA</i>.</p>
<p><i>asset pool</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>RCB</i>) (as defined in Regulation 1(2) of the <i>RCB Regulations</i>) an asset pool within the meaning of Regulation 3 of the <i>RCB Regulations</i>.</p>
<p><i>asset pool monitor</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a person appointed under regulation 17A of the <i>RCB Regulations</i>.</p>
<p><i>asset-related capital requirement</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a component of the calculation of the <i>ECR</i> for a firm carrying on <i>general insurance business</i> as set out in <i>INSPRU 2.2</i>.</p>
<p><i>assistance</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>class of contract of insurance</i>) the <i>class of contract of insurance</i>, specified in paragraph 18 of Part I of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of general insurance), providing either or both of the following benefits:</p> <ul style="list-style-type: none"> <li>(a) assistance (whether in cash or in kind) for <i>persons</i> who get into difficulties while travelling, while away from home or while away from their permanent residence;</li> <li>(b) assistance (whether in cash or in kind) for <i>persons</i> who get into difficulties otherwise than as in (a).</li> </ul>
<p><i>assisting in the administration and performance of a contract of insurance</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the <i>regulated activity</i>, specified in article 39A of the <i>Regulated Activities Order</i> (Assisting in the administration and performance of a contract of insurance) of assisting in the administration and performance of a contract of insurance.</p>
<p><i>associate</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(1) (in <i>LR</i>) (in relation to a <i>director, substantial shareholder, or person exercising significant influence</i>, who is an individual):</p> <ul style="list-style-type: none"> <li>(a) that individual's spouse, civil partner or child (together "the individual's family");</li> <li>(b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an <i>occupational pension</i></li> </ul>

*scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;

(c) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:

(i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or

(ii) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;

(d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(i) a voting interest greater than 30% in the partnership; or

(ii) at least 30% of the partnership.

For the purpose of paragraph (c), if more than one *director* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *directors* and their *associates* will be aggregated when determining whether that *company* is an associate of the *director*.

(2) (in LR) (in relation to a *substantial shareholder* or *person exercising significant influence*, which is a *company*):

(a) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(b) any *company* whose *directors* are accustomed to act in accordance with the *substantial shareholder's* or *person exercising significant influence's*, directions or instructions ;

(c) any *company* in the capital of which the *substantial shareholder* or *person exercising significant influence* and any other *company* under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (1)(c)(i) or (ii) of this definition.

(3) (except in LR) (in relation to a *person* ("A")):

(a) an *affiliated company* of A;

(b) an *appointed representative* of A, or a *tied agent* of A, or of any *affiliated company* of A;

(c) any other *person* whose business or domestic relationship with A or his *associate* might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties.

*associated call option*

FCA PRA

a right to acquire a particular amount of the *relevant security* or of any *associated security* at a future date at a particular *price*.

*associated instrument*

FCA PRA

(as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) any of the following *financial instruments* (including those which are not admitted to trading on a *regulated market*, or for which a request for admission to trading on such a market has not been made, provided that the relevant competent authorities have agreed to standards of transparency for transactions in such *financial instruments*):

- (a) contracts or rights to subscribe for, acquire or dispose of *relevant securities*;
- (b) financial derivatives on *relevant securities*;
- (c) where the *relevant securities* are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;
- (d) instruments which are issued or guaranteed by the *issuer* or guarantor of the *relevant securities* and whose market price is likely to materially influence the price of the *relevant securities*, or vice versa; and
- (e) where the *relevant securities* are *securities* equivalent to *shares*, the *shares* represented by those *securities* (and any other *securities* equivalent to those *shares*).

*at the money*

FCA PRA

(for the purposes of ■ BIPRU 7 (Market risk) and in relation to an *option* or *warrant*) the strike price of that *option* or *warrant* being equal to the current market value of the underlying instrument.

*attached shares*

FCA PRA

(in CREDS) means any shares in the *credit union* (other than any *deferred shares*):

- (a) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by section 7(5) of the Credit Unions Act 1979 or (in relation to a *Northern Ireland credit union*) the withdrawal of which is not permitted by article 23(4) of the Credit Unions (Northern Ireland) Order 1985; or
- (b) (in relation to a *Great Britain credit union*) the withdrawal of which is not permitted by the terms of a loan made to a member; or
- (c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the *credit union*.

In relation to a *Great Britain credit union*, paragraph (c) is relevant only where the *credit union* made a loan to the holder of the shares before the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 came into force.

*auction platform*

FCA

a platform on which auctions of *emissions allowances* are held in accordance with the *auction regulation*.

*auction regulation*

FCA

Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.

*auction regulation bidding*

the *regulated activity of bidding in emissions auctions* where it is carried on by:

- (a) a *firm* that is exempt from MiFID under article 2(1)(i); or

FCA PRA

(b) a *MiFID investment firm* (other than a *UCITS investment firm*) on behalf of its *clients* in relation to a *two-day emissions spot*.

Audit Directive

FCA PRA

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

AUT

FCA PRA

an *authorised unit trust scheme*.

authorisation

FCA PRA

authorisation as an *authorised person* for the purposes of the *Act*.

authorisation order

FCA PRA

an order made by the *FCA* :

(a) in relation to an *AUT* under section 243 of the *Act* (Authorisation orders);

(b) in relation to an *ICVC* under regulation 14 of the *OEIC Regulations* (Authorisation);

(c) in relation to an *ACS* under section 261D of the *Act* (Authorisation orders);

as a result of which the *AUT* or *ACS* becomes authorised or the body becomes incorporated as an *ICVC* under regulation 3 of the *OEIC Regulations* (Open-ended investment company).

authorised AIF

FCA PRA

an *AIF* which is an *authorised fund*.

authorised central counterparty

a *CCP* authorised or recognised under *EMIR*.

authorised contractual scheme

FCA PRA

a *co-ownership scheme* or a *limited partnership scheme*.

authorised contractual scheme manager

FCA

a *firm*, including, if relevant, an *EEA UCITS management company* or *incoming EEA AIFM*, which is the *authorised fund manager* of the *ACS* in accordance with the *contractual scheme deed*.

authorised corporate director

FCA PRA

the director of an *ICVC* who is the *authorised corporate director* of the *ICVC* in accordance with ■ COLL 6.5.3 R (Appointment of an ACD) including, if relevant, an *EEA UCITS management company* or *incoming EEA AIFM*.

*authorised electronic money institution*

**FCA** **PRA**

(in accordance with regulation 2(1) of the *Electronic Money Regulations*):

(a) a *person* included by the *FCA* in the *Financial Services Register* as an *authorised electronic money institution* pursuant to regulation 4(1)(a) of the *Electronic Money Regulations*; or

(b) a *person* deemed to have been granted authorisation by virtue of regulation 74 of the *Electronic Money Regulations*.

*authorised fund*

**FCA** **PRA**

an *ICVC*, *ACS* or an *AUT*.

*authorised fund manager*

**FCA** **PRA**

an *ACD*, an *authorised contractual scheme manager* or an *authorised unit trust manager*.

*authorised insurance company*

**FCA** **PRA**

(In *COMP*) (in accordance with the *compensation transitionals order*) a *person* who was, at any time before *commencement*, authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of any class in the *United Kingdom*.

*authorised payment institution*

**FCA** **PRA**

(in accordance with regulation 2(1) of the *Payment Services Regulations*) a *person* included by the *FCA* in the *Financial Services Register* as an authorised payment institution pursuant to regulation 4(1)(a), or a *person* deemed to have been granted authorisation by virtue of regulation 121 of the *Payment Services Regulations*.

*authorised person*

**FCA** **PRA**

(in accordance with section 31 of the *Act* (Authorised persons)) one of the following:

(a) a *person* who has a *Part 4A permission* to carry on one or more *regulated activities*;

(b) an *incoming EEA firm*;

(c) an *incoming Treaty firm*;

(d) a *UCITS qualifier*;

(e) an *ICVC*;

(f) the *Society of Lloyd's*.

(see also ■ GEN 2.2.18 R for the position of an *authorised partnership* or unincorporated association which is dissolved.)

*authorised primary dealer*

**FCA** **PRA**

(as defined in article 2(1)(n) of the *short selling regulation*) a natural or legal person who has signed an agreement with a *sovereign issuer* or who has been formally recognised as a primary dealer by or on behalf of a *sovereign issuer* and who, in accordance with that agreement or recognition, has committed to dealing as principal in connection with primary and secondary market operations relating to debt issued by that *sovereign issuer*.

*authorised primary dealer exemption*

**FCA** **PRA**

an exemption from articles 7, 13 and 14 of the *short selling regulation* for the activities of an *authorised primary dealer* pursuant to article 17 of the *short selling regulation*.

*authorised professional firm*

**FCA** **PRA**

a *professional firm* which is an *authorised person*.

*authorised UK representative*

**FCA** **PRA**

(in relation to a *firm*) a *person* resident in the *United Kingdom* who is authorised to act generally, and to accept service of any *document*, on behalf of the *firm*.

*authorised unit trust manager*

**FCA** **PRA**

a *manager* of an *AUT*.

*authorised unit trust scheme*

**FCA** **PRA**

(as defined in section 237(3) of the *Act* (Other definitions)) a *unit trust scheme* which is authorised for the purposes of the *Act* by an *authorisation order*.

*authorised Voluntary Jurisdiction participant*

**FCA** **PRA**

a participant in the *Voluntary Jurisdiction* who is an *authorised person*.

*automatic enrolment scheme*

**FCA** **PRA**

a scheme that meets the conditions in Part 1 of the Pensions Act 2008. In summary this is a qualifying *occupational pension scheme* or qualifying *personal pension scheme* that enables automatic enrolment arrangements to take place.

AVC

**FCA** **PRA**

a voluntary contribution arrangement paid by a member of an *occupational pension scheme* under the terms of the scheme or of a separate contract.

*average outstanding electronic money*

**FCA** **PRA**

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) the average total amount of financial liabilities related to *electronic money* in issue at the end of each calendar day over the preceding six calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.

	(b) section 96 of the Charities Act 2011; or (c) section 25 of the Charities Act (Northern Ireland) 1964; or (d) section 100 of the Charities Act 2011.
<i>chief executive</i> FCA PRA	(1) (in relation to an undertaking whose principal place of business is within the <i>United Kingdom</i> ) the <i>person</i> who, alone or jointly with one or more others, is responsible under the immediate authority of the <i>directors</i> for the conduct of the whole of its business.  (2) (in relation to an undertaking whose principal place of business is outside the <i>United Kingdom</i> ) the <i>person</i> who, alone or jointly with one or more others, is responsible for the conduct of its business within the <i>United Kingdom</i> .
<i>chief executive function</i> FCA PRA	(1) (in the <i>FCA Handbook</i> ) <i>FCA controlled function</i> CF3 in Part 1 of the <i>table of FCA controlled functions</i> , described more fully in ■ SUP 10A.6.17 R.  (2) (in the <i>PRA Handbook</i> ) <i>PRA controlled function</i> CF3 in the <i>table of PRA controlled functions</i> , described more fully in ■ SUP 10B.6.7 R.
<i>Chinese wall</i> FCA PRA	an arrangement that requires information held by a <i>person</i> in the course of carrying on one part of its business to be withheld from, or not to be used for, <i>persons</i> with or for whom it acts in the course of carrying on another part of its business.
<i>circular</i> FCA PRA	(in <i>LR</i> ) any document issued to holders of <i>listed securities</i> including notices of meetings but excluding <i>prospectuses</i> , <i>listing particulars</i> , annual reports and accounts, interim reports, proxy cards and dividend or interest vouchers.
<i>CIS administrator</i> PRA	(in relation to <i>firm type</i> in ■ SUP 16.10 (Confirmation of <i>standing data</i> )) a <i>person</i> responsible for the <i>administrative functions</i> of a <i>collective investment scheme</i> .
<i>CIS stakeholder product</i> FCA PRA	the <i>stakeholder product</i> specified by regulations 5 (units in certain collective investment schemes) and 7 of the <i>Stakeholder Regulations</i> .
<i>CIS trustee</i> PRA	(in relation to <i>firm type</i> in ■ SUP 16.10 (Confirmation of <i>standing data</i> )) a <i>person</i> holding the property of a <i>collective investment scheme</i> on trust for the participants in the <i>collective investment scheme</i> .
<i>CIU</i> FCA PRA	(A) In the <i>PRA Handbook</i> : collective investment undertaking.  (B) In the <i>FCA Handbook</i> : (1) (except in <i>IFPRU</i> ) collective investment undertaking. (2) (in <i>IFPRU</i> ) has the meaning in article 4(1)(7) of the <i>EU CRR</i> .
PAGE C11 <i>CIU look through method</i> FCA PRA	one of the <i>standard CIU look through method</i> or the <i>modified CIU look through method</i> .
<i>CIU PRR</i>	the <i>collective investment undertaking PRR</i> .

FCA PRA

claim

FCA PRA

(1) (in *COMP*) a valid claim made in respect of a civil liability owed by a *relevant person* to the claimant.

(2) (in *INSPRU* and *SUP*) a claim under a *contract of insurance*.

claims amount

FCA PRA

an amount, as defined in ■ *INSPRU 1.1.47 R*, used in the calculation of the *general insurance capital requirement*.

class

FCA PRA

(A) In the FCA Handbook:

(1) (in *GENPRU*, *INSPRU* and *SUP*) (in relation to a *contract of insurance*) any class of *contract of insurance* listed in Schedule 1 to the *Regulated Activities Order* (Contracts of insurance) and references to:

(a) *general insurance business class 1, 2 3*, etc. are references to *contracts of insurance* of the kind mentioned in the corresponding numbered paragraph in Part I of Schedule 1 to that Order or, as the context may require, to the *effecting or carrying out of contracts of insurance* of that kind; and

(b) *long-term insurance business class I, II, III*, etc. are references to *contracts of insurance* of the kind mentioned in the corresponding numbered paragraph in Part II of Schedule 1 to that Order, as the context may require, to the *effecting or carrying out of contracts of insurance* of that kind.

(2) (in *COLL*):

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

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

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

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

(3) (in *COBS*) a particular category or type of *packaged product*.

(4) (in *LR*) *securities* the rights attaching to which are or will be identical and which form a single issue or issues.

(5) (in *FEES*) one of the broad classes to which *FSCS* allocates levies as described in ■ *FEES 6.4.7A R*, ■ *FEES 6.5.6A R* and ■ *FEES 6 Annex 3AR*.

(B) In the PRA Handbook:

(1) (in *GENPRU*, *INSPRU* and *SUP*) (in relation to a *contract of insurance*) any class of *contract of insurance* listed in Schedule 1 to the *Regulated Activities Order* (Contracts of insurance) and references to:

(a) *general insurance businessclass 1, 2, 3*, etc. are references to *contracts of insurance* of the kind mentioned in the corresponding numbered paragraph in Part I of Schedule 1 to that Order or, as the context may require, to the *effecting or carrying out of contracts of insurance* of that kind; and

(b) *long-term insurance business class I, II, III*, etc. are references to *contracts of insurance* of the kind mentioned in the corresponding numbered paragraph in Part II of Schedule 1 to that Order or, as the context may require, to the *effecting or carrying out of contracts of insurance* of that kind.

(2) (in *COLL* ):

corporate  
governance  
rules

FCA PRA

- (i) is not acting for him; and
- (ii) will not be responsible to him for providing protections afforded to *clients* of the *firm* or be advising him on the relevant transaction.

(in accordance with sections 73A(1) and 89O(1) of the *Act*) *rules* for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any *EU* law obligation relating to the corporate governance of *issuers* who have requested or approved *admission to trading* of their securities and about corporate governance in relation to such *issuers* for the purpose of implementing, or dealing with matters arising out of or related to, any *EU* law obligation. The *corporate governance rules* are located in chapters 1B, 4 and 7 of *DTR*.

corporate  
member

FCA PRA

a *member* that is a *body corporate* or a Scottish Limited partnership.

correlation  
trading  
portfolio

FCA PRA

(in ■ BIPRU 7) a portfolio consisting of *securitisation positions* and nth-to-default credit derivatives that meet the criteria set out at ■ BIPRU 7.2.42A R, or other *positions* which may be included in accordance with ■ BIPRU 7.2.42B R.

## Council

FCA PRA

the *governing body* of the *Society* constituted by section 3 of Lloyd's Act 1982.

## counterparty

FCA PRA

(A) In the PRA Handbook:

- (1) (in *UPRU*) any *person* with or for whom a firm carries on *designated investment business* or an *ancillary activity*.
- (2) (for the purposes of the rules relating to insurers in *GENPRU* and *INSPRU*) (in relation to an *insurer*, the *Society*, a *syndicate* or *member* ('A')):
  - (a) any one individual; or
  - (b) any one unincorporated body of *persons*; or
  - (c) any *company* which is not a member of a *group*; or
  - (d) any *group* of *companies* excluding:
    - (i) (for the purposes of ■ *INSPRU* 2.1) any *companies* within the *group* which are *subsidiary undertakings* of A and which fall within ■ *GENPRU* 1.3.43 R; and
    - (ii) (for all other purposes) any *companies* within the *group* which are *subsidiary undertakings* of A; or
  - (e) any government of a State together with all the public bodies, local authorities or nationalised industries of that State, in which A, or any of its *subsidiary undertakings*, has made *investments* or against whom, or in respect of whom, it, or any of its *subsidiary undertakings*, has rights or obligations under a contract entered into by A or any of its *subsidiary undertakings*.
- (3) (for the purposes of the *rules* relating to *BIPRU firms* in *GENPRU* and *BIPRU* and in relation to an *exposure* of a *person* ('A')) the counterparty with respect to that *exposure* or, if the context requires, another *person* in respect of whom, under that *exposure*, A is exposed to credit risk or the risk of loss if that *person* fails to meet its obligations, such as the issuer of the underlying *security* in relation to a *derivative* held by A.

(B) In the FCA Handbook:

(1) [deleted]

(2) (for the purposes of the rules relating to insurers in *GENPRU* and *INSPRU*) (in relation to an *insurer*, the *Society*, a *syndicate* or *member* ('A')):

(a) any one individual; or

(b) any one unincorporated body of *persons*; or

(c) any *company* which is not a member of a *group*; or

(d) any *group* of *companies* excluding:

(i) (for the purposes of ■ *INSPRU* 2.1) any *companies* within the *group* which are *subsidiary undertakings* of A and which fall within ■ *GENPRU* 1.3.43 R; and

(ii) (for all other purposes) any *companies* within the *group* which are *subsidiary undertakings* of A; or

(e) any government of a State together with all the public bodies, local authorities or nationalised industries of that State, in which A, or any of its *subsidiary undertakings*, has made *investments* or against whom, or in respect of whom, it, or any of its *subsidiary undertakings*, has rights or obligations under a contract entered into by A or any of its *subsidiary undertakings*.

(3) (for the purposes of the *rules* relating to *BIPRU firms* in *GENPRU* and *BIPRU* and in relation to an *exposure* of a *person* ('A')) the counterparty with respect to that *exposure* or, if the context requires, another *person* in respect of whom, under that *exposure*, A is exposed to credit risk or the risk of loss if that *person* fails to meet its obligations, such as the issuer of the underlying *security* in relation to a *derivative* held by A.

counterparty  
credit risk

FCA PRA

(A) In the PRA Handbook:

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.

(2) (other than in (1)) has the meaning as used in the *EU CRR*.

(B) In the FCA Handbook:

(1) (in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.

(2) (other than in (1)) has the meaning as used in the *EU CRR*.

counterparty  
risk

FCA

(in *COLL* and *FUND*) the risk of loss for a *UCITS* or an *AIF* resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow.

counterparty  
risk capital  
component

FCA PRA

the part of the *credit risk capital requirement* calculated in accordance with ■ *BIPRU* 14.2.1 R (Calculation of the counterparty risk capital component).

country of origin

FCA PRA

in relation to an *electronic commerce activity*, the *EEA State* in which the *establishment* from which the service in question is provided is situated.

coupon

FCA PRA

a dividend, interest payment or any similar payment.

covered bond

FCA PRA

(A) In the PRA Handbook:

(1) (in accordance with Article 52(4) of the *UCITS Directive* and except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued by a *credit institution* which has its registered office in an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

(2) (in accordance with point 68 of Part 1 of Annex VI of the *Banking Consolidation Directive* (Exposures in the form of covered bonds) and for the purposes of the *IRB approach* or the *standardised approach* to credit risk in *BIPRU*) a covered bond as defined in (1) collateralised in accordance with ■ *BIPRU 3.4.107 R* (Exposures in the form of covered bonds).

(3) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) a bond in relation to which the claims attaching to that bond are guaranteed to be paid by an *owner* from an *asset pool* it owns.

(4) (in accordance with Article 22(4) of the *Third Non-Life Directive* and Article 24(4) of the *Consolidated Life Directive* and for the purposes of ■ *INSPRU 2.1*) a *debenture* that is issued by a *credit institution* which:

(a) has its head office in an *EEA State*; and

(b) is subject by law to special official supervision designed to protect the holders of the *debenture*; in particular, sums deriving from the issue of the *debenture* must be invested in accordance with the law in assets which, during the whole period of validity of the *debenture*, are capable of covering claims attaching to the *debenture* and which, in the event of failure of the *issuer*, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

(B) In the FCA Handbook:

(1) (in accordance with Article 52(4) of the *UCITS Directive* and except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued by a *credit institution* which has its registered office in an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

(2) (in accordance with point 68 of Part 1 of Annex VI of the *Banking Consolidation Directive* (Exposures in the form of covered bonds) and for the purposes of the IRB approach or the *standardised approach* to credit risk in *BIPRU*) a covered bond as defined in (1) collateralised in accordance with ■ *BIPRU 3.4.107 R* (Exposures in the form of covered bonds).

(3) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) a bond in relation to which the claims attaching to that bond are guaranteed to be paid by an *owner* from an *asset pool* it owns.

(4) (in accordance with Article 22(4) of the *Third Non-Life Directive* and Article 24(4) of the *Consolidated Life Directive* and for the purposes of ■ *INSPRU 2.1*) a *debenture* that is issued by a *credit institution* which:

(a) has its head office in an *EEA State*; and

(b) is subject by law to special official supervision designed to protect the holders of the *debenture*; in particular, sums deriving from the issue of the *debenture* must be invested in accordance with the law in assets which, during the whole period of validity of the *debenture*, are capable of covering claims attaching to the *debenture* and which, in the event of failure of the *issuer*, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

CPI

FCA

the Consumer Prices Index.

CRD

FCA PRA

(A) In the PRA Handbook:

the *Capital Adequacy Directive* and the *Banking Consolidation Directive*.

(B) In the FCA Handbook:

(1) (in *GENPRU* (except ■ *GENPRU 3*) and *BIPRU* (except ■ *BIPRU 12*)) the *Capital Adequacy Directive* and the *Banking Consolidation Directive*.

(2) (except in (1)) the Directive of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (No 2013/36/EU) and amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

CRD bank

FCA PRA

(A) In the PRA Handbook:

a *bank* which uses the *EU CRR* to measure the capital requirement on its trading book.

(B) In the FCA Handbook:

a *bank* which uses the *EU CRR* to measure the capital requirement on its trading book.

CRD credit institution

FCA PRA

(A) In the PRA Handbook:

a *credit institution* that has its registered office (or, if it has no registered office, its head office) in an *EEA State*, excluding an *institution* to which the *CRD* does not apply under article 2 of the *CRD* (see also *full CRD credit institution*).

(B) In the FCA Handbook:

CRD financial instrument

FCA PRA

a *credit institution* that has its registered office (or, if it has no registered office, its head office) in an *EEA State*, excluding an *institution* to which the *CRD* does not apply under article 2 of the *CRD* (see also *full CRD credit institution*).

has the meaning set out in ■ BIPRU 1.2.7 R to ■ BIPRU 1.2.8 R (CRD financial instruments), which is in summary any contract that gives rise to both a financial asset of one party and a financial liability or equity instrument of another party.

CRD full-scope firm

FCA

an investment firm as defined in article 4(1)(2) of the *EU CRR* that is subject to the requirements imposed by *MiFID* (or which would be subject to that Directive if its head office were in an *EEA State*) and that is not a *limited activity firm* or a *limited licence firm*.

CRD implementation measure

FCA PRA

(A) In the PRA Handbook:

(in relation to an *person* and for the purposes of *GENPRU* and *BIPRU* (except in ■ GENPRU 3)), a provision of the *Banking Consolidation Directive* or the *Capital Adequacy Directive* and an *EEA State* other than the *United Kingdom*) a measure implementing that provision of that Directive for that type of *person* in that *EEA State*.

(B) In the FCA Handbook:

(in relation to an *person* and for the purposes of *GENPRU* and *BIPRU* (except in ■ GENPRU 3 and ■ BIPRU 12), a provision of the *Banking Consolidation Directive* or the *Capital Adequacy Directive* and an *EEA State* other than the *United Kingdom*) a measure implementing that provision of that Directive for that type of *person* in that *EEA State*.

CRED

FCA PRA

the Credit Unions sourcebook.

credit

FCA PRA

(1) (except in relation to a *class of contract of insurance*) any kind of loan, deferment of repayment of any loan or of interest on any loan, guarantee or indemnity, and any other kind of accommodation or facility in the nature of credit.

(2) (in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 14 of Part I of Schedule 1 to the *Regulated Activities Order* (Contracts of general insurance), against risks of loss to the *persons* insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.

credit enhancement

FCA

(in accordance with Article 4(43) of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) a contractual arrangement whereby the credit quality of a *position* in a *securitisation* (within the meaning of paragraph (2) of the definition of *securitisation*) is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior *tranches* in the *securitisation* and other types of credit protection.

credit equalisation provision

FCA PRA

the provision required to be established by INSPRU 1.4.43R.

*credit  
institution*

**FCA** **PRA**

- (A) In the PRA Handbook:
- (1) (except in *REC*)
    - (a) has the meaning in article 4(1)(1) of the *EU CRR*; or
    - (b) [deleted]
    - (c) [deleted]
    - (d) [deleted]
  - (2) (in *REC* and in *SUP* 11 (Controllers and close links) and *SUP* 16 (Reporting requirements)):
    - (a) a credit institution authorised under the *CRD*; or
    - (b) an institution which would satisfy the requirements for authorisation as a credit institution under the *CRD* if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*.
  - (3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of article 4(1)(17) of the *EU CRR* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 47 of the *CRD*.

(B) In the FCA Handbook:

- (1) (except in *REC*):
  - (a) has the meaning in article 4(1)(1) of the *EU CRR*; or
  - (b) [deleted]
  - (c) [deleted]
  - (d) [deleted]
- (2) (in *REC* and in *SUP* 11 (Controllers and close links) and *SUP* 16 (Reporting requirements)):
  - (a) a credit institution authorised under the *CRD*; or
  - (b) an institution which would satisfy the requirements for authorisation as a credit institution under the *CRD* if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*.
- (3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of article 4(1)(17) of the *EU CRR* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 47 of the *CRD*.

*credit quality  
assessment  
scale*

**FCA** **PRA**

the credit quality assessment scale:

- (1) onto which the credit assessments of an export credit agency are mapped under the table in ■ BIPRU 3.4.9 R (Exposure for which a credit assessment by an export credit agency is recognised); or
- (2) published by the *appropriate regulator* in accordance with the *Capital Requirements Regulations 2006* which determine:
  - (a) (in relation to an *eligible ECAI* whose recognition is for *risk weighting* purposes other than those in (2)(b)) with which of the *credit quality steps* set out in ■ BIPRU 3.4 (Risk weights under the standardised approach to credit risk) the relevant credit assessments of an *eligible ECAI* are to be associated; or

(b) (in relation to an *eligible ECAI* whose recognition is for *securitisation risk-weighting* purposes) with which of the *credit quality steps* set out in ■ BIPRU 9 (Securitisation) the relevant credit assessments of the *eligible ECAI* are to be associated.

*credit quality step*

FCA PRA

a credit quality step in a *credit quality assessment scale* as set out in ■ BIPRU 3.4 (Risk weights under the standardised approach to credit risk) and ■ BIPRU 9 (Securitisation).

*credit risk capital component*

FCA PRA

the part of the *credit risk capital requirement* calculated in accordance with ■ BIPRU 3.1.5 R (Calculation of the credit risk capital component).

*credit risk capital requirement*

FCA PRA

the part of the *capital resources requirement* of a *BIPRU firm* in respect of credit risk, calculated in accordance with ■ GENPRU 2.1.51 R (Calculation of the credit risk capital requirement).

*credit risk mitigation*

FCA PRA

(A) In the PRA Handbook:  
(in accordance with Article 4(30) of the *Banking Consolidation Directive* (Definitions)) a technique used by an *undertaking* to reduce the credit risk associated with an *exposure* or *exposures* which the *undertaking* continues to hold.

(B) In the FCA Handbook:

(1) (in *GENPRU* (except in ■ GENPRU 3) and *BIPRU* (except in ■ BIPRU 12)) (in accordance with Article 4(30) of the *Banking Consolidation Directive* (Definitions)) a technique used by an *undertaking* to reduce the credit risk associated with an *exposure* or *exposures* which the *undertaking* continues to hold.

(2) (except in (1)) has the meaning in article 4(1)(58) of the *EU CRR*.

*credit union*

FCA PRA

a body corporate registered under the Industrial and Provident Societies Act 1965 as a credit union in accordance with the Credit Unions Act which is an *authorised person* or a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 which is an *authorised person* or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union which is an *authorised person*.

*credit unions day*

FCA PRA

(in relation to a *Great Britain credit union*) 1 July 2002 or (in relation to a *Northern Ireland credit union*) 31 March 2012.

*credit valuation adjustment*

FCA

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty; and so that this adjustment:

(a) reflects the market value of the credit risk due to any failure to perform on contractual agreements with a counterparty; and

(b) may reflect the market value of the credit risk of the counterparty or the market value of the credit risk of both the *firm* and the counterparty.

CREDS

the Credit Unions sourcebook.

FCA PRA

CREST

FCA PRA

(A) In the PRA Handbook:

the computer-based system which enables securities to be held and transferred in uncertificated form and which is operated by CRESTCo Limited.

(B) In the FCA Handbook:

the computer-based system which enables securities to be held and transferred in uncertificated form and which is operated by Euroclear UK & Ireland Limited.

CRM eligibility conditions

FCA PRA

(1) (in relation to the *standardised approach* to credit risk),  
 ■ BIPRU 5.3.1 R-■ BIPRU 5.3.2 R, ■ BIPRU 5.4.1 R-■ BIPRU 5.4.8 R,  
 ■ BIPRU 5.5.1 R, ■ BIPRU 5.5.4 R, ■ BIPRU 5.5.8 R, ■ BIPRU 5.6.1 R and  
 ■ BIPRU 5.7.1 R-■ BIPRU 5.7.4 R; or

(2) (in relation to the *IRB approach*), the provisions in (1) and  
 ■ BIPRU 4.4.83 R, ■ BIPRU 4.10-■ BIPRU 4.10.7 R, ■ BIPRU 4.10.9 R,  
 ■ BIPRU 4.10.10 R-■ BIPRU 4.10.12 R, ■ BIPRU 4.10.14 R, ■ BIPRU 4.10.16 R,  
 ■ BIPRU 4.10.19 R, and ■ BIPRU 4.10.38 R-■ BIPRU 4.10.39 R.

CRM minimum requirements

FCA PRA

(1) (in relation to the *standardised approach* to credit risk);  
 ■ BIPRU 5.2.9 R-■ BIPRU 5.2.10 R, ■ BIPRU 5.3.3 R,  
 ■ BIPRU 5.4.9 R-■ BIPRU 5.4.13 R, ■ BIPRU 5.5.2 R,  
 ■ BIPRU 5.5.5 R-■ BIPRU 5.5.6 R, ■ BIPRU 5.6.2 R-■ BIPRU 5.6.3 R,  
 ■ BIPRU 5.7.6 R-■ BIPRU 5.7.14 R; or

(2) (in relation to the *IRB approach*), the provisions in (1) and  
 ■ BIPRU 4.4.85 R, ■ BIPRU 4.10.13 R, ■ BIPRU 4.10.15 R, and  
 ■ BIPRU 4.10.18 R-■ BIPRU 4.10.19 R.

cross border services

FCA PRA

(1) (in relation to a *UK firm*) services provided within an *EEA State* other than the *United Kingdom* under the freedom to provide services.

(2) (in relation to an *incoming EEA firm* or an *incoming Treaty firm*) services provided within the *United Kingdom* under the freedom to provide services.

cross product netting

FCA PRA

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the inclusion of transactions of different product categories within the same *netting set* pursuant to the *rules* about cross-product netting set out in ■ BIPRU 13.

Cross-Border Payments in Euro Regulations

FCA PRA

the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89).

cross-border UCITS merger

FCA PRA

(in *COLL* and in accordance with article 2(1)(q) of the *UCITS Directive*) a *UCITS merger* of two or more *UCITS*:

(a) at least two of which are established in different *EEA States*; or

(b) established in the same *EEA State* into a newly constituted *UCITS* established in another *EEA State*;

but at least one of which is established in the *United Kingdom*.

*cross-transaction*

**FCA** **PRA**

(a) a transaction by which a *person* matches, at the same price and on the same terms, the *buy* and *sell* orders of two or more *persons* for whom he is acting as agent;

(b) a transaction to which only one *person* is a party, by which he purports to *sell* to and *buy* from himself.

CRR

**FCA** **PRA**

*capital resources requirement.*

CRR firm

**FCA** **PRA**

(A) (in the PRA Handbook):

for the purposes of SYSC means *UK banks, buildings society and investment firms* that are subject to the *EU CRR*.

(B) (in the FCA Handbook)

(for the purposes of SYSC) a *UK bank, building society and an investment firm* that is subject to the *EU CRR*.

CTF

**FCA** **PRA**

(as defined in section 1(2) of the Child Trust Funds Act 2004) a child trust fund, that is, an account which:

(1) is held by a child who is or has been an eligible child (as defined in section 2 of that Act);

(2) satisfies the requirements imposed by or under the Child Trust Funds Act 2004; and

(3) has been opened in accordance with the Child Trust Funds Act 2004.

CTF bank account

**FCA** **PRA**

a bank account which fulfils the requirements of Regulation 11(5) of the *CTF Regulations*.

CTF provider

**FCA** **PRA**

(in accordance with section 3(1) of the Child Trust Funds Act 2004) a *person* approved by HM Revenue and Customs in accordance with the *CTF Regulations*.

CTF Regulations

**FCA** **PRA**

the Child Trust Funds Regulations 2004 (SI 2004/1450) .

CTF transfer

**FCA** **PRA**

a transaction resulting from a decision by a *customer*, made with or without advice from a *firm*, to transfer the *investments* (or their value) held in an existing *CTF* into another *CTF* whether or not provided by the same *CTF provider*.

currency class unit

**FCA** **PRA**

(in *COLL*) a class of *unit* denominated in a currency that is not the *base currency* of the *authorised fund*, or if permitted, by ■ *COLL 3.3.4 R (1)* (Currency class units: requirements).

PAGE  
C61

current approved person approval

**FCA** **PRA**

(in relation to an *approved person* in relation to a particular *firm* and *controlled function* as at any particular time) an approval under section 59 of the *Act* (Approval for particular arrangements) given by the *FCA* or the *PRA* in relation to that *person* for the performance of that *controlled function* in relation to that *firm* that is in force at that time.

*current customer order*

**FCA** **PRA**

- (a) a *customer order* to be *executed* immediately;
- (b) a *customer order* which is to be *executed* only on fulfilment of a condition, after the condition has been fulfilled.

*current exposure*

**FCA** **PRA**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of **■ BIPRU 13** (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the larger of zero, or the market value of a transaction or portfolio of transactions within a *netting set* with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in bankruptcy.

*current FCA approved person approval*

**FCA** **PRA**

a *current approved person approval* given by the FCA.

*current market value*

**FCA** **PRA**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of **■ BIPRU 13.5** (CCR standardised method)) the net market value of the portfolio of transactions within the *netting set* with the counterparty; both positive and negative market values are used in computing *current market value*.

*current PRA approved person approval*

**FCA** **PRA**

a *current approved person approval* given by the PRA.

*custodian*

**FCA** **PRA**

(A) In the PRA Handbook:

- (a) an *approved bank*;
- (b) an *approved depositary*;
- (c) a member of a *recognised investment exchange*;
- (d) a *firm* whose *permitted activities* include *safeguarding and administering investments*;
- (e) a regulated *clearing firm*;
- (f) where it is not feasible to use a *custodian* in (a) to (e), and there are reasonable grounds to show that a *person* outside the *United Kingdom*, whose business includes the provision of custodial services, is able to provide such services which are appropriate to the *client* and in the *client's* best interest to use, that *person*.

(B) In the FCA Handbook:

- (a) an *approved bank*;
- (b) an *approved depositary*;
- (c) a member of a *recognised investment exchange*;
- (d) a *firm* whose *permitted activities* include *safeguarding and administering investments*;
- (e) a regulated *clearing firm*;

custody

FCA PRA

(f) where it is not feasible to use a *custodian* in (a) to (e), and there are reasonable grounds to show that a *person* outside the *United Kingdom*, whose business includes the provision of custodial services, is able to provide such services which are appropriate to the *client* and in the *client's* best interest to use, that *person*.

(in relation to *clients'* assets) *safeguarding and administering investments*.

custody asset

FCA PRA

(A) (in the *FCA Handbook*)

(1) other than when *acting as trustee or depositary of an AIF*:

(a) a *designated investment* held for or on behalf of a *client*;

(b) any other asset which is or may be held with a *designated investment* held for, or on behalf of, a *client*.

(2) in relation to *acting as trustee or depositary of an AIF* in ■ CASS 6:

(a) an *AIF custodial asset* held by a *depositary* in line with ■ FUND 3.11.21 R (Depositary functions: safekeeping of financial instruments); or

(b) any other asset of an *AIF* in respect of which a *depositary* exercises safe-keeping functions in line with ■ FUND 3.11.23 R (Depositary functions: safekeeping of other assets).

(B) (in the *PRA Handbook*)

(a) a *designated investment* held for or on behalf of a *client*;

(b) any other asset which is or may be held with a *designated investment* held for, or on behalf of, a *client*.

custody chapter

FCA PRA

■ CASS 6.

custody rules

FCA PRA

■ CASS 6.

customer

FCA PRA

(1) (except in relation to *ICOBS*, ■ MCOB 3 and ■ CASS 5 ) a *client* who is not an *eligible counterparty* for the relevant purposes .

(2) (in relation to ■ MCOB 3) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.

(3) (in relation to *ICOBS*) a *person* who is a *policyholder*, or a prospective *policyholder* but (except in ■ *ICOBS* 2 (general matters ), and (in respect of that chapter ) ■ *ICOBS* 1 (application )) excluding a *policyholder* or prospective *policyholder* who does not make the arrangements preparatory to him concluding the *contract of insurance* .

(4) (in relation to ■ CASS 5) a *client*.

customer function

FCA PRA

(in the *FCA Handbook*) *FCA controlled function* CF30 in Parts 1 and 2 of the table of *FCA controlled functions*, described more fully in ■ SUP 10A.10.7 R.

*customer order*

FCA PRA

- (a) an order to a *firm* from a *customer* to *execute* a transaction as agent;
- (b) any other order to a *firm* from a *customer* to *execute* a transaction in circumstances giving rise to duties similar to those arising on an order to *execute* a transaction as agent;
- (c) a decision by a *firm* in the exercise of discretion to *execute* a transaction with or for a *customer*.

*customer-dealing function*

FCA PRA

(in accordance with section 59(7A) of the *Act* (Approval for particular arrangements) in relation to the carrying on of a *regulated activity* by an *authorised person* ("A") a function that will involve the *person* performing it in dealing with:

- (a) customers of A; or
  - (b) property of customers of A;
- in a manner substantially connected with the carrying on of the activity.

*employee*

**FCA** **PRA**

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

(a) who is employed or appointed by a *person* in connection with that *person's* business, whether under a contract of service or for services or otherwise; or

(b) whose services, under an arrangement between that *person* and a third party, are placed at the disposal and under the control of that *person*;

but excluding an *appointed representative* or a *tied agent* of that *person*.

(2) (for the purposes of:

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

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

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

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

(c) *TC*)

an individual:

(i) within (1); or

(ii) who is:

(A) an *appointed representative* or, where applicable, a *tied agent* of the *person* referred to in (1); or

(B) employed or appointed by an *appointed representative* or, where applicable, a *tied agent* of that *person*, whether under a contract of service or for services or otherwise, in connection with the business of the *appointed representative* or *tied agent* for which that *person* has accepted responsibility.

a *person* that gives advice, or provides services to, an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* provided, or to be provided, by the employer for the benefit of its employees.

*employee benefit consultant*

**FCA** **PRA**

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

*employees' share scheme*

**FCA** **PRA**

*employers' liability insurance*

**FCA** **PRA**

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

PAGE  
E15

*EMPS*

**FCA** **PRA**

the Handbook Guide for energy market participants.

*endowment assurance*

FCA PRA

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

*energy*

FCA PRA

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

*energy collective investment scheme*

FCA PRA

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

*energy investment*

FCA PRA

any of the following:

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

*energy market activity*

FCA PRA

(A) In the PRA Handbook:

- (a) any *regulated activity* other than *bidding in emissions auctions* in relation to an *energy investment* or to *energy*, or in relation to a *biomass investment* or *biomass* that is ancillary to activities related to *energy investments* or *energy*, which:
  - (i) is the *executing of own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or
  - (ii) if it is not the *executing of transactions* on such exchanges, is performed in connection with or for persons who are not *retail clients*;
- (b) *establishing, operating or winding up a collective investment scheme* which is an *energy collective investment scheme* in which *retail clients* do not participate.

(B) In the FCA Handbook:

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

(i) is the *executing of own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or

(ii) if it is not the *executing of transactions* on such exchanges, is performed in connection with or for persons who are not *retail clients*;

(b) [deleted]

(A) In the PRA Handbook:

a firm:

(a) whose permission:

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

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

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

(B) In the FCA Handbook:

a firm:

(a) whose permission:

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

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

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

energy market  
participant

FCA PRA

*engage in investment activity*

**FCA** **PRA**

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

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

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

*enhanced capital requirement*

**FCA** **PRA**

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

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

*entering as provider into a funeral plan contract*

**FCA** **PRA**

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

*entering into a home finance transaction*

**FCA** **PRA**

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

*entering into a home purchase plan*

**FCA** **PRA**

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

*entering into a home reversion plan*

**FCA** **PRA**

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

*entering into a regulated mortgage contract*

**FCA** **PRA**

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

*entering into a regulated sale and rent back agreement*

**FCA** **PRA**

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

*Enterprise Investment Scheme*

**FCA** **PRA**

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

Enterprise Zone Property Unit Trust

PRA

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

EPE

FCA PRA

*expected positive exposure*.

equalisation provision

FCA PRA

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

equity

FCA PRA

(A) In the PRA Handbook:  
(for the purposes of ■ BIPRU 7) a *share*.

(B) In the FCA Handbook:  
(for the purposes of ■ BIPRU 7 and ■ IFPRU 6) a *share*.

equity exposure

FCA PRA

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

equity market adjustment ratio

FCA PRA

(1) (in relation to the *resilience capital requirement*) has the meaning set out in INSPRU 3.1.19R.  
(2) (in relation to the *market risk* scenario for the *risk capital margin* of a *with-profits fund*) has the meaning set out in INSPRU 1.3.71R.

equity PRR

FCA PRA

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

- (a) the *equity PRR* excludes the part of the *market risk capital requirement* calculated under ■ BIPRU 7.3.45 R (Basic interest rate PRR for equity derivatives); and
- (b) in relation to a particular *position*, it means the portion of the overall *equity PRR* attributable to that *position*.

equity release activity

FCA PRA

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

equity release adviser

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for:  
(a) *advising on regulated mortgage contracts* (when carried on in relation to a *lifetime mortgage*); or  
(b) *advising on a home reversion plan*.

equity release arranger

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for *arranging* a:  
(a) *regulated mortgage contract* (when carried on in relation to a *lifetime mortgage*); or  
(b) *home reversion plan*.

*equity release intermediary*

**FCA** **PRA**

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

*equity release mediation activity*

**FCA** **PRA**

any of the *regulated activities* of:

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

*equity release provider*

**FCA** **PRA**

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

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

*equity release transaction*

**FCA** **PRA**

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

*equity security*

**FCA** **PRA**

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

*equity share*

**FCA** **PRA**

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

*equity share capital*

**FCA** **PRA**

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

*equity stake*

**FCA** **PRA**

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

*equivalent*

**FCA** **PRA**

see *commission equivalent*.

*equivalent business of a third country investment firm*

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

FCA PRA

*equivalent document*

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

FCA PRA

ESMA

European Securities and Markets Authority.

FCA PRA

*ESMA AIFMD key concepts guidelines*

ESMA's guidelines on key concepts of the *AIFMD*.

FCA

*ESMA recommendations*

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

*established*

(in accordance with article 4(1)(j) *AIFMD*):

FCA PRA

- (a) for *AIFMs*, 'having its registered office in';
- (b) for *AIFs*, 'being authorised or registered in' or, if the *AIF* is not authorised or registered, 'having its registered office in'; or
- (c) for *depositories*, 'having its registered office or branch in'.

*established surplus*

has the meaning in ■ IPRU-INS 3.3(4).

FCA PRA

*establishing, operating or winding up a collective investment scheme*

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

FCA PRA

*establishing, operating or winding up a personal pension scheme*

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

FCA PRA

PAGE  
E21*establishing, operating or winding up a regulated collective*

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

*investment scheme*

**FCA** **PRA**

*establishing, operating or winding up a stakeholder pension scheme*

**FCA** **PRA**

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

*establishing, operating or winding up an unregulated collective investment scheme*

**FCA** **PRA**

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

*establishment*

**FCA** **PRA**

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

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

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

*establishment conditions*

**FCA** **PRA**

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

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

(i)...

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

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

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

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

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

*establishment costs*

**FCA** **PRA**

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

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

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

*EU*

**FCA** **PRA**

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

*EU Cross-Border Regulation*

**FCA** **PRA**

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

*EU CRR*

**FCA** **PRA**

(A) (In the PRA Handbook)

Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012.

(B) (In the FCA Handbook)

Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012.

*European Economic Area*

**FCA** **PRA**

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

*EuSEF manager*

**FCA**

the manager of a qualifying social entrepreneurship fund (as defined in the *EuSEF Regulation*) that is registered in accordance with article 15 of the *EuSEF Regulation*.

*EuSEF regulation*

**FCA**

Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds.

*EuVECA manager*

**FCA**

the manager of a qualifying venture capital fund (as defined in the *EuVECA Regulation*) that is registered in accordance with article 14 of the *EuVECA Regulation*.

*EuVECA regulation*

**FCA**

Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds.

*evidential provision*

FCA PRA

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

- (a) contravention may be relied on as tending to establish contravention of such other *rule* as may be specified; or
- (b) compliance may be relied on as tending to establish compliance with such other *rule* as may be specified; or
- (c) both (a) and (b).

*excepted contract*

FCA PRA

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

*excess LLP members' drawings*

FCA PRA

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

*excess spread*

FCA PRA

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

*excess surplus*

FCA PRA

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

- (a) the *regulatory surplus* (or, in the case of a *realistic basis life firm*, the excess of *realistic value of assets* over *realistic value of liabilities*) in that *with-profits fund*; and
- (b) any other financial resources applied to, or expected to be applied to, that *with-profits fund*;

exceed:

- (c) the amount required to meet the higher of any regulatory capital requirement or the *firm's individual capital assessment* (at the *firm's* own risk appetite) for existing business; and
- (d) any further amount necessary to support the new business plans of that *with-profits fund*.

*excess trading book position*

FCA PRA

has the meaning in ■ *GENPRU 2.2.264 R* (Deductions from total capital: Excess trading book position).

*exchange traded*

FCA PRA

(in *IPRU(INV)* 13) listed or traded on a *recognised* or *designated investment exchange*.

*exchange traded fund*

FCA

[deleted]

exchange  
traded product

FCA

any of the following *investments*:

(a) a *unit* or *share* in an *open-ended investment company*, a *debt security* or a *contract for differences* which meets all of the following criteria:

(i) it is admitted to trading on a *regulated market* or a market operated by a *ROIE*;

(ii) it is created and redeemed in response to demand from investors or arbitrage opportunities arising from the difference in price from the *unit, share, debt security* or *contract for differences* and the price of the underlying asset(s) it seeks to track;

(iii) it aims to closely simulate the performance of a specified index or other benchmark (relating to any assets such as *shares, debentures, commodities* or currencies), whether or not the simulated performance is delta 1, inverse, leveraged, achieved by physical replication or synthetically through *derivatives*.

(b) a senior, unsubordinated *debt security* traded on a *regulated market* or a market operated by a *ROIE* featuring no periodic coupon payments and whose return tracks the performance of a specific index or other benchmark (relating to any assets such as *shares, debentures, commodities* or currencies), minus applicable fees, whether or not featuring delta 1, inverse or leveraged exposure to the index or other benchmark being tracked.

excluded  
communication

FCA PRA

the following types of *financial promotion* (a *firm* may rely on more than one of the paragraphs in relation to the same *financial promotion*):

(a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were *communicated* by an *unauthorised person*, or which originates outside the *United Kingdom* and is not capable of having an effect in the *United Kingdom* (within the meaning of s.21(3) of the Act);

(b) a *financial promotion* from outside the *United Kingdom* that would be exempt under articles 30, 31, 32 or 33 of the *Financial Promotion Order* (Overseas communicators) if the office from which the *financial promotion* is *communicated* were a separate *unauthorised person*;

(c) a *financial promotion* that is subject to, or exempted from, the *Takeover Code* or to the requirements relating to takeovers or related operations in another *EEA State*;

(d) a personal quotation or illustration form;

(e) a "one-off" *financial promotion* that is not a *cold call*. If the conditions set out in (i) to (iii), below, are satisfied, a *financial promotion* is "one-off". If not, the fact that any one or more of these conditions is met is to be taken into account in determining if a *financial promotion* is "one-off". However, a *financial promotion* may be regarded as "one-off" even if none of the conditions are met. The conditions are that:

(i) the *financial promotion* is *communicated* only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;

(ii) the identity of the product or service to which the *financial promotion* relates has been determined having regard to the particular circumstances of the recipient;

(iii) the *financial promotion* is not part of an organised marketing campaign; or

(f) a communication that is exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

*excluded material*

**FCA** **PRA**

(in relation to access to *appropriate regulator* material) (as defined in section 394(7) of the *Act* (Access to FCA or PRA material)) material which:

- (a) has been intercepted in obedience to a warrant issued under any enactment relating to the interception of communications; or
- (b) indicates that such a warrant has been issued or that material has been intercepted in obedience to such a warrant; or
- (c) is a *protected item*.

*excluded security*

**FCA**

any of the following *investments*:

- (a) a *security* whereby the issuer's ability to fulfil its payment obligations to the investor, or the *investment* returns received in connection with the *security*, are wholly or predominantly linked to, contingent on, highly sensitive to or dependent on, the performance of or changes in the value of *shares, debentures or government and public securities*, whether or not such performance or changes in value are measured directly or via a market index or indices, and provided the relevant *shares* and *debentures* are not themselves issued by *special purpose vehicles*;
- (b) a *covered bond*;
- (c) a *security* issued by an *investment trust*;
- (d) a *share* in a *company* resident outside the *EEA*, where that *company* would qualify for approval as an *investment trust* by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 if resident in the *United Kingdom*;
- (e) a *share* in a *venture capital trust*;
- (f) a *share* in a *company* to which Part 12 of the Corporation Tax Act 2010 (Real Estate Investment Trusts) applies or a member of a group to which that Part applies;
- (g) an *exchange traded product*;
- (h) a *security* issued by a *regulated collective investment scheme* other than a *qualified investor scheme*.

*execute*

**FCA** **PRA**

(in relation to a transaction) carry into effect or perform the transaction, whether as *principal* or as agent, including instructing another *person* to execute the transaction.

*execution criteria*

**FCA** **PRA**

(A) In the PRA Handbook:

the criteria set out in ■ COBS 11.2.6 R, that is:

- (a) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
- (b) the characteristics of the *client* order;
- (c) the characteristics of *financial instruments* that are the subject of that order;
- (d) the characteristics of the *execution venues* to which that order can be directed; and
- (e) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the scheme*.

(B) In the FCA Handbook:

the criteria set out in ■ COBS 11.2.6 R, that is:

<p><i>execution factors</i> FCA PRA</p>	<p>(a) the characteristics of the <i>client</i> including the categorisation of the <i>client</i> as retail or professional;</p> <p>(b) the characteristics of the <i>client</i> order;</p> <p>(c) the characteristics of <i>financial instruments</i> that are the subject of that order;</p> <p>(d) the characteristics of the <i>execution venues</i> to which that order can be directed; and</p> <p>(e) for a <i>management company</i>, the objectives, investment policy and risks specific to the <i>UCITS scheme</i> or <i>EEA UCITS scheme</i>, as indicated in its <i>prospectus</i> or <i>instrument constituting the fund</i>.</p>
<p><i>execution of orders on behalf of clients</i> FCA PRA</p>	<p>price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order.</p> <p>acting to conclude agreements to buy or sell one or more <i>financial instruments</i> on behalf of <i>clients</i>.</p> <p>[Note: article 4 (1)(5) of <i>MiFID</i>]</p>
<p><i>execution venue</i> FCA PRA</p>	<p>for the purposes of the provisions relating to best execution in ■ COBS 11.2 and in <i>COLL</i>, execution venue means a <i>regulated market</i>, an <i>MTF</i>, a <i>systematic internaliser</i>, or a <i>market maker</i> or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.</p> <p>[Note: article 44(1) of the <i>MiFID implementing Directive</i>]</p>
<p><i>execution-only transaction</i> FCA PRA</p>	<p>a transaction <i>executed</i> by a <i>firm</i> upon the specific instructions of a <i>client</i> where the <i>firm</i> does not give <i>advice on investments</i> relating to the merits of the transaction and in relation to which the <i>rules</i> on assessment of appropriateness (■ COBS 10) do not apply .</p>
<p><i>executive procedures</i> FCA PRA</p>	<p>the procedures relating to the giving of warning notices, decision notices and <i>supervisory notices</i> that are described in ■ DEPP 4 (Decisions by <i>FCA</i> staff under executive procedures) .</p>
<p><i>exempt activity</i> FCA PRA</p>	<p>(in relation to a <i>recognised body</i>) any <i>regulated activity</i> in respect of which the body is exempt from the <i>general prohibition</i> as a result of section 285(2) or (3) of the <i>Act</i> (Exemption for recognised investment exchanges and clearing houses).</p>
<p><i>exempt BIPRU commodities firm</i> FCA PRA</p>	<p>a <i>BIPRU firm</i> to which the exemption in ■ BIPRU TP 15.6R (Exemption for a BIPRU firm whose main business relates to commodities) applies.</p>
<p><i>exempt CAD firm</i> FCA PRA</p>	<p>(A) In the PRA Handbook:</p> <p>(1) (except in <i>SYSC</i> and <i>IPRU(INV)</i>) has the meaning set out ■ BIPRU 1.1.16 R (Types of investment firm: exempt CAD firm) which is in summary an <i>investment firm</i> that satisfies certain specified conditions.</p>

<p><i>exempt full scope BIPRU investment firm</i></p> <p><b>PRA</b></p>	<p>(2) (in SYSC and IPRU(INV)) a <i>firm</i> in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.</p> <p>(B) In the FCA Handbook:</p> <p>(1) (except in SYSC and IPRU(INV)) a firm as defined in article 4(1)(2)(c) of the EU CRR that is authorised to provide only one or more the following <i>investment services</i>:</p> <p style="margin-left: 20px;">(a) investment advice;</p> <p style="margin-left: 20px;">(b) receive and transmit orders from investors as referred to in Section A of Annex I of MiFID).</p> <p>(2) (in SYSC and IPRU(INV)) a <i>firm</i> in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.</p> <p>a <i>full scope BIPRU investment firm</i> falling into BIPRU 12.1.4R.</p>
<p><i>exempt full scope IFPRU investment firm</i></p> <p><b>FCA</b></p>	<p>a <i>full-scope IFPRU investment firm</i> falling into BIPRU 12.1.4R.</p>
<p><i>exempt IFPRU commodities firm</i></p> <p><b>FCA</b></p>	<p>an <i>IFPRU investment firm</i> which falls within the meaning in articles 493(1) and 498(1) of the EU CRR.</p>
<p><i>exempt insurance intermediary</i></p> <p><b>FCA PRA</b></p>	<p>an <i>insurance intermediary</i>:</p> <p style="margin-left: 20px;">(a) whose <i>Part 4A permission</i> is limited to or includes <i>insurance mediation activity</i>;</p> <p style="margin-left: 20px;">(b) which, in relation to <i>insurance mediation activity</i> (but disregarding <i>money</i> or other assets held in relation to other activities) either:</p> <p style="margin-left: 40px;">(i) does not hold any <i>client money</i> or other <i>client</i> assets in any form; or</p> <p style="margin-left: 40px;">(ii) holds <i>client money</i> as trustee under a statutory trust imposed by <b>■ CASS 5.3</b> (statutory trust) but does not otherwise hold <i>client money</i>; and</p> <p style="margin-left: 20px;">(c) which (when aggregating the amount calculated in accordance with <b>■ CASS 5.5.65 R</b>) does not in relation to <i>insurance mediation activity</i> hold <i>client money</i> in excess of £30,000 at any time during a <i>financial year</i>.</p>
<p><i>exempt person</i></p> <p><b>FCA PRA</b></p>	<p>(1) (as defined in section 417(1) of the Act (Definitions)) (in relation to a <i>regulated activity</i>) a <i>person</i> who is exempt from the <i>general prohibition</i> in respect of that activity as a result of:</p> <p style="margin-left: 20px;">(a) the <i>Exemption Order</i>; or</p> <p style="margin-left: 20px;">(b) being an <i>appointed representative</i>; or</p>

<p>(c) section 285(2) or (3) of the <i>Act</i> (Exemption for recognised investment exchanges and clearing houses) ;</p>	<p>(c) section 285(2) or (3) of the <i>Act</i> (Exemption for recognised investment exchanges and clearing houses) ;</p>
<p>and</p>	<p>and</p>
<p>(2) a <i>person</i> who is exempt from the general prohibition as a result of section 312A(2) of the <i>Act</i>.</p>	<p>(2) a <i>person</i> who is exempt from the general prohibition as a result of section 312A(2) of the <i>Act</i>.</p>
<p><i>exempt professional firm</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>person</i> to whom, under section 327 of the <i>Act</i>, the <i>general prohibition</i> does not apply; guidance is given in ■ PROF 2.1 (<i>Exempt regulated activities</i>).</p>
<p><i>exempt regulated activity</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(as defined in section 325(2) of the <i>Act</i> ( FCA's general duty)) a <i>regulated activity</i> which may, as a result of Part XX of the <i>Act</i> (Provision of Financial Services by Members of the Professions), be carried on by <i>members</i> of a profession which is supervised and regulated by a <i>designated professional body</i> without breaching the <i>general prohibition</i>.</p>
<p><i>Exemption Order</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the Financial Services and Markets Act 2000 (Exemption) Order 2001 (SI 2001/1201).</p>
<p><i>exercise notice</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) (in relation to <i>securitised derivatives</i>), a document that notifies the <i>issuer</i> of a holder's intention to exercise its rights under the <i>securitised derivative</i>.</p>
<p><i>exercise price</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) (in relation to <i>securitised derivatives</i>), the price stipulated by the <i>issuer</i> at which the holder can buy or sell the <i>underlying instrument</i> from or to the <i>issuer</i>.</p>
<p><i>exercise time</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) (in relation to <i>securitised derivatives</i>), the time stipulated by the <i>issuer</i> by which the holder must exercise their rights.</p>
<p><i>expected exposure</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the average of the distribution of <i>exposures</i> at any particular future date before the longest maturity transaction in the <i>netting set</i> matures.</p>
<p><i>expected loss</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with Article 4(29) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of the <i>IRB approach</i> and the <i>standardised approach</i> to credit risk) the ratio of the amount expected to be lost on an <i>exposure</i> from a potential <i>default</i> of a counterparty or dilution over a one year period to the amount outstanding at default.</p>
<p><i>expected positive exposure</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the weighted average over time of <i>expected exposures</i> where the weights are the proportion that an individual <i>expected exposures</i> represents of the entire time interval; when calculating the minimum capital requirement, the average is taken over the first year or, if all the contracts within the <i>netting set</i> mature before one year, over the time period of the longest-maturity contract in the <i>netting set</i>.</p>

*expiration date*

FCA PRA

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

*exposure*

FCA PRA

(A) In the PRA Handbook:

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

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

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

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

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

(B) In the FCA Handbook:

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

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

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

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

(3) [delete]

(4) (in *IFPRU* and to calculate *own funds requirements* under Part Three Title II (credit risk and counterparty credit risk)) has the meaning in article 5(1) of the *EU CRR*.

(5) (in ■ IFPRU 8.2 (Large exposures) for the purpose of Part Four ((Large exposures) of the *EU CRR*) has the meaning in article 389 of the *EU CRR* (Large exposures: definitions).

*ex-section 43 firm*

FCA PRA

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

*ex-section 43 lead regulated firm*

FCA PRA

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

<i>external AIFM</i> FCA	(in accordance with regulation 4(3)(a) of the <i>AIFMD UK regulation</i> ) an <i>AIFM</i> appointed by, or on behalf of, an <i>AIF</i> and which, through that appointment, is responsible for managing the <i>AIF</i> .
<i>external management company</i> FCA PRA	(in <i>LR</i> and <i>PR</i> ) has the meaning in ■ PR 5.5.3A R.
<i>external valuer</i> FCA	a person who performs the valuation function described in article 19 of the <i>AIFMD</i> in respect of an <i>AIF</i> managed by a <i>full-scope UK AIFM</i> , and is not the <i>AIFM</i> of that <i>AIF</i> .
<i>extraction</i> FCA PRA	(in relation to <i>mineral companies</i> ), includes mining, production, quarrying or similar activities and the reworking of mine tailings or waste dumps.
<i>extraordinary resolution</i> FCA PRA	(in <i>COLL</i> ) a resolution passed by a majority of not less than three-quarters of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at a general meeting or (as the case may be) <i>class meeting</i> of holders, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.
<i>EZPUT</i> PRA	<i>Enterprise Zone Property Unit Trust</i> .



FCA PRA

*interest rate maturity method*

the method of calculating the part of the *interest rate PRR* that relates to *general market risk* set out in ■ BIPRU 7.2.59 R (General market risk calculation: The maturity method).

FCA PRA

*interest rate PRR*

the part of the *market risk capital requirement* calculated in accordance with ■ BIPRU 7.2 (Interest rate PRR) or ■ BIPRU 7.3.45 R (Basic interest rate PRR for equity derivatives) or, in relation to a particular *position*, the portion of the overall *interest rate PRR* attributable to that *position*.

FCA PRA

*interest rate simplified maturity method*

the method of calculating the part of the *interest rate PRR* that relates to *general market risk* set out in ■ BIPRU 7.2.56 R (General market risk calculation: Simplified maturity method).

FCA PRA

*interested party*

(in relation to an application made under section 60 of the *Act* (Applications for approval)):

FCA PRA

- (a) the *firm* making the application;
- (b) the *person* in respect of whom the application is being made ("A"); and
- (c) the *person* by whom A's services are to be retained, if not the *firm* making the application.

*interest-only mortgage*

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

FCA PRA

*interest-rate contract*

interest-rate contracts listed in paragraph 1 of Annex II to the *EU CRR*.

FCA

*interim accounting period*

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

FCA PRA

*interim income allocation date*

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

FCA PRA

PAGE I21

*intermediaries offer*

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

FCA PRA

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

*intermediate broker*

**FCA** **PRA**

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

*intermediate customer*

**FCA**

(for the purposes only of **■** COBS TP 1 (Transitional Provisions in relation to Client Categorisation)) any *person* classified as an 'intermediate customer' under COB on 31 October 2007, in accordance with the applicable conditions in force at the time.

*intermediate holding vehicle*

**FCA** **PRA**

a *company*, trust or partnership but not a *collective investment scheme*, whose purpose is to enable the holding of overseas immovables on behalf of a *non-UCITS retail scheme* or a *qualified investor scheme*.

*intermediate rate of return*

**FCA** **PRA**

(in COBS) the intermediate rate of return described in paragraph 2.3 of the *projection rules* (**■** COBS 13 Annex 2).

*intermediate unitholder*

**FCA**

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

(a) does not *manage investments* on behalf of the relevant beneficial owner of the *unit*; or

(b) does not act as a *depository* of a *collective investment scheme* or on behalf of such a *depository* in connection with its role in holding property subject to the *scheme*.

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

*intermediate unitholder in a qualified investor scheme*

**FCA**

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

(a) does not *manage investments* on behalf of the relevant beneficial owner of the *unit*; or

(b) does not act as a *depository* of a *collective investment scheme* or on behalf of such a *depository* in connection with its role in holding property subject to the *scheme*.

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

*internal approaches*

**FCA**

one or more of the following, as referred to in the *EU CRR*:

(a) the Internal Ratings Based Approach in article 143(1);

(b) the Internal Models Approach in article 221;

(c) the own estimates approach in article 225;

(d) the Advanced Measurement Approaches in article 312(2);

(e) the Internal Model Method and internal models in articles 283 and 363; and

(f) the internal assessment approach in article 259(3).

*internal capital adequacy assessment process*

**FCA** **PRA**

a *firm's* assessment of the adequacy of its capital and financial resources, as required by the *ICAAP rules*.

*internal controls*

**FCA** **PRA**

the whole system of controls, financial or otherwise, established by the management of a *firm* in order to:

- (a) carry on the business of the *firm* in an orderly and efficient manner;
- (b) ensure adherence to management policies;
- (c) safeguard the assets of the *firm* and other assets for which the *firm* is responsible; and
- (d) secure as far as possible the completeness and accuracy of the *firm's* records (including those necessary to ensure continuous compliance with the requirements or standards under the *regulatory system* relating to the adequacy of the *firm's* financial resources).

*internally managed AIF*

**FCA**

(in accordance with regulation 4(3)(b) of the *AIFMD UK regulation*) an *AIF* where the legal form permits internal management and where the *AIF's* governing body chooses not to appoint an *external AIFM*.

*internally managed corporate AIF*

**FCA**

a *closed-ended corporate AIF* which is an *internally managed AIF*.

*international accounting standards*

**FCA** **PRA**

means the international accounting standards, within the meaning of EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, adopted from time to time by the European Commission in accordance with that Regulation.

*International Financial Reporting Standards*

**FCA** **PRA**

international financial accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.

*international organisation*

**FCA** **PRA**

(for the purposes of *GENPRU* and *BIPRU*) an organisation referred to in ■ *BIPRU* 3.4.30 R (Exposures to international organisations).

*International Securities Identification Number (ISIN)*

**FCA** **PRA**

a 12-character, alphanumeric code which uniquely identifies a *financial instrument* and provides for the uniform identification of *securities* at trading and settlement.

<i>inter-professional business</i> <span style="border: 1px solid black; padding: 2px;">FCA</span>	<p>(for the purposes only of ■ COBS TP 1 (Transitional Provisions in relation to Client Categorisation)) business which comes within the meaning of 'inter-professional business' as defined in COB on 31 October 2007.</p>
<i>inter-professional investment</i> <span style="border: 1px solid black; padding: 2px;">FCA</span>	<p>[deleted]</p>
<i>inter-syndicate reinsurance</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>reinsurance between one <i>syndicate year</i> and another, not being <i>reinsurance to close</i>.</p>
<i>intra-group liquidity modification</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>a modification to the <i>overall liquidity adequacy rule</i> of the kind described in BIPRU 12.8.7G.</p>
<i>intra-group transactions</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>(in accordance with Article 2(18) of the <i>Financial Groups Directive</i> (Definitions)) all transactions by which <i>regulated entities</i> within a <i>financial conglomerate</i> rely either directly or indirectly upon other <i>undertakings</i> within the same <i>financial conglomerate</i> or upon any <i>person</i> linked to the <i>undertakings</i> within that <i>financial conglomerate</i> by <i>close links</i>, for the fulfilment of an obligation whether or not contractual, and whether or not for payment.</p>
<i>introducer</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>an individual appointed by a <i>firm</i>, an <i>appointed representative</i> or, where applicable, a <i>tied agent</i>, to carry out in the course of <i>designated investment business</i> either or both of the following activities:</p> <ul style="list-style-type: none"> <li>(a) effecting introductions;</li> <li>(b) distributing <i>non-real time financial promotions</i>.</li> </ul>
<i>introducer appointed representative</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>an <i>appointed representative</i> appointed by a <i>firm</i> whose scope of appointment is limited to:</p> <ul style="list-style-type: none"> <li>(a) effecting introductions; and</li> <li>(b) distributing <i>non-real time financial promotions</i>.</li> </ul>
<i>introducing broker</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>a <i>firm</i> which introduces transactions relating to <i>designated investments arranged</i> (brought about) for its <i>clients</i> to a <i>clearing firm</i>.</p>
<i>investment</i> <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span>	<p>(in accordance with sections 22(4) of the <i>Act</i> (Regulated activities) and section 93(2) of the Financial Services Act 2012 ) any investment, including any asset, right or interest.</p>
<i>investment adviser</i> <span style="border: 1px solid black; padding: 2px;">FCA</span>	<p>(in relation to an <i>authorised fund</i>) a <i>person</i> who is retained by an <i>ICVC</i>, its <i>directors</i> or its <i>ACD</i> or by a <i>manager</i> of an <i>AUT</i> or by an <i>authorised contractual scheme manager</i> of an <i>ACS</i> under a commercial arrangement which is not a contract of service:</p> <ul style="list-style-type: none"> <li>(a) to supply any of them with advice in relation to the <i>authorised fund</i> as to the merits of investment opportunities or information relevant to the making of judgements about the merits of investment opportunities; or</li> </ul>

<i>investment agreement</i> <b>FCA</b> <b>PRA</b>	<p>(b) to exercise for any of them any function concerning the management of the <i>scheme property</i>.</p> <p>any agreement the making or performance of which by either party constitutes a <i>regulated activity</i>, but disregarding the exclusions in Part II of the <i>Regulated Activities Order</i>.</p>
<i>investment business compensation scheme</i> <b>FCA</b> <b>PRA</b>	<p>(as defined in article 2(2) of the <i>compensation transitionals order</i>) any of the following:</p> <p>(a) the scheme established under section 54 of the Financial Services Act 1986 and known as the Investors Compensation Scheme;</p> <p>(b) the scheme established under section 22j of the Grey Paper published by the FSA on 26 September 1998 and known as the Section 43 Compensation Scheme;</p> <p>(c) the scheme established by chapter II of part L:VIII of the <i>PIA</i> rule book and known as the PIA Indemnity Scheme;</p> <p>(d) the scheme resulting from an agreement dated 1 February 1999 between the Association of British Insurers and the Investors Compensation Scheme Limited for the making of payments by way of compensation to widows, widowers and dependants of persons (since deceased), in connection with advice given to such persons in relation to pensions, or the arranging of pensions for such persons, and known as the ABI/ICS scheme.</p>
<i>investment company with variable capital</i> <b>FCA</b> <b>PRA</b>	<p>a body incorporated under the <i>OEIC Regulations</i>.</p>
<i>investment entity</i> <b>FCA</b> <b>PRA</b>	<p>(in <i>LR</i>) an entity whose primary object is investing and managing its assets with a view to spreading or otherwise managing investment risk.</p>
<i>investment firm</i> <b>FCA</b> <b>PRA</b>	<p>(A) In the PRA Handbook:</p> <p>(1) any person whose regular occupation or business is the provision of one or more <i>investment services</i> to third parties and/or the performance of one or more investment activities on a professional basis.</p> <p>[Note: article 4(1)(1) of <i>MiFID</i>]</p> <p>(2) (in <i>REC</i>) a <i>MiFID investment firm</i>, or a person who would be a <i>MiFID investment firm</i> if it had its head office in the <i>EEA</i>.</p> <p>(5) (in <b>■ SYSC 19A</b>) a <i>firm</i> in (3) except for a <i>BIPRU firm</i></p> <p>(B) In the FCA Handbook:</p> <p>(1) any person whose regular occupation or business is the provision of one or more <i>investment services</i> to third parties and/or the performance of one or more investment activities on a professional basis.</p> <p>[Note: article 4(1)(1) of <i>MiFID</i>]</p> <p>(2) (in <i>REC</i>) a <i>MiFID investment firm</i>, or a person who would be a <i>MiFID investment firm</i> if it had its head office in the <i>EEA</i>.</p>

investment  
firm  
consolidation  
waiver

FCA PRA

investment  
management  
firm

FCA PRA

(3) (in *IFPRU*, ■ GENPRU 3 and ■ BIPRU 12) has the meaning in article 4(1)(2) of the *EU CRR*.

(4) (in *GENPRU* (except ■ GENPRU 3) and *BIPRU* (except ■ BIPRU 12) any of the following:

(a) a *firm* in (3); and

(b) a *BIPRU firm*.

(5) (in ■ SYSC 19A) a *firm* in (3).

(A) In the PRA Handbook:

a *waiver* (described in ■ BIPRU 8.4 (CAD Article 22 groups and investment firm consolidation waiver)) that disapplies certain requirements so far as they apply on a consolidated basis with respect to a *CAD Article 22 group*.

(B) In the FCA Handbook:

(in relation to a *BIPRU firm*) a *waiver* (described in ■ BIPRU 8.4 (CAD Article 22 groups and investment firm consolidation waiver)) that disapplies certain requirements so far as they apply on a consolidated basis with respect to a *CAD Article 22 group*.

(A) In the PRA Handbook:

(a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *IFPRU investment firm*, *BIPRU firm*, *building society*, *collective portfolio management firm*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with ■ IPRU-INV 3 or ■ IPRU-INV 13 (Personal investment firms) and which is within (a), (b) or (c):

(a) a *firm*:

(i) which was a member of *IMRO* immediately before *commencement*; and

(ii) which was not, immediately before *commencement*, subject to the financial supervision requirements of the *FSA* (under section 43 of the Financial Services Act 1986), or *PIA* or *SFA* (under lead regulation arrangements);

(b) a *firm* whose *permission* includes a *requirement* that it comply with ■ IPRU-INV 5 (Investment management firms);

(c) a *firm*:

(i) which was given a *Part 4A permission* on or after *commencement*, or which was authorised under section 25 of the Financial Services Act 1986 immediately before *commencement* and was not a member of *IMRO*, *PIA* or the *SFA*; and

(ii) for which the most substantial part of its gross income (including *commissions*) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the *Act*):

(A) *managing investments* other than for *retail clients* or where the assets managed are primarily *derivatives*;

(B) *OPS activity*;

(C) acting as the *manager* or *trustee* of an *AUT*;

(Ca) *managing an AIF*;

(D) acting as the *ACD* or *depository* of an *ICVC*;

(Da) acting as the *authorised contractual scheme manager* or *depository* of an *ACS*;

(Db) *acting as trustee or depository of an AIF*;

(Dc) *acting as trustee or depository of a UCITS*;

(E) *establishing, operating or winding up a collective investment scheme* (other than an *AUT*, *ICVC* or *ACS*);

(Ea) *establishing, operating or winding up a personal pension scheme*; and

(F) *safeguarding and administering investments*.

(B) In the FCA Handbook:

a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *IFPRU investment firm*, *BIPRU firm*, *collective portfolio management firm*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with ■ [IPRU-INV 3](#) or ■ [IPRU-INV 13](#) (Personal investment firms) and which is within (a), (b) or (c):

(a) a *firm*:

(i) which was a member of *IMRO* immediately before *commencement*; and

(ii) which was not, immediately before *commencement*, subject to the financial supervision requirements of the *FSA* (under section 43 of the Financial Services

Act 1986), or PIA or SFA (under lead regulation arrangements);

(b) a *firm* whose *permission* includes a *requirement* that it comply with ■ IPRU-INV 5 (Investment management firms);

(c) a *firm*:

(i) which was given a *Part 4A permission* on or after *commencement*, or which was authorised under section 25 of the Financial Services Act 1986 immediately before *commencement* and was not a member of IMRO, PIA or the SFA; and

(ii) for which the most substantial part of its gross income (including *commissions*) from the *designated investment business* included in its *Part 4A permission* is derived from one or more of the following activities (based, for a *firm* given a *Part 4A permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the Act):

(A) *managing investments* other than for *retail clients* or where the assets managed are primarily *derivatives*;

(B) *OPS activity*;

(C) acting as the *manager* or *trustee* of an *AUT*;

(Ca) *managing an AIF*;

(D) acting as the *ACD* or *depository* of an *ICVC*;

(Da) acting as the *authorised contractual scheme manager* or *depository* of an *ACS*;

(Db) *acting as trustee or depository of an AIF*;

(Dc) *acting as trustee or depository of a UCITS*;

(E) *establishing, operating or winding up a collective investment scheme* (other than an *AUT*, *ICVC* or *ACS*);

(Ea) *establishing, operating or winding up a personal pension scheme*; and

(F) *safeguarding and administering investments*.

*investment manager*

FCA PRA

- (1) (except in *LR*) a *person* who, acting only on behalf of a *client*:
- (a) manages *designated investments* in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement; or
  - (b) manages *designated investments* in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.
- (2) (in *LR*) a *person* who, on behalf of a *client*, manages *investments* and is not a wholly-owned *subsidiary* of the *client*.

*Investment Ombudsman*

FCA PRA

the *former Ombudsman* under the *IMRO scheme*.

*investment professional*

FCA PRA

- (in accordance with article 19(5) of the *Financial Promotion Order*) (in relation to a *financial promotion*):
- (a) an *authorised person*;
  - (b) an *exempt person* when the *financial promotion* relates to a *controlled activity* which is a *regulated activity* in relation to which the *person* is exempt;
  - (c) any other *person*:
    - (i) whose ordinary activities involve him in carrying on the *controlled activity* to which the *financial promotion* relates for the purposes of a business carried on by him; or
    - (ii) who it is reasonable to expect will carry on that activity for the purposes of a business carried on by him;
  - (d) a government, a local authority (whether in the *United Kingdom* or elsewhere) or an international organisation;
  - (e) a *person* ("A") who is a *director, officer* or employee of a *person* ("B") falling within any of (a) to (d) where the *financial promotion* is made to A in that capacity and where A's responsibilities when acting in that capacity involve him in the carrying on by B of *controlled activities*.

*investment research*

FCA PRA

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

- (a) it is labelled or described as investment research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
- (b) if the recommendation in question were to be made by an *investment firm* to a *client*, it would not constitute the provision of a *personal recommendation*.

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

*investment service*

FCA PRA

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

- (a) reception and transmission of orders in relation to one or more *financial instruments*;
- (b) execution of orders on behalf of *clients*;
- (c) *dealing on own account*;

*investment services and/or activities*

**FCA** **PRA**

- (d) *portfolio management*;
- (e) the making of a *personal recommendation*;
- (f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;
- (g) placing of *financial instruments* without a firm commitment basis;
- (h) operation of *multilateral trading facilities*.

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

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

- (a) reception and transmission of orders in relation to one or more *financial instruments*;
- (b) execution of orders on behalf of *clients*;
- (c) *dealing on own account*;
- (d) *portfolio management*;
- (e) the making of a *personal recommendation*;
- (f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;
- (g) placing of *financial instruments* without a firm commitment basis;
- (h) operation of *multilateral trading facilities*.

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

*Investment Services Directive*

**FCA** **PRA**

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

*investment services or activities*

**FCA** **PRA**

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

- (a) reception and transmission of orders in relation to one or more *financial instruments*;
- (b) execution of orders on behalf of *clients*;
- (c) *dealing on own account*;
- (d) *portfolio management*;
- (e) the making of a *personal recommendation*;
- (f) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;
- (g) placing of *financial instruments* without a firm commitment basis;
- (h) operation of *multilateral trading facilities*.

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

*investment services sector*

**FCA** **PRA**

(A) In the PRA Handbook:

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

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

(B) In the FCA Handbook:

(1) a sector composed of one or more of the following entities:

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

(2) (in BIPRU (except in ■ BIPRU 12) a sector comprised of one or more of the following entities:

- (a) the entities in (1); and
- (b) a *CAD investment firm*.

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

*investment transaction*

**FCA** **PRA**

*investment trust*

**FCA** **PRA**

(A) In the PRA Handbook:

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

- (a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or
- (b) is resident in an *EEA State* other than the *United Kingdom* and would qualify for such approval if resident and *listed* in the *United Kingdom*.

(B) In the FCA Handbook:

a *company* which:

- (a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed *company*, has declared its intention to conduct its affairs so as to obtain such approval); or
- (b) is resident in an *EEA State* other than the *United Kingdom* and would qualify for such approval if resident in the *United Kingdom*.

(a) a *dealing service* (whether or not held within a *pension contract*) dedicated to the *securities* of one or more *investment trusts*;

(b) *securities* to be acquired through an investment trust savings scheme in (a).

*investment trust savings scheme*

**FCA** **PRA**

<p><i>Investor Compensation Directive</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Council Directive of 3 March 1997 on investor compensation schemes (No 97/9/EC).</p>
<p>IOSCO  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the International Organisation of Securities Commissions.</p>
<p>IPA  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>individual pension account.</p>
<p><i>IPA eligible investment</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>a type of investment specified in regulation 2(2) (condition 5) of the Stamp Duty and Stamp Duty Reserve Tax (Definition of Unit Trust Scheme and Open-ended Investment Company) Regulations 2001 (SI 2001/964) .</p>
<p>IPRU  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential sourcebook, comprising ■ IPRU(BANK), ■ IPRU(BSOC), ■ IPRU(FSOC), ■ IPRU(INS) and ■ IPRU(INV), or according to the context one of these Interim Prudential sourcebooks.</p>
<p>IPRU(BANK)  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential sourcebook for Banks.</p>
<p>IPRU(BSOC)  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential sourcebook for Building Societies.</p>
<p>IPRU(FSOC)  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential sourcebook for Friendly Societies.</p>
<p>IPRU(INS)  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential Sourcebook for Insurers.</p>
<p>IPRU(INV)  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the Interim Prudential sourcebook for Investment Businesses.</p>
<p><i>IRB approach</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>one of the following:</p> <ul style="list-style-type: none"> <li>(a) the adjusted method of calculating the <i>credit risk capital component</i> set out in ■ BIPRU 4 (IRB approach) and ■ BIPRU 9.12 (Calculation of risk weighted exposure amounts under the internal ratings based approach), including that approach as applied under ■ BIPRU 14 (Capital requirements for settlement and counterparty risk);</li> <li>(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with ■ BIPRU 8 (Group risk - consolidation); or</li> <li>(c) when the reference is to the rules of or administered by a <i>regulatory body</i> other than the <i>appropriate regulator</i>, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.</li> </ul>

<p><i>IRB exposure class</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to the <i>IRB approach</i>) one of the classes of <i>exposure</i> set out in ■ BIPRU 4.3.2 R (exposure classes).</p>
<p><i>IRB permission</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) In the PRA Handbook:</p> <p style="padding-left: 20px;">an <i>Article 129 implementing measure</i>, a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or an <i>institution</i> to use the <i>IRB approach</i>.</p> <p>(B) In the FCA Handbook:</p> <p style="padding-left: 20px;">an <i>Article 129 implementing measure</i>, a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or a <i>CAD investment firm</i> to use the <i>IRB approach</i>.</p>
<p><i>ISA</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>individual savings account</i>.</p>
<p><i>ISA manager</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>person</i> who is approved by HM Revenue and Customs for the purposes of the <i>ISA Regulations</i> as an account manager.</p>
<p><i>ISA Regulations</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the Individual Savings Account Regulations 1998 (SI 1998/1870).</p>
<p><i>ISA transfer</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a transaction resulting from a decision, made with or without advice from a <i>firm</i>, by a <i>customer</i> who is an individual, to transfer the <i>investments</i> (or their value) held in his existing <i>ISA</i> in favour of another <i>ISA</i> which may or may not be managed by the same <i>ISA manager</i>.</p>
<p><i>ISD</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p><i>Investment Services Directive</i>.</p>
<p><i>ISPV</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>insurance special purpose vehicle</i>.</p>
<p><i>issue</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to <i>units</i>):</p> <p>(1) (except in ■ EG 14 ) the issue of new <i>units</i> by the <i>trustee</i> of an <i>AUT</i>, the <i>depository</i> of an <i>ACS</i> or by an <i>ICVC</i>;</p> <p>(2) (in ■ EG 14 ):</p> <p style="padding-left: 20px;">(a) an issue in accordance with (1); and</p> <p style="padding-left: 20px;">(b) the sale of <i>units</i>.</p>
<p><i>issue price</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to the <i>issue</i> of <i>units</i> of a <i>dual-priced authorised fund</i>) the <i>price</i> for each <i>unit</i> payable by the <i>authorised fund manager</i> to the <i>depository</i> on that <i>issue</i>.</p>
<p><i>issuer</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(1) (except as otherwise provided for below) :</p> <p style="padding-left: 20px;">(a) (in relation to any <i>security</i>) (other than a <i>unit</i> in a <i>collective investment scheme</i>) the <i>person</i> by whom it is or is to be issued;</p>

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

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

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

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

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

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

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

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

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

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

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

(6) (in *FUND*) means an issuer within the meaning of article 2(1)(d) of the *Transparency Directive* where that issuer has its registered office in the *EEA* and where its shares are admitted to trading on a *regulated market*.

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

- (a) a *credit institution*, a *credit union* or a municipal bank; or

issuing  
electronic  
money



(b) a person who is deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations* or who falls within regulation 76(1) of the *Electronic Money Regulations*.



*linked policyholders*

**FCA** **PRA**

*policyholders* under a *linked long-term* contract.

*liquidity facility*

**FCA** **PRA**

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

*liquidity risk*

**FCA** **PRA**

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

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

*list of primary information providers*

**FCA**

the list of *primary information providers* maintained by the *FCA* in accordance with section 89P(4)(a) of the *Act*.

*list of sponsors*

**FCA** **PRA**

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

*listed*

**FCA** **PRA**

(A) In the *PRA Handbook*:

(1) (except in *LR*, ■ SUP 11, *INSPRU* and *IPRU(INS)*) included in an official list.

(2) (in ■ SUP 11, *INSPRU* and *IPRU(INS)*):

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

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

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

(B) In the *FCA Handbook*:

(1) (except in *LR*, ■ SUP 11, *INSPRU* and *IPRU(INS)*) included in an official list.

(2) (in ■ SUP 11, *INSPRU* and *IPRU(INS)*):

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

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

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

*listed activity*

**FCA** **PRA**

(A) In the *PRA Handbook*:

an activity listed in Annex 1 to the *CRD*.

	(B) In the FCA Handbook: an activity listed in Annex 1 to the CRD.
<i>listed company</i> FCA PRA	(in LR and DEPP) a <i>company</i> that has any <i>class</i> of its <i>securities listed</i> .
<i>listed security</i> FCA PRA	any <i>security</i> that is admitted to an <i>official list</i> .
<i>listing particulars</i> FCA PRA	(in LR) (in accordance with section 79(2) of the <i>Act</i> ), a document in such form and containing such information as may be specified in <i>listing rules</i> .
<i>listing rules</i> FCA PRA	(in accordance with sections 73A(1) and 73A(2) of the <i>Act</i> ) <i>rules</i> relating to admission to the <i>official list</i> .
<i>Lloyd's actuary</i> FCA PRA	the <i>actuary</i> appointed by the <i>Society</i> under ■ SUP 4.6.1 R .
<i>Lloyd's actuary function</i> FCA PRA	(in the <i>PRA Handbook</i> ) <i>PRA controlled functions</i> CF12B in the <i>table of PRA controlled functions</i> , described more fully in ■ SUP 10B.8.3 R.
<i>Lloyd's Arbitration Scheme</i> FCA PRA	the Lloyd's Arbitration Scheme (Members and Underwriting Agents Arbitration Scheme) established under Lloyd's Arbitration Scheme (Members and Underwriting Agents Scheme) Byelaw (No 15 of 1992).
<i>Lloyd's complaint procedures</i> FCA PRA	the procedures maintained by the <i>Society</i> under ■ DISP 1.11.1 R.
<i>Lloyd's complaint rules</i> FCA PRA	■ DISP 1.7.
<i>Lloyd's market activities</i> FCA PRA	(a) <i>advising on syndicate participation at Lloyd's</i> , including <i>advising on a transaction in the capacity transfer market</i> ; (b) <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> ; (c) agreeing to carry on the <i>regulated activities</i> in (a) and (b); (d) carrying on <i>designated investment business</i> which is not <i>MiFID business</i> in relation to <i>funds at Lloyd's</i> ; or (e) <i>communicating or approving a financial promotion</i> in relation to:

<p><i>Lloyd's member's contribution</i></p> <p><b>FCA</b> <b>PRA</b></p>	<ul style="list-style-type: none"> <li>(i) the <i>underwriting capacity of a Lloyd's syndicate</i>; or</li> <li>(ii) <i>membership of a Lloyd's syndicate</i>; or</li> <li>(iii) <i>life policies</i> written at Lloyd's; or</li> <li>(iv) any of the activities specified in (a) or (d).</li> </ul> <p>assets:</p> <ul style="list-style-type: none"> <li>(a) provided to a <i>managing agent</i> in response to a cash call; or</li> <li>(b) held by the <i>Society</i> as funds at Lloyds.</li> </ul>
<p><i>Lloyd's Members' Ombudsman</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the office of Ombudsman established under Lloyd's Members' Ombudsman Scheme Byelaw (No 13 of 1987).</p>
<p><i>Lloyd's Return</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the financial report that the <i>Society</i> is required to submit to the <i>PRA</i> under IPRU(INS) 9.48(1) .</p>
<p><i>Lloyd's trust deed</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a trust deed in the form prescribed by the <i>Society</i> and notified to the <i>PRA</i>, for execution by a <i>member</i> in respect of his <i>insurance business</i>.</p>
<p><i>Lloyd's trust fund</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a fund held on the terms of a <i>Lloyd's trust deed</i>.</p>
<p><i>local</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) In the PRA Handbook:</p> <p>(1) (except in <b>■</b> BIPRU 1.1 (Application and purpose)) a <i>firm</i> which is a member of a <i>futures</i> and <i>options</i> exchange and whose <i>permission</i> includes a <i>requirement</i> that:</p> <ul style="list-style-type: none"> <li>(a) the <i>firm</i> will not conduct <i>designated investment business</i> other than: <ul style="list-style-type: none"> <li>(i) <i>dealing</i> for its own account on that <i>futures</i> or <i>options</i> exchange; or</li> <li>(ii) <i>dealing</i> for the accounts of other members of the same <i>futures</i> and <i>options</i> exchange; or</li> <li>(iii) making a price to other members of the same <i>futures</i> and <i>options</i> exchange; and</li> <li>(iv) <i>dealing</i> for its own account in financial <i>futures</i> and <i>options</i> or other <i>derivatives</i> in the capacity of a customer; and</li> </ul> </li> <li>(b) the performance of the <i>firm's</i> contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same <i>futures</i> and <i>options</i> exchange.</li> </ul>

(2) (in ■ BIPRU 1.1 (Application and purpose) and in accordance with article 3(1)(p) of the *Capital Adequacy Directive* (Definitions)) an *undertaking* dealing for its own account on markets in financial-futures or options or other derivatives and on cash markets for the sole purpose of hedging *positions* on derivatives markets or which deals for the accounts of other members of those markets and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such an *undertaking* is assumed by clearing members of the same markets; for these purposes a clearing member means a member of the exchange or the clearing house which has a direct contractual relationship with the central counterparty (market guarantor).

(B) In the FCA Handbook:

(1) (except in ■ IFPRU 1.1 (Application and purpose)) a *firm* which is a member of a *futures* and *options* exchange and whose *permission* includes a *requirement* that:

(a) the *firm* will not conduct *designated investment business* other than:

(i) *dealing* for its own account on that *futures* or *options* exchange; or

(ii) *dealing* for the accounts of other members of the same *futures* and *options* exchange; or

(iii) making a price to other members of the same *futures* and *options* exchange; and

(iv) *dealing* for its own account in financial *futures* and *options* or other *derivatives* in the capacity of a customer; and

(b) the performance of the *firm's* contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same *futures* and *options* exchange.

(2) [deleted]

(3) (in ■ IFPRU 1.1 (Application and purpose) has the meaning given to the definition of "local firm" in article 4(1)(4) of the *EU CRR*.

*local authority*

FCA

(a) in England and Wales, a local authority within the meaning of the Local Government Act 1972, the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1973;

(c) in Northern Ireland, a district council within the meaning of the Local Government Act (Northern Ireland) 1972.

*local firm*

FCA PRA

a *firm* which falls within the definition of "local firm" in Article 3.1P of *CAD*, that is a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts

London Stock Exchange

FCA PRA

entered into by such a firm is assumed by clearing members of the same markets.  
(in LR) London Stock Exchange Plc.

long settlement transaction

FCA PRA

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)) a transaction where a counterparty undertakes to deliver a security, a *commodity*, or a *foreign currency* amount against cash, other *CRD financial instruments*, or *commodities*, or vice versa, at a settlement or delivery date that is contractually specified as more than the lower of the market standard for this particular transaction and five *business days* after the date on which the *person* enters into the transaction.

long-term admissible asset

FCA PRA

a *long-term insurance asset* which is an *admissible asset*.

long-term care insurance contract

FCA PRA

a *long-term insurance contract*:

(a) which provides, would provide at the *policyholder's* option, or is sold or held out as providing, benefits that are payable or provided if the *policyholder's* health deteriorates to the extent that he cannot live independently without assistance and that is not expected to change; and

(b) under which the benefits are capable of being paid for periodically for all or part of the period that the *policyholder* cannot live without assistance;

where 'benefits' are services, accommodation or goods necessary or desirable for the continuing care of the *policyholder* because he cannot live independently without assistance.

long-term incentive scheme

FCA

(in LR) any arrangement (other than a retirement benefit plan, a deferred bonus or any other arrangement that is an element of an executive *director's* remuneration package) which may involve the receipt of any asset (including cash or any security) by a *director* or *employee* of the *group*:

(a) which includes one or more conditions in respect of service and/or performance to be satisfied over more than one financial year; and

(b) pursuant to which the *group* may incur (other than in relation to the establishment and administration of the arrangement) either cost or a liability, whether actual or contingent.

long-term insurance asset

FCA PRA

has the meaning set out in INSPRU 1.5.21R.

long-term insurance business

FCA PRA

the business of *effecting* or *carrying out long-term insurance contracts*.

long-term insurance business syndicate

a *syndicate* in which *members* carry on *long-term insurance business*.

FCA PRA

*long-term insurance capital requirement*

(in relation to a *firm* carrying on *long-term insurance business*) an amount of *capital resources* that the *firm* must hold calculated in accordance with GENPRU 2.1.36R.

FCA PRA

*long-term insurance contract*

(in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation: general)) any *contract of insurance* within Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), namely:

FCA PRA

- (a) *life and annuity* (paragraph I);
- (b) *marriage or the formation of a civil partnership and birth* (paragraph II);
- (c) *linked long-term* (paragraph III);
- (d) *permanent health* (paragraph IV);
- (e) *tontines* (paragraph V);
- (f) *capital redemption* (paragraph VI);
- (g) *pension fund management* (paragraph VII);
- (g) *collective insurance* etc (paragraph VIII);
- (h) *social insurance* (paragraph IX).

*long-term insurance fund*

has the meaning set out in INSPRU 1.5.22R .

FCA PRA

*long-term insurance liabilities*

liabilities arising from *long-term insurance business*.

FCA PRA

*long-term insurer*

an *insurer* with *permission* to effect or carry out long-term insurance contracts.

FCA PRA

*loss*

(in accordance with Article 4(26) of the *Banking Consolidation Directive* (Definitions) and for the purposes of the *IRB approach*, the *standardised approach* to credit risk and ■ BIPRU 5 (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

FCA PRA

(A) In the PRA Handbook:

(in accordance with Article 4(26) of the *Banking Consolidation Directive* (Definitions) and for the purposes of the *IRB approach*, the *standardised approach* to credit risk and ■ BIPRU 5 (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

(B) In the FCA Handbook:

<p><i>loss given default</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(1) (in <i>BIPRU</i> and in accordance with Article 4(26) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of the <i>IRB approach</i>, the <i>standardised approach</i> to credit risk and <b>■ BIPRU 5</b> (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.</p> <p>(2) (except in (2)) has the meaning in article 5(1) of the <i>EU CRR</i>.</p>
<p><i>low frequency liquidity reporting firm</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with Article 4(27) of the <i>Banking Consolidation Directive</i> (Definitions) and in relation to the <i>IRB approach</i>) the ratio of the <i>loss</i> on an <i>exposure</i> due to the <i>default</i> of a counterparty to the amount outstanding at <i>default</i>.</p> <p>any of the following:</p> <p>(a) a <i>simplified ILAS BIPRU firm</i>; or</p> <p>(b) a <i>standard ILAS BIPRU firm</i> whose most recent <i>annual report and accounts</i> show balance sheet assets of less than £5 billion (or its equivalent in foreign currency translated into sterling at the balance sheet date); or</p> <p>(c) a <i>standard ILAS BIPRU firm</i> that meets the following conditions:</p> <p>(i) it does not have any <i>annual report and accounts</i> and it has been too recently established to be required to have produced any;</p> <p>(ii) it has submitted a projected balance sheet to the <i>FCA</i> or <i>PRA</i> (as the case may be) as part of an application for a <i>Part 4A permission</i> or a variation of one; and</p> <p>(iii) the most recent such balance sheet shows that the <i>firm</i> will meet the size condition set out in (b) in all periods covered by those projections.</p> <p>In respect of an <i>incoming EEA firm</i> or <i>third country BIPRU firm</i> that is also a <i>standard ILAS BIPRU firm</i> and which reports on the basis of its branch operation in the <i>United Kingdom</i>, if the balance sheet assets attributable to the <i>UK branch</i> can be determined from the <i>firm's</i> most recent <i>annual report and accounts</i> (or, if applicable, the projected balance sheet) or any <i>data item</i> submitted by the <i>firm</i>, then paragraphs (b) and (c) apply at the level of the <i>branch</i> rather than of the <i>firm</i>.</p>
<p><i>lower rate of return</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>COBS</i>) the lower rate of return described in paragraph 2.3 of the projection <i>rules</i> (<b>■ COBS 13 Annex 2</b>).</p>
<p><i>lower stage of capital</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(with respect to a particular item of capital in the <i>capital resources table</i>) a stage in the <i>capital resources table</i> below that in which that item of capital appears.</p>
<p><i>lower tier three capital</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an item of capital that is specified in stage P of the <i>capital resources table</i> (Lower tier three).</p>
<p><i>lower tier three capital resources</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the sum calculated at stage P of the <i>capital resources table</i> (Lower tier three).</p>

*lower tier two capital*

**FCA** **PRA**

(1) [deleted]

(2) (in *BIPRU*, *GENPRU* and *INSPRU*) an item of capital that is specified in stage H of the capital resources table (Lower tier two capital) .

*lower tier two capital resources*

**FCA** **PRA**

the sum calculated at stage H of the calculation in the *capital resources table* (Lower tier two capital) .

*lower tier two instrument*

**FCA** **PRA**

an item of capital that meets the conditions in GENPRU 2.2.194R (Lower tier two capital) and is eligible to form part of a *firm's lower tier two capital resources*.

*LR*

**FCA** **PRA**

the Listing Rules sourcebook.

*LTICR*

**FCA** **PRA**

*long-term insurance capital requirement*.

FCA PRA

market contract

FCA PRA

a market contract as described in section 155(2)(a) of the Companies Act 1989 or article 80(2)(a) of the Companies (No2) (Northern Ireland) Order 1990 which is in summary a contract entered into by a *member* or *designated non-member* of an *RIE* with a person other than the *RIE* which is either:

- (a) a contract made on the exchange or an exchange to whose undertaking the exchange has succeeded; or
- (b) a contract in the making of which the member or *designated non-member* was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded.

market counterparty

FCA

(for the purposes only of ■ COBS TP 1 (Transitional Provisions in relation to Client Categorisation)) any *person* classified as a 'market counterparty' under COB on 31 October 2007, in accordance with the applicable conditions in force at the time.

market liquidity stress

FCA PRA

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

- (a) (in the case of reporting obligations on a solo basis) any market that is of material significance to the *firm* being materially adversely affected by crystallised *liquidity risk* or a substantial number of participants in any such market being materially adversely affected by crystallised *liquidity risk*, whether or not the *firm* itself is so affected;
- (b) (in the case of reporting obligations with respect to the *firm* and a group of other persons) has the same meaning as in (a) except that references to the *firm* are to the *firm* and that group considered together;
- (c) (in the case of reporting obligations with respect to a *firm's UK branch*) has the same meaning as in (a) except that references to the *firm* are to that *branch*.

market maker

FCA PRA

(1) (except in COBS and DTR ) (in relation to an *investment*) a *person* who (otherwise than in his capacity as the *operator* of a *regulated collective investment scheme*) holds himself out as able and willing to enter into transactions of sale and purchase in *investments* of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.

(2) (in COBS and DTR) a *person* who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against his proprietary capital at prices defined by him.

[Note: article 4 (1)(8) of MiFID]

(3) [deleted]

market maker exemption

FCA PRA

an exemption from articles 5, 6, 7, 12, 13 and 14 of the *short selling regulation* for transactions performed due to *market making activities* pursuant to article 17 of the *short selling regulation*.

PAGE M9

market making activities

FCA PRA

(as defined in article 2(1)(k) of the *short selling regulation*) the activities of an *investment firm*, a *credit institution*, a third-country entity, or a firm as referred to in point (l) of article 2(1) of MIFID, which is a member of a *trading venue* or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to article 17(2) of the *short selling regulation* where it deals as principal in a *financial*

market  
operator

FCA PRA

*instrument*, whether traded on or outside a *trading venue*, in any of the following capacities:

- (a) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; or
- (b) as part of its usual business, by fulfilling orders initiated by clients or in response to clients' requests to trade; or
- (c) by hedging positions arising from the fulfilment of tasks under points (a) and (b).

a *person* who manages and/or operates the business of a *regulated market*. The *market operator* may be the *regulated market* itself.

[Note: article 4(1)(13) of *MiFID*]

market risk

FCA PRA

(1) (in *COLL* and *FUND*) the risk of loss for a *UCITS* or *AIF* resulting from fluctuation in the market value of positions in the *fund's* portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's credit worthiness.

(2) (except in *COLL* and *FUND*) (in relation to a *firm*) the risks that arise from fluctuations in values of, or income from, assets or in interest or exchange rates.

market risk  
capital  
requirement

FCA PRA

the part of the *capital resources requirement* of a *BIPRU firm* in respect of *market risk*, calculated in accordance with GENPRU 2.1.52R (Calculation of the market risk capital requirement).

market value

FCA PRA

the market value as determined in accordance with generally accepted accounting practice.

marketable  
investment

FCA PRA

(a) an *investment* which is traded on or under the rules of an exchange;

(b) a debt instrument which may be transferred without the consent of the *issuer* or any other *person* (including a collateralised mortgage obligation);

(c) a *commodity*;

(d) a *warrant*, *option*, *future* or other instrument which entitles the holder to subscribe for or acquire:

(i) an *investment* or *commodity* in (a) to (c); or

(ii) any currency; or

(iii) any combination of (i) and (ii);

(e) a *contract for differences* (including interest rate and currency swaps) relating to fluctuations in:

(i) the value or price of an *investment* or *commodity* in (a) to (d); or

(ii) any currency; or

(iii) the rate of interest in any currency or any index of such rates; or

marketing

FCA

- (iv) the level of any index which is derived from the prices of an *investment* or *commodity* in (a) to (c); or
- (v) any combination of (i) to (iv);
- (f) *warrants, options, futures* or other instruments entitling the holder to obtain the rights of those contracts in (d) or (e);
- (g) a *unit* in a *regulated collective investment scheme*.

(1) (in *COLL*) (in relation to marketing *units* in a *regulated collective investment scheme* in a particular country or territory):

- (a) *communicating* to a *person* in that country or territory an invitation or inducement to become, or offer to become, a *holder* in that *regulated collective investment scheme*;
- (b) giving *advice on investments* to, or arranging (bringing about) a deal in an investment for a *person* in that country or territory to become a *holder* in that *regulated collective investment scheme*

(2) (except in *COLL*) a direct or indirect offering or placement, at the initiative of the *AIFM* or on behalf of the *AIFM* of *units* or *shares* of an *AIF* it manages, to or with investors domiciled or with a registered office in the *EEA*.

[Note: article 4(1)(x) of *AIFMD*]

marketing group

FCA PRA

a group of *persons* who:

- (a) are allied together (either formally or informally) for the purposes of marketing *packaged products* of the *marketing group*; and
- (b) each of whom, if it holds itself out in the *United Kingdom* as marketing *packaged products* to *private customers*, does so only as an *investment manager* or in relation to *packaged products* of the *marketing group*.

marketing group associate

FCA PRA

a *firm* other than a *product provider* which is a member of a *marketing group*.

mark-up or mark-down

FCA PRA

(a) (when a *firm* receives a *customer order* and takes a *principal* position in the relevant *investment* in order to fulfil that *customer order* (that is, when the *firm* takes a *principal* position in the relevant *investment* which it would not otherwise take, except to fulfil that *customer order*)) the difference, if any, between:

- (i) the price at which the *firm* takes a *principal* position in the relevant *investment* in order to fulfil that *customer order*; and
- (ii) the *price* at which the firm executes the transaction with its *customer*;

(b) (when a firm executes a *customer order* against its own book and owes a duty of best execution) the difference between:

- (i) the *price* at which best execution would be achieved; and
- (ii) the *price* at which the firm executes the transaction with its *customer*.

marriage or the formation of a civil partnership and birth

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph II of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), to provide a sum on marriage or the formation of a civil partnership or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.

FCA PRA

master AIF

FCA

(in accordance with article 4(1)(y) of *AIFMD*) an *AIF* in which another *AIF* (a *feeder AIF*) invests or has an exposure in accordance with the definition of '*feeder AIF*'.

master netting  
agreement  
internal models  
approach

FCA

one of the following:

(a) the method of calculating the effect of *credit risk mitigation* described in ■ BIPRU 5.6.16 R to ■ BIPRU 5.6.28 G;

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

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

master netting  
agreement  
internal models  
approach  
permission

FCA

(A) In the PRA Handbook:

*requirement* or a *waiver* that requires a *firm* to use the *master netting agreement internal models approach* on a solo basis or, if the context requires, a consolidated basis.

(B) In the FCA Handbook:

*requirement* or a *waiver* that requires a *BIPRU firm* to use the *master netting agreement internal models approach* on a solo basis or, if the context requires, a consolidated basis.

master UCITS

FCA PRA

(in accordance with article 58(3) of the *UCITS Directive*) a *UCITS scheme*, an *EEA UCITS scheme* or a *sub-fund* of such a *scheme* where:

(a) at least one of its *unitholders* is a *feeder UCITS*;

(b) it is not itself a *feeder UCITS*; and

(c) it does not hold *units* of a *feeder UCITS*.

master-feeder  
agreement

FCA PRA

(in *COLL*) a written agreement between the *management company* of a *master UCITS* and the *management company* of a *feeder UCITS* in accordance with ■ *COLL* 11.3.2 R (1) (Master-feeder agreement and internal conduct of business rules).

matched  
principal  
exemption  
conditions

FCA

(for the purposes of *BIPRU*) the conditions set out in ■ *BIPRU* 1.1.23 R (2) (Meaning of dealing on own account).

material  
currency

FCA PRA

(a) *Material currencies*, in respect of a *firm* at any time, are currencies determined in accordance with the following.

(b) First, the amount of its assets and the amount of its liabilities in each currency (ignoring the sign) are separately calculated. The figures are as shown in the most recent *data item* FSA054 submitted to the *appropriate regulator*.

(c) Then, each such amount is converted into the reporting currency for the *data item* referred to in (b).

(d) Each currency (which may include the reporting currency) that represents 20% or more of the total asset figure or 20% or more of the total liabilities figure is a *material currency*.

(e) A currency is also a *material currency* if it is identified by the *firm's* current:

- (i) *Individual Liquidity Adequacy Assessment*; or
- (ii) *Individual Liquidity Systems Assessment*; or
- (iii) *ILG* that has been accepted by the *firm*;

as being significant in the context of cross-currency *liquidity risk* (as referred to in BIPRU 12.5 (Individual Liquidity Adequacy Standards)).

(f) The conversion rate for a currency into the reporting currency is the exchange rate on the date as of which the calculation is being made.

(g) The reporting currency means the currency in which the most recent *data item* FSA054 (as referred to in (b)) is reported.

(h) A currency is a *material currency* in relation to a *firm's branch* or a *defined liquidity group* of which it is a *group liquidity reporting firm* if it is identified as such in accordance with the procedures in the previous paragraphs of this definition except that the identification is carried out by reference to that *branch* or *defined liquidity group*. For these purposes, *data item* FSA054 for the *reporting level* concerned is used.

(i) If the *firm* has not delivered *data item* FSA054 to the *appropriate regulator* at the *reporting level* concerned or is currently not required to do so at the *reporting level* concerned, the calculation is carried out using the methods for drawing up *data item* FSA054.

(in IPRU(INV) 13) losses of an amount equal to 10 per cent or more of the amount by which the *own funds* of an *undertaking* exceed the *own funds* needed to meet financial resources test 1 as prescribed in chapter 13.

*material current year losses*

FCA PRA

*material holding*

FCA PRA

(1) [deleted]

(2) (for the purposes of GENPRU and BIPRU) has the meaning in ■ GENPRU 2.2.209 R (Deductions from tiers one and two: Material holdings (BIPRU firm only)).

*material insurance holding*

FCA PRA

has the meaning in GENPRU 2.2.212R (Material holdings) or, for an *exempt CAD firm* which is an *investment management firm*, in IPRU(INV) Table 5.2.2(1).

*material interest*

FCA PRA

(in COBS) (in relation to a transaction) any interest of a material nature, other than:

- (a) disclosable *commission* on the transaction;
- (b) goods or services which can reasonably be expected to assist in carrying on *designated investment business* with or for *clients* and which are provided or to be provided in compliance with ■ COBS 11.6.3 R.

*material outsourcing*

FCA PRA

*outsourcing* services of such importance that weakness, or failure, of the services would cast serious doubt upon the *firm's* continuing satisfaction of the *threshold conditions* or compliance with the *Principles*.

*mathematical reserves*

**FCA** **PRA**

the provision made by an *insurer* to cover liabilities (excluding liabilities which have fallen due and liabilities arising from *deposit back arrangements*) arising under or in connection with *long-term insurance contracts*.

*maxi-ISA*

**FCA** **PRA**

an *ISA* which includes a *stocks and shares component* and may also include other *qualifying investments* such as:

- (a) a *cash component*;
- (b) an *insurance component*;

as prescribed in paragraphs 7, 8 and 9 respectively of the *ISA Regulations*.

*MCAS scheme*

**FCA** **PRA**

Mortgage Code Arbitration Scheme.

*MCOB*

**FCA** **PRA**

the Mortgages and Home Finance: Conduct of Business sourcebook.

*MCR*

**FCA** **PRA**

*minimum capital requirement*.

*media firm*

**FCA** **PRA**

a *firm* whose only *permitted activities* are *advising on investments* and *agreeing to carry on that regulated activity*, and whose *Part 4A permission* includes *requirements* to the effect that the *firm* must advise:

- (a) only through the media; and
- (b) without conveying the impression that the advice is particularly suitable for any *person*, except when it is given in response to a specific request for advice from that *person*;

in this definition, "media" means:

- (i) newspapers, journals, magazines or other periodical publications;
- (ii) services comprising regularly updated news or information;
- (iii) services consisting of the broadcast or transmission of television or radio programmes.

*media operator*

**FCA**

a news vendor that receives *regulated information* from a *regulatory information service* and then disseminates that information to the public as soon as possible.

*meeting of repayment claims*

**FCA** **PRA**

the *regulated activity*, specified in article 63N(1)(a) of the *Regulated Activities Order*, which is the meeting of *repayment claims* by a *dormant account fund operator*.

*member*

**FCA** **PRA**

(1) (except in *PROF, LR*, ■ *EG 16* and *REC*) a *person* admitted to membership of the *Society* or any *person* by law entitled or bound to administer his affairs.

(2) (in *PROF, LR* and ■ *EG 16*) (as defined in section 325(2) of the *Act* (FCA's general duty)) (in relation to a profession) a *person* who is entitled to practise that profession and, in practising it, is subject to the rules of

<p><i>member contribution</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the relevant <i>designated professional body</i>, whether or not he is a member of that body.</p> <p>(3) (in <i>REC</i>) (in relation to a <i>recognised body</i>) a <i>person</i> who is entitled, under an arrangement or agreement between him and that body, to use that body's <i>facilities</i>.</p> <p>any paid up contribution by a member of a <i>mutual</i> where the members' accounts meet the following criteria:</p> <p>(a) the memorandum and articles of association or other constitutional documents must stipulate that payments may be made from these accounts to members only in so far as this does not cause the <i>firm's capital resources</i> to fall below the required level, or, if after dissolution of the <i>firm</i>, all the <i>firm's</i> other debts have been settled;</p> <p>(b) the memorandum and articles of association or other constitutional documents must stipulate, with respect to the payments referred to in (a) made for reasons other than the individual termination of membership, that the <i>appropriate regulator</i> must be notified at least one month in advance of the intended date of such payments; and</p> <p>(c) the <i>appropriate regulator</i> must be notified of any amendment to the relevant provisions of the memorandum and articles of association or other constitutional documents.</p>
<p><i>member society</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(as defined in article 2(2) of the <i>compensation transitionals order</i> ) a person who at any time before <i>commencement</i> was a member society within the rules of the Friendly Societies Protection Scheme established in accordance with section 141 of the Financial Services Act 1986.</p>
<p><i>members' adviser</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> whose <i>permission</i> includes <i>advising on syndicate participation at Lloyd's</i>, but which is not an <i>underwriting agent</i>.</p>
<p><i>members' agent</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>underwriting agent</i> who carries on the <i>regulated activity of advising on syndicate participation at Lloyd's</i>.</p>
<p><i>membership of a Lloyd's syndicate</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the <i>investment</i> , specified in article 86(2) of the <i>Regulated Activities Order</i>, which is a <i>person's</i> membership (or prospective membership) of a Lloyd's <i>syndicate</i>.</p>
<p><i>merging UCITS</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>COLL</i>) in relation to a <i>UCITS merger</i>, the <i>UCITS scheme</i>, <i>EEA UCITS scheme</i> or <i>sub-fund</i> of such a <i>scheme</i>, that under the proposed arrangements will be transferring all its assets and liabilities to the <i>receiving UCITS</i>.</p>
<p><i>MERS levy</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a levy (management expenses in respect of relevant schemes levy) imposed by the <i>FSCS</i> on <i>participant firms</i> to meet the management expenses incurred by the <i>FSCS</i> in connection with acting on behalf of the <i>manager of the relevant scheme</i> in accordance with Part 15A of the <i>Act</i>.</p>
<p><i>mesothelioma regulations</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>The Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (SI 2006/3259).</p>

*mesothelioma victim*

FCA PRA

(in accordance with section 3 (1) of the Compensation Act 2006) a *person* who has contracted mesothelioma as a result of exposure to asbestos by a *responsible person*.

*mezzanine securitisation positions*

FCA PRA

for the purposes of ■ BIPRU 9.3.7 R, ■ BIPRU 9.4.11 R and ■ BIPRU 9.5.1 R (6), *securitisation positions* to which a *risk weight* lower than 1250% applies and which are more junior than the most senior position in the relevant *securitisation* and more junior than any *securitisation* position in the relevant *securitisation* to which:

(a) in the case of a *securitisation position* subject to the *standardised approach* to *securitisation* set out in ■ BIPRU 9.11.1 R and ■ BIPRU 9.11.2 R, a *credit quality step* 1 is assigned; or

(b) in the case of a *securitisation position* subject to the *IRB approach* to *securitisation* set out in ■ BIPRU 9.12.10 R and ■ BIPRU 9.12.11 R, a *credit quality step* 1 or 2 is assigned under ■ BIPRU 9.7.2 R, ■ BIPRU 9.8.2 R to ■ BIPRU 9.8.7 R and regulation 23 of the *Capital Requirements Regulations 2006*.

[Note: BCD, Annex IX, Part 2, Point 1, paragraph 1b]

*MFHC conglomerate*

FCA PRA

a *financial conglomerate* which is headed by a *mixed financial holding company*.

*micro-enterprise*

FCA PRA

an enterprise which:

(a) employs fewer than 10 *persons*; and

(b) has a turnover or annual balance sheet that does not exceed €2 million.

In this definition, "enterprise" means any *person* engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed *persons* and family businesses engaged in craft or other activities, and *partnerships* or associations regularly engaged in an economic activity.

[Note: article 4(26) of the *Payment Services Directive* and the Annex to the *Micro-enterprise Recommendation*]

*Micro-enterprise Recommendation*

FCA PRA

Recommendation 2003/361/EC of the Commission of 6th May 2003 concerning the definition of micro, small and medium-sized enterprises.

*MiFID*

FCA PRA

The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).

See also *MiFID Regulation* and *MiFID implementing Directive*.

*MiFID business*

FCA PRA

*investment services and activities* and, where relevant, *ancillary services* carried on by a *MiFID investment firm*.

*MiFID business bidding*

FCA PRA

the *regulated activity* of *bidding in emissions auctions* where it is carried on by a *MiFID investment firm* (other than a *UCITS investment firm*) in relation to a *financial instrument*.

*MiFID client money (minimum implementing) rules*

**FCA** **PRA**

■ CASS 7.3.1 R, ■ CASS 7.3.2 R, ■ CASS 7.4.1 R, ■ CASS 7.4.5 R, ■ CASS 7.4.7 R, ■ CASS 7.4.8 R, ■ CASS 7.4.11 R, ■ CASS 7.6.1 R, ■ CASS 7.6.2 R and ■ CASS 7.6.9 R.

*MiFID implementing Directive*

**FCA** **PRA**

Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*MiFID implementing requirement*

**FCA** **PRA**

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

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

*MiFID investment firm*

**FCA** **PRA**

(A) In the PRA Handbook:

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

(in full) a *firm* which is:

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

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

(3) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or Article 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in article 6(6) of *AIFMD* or Article 20 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM* the *rules* implementing article 12(2)(b) of *AIFMD*);

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

(B) In the FCA Handbook:

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

(in full) a *firm* which is:

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

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

<p><i>MiFID or equivalent third country business</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(3) a <i>collective portfolio management investment firm</i> (only when providing the services referred to in article 6(4) <i>AIFMD</i> or Article 6(3) of the <i>UCITS Directive</i> in relation to the <i>rules</i> implementing the articles of <i>MiFID</i> referred to in article 6(6) of <i>AIFMD</i> or Article 20 6(4) of the <i>UCITS Directive</i> and for a <i>full-scope UK AIFM</i> the <i>rules</i> implementing article 12(2)(b) of <i>AIFMD</i>);</p> <p>unless, and to the extent that, <i>MiFID</i> does not apply to it as a result of Article 2 (Exemptions) or Article 3 (Optional exemptions) of <i>MiFID</i>.</p> <p><i>MiFID business</i> or the <i>equivalent business of a third country investment firm</i>.</p>
<p><i>MiFID outsourcing rules</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>■ SYSC 8.1.1 R to ■ SYSC 8.1.11 R.</p>
<p><i>MiFID Regulation</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>Commission Regulation (EC) 1287/2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.</p>
<p><i>MIIC</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the <i>Motor Insurers' Information Centre</i>.</p>
<p><i>mineral company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) a <i>company</i> or <i>group</i>, whose principal activity is, or is planned to be, the <i>extraction of mineral resources</i> (which may or may not include exploration for <i>mineral resources</i>).</p>
<p><i>mineral expert's report</i></p> <p><b>FCA</b></p>	<p>(in <i>LR</i>) a report prepared in accordance with the <i>ESMA recommendations</i>.</p>
<p><i>mineral resources</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) include metallic and non-metallic ores, mineral concentrates, industrial minerals, construction aggregates, mineral oils, natural gases, hydrocarbons and solid fuels including coal.</p>
<p><i>mini-ISA</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>ISA</i> which contains only one of the following <i>qualifying investments</i>:</p> <ul style="list-style-type: none"> <li>(a) a <i>stocks and shares component</i>;</li> <li>(b) a <i>cash component</i>;</li> <li>(c) an <i>insurance component</i>;</li> </ul> <p>as prescribed in paragraph 7, 8 or 9 respectively of the <i>ISA Regulations</i>.</p>

*minimum capital requirement*

FCA PRA

an amount of capital resources that a *firm* must hold as set out in  
 ■ GENPRU 2.1.24 R and ■ GENPRU 2.1.25 R.

*minimum IRB standards*

FCA PRA

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

*minimum levy*

FCA PRA

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

*minimum multiplication factor*

FCA PRA

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

*MIPRU*

FCA PRA

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

*miscellaneous financial loss*

FCA PRA

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

- (a) risks of loss to the *persons* insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;
- (b) risks of loss to the *persons* insured attributable to their incurring unforeseen expense (other than loss such as is covered by contracts within paragraph 18 of Part I of Schedule 1 to the *Regulated Activities Order* (Assistance));
- (c) risks which do not fall within paragraphs (a) or (b) and which are not of such a kind that *contracts of insurance* against them fall within any other provision of Schedule 1 to the *Regulated Activities Order*.

*miscellaneous securities*

FCA PRA

(in *LR*) *securities* which are not:

- (a) *shares*; or
- (b) *debt securities*; or
- (c) *asset backed securities*; or

<p><i>misleading statements and practices offence</i></p>	<p>(d) <i>certificate representing debt securities</i>; or</p> <p>(e) <i>convertible securities</i> which convert to <i>debt securities</i>; or</p> <p>(f) <i>convertible securities</i> which convert to <i>equity securities</i>; or</p> <p>(g) <i>convertible securities</i> which are exchangeable for <i>securities</i> of another <i>company</i>; or</p> <p>(h) <i>certificate representing certain securities</i>; or</p> <p>(i) <i>securitised derivatives</i>.</p>
<p><i>mixed financial holding company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>[deleted]</p> <p>(in accordance with Article 2(15) of the <i>Financial Groups Directive</i> (Definitions)) a <i>parent undertaking</i>, other than a <i>regulated entity</i>, which meets the following conditions:</p> <p>(a) it, together with its <i>subsidiary undertakings</i>, at least one of which is an <i>EEA regulated entity</i>, and other entities, constitutes a <i>financial conglomerate</i>;</p> <p>(b) it has been notified by its <i>coordinator</i> that its group is a <i>financial conglomerate</i> in accordance with Article 4(2) of the <i>Financial Groups Directive</i>; and</p> <p>(c) it has not been notified that its <i>coordinator</i> and other <i>relevant competent authorities</i> have agreed not to treat the group as a <i>financial conglomerate</i> in accordance with Article 3(3) or Article 3(3a) of the <i>Financial Groups Directive</i>.</p>
<p><i>mixed insurer</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>insurer</i> (other than a <i>pure reinsurer</i>) which carries on <i>reinsurance</i> business and where one or more of the following conditions is met in respect of its <i>reinsurance</i> acceptances:</p> <p>(a) the <i>premiums</i> collected in respect of those acceptances during the previous <i>financial year</i> exceeded 10% of its total <i>premiums</i> collected during that year;</p> <p>(b) the <i>premiums</i> collected in respect of those acceptances during the previous <i>financial year</i> exceeded €50 million; and</p> <p>(c) the <i>technical provisions</i> in respect of those acceptances at the end of the previous <i>financial year</i> exceeded 10% of its total <i>technical provisions</i> at the end of that year.</p>
<p><i>mixed remittance</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a remittance that is part <i>client money</i> and part other <i>money</i>.</p>
<p><i>mixed-activity holding company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) In the PRA Handbook:</p> <p style="padding-left: 20px;">has the meaning given to the definition of "mixed activity holding company" in article 4(1)(22) of the <i>EU CRR</i>.</p> <p>(B) In the FCA Handbook:</p> <p style="padding-left: 20px;">has the meaning given to the definition of "mixed activity holding company" in article 4(1)(22) of the <i>EU CRR</i>.</p>

<p><i>mixed-activity insurance holding company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with Article 1(j) of the <i>Insurance Groups Directive</i> (Definitions)) a <i>parent undertaking</i>, other than an <i>insurance undertaking</i>, an <i>insurance holding company</i> or a <i>mixed financial holding company</i>, the <i>subsidiary undertakings</i> of which include at least one <i>insurance undertaking</i>.</p>
<p>MLAR</p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>SUP</i>) a Mortgage Lending and Administration Return containing data specified in ■ <i>SUP 16 Annex 19A R</i> and relevant to the <i>firm's</i> type and <i>regulated activities</i>.</p>
<p>MLRO</p> <p><b>FCA</b> <b>PRA</b></p>	<p><i>money laundering reporting officer</i>.</p>
<p>Model Code</p> <p><b>FCA</b> <b>PRA</b></p>	<p>The Model Code on directors' dealings in securities set out in ■ <i>LR 9 Annex 1 R</i>.</p>
<p>model PRR</p> <p><b>FCA</b> <b>PRA</b></p>	<p>the part of the <i>market risk capital requirement</i> calculated under a <i>VaR model permission</i> as more fully defined in ■ <i>BIPRU 7.10</i> (Use of a Value at Risk Model).</p>
<p>model risk</p> <p><b>FCA</b></p>	<p>the potential loss an <i>institution</i> may incur, as a consequence of decisions that could be principally based on the output of internal models used under any of the internal approaches, due to errors in the development, implementation or use of such models.</p>
<p>modified CIU look through method</p> <p><b>FCA</b> <b>PRA</b></p>	<p>the method for calculating <i>PRR</i> for a <i>CIU</i> set out in ■ <i>BIPRU 7.7.4 R</i>, ■ <i>BIPRU 7.7.7 R</i> to ■ <i>BIPRU 7.7.8 R</i> and ■ <i>BIPRU 7.7.11 R</i> to ■ <i>BIPRU 7.7.12 R</i></p>
<p>modified report</p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i>) an accountant's or auditor's report:</p> <ul style="list-style-type: none"> <li>(a) in which the opinion is modified; or</li> <li>(b) which contains an emphasis-of-matter paragraph.</li> </ul>
<p>money</p> <p><b>FCA</b> <b>PRA</b></p>	<p>any form of money, including cheques and other payable orders.</p>
<p>Money Advice Service</p> <p><b>FCA</b> <b>PRA</b></p>	<p>the consumer financial education body (<i>CFEB</i>) originally established by the <i>FSA</i> under section 6A(1) of the <i>Act</i> (Enhancing public understanding of financial matters etc) (as it had effect before the passing of the <i>Financial Services Act 2012</i>)</p> <p>.</p>
<p>money laundering</p> <p><b>FCA</b> <b>PRA</b></p>	<p>any act which:</p> <ul style="list-style-type: none"> <li>(a) constitutes an offence under section 18 (Money laundering) of the <i>Terrorism Act 2000</i>; or</li> <li>(b) constitutes an offence under section 327 (Concealing etc), section 328 (Arrangements) or section 329 (Acquisition, use and possession) of the <i>Proceeds of Crime Act 2002</i>; or</li> <li>(c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (b); or</li> </ul>

Money  
Laundering  
Directive

FCA PRA

(d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (b); or

(e) would constitute an offence specified in paragraph (b), (c), or (d) if done in the *United Kingdom*.

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

Money  
Laundering  
Regulations

FCA PRA

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

money  
laundering  
reporting  
function

FCA PRA

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

money  
laundering  
reporting  
officer

FCA PRA

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

money market  
fund

FCA PRA

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

money market  
instrument  
activity

FCA PRA

an activity in respect of a transaction:

(a) which involves any of the following *investments* and is not regulated by the rules of a *recognised investment exchange*:

(i) a *debenture* which is issued on terms requiring repayment not later than five years from the date of issue;

(ii) any *government and public security* which is issued on terms requiring repayment not later than one year or, if issued by a local authority in the *United Kingdom*, five years from the date of issue; or

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

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

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

(ii) an *option* relating to:

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

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

(C) gold or silver;

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

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

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

(C) gold or silver;

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

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

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

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

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

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

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

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

money  
purchase  
scheme

FCA PRA

money  
remittance

FCA PRA

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

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

(b) funds are received on behalf of, and made available to, the payee.

[Note: article 4(13) of the *Payment Services Directive*]

carrying on by way of business the activity of:

(a) operating a bureau de change; or

(b) transmitting money, or any representation of monetary value, by any means; or

(c) cashing cheques which are made payable to customers.

money service  
business

FCA PRA

PAGE  
M23

money service  
operator

FCA PRA

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

*money-market instrument*

FCA PRA

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

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

*money-market instruments*

FCA PRA

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

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

*money-purchase benefits*

FCA PRA

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

<p><i>money-purchase occupational scheme</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>occupational pension scheme</i> which provides <i>money-purchase benefits</i>.</p>
<p><i>month</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in accordance with the Interpretation Act 1978) a calendar month.</p>
<p><i>monthly financial return</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>UPRU</i>) means the return referred to in <i>SUP</i>.</p>
<p><i>mortgage administrator</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>administering a regulated mortgage contract</i>.</p>
<p><i>mortgage adviser</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) for <i>advising on regulated mortgage contracts</i>.</p>
<p><i>Mortgage and General Insurance Complaints Transitional Order</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>The Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454).</p>
<p><i>mortgage arranger</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i>) for <i>arranging</i> (see also <i>arranging (bringing about) regulated mortgage contracts</i> and <i>making arrangements with a view to regulated mortgage contracts</i>).</p>
<p><i>mortgage credit card</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>plastic card</i> which is a credit card issued under a <i>regulated mortgage contract</i> and not regulated by the Consumer Credit Act 1974.</p>
<p><i>mortgage intermediary</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i> ) to carry on <i>mortgage mediation activity</i> .</p>
<p><i>mortgage lender</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> with <i>permission</i> (or which ought to have <i>permission</i>) for <i>entering into a regulated mortgage contract</i>.</p>

*mortgage mediation activity*

**FCA** **PRA**

(as defined in article 26 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 1) Order 2003 (SI 2003/1475)) any of the following *regulated activities*:

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (b) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (c) *advising on regulated mortgage contracts* (article 53A);
- (d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

*most important financial sector*

**FCA** **PRA**

(in relation to a financial sector in a *consolidation group* or a *financial conglomerate* and in accordance with ■ GENPRU 3.1 (Cross sector groups)) the *financial sector* with the largest average referred to in the box titled Threshold Test 2 in the *financial conglomerate definition decision tree* (10% ratio of balance sheet size and solvency requirements); and so that the investment services sector and the banking sector are treated as one for the purpose of the definition of *financial conglomerate* and for any other purpose that GENPRU 3.1 (Cross sector groups) says they are.

*Motor Insurers' Information Centre*

**FCA** **PRA**

the information centre appointed to meet the *United Kingdom's* obligations under article 23 of the *Consolidated Motor Insurance Directive* (Information Centres).

*motor vehicle liability*

**FCA** **PRA**

(in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph 10 of Part I of Schedule 1 to the *Regulated Activities Order* (Contracts of general insurance), against damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carrier's liability.

*motor vehicle liability insurance business*

**FCA** **PRA**

*general insurance business* of class 10, other than:

- (a) carrier's liability;
- (b) pure reinsurance of that class.

*motor vehicle liability insurer*

**FCA** **PRA**

- (a) a *firm* with *permission* to carry on *motor vehicle liability insurance business*;
- (b) any *person* carrying on the *regulated activity* of managing the *underwriting capacity of a Lloyd's syndicate* in respect of *members* whose insurance business at Lloyd's includes *motor vehicle liability insurance business*.

MTF

**FCA** **PRA**

a *multilateral trading facility*.

*MTF transaction*

**FCA** **PRA**

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

*multilateral  
development  
bank*

**FCA** **PRA**

(A) In the PRA Handbook:

(a) any of the following:

- (i) African Development Bank;
- (ii) Asian Development Bank;
- (iii) Caribbean Development Bank;
- (iv) Council of Europe Development Bank;
- (v) European Bank for Reconstruction & Development;
- (vi) European Investment Bank;
- (vii) European Investment Fund;
- (viii) Inter-American Development Bank;
- (ix) International Bank for Reconstruction 91 and 91 Development;
- (x) International Finance Corporation;
- (xa) International Finance Facility for Immunisation;
- (xb) Islamic Development Bank;
- (xi) Multilateral Investment Guarantee Agency; and
- (xii) Nordic Investment Bank;

(b) [deleted]

(B) In the FCA Handbook:

(a) any of the following:

- (i) African Development Bank;
- (ii) Asian Development Bank;
- (iii) Caribbean Development Bank;
- (iv) Council of Europe Development Bank;
- (v) European Bank for Reconstruction & Development;
- (vi) European Investment Bank;
- (vii) European Investment Fund;
- (viii) Inter-American Development Bank;
- (ix) International Bank for Reconstruction 91 and 91 Development;
- (x) International Finance Corporation;
- (xa) International Finance Facility for Immunisation;
- (xb) Islamic Development Bank;
- (xi) Multilateral Investment Guarantee Agency; and
- (xii) Nordic Investment Bank;

(b) (in *BIPRU*) for the purposes of the *standardised approach* to credit risk the following are considered to be a multilateral development bank;

- (i) the Inter-American Investment Corporation;
- (ii) the Black Sea Trade and Development Bank; and

	(iii) the Central American Bank for Economic Integration
<i>multilateral trading facility</i> FCA PRA	a multilateral system, operated by an <i>investment firm</i> or a <i>market operator</i> , which brings together multiple third-party buying and selling interests in <i>financial instruments</i> - in the system and in accordance with non-discretionary rules - in a way that results in a contract in accordance with the provisions of Title II of <i>MiFID</i> . [Note: article 4(1)(15) of <i>MiFID</i> ]
<i>multiplication factor</i> FCA PRA	(in ■ BIPRU 7.10 (Use of a value at risk model)) a multiplication factor applied to a <i>VaR measure</i> for the purpose of calculating the <i>model PRR</i> made up of the <i>minimum multiplication factor</i> as increased by the <i>plus factor</i> , all as more fully defined in ■ BIPRU 7.10.118 R (Capital calculations: Multiplication factors).
<i>mutual</i> FCA PRA	an <i>insurer</i> which: (a) if it is a <i>body corporate</i> has no <i>share capital</i> (except a wholly owned <i>subsidiary</i> with no <i>share capital</i> but limited by guarantee); or (b) is a <i>registered friendly society</i> or <i>incorporated friendly society</i> ; or (c) is a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies (Northern Ireland) Act 1969.

*officer*

FCA PRA

(1) (in connection with the exercise of the *appropriate regulator's* power to require information) an officer of the *appropriate regulator*, a member of the *appropriate regulator's* staff or an agent of the *appropriate regulator*.

(2) (otherwise) (in relation to a *body corporate*) (as defined in section 400(5) of the *Act* (Offences by *bodies corporate* etc)) a director, member of the committee of management, *chief executive*, *manager*, secretary, or other similar officer of the body, or a *person* purporting to *act* in that capacity or a *controller* of the body.

*official list*

FCA PRA

(1) (in *LR*) the list maintained by the *FCA* in accordance with section 74(1) of the *Act* for the purposes of Part VI of the *Act*.

(2) (except in *LR*):

(a) the list maintained by the *FCA* in accordance with section 74(1) of the *Act* (The official list) for the purposes of Part VI of the *Act* (Official Listing);

(b) any corresponding list maintained by a *competent authority* for listing in another *EEA State*.

*oil*

FCA PRA

mineral oil of any description and petroleum gases, whether in liquid or vapour form, including products and derivatives of oil.

*oil collective investment scheme*

FCA PRA

a *collective investment scheme*, the property of which consists only of property which is *oil* or an *oil* investment or cash awaiting investment.

*oil investment*

FCA PRA

any of the following:

(a) a *unit* in an *oil* collective investment scheme;

(b) an *option* to acquire or dispose of an *oil* investment;

(c) a future where the *commodity* in question is *oil*;

(d) a *contract for differences* where the property in question is *oil* or an *oil* investment or the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of *oil* or any *oil* investments;

(e) *rights to or interests in investments* in (a) - (d).

*oil market activity*

FCA PRA

(A) In the PRA Handbook:

(a) any *regulated activity* in relation to an *oil investment* or to *oil*, or in relation to a *biofuel investment*, *biofuel*, a *biomass investment* or *biomass* that is ancillary to activities related to *oil investments* or *oil*, which:

(i) is the *executing* of *own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or

(ii) if it is not the *executing* of transactions on such exchanges, is performed in connection with or for persons who are not individuals; and

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

(B) In the FCA Handbook:

oil market  
participant

FCA PRA

(a) any *regulated activity* in relation to an *oil investment* or to *oil*, or in relation to a *biofuel investment*, *biofuel*, a *biomass investment* or *biomass* that is ancillary to activities related to *oil investments* or *oil*, which:

(i) is the *executing of own account transactions* on any *recognised investment exchange* or *designated investment exchange*; or

(ii) if it is not the *executing of transactions* on such exchanges, is performed in connection with or for persons who are not individuals;

(b) [deleted]

(A) In the PRA Handbook:

a *firm*:

(a) whose permission:

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

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

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

(B) In the FCA Handbook:

a *firm*:

(a) whose permission:

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

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

(b) which is not an *authorised professional firm*, *bank*, *BIPRU firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*), *building society*, *credit union*, *friendly society*, *ICVC*, *insurer*, *MiFID investment firm* (unless it is an *exempt BIPRU commodities firm* or *exempt IFPRU commodities firm*), *media firm*, *service company*, *insurance intermediary*, *home finance administrator*, *mortgage intermediary*, *home finance provider*, *incoming EEA*

*firm* (without a *top-up permission*), or *incoming Treaty firm* (without a *top-up permission*).

Ombudsman

FCA PRA

a *person* appointed to the panel of *persons* maintained by the FOS Ltd to determine complaints, including the Chief Ombudsman.

Ombudsman  
Transitional  
Order

FCA PRA

the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326).

*omnibus client  
account*

FCA

as the context requires, either:

an account maintained by a *person* for more than one of the *clients* in respect of which the *person* has agreed with the *clearing member* to provide ; or

an *account* maintained by a *firm* for more than one *indirect client* at a *clearing member* in respect of which that clearing member has agreed with the *firm* to provide segregation arrangements that satisfy the requirements of article 4(2)(a) of the *EMIR L2 Regulation*.

*omnibus client  
segregation*

FCA PRA

as defined in article 39(2) of *EMIR*.

OMPS

FCA PRA

the Handbook Guide for oil market participants.

*one-day VaR  
measure*

FCA PRA

(in BIPRU 7.10 (Use of a value at risk model)) has the meaning in BIPRU 7.10.98R (Backtesting: One day VaR measure), which is in summary and in relation to a particular *business day*, the *VaR number* for that *business day* calibrated to a one *business day* holding period and a 99% one-tailed confidence level.

*one-off  
promotion*

FCA

a communication meeting the requirements set out in articles 15 or 15A of the *Promotion of Collective Investment Schemes Order* or in articles 28 or 28A of the *Financial Promotions Order*.

*one-off  
transaction*

FCA PRA

any transaction other than a transaction carried out in the course of an established business relationship formed by a *person* acting in the course of relevant financial business.

*one-sided  
credit  
valuation  
adjustment*

FCA

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) a *credit valuation adjustment* that reflects the market value of the credit risk of the counterparty to a *firm*, but does not reflect the market value of the credit risk of the *firm* to the counterparty.

*on-exchange*

FCA PRA

- (a) (in relation to a transaction in the *United Kingdom*) effected by means of the *facilities* of, or governed by the *rules* of, an *RIE* or a *regulated market*;
- (b) (in relation to any other transaction) effected by means of the *facilities* of, or governed by the *rules* of, an exchange.

*ongoing basis*

**FCA** **PRA**

in ■ BIPRU 9.15, maintaining on an *ongoing basis* means that the retained positions, interest or exposures are not hedged or sold.

[Note: BCD, Article 122a, paragraph 1]

*open*

**FCA** **PRA**

in relation to a *syndicate year*, one which has not been *closed*.

*open currency position*

**FCA** **PRA**

the amount calculated under BIPRU 7.5.19R (Open currency position) as part of the calculation of the *foreign currency PRR*.

*open offer*

**FCA** **PRA**

(in *LR* and in ■ DTR 5) an invitation to existing *securities* holders to subscribe or purchase *securities* in proportion to their holdings, which is not made by means of a renounceable letter (or other negotiable document).

*open-ended investment company*

**FCA** **PRA**

(as defined in section 236 of the *Act* (Open-ended investment companies)) a *collective investment scheme* which satisfies both the property condition and the investment condition:

(a) the property condition is that the property belongs beneficially to, and is managed by or on behalf of, a *body corporate* ("BC") having as its purpose the investment of its funds with the aim of:

(i) spreading investment risk; and

(ii) giving its members the benefit of the results of the management of those funds by or on behalf of that body;

(b) the investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the *scheme*:

(i) expect that he would be able to realise, within a period appearing to him to be reasonable, his investment in the *scheme* (represented, at any given time, by the value of shares in, or securities of, BC held by him as a *participant* in the *scheme*); and

(ii) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the *scheme* makes arrangements.

(see also *investment company with variable capital*.)

*operating a dormant account fund*

**FCA** **PRA**

any of the *regulated activities* of:

(a) *meeting of repayment claims*; or

(b) *managing dormant account funds (including the investment of such funds)*.

*operating a multilateral trading facility*

**FCA** **PRA**

the *regulated activity* in article 25D of the *Regulated Activities Order*, which is, in summary, the operation of a multilateral trading facility on which MiFID instruments are traded.

In this definition "MiFID instrument" means any investment:

(a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 83, 84 or 85 of the *Regulated Activities Order*; or

(b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a),

that is a *financial instrument*.

*operational objectives*

FCA PRA

as defined in section 1B(3) of the *Act*.

*operational risk*

FCA PRA

(A) In the PRA Handbook:

(1) (in *COLL* and *FUND*) the risk of loss for a *UCITS* or *AIF* resulting from inadequate internal processes and failures in relation to the people and systems of the *management company* or *AIFM* or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the *fund*.

(2) (in *GENPRU* (except ■ *GENPRU 3* (Cross sector groups) and *BIPRU* (except ■ *BIPRU 12* (Liquidity Standards)) (in accordance with Article 4(22) of the *Banking Consolidation Directive*) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

(3) (in ■ *GENPRU 3*, *IFPRU*, and ■ *BIPRU 12*) has the meaning in Article 4(1)(52) of the *EU CRR*.

(B) In the FCA Handbook:

(1) (in *COLL* and *FUND*) the risk of loss for a *UCITS* or *AIF* resulting from inadequate internal processes and failures in relation to the people and systems of the *management company* or *AIFM* or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the *fund*.

(2) (in *GENPRU* (except ■ *GENPRU 3* (Cross sector groups) and *BIPRU* (except ■ *BIPRU 12* (Liquidity Standards)) (in accordance with Article 4(22) of the *Banking Consolidation Directive*) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

(3) (except in (1) and (2)) has the meaning in article 4(1)(52) of the *EU CRR*.

*operational risk capital requirement*

PRA

the part of the *capital resources requirement* of a *BIPRU firm* falling within *BIPRU 6.1.1R* in respect of *operational risk*, calculated in accordance with *BIPRU 6.2*.

*operator*

FCA PRA

(1) (except in *EG*):

(a) (in relation to an *AUT*) the *manager*;

(aa) (in relation to an *ACS*) the *authorised contractual scheme manager*;

(b) (in relation to an *ICVC*) that *company* or, if applicable, the *authorised corporate director*;

(ba) (in relation to any other *OEIC* which is an undertaking for *collective investment* in transferable securities within the meaning of the *UCITS Directive* and which has appointed a *person* to manage the *scheme*) the *manager*;

(c) (in relation to any other *collective investment scheme* that is a *unit trust scheme* with a separate *trustee*) any *person* who, under the *trust deed* establishing the *scheme*, is responsible for the management of the property held for or within the *scheme*;

(ca) (in relation to any other *collective investment scheme* that is a contractual scheme) any *person* who, under the constituent instrument, is responsible for the management of the property held for or within the *scheme*;

(d) (in relation to any other *collective investment scheme* that is an *open-ended investment company*) that *company* or, if applicable, any *person* who, under the constitution or founding arrangements of the *scheme*, is responsible for the management of the property held for or within the *scheme*;

(e) (in relation to any other *collective investment scheme*) any *person* who, under the constitution or founding arrangements of the *scheme*, is responsible for the management of the property held for or within the *scheme*;

(f) (in relation to an *investment trust savings scheme*) any *person* appointed, by those responsible for managing the property of the *investment trust*, to manage the *investment trust savings scheme* ;

(g) (in relation to a *personal pension scheme* or *stakeholder pension scheme*) the *person* who carries on the *regulated activity* specified in article 52 of the *Regulated Activities Order* (Establishing etc. a pension scheme).

(2) (in *EG* ) (in accordance with section 237(2) of the *Act* (Other definitions)):

(a) (in relation to a *unit trust scheme* with a separate *trustee*) the *manager*;

(b) (in relation to an *OEIC* which is an undertaking for collective investment in transferable securities within the meaning of the *UCITS Directive* and which has appointed a *person* to manage the *scheme*) the *manager*;

(c) (in relation to any other *OEIC*) the *company*.

OPS activity

FCA PRA

(a) *managing investments* in a case where the assets managed are:

(i) held for the purposes of an *occupational pension scheme*; or

(ii) held for the purposes of a *welfare trust* established by a *person* who is, or has been at any time during the last 12 *months*, an *associate* of the *OPS firm*; or

(iii) assets of an *OPS collective investment scheme*;

(b) any one or more of the following activities undertaken in the course of, or incidental to, the operation of an *occupational pension scheme*, *welfare trust* or *OPS collective investment scheme*:

(i) *dealing in investments as principal*;

(ii) *dealing in investments as agent*;

(iii) arranging (bringing about) deals in investments;

(iv) *making arrangements with a view to transactions in investments*;

(v) *safeguarding and administering investments*;

(vi) *advising on investments*;

(vii) receiving or holding *client money*.

*OPS collective investment scheme*

**FCA** **PRA**

a *collective investment scheme* the contributions to which consist entirely of assets held for an *occupational pension scheme*.

*OPS firm*

**FCA** **PRA**

- (a) (except in *IPRU(INV)*) a *firm* which:
- (i) carries on *OPS activity*; and
  - (ii) is one or more of the following:
    - (A) a trustee of the *occupational pension scheme* in question;
    - (B) a *company* owned by the trustees of the *occupational pension scheme* in question;
    - (C) a *company* which is:
      - (I) an employer in relation to the *occupational pension scheme* in question in respect of its employees or former employees or their dependants; or
      - (II) a *company* within the *group* which includes an employer within (I); or
      - (III) an administering authority subject to the Local Government Pension Scheme (Administration) Regulations 2008; or
- (b) a *firm* which:
- (i) has satisfied the requirements set out in (a) at any time during the past 12 *months*; but
  - (ii) is no longer able to comply with those requirements because of a change in the control or ownership of the employer referred to in (a)(ii) during that period.

*opted-in exempt CAD firm*

**FCA** **PRA**

an *exempt CAD firm* which complies with the requirements in regulation 4C (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (SI 2007/126).

*option*

**FCA** **PRA**

- (A) In the PRA Handbook:
- the *investment*, specified in article 83 of the *Regulated Activities Order* (Options), which is an option to acquire or dispose of:
- (a) a *designated investment* (other than an option or one to which (d) or (e) applies); or
  - (b) currency of the *United Kingdom* or of any other country or territory; or
  - (c) palladium, platinum, gold or silver; or
  - (d) a commodity to which article 83(2) of the *Regulated Activities Order* applies; or
  - (e) a *financial instrument* in paragraph 10 of Section C of Annex 1 to *MiFID* to which article 83(3) of the *Regulated Activities Order* applies; or

	<p>(f) an option to acquire or dispose of an option specified in (a), (b), (c), (d) or (e);</p> <p>but so that for the purposes of calculating capital requirements for <i>BIPRU firms</i> it also includes any of the items listed in the table in ■ BIPRU 7.6.18 R (Option PRR: methods for different types of option) and any cash settled option.</p> <p>(B) In the FCA Handbook:</p> <p>the <i>investment</i>, specified in article 83 of the <i>Regulated Activities Order</i> (Options), which is an option to acquire or dispose of:</p> <p>(a) a <i>designated investment</i> (other than an option or one to which (d) or (e) applies); or</p> <p>(b) currency of the <i>United Kingdom</i> or of any other country or territory; or</p> <p>(c) palladium, platinum, gold or silver; or</p> <p>(d) a commodity to which article 83(2) of the <i>Regulated Activities Order</i> applies; or</p> <p>(e) a <i>financial instrument</i> in paragraph 10 of Section C of Annex 1 to <i>MiFID</i> to which article 83(3) of the <i>Regulated Activities Order</i> applies; or</p> <p>(f) an option to acquire or dispose of an option specified in (a), (b), (c), (d) or (e);</p> <p>but so that for the purposes of calculating capital requirements for <i>BIPRU firms</i> it also includes any of the items listed in the table in ■ BIPRU 7.6.18 R (Option PRR: methods for different types of option) and any cash settled option.</p>
<p><i>option hedging method</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the method of calculating the <i>option PRR</i> in BIPRU 7.6.24R (The hedging method).</p>
<p><i>option PRR</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the part of the market risk capital requirement calculated in accordance with BIPRU 7.6 (Option PRR) or, in relation to a particular position, the portion of the overall option PRR attributable to that position.</p>
<p><i>option standard method</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the method of calculating the option PRR in BIPRU 7.6.20R to BIPRU 7.6.22R (The standard method).</p>
<p>ORCR</p> <p><b>PRA</b></p>	<p>the <i>operational risk capital requirement</i>.</p>
<p><i>organisation</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>body corporate</i>, a <i>partnership</i>, a trust or an unincorporated association.</p>
<p><i>original financing costing amount</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>share</i>, <i>debenture</i> or other investment in, or external contribution to the capital of, a <i>firm</i> that is subject to a <i>step-up</i>) the <i>financing cost amount</i> for the instrument for a period beginning on or near the date of issue of the instrument and ending on or near the date of the first <i>step-up</i>.</p>

*originator*

**FCA** **PRA**

(A) In the PRA Handbook:

(in accordance with Article 4(41) of the *Banking Consolidation Directive* (Definitions) and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*) either of the following:

(a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the *exposures* being *securitised*; or

(b) an entity which purchases a third party's *exposures* onto its balance sheet and then *securitises* them.

(B) In the FCA Handbook:

(1) (in *GENPRU* (except **■** *GENPRU* 3) and *BIPRU* (except **■** *BIPRU* 12)) (in accordance with Article 4(41) of the *Banking Consolidation Directive* (Definitions) and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*) either of the following:

(a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the *exposures* being *securitised*; or

(b) an entity which purchases a third party's *exposures* onto its balance sheet and then *securitises* them.

(2) (except in (1)) has the meaning in article 4(1)(13) of the *EU CRR*.

OTC

**FCA** **PRA**

*over the counter*.

OTC  
*derivative*

**FCA** **PRA**

a *derivative* traded solely *over the counter*.

OTC  
*derivative transaction*

**FCA**

a derivative financial instrument of a type listed on Annex II to the *CRR* that is traded *over the counter*.

OTC  
*derivatives, CCPs and trade repositories regulation*

**FCA**

the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013

*out of the money*

**FCA** **PRA**

(for the purposes of *BIPRU* 7 (Market risk) and in relation to an *option* or *warrant*) that *option* or *warrant* being neither *at the money* nor *in the money*.

outgoing ECA  
provider

FCA PRA

a *firm* which:

(a) provides an *electronic commerce activity*, from an *establishment* in the *United Kingdom*, with or for an *ECA recipient* present in an *EEA State* other than the *United Kingdom*; and

(b) is a national of an *EEA State* or a firm or company mentioned in article 54 of the *Treaty*.

outsourcing

FCA PRA

(1) (except in ■ SYSC 8, ■ COBS 11.7 and the definition of *relevant person*) the use of a *person* to provide customised services to a *firm* other than:

(a) a member of the *firm's* governing body acting in his capacity as such; or

(b) an individual employed by a *firm* under a contract of service.

(2) (in ■ SYSC 8, ■ COBS 11.7 and the definition of *relevant person*) an arrangement of any form between a *firm* and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the *firm* itself.

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

over  
collateralisation

FCA PRA

(in *RCB*) (as defined in Regulation 3(3) of the *RCB Regulations*) the provision of additional *assets* that assist the payment from the *relevant asset pool* of claims attaching to a *regulated covered bond* in the event of the failure of the *issuer*.

over the  
counter

FCA PRA

(in relation to a transaction in an *investment*) not *on-exchange*.

overall  
financial  
adequacy rule

FCA PRA

(A) In the PRA Handbook:

■ GENPRU 1.2.26A G (Requirement for certain *firms* to have adequate financial resources).

(B) In the FCA Handbook:

(1) (in *GENPRU*, *BIPRU* and *INSPRU*) ■ GENPRU 1.2.26A G (Requirement for certain *firms* to have adequate financial resources).

(2) (in *IFPRU*) IFPRU 2.2.1R (Adequacy of financial resources).

overall  
financial sector

FCA PRA

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

(a) members of each of the *financial sectors*; and

(b) (except where ■ GENPRU 3.1 (Cross sector groups) or GENPRU 3 Ann 1R (Capital adequacy calculations for financial conglomerates) provide otherwise) a *mixed financial holding company*.

overall  
liquidity  
adequacy rule

FCA PRA

BIPRU 12.2.1R.

overall Pillar 2  
rule

FCA PRA

(A) In the PRA Handbook:

■ GENPRU 1.2.30 R (Systems, strategies, processes and reviews for certain *firms*).

<p><i>overallotment facility</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(B) In the FCA Handbook:</p> <p>(1) (in <i>GENPRU</i>, <i>BIPRU</i> and <i>INSPRU</i>) ■ <b>GENPRU 1.2.30 R</b> (Systems, strategies, processes and reviews for certain <i>firms</i>).</p> <p>(2) (in <i>IFPRU</i>) <b>IFPRU 2.2.7R</b> (Strategy processes and systems).</p> <p>(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of <i>relevant securities</i> than originally offered.</p>
<p><i>overseas</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>outside the <i>United Kingdom</i>.</p>
<p><i>overseas company</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in <i>LR</i> and <i>PR</i>) a <i>company</i> incorporated outside the <i>United Kingdom</i>.</p>
<p><i>overseas financial services institution</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an institution authorised to carry on any <i>regulated activity</i> or other financial service by an <i>overseas regulator</i>.</p>
<p><i>overseas financial stability information power</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the <i>PRA's</i> power under section 169A of the <i>Act</i> (Support of overseas regulator with respect to financial stability) which, in summary, is a power exercisable at the request of an <i>overseas regulator</i> to require a <i>person</i> to provide information or documents relevant to the stability of one or more aspects of the <i>relevant financial system</i> operating in the country or territory of that regulator.</p>
<p><i>overseas firm</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(1) (in relation to ■ <b>MAR 5</b>) a <i>firm</i> which has its registered office (or, if it has no registered office, its head office) outside the <i>United Kingdom</i> excluding an <i>incoming EEA firm</i>.</p> <p>(2) (in any other case) a <i>firm</i> which has its registered office (or, if it has no registered office, its head office) outside the <i>United Kingdom</i>.</p>
<p><i>overseas introducing broker</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>person</i>, who is not an <i>authorised person</i>:</p> <p>(a) who is resident outside the <i>United Kingdom</i>; and</p> <p>(b) who introduces transactions relating to designated investments arranged (brought about ) for its <i>clients</i> to a <i>clearing firm</i> in the <i>United Kingdom</i>.</p>
<p><i>overseas investment exchange</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>an investment exchange which has neither its head office nor its registered office in the <i>United Kingdom</i>.</p>
<p><i>overseas long-term insurer</i></p>	<p>an <i>insurance undertaking</i> which is not an <i>authorised person</i> and which:</p> <p>(a) has its head office in an <i>EEA State</i> other than the <i>United Kingdom</i>, and is entitled to carry on <i>long-term insurance business</i> in that <i>EEA State</i>; or</p>

FCA PRA

(b) has a *branch* or agency in an *EEA State* other than the *United Kingdom* and is entitled to carry on *long-term insurance business* in that *EEA State*; or

(c) is authorised to effect or carry on *long-term insurance business* in the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man, the Commonwealth of Pennsylvania or the State of Iowa;

for the purposes of (a) and (b), Gibraltar is to be regarded as if it were an *EEA State*.

overseas  
person

FCA PRA

(A) In the PRA Handbook:

(in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a *person* who:

(a) carries on any of the following *regulated activities*:

(i) *dealing in investments as principal*;

(ii) *dealing in investments as agent*;

(iii) *arranging (bringing about) deals in investments*;

(iv) *arranging (bringing about) regulated mortgage contracts*;

(v) *making arrangements with a view to regulated mortgage contracts*;

(vi) *making arrangements with a view to transactions in investments*;

(vii) *managing investments*;

(viii) *safe custody and administering investments*;

(ix) *sending dematerialised instructions*;

(x) *causing dematerialised instructions to be sent*;

(xi) *establishing, operating or winding up a collective investment scheme*;

(xii) *acting as trustee of an authorised unit trust scheme*;

(xiii) *acting as the depositary or sole director of an open-ended investment company*;

(xiiiia) *acting as the depositary of an authorised contractual scheme*;

(xiv) *establishing, operating or winding up a stakeholder pension scheme*;

(xiva) *establishing, operating or winding up a personal pension scheme*;

(xv) *advising on investments*;

(xvi) *advising on regulated mortgage contracts* ;

(xvii) *entering into a regulated mortgage contract* ;

(xviii) *administering a regulated mortgage contract* ;

(xix) *arranging (bringing about) a home reversion plan*;

(xx) *making arrangements with a view to a home reversion plan*;

(xxi) *advising on a home reversion plan*;

(xxii) *entering into a home reversion plan*;

(xxiii) *administering a home reversion plan*;

- (xxiv) *arranging (bringing about) a home purchase plan;*
- (xxv) *making arrangements with a view to a home purchase plan;*
- (xxvi) *advising on a home purchase plan;*
- (xxvii) *entering into a home purchase plan;*
- (xxviii) *administering a home purchase plan;*
- (xxix) *agreeing to carry on those regulated activities, disregarding the exclusion in article 72 of the Regulated Activities Order (Overseas persons); but*

(b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*.

(B) In the FCA Handbook:

(in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*)  
a *person* who:

- (a) carries on any of the following *regulated activities*:
  - (i) *dealing in investments as principal;*
  - (ii) *dealing in investments as agent;*
  - (iii) *arranging (bringing about) deals in investments;*
  - (iv) *arranging (bringing about) regulated mortgage contracts;*
  - (v) *making arrangements with a view to regulated mortgage contracts;*
  - (vi) *making arrangements with a view to transactions in investments;*
  - (vii) *managing investments;*
  - (viii) *safe custody and administering investments;*
  - (ix) *sending dematerialised instructions;*
  - (x) *causing dematerialised instructions to be sent;*
  - (xa) *managing a UCITS;*
  - (xb) *acting as trustee or depositary of a UCITS;*
  - (xc) *managing an AIF;*
  - (xd) *acting as trustee or depositary of an AIF;*
  - (xi) *establishing, operating or winding up a collective investment scheme;*
  - (xii) *acting as trustee of an authorised unit trust scheme;*
  - (xiii) *acting as the depositary or sole director of an open-ended investment company;*
  - (xiiiia) *acting as the depositary of an authorised contractual scheme;*
  - (xiv) *establishing, operating or winding up a stakeholder pension scheme;*
  - (xiva) *establishing, operating or winding up a personal pension scheme;*
  - (xv) *advising on investments;*
  - (xvi) *advising on regulated mortgage contracts ;*
  - (xvii) *entering into a regulated mortgage contract ;*
  - (xviii) *administering a regulated mortgage contract ;*

overseas  
regulator

**FCA** **PRA**

- (xix) *arranging (bringing about) a home reversion plan;*
- (xx) *making arrangements with a view to a home reversion plan;*
- (xxi) *advising on a home reversion plan;*
- (xxii) *entering into a home reversion plan;*
- (xxiii) *administering a home reversion plan;*
- (xxiv) *arranging (bringing about) a home purchase plan;*
- (xxv) *making arrangements with a view to a home purchase plan;*
- (xxvi) *advising on a home purchase plan;*
- (xxvii) *entering into a home purchase plan;*
- (xxviii) *administering a home purchase plan;*
- (xxix) *agreeing to carry on those regulated activities, disregarding the exclusion in article 72 of the Regulated Activities Order (Overseas persons); but*

(b) does not carry on any such activities, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*.

(1) (except in relation to the *overseas financial stability information power*) (as defined in section 195(3) of the *Act* (Exercise of power in support of overseas regulator)) an authority in a country or territory outside the *United Kingdom*:

(a) which is a *Home State regulator*; or

(b) which exercises any of the following functions:

(i) a function corresponding to any function of the *FCA* or *PRA* under the *Act*;

(ii) a function corresponding to any function exercised by the *FCA* in its capacity as *competent authority* in relation to the listing of securities;

(iii) a function corresponding to any function exercised by the Secretary of State under the Companies Acts (as defined in section 2 of the Companies Act 2006);

(iv) a function in connection with the investigation of conduct of the kind prohibited by Part V of the Criminal Justice Act 1993 (Insider Dealing), or with the enforcement of rules (whether or not having the force of law) relating to such conduct;

(v) a function prescribed by regulations made for the purposes of section 195(4) of the *Act* (Exercise of powers) which, in the opinion of the Treasury, relates to companies or financial services.

(2) (in relation to the *overseas financial stability information power*) (as defined in section 169A(2) of the *Act* (Support of overseas regulator with respect to financial stability)) an authority in a country or territory outside the *United Kingdom* which exercises functions with respect to the stability of the *relevant financial system* operating in that country or territory.

own account  
order

**FCA** **PRA**

an order which relates to an *own account transaction*.

own account trading firm

**FCA** **PRA**

(in relation to *firm type* in ■ SUP 16.10 (Confirmation of *standing data* )) a *firm* that only *deals* or arranges *deals* in *securities* or *contractually based investments* for its own benefit, or for the benefit of an *associate*.

own account transaction

**FCA** **PRA**

a transaction *executed* by the *firm* for its own benefit or for the benefit of its *associate*.

own estimates of volatility adjustments approach

**FCA** **PRA**

the approach to calculating volatility adjustments under the *financial collateral comprehensive method* under which the *firm* uses its own estimates of such adjustments, as more fully described in ■ BIPRU 5.4 (Financial collateral) and including that approach as applied to master netting agreements as described in BIPRU 5.6 (Master netting agreements).

own funds

**FCA** **PRA**

(A) In the PRA Handbook:

(1) (in *GENPRU* (except ■ GENPRU 3 (Cross sector groups) and *BIPRU* (except ■ BIPRU 12 (Liquidity standards))) own funds as described in articles 56 to 67 of the *Banking Consolidation Directive*.

(2) [deleted]

(2A) (in ■ IPRU(INV) 11) the own funds of a *firm* calculated in line with ■ IPRU(INV) Table 11.4 (Method of calculating initial capital and own funds).

(3) (in *IPRU(INV)* 8) capital, as defined in ■ CREDS 5.2.1 R.

(3A) (in *IPRU(INV)* 13) the own funds of a *firm* calculated in accordance with 13.1A.14R.

(4) (in *UPRU*) funds calculated in accordance with ■ UPRU Table 2.2.1 R (Method of calculation of financial resources) composed of the specified items set out in that Table.

(5) (except in (1) to (4)) has the meaning in article 4(1)(118) of the *EU CRR*.

(B) In the FCA Handbook:

(1) (in *GENPRU* (except ■ GENPRU 3 (Cross sector groups) and *BIPRU* (except ■ BIPRU 12 (Liquidity standards))) own funds as described in articles 56 to 67 of the *Banking Consolidation Directive*.

(2) [deleted]

(2A) (in ■ IPRU(INV) 11) has the meaning in article 4(1)(118) of the *EU CRR*.

(3) (in *IPRU(INV)* 8) capital, as defined in ■ CREDS 5.2.1 R.

(3A) (in *IPRU(INV)* 13) the own funds of a *firm* calculated in accordance with 13.1A.14R.

(4) (in *UPRU*) has the meaning in article 4(1)(118) of the *EU CRR*.

(5) (except in (1) to (4)) has the meaning in article 4(1)(118) of the *CRR*.

has the meaning in article 4(1)(119) of the *EU CRR*.

own funds instruments

**FCA**

*own funds requirements*

**FCA** **PRA**

(A) (In the PRA Handbook):  
as defined in article 92 (Own funds requirements) of the *EU CRR*.

(B) (In the FCA Handbook):  
as defined in article 92 (Own funds requirements) of the *EU CRR*.

*owner*

**FCA** **PRA**

(in *RCB*) (as defined in Regulation 4 of the *RCB Regulations*) an owner which owns an *asset pool* and issues a guarantee to pay from that *asset pool* claims attaching to a *regulated covered bond* in the event of a failure of the *issuer* of that bond.

*ownership share*

**FCA** **PRA**

in accordance with the definition of a "share" in section 422(6) of the *Act* (Controller):

- (a) (in relation to an *undertaking* with a share capital) an allotted share;
- (b) (in relation to an *undertaking* with capital but no share capital) a right to share in the capital of the *undertaking* ;
- (c) (in relation to an *undertaking* without capital) an interest:
  - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the *undertaking* ; or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the *undertaking* in the event of a winding up.

*own-initiative powers*

**FCA** **PRA**

*FCA's* or the *PRA's own-initiative variation power* and *own-initiative requirement power*.

*own-initiative requirement power*

**FCA** **PRA**

The *FCA's* power under section 55L(3) of the *Act* or the *PRA's* power under section 55M(3) of the *Act* to impose a new *requirement* on a *firm*, to vary a *requirement* that it has imposed on the *firm* or to cancel any such *requirement* otherwise than on the application of a *firm*.

*own-initiative variation power*

**FCA** **PRA**

The *FCA's* or the *PRA's* power under section 55J (Variation or cancellation on initiative of regulator) to vary or cancel a *Part 4A permission* otherwise than on the application of a *firm*.

(3) (in ■ CASS 7 and ■ CASS 7A) an event that occurs in the circumstances described in ■ CASS 7A.2.2 R (Failure of the authorised firm: primary pooling event).

*prime brokerage agreement*

FCA PRA

an agreement between a *prime brokerage firm* and a *client* for *prime brokerage services*.

*prime brokerage firm*

FCA

a *firm* that provides *prime brokerage services* to a *client* and which may do so acting as *principal*.

(1) (except in *FUND*) a *firm* that provides *prime brokerage services* to a *client* and which may do so acting as *principal*.

(2) (in *FUND*) a *credit institution*, regulated *investment firm* or another entity subject to prudential regulation and ongoing supervision, offering services to *professional clients* primarily to finance or execute transactions in *financial instruments* as counterparty and which may also provide other services, such as clearing and settlement of trades, custodial services, *stock lending*, customised technology and operational support facilities.

[Note: article 4(1)(af) of AIFMD]

*prime brokerage services*

FCA

a package of services provided under a *prime brokerage agreement* which gives a *prime brokerage firm* a right to use *safe custody assets* for its own account and which comprises each of the following:

- (a) *custody or arranging safeguarding and administration of assets*;
- (b) clearing services; and
- (c) financing, the provision of which includes one or more of the following:
  - (i) capital introduction;
  - (ii) margin financing;
  - (iii) *stock lending*;
  - (iv) stock borrowing;
  - (v) entering into repurchase or reverse repurchase transactions;

and which, in addition, may comprise consolidated reporting and other operational support.

PRIN

FCA PRA

the part of the *Handbook* in High Level Standards that has the title Principles for Businesses.

*principal*

FCA PRA

(1) in relation to a *person* :

- (a) a *person* acting on his own account;
- (b) (if the *person* is an *appointed representative* or, where applicable, a *tied agent* ) the *authorised person* who is party to a contract with the *appointed representative*, or who is responsible for the acts of the *tied agent*, resulting in him being exempt under section 39 of the *Act* (Exemption of appointed representatives ).

(2) in relation to an *option* , *future* or forward contract:

- (a) (except in the case of an *option* on a *future* ) the amount of property or the value of the property which must be delivered in order to satisfy settlement of the *option* , *future* or forward contract;

*Principle*

FCA PRA

(b) (in relation to an *option* on a *future* ) the amount of property or the value of the property which must be delivered in order to satisfy settlement of the *future* .

one of the Principles set out in ■ PRIN 2.1.1 R (Principles for Businesses).

*Principles and Practices of Financial Management*

FCA PRA

the Principles and Practices of Financial Management, containing *with-profits principles* and *with-profits practices*, which a *firm* carrying on *with-profits business* must establish, maintain and record under ■ COBS 20.3 (Principles and Practices of Financial Management).

*priority debt*

FCA PRA

(in *BCOBS*) an obligation on the part of a *consumer* to make a payment:

(a) where the remedies for a breach of that obligation potentially include seeking possession of, or seeking to exercise a power of sale in respect of:

(i) the sole or main residence of the *consumer* (for example, an obligation to pay secured by a mortgage or charge in respect of land, an obligation to pay rent under a tenancy, or an obligation to make payment under a licence to occupy land); or

(ii) the *consumer's* essential goods or services (for example, an obligation to pay under a hire purchase, conditional sale or hire agreement that relates to, or an obligation to pay secured by a charge on, the *consumer's* cooker, refrigerator, or the means to travel to work); or

(b) where that obligation arises out of an order of the court, an Act or secondary legislation (for example, an obligation to pay council tax, child support maintenance, income tax or court fines); or

(c) where that obligation arises under a contract for the provision of utility supplies (for example, water, gas or electricity).

*private customer*

FCA

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

(1) (except in ■ COB 3, ■ COB 4.2 and ■ COB 6.4) subject to (h), a *client* who is not a market counterparty or an *intermediate customer*, including:

(a) an individual who is not a *firm* ;

(b) an overseas individual who is not an *overseas financial services institution*;

(c) [deleted]

(d) (except for the purposes of *DISP*) a *client* when he is classified as a *private customer* in accordance with ■ COB 4.1.14 R (Client classified as a private customer);

(e) a *person* to whom a *firm* gives *basic advice* ;

(f) (in ■ COB 6.1 to ■ 6.5) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF* ) relates to a *CTF* and there is no *registered contact* , the *person* to whom the statement must be sent in accordance with Regulation 10 of the *CTF* Regulations;

(g) (in ■ COB 6.7) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF*) relates to a *CTF* and there is no *registered contact*, the child, via

the person to whom the statement must be sent in accordance with Regulation 10 of the CTF Regulations;

(h) a *client* who would otherwise be excluded as a market counterparty or *intermediate customer* if the *client* is within (e), (f) or (g);

but excluding a *client*, who would otherwise be a *private customer*:

(i) when he is classified as an *intermediate customer* in accordance with ■ COB 4.1.9 R (Expert private customer classified as an intermediate customer); or

(ii) when the *regulated activity* relates to a CTF, any *person* other than (e), (f), (g) or (h).

(2) (in ■ COB 3) a *person* in (1) or a *person* excluded under (1)(h)(ii) or a *person* who would be such a *person* if he were a *client*. (in ■ COB 4.2 and 6.1 to 6.5) a *person* in (1) and, in relation to the conclusion of a *distance contract*, a *consumer*.

(3) (in ■ COB 4.2 and ■ 6.1 to ■ 6.5) a *person* in (1) and, in relation to the conclusion of a *distance contract*, a *consumer*.

*private person*

FCA PRA

(as defined in article 3 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2000 (SI 2001/2256)):

(a) any individual, unless he suffers the loss in question in the course of carrying on:

(i) any *regulated activity*; or

(ii) any activity which would be a *regulated activity* apart from any exclusion made by article 72 of the *Regulated Activities Order* (Overseas persons); and

(b) any *person* who is not an individual, unless he suffers the loss in question in the course of carrying on business of any kind;

but not including a government, a local authority (in the *United Kingdom* or elsewhere) or an international organisation; for the purposes of (a), an individual who suffers loss in the course of *effecting or carrying out contracts of insurance* written at Lloyd's is not to be taken to suffer loss in the course of carrying on a *regulated activity*; in this definition:

(A) "government" means:

(I) the government of the *United Kingdom*; or

(II) the Scottish Administration; or

(III) the Executive Committee of the Northern Ireland Assembly; or

(IV) the National Assembly for Wales; or

(V) the government of any country or territory outside the *United Kingdom*;

(B) "international organisation" means any international organisation the members of which include the *United Kingdom* or any other State;

(C) "local authority", in relation to the *United Kingdom*, means:

(I) in England and Wales, a local authority as defined in the Local Government Act 1972, the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly;

(II) in Scotland, a local authority as defined in the Local Government (Scotland) Act 1973; and

<p>(III) in Northern Ireland, a district council as defined in the Local Government Act (Northern Ireland) 1972.</p>	
<p><i>probability of default</i> FCA</p>	<p>(in accordance with Article 4(25) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of <i>BIPRU</i>) the probability of default of a counterparty over a one year period; for the purposes of the <i>IRB approach</i>, default has the meaning in the definition of <i>default</i>.</p>
<p><i>probable reserves</i> FCA PRA</p>	<p>(in LR):</p> <p>(a) in respect of <i>mineral companies</i> primarily involved in the <i>extraction</i> of oil and gas resources, those reserves which are not yet <i>proven</i> but which, on the available evidence and taking into account technical and economic factors, have a better than 50% chance of being produced; and</p> <p>(b) in respect of <i>mineral companies</i> other than those primarily involved in the <i>extraction</i> of oil and gas resources, those measured and/or indicated mineral resources, which are not yet <i>proven</i> but of which detailed technical and economic studies have demonstrated that <i>extraction</i> can be justified at the time of the determination and under specified economic conditions.</p>
<p><i>procurement fee</i> FCA PRA</p>	<p>the total amount paid by a <i>home finance provider</i> to a <i>home finance intermediary</i>, whether directly or indirectly, in connection with providing applications from <i>customers</i> to enter into <i>home finance transactions</i> with that <i>home finance provider</i>.</p>
<p><i>product provider</i> FCA PRA</p>	<p>a <i>firm</i> which is:</p> <p>(i) a <i>long-term insurer</i>;</p> <p>(ii) a <i>friendly society</i>;</p> <p>(iii) the <i>operator</i> of a <i>regulated collective investment scheme</i> or an <i>investment trust savings scheme</i>; or</p> <p>(iv) the <i>operator</i> of a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i>.</p>
<p>PROF FCA PRA</p>	<p>the Professional Firms sourcebook.</p>
<p><i>professional ACS investor</i> FCA</p>	<p>in relation to an ACS, a <i>person</i> who falls within one of the categories (1) to (4) of Section I of Annex II (professional clients for the purpose of that directive) to <i>MiFID</i>.</p>
<p><i>professional client</i> FCA PRA</p>	<p>a <i>client</i> that is either a <i>per se professional client</i> or an <i>elective professional client</i> (see ■ COBS 3.5.1 R).</p> <p>[Note: article 4(1)(12) of <i>MiFID</i>].</p>
<p><i>professional firm</i> FCA PRA</p>	<p>a <i>person</i> which is:</p> <p>(a) an individual who is entitled to practise a profession regulated by a <i>designated professional body</i> and, in practising it, is subject to its rules, whether or not he is a member of that body; or</p> <p>(b) a <i>person</i> (not being an individual) which is controlled or managed by one or more such individuals.</p>
<p><i>professional negligence</i></p>	<p>(1) (in ■ IPRU(INV) 11) an amount of <i>own funds</i> that a <i>collective portfolio management firm</i> must hold professional liability risks as set out in article</p>

recognised  
scheme

FCA PRA

(A) In the PRA Handbook:

a *scheme* recognised under:

- (a) section 264 of the *Act* (Schemes constituted in other EEA States); or
- (b) section 270 of the *Act* (Schemes authorised in designated countries or territories); or
- (c) section 272 of the *Act* (Individually recognised overseas schemes).

(B) In the FCA Handbook:

a *scheme* recognised under:

- (a) section 264 of the *Act* (Schemes constituted in other EEA States); or
- (b) [deleted]
- (c) section 272 of the *Act* (Individually recognised overseas schemes).

recognised  
third country  
credit  
institution

FCA PRA

(A) In the PRA Handbook:

a *full BCD credit institution* that satisfies the following conditions:

- (a) its head office is outside the *EEA*;
- (b) it is authorised by a *third country competent authority* in the state or territory in which the credit institution's head office is located;
- (c) that *third country competent authority* is named in Part 1 of ■ BIPRU 8 Annex 6 R (Non-EEA banking regulators' requirements deemed CRD-equivalent for individual risks); and
- (d) there is a tick against that *third country competent authority* in each of the columns headed "Market risk", "Credit risk" and "Operational Risk" in the table referred to in (c).

(B) In the FCA Handbook:

a *full CRD credit institution* that satisfies the following conditions:

- (a) its head office is outside the *EEA*;
- (b) it is authorised by a *third country competent authority* in the state or territory in which the credit institution's head office is located; and
- (c) that *third country competent authority* applies prudential and supervisory requirements to that credit institution that are at least equivalent to those applied in the *EEA*.

(A) In the PRA Handbook:

a *CAD investment firm* that satisfies the following conditions:

- (a) its head office is outside the *EEA*;
- (b) it is authorised by a *third country competent authority* in the state or territory in which the *CAD investment firm*'s head office is located;
- (c) that *third country competent authority* is named in Part 2 of ■ BIPRU 8 Annex 6 R (Non-EEA investment firm regulators' requirements deemed CRD-equivalent for individual risks); and

recognised  
third country  
investment  
firm

FCA PRA

(d) that *firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the *Banking Consolidation Directive* and the *Capital Adequacy Directive* as applied under the third paragraph of article 95(2) of the *EU CRR*.

(B) In the FCA Handbook:

a *CAD investment firm* that satisfies the following conditions:

(a) its head office is outside the *EEA*;

(b) it is authorised by a *third country competent authority* in the state or territory in which the *CAD investment firm's* head office is located;

(c) that *third country competent authority* is named in Part 2 of ■ BIPRU 8 Annex 6 R (Non-EEA investment firm regulators' requirements deemed CRD-equivalent for individual risks); and

(d) that *investment firm* is subject to and complies with prudential rules of or administered by that *third country competent authority* that are at least as stringent as those laid down in the *Banking Consolidation Directive* and the *Capital Adequacy Directive* as applied under the third paragraph of article 95(2) of the *EU CRR*.

*recognition order*

FCA PRA

(in accordance with section 313 of the *Act* (Interpretation of Part XVIII)) an order made under section 290 or 292 of the *Act* which declares an investment exchange to be an *RIE* or (for *RAPs*) an order made under regulation 2 of the *RAP regulations* which declares a *UK RIE* to be an *RAP* .

*recognition requirement*

FCA PRA

(1) (in relation to a *UK RIE* ) any of the requirements applicable to that body under the Recognition Requirements Regulations.

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

(3) (in relation to an *ROIE* , or to an applicant for recognition as an *ROIE* ) any of the requirements in section 292(3) of the *Act* (Overseas investment exchanges and overseas clearing houses).

*Recognition Requirements Regulations*

FCA PRA

the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995).

*redemption*

FCA PRA

(1) (except in ■ EG 14 (Collective investment schemes)) (in relation to *units* in an *authorised fund*) the purchase of them from their *holder* by the *authorised fund* manager acting as a *principal*.

(in ■ EG 14 (Collective investment schemes)) redemption as in (1) but including their cancellation by:

the trustee of an *AUT*;

the *depository* of an *ACS*; or

an *ICVC*.

<p><i>redemption charge</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>an amount levied by the <i>operator</i> of a <i>scheme</i> upon the <i>redemption</i> of <i>units</i>, in the case of an <i>authorised fund</i> under COLL 6.7.7R (Charges on buying and selling units).</p>
<p><i>redemption price</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>(in COLL)  the <i>price</i> payable by the <i>authorised fund manager</i> for each <i>unit</i> it <i>redeems</i> from a unitholder, calculated in accordance with ■ COLL 6.3 (Valuation and pricing).</p>
<p><i>redress determination</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>a written communication from a <i>respondent</i> under a <i>consumer redress scheme</i> which:</p> <ul style="list-style-type: none"> <li>(a) sets out the results of the <i>respondent's</i> determination under the scheme;</li> <li>(b) encloses a copy of the <i>Financial Ombudsman Service's</i> standard explanatory leaflet; and</li> <li>(c) informs the complainant that if he is dissatisfied, he may now make a <i>complaint</i> to the <i>Financial Ombudsman Service</i> and must do so within six <i>months</i>.</li> </ul>
<p><i>reduced net underwriting position</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>the <i>net underwriting position</i> as adjusted under ■ BIPRU 7.8.27 R (Calculating the reduced net underwriting position).</p>
<p><i>Referral Fees Regulations</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span></p>	<p>the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635).</p>
<p><i>register</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span></p>	<p>(1) [deleted]  (2) [deleted]  (3) (in COLL) the register of <i>unitholders</i> kept under Schedule 3 to the <i>OEIC Regulations</i> or ■ COLL 6.4.4 R (Register: general requirements and contents), or ■ COLL 8.5.8 R (The register of unitholders: AUTs or ACSs) as appropriate or, in relation to a <i>collective investment scheme</i> that is not an <i>authorised fund</i>, a record of the holders (other than of <i>bearer certificates</i>) of <i>units</i> in it.</p>
<p><i>registered branch</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>a branch of a <i>friendly society</i> which is separately registered under the Friendly Societies Act 1974.</p>
<p><i>registered contact</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>(as defined in regulation 8(1)(d) of the <i>CTF Regulations</i>) the <i>person</i> who is capable of giving instructions to the <i>CTF provider</i> with respect to the management of the <i>CTF</i>.</p>
<p><span style="border: 1px solid black; padding: 2px;">PAGE R7</span> <i>registered friendly society</i>  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>a <i>friendly society</i> registered under section 7(1)(a) of the <i>Friendly Societies Act</i> 1974 or any enactment which it replaced, including any registered branches.</p>
<p><i>registrar</i></p>	<p>the <i>person</i> who maintains a <i>register</i>.</p>

FCA PRA

*registration date*(in *RCB*) the date of the *FCA* decision to register a *regulated covered bond*.

FCA PRA

*registration document*(in *Part 6 rules*) a registration document referred to in ■ PR 2.2.2 R.

FCA PRA

*regular user*

FCA PRA

(1) (as defined in section 130A(3) of the *Act* (Market abuse)) a *person* who is, in relation to a particular market, a reasonable *person* who regularly deals on that market in *investments* of the kind in question.(2) (in accordance with section 130A(3) of the *Act* (Market abuse) as modified by the *RAP Regulations*) a *person* who is, in relation to a particular auction platform, a reasonable *person* who regularly makes bids on that market for *investments* of the kind in question.*Regulated Activities Order*

FCA PRA

the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544).*regulated activity*

FCA PRA

(A) in the *PRA Handbook*:(in accordance with section 22 of the *Act* (Regulated activities)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

- (a) *accepting deposits* (article 5);
- (aa) *issuing electronic money* (article 9B);
- (b) *effecting contracts of insurance* (article 10(1));
- (c) *carrying out contracts of insurance* (article 10(2));
- (d) *dealing in investments as principal* (article 14);
- (e) *dealing in investments as agent* (article 21);
- (ea) *bidding in emissions auctions* (article 24A);
- (f) *arranging (bringing about) deals in investments* (article 25(1));
- (g) *making arrangements with a view to transactions in investments* (article 25(2));
- (ga) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (gb) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (gc) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (gd) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (ge) *arranging (bringing about) a home purchase plan* (article 25C(1));

- (gf) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (gg) *operating a multilateral trading facility* (article 25D);
- (gh) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (gi) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (h) *managing investments* (article 37);
- (ha) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (i) *safeguarding and administering investments* (article 40); for the purposes of the *permission* regime, this is sub-divided into:
- (i) *safeguarding and administration of assets (without arranging)*;
  - (ii) *arranging safeguarding and administration of assets*;
- (j) *sending dematerialised instructions* (article 45(1));
- (k) *causing dematerialised instructions to be sent* (article 45(2));
- (l) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a)); for the purposes of the *permission* regime, this is sub-divided into:
- (i) *establishing, operating or winding up a regulated collective investment scheme*;
  - (ii) *establishing, operating or winding up an unregulated collective investment scheme*;
- (m) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (ma) *acting as the depositary of an authorised contractual scheme* (article 51(1)(bb));
- (n) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (na) *managing a UCITS* (article 51ZA);
- (nb) *acting as trustee or depositary of a UCITS* (article 51ZB);
- (nc) *managing an AIF* (article 51ZC);
- (nd) *acting as trustee or depositary of an AIF* (article 51ZD);
- (ne) *establishing, operating or winding up a collective investment scheme* (51ZE).
- (o) *establishing, operating or winding up a stakeholder pension scheme* (article 52 (a) );
- (oa) *providing basic advice on stakeholder products* (article 52B);
- (ob) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (p) *advising on investments* (article 53); for the purposes of the *permission* regime, this is sub-divided into:
- (i) *advising on investments* (except pension transfers and pension opt-outs);
  - (ii) *advising on pension transfers and pension opt-outs*;
- (pa) *advising on regulated mortgage contracts* (article 53A);

- (pb) *advising on a home reversion plan* (article 53B);
- (pc) *advising on a home purchase plan* (article 53C);
- (pd) *advising on a regulated sale and rent back agreement* (article 53D);
- (q) *advising on syndicate participation at Lloyd's* (article 56);
- (r) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (s) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (sa) *entering into a regulated mortgage contract* (article 61(1));
- (sb) *administering a regulated mortgage contract* (article 61(2));
- (sc) *entering into a home reversion plan* (article 63B(1));
- (sd) *administering a home reversion plan* (article 63B(2));
- (se) *entering into a home purchase plan* (article 63F(1));
- (sf) *administering a home purchase plan* (article 63F(2));
- (sg) *entering into a regulated sale and rent back agreement* (article 63J(1));
- (sh) *administering a regulated sale and rent back agreement* (article 63J(2));
- (si) *meeting of repayment claims* (article 63N(1)(a));
- (sj) *managing dormant account funds (including the investment of such funds)* (article 63N(1)(b));
- (t) *entering as provider into a funeral plan contract* (article 59);

(B) in the FCA Handbook:

as in (A) with the addition of:

- (ob) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (ta) *providing information in relation to a specified benchmark*;
- (tb) *administering a specified benchmark*;

which is carried on by way of business and, except for (ta) and (tb), relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

- (u) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

*regulated activity debt*

**FCA** **PRA**

an obligation to pay a sum due and payable under an agreement, the making or performance of which constitutes or is part of a *regulated activity* carried on by an individual who:

- (a) is, or has been, an *authorised person*; or
- (b) is carrying on, or has carried on, a *regulated activity* in contravention of the *general prohibition*.

*regulated activity group*

**FCA** **PRA**

A set of one or more *regulated activities* (with associated *investment* types and *customer* types) referred to in ■ SUP 16 to determine a *firm's* or other regulated person's *data item submission* requirements.

*regulated clearing arrangement*

**FCA**

as the context requires, either:

(a) an arrangement under which a *firm* directly places *client money* in a *client transaction account* that is an *individual client account* or an *omnibus client account* at an *authorised central counterparty*; or

(b) an arrangement under which a *firm*, acting for a *client* who is also an *indirect client*, directly places *client money* of that *indirect client* in a *client transaction account* that is an *individual client account* or an *omnibus client account* at a *clearing member* for the purposes of having that *clearing member* clear the positions of that *indirect client* through an *authorised central counterparty*.

*regulated collective investment scheme*

**FCA PRA**

(a) an *ICVC*; or

(b) an *AUT*; or

(ba) an *ACS*; or

(c) a *recognised scheme*;

whether or not the *units* are held within an *ISA* or *personal pension scheme*.

*regulated consumer credit agreement*

**FCA PRA**

in accordance with section 8 of the Consumer Credit Act 1974 (as amended) an agreement between an individual "the debtor" and any other person "the creditor" by which the creditor provides the debtor with credit of any amount and which is not an exempt agreement for the purposes of that Act;

and expressions used in that Act have the same meaning in this definition.

*regulated consumer hire agreement*

**FCA**

in accordance with section 15 of the Consumer Credit Act 1974 (as amended) an agreement made by a person with an individual "the hirer" for the bailment or (in Scotland) the hiring of goods to the hirer, being an agreement which

(a) is not a hire-purchase agreement, and

(b) is capable of subsisting for more than three months, and

(c) is not an exempt agreement;

and expressions used in that Act have the same meaning in this definition.

*regulated covered bond*

**FCA PRA**

(in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) a *covered bond* or *programme* of *covered bonds*, as the case may be, which is admitted to the register of *regulated covered bonds* maintained under Regulation 7(1)(b) of the *RCB Regulations*.

*regulated entity*

**FCA PRA**

one of the following:

(a) a *credit institution*; or

(b) a regulated insurance entity; or

(c) an *investment firm*;

whether or not it is incorporated in, or has its head office in, an *EEA State*.

An *asset management company* is treated as a regulated entity for the purposes described in GENPRU 3.1.39R (The financial sectors: *asset management companies*).

An *alternative investment fund manager* is treated as a regulated entity for the purposes described in ■ GENPRU 3.1.39 R (The financial sectors: alternative investment fund managers).

*regulated information*

**FCA** **PRA**

all information which an *issuer*, or any other *person* who has applied for the admission of *financial instruments* to trading on a *regulated market* without the *issuer's* consent, is required to disclose under:

- (a) the *Transparency Directive*;
- (b) article 6 of the *Market Abuse Directive*; or
- (c) *LR*, and *DTR*.

*Regulated Information Service*

**PRA**

a Regulated Information Service that is approved by the *FCA* as meeting the Criteria for Regulated Information Services and that is on the list of Regulated Information Services maintained by the *FCA* .

*regulated institution*

**FCA** **PRA**

any of the following:

- (a) an *EEA insurer* or *UK insurer*; or
- (b) an *approved credit institution*; or
- (c) a *friendly society* (not within (a)) which is authorised to carry on *insurance business*; or
- (d) a *firm* whose *permission* includes dealing in investments as *principal* with respect to *derivatives* which are not *listed*; or
- (e) a *MiFID investment firm* whose authorisation (as referred to in article 5 of *MiFID*) authorises it to carry on activities of the kind referred to in (d).

*regulated insurance entity*

**FCA** **PRA**

an insurance undertaking within the meaning of Article 4 of the *Consolidated Life Directive*, Article 6 of the *First Non-Life Directive* or Article 1(b) of the *Insurance Groups Directive*.

*regulated lifetime mortgage contract*

**FCA** **PRA**

a *regulated mortgage contract* which is a *lifetime mortgage*.

*regulated market*

**FCA** **PRA**

(1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* - in the system and in accordance with its non-discretionary rules - in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of *MiFID*.

[Note: article 4(1)(14) of *MiFID*]

- (2) (in addition, in *INSPRU* and *IPRU(INS)* only) a market situated outside the *EEA States* which is characterised by the fact that:
  - (a) it meets comparable requirements to those set out in (1); and
  - (b) the *financial instruments* dealt in are of a quality comparable to those in a regulated market in the United Kingdom.

*regulated market transaction*

FCA PRA

a transaction concluded by a *firm* on a *regulated market* with another member or participant of that *regulated market*.

*regulated mortgage activity*

FCA PRA

any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

- (a) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (b) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (c) *advising on regulated mortgage contracts* (article 53A);
- (d) *entering into a regulated mortgage contract* (article 61(1));
- (e) administering a regulated mortgage contract (article 61(2));
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

*regulated mortgage contract*

FCA PRA

(a) (in relation to a contract) a contract which:

(i) (in accordance with article 61(3) of the *Regulated Activities Order*) at the time it is entered into, meets the following conditions:

( A ) a lender provides credit to an individual or to trustees (the 'borrower'); and

( B ) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the *United Kingdom*, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a *person* who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:

( I ) that *person's* spouse or civil partner; or

( II ) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristics of the relationship between husband and wife; or

( III ) that *person's* parent, brother, sister, child, grandparent or grandchild ; and

(ii) is not a *home purchase plan*.

(b) (in relation to a *specified investment*) the *investment*, specified in article 88 of the *Regulated Activities Order*, which is rights under a *regulated mortgage contract* within (a).

a *related undertaking* that is any of the following:

- (a) a *regulated entity*; or
- (b) an *insurance undertaking* which is not a *regulated insurance entity*; or
- (c) an *asset management company*; or
- (d) a *financial institution* which is neither a *credit institution* nor an *investment firm*; or

*regulated related undertaking*

FCA PRA

*regulated sale and rent back activity*

**FCA** **PRA**

- (e) a *financial holding company*; or
- (f) an *insurance holding company*; or
- (g) a *mixed financial holding company*.

any of the following *regulated activities*:

- (a) *arranging (bringing about) a regulated sale and rent back agreement* (article 25E(1));
- (b) *making arrangements with a view to a regulated sale and rent back agreement* (article 25E(2));
- (c) *advising on a regulated sale and rent back agreement* (article 53D);
- (d) *entering into a regulated sale and rent back agreement* (article 63J(1));
- (e) *administering a regulated sale and rent back agreement* (article 63J(2)); or
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

*regulated sale and rent back agreement*

**FCA** **PRA**

(in accordance with article 63J(3)(a) of the *Regulated Activities Order*) an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a *person* (an agreement provider), buys all or part of the *qualifying interest in land* in the *United Kingdom* from an individual or trustees (the "agreement seller"); and
- (b) the agreement seller (if he is an individual) or an individual who is the beneficiary of the trust (if the agreement seller is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so;

but excluding any arrangement that is a regulated *home reversion plan*.

*regulated sale and rent back firm*

**FCA** **PRA**

a *firm* that carries on any *regulated sale and rent back activity*.

*regulated sale and rent back mediation activity*

**FCA** **PRA**

any of the following *regulated activities*:

- (a) *arranging (bringing about) regulated sale and rent back agreements* (article 25E(1));
- (b) *making arrangements with a view to regulated sale and rent back agreements* (article 25E(2));
- (c) *advising on regulated sale and rent back agreements* (article 53D);
- (d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

*regulated sale and rent back transaction*

**FCA** **PRA**

a transaction involving a *regulated sale and rent back agreement* under which a *SRB agreement seller*, in return for the sale of a *qualifying interest in land* in whole or in part to a *SRB agreement provider*, is granted, or any member of his family is granted, a right to occupy the land in question as, or in connection with, a dwelling, and intends so to occupy it.

*regulatory basis only life firm*

**FCA** **PRA**

a *firm* carrying on *long-term insurance business* which is not a *realistic basis life firm*.

regulatory body

**FCA** **PRA**

(A) In the PRA Handbook:

any authority, body or *person* having, or who has had, responsibility for the supervision or regulation of any *regulated activities* or other financial services, whether in the *United Kingdom* or overseas.

(B) In the FCA Handbook:

(1) (except in *DTR*) any authority, body or *person* having, or who has had, responsibility for the supervision or regulation of any *regulated activities* or other financial services, whether in the *United Kingdom* or overseas.

(2) (in *DTR*) an organisation listed in **■ DTR 8 Annex 1**.

regulatory costs

**FCA** **PRA**

the periodic fees payable to the *appropriate regulator* by a *participant firm* in accordance with **■ FEES 4** (Periodic fees) .

regulatory current liabilities

**FCA** **PRA**

(in relation to a *with-profits fund*) the regulatory current liabilities of the *with-profits fund* calculated in accordance with **INSPRU 1.1.30R**.

Regulatory Decisions Committee

**FCA** **PRA**

a committee of the Board of the *FCA*, described in **■ DEPP 3.1** (The nature and procedure of the RDC).

regulatory excess capital

**FCA** **PRA**

(in relation to a *with-profits fund*) has the meaning set out in **INSPRU 1.3.32R** .

regulatory function

**FCA** **PRA**

(as defined in section 291 of the *Act* (Liability in relation to *recognised body's* regulatory functions)) any function of a *recognised body* so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of the *Act* and (for an *RAP*) under the *RAP recognition requirements* .

regulatory high risk category

**FCA** **PRA**

(for the purposes of the *standardised approach* to credit risk) an item that falls into **■ BIPRU 3.4.104 R** (Items belonging to regulatory high risk categories under the standardised approach to credit risk).

regulatory information service or RIS

**FCA**

(A) In the PRA Handbook:

either:

(a) a *Regulated Information Service*; or

(b) an incoming *information society service* that has its *establishment* in an *EEA State* other than the *United Kingdom* and that disseminates *regulated information* in accordance with the minimum standards set out in [article 12 of the *TD implementing Directive*].

(B) In the FCA Handbook:

(a) a *primary information provider*; or

<p><i>regulatory objectives</i></p>	<p>(b) an incoming <i>information society service</i> that has its <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> and that disseminates <i>regulated information</i> in accordance with the minimum standards set out in article 12 of the ; or</p> <p>(c) a <i>person</i> to whom ■ DTR TP 1.22 applies, for as long as ■ DTR TP 1.22 remains in force.</p>
<p>[deleted]</p>	
<p><i>regulatory provisions</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>any rules, guidance, arrangements or policy issued by the investment exchange in connection with its business as an investment exchange or in connection with the provision by it of <i>clearing facilitation services</i>.</p>
<p><i>regulatory surplus</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a long-term business fund, or sub-fund) the excess, if any, of the <i>regulatory value of assets</i> for the <i>with-profits fund</i> over the <i>regulatory value of liabilities</i> for that fund.</p>
<p><i>regulatory surplus value</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>has the meaning set out in GENPRU 1.3.48R.</p>
<p><i>regulatory system</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) In the PRA Handbook:</p> <p>the arrangements for regulating a <i>firm</i> or other <i>person</i> in or under the <i>Act</i>, including the <i>threshold conditions</i>, the <i>Principles</i> and other <i>rules</i>, the <i>Statements of Principle</i>, codes and <i>guidance</i> and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the <i>MiFID implementing Directive</i>, the <i>MiFID Regulation</i> and the <i>EU CRR</i>.</p> <p>(B) In the FCA Handbook:</p> <p>the arrangements for regulating a <i>firm</i> or other <i>person</i> in or under the <i>Act</i>, including the <i>threshold conditions</i>, the <i>Principles</i> and other <i>rules</i>, the <i>Statements of Principle</i>, codes and <i>guidance</i>, or in or under the <i>CCA</i>, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the <i>MiFID implementing Directive</i>, the <i>MiFID Regulation</i> and the <i>EU CRR</i>.</p>
<p><i>regulatory value of assets</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>with-profits fund</i>) has the meaning set out in INSPRU 1.3.24R.</p>
<p><i>regulatory value of liabilities</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>with-profits fund</i>) has the meaning set out in INSPRU 1.3.29R.</p>
<p><i>rehabilitation exceptions orders</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.</p>

*reinsurance*

FCA PRA

includes retrocession.

*reinsurance contract*

FCA PRA

(in ■ COBS 21, ICOBS, ■ CASS 5 and COMP) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

*Reinsurance Directive*

FCA PRA

the Directive of 16 November 2005 of the European Parliament and of the Council (No 2005/68/EC) on reinsurance and amending the *First Non-Life Directive* and the *Third Non-Life Directive* as well as the *Insurance Groups Directive* and the *Consolidated Life Directive*.

*reinsurance mediation*

FCA PRA

(as defined in article 2.4 of the *Insurance Mediation Directive*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by a *IMD reinsurance undertaking* or an employee of a *IMD reinsurance undertaking* who is acting under the responsibility of the *IMD reinsurance undertaking* shall not be considered as *reinsurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a *IMD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *reinsurance mediation*.

*reinsurance to close*

FCA PRA

(a) an agreement under which members of a *syndicate* in one *syndicate year* ("the reinsured members") agree with the members of that *syndicate* in a later *syndicate year* or the members of another *syndicate* ("the reinsuring members") that the reinsuring members will discharge, or procure the discharge of, or indemnify the reinsured members against, all known and unknown *insurance business* liabilities of the reinsured members arising out of the *insurance business* carried on by the reinsured members in that *syndicate year*; or

(b) a similar reinsurance agreement or arrangement that has been approved by the *Council* as a reinsurance to close.

*reinsurance undertaking*

FCA PRA

an *insurance undertaking* whose *insurance business* is restricted to *reinsurance*.

*reinsurer*

FCA PRA

an *insurance undertaking* whose business includes *effecting* or *carrying out* contracts of *reinsurance*; includes a retrocessionaire.

*related designated investment*

FCA PRA

(in relation to a *designated investment* (the "first investment")) a *designated investment* whose value might reasonably be expected to be directly affected by:

(a) any fluctuation in the value of the first investment; or

(b) any *published recommendation* that concerns the first investment.

*related financial instrument*

FCA PRA

means a *financial instrument*, the price of which is closely affected by price movements in another *financial instrument* which is the subject of *investment research*, and includes a derivative on that other *financial instrument*.

[Note: article 25(2) of the *MiFID implementing Directive*]

*related investment*

FCA PRA

(as defined in section 130A(3) of the *Act*) in relation to a *qualifying investment*, means an investment whose price or value depends on the price or value of the *qualifying investment*.

*related party*

FCA PRA

(1) (in *LR*) as defined in ■ LR 11.1.4 R;

(2) (in relation to an agreement seller under a *regulated sale and rent back agreement* or, where the agreement seller is a trustee, a beneficiary of the trust):

(a) that *person's* spouse or civil partner; or

(b) a *person* (whether or not of the opposite sex) whose relationship with that *person* has the characteristic of the relationship between husband and wife; or

(c) that *person's* parent, brother, sister, child, grandparent or grandchild.

*related party circular*

FCA PRA

(in *LR*) a *circular* relating to a *related party transaction*.

*related party transaction*

FCA PRA

(in *LR*) as defined in ■ LR 11.1.5 R.

*related undertaking*

FCA PRA

in relation to an *undertaking* ("U"):

(a) any *subsidiary undertaking* of U; or

(b) any *undertaking* in which U or any of U's *subsidiary undertakings* holds a participation; or

(c) any *undertaking* linked to U by a *consolidation Article 12(1) relationship*; or

(d) any *undertaking* linked by a *consolidation Article 12(1) relationship* to an *undertaking* in (a), (b) or (c).

*relevant articles*

FCA PRA

(in *REC*):

(1) Article 6.1 to 6.4 of the *Market Abuse Directive*;

(2) Articles 3, 5, 7, 8, 10, 14 and 16 of the *Prospectus Directive*;

(3) Articles 4 to 6, 14, 16 to 19 and 30 of the *Transparency Directive*; and

(4) *EU* legislation made under the provisions mentioned in (1) to (3).

*relevant asset pool*

FCA PRA

(in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) in relation to a *regulated covered bond* the *asset pool* from which the claims attaching to that bond are guaranteed to be paid by the *owner* of that pool in the event of the failure of the *issuer*.

*relevant business*

FCA PRA

(1) (in *DISP* and *FEES*) that part of a *firm's* business which it conducts with *consumers* and which is subject to the jurisdiction of the *Financial Ombudsman Service* as provided for in ■ DISP 2.3 (To which activities does the Compulsory Jurisdiction apply?), ■ DISP 2.4 (To which activities does the Consumer Credit Jurisdiction apply?) and ■ DISP 2.5 (To which activities does the Voluntary Jurisdiction apply?), measured by reference to the appropriate tariff-base for each *industry block*.

relevant capital sum

FCA PRA

(2) (in relation to information communicated to a *client* other than a *financial promotion*) *designated investment business*.

(3) (in relation to a *financial promotion*) a *controlled activity*.

for the purposes of INSPRU 1.3.34R, the sum under a *contract of insurance* which is:

(a) unless (b) applies:

(i) for whole life assurances, the sum assured;

(ii) for *contracts of insurance* where a sum is payable on maturity (including contracts where a sum is also payable on earlier death), the sum payable on maturity;

(iii) for deferred annuities, the capitalised value of the annuity at the vesting date (or the cash option if it is greater);

(iv) for *capital redemption* contracts, the sum payable at the end of the contract period; and

(v) for linked long-term contracts of insurance, notwithstanding (i) to (iv), the lesser of:

(A) the amount for the time being payable on death; and

(B) the aggregate of the value for the time being of the units allocated to the contract (or, where entitlement is not denoted by means of units, the value for the time being of any other measure of entitlement under the contract equivalent to units) and the total amount of the *premiums* remaining to be paid during such of the term of the contract as is appropriate for *zillmerising* or, if such *premiums* are payable beyond the age of seventy-five, until that age;

but excluding in all cases any vested reversionary bonus; and

(b) for temporary assurances, the sum assured on the *actuarial valuation date*.

an *authorised fund* which is:

(a) a registered charity; or

(b) a charitable unit trust scheme under regulation 7(2)(d) of the Income Tax (Definition of Unit Trust Scheme) Regulations 1988.

relevant charitable scheme

FCA PRA

relevant collateral

FCA PRA

in relation to a transaction:

(a) cash;

(b) letters of credit and guarantees to the extent of their face value, issued by an *approved bank* which is neither a counterparty nor an *associate* of a counterparty;

(c) gold and silver bullion and coinage;

(d) marketable investments;

(e) the performance guarantees issued in support of the securities lending and borrowing programmes of Euroclear and Cedel, in respect only of *exposure* arising from participation in such programmes;

subject in each case to:

(i) the *firm* having an unconditional right to apply or realise the relevant collateral for the purpose of repaying a counterparty's obligations;

<p><i>relevant commencement date</i> FCA PRA</p>	<p>(ii) marketable investments:</p> <p>(A) being marked to market daily using the valuation principles in ■ IPRU(INV) 3.41(9)R;</p> <p>(B) not being issued by a counterparty nor by an <i>associate</i> of a counterparty.</p> <p>(as defined in article 1 of the <i>Mortgage and General Insurance Complaints Transitional Order</i>):</p> <p>(a) in relation to a complaint which relates to an activity to which, immediately before 14 January 2005, the <i>GISC facility</i> applied, the beginning of 14 January 2005;</p> <p>(b) in relation to a complaint which relates to an activity to which, immediately before 31 October 2004, the <i>MCAS scheme</i> applied, the beginning of 31 October 2004.</p>
<p><i>relevant competent authorities</i> FCA PRA</p>	<p>(in relation to a <i>financial conglomerate</i> ) those <i>competent</i> authorities which are, or which have been appointed as, relevant <i>competent</i> authorities in relation to that <i>financial conglomerate</i> under Article 2(17) of the <i>Financial Groups Directive</i> (Definitions).</p>
<p><i>relevant competent authority</i> FCA PRA</p>	<p>(in relation to a <i>financial instrument</i>) means the <i>competent authority</i> of the most relevant market in terms of liquidity for that <i>financial instrument</i>.</p> <p>[Note: article 2(7) of <i>MiFID Regulation</i>]</p>
<p><i>relevant complaint</i> FCA PRA</p>	<p>(1) (in <i>DISP</i>) a <i>relevant existing complaint</i>, a <i>relevant new complaint</i> or a <i>relevant transitional complaint</i>.</p> <p>(2) (in <i>REC</i>) (as defined in section 299(2) of the <i>Act</i> (Complaints about <i>recognised bodies</i>)) a complaint which the <i>FCA</i> considers is relevant to the question of whether a <i>recognised body</i> should remain a <i>recognised body</i>.</p>
<p><i>relevant date</i> FCA PRA</p>	<p>(in ■ <i>MCOB 10</i> (Annual percentage rate)):</p> <p>(a) (where a date is specified in or determinable under an agreement at the date of its making as the date on which the debtor is entitled to require provision of anything which is the subject of the agreement) the earliest such date;</p> <p>(b) (in any other case) the date of making the agreement.</p>
<p><i>relevant EEA details</i> FCA PRA</p>	<p>the details listed in regulation 14 of the <i>EEA Passport Rights Regulations</i> and set out in ■ <i>SUP 13 Annex 1 R</i> (Requisite details or relevant details: branches).</p>
<p><i>relevant existing complaint</i> FCA PRA</p>	<p>(in accordance with the <i>Ombudsman Transitional Order</i>) a complaint which:</p> <p>(a) was referred to a <i>former scheme</i> at any time before <i>commencement</i>, by a person who was at that time entitled, under the terms of the <i>former scheme</i>, to refer such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise); and</p> <p>(b) has not, before <i>commencement</i>, been rejected, withdrawn, settled or determined by the former <i>Ombudsman</i> (whether by a substantive decision, or by closure of the case without a substantive decision).</p>

*relevant financial system*

**FCA** **PRA**

(in accordance with section 169A(5) of the *Act* (Support of overseas regulator with respect to financial stability)) a financial system including:

- (a) financial markets and exchanges;
- (b) activities that would be *regulated activities* if carried on in the *United Kingdom*; and
- (c) other activities connected with financial markets and exchanges.

*relevant former scheme*

**FCA** **PRA**

(as defined in article 2(2) of the *compensation transitionals order*):

- (a) in relation to a *pending application*, the *investment business compensation scheme* under which the application was made;
- (b) in relation to an *article 9 default*, one of the following that applied to the default before *commencement*:
  - (i) the Policyholders Protection Scheme established by the Policyholders Protection Act 1975;
  - (ii) the Deposit Protection Scheme established by Part II of the Banking Act 1987;
  - (iii) the Building Societies Investor Protection Scheme established by Part IV of the Building Societies Act 1986;
  - (iv) the Friendly Societies Protection Scheme established in accordance with section 141 of the Financial Services Act 1986.

*relevant function*

**FCA** **PRA**

(in relation to a *UK recognised body*) an *exempt activity* or a *regulatory function*.

*relevant general insurance contract*

**FCA** **PRA**

(in *COMP*) any *general insurance contract* other than:

- (a) [deleted]
- (b) [deleted]
- (c) a contract falling within any of the following classes:
  - (i) *aircraft*;
  - (ii) *ships*;
  - (iii) *goods in transit*;
  - (iv) *aircraft liability*;
  - (v) *liability of ships*;
  - (vi) *credit*.

*relevant information*

**FCA** **PRA**

(1) (except in *REC*) (in relation to an *investment*) information which would be likely to be regarded by a *regular user* of the market or auction platform in question as relevant when deciding the terms on which transactions in that *investment* should be effected.

(2) (in *REC*) (in relation to an *investment*) information which is relevant to determining the current value of that *investment* or (in relation to *RAPs*) information on the terms of *emissions auction products* and the terms on which they will be auctioned on an *RAP*.

*relevant insurer*

**FCA** **PRA**

in relation to a *community co-insurance operation*, an *insurer* which is concerned in the operation but is not the *leading insurer*.

*relevant investment*

FCA PRA

(1) (in ■ COBS 12.4, in relation to a *research recommendation* or a public appearance), a *designated investment* that is the subject of that *research recommendation* or public appearance,

(2) (other than in ■ COBS 4 or ■ COBS 12.4) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)):

(a) a *contractually based investment*;

(b) a *pure protection contract*;

(c) a *general insurance contract*;

(d) rights to or interests in an *investment* falling within (a).

(3) (in ■ COBS 4) a *specified investment* or a *controlled investment*.

*relevant issuer*

FCA PRA

(1) (in relation to a *designated investment* that is the subject of a *research recommendation* or a public appearance) the *issuer* of that *designated investment*; or

(2) (in relation to a *related designated investment* that is the subject of a public appearance) either the *issuer* of the *related designated investment* or the *issuer* of a *designated investment* that might reasonably be expected directly to affect the value of the *related designated investment*.

*relevant liquid market*

FCA PRA

a market for a share determined in accordance with paragraph 2 and 8 of Article 9 of the *MiFID Regulation*, in many cases this will be the Member State where the share or the unit was first admitted to trading on a regulated market.

[Note: article 9 of the *MiFID Regulation*]

*relevant net premium income*

FCA PRA

(1) (in relation to business which is not *occupational pension fund management business*) the premium income in respect of *protected contracts of insurance* of a *firm*; or

(2) (in relation to *occupational pension fund management business*) the *remuneration* retained by a *firm* in relation to its carrying on *occupational pension fund management business*

in the year preceding that in which the date for submission of the information under ■ FEES 6.5.13 R falls, net of any relevant rebates or refunds.

*relevant new complaint*

FCA PRA

(in accordance with the *Ombudsman Transitional Order*) a complaint referred to the *Financial Ombudsman Service* after *commencement* which relates to an act or omission occurring before *commencement* if:

(a) the act or omission is that of a person who was, immediately before *commencement*, subject to a *former scheme*;

(b) the act or omission occurred in the carrying on by that person of an activity to which that *former scheme* applied; and

(c) the complainant is eligible and wishes to have the complaint dealt with under the new scheme;

for the purposes of (c), where the complainant is not eligible in accordance with ■ DISP 2 (Jurisdiction of the Financial Ombudsman Service), an *Ombudsman* may, nonetheless, if he considers it appropriate, treat the complainant as eligible if he would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before *commencement*.

*relevant office-holder*

FCA PRA

a relevant office-holder as defined in section 189 of the Companies Act 1989, which is in summary:

(a) the official receiver;

(b) (in relation to a company) any *person* acting as its liquidator, provisional liquidator, administrator or administrative receiver;

(c) (in relation to an individual or a debtor within the Bankruptcy (Scotland) Act 1985) a trustee in bankruptcy, interim receiver of property, or permanent or interim trustee in the sequestration of an estate;

(d) any *person* acting as administrator of an insolvent estate of a deceased *person*.

a *pension scheme* or an *additional voluntary contribution*.

relevant  
pension scheme

FCA PRA

relevant person

FCA PRA

(1) (in COMP) a *person* for *claims* against whom the *compensation scheme* provides cover, as defined in ■ COMP 6.2.1 R.

(2) any of the following:

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

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

(c) an *employee* of the *firm* or of an *appointed representative* (or where applicable, *tied agent*) of the *firm*; as well as any other natural person whose services are placed at the disposal and under the control of the *firm* or an *appointed representative* or a *tied agent* of the *firm* and who is involved in the provision by the *firm* of *regulated activities*;

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

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

relevant  
scheme

FCA PRA

(1) (except in ■ FEES 6) a *collective investment scheme* managed by an EEA UCITS *management company*.

(2) (in ■ FEES 6) a scheme or arrangement (other than the *compensation scheme*) for the payment of compensation (in certain cases) to customers (including customers outside the *United Kingdom*) of *persons* (including *persons* outside the *United Kingdom*) who provide financial services (including financial services provided outside the *United Kingdom*) or carry on a business connected with the provision of such services.

relevant  
security

FCA PRA

(1) (in ■ MAR 2, when used with reference to the *Buy-back and Stabilisation Regulation*) (in accordance with Article 2(6) of the *Buy-back and Stabilisation Regulation*) *transferable securities* which are admitted to trading on a *regulated market* or for which a request for admission to trading on a *regulated market* has been made, and which are the subject of a *significant distribution*.

(2) (otherwise in ■ MAR 2) *transferable securities*

(3) [deleted]

*relevant transitional complaint*

**FCA** **PRA**

(A) In the PRA Handbook:

(in accordance with the *Mortgage and General Insurance Complaints Transitional Order*) a complaint referred to the *Financial Ombudsman Service* after the *relevant commencement date* which relates to an act or omission occurring before that date if:

- (a) the act or omission is that of a *person* ("R") who, at the time of that act or omission, was subject to a *former scheme*;
- (b) R was an *authorised person* on or after the *relevant commencement date*;
- (c) the act or omission occurred in the carrying on by R of an activity to which that *former scheme* applied; and
- (d) the complainant is eligible and wishes to have the complaint dealt with under the new *scheme*.

(B) In the FCA Handbook:

(in accordance with the *Mortgage and General Insurance Complaints Transitional Order*) a complaint referred to the *Financial Ombudsman Service* after the *relevant commencement date* which relates to an act or omission occurring before that date if:

- (a) the act or omission is that of a *person* ("R") who, at the time of that act or omission, was subject to a *former scheme*;
- (b) R was an *authorised person* on or after the *relevant commencement date*;
- (c) the act or omission occurred in the carrying on by R of an activity to which that *former scheme* applied; and
- (d) the complainant is eligible and wishes to have the complaint dealt with under the new scheme.

*relevant UK details*

**FCA** **PRA**

the details required in regulation 15 of the *EEA Passport Rights Regulations* and set out in ■ SUP 13 Annex 2 R (Relevant UK details: branches of insurance undertakings).

*remedial direction*

[deleted]

*remuneration*

**FCA** **PRA**

(A) In the PRA Handbook:

any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.

[Note: article 92(2) of the *CRD*]

(B) In the FCA Handbook:

any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.

[Note: article 92(2) of the *CRD*]

*Remuneration Code*

**FCA** **PRA**

■ SYSC 19A (Remuneration Code).

Remuneration  
Code general  
requirement

FCA PRA

■ SYSC 19A.2.1 R.

Remuneration  
Code staff

FCA PRA

(A) In the PRA Handbook:

(for a *CRR firm* and an *overseas firm* in SYSC 19A1.1.1R(1)(f)) has the meaning given in ■ SYSC 19A.3.4 R

(B) In the FCA Handbook:

(for a *CRR firm* and an *overseas firm* in SYSC 19A1.1.1R(1)(f)) has the meaning given in ■ SYSC 19A.3.4 R

remuneration  
principles  
proportionality  
rule

FCA PRA

(in ■ SYSC 19A) has the meaning given in ■ SYSC 19A.3.3 R.

renewal

FCA PRA

carrying forward a contract, at the point of expiry and as a successive or separate operation of the same nature as the preceding contract, between the same contractual parties.

repayment  
claim

FCA PRA

(in relation to a *dormant account*) a claim for repayment made by virtue of sections 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008, that is, in summary, that the customer has against the *dormant account fund operator* whatever right to payment of the *balance* the customer would have against the *bank* or *building society* if the transfer (or in the case of section 2(2)(b), transfers) had not happened. In this definition, 'customer' is the *person* who held with a *bank* or *building society* the *balance* of a *dormant account* transferred to a *dormant account fund operator*.

repayment  
mortgage

FCA PRA

a *regulated mortgage contract* under which the *customer* is obliged to make payments of interest and capital which are designed to repay the mortgage over the stated term.

repayment  
vehicle

the means by which the *customer* will repay the capital due under the *regulated mortgage contract*, where all or part of that contract is an *interest-only* mortgage.

repo

FCA PRA

(a) an agreement between a seller and buyer for the sale of *securities*, under which the seller agrees to repurchase the *securities*, or equivalent *securities*, at an agreed date and, usually, at a stated price;

(b) an agreement between a buyer and seller for the purchase of *securities*, under which the buyer agrees to resell the *securities*, or equivalent *securities*, at an agreed date and, usually, at a stated price.

reporting  
accountant

FCA PRA

an accountant appointed:

(a) by the *appropriate regulator* ; or

(b) by a *firm* , having been nominated or approved by the *appropriate regulator* under section 166 of the *Act* (Reports by skilled persons); or

(c) by an applicant for *Part 4A permission* ;

<p><i>reporting level</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>to report on one or more aspects of the business of a <i>firm</i> or applicant, such as its financial position, including <i>internal controls</i> and reporting returns.</p>
<p><i>repossess</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in ■ SUP 16 (Reporting requirements) and in relation to a <i>data item</i>) refers to whether that <i>data item</i> is prepared on a solo basis or on the basis of a group such as a <i>UK DLG by modification</i> and, if it is prepared on the basis of a group, refers to the type of group (such as a <i>UK DLG by modification</i> or a <i>non-UK DLG by modification (firm level)</i>).</p>
<p><i>representative</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in MCOB) take possession of the property that is the subject of a <i>regulated mortgage contract</i> or <i>home purchase plan</i> .</p> <p>(1) an individual who:</p> <p>(a) is appointed by a <i>firm</i>, or by an <i>appointed representative</i> of a <i>firm</i>, to carry on any of the following activities:</p> <ul style="list-style-type: none"> <li>(i) <i>advising on investments</i>;</li> <li>(ii) providing <i>basic advice</i> on <i>stakeholder products</i>;</li> <li>(iii) <i>arranging (bringing about) deals in investments</i>;</li> <li>(iv) dealing in investments; or</li> </ul> <p>(b) although not appointed to do so, carries on any of the activities in (i) to (iii) on behalf of a <i>firm</i> or its <i>appointed representative</i> .</p> <p>(2) (in IPRU(INV) 13 in relation to <i>designated investment business</i>) an individual appointed by a provider firm or by an <i>appointed representative</i> or <i>tied agent</i> of that <i>firm</i> to carry out either or both of the following activities:</p> <ul style="list-style-type: none"> <li>(a) giving <i>advice on investments</i> to <i>customers</i> on the merits of <i>packaged products</i> offered by that <i>firm</i> (or any other provider firm within the same <i>marketing group</i>); or</li> <li>(b) <i>arranging (bringing about) deals in investments</i> in relation to those products.</li> </ul> <p>(3) In (2), a provider firm is a <i>firm</i> that is:</p> <ul style="list-style-type: none"> <li>(a) a <i>product provider</i>; or</li> <li>(b) a <i>marketing group associate</i>.</li> </ul>
<p><i>repurchase agreement</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>see <i>repurchase transaction</i>.</p>
<p><i>repurchase transaction</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) In the PRA Handbook:</p> <p>(in accordance with Article 3(1)(m) of the <i>Capital Adequacy Directive</i> and Article 4(33) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of BIPRU) any agreement in which an <i>undertaking</i> or its counterparty transfers securities or <i>commodities</i> or guaranteed rights relating to title to securities or <i>commodities</i> where that guarantee is issued by a <i>designated investment exchange</i> or <i>recognised investment exchange</i> which holds the rights to the securities or <i>commodities</i> and the agreement does not allow an <i>undertaking</i> to transfer or pledge a particular security or <i>commodity</i> to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or <i>commodities</i> of the same description at a specified price on a future date specified, or to be specified, by the</p>

transferor, being a *repurchase agreement* for the *undertaking* selling the securities or *commodities* and a *reverse repurchase agreement* for the *undertaking* buying them.

(B) In the FCA Handbook:

(in accordance with Article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) any agreement in which an *undertaking* or its counterparty transfers securities or *commodities* or guaranteed rights relating to title to securities or *commodities* where that guarantee is issued by a *designated investment exchange* or *recognised investment exchange* which holds the rights to the securities or *commodities* and the agreement does not allow an *undertaking* to transfer or pledge a particular security or *commodity* to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or *commodities* of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the *undertaking* selling the securities or *commodities* and a *reverse repurchase agreement* for the *undertaking* buying them.

required  
percentage

FCA PRA

the *required percentage* referred to in ■ COBS 20.2.17 R is, for each *with-profits fund*:

- (a) the percentage (if any) required in respect of that fund by:
  - (i) the *firm's* articles of association, registered rules or other equivalent instrument; or
  - (ii) a relevant order made by a court of competent jurisdiction;
- (b) if (a) does not apply, the percentage that reflects the *firm's* established practice, if it has one;
- (c) if (a) and (b) do not apply, not less than 90 per cent.

requirement

FCA PRA

a requirement included in a firm's *Part 4A permission* under section 55L(3) of the *Act* (Imposition of requirements by the FCA), section 55M(3) of the *Act* (Imposition of Requirements by the PRA) or section 55O of the *Act* (Imposition of requirements on acquisition of control) .

requiring or  
encouraging

FCA PRA

taking or refraining from taking any action which requires or encourages another *person* to engage in *behaviour* which, if engaged in by the *person* requiring or encouraging, would amount to *market abuse*.

requisite details

FCA PRA

the details required in regulation 1 of the *EEA Passport Rights Regulations* and set out in ■ SUP 13 Annex 1 R (Requisite details: branches).

research  
recommendation

FCA PRA

research or other information:

- (a) concerning one or several *financial instruments* admitted to trading on *regulated markets* , or in relation to which an application for admission to trading has been made, or *issuers* of such *financial instruments*;
- (b) intended for distribution so that it is, or is likely to become, accessible by a large number of *persons*, or for the public, but not including:
  - (i) an informal short-term investment personal recommendation expressed to *clients*, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or

(ii) advice given by a *firm* to a *body corporate* in the context of a *takeover bid* and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the *Takeover Code* or its equivalents outside the *UK*; and

(c) which:

(i) explicitly or implicitly, recommends or suggests an investment strategy; or

(ii) directly or indirectly, expresses a particular investment recommendation; or

(iii) expresses an opinion as to the present or future value or price of such instruments.

In this definition, "financial instruments" means the following (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

(a) *transferable securities*;

(b) units in collective investment undertakings;

(c) *money-market instruments*;

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

(e) forward interest-rate agreements;

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

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

(h) derivatives on commodities; and

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

*resecuritisation*

FCA PRA

in ■ BIPRU 7 and ■ 9, a *securitisation* where the risk associated with an underlying pool of *exposures* is *tranché* and at least one of the underlying *exposures* is a *securitisation position*.

[Note: BCD, Article 4(40a)]

*resecuritisation position*

FCA PRA

in ■ BIPRU 7 and ■ 9, an *exposure* to a *resecuritisation*.

[Note: BCD, Article 4(40b)]

*residual CIS operator*

FCA

a *firm* with a *Part 4A permission* to carry on the activity specified in article 51ZE (Establishing etc. a collective investment scheme) of the *Regulated Activities Order*.

*resilience capital requirement*

FCA PRA

the capital component for *long-term insurance business* calculated in accordance with the *rules* in INSPRU 3.1.9G to INSPRU 3.1.26R.

respondent

FCA PRA

(A) In the PRA Handbook:

(1) (in *DISP*, ■ FEES 5 and ■ CREDS 9) a *firm* (except a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

(2) (in ■ DISP 2 and ■ 3 and ■ FEES 5) includes, as a result of sections 226 and 226A of the *Act*:

(a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question;

(b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the act or omission

(c) a *person* who was formerly a *payment service provider* in respect of a *complaint* about an act or omission which occurred at the time when it was a *payment service provider*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and

(d) a *person* who was formerly an *electronic money issuer* in respect of a *complaint* about an act or omission which occurred at the time when it was an *electronic money issuer*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

(3) (in ■ DISP 2 and ■ 3 and ■ FEES 5) includes, in accordance with the *Ombudsman Transitional Order*, an *unauthorised person* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.

(4) (in ■ DISP 2 and ■ 3 and ■ FEES 5) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, a former *firm* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.

(B) In the FCA Handbook:

(1) (in *DISP*, ■ FEES 5 and ■ CREDS 9) a *firm* (except an *AIFM qualifier* or a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

(2) (in ■ DISP 2 and ■ 3 and ■ FEES 5) includes, as a result of sections 226 and 226A of the *Act*:

(a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question;

(b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the act or omission

(c) a *person* who was formerly a *payment service provider* in respect of a *complaint* about an act or omission which occurred at the time when it was a *payment service provider*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and

<p><i>responsible person</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(d) a <i>person</i> who was formerly an <i>electronic money issuer</i> in respect of a <i>complaint</i> about an act or omission which occurred at the time when it was an <i>electronic money issuer</i>, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.</p> <p>(3) (in <b>DISP 2</b> and <b>3</b> and <b>FEES 5</b>) includes, in accordance with the <i>Ombudsman Transitional Order</i>, an <i>unauthorised person</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant existing complaints</i> and <i>relevant new complaints</i>.</p> <p>(4) (in <b>DISP 2</b> and <b>3</b> and <b>FEES 5</b>) includes, in accordance with the <i>Mortgage and General Insurance Complaints Transitional Order</i>, a former <i>firm</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant transitional complaints</i>.</p> <p>(1) (except in <i>COMP</i>) (as defined in section 3(8) of the Child Trust Funds Act 2004) a <i>person</i> with <i>parental responsibility</i> in relation to a child under 16 who is not:</p> <p>(a) a local authority or, in Northern Ireland, an authority within the meaning of the Children (Northern Ireland) Order 1995 (SI 1995/755 (NI 2)); or</p> <p>(b) a <i>person</i> under 16.</p> <p>(2) (in <i>COMP</i>) (in accordance with section 3 (1) of the Compensation Act 2006) a <i>person</i> who has negligently or in breach of statutory duty caused or permitted another <i>person</i> to be exposed to asbestos (including an <i>insurer</i> of such a <i>person</i>).</p>
<p><i>restricted advice</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(a) a <i>personal recommendation</i> to a <i>retail client</i> in relation to a <i>retail investment product</i> which is not <i>independent advice</i>; or</p> <p>(b) <i>basic advice</i>.</p>
<p><i>restricted credit</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a loan for which, as a result of an existing arrangement between a supplier and a <i>firm</i>, the <i>customer's</i> application to the <i>firm</i> is submitted through the supplier and the terms of the loan require that it be paid to the supplier for goods or services supplied to the <i>customer</i>, not including loans secured by a charge over land or loans or payments by <i>plastic card</i> (other than a <i>store card</i>).</p>
<p><i>restricted-use credit agreement</i></p> <p><b>FCA</b></p>	<p>(in accordance with section 11 of the Consumer Credit Act 1974) an agreement:</p> <p>(a) to finance a transaction between the <i>customer</i> and the <i>firm</i>, whether forming part of that agreement or not;</p> <p>(b) to finance a transaction between the <i>customer</i> and a person (the 'supplier') other than the <i>firm</i>;</p> <p>(c) to refinance any existing indebtedness of the <i>customer's</i>, whether to the <i>firm</i> or another <i>person</i>.</p>
<p><i>restriction notice</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>a notice served under sections 191B or 301J of the <i>Act</i>.</p>
<p><i>retail (investment) customer</i></p> <p><b>FCA</b> <b>PRA</b></p>	<p>(in relation to a <i>firm's permission</i> and the <i>Financial Services Register</i>) a <i>retail client</i>.</p>

*retail  
(non-investment  
insurance)  
customer*

**FCA** **PRA**

(in relation to a *firm's permission* and the *Financial Services Register*) a *consumer* or a *customer* acting in the capacity of both a *consumer* and a *commercial customer* (see ■ ICOBS 2.1.3 G).

*retail banking  
service*

**FCA** **PRA**

an arrangement with a *banking customer*, under which a *firm* agrees to accept a *deposit* from a *banking customer* on terms to be held in an account for that customer, and to provide services in relation to that *deposit* including but not limited to repayment to the customer.

*retail client*

**FCA** **PRA**

(1) (other than in relation to the *provision of basic advice on stakeholder products*) in accordance with ■ COBS 3.4.1 R, a *client* who is neither a *professional client* or an *eligible counterparty*; or

[Note: article 4(1)(12) of MiFID]

(2) (in relation to the provision of *basic advice on a stakeholder product* and in accordance with article 52B of the RAO) any *person* who is advised by a *firm* on the merits of opening or buying a *stakeholder product* where the advice is given in the course of a business carried on by that *firm* and it is received by a *person* not acting in the course of a business carried on by him.

*retail customer*

**FCA** **PRA**

(in accordance with the meaning of 'consumer' in article 2(d) of the *Distance Marketing Directive* an individual who is acting for purposes which are outside his trade, business or profession.

*retail exposure*

**FCA** **PRA**

(1) (in relation to the *IRB approach* and with respect to an *exposure*) an *exposure* falling into the *IRB exposure class* listed in ■ BIPRU 4.3.2 R (4) (Retail exposures).

(2) (in relation to the *standardised approach* to credit risk and with respect to an *exposure*) an *exposure* falling into the *standardised credit risk exposure class* listed in ■ BIPRU 3.2.9 R (8) (Retail exposures).

*retail  
investment*

**FCA** **PRA**

- (a) a *life policy*; or
- (b) a *unit*; or
- (c) a *stakeholder pension scheme*; or
- (ca) a *personal pension scheme*; or
- (d) an interest in an *investment trust savings scheme*; or
- (e) a *structured capital-at-risk product*.

*retail  
investment  
activity*

**FCA** **PRA**

- (a) *advising on investments*;
- (b) *arranging (bringing about) deals in investments*; or
- (c) *making arrangements with a view to transactions in investments*,

in relation to *retail investments*, except when carried on by a *firm* exclusively with or for *professional client* or *eligible counterparties*.

*retail  
investment  
adviser*

**FCA** **PRA**

an *employee* who carries on activities 2, 3, 4, 6, 12 and 13 in ■ TC Appendix 1.1.1 R (other than in relation to a *Holloway sickness policy* where the *Holloway policy special application conditions* are met).

*retail investment firm*

**FCA** **PRA**

a *firm* that has *permission* to carry on an activity which is a *retail investment activity*.

*retail investment product*

**FCA** **PRA**

(a) a *life policy*; or  
 (b) a *unit*; or  
 (c) a *stakeholder pension scheme* (including a *group stakeholder pension scheme*); or  
 (d) a *personal pension scheme* (including a *group personal pension scheme*); or  
 (e) an interest in an *investment trust savings scheme*; or  
 (f) a *security* in an *investment trust*; or  
 (g) any other *designated investment* which offers exposure to underlying financial assets, in a packaged form which modifies that exposure when compared with a direct holding in the financial asset; or  
 (h) a *structured capital-at-risk product*;

whether or not any of (a) to (h) are held within an *ISA* or a *CTF*.

[Note: Section 238 of the Act and **COBS 4.12.3 R** set out restrictions on the promotion of *non-mainstream pooled investments* to *retail clients*. See also **COBS 9.3.5 G** (Non-mainstream pooled investments).]

*retail pool*

the pool of *classes* to which the *FSCS* allocates levies as described in **FEES 6.5A** [*to follow*].

*retail securitised derivative*

**FCA** **PRA**

a *securitised derivative* which is not a specialist securitised derivative; in this definition, a "specialist securitised derivative" is a *securitised derivative* which, in accordance with the *listing rules*, is required to be admitted to listing with a clear statement on any disclosure document that the issue is intended for a purchase by only investors who are particularly knowledgeable in investment matters.

*retail SME*

**FCA** **PRA**

(1) (in relation to the *IRB approach*) a small or medium sized entity, an *exposure* to which may be treated as a *retail exposure* under **BIPRU 4.6.2 R** (Definition of retail exposures).

(2) (in relation to the *standardised approach* to credit risk) a small or medium sized entity, an *exposure* to which may be treated as a retail exposure under **BIPRU 3.2.10 R** (Definition of retail exposures).

*retail SME exposure*

**FCA** **PRA**

(in relation to the *IRB approach* or the *standardised approach* to credit risk) an *exposure* to a *retail SME*.

*retirement annuity*

**FCA** **PRA**

an individual *pension policy* effected before 1 July 1988 by a self-employed *person* or a *person* in non-pensionable employment which was approved under Chapter III, Part XIV of the Income and Corporation Taxes Act 1988 (when sections 618 to 628 of that Chapter were in force).

*retirement fund*

**FCA** **PRA**

the amount which will be available, at the date on which the investor retires, for the provision of benefits.

*return*

**FCA** **PRA**

the documents required (taken together) to be deposited under *IPRU(INS) rule 9.6(1)*.

*reverse  
repurchase  
agreement*

**FCA** **PRA**

see *repurchase transaction*.

*reverse  
takeover*

**FCA** **PRA**

(in *LR*) a transaction classified as a *reverse takeover* under ■ LR 5.6.

*reversion  
activity*

**FCA** **PRA**

any of the *regulated activities* of:

- (a) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (b) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (c) *advising on a home reversion plan* (article 53B);
- (d) *entering into a home reversion plan* (article 63B(1));
- (e) *administering a home reversion plan* (article 63B(2)); or
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

*reversion  
administrator*

**FCA** **PRA**

a *firm* with *permission* (or which ought to have *permission*) for *administering a home reversion plan*.

*reversion  
adviser*

**FCA** **PRA**

a *firm* with *permission* (or which ought to have *permission*) for *advising on a home reversion plan*.

*reversion  
arranger*

**FCA** **PRA**

a *firm* with *permission* (or which ought to have *permission*) for *arranging a home reversion plan*.

*reversion  
intermediary*

**FCA** **PRA**

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

*reversion  
mediation  
activity*

**FCA** **PRA**

any of the following *regulated activities*:

- (a) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (b) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (c) *advising on a home reversion plan* (article 53B); or
- (d) *agreeing to carry on a regulated activity* in (a) to (c) (article 64).

*reversion occupier*

FCA PRA

the individual (or trustees), specified in article 63B(3) of the *Regulated Activities Order*, who in summary:

(a) is (or are) the *person* (or *persons*) from whom all or part of an interest in land is bought as part of an arrangement comprising a *home reversion plan*; and

(b)

(i) in the case of an individual, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling and intends to do so; or

(ii) in the case of trustees, are trustees of a trust a beneficiary of which is an individual described in (i).

*reversion provider*

FCA PRA

a *firm* with *permission* (or which ought to have *permission*) for *entering into a home reversion plan*.

*revolving exposure*

FCA PRA

(for the purpose of ■ BIPRU 9.13 (Securitisations of revolving exposures with early amortisation provisions) and in accordance with Article 100 of the Banking Consolidation Directive (Securitisations of revolving exposures)) an *exposure* whereby customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit.

RIE

FCA PRA

*recognised investment exchange*.

*right of set-off*

FCA PRA

(in BCOBS) any right of a *firm*, whether under a contract for a *retail banking service* or the general law, to set off or combine:

(a) any debt due from a *consumer*; or

(b) any debit balance on an account held by a *consumer*;

against or with:

(c) any sum payable by the *firm* to the *consumer*; or

(d) any credit balance on an account held by the *consumer*;

that has the effect of reducing, discharging or extinguishing the *firm's* liability to the *consumer* or the credit balance on the account held by the *consumer*.

*rights issue*

FCA PRA

(in LR and ■ DTR 5) an offer to existing *security* holders to subscribe or purchase further *securities* in proportion to their holdings made by means of the issue of a renounceable letter (or other negotiable document) which may be traded (as "nil paid" rights) for a period before payment for the *securities* is due.

*rights to or interests in investments*

FCA PRA

the *investment*, specified in article 89 of the *Regulated Activities Order* (Rights to or interests in investments), which is in summary: any right to or interest in any other *specified investment*, but excluding:

(a) interests under the trusts of an *occupational pension scheme*;

(b) rights to or interests in a *contract of insurance* of the kind referred to in paragraph (1)(a) of article 60 of the *Regulated Activities Order* (Plans covered by insurance or trust arrangements), or interests under a trust of the kind referred to in paragraph 1(b) of article 60 of the *Regulated Activities Order* (Plans covered by insurance or trust arrangements);

(c) any other *specified investment*.

*risk capital margin*

**FCA** **PRA**

the risk capital margin for a *with-profits fund* calculated in accordance with the rules in INSPRU 1.3.43R to INSPRU 1.3.103G.

*risk capital requirement*

**FCA**

(1) (in relation to the *FCA's rules*) one of the following:

- (a) the *credit risk capital requirement*;
- (b) the *fixed overheads requirement*;
- (c) the *market risk capital requirement*; or

(2) (in relation to the rules of another *regulatory body*) whatever corresponds to the items in (1) under the rules of that *regulatory body*.

*risk concentration*

**FCA** **PRA**

(in accordance with Article 2(19) of the *Financial Groups Directive* (Definitions)) all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the *regulated entities* in the *financial conglomerate*, whether such exposures are caused by counterparty risk /credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

*risk control rules*

**FCA**

■ IFPRU 2.2.58 R to ■ IFPRU 2.2.60 R.

*risk factors*

**FCA** **PRA**

(in *PR*) (as defined in the *PD Regulation*) a list of risks which are specific to the situation of the issuer and/or the securities and which are material for taking investment decisions.

*risk limit system*

**FCA** **PRA**

(in *COLL* and in accordance with article 40(2)(d) of the *UCITS implementing Directive*) a documented system of internal limits concerning the measures used by a *management company* to manage and control the relevant risks for each *UCITS* it manages, taking into account all the risks which may be material to the *UCITS*, as referred to in the second paragraph of article 38(1) of the *UCITS implementing Directive* and ensuring consistency with the *UCITS'* risk profile.

*risk of excessive leverage*

**FCA**

has the meaning in article 4(1)(94) of the *EU CRR*.

*risk position*

**FCA** **PRA**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a risk number that is assigned to a transaction under the *CCR standardised method* following a predetermined algorithm.

*risk weight*

**FCA** **PRA**

(A) In the *PRA Handbook*:

(in relation to an *exposure* for the purposes of *BIPRU*) a degree of risk expressed as a percentage assigned to that *exposure* in accordance with whichever is applicable of the *standardised approach* to credit risk and the *IRB approach*, including (in relation to a *securitisation position*) under ■ ■ BIPRU 9 (Securitisation).

(B) In the *FCA Handbook*:

(in relation to an *exposure* for the purposes of *BIPRU*) a degree of risk expressed as a percentage assigned to that *exposure* in accordance

	with whichever is applicable of the <i>standardised approach</i> to credit risk and the <i>IRB approach</i> , including (in relation to a <i>securitisation position</i> ) under ■ ■ BIPRU 9 (Securitisation).
<i>risk weighted exposure amount</i> FCA PRA	(A) In the PRA Handbook:  (in relation to an <i>exposure</i> for the purposes of <i>BIPRU</i> ) the value of an <i>exposure</i> for the purposes of the calculation of the <i>credit risk capital component</i> after application of a <i>risk weight</i> .  (B) In the FCA Handbook:  (in relation to an <i>exposure</i> for the purposes of <i>BIPRU</i> ) the value of an <i>exposure</i> for the purposes of the calculation of the <i>credit risk capital component</i> after application of a <i>risk weight</i> .
RMAR FCA PRA	(in <i>SUP</i> ) a Retail Mediation Activities Return, containing data specified in ■ SUP 16 Annex 18A R and relevant to the <i>firm's</i> type and <i>regulated activities</i> .
ROIE FCA PRA	<i>recognised overseas investment exchange</i> .
<i>rolling spot forex contract</i> FCA PRA	either of the following:  (a) a <i>future</i> , other than a <i>future</i> traded or expressed to be as traded on a <i>recognised investment exchange</i> , where the property which is to be sold under the contract is foreign exchange or sterling; or  (b) a <i>contract for differences</i> where the profit is to be secured or loss avoided by reference to fluctuations in foreign exchange; and  in either case where the contract is entered into for the purpose of speculation.
<i>rollover risk</i> FCA PRA	(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) and for the purpose of ■ BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the amount by which <i>expected positive exposure</i> is understated when future transactions with a counterpart are expected to be conducted on an ongoing basis; the additional <i>exposure</i> generated by those future transactions is not included in calculation of <i>expected positive exposure</i> .
<i>roll-up of interest mortgage</i> FCA PRA	a <i>regulated mortgage contract</i> where no payment of interest on the amount borrowed (other than interest charged when all or part of the amount borrowed is repaid voluntarily by the <i>customer</i> ), is due or capable of becoming due while the <i>customer</i> continues to occupy the mortgaged property as his main residence and fulfil his obligations under the <i>regulated mortgage contract</i> .
RPI FCA	the Retail Prices Index.
RPPD FCA PRA	the Regulatory Guide which contains a statement of the responsibilities of providers and distributors for the fair treatment of <i>customers</i> .
RSRB permission FCA PRA	(in <i>FEES</i> ) an <i>authorisation</i> to carry on one or more <i>regulated sale and rent back activities</i> .

*rule*

**FCA** **PRA**

(in accordance with section 417(1) of the *Act* (Definitions)) a rule made by the *FCA* or the *PRA* under the *Act*, including:

- (a) a *Principle*; and
- (b) an *evidential provision*.

*rule on use of dealing commission*

**FCA** **PRA**

■ COBS 11.6.3 R.

*running-account credit*

**FCA**

(in accordance with section 10(1)(a) of the Consumer Credit Act 1974) a facility under a contract by which the *customer* is enabled to receive from time to time (whether in his own person, or by another person) from the *firm* or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the customer, the credit limit (if any) is not at any time exceeded.



<p>safe custody asset</p>	<p>(a) in relation to <i>MiFID business</i>, a <i>financial instrument</i>;</p>
<p><b>FCA</b></p>	<p>(b) in relation to <i>safeguarding and administering investments</i> that is not <i>MiFID business</i> and/or <i>acting as trustee or depositary of a UCITS</i>, a <i>safe custody investment</i> ; or</p>
<p></p>	<p>(c) when <i>acting as trustee or depositary of an AIF</i>, an <i>AIF custodial asset</i>.</p>
<p>safe custody investment</p>	<p>a <i>designated investment</i> , which is not the property of the <i>firm</i>, but for which the <i>firm</i>, or any <i>nominee company</i> controlled by the <i>firm</i> or by its <i>associate</i>, is accountable; which has been paid for in full by the <i>client</i> ; and which ceases to be a <i>safe custody investment</i> when the <i>firm</i> has disposed of it in accordance with a valid instruction.</p>
<p><b>FCA PRA</b></p>	<p></p>
<p>safeguarding and administering investments</p>	<p>the <i>regulated activity</i> , specified in article 40 of the <i>Regulated Activities Order</i> (Safeguarding and administering investments), which is in summary: the safeguarding of assets belonging to another and the administration of those assets, or arranging for one or more other <i>persons</i> to carry on that activity, where:</p>
<p><b>FCA PRA</b></p>	<p>(a) the assets consist of or include any <i>security</i> or <i>contractually based investment</i> (that is, any designated investment, <i>funeral plan contract</i> or right to or interest in a <i>funeral plan contract</i>); or</p>
<p></p>	<p>(b) the arrangements for their safeguarding and administration are such that the assets may consist of or include <i>designated investments</i>, and either the assets have at any time since 1 June 1997 done so, or the arrangements have at any time (whether before or after that date) been held out as ones under which <i>designated investments</i> would be safeguarded and administered.</p>
<p>safeguarding and administration of assets (without arranging)</p>	<p>that part of <i>safeguarding and administering investments</i> which consists of both:</p>
<p><b>FCA PRA</b></p>	<p>(a) the safeguarding of assets belonging to another; and</p>
<p></p>	<p>(b) the administration of those assets.</p>
<p>sale</p>	<p>(in <i>COLL</i>) (in relation to <i>units</i> in an <i>authorised fund</i>) the sale of <i>units</i> by the <i>authorised fund manager</i> as <i>principal</i>.</p>
<p><b>FCA PRA</b></p>	<p></p>
<p>sale price</p>	<p>(in <i>COLL</i>)</p>
<p><b>FCA PRA</b></p>	<p>the <i>price</i> payable to the <i>authorised fund manager</i> for each <i>unit</i> it <i>sells</i> to a <i>unitholder</i>, calculated in accordance with <b>■</b> <i>COLL</i> 6.3 (Valuation and pricing).</p>
<p>sale shortfall</p>	<p>the outstanding amount due to the <i>home finance provider</i> , under a <i>home finance transaction</i> , following the sale of the <i>property</i> that is its subject.</p>
<p><b>FCA PRA</b></p>	<p></p>
<p>same stage of capital</p>	<p>(with respect to a particular item of capital in the <i>capital resources table</i>) the stage in the <i>capital resources table</i> in which that item of capital appears.</p>
<p><b>FCA PRA</b></p>	<p></p>
<p>schedule</p>	<p>(in <i>Part 6 rules</i>) (as defined in the <i>PD Regulation</i>) a list of minimum information requirements adapted to the particular nature of the different types of <i>issuers</i> and/or the different <i>securities</i> involved.</p>
<p><b>FCA PRA</b></p>	<p></p>
<p>scheme</p>	<p>(1) (except in <i>COBS</i>, <i>CASS</i> and <i>SUP</i> ) a <i>collective investment scheme</i>.</p>

FCA PRA

(2) (in COBS, CASS and SUP)

- (a) a *regulated collective investment scheme* ;
- (b) an *investment trust* where the relevant *shares* have been , or will be, acquired through an *investment trust savings scheme* ;
- (c) an *investment trust* , if:
  - (i) the relevant *shares* will be held in a *wrapper* or *personal pension scheme*; and
  - (ii) the trust and the *wrapper* or *personal pension scheme* will be promoted together;
- (d) (in COBS 18.5 ) in addition to (a), (b) and (c), an *unregulated collective investment scheme*.

*scheme holding*

PRA

a holding of:

- (a) *units* in a *collective investment scheme* ; or
- (b) *shares* in an *investment trust savings scheme*.

*scheme management activity*

FCA PRA

the management by an *operator* of the property held for or within the *scheme* of which it is the *operator*, excluding the receiving and holding of *client money* and *safeguarding and administering investments*.

*scheme of arrangement*

FCA PRA

(in COLL ) an arrangement relating to an *authorised fund* ("transferor fund") or to a *sub-fund* of a *scheme* that is an *umbrella* ("transferor *sub-fund*") under which:

- (a) either:
  - (i) all or part of the property of the transferor fund, or all or part of the property attributed to the transferor *sub-fund*, is to become the property of one or more *regulated collective investment schemes* ("transferee *schemes*"); or
  - (ii) all or part of the property attributed to the transferor *sub-fund* is to become part of the property attributed to one or more other *sub-funds* of the same *umbrella* ("transferee *sub-funds*"); and
- (b) holders of *units* in the transferor fund or transferor *sub-fund*, the property of which is being transferred or reattributed under (a), are to receive, in exchange for their respective interests in that property, either:
  - (i) *units* in the transferee *scheme* or one or more of the transferee *schemes*, to which the property is transferred; or
  - (ii) *units* in the transferee *sub-fund* or one or more of the transferee *sub-funds*, to which the property is reattributed.

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

*scheme of operations*

FCA PRA

a scheme which:

- (a) describes the nature of the risks which the *insurer* is underwriting, or intends to underwrite, and the guiding principles which it intends to follow in reinsuring or covering those risks; and
- (b) contains the information required under ■ SUP App 2.12.1 R (Content of a scheme of operations).

(iii) taken in order to hedge other elements of the trading book;

(b) *exposures* due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and

(c) fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above.

(2) (in *BIPRU* and *GENPRU* in relation to a *BIPRU firm*) has the meaning in ■ BIPRU 1.2 (Definition of the trading book) which is in summary, all that *firm's positions* in *CRD financial instruments* and *commodities* held either with trading intent or in order to hedge other elements of the *trading book*, and which are either free of any restrictive covenants on their tradability or able to be hedged.

(3) (in *BIPRU* and *GENPRU* and in relation to a *person* other than a *BIPRU firm*) has the meaning in (2) with references to a *firm* replaced by ones to a *person*.

(4) (in *IFPRU* and in relation to an *IFPRU investment firm*) has the meaning in article 4(1)(86) of the *EU CRR*.

(B) In the FCA Handbook:

(1) (in *UPRU*) in relation to a *firm's* business or *exposures*, means:

(a) its proprietary positions in financial instruments:

(i) which are held for resale and/or are taken on by the firm with the intention of benefiting in the short term from actual and/or expected differences between their buying and selling prices or from other price or interest-rate variations;

(ii) arising from matched principal broking;

(iii) taken in order to hedge other elements of the trading book;

(b) *exposures* due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and

(c) fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above.

(2) (in *BIPRU* and *GENPRU* in relation to a *BIPRU firm*) has the meaning in ■ BIPRU 1.2 (Definition of the trading book) which is in summary, all that *firm's positions* in *CRD financial instruments* and *commodities* held either with trading intent or in order to hedge other elements of the *trading book*, and which are either free of any restrictive covenants on their tradability or able to be hedged.

*trading book  
concentration  
risk excess*

[deleted]

(3) (in *BIPRU* and *GENPRU* and in relation to a *person* other than a *BIPRU firm*) has the meaning in (2) with references to a *firm* replaced by ones to a *person*.

(4) (in *IFPRU* and in relation to an *IFPRU investment firm*) has the meaning in article 4(1)(86) of the *EU CRR*.

*trading book  
policy  
statement*

**FCA** **PRA**

(A) In the PRA Handbook:

has the meaning in BIPRU 1.2.29R (Trading book policy statements) which is in summary a single document of a *person* recording the policies and procedures referred to in BIPRU 1.2.26R and BIPRU 1.2.27R.

(B) In the FCA Handbook:

(1) (in *BIPRU*) has the meaning in BIPRU 1.2.29R (Trading book policy statements) which is in summary a single document of a *person* recording the policies and procedures referred to in BIPRU 1.2.26R and BIPRU 1.2.27R.

(2) (in *IFPRU*) the statement of policies and procedures relating to the *trading book*.

*trading book  
systems and  
controls rules*

**FCA** **PRA**

GENPRU 1.3.13R(2) to (3) (General requirements: Methods of valuation and systems and controls), GENPRU 1.3.14R to GENPRU 1.3.16R (Marking to market), GENPRU 1.3.17R to GENPRU 1.3.25R (Marking to model), GENPRU 1.3.26R to GENPRU 1.3.28R (Independent price verification), GENPRU 1.3.30R to GENPRU 1.3.33R (Valuation adjustments or reserves), GENPRU 2.2.86R (Core tier one capital: profit and loss account and other reserves: Losses arising from valuation adjustments) and GENPRU 2.2.248R to GENPRU 2.2.249R (Tier three capital: lower tier three capital resources).

*trading day*

**FCA**

(1) (in **MAR 7** (Disclosure of information on certain trades undertaken outside a regulated market or MTF) and **SUP 17** (Transaction reporting)) in relation to post-trade information to be made public about a share under **MAR 7.2.10 EU**, any day of normal trading in a share on a *trading venue* in the *relevant liquid market* for this share.

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

(2) other than in (1) or (3), a day included in the calendar of trading days published by the *appropriate regulator* at [web address tbc]

(3) (in *FINMAR*) as defined in article 2(1)(p) of the *short selling regulation*, a trading day as referred to in article 4 of Regulation (EC) No 1287/2006.

*trading  
information*

**FCA** **PRA**

information of the following kinds:

(1) that *investments* of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation; or

(2) that *investments* of a particular kind have not been or are not to be acquired or disposed of; or

(3) the quantity of *investments* acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation; or

(4) the price (or range of prices) at which *investments* have been or are to be acquired or disposed of or the price (or range of prices) at which

*UCITS*

FCA PRA

undertakings for collective investment in transferable securities that are established in accordance with the *UCITS Directive*.

*UCITS Directive*

FCA PRA

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

*UCITS eligible assets Directive*

FCA PRA

Commission Directive 2007/16/EC implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.

*UCITS firm*

FCA PRA

(A) In the PRA Handbook:

a *firm* which:

- (a) is a *management company*, including where in addition the *firm* is also an *AIFM*; and
- (b) does not have a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) to carry on any *regulated activities* other than those which are in connection with, or for the purpose of, managing collective investment undertakings.

(B) In the FCA Handbook:

a *firm* which:

- (a) is a *management company* (whether or not it is also the manager of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) does not have a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) to carry on any *regulated activities* other than those which are in connection with, or for the purpose of, managing collective investment undertakings.

*UCITS Home State*

FCA PRA

the *Home State* of a *UCITS scheme* or *EEA UCITS scheme*.

*UCITS implementing Directive*

FCA PRA

Commission Directive (2010/43/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a *depository* and a *management company*.

*UCITS implementing Directive No 2*

FCA PRA

Commission Directive (2010/44/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.

PAGE  
U1*UCITS investment firm*

FCA PRA

(A) In the PRA Handbook:

a *firm* which:

- (a) is a *management company* (whether or not it is also the operator of other *collective investment schemes*); and

UCITS  
management  
company

FCA PRA

UCITS  
marketing  
notification

FCA PRA

UCITS merger

FCA PRA

(b) has a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) to manage *investments* where:

- (i) the *investments* managed include one or more of the instruments listed in Section C of Annex 1 to *MiFID*; and
- (ii) the *permission* extends to activities permitted by article 6(3) of the *UCITS Directive* as well as those permitted by article 6(2).

(B) In the FCA Handbook:

a *firm* which:

- (a) is a *management company* (whether or not it is also the manager of *AIFs* or the *operator* of other *collective investment schemes*); and
- (b) has a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) to manage *investments* where:
  - (i) the *investments* managed include one or more of the instruments listed in Section C of Annex 1 to *MiFID*; and
  - (ii) the *permission* extends to activities permitted by article 6(3) of the *UCITS Directive* as well as those permitted by article 6(2).

(1) (except in relation to *MiFID business*) a *firm* which is either:

- (a) a *UCITS firm*; or
- (b) a *UCITS investment firm*.

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

[Note: article 4 (1)(24) of *MiFID*]

(in *COLL*) a notification in respect of a *UCITS scheme*, for the purpose of *marketing units* in another *EEA State*, pursuant to:

- (a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the *Act*; or
- (b) article 46 of the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (*UCITS*) (No 85/611/EEC).

(in *COLL* and in accordance with article 2(1)(p) of the *UCITS Directive*) a merger between one or more *UCITS schemes* or between one or more *UCITS schemes* and *EEA UCITS schemes* being an operation whereby:

- (a) one or more *merging UCITS*, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing *receiving UCITS*, in exchange for the issue to its *unitholders* of *units* of the *receiving UCITS* and, if applicable, a cash payment not exceeding 10% of the net asset value of those *units* (a "merger by absorption"); or
- (b) two or more *merging UCITS*, on being dissolved without going into liquidation, transfer all of its assets and liabilities to a *receiving UCITS* which they form, in exchange for the issue to their *unitholders* of *units* of the *receiving UCITS* and, if applicable, a cash payment not exceeding 10% of the net asset value of those *units* (a "merger by formation of a new *UCITS*"); or
- (c) one or more *merging UCITS*, which continue to exist until the liabilities have been discharged, transfer its net assets to another *receiving UCITS*, and for this purpose the *merging UCITS* and the *receiving UCITS* may be *sub-funds* of the same *UCITS* (a "merger by *scheme of arrangement*");

but at least one of which is established in the *United Kingdom*.

UCITS  
qualifier

FCA PRA

a *firm* (other than an EEA UCITS management company) which:

- (a) for the time being is an *operator, trustee or depositary* of a *scheme* which is a *recognised scheme* under section 264 of the *Act*; and
- (b) is an *authorised person* as a result of paragraph 1(1) of Schedule 5 to the *Act* (Persons Concerned in Collective Investment Schemes);

a reference to a *firm* as a *UCITS qualifier* applies in relation to the carrying on by the *firm* of activities for which it has *permission* in that capacity.

UCITS  
Regulations  
2011

FCA PRA

the Undertaking for Collective Investment in Transferable Securities Regulations 2011 (SI 2011/1613).

## UCITS scheme

FCA PRA

(A) In the PRA Handbook:

(a) an *authorised fund* authorised by the *FCA* in accordance with the *UCITS Directive*:

(i) with the sole object of collective investment in *transferable securities* or in other liquid financial instruments permitted by ■ COLL 5.2 (General investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

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

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

unless:

(c) [deleted]

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

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

[Note: article 1 of the *UCITS Directive*]

(B) In the FCA Handbook:

(a) an *authorised fund* authorised by the *FCA* in accordance with the *UCITS Directive*:

(i) with the sole object of collective investment in *transferable securities* or in other liquid financial instruments permitted by ■ COLL 5.2 (General investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

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

<p>UK  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>(b) an umbrella, each of whose <i>sub-funds</i> would be a <i>UCITS scheme</i> if it had a separate <i>authorisation order</i>;</p> <p>unless:</p> <p>(c) [deleted]</p> <p>(d) the <i>scheme's units</i> under its <i>instrument constituting the fund</i>, may be sold only to the public in non-EEA States; or</p> <p>(e) the <i>scheme</i> (other than a <i>master UCITS</i> which has at least two <i>feeder UCITS</i> as <i>unitholders</i>) raises capital without promoting the <i>sale</i> of its <i>units</i> to the public within the <i>EEA</i> or any part of it.</p> <p>[Note: article 1 of the <i>UCITS Directive</i>]</p> <p><i>United Kingdom.</i></p>
<p>UK AIF  <span style="border: 1px solid black; padding: 2px;">FCA</span></p>	<p>an <i>AIF</i> that is:</p> <p>(a) an <i>authorised fund</i>; or</p> <p>(b) not an <i>authorised fund</i> but has its registered office or head office in the <i>UK</i>;</p>
<p>UK AIFM</p>	<p>an <i>AIFM</i> established in the <i>UK</i> and with a <i>Part 4A permission</i> to carry on the <i>regulated activity of managing an AIF</i>.</p>
<p>UK bank  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>a <i>bank</i> which is a <i>body corporate or partnership</i> formed under the law of any part of the <i>United Kingdom</i>.</p>
<p>UK consolidation group  <span style="border: 1px solid black; padding: 2px;">FCA</span> <span style="border: 1px solid black; padding: 2px;">PRA</span></p>	<p>(A) In the PRA Handbook:</p> <p>The <i>group of undertakings</i> which are included in the <i>consolidated situation</i> of a <i>parent institution in a Member State</i>, an <i>EEA parent institution</i>, an <i>EEA parent financial holding company</i> or an <i>EEA parent mixed financial holding company</i> (including any <i>undertaking</i> which is included in that consolidation because of an <i>Article 12(1) relationship</i>, <i>Article 18(5) relationship</i> or <i>Article 18 relationship</i>).</p> <p>(B) In the FCA Handbook:</p> <p>(1) (for the purposes of SYSC as it applies to a <i>CRR firm</i>) the <i>group of undertakings</i> which are included in the <i>consolidated situation</i> of a <i>parent institution in a Member State</i>, an <i>EEA parent institution</i>, an <i>EEA parent financial holding company</i> or an <i>EEA parent mixed financial holding company</i> (including any <i>undertaking</i> which is included in that consolidation because of a <i>consolidation article 12(1) relationship</i>, <i>article 18(5) relationship</i> or <i>article 18(6) relationship</i>).</p> <p>(2) (for the purposes of BIPRU and SYSC as it applies to a <i>BIPRU firm</i>) has the meaning in <span style="color: #000080;">■</span> BIPRU 8.2.4 R (Definition of UK consolidation group), which is in summary the group that is identified as a <i>UK consolidation group</i> in accordance with the decision tree in <span style="color: #000080;">■</span> BIPRU 8 Annex 1 R (Decision tree identifying a UK consolidation group); in each case only <i>persons</i> included under <span style="color: #000080;">■</span> BIPRU 8.5 (Basis of consolidation) are included in the <i>UK consolidation group</i>.</p>

<p>UK Corporate Governance Code</p> <p><b>FCA</b> <b>PRA</b></p>	<p>the UK Corporate Governance Code published in May 2010 by the Financial Reporting Council.</p>
<p>UK depositary</p> <p><b>FCA</b></p>	<p>a <i>depositary established</i> in the UK.</p>
<p>UK designated investment firm</p> <p><b>FCA</b> <b>PRA</b></p>	<p>(A) (In the PRA Handbook):</p> <p>(in <b>■</b> BIPRU 12 and <b>■</b> SUP 16) a <i>designated investment firm</i> which is a <i>body corporate</i> or <i>partnership</i> formed under the law of any part of the UK.</p> <p>(B) (In the FCA Handbook):</p> <p>(in <b>■</b> BIPRU 12) a <i>designated investment firm</i> which is a <i>body corporate</i> or <i>partnership</i> formed under the law of any part of the UK.</p>
<p>UK DLG by modification</p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>DLG by modification (firm level)</i> in which each member is a UK ILAS BIPRU firm. A firm with a UK DLG by modification cannot also have a <i>non-UK DLG by modification (firm level)</i>.</p>
<p>UK domestic firm</p> <p><b>FCA</b> <b>PRA</b></p>	<p>a <i>firm</i> that has its registered office (or, if it has no registered office, its head office) in the <i>United Kingdom</i>.</p>
<p>UK financial sector company</p> <p><b>FCA</b> <b>PRA</b></p>	<p>a company that is a:</p> <ul style="list-style-type: none"> <li>(a) UK bank; or</li> <li>(b) UK insurer; or</li> <li>(c) UK incorporated <i>parent undertaking</i> of a company referred to in (a) or (b) where the main business of the <i>group</i> to which the <i>parent undertaking</i> and the company belong is financial services .</li> </ul>
<p>UK financial system</p> <p><b>FCA</b> <b>PRA</b></p>	<p>(as defined in section 11 of the <i>Act</i> (Meaning of "the UK financial system" )) the financial system operating in the <i>United Kingdom</i> including:</p> <ul style="list-style-type: none"> <li>(a) financial markets and exchanges;</li> <li>(b) <i>regulated activities</i>; and</li> <li>(c) other activities connected with financial markets and exchanges.</li> </ul>
<p>UK firm</p> <p><b>FCA</b> <b>PRA</b></p>	<p>(1) (except in <i>REC</i>) (as defined in paragraph 10 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) a <i>person</i> whose head office is in the <i>United Kingdom</i> and who has an <i>EEA right</i> to carry on activity in an <i>EEA State</i> other than the <i>United Kingdom</i>.</p> <p>(2) (in <i>REC</i>) means an <i>investment firm</i> or <i>credit institution</i> which has a <i>Part 4A permission</i> to carry on one or more <i>regulated activities</i>.</p>
<p>UK ILAS BIPRU firm</p> <p><b>FCA</b> <b>PRA</b></p>	<p>an <i>ILAS BIPRU firm</i> which has its registered office (or, if it does not have a registered office, its head office) in the <i>United Kingdom</i>.</p>
<p>UK insurance intermediary</p>	<p>a <i>UK domestic firm</i> which has <i>Part 4A permission</i> to carry on <i>insurance mediation activity</i> but no other <i>regulated activity</i>.</p>

FCA PRA

UK insurer

FCA PRA

an *insurer*, other than a *pure reinsurer* or a *non-directive insurer*, whose head office is in the *United Kingdom*.

UK ISPV

FCA PRA

an *ISPV* with a *Part 4A permission* to *effect or carry out contracts of insurance*.

UK lead regulated firm

FCA PRA

(A) In the PRA Handbook:

a *UK firm* that:

(a) is not part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* or any other *regulatory body*; or

(b) is part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* and that group is not part of a wider group that is subject to consolidated supervision by a *regulatory body* other than the *FCA* or the *PRA* .

For the purposes of this definition:

(c) Consolidated supervision of a group of *persons* means supervision of the adequacy of financial and other resources of that group on a *consolidated basis*. For example, this includes supervision under ■ BIPRU 8 (Group risk consolidation).

(d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* and *EU CRR* or the *Financial Groups Directive*.

(e) If the group is a *UK consolidation group* or *financial conglomerate* of which the *FCA* or the *PRA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a 'UK lead regulated firm'.

This definition is not related to the defined term *lead regulated firm*.

(B) In the FCA Handbook:

a *UK firm* that:

(a) is not part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* or any other *regulatory body*; or

(b) is part of a group that is subject to consolidated supervision by the *FCA* or the *PRA* and that group is not part of a wider group that is subject to consolidated supervision by a *regulatory body* other than the *FCA* or the *PRA* .

For the purposes of this definition:

(c) Consolidated supervision of a group of *persons* means supervision of the adequacy of financial and other resources of that group on a *consolidated basis*.

(d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* and *EU CRR* or the *Financial Groups Directive*.

(e) If the group is a *consolidation group* or *financial conglomerate* of which the *FCA* or the *PRA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a 'UK lead regulated firm'.

This definition is not related to the defined term *lead regulated firm*.

UK MCR

**FCA** **PRA**

the MCR calculated in accordance with INSPRU 1.5.44R by a *non-EEA direct insurer* (except a *UK-deposit insurer*, an *EEA-deposit insurer* or a *Swiss general insurer*) in relation to business carried on by the *firm* in the *United Kingdom*.

UK MiFID investment firm

**FCA** **PRA**

a *MiFID investment firm* whose *Home State* is the *United Kingdom* (this may include a natural *person* provided the conditions set out in Article 4(1)(1) of *MiFID* are satisfied).

UK parent financial holding company in a Member State

**FCA** **PRA**

a *parent financial holding company* in a *Member State* where the *EEA State* in question is the *United Kingdom*.

UK parent mixed financial holding company in a Member State

**FCA**

a *parent mixed financial holding company* in a *Member State* where the *EEA State* in question is the *UK*.

UK pure reinsurer

**FCA** **PRA**

a *pure reinsurer* whose head office is in the *United Kingdom*.

UK RCH

**FCA** **PRA**

a *clearing house* which is declared by an order made by the Bank of England under section 290 of the *Act* and for the time being in force to be a recognised clearing house.

UK recognised body

**FCA** **PRA**

a *UK RIE* or *RAP*.

UK regulated EEA financial conglomerate

**FCA** **PRA**

a *financial conglomerate* (other than a *third-country financial conglomerate*) that satisfies one of the following conditions:

- (a) ■ GENPRU 3.1.29 R (Capital adequacy calculations for *financial conglomerates*) applies with respect to it; or

UK RIE

FCA PRA

(b) a *firm* that is a member of that *financial conglomerate* is subject to obligations imposed through its *Part 4A permission* to ensure that *financial conglomerate* meets levels of capital adequacy based or stated to be based on Annex I of the *Financial Groups Directive*.

an RIE that is not an ROIE.

UK UCITS  
management  
company

FCA PRA

a *management company* that is established in the *United Kingdom* and is *authorised* and regulated by the *FCA*.

UK-deposit  
insurer

FCA PRA

a *non-EEA insurer* that has made a deposit in the *United Kingdom* under article 23 of the *First Non-Life Directive* in accordance with article 26 of that Directive or under article 51 of the *Consolidated Life Directive* in accordance with article 56 of that Directive.

UKLA

FCA PRA

the *FCA* acting in its capacity as the *competent authority* for the purposes of Part VI of the *Act* (Official Listing).

ultimate EEA  
insurance  
parent  
undertaking

FCA PRA

an *EEA insurance parent undertaking* that is not itself the *subsidiary undertaking* of another *EEA insurance parent undertaking*.

ultimate EEA  
mixed financial  
holding  
company

FCA PRA

a *mixed financial holding company* which has its head office in an *EEA State* and which is not itself the *subsidiary undertaking* of another *mixed financial holding company*, *insurance parent undertaking* or *financial holding company* which has its head office in an *EEA State*.

ultimate  
insurance  
parent  
undertaking

FCA PRA

an *insurance parent undertaking* that is not itself the *subsidiary undertaking* of another *insurance parent undertaking*.

ultimate mixed  
financial  
holding  
company

FCA PRA

a *mixed financial holding company* which is not itself the *subsidiary undertaking* of another *mixed financial holding company*, *insurance parent undertaking*, or *financial holding company*.

ultimate parent  
undertaking

FCA PRA

(in relation to an *insurer*) a *parent undertaking* of the *insurer* that is not itself the *subsidiary undertaking* of another *undertaking*.

*umbrella*

**FCA** **PRA**

(A) In the PRA Handbook:

(in *FEES*, *COLL* and *COBS*) a *collective investment scheme* whose *instrument constituting the scheme* provides for such pooling as is mentioned in section 235(3)(a) of the *Act* (Collective investment schemes) in relation to separate parts of the *scheme property* and whose are entitled to exchange rights in one part for rights in another.

(B) In the FCA Handbook:

(in *FEES*, *COLL* and *COBS*) a *collective investment scheme* whose *instrument constituting the fund* provides for such pooling as is mentioned in section 235(3)(a) of the *Act* (Collective investment schemes) in relation to separate parts of the *scheme property* and whose are entitled to exchange rights in one part for rights in another.

*umbrella collective investment scheme*

**FCA** **PRA**

(in *PR*) (as defined in the *PD Regulation*) a collective investment undertaking invested in one or more collective investment undertakings, the asset of which is composed of separate class(es) or designation(s) of securities.

*unattached shares*

**FCA** **PRA**

(in *CREDS*) means the total shares in the *credit union* other than any *attached shares* or *deferred shares*.

*unauthorised AIF*

**FCA** **PRA**

an *AIF* which is not an *authorised fund*.

*unauthorised AIFM*

**FCA**

a person who is not an *authorised person* but who is:

- (a) a *small registered UK AIFM*; or
- (b) a small registered EEA AIFM, i.e. an *EEA AIFM* that is a *small AIFM* that has not opted in to become a *full-scope EEA AIFM*; or
- (c) a *full-scope EEA AIFM* that is entitled to *market* an *AIF* in the *United Kingdom* following a notification under regulation 57 of the *AIFMD UK regulation*; or
- (d) an *small non-EEA AIFM* that is entitled to *market* an *AIF* in the *United Kingdom* following a notification under regulation 58 of the *AIFMD UK regulation*; or
- (e) an *above-threshold non-EEA AIFM* to which the requirement at regulation 59(3) of the *AIFMD UK regulation* applies; or
- (f) a *full-scope EEA AIFM* that is exercising a right to *market* an *AIF* in the *United Kingdom* arising out of the *EuSEF regulation* or the *EuVECA regulation*.

*unauthorised fund*

**FCA** **PRA**

a *fund* which is not an *authorised fund*.

*unauthorised person*

**FCA** **PRA**

a *person* who is not an *authorised person*.

*unauthorised reversion provider*

FCA PRA

a *person* who carries on, or proposes to carry on, the activity specified in article 63B(1) of the *Regulated Activities Order* which is entering into a *home reversion plan* as plan provider, and who does not have *permission* for, and is not an *exempt person* in relation to, *entering into a home reversion plan*.

*unauthorised SRB agreement provider*

FCA PRA

a *person* who carries on, or proposes to carry on, the activity specified in article 63J(1) of the *Regulated Activities Order* which is entering into a *regulated sale and rent back agreement* as agreement provider, and who does not have *permission* for, and is not an *exempt person* in relation to, *entering into a regulated sale and rent back agreement*; and in this definition references to an agreement provider include a *person* who acquires obligations or rights under a *regulated sale and rent back agreement*.

*underlying instrument*

FCA PRA

(in LR) (in relation to *securitised derivatives*) means either:

- (a) if the *securitised derivative* is an *option* or *debt security* with the characteristics of an *option*, any of the underlying investments listed in article 83 of the *Regulated Activities Order*; or
- (b) if the *securitised derivative* is a *contract for differences* or *debt security* with the characteristics of a *contract for differences*, any factor by reference to which a profit or loss under article 85 of the *Regulated Activities Order* can be calculated.

*undertaking*

FCA PRA

(as defined in section 1161(1) of the Companies Act 2006 (Meaning of "undertaking" and related expressions)):

- (a) a *body corporate* or *partnership*; or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit.

*underwrite*

FCA PRA

(for the purposes of ■ BIPRU 7 (Market risk)) to undertake a firm commitment to buy a specified quantity of new *securities* on a given date and at a given price if no other has purchased or acquired them; and so that:

- (a) new is defined in BIPRU 7.8.12R (New securities);
- (b) a *firm* still underwrites *securities* at a time before the exact quantity of *securities* being underwritten or their price has been determined if it is committed at that time to underwrite them when the quantity and price is fixed;
- (c) (in the case of provisions of the *Handbook* that distinguish between *underwriting* and sub-*underwriting*) *underwriting* does not include sub-*underwriting*; and
- (d) (in any other case) *underwriting* includes sub-*underwriting*.

*underwriting agent*

FCA PRA

a *firm* permitted by the *Council* to act as an underwriting agent at Lloyd's.

*underwriting capacity of a Lloyd's syndicate*

FCA PRA

the *investment*, specified in article 86(1) of the *Regulated Activities Order*, which is the underwriting capacity of a *syndicate*.

*underwriting member*

a *person* admitted to the *Society* as an underwriting member.

FCA PRA

*unearned premium*

the amount set aside by a *firm* at the end of its *financial year* out of *premiums* in respect of risks to be borne by the *firm* after the end of the *financial year* under *contracts of insurance* entered into before the end of that year.

FCA PRA

*Unfair Terms Regulations*

the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), as amended by SI 2001/1186 and SI 2001/3649.

FCA PRA

UNFCOG

the Unfair Contract Terms Regulatory Guide.

FCA PRA

*unfunded credit protection*

(1) (in *BIPRU* and in accordance with Article 4(32) of the *Banking Consolidation Directive* (Definitions)) a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an undertaking derives from the *undertaking* of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.

FCA

(2) (in *IFPRU*) has the meaning in article 4(1)(59) of the *EU CRR*.

*unit*

(1) (in relation to a *collective investment scheme*) the investment, specified in article 81 of the *Regulated Activities Order* (Units in a collective investment scheme) and defined in section 237(2) of the *Act* (Other definitions)), which is the right or interest (however described) of the *participants* in a *collective investment scheme*; this includes:

FCA PRA

(a) (in relation to an *AUT*) a unit representing the rights or interests of the *unitholders* in the *AUT*;

(aa) (in relation to an *ACS*) a unit representing the rights or interests of the *unitholders* in the *ACS*; and

(b) (in relation to an *ICVC*) a *share* in the *ICVC*.; and

(2) (in relation to an *alternative investment fund*) the right or interest (however described) of an investor in an *alternative investment fund*.

*unit trust scheme*

(as defined in section 237(1) of the *Act* (Other definitions)) a *collective investment scheme* under which the property in question is held on trust for the *participants*, except that it does not include an *authorised contractual scheme*.

FCA PRA

*United Kingdom*

England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man).

FCA PRA

*unitholder*

(a) (in relation to an *ICVC*, *ACS* or an *AUT* as appropriate, and subject to ■ COLL 4.4.4 R (Special meaning of unitholder in ■ COLL 4.4)):

FCA PRA

(i) (in relation a *unit* which is represented by a *bearer certificate*) the *person* who holds that certificate; or(ii) (in relation to a *unit* that is not represented by a *bearer certificate*) the *person* whose name is entered on the *register* in relation to that *unit*; or

(b) (in relation to a *unit* in *collective investment scheme* not within (a)):

(i) the holder of the *bearer certificate* representing that *unit*; or

<p><i>unitisation</i></p> <p><b>FCA</b></p>	<p>(ii) the <i>person</i> who entered on the <i>register</i> of the <i>scheme</i> as the holder of that <i>unit</i>.</p> <p>arrangements for a newly formed <i>AUT</i> or <i>ACS</i> under which:</p> <p>(a) the whole or part of the property of a <i>body corporate</i> (or a <i>collective investment scheme</i>) becomes the first <i>scheme property</i> of the <i>AUT</i> or <i>ACS</i>; and</p> <p>(b) the <i>holders</i> of:</p> <p style="padding-left: 40px;">(i) <i>shares</i> in the <i>body corporate</i> being wound up; or</p> <p style="padding-left: 40px;">(ii) <i>units</i> in the <i>collective investment scheme</i>, the property of which is being transferred;</p> <p>become the first <i>participants</i> in the <i>AUT</i> or <i>ACS</i>.</p>
<p><i>units of a collective investment scheme</i></p> <p><b>FCA PRA</b></p>	<p>(in <i>PR</i>) (as defined in Article 2.1(p) of the <i>prospectus directive</i>) securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets.</p>
<p><i>unpaid initial fund</i></p> <p><b>FCA PRA</b></p>	<p>part of the <i>initial fund</i> of a <i>mutual</i> which the <i>mutual</i> is prevented from including in its <i>tier one capital resources</i> as <i>permanent share capital</i> by reason of GENPRU 2.2.64R because it is not fully paid.</p>
<p><i>unrated position</i></p> <p><b>FCA PRA</b></p>	<p>(for the purposes of BIPRU 9 (Securitisation), in accordance with Part 1 of Annex IX of the <i>Banking Consolidation Directive</i> (Securitisation definitions) and in relation to a <i>securitisation position</i>) describes a <i>securitisation position</i> which does not have an eligible credit assessment by an <i>eligible ECAI</i>.</p>
<p><i>unrecognised scheme</i></p> <p><b>FCA</b></p>	<p>(in <i>LR</i>) a <i>collective investment scheme</i> which is neither a <i>recognised scheme</i> nor a scheme that is constituted as an <i>authorised unit trust scheme</i> or <i>authorised contractual scheme</i>.</p>
<p><i>unregulated activity</i></p> <p><b>FCA PRA</b></p>	<p>an activity which is not a <i>regulated activity</i>.</p>
<p><i>unregulated collective investment scheme</i></p> <p><b>FCA PRA</b></p>	<p>a <i>collective investment scheme</i> which is not a <i>regulated collective investment scheme</i>.</p>
<p><i>unsecured debt</i></p> <p><b>FCA PRA</b></p>	<p>debt that does not fall within the definition of <i>secured debt</i>.</p>
<p><i>unsecured lending</i></p> <p><b>FCA PRA</b></p>	<p>lending where the <i>mortgage lender</i> does not take a mortgage or other form of security in respect of the credit provided to the <i>customer</i>.</p>

<p><i>unsolicited real time financial promotion</i></p>	<p>(in accordance with article 8 of the <i>Financial Promotion Order</i>) a <i>real time financial promotion</i> which is not a <i>solicited real time financial promotion</i>.</p>
<p>FCA PRA</p>	
<p><i>upper tier three capital</i></p>	<p>an item of capital that is specified in stage O of the <i>capital resources table</i> (Upper tier three).</p>
<p>FCA PRA</p>	
<p><i>upper tier three capital resources</i></p>	<p>the sum calculated at stage O of the <i>capital resources table</i> (Upper tier three).</p>
<p>FCA PRA</p>	
<p><i>upper tier three instrument</i></p>	<p>an item of capital that meets the conditions in GENPRU 2.2.242R (Tier three capital: upper tier three capital resources) and is eligible to form part of a <i>firm's upper tier three capital resources</i>.</p>
<p>FCA PRA</p>	
<p><i>upper tier two capital</i></p>	<p>(1) [deleted] (2) (in <i>BIPRU</i>, <i>GENPRU</i> and <i>INSPRU</i>) an item of capital that is specified in stage G of the <i>capital resources table</i> (Upper tier two capital) .</p>
<p>FCA PRA</p>	
<p><i>upper tier two capital resources</i></p>	<p>the sum calculated at stage G of the calculation in the <i>capital resources table</i> (Upper tier two capital) .</p>
<p>FCA PRA</p>	
<p><i>upper tier two instrument</i></p>	<p>a <i>capital instrument</i> that meets the conditions in ■ GENPRU 2.2.177 R (Upper tier two capital: General) and is eligible to form part of a <i>firm's upper tier two capital resources</i>.</p>
<p>FCA PRA</p>	
<p>UPRU</p>	<p>the Prudential sourcebook for UCITS Firms.</p>
<p>FCA PRA</p>	



<p><i>valuation point</i> FCA PRA</p>	<p>(in COLL ) a <i>valuation point</i> fixed by the <i>authorised fund manager</i> for the purpose of ■ COLL 6.3.4 R (Valuation points) or ■ COLL 8.5.9 R (Valuation, pricing and dealing ) .</p>
<p><i>value at risk</i> FCA</p>	<p>(in relation to risk modelling or estimation for the purposes of BIPRU) the measure of risk described in ■ BIPRU 7.10.146 R (Requirement to use value at risk methodology).</p>
<p>VaR FCA PRA</p>	<p><i>value at risk</i></p>
<p><i>VaR measure</i> FCA</p>	<p>(in BIPRU) an estimate by a <i>VaR model</i> of the worst expected loss on a portfolio resulting from market movements over a period of time with a given confidence level.</p>
<p><i>VaR model</i> FCA PRA</p>	<p>a value at risk model as described in BIPRU 7.10 (Use of a Value at Risk Model).</p>
<p><i>VaR model approach</i> FCA PRA</p>	<p>one of the following:</p> <ul style="list-style-type: none"> <li>(a) the approach to calculating part of the <i>market risk capital requirement</i> set out in BIPRU 7.10 (Use of a value at risk model);</li> <li>(b) (where the approach in (a) is being applied on a consolidated basis) the method in (a) as applied on a consolidated basis in accordance with BIPRU 8 (Group risk - consolidation); or</li> <li>(c) when the reference is to the rules of or administered by a <i>regulatory body</i> other than the <i>appropriate regulator</i>, whatever corresponds to the approach in (a) or (b), as the case may be, under those rules.</li> </ul>
<p><i>VaR model permission</i> FCA PRA</p>	<p>(A) In the PRA Handbook:</p> <p style="padding-left: 40px;">an <i>Article 129 implementing measure</i>, a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or an <i>institution</i> to use the <i>VaR model approach</i> on a solo basis or, if the context requires, a consolidated basis.</p>
<p><i>VaR model permission</i> FCA PRA</p>	<p>(B) In the FCA Handbook:</p> <p style="padding-left: 40px;">an <i>Article 129 implementing measure</i>, a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or a <i>CAD investment firm</i> to use the <i>VaR model approach</i> on a solo basis or, if the context requires, a consolidated basis.</p>
<p><i>VaR number</i> FCA PRA</p>	<p>has the meaning in BIPRU 7.10.115R (Capital calculations: General) which in summary is (in relation to a <i>business day</i> and a <i>VaR model</i>) the <i>VaR measure</i>, in respect of the previous <i>business day</i>'s close-of-business <i>positions</i> in products coming within the scope of the <i>VaR model permission</i>, calculated by the <i>VaR model</i> and in accordance with BIPRU 7.10 (Use of a Value at Risk Model) and any methodology set out in the <i>VaR model permission</i>.</p>
<p><i>VaR specific risk minimum requirements</i> FCA PRA</p>	<p>BIPRU 7.10.46R to BIPRU 7.10.52R (Model standards: Risk factors: Specific risk) and BIPRU 7.10.107R (Backtesting: Specific risk backtesting).</p>

*vehicle*

FCA PRA

any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer whether or not coupled.

[Note: article 1(1) of Council Directive 72/166/EEC (First Motor Insurance Directive)]

*vendor  
consideration  
placing*

FCA PRA

(in *LR*) a marketing, by or on behalf of vendors, of *securities* that have been allotted as consideration for an acquisition.

*venture capital  
business*

FCA PRA

(A) In the PRA Handbook:

the business of carrying on any of:

(a) investing in, *advising on investments* which are, *managing investments* which are, *arranging* (bringing about) *transactions* in, or *making arrangements with a view to transactions in venture capital investments*;

(b) *advising on investments* or *managing investments* in relation to portfolios, or *establishing, operating or winding up collective investment schemes*, where the portfolios or *collective investment schemes* (apart from funds awaiting investment) invest only in *venture capital investments*;

(c) any *custody* activities provided in connection with the activities in (a) and (b);

(d) any related *ancillary activities*.

(B) In the FCA Handbook:

the business of carrying on any of:

(a) investing in, *advising on investments* which are, *managing investments* which are, *arranging* (bringing about) *transactions* in, or *making arrangements with a view to transactions in venture capital investments*;

(b) *advising on investments* or *managing investments* in relation to portfolios, or *establishing, operating or winding up collective investment schemes* or *managing AIFs*, where the portfolios or *funds* (apart from funds awaiting investment) invest only in *venture capital investments*;

(c) any *custody* activities provided in connection with the activities in (a) and (b);

(d) any related *ancillary activities*.

*venture capital  
contact*

FCA PRA

(when a *firm* carries on *regulated activities* with or for a *person* in the course of or as a result of carrying on *venture capital business*) that *person* in connection with that *regulated activity* if:

(a) the *firm* does not behave in a way towards that *person* which might reasonably be expected to lead that *person* to believe that he is being treated as a *client*; and

(b) the *firm* clearly indicates to that *person* that the *firm*:

(i) is not acting for him; and

(ii) will not be responsible to him for providing protections afforded to *clients* of the *firm* or be advising him on the relevant transaction.

*venture capital  
firm*

FCA PRA

a *firm* whose *permission* includes a *requirement* that it must not conduct *designated investment business* other than *venture capital business*.

*venture capital investment*

FCA PRA

a *designated investment* which, at the time the investment is made, is:

- (a) in a new or developing *company* or venture; or
- (b) in a management buy-out or buy-in; or
- (c) made as a means of financing the investee *company* or venture and accompanied by a right of consultation, or rights to information, or board representation, or management rights; or
- (d) acquired with a view to, or in order to, facilitate a transaction falling within (a) to (c).

*venture capital trust*

FCA PRA

(in *LR*) a *company* which is, or which is seeking to become, approved as a venture capital trust under section 842AA of the Income and Corporation Taxes Act 1988.

*verified*

FCA PRA

(in *IPRU(INV)* 13) where interim net profits are to be included in a *firm's* capital resources, checked by an external auditor who has undertaken at least to:

- (a) satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records;
- (b) review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the *firm* in drawing up its *annual financial statements* and are in accordance with the accounting principles set out in *IPRU(INV)* 13;
- (c) perform analytical procedures on the result to date, including comparisons of actual performance to date with budget and with the results of prior period(s);
- (d) discuss with management the overall performance and financial *position* of the *firm*;
- (e) obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisioning for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and
- (f) follow up problem areas of which he is already aware in the course of auditing the *firm's* financial statements, a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the *FCA* (although this does not apply to *exempt CAD firms*).

*version 1 credit union*

FCA PRA

a *credit union* whose *Part 4A permission* includes a *requirement* (whether for all or for particular purposes) that it must not lend more than £15,000, or such lesser amount as may be specified, in excess of a member's shareholding;

in this definition a "member's shareholding" means any shares held by a member of the *credit union*

in accordance with section 5 and 7 of the Credit Unions Act 1979 or articles 14 and 23 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate).

*version 2 credit union*

FCA PRA

a *credit union* which is not a *version 1 credit union*.

*VJ participant*

FCA PRA

a *person* subject to the *Voluntary Jurisdiction* by contract.

*volatility risk*

the potential loss due to fluctuations in implied *option* volatilities.

FCA PRA

Voluntary  
Jurisdiction

FCA PRA

voting power

FCA PRA

the jurisdiction of the *Financial Ombudsman Service* in which *persons* (whether *authorised* or *unauthorised*) participate by contract.

(in *SUP* 11 (Controllers and close links) and *SUP* 16 (Reporting requirements) (in accordance with section 422 of the *Act*):

(a) includes, in relation to a *person* ("H"):

(i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the *undertaking* in question;

(ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;

(iii) voting power attaching to *shares* which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;

(iv) voting power attaching to *shares* in which H has a life interest;

(v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a subsidiary *undertaking* of H;

(vi) voting power attaching to *shares* deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;

(vii) voting power held in the name of a third party on behalf of H;

(viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an *undertaking* which does not have general meetings at which matters are decided by the exercise of voting rights, the right under the constitution of the *undertaking* to direct the overall policy of the *undertaking* or alter the terms of its constitution.

*waiver*

FCA PRA

a direction waiving or modifying a *rule*, given by the *appropriate regulator* under section 138A of the *Act* (Modification or waiver of rules) or by the *FCA* under sections 250, 261L or 294 of the *Act* (Modification or waiver of rules) or regulation 7 of the *OEIC Regulations* (see ■ SUP 8 and ■ REC 3.3).

*warning notice*

FCA PRA

a notice issued by the *appropriate regulator* in accordance with section 387 of the *Act* (Warning notices).

*warrant*

FCA PRA

(1) (except in *COLL*) the *investment*, specified in article 79 of the *Regulated Activities Order* (Instruments giving entitlements to investments), which is in summary: a warrant or other instrument entitling the holder to subscribe for a *share*, *debenture*, *alternative debenture* or *government and public security*.

(2) (in *COLL*) an *investment* in (1) and any other *transferable security* (not being a nil paid or partly paid *security*) which is:

(i) *listed* on an *eligible securities* market; and

(ii) akin to an *investment* within (1) in that it involves a down payment by the then holder and a right later to surrender the instrument and to pay more *money* in return for a further *transferable security*.

*weather derivative*

FCA PRA

a *contract for differences* where the index or other factor in question is a climatic variable.

*website conditions*

FCA PRA

the following conditions :

(1) the provision of information by means of a website must be appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on (that is, there is evidence that the *client* has regular access to the internet, such as the provision by the client of an e-mail address for the purposes of the carrying on of that business);

(2) the *client* must specifically consent to the provision of that information in that form;

(3) the *client* must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(4) the information must be up to date; and

(5) the information must be accessible continuously by means of that website for such period of time as the *client* may reasonably need to inspect it.

[Note: article 3 of the *MiFID implementing Directive* and article 38(2) of the *KII Regulation*]

*weighted average life*

FCA PRA

(in accordance with the definitions section in *CESR's guidelines on a common definition of European money market funds*) the weighted average of the remaining life (maturity) of each *security* held in a fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting).

*weighted average maturity*

FCA PRA

(in accordance with the definitions section in *CESR's guidelines on a common definition of European money market funds*) a measure of the average length of time to maturity of all of the underlying *securities* in a fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the *security* must be repaid.

*welfare trust*

FCA PRA

any scheme or arrangement, not being an *occupational pension scheme*, that is comprised in one or more instruments or agreements and operates as a benevolent fund so as to provide benefits, at the discretion of the trustees and to which the beneficiaries have no contractual rights.

*whole life assurance*

FCA PRA

a *contract of insurance* which, disregarding any benefit payable on surrender, secures a capital sum only on death or either on death or on disability, but does not include a term assurance.

*whole-firm liquidity modification*

FCA PRA

a modification to the *overall liquidity adequacy rule* of the kind described in BIPRU 12.8.22G.

*wholesale depositor*

PRA

a *person* who is:

- (a) a *credit institution*; or
- (b) a *large company*; or
- (c) a *large mutual association* which is:
  - (i) a *firm*; or
  - (ii) an *overseas financial services institution*; or
  - (iii) a *collective investment scheme* or an operator or trustee of a *collective investment scheme*; or
  - (iv) a pension or retirement fund, or a trustee of such a fund (except a trustee of a small self-administered scheme or an occupational scheme of an employer which is not a *large company* or a *large partnership*); or
- (d) a supranational institution, government or central administrative authority; or
- (e) a provincial, regional, local or municipal authority; or
- (f) a *body corporate* in the same *group* as the *person* with whom the *deposit* is made.

*wholesale market broker*

FCA PRA

a *firm* when carrying out the activities of *name-passing broker*, or acting on a matched principal basis, with or for *market counterparties*.

*wholesale only bank*

PRA

(in relation to *firm type* in ■ SUP 16.10 (Confirmation of *standing data*)) a *bank* with *permission* to accept *deposits* from *wholesale depositors* only.

*with-profits actuary*

FCA PRA

an *actuary* appointed to perform the *with-profits actuary function*.

*with-profits actuary function*

FCA PRA

(in the *PRA Handbook*) *PRA controlled function* CF12A in the *table of PRA controlled functions*, described more fully in ■ SUP 4.3.16A R and ■ SUP 10B.8.2 R.

# Principles for Businesses



## Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

**FCA**

- 1.1** A *firm* may categorise the following types of *client* as an *eligible counterparty* for the purposes of *PRIN*:
- (1) a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;
  - (2) a central bank or other national monetary authority of any country or territory;
  - (3) a supranational whose members are either countries or central banks or national monetary authorities;
  - (4) a State investment body, or a body charged with, or intervening in, the management of the public debt;
  - (5) another *firm*, or an *overseas financial services institution*;
  - (6) any *associate* of a *firm* (except an *OPS firm*), or of an *overseas financial services institution*, if the *firm* or institution consents;
  - (7) a *client* when he is classified as an *eligible counterparty* in accordance with 1.2; or
  - (8) a *recognised investment exchange, regulated market or clearing house*.
- 1.2** A *firm* may classify a *client* (other than another *firm, regulated collective investment scheme, or an overseas financial services institution*) as an *eligible counterparty* for the purposes of *PRIN* under 1.1(7) if:
- (1) the *client* at the time he is classified is one of the following:
    - (a) a *body corporate* (including a *limited liability partnership*) which has (or any of whose *holding companies* or *subsidiaries* has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);
    - (b) a *body corporate* that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:
      - (i) a balance sheet total of 12.5 million euros (or its equivalent in any other currency at the relevant time);
      - (ii) a net turnover of 25 million euros (or its equivalent in any other currency at the relevant time);
      - (iii) an average number of employees during the year of 250;
    - (c) a local authority or public authority;

- (d) a *partnership* or unincorporated association which has net assets of at least £10 million (or its equivalent in any other currency at the relevant time) (and calculated, in the case of a limited *partnership*, without deducting loans owing to any of the *partners*);
  - (e) a trustee of a trust (other than an *occupational pension scheme*, *SSAS*, *personal pension scheme* or *stakeholder pension scheme*) with assets of at least £10 million (or its equivalent in any other currency), calculated by aggregating the value of the cash and *designated investments* forming part of the trust's assets, but before deducting its liabilities;
  - (f) a trustee of an *occupational pension scheme* or *SSAS*, or a trustee or operator of a *personal pension scheme* or *stakeholder pension scheme* where the *scheme* has (or has had at any time during the previous two years):
    - (i) at least 50 members; and
    - (ii) assets under management of not less than £10 million (or its equivalent in any other currency at the relevant time); and
- (2) the *firm* has, before commencing business with the *client* on an *eligible counterparty* basis:
- (a) advised the *client* in writing that he is being categorised as an *eligible counterparty* for the purposes of *PRIN*;
  - (b) given a written warning to the *client* that he will lose protections under the *regulatory system*;
  - (c) for a *client* falling under (1)(a) or (b):
    - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
    - (ii) not been notified by the *client* that the *client* objects to being classified as an *eligible counterparty*;
  - (d) for a *client* falling under (1)(c), (d), (e) or (f):
    - (i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a *person* authorised to take such a decision for the *client*; and
    - (ii) obtained the *client's* written consent or is otherwise able to demonstrate that consent has been given.

## Principles for Businesses

### PRIN TP 1 Transitional provisions

FCA

	Material to which the transitional provision applies	Transitional Provision	Transitional Provision: dates in force	Handbook provision: coming into force
1.	PRIN 1 Annex 1 R 1.2(2) R	A <i>firm</i> need not comply with PRIN Ann 1R 1.2(2) in relation to an <i>eligible counterparty</i> if the <i>client</i> was correctly categorised as a <i>market counterparty</i> on 31 October 2007 and the <i>firm</i> complied with COB 4.1.12 R (2) (Large intermediate customer classified as market counterparty).	From 1 November 2007 indefinitely	1 November 2007



# Senior Management Arrangements, Systems and Controls



Part 2		Application of the common platform requirements (SYSC 4 to 10)
[FCA]		<p>(1) SYSC 4.3 and 4.4 do not apply as long as he does not employ any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements);</p> <p>(2) SYSC 4.1.4 R and SYSC 6.3.9 R do not apply if he has no <i>employees</i>.</p>
2.4	R	For a <i>UCITS</i> qualifier:
[FCA]		<p>(1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and</p> <p>(2) the <i>common platform requirements</i> apply in relation to the <i>communication</i> and <i>approval</i> of <i>financial promotions</i> only as set out in SYSC 1 Annex 1.2.12R.</p> <p>[Note: section 266 of the <i>Act</i>.]</p>
2.4A	R	For an <i>AIFM</i> qualifier:
[FCA]		<p>(1) the <i>rule</i> on responsibility of senior personnel (SYSC 4.3) does not apply; and</p> <p>(2) the <i>common platform requirements</i> apply in relation to the <i>communication</i> and <i>approval</i> of <i>financial promotions</i> only as set out in SYSC 1 Annex 1, 2.12R.</p>
2.5	R	For an <i>authorised professional firm</i> when carrying on <i>non-mainstream regulated activities</i> , the <i>common platform requirements</i> on <i>financial crime</i> , <i>conflicts of interest</i> and <i>Chinese walls</i> do not apply.
[FCA]		
2.6	R	The <i>common platform requirements</i> do not apply to an <i>incoming ECA provider</i> acting as such.
[FCA]		
[PRA]		
2.6A	R	The <i>common platform requirements</i> do not apply to a <i>firm</i> (including an <i>incoming EEA firm</i> ) in relation to its carrying on of <i>auction regulation bidding</i> , except for:
[FCA]		<p>(1) SYSC 6.1.1 R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers, employees and <i>appointed representatives</i>) might be used to further <i>financial crime</i>; and</p> <p>(2) SYSC 6.3 (Financial crime).</p>
[PRA]		
2.6B	R	Subject to SYSC 1 Annex 1 2.6CR, the <i>common platform requirements</i> do not apply to a <i>full-scope UK AIFM</i> of an <i>unauthorised AIF</i> except for:
[FCA]		

## Part 2 Application of the common platform requirements (SYSC 4 to 10)

		(1)	SYSC 4.1.1 R to SYSC 4.1.2 R and SYSC 4.1.2B R to SYSC 4.1.2D R;
		(2)	SYSC 4.2.1 R, SYSC 4.2.1B R, SYSC 4.2.2 R to SYSC 4.2.5 G, SYSC 4.2.7 R and SYSC 4.2.8 G;
		(3)	SYSC 6.1.1 R, which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers and <i>employees</i> ) might be used to further <i>financial crime</i> ;
		(4)	SYSC 6.1.4A G;
		(5)	SYSC 6.3;
		(6)	SYSC 7.1.7B G;
		(7)	SYSC 10.1.1 R and SYSC 10.1.22 R to SYSC 10.1.26 R; and
		(8)	SYSC 10.2.
2.6C	R		The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> which is a <i>full-scope UK AIFM</i> in respect of its <i>MiFID business</i> in line with Column A of Part 3.
[FCA]			
2.6D	R		The <i>common platform requirements</i> apply to a <i>full-scope UK AIFM</i> of an <i>authorised AIF</i> in line with column A++ of Part 3.
[FCA]			
2.6E	G		The <i>common platform requirements</i> apply to a <i>small authorised UK AIFM</i> in line with Column B of Part 3 (unless such a <i>firm</i> is also a <i>common platform firm</i> , in which case they must comply with Column A).
[FCA]			
2.6F	R		The <i>common platform requirements</i> do not apply to an <i>incoming EEA AIFM branch</i> in respect of its management of a <i>UK AIF</i> , except for:
[FCA]			
		(1)	those <i>common platform requirements</i> which are <i>AIFMD host state requirements</i> ;
		(2)	SYSC 6.1.1 R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <i>firm</i> (including its managers and <i>employees</i> ) might be used to further <i>financial crime</i> ; and
		(3)	SYSC 6.3.
2.7	G		<i>EEA MiFID investment firms</i> are reminded in particular that they must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i> .
[FCA]			
2.7A	G		<i>EEA UCITS management companies</i> are also reminded that they must comply with:
[FCA]			

Part 2		Application of the common platform requirements (SYSC 4 to 10)
		<p>(1) the <i>common platform requirements</i> indicated in Column A+ (Application to a management company) in Part 3 of this Annex;</p> <p>(2) the <i>common platform record-keeping requirements</i>; and</p> <p>(3) the <i>common platform requirements on financial crime</i>;</p> <p>in relation to activities carried on from a <i>branch</i> in the <i>United Kingdom</i>. Where the <i>common platform requirement</i> addresses matters within the scope of article 12 of the <i>UCITS Directive</i>, an <i>EEA UCITS management company</i> should note that those matters may also be subject to the rules of its <i>Home State regulator</i>.</p> <p>[Note: articles 12(1)(b), 14(1)(c), 14(1)(d), 17(4), 18(3) and 19(1) of the <i>UCITS Directive</i> and articles 4(1)(e), 10(1), 10(2) and 10(3) of the <i>UCITS implementing Directive</i>]</p>
	What?	
2.8	R	The <i>common platform organisational requirements</i> apply with respect to the carrying on of the following (unless provided otherwise within a specific <i>rule</i> ):
[FCA]		
[PRA]		
		<p>(1) <i>regulated activities</i>;</p> <p>(2) activities that constitute <i>dealing in investments as principal</i>, disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc);</p> <p>(3) <i>ancillary activities</i>;</p> <p>(4) in relation to <i>MiFID business, ancillary services</i> ; and</p> <p>(5) <i>collective portfolio management</i>.</p>
2.9	G	The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.1 R and SYSC 10.2.1 R
[FCA]		
[PRA]		
2.10	R	The provisions on record-keeping in SYSC 9 apply as set out in SYSC 1 Annex 1.2.8R, except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
[FCA]		
		<p>(1) <i>designated investment business</i>;</p> <p>(2) <i>home finance activity</i>; and</p> <p>(3) <i>insurance mediation activity</i>.</p>
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:
[FCA]		
		(1) with respect to:

## Part 2 Application of the common platform requirements (SYSC 4 to 10)

- (a) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (b) *ancillary activities*; or
- (2) in relation to the following *regulated activities*:
  - (a) *general insurance business*;
  - (b) *insurance mediation activity in relation to a general insurance contract or pure protection contract*;
  - (c) *long-term insurance business which is outside the Consolidated Life Directive (unless it is otherwise one of the regulated activities specified in this rule)*;
  - (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of "contract of insurance" in article 3 of that Order;
  - (e)
    - (i) arranging by the *Society* of deals in *general insurance contracts* written at Lloyd's; and
    - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
  - (f) *home finance mediation activity and administering a home finance transaction*;
  - (g) *reversion activity*; and
  - (h) *meeting of repayment claims and managing dormant account funds (including the investment of such funds)*.

2.12 R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply with respect to the *communication and approval of financial promotions* which:

[FCA]

- (1) if *communicated by an unauthorised person* without *approval* would contravene section 21(1) of the Act (Restrictions on financial promotion); and
- (2) may be *communicated by a firm* without contravening section 238(1) of the Act (Restrictions on promotion of collective investment schemes).

2.13 R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also:

[FCA]  
[PRA]

- (1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and

Part 2		Application of the common platform requirements (SYSC 4 to 10)
		(2) take into account any activity of other members of a <i>group</i> of which the <i>firm</i> is a member.
2.14	G	SYSC 1 Annex 1.2.13R(2) does not mean that inadequacy of a <i>group</i> member's systems and controls will automatically lead to a <i>firm</i> contravening any of the <i>common platform organisational requirements</i> . Rather, the potential impact of a <i>group</i> member's activities, including its systems and controls, and any systems and controls that operate on a <i>group</i> basis, will be relevant in determining the appropriateness of the <i>firm's</i> own systems and controls.
[FCA]		
[PRA]		
		Where?
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities carried on by it from an establishment in the <i>United Kingdom</i> .
[FCA]		
[PRA]		
2.16	R	The <i>common platform requirements</i> , except the <i>common platform requirements on financial crime</i> and the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> that is not a <i>UK UCITS management company</i> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
[FCA]		
[PRA]		
2.16A	R	(1) The <i>common platform requirements</i> referred to in Column A+ of Part 3 (below) apply to a <i>UK UCITS management company</i> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
[FCA]		
		(2) Any other <i>common platform requirement</i> applies to a <i>UK UCITS management company</i> in relation to <i>passported activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> to the extent that the requirement addresses matters within the scope of article 12 of the <i>UCITS Directive</i> .
2.16B	G	The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the <i>UK UCITS management company's Host State regulator</i> .
[FCA]		
2.16C	R	The <i>common platform requirements</i> apply to a <i>full-scope UK AIFM</i> in respect of its management of an <i>AIF</i> where carried on from an establishment in the <i>UK</i> .
[FCA]		
2.16D	R	The <i>common platform requirements</i> , except those which are <i>AIFMD host state requirements</i> , apply to a <i>full-scope UK AIFM</i> in respect of its management of an <i>EEA AIF</i> from a <i>branch</i> in another <i>EEA State</i> .
[FCA]		
2.16E	R	The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> which is a <i>full-scope UK AIFM</i> in respect of its <i>MiFID business</i> where carried on from an establishment in the <i>UK</i> .
[FCA]		
2.16F	R	The <i>common platform requirements</i> , except the <i>common platform requirements on financial crime</i> and the <i>common platform record-keeping requirements</i> , apply to an <i>AIFM investment firm</i> in respect of its <i>MiFID business</i> where carried on from a <i>branch</i> in another <i>EEA State</i> .
[FCA]		

## Part 2 Application of the common platform requirements (SYSC 4 to 10)

2.17	R	The <i>common platform record-keeping requirements</i> apply to activities carried on by a firm from an establishment maintained in the <i>United Kingdom</i> , unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> .
[FCA] [PRA]		[Note: article 13(9) of <i>MiFID</i> ]
2.18	R	The <i>common platform organisational requirements</i> , except the <i>common platform requirements on financial crime</i> , also apply in a <i>prudential context</i> to a <i>UK domestic firm</i> and to an <i>overseas firm</i> (other than an <i>incoming EEA firm</i> or an <i>Incoming Treaty firm</i> ) with respect to activities wherever they are carried on.
		Actions for damages
2.19	R	A contravention of a <i>rule</i> in the <i>common platform requirements</i> does not give rise to a right of action by a <i>private person</i> under section 138D of the <i>Act</i> (and each of those <i>rules</i> is specified under section 138D(3) of the <i>Act</i> as a provision giving rise to no such right of action).
[FCA]		

## Part 3 Tables summarising the application of the common platform requirements to different types of firm

3.1	G	The <i>common platform requirements</i> apply in the following four ways (subject to the provisions in Part 2 of this Annex).
[FCA] [PRA]		
3.2	G	For a <i>common platform firm</i> , they apply in accordance with Column A in the table below.
[FCA] [PRA]		
3.2A	G	For a <i>management company</i> , they apply in accordance with Column A+ in the table below.
[FCA]		
3.2B	R	For a <i>full-scope UK AIFM</i> of an <i>authorised AIF</i> , they apply in line with Column A++ in the table below.
[FCA]  [PRA]		
3.3	G	For all other <i>firms</i> apart from <i>insurers</i> , <i>managing agents</i> , the <i>Society</i> and <i>full-scope UK AIFMs</i> of <i>unauthorised AIFs</i> , they apply in accordance with Column B in the table below. For these <i>firms</i> , where a <i>rule</i> is shown modified in Column B as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that rule instead of "must") and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's business.
[FCA] [PRA]		

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs
<b>[PRA]</b>				
SYSC 6.3.1 R	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>
<b>[FCA]</b>				
SYSC 6.3.2 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.3 R	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>
<b>[FCA]</b>				
SYSC 6.3.4 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.5 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.6 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.7 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.8 R	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>
<b>[FCA]</b>				
SYSC 6.3.9 R	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>	<b>Rule</b>
<b>[FCA]</b>				
SYSC 6.3.10 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
<b>[FCA]</b>				
SYSC 6.3.11 G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs

[FCA]

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs

SYSC 7.1.1 G	<b>Guidance</b>	<b>Guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
[FCA] [PRA]				
SYSC 7.1.2 R	<b>Rule</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
[FCA] [PRA]				
SYSC 7.1.2A G	<b>Not applicable</b>	<b>Not applicable to a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
[FCA] [PRA]				
SYSC 7.1.2B G	<b>Not applicable</b>	<b>Guidance</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.3 R	<b>Rule</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
[FCA] [PRA]				
SYSC 7.1.4 R	<b>Rule</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
[FCA] [PRA]				

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
SYSC 7.1.4A G [FCA] [PRA]	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.4B G [FCA] [PRA]	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.5 R [FCA] [PRA]	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.6 R [FCA] [PRA]	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.7 R [FCA] [PRA]	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.7A G [FCA] [PRA]	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.7B G [FCA] [PRA]	Guidance applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Guidance	Guidance
SYSC 7.1.7BA G [FCA]	Not applicable	Not applicable	Guidance	Not applicable
SYSC 7.1.7BB G [FCA]	Guidance applies only to a <i>BIPRU firm</i>	Guidance applies only to a <i>BIPRU firm</i> that is a	Not applicable	Not applicable

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
		<i>UCITS investment firm</i>		
SYSC 7.1.7C G	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>	<b>Guidance</b>
[FCA] [PRA]				
SYSC 7.1.8 G	[deleted]	[deleted]	[deleted]	[deleted]
[FCA] [PRA]				
SYSC 7.1.9 R	<b>Rule applies to a BIPRU firm</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.10 R	<b>Rule applies to a BIPRU firm</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.11 R	<b>Rule applies to a BIPRU firm</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.12 G	<b>Guidance applies to a BIPRU firm</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.13 R - 7.1.16 R	<b>Rule applies to a BIPRU firm</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA] [PRA]				
SYSC 7.1.16A G	<b>Guidance applies to a BIPRU firm</b>	<b>Guidance for a <i>UCITS investment firm</i> otherwise not applicable</b>	<b>Not applicable</b>	<b>Not applicable</b>
[FCA]				

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
SYSC 7.1.16B G [FCA]	Guidance applies to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.16C R [FCA]	Rule applies to a <i>CRR firm</i>	Not applicable	Not applicable	Not applicable
SYSC 7.1.17 R [FCA] [PRA]	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18 R [FCA] [PRA]	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18A G [FCA]	Guide applies to a <i>CRR firm</i>	Guidance for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.18B R [FCA]	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.19 R [FCA] [PRA]	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.20 R	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i>	Not applicable	Not applicable

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 7	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs

[FCA]		that is a <i>CRR firm</i> , otherwise not applicable		
[PRA]				
SYSC 7.1.21 R	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
[FCA]				
[PRA]				
SYSC 7.1.22 R	Rule applies to a <i>CRR firm</i>	Rule for a <i>UCITS investment firm</i> that is a <i>CRR firm</i> , otherwise not applicable	Not applicable	Not applicable
[FCA]				
[PRA]				

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 8	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs

SYSC 8.1.1 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA]				
SYSC 8.1.1A G	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA]				
SYSC 8.1.2 G	Guidance	Guidance	Not applicable	Guidance

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 8	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
[FCA] [PRA] SYSC 8.1.3 G	Guidance	Guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.4 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.5 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.5A G	Not applicable	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.6 R	Rule	Rule	Not applicable	Rule
[FCA] [PRA] SYSC 8.1.7 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.8 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.9 R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
[FCA] [PRA] SYSC 8.1.10 R	Rule	Rule for a <i>UCITS investment firm</i> ;	Not applicable	Guidance

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 8	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
		<b>otherwise guidance</b>		
SYSC 8.1.11 R [FCA] [PRA]	<b>Rule</b>	<b>Rule for a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
SYSC 8.1.11A G [FCA] [PRA]	<b>Not applicable</b>	<b>Not applicable to a <i>UCITS investment firm</i>; otherwise guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
SYSC 8.1.12 G [FCA] [PRA]	<b>Guidance</b>	<b>Guidance</b>	<b>Not applicable</b>	<b>Guidance</b>
SYSC 8.1.13 R [FCA]	<b>Not applicable</b>	<b>Rule</b>	<b>Not applicable</b>	<b>Not applicable</b>
SYSC 8.1.14 G [FCA]	<b>Not applicable</b>	<b>Guidance</b>	<b>Not applicable</b>	<b>Not applicable</b>
SYSC 8.2 [FCA]	<b><i>MiFID investment firms only</i></b>	<b><i>UCITS investment firms only</i></b>	<b>Not applicable</b>	<b>Not applicable</b>
SYSC 8.3 [FCA]	<b><i>MiFID investment firms only</i></b>	<b><i>UCITS investment firms only</i></b>	<b>Not applicable</b>	<b>Not applicable</b>

# Threshold Conditions



## 2.2 Location of offices

2.2.1 [deleted]

### Paragraph 2B of Schedule 6 to the Act

2.2.1A

FCA

- (1) Unless sub-paragraph (3) , (4)(a) or (7) applies, if A is a body incorporated in the United Kingdom -
  - (a) A's head office, and
  - (b) if A has a registered office, that office,
 must be in the United Kingdom.
- (2) If A is not a body corporate but A's head office is in the United Kingdom, A must carry on business in the United Kingdom.
- (3) If-
  - (a) A is seeking to carry on, or is carrying on, a regulated activity which is any of the investment services and activities,
  - (b) A is a body corporate with no registered office, and
  - (c) A's head office is in the United Kingdom,
 A must carry on business in the United Kingdom.
- (4) If A is seeking to carry on, or is carrying on, an insurance mediation activity-
  - (a) where A is a body corporate incorporated in the United Kingdom, A's registered office, or if A has no registered office, A's head office, must be in the United Kingdom;
  - (b) where A is an individual, A is to be treated for the purposes of sub-paragraph (2), as having a head office in the United Kingdom if A's residence is resident in the United Kingdom.
- (5) "Insurance mediation activity" means any of the following activities-

- (a) dealing in rights under a contract of insurance as agent;
- (b) arranging deals in rights under a contract of insurance;
- (c) assisting in the administration and performance of a contract of insurance;
- (d) advising on buying or selling rights under a contract of insurance;
- (e) agreeing to do any of the activities specified in paragraph (a) to (d).

(6) Sub-paragraph (5) must be read with-

- (a) section 22
- (b) any relevant order under that section; and
- (c) Schedule 2.

(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.

2.2.1B  
FCA

**G** Paragraph 2B of Schedule 6 to the *Act* sets out the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

2.2.1C  
FCA

**G** The *FCA* is not responsible for the location of offices *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.2.2  
FCA

**G** Paragraph 2B(1) of Schedule 6 to the *Act* implements article 7(1)(d) of the *UCITS Directive*, paragraphs 2B(1) to 2B(23) of Schedule 6 to the *Act* implement article 5(4) of *MiFID*, paragraph 2B(4) of Schedule 6 to the *Act* implements article 2.9 of the *Insurance Mediation Directive* and paragraph 2B(7) of Schedule 6 to the *Act* implements article 8(1)(e) of *AIFMD*, although the *Act* extends the *threshold condition* set out in paragraph 2B of Schedule 6 of the *Act* to *authorised persons* that are not *PRA-authorised persons* who are outside the scope of these *Single Market Directives*.

2.2.3  
FCA

**G** Neither the *UCITS Directive*, *MiFID*, the *Insurance Mediation Directive*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

- (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and

- 
- (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).

2



2.2A [Deleted]

## 2.3 Effective supervision

2.3.1 [deleted]

### Paragraph 2C of Schedule 6 to the Act

2.3.1A

FCA

- (1) A must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- (a) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;
  - (b) the complexity of any products that A provides or will provide in carrying on those activities;
  - (c) the way in which A's business is organised;
  - (d) if A is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of A;
  - (e) whether A is subject to consolidated supervision required under any of the relevant directives;
  - (f) if A has close links with another person ("CL")-
    - (i) the nature of the relationship between A and CL;
    - (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of A; and
    - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of A.
- (2) A has close links with CL if-
- (a) CL is a parent undertaking of A;
  - (b) CL is a subsidiary undertaking of A;
  - (c) CL is a parent undertaking of a subsidiary undertaking of A;
  - (d) CL is a subsidiary undertaking of a parent undertaking of A;

## 2.3.1B

FCA

G

Paragraph 2C of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

- (e) CL owns or controls 20% or more of the voting rights or capital of A; or
- (f) A owns or controls 20% or more of the voting rights or capital of CL.

## 2.3.1C

FCA

✠

**Paragraph 3B of Schedule 6 to the Act**

- (1) B must be capable of being effectively supervised by the FCA having regard to all the circumstances including-
- (a) the nature (including the complexity) of the regulated activities that B carries on or seeks to carry on;
  - (b) the complexity of any products that B provides or will provide in carrying on those activities;
  - (c) the way in which B's business is organised;
  - (d) if B is a member of a group, whether membership of the group is likely to prevent the FCA's effective supervision of B;
  - (e) whether B is subject to consolidated supervision required under any of the relevant directives;
  - (f) if B has close links with another person ("CL")-
    - (i) the nature of the relationship between B and CL;
    - (ii) whether those links are or that relationship is likely to prevent the FCA's effective supervision of B; and
    - (iii) if CL is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the FCA's effective supervision of B.
- (2) B has close links with CL if-
- (a) CL is a parent undertaking of B;
  - (b) CL is a subsidiary undertaking of B;
  - (c) CL is a parent undertaking of a subsidiary undertaking of B;
  - (d) CL is a subsidiary undertaking of a parent undertaking of B;

- (e) CL owns or controls 20% or more of the voting rights or capital of B; or
- (f) B owns or controls 20% or more of the voting rights or capital of CL.

## 2.3.1D

FCA

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Paragraph 3B of Schedule 6 to the *Act* sets out the effective supervision *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

## 2.3.1E

FCA

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The guidance in ■ COND 2.3 should be read as applying to both paragraph 2C of Schedule 6 of the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3B of Schedule 6 of the *Act*.

## 2.3.1F

FCA

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*Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing effective supervision under its own *threshold conditions*. Paragraphs 4F and 5F of Schedule 6 to the *Act* set out the effective supervision *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraphs 4F and 5F of Schedule 6 to the *Act*.

## 2.3.2

FCA

G

Paragraphs 2C and 3B of Schedule 6 to the *Act* implements requirements of the *Single Market Directives*, but the *Act* extends this condition to *firms* from outside the *EEA* and other *firms* which are outside the scope of the *Single Market Directives*.

## 2.3.3

FCA

G

In assessing the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, factors which the *FCA* will take into consideration include, among other things, whether:

- (1) it is likely that the *FCA* will receive adequate information from the *firm*, and those *persons* with whom the *firm* has *close links*, to enable it to determine whether the *firm* is complying with the requirements and standards under the *regulatory system* for which the *FCA* is responsible and to identify and assess the impact on its *statutory objectives*; this will include consideration of whether the *firm* is ready, willing and organised to comply with *Principle 11* (Relations with regulators and the *rules* in *SUP* on the provision of information to the *FCA*;
- (2) the structure and geographical spread of the *firm*, the *group* to which it belongs and other *persons* with whom the *firm* has *close links*, might hinder the provision of adequate and reliable flows of information to the *FCA*; factors which may hinder these flows include the fact there may be branches or connected *companies* in territories which supervise *companies* to a different standard or territories with laws which restrict the free flow of information, although the *FCA* will consider the totality of information available from all sources; and
- (3) [deleted]

- (4) in respect of a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity*, it is possible to assess with confidence the overall financial position of the *group* at any particular time; factors which may make this difficult include lack of audited consolidated accounts for a *group*, if companies in the same *group* as the *firm* have different financial years and accounting dates and if they do not share common auditors.

2.3.4 G [deleted]

2.3.5 G [deleted]

### Meaning of "parent undertaking" and "subsidiary undertaking"

2.3.6  
FCA

G

- (1) Section 420(1) of the *Act* (Parent and subsidiary undertaking) states that, except in relation to an *incorporated friendly society*, '*parent undertaking*' and '*subsidiary undertaking*' have the same meaning as in the Companies Acts (see section 1162 of, and schedule 7 to, the Companies Act 2006) . These are the cases referred to in ■ COND 2.3.7 G (1)(a) to ■ (f).
- (2) Section 420(2) of the *Act* supplements these definitions in two ways; these are the cases referred to in ■ COND 2.3.7 G (1)(g) and ■ (h).
- (3) Paragraph 1A of Schedule 6 to the *Act* extends the meaning of '*subsidiary undertaking*' for the purposes of the *threshold conditions* to all the cases in articles 1(1) and (2) of the *Seventh Company Law Directive* in which one *undertaking* may be a *subsidiary* of another *undertaking* (see ■ COND 2.3.11 G).

2.3.7  
FCA

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- (1) For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, and except in relation to an *incorporated friendly society*, an undertaking is a *parent undertaking* of another *undertaking* (a *subsidiary undertaking*) if any of the following apply to it:
- (a) it holds a majority of the voting rights in the *subsidiary undertaking*; or
- (b) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of its board of *directors*; or
- (c) it has the right to exercise a dominant influence over the *subsidiary undertaking* through:
- (i) provisions contained in the *subsidiary undertaking's* memorandum or articles; or
- (ii) a control contract; or
- (d) it is a member of the *subsidiary undertaking* and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in the *subsidiary undertaking*; or
- (e) it has the power to exercise, or actually exercises, dominant influence or control over it, or it and the *subsidiary undertaking* are managed on a unified basis; or

- (f) it is a *parent undertaking* of a *parent undertaking* of the *subsidiary undertaking*; or
- (g) it is an individual and would be a *parent undertaking* if it were an *undertaking*; or
- (h) it is incorporated in or formed under the law of another *EEA State* and is a *parent undertaking* within the meaning of any rule of law in that State for purposes connected with implementation of the *Seventh Company Law Directive*.

(2) [deleted]

2.3.8

G

- (1) In relation to ■ COND 2.3.7 G (1)(b) and ■ (d), an *undertaking* is treated as a member of another *undertaking* if any of its *subsidiary undertaking* is a member of that *undertaking*, or if any shares in that other *undertaking* are held by a *person* acting on behalf of the *undertaking* or any of its *subsidiary undertakings*.
- (2) [deleted]
- (3) [deleted]

2.3.9

G

The provisions of Schedule 7 to the Companies Act 2006 (Parent and subsidiary undertakings : supplementary provisions) explain and supplement the provisions of section 1162 of the Companies Act 2006 (outlined in ■ COND 2.3.7 G (1)(a) to ■ (f)).

2.3.10

G

FCA

Section 420(3) of the *Act* (Parent and subsidiary undertaking) states that an *incorporated friendly society* is a *parent undertaking* of another *body corporate* (a *subsidiary undertaking*) if it has the following relationship to it:

- (1) it holds a majority of the voting rights in the *subsidiary undertaking*; or
- (2) it is a member of the *subsidiary undertaking* and has the right to appoint or remove a majority of the *subsidiary undertaking's* board of *directors*; or
- (3) it is a member of the *subsidiary undertaking* and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in it.

2.3.11

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FCA

For the purposes of the *threshold conditions* set out in paragraphs 2C and 3B of Schedule 6 to the *Act*, an *undertaking* is a *subsidiary undertaking* of another *undertaking* if:

- (1) the other undertaking (its parent) is a member of the *undertaking*;
- (2) a majority of the *undertaking's* board of *directors* who have held office during the financial year and during the preceding financial year have been appointed solely as a result of the exercise of the parent's voting rights; and
- (3) no one else is the *parent undertaking* of the *undertaking* under ■ COND 2.3.7 G (1)(a) or ■ COND 2.3.10 G (1).

2.3.11A

FCA

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Paragraphs 2C(2)(e) and (f) and 3B(2)(e) and (f) of Schedule 6 to the *Act* reflect legislation initially introduced in the *Post-BCCI Directive*, which defines close links, in part, by reference to participation. Recital 5 of the *Post-BCCI Directive* gives further guidance on what is meant by 'participation' for the purposes of the directive. It states that the sole fact of having acquired a significant proportion of a company's capital does not constitute participation for the purposes of the directive if that holding has been acquired solely as a temporary investment which does not make it possible to exercise influence over the structure or financial policy of the undertaking.

2.3.12

FCA

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The *guidance* in ■ COND 2.3 is not comprehensive and is not a substitute for consulting the relevant legislation, for example the Companies Act 2006, the Friendly Societies Act 1992 and the *Seventh Company Law Directive*, or obtaining appropriate professional advice.

## 2.4 Appropriate resources

2.4.1 [deleted]

### Paragraph 2D of Schedule 6 to the Act

2.4.1A

FCA

- (1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A has appropriate resources include-
  - (a) the nature and scale of the business carried on, or to be carried on, by A;
  - (b) the risks to the continuity of the services provided by, or to be provided by, A; and
  - (c) A's membership of a group and any effect which that membership may have.
- (3) The matters which are relevant in determining whether A has appropriate financial resources include-
  - (a) the provision A makes and, if A is a member of a group, which other members of the group make, in respect of liabilities; and
  - (b) the means by which A manages and, if A is a member of a group, by which other members of the group manage, the incidence of risk in connection with A's business.
- (4) The matters which are relevant in determining whether A has appropriate non-financial resources include-
  - (a) the skills and experience of those who manage A's affairs;
  - (b) whether A's non-financial resources are sufficient to enable A to comply with -
    - (i) requirements imposed or likely to be imposed on A by the FCA in the course of the exercise of its functions;

2.4.1B  
FCA

G

Paragraph 2D of Schedule 6 to the *Act* sets out the appropriate resources *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

- (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purposes of any provision of Part 14 of this Act.

2.4.1C  
FCA

UK

#### Paragraph 3C of Schedule 6 to the Act

- (1) The non-financial resources of B must be appropriate in relation to the regulated activities that B carries on or seeks to carry on, having regard to the operational objectives of the FCA.
- (2) The matters which are relevant in determining whether the condition in sub-paragraph (1) is met include-
- (a) the nature and scale of the business carried on, or to be carried on, by B;
  - (b) the risks to the continuity of the services provided by, or to be provided by, B;
  - (c) B's a member of a group and any effect which that membership may have;
  - (d) the skills and experience of those who manage B's affairs;
  - (e) whether B's non-financial resources are sufficient to enable B to comply with-
    - (i) requirements imposed or likely to be imposed on B by the FCA in the exercise of its functions; or
    - (ii) any other requirement in relation to whose contravention the FCA would be the appropriate regulator for the purpose of any provision of Part 14 of this Act.

2.4.1D  
FCA

G

Paragraph 3C of Schedule 6 to the *Act* sets out the appropriate non-financial resources *threshold condition* which is relevant to the discharge by the FCA of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.4.1E  
FCA

G

The guidance in ■ COND 2.4 should be read as applying to both paragraph 2D of Schedule 6 of the *Act* and, as far as relevant to the discharge by the FCA of its functions in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity* under the *Act*, paragraph 3C of Schedule 6 of the *Act*.

2.4.1F  
FCA

G

As the *threshold condition* set out in paragraph 3C of Schedule 6 to the *Act* does not relate to financial resources, the *guidance* in ■ COND 2.4 relating to appropriate financial

resources only applies to the *FCA's* assessment of the *threshold condition* set out in paragraph 2D of Schedule 6 of the *Act*.

## 2.4.1G

FCA

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*Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is responsible for assessing their financial resources. Paragraphs 4D and 5D of Schedule 6 to the *Act* contain the *threshold conditions* relating to financial resources which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity* (in addition to additional non-financial resources *threshold conditions* which are also relevant to the discharge by the *PRA* of its functions). For the avoidance of doubt, this *guidance* does not apply to *threshold conditions* set out in paragraphs 4D and 5D of Schedule 6 to the *Act*.

## 2.4.2

FCA

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- (1) [deleted]
- (2) In this context, the *FCA* will interpret the term 'appropriate' as meaning sufficient in terms of quantity, quality and availability, and 'resources' as including all financial resources (though only in the case of *firms* not carrying on, or seeking to carry on, a *PRA-regulated activity*), non-financial resources and means of managing its resources; for example, capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources and effective means by which to manage risks.
- (2A) Paragraph 1A(2) of Schedule 6 to the *Act* provides that "non-financial resources" of a *firm* for the purposes of the *threshold conditions* include any systems, controls, plans or policies that the *firm* maintains and the human resources that the *firm* has available.
- (3) High level systems and control requirements are in SYSC. The *FCA* will consider whether the *firm* is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the *threshold conditions* set out in paragraphs 2D and 3C to Schedule 6 of the *Act*.
- (4) Detailed financial resources requirements are in the relevant section of the Prudential Standards part of the *FCA Handbook*, including specific provisions for particular types of *regulated activity*. The *FCA* will consider whether *firms* (other than *firms* carrying on, or seeking to carry on, *PRA-regulated activities*) are ready, willing and organised to comply with these requirements when assessing if they have appropriate financial resources for the purposes of the *threshold condition* set out in paragraph 2D of Schedule 6 to the *Act*.

## 2.4.3

FCA

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- (1) [deleted]
- (2) Although it is the *firm* that is being assessed, the *FCA* may take into consideration the impact of other members of the *firm's group* on the adequacy of its resources, where relevant to the discharge of the *FCA's* functions. For example, in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*, the *FCA* may assess the consolidated solvency of the *group*. The *FCA's* approach to the consolidated supervision of such a *firm*, and its *group*, is in the relevant part of the Prudential Standards part of the *FCA Handbook*.

2.4.4

FCA

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- (1) [deleted]
- (2) Relevant matters to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* may include but are not limited to:
- (a) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*), whether there are any indications that the *firm* may have difficulties if the application is granted, at the time of the grant or in the future, in complying with any of the *FCA*'s prudential *rules* (see the relevant part of the Prudential Standards part of the *FCA Handbook*);
  - (b) (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*, whether there are any indications that the *firm* will not be able to meet its debts as they fall due;
  - (c) whether there are any implications for the adequacy of the *firm*'s resources arising from the history of the *firm*; for example, whether the *firm* has:
    - (i) been adjudged bankrupt; or
    - (ii) entered into liquidation; or
    - (iii) been the subject of a receiving or administration order; or
    - (iv) had a bankruptcy or winding-up petition served on it; or
    - (v) had its estate sequestrated; or
    - (vi) entered into a deed of arrangement or an individual voluntary agreement (or in Scotland, a trust deed) or other composition in favour of its creditors, or is doing so; or
    - (vii) within the last ten years, failed to satisfy a judgment debt under a court order, whether in the *United Kingdom* or elsewhere;
  - (d) whether the *firm* has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times :
  - (e) whether the *firm* has conducted enquiries into the financial services sector in which it intends to conduct business that are sufficient to satisfy itself that:
    - (i) it has access to adequate capital, by reference to the *FCA*'s prudential requirements, to support the business including any losses which may be expected during its start-up period (in relation to a *firm* other than a *firm* carrying on, or seeking to carry on, a *PRA-regulated activity*); and
    - (ii) *Client money, deposits, custody assets* and *policyholders' rights* will not be placed at risk if the business fails; and
  - (f) whether the resources of the *firm* are commensurate with the likely risks it will face.
- (3) [deleted]

(4) [deleted]

2.4.5

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[deleted]

2.4.6

G

(1) [deleted]

FCA

(2) [deleted]

(3) [deleted]

## 2.5 Suitability

2.5.1  [deleted]

2.5.1A

 **FCA**

### Paragraph 2E to Schedule 6 of the Act

- (1) A must be a fit and proper person having regard to all the circumstances, including-
- (a) A's connection with any person;
  - (b) the nature (including the complexity) of any regulated activity that A carries on or seeks to carry on;
  - (c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
  - (d) whether A has complied and is complying with requirements imposed by the FCA in the exercise of its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where A has so complied or is so complying, the manner of that compliance;
  - (e) whether those who manage A's affairs have adequate skills and experience and act with probity;
  - (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and
  - (g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.

2.5.1B

 **FCA**

 Paragraph 2E of Schedule 6 to the *Act* sets out the suitability *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not consist of or include a *PRA-regulated activity*.

**Paragraph 3D to Schedule 6 of the Act**

2.5.1C

FCA



- (1) B must be a fit and proper person, having regard to the operational objectives of the FCA.
- (2) The matters which are relevant in determining whether B satisfies the condition in sub-paragraph (1) include-
  - (a) B's connection with any person;
  - (b) the nature (including the complexity) of any regulated activity that B carries on or seeks to carry on;
  - (c) the need to ensure that B's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;
  - (d) whether B has complied and is complying with requirements imposed by the FCA in the exercise its functions, or requests made by the FCA, relating to the provision of information to the FCA and, where B has so complied or is so complying, the manner of that compliance;
  - (e) whether those who manage B's affairs have adequate skills and experience and act with probity; and
  - (f) the need to minimise the extent to which it is possible for the business carried on by B, or to be carried on by B, to be used for a purpose connected with financial crime.

2.5.1D

FCA



Paragraph 3D of Schedule 6 to the *Act* sets out the suitability *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.5.1E

FCA



The *guidance* in ■ COND 2.5 should be read as applying to both paragraph 2E of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3D of Schedule 6 of the *Act*.

2.5.1F

FCA



*Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* is also responsible for assessing suitability under its own *threshold conditions*. Paragraphs 4E and 5E of Schedule 6 to the *Act* set out the suitability *threshold conditions* which are relevant to the discharge by the *PRA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*. For the avoidance of doubt, this *guidance* does not apply to the *threshold conditions* set out in paragraph 4E and 5E of Schedule 6 to the *Act*.

PAGE  
19

2.5.2

FCA



- (1) [deleted]
- (2) The *FCA* will also take into consideration anything that could influence a *firm's* continuing ability to satisfy the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act*. Examples include the *firm's* position within a

## 2.5.3

FCA

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UK or international *group*, information provided by *overseas regulators* about the *firm*, and the *firm's* plans to seek to vary its *Part 4A permission* to carry on additional *regulated activities* once it has been granted that *permission* .

- (1) The emphasis of the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 of the *Act* is on the suitability of the *firm* itself. The suitability of each *person* who performs a *controlled function* will be assessed by the *FCA* and/or the *PRA*, as appropriate, under the *approved persons* regime (see ■ SUP 10 (Approved persons) and *FIT*). In certain circumstances, however, the *FCA* may consider that the *firm* is not suitable because of doubts over the individual or collective suitability of *persons* connected with the *firm*.
- (2) [deleted]
- (3) [deleted]

## 2.5.4

FCA

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- (1) [deleted]
- (2) Examples of the kind of general considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, the *threshold conditions* set out in paragraphs 2E and 3D of Schedule 6 to the *Act* include, but are not limited to, whether the *firm*:
  - (a) conducts, or will conduct, its business with integrity and in compliance with proper standards;
  - (b) has, or will have, a competent and prudent management; and
  - (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
- (3) [deleted]
- (4) [deleted]

## 2.5.5

G

[deleted]

## 2.5.6

FCA

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Examples of the kind of particular considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* include, but are not limited to, whether:

- (1) the *firm* has been open and co-operative in all its dealings with the *FCA* and any other regulatory body (see *Principle 11* (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the *regulatory system* (such as the detailed requirements of *SYSC* and, in relation to a *firm* not carrying on, or seeking to carry on, a *PRA-regulated activity* only, the Prudential Standards part of the *FCA Handbook*) in addition to other legal, regulatory and professional obligations; the relevant requirements and standards will depend on the circumstances of each case, including the *regulated activities* which the *firm* has *permission*, or is seeking *permission*, to carry on;

- (1A) the *firm* has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the *FCA* is responsible under the *regulatory system*;
- (2) the *firm* has been convicted, or is connected with a *person* who has been convicted, of any criminal offence; this must include, where provided for by the *Rehabilitation Exceptions Orders* to the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (as applicable), any spent convictions; particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking, other financial services, insolvency, consumer credit companies, insurance, consumer protection, *money laundering*, market manipulation and *insider dealing*, whether or not in the *United Kingdom* ;
- (3) the *firm* has been the subject of, or connected to the subject of, any existing or previous investigation or enforcement proceedings by the *FCA*, the *Society of Lloyd's* or by other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, *professional bodies* or government bodies or agencies; the *FCA* will, however, take both the nature of the *firm's* involvement in, and the outcome of, any investigation or enforcement proceedings into account in determining whether it is a relevant matter;
- (4) the *firm* has contravened, or is connected with a *person* who has contravened, any provisions of the *Act* or any preceding financial services legislation, the *regulatory system* or the rules, regulations, statements of principles or codes of practice (for example the *Society of Lloyd's* Codes) of other regulatory authorities (including the *FCA's* predecessors), *clearing houses* or exchanges, *professional bodies*, or government bodies or agencies or relevant industry standards (such as the Non-Investment Products Code); the *FCA* will, however, take into account both the status of codes of practice or relevant industry standards and the nature of the contravention (for example, whether a *firm* has flouted or ignored a particular code);
- (5) the *firm*, or a *person* connected with the *firm*, has been refused registration, authorisation, membership or licence to carry out a trade, business or profession or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body; whether the *FCA* considers such a refusal relevant will depend on the circumstances;
- (6) [deleted]
- (7) the *firm* has put in place procedures which are reasonably designed to:
  - (a) ensure that it has made its *employees* aware of, and compliant with, those requirements and standards under the *regulatory system* that apply to the *firm* for which the *FCA* is responsible and the *regulated activities* for which it has, or will have *permission*;
  - (b) ensure that its *approved persons* (whether or not employed by the *firm*) are aware of those requirements and standards under the *regulatory system* applicable to them;
  - (c) determine that its *employees* are acting in a way compatible with the *firm* adhering to those requirements and standards; and

- (d) determine that its *approved persons* are adhering to those requirements and standards;
- (8) the *firm* or a *person* connected with the *firm* has been dismissed from employment or a position of trust, fiduciary relationship or similar or has ever been asked to resign from employment in such a position; whether the *FCA* considers a resignation to be relevant will depend on the circumstances, for example if a *firm* is asked to resign in circumstance that cast doubt over its honesty or integrity;
- (9) the *firm* or a *person* connected with the *firm* has ever been disqualified from acting as a *director* ;
- (10) the *governing body* of the *firm* is made up of individuals with an appropriate range of skills and experience to understand, operate and manage the *firm's regulated activities*;
- (11) where appropriate, the *governing body* of the *firm* includes non-executive representation, at a level which is appropriate for the control of the *regulated activities* proposed, for example, as members of an audit committee;
- (12) those *persons* who perform *controlled functions* under certain *arrangements* entered into by the *firm* or its contractors (including *appointed representatives* or, where applicable, *tied agents*) act with due skill, care and diligence in carrying out their *controlled function* (see ■ APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see ■ APER 4.7 (Statement of Principle 7));
- (13) the *firm*, or a *person* connected with the *firm*, has been a *director, partner* or otherwise concerned in the management of a *company, partnership* or other organisation or business that has gone into insolvency, liquidation or administration while having been connected with that organisation or within one year of such a connection;
- (14) the *governing body* of the *firm* is organised in a way that enables it to address and control the *regulated activities* of the *firm*, including those carried on by *managers* to whom particular functions have been delegated;
- (15) the *firm* has developed human resources policies and procedures that are reasonably designed to ensure that it employs only individuals who are honest and committed to high standards of integrity in the conduct of their activities;
- (16) the *firm* has taken reasonable care to ensure that robust information and reporting systems have been developed, tested and properly installed;
- (17) the *firm* has in place appropriate systems and controls against financial crime, including, for example, *money laundering*;
- (18) in the case of a *firm* that carries on *insurance mediation activity*:
- (a) a reasonable proportion of the *persons* within its management structure who are responsible for the *insurance mediation activity*; and
- (b) all other *persons* directly involved in its *insurance mediation activity*;

demonstrate the knowledge and ability necessary for the performance of their duties; and

- (c) all the persons in the *firm's* management structure and any staff directly involved in *insurance mediation activity* are of good repute (see ■ MIPRU 2.3.1 R (Knowledge, ability and good repute); and

- (19) where appropriate, the *firm* has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted.

2.5.7

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[deleted]

2



2.6

[Deleted]

## 2.7 Business model

### Paragraph 2F to Schedule 6 of the Act

2.7.1

FCA



- (1) A's business model (that is, A's strategy for doing business) must be suitable for a person carrying on the regulated activities that A carries on or seeks to carry on.
- (2) The matters which are relevant in determining whether A satisfies the condition in sub-paragraph (1) include-
  - (a) whether the business model is compatible with A's affairs being conducted, and continuing to be conducted, in a sound and prudent manner;
  - (b) the interests of consumers;
  - (c) the integrity of the UK financial system.

2.7.2

FCA



Paragraph 2F of Schedule 6 to the *Act* sets out the business model *threshold condition* for *firms* carrying on, or seeking to carry on, *regulated activities* which do not include a *PRA-regulated activity*.

### Paragraph 3E to Schedule 6 of the Act

2.7.3

FCA



B's business model (that is, B's strategy for doing business) must be suitable for a person carrying on the regulated activities that B carries on or seeks to carry on, having regard to the FCA's operational objectives.

2.7.4

FCA



Paragraph 3E of Schedule 6 to the *Act* sets out the business model *threshold condition* which is relevant to the discharge by the *FCA* of its functions under the *Act* in relation to *firms* carrying on, or seeking to carry on, *regulated activities* which include a *PRA-regulated activity*.

2.7.5

FCA



The *guidance* in ■ COND 2.7 should be read as applying to both paragraph 2F of Schedule 6 to the *Act* and, as far as relevant to the discharge by the *FCA* of its functions under the *Act* in respect of *firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, paragraph 3E of Schedule 6 of the *Act*.

2.7.6

FCA



*Firms* carrying on, or seeking to carry on, a *PRA-regulated activity*, should note that the *PRA* states in its Approach Documents that analysis of such *firms'* business models will

## 2.7.7

FCA

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form an important part of the *PRA's* supervisory approach. For the avoidance of doubt, this guidance does not apply to the *PRA's* own assessment of the *firms'* business models.

In assessing whether the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* are satisfied, the *FCA* may consider all matters that might affect the design and execution of a *firm's* business model, taking into account the nature, scale and complexity of a *firm's* business.

## 2.7.8

FCA

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In deciding how they will satisfy and continue to satisfy the *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act*, *firms* should consider matters including (but not limited to) the following:

- (1) the assumptions underlying the *firm's* business model and justification for it;
- (2) the rationale for the business the *firm* proposes to do or continues to do, its competitive advantage, viability and the longer-term profitability of the business;
- (3) the needs of and risks to *consumers*;
- (4) the expectations of stakeholders, for example, shareholders and regulators;
- (5) the products and services being offered and product strategy;
- (6) the governance and controls of the *firm* and of any member of its *group* (if appropriate);
- (7) the growth strategy and any risks arising from it;
- (8) any diversification strategies; and
- (9) the impact of the external macroeconomic and business environment.

## 2.7.9

FCA

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*Firms* should consider the manner in which they intend to bring their business model into operation. This plan could, for example, include matters such as procurement, outsourcing, and recruitment.

## 2.7.10

FCA

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*Firms* should consider scenarios which may negatively impact on the *firm's* business model with a view to ensuring the sustainability of the *firm* and, further, to consider the vulnerability of the business model to specific events and the risks and consequences that might arise. Where appropriate, this might include reverse stress-testing (see SYSC 20 'Reverse stress testing'). A *firm* should put in place a credible plan to minimise the risks that it identifies from, or in relation to, its business model and a contingency plan for dealing with risks that have crystallised.

## 2.7.11

FCA

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Firms should ensure that any adjustments to its business model:

- (1) are approved at an appropriate level in the business;

- (2) are considered in the light of any potential risks, impacts and consequences of the proposed changes; and
- (3) appropriately take into account the needs of and risks to *clients* and relevant *consumers*.

2.7.12

FCA

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The *FCA*'s assessment of a *firm*'s satisfaction of this *threshold conditions* set out in paragraphs 2F and 3E of Schedule 6 to the *Act* will not necessarily be limited to a *firm*'s *regulated activities* if the *FCA* believes the *firm*'s other business activities, if any, may impact on a *firm*'s *regulated activities*.

2



# General Provisions



Section 192H (Statement of policy: directions under section 192C)

Section 192N (Imposition of penalties under section 192K: statement of policy)

Section 210 (Statements of policy) (including as applied by regulation 86(6) of the *Payment Services Regulations* and regulation 53 (6) of the *Electronic Money Regulations* and by regulation 71(3) of the *AIFMD UK regulation*)

Section 312J (Statement of policy under section 312F)

Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph 7 of Schedule 5 to the *Payment Services Regulations* and paragraph 8 of Schedule 3 to the *Electronic Money Regulations*)

Section 404(3) (Consumer redress schemes)

Section 404A (Rules under s404: supplementary)

**Sch 4.6 G****FCA**

The following additional powers and related provisions have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 44 (Warning notices and decision notices) of the *RCB Regulations*

Regulation 93 (Guidance) of the *Payment Services Regulations*

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Section 80 (Statement of policy under sections 73 to 79) of the Financial Services Act 2012

Regulations 70 (Application of procedural provisions of the Act) and 71 (Application of provisions of the Act to unauthorised AIFMs) of the *AIFMD UK regulation*

**Sch 4.7 G****FCA****Powers to direct, require or specify**

The following powers and related provisions in the *Act* have been exercised by the *FCA* in *GEN* to direct, require or specify:

Section 55U (Applications under this Part)

Section 60 (Applications for approval)

Section 137S (Financial promotion rules: directions given by FCA)

Section 138A (Modification or waiver of rules)

Section 179 (Requirements for section 178 notices)

Section 218A (Authority's power to require information)

Section 242 (Applications for authorisation of unit trust schemes)

Section 250 (Modification or waiver of rules)

Section 274 (Applications for recognition of individual schemes)

Section 279 (Revocation of recognition)

Section 287 (Application by an investment exchange)

Section 293A (Information: compliance with EU requirements)  
 Section 294 (Modification or waiver of rules)  
 Section 316 (Direction by Authority)  
 Section 317 (The core provisions)  
 Section 318 (Exercise of powers through Council)  
 Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)  
 Regulations 7(3) and (4) (Modification or waiver of FCA rules) and 12 (Application for authorisation) of the *OEIC Regulations*

**Sch 4.7A G****Sch 4.8 G****FCA**

The following additional powers and related provisions have been exercised by the *FCA* in *GEN* to direct, require or specify:

Regulation 49 (Reporting requirements) of the *Electronic Money Regulations*  
 Regulations 21 (Disclosure obligations of small registered UK AIFMs), 54 (FCA approval for marketing), 58 (Marketing of AIFs managed by small third country AIFMs) and 60 (Manner and content of notifications) of the *AIFMD UK regulation*

**Sch 4.9 G****FCA****Power to make the complaints scheme**

The following power has been exercised by the *FCA* to make the complaints scheme in *GEN*:

Part 6 of the Financial Services Act 2012

**Sch 4.10 G****FCA****Powers to give guidance**

The following powers in or under the *Act* have been exercised by the *FCA* to give the guidance in *GEN*:

Section 139A (Power of the FCA to give guidance)  
 Section 234G (Guidance)

**Sch 4.11 G****FCA**

The following additional powers have been exercised by the *FCA* to give the other *guidance* in *GEN*:

Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)  
 Articles 9D (Applications for certificates), 9F (Revocation of certificate on request), 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the *Regulated Activities Order*  
 Regulation 93 (Guidance) of the *Payment Services Regulations*

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Section 123 of the Banking Act 2009

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Regulation 15 of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122)

#### Sch 4.12 G

FCA

#### Powers exercised by the FOS Ltd

GEN 2.1.8 R is made by *FOS Ltd* in exercise of its powers referred to in Schedule 4 to *DISP*.



# Fees Manual



- (j) [deleted]
- (k) [deleted]
- (l) [deleted]
- (m) [deleted]
- (n) [deleted]
- (o) [deleted]
- (p) [deleted]
- (q) [deleted]
- (r) [deleted]
- (s) [deleted]

(2) ■ FEES 1, ■ 2 and ■ 4 apply to:

- (a) every *firm* (except an *AIFM qualifier*, *ICVC* or *UCITS qualifier*);
- (b) every *authorised fund manager* of an *authorised unit trust* or *authorised contractual scheme*;
- (c) every *ACD* of an *ICVC*;
- (d) every *person* who, under the constitution or founding arrangements of a *recognised scheme*, is responsible for the management of the property held for or within the *scheme*;
- (e) every *designated professional body*;
- (f) every *recognised body*;
- (g) under the Listing Rules every *issuer* of *shares*, depositary receipts and *securitised derivatives*;
- (h) under the Listing Rules (*LR*) every *sponsor*;
- (i) under the Disclosure Rules and Transparency Rules (*DTR*) every *issuer* of *shares*, depositary receipts and securitised derivatives ;
- (j) every *fee-paying payment service provider*;
- (k) every *fee-paying electronic money issuer* ;
- (l) every *issuer* of a *regulated covered bond*;
- (m) every *AIFM* applying to become a *small registered UK AIFM* and every *small registered UK AIFM*; and
- (n) every *AIFM* notifying the *FCA* under regulation 57, 58 and 59 of the *AIFMD UK regulation* and every *AIFM* which has made such a notification.

- (3) ■ FEES 1, ■ 2 and ■ 5 apply to:
- (a) every *firm* (except to the extent it is *bidding in emissions auctions*), *fee-paying payment service provider* and *fee-paying electronic money issuer* which is subject to the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*; and
  - (b) every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.
- (4) ■ FEES 1, ■ 2 and ■ 6 apply to:
- (a) every *participant firm* ;
  - (b) the *FSCS*; and
  - (c) the *Society*.
- (5) ■ FEES 1, ■ 2 and ■ 7 apply to:
- (a) every *person* having a *Part 4A permission*;
  - (b) an *incoming EEA firm*;
  - (c) an *incoming Treaty firm*;
  - (d) the *Society*;
  - (e) every *fee-paying payment service provider* except the Bank of England, government departments and local authorities;
  - (f) every *fee-paying electronic money issuer* except the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank.
- (6) ■ FEES App 1 Annex 1 applies to every:
- (a) *registered society*; or
  - (b) *sponsoring body*; or
  - (c) *person* who submits a proposal for the registration of a *registered society*;

each as defined in ■ FEES Appendix 1.

■ FEES 1, ■ 2 and ■ 7 do not apply to an *incoming EEA firm* or an *incoming Treaty firm* that has not established a *branch* in the *United Kingdom*.

The application statement at ■ FEES 1.1.2 R (3) does not apply to  
■ FEES 5.5A, ■ FEES 5 Annex 2R or ■ FEES 5 Annex 3R.

## Chapter 3

# Application, Notification and Vetting Fees

## 3.1 Introduction

### Application

**3.1.1** **R** This chapter applies to every *person* set out in column 1 of the Table of application, notification and vetting fees in ■ FEES 3.2.7 R and ■ FEES 3.2.7A R.  
**FCA** **PRA**

**3.1.1A** **R** A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.  
**FCA**

**3.1.2** **G** This chapter does not apply to:  
**FCA** **PRA**

- (1) an *EEA firm* that wishes to exercise an *EEA right*; or
- (2) an *EEA authorised payment institution*; or
- (3) an *EEA authorised electronic money institution*.

### Purpose

**3.1.3** **G** The purpose of this chapter is to set out the *appropriate regulator* fee paying requirements on the persons set out in ■ FEES 1.1.2 R (1).  
**FCA** **PRA**

**3.1.4** **G** Most of the detail of what fees are payable by the persons referred to in ■ FEES 3.1.3 G is set out in ■ FEES 3 Annex 1 R - ■ FEES 3 Annex 10 R.

**3.1.5** **G**

- (1) The rates set for authorisation fees represent an appropriate proportion of the costs of the *appropriate regulator* in processing the application or exercise of *Treaty rights*.
- (2) [deleted]
- (3) [deleted]

**3.1.5A** **G** The fees for *funds* reflect the estimated costs to the *FCA* of assessing applications and notifications. The level of fees payable in respect of an application or a notification will vary depending upon the provision of the *Act* under which it is made. This fee is adjusted when the *scheme* concerned is an *umbrella*.  
**FCA**

**Portfolio managers** (1) its *permission* includes *managing investments* (a *firm* falling within this category is a class (1) *firm*);

OR

(2) its *permission* includes

**ONLY** either one or both of:

*safeguarding and administering of investments (without arranging); and*

*arranging safeguarding and administration of assets* (a *firm* falling within this category is a class (2) *firm*);

OR

(3) the *firm* is a *venture capital firm* (a *firm* falling within this category is a class (3) *firm* if it is not a class (1) or (2) *firm*).

OR

(4) its *permission* includes *managing an AIF* or *managing a UCITS*

**Note:**

**Class (1) firms** are subdivided into three classes:

- class (1)A, where the funds managed by the *firm* belong to one or more *occupational pension schemes*;

- class (1)B, where:

(a) the *firm* is not a class (1)A *firm*; and

(b) the *firm* permission includes **NEITHER** of the following:

*safeguarding and administering investments (without arranging);*

*arranging safeguarding and administration of assets*; and (c) the *firm* **EITHER**:

has a *requirement* that prohibits the *firm* from holding or controlling *client money*, or both; OR

if it does not have such a *requirement*, only holds or controls *client money* (or both), arising from an agreement under which *commission* is rebated to a *client*; and

- class (1)C, where the *firm* is not within class (1)A or class (1)B.

**A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes** (1) *its permission:*

(a) includes one or more of the following:

- managing an AIF;*
- managing a UCITS;*
- acting as trustee or depositary of an AIF;*
- acting as trustee or depositary of a UCITS; establishing, operating or winding up a collective investment scheme;*
- establishing, operating or winding up a regulated collective investment scheme;*
- establishing, operating or winding up an unregulated collective investment scheme;*
- acting as trustee of an authorised unit trust scheme; acting as the depositary of an authorised contractual scheme; acting as the depositary or sole director of an open-ended investment company;*
- establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme (but only if the firm does not fall within activity group A1 or A4);*

**AND**

(b) **PROVIDED** the *firm* is **NOT** one of the following:

**OR**

- a corporate finance advisory firm;*
- a firm in which the above activities are limited to carrying out corporate finance business;*
- a venture capital firm;*
- a firm which would be a venture capital firm but for the inclusion of managing an AIF on its permission; but only where the firm is managing an AIF exclusively in respect of AIFs which only invest in venture capital investments.*

**OR**

(2) if the fee-payer has none of the *regulated activities* above within its *permission*, but **ALL** the remaining *regulated activities* in its *permission* are limited to carrying out trustee activities.

**A.10 Firms** *its permission includes:*  
**dealing as**

**principal** (a) *dealing in investments as principal;* and/or

(b) *bidding in emissions auctions;*

**BUT NOT** if one or more of the following apply:

the *firm* is acting exclusively as a matched principal broker;

the above activity is limited either to *establishing, operating or winding up a collective investment scheme, establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme, or to carrying out depositary activities;*

the *firm* is a *corporate finance advisory firm;*

the above activity is otherwise limited to carrying out *corporate finance business;*

the *firm* is subject to a *limitation* to the effect that the *firm*, in carrying on this *regulated activity*, is limited to entering into transactions in a manner which, if the *firm* was an *unauthorised person*, would come within article 16 of the *Regulated Activities Order (Dealing in contractually based investments);*

the above activity is limited to not acting as a *market maker;*

the *firm* is an *oil market participant, energy market participant* or a local (except where the *firm* is *bidding in emissions auctions*);

*its permission includes either:*

- *effecting contracts of insurance;* or

- *carrying out contracts of insurance.*

**A.12 Adv- its permission:**

sors, ar-

rangers,

dealers or

brokers

(holding or

controlling

client mon-

ey or as-

sets, or

both)

(a) includes one or more of the following, in relation to one or more *designated invest-ments*:

*dealing in investments as agent;*

*arranging (bringing about) deals in investments;*

*making arrangements with a view to transactions in investments;*

*dealing as principal in investments where the activity is carried on as a matched principal broker, oil market participant, energy market participant or local;*

*advising on investments (except pension transfers and pension opt-outs);*

*advising on pension transfers and pension opt-outs;*

*advising on syndicate participation at Lloyd's;*

(b) BUT NONE of the following:

*effecting contracts of insurance; or*

*carrying out contracts of insurance;*

AND

(c) CAN HAVE one or more of the following:

*safeguarding and administering of assets;*

*arranging safeguarding and administration of assets;*

the ability to hold or control *client money*, or both:

- that is, there is no *requirement* which prohibits the *firm* from doing this; and

- provided that the *client money* in question does not only arise from an agreement under which *commission* is rebated to a *client*;

AND

(d) PROVIDED the fee-payer is NOT any of the following:

*a corporate finance advisory firm;*

*a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;*

**a firm for whom all the applicable activities above are limited to carrying out *venture capital business*;**

**a firm for whom all the applicable activities above are limited to acting as a *residual CIS operator*;**

**a firm for whom all the applicable activities above are limited to *acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS*;**

**a *service company*.**

A.13 Advisors, arrangers, dealers or brokers (not holding or controlling client money or assets, or both)

(1) it is an *authorised professional firm* and ALL the regulated activities in its *permission* are limited to non-mainstream regulated activities (a firm falling within this category is a *class (1) firm*);

OR

(2) its *permission*:

(a) includes one or more of the following, in relation to one or more *designated investments*:

- dealing in investments as agent;*
- arranging (bringing about) deals in investments;*
- making arrangements with a view to transactions in investments;*
- dealing as principal in investments* where the activity is carried on as a matched principal broker, *oil market participant, energy market participant* or *local*;
- advising on investments (except pension transfers and pension opt-outs);*
- giving basic advice on a stakeholder product;*
- advising on pension transfers and pension opt-outs;*
- advising on syndicate participation at Lloyd's;*

(b) BUT NONE of the following:

- effecting contracts of insurance;*
- carrying out contracts of insurance;*
- safeguarding and administration of assets;*
- arranging safeguarding and administration of assets;*

AND

(c) MUST EITHER, in connection with its *designated investment business*:

- have a *requirement* that prohibits the *firm* from holding or controlling *client money*, or both;

OR

- if it does not have such a *requirement*, only holds or controls *client money* (or both), arising from an agreement under which *commission* is rebated to a *client*;

AND

(d) PROVIDED the fee-payer is NOT any of the following:

*a corporate finance advisory firm;*

*a firm for whom all of the applicable activities above are otherwise limited to carrying out corporate finance business;*

*a firm for whom all the applicable activities above are limited to carrying out venture capital business;*

*a firm for whom all the applicable activities above are limited to acting as a residual CIS operator;*

*a firm for whom all the applicable activities above are limited to acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS;*

*a service company.*

*A firm falling within (2) and not (1) is a class 2 firm.*

A.14 Corporate finance advisers the *firm* is carrying on *corporate finance business* PROVIDED the fee-payer is NOT a *venture capital firm*.

A.18 Home finance providers, advisers and arrangers its *permission* includes a *regulated activity* within one or more of the following:

*entering into a home finance transaction; or*

*arranging (bringing about) a home finance transaction ; or*

*making arrangements with a view to a home finance transaction; or*

*advising on a home finance transaction; or*

*agreeing to carry on a regulated activity which is within any of the above.*

<b>A.19 General insurance mediation</b>	its <i>permission</i> includes one or more of the following in relation to a <i>non-investment insurance contract</i> :  <i>dealing in investments as agent; or</i>  <i>arranging (bringing about) deals in investments; or</i>  <i>making arrangements with a view to transactions in investments; or</i>  <i>assisting in the administration and performance of a contract of insurance; or</i>  <i>advising on investments; or</i>  <i>agreeing to carry on a regulated activity which is within any of the above.</i>
<b>B. Market operators</b>	<i>firms</i> that have been prescribed as an operator of a prescribed market under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996).
<b>B. Service companies</b>	it is a <i>service company</i> .
<b>B. MTF operators</b>	its <i>permission</i> includes <i>operating a multilateral trading facility</i> .
<b>B. Benchmark administrators</b>	It is a <i>benchmark administrator</i>

## Part 2

This table sets out the activity groups (fee blocks) in relation to (i) the minimum fee payable to the *FCA* and (ii) the prudential fee payable to the *FCA*.

Activity group	Fee payer falls into the fee-block if
<b>A.0 FCA minimum fee</b>	(1) it is in at least one of the fee blocks under Part 1; and  (2) it is not:  (a) a <i>UK ISPV</i> ; or  (b) a <i>firm</i> whose only <i>permission</i> is <i>operating a dormant fund account</i> .
<b>AP.0 FCA prudential fee</b>	(1) it is an <i>FCA authorised person</i> ; and  (2) the periodic fee it pays to the <i>FCA</i> is not limited to the <b>A.0 FCA minimum fee</b> .

## Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

The tariff base in this Part is the means by which the *FCA* measures the amount of business conducted by a *firm* for the purposes of calculating the annual periodic fees payable to the *FCA* by that *firm*.

Activity group	Tariff base
A.1	<p><b>MODIFIED ELIGIBLE LIABILITIES</b></p> <p>For <i>banks</i> and <i>building societies</i>:</p> <p>Item B of Form ELS (Note (1)):</p> $(1 + 2 + 3 + 4 + 0.6*5 + 6 - 8 - 9A - 9B - 10A - 10B - 10C - 11A - 11B - 0.6*12) + (1/3)*(F1 + F2 + F3 + F4 + 0.6*F5 + F6 - F8 - F9A - F9B - F10A - F10B - F10C - F11A - F11B - 0.6*F12)$ <p>- 13M</p> <p>Notes:</p> <p>(1) All references in the above formula are to entries on Form ELS (that is, the Eligible Liabilities Return completed to provide information by <i>banks</i> and <i>building societies</i> to the Bank of England as required by the Bank of England Act 1998).</p> <p>(2) The figures reported on the Form ELS relate to business conducted out of offices in the <i>United Kingdom</i>.</p> <p>For <i>credit unions</i>:</p> <p>Deposits with the <i>credit union</i> (share capital)</p> <p>LESS</p> <p>the <i>credit union's</i> bank deposits (investments + cash at bank)</p> <p>Note:</p> <p>Only <i>United Kingdom</i> business is relevant for calculating <i>credit unions'</i> MELs.</p> <p>Note:</p> <p>For a <i>dormant account fund operator</i> the tariff base is not relevant and the flat fee in FEES 4 Annex 2A R is payable.</p>

**A.2 NUMBER OF MORTGAGES OR OTHER HOME FINANCE TRANSACTIONS ENTERED INTO AND ADMINISTERED**

The number of new mortgage contracts, *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements* entered into;

AND

The number of mortgage contracts, *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements* being administered, multiplied by 0.05 for mortgage outsourcing *firms* or other home finance outsourcing *firms* and by 0.5 for all other *firms*.

Notes:

(1) Mortgage outsourcing *firms* are *firms* with *permission* for *administering regulated mortgage contracts*, but not to enter the contract as lender.

Home finance outsourcing *firms* are *firms* with *permission* for *administering a home finance transaction*, but not *entering into a home finance transaction*.

(2) In this context a 'mortgage' means a loan secured by a first charge over residential property in the *United Kingdom*. For the measure of the number of contracts being administered, each first charge counts as one contract, irrespective of the number of loans involved.

(3) Mortgages, *home purchase plans*, *home reversion plans* and *regulated sale and rent back agreements* administered include those that the *firm* administers on behalf of other *firms*.

**A.3 GROSS PREMIUM INCOME AND GROSS TECHNICAL LIABILITIES**

For *insurers*:

The amount of *premium* receivable which must be included in the documents required to be deposited under *IPRU(INS) 9.6* in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a waiver or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to *IPRU(INS)* under transitional provisions relating to written concessions in *SUP*;

AND the amount of gross technical liabilities (*IPRU(INS) Appendix 9.1 - Form 15, line 19*) which must be included in the documents required to be deposited under *IPRU(INS) 9.6R* in relation to the financial year to which the documents relate but disregarding for this purpose such amounts as are not included in the document by reason of a *waiver* or an order under section 68 of the Insurance Companies Act 1982 carried forward as an amendment to *IPRU(INS)* under transitional provisions relating to written concessions in *SUP*.

## General Insurance

Appendix 10 of *IPRU(FSOC)* (total mathematical reserves after distribution of surplus) in relation to the most recent financial year of the *firm* (as at the applicable reporting date under FEES 6.5.13 R) for which the *firm* is required to have reported that information to the *PRA* under *IPRU(FSOC)*. A *non-directive friendly society* must disregard for this purpose such amounts as are not required to be included by reason of a *waiver* or a written concession carried forward as an amendment to the *rule* to which it relates under SUP TP.

(7) The provisions relating to pension fund management business in Part 2 of FEES 4 Annex 1B R do not apply. A *firm* undertaking such business that does not carry out any other activities within *class C1* (ignoring any activities that would have a wholly insignificant effect on the calculation of its tariff base for *class C1*) must use its Long-term insurance capital requirement instead of gross technical liabilities. The Long-term insurance capital requirement means the amount that it is required to show as its Long-term insurance capital requirement in Form 2 Line 31 (Statement of solvency - Long-term insurance business) in relation to the most recent financial year of the *firm* (as at the applicable reporting date under FEES 6.5.13 R) for which the *firm* is required to have reported that information to the *PRA*.

(8) The split in the levy between *relevant net premium income* and eligible mathematical reserves does not apply to a partnership pension society (as defined in Chapter 7 of *IPRU(FSOC)* (Definitions)). Instead the levy is only calculated by reference to *relevant net premium income*.

**Class C2: *annual eligible income*** where *annual eligible income* means annual income adjusted in accordance with this table. Annual income is calculated as the sum of (a) and (b):

(a) the net amount retained by the *firm* of all brokerages, fees, commissions and other related income (for example, administration charges, overrides and profit shares) due to the *firm* in respect of or in relation to *class C2* activities including any income received from an *insurer*; and

(b) if the *firm* is a life and pensions *firm*, in relation to *class C2* activities, the amount of *premiums* or commission receivable on its life and pensions contracts multiplied by 0.07, excluding those life and pensions contracts which result from *class C2* activities carried out by another *firm*, where a payment has been made by the life and pensions *firm* to that other *firm* and that payment is of a type that falls under (a).

Notes relating to the calculation of the tariff base for *class C2*:

(1) Life and pensions contracts mean *long-term insurance contracts* (including *pure protection contracts*) and rights under a *stakeholder pension scheme* or a *personal pension scheme*.

General Insurance

(2) Life and pensions *firm* means an *insurer*. It also means a *firm* that provides *stakeholder pension schemes* or *personal pension schemes* if those activities fall into *class D1*.

(3) The calculation is adjusted in accordance with the definition of *annual eligible income*.

(4) Net amount retained means all the commission, fees, etc. in respect of *class C2* activities that the *firm* has not rebated to customers or passed on to other *firms* (for example, where there is a commission chain). Items such as general business expenses (for example, employees' salaries and overheads) must not be deducted.

(5) *Class C2* activities mean activities that fall within *class C2*. They also include activities that now fall within *class C2* but that were not *regulated activities* when they were carried out.

(6) A reference to a *firm* also includes a reference to any *person* who carried out activities that would now fall into *class C2* but which were not at the time *regulated activities*.

Investment

Investment provision

Class D1

Firms with permission for:

Any of the following:

*managing investments;*

*managing an AIF;*

*managing a UCITS;*

*acting as trustee or depositary of an AIF;*

*acting as trustee or depositary of a UCITS;*

*establishing, operating or winding up a collective investment scheme;*

*establishing, operating or winding up a regulated collective investment scheme;*

*establishing, operating or winding up an unregulated collective investment scheme;*

*acting as trustee of an authorised unit trust scheme;*

*acting as the depositary of an authorised contractual scheme;*

*acting as the depositary or sole director of an open-ended investment company;*

*establishing, operating or winding up a stakeholder pension scheme;*

*establishing, operating or winding up a personal pension scheme;*

*agreeing to carry on a regulated activity which is within any of the above.*



Home Finance

<b>Class E2</b>	<b>Home Finance Intermediation</b>
<b>Firms with permission for:</b>	<p>Any of the following activities:</p> <p><i>arranging (bringing about) a home finance transaction;</i></p> <p><i>making arrangements with a view to a home finance transaction;</i></p> <p><i>advising on home finance transaction;</i></p> <p>the activities of a <i>home finance provider</i> which would be arranging but for article 28A of the <i>Regulated Activities Order</i> (Arranging contracts or plans to which the arranger is party);</p> <p><i>agreeing to carry on a regulated activity</i> which is within any of the above.</p>
<b>Tariff base</b>	<p><b>Class: E2:</b> <i>annual eligible income</i> where the annual income is calculated in accordance with fee-block A18 in part 2 of FEES 4 Annex 1A R.</p>
<b>Class F</b>	<b>Deposit acceptor's contribution</b>
<b>Firms with permission for:</b>	<p><i>accepting deposits and/or operating a dormant account fund. BUT does not include any fee payer who either effects or carries out contracts of insurance.</i></p>
<b>Class G</b>	<b>Insurers - life contribution</b>
<b>Firms with permission for:</b>	<p><i>effecting contracts of insurance; and/or</i></p> <p><i>carrying out contracts of insurance;</i></p> <p><i>in respect of specified investments including life policies; entering as provider into a funeral plan contract.</i></p> <p>-</p>
<b>Class H</b>	<b>Insurers - general contribution</b>
<b>Firms with permission for:</b>	<p><i>effecting contracts of insurance; and/or</i></p> <p><i>carrying out contracts of insurance;</i></p> <p><i>in respect of specified investments that are:</i></p> <p>- <i>general insurance contracts; or</i></p> <p>- <i>long-term insurance contracts other than life policies.</i></p>
<b>Class I</b>	<b>Home finance provision</b>
<b>Firms with permission for:</b>	<p>Any of the activities below:</p> <p><i>entering into a home finance transaction;</i></p> <p><i>administering a home finance transaction;</i></p> <p><i>agreeing to carry on a regulated activity</i> which is within any of the above.</p>

Notes

(1) Any reference in this annex to a *specified investment* includes a reference to *rights to or interests in investments* in that *specified investment*.

(2) In calculating *annual eligible income* a *firm* must apportion income between different *classes* and between income that falls within the definition of *annual eligible income* and income that does not in a reasonable and consistent way and on the basis of clear policies.

(3) The question of whether a *person* is an *eligible claimant* or not or whether a *contract of insurance* is a *protected contract* or not or whether business is compensatable business or not must be judged at whichever of the following dates the *firm* chooses:

(a) (for a *person* who has become a new *client* during the period by reference to which the *firm's* tariff base is being calculated) the date on which the *person* becomes a *client*;

(b) (for a *person* who has ceased to be a *client* during that period) the date on which the *person* ceases to be a *client*; or

(c) (in any other case) the date to which the most recent information supplied by the *firm* under FEES 6.5.13 R is prepared.

However this does not apply for the purpose of calculating the tariff base for *class A (Deposits)* so far as it relates to *protected deposits*.

(4) For classes G to I (inclusive) the tariff base is not set out in this Annex: see FEES 6.4.7 R (3), FEES 6.5.6 R (3) and FEES 6.5A.6 R



# **Interim Prudential Sourcebook Insurers**



## Appendix 9.6 (rules 9.34 and 9.35)

### Certificates by Directors and Report of the Auditor

#### *Part I: Certificate by directors*

- 1 (1) Subject to 3, the certificate required by rule 9.34 must state –
- PRA**
- (a) that the *return* has been properly prepared in accordance with the requirements in *IPRU(INS)*, *GENPRU* and *INSPRU*; and
  - (b) that the *directors* are satisfied that:
    - (i) throughout the *financial year in question*, the *insurer* has complied in all material respects with the requirements in *SYSC* and *PRIN* as well as the provisions of *IPRU(INS)*, *GENPRU* and *INSPRU*; and
    - (ii) it is reasonable to believe that the *insurer* has continued so to comply subsequently, and will continue so to comply in future.
- (2) An *insurer* does not comply in all material respects with the requirements specified in (1)(b) if it commits a breach of any of those requirements which is significant, having regard to the potential financial loss to *policyholders* or to the *insurer*, frequency of the breach, implications for the *insurer's* systems and controls and if there were any delays in identifying or rectifying the breach.
- 2 Subject to 3, if the *insurer* carries on *long-term insurance business*, the certificate required by rule 9.34(1) must also state that –
- PRA**
- (a) in the *directors' opinion*, *premiums* for contracts entered into during the *financial year* and the resulting income earned are sufficient, under reasonable actuarial methods and assumptions, and taking into account the other financial resources of the *insurer* that are available for the purpose, to enable the *insurer* to meet its obligations in respect of those contracts and, in particular, to establish adequate *mathematical reserves*;
  - (b) the sum of the *mathematical reserves* and the deposits received from *reinsurers* as shown in *Form 14* constitute proper provision at the end of the *financial year in question* for the *long-term insurance liabilities* (including all liabilities arising from *deposit back arrangements*, but excluding other liabilities which had fallen due before the end of the *financial year*) including any increase in those liabilities arising from a distribution of surplus as a result of an *actuarial investigation* as at that date into the financial condition of the *long-term insurance business*;
  - (c) the *with-profits fund* has been managed in accordance with the *Principles and Practices of Financial Management*, as established, maintained and recorded under *COBS 20.3* of the *FCA Handbook*; and

- (d) the *directors* have, in preparing the *return*, taken and paid due regard to –
- (i) advice from every *actuary* appointed by the *insurer* to perform the *actuarial function* in accordance with SUP 4.3.13R; and
  - (ii) if applicable, advice from every *actuary* appointed by the *insurer* to perform the *with-profits actuary function* in accordance with SUP 4.3.16AR of the *FCA Handbook* and SUP 4.3.16R of the *PRA Handbook*.

- 3
- (1) Where, in the opinion of those signing the certificate, the circumstances are such that any of the statements required by 1 and 2 cannot truthfully be made, the relevant statements must be omitted.
- (2) Where, by virtue of (1), any statements have been omitted from the certificate, this fact, and the reasons for omission, must be stated in a note to the certificate.

PRA

*Part IA – Certificate by a director on the half-yearly balance sheet and report for realistic valuation*

- 3A Subject to 3C, the certificate required by rule 9.34(2) must state that the *return* has been properly prepared in accordance with the requirements in *IPRU(INS)*, *GENPRU* and *INSPRU*.

PRA

- 3B Subject to 3C, the certificate required by rule 9.34(2) must also state that –

PRA

- (a) the amount provided for *long-term insurance liabilities* for the purpose of determining the *insurer's capital resources* as shown in *Form 2* constitutes proper provision at the end of the six month period referred to in rule 9.3A(1) for those liabilities (including all liabilities arising from *deposit back arrangements*); and
- (b) the *director* has, in preparing the *return*, taken and paid due regard to –
  - (i) advice from every *actuary* appointed by the *insurer* to perform the *actuarial function* in accordance with SUP 4.3.13R; and
  - (ii) advice from every *actuary* appointed by the *insurer* to perform *with-profits actuary function* in accordance with SUP 4.3.16AR.

- 3C
- (1) Where, in the opinion of the *director* signing the certificate, the circumstances are such that any of the statements required by 3A and 3B cannot truthfully be made, the relevant statements must be omitted.
- (2) Where, by virtue of (1), any statements have been omitted from the certificate, this fact, and the reasons for omission, must be stated in a note to the certificate.

PRA

*Part II – Auditor's report*

- 4 The report required by rule 9.35 must, in addition to any statement required under rule 9.35, state:

# Conduct of Business Sourcebook



quently, an *EEA UCITS management company* should note that, under *COBS*, certain of the *FCA's rules* apply to it, including the *financial promotion rules*. *COBS 4.13 (UCITS)* is concerned with marketing communications for *UCITS schemes* and *EEA UCITS schemes*.

- 9.1D G *EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS 18.5* ( Residual CIS operators, UCITS management companies and AIFMs ).
- [FCA]
- 9.2 G [deleted]
- 9.3 G The Directive does not affect the territorial scope of *rules* as they apply to an intermediary (that is not a *management company*) selling *units* of a *UCITS*.
- [FCA]
- [Note: articles 12, 14, 17, 18, 19 and 94 of the *UCITS Directive*]
10. AIFMD: effect on territorial scope
- [FCA]
- 10.1 G PERG 16 contains general *guidance* on the businesses to which *AIFMD* applies. *FUND 1* contains *guidance* on the types of *AIFM*.
- 10.2 G The only *rule* in this sourcebook which implements *AIFMD* is *COBS 2.1.4 R*, which applies to:
- (1) a *full-scope UK AIFM* operating from an establishment in the *UK* or a *branch* in another *EEA State*; and
  - (2) an *incoming EEA AIFM branch*.
- 10.3 G The other rules in *COBS* which apply to a *full-scope UK AIFM* or *incoming EEA AIFM* (including an *AIFM qualifier*) fall outside the scope of *AIFMD* and are, therefore, not affected by its territorial scope.
- 10.4 G *Incoming EEA AIFM branches* should be aware that there is a special narrower application of *COBS* for *AIFM investment management functions* provided for by *COBS 18.5* (Residual CIS operators, UCITS management companies and AIFMs).



4.13 UCITS

Application

4.13.1

FCA

R

- (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.
- (2) This section does not apply to:
  - (a) *image advertising*; or
  - (b) the *instrument constituting the fund*, the *prospectus*, the *key investor information* (or alternatively the *simplified prospectus* or *EEA simplified prospectus*) or the periodic reports and accounts of either a *UCITS scheme* or an *EEA UCITS scheme*.

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

Marketing communications relating to UCITS schemes or EEA UCITS schemes

4.13.2

FCA

R

- (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme* and that contains specific information about the *scheme*:
  - (a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* or *EEA key investor information document* for the *scheme*;
  - (b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* or *EEA key investor information document* is available; and
  - (c) specifies where and in which language such information or *documents* may be obtained by investors or potential investors or how they may obtain access to them.
- (2) Where a *UCITS scheme* or an *EEA UCITS scheme* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by an *EEA State*, one or more of its local authorities, a third country or a public international body to which one or more *EEA States* belong, the

*firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular *EEA States*, local authorities, third countries or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.

- (3) Where a *UCITS scheme* or *EEA UCITS scheme* invests principally in *units in collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with ■ COLL 5.2.31 R (Schemes replicating an index) or equivalent national measures implementing article 53 of the *UCITS Directive*, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.
- (4) Where the net asset value of a *UCITS scheme* or *EEA UCITS scheme* has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

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

#### Marketing communications relating to a feeder UCITS

4.13.3

FCA

R

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

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

provide to the *consumer* only the information specified in rows 7 to 12, 15, 16 and 20 of ■ COBS 5 Annex 1 R. [Note: article 4(5) of the *Distance Marketing Directive*]

5.1.3B

FCA

G

Where a *distance contract* covers both *payment services* and *non-payment services*, this exception applies only to the payment services aspects of the contract. A *firm* taking advantage of this exception will need to comply with the information requirements in Part 5 of the *Payment Services Regulations*.

5.1.4

FCA

R

A *firm* must ensure that information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

#### Terms and conditions, and form

5.1.5

FCA

R

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer.

[Note: article 5(1) of the *Distance Marketing Directive*]

5.1.6

FCA

G

A *firm* will provide information, or communicate contractual terms and conditions, to a *consumer* if another *person* provides the information, or communicates the terms and conditions, to the *consumer* on its behalf.

#### Exception: distance contract as a stage in the provision of another service

5.1.7

FCA

R

This section does not apply to a *distance contract* to deal as agent, advise or arrange, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: recital 19 to the *Distance Marketing Directive*]

#### Exception: successive operations

5.1.8

FCA

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

5.1.9

FCA

R

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure rules (■ COBS 5.1.1 R to ■ COBS 5.1.4 R) will only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

5.1.10

FCA

G

In this section:

- (1) 'initial service agreement' includes the opening of a bank account and the concluding of a portfolio management contract;
- (2) 'operations' includes transactions made within the framework of a portfolio management contract; and
- (3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The subscription to new *units* of the same *fund* is considered to be one of 'successive operations of the same nature'.

[Note: recital 17 of the *Distance Marketing Directive*]

5.1.11

FCA

G

In the *FCA's* view, other examples of:

- (1) 'initial service agreement' include:
  - (a) subscribing to an *investment trust savings scheme*; or
  - (b) concluding a *life policy*, *personal pension scheme* or *stakeholder pension scheme* that includes a pre-selected option providing for future increases or decreases in regular *premiums* or payments; and
- (2) 'operations' include:
  - (a) successive purchases or sales of *shares* under an *investment trust savings scheme*; and
  - (b) subsequent index-linked changes to premiums or increases or decreases to pension contributions following fluctuations in salary.

#### Exception: voice telephony communications

5.1.12

FCA

R

In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information ( ■ COBS 5 Annex 2R ) needs to be provided during that communication. However, a *firm* must still provide the distance marketing information ( ■ COBS 5 Annex 1R ) on a *durable medium* available and accessible to the *consumer* in good time before the *consumer* is bound by any *distance contract* or offer, unless another exception applies.

obligations if it executes its quote after the *client* accepts it, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.

**[Note: second sentence of recital 69 to the MiFID implementing Directive]**

11.2.5

FCA

G

The obligation to deliver the best possible result when executing *client* orders applies in relation to all types of *financial instruments*. However, given the differences in market structures or the structure of *financial instruments*, it may be difficult to identify and apply a uniform standard of and procedure for best execution that would be valid and effective for all classes of instrument. Best execution obligations should therefore be applied in a manner that takes into account the different circumstances associated with the execution of orders related to particular types of *financial instruments*. For example, transactions involving a customised OTC *financial instrument* that involve a unique contractual relationship tailored to the circumstances of the *client* and the *firm* may not be comparable for best execution purposes with transactions involving shares traded on centralised *execution venues*.

**[Note: recital 70 to the MiFID implementing Directive]**

#### **Management companies: execution and transmission of orders**

11.2.5A

FCA

G

- (1) A *management company* should, for each *UCITS scheme* or *EEA UCITS scheme* it manages, act in the best interests of the *scheme* when directly executing orders to deal on its behalf or when transmitting those orders to third parties.
- (2) When executing orders on behalf of any such *scheme* it manages, a *management company* is expected to take all reasonable steps to obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

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

#### **Best execution criteria**

11.2.6

FCA

R

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

- (1) the characteristics of the *client* including the categorisation of the *client* as retail or professional;
- (2) the characteristics of the *client* order;
- (3) the characteristics of *financial instruments* that are the subject of that order;
- (4) the characteristics of the *execution venues* to which that order can be directed; and
- (5) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the fund*.

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

### Role of price

11.2.7

FCA

R

Where a *firm* executes an order on behalf of a *retail client*, the best possible result must be determined in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution, which must include all expenses incurred by the *client* which are directly related to the execution of the order, including *execution venue* fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

[Note: paragraph 1 of article 44(3) of the *MiFID implementing Directive*]

11.2.8

FCA

G

For the purposes of ensuring that a *firm* obtains the best possible result for the *client* when executing a *retail client* order in the absence of specific *client* instructions, the *firm* should take into consideration all factors that will allow it to deliver the best possible result in terms of the total consideration, representing the price of the *financial instrument* and the costs related to execution. Speed, likelihood of execution and settlement, the size and nature of the order, market impact and any other implicit transaction costs may be given precedence over the immediate price and cost consideration only insofar as they are instrumental in delivering the best possible result in terms of the total consideration to the *retail client*.

[Note: recital 67 to the *MiFID implementing Directive*]

11.2.9

FCA

G

A *firm's* execution policy should determine the relative importance of each of the *execution factors* or establish a process by which the *firm* will determine the relative importance of the *execution factors*. The relative importance that the *firm* gives to those *execution factors* must be designed to obtain the best possible result for the execution of its *client* orders. Ordinarily, the FCA would expect that price will merit a high relative importance in obtaining the best possible result for *professional clients*. However, in some circumstances for some *clients*, orders, *financial instruments* or markets, the policy may appropriately determine that other *execution factors* are more important than price in obtaining the best possible execution result.

### Delivering best execution where there are competing execution venues

11.2.10

FCA

R

For the purposes of delivering best execution for a *retail client* where there is more than one competing venue to execute an order for a *financial instrument*, in order to assess and compare the results for the *client* that would be achieved by executing the order on each of the *execution venues* listed in the *firm's* order execution policy that is capable of executing that order, the *firm's* own commissions and costs for executing the order on each of the eligible *execution venues* must be taken into account in that assessment.

[Note: article 44(3) of paragraph 2 of the *MiFID implementing Directive*]

11.2.11

FCA

G

The obligation to deliver best execution for a *retail client* where there are competing *execution venues* is not intended to require a *firm* to compare the results that would be achieved for its *client* on the basis of its own execution policy and its own commissions and fees, with results that might be achieved for the same *client* by any other *firm* on the basis of a different execution policy or a different structure of

- where the venue is a trading venue: its unique harmonised identification code;
- otherwise: the code 'OTC'.

## 11.6 Use of dealing commission

11.6.1

FCA

G

This section deals with the acceptance of certain inducements by *investment managers* and builds upon the *rule* on inducements (■ COBS 2.3.1 R). *Investment managers* should ensure they comply with both this section and the *rule* on inducements.

### Application

11.6.2

FCA

R

This section applies to a *firm* that acts as an *investment manager* when it *executes customer orders* that relate to:

- (1) *shares*; and
- (2) (a) *warrants*;
- (b) *certificates representing certain securities*;
- (c) *options*; and
- (d) *rights to or interests in investments* of the nature referred to in (a) to (c);

to the extent that they relate to *shares*.

11.6.2A

FCA

G

■ COBS 11.6.3 R applies to a *full-scope UK AIFM* that is an *internally managed AIF* in accordance with the modification in ■ COBS 18.5.4C R.

### Use of dealing commission to purchase goods or services

11.6.3

FCA

R

- (1) An *investment manager* must not accept goods or services in addition to the *execution* of its *customer orders* if it:
  - (a) *executes its customer orders* through a broker or another *person*;
  - (b) passes on the broker's or other *person's charges* to its *customers*; and
  - (c) is offered goods or services in return for the *charges* referred to in (b).

- (2) This prohibition does not apply if the *investment manager* has reasonable grounds to be satisfied that the goods or services received in return for the *charges*:
- (a) (i) are related to the *execution* of trades on behalf of the *investment manager's customers*; or
  - (ii) comprise the provision of research; and
  - (b) will reasonably assist the *investment manager* in the provision of its services to its *customers* on whose behalf the orders are being *executed* and do not, and are not likely to, impair compliance with the duty of the *investment manager* to act in the best interests of its *customers*.

## 11.6.4



FCA

- (1) Where the goods or services relate to the *execution* of trades, an *investment manager* should have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) are met if the goods or services are:
- (a) linked to the arranging and conclusion of a specific investment transaction (or series of related transactions); and
  - (b) provided between the point at which the *investment manager* makes an investment or trading decision and the point at which the investment transaction (or series of related transactions) is concluded.
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (■ COBS 11.6.3 R)

## 11.6.5



FCA

- (1) Where the goods or services relate to the provision of research, an *investment manager* will have reasonable grounds to be satisfied that the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) are met if the research:
- (a) is capable of adding value to the investment or trading decisions by providing new insights that inform the *investment manager* when making such decisions about its *customers'* portfolios;
  - (b) whatever form its output takes, represents original thought, in the critical and careful consideration and assessment of new and existing facts, and does not merely repeat or repackage what has been presented before;
  - (c) has intellectual rigour and does not merely state what is commonplace or self-evident; and
  - (d) involves analysis or manipulation of data to reach meaningful conclusions.

- (2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on use of dealing commission (■ COBS 11.6.3 R).

11.6.6

FCA

G

An example of goods or services relating to the *execution* of trades that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) is post-trade analytics.

11.6.7

FCA

G

Examples of goods or services that relate to the provision of research that the *FCA* does not regard as meeting the requirements of the *rule* on use of dealing commission (■ COBS 11.6.3 R) include price feeds or historical price data that have not been analysed or manipulated to reach meaningful conclusions.

11.6.8

FCA

G

Examples of goods or services that relate to the *execution* of trades or the provision of research that the *FCA* does not regard as meeting the requirements of either evidential provisions ■ COBS 11.6.4 E or ■ COBS 11.6.5 E include:

- (1) services relating to the valuation or performance measurement of portfolios;
- (2) computer hardware;
- (3) connectivity services such as electronic networks and dedicated telephone lines;
- (4) seminar fees;
- (5) subscriptions for publications;
- (6) travel, accommodation or entertainment costs;
- (7) order and execution management systems;
- (8) office administrative computer software, such as word processing or accounting programmes;
- (9) membership fees to professional associations;
- (10) purchase or rental of standard office equipment or ancillary facilities;
- (11) employees' salaries;
- (12) direct money payments;
- (13) publicly available information; and
- (14) *custody* services relating to *designated investments* belonging to, or managed for, *customers* other than those services that are incidental to the *execution* of trades.

11.6.9

FCA

G

The reference to research in the *rule* on use of dealing commission (■ COBS 11.6.3 R) is not confined to *investment research* as defined in the *Glossary*. The *FCA*'s view is that

research can include, for example, the goods or services encompassed by *investment research*, provided that they are directly relevant to and are used to assist in the management of investments on behalf of *customers*. In addition, any goods or services that relate to the provision of research that the *FCA* regards as not acceptable under ■ COBS 11.6.6 G or ■ COBS 11.7.6 R should be viewed as not meeting the requirements of ■ COBS 11.6.3 R (2), notwithstanding that their content might qualify as *investment research*.

11.6.10

FCA

G

This section applies only to arrangements under which an *investment manager* receives from brokers or other *persons* goods or services that relate to the *execution* of trades or the provision of research. It has no application in relation to *execution* and research generated internally by an *investment manager* itself.

11.6.11

FCA

G

An *investment manager* should not enter into any arrangements that could compromise its ability to comply with its best execution obligations ( ■ COBS 11.2).

### Rule on prior disclosure

11.6.12

FCA

R

**An *investment manager* that enters into arrangements under this section must make adequate prior disclosure to *customers* concerning the receipt of goods or services that relate to the *execution* of trades or the provision of research. This prior disclosure should form part of the summary form disclosure under the *rule* on inducements ( ■ COBS 2.3.1 R).**

### Guidance on prior disclosure

11.6.13

FCA

G

The *rule* on prior disclosure of goods and services under this section complements the requirements on the disclosure of inducements ( ■ COBS 2.3.1 R (2)(b)). *Investment managers* should ensure they comply with both requirements where relevant.

11.6.14

FCA

G

- (1) The prior disclosure required by this section should include an adequate disclosure of the *firm's* policy relating to the receipt of goods or services that relate to the *execution* of trades or the provision of research in accordance with the *rule* on use of dealing commission ( ■ COBS 11.6.3 R).
- (2) The prior disclosure should explain generally why the *firm* might find it necessary or desirable to use dealing commission to purchase goods or services, bearing in mind the practices in the markets in which it does business on behalf of its *customers*. While the appropriate method of making such a disclosure is for the *firm* to decide, this could, for example, be achieved in a client agreement.

### Rule on periodic disclosure

11.6.15

FCA

R

**If an *investment manager* enters into arrangements in accordance with the *rule* on use of dealing commission ( ■ COBS 11.6.3 R), it must in a timely manner make adequate periodic disclosure to its *customers* of the arrangements entered into.**

### Adequate prior and periodic disclosure

11.6.16

FCA

R

**Adequate prior and periodic disclosure under this section must include details of the goods or services that relate to the *execution* of trades and,**

wherever appropriate, separately identify the details of the goods or services that are attributable to the provision of research.

11.6.17

FCA

G

In assessing the adequacy of prior and periodic disclosures made by an *investment manager* under this section, the *FCA* will have regard to the extent to which the *investment manager* adopts disclosure standards developed by industry associations such as the Investment Management Association, the National Association of Pension Funds and the Association for Financial Markets in Europe.

#### **Making periodic disclosures in a timely manner**

11.6.18

FCA

A

(1) A *firm* will make periodic disclosure to its customers under this section in a timely manner if it is made at least once a year.

(2) Compliance with (1) may be relied upon as tending to establish compliance with the *rule* on periodic disclosure

(■ COBS 11.6.16 R).

#### **Record keeping**

11.6.19

FCA

R

An *investment manager* must make a record of each prior and periodic disclosure it makes to its *customers* in accordance with this section and must maintain each such record for at least five years from the date on which it is provided.

## 11.8 Recording telephone conversations and electronic communications

### Application - Who?

11.8.1

FCA

R

This section applies to a *firm*:

- (1) which carries out any of the following activities:
  - (a) receiving *client* orders;
  - (b) executing *client* orders;
  - (c) arranging for *client* orders to be executed;
  - (d) carrying out transactions on behalf of the *firm*, or another person in the *firm's* group, and which are part of the *firm's* trading activities or the trading activities of another person in the *firm's* group;
  - (e) executing orders that result from decisions by the *firm* to deal on behalf of its *client*;
  - (f) placing orders with other entities for execution that result from decisions by the *firm* to deal on behalf of its *client*;
- (2) to the extent that the activities referred to in (1) relate to:
  - (a) *qualifying investments* admitted to trading on a *prescribed market*;
  - (b) *qualifying investments* in respect of which a request for admission to trading on such a market has been made;
  - (c) investments which are *related investments* in relation to such *qualifying investments*.

11.8.2

FCA

R

This section does not apply to the carrying on of the following activities:

- (1) activities carried on between *operators*, or between *operators* and *depositories*, of the same *fund* (when acting in that capacity);
- (2) *corporate finance business*;

11.8.3

FCA

R

This section does not apply to the following *firms* or *persons*:

- (1) a *service company*;
- (2) a *non-directive friendly society*;
- (3) a *non-directive insurer*;
- (4) a *UCITS qualifier*.

#### Application - Where?

11.8.4

FCA

R

This section applies only with respect to a *firm's* activities carried on from an establishment maintained by the *firm* in the *United Kingdom*.

#### Recording telephone conversations, etc

11.8.5

FCA

R

A *firm* must take reasonable steps to record relevant telephone conversations, and keep a copy of relevant electronic communications, made with, sent from or received on equipment:

- (1) provided by the *firm* to an employee or contractor; or
- (2) the use of which by an employee or contractor has been sanctioned or permitted by the *firm*;

to enable that employee or contractor to carry out any of the activities referred to in ■ COBS 11.8.1 R.

11.8.5A

FCA

R

A *firm* must take reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the *firm* is unable to record or copy.

11.8.6

FCA

R

The obligation in ■ COBS 11.8.5 R and ■ COBS 11.8.5A R does not apply to:

- (1) [deleted]
- (2) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *firm* which the *discretionary investment manager* reasonably believes is subject to the recording obligation in ■ COBS 11.8.5 R in respect of that conversation or communication; or
- (3) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *person* who is not subject to the recording

Trade confirmation and periodic information

**FCA**

This annex forms part of **COBS 16.2.1 R**

The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with SUP 17 Annex 1		(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
General			
1.	<b>the reporting <i>firm</i> identification;</b>	Y	
2.	<b>the name or other designation of the <i>client</i>;</b>	Y	
3.	<b>the trading day;</b>	Y	Y
4.	<b>the trading time;</b>	Y	Y
5.	<b>the type of the order (for example, a limit order or a market order);</b>	Y	Y
6.	<b>the venue identification;</b>	Y	Y
7.	<b>the instrument identification;</b>	Y	Y
8.	<b>the buy/sell indicator;</b>	Y	Y
9.	<b>the nature of the order if other than buy/sell;</b>	Y	Y
10.	<b>the quantity;</b>	Y	Y
11.	<b>the unit price;</b>	Y	Y
12.	<b>the total consideration;</b>	Y	Y

The information below must be provided, where relevant for the purposes of reporting to a *retail client*, in accordance with SUP 17 Annex 1

(1) Trade confirmation information

(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)

General

13.	a total sum of the commissions and expenses charged (for a <i>collective investment scheme operator</i> , initial charges may be disclosed in cash or percentage terms) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up</i> or <i>mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	Y
14.	the rate of exchange obtained where the transaction involves a conversion of currency;	Y	Y
15.	[intentionally blank]		
16.	[intentionally blank]		
17.	the <i>client's</i> responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details where these details and respon-	Y	

<p>The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i>, in accordance with SUP 17 Annex 1</p>	<p>(1) Trade confirmation information</p>	<p>(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)</p>
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General

<p>18.</p>	<p><b>sibilities have not previously been notified to the <i>client</i>; and</b></p> <p><b>if the <i>client's</i> counterparty was the <i>firm</i> itself or any person in the <i>firm's</i> group or another <i>client</i> of the <i>firm</i>, the fact that this was the case unless the order was <i>executed</i> through a trading system that facilitates anonymous trading.</b></p>	<p>Y</p>	<p>[Note: article 40(4) and recital 64 to the <i>MiFID implementing Directive</i>]</p> <p><b>A <i>firm</i> may provide the <i>client</i> with the information referred to in this Annex using standard codes if it also provides an explanation of the codes used.</b></p> <p>[Note: article 40(5) of the <i>MiFID implementing Directive</i>]</p>
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## 18.5 Residual CIS operators, UCITS management companies and AIFMs

### Application

18.5.1

FCA

R

Subject to ■ COBS 18.5.1A R, this section applies to a *firm* which is :

- (1) a *UCITS management company*;
- (2) a *full-scope UK AIFM*;
- (3) a *small authorised UK AIFM*;
- (4) a *residual CIS operator*; or
- (5) an *incoming EEA AIFM branch*.

18.5.1A

FCA

R

■ COBS 18.5.3 R (2) and ■ COBS 18.5.5 R to ■ COBS 18.5.18 E do not apply to a *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*.

18.5.1B

FCA

R

Only ■ COBS 18.5.1 R to ■ COBS 18.5.4A R, ■ COBS 18.5.4C R to ■ COBS 18.5.4D G and ■ COBS 18.5.10A R apply to a *full-scope UK AIFM*, with the exception that ■ COBS 18.5.10A R does not apply to a *full-scope UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme*. ■ COBS 18.5.4C R to ■ COBS 18.5.4D G only apply to a *full-scope UK AIFM* that is an *internally managed AIF*.

### Application or modification of general COBS rules

18.5.2

FCA

R

A *firm* when it is carrying on *scheme management activity* or, for an *AIFM*, *AIFM investment management functions*:

- (1) must comply with the *COBS rules* specified in the table, as modified by this section; and
- (2) need not comply with any other *rule* in *COBS*.

18.5.2-A

FCA

G

For activities carried on by *firms* which are not *scheme management activities* or, for an AIFM, *AIFM investment management functions*, the COBS rules apply under the *general application rule*, as modified in ■ COBS 1 Annex 1.

Table: Application of conduct of business rules

This table belongs to ■ COBS 18.5.2 R

Chapter, section, rule	Full-scope UK AIFM	Small authorised UK AIFM and a residual CIS operator	Incoming EEA AIFM branch	UCITS management company
1	Applies	Applies	Applies	Applies
2.1.1	Does not apply	Applies	Does not apply	Applies
2.1.4	Applies	Does not apply	Applies	Does not apply
2.3	Does not apply	Applies	Does not apply	Applies
2.4	Does not apply	Applies	Does not apply	Applies
4.2.1-4.2.3	Applies	Applies	Applies	Applies
5.2	Applies	Applies	Applies	Applies
6.1G.2	Applies	Applies	Applies	Applies
11.2	Applies as modified by COBS 18.5.4A R	Applies to a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i> . Applies (as modified by COBS 18.5.4 R) to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> or <i>residual CIS operator</i>	Applies as modified by COBS 18.5.4A R	Applies
11.3	Does not apply	Applies	Does not apply	Applies
11.5	Does not apply	Applies as <i>rules</i>	Does not apply	Does not apply
11.6	Applies , but as modified by COBS 18.5.4C R for <i>internally managed AIFs</i> .	Applies	Applies	Applies
11.8	Applies	Applies	Applies	Applies
16.3	Does not apply	Applies to a <i>small authorised UK AIFM</i> of an <i>unauthorised AIF</i> which is not a <i>collective investment scheme</i> , as modified by	Does not apply	Does not apply

Chapter, section, rule	Full-scope UK AIFM	Small authorised UK AIFM and a residual CIS operator	Incoming EEA AIFM branch	UCITS management company
18.5	Applies as modified by COBS 18.5.1B R	COBS 18.5.4B R. Otherwise does not apply. Applies	Applies	Applies

### Additional application of COBS rules for management companies

18.5.2A

FCA

R

A management company must:

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

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

### General modifications

18.5.3

FCA

R

Where *COBS rules* specified in the table in ■ COBS 18.5.2 R apply to a *firm* carrying on *scheme management activities* or, for an AIFM, AIFM *investment management functions*, the following modifications apply:

- (1) subject to (2), references to *customer* or *client* are to be construed as references to any *fund* in respect of which the *firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on;
- (2) in the case of a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator*, when a *firm* is required by the rules in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the *firm* must ensure that the information is provided to, or consent obtained from, an investor or a potential investor in the *fund* as the case may be;
- (3) references to the service of *portfolio management* in ■ COBS 11.2 (Best execution), ■ 11.3 (Client order handling) and ■ COBS 11.5 (Record keeping: client orders and transactions) are to be read as references to the management by a *firm of financial instruments* held for or within the *fund*; and

- (4) references to *investment firm* in ■ COBS 11.5 are to be read as references to *small authorised UK AIFM* or *residual CIS operator*.

#### Modification of best execution

18.5.4

FCA

**R** The best execution provisions applying to a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* do not apply in relation to a *fund* whose *fund* documents include a statement that best execution does not apply in relation to the *fund* and in which:

- (1) no investor is a *retail client*; or
- (2) no current investor in the *fund* was a *retail client* when it invested in the *fund*.

18.5.4A

FCA

**R** Only the following provisions in ■ COBS 11.2 apply to a *full-scope UK AIFM*:

- (1) ■ COBS 11.2.5 G;
- (2) ■ COBS 11.2.17 G;
- (3) ■ COBS 11.2.23A R, but references to *management company* should be read as references to an *AIFM* and references to *unitholders* read as references to investors. This obligation only applies for the execution policy required under article 27(3) of the *AIFMD level 2 regulation* (Execution of decisions to deal on behalf of the managed AIF);
- (4) ■ COBS 11.2.24 R;
- (5) ■ COBS 11.2.25 R (1) and ■ COBS 11.2.26 R, but only where an *AIF* itself has a governing body which can provide prior consent; and
- (6) ■ COBS 11.2.27 R, but only regarding the obligation on an *AIFM* to notify the *AIF* of any material changes to their order execution arrangements or execution policy.

#### Modification of periodic reporting requirements

18.5.4B

FCA

**R** A *small authorised UK AIFM* of an *unauthorised AIF* which is not a *collective investment scheme* must comply with ■ COBS 16.3 (Periodic reporting) with references to *managing investments* to be construed as providing *AIFM investment management functions*.

#### Modification of dealing commission rules for internally managed AIFs

18.5.4C

FCA

**R** Only ■ COBS 11.6.1 G to ■ COBS 11.6.11 G apply to a *full-scope UK AIFM* that is an *internally managed AIF* and references to an *investment*

*manager* in ■ COBS 11.6 are to be read as including an *internally managed AIF* which manages *designated investments* on its own account and references to a *customer order* as a decision by an *internally managed AIF* to execute a transaction for these purposes.

18.5.4D

FCA

G

To be an *investment manager*, a *person* needs to manage *designated investments* on a discretionary or non-discretionary basis under the terms of a management agreement. The purpose of ■ COBS 18.5.4C R is to modify ■ COBS 11.6.1 G to ■ COBS 11.6.11 G so that these provisions apply to a *full-scope UK AIFM* that is an *internally managed AIF* because such *firms* manage *designated investments* on their own account rather than under the terms of a management agreement.

### Scheme documents for an unauthorised fund

18.5.5

FCA

R

A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must not accept a *retail client* as an investor in the *fund* unless it has taken reasonable steps to offer and, if requested, provide to the potential investor, fund documents which adequately describe how the *fund* is governed.

### Distance marketing

18.5.5A

FCA

G

*Firms* should also be aware that if they are carrying on distance marketing activity from an establishment in the *UK*, with or for a *consumer* in the *UK* or another *EEA State*, ■ COBS 5.1 applies specific requirements for that activity.

### Format and content of fund documents

18.5.6

FCA

G

The fund documents required under ■ COBS 18.5.5 R may consist of any number of *documents* provided that it is clear that collectively they constitute the fund documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the potential investor.

18.5.7

FCA

G

The fund documents of an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* (if those fund documents exist) should make it clear that if an investor is reclassified as a *retail client*, this reclassification will not affect certain activities of the firm. In particular, despite such a reclassification, the *firm* will not be required to comply with the best execution provisions. It should be noted that there is no requirement that fund documents must be produced by a *small authorised UK AIFM* of an *unauthorised fund* or a *residual CIS operator*.

18.5.8

FCA

R

Where the *fund* is an *unauthorised fund* managed by a *small authorised UK AIFM* or a *residual CIS operator* and no current investor in the *fund* was a *retail client* when it invested in the *fund*, the fund documents must include a statement that:

- (1) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the *firm* may continue to treat all investors in the *fund* as though they were not *retail clients*;

18.5.9  
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- (2) explains that if an investor is reclassified as a *retail client* subsequent to investing in the *fund*, then the modification of best execution (see ■ COBS 18.5.4 R ) will continue to apply to that fund; and
- (3) explains that, in the event of such a reclassification, the *firm* will not be required to provide best execution in relation to the *fund*.

A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* will still have to comply with other COBS provisions as a result of the reclassification of an investor as a *retail client*. For example, the *firm* must provide *periodic statements* to investors who are *retail clients* in an *unauthorised fund* (see the rule on periodic statements for an unauthorised fund (■ COBS 18.5.11 R )).

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**Adequate information**

- (1) In order to provide adequate information to describe how the *fund* is governed, a *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should include in the fund documents a provision about each of the items of relevant information set out in the following table (Content of fund documents).
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ COBS 18.5.5 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ COBS 18.5.5 R.

Table: Content of fund documents

**Content of fund documents**

The <i>fund</i> documents should include provision about:	
(1)	Regulator  The <i>firm</i> statutory status in accordance with GEN 4 Annex 1 R (Statutory status disclosure);
(2)	Services  the nature of the services that the <i>firm</i> will provide;
(3)	Payments for services  details of any payment for services payable by the <i>fund</i> or from the property of the fund or investors in the <i>fund</i> to the <i>firm</i> , including where appropriate:  (a) the basis of calculation;

The *fund* documents should include provision about:

- (b) how it is to be paid and collected;
  - (c) how frequently it is to be paid; and
  - (d) whether or not any other payment is receivable by the *firm* (or to its knowledge by any of its *associates*) in connection with any transactions effected by the *firm* with or for the *fund*, in addition to or in lieu of any fees;
- (4) Commencement
- when and how the *firm* is appointed;
- (5) Accounting
- the arrangements for accounting to the *fund* or investors in the *fund* for any transaction effected;
- (6) Termination method
- how the appointment of the *firm* may be terminated;
- (7) Complaints procedure
- how to complain to the *firm* and a statement that the investors in the *fund* may subsequently complain direct to the *Financial Ombudsman Service*;
- (8) Compensation
- whether or not compensation may be available from the *compensation scheme* should the *firm* be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;
- (9) Investment objectives
- the investment objectives for the portfolio of the *fund*;
- (10) Restrictions
- (a) any restrictions on:
    - (i) the types of *investments* or property which may be included in the portfolio of the *fund*;
    - (ii) the markets on which *investments* or property may be acquired for the portfolio of the *fund*;
    - (iii) the amount or value of any one *investment* or asset, or on the proportion of the portfolio of the *fund* which any one *investment* or as-

The *fund* documents should include provision about:

- set or any particular kind of *investment* or asset may constitute; or
- (b) that there are no such restrictions;
- (11) Holding fund assets
- (a) if it is the case, that the *firm* will:
- (i) hold *money* on behalf of the *fund* or be the *custodian* of *investments* or other property of the *fund*; or
- (ii) arrange for some other *person* to act in either capacity and, if so, whether that *person* is an associate of the *firm* identifying that *person* and describing the nature of any association; and
- (b) in either case:
- (i) how any *money* is to be deposited;
- (ii) the arrangements for recording and separately identifying registrable *investments* of the *fund* and, where the registered holder is the *firm's* own nominee, that the *firm* will be responsible for the acts and omissions of that *person*;
- (iii) the extent to which the *firm* accepts liability for any loss of the *investment* of the *fund*;
- (iv) the extent to which the *firm* or any other *person* mentioned in (11)(a)(ii), may hold a lien or security interest over *investments* of the *fund*;
- (v) where *investments* of the *fund* will be registered collectively in the same name, a statement that the entitlements of the *fund* may not be identifiable by separate certificates or other physical documents of title, and that, should the *firm* default, any shortfall in *investments* of the *fund* registered in that name may be shared proportionately among all *funds* and any other *customers* of the *firm* whose *investments* are so registered;
- (vi) whether or not *investments* or other property of the *fund* can be lent to, or deposited by way of collateral with, a third party and

The *fund* documents should include provision about:

- whether or not *money* can be borrowed on behalf of the *fund* against the security of those *investments* or property and, if so, the terms upon which they may be lent or deposited;
- (vi) the arrangements for accounting to the *fund* for *investments* of the *fund*, for income received (including any interest on *money* and any income earned by lending *investments* or other property) of the *fund*, and for rights conferred in respect of *investments* or other property of the *fund*;
- (vii) the arrangements for determining the exercise of any voting rights conferred by *investments* of the *fund*; and
- (viii) where *investments* of the *fund* may be held by an eligible *custodian* outside the *United Kingdom*, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those *investments*, may apply;
- (ix) Clients' money outside the United Kingdom
- if it is the case, that the *firm* may hold the *money* of the *fund* in a *client bank account* outside the *United Kingdom*;
- (10) Exchange rates
- if a liability of the *fund* in one currency is to be matched by an asset in a different currency, or if the services to be provided to the *firm* for the *fund* may relate to an *investment* denominated in a currency other than the currency in which the *investments* of the *fund* are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the *investments* of the *fund*;
- (11) Stabilised investments
- if it is the case, that the *firm* is to have the right under the *fund documents* to effect transactions in *investments* the prices of which may be the subject of stabilisation;
- (12) Conflict of interest and material interest
- if it is the case, that the *firm* is to have the right under the agreement or *instrument constituting the fund* to effect transactions on behalf of the *fund* in which the *firm* has directly or indirectly a material

The *fund* documents should include provision about:

- interest (except for an interest arising solely from the investment of the *firm* as agent for the *fund*), or a relationship of any description with another party which may involve a conflict with the *firm* duty to the *fund*, together with a disclosure of the nature of the interest or relationship;
- (16) Use of dealing commission
- if the *firm* receives goods or services in addition to the *execution* of its *customer orders* in accordance with the section on the use of dealing commission, the prior disclosure required by the *rule* on prior disclosure (see COBS 11.6.2 R);
- (17) Acting as principal
- if it is the case, that the *firm* may act as *principal* in a transaction with the *fund*;
- (18) Stock lending
- if it is the case, that the *firm* may undertake *stock lending activity* with or for the *fund* specifying the type of assets of the *fund* to be lent, the type and value of *relevant collateral* from the borrower and the method and amount of payment due to the *fund* in respect of the lending;
- (19) Transactions involving contingent liability investments
- (a) if it is the case, that the agreement or *instrument constituting the fund* allows the *firm* to effect transactions involving *contingent liability investments* for the account of the portfolio of the *fund*;
- (b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and
- (c) if applicable, that the *firm* has the authority to effect transactions involving *contingent liability investments* otherwise than under the rules of a *recognised investment exchange* and in a contract traded thereon;
- (20) Periodic statements
- (a) the frequency of any *periodic statement* (this should not be less than once every 12 months) except where a *periodic statement* is not required (see COBS 18.5.13R); and
- (b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;

The *fund* documents should include provision about:

- (21) Valuation
- the bases on which assets comprised in the portfolio of the *fund* are to be valued;
- (22) Borrowings
- if it is the case, that the *firm* may supplement the funds in the portfolio of the *fund* and, if it may do so:
- (a) the circumstances in which the *firm* may do so;
  - (b) whether there are any limits on the extent to which the *firm* may do so and, if so, what those limits are; and
  - (c) any circumstances in which such limits may be exceeded;
- (23) Underwriting commitments
- if it is the case, that the *firm* may for the account of the portfolio of the *fund* underwrite or sub-underwrite any issue or offer for sale of *securities*, and:
- (a) whether there are any restrictions on the categories of *securities* which may be underwritten and, if so, what these restrictions are; and
  - (b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;
- (24) Investments in other funds
- whether or not the portfolio may invest in *funds* either managed or advised by the *firm* or by an *associate* of the *firm* or in a *fund* which is not a *regulated collective investment scheme*;
- (25) Investments in securities underwritten by the firm
- whether or not the portfolio may contain *securities* of which any issue or offer for sale was underwritten, managed or arranged by the *firm* or by an *associate* of the *firm* during the preceding 12 months.

**Application of COBS 18.5.10E to a full-scope UK AIFM**

A *full-scope UK AIFM* which *markets an unauthorised AIF to a retail client* must, in addition to providing the information in ■ FUND 3.2, take reasonable steps to offer and, if requested, provide to that potential investor information about the following items in the ■ COBS 18.5.10 E table (content of fund documents):

- (1) (1) (Regulator);

18.5.10A

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PAGE  
23

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- (2) (4) (Commencement);
- (3) (5) (Accounting);
- (4) (6) (Termination method);
- (5) (7) (Complaints procedure);
- (6) (8) (Compensation);
- (7) (13) (Exchange rates);
- (8) (14) (Stabilised investments);
- (9) (16) (Use of dealing commission);
- (10) (17) (Acting as principal);
- (11) (23) (Underwriting commitments);
- (12) (24) (Investments in other funds); and
- (13) (25) (Investments in securities underwritten by the firm).

#### Periodic statements for an unauthorised fund

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A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* must, subject to the exceptions from the requirement to provide a *periodic statement*, provide to investors in the *fund*, promptly and at suitable intervals, a statement in a *durable medium* which contains adequate information on the value and composition of the portfolio of the *fund* at the beginning and end of the period of the statement.

#### Promptness, suitable intervals and adequate information

18.5.12

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- (1) A *small authorised UK AIFM* of an *unauthorised AIF* or a *residual CIS operator* should act in accordance with the provisions in the right hand column of the periodic statements table (see ■ COBS 18.5.15E) to fulfil the requirement to prepare and issue *periodic statements* indicated in the left hand column against these provisions.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue *periodic statements*.
- (3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue *periodic statements*.

**Exceptions from the requirement to provide a periodic statement**

18.5.13

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- (1) *A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator need not provide a periodic statement:*
  - (a) (i) to an investor in the *fund* who is a *retail client* ordinarily resident outside the *United Kingdom*; or
  - (ii) to an investor in the *fund* who is a *professional client*; if the investor has so requested or the *firm* has taken reasonable steps to establish that the investor does not wish to receive it; or
  - (b) if it would duplicate a statement to be provided by someone else.
- (2) For a *firm* acting as an *outgoing ECA provider*, the exemption for *retail client* investors ordinarily resident outside the *United Kingdom* applies only to an investor in the *fund* who is a *retail client* ordinarily resident outside the *EEA*.

**Record keeping requirements**

18.5.14

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*A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must make a copy of any periodic statement it has provided in accordance with the requirement to prepare and issue periodic statements to investors in the fund. The record must be retained for a minimum period of three years.*

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Table: Periodic statements

This table belongs to ■ COBS 18.5.12 E.

Periodic statements

Suitable inter-vals	(1)	A <i>periodic statement</i> should be provided at least:	
		(a)	six-monthly; or
		(b)	once in any other period, not exceeding 12 months, which has been mutually agreed between the <i>firm</i> and the investor in the <i>fund</i> .
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:
		(i)	(A) The information set out in the table of general contents of a <i>periodic statement</i> ;
			(B) where the portfolio of the <i>fund</i> includes uncovered open positions in <i>contingent liability investments</i> , the addi-

## Periodic statements

tional information in the table listing the contents of a *periodic statement* (see COBS 18.5.18 E ) in respect of contingent liability investments; or

(ii) such information as an investor who is a *retail client* ordinarily resident outside the *United Kingdom*, or a *professional client*, has on his own initiative agreed with the *firm* as adequate.

(b) For a *firm* acting as an *outgoing ECA provider*, the words '*United Kingdom*' is replaced by '*EEA*'

## 18.5.16

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Examples of uncovered open positions include:

- (1) selling a call *option* on an *investment* not held in the portfolio;
- (2) unsettled sales of call *options* on currency in amounts greater than the portfolio's holding of that currency in cash or in *readily realisable investments* denominated in that currency; and
- (3) transactions having the effect of *selling* an index to an amount greater than the portfolio's holdings of *investments* included in that index.

## 18.5.17

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Table: General contents of a periodic statement

This table belongs to ■ COBS 18.5.15 E.

## General contents of periodic statements

1	Contents and value
	(a) As at the beginning of the account period, the total value of the portfolio of the <i>fund</i> , being either: <ol style="list-style-type: none"> <li>(i) the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately preceding period of account is made up; or</li> <li>(ii) in the case of the first <i>periodic statement</i>, the value of the assets comprised in the portfolio on the date on which the <i>firm</i> assumed responsibility for the management of the portfolio.</li> </ol>
	(b) As at the end of the account period:

## General contents of periodic statements

- (i) the number, description and value of each *investment* held on behalf of the *fund*;
- (ii) the amount of cash held on behalf of the *fund*; and
- (iii) the total value of the portfolio of the *fund*.
- 2 Basis of valuation
- A statement of the basis on which the value of each *investment* has been calculated and, if applicable, a statement that the basis for valuing a particular *investment* has changed since the previous *periodic statement*. Where any *investments* are shown in a currency other than the usual one used for valuation of the portfolio of the *fund*, the relevant currency exchange rates must be shown.
- 3 Details of any assets loaned or charged
- (a) A summary of those *investments* (if any) which were, at the closing date, loaned to any third party and those *investments* (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the *fund*; and
- (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.
- 4 Transactions and changes in composition
- Except in the case of a portfolio which aims to track the performance of an external index:
- (a) a statement that summarises the transactions entered into for the portfolio of the *fund* during the period; and
- (b) the aggregate of *money* and a summary of all investments transferred into and out of the portfolio of the *fund* during the period; and
- (c) the aggregate of any interest payments, dividends and other benefits received by the *firm* for the portfolio of the *fund* during that period.
- 5 Charges and remuneration
- If not previously advised in writing, a statement for the account period:
- (a) of the aggregate charges of the *firm* and its *associates*; and
- (b) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the trans-

## General contents of periodic statements

actions entered into, or any other services provided, for the portfolio of the *fund*.

## 6 Movement in value of portfolio

A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:

- (a) the aggregate of assets received from investors of the *fund* and added to the portfolio of the *fund*;
- (b) the aggregate of the value of assets transferred, or of amounts paid, to the *fund*;
- (c) the aggregate income received on behalf of the *fund* in respect of the portfolio; and
- (d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the *fund*.

## Notes:

For the purposes of Item 1, where the *fund* is a *property enterprise trust*, it will be sufficient for the *periodic statement* to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the *fund*, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless a *firm* could show that different bands were justifiable in the circumstances.

The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the *fund*.

A *firm* may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.

18.5.18



Table: Contents of a periodic statement in respect of contingent liability investments

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This table belongs to ■ COBS 18.5.15 E.

### Contents of a periodic statement in respect of contingent liability investments

- (1) Changes in value
 

The aggregate of *money* transferred into and out of the portfolio of the *fund* during the account period.
- (2) Open positions
 

In relation to each open position in the portfolio of the *fund* at the end of the account period, the unrealised profit or loss to the portfolio of the *fund* (before deducting or adding any *commission* which would be payable on closing out).
- (3) Closed positions
 

In relation to each transaction effected during the account period to close out a position of the *fund*, the resulting profit or loss to the portfolio of the *fund* after deducting or adding any *commission*.

(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the *fund* in each contract)
- (4) Aggregate of contents
 

The aggregate of each of the following in, or relating to, the portfolio of the *fund* at the close of business on the valuation date:

  - (a) cash;
  - (b) *collateral* value;
  - (c) management fees; and
  - (d) *commissions* attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the investor.
- (5) Option account valuations
 

In respect of each open *option* comprising the portfolio of the *fund* on the valuation date:

  - (a) the *share, future, index* or other *investment* or asset involved;

18

## Contents of a periodic statement in respect of contingent liability investments

- (b) (unless the valuation statement follows the statement for the period in which the *option* was opened) the trade price and date for the opening transaction;
- (c) the market price of the contract; and
- (d) the exercise price of the contract.

*Options* account valuations may show an average trade price and market price in respect of an *option* series where a number of contracts within the same series have been purchased on behalf of the *fund*.

## 18.6 Lloyd's

### Application

**18.6.1** **R** This section applies to a *firm* when it carries on *Lloyd's market activities*.  
**FCA**

### COBS rules that apply to Lloyd's market activities

**18.6.2** **R** Only **■** COBS 3 (Client categorisation) and the *financial promotion rules* apply when a *firm* is carrying out *Lloyd's market activities*.  
**FCA**

**18.6.3** **G** *Firms* are reminded that *syndicate* business plans may be used in ways that bring them within the definition of a *financial promotion*.  
**FCA**

### Definitions and modifications

**18.6.4** **R** When a *firm* is carrying on *Lloyd's market activities*, any reference in COBS to the term:  
**FCA**

- (1) *designated investment* is to be taken to include the following specified investments:
  - (a) the *underwriting capacity of a Lloyd's syndicate*;
  - (b) *membership of a Lloyd's syndicate*; and
  - (c) *rights to or interests in the specified investments* in (a) or (b);
- (2) *designated investment business* is to be taken to include the following *regulated activities*:
  - (a) *advising on syndicate participation at Lloyd's*;
  - (b) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*; and
  - (c) *agreeing to carry on the regulated activities* in (a) or (b).

### The Principles and Lloyd's market activities

**18.6.5** **G** Whilst COBS has limited application to *Lloyd's market activities*, firms conducting *Lloyd's market activities* are reminded that they are required to comply with the *Principles*.  
**FCA**



**18.7 Depositaries**

18.7.1

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**R**

Only the COBS provisions in the table apply to a *depositary* when acting as such, when carrying on business which is not *MiFID or equivalent third country business*:

COBS	Description
2.1	Acting honestly, fairly and professionally
2.3	Inducements, except COBS 2.3.1 R (2)(b) and COBS 2.3.2 R
4	Communication to clients including financial promotions, but only in relation to <i>communicating or approving a financial promotion</i>
11.7	Personal account dealing

## 18.8 OPS firms - non scope business

18.8.1

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COBS applies to an *OPS firm* when it carries on business which is not *MiFID* or *equivalent third country business*, with the following modifications:

- (1) references to *client* are to be taken to be references to the *OPS* or *welfare trust*, as the case may be, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on;
- (2) if an *OPS firm* is required by any *COBS rule* to provide information to, or obtain consent from, a *client*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* for whom that *firm* is acting; and
- (3) *COBS* is modified by the addition of the *rules* in the table below:

### Additional COBS rules applicable to an OPS firm

COBS	Description
16.2.6R (4)	If an <i>OPS firm</i> carries on <i>OPS activity</i> for an <i>OPS trustee</i> who is a <i>professional client</i> and who is habitually resident in the <i>United Kingdom</i> , it may rely upon the exceptions in COBS 16.2.1 R (2) or COBS 16.2.6 R (1) only if it provides a <i>periodic statement</i> to the <i>professional client</i> containing the information required by COBS 18.8.2R

18.8.2

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Where an *OPS firm* conducts *OPS activity* and is obliged to provide a *periodic statement*, the *periodic statement* must contain the information in the table below.

### Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- |     |                       |
|-----|-----------------------|
| (1) | Investment objectives |
|-----|-----------------------|

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- A statement of any investment objectives governing the mandate of the portfolio of the *occupational pension scheme* as at the closing and starting date of the *periodic statement*.**
- (2) **Details of any asset loaned or charged**
- (a) a summary of any *investments* that were, at the closing date, lent to a third party and any *investments* that were at that date charged to secure borrowings made on behalf of the portfolio; and
- (b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.
- (3) **Transactions and changes in composition**
- (a) a summary of the *transactions* entered into for the portfolio during the period and a comparison with the previous period;
- (b) the aggregate of *money* and a summary of all *investments* transferred into and out of the portfolio during the period; and
- (c) the aggregate of any interest payments, dividends and other benefits received by the firm for the portfolio during that period and a comparison with the previous period.
- (4) **Charges and remuneration**
- If not previously advised in writing, a statement for the period of account:
- (a) of the aggregate *charges* of the *firm* and its *associates*; and
- (b) of any *remuneration* received by the *firm* or its *associates* or both from a third party in respect of the *transactions* entered into, or any other services provided, for the portfolio.
- (5) **Movement in value of portfolio**
- A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity

- (a) the aggregate of assets received from the *occupational pension scheme* and added to the portfolio;
- (b) the aggregate of the value of assets transferred, or of amounts paid, to the *client*;
- (c) the aggregate income received on behalf of the *client* in respect of the portfolio; and
- (d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.

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18.8.3

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■ COBS 8 (Client agreements) does not apply to an *OPS firm*, where the *OPS firm* is carrying on *designated investment business* as part of its *OPS activity* in relation to an *occupational pension scheme* of which it is a *trustee*.

 18.9 ICVCs

18.9.1

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(1) The *financial promotion rules* in COBS apply to an ICVC, except that COBS 4.13 (UCITS) applies only to an ICVC that is a *UCITS scheme*.

(2) ■ COBS 14.2 (Providing product information to clients) applies to an ICVC that is a *UCITS scheme*.

18.9.2

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*Firms* should note that the *operator* of an ICVC when it is undertaking *scheme management activity* will be subject to ■ COBS 18.5.2R.



**18.10 UCITS qualifiers, AIFM qualifiers and service companies**

18.10.1  
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**R**

The COBS provisions in the table apply to a *UCITS qualifier* and a *service company*:

COBS	Description
4	Communications to clients, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-Commerce
12.4	Investment Research recommendations: required disclosures

18.10.2  
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**R**

■ COBS 4 and ■ COBS 12.4 apply to an *AIFM qualifier*.

## 18.11 Authorised professional firms

- 18.11.1** **R** COBS applies to an *authorised professional firm*, except that its application in relation to *non-mainstream regulated activities* and *financial promotion* is modified as set out below.
- FCA**
- 18.11.2** **R** COBS does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:
- FCA**
- (1) the *fair, clear and not misleading rule* applies;
  - (2) the *financial promotion rules* apply as modified below;
  - (3) **■** COBS 7 (Insurance mediation) applies but only if the *designated professional body* of the *firm* does not have rules approved by the FCA under section 332(5) of the *Act* that implement articles 12 and 13 of the *Insurance Mediation Directive* and that apply to the *firm*;
  - (4) **■** COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
  - (5) **■** COBS 5.2 (E-commerce) applies.
- 18.11.3** **R** The *financial promotion rules* do not apply to an *authorised professional firm* in relation to the *communication* of a *financial promotion* if:
- FCA**
- (1) the *firm's* main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));
  - (2) the *financial promotion* is made for the purposes of and incidental to the promotion or provision by the *firm* of its professional services or its *non-mainstream regulated activities*; and
  - (3) the *financial promotion* is not *communicated* on behalf of another *person* who would not be able lawfully to *communicate* the *financial promotion* if he were acting in the course of business;

however, a *firm* may use the exemptions for promoting *unregulated collective investment schemes* in ■ COBS 4 (Communicating with clients, including financial promotions) if it wishes.

18.11.4

G

The *rules* on *approving financial promotions* continue to apply.

FCA

18



Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		materially from the charge indicated for that service in the <i>firm's</i> charging structure, the reasons for that difference.		
COBS 6.1C.21 R	Consultancy charging and remuneration	(1) the <i>firm's</i> charging structure;  (2) the total <i>consultancy charge</i> payable by each employer.  (3) if the total <i>consultancy charge</i> for a particular service has varied materially from that indicated in the <i>firm's</i> charging structure, the reasons for that difference.	(1) when the charging structure is first used;  (2) from the date of disclosure;	See COBS 6.1C.21 R
COBS 6.3.11 R	<i>Menu</i>	Copy of each <i>menu</i>	From date on which it was updated or replaced	5 years
COBS 8.1.4 R	<i>Client agreements</i>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or the duration of the relationship with the <i>client</i> . Records relating to a <i>pension transfer</i> , <i>pension opt-out</i> or <i>FSAVC</i> must be retained indefinitely
COBS 9.2.9 R	Recommendations on <i>friendly society life policies</i> .	Why the recommendation is considered suitable	Date of recommendation.	5 years.
COBS 9.5.1 G	Suitability	<i>Client</i> information for <i>suitability report</i> and <i>suitability report</i>	From date of <i>suitability report</i>	See COBS 9.5.2 R.
COBS 9.6.19 R	<i>Basic advice</i>	Decision to give <i>basic advice</i> , <i>range</i> used and <i>basic advice</i> summary prepared for <i>retail client</i>	Date on which <i>basic advice</i> given	5 years
COBS 9.6.20 R	<i>Scope of basic advice (stakeholder products)</i>	<i>Scope of basic advice</i> and its <i>range</i> (or <i>ranges</i> ) of <i>stakeholder products</i>	Date on which the <i>scope</i> and <i>range</i> becomes relevant	5 years from the date replaced by more up-to-date record
COBS 10.7.1 G	Appropriateness	<i>Client</i> information obtained in making as-	Date of assessment	5 years

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		assessment of appropriateness and the appropriateness assessment		
COBS 11.3.2 R	Client orders	Orders executed for <i>clients</i>	See COBS 11.5	5 years
COBS 11.5.1 EU	<i>Client orders and decisions to deal in portfolio management</i>	Orders received from <i>clients</i> and decisions taken - details in COBS 11.5.1 EU	See COBS 11.5.1 EU	5 years
COBS 11.5.2 EU	<i>Client orders</i>	Execution of orders	See COBS 11.5.1 EU	5 years
COBS 11.5.3 EU	<i>Client orders</i>	Transmission details (see COBS 11.5.3 EU)	Date of transmission	5 years
COBS 11.6.19 R	Prior and periodic disclosure	Prior and periodic disclosure on use of dealing commission	From date of disclosure to <i>customers</i>	5 years
COBS 11.7.4 R	Personal account dealing	Notifications by outsourcing provider and authorisation or prohibition.	Date of notification or decision.	5 years
COBS 11.8.5 R	Telephone conversations and electronic communications subject to the taping obligation (see COBS 11.8.5 R)	Telephone conversations and electronic communications recorded under COBS 11.8.5 R	When the conversation or electronic communication is made, sent or received	6 months
COBS 12.4.6 R	<i>Research recommendations</i>	Basis of substantiation of <i>research recommendation</i>	Date of recommendation	5 years
COBS 15.3.4 R	Cancellation: exercise of right	Exercise of the right to cancel or withdraw	Date of exercise	As specified in COBS 15.3.4 R(1), (2) and (3)
COBS 16.2.7 R	Confirmation to <i>clients</i>	Copy of a confirmation	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> - 5 years Other business - 3 years
COBS 16.3.11 R	<i>Periodic statements</i>	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> - 5 years Other business - 3 years
COBS 16.6.6 R	Life insurance contracts	Information to be provided during the terms of the contract	When information is given	5 years after information given
COBS 18.5.14 R	<i>Residual CIS operators and small authorised UK AIFMs of an unauthorised AIF</i>	<i>Periodic statement</i> to be provided to <i>participants</i>	When provided	3 years

# Client Assets



## 6.2 Holding of client assets

6.2.1

FCA

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### Requirement to protect clients' safe custody assets

A *firm* must, when holding *safe custody assets* belonging to *clients*, make adequate arrangements so as to safeguard *clients'* ownership rights, especially in the event of the *firm's* insolvency, and to prevent the use of *safe custody assets* belonging to a *client* on the *firm's* own account except with the *client's* express consent.

[Note: article 13(7) of *MiFID*]

6.2.2

FCA

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### Requirement to have adequate organisational arrangements

A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' safe custody assets*, or the rights in connection with those *safe custody assets*, as a result of the misuse of the *safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[Note: article 16(1)(f) of the *MiFID implementing Directive*]

6.2.3

FCA

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### Registration and recording of legal title

To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* in the name of:

- (1) the *client* (or, where appropriate, the *trustee firm*), unless the *client* is an *authorised person* acting on behalf of its *client*, in which case it may be registered in the name of the *client* of that *authorised person*;
- (2) a *nominee company* which is controlled by:
  - (a) the *firm*;
  - (b) an *affiliated company*;
  - (c) a *recognised investment exchange*; or
  - (d) a third party with whom *financial instruments* are deposited under ■ CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties);

- (3) any other third party if:
- (a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
  - (b) the *firm* has notified the *client* in writing;
- (4) the *firm* if:
- (a) the *safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and
  - (b) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*.

6.2.3A

FCA

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If:

- (1) the *safe custody asset* is an *emission auction product* that is a *financial instrument*; and
- (2) it is not practicable or possible for a *firm* to effect registration or recording of legal title in this asset in the manner set out in ■ CASS 6.2.3 R,

the *firm* must register or record legal title in its name provided it has notified the *client* in writing.

6.2.4

FCA

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A *firm* must accept the same level of responsibility to its *client* for any *nominee company* controlled by the *firm* with respect of any requirements of the *custody rules*.

6.2.5

FCA

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A *firm* may register or record legal title to its own *applicable assets* in the same name as that in which legal title to a *safe custody asset* is registered or recorded, but only if:

- (1) the *firm's applicable assets* are separately identified in the *firm's* records from the *safe custody assets*; or
- (2) the *firm* registers or records a *safe custody asset* in accordance with ■ CASS 6.2.3 R (4).

# Supervision



# Supervision

## Supervision

<b>SUP 1</b>	<b>[Deleted]</b>
1.1	[Deleted]
1.2	[Deleted]
1.3	[Deleted]
1.4	[Deleted]
1.5	[Deleted]
<b>SUP 1A</b>	<b>The FCA's approach to supervision</b>
1A.1	Application and purpose
1A.2	Introduction
1A.3	The FCA's approach to supervision
1A.4	Tools of supervision
<b>SUP 2</b>	<b>Information gathering by the appropriate regulator on its own initiative</b>
2.1	Application and purpose
2.2	Information gathering by the appropriate regulator on its own initiative: background
2.3	Information gathering by the appropriate regulator on its own initiative: cooperation by firms
2.4	'Mystery shopping'
<b>SUP 3</b>	<b>Auditors</b>
3.1	Application
3.2	Purpose
3.3	Appointment of auditors
3.4	Auditors' qualifications
3.5	Auditors' independence
3.6	Firms' cooperation with their auditors
3.7	Notification of matters raised by auditor
3.8	Rights and duties of auditors
3.9	[deleted]
3.10	Duties of auditors: notification and report on client assets
3.11	Review of auditor's client assets report
3 Annex 1	SUP 3 Annex 1
<b>SUP 4</b>	<b>Actuaries</b>

## Chapter 2

# Information gathering by the appropriate regulator on its own initiative

## 2.1 Application and purpose

### Application

**2.1.1** **R** The application of this chapter is the same as the application of *Principle 11 (Relations with regulators)*.  
**FCA PRA**

**2.1.2** **G** ■ PRIN 3 (Rules about application) specifies to whom, to what and where *Principle 11* applies.  
**FCA**

### Purpose

**2.1.3** **G** Achieving the *regulatory objectives* involves the *FCA* informing itself of developments in *firms* and in markets. The *Act* requires the *FCA* to maintain arrangements for supervising *authorised persons* (section 1L(1)). The *Act* also requires the *FCA* to take certain steps to cooperate with other relevant bodies and regulators (section 354A ). For these purposes, the *FCA* needs to have access to a broad range of information about a *firm's* business.  
**FCA**

**2.1.4** **G** The *FCA* receives the information in ■ SUP 2.1.3 G through a variety of means, including notifications by *firms* (see ■ SUP 15) and regular reporting by *firms* (see ■ SUP 16). This chapter is concerned with the methods of information gathering that the *FCA* may use on its own initiative in the discharge of its functions under the *Act*. This chapter does not deal with the information gathering powers that the *FCA* has under the *Unfair Terms Regulations*. These are dealt with in *UNFCOG*.  
**FCA**

**2.1.5** **G** Part XI of the *Act* (Information Gathering and Investigations) gives the *FCA* statutory powers, including:

- (1) to require the provision of information (see sections 165 and ■ EG 3 );
- (2) to require reports from *skilled persons* (see section 166 and ■ SUP 5);
- (3) to appoint investigators (see sections 167, 168 and 169 of the *Act* and ■ EG 3 ); and
- (4) to apply for a warrant to enter premises (see section 176 of the *Act* and ■ EG 4 ).

2.1.6

FCA

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The *FCA* prefers to discharge its functions by working in an open and cooperative relationship with *firms*. The *FCA* will look to obtain information in the context of that relationship unless it appears that obtaining information in that way will not achieve the necessary results, in which case it will use its statutory powers. The *FCA* has exercised its *rule-making* powers to make *Principle 11* which requires that a *firm* must deal with its regulators in an open and cooperative way, and must disclose to the *FCA* appropriately anything relating to the *firm* of which the *FCA* would reasonably expect notice.

2.1.7

FCA

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The *FCA* operates in the context of the *Act* and the general law. The purpose of ■ SUP 2.2 is to explain how certain provisions of the *Act* and the general law are relevant to the *FCA*'s methods of information gathering described in ■ SUP 2.3 and ■ SUP 2.4.

2.1.8

FCA

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The purpose of ■ SUP 2.3 is to amplify *Principle 11* in the context of information gathering by the *FCA* on its own initiative in the discharge of its functions under the *Act*. ■ SUP 2.3 therefore sets out, in *guidance on Principle 11* and in *rules*, how the *FCA* expects *firms* to deal with the *FCA* in that context, including the steps that a *firm* should take with a view to ensuring that certain connected persons should also cooperate with the *FCA*.

2.1.9

FCA

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The purpose of ■ SUP 2.4 is to explain a particular method of information gathering used by the *FCA*, known as "mystery shopping". Information about how a *firm* sells financial products can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a *firm* in the role of potential retail *consumers* on the *FCA*'s initiative. The *FCA* may seek information about particular issues or the activities of individual *firms* by means of mystery shopping.

## 2.2 Information gathering by the appropriate regulator on its own initiative: background

### Link to the statutory information gathering and investigation powers

2.2.1

FCA PRA

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Breaching *Principle 11*, or the *rules* in this chapter, makes a *firm* liable to regulatory sanctions, including discipline under Part XIV of the *Act* (Disciplinary Measures), and may be relevant to the use of the *appropriate regulator's* other powers, including the statutory information gathering and investigation powers (see further ■ PRIN 1.1.7 G to ■ PRIN 1.1.9 G). But, unlike a breach of a requirement imposed under the statutory powers listed in ■ SUP 2.1.5 G, a breach of *Principle 11* or a *rule*:

- (1) is not a criminal offence; and
- (2) cannot lead to a *person* being treated as if in contempt of court (see section 177 of the *Act* (Offences)).

2.2.2

FCA PRA

G

Neither *Principle 11* nor ■ SUP 2.3.5 R (1) (Access to premises) enable the *appropriate regulator* to force access to premises.

### Banking confidentiality and legal privilege

2.2.3

FCA

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The *FCA* would not normally seek to gather information using the methods described in ■ SUP 2.3 or ■ SUP 2.4 in a situation where the *FCA* could not have obtained it under the powers in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *FCA* would not normally seek such information using the methods described in ■ SUP 2.3 or ■ SUP 2.4; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

2.2.3A

PRA

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The *PRA* would not normally seek to gather information using the methods described in ■ SUP 2.3 in a situation where the *PRA* could not have obtained it under the powers

in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *PRA* would not normally seek such information using the methods described in ■ SUP 2.3; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

**Confidentiality of information**

2.2.4  
FCA

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When the *FCA* obtains confidential information using the methods of information gathering described in ■ SUP 2.3 or ■ SUP 2.4, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *FCA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

2.2.4A  
PRA

G

When the *PRA* obtains confidential information using the methods of information gathering described in ■ SUP 2.3, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *PRA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

**Admissibility of information in proceedings**

2.2.5  
FCA

G

Information obtained by the *FCA* using the methods described in ■ SUP 2.3 and ■ SUP 2.4 is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.

2.2.5A  
PRA

G

Information obtained by the *PRA* using the methods described in ■ SUP 2.3 is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.

## 2.3 Information gathering by the appropriate regulator on its own initiative: cooperation by firms

### Introduction: Methods of information gathering requiring cooperation

2.3.1

FCA

G

The *appropriate regulator* uses various methods of information gathering on its own initiative which require the cooperation of *firms*:

- (1) Visits may be made by representatives or appointees of the *appropriate regulator*. These visits may be made on a regular basis, on a sample basis, for special purposes such as theme visits (looking at a particular issue across a range of *firms*), or when the *appropriate regulator* has a particular reason for visiting a *firm*. Appointees of the *appropriate regulator* may include persons who are not *appropriate regulator* staff, but who have been appointed to undertake particular monitoring activities for the *appropriate regulator* (paragraph 6(2) of Schedule 1 to the *Act*). The *appropriate regulator* needs to have access to a *firm's documents*, personnel and business premises to carry out a visit.
- (2) The *appropriate regulator* may seek meetings at the *appropriate regulator's* offices or elsewhere.
- (3) The *appropriate regulator* may seek information or request *documents* by telephone, at meetings or in writing, including by electronic communication.

2.3.2

FCA PRA

G

The *appropriate regulator* expects to request meetings or access to business premises during reasonable business hours. The *appropriate regulator* also normally expects to be able to give reasonable notice to a *firm* or connected person when it seeks information, *documents*, meetings or access to business premises. On rare occasions, however, the *appropriate regulator* may seek access to premises without notice. The prospect of unannounced visits is intended to encourage *firms* to comply with the requirements and standards under the *regulatory system* at all times.

### Access to a firm's documents and personnel

2.3.3

FCA PRA

G

In complying with *Principle 11*, the *appropriate regulator* considers that a *firm* should, in relation to the discharge by the *appropriate regulator* of its functions under the *Act*:

- (1) make itself readily available for meetings with representatives or appointees of the *appropriate regulator* as reasonably requested;
- (2) give representatives or appointees of the *appropriate regulator* reasonable access to any records, files, tapes or computer systems, which are within the

*firm's* possession or control, and provide any facilities which the representatives or appointees may reasonably request;

- (3) produce to representatives or appointees of the *appropriate regulator* specified *documents*, files, tapes, computer data or other material in the *firm's* possession or control as reasonably requested;
- (4) print information in the *firm's* possession or control which is held on computer or on microfilm or otherwise convert it into a readily legible *document* or any other record which the *appropriate regulator* may reasonably request;
- (5) permit representatives or appointees of the *appropriate regulator* to copy *documents* or other material on the premises of the *firm* at the *firm's* reasonable expense and to remove copies and hold them elsewhere, or provide any copies, as reasonably requested; and
- (6) answer truthfully, fully and promptly all questions which are reasonably put to it by representatives or appointees of the *appropriate regulator*.

**2.3.4**

**FCA PRA**

**G**

In complying with *Principle 11*, the *appropriate regulator* considers that a *firm* should take reasonable steps to ensure that the following *persons* act in the manner set out in

■ SUP 2.3.3 G:

- (1) its *employees*, agents and *appointed representatives*; and
- (2) any other members of its *group*, and their *employees* and agents.

(See also, in respect of *appointed representatives*, ■ SUP 12.5.3 G (2)).

**Access to premises**

**2.3.5**

**FCA PRA**

**R**

(1) A *firm* must permit representatives of the *appropriate regulator*, or *persons* appointed for the purpose by the *appropriate regulator*, to have access, with or without notice, during reasonable business hours to any of its business premises in relation to the discharge of the *appropriate regulator's* functions under the *Act* or its obligations under the *short selling regulation* .

(2) A *firm* must take reasonable steps to ensure that its agents, suppliers under *material outsourcing* arrangements and *appointed representatives* permit such access to their business premises. (See also, in respect of *appointed representatives*, ■ SUP 12.5.3 G (2)).

**2.3.6**

**FCA PRA**

**G**

The *appropriate regulator* normally expects to give reasonable notice of a visit (See

■ SUP 2.3.2 G).

**Suppliers under material outsourcing arrangements**

**2.3.7**

**FCA PRA**

**R**

A *firm* must take reasonable steps to ensure that each of its suppliers under *material outsourcing* arrangements deals in an open and cooperative way with the *appropriate regulator* in the discharge of its functions under the *Act* in relation to the *firm*.

**2.3.8**  
**FCA PRA**

**G**

The cooperation that a *firm* is expected to procure from such suppliers is similar to that expected of the *firm*, in the light of the *guidance* in ■ SUP 2.3.3 G to ■ SUP 2.3.4 G, but does not extend to matters outside the scope of the *appropriate regulator's* functions in relation to the *firm*. ■ SUP 2.3.5 R (2) also requires a *firm* to take reasonable steps regarding access to the premises of such suppliers.

**2.3.9**  
**FCA PRA**

**G**

When a *firm* appoints or renews the appointment of a supplier under a *material outsourcing* arrangement, it should satisfy itself that the terms of its contract with the supplier require the supplier to give the *appropriate regulator* access to its premises as described in ■ SUP 2.3.5 R (2), and to cooperate with the *appropriate regulator* as described in ■ SUP 2.3.7 R. The *appropriate regulator* does not consider that the 'reasonable steps' in ■ SUP 2.3.7 R would require a *firm* to seek to change a contract, already in place either when that *rule* : (1) was made by the *appropriate regulator* on 21 June 2001; or (2) was designated by the *appropriate regulator* , until renewal of the contract.

**2.3.10**  
**FCA PRA**

**G**

The *appropriate regulator* will normally seek information from the *firm* in the first instance, but reserves the right to seek it from a supplier under a *material outsourcing* arrangement if the *appropriate regulator* considers it appropriate.

**Information requested on behalf of other regulators**

**2.3.11**  
**FCA PRA**

**G**

The *appropriate regulator* may ask a *firm* to provide it with information at the request of or on behalf of other regulators to enable them to discharge their functions properly. Those regulators may include *overseas regulators* or the *Takeover Panel*. The *appropriate regulator* may also, without notifying a *firm*, pass on to those regulators information which it already has in its possession. The *appropriate regulator's* disclosure of information to other regulators is subject to the obligation described in ■ SUP 2.2.4 G (Confidentiality of information).

**2.3.12**

**G**

[Deleted]

**2.3.12A**  
**FCA**

**G**

In complying with *Principle 11*, the *FCA* considers that a *firm* should cooperate with it in providing information for other regulators. Sections 169 (Investigations etc. in support of overseas regulator) of the *Act* gives the *FCA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ■ DEPP 7 and ■ EG 3).

**2.3.12B**  
**PRA**

**G**

In complying with *Principle 11*, the *PRA* considers that a *firm* should cooperate with it in providing information for other regulators. Sections 169 (Investigations etc. in support of overseas regulator) and 169A (Support of overseas regulator with respect to financial stability) of the *Act* give the *PRA* certain statutory powers to obtain information and appoint investigators for *overseas regulators* if required (see ■ FINMAR 1).



## 2.4 'Mystery shopping'

2.4.1  
FCA

G

Representatives or appointees of the *FCA* (which may include individuals engaged by a market research firm) may approach a *firm*, its agents or its *appointed representatives* in the role of potential retail *consumers* . This is known as 'mystery shopping'.

2.4.2  
FCA

G

The *FCA* uses mystery shopping to help it protect *consumers*. This may be by seeking information about a particular practice across a range of *firms* ( ■ SUP 2.4.3 G (1)) or the practices of a particular *firm* (■ SUP 2.4.3 G (2)). One of the risks *consumers* face is that they may be sold financial products which are inappropriate to them. A problem in protecting *consumers* from this risk is that it is very difficult to establish after the event what a *firm* has said to a 'genuine' *consumer* in discussions. By recording what a *firm* says in discussions with a 'mystery shopper', the *FCA* can establish a *firm's* normal practices in a way which would not be possible by other means.

2.4.3  
FCA

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The *FCA* may carry out mystery shopping:

- (1) together with a programme of visits to obtain information about a particular practice, looking at a particular issue across a range of *firms*, when the *FCA* may advise the *firms* of the issues beforehand; the practice being scrutinised may be that of *firms* or a class of *firms* in carrying on *regulated activities* or *ancillary activities* or in *communicating* or *approving financial promotions*;
- (2) together with focused visits (concentrating on particular aspects of a *firm's* business) to obtain information about the practices of a *firm*; these practices may be in carrying on *regulated activities* or *ancillary activities* or in *communicating* or *approving financial promotions* when the *FCA* has particular concerns about those practices;
- (3) using recording devices, telephonic or other communications; the *FCA* may monitor and store the contents of the materials obtained by these devices or communications.

2.4.4  
FCA

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Telephone calls and meetings held during mystery shopping will be recorded. The *FCA* expects that any mystery shopping it arranges will be conducted in accordance with the Market Research Society Code of Practice.

2.4.5  
FCA

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The *FCA* may use the information it obtains from mystery shopping in support of both its supervisory functions and its enforcement functions. This includes sharing any information so obtained with *firms* and *approved persons*.



Supervision

# Chapter 3

# Auditors

## 3.1 Application

### 3.1.1

FCA PRA

R

This chapter applies to:

- (1) every *firm* within a category listed in column (1) of the table in ■ SUP 3.1.2 R; and
- (2) the external auditor of such a *firm* (if appointed under ■ SUP 3.3 or appointed under or as a result of a statutory provision other than in the *Act*);

in accordance with column (2) or (3) of that table, except as described in the remainder of this section.

### 3.1.1A

FCA

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For the avoidance of doubt, this chapter does not apply to the following *firms* if they do not hold *client money* or client assets and do not appoint an auditor under or as a result of a statutory provision other than in the *Act*:

- (1) *authorised professional firms*;
- (2) *energy market participants*, including *oil market participants* to whom ■ IPRU(INV) 3 does not apply;
- (3) *exempt insurance intermediaries*;
- (4) *insurance intermediaries* not subject to ■ SUP 3.1.2 R(10);
- (5) *investment management firms*;
- (6) *home finance administrators*;
- (7) *home finance intermediaries*;
- (8) *home finance providers*;
- (9) *personal investment firms*, including *small personal investment firms*;
- (10) *securities and futures firms*; and
- (11) *service companies*.

3.1.2

FCA PRA

**R** Table Applicable sections (see ■ SUP 3.1.1 R)

This table and the provisions in SUP 3 should be read in conjunction with GEN 2.2.23 R to GEN 2.2.25 G. In particular, the PRA does not apply any of the provisions in SUP 3 in respect of FCA-authorized persons. SUP 3.10 and SUP 3.11 are applied by the FCA only.

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1) <i>Authorized professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5 or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Notes 1 and 6)	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.10
(2) <i>Authorized professional firm</i> not within (1) to which the <i>custody chapter</i> or <i>client money chapter</i> applies	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(3) <i>Authorized professional firm</i> not within (1) or (2) which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(4) <i>Bank, building society or dormant account fund operator</i> which in each case carries on <i>designated investment business</i> (Notes 2A and 6)	SUP 3.1-SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(5) <i>Bank , building society or a dormant account fund operator</i> which in each case does not carry on <i>designated investment business</i> (Note 2A)	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(5A) <i>Credit union</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(6) <i>Insurer, the Society of Lloyd's, underwriting agent or members' adviser , UK ISPV (Note 5)</i>	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(7) <i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm) , securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm ) or collective portfolio management firm that is an external AIFM which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3 and 6 )</i>	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.10
(7A) <i>Investment management firm (other than an exempt CAD firm) , personal investment firm (other than a small personal investment firm or exempt CAD firm), securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm ) or collective portfolio management firm that is an ex-</i>	SUP 3.1 - SUP 3.7, SUP 3.10 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
<i>ternal AIFM not within (7) to which the custody chapter or client money chapter applies</i>		
(7AA) A firm that has exercised an opt in to CASS in accordance with CASS 1.4.9 R	SUP 3.1 to SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7B) Collective portfolio management firm that is a UCITS firm or an internally managed AIF (Note 6)	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8 , SUP 3.10
(7C) UK MiFID investment firm, which has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3B and 6)	SUP 3.1 - 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(7D) Sole trader or partnership that is a UK MiFID investment firm (other than an exempt CAD firm) (Notes 3C and 6)	SUP 3.1 - SUP 3.7, SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(8) Small personal investment firm or service company which, in either case, has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(9) Home finance provider which has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1 - SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(10) <i>Insurance intermediary (other than an exempt insurance intermediary) to which the insurance client money chapter (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</i>	SUP 3.1 - SUP 3.7 , SUP 3.11	SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10
(11) <i>Exempt insurance intermediary and insurance intermediary not subject to SUP 3.1.2 R(10) which has an auditor appointed under or as a result of a statutory provision other than in the Act</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
(12) <i>Home finance intermediary or home finance administrator which has an auditor appointed under or as a result of a statutory provision other than in the Act.</i>	SUP 3.1, SUP 3.2, SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8

Note 1 = This chapter applies to an *authorised professional firm* in row (1) (and its auditor) as if the *firm* were of the relevant type in the right-hand column of *IPRU(INV) 2.1.4R*.

Note 2 [deleted]

Note 2A = For this purpose, *designated investment business* does not include either or both:

(a) *dealing* which falls within the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc) (or agreeing to do so); and

(b) *dealing in investments as principal* (or agreeing to do so):

(i) by a *firm* whose *permission to deal in investments as principal* is subject to a *limitation* to the effect that the *firm*, in carrying on this *regulated activity*, is limited to entering into transactions in a manner which, if the *firm* was an *unauthorised person*, would come within article 16 of the

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
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***Regulated Activities Order (Dealing in contractually based investments); and***

**(ii) in a manner which comes within that *limitation*;**

**having regard to article 4(4) of the *Regulated Activities Order (Specified activities: general)* .**

**Note 3 = This note applies in relation to an *oil market participant* to which *IPRU(INV) 3* does not apply and in relation to an *energy market participant* to which *IPRU(INV) 3* does not apply. In SUP 3:**

**(a) only SUP 3.1, SUP 3.2 and SUP 3.7 are applicable to such a *firm*; and**

**(b) only SUP 3.1, SUP 3.2 and SUP 3.8 are applicable to its auditor;**

**and, in each case, only if it has an auditor appointed under or as a result of a statutory provision other than in the *Act*.**

**Note 3A [deleted]**

**Note 3B = *UK MiFID investment firms* include *exempt CAD firms*. An *exempt CAD firm* that has opted into *MiFID* can benefit from the audit exemption for small companies in the Companies Act legislation if it meets the relevant criteria in that legislation and fulfils the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. If a *firm* does so benefit then SUP 3 will not apply to it. For further details about *exempt CAD firms*, see PERG 13, Q58.**

**Note 3C = A *sole trader* or a *partnership* that is a *UK MiFID investment firm* to which the *custody chapter* or *client money chapter* applies must have its annual accounts audited.**

**Note 4 = The *client money* audit requirement in SUP 3.1.2 R(10) therefore applies to all *insurance intermediaries* except:**

- those which do not hold *client money* or *other client assets* in relation to *insurance mediation activities*; or
- those which only hold up to, but not exceeding, £30,000 of *client money* under a statutory trust arising under CASS 5.3.

***Insurance intermediaries* which, in relation to *insurance mediation activities*, hold no more than that amount of *client money* only on a statutory trust are *exempt insurance intermediaries*.**

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
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**Note (5) = In row (6):**

(a) SUP 3.1 - SUP 3.7 applies to a *managing agent* in respect of its own business and in respect of the *insurance business* of each *syndicate* which it manages; and

(b) SUP 3.1, SUP 3.2 and SUP 3.8 apply to the auditors of a *managing agent* and the auditors of the *insurance business* of each *syndicate* which the *managing agent* manages.

**Note 6 =** Where SUP 3.11 applies to a *firm*, and SUP 3.10 applies to the auditor of that *firm*, those sections apply whether or not that *firm's permission* prevents it from holding *client money* or *custody assets* and whether or not it holds *client money* or *custody assets*. A *collective portfolio management firm* that is an *internally managed AIF* is required to appoint an auditor under FUND 3.3.6 R (2) (Annual report of an AIF) because the *AIFM* is also an *AIF*.

3.1.2A  
FCA PRA

**G** If a *firm* falls within more than one row in column (1) of the table in ■ SUP 3.1.2 R, ■ SUP 3.1.1 R requires the *firm* and its external auditor to comply with all the sections referred to in column (2) or (3).

**Incoming firms**

3.1.3  
FCA PRA

**R** This chapter applies to an *incoming EEA firm* (and the auditor of such a *firm*) only if it has a *top-up permission*.

3.1.4  
FCA PRA

**G** The application of ■ SUP 3.10 to the auditor of an *incoming EEA firm* with a *top-up permission* is qualified in ■ SUP 3.10.3 R.

3.1.5  
FCA PRA

**R** This chapter does not apply to an *incoming Treaty firm*, which:

- (1) does not have a *top-up permission*; and
- (2) is not required to comply with the *client asset rules*.

3.1.6  
FCA PRA

**G** The application of ■ SUP 3.7 to an *incoming Treaty firm* or an auditor of such a *firm* is further qualified in ■ SUP 3.7.1 G .

**Auditors of lead regulated firms**

3.1.7  
FCA

**G** The application of ■ SUP 3.10 to the auditor of a *lead regulated firm* is qualified in ■ SUP 3.10.3 R.

3.1.8 **G** [deleted]

**Material elsewhere in the Handbook**

3.1.9 **G** A *firm* which is mentioned in ■ SUP 3.1.10 G should see the Prudential Standards part of the *Handbook* for further provisions on auditors as set out in ■ SUP 3.1.10 G.

**FCA PRA**

3.1.10 **G** Table Other relevant sections of the Handbook (see ■ SUP 3.1.9 G)

**FCA PRA**

<i>Friendly society</i>	<i>IPRU(FSOC)</i>
<i>Insurer (other than a friendly society)</i>	<i>IPRU(INS)</i>
<i>Investment management firm, personal investment firm, securities and futures firm and collective portfolio management firm (other than IFPRU investment firms and BIPRU firms)</i>	<i>IPRU(INV)</i>
<i>UCITS firm</i>	<i>(UPRU)</i>
<i>Society of Lloyd's and Lloyd's managing agents</i>	<i>IPRU(INS)</i>

**Lloyd's**

**Enabling provision and application**

3.1.11 **G** The *insurance market direction* in this chapter is given under section 316(1) of the Act (Direction by a regulator) and applies to *members*.

**PRA**

**Purpose**

3.1.12 **G** The *insurance market direction* in this chapter is intended to enable the *rules* in ■ SUP 3 and ■ SUP 4 to be applied to a *managing agent* in respect of the *insurance business* of each *syndicate* which it manages.

**PRA**

**Insurance market direction on rules concerning auditors and actuaries**

- 3.1.13 **D**
- (1) With effect from 1 January 2005, Part XXII of the *Act* (Auditors and Actuaries) applies to the carrying on of *insurance business* by *members* as modified by paragraph (3).
  - (2) For the purposes of (1) "insurance business" means the *regulated activities of effecting or carrying out contracts of insurance* written at Lloyd's.
  - (3) Regulations made by the Treasury under section 342(5) and section 343(5) of Part XXII of the *Act* apply only to *actuaries* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*, in relation to the *long-term insurance business* of that *syndicate*.
  - (4) In Part XXII of the *Act* (Auditors and Actuaries) as applied by this *insurance market direction*:
    - (a) a reference to an auditor of an *authorised person* is to be read as including an auditor appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*; and

(b) a reference to an *actuary* acting for an *authorised person* is to be read as including an *actuary* appointed by a *managing agent* in respect of the *insurance business* of a *syndicate*.

3.1.14

PRA

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Part XXII (Auditors and Actuaries) is a *core provision* mentioned in section 317(1) of the *Act* (The core provisions).

3.1.15

PRA

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Section 317(2) of the *Act* (The core provisions) provides that references in an applied *core provision* to an *authorised person* are to be read as references to a *person* in the class to which the *insurance market direction* applies. The effect of this, and of the *insurance market direction* set out at ■ SUP 3.1.13 D, is that Part XXII of the *Act* (Auditors and Actuaries), applies also to auditors and *actuaries* who are appointed to report on the underwriting business of *members*. Part XXII is modified in its application to *members* by paragraph (3) of ■ SUP 3.1.13 D with the effect that the regulations made under sections 342(5) and 343(5) of the *Act* relating to communications by *actuaries* will only apply where the *actuary* is appointed to evaluate the *long-term insurance business* of the *syndicate*. The regulations made under sections 342(5) and 343(5) in relation to communications by auditors will apply in relation to both *general insurance business* and *long-term insurance business*.

3.1.16

PRA

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■ SUP 3.3 sets out *rules* the effect of which is to require a *managing agent* to appoint an auditor in respect of its own business and the *insurance business* of each *syndicate* which it manages.

3.1.17

PRA

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References in ■ SUP 3, as applied by ■ SUP 3.1.2 R, to a *firm* include, where appropriate:

- (1) a *managing agent*; and
- (2) one or more *members* carrying on *insurance business* at Lloyd's through a *syndicate*,

and references to an *actuary* of a *firm* should be read accordingly.

3.1.18

PRA

G

■ SUP 4.6 sets out *rules* the effect of which is to require a *managing agent* to appoint an *actuary* in respect of the *insurance business* of each *syndicate* which it manages.

3. (1) As a first step, the *firm* should apply to the relevant regulator for a variation of its *Part 4A permission* to limit the *regulated activity*, after the Lloyd's *syndicates* have been closed, to permit no new business. Once the *syndicates* have been closed, the *firm's* consent from the *Society* to manage *syndicates* will also lapse
- (2) After a period of one year from the date of closure of the Lloyd's *syndicates* the *firm* may apply to vary its *Part 4A permission*, to remove the *regulated activity* or to cancel its *Part 4A permission* entirely, as appropriate. At this time, a *firm's* approval from the *Society of Lloyd's* as a *managing agent* will cease.
4. *Firms* which wish to discuss these procedures in more detail should contact their appropriate supervisory contact and the *Society of Lloyd's*, as appropriate.

**FCA PRA**

1. As stated in SUP 6.2.9 G, where a *bank*, or other *firm* with permission that includes *accepting deposits*, wishes to cancel its *Part 4A permission*, it will generally need to apply for a variation of that *permission* while it winds down its business.
2. When a *firm* is winding down its business activities, it may be appropriate to:
  - (1) vary its *Part 4A permission* by imposing a *limitation* that no new *deposits* will be accepted; or
  - (2) vary its *Part 4A permission* by imposing a *limitation* on the purchasing of *investments* for its own account; or
  - (3) impose on it *requirements* concerning solvency.
3. After a *bank* has discussed with the *appropriate regulator* the type of variation of *Part 4A permission* and/or *requirement* the *bank* requires to wind down its business, it should make an application as directed in SUP 6.3.15 D and follow the *guidance* and procedures in SUP 6 as well as the additional procedures set out in this annex.
4. As appropriate, one or more of the following may be imposed on a *firm*:
  - (1) a *requirement* that the *firm* takes certain steps or refrains from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
  - (2) a *limitation* on *accepting deposits*, for example a *limitation* that no new deposits will be accepted;
  - (3) a *requirement* restricting the granting of *credit* or the making of investments;
  - (4) a *requirement* prohibiting the *firm* from soliciting *deposits* either generally or from *persons* who are not already depositors.
5. The information concerning the circumstances of these applications and the confirmations a *firm* is required to give to the regulator(s) concerned will differ according to the nature of the *bank* and its *Part 4A permission*. If appropriate, it may include, but will not necessarily be limited to:
  - (1) a plan containing the arrangements made in respect of the business of any current depositors, for example how and when the *firm* intends to repay or novate arrangements with depositors; or
  - (2) confirmation that the *bank* will not take any new *deposits*, will not roll over or renew any existing *deposits* at maturity and will repay all remaining *deposits* (including accrued interest) as they fall due for repayment

**Dealing with residual deposits: general**

6. Where a *firm* has residual *deposits* which, for whatever reason, cannot be repaid, they may be protected by a number of different methods. The precise applicability of the courses to be followed depends upon the particular circumstances of the individual *firm*. The *appropriate regulator's* supervisory approach will be determined by the course of action taken.

**Holding funds on trust**

7. In some circumstances, it may be appropriate for the *firm* to make an irrevocable transfer of funds, at least equal to the total of its *deposits*, to an independent trustee to be held on trust for the benefit of the depositors. Any such proposal should be discussed in advance with the *appropriate regulator*. The amount of funds held on trust should at all times exceed the total of all *deposits*, in order to provide for contingencies. Trust account arrangements are appropriate only in respect of solvent institutions. The *guidance* in paragraph 13 of this section applies in most cases.

8. (1) A plan containing the arrangements should be made by the *firm* in respect of the business of any current depositors, for example how and when the *firm* intends to repay or novate arrangements with depositors.

(2) The trustee should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the *appropriate regulator*.

(a) The trustee should usually be a major *UK bank*. If appropriate, an additional trustee from within the institution may be appointed, preferably in an advisory role. An internal trustee may help to ensure continuity if the *firm* and the trust are likely to remain in existence for the foreseeable future.

(b) The *appropriate regulator* should be consulted about, or pre-notified of, a potential change of trustee.

(c) Trustees are responsible for fulfilling their obligations under the trust deed. In practice, the *appropriate regulator* may wish to point out that certain factors need to be given consideration by the trustees and the institution (for example, the procedures for paying out to depositors).

9. The *appropriate regulator* would require to see an opinion by the *firm's* legal advisers, confirming the validity and enforceability of the *trust* and in particular specifying the extent (if any) to which the trust arrangements may be set aside in future. The *appropriate regulator* reserves the right to request sight of the proposed trust documentation itself.

10. The trustee has the right (and probably the obligation) to invest the funds, and in doing so should normally seek to "match" the maturity profile of the *firm's deposit* base. However, the following could result in *deposit* liabilities exceeding *trust* funds at any time:

(a) maturity mismatches, that is, whether there are insufficient liquid funds across the maturity bands to repay depositors; or

(b) changes in interest rates; or

(c) the trustee's fees and disbursements.

11. The trustee should not deposit, or otherwise invest, trust funds except in segregated accounts with third-party authorised institutions.

(1) An auditor's report, similar to that used to determine whether all the *deposits* have been repaid by a *firm*, should be provided to confirm that all depositors have been repaid before the discharge of a trust is allowed.

(2) Auditors' reports, from the trust's auditors, should subsequently be obtained at intervals to demonstrate that funds in the trust continue to be at least equal to the remaining liabilities to depositors and that repayments have been properly made. The *firm* retains the ultimate responsibility to provide information to the *appropriate regulator*.

(3) The *appropriate regulator* may, however, require the inclusion of a clause in the trust deed requiring the trustee to provide such information as may be requested.

12. Entering into a trust arrangement does not "transfer" deposits or discharge the *firm's* contractual obligations to its depositors.

#### **Holding the funds in segregated accounts**

13. The *firm* may place and retain an amount at all times at least equal to its *deposit* liabilities in a segregated account with its usual bankers. The advantage of this course of action is that if all deposit liabilities are matched by funds in such an account, then the *firm* is not carrying on the *regulated activity* of *accepting deposits* in contravention of the *Act*.

14. Placing funds in a segregated account does not discharge a *firm's* contractual obligations to its depositors.

## Chapter 8

# Waiver and modification of rules



## 8.1 Application and purpose

8.1.1 **R** [deleted]

8.1.1-A **R** This chapter applies to every:

**FCA**

- (1) *firm* or *person* who is subject to *FCA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *FCA's rules*;
- (2) *person*, as respects a particular *AUT*, *ACS* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules* in *COLL*.

8.1.1-B **R** This chapter applies to every *firm* or *person* who is subject to *PRA rules* that wishes to apply for, consent to, or has been given a modification of or waiver of the *PRA's rules*.

**PRA**

8.1.1A **G** This chapter is relevant to an applicant for a *Part 4A permission*, as if that applicant were a *firm*. Where the chapter refers to appropriate supervisory contact, the applicant should read this as being the usual supervisory contact at the *appropriate regulator*. Further, this chapter is relevant to a *person* who is subject to rules made by the *appropriate regulator* and where the chapter refers to a *firm*, this includes that person.

**FCA PRA**

8.1.2 **G** A *recognised body* should see **REC 3.3** for information on *waivers of rules* in *REC* under section 294 of the *Act*.

**FCA**

8.1.3 **G** This chapter is not relevant to the functions of the *FCA* acting in its capacity as the *competent authority* for the purposes of Part VI of the *Act* (Official Listing).

**FCA**

### Purpose

8.1.4 **G** This chapter explains how the regime for the *waiver of rules* works.

**FCA PRA**

- (2) *controllers* and potential *controllers* of *building societies* are exempt from the obligation to notify a change in *control* unless the change involves the acquisition of a holding of a specified percentage of a *building society's* capital or the increase or reduction by a specified percentage of a holding of a *building society's* capital (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774 .)). The "capital" of a *building society* for these purposes consists of:
  - (a) any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which have been issued by the society (in practice, likely to be permanent interest bearing shares (PIBS)); and
  - (b) the general reserves of that *building society*;
  
- (3) potential *controllers* of *non-directive firms* ("A") are exempt from the obligation to notify a change in *control* unless the change results in the potential *controller* holding:
  - (a) 20% or more of the *shares* in A or in a *parent undertaking* of A ("P");
  - (b) 20% or more of the *voting power* in A or P; or
  - (c) *shares* or *voting power* in A or P as a result of which the *controller* is able to exercise significant influence over the management of A;

or where the change in *control* over A would lead to the *controller* ceasing to fall into any of the cases (a), (b) or (c) above (The Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)).

11.3.3 G [deleted]

**Approval required before acquiring or increasing control**

11.3.4 G  
FCA PRA If a *person* decides to acquire *control* or increase *control* over a *UK domestic firm* in a way described in ■ SUP 11.4.2 R or acquire *control* in a way described in ■ SUP 11.4.2A R (1), he must obtain the *appropriate regulator's* approval before doing so. Making an acquisition before the *appropriate regulator* has approved of it is an offence under section 191F of the *Act* (Offences under this Part).

11.3.5 G  
FCA PRA The *appropriate regulator's* approval is not required before a *controller* reduces *control* or ceases to have *control* over a *UK domestic firm*.

**Pre-notification and approval for fund managers**

11.3.5A G  
FCA PRA The *appropriate regulator* recognises that *firms* acting as *investment managers* may have difficulties in complying with the prior notification requirements in sections 178 and 191D of the *Act* as a result of acquiring or disposing of listed *shares* in the course of that fund management activity. To ameliorate these difficulties, the *appropriate regulator* may accept pre-notification of proposed changes in *control*, made in accordance with ■ SUP D, and may grant approval of such changes for a period lasting up to a year.

11.3.5B  
FCA PRA

D

The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the *Act* a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, *listed*, or which are traded or admitted to trading on a *MTF* or a market operated by a *ROIE*;
- (2) that any such acquisitions and/or disposals of *control* will occur only in the course of the *firm's* business as an *investment manager*;
- (3) that the level of *control* the *firm* so acquires in the pre-approval period will at all times remain less than 20% ; and
- (4) that the *firm* will not exercise any influence over the *UK domestic firm* in which the shares are held, other than by exercising its voting rights as a shareholder or by exercising influence intended to promote generally accepted principles of good corporate governance.

11.3.5C  
FCA PRA

G

Where the *appropriate regulator* approves changes in *control* proposed in a notice given under ■ SUP 11.3.5B D:

- (1) the *controller* remains subject to the requirement to notify the *appropriate regulator* when a change in *control* actually occurs; and
- (2) the notification of change in *control* should be made no later than five *business days* after the end of each *month* and set out all changes in the *controller's* control position for each *UK domestic firm* for the *month* in question.

At that stage, the *appropriate regulator* may seek from the *controller* further information.

11.3.6 G

[deleted]

11.3.6A G

[deleted]

11.3.6B G

[deleted]

11.3.6C G

[deleted]

### Forms of notifications when acquiring or increasing control

11.3.7  
FCA PRA

D

A *section 178 notice* given to the *appropriate regulator* by a *person* who is acquiring *control* or increasing his *control* over a *UK domestic firm*, in a way described in ■ SUP 11.4.2 R (1) to (4), or acquiring *control* in a way described in ■ SUP 11.4.2A R, must contain the information and be accompanied by such documents as are required by the controllers form approved by the *appropriate regulator* for the relevant application.



## 11.9 Changes in close links

### Requirement to notify changes in close links

11.9.1

**R**

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

11.9.1A

**FCA**

**R**

- (1) A *firm* must notify the *FCA* that it has become or ceased to be *closely linked* with any *person* . and ensure the following:
  - (a) where a *firm* has elected to report changes in *close links* on a *monthly* basis under ■ SUP 11.9.5A R, the notification must be made in line with ■ SUP 11.9.3BA R; and
  - (b) in any other case, the notification must be made by completing the Close Links Notification Form (see ■ SUP 11.9.3B G) and must include the information in ■ SUP 11.9.3D G.
- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form or the Close Links Monthly Report (as applicable) and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

11.9.1B

**PRA**

**R**

- (1) A *firm* must notify the *PRA* that it has become or ceased to be *closely linked* with any *person* and ensure the following:
  - (a) where a *firm* has elected to report changes in *close links* on a *monthly* basis under ■ SUP 11.9.5B R, the notification must be made in line with ■ SUP 11.9.3CA R; and
  - (b) in any other case, the notification must be made by completing the Close Links Notification Form (see ■ SUP 11.9.3C G) and must include the information in ■ SUP 11.9.3D G.
- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form or the Close Links Monthly Report (as

11

applicable). and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

11.9.2 G  
FCA

Guidance on what constitutes a *close link* is provided in ■ COND 2.3.

11.9.2A G  
FCA PRA

A *firm* may elect not to include the following *close links* in the notification submitted under ■ SUP 11.9.1A R, ■ SUP 11.9.1B R, ■ SUP 11.9.5A R, ■ SUP 11.9.5B R or ■ SUP 16.5:

- (1) *shares* held in its capacity as custodian provided it can only exercise any voting rights attached to such *shares* under instructions given in writing or by *electronic means*;
- (2) *shares* held in its capacity as collateral taker under a collateral transaction which involves the outright transfer of *securities* provided it does not declare any intention of exercising (and does not exercise) the voting rights attaching to such *shares*.

11.9.3 G

[deleted]

11.9.3-A G  
FCA

The *FCA* may ask the *firm* for additional information following a notification under ■ SUP 11.9.1A R in order to satisfy itself that the *firm* continues to satisfy the *threshold conditions* (see ■ SUP 2: Information gathering by the *FCA* and *PRA* on their own initiative).

11.9.3-B G  
PRA

The *PRA* may ask the *firm* for additional information following a notification under ■ SUP 11.9.1B R in order to satisfy itself that the *firm* continues to satisfy the *threshold conditions* (see ■ SUP 2: Information gathering by the *FCA* and *PRA* on their own initiative).

**Form of notification and method of submission**

11.9.3A G

[deleted]

11.9.3B G  
FCA

The Close Links Notification Form approved by the *FCA* for notifications under ■ SUP 11.9.1A R, ■ SUP 11.9.5A R may be found at the *FCA* website. The Close Links Notification Form approved by the *FCA* for notifications under ■ SUP 11.9.1AR (1)(b) may be found at the *FCA* website.

11.9.3BA R  
FCA

The notification under ■ SUP 11.9.1AR (1)(a) must be made electronically by completing the Close Links Monthly Report and submitting it through the relevant platform provided by the *FCA*.

11.9.3BB R  
FCA

The Close Links Monthly Report must contain the information specified in ■ SUP 16 Annex 35AR.

**11.9.3C** PRA G The Close Links Notification Form approved by the *PRA* for notifications under may be found at the *PRA* website.

**11.9.3CA** PRA R The notification under ■ SUP 11.9.1B R (1)(a) must be made electronically by completing the Close Links Monthly Report and submitting it through the relevant platform provided by the *PRA*.

**11.9.3CB** PRA R The Close Links Monthly Report must contain the information specified in ■ SUP 16 Annex 35A.

**11.9.3D** FCA PRA G

- (1) The notification in ■ SUP 11.9.1AR (1)(b) and ■ SUP 11.9.1B R (1)(b) should contain a list of all *persons* with whom the *firm* is aware that it has *close links*, at the time the notification is made, and, for each such person, state:
  - (a) its name;
  - (b) the nature of the *close links*;
  - (c) if the *close links* are with a *body corporate*, its country of incorporation, address and registered number; and
  - (d) if the *close links* are with an individual, their date and place of birth.
- (2) The *firm* must also submit a *group* organisation chart.

**Timing of notification requirement**

**11.9.4** R [deleted]

**11.9.4A** FCA R The *firm* must make a notification to the *FCA* under ■ SUP 11.9.1A R:

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Monthly Report for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *FCA*, in which case the *group* organisation chart is not required.

**11.9.4B** PRA R The *firm* must make a notification to the *PRA* under ■ SUP 11.9.1B R:

- (1) as soon as reasonably practicable and no later than one *month* after it becomes aware that it has become or ceased to be closely linked with any *person*; or
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Monthly Report for that *month* and must submit the *group*

organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *PRA*, in which case the *group* organisation chart is not required.

**Electing to notify changes in close links monthly**.....

11.9.5 **R**

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

11.9.5A **R**  
FCA

- (1) A *firm* elects to report changes in *close links* on a *monthly* basis by sending a written notice of election to the *firm's* usual supervisory contact at the *FCA*.
- (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contact at the *FCA* at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

11.9.5B **R**  
PRA

- (1) A *firm* elects to report changes in *close links* on a *monthly* basis by sending a written notice of election to the *firm's* usual supervisory contacts at both the *PRA* and *FCA*.
- (2) An election to report changes in *close links* on a *monthly* basis will stand until such time as the *firm* gives its usual supervisory contacts at both the *PRA* and *FCA* at least one *month's* written notice of its intention to cease reporting changes in *close links* on a *monthly* basis.

11.9.6 **G**

[deleted]

11.9.6A **G**  
FCA

The *FCA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.

11.9.6B **G**  
PRA

The *PRA* considers that *monthly* reporting of changes in *close links* will ordinarily only be appropriate for *firms* forming part of large *groups*.



**13.8 Changes of details: provision of notices to the appropriate UK regulator**

13.8.1

**R**

**FCA PRA**

(1) Where a *firm* is required to submit a notice of a change to a *branch* referred to in ■ SUP 13.6.5 G (1), ■ SUP 13.6.5B G (1), ■ SUP 13.6.7 G (1), ■ SUP 13.6.8 G , ■ SUP 13.6.9B R ■ SUP 13.6.10 G (1) and ■ SUP 13.6.9C G or a notice of a change to *cross border services* referred to in ■ SUP 13.7.3 G (1) , ■ SUP 13.7.3A G (1), ■ SUP 13.7.5 G (1) ■ SUP 13.7.6 G, ■ SUP 13.7.13B G and ■ SUP 13.7.14 G it must complete and submit that notice in accordance with the procedures set out in ■ SUP 13.5 for notifying the establishing of a *branch* or the provision of *cross border services*.

- (a) [deleted]
- (b) [deleted]

(2) [deleted]

- (a) [deleted]
- (b) [deleted]
- (c) [deleted]
- (d) [deleted]
- (e) [deleted]
- (f) [deleted]

(3) [deleted]

(4) [deleted]

13.8.1A

**G**

**FCA PRA**

The effect of ■ SUP 13.8.1 R (1) is that a *firm* should submit any form, notice or application under ■ SUP 13.8.1 R (1) in the following ways:

- (1) A UK *firm*, other than a *credit union*, should submit it online at [www.fca.org.uk](http://www.fca.org.uk) using the ONA system.
- (2) If the information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are

restored, a *firm* should submit it in the way set out in ■ SUP 13.5.3 R (3) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification). ■ GEN 1.3.2 R (Emergency) does not apply in these circumstances.

(3) If the information technology systems fail and online submission is unavailable for 24 hours or more, the *appropriate UK regulator* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission should be used.

(4) [deleted]

13.8.1B

PRA

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A *credit union* should submit any form, notice or application under ■ SUP 13.8.1 R (1) in the way set out in ■ SUP 13.5.3 R (3) and ■ SUP 15.7.4 R to ■ SUP 15.7.9 G (Form and method of notification).

13.8.2

FCA PRA

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*UK firms* passporting under the *CRD* or the *Insurance Directives* may be required to submit the change to details notice in the language of the *Host State* as well as in English.

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## Passporting: Notification of intention to establish a branch in another EEA state

**FCA** **PRA**

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.bankofengland.co.uk/pr/Pages/authorisations/passporting/notifying.aspx> for a *PRA-authorised person* or <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms are also to be found through the following address:

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



- (b) pursuant to a *community co-insurance operation* in which the *firm* is participating otherwise than as *leading insurer* (see Article 11 of the *Regulated Activities Order*); or
- (3) a *Treaty firm* that wishes to provide *electronic commerce activities* into the *United Kingdom* ; or
- (4) a *market operator* that operates a *regulated market* or an *MTF* in an *EEA State* other than the *UK* and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the *UK*. See ■ SUP App 3.6.25 G for *guidance*.

13A.1.3

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FCA PRA

- (1) Under the *Gibraltar Order* made under section 409 of the *Act* , a *Gibraltar firm* is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
  - (a) authorised in Gibraltar under the *Insurance Directives*; or
  - (aA) authorised in Gibraltar under the *Reinsurance Directive*; or
  - (b) authorised in Gibraltar under the *CRD* ; or
  - (c) authorised in Gibraltar under the *Insurance Mediation Directive*; or
  - (d) authorised in Gibraltar under the *MiFID* ;
  - (e) authorised in Gibraltar under the *UCITS Directive*.
- (1A) Similarly, an *EEA firm* which:
  - (a) has satisfied the Gibraltar establishment conditions and has established a *branch* in the *UK*; or
  - (b) has satisfied the Gibraltar service conditions and is providing *cross border services* into the *UK*;

is treated as having satisfied the *establishment conditions* or *service conditions* (as appropriate) under Schedule 3 to the *Act*. Regulations 4 to 7 of the *EEA Passport Rights Regulations* will apply to the establishment of the *branch* or the provision of *cross border services*.
- (2) Gibraltar insurance companies, *credit institutions*, *insurance intermediaries* , *investment firms* and *management companies* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in this chapter to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.
- (3) [deleted]

**Purpose**

- (1) This chapter explains how an *EEA firm* and a *Treaty firm* can qualify for *authorisation* under Schedules 3 and 4 to the *Act* and how a *UCITS qualifier* is *authorised* under Schedule 5 to the *Act*.
- (2) This chapter also provides *guidance* on Schedule 3 to the *Act* for an *incoming EEA firm* that wishes to establish a *branch* in the *United Kingdom* instead of,

13A.1.4

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FCA PRA

13A.1.5

FCA PRA

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or in addition to, providing *cross border services* into the *United Kingdom* or vice versa.

- (1) *EEA firms* should note that this chapter only addresses the procedures which the *appropriate UK regulator* will follow under the *Act*. So, an *EEA firm* should consider this *guidance* in conjunction with the requirements with which it will have to comply in its *Home State*.
- (2) The *guidance* in this chapter represents the *appropriate UK regulator's* interpretation of the *Single Market Directives*, the *auction regulation*, the *Act* and the secondary legislation made under the *Act*. The *guidance* is not exhaustive and should not be seen as a substitute for a *person* consulting the legislation or taking legal advice.

13A.3.11

PRA

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- (1) An EEA firm that is carrying on both direct insurance and *reinsurance* business will be entitled to passport under Schedule 3 to the Act in relation to the direct *insurance business*. It will also have a *Treaty right* under Schedule 4 to the Act in relation to the *reinsurance* business if the firm has received *Home State authorisation* for the *regulated activity* of effecting and/or carrying out the relevant class of *insurance business* that includes *reinsurance* business for that class and the relevant provisions of the law of the *Home State* satisfy the conditions laid down by the *Insurance Directives* relating to the carrying on of that activity (see ■ SUP App 3.10.13 G).
- (1A) An insurance company with its head office in an EEA State other than the *United Kingdom* that is carrying on pure *reinsurance* business in that State, and which has received authorisation (or is deemed to be authorised) under the *Reinsurance Directive* from its *Home State* (an EEA pure reinsurer), has an automatic EEA right to passport into the *United Kingdom* by establishing a *branch* in the *United Kingdom* or by the provision of *cross border services*. Under the *General Protocol*, *Home State regulators* have agreed to inform *Host State regulators* if a *pure reinsurer* carries on business through a *branch* in the *Host State*.
- (2) An insurance company with its head office in an EEA State other than the *United Kingdom* that is carrying on pure *reinsurance* business in that State, and which wishes to carry on such business in the *United Kingdom* and is authorised by its *Home State* but not yet under the *Reinsurance Directive*, is advised to discuss its particular requirements with the authorisations team in the PRA. It may be entitled to exercise a *Treaty right* provided it satisfies the conditions in paragraph 3(1) of Schedule 4 to the Act (see ■ SUP 13A.3.4 G). Otherwise, it will have to seek a *Part 4A permission* (see [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx)).

### UCITS qualifiers

13A.3.12

FCA

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Under Schedule 5 to the Act (Persons concerned in collective investment schemes), a *person* who for the time being is an *operator*, *trustee* or *depository* of a *scheme* which is a *recognised scheme* under section 264 of the Act is an *authorised person*. Such a *person* is referred to in the *Handbook* as a *UCITS qualifier*.

13A.3.13

FCA

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A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the Act, to carry on, as far as is appropriate to the capacity in which it acts in relation to the *scheme*:

- (1) the *regulated activity* of *establishing*, *operating* or *winding up* a *collective investment scheme*; and
- (2) any activity in connection with, or for the purposes of, the *scheme* (including the *regulated activity* of *managing* a *UCITS*).

13A.3.14

FCA

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A *UCITS qualifier* should refer to COLLG or to the following sections of COLL for requirements for *recognised schemes*:

- (1) ■ COLL 9.2.1 G for *guidance* on notifications;
- (2) ■ COLL 9.2.1 G for *guidance* on information and documentation requirements; and

(3) ■ COLL 9.4 which includes *rules* on what facilities need to be maintained.



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

### The conditions for establishing a branch

13A.4.1

FCA

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- (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.
- (2) For the purposes of paragraph 13(1)(b)(iii) of Part II of Schedule 3 to the *Act*, the information to be included in the consent notice has been prescribed under regulation 2 of the *EEA Passport Rights Regulations*.

13A.4.1A

FCA

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

13A.4.2

FCA PRA

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Where an *EEA firm* exercises its *EEA right* to establish a *branch* in the *United Kingdom* under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1A) of Part II of Schedule 3 to the *Act*.

13A.4.3

FCA PRA

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For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the *Act*, the *applicable provisions* may include the *appropriate UK regulator's rules*. The *EEA firm* is required to comply with relevant *rules* when carrying on a *passported activity* through a *branch* in the *United Kingdom* as well as with relevant *UK legislation*.

13A.4.3A

FCA PRA

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*Guidance* on the matters that are reserved to a *firm's Home State regulator* is located in ■ SUP 13A Annex 2 G.

### The notification procedure

13A.4.4

FCA PRA

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- (1) When the *appropriate regulator* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:
  - (a) the *EEA firm*; and
  - (b) in the case of an *EEA firm* passporting under the *Insurance Directives*, the *Home State regulator*;

within two *months* of the notice date .

13A.4.4A G  
FCA PRA

- (1A) The notice date is:
  - (a) for a *MiFID investment firm*, the date on which the *Home State* gave the consent notice; and
  - (b) in any other case, the date on which the *appropriate UK regulator* received the consent notice.
  
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA firm* passporting under the *Insurance Mediation Directive*, *MIFID* or *AIFMD*, these provisions are set out in
  - SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).
  
- (1) Where the *PRA* receives a consent notice, it will give a copy to the *FCA* without delay, and where the *FCA* receives a consent notice it will give a copy to the *PRA*, where relevant, without delay.
  
- (2) In a case where the *FCA* is the *appropriate UK regulator*, the consent of the *PRA* is required for any notification by the *FCA* which relates to:
  - (a) a *PRA-regulated activity*;
  - (b) a *PRA-authorised person*; or
  - (c) a *person* whose immediate group includes a *PRA-authorised person*.

13A.4.5 R  
FCA

**Auction regulation bidding: notification rule and applicable provisions**  
 An *incoming EEA firm* that is exercising an *EEA right* under the *auction regulation* to establish a branch in the *United Kingdom* must submit the form in ■ SUP 13A Annex 4 R prior to its establishment of that branch or whenever possible thereafter.

13A.4.6 G  
FCA

The sole purpose of the notification in ■ SUP 13A.4.5 R is to enable the *FSA* to supervise the *UK branch* of the *incoming EEA firm's* compliance with the *applicable provisions* on an ongoing basis. The *applicable provisions* that apply to that branch are set out in ■ SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).



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

### Is the service provided within the United Kingdom?

13A.5.1  
FCA PRA

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There is *guidance* for UK firms in ■ SUP Appendix 3.6 on when a service is provided cross border. EEA firms may find this of interest although they should follow the guidance of their Home State regulators.

13A.5.2  
FCA PRA

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An EEA firm ( other than an EEA pure reinsurer or an EEA firm that received authorisation under article 18 of the *auction regulation*) should note that the requirement under the *Single Market Directives* to give a notice of intention to provide *cross border services* applies whether or not:

- (1) it has established a *branch* in the *United Kingdom*; or
- (2) those *cross border services* are *regulated activities*.

### The conditions for providing cross border services into the United Kingdom

13A.5.3  
FCA PRA

G

- (1) Before an EEA firm ( other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the *auction regulation*) exercises an EEA right to provide *cross border services* into the *United Kingdom*, the Act requires it to satisfy the *service conditions*, as set out in paragraph 14 of Part II of Schedule 3 to the Act.
- (2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the Act, the information to be contained in the regulator's notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations* and in the case of CRD, the information has been prescribed in the technical standards issued pursuant to and under Article 39 of the CRD.
- (3) An EEA UCITS management company may not exercise an EEA right to provide *collective portfolio management services* for a UCITS scheme on a *cross border services* basis until approved by the FCA to do so (see ■ SUP 13A.3.1C G).
- (4) An EEA firm that has received authorisation under article 18 of the *auction regulation* is not subject to the service conditions in its exercise of an EEA right under the *auction regulation* to provide services in the *United Kingdom*. The notification procedure in ■ SUP 13A.5.4 G does not apply to it and it does not need to notify the FCA prior to providing services into the *United Kingdom* because there are presently no *applicable provisions* that apply in these circumstances. Instead, its provision of these services is supervised by its Home State regulator.

**The notification procedure**

13A.5.4  
FCA PRA

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- (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *Insurance Mediation Directive*, if the *appropriate UK regulator* receives a regulator's notice or, where no notice is required, is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *appropriate UK regulator* will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.
- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive*, *MIFID* or *AIFMD* these provisions are set out in
  - SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).

13A.5.4A  
FCA PRA

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Where the *PRA* receives a notice, it will give a copy to the *FCA* without delay and where the *FCA* receives a notice, it will give a copy to the *PRA* without delay, where relevant.

13A.5.5  
FCA PRA

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



## 13A.6 Which rules will an incoming EEA firm be subject to?

13A.6.1  
FCA PRA

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- (1) ■ SUP 13A Annex 1 G summarises how the *Handbook* applies to *incoming EEA firms*.
- (2) ■ SUP 13A Annex 2 G summarises the matters that are reserved to a *firm's Home State regulator*.

13A.6.2  
FCA PRA

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An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see ■ SUP 13A.4.4 G, ■ SUP 13A.4.6 G, and ■ SUP 13A.5.4 G) and other relevant *UK legislation*. For example where the business includes:

- (1) business covered by the Consumer Credit Act 1974, then an *incoming EEA firm* or *incoming Treaty firm* must comply with the provisions of that Act, as modified by paragraph 15(3) of Schedule 3 to the *Act*; or
- (2) effecting or carrying out contracts covering motor vehicle third party liability risks as part of direct *insurance business*, then an *incoming EEA firm* or *incoming Treaty firm* is required to become a member of the Motor Insurers' Bureau.

13A.6.3  
FCA PRA

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In particular, an *EEA firm* (other than an *EEA pure reinsurer*) or *Treaty firm* must comply with the *applicable provisions* in ■ SUP 10 (Approved persons). An *EEA firm* or *Treaty firm* should also refer to ■ SUP 10.1 (Application) which sets out the territorial provisions of the *approved persons* regime.

13A.6.4  
FCA PRA

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Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include :

- (1) an *EEA MiFID investment firm* whose *Home State regulator* has given a consent notice under paragraph 13 of Schedule 3 to the *Act* (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule; and
- (2) any other *EEA firm* with respect to which the *appropriate UK regulator* has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see ■ SUP 13A.4.1G (1) and ■ SUP 13A.4.2 G) or a regulator's notice

under paragraph 14 of that Schedule (see ■ SUP 13A.5.3G (1)), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.

13A.6.5

FCA PRA

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■ SUP 13A Annex 1 G does not apply to *incoming ECA providers* acting as such.

## 13A.7 Top-up permission

### 13A.7.1

FCA PRA

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If a *person* established in the *EEA*:

- (1) does not have an *EEA right*;
- (2) does not have *permission* as a *UCITS qualifier*; and
- (3) does not have, or does not wish to exercise, a *Treaty right* (see ■ SUP 13A.3.4 G to ■ SUP 13A.3.11 G);

to carry on a particular *regulated activity* in the *United Kingdom*, it must seek *Part 4A permission* from the *appropriate UK regulator* to do so (see the *appropriate UK regulator's* website: <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) for the *PRA* ). This might arise if the activity itself is outside the scope of the *Single Market Directives*, or where the activity is included in the scope of a *Single Market Directive* but is not covered by the *EEA firm's Home State authorisation*. If a *person* also qualifies for *authorisation* under Schedules 3, 4 or 5 to the *Act* as a result of its other activities, the *Part 4A permission* is referred to in the *Handbook* as a *top-up permission*.

### 13A.7.2

FCA PRA

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Where the *appropriate UK regulator* grants a *top-up permission* to an *incoming EEA firm* to carry on *regulated activities* for which it has neither an *EEA right* nor a *Treaty right*, the *appropriate UK regulator* is responsible for the prudential supervision of the *incoming EEA firm*, to the extent that the responsibility is not reserved to the *incoming EEA firm's Home State regulator*.

### 13A.7.3

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[deleted]

### 13A.7.4

FCA PRA

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For *guidance* on how to apply for *Part 4A permission* under the *Act*, see the *appropriate UK regulator's* website: <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for the *FCA* and [www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx](http://www.bankofengland.co.uk/pr/Pages/authorisations/newfirm/default.aspx) for the *PRA*. If an *EEA firm* or *Treaty firm* wishes to make any subsequent changes to its *top-up permission*, it can make an application for variation of that *permission* (see ■ SUP 6 (Applications to vary and cancel *Part 4A permission*)).



## 13A.8 Sources of further information

### 13A.8.1

FCA PRA

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For further information on *UK* regulation, an *EEA firm*, a *Treaty firm* or a *UCITS qualifier* should contact the authorisations team in the *FCA* or *PRA*, if and when appropriate. To contact the *FCA* and/or *PRA* authorisations teams, please see the details provided on that regulator's website.



**13A.9 [Deleted]**

13A

<p><b>SUP 12 (Appointed representatives)</b></p>	<p><b>SUP 12 (Appointed representatives)</b></p>
<p>Applies only if the <i>firm</i> has <i>permission</i> to carry on <i>designated investment business, insurance mediation activity</i> or <i>mortgage mediation activity</i> and wishes to appoint, or has appointed, an <i>appointed representative</i> (SUP 12.1.1 R (1)).</p>	<p>As column (2).</p>
<p><b>SUP 13 (Exercise of passport rights by UK firms)</b></p>	<p><b>SUP 13 (Exercise of passport rights by UK firms)</b></p>
<p>Does not apply.</p>	<p>Does not apply.</p>
<p><b>SUP 13A (Qualifying for authorisation under the Act)</b></p>	<p><b>SUP 13A (Qualifying for authorisation under the Act)</b></p>
<p>SUP 13A applies to the <i>firm</i> if it:</p>	<p>As column (2).</p>
<p>(1) is considering carrying on activities in the <i>United Kingdom</i> which may fall within the scope of the <i>Act</i> and is seeking <i>guidance</i> on whether it needs a <i>top-up permission</i>; or</p>	
<p>(2) is, or is considering, applying to the <i>appropriate regulator</i> to carry on <i>regulated activities</i> in the <i>United Kingdom</i> under a <i>top-up permission</i>; or</p>	
<p>(3) is, or is considering, establishing a <i>branch</i> or providing <i>cross-border services</i> into the <i>United Kingdom</i> using <i>EEA rights</i>.</p>	
<p><b>SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)</b></p>	<p><b>SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)</b></p>
<p>Applies.</p>	<p>Applies.</p>
<p><b>SUP 15 (Notifications to the FCA or PRA)</b></p>	<p><b>SUP 15 (Notifications to the FCA or PRA)</b></p>
<p>Applies in full if the <i>firm</i> has a <i>top-up permission</i>. Otherwise, the application is modified as set out in SUP 15 Annex 1 R.</p>	<p>Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (SUP 15 Annex 1 R).</p>
	<p>Otherwise, as column (2).</p>

**SUP 16 (Reporting requirements) SUP 16 (Reporting requirements)**

Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is: Parts of this chapter may apply if the *firm* has a *top-up permission* or if the *firm* is:

- (a) a *bank*; or
- (b) an *OPS firm*; or
- (c) an *OPS firm*; or
- (d) an *insurer* with *permission* to effect or carry out *life policies*; or
- (e) an *insurer* with *permission* to effect or carry out *life policies*; or
- (e) a *firm* with *permission* to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or
- (f) a *firm* with *permission* to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or
- (f) a *firm* with *permission* to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.
- (g) a *firm* with *permission* to advise on investments, arrange (bring about) deals in investments, make arrangements with a view to transactions in investments, or arrange safeguarding and administration of assets.
- ( SUP 16.1)
- ( SUP 16.1)

**SUP 17 (Transaction reporting) SUP 17 (Transaction reporting)**

Applies to *UK* branches of *incoming EEA firms* which are *MiFID investment firms* in respect of reportable *transactions* executed in the course of services provided, whether within in the *United Kingdom* and outside. (SUP 17.1.2 G and SUP 17.1.3A G) Applies as appropriate to *incoming EEA firms* which are *MiFID investment firms* in respect of reportable *transactions*. ( SUP 17.1.1 R and SUP 17.1.4 R).

**SUP 18 (Transfers of business) SUP 18 (Transfers of business)**

SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the *firm* proposes to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer or proposes to accept certain transfers of *insurance business* taking place outside the *United Kingdom*. As column (2).

**SUP App 2 (Insurers: Scheme of operations) SUP App 2 (Insurers: Scheme of operations)**

Does not apply ( SUP App 2.1.1 R). Does not apply ( SUP App 2.1.1 R).

<p><i>DEPP</i></p>	<p><i>DEPP</i> applies and contains a description of the <i>FCA's</i> procedures for taking statutory notice decisions, the <i>FCA's</i> policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the <i>Act</i> has been given or the <i>FCA</i> is considering giving.</p>	<p><i>DEPP</i> applies and contains a description of the <i>FCA's</i> procedures for taking statutory notice decisions, the <i>FCA's</i> policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the <i>Act</i> has been given or the <i>FCA</i> is considering giving.</p>
<p><i>DISP</i></p>	<p>Generally applies (<a href="#">DISP 1.1.1 G</a>) but in a limited way in relation to <i>MiFID business</i> .</p> <p>For an <i>incoming EEA AIFM branch</i> <i>DISP</i> applies (subject to some limitations, see <a href="#">DISP 1.1.3 R</a>), except for an <i>incoming EEA AIFM branch</i> of a <i>closed-ended corporate AIF</i>, when <i>DISP</i> does not apply.</p>	<p>Generally does not apply (<a href="#">DISP 1.1.1 G</a>).</p> <p>However, for an <i>incoming EEA firm</i> which is a <i>UCITS management company</i> managing a <i>UCITS scheme</i> or an <i>AIFM</i> managing an <i>authorised AIF</i>, <i>DISP</i> applies (subject to some limitations, see <a href="#">DISP 1.1.3 R</a>).</p>
<p><i>COMP</i></p>	<p>Applies, except in relation to the <i>passport activities</i> of a <i>MiFID investment firm</i>, a <i>CRD credit institution</i> (other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>CRD</i>), an <i>IMD insurance intermediary</i> . a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> and an <i>incoming AIFM branch</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of "<i>participant firm</i>"). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passport activities</i> (see <a href="#">COMP 14</a> (Participation by EEA Firms)).</p>	<p>Does not apply in relation to the <i>passport activities</i> of an <i>MiFID investment firm</i>, a <i>CRD credit institution</i>, an <i>IMD insurance intermediary</i> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an <i>incoming EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <a href="#">COMP 5</a>).</p>
<p><i>COLL</i></p>	<p>A. The following provisions of <i>COLL</i> apply to an <i>EEA UCITS management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS scheme</i>:</p> <p>(a) <a href="#">COLL 6.6A.2 R</a> (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);</p>	<p>For an <i>EEA UCITS management company</i> providing <i>collective portfolio management services</i> for a <i>UCITS scheme</i>, as column (2)A.(d), (e), (f) and (g) and the other parts of <i>COLL</i> specified.</p> <p>For an <i>incoming EEA AIFM</i>, as column (2) B.</p>

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

An *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* should be aware that it will be expected to comply with the above *rules* in relation to all aspects of the functioning of the relevant *UCITS scheme* where, for example, the *firm*:

- (a) [deleted]
- (b) wishes to apply for an *authorisation order* to establish an *AUT*, *ACS* or *ICVC* as a *UCITS scheme*; or
- (ba) is the *management company* of a *UCITS scheme* that wishes to exercise an *EEA right* to market its *units* in another *EEA State*; or

	(c) is the <i>operator</i> of a <i>recognised scheme</i> .	
	B. Subject to FUND 1.1.2 R, <i>COLL</i> applies to an <i>incoming EEA AIFM</i> as relevant.	
FUND	FUND 3.8 (Prime brokerage firms) applies to an <i>incoming EEA AIFM branch</i> .	Does not apply, except FUND 10 (Operating on a cross border basis) which provides guidance for an <i>EEA AIFM</i> managing an <i>AIF</i> on a services basis or <i>marketing</i> an <i>AIF</i> using the <i>marketing</i> passport under <i>AIFMD</i> .
	FUND 10 (Operating on a cross-border basis), provides guidance for an <i>incoming EEA AIFM branch</i> .	
CREDS	Does not apply.	Does not apply.
PROF	<i>PROF</i> applies only if the <i>firm</i> is an <i>authorised professional firm</i> .	As column (2).
REC	Does not apply.	Does not apply.
LR	<i>LR</i> (Listing Rules)	<i>LR</i> (Listing Rules)
	May apply if the <i>firm</i> is applying for <i>listing</i> in the <i>United Kingdom</i> , is a <i>listed issuer</i> in the <i>United Kingdom</i> , is a <i>sponsor</i> or is applying for approval as a <i>sponsor</i> .	As column (2).
PR	<i>PR</i> (Prospectus Rules)	<i>PR</i> (Prospectus Rules)
	May apply if the <i>firm</i> makes an <i>offer of transferable securities to the public</i> in the <i>United Kingdom</i> or is seeking the <i>admission to trading</i> of <i>transferable securities</i> on a <i>regulated market</i> situated or operating in the <i>United Kingdom</i> .	As column (2).
DTR	<i>DTR</i> (Disclosure Rules and Transparency Rules)	<i>DTR</i> (Disclosure Rules and Transparency Rules)
	May apply if the <i>firm</i> is an <i>issuer</i> , any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i> , or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i> , other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i> .	As column (2).
EG	<i>EG</i> describes the <i>FCA's</i> approach to exercising the main enforcement powers given to it by <i>FSMA</i> and by regulation 12 of the <i>Unfair Terms Regulations</i> . <i>EG</i> is a Regula-	<i>EG</i> (Enforcement Guide) As column (2).

tory Guide and as such does not form part of the Handbook.

<i>CONRED</i>	Applies to a <i>firm</i> which made a <i>personal recommendation</i> in relation to an Arch cru fund, after which a <i>consumer</i> made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in CONRED 2 Annex 13 ) applied (CONRED 2.1.1R).	Does not apply
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**Notes to Annex 1**

Note 1: The following modules or chapters are relevant to *firms* in both the *PRA Handbook* and the *FCA Handbook*: *PRIN, SYSC, APER, FIT, GEN, FEES, GENPRU, BIPRU, MIPRU, IPRU(INV), SUP 2 to 6, 8, 11, 13 to 16, 18 & Appendix 2 and COMP.*

Note 2: The following modules or chapters are relevant in the *FCA Handbook* only: *COND, INSPRU, COBS, ICOBS, MCOB, CASS, MAR, TC, SUP 1A, 7, 9, 10A, 12 & 17, DEPP, DISP, COLL, FUND, PROF, LR, PR, DTR and EG.*

## Chapter 14

# Incoming EEA firms changing details, and cancelling qualification for authorisation

## 14.1 Application and purpose

### Application

#### 14.1.1

FCA PRA

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This chapter applies to an *incoming EEA firm* other than an *EEA pure reinsurer* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* under one of the *Single Market Directives* or the *auction regulation* and, therefore, qualifies for *authorisation* under Schedule 3 to the *Act*.

#### 14.1.1A

FCA

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The *guidance* in ■ SUP 14.2 and ■ SUP 14.3 covers the *EEA Passport Rights Regulations*. It is not, however, relevant to an *EEA firm* exercising an *EEA right* under the *auction regulation*, except for ■ SUP 14.2.14 R which applies a separate notification requirement. Additionally, where an *EEA firm* is carrying on *MiFID business bidding*, that *firm* is exercising an *EEA right* under *MiFID* and so this chapter applies to that activity because it is *MiFID business*.

#### 14.1.2

FCA PRA

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■ SUP 14.6 (Cancelling qualification for authorisation), which sets out how to cancel qualification for *authorisation* under the *Act*, also applies to:

- (1) an *incoming Treaty firm* that qualifies for *authorisation* under Schedule 4 to the *Act*; and
- (2) a *UCITS qualifier* that is an *authorised person* under Schedule 5 to the *Act*; a *UCITS qualifier* should, however, refer to ■ COLLG 3.1.11 G for full details of applicable *rules* and *guidance*.

#### 14.1.3

FCA PRA

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- (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a *Gibraltar firm* is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:
  - (a) authorised in *Gibraltar* under the *Insurance Directives*; or
  - (aa) authorised in *Gibraltar* under the *Reinsurance Directive*; or
  - (b) authorised in *Gibraltar* under the *CRD*; or ;
  - (c) authorised in *Gibraltar* under the *Insurance Mediation Directive*; or
  - (d) authorised in *Gibraltar* under *MiFID*; or
  - (e) authorised in *Gibraltar* under the *UCITS Directive*.

(1A) Similarly, an *EEA firm* which:

- (a) has satisfied the Gibraltar establishment conditions and has established a *branch* in the *UK*; or
- (b) has satisfied the Gibraltar service conditions and is providing *cross border services* into the *UK*;

is treated as having satisfied the *establishment conditions* or *service conditions* (as appropriate) under Schedule 3 to the *Act*.

- (2) Gibraltar insurance companies, *credit institutions*, *insurance intermediaries*, *investment firms* and *management companies* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in ■ SUP 14 to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

**Purpose**

14.1.4

FCA PRA

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This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations* made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*.

[**Note:** An *EEA bank* is required to comply with the requirements set out in the directly applicable regulations adopted under Articles 35, 36 and 39 *CRD*.]

14.1.5

FCA PRA

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This chapter also explains how an *incoming EEA firm*, an *incoming Treaty firm* or a *UCITS qualifier* may cancel its qualification for *authorisation* under the *Act*.

14.1.6

FCA PRA

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This chapter does not, however, give *guidance* on the procedures for the establishment of a *branch* in, or the providing of *cross border services* into, the *United Kingdom* for the first time. So, an *incoming EEA firm* that wishes to change or supplement the nature of its operations in the *United Kingdom* from the providing of *cross border services* to the establishment of a *branch* (or vice versa) should refer to ■ SUP 13A (Qualifying for authorisation under the *Act*).

14.1.7

FCA PRA

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In addition, the chapter does not give *guidance* on the procedures for making an application for *top-up permission*, to carry on *regulated activities* in the *United Kingdom* which are outside the scope of the *Single Market Directives* and for which the firm cannot exercise *Treaty rights*. *Incoming EEA firms* seeking a *top-up permission* should refer to ■ SUP 13A.

14.1.8

FCA PRA

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The *FCA* and *PRA* will share with each other relevant information received, as necessary, in order to perform their respective functions.

## 14.2 Changes to branch details

### 14.2.1 G FCA PRA

Where an *incoming EEA firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive*, and has established a *branch* in the United Kingdom, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly. All references to regulations in ■ SUP 14 are to the *EEA Passport Rights Regulations*.

### 14.2.2 G FCA PRA

#### Firms passporting under the CRD and the UCITS Directive

- (1) Where an *incoming EEA firm* passporting under the *CRD* or the *UCITS Directive* has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.
- (2) The relevant requirements are set out in regulation 4(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, in regulation 4(5) (see ■ SUP 14.2.8 G).

### 14.2.3 G FCA PRA

Where the change arises from circumstances within the control of the *incoming EEA firm*, the requirements in regulation 4(4) are that:

- (1) the *incoming EEA firm* has given notice to the *appropriate UK regulator* (see ■ SUP 14.4.1 G) and to its *Home State regulator* stating the details of the proposed change;
- (2) the *appropriate UK regulator* has received a notice stating those details; and
- (3) either:
  - (a) the *appropriate UK regulator* has informed the firm that it may make the change; or
  - (b) the period of one month beginning with the date on which the *incoming EEA firm* gave the *appropriate UK regulator* the notice mentioned in (1) has elapsed.

### 14.2.4 G FCA PRA

Changes to the *requisite details* may lead to changes to the *applicable provisions* to which the *incoming EEA firm* is subject. The *appropriate UK regulator* will, as soon as practicable after receiving a notice in ■ SUP 14.2.3 G or ■ SUP 14.2.8 G, inform the

16.9.5 G [deleted]

16.9.6 G If a group includes more than one *firm*, a single annual *appointed representatives* report may be submitted on behalf of all *firms* in the *group*. Such a report should contain the information required from all the *firms*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their *Financial Services Register* firm reference numbers. The requirement to provide a report, and the responsibility for the report remains with each *firm* in the *group*.

FCA



**16.10 Verification of standing data**

**Application**

**16.10.1**  
FCA PRA

G

The effect of ■ SUP 16.1.1 R is that this section applies to every *firm* except:

- (1) an *ICVC*; or
- (2) a *UCITS qualifier*; or
- (2A) an *AIFM qualifier*; or
- (3) a *credit union*; or
- (4) a *dormant account fund operator*.

**Purpose**

**16.10.2**  
FCA PRA

G

*Standing data* is used by the *appropriate regulator* :

- (1) to ensure that a *firm* is presented with the correct regulatory return when it seeks to report electronically;
- (2) in order to communicate with a *firm*;
- (3) as the basis for some sections of the *Financial Services Register*; and
- (4) in order to carry out thematic analysis across sectors and groups of *firms*.

**16.10.3**  
FCA PRA

G

In view of the importance attached to *standing data*, and the consequences which may result if it is wrong, this section provides the framework for a *firm* to check and correct it.

**Requirement to check the accuracy of standing data and to report changes to the appropriate regulator**

**16.10.4**  
FCA PRA

R

- (1) Within 30 *business days* of its *accounting reference date*, a *firm* must check the accuracy of its *standing data* through the relevant section of the *appropriate regulator's* website.
- (2) [paragraph suspended by FSA 2004/79]

16.10.4A **R**  
**FCA PRA**

- (3) If any *standing data* is incorrect, the *firm* must submit the corrected *standing data* to the *appropriate regulator*, using the appropriate form set out in ■ SUP 15 Ann 3 R and in accordance with ■ SUP 16.10.4A R.
- (1) A *firm* other than a *credit union* must submit any corrected *standing data* under ■ SUP 16.10.4R (3) online at the *appropriate regulator's* website using the ONA system.
- (2) A *credit union* must submit any corrected *standing data* under ■ SUP 16.10.4R (3) to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team' .
- (3) Where a *firm* is obliged to submit corrected *standing data* online under (1), if the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a *firm* must submit its corrected *standing data* to static.data@fca.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team' .

16.10.4B **G**  
**FCA PRA**

If the *FCA's* information technology systems fail and online submission is unavailable for 24 hours or more, the *FCA* will endeavour to publish a notice on its website confirming that online submission is unavailable and that the alternative methods of submission set out in ■ SUP 16.3.9 R should be used.

16.10.4C **G**  
**FCA PRA**

Where ■ SUP 16.10.4AR (3) applies to a *firm*, ■ GEN 1.3.2 R (Emergency) does not apply.

16.10.5 **G**  
**FCA PRA**

The *standing data* is made available to the *firm* when the *firm* logs into the appropriate section of the *appropriate regulator's* website. The *firm* should check the *standing data* and send any corrections to the *appropriate regulator* . The *appropriate regulator's* preferred method of receiving corrections to *standing data* is by the online forms available at the *appropriate regulator's* website.

16.10.6 **G**  
**FCA PRA**

A *firm* may check, and submit corrections to, its *standing data* more frequently than annually.

16.10.7 **G**

[deleted]



## 16.11 Product Sales Data Reporting

### Application

16.11.1  
FCA

R

This section applies to a *firm* which is a *home finance provider* or which is, in respect of sales to a *retail client* or a *consumer*:

- (1) an *insurer*; or
- (1A) the *manager* of an *authorised AIF* or a *UCITS scheme*; or
- (2) the *operator* of an *investment trust savings scheme* , or a *personal pension scheme* ; or
- (3) a *person* who issues or manages the relevant assets of the issuer of a *structured capital-at-risk product*,

unless the *firm* is a *managing agent*.

### Purpose

16.11.2  
FCA

G

- (1) The purpose of this section is to set out the requirements for *firms* in the retail mortgage, investment, and *pure protection contract* markets specified in ■ SUP 16.11.1 R to report individual product sales data to the *FCA*. In the case of *firms* in the sale and rent back market, there is a requirement to record, but not to submit, the data. These requirements apply whether the *regulated activity* has been carried out by the *firm*, or through an intermediary which has dealt directly with the *firm*.
- (2) The purpose of collecting this data is to assist the *FCA* in the ongoing supervision of *firms* engaged in retail activities and to enable the *FCA* to gain a wider understanding of market trends in the interests of protecting *consumers*.

### Reporting requirement

16.11.3  
FCA

R

- (1) A *firm* must submit a report (the 'data report') containing the information required by ■ SUP 16.11.5 R quarterly, within 20 *business days* of the end of the quarter, unless (3) or (4) applies.
- (2) The reporting periods are the four calendar quarters of each year beginning on 1 January.

- (3) A *firm* need not submit a data report if no relevant sales have occurred in the quarter.
- (4) A *SRB agreement provider* must compile, and keep for at least five years from the end of the relevant quarter, a data report containing the information required by ■ SUP 16.11.5 R, but is not subject to the requirement in (1) to submit a data report (or to the requirement in ■ SUP 16.11.9 R).

16.11.4

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FCA

- (1) A *firm* may submit a data report more frequently than quarterly if it wishes.
- (2) If it is easier and more practical for a *firm* to submit additional data relating to products other than those specified in ■ SUP 16.11.5 R, it may submit that additional data to the *FCA* in a data report.

### Content of the report

16.11.5

R

FCA

The data report must contain sales data in respect of the following products:

- (1) *retail investments*;
- (2) *pure protection contracts*;
- (3) *regulated mortgage contracts* (but not further advances);
- (4) *home purchase plans*;
- (5) *home reversion plans*; and
- (6) *regulated sale and rent back agreements* .

16.11.6

G

FCA

*Guidance* on the type of products covered by ■ SUP 16.11.5 R is contained in ■ SUP 16 Annex 20 GG.

16.11.7

R

FCA

The data report must comply with the provisions of ■ SUP 16 Annex 21 RR.

16.11.8

R

FCA

The data report must relate both to transactions undertaken by the *firm* and to transactions undertaken by an intermediary which has dealt directly with the customer on the *firm's* behalf.

16.11.8A

G

FCA

Where the *manager* of an *authorised AIF* or a *UCITS scheme* receives business from a *firm* which operates a nominee account, the data report in respect of those transactions submitted by the *manager* should treat those transactions as transactions undertaken by the *manager* with the *firm*.

16.11.9

R

FCA

A *firm* must provide the data report to the *FCA* electronically in a standard format provided by the *FCA*.

16.11.10 G  
FCA

A data report will have been provided to the *FCA* in accordance with ■ SUP 16.11.9 R only if all mandatory data reporting fields (as set out in ■ SUP 16 Annex 21 RR) have been completed correctly and the report has been accepted by the relevant *FCA* reporting system.

**Use of reporting agents**  
 .....

16.11.11 R  
FCA

- (1) A *firm* may appoint another *person* to provide the data report on the *firm's* behalf if the *firm* has informed the *FCA* of that appointment in writing.
- (2) Where (1) applies, the *firm* must ensure that the data report complies with the requirements of ■ SUP 16.11 and identifies the originator of the transaction.

Content of Report	Form (Note 1)	Frequency	Due Date
<p><b>GENPRU 3.1.35 R</b>  <b>where it applies</b></p>			
<p><b>Note 1</b></p>	<p>When giving the report required, a <i>firm</i> must use the form indicated, if any.</p>		
<p><b>Note 2</b></p>	<p>In respect of <i>FCA-authorized persons</i>, if Part 1 of GENPRU 3 Annex 1 R(method 1), or Part 2 of GENPRU 3 Annex 1 R (method 2), or Part 3 of GENPRU 3 Annex 1 R (method 3) applies, there is no specific form. Adequate information must be provided, specifying the calculation method used and each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form which this reporting will take and the extent to which verification by an auditor will be required.</p> <p>For the purposes of the above, where relevant to the agreed reporting arrangements, <i>rules 9.40(1), 9.40(1A), 9.40(3) and 9.40(4) of IPRU(INS)</i> apply as they would if the <i>financial conglomerate</i> were an <i>insurance group</i>.</p>		
<p><b>Note 3</b></p>	<p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p> <p>When reviewing the <i>risk concentration</i> levels, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interests, the risk of circumvention of sectoral <i>rules</i>, and the level or volume of risks.</p>		
<p><b>Note 4</b></p>	<p>For the purposes of this reporting requirement, an <i>intra-group transaction</i> will be presumed to be significant if its amount exceeds 5% of the total amount of capital adequacy requirements at the level of the <i>financial conglomerate</i>.</p> <p>Rather than specifying a standard format for each <i>financial conglomerate</i> to use, each <i>financial conglomerate</i> for which the <i>appropriate regulator</i> is the <i>co-ordinator</i> must discuss with the <i>appropriate regulator</i> the form of the</p>		

Content of Report	Form (Note 1)	Frequency	Due Date
<p>Note 5</p>		<p>information to be reported. This should mean that usual information management systems of the <i>financial conglomerate</i> can be used to the extent possible to generate and analyse the information required.</p> <p>When reviewing the <i>intra-group transactions</i>, the <i>appropriate regulator</i> will in particular monitor the possible risk of contagion in the <i>financial conglomerate</i>, the risk of a conflict of interest, the risk of circumvention of <i>sectoral rules</i>, and the level or volume of risks.</p> <p>The frequency and due date will be as follows:</p> <p>(1) <i>banking and investment services conglomerate</i>: frequency is yearly with due date 45 <i>business days</i> after period end;</p> <p>(2) <i>insurance conglomerate</i>: frequency is yearly with due date four months after period end for the capital adequacy return and three months after period end for the report on compliance with <a href="#">GENPRU 3.1.35 R</a> where it applies.</p>	
<p>Note 6</p>		<p>Adequate information must be added as a separate item to the relevant form for sectoral reporting.</p>	

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## Reports from depositaries of ICVCs, AUTs and ACSs

**FCA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Reports from trustees of AUTs and depositaries* - Forms/sup/sup\_chapter16\_annex12g\_20130701.pdf



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## Data items for SUP 16.12

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Data items for SUP 16.12* Forms/sup/sup\_chapter16\_annex24r\_20140101.pdf



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## Close Links Monthly Report

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

SUP 16 Annex 35AR



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**Guidance notes for completion of the close links monthly report in SUP 16 Annex 35AR**

**FCA** **PRA**

This annex consists only of one or more forms. Forms are to be found through the following address:

SUP 16 Annex 35BG



# Appendix 3

## Guidance on passporting issues

### 3.1 Application

App 3.1.1 G  
FCA PRA

This appendix applies to all *firms* when carrying on a *passporting activity*, except for a *firm* which is only carrying on a *passporting activity* under the *auction regulation*.

### 3.2 Purpose

App 3.2.1 G  
FCA PRA

The purpose of this appendix is to give *guidance*:

- (1) to *UK firms* on some of the issues that arise when carrying on *passporting activities* (see ■ SUP App 3.5 and ■ SUP App 3.6 );
- (2) to all *firms* on the relationship between *regulated activities* and activities passported under the *Single Market Directives* (see ■ SUP App 3.9 and ■ SUP App 3.10 ).

### 3.3 Background

#### The Treaty on the Functioning of the European Union

App 3.3.1 G  
FCA PRA

- (1) The *Treaty* establishes in *EU law* the rights of freedom of establishment and freedom to provide services in the *EU*.
- (2) The *Treaty* lays down central principles governing the legal framework for freedom of establishment and the free movement of services in the *EU*. There are, however, a number of areas where the legal position is not clear. This includes, for example, identifying whether a service is provided through an establishment, where the issues involved are complex. Therefore, this Appendix is intended to provide *guidance* but

cannot be regarded as comprehensive. Ultimately, the construction of the *Treaty* and relevant Directive provisions is a matter for the European Court of Justice.

App 3.3.2 **G**  
FCA PRA

The *Treaty* provides the framework for the provision of banking, insurance business, investment business, UCITS management services and insurance mediation, while the *Single Market Directives* clarify the rights and freedoms within that framework.

## EU and EEA

App 3.3.3 **G**  
FCA PRA

The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* that are not Member States of the *EU*.

## Interpretative communications

App 3.3.4 **G**  
FCA PRA

In 1997, the European Commission published an interpretative communication (Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)) (the text of this directive and the First Banking Directive is now consolidated in the *Banking Consolidation Directive*). The European Commission's objective in publishing this communication was to explain and clarify the *EU* rules. The European Commission deemed it desirable "to restate in a Communication the principles laid down by the Court of Justice and to set out its position regarding the application of these Principles to the specific problems raised by the Second Banking Directive".

App 3.3.5 **G**  
FCA PRA

In 2000, the European Commission published a further interpretative communication (Freedom to provide services and the general good in the insurance sector (2000/C43/03)). This allowed the European Commission to publicise its own interpretation of the rules on the freedom to provide services.

App 3.3.6 **G**  
FCA PRA

- (1) The European Commission has not produced an interpretative communication on *MiFID*. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*, which is repealed and replaced by the *CRD*.
- (2) The European Commission has not produced an interpretative communication on the *Insurance Mediation Directive*, *AIFMD* or the *UCITS Directive*.

App 3.3.7 **G**  
FCA PRA

In giving its views, communications made by the European Commission have the status of guidance and are not binding on the national courts of *EEA States*. This is because it is the European Court of Justice that has ultimate responsibility for interpreting the *Treaty* and secondary legislation. Accordingly, the communications "do not prejudice the interpretation that the Court of Justice ..., which is responsible in the final instance for interpreting the *Treaty* and secondary legislation, might place on the matter at issue." (European Commission interpretative communication: Freedom to provide services and the general good in the insurance sector (C(99) 5046). However, the Courts may take account of European Commission communications when interpreting the *Treaty* and secondary legislation.

App 3.3.8 **G**  
FCA PRA

*Firms* should also note that European Commission communications do not necessarily represent the views taken by all *EEA States*.

## E-Commerce

App 3.3.9 G  
FCA PRA

The *E-Commerce Directive* covers services provided at a distance by means of electronic equipment for the processing (including digital compression) and storage of data. The services would normally be provided in return for remuneration and must be provided at the individual request of a recipient (see recital 17 of the *E-Commerce Directive*). The Directive implements the *country of origin* approach to regulation. This approach makes *firms* subject to the conduct of business requirements of the *EEA State* from which the service is provided. This is subject to certain derogations (see ■ SUP App 3.3.11 G).

App 3.3.10 G  
FCA PRA

The *E-Commerce Directive* does not affect the responsibilities of *Home State* under the *Single Market Directives*. This includes the obligation of a *Home State regulator* to notify the *Host State regulator* of a *firm's* intention to establish a *branch* in, or provide *cross border services* into, the other *EEA State*.

App 3.3.11 G  
FCA PRA

There are, however, general derogations from the internal market provisions under article 3(3) of the *E-Commerce Directive*. The derogations include consumer contracts, the permissibility of unsolicited e-mail and certain insurance services (both life and non-life). Where these derogations apply, the *EEA States* in which the recipients of the service are based may continue to be able to impose their own requirements.

App 3.3.12 G

[deleted]

## Notification of establishing a branch or of providing cross border services

App 3.3.13 G  
FCA PRA

The *Single Market Directives* require *credit institutions*, *insurance undertakings* (other than *reinsurance undertakings*), *MiFID investment firms*, *AIFMs*, *UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*.

■ SUP 13.5 (Notices of intention) sets out the notification requirements for a *firm* seeking to establish a *branch* or provide *cross border services*. As *firms* will note, the decision whether a passport notification needs to be made will be a matter of interpretation. The onus is on *firms* to comply with the requirements of the *Act* and, where relevant, the laws of other *EEA States*. So, in cases of doubt, *firms* should obtain their own legal advice on the specific issues involved.

App 3.3.14 G  
FCA PRA

Blanket notification is the practice of the *Home State regulator* notifying all *Host State regulators* in respect of all activities regardless of any genuine intention to carry on the activity. This practice is discouraged by the *FCA* and *PRA*. However, a *firm* may be carrying on activities in the *United Kingdom* or elsewhere in a way that necessarily gives rise to a real possibility of the provision of services in other *EEA States*. In such cases, the *firm* should consider with its advisers whether it should notify the relevant authorities and include that possibility in its business plan.

3.4 [Deleted]

3.5 [Deleted]

### 3.6 Freedom to provide services

App 3.6.1 **G**  
FCA PRA

Article 56 (Services) of the *Treaty* grants to *EEA* nationals established in one *EEA State* the freedom to provide *cross border services* to other *EEA States*.

#### How services may be provided

App 3.6.2 **G**  
FCA PRA

Under the *Treaty*, the freedom to provide services within the EC may be exercised in three broad ways:

- (1) where the provider of a service moves temporarily to another *EEA State* in order to provide the service;
- (2) where the service is provided without either the provider or the recipient moving (in this situation the provision, and receipt, of the service may take place by post, telephone or fax, through computer terminals or by other means of remote control);
- (3) where the recipient of a service moves temporarily to another *EEA State* in order to receive (or, perhaps, commission the receipt of) the service within that State.

App 3.6.3 **G**  
FCA PRA

Under the *Single Market Directives*, however, *EEA rights* for the provision of services are concerned only with services provided in one of the ways referred to in ■ SUP App 3.6.2 G (1) and ■ (2) (How services may be provided).

App 3.6.4 **G**

[deleted]

#### Place of supply

App 3.6.5 **G**  
FCA PRA

In the opinion of the European Commission (and in the wording of the *Single Market Directives*) "only activities carried on within the territory of another Member State should be the subject of prior notification" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In determining, for the purposes of notification, whether a service is to be provided 'within' another *EEA State*, it is necessary to determine the place of supply of the service.

App 3.6.6 G  
FCA PRA

An *insurance undertaking* that effects *contracts of insurance* covering risks or commitments situated in another *EEA State* should comply with the notification procedures for the provision of services within that *EEA State*. The location of risks and commitments is found by reference to the rules set out in paragraph 6 of schedule 12 to the *Act*, which derive from article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*. It may be appropriate for *insurers* to take legal advice as to how these rules are interpreted and applied in other *EEA States*. The need to passport may arise because of only one of the risks covered by an insurance policy. This includes, for example, where a policy covers a number of property risks and one of those properties is in another *EEA State*.

App 3.6.7 G  
FCA PRA

In respect of banking services, the European Commission believes that "...to determine where the activity was carried on, the place of provision of what may be termed the 'characteristic performance' of the service i.e. the essential supply for which payment is due, must be determined" (Commission interpretative communication: Freedom to provide services and the interests of the general good in the Second Banking Directive (97/C 209/04)). In the view of the *FCA* and *PRA*, this requires consideration of where the service is carried out in practice.

App 3.6.8 G  
FCA PRA

The *FCA* and *PRA* are of the opinion that *UK firms* that are *credit institutions* and *MiFID investment firms* should apply the 'characteristic performance' test (as referred to in ■ SUP App 3.6.7 G) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

App 3.6.9 G  
FCA PRA

In the case of a *UK firm* conducting portfolio management, for example, this would mean looking at where the investment decisions and management are actually carried on in order to determine where the service is undertaken. Similarly, a *UK stockbroker* that receives orders by telephone from a *customer* in France for execution on a *UK exchange* may be deemed to be dealing or receiving and transmitting orders within the territory of the *United Kingdom*. In such a case, whether the *firm* solicited the overseas investor would be irrelevant.

App 3.6.10 G  
FCA PRA

Where, however, a *credit institution* or *MiFID investment firm*:

- (1) intends to send a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* on a temporary basis to provide financial services; or
- (2) provides advice, of the type that requires notification under either *MiFID* or the *Banking Consolidation Directive*, to *customers* in another *EEA State*;

the *firm* should make a prior notification under the freedom to provide services.

### Temporary activities

App 3.6.11 G  
FCA PRA

The key distinction in relation to temporary activities is whether a *firm* should make its notification under the freedom of establishment in a *Host State*, or whether it should notify under the freedom to provide services into a *Host State*. It would be inappropriate to discuss such a complex issue in *guidance* of this nature. It is recommended that, where a *firm* is unclear on the distinction, it should seek appropriate advice. In either case, where a *firm* is carrying on activities in another *EEA State* under a *Single Market Directive*, it should make a notification.

App 3.6.12 G

[deleted]

App 3.6.13 **G** [deleted]

App 3.6.14 **G** [deleted]

### Monitoring procedures

App 3.6.15 **G**

**FCA** **PRA**

The *FCA* and *PRA* consider that, in order to comply with *Principle 3: Management and control* (see ■ PRIN 2.1.1 R), a *firm* should have appropriate procedures to monitor the nature of the services provided to its *customers*. Where a *UK firm* has non-resident *customers* but has not notified the *EEA State* in which the *customers* are resident that it wishes to exercise its freedom to provide services, the *FCA* and *PRA* would expect the *firm's* systems to include appropriate controls. Such controls would include procedures to prevent the supply of services covered by the *Single Market Directives* in the *EEA State* in which the *customers* are resident if a notification has not been made and it is proposed to provide services otherwise than by remote communication. In respect of *insurance business*, the *insurer's* records should identify the location of the risk at the time the policy is taken out or last renewed. That will, in most cases, remain the location of the risk thereafter, even if, for example, the *policyholder* changes his habitual residence after that time.

App 3.6.16 **G** [deleted]

App 3.6.17 **G** [deleted]

App 3.6.18 **G** [deleted]

App 3.6.19 **G** [deleted]

App 3.6.20 **G** [deleted]

App 3.6.21 **G** [deleted]

App 3.6.22 **G** [deleted]

App 3.6.23 **G** [deleted]

App 3.6.24 **G** [deleted]

### Membership of regulated markets

App 3.6.25 **G**

**FCA** **PRA**

- (1) The *FCA* and *PRA* are of the opinion that where a *UK firm* becomes a member of:
  - (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
  - (b) an *MTF* operated by a *MiFID investment firm* or a *market operator* in another *EEA State*,

the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the *regulated market's* or the *MTF's* prices in its UK office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the *MTF*.

- (2) In such a case, the *FCA* and *PRA* would consider that:
- (a) the *market operator* operating the *regulated market* or the *MTF* is providing a *cross-border service* into the *UK* and so, provided it has given notice to its *Home State regulator* in accordance with articles 42(6) or 31(5) *MiFID*, it will be exempt from the *general prohibition* in respect of any *regulated activity* carried on as part of the business of the *regulated market* or of *operating an MTF* (see section 312A of the *Act*);
  - (b) the *MiFID investment firm* operating the *MTF* is providing a *cross-border service* into the *UK* and so needs to comply with ■ SUP 13A.

**App 3.6.26** G *Firms* are reminded of their rights, under article 33 of *MiFID*, to become members of, or have access to, the *regulated markets* in other Member States.

FCA PRA

**App 3.6.27** G *Firms* should note that, in circumstances where the *FCA* or *PRA* take the view that a notification would not be required, other *EEA States* may take a different view.

FCA PRA

**App 3.6.28** G [deleted]

**App 3.6.29** G [deleted]

**App 3.6.30** G [deleted]

**App 3.6.31** G [deleted]

3.7 [Deleted]

3.8 [Deleted]

3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.1 G  
FCA PRA

The following Tables 1 , 2, 2ZA 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passporting activities* under the *CRD* , *MiFID*, *AIFMD* , the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G  
FCA PRA

The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD* , *MiFID*, *AIFMD*, the *UCITS Directive* or the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passporting activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

App 3.9.3 G  
FCA PRA

In considering the issues raised in the tables, *firms* should note that:

- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) applies in respect of agreeing to undertake the specified activity; and
- (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

App 3.9.4 G  
FCA PRA

Table Activities set out in Annex 1 of the CRD

Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
1.	Taking deposits and other repayable funds from the public	Article 5	Article 74
2.	Lending	Article 61, 64	Article 88

Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
3.	Financial leasing		
4.	Money transmission services		
5.	Issuing and administering means of payment (eg credit cards, travellers' cheques and bankers' drafts)		
6.	Guarantees and commitments		
7.	Trading for own account or for account of customers in:	Article 14, 21, 25 (see Note 1), 64	Article 77, 78, 80, 83-85, 89
	(a) money market instruments	Article 14, 21, 25, 64	Article 83-85, 89
	(b) foreign exchange	Article 14, 21, 25, 64	Article 83-85, 89
	(c) financial futures and options	Article 14, 21, 25, 64	Article 83-85, 89
	(d) exchange and interest rate instruments	Article 14, 21, 25, 64	Article 76-81, 89
	(e) transferable securities		
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, 53, 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
10.	Money broking	Article 25, 64	Article 77, 78, 89
11.	Portfolio management and advice	Article 14, 21, 25, 37, 53, 64	Article 76-81, 83-85, 89
12.	Safekeeping and administration of securities	Article 40, 45, 64	Article 76-81, 83-85, 89
13.	Credit reference services		
14.	Safe custody services		
15.	Issuing electric money	Article 9B	Article 74A

Note 1: The services and activities provided for in Sections A and B of Annex I of *MiFID* when referring to the *financial instruments* provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the CRD from 1 January 2013. See the table at SUP App 3.9.5 G below for mapping of *MiFID investment services and activities*. For further details relating to this residual category, please see the "CRD" section of the passporting forms entitled "Notification of intention to establish a branch in another EEA State" and "Notification of intention to provide cross border services in another EEA State".

Table Services set out in Annex I to MiFID

Table 2: <i>MiFID investment services and activities</i>	Part II RAO Investments	Part III RAO Investments
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<i>A MiFID investment services and activities</i>		
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25 Article 76-81, 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21 A Article 76-81, 83-85, 89
3.	Dealing on own account	Article 14 Article 76-81, 83-85, 89
4.	Portfolio management	Article 37 (14, 21, 25 - see Note 1) Article 76-81, 83-85, 89
5.	Investment advice	Article 53 Article 76-81, 83-85, 89
6.	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21 Article 76-81, 83-85, 89
7.	Placing of financial instruments without a firm commitment basis	Article 21, 25 Article 76-81, 83-85, 89
8.	Operation of Multilateral Trading Facilities	Article 25D (see Note 2) Article 76-81, 83-85, 89
Ancillary services		
		Part II RAO Activities
		Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	Article 40, 45, 64 Article 76-81, 83-85, 89
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved	
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64 Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64 Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53, 64 Article 76-81, 83-85, 89
6.	Services related to underwriting	Article 25, 53, 64 Article 76-81, 83-85, 89

7. Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services. Article 14, 21, 25, 25D, 37, 53, 64 Article 83 and 84

Note 1. A *firm* may also carry on these other activities when it is *managing investments*.

Note 2. A *firm* operating an *MTF* under article 25D does not need to have a *permission* covering other *regulated activities*, unless it performs other *regulated activities* in addition to *operating an MTF*.

App 3.9.5A **G**

FCA

Activities set out in article 6(2) to (4) of AIFMD

Table 2ZA: AIFMD activities		Part II RAO Activities	Part III RAO Investments
1.	<i>AIFM management functions.</i>	Article 51ZC	N/A (activity relates to property of any kind)
2.	Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client basis (Note 2).	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76 to 81, 83 to 85, 89
3.	Investment advice (Note 2).	Articles 53, 64	Articles 76 to 81, 83 to 85, 89
4.	Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.	Articles 40, 45, 64	Articles 76 to 81, 83 to 85, 89
5.	Reception and transmission or orders in relation to <i>financial instruments</i> .	Articles 25(1), 64	Articles 76 to 81, 83 to 85, 89

Note 1. See FUND 1.4.2 R to FUND 1.4.4 R for further information in relation to the activities that *full-scope UK AIFMs* are able to perform.

Note 2. See FUND 1.4.5 G for the position with respect to assets which are not *financial instruments*.

App 3.9.6 **G**

FCA

Table Activities set out in Article 6(2) and (3) of the UCITS Directive

Table 2A: UCITS Directive activities	Part II RAO Activities	Part III RAO Investments
1. The management of UCITS in the form of unit trusts / common funds or of investment companies; this includes the function mentioned in Annex II of the <i>UCITS Directive</i> (see Note 2).	Articles 14, 21, 25, 37, 51, 53, 64  OR  Article 51ZA	Articles 76-81, 83-85, 89  OR  N/A (activity relates to property of any kind) (Note 3)
2. Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76-81, 83-85, 89
3. Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 53, 64	Articles 76-81, 83-85, 89
4. Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, 83-85, 89

Note 1. A *UCITS management company* can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also *authorised* to carry on the activity set out in row (2) of the table (see [COLL 6.9.9 R](#)).

Note 2. The functions set out in Annex 2 to the *UCITS Directive* are:

1. Investment management.
2. Administration:
  - a. legal and fund management accounting services;
  - b. customer inquiries;
  - c. valuation and pricing (including tax returns);
  - d. regulatory compliance monitoring;
  - e. maintenance of unit-holder register;
  - f. distribution of income;
  - g. unit issues and redemptions;
  - h. contract settlements (including certificate dispatch);
  - i. record keeping.
3. Marketing.

Note 3. The *regulated activity* of *managing a UCITS* may be carried on for property of any kind (article 4(2) of the *regulated activities order*). However, the *scheme property* of a *UCITS scheme* is limited to certain types of property, in line with [COLL 5](#) (Investment and borrowing powers).

Table 2B: Insurance Mediation Directive Activities		Part II RAO Activities	Part III RAO Investments
1.	Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance.	Articles 25, 53 and 64	Articles 75, 89 (see Note 1)
2.	Concluding contracts of insurance	Articles 21, 25, 53 and 64	Articles 75, 89
3.	Assisting in the administration and performance of contracts of insurance, in particular in the event of a claim.	Articles 39A, 64	Articles 75, 89

Note 1. Rights to or interests in *life policies* are *specified investments* under Article 89 of the *Regulated Activities Order*, but rights to or interests in *general insurance contracts* are not.

### 3.10 Mapping of Insurance Directives to the Regulated Activities Order

#### Introduction

App 3.10.1 G  
FCA PRA

The *guidance* in Table 3 describes in broad outline the relationship between:

- (1) the insurance-related *regulated activities* specified in the *Regulated Activities Order*; and
- (2) the activities within the scope of the *Insurance Directives*

App 3.10.2 G  
FCA PRA

This is a guide only and should not be used as a substitute for legal advice in individual cases.

Table 3: Insurance Directive activities		Part II RAO Activities	Part III RAO Investments
<b>1. Non-life Insurance Directive activities</b>			
1.	Taking up and carrying on direct non-life insurance business	Article 10	Article 75
2.	Classes 1 to 18 of direct non-life insurance business in Point A of the Annex to the First Directive		Corresponding paragraphs 1 to 18 of Schedule 1, Part I
<b>2. Consolidated Life Directive activities</b>			
1.	Taking up and carrying on direct life insurance business	Article 10	Article 75
2.	Classes I to IX of direct life insurance business in the Annex 1 to the Consolidated Life Directive		Corresponding paragraphs I to IX of Schedule 1, Part II

### Meaning of contract of insurance

App 3.10.3 **G**  
**FCA** **PRA**

The meaning of *contract of insurance* is set out in article 3(1) of the *Regulated Activities Order* (Interpretation). It does not include benefit-in-kind funeral plans, which are specified in article 60 of the *Regulated Activities Order* (plans covered by insurance or trust arrangements). Such funeral plans (to the extent that they are insurance) are also excluded from the *Insurance Directives*. It covers some contracts which might not otherwise be viewed as insurance in the *United Kingdom* (for example, contracts of guarantee). These contracts are also governed by the *Insurance Directives*. For the purpose of the *Regulated Activities Order*, a *contract of insurance* includes a contract of reinsurance as well as a contract of direct insurance.

### The Insurance Directives

App 3.10.4 **G**  
**FCA** **PRA**

Article 1 of the *First Non-Life Directive* and article 2 of the *Consolidated Life Directive* provides that the Directives "concern the taking up and pursuit of the self-employed activity of direct insurance". By contrast, article 10 of the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) also covers reinsurance.

App 3.10.5 **G**  
**FCA** **PRA**

Articles 2, 3 and 4 of the *First Non-Life Directive* and article 3 of the *Consolidated Life Directive* set out certain exclusions by reference to:

- (1) types of insurance;
- (2) types of insurer;
- (3) particular conditions under which insurance activities are carried out.
- (4) annual income; and
- (5) particular identified institutions.

App 3.10.6 **G**  
**FCA** **PRA**

Some of the exclusions referred to in mirror exclusions in the *Regulated Activities Order*. So, the exclusion for breakdown insurance in article 2(3) of the *First Non-Life Directive* is matched by a slightly narrower exclusion in article 12 of the *Regulated Activities Order* (Breakdown insurance). The separate treatment of benefit-in-kind funeral plans under the *Regulated Activities Order* (see ■ SUP App 3.10.4 G) is matched by their exclusion on a slightly wider basis in article 3(5) of the *Consolidated Life Directive*. Other requirements from these Directives are also excluded from regulation by the *Exemption Order*.

App 3.10.7 **G**  
**FCA** **PRA**

Most of the exclusions under the Directives, however, are not excluded from being *regulated activities*. For example, article 3 of the *Consolidated Life Directive* and article 3 of the *Non-Life Directive* exclude certain mutual associations whose annual contribution income falls below a defined threshold. In the *United Kingdom*, these include certain smaller *friendly societies* commonly referred to as "*non-directive friendly societies*". The activities of such societies are regulated under the *Act*, on a "lighter basis" than the activities of other insurers.

### Territorial scope of the Regulated Activities Order and the Directives

App 3.10.8 **G**  
**FCA** **PRA**

Under the *Act* and the *Regulated Activities Order*, the activities of *effecting* and *carrying out contracts of insurance* are treated as being carried on in the *United Kingdom* on the basis of legal tests under which the location of the risk is only one factor. If the risk is located in the *United Kingdom*, then (other relevant factors being taken into account) the activity will, in the vast majority of cases, also be viewed as carried on in the *United Kingdom*. There are exceptions,

however, and overseas insurers may insure risks in the *United Kingdom* without carrying on business here and so without requiring to be regulated (although the *financial promotion* regime may apply). By contrast, under the Directives, the responsibility, as between *EEA States*, for regulating the conduct of passported insurance services is determined by reference to the location of the risk or commitment, as defined in article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive*.

App 3.10.9 G  
FCA PRA

So, the effect of App 3.12.1 is that an insurer may be carrying on *insurance business* in the *United Kingdom* which is to be treated as a *regulated activity* under article 10 to the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) in circumstances where the risks covered are treated as located in another *EEA State*. In that event, the *insurer* is required by Schedule 3 to the *Act* to passport into the State concerned and may be subject to conduct of business requirements in that State (see ■ SUP 13.10 (Applicable provisions)).

App 3.10.10 G  
FCA PRA

An *insurer* authorised in another *EEA State* who is insuring *UK* risks and so passports on a services basis under the *Insurance Directives* into the *United Kingdom* (see ), may not be carrying on a *regulated activity* in the *United Kingdom*. But, if it passports into the *United Kingdom*, it will qualify for *authorisation* under paragraph 12 of Schedule 3 to the *Act* (Firms qualifying for authorisation). Where this is the case, the *insurer* will be subject to conduct of business requirements in the *United Kingdom* (see ■ SUP 13A.6 (Which rules will an incoming EEA firm be subject to?)).

### Activities carried on by incoming EEA firms in connection with insurance business.

App 3.10.11 G  
FCA PRA

Although the *Insurance Directives* are concerned with the *regulated activities* of *effecting and carrying out contracts of insurance*, an *incoming EEA firm* passported under the *Insurance Directives* will be entitled to carry on certain other *regulated activities* without the need for *top-up permission*. This is where the *regulated activities* are carried on for the purposes of or in connection with the *incoming EEA Firm's insurance business*. These *regulated activities* may include:

- (1) *dealing in investments as principal*;
- (2) *dealing in investments as agent*;
- (3) *arranging (bringing about) deals in investments*;
- (4) *making arrangements with a view to transactions in investments*;
- (5) *managing investments*;
- (6) *safeguarding and administering investments*;
- (7) *advising on investments*;
- (8) *agreeing to carry on a regulated activity of the above kind*.

App 3.10.12 G  
FCA PRA

### Financial promotion

The *financial promotion* regime under section 21 of the *Act* (Restrictions on financial promotion) may also apply to *EEA insurance undertakings* regardless of whether they carry on a *regulated activity* in the *United Kingdom* or passport into the *United Kingdom*.

App 3.10.13 G

PRA

**Position of EEA insurers carrying out both direct and reinsurance business**

The *Insurance Directives* do not apply to the authorisation to carry on *reinsurance*. But, the *Insurance Directives* do not prevent *insurance undertakings* authorised under those Directives from carrying out *reinsurance* as well as direct insurance business. Article 13(2) of the *First Non-Life Directive* and article 10(2) of the *Consolidated Life Directive* state that financial supervision of *insurance undertakings* "shall include verification, with respect to the *insurance undertaking's* entire business, of its state of solvency, of the establishment of technical provisions and of the assets covering them". On that basis, an *insurance undertaking* authorised in another *EEA State* which carries on a mixed direct insurance and *reinsurance* business, and is, therefore, subject to the requirements of the Directives, will generally be treated as satisfying the conditions laid down by an *EU* instrument relating to the carrying on of the *regulated activity* of *effecting* or *carrying out contracts of insurance*. This is for the purpose of paragraph 3 of Schedule 4 to the *Act* (Exercise of treaty rights). The *insurance undertaking* will, therefore, generally be able to qualify for *permission* as a *Treaty firm* for its *reinsurance* business if it follows the procedure provided for by Schedule 4 (see ■ SUP 13A.3.4 G to ■ SUP 13A.3.11 G (Treaty Firms)). This will be in addition to the *insurance undertaking* being an *EEA firm* under Schedule 3 of the *Act* for its direct insurance business.

# Decision Procedure and Penalties Manual



2.5.13

FCA

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The decisions referred to in ■ DEPP 2.5.12 G are:

- (1) the decision to give a *supervisory notice* pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the *Act*;
- (1A) the decision to give a *supervisory notice* pursuant to section 261Z1(3), (8) or (9)(b) (Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative) of the *Act*;
- (2) the decision to give a *warning notice* or *decision notice* pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) of the *Act*;
- (3) the decision to give a *supervisory notice* in accordance with regulation 27(3), (8) or 9(b) of the *OEIC Regulations*; and
- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC Regulations*.
- (4A) the decision to give a *warning notice* or *decision notice* pursuant to section 255 or 260 of the *Act*;
- (4B) the decision to give a *warning notice* or *decision notice* pursuant to section 261V or 261Z2 of the *Act*;
- (5) [deleted]
- (6) [deleted]

2.5.14

FCA

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In determining whether there is agreement to or acceptance of the action proposed, an indication by the following *persons* will be regarded as conclusive:

- (1) in relation to an *authorised unit trust scheme*, the *manager* and *trustee*;
- (1A) in relation to an *authorised contractual scheme*, the *authorised contractual scheme manager* and *depository*;
- (2) in relation to an *ICVC*, the *directors* and the *depository*;
- (3) in relation to a *recognised scheme*, the *operator* and, if any, the *trustee* or *depository*.

2.5.15

FCA

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A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a *scheme* to be an *AUT*, *ACS* or *ICVC* will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the *operator* of an existing *AUT*, *ACS* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FCA* staff under *executive procedures*.

2.5.16

FCA

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A notice under paragraph 15A(4) of Schedule 3 to the *Act* relating to the application by an *EEA firm* for approval to manage a *UCITS scheme* is not a *warning notice*, but the

FCA will operate a procedure for this notice which will be similar to the procedure for a *warning notice*.

**Notices under other enactments**

2

2.5.17

FCA

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The FCA expects to adopt a procedure in respect of notices under enactments other than the *Act* which is similar to that for *statutory notices* under the *Act*, but which recognises any differences in the legislative framework and requirements.

■ DEPP 2 Annex 1 G and ■ DEPP 2 Annex 2 G therefore identify notices to be given pursuant to other enactments and the relevant FCA decision maker.

2.5.18

FCA

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Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

- (1) [deleted]
- (2) [deleted]
- (3) Friendly Societies Act 1992, section 58A : The *warning notice* and *decision notice* must set out the terms of the direction which the FCA proposes or has decided to give and any specification of when the friendly society is to comply with it. A *decision notice* given under section 58A(3) must give an indication of the society's right, given by section 58A(5), to have the matter referred to the *Tribunal*. A *decision notice* under section 58A(3) may only relate to action under the same section of the Friendly Societies Act 1992 as the action proposed in the *warning notice*. A *final notice* under section 390 of the *Act* must set out the terms of the direction and state the date from which it takes effect. Section 392 of the *Act* is to be read as if it included references to a *warning notice* given under section 58A(1) and a *decision notice* given under section 58A(3).

Articles of the Credit Unions (Northern Ireland) Order 1985	Description	Handbook reference	Decision maker
60(1), 61(1) and 63	where the <i>FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending the registration of a <i>Northern Ireland credit union</i> , or petitioning for the winding up of a <i>Northern Ireland credit union</i>		<i>RDC</i>

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/(3)(a)	when the <i>FCA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the case may be, the society, or varying such a direction other than at the request of the society*	See DEPP 2.5.18 G (3)	<i>RDC</i>
58A(1)(b)/(3)(b)	when the <i>FCA</i> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> *		<i>RDC</i>
85(4A)	when the <i>FCA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part 4A permission</i> , notifies the successor society of the terms of its <i>Part 4A permission</i>		<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.12 G

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i>	COLL 2	<i>RDC</i> or <i>executive procedures</i>  See DEPP 2.5.15 G
Regulation 22(1)/(2)/(4)/(5)	when the <i>FCA</i> is proposing to refuse approval of (or, having given a <i>warning notice</i> , deciding to refuse) a proposal to replace the <i>depository</i> or <i>director</i> of an <i>ICVC</i> , or any other proposal or decision falling within regulation 21	COLL 2	<i>Executive procedures</i>
Regulation 22A(5)(b)/(8)(a)	when the <i>FCA</i> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of incorporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	COLL 11	<i>Executive procedures</i>
Regulation 24(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		<i>RDC</i>
Regulation 28(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke or vary a direction in accor-		<i>RDC</i>

OEIC Regulations reference	Description	Handbook reference	Decision maker
Paragraph 20 of Schedule 5	dance with a request under regulation 25(7) or to vary the direction in accordance with the application when the <i>FCA</i> is proposing or deciding to use the disqualification powers under section 249(1)*		<i>RDC</i>
Regulated Activities Order	Description	Handbook reference	Decision maker
Article 95(2)/(3)	when the <i>FCA</i> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	<i>RDC</i>
Article 95(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	SUP 12.4.10 G	<i>RDC</i>
Payment Services Regulations	Description	Handbook reference	Decision maker
Regulations 9(7) and 14	when the <i>FCA</i> is proposing to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration as a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i>
Regulations 9(8)(a) and 14	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or to impose a requirement, or to refuse an application to vary an authorisation		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 10(2) and 10(3)(a) and 14	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution's</i> registration, otherwise than at that institution's own request*		<i>RDC</i>
Regulation 24(2)	when the <i>FCA</i> is proposing to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i>
Regulation 24(3)(a)	when the <i>FCA</i> is deciding to refuse to register an <i>EEA branch</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 24(2) and 24(3)(a)	when the <i>FCA</i> is proposing or deciding to cancel the registration of an <i>EEA branch</i> *		<i>RDC</i>
Regulation 29(9)	when the <i>FCA</i> is proposing to refuse an application for registration as an <i>agent</i>		<i>Executive procedures</i>

# Compensation



## 4.2 Who is eligible to benefit from the protection provided by the FSCS?

### 4.2.1

FCA PRA

R

Unless ■ COMP 4.2.3 R applies, an *eligible claimant* is any *person* who at any material time:

- (1) did not come within ■ COMP 4.2.2 R; or
- (2) did come within ■ COMP 4.2.2 R, but satisfied the relevant exception in ■ COMP 4.3 or ■ COMP 4.4.

### 4.2.2

FCA PRA

R

Table Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to COMP 4.2.1R

- (1) *Firms (other than a sole trader firm ; a credit union; a trustee of a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; a firm carrying on the regulated activity of operating, or winding up, a stakeholder pension scheme (which is not an occupational pension scheme) or personal pension scheme; or a small business ; in each case, whose claim arises out of a regulated activity for which they do not have a permission)*
- (2) *Overseas financial services institutions*
- (3) *Collective investment schemes, and anyone who is the operator or depositary of such a scheme.*
- (4) **Pension and retirement funds, and anyone who is a trustee of such a fund. However, this exclusion does not apply to:**
  - (a) *a trustee of a personal pension scheme or a stakeholder pension scheme (which is not an occupational pension scheme); or*
  - (b) *a trustee of a small self-administered scheme or an occupational pension scheme of an employer which is not a large company, large partnership or large mutual association.*
- (5) **Supranational institutions, governments, and central administrative authorities**
- (6) **Provincial, regional, local and municipal authorities**

- (7) **Directors of the relevant person in default.** However, this exclusion does not apply if:
- (a) both of the following apply:
    - (i) the *relevant person in default* is a mutual association which is not a *large mutual association*; and
    - (ii) the *directors* do not receive a salary or other remuneration for services performed by them for the *relevant person in default*, or
  - (b) the *relevant person in default* is a *credit union*.
- (8) [deleted]
- (9) **Bodies corporate in the same group as the relevant person in default unless that body corporate is:**
- (a) a trustee of:
    - (i) a *stakeholder pension scheme* (which is not an *occupational pension scheme*) or a *personal pension scheme* (but in each case if the trustee is a *firm* it will only be an *eligible claimant* if its *claim* arises out of a *regulated activity* for which it does not have a permission);
    - (ii) (if the *claim* is with respect to a *long-term insurance contract*) a *small self-administered scheme* or an *occupational pension scheme*; or
    - (iii) (if the *claim* is not with respect to a *long-term insurance contract*) a *small self-administered scheme* or an *occupational pension scheme* of an employer which is not a *large company*, *large partnership* or *large mutual association*; or
  - (b) carrying on the *regulated activity* of *operating or winding up a stakeholder pension scheme* (which is not an *occupational pension scheme*) or *personal pension scheme*.
- (10) [deleted]
- (11) [deleted]
- (12) **Persons who, in the opinion of the FSCS, are responsible for, or have contributed to, the relevant person's default**
- (13) **Large companies**
- (14) **Large partnerships**
- (15) **Persons whose claim arises from transactions in connection with which they have been convicted of an offence of money laundering.**
- (16) **Persons whose claim arises under the Third Parties (Rights against Insurers) Act 1930**

- (17) Where the *claim* is in relation to a *protected contract of insurance* or *protected non-investment insurance mediation, body corporate, partnerships, mutual associations* and *unincorporated associations* which are not *small businesses*.
- (18) *Alternative investment funds*, and anyone who is the *AIFM* or *depository of an alternative investment fund*.
- (19) *Large mutual associations*

4.2.3

FCA PRA

R

A *person* who is a *small business* is an *eligible claimant* in respect of a *relevant general insurance contract* entered into before *commencement* only if the *person* is a *partnership*.

4

## 4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

### Deposits (and balances in dormant accounts)

4.3.1

PRA

R

A person is eligible to claim compensation in respect of a *protected deposit* or a *protected dormant account* if, at the date on which the *relevant person* is determined to be *in default*:

- (1) he came within category (14) of COMP 4.2.2R; or
- (2) he came within any of categories (1)-(3), (7) or (12) of COMP 4.2.2R, and was not a *large company* or a *credit institution* ; or
- (3) he was a *credit union*.
- (4) he came within category (19) of ■ COMP 4.2.2 R

### Long term insurance

4.3.2

FCA PRA

R

A person other than one which comes within any of categories (7), (9), (12) or (15) of COMP 4.2.2R is eligible to claim compensation in respect of a *long term insurance* contract.

### Relevant general insurance contracts

4.3.3

FCA PRA

R

- (1) A person falling within categories (1)-(4) of ■ COMP 4.2.2 R is eligible to claim compensation in respect of a *relevant general insurance contract* if, at the date the contract commenced he was a *small business*.
- (2) Where the contract has been renewed, the last renewal date shall be taken as the commencement date.

4.3.4

FCA PRA

R

A *partnership* which falls within category 14, or category 17, or both of COMP 4.2.2R is eligible to claim compensation in respect of a *relevant general insurance contract* entered into before *commencement*.

4.3.5

PRA

R

A *person* who comes within category (16) of COMP 4.2.2R (a 'category 16 *person*') is eligible to claim compensation if:

- (1) the *person* insured would have been an *eligible claimant* at the time that his rights against the insurer were transferred to and vested in the category 16 *person*; or
- (2) the liability of the *person* insured in respect of the category 16 *person* was a liability under a contract of employer's liability insurance which would have been a *liability subject to compulsory insurance* had the contract been entered into after 1 January 1972 or (for contracts in Northern Ireland) 29 December 1975; or
- (3) the extent of the liability of the *person* insured in respect of the category 16 *person* had been agreed in writing by the insurer, or determined by a court or arbitrator, before the date on which the insurer is determined to be *in default*.

**Liability subject to compulsory insurance**

4.3.6

FCA

PRA

R

A *person* who comes within COMP 4.2.2R is eligible to claim compensation in respect of a *liability subject to compulsory insurance* if the *claim* is:

- (1) a *claim* under a *protected contract of insurance*; or
- (2) a *claim* in connection with *protected non-investment insurance mediation*.

**Protected home finance mediation**

4.3.7

FCA

G

There are no exceptions to COMP 4.2.2R for *claims* made in connection with *protected home finance mediation*.

**Eligibility to claim in specified circumstances**

4.3.8

FCA

PRA

R

The FSCS may treat a *person* who comes within category (7) or (12) of COMP 4.2.2 R as eligible to claim compensation where:

- (1) this is desirable to achieve the efficient performance of any of its functions, including without limitation, to facilitate a transfer of business or any part thereof, to secure the issue of policies by another *firm* to *eligible claimants* in substitution for their existing policies, to achieve the efficient payment of compensation, to secure under COMP 3.3.2C R the payment of benefits under a *long term insurance contract*; and
- (2) treating these *persons* as eligible to claim compensation would, in the opinion of the FSCS, be beneficial to the generality of *eligible claimants* who will be affected by the action in (1).

4.3.9

FCA

R

**Protected investment business**

*A person is eligible to claim compensation for claims made in connection with protected investment business if, at the date at which the relevant person is deemed to be in default, he:*

- (1) came within category (14) of ■ COMP 4.2.2 R and he does not exceed the limits for a *body corporate* which qualifies as a small company under section 247 of the Companies Act 1985 or section 382 of the Companies Act 2006 as applicable; or
- (2) came within category (19) of ■ COMP 4.2.2 R.

## 4.4 Exceptions: Relevant general insurance contracts: mesothelioma claims

### Application

4.4.1

PRA

R

This section applies in respect of any claim for a contribution by a *responsible person* made on or after 25 July 2006 in relation to a *mesothelioma victim's* claim which is determined by agreement in writing, a court or an arbitrator on or after 3 May 2006.

### Claims for contribution by responsible persons

4.4.2

PRA

R

The *rules* in this sourcebook shall have effect as modified to the extent necessary to enable the *FSCS* to receive, assess, determine and make payments in respect of applications for compensation from *responsible persons* in accordance with article 9A of the *compensation transitionals order* and regulation 3 of the *mesothelioma regulations*.

4.4.3

PRA

R

In particular:

- (1) a *responsible person* is eligible to claim in accordance with the provisions of this section;
- (2) the *FSCS* may pay compensation to a *responsible person* where it is satisfied that an *eligible claimant* has a claim under a *protected contract of insurance* issued by an *insurer in default*, which, but for satisfaction of that claim by the *responsible person*, the *FSCS* would have paid;
- (3) a *responsible person* in (2) may claim compensation only if, having satisfied a claim in relation to a *mesothelioma victim*, he could claim contribution from an *insurer in default*;
- (4) the *FSCS* may pay compensation in respect of any contribution for which an *insurer in default* is liable by agreement in writing, or by a determination of a court or arbitrator; and
- (5) in this section, references to an *insurer* include an *authorised insurance company*, and references to *in default* include an *article 9 default*.

4.4.4

PRA

G

The provisions in this section establish a scheme for contribution claims by *responsible persons*. The requirement in ■ COMP 12.2.7 R to take into account payments to the claimant do not therefore require the FSCS, in paying compensation in respect of such a *claim*, to take into account any payments referred to in that *rule* made by a *responsible person* in calculating the claimant's overall *claim*.

**Limits to amounts payable for contribution claims**

4.4.5

PRA

R

The amount payable by the FSCS in respect of a claim in accordance with the provisions of this section may not exceed the amount that it would have paid if the *mesothelioma victim* (or a *responsible person* other than an *insurer* of such a *person*) to whom the contribution claim relates had made that claim directly against FSCS.

# Collective Investment Schemes



# Collective Investment Schemes

## **Collective Investment Schemes**

<b>COLL 1</b>	<b>Introduction</b>
1.1	Applications and purpose
1.2	Types of authorised fund
<b>COLL 2</b>	<b>Authorised fund applications</b>
2.1	Authorised fund applications
<b>COLL 3</b>	<b>Constitution</b>
3.1	Introduction
3.2	The instrument constituting the fund
3.3	Units
<b>COLL 4</b>	<b>Investor Relations</b>
4.1	Introduction
4.2	Pre-sale notifications
4.3	Approvals and notifications
4.4	Meetings of unitholders and service of notices
4.5	Reports and accounts
4.6	Simplified Prospectus provisions
4.7	Key investor information and marketing communications
4.8	Notifications for UCITS master-feeder arrangements
4 Annex 1	Total expense ratio calculation
4 Annex 2	Portfolio turnover calculation
<b>COLL 5</b>	<b>Investment and borrowing powers</b>
5.1	Introduction
5.2	General investment powers and limits for UCITS schemes
5.3	Derivative exposure
5.4	Stock lending
5.5	Cash, borrowing, lending and other provisions
5.6	Investment powers and borrowing limits for non - UCITS retail schemes
5.7	Investment powers and borrowing limits for NURS operating as FAIFs
5.8	Investment powers and borrowing limits for feeder UCITS
5.9	Investment powers and other provisions for money market funds

<b>COLL 6</b>	<b>Operating duties and responsibilities</b>
6.1	Introduction and Application
6.2	Dealing
6.3	Valuation and pricing
6.4	Title and registers
6.5	Appointment and replacement of the authorised fund manager and the depositary
6.6	Powers and duties of the scheme, the authorised fund manager, and the depositary
6.6A	Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes
6.7	Payments
6.8	Income: accounting, allocation and distribution
6.9	Independence, names and UCITS business restrictions
6.10	Senior personnel responsibilities
6.11	Risk control and internal reporting
6.12	Risk management policy and risk measurement
6.13	Record keeping
6 Annex 1	Particulars of the standard agreement between an EEA UCITS management company and a depositary
<b>COLL 7</b>	<b>Suspension of dealings and termination of authorised funds</b>
7.1	Introduction
7.2	Suspension and restart of dealings
7.3	Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC
7.4	Winding up an AUT and terminating a sub-fund of an AUT
7.4A	Winding up a solvent ACS and terminating a sub-fund of a co-ownership scheme
7.5	Schemes or sub-funds that are not commercially viable
7.6	Schemes of arrangement
7.7	UCITS mergers
<b>COLL 8</b>	<b>Qualified investor schemes</b>
8.1	Introduction
8.2	Constitution
8.3	Investor relations
8.4	Investment and borrowing powers
8.5	Powers and responsibilities
8.6	Termination, suspension, and schemes of arrangement
8 Annex 1	[Deleted]
8 Annex 2	ACS Qualified Investor Schemes: eligible investors
<b>COLL 9</b>	<b>Recognised schemes</b>
9.1	Application and general information
9.2	Section 264 recognised schemes
9.3	Section 272 recognised schemes

9.4	Facilities in the United Kingdom
<b>COLL 10</b>	<b>Fees</b>
10.1	The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4
10.2	The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4
10.3	The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4
10 Annex 1	[Deleted]
10 Annex 2	[Deleted]
<b>COLL 11</b>	<b>Master-feeder arrangements under the UCITS Directive</b>
11.1	Introduction
11.2	Approval of a feeder UCITS
11.3	Co-ordination and information exchange for master and feeder UCITS
11.4	Depositaries
11.5	Auditors
11.6	Winding up, merger and division of master UCITS
11 Annex 1	Contents of the standard master-feeder agreement
11 Annex 2	Contents of the internal conduct of business rules
<b>COLL 12</b>	<b>Management company and product passports under the UCITS Directive</b>
12.1	Introduction
12.2	UK UCITS management companies
12.3	EEA UCITS management companies
12.4	UCITS product passport
<b>COLL 13</b>	<b>Operation of feeder NURS</b>
13.1	Introduction
13.2	Operational requirements for feeder NURS
<b>COLL Appendix</b>	<b>KII Regulation</b>
<b>Appendix 1EU</b>	<b>KII Regulation</b>
	<b>Transitional Provisions and Schedules</b>

<b>TP 1</b>	<b>Transitional Provisions</b>
<b>Sch 1</b>	<b>Record keeping requirements</b>
<b>Sch 2</b>	<b>Notification requirements</b>
<b>Sch 3</b>	<b>Fees and other required payments</b>
<b>Sch 4</b>	<b>Powers exercised</b>
<b>Sch 5</b>	<b>Rights of action for damages</b>
<b>Sch 6</b>	<b>Rules that can be waived</b>



# Chapter 3

# Constitution

## 3.1 Introduction

### Application

3.1.1

FCA

R

This chapter applies to:

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

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

### Purpose

3.1.2

FCA

G

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

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

## 3.2 The instrument constituting the fund

### Application

3.2.1

FCA

R

This section applies to:

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

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

### Relationship between the instrument constituting the fund and the rules

3.2.2

FCA

R

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

### The trust deed for AUTs

3.2.3

FCA

R

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

3.2.3A  
FCA

R

**The contractual scheme deed for ACSs**

An ACS must be constituted by a *contractual scheme deed* made between the *authorised contractual scheme manager* and:

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

3.2.4  
FCA

R

**Matters which must be included in the instrument constituting the fund**

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

3.2.5  
FCA

G

**The instrument constituting the fund: OEIC Regulations, Contractual Scheme Regulations and trust law requirements**

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

3.2.6  
FCA

R

**Table: contents of the instrument constituting the fund**

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

Name of scheme	
1	<p><b>A statement of:</b></p> <ul style="list-style-type: none"> <li>(1) the name of the <i>authorised fund</i>; and</li> <li>(2) whether the <i>authorised fund</i> is a <i>UCITS scheme</i> or a <i>non-UCITS retail scheme</i>.</li> </ul> <p><b>Investment powers in eligible markets</b></p>
2	<p>A statement that, subject to any restriction in the <i>rules</i> in this sourcebook or the <i>instrument constituting the fund</i>, the <i>scheme</i> has the power to invest in any <i>eligible securities</i> market or <i>deal</i> on any <i>eligible derivatives</i> market to the extent that power to do so is conferred by COLL 5 (Investment and borrowing powers).</p> <p><b>Unitholder's liability to pay</b></p>

- 3** A provision that a *unitholder* in an *AUT, ICVC* or *co-ownership scheme* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* which he holds.
- 3A** A provision that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business.
- 3B** A provision that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business.
- Base currency**
- 4** A statement of the *base currency* of the *scheme*.
- Valuation and pricing**
- 5** A statement setting out the basis for the valuation and pricing of the *scheme*.
- Duration of the scheme**
- 6** If the *scheme* is to be wound up after a particular period expires, a statement to that effect.
- Object of the scheme**
- 7** A statement:
- (1) as to the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest; and
  - (2) that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk and giving *unitholders* the benefits of the results of the management of that property.
- 7A** Where the *authorised fund* is a *qualifying money market fund*, a statement to that effect and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the definition of *qualifying money market fund*.
- [deleted]
- Government and public securities: investment in one issuer**
- 8** Where relevant, for a *UCITS scheme*, a statement in accordance with **COLL 5.2.12 R** (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the *scheme* may be invested in *government and public securities*.
- Classes of unit**
- 9** A statement:

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

#### Authorised fund manager's charges and expenses

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

#### Issue or cancellation directly through the ICVC or depositary of an AUT or ACS

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

#### In specie issue and cancellation

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

#### Restrictions on sale and redemption

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

#### Voting at meetings

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

#### Certificates

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

#### Income

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

#### Income equalisation

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

#### Redemption or cancellation of units on breach of law or rules

- 18 A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be)

an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

ICVCs: larger and smaller denomination shares

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

ICVCs: resolution to remove a director

- 20 A statement that the *ICVC* may (without prejudice to the requirements of regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of *unitholders*, remove a *director* before his period of office expires, despite anything else in the *ICVC's instrument of incorporation* or in any agreement between the *ICVC* and that *director*.

ICVCs: unit transfers

- 21 A statement that the *person* designated for the purposes of paragraph 4 of Schedule 4 to the *OEIC Regulations* (Share transfers) is the *person* who, for the time being, is the *ACD* of the *ICVC*.

ICVCs and ACSs: Charges and expenses

- 22 A statement that charges or expenses of the *ICVC* or *ACS* may be taken out of the *scheme property*.

ICVCs: Umbrella schemes - principle of limited recourse

- 22A For an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose.

Co-ownership schemes: umbrella schemes - principle of limited recourse

- 22B For a *co-ownership scheme* which is an *umbrella*, a statement that the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*.

AUTs: governing law for a trust deed

- 23 A statement that the *trust deed* is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.

AUTs: trust deed to be binding and authoritative

- 24 A statement that the *trust deed*:
- (1) is binding on each *unitholder* as if it had been a party to it and that it is bound by its provisions; and

- (2) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms.

**AUTs: declaration of trust**

- 25 A declaration that, subject to the provisions of the *trust deed* and all *rules* made under section 247 of the *Act* (Trust scheme rules) and for the time being in force:

- (1) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*; and
- (2) the sums standing to the credit of the *distribution account* are held by the *trustee* on trust to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution).

**AUTs: trustee's remuneration**

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

**AUTs: responsibility for the register**

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

**ACSS: governing law for a contractual scheme deed**

- 27A A statement that the *contractual scheme deed* is made under and governed by the law of England and Wales, or Scotland or Northern Ireland.

**ACSS: contractual scheme deed to be binding and authoritative**

- 27B A statement that the *contractual scheme deed*:
- (1) is binding on each *unitholder* as if it had been a party to it and that it is bound by its provisions; and
- (2) authorises and requires the *depository* and the *authorised contractual manager* to do the things required or permitted of them by its terms.

**ACSS: ownership of scheme property**

- 27C A statement that, subject to the provisions of the *contractual scheme deed* and all *rules* made under section 261I of the *Act* (Contractual scheme rules) and for the time being in force:

- (1) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each *unitholder* or, where rele-

vant, according to the number of undivided shares in the *scheme property* represented by the *units* held by each *unitholder*;

- (2) the sums standing to the credit of the *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 6.8 (Income: accounting, allocation and distribution); and
- (3) the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*).

ACSs: responsibility for the register

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

ACSs: UCITS and NURS eligible investors

27E For an *ACS* which is a *UCITS scheme* or a *non-UCITS retail scheme*, a statement that *units* may not be *issued* to a *person* other than a:

- (1) *professional ACS investor*;
- (2) *large ACS investor*; or
- (3) *person* who already holds *units* in the *scheme*.

27F A statement that the *authorised contractual scheme manager* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 27E.

ACSs: UCITS and NURS transfer of units

27G (1) A statement whether the transfer of *units* in the *ACS scheme* is either:

- (a) prohibited; or
- (b) allowed

(2) Where transfer of *units* is allowed in accordance with (1)(b), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:

- (a) *professional ACS investor*;
- (b) *large ACS investor*; or
- (c) *person* who already holds *units* in the *scheme*.

(3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies

in relation to transfer of *units*, separate statements are required.

**Co-ownership schemes: constitution**

**27H** For a *co-ownership scheme*, a statement that the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*.

**Co-ownership schemes: operator's powers**

**27I** A statement that the *operator* of a *co-ownership scheme* is authorised to:

- (1) acquire, manage and dispose of the *scheme property*; and
- (2) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

**Co-ownership schemes: winding-up**

**27J** A statement that the *operator* and *depository* of a *co-ownership scheme* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*.

**Limited partnership schemes: participants**

**27K** A statement that the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*.

**Limited partnership schemes: resignation of limited partners**

**27L** A statement that the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*.

**Limited partnership schemes: inability to operate as an umbrella**

**27M** A statement that the *limited partnership scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*.

**Investment in overseas property through an intermediate holding vehicle**

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

**Umbrella scheme with only one sub-fund**

3.2.7

**R**

(1) [deleted]

(2) [deleted]

(3) [deleted]

**UCITS obligations**

3.2.8

FCA

**R**

(1) The instrument constituting a *UCITS scheme* may not be amended in such a way that it ceases to be a *UCITS scheme*.

(2) [deleted]

(3) [deleted]

3

## 3.3 Units

### Application

3.3.1  
FCA

R

This section applies to an *authorised fund manager*, an *ICVC* and the *depository* of an *AUT* or *ACS*.

### Classes of units

3.3.2  
FCA

G

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

### Currency class units

3.3.3  
FCA

G

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

### Currency class units: requirements

3.3.4  
FCA

R

For a *currency class unit*:

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

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

#### Rights of unit classes

3.3.5

FCA

R

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

3.3.5A

FCA

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**Hedging of unit classes**

A class hedging transaction must:

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

**Guidance on hedging of unit classes**

3.3.5B

FCA

G

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

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

**Requirement: larger and smaller denomination shares in an ICVC**

3.3.6

FCA

R

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

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

#### Characteristics of larger and smaller denomination shares in an ICVC

3.3.7

FCA

G

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

#### Sub-division and consolidation of units

3.3.8

FCA

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

#### Guarantees and capital protection

3.3.9

FCA

R

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

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

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

#### Switching rights: umbrella schemes

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

4.2.4

FCA

R

**False or misleading prospectus**

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

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

#### Table: contents of the prospectus

4.2.5

FCA

R

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

##### Document status

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

##### Authorised fund

- 2 A description of the *authorised fund* including:
- (a) its name;
  - (b) whether it is an *ICVC*, *ACS* or an *AUT* ;
  - (ba) whether it is a *UCITS scheme* or a *non-UCITS retail scheme*;
  - (bb) a statement that *unitholders* in an *AUT*, *ICVC* or *co-ownership scheme* are not liable for the debts of the *authorised fund*;
  - (bc) a statement that the *scheme property* of a *co-ownership scheme* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
  - (bd) a statement that a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
  - (be) a statement that the exercise of rights conferred on *limited partners* by *FCA rules* does not constitute taking part in the management of the partnership business;
  - (c) for an *ICVC*, the address of its head office and the address of the place in the *United Kingdom* for service on the *ICVC* of notices or other documents required or authorised to be served on it;
  - (ca) for an *ACS* that is a *limited partnership scheme*, the address of the proposed principal place of business of the *limited partnership scheme*;
  - (d) the effective date of the *authorisation order* made by the *FCA* and relevant details of termination, if the duration of the *authorised fund* is limited;
  - (e) its *base currency*;

- (f) for an *ICVC*, the maximum and minimum sizes of its capital;
- (g) the circumstances in which it may be wound up under the *rules* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up; and
- (h) if it is not an *umbrella*, a statement that it is a *feeder UCITS*, a *feeder NURS*, a *fund of alternative investment funds* or a *property authorised investment fund*, where that is the case.

#### Umbrella ICVCs or co-ownership schemes

**2A** The following statements for an *ICVC* or a *co-ownership scheme* which is an *umbrella*:

- (a) for an *ICVC*, a statement that its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
- (aa) for a *co-ownership scheme*, a statement that the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*; and
- (b) for an *ICVC* or a *co-ownership scheme*, a statement that while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*.

#### Umbrella Schemes

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

#### Investment objectives and policy

**3** The following particulars of the investment objectives and policy of the *authorised fund*:

- (a) the investment objectives, including its financial objectives;

- (b) the *authorised fund's* investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
- (c) an indication of any limitations on that investment policy;
- (ca) for an *authorised fund* that has indicated in its name, investment objectives or fund literature (including in any *financial promotions* for the fund), through use of descriptions such as 'absolute return', 'total return' or similar, an intention to deliver positive returns in all market conditions (and where there is no actual guarantee of such returns), additional statements in the *authorised fund's* investment objectives specifying:
  - (i) that capital is in fact at risk;
  - (ii) the investment period over which the *authorised fund* aims to achieve a positive return; and
  - (iii) there is no guarantee that this will be achieved over that specific, or any, time period;
- (d) the description of assets which the *capital property* may consist of;
- (e) the proportion of the *capital property* which may consist of an asset of any description;
- (f) the description of transactions which may be effected on behalf of the *authorised fund* and an indication of any techniques and instruments or borrowing powers which may be used in the management of the *authorised fund*;
- (g) a list of the *eligible* markets through which the *authorised fund* may invest or *deal* in accordance with [COLL 5.2.10 R \(2\)\(b\)](#) (Eligible markets: requirements);
- (h) for an ICVC, a statement as to whether it is intended that the *scheme* will have an interest in any immovable property or movable property ((in accordance with [COLL 5.6.4 R \(2\)](#) (Investment powers: general) or [COLL 5.2.8 R \(2\)](#) (UCITS schemes: general)) for the direct pursuit of the *ICVC's* business;
- (i) where [COLL 5.2.12 R \(3\)](#) (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the *scheme property* is or may be invested in *government and public securities* and the names of the individual states, local authorities or public international bodies in whose *securities* the *authorised fund* may invest more than 35% of the *scheme property*;
- (j) the policy in relation to the exercise of borrowing powers by the *authorised fund*;

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

listed) referred to in **COLL 4.2.3R (3) (Availability of prospectus and long report)**; and

- (t) for a *UCITS scheme* that is or is intended to be a *master UCITS*, a statement that it is not a *feeder UCITS* and will not hold *units* of a *feeder UCITS*.

#### Reporting, distributions and accounting dates

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

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

#### Characteristics of the units

#### 5 Information as to:

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

#### 5A ACSs: UCITS and NURS eligible investors

- (a) A statement that *units* may not be *issued* to a *person* other than a:
  - (i) *professional ACS investor*; or

- (ii) *large ACS investor; or*
  - (iii) *person who already holds units in the scheme.*
- (b) A statement that the *authorised contractual scheme manager* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in paragraph 5A(a).

#### 5B ACSs: UCITS and NURS transfer of units

- (a) A statement whether the transfer of *units* in the *ACS scheme* is either:
- (i) prohibited; or
  - (ii) allowed;
- by the *instrument constituting the fund and prospectus*.
- (b) Where transfer of *units* is allowed by the *instrument constituting the fund and prospectus* in accordance with (a)(ii), a statement that *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a:
- (i) *professional ACS investor; or*
  - (ii) *large ACS investor; or*
  - (iii) *person who already holds units in the scheme.*
- (c) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (5B)(a)(i) or (ii) and, where appropriate, a statement in accordance with (5B)(b), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.

#### Authorised fund manager

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

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

- (h) the amount of its issued share capital and how much of it is paid up.

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

##### 7 Other than for the *ACD*:

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

#### Depository

##### 8 The following particulars of the *depository*:

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

#### Investment adviser

##### 9 If an *investment adviser* is retained in connection with the business of an *authorised fund*:

- (a) its name; and
- (b) where it carries on a significant activity other than providing services to the *authorised fund* as an *investment adviser*, what that significant activity is.

#### Auditor

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

#### Contracts and other relationships with parties

##### 11 The following relevant details:

- (a) for an *ICVC*:
  - (i) a summary of the material provisions of the contract between the *ICVC* and the *ACD* which may be relevant to *unitholders* including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;
  - (ii) the main business activities of each of the *directors* (other than those connected with the business of the *ICVC*) where these are of significance to the *ICVC's* business;

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

with applicable *Home State* measures implementing article 13 of the *UCITS Directive*; and

- (ii) the *person* to whom such functions have been delegated; and
- (h) in what capacity (if any), the *authorised fund manager* acts in relation to any other *regulated collective investment schemes* and the name of such *schemes*.

#### Register of unitholders

##### 12 Details of:

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

#### Payments out of scheme property

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

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

#### Allocation of payments

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

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

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

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

#### Valuation and pricing of scheme property

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

- (a) either:
  - (i) in the case of a *single-priced authorised fund*, a provision that there must be only a single *price* for any *unit* as determined from time to time by reference to a particular *valuation point*; or
  - (ii) in the case of a *dual-priced authorised fund*, the *authorised fund manager's* policy for determining *prices* for the *sale and redemption* of *units* by reference to a particular *valuation point* and an explanation of how those *prices* may differ;
- (b) details of:
  - (i) how the value of the *scheme property* is to be determined in relation to each purpose for which the *scheme property* must be valued;
  - (ii) how frequently and at what time or times of the *day* the *scheme property* will be regularly valued for *dealing* purposes and a description of any circumstance in which the *scheme property* may be specially valued;
  - (iii) where relevant, how the *price* of *units* of each *class* will be determined for *dealing* purposes;
  - (iv) where and at what frequency the most recent *prices* will be published; and
  - (v) where relevant in the case of a *dual-priced authorised fund*, the *authorised fund manager's* policy in relation to *large deals*; and
- (c) if provisions in (a) and (b) do not take effect when the *instrument constituting the fund* or (where appropriate) supplemental *trust deed* takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

### Dealing

#### 17 The following particulars:

- (a) the procedures, the dealing periods and the circumstances in which the *authorised fund manager* will effect:
  - (i) the *sale and redemption* of *units* and the settlement of transactions (including the minimum number or value of *units* which one *person* may hold or which may be subject to any transaction of *sale or redemption*) for each *class* of *unit* in the *authorised fund*; and
  - (ii) any direct *issue or cancellation* of *units* by an *ICVC* or by the *depository* of an *AUT* or *ACS* (as appropri-

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

#### Dilution

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

- (a) a statement explaining:

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

#### SDRT provision

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

#### Forward and historic pricing

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

#### Preliminary charge

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

#### Redemption charge

- 22 Where relevant, a statement authorising the *authorised fund manager* to deduct a *redemption charge* out of the proceeds of *redemption*; and if the *authorised fund manager* makes a *redemption charge*:
- (a) the current amount of that charge or if it is variable, the rate or method of calculating it;

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

#### Property Authorised Investment Funds

22A For a *property authorised investment fund*, a statement that:

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

#### General information

23 Details of:

- (a) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;
- (b) the manner in which any notice or *document* will be served on *unitholders*;
- (c) the extent to which and the circumstances in which:
  - (i) the *scheme* is liable to pay or suffer tax on any appreciation in the value of the *scheme property* or on the income derived from the *scheme property*; and
  - (ii) deductions by way of withholding tax may be made from distributions of income to *unitholders* and payments made to *unitholders* on the *redemption of units*;
- (d) for a *UCITS scheme*, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a *unitholder* and those to be paid out of *scheme property* ; and

- (e) for an *ICVC*, whether or not annual general meetings will be held.

#### Information on the umbrella

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

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

#### Application of the prospectus contents to an umbrella

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

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

#### Information on a feeder UCITS

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

- (a) a declaration that the *feeder UCITS* is a feeder of a particular *master UCITS* and as such permanently invests at least 85% in value of the *scheme property* in *units* of that *master UCITS*;
- (b) the investment objective and policy, including the risk profile; and whether the performance records of the *feeder*

*UCITS* and the *master UCITS* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in *units* of the *master UCITS* is invested in accordance with COLL 5.8.3 R (Balance of scheme property: investment restrictions on a feeder UCITS);

- (c) a brief description of the *master UCITS*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the *prospectus* of the *master UCITS* may be obtained;
- (d) a summary of the *master-feeder agreement* or where applicable, the internal conduct of business rules referred to in COLL 11.3.2 R (2) (Master-feeder agreement and internal conduct of business rules);
- (e) how the *unitholders* may obtain further information on the *master UCITS* and the *master-feeder agreement*;
- (f) a description of all remuneration or reimbursement of costs payable by the *feeder UCITS* by virtue of its investment in *units* of the *master UCITS*, as well as the aggregate charges of the *feeder UCITS* and the *master UCITS*; and
- (g) a description of the tax implications of the investment into the *master UCITS* for the *feeder UCITS*.

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

#### Information on a feeder NURS

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

- (a) a declaration that the *feeder NURS* is a feeder of a particular *qualifying master scheme* and as such is *dedicated to units* in a single *qualifying master scheme* and the minimum (and, if relevant, maximum) investment that the *feeder NURS* may make in its *qualifying master scheme*;
- (b) the investment objective and policy of the *feeder NURS*, including its risk profile; and whether the performance records of the *feeder NURS* and the *qualifying master scheme* are identical, or to what extent and for which reasons they differ, including a description of how the balance of the *scheme property* which is not invested in *units* of the *qualifying master scheme* is invested in accordance with COLL 5.6.7 R (6A) (Spread: general);
- (c) a brief description of the *qualifying master scheme*, its organisation, its investment objective and policy, including the risk profile, and an indication of how the *prospectus* of the *qualifying master scheme* may be obtained;
- (d) how the *unitholders* may obtain further information on the *qualifying master scheme*;

- (e) a description of all remuneration or reimbursement of costs payable by the *feeder NURS* by virtue of its investment in *units* of the *qualifying master scheme*, as well as the aggregate charges of the *feeder NURS* and the *qualifying master scheme*; and
- (f) a description of the tax implications of the investment into the *qualifying master scheme* for the *feeder NURS*.

#### Marketing in another EEA state

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

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

#### Investment in overseas property through an intermediate holding vehicle

26A If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicle* is to enable the holding of overseas immovables by the *scheme*.

#### Additional information

27 Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund manager* would

have obtained by making reasonable enquiries, including but not confined to, the following matters:

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

[Note: A transitional provision applies to row 3(ca) of this table: see ■ COLL TP 1.28.]

#### Guidance on contents of the prospectus

4.2.6

FCA

G

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

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



## 4.3 Approvals and notifications

### Application

4.3.1  
FCA

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

### Explanation

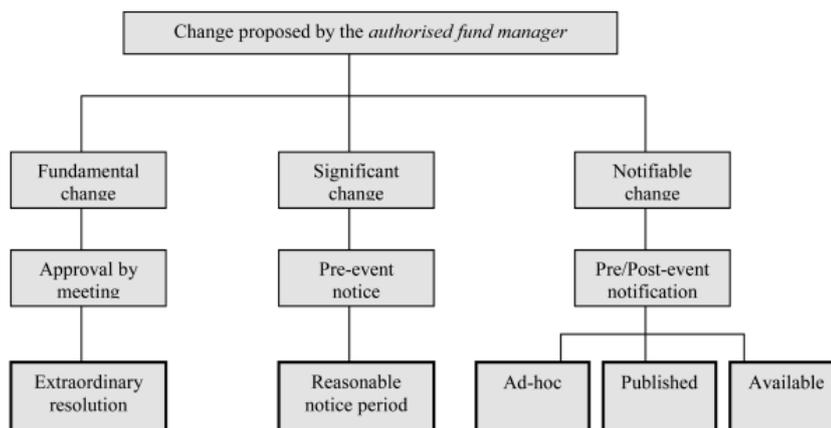
4.3.2  
FCA

- G**
- (1) The diagram in ■ COLL 4.3.3 G explains how an *authorised fund manager* should treat changes it is proposing to a *scheme* and provides an overview of the *rules* and *guidance* in this section.
  - (2) Regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FCA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depositary* or a change to the *instrument constituting the fund*. This should be kept in mind when considering any proposed change.

### Diagram: Change event

4.3.3  
FCA

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



### Fundamental change requiring prior approval by meeting

4.3.4  
FCA

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

4.3.13

FCA

G

- (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master scheme* in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS* . In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme* , the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with ■ COLL 11.2.2 R (Application for approval of an investment in a master UCITS).
- (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder UCITS* or *feeder NURS* if the *prices* of its own *units* continue to be published in the same way.
- (3) Where the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* receives insufficient notice of the intended change to the *master UCITS* or *qualifying master scheme* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS* or *feeder NURS* .

4

## 4.4 Meetings of unitholders and service of notices

### Application

4.4.1  
FCA

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

### General meetings

4.4.2  
FCA

- 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 fund*) of all of the *units* then in issue; and
    - (d) be deposited at the head office of the *ICVC* or with the *depository* of an *AUT* or *ACS*.
  - (3) The *authorised fund manager*, the *depository* or the other *directors* of an *ICVC* must on receipt of a requisition that complies with (2), immediately convene a general meeting of the *authorised fund* for a date no later than eight weeks after receipt of the requisition.

### Class meetings

4.4.3  
FCA

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

**Special meaning of unitholder in COLL 4.4**

4.4.4

FCA

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

FCA

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 4.4.6 R (3), should two such *unitholders* not be present after a reasonable time of convening of the meeting.

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

#### Quorum

4.4.6

FCA

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

FCA

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 4.4.8 R (4) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the *depository* to the process, instead be passed with the written consent of *unitholders* representing 50% or more, or for an *extraordinary resolution* 75% or more, of the *units* of the *scheme in issue*.

#### Voting rights

4.4.8

FCA

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

#### Right to demand a poll

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

4.4.9

FCA

R

- (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

FCA

R

- (1) A *unitholder* may appoint another *person* to attend a general meeting and vote in his place.
- (2) Unless the *instrument constituting the fund* 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

FCA

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

adjourn the meeting from time to time and from place to place.
- (4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.
- (5) The *authorised fund manager* must ensure that:

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

#### Report of the depositary

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

4.5.11

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PAGE  
45

4.5.12

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

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

#### Report of the auditor

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

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

#### Provision of short report

4.5.13

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



**5.2 General investment powers and limits for UCITS schemes**

**Application**

5.2.1  
FCA

**R**

- (1) This section applies to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS* and a *depository* of an *ICVC*, *AUT* or *ACS* where such *ICVC* , *AUT* or *ACS* is a *UCITS scheme*, in accordance with ■ COLL 5.2.2 R (Table of application).
- (2) ■ COLL 5.2.23C R (Valuation of OTC derivatives) also applies to a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.

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**Table of application**

5.2.2  
FCA

**R**

This table belongs to ■ COLL 5.2.1 R.

Rule	ICVC	ACD	Authorised fund manager of an AUT or ACS	Depository of an ICVC, AUT or ACS
5.2.3R to 5.2.9R		X	X	
5.2.9AR		X	X	
5.2.10R(1)		X	X	
5.2.10R(2)(a)&(b)		X	X	
5.2.10R(2)(c)				X
5.2.10R(3)		X	X	
5.2.10AR to 5.2.10EG		X	X	
5.2.11R to 5.2.21R		X	X	

Rule	ICVC	ACD	Authorised fund manager of an AUT or ACS	Depository of an ICVC, AUT or ACS
5.2.22R	X		X	
5.2.22AG	X	X	X	X
5.2.23R(1)	X	X	X	
5.2.23R(2) to (4)	X	X	X	X
5.2.23CR		X	X	
5.2.26R		X	X	
5.2.27R	X			
5.2.28R			X	
5.2.29R to 5.2.33R	X	X	X	
5.2.34G		X	X	
<b>Note: x means "applies"</b>				

**5.2.2A**  
**FCA**

**G**

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

**5.2.3**  
**FCA**

**R**

**Prudent spread of risk**

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

**5.2.4**  
**FCA**

**R**

**Investment powers: general**

The *scheme property* of each *UCITS scheme* must be invested only in accordance with the relevant provisions in sections ■ COLL 5.2 to

■ COLL 5.5 that are applicable to that *UCITS scheme* and up to any maximum limit so stated, but, the *instrument constituting the fund* may further restrict:

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

**Valuation**

5.2.5  
FCA

**R**

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

**Valuation guidance**

5.2.6  
FCA

**G**

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

5.2.6A  
FCA

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**UCITS schemes: permitted types of scheme property**

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

- (1) *transferable securities*;
- (2) *approved money-market instruments*;
- (3) *units in collective investment schemes*;
- (4) *derivatives* and forward transactions;
- (5) *deposits*; and
- (6) (for an *ICVC*) movable and immovable property that is essential for the direct pursuit of the *ICVC*'s business;

in accordance with the *rules* in this section.

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

**Transferable securities**

5.2.7  
FCA

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

5.2.7A

FCA

R

**Investment in transferable securities**

- (1) A UCITS scheme may invest in a *transferable security* only to the extent that the *transferable security* fulfils the following criteria:
- (a) the potential loss which the UCITS scheme may incur with respect to holding the *transferable security* is limited to the amount paid for it;
  - (b) its liquidity does not compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3) );
  - (c) reliable valuation is available for it as follows:
    - (i) in the case of a *transferable security* admitted to or *dealt in* on an *eligible* market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;
    - (ii) in the case of a *transferable security* not admitted to or *dealt in* on an *eligible* market, where there is a valuation on a periodic basis which is derived from information from the issuer of the *transferable security* or from competent investment research;
  - (d) appropriate information is available for it as follows:
    - (i) in the case of a *transferable security* admitted to or *dealt in* on an *eligible* market, where there is regular, accurate and comprehensive information available to the market on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
    - (ii) in the case of a *transferable security* not admitted to or *dealt in* on an *eligible* market, where there is regular and accurate information available to the *authorised fund manager* on the *transferable security* or, where relevant, on the portfolio of the *transferable security*;
  - (e) it is negotiable; and
  - (f) its risks are adequately captured by the risk management process of the *authorised fund manager*.
- (2) Unless there is information available to the *authorised fund manager* that would lead to a different determination, a *transferable security* which is admitted to or *dealt in* on an *eligible* market shall be presumed:

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- (a) not to compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder*; and
- (b) to be negotiable.

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

5.2.7B  
FCA

G

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

### Closed end funds constituting transferable securities

5.2.7C  
FCA

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

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

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

5.2.7D  
FCA

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- (1) An *authorised fund manager* should not invest the *scheme property* of a *UCITS scheme* in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.
- (2) When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the *authorised fund manager* should consider whether the contract on which the closed end fund is based provides its investors with rights to:
  - (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment

- to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
- (b) control the investment policy of the closed end fund through appropriate mechanisms.
- (3) The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

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

**Transferable securities linked to other assets**

5.2.7E  
FCA

**R**

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

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

**Approved money-market instruments**

5.2.7F  
FCA

**R**

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

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

5.2.7G  
FCA

**R**

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

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

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set out in (1) or (2) or is subject to yield adjustments as set out in (3).

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

5.2.7H

FCA

R

- (1) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the *authorised fund manager* to *redeem units* at the request of any qualifying *unitholder* (see ■ COLL 6.2.16 R (3) ).
- (2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:
  - (a) enabling the *authorised fund manager* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
  - (b) based either on market data or on valuation models including systems based on amortised costs.
- (3) A money-market instrument that is normally *dealt in* on the money market and is admitted to or dealt in on an *eligible* market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the *authorised fund manager* that would lead to a different determination.

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

#### **Guidance on assessing liquidity and quality of money-market instruments**

5.2.7I

FCA

G

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

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

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

5.2.8  
FCA

**R**

- (1) [deleted]
- (2) [deleted]
- (3) *Transferable securities and approved money-market instruments held within a UCITS scheme* must be :
  - (a) admitted to or *dealt in* on an *eligible* market within
    - COLL 5.2.10 R (1)(a) (Eligible markets: requirements); or
  - (b) *dealt in* on an *eligible* market within ■ COLL 5.2.10 R (1)(b); or
  - (c) admitted to or *dealt in* on an *eligible* market within
    - COLL 5.2.10 R (2); or
  - (d) for an *approved money-market instrument* not admitted to or *dealt in* on an *eligible* market, within ■ COLL 5.2.10A R (1); or
  - (e) recently issued *transferable securities*, provided that:
    - (i) the terms of issue include an undertaking that application will be made to be admitted to an *eligible* market; and
    - (ii) such admission is secured within a year of issue.
- (4) However, a *UCITS scheme* may invest no more than 10% of the *scheme property* in *transferable securities* and *approved money-market instruments* other than those referred to in (3).

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

**Eligible markets regime: purpose**

5.2.9  
FCA

**G**

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

5.2.9A  
FCA

**R**

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

- (1) for a *qualifying money market fund*, the 10% restriction is limited to high quality money market instruments with a maturity or residual maturity of not more than 397 *days*, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 *days*;

- (2) for a *short-term money market fund* or a *money market fund*, the 10% restriction is limited to high quality *approved money-market instruments* as determined under ■ COLL 5.9.6 R (High quality money market instruments).

**Eligible markets: requirements**

5.2.10

FCA

R

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

**Money-market instruments with a regulated issuer**

5.2.10A

FCA

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(1) (In addition to instruments admitted to or *dealt in* on an *eligible market*) a *UCITS scheme* may invest in an *approved money-market instrument* provided it fulfils the following requirements:

- (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
- (b) the instrument is issued or guaranteed in accordance with ■ COLL 5.2.10B R.

[Note: article 50(1)(h)(i) to (iii) of the *UCITS Directive*]

(2) The issue or the issuer of a money-market instrument, other than one dealt in on an *eligible market*, shall be regarded as regulated for the purpose of protecting investors and savings if:

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

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

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

5.2.10B

FCA

R

(1) A *UCITS scheme* may invest in an *approved money-market instrument* if it is:

- (a) issued or guaranteed by any one of the following:
  - (i) a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation;
  - (ii) a regional or local authority of an *EEA State*;
  - (iii) the European Central Bank or a central bank of an *EEA State*;
  - (iv) the European Union or the European Investment Bank;
  - (v) a non-*EEA State* or, in the case of a federal state, one of the members making up the federation;
  - (vi) a public international body to which one or more *EEA States* belong; or
- (b) issued by a body, any *securities* of which are dealt in on an *eligible market*; or
- (c) issued or guaranteed by an establishment which is:

- (i) subject to prudential supervision in accordance with criteria defined by *EU* law; or
- (ii) subject to and complies with prudential rules considered by the *FCA* to be at least as stringent as those laid down by *EU* law.

- (2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:
- (a) it is located in the *European Economic Area*;
  - (b) it is located in an *OECD* country belonging to the Group of Ten;
  - (c) it has at least investment grade rating;
  - (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by *EU* law.

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

**Appropriate information for money-market instruments**

5.2.10C  
FCA

**R**

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

- (b) updates of that information on a regular basis and whenever a significant event occurs; and
- (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.

(3) In the case of an *approved money-market instrument*:

- (a) within ■ COLL 5.2.10B R (1)(a)(i), ■ (iv) or ■ (v); or
- (b) which is issued by an authority within ■ COLL 5.2.10B R (1)(a)(ii) or a public international body within ■ COLL 5.2.10B R (1)(a)(vi) and is guaranteed by a central authority within ■ COLL 5.2.10B R (1)(a)(i);

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

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

5.2.10D  
FCA

G

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

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

**Other money-market instruments with a regulated issuer**

5.2.10E  
FCA

G

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

- (2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
- (3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by *EU* law or an establishment which is subject to and complies with prudential rules considered by the *FCA* (in accordance with ■ COLL 5.2.10B R (2)) to be at least as stringent as those laid down by *EU* law.

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

**Spread: general**

5.2.11

FCA

R

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

- (8) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and *approved money-market instruments* issued by the same group (as referred to in (2)).
- (9) Not more than 20% in value of the *scheme* is to consist of the *units* of any one *collective investment scheme*.
- (10) In applying the limits in (3),(4),(5), (6) and (7), and subject to (5A), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
  - (a) *transferable securities* (including *covered bonds*) or *approved money-market instruments* issued by; or
  - (b) *deposits* made with; or
  - (c) exposures from *OTC derivatives* transactions made with a single body.
- (11) [deleted]
- (12) [deleted]
- (13) [deleted]
- (14) [deleted]

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

**Guidance on spread: general**

5.2.11A  
FCA

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

**Counterparty risk and issuer concentration**

5.2.11B  
FCA

R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure that *counterparty risk* arising from an *OTC derivative* transaction is subject to the limits set out in ■ COLL 5.2.11 R (7) and ■ COLL 5.2.11 R (10).
- (2) When calculating the exposure of a *UCITS scheme* to a counterparty in accordance with the limits in ■ COLL 5.2.11 R (7), the *authorised fund manager* must use the positive mark-to-market value of the *OTC derivative* contract with that counterparty.

- (3) An *authorised fund manager* may net the *OTC derivative* positions of a *UCITS scheme* with the same counterparty, provided:
  - (a) it is able legally to enforce netting agreements with the counterparty on behalf of the *UCITS scheme*; and
  - (b) the netting agreements in (a) do not apply to any other exposures the *UCITS scheme* may have with that same counterparty.
- (4) An *authorised fund manager* of a *UCITS scheme* may reduce the exposure of the *scheme property* to a counterparty to an *OTC derivative* transaction through the receipt of collateral. Collateral received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.
- (5) An *authorised fund manager* of a *UCITS scheme* must take collateral into account in calculating exposure to *counterparty risk* in accordance with the limits in ■ COLL 5.2.11B R (7) when it passes collateral to the counterparty to an *OTC derivative* transaction on behalf of the *UCITS scheme*.
- (6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the *authorised fund manager* is able legally to enforce netting arrangements with this counterparty on behalf of the *UCITS scheme*.
- (7) An *authorised fund manager* of a *UCITS scheme* must calculate the issuer concentration limits referred to in ■ COLL 5.2.11 R on the basis of the underlying exposure created through the use of *OTC derivatives* in accordance with the commitment approach.
- (8) In relation to exposures arising from *OTC derivative* transactions, as referred to in ■ COLL 5.2.11 R (10), the *authorised fund manager* must include in the calculation any *counterparty risk* relating to the *OTC derivative* transactions.

[Note: article 43 of the *UCITS implementing Directive*]

**Spread: government and public securities**

- (1) This *rule* applies to *government and public securities* ("such *securities*").
- (2) Where no more than 35% in value of the *scheme property* is invested in such *securities* issued by any one body, there is no limit on the amount which may be invested in such *securities* or in any one issue.

5.2.12

FCA

R

- (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:
  - (a) the *authorised fund manager* has before any such investment is made consulted with the *depository* and as a result considers that the issuer of such *securities* is one which is appropriate in accordance with the investment objectives of the *authorised fund*;
  - (b) no more than 30% in value of the *scheme property* consists of such *securities* of any one issue;
 

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

the disclosures in (4) have been made.
  
- (4) Where it is intended that (3) may apply, the *instrument constituting the fund*, and the most recently published *prospectus*, must prominently state:
  - (a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer; and
  - (b) the names of the individual states, the local authorities or public international bodies issuing such *securities* in which the *authorised fund* may invest over 35% of its assets.
  
- (5) In this *rule* in relation to such *securities*:
  - (a) issue, issued and issuer include guarantee, guaranteed and guarantor; and
  - (b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.
  
- (6) Notwithstanding ■ COLL 5.2.11 R (1) and subject to ■ (2) and ■ (3), in applying the 20% limit in ■ COLL 5.2.11 R (10) with respect to a single body, *government and public securities* issued by that body shall be taken into account.

**Investment in collective investment schemes**

**R**

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

- (1) the second *scheme* must:

5.2.13

FCA

PAGE 21

- (a) satisfy the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
  - (b) be a *recognised scheme* under the provisions of section 272 of the *Act* (Individually recognised overseas schemes) that is authorised by the *supervisory authorities* of Guernsey, Jersey or the Isle of Man (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or
  - (c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or
  - (d) be authorised in another *EEA State* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or
  - (e) be authorised by the competent authority of an *OECD* member country (other than another *EEA State*) which has:
    - (i) signed the IOSCO Multilateral Memorandum of Understanding; and
    - (ii) approved the *scheme's* management company, rules and *depository/custody* arrangements;

(provided the requirements of article 50(1)(e) of the *UCITS Directive* are met);
- (2) the second *scheme* must comply, where relevant, with ■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes);
  - (3) the second *scheme* must have terms which prohibit more than 10% in value of the *scheme property* consisting of *units* in *collective investment schemes* ; and
  - (4) where the second *scheme* is an *umbrella*, the provisions in (2) and (3) and ■ COLL 5.2.11 R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

**Qualifying non-UCITS collective investment schemes**

5.2.14

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- (1) ■ COLL 9.3 gives further detail as to the recognition of a *scheme* under section 272 of the *Act*.
- (2) Article 50 of the *UCITS Directive* sets out the general investment limits. So, a *scheme* which has the power to invest in gold or immovables would not meet the criteria set out in ■ COLL 5.2.13 R (1).
- (3) In determining whether a *scheme* (other than a *UCITS*) meets the requirements of article 50(1)(e) of the *UCITS Directive* for the purposes of ■ COLL 5.2.13 R (1), the *authorised fund manager* should consider the following

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

- (a) the rules guaranteeing the autonomy of the *scheme* and management in the exclusive interest of the *unitholders*;
- (b) the existence of an independent *depository/custodian* with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent *depository/custodian* is not a requirement of local law as regards *collective investment schemes*, robust governance structures may provide a suitable alternative;
- (c) the availability of pricing information and reporting requirements;
- (d) redemption facilities and frequency;
- (e) restrictions in relation to dealings by related parties;
- (f) the extent of asset segregation; and
- (g) the local requirements for borrowing, lending and uncovered sales of *transferable securities* and money market instruments regarding the portfolio of the *scheme*.

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

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

**Investment in associated collective investment schemes**

5.2.15

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R

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

- (b) ■ COLL 5.2.15R (1)(b) is modified as follows - ■ COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "*UCITS scheme*" are taken to be references to the investing or disposing *sub-fund* and references to the "*second scheme*" are taken to be references to the second *sub-fund*.

**Investment in other group schemes**.....

5.2.16

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**R**

- (1) Where:
- (a) an investment or disposal is made under ■ COLL 5.2.15 R; and
  - (b) there is a charge in respect of such investment or disposal; the *authorised fund manager* of the *UCITS scheme* making the investment or disposal must pay the *UCITS scheme* the amounts referred to in (2) or (3) within four *business days* following the date of the agreement to invest or dispose.
- (2) When an investment is made, the amount referred to in (1) is either:
- (a) any amount by which the consideration paid by the *UCITS scheme* for the *units* in the second *scheme* exceeds the price that would have been paid for the benefit of the second *scheme* had the *units* been newly issued or sold by it; or
  - (b) if such price cannot be ascertained by the *authorised fund manager* of the *authorised fund*, the maximum amount of any charge permitted to be made by the seller of *units* in the second *scheme*.
- (3) When a disposal is made, the amount referred to in (1) is any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal.
- (4) In this *rule*:
- (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with ■ COLL 6.3.8 (Dilution) or *SDRT provision* made in accordance with ■ COLL 6.3.7 (SDRT provision) is to be treated as part of the *price* of the *units* and not as part of any charge; and
  - (b) any charge made in respect of an exchange of *units* in one *sub-fund* or separate part of the second *scheme* for *units* in

another *sub-fund* or separate part of that *scheme* is to be included as part of the consideration paid for the *units*.

**Investment in nil and partly paid securities**

5.2.17

FCA

**R**

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

5.2.18

**R**

[deleted]

**Derivatives: general**

5.2.19

FCA

**R**

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

5

(iii) it has a significant impact on the risk profile and pricing of the *transferable security* or *approved money-market instrument*.

(b) A *transferable security* or an *approved money-market instrument* does not embed a derivative where it contains a component which is contractually transferable independently of the *transferable security* or the *approved money-market instrument*. That component shall be deemed to be a separate instrument.

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

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

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

#### Guidance on transferable securities and money-market instruments embedding derivatives

5.2.19A

FCA

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- (1) Collateralised debt obligations (CDOs) or asset-backed securities using *derivatives*, with or without an active management, will generally not be considered as embedding a *derivative* except if:
  - (a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or
  - (b) they are not sufficiently diversified.
- (2) Where a *transferable security* or *approved money-market instrument* embedding a *derivative* is structured as an alternative to an *OTC derivative*, the requirements set out in ■ COLL 5.2.23 R with respect to transactions in *OTC derivatives* will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a *scheme*, which should be considered as embedding a *derivative*. Such a product offers an alternative to the use of an *OTC derivative*, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.
- (3) The following list of *transferable securities* and *approved money-market instruments*, which is illustrative and non-exhaustive, could be assumed to embed a *derivative*:
  - (a) credit linked notes;
  - (b) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a bond index;

- (c) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a basket of shares, with or without active management;
  - (d) *transferable securities* or *approved money-market instruments* with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;
  - (e) convertible bonds; and
  - (f) exchangeable bonds.
- (4) Schemes cannot use *transferable securities* or *approved money-market instruments* which embed a *derivative* to circumvent the rules in this section.
- (5) *Transferable securities* and *approved money-market instruments* which embed a *derivative* are subject to the rules applicable to *derivatives* as required by this section. It is the *authorised fund manager's* responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded *derivatives* and on their impact on the *scheme*, taking into account its stated investment objective and risk profile.

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

**Permitted transactions (derivatives and forwards)**

5.2.20

FCA

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- (1) A transaction in a *derivative* must:
- (a) be in an *approved derivative*; or
  - (b) be one which complies with ■ COLL 5.2.23 R (OTC transactions in derivatives).
- (2) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *scheme* is *dedicated*:
- (a) *transferable securities* permitted under ■ COLL 5.2.8 R (3)(a) to ■ (c) and ■ COLL 5.2.8 R (3)(e) ;
  - (b) *approved money-market instruments* permitted under ■ COLL 5.2.8 R (3)(a) to ■ COLL 5.2.8 R (3)(d) ;
  - (c) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
  - (d) *derivatives* permitted under this *rule*;
  - (e) *collective investment scheme* units permitted under ■ COLL 5.2.13 R (Investment in collective investment schemes);
  - (f) financial indices which satisfy the criteria set out in ■ COLL 5.2.20A R;
  - (g) interest rates;
  - (h) foreign exchange rates; and

(i) currencies.

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

- (3) A transaction in an *approved derivative* must be effected on or under the rules of an *eligible derivatives* market.
- (4) A transaction in a *derivative* must not cause a *scheme* to diverge from its investment objectives as stated in the *instrument constituting the fund* and the most recently published *prospectus*.
- (5) A transaction in a *derivative* must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more *transferable securities, approved money-market instruments, units in collective investment schemes or derivatives* provided that a sale is not to be considered as uncovered if the conditions in ■ COLL 5.2.22R (1) (Requirement to cover sales), as read in accordance with the guidance at ■ COLL 5.2.22A G, are satisfied.
- (6) Any forward transaction must be made with an *eligible institution* or an *approved bank*.
- (7) A *derivative* includes an instrument which fulfils the following criteria:
  - (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
  - (b) it does not result in the delivery or the transfer of assets other than those referred to in ■ COLL 5.2.6A R (UCITS schemes: permitted types of scheme property) including cash;
  - (c) in the case of an *OTC derivative*, it complies with the requirements in ■ COLL 5.2.23 R (OTC transactions in derivatives);
  - (d) its risks are adequately captured by the risk management process of the *authorised fund manager*, and by its internal control mechanisms in the case of risks of asymmetry of information between the *authorised fund manager* and the counterparty to the *derivative*, resulting from potential access of the counterparty to non-public information on *persons* whose assets are used as the underlying by that *derivative*.

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

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

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

**Financial indices underlying derivatives**

5.2.20A

**R**

**FCA**

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

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- (5) Where the composition of underlyings of a transaction in a *derivative* does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to ■ COLL 5.2.20 R (2), be regarded as a combination of those underlyings.

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

**Guidance on financial indices underlying derivatives**

5.2.20B  
FCA

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- (1) An index based on *derivatives* on *commodities* or an index on property may be regarded as a financial index of the type referred to in ■ COLL 5.2.20 R (2)(f) provided it satisfies the criteria for financial indices set out in ■ COLL 5.2.20A R.
- (2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *UCITS scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in ■ COLL 5.3.3A R and spread set out in ■ COLL 5.2.11 R.
- (3) (a) In order to avoid undue concentration, where *derivatives* on an index composed of assets in which a *UCITS scheme* cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.  
 (b) If *derivatives* on that index are used for risk-diversification purposes, provided that the exposure of the *UCITS scheme* to that index complies with the 5%, 10% and 40% ratios required by ■ COLL 5.2.11 R (4) and ■ (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

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

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

**Transactions for the purchase of property**

5.2.21  
FCA

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

- (1) that property can be held for the account of the *UCITS scheme*; and
- (2) the *authorised fund manager* having taken reasonable care determines that delivery of the property under the transaction



**5.5 Cash, borrowing, lending and other provisions**

**Application**

5.5.1  
FCA

**R**

This section applies to an *ICVC*, an *ACD*, an *authorised fund manager* of an *AUT* or *ACS*, and a *depository* of an *ICVC*, *AUT* or *ACS*, where such *ICVC*, *AUT* or *ACS* is a *UCITS scheme* as set out in ■ COLL 5.5.2 R (Table of application).

**Table of application**

5.5.2  
FCA

**R**

This table belongs to ■ COLL 5.5.1 R.

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

**Note: x means "applies"**

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5.5.3  
FCA

R

Cash and near cash

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

5.5.4  
FCA

R

General power to borrow

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

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

**Borrowing limits**

5.5.5  
FCA

**R**

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

**Restrictions on lending of money**

5.5.6  
FCA

**R**

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

**Restrictions on lending of property other than money**

5.5.7  
FCA

**R**

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

- (4) Where transactions in *derivatives* or forward transactions are used for the account of the *authorised fund* in accordance with any of the *rules* in this chapter, nothing in this *rule* prevents the ICVC or the *depository* at the request of the ICVC, or the *depository* of an AUT or ACS at the request of the *authorised fund manager*, from :
- (a) lending, depositing, pledging or charging *scheme property* for *margin* requirements; or
  - (b) transferring *scheme property* under the terms of an agreement in relation to *margin* requirements, provided that the *authorised fund manager* reasonably considers that both the agreement and the *margin* arrangements made under it (including in relation to the level of *margin*) provide appropriate protection to *unitholders*.

5.5.7A

FCA

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An agreement providing appropriate protection to *unitholders* for the purposes of ■ COLL 5.5.7 R (4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

5.5.8

FCA

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#### General power to accept or underwrite placings

- (1) Any power in this chapter to invest in *transferable securities* may be used for the purpose of entering into transactions to which this *rule* applies, subject to compliance with any restriction in the *instrument constituting the fund*.
- (2) This *rule* applies to any agreement or understanding which:
  - (a) is an underwriting or sub-underwriting agreement; or
  - (b) contemplates that *securities* will or may be issued or subscribed for or acquired for the account of the *authorised fund*.
- (3) Paragraph (2) does not apply to:
  - (a) an *option*; or
  - (b) a purchase of a *transferable security* which confers a right to:
    - (i) subscribe for or acquire a *transferable security*; or
    - (ii) convert one *transferable security* into another.
- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:

power to invest up to 100% of the value of the *scheme property* in *schemes* to which ■ COLL 5.7.7 R (Investment in collective investment schemes) applies.

- (3) In order to ensure adequate *unitholder* protection, the *authorised fund manager* is required to implement certain due diligence procedures in respect of investment in second *schemes*.

**Applicable rules in COLL 5.6**

5.7.3  
FCA

**R** The following *rules and guidance* in ■ COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) apply to the *authorised fund manager* and the *depository* of a *non-UCITS retail scheme* operating as a *FAIF* and to an *ICVC* which is a *non-UCITS retail scheme* operating as a *FAIF*:

- (1) ■ COLL 5.6.3 R;
- (2) ■ COLL 5.6.5 R to ■ 5.6.6 R;
- (3) ■ COLL 5.6.8 R to ■ 5.6.9 R; and
- (4) ■ COLL 5.6.11 R to ■ 5.6.24 R.

**Investment powers: general**

5.7.4  
FCA

- R**
- (1) The *scheme property* of a *non-UCITS retail scheme* operating as a *FAIF* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.
  - (2) For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC*'s business of investing in those assets or *investments*.
  - (3) The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that *non-UCITS retail scheme* operating as a *FAIF* and within any upper limit specified in this section.
  - (4) The *instrument constituting the fund* may restrict the investment powers of a *scheme* further than the relevant restrictions in this section.
  - (5) The *scheme property* may only, except where otherwise provided in the *rules* in this section, consist of any one or more of:
    - (a) *transferable securities*;
    - (b) money market instruments;
    - (c) *units in collective investment schemes* permitted under ■ COLL 5.7.7 R (Investment in collective investment schemes);

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- (d) *derivatives* and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
- (e) *deposits* permitted under ■ COLL 5.2.26 R (Investment in deposits);
- (f) immovables permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
- (g) gold up to a limit of 10% in value of the *scheme property*.

**Spread: general**

- (1) This *rule* does not apply in respect of *government and public securities*.
- (2) Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.
- (3) Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body subject to ■ COLL 5.6.23 R (Schemes replicating an index).
- (4) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.
- (5) In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.
- (6) The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.
- (7) Except for a feeder *scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to the *units* of a master *scheme*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.
- (8) For the purpose of calculating the limit in (6), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (9).
- (9) The conditions referred to in (8) are that the collateral:
  - (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
  - (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;

5.7.5  
FCA

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- (3) (for an *ICVC*) movable and immovable property which is essential for the direct pursuit of the business.

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

**Exposure to derivatives**

5.8.4  
FCA

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

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

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

**Prudent spread of risk**

5.8.5  
FCA

**R** An *authorised fund manager* must ensure that, to the extent that the *feeder UCITS* invests in assets other than *units* of a *master UCITS*, the *feeder UCITS* complies with ■ COLL 5.2.3 R (1) (Prudent spread of risk).

**Investment powers: general**

5.8.6  
FCA

**R** The *scheme property* of a *feeder UCITS* must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the *instrument constituting the fund* may restrict the investment and borrowing powers of a *scheme* further than the relevant restrictions in this section.

**Other provisions applicable to a feeder UCITS**

5.8.7  
FCA

**R** The following *rules and guidance* in ■ COLL 5.1 (Introduction), ■ COLL 5.2 (General investment powers and limits for UCITS schemes) and ■ COLL 5.5 (Cash, borrowing, lending and other provisions) apply to the *authorised fund manager* of a *UCITS scheme* which is a *feeder UCITS* and to an *ICVC* which is a *feeder UCITS*:

- (1) ■ COLL 5.1.1 R (Application), ■ COLL 5.1.2 G (1) (Purpose) and ■ COLL 5.1.3 R (Treatment of obligations);
- (2) ■ COLL 5.2.1 R (Application), ■ COLL 5.2.2 R (Table of application) and ■ COLL 5.2.2A G;
- (3) ■ COLL 5.2.5 R (Valuation) and ■ COLL 5.2.6 G (Valuation guidance);

- (4) ■ COLL 5.2.10 R (Eligible markets: requirements);
- (5) ■ COLL 5.2.11 R (7) (Spread: general);
- (6) ■ COLL 5.2.11B R (Counterparty risk and issuer concentration);
- (7) ■ COLL 5.2.15 R (1) (Investment in associated collective investment schemes);
- (8) ■ COLL 5.2.19 R (1), ■ COLL 5.2.19 R (2) and ■ COLL 5.2.19 R (4) (Derivatives: general);
- (9) ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards));
- (10) ■ COLL 5.2.20A R (Financial indices underlying derivatives), ■ COLL 5.2.20B G (1) and ■ COLL 5.2.20B G (4) (Guidance on financial indices underlying derivatives);
- (11) ■ COLL 5.2.21 R (Transactions for the purchase of property);
- (12) ■ COLL 5.2.22 R (Requirement to cover sales) and ■ COLL 5.2.22A G (Guidance on requirement to cover sales);
- (13) ■ COLL 5.2.23 R (OTC Transactions in derivatives), ■ COLL 5.2.23A R and ■ COLL 5.2.23B R);
- (14) ■ COLL 5.2.23C R (Valuation of OTC derivatives);
- (15) ■ COLL 5.2.26 R (Investment in deposits);
- (16) ■ COLL 5.5.1 R to ■ COLL 5.5.7A G (Cash, borrowing, lending and other provisions); and
- (17) ■ COLL 5.5.9 R (Guarantees and indemnities) and ■ COLL 5.5.10 G (Guidance on restricting payments).

## Chapter 6

# Operating duties and responsibilities



## 6.1 Introduction and Application

### Application

6.1.1  
FCA

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This chapter applies to:

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

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

### Purpose

6.1.2  
FCA

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This chapter helps in achieving the *statutory objective* of protecting *consumers*. It provides the operating framework within which the *authorised fund* must be operated on a day-to-day basis to ensure that *clients* are treated fairly when they become, remain or as they cease to be *unitholders*.

### Explanation of this chapter

6.1.3  
FCA

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- (1) The *authorised fund manager* operates the *scheme* on a day-to-day basis. Its operation is determined by the *rules* in this chapter, which require appropriate powers in the *instrument constituting the fund* or refer to the need to state the relevant operating procedures in the *prospectus* of the *scheme*.
- (2) The *authorised fund manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*. The *rules* in this chapter set out the parameters of such delegation.
- (3) The *depository's* duty is, generally speaking, to ensure the safe custody of *scheme property* and to oversee certain functions of the *authorised fund manager* (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a *trustee* of an *AUT* are similar to, but not the same as, the oversight responsibilities of the *depository* of an *ICVC* or *ACS*. These differences result from the different legal structure of the *authorised funds* and the *trustee's* obligations under trust law.



## 6.2 Dealing

### Application

6.2.1  
FCA

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

### Purpose

6.2.2  
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- (1) This section helps in achieving the *statutory objective* of securing an appropriate degree of protection for *consumers*. In accordance with *Principle 6*, this section is also concerned with ensuring the *authorised fund manager* pays due regard to its *clients'* interests and treats them fairly.
- (2) An *authorised fund manager* of an *AUT*, *ACS* or *ICVC* is responsible for arranging for the *issue* and the *cancellation* of *units* for the *authorised fund*. An *authorised fund manager* of an *AUT*, *ICVC* or *co-ownership scheme* is permitted to *sell* and *redeem units* for its own account. An *authorised fund manager* of a *limited partnership scheme* is only permitted to *sell* and *redeem units* as agent for the *scheme*. The *rules* in this section are intended to ensure that the *authorised fund manager* treats the *authorised fund* fairly when arranging for the *issue* or *cancellation* of *units*, and treats *clients* fairly when they purchase or *sell units*.
- (3) This section also sets out common standards for how the amounts in relation to *unit* transactions are to be paid. These arrangements include the *initial offer* of *units*, the exchange of *units* for *scheme property* and *issues* and *cancellations* of *units* by an *ICVC*, or by the *depository* of an *AUT* or *ACS*, carried out directly with the *unitholder*.
- (4) This section also sets out *rules* and *guidance* relating to the *authorised fund manager's* controls over the *issue* and *cancellation* of *units* including any box holdings.
- (5) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*.

### Initial offers

6.2.3  
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- (1) During the *initial offer* period, *units* may only be issued at the *initial price*.

- (2) The length of any *initial offer* should not be unreasonable when considered alongside the characteristics of the *authorised fund*.
- (3) The *authorised fund manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *depository* in respect of any *unit* it has agreed to *sell* during the period of the *initial offer* :
  - (a) in the case of a *single-priced authorised fund*, the *initial price* of that *unit*; or
  - (b) in the case of a *dual-priced authorised fund*, the *initial price* of that *unit* less, where relevant, an amount not exceeding the amount of any *preliminary charge* stated in the *prospectus*.
- (4) The period of the *initial offer* comes to an end if the *authorised fund manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

**Initial offer: guidance**

6.2.4  
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- (1) Details of any *initial offer* period must be provided in the relevant *prospectus* as described in ■ COLL 4.2.5R (17)(h) (Table: contents of the prospectus).
- (2) It may be appropriate that the *initial offer* for a *scheme* operating limited *issue* or *limited redemption arrangements*, or intending to invest in illiquid assets, is longer than one for a *scheme* which does not have these features.

**Issue and cancellation of units by an ICVC**

6.2.5  
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- (1) *Units* in an *ICVC* are *issued* or *cancelled* by the *ACD* making a record of the *issue* or *cancellation* and of the number of the *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless ■ COLL 3.2.6R (11) (Table: contents of the instrument constituting the fund) applies.
- (2) The time of the *issue* or *cancellation* under (1) is the time when the record is made.

**Issue and cancellation of units in an AUT or ACS**

6.2.6  
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- (1) The *depository* must *issue* or *cancel units* in an *AUT* or *ACS* when instructed by the *authorised fund manager*.
- (2) Any instructions given by the *authorised fund manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).

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

#### Issue and cancellation of units in multiple classes

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If an *authorised fund* has two or more *classes* of *unit* in issue, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
  - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
  - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

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#### Issue and cancellation of units through an authorised fund manager

6.2.7

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- (1) The *authorised fund manager* may require, on agreement with the *depository*, or may permit, on the request of the investor, direct *issues* and *cancellations* of *units* by an *ICVC* or by the *depository* of an *AUT* or *ACS*.
- (2) If (1) applies:
  - (a) the *instrument constituting the fund* must provide for this; and
  - (b) the *prospectus* must provide details of the procedure to be followed which must be consistent with the *rules* in this section.

#### Controls over the issue and cancellation of units

6.2.8

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- (1) An *authorised fund manager* must ensure that at each *valuation point* there are at least as many *units* in *issue* of any *class* as there are *units* registered to *unitholders* for that *class*.
- (2) An *authorised fund manager* must not:
  - (a) for an *AUT* or *ACS*, when giving instructions to the *depository* for the *issue* or *cancellation* of *units*; or

(b) for an ICVC, when arranging for the *issue* or *cancellation* of *units*;

do, or omit to do, anything that would, or might, confer on itself or an *associate* a benefit or advantage at the expense of a *unitholder* or a potential *unitholder*.

(3) For the purpose of (1), the *authorised fund manager* may take into account instructions to *redeem units* at the following *valuation point* received before any time agreed with the *depository* for such purpose.

#### Controls over the issue and cancellation of units - guidance

6.2.9  
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- (1) As the *authorised fund manager* normally controls the *issue*, *cancellation*, *sale* and *redemption* of an *authorised fund's units*, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its *clients*.
- (2) ■ SYSC 3.1.1 R (Systems and controls) requires that a *firm* take reasonable care to establish and maintain such systems and controls as are appropriate to its business and *Principle 8* requires a *firm* to manage conflicts of interest between itself and a *customer* fairly.
- (3) To manage the conflict of interest that arises, when an *authorised fund manager* gives an instruction to *issue* or *cancel units*, the *price* of the *units* should be calculated at the *valuation point* before or after the instruction has been given, in accordance with (4).
- (4) An *authorised fund manager* should agree a period of time with the *depository* during which it will give instructions to *issue* or *cancel units*. Where the *authorised fund manager* operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next *valuation point* but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.
- (5) The last *valuation point* should be used for the pricing of *units* where instructions are given before the expiry of the period of time agreed in (4); otherwise the next *valuation point* should be used.
- (6) Where an in specie *issue* or *cancellation* occurs it should be undertaken using the next *valuation point's price*.

#### Modification to number of units issued or cancelled

6.2.10  
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- (1) Any instruction for the *issue* or *cancellation* of *units* under ■ COLL 6.2.5 R (Issue and cancellation of units by an ICVC) or ■ COLL 6.2.6 R (Issue and cancellation of units in an AUT or ACS) may be modified but only if the *depository* agrees and has taken reasonable care to determine that:
  - (a) the modification corrects an error in the instruction; and
  - (b) the error is an isolated one.

- (2) Any error in (1) must be corrected within the payment period applicable under ■ COLL 6.2.13 R (Payment for units issued) or ■ COLL 6.2.14 R (Payment for cancelled units).

**Compensation for box management errors**

6.2.11

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- (1) Where the *authorised fund manager* has not complied with ■ COLL 6.2.8 R (1) (Controls over the issue and cancellation of units), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.
- (2) The *authorised fund manager* need not reimburse the *authorised fund* when:
  - (a) the amount under (1) is not, in the *depository's* opinion, material to the *authorised fund*;
  - (b) the *authorised fund manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
  - (c) the requirements of ■ COLL 6.2.10 R (Modification to number of units issued or cancelled) are complied with.

**Box management errors guidance**

6.2.12

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Explanatory table: This table belongs to ■ COLL 6.2.2 G (4) (Purpose).

Correction of box management errors

**1 Controls by authorised fund managers**

An authorised fund manager needs to be able to demonstrate that it has effective controls over:

- (1) its calculations of what *units* are owned by it (its 'box'); and
- (2) compliance with COLL 6.2.8 R which is intended to prevent a negative box.

**2 Controls by depositaries**

- (1) Under COLL 6.6.4 (General duties of the depository), a *depository* should take reasonable care to ensure that a *scheme* is managed in accordance with COLL 6.2 (Dealing) and COLL 6.3 (Pricing and valuation).
- (2) A *depository* should therefore make a regular assessment of the *authorised fund manager's* box management procedures (including supporting systems) and controls. This should include reviewing the *authorised fund manager's* controls and procedures when the *depository* assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.

**3 Recording and reporting of box management errors**

- (1) An *authorised fund manager* should record all errors which result in a breach of COLL 6.2.8 R (Controls over the issue and cancellation of units) and as soon as an error is discovered, the *authorised fund manager* should report the fact to the

6.2.13

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*depository*, together with details of the action taken, or to be taken, to avoid repetition of the error.

- (2) A *depository* should report material box management errors to the *FCA* immediately. Materiality should be determined by taking into account a number of factors including:
  - (a) the implications of the error for the sufficiency of controls put into place by the *authorised fund manager*;
  - (b) the significance of any breakdown in the *authorised fund manager's* management controls or other checking procedures;
  - (c) the significance of any failure of systems or back-up arrangements;
  - (d) the duration of an error; and
  - (e) the level of compensation due to the *scheme*, and an *authorised fund manager's* ability (or otherwise) to meet claims for compensation in full.
- (3) A *depository* should also make a return to the *FCA* (in the manner prescribed by SUP 16.6.8 R) on a quarterly basis.

#### Payment for units issued

- (1) The *authorised fund manager* must, by the close of business on the fourth *business day* following the *issue* of any *units*, arrange for payment to the *depository* of an *AUT* or *ACS* or the *ICVC* of:
  - (a) in the case of a *single-priced authorised fund*, the *price* of the *units* and any payments required under ■ COLL 6.3.7 R (SDRT provision) and ■ COLL 6.3.8 R (Dilution); or
  - (b) in the case of a *dual-priced authorised fund*, the *issue price* of the *units* and any payment required under ■ COLL 6.3.7 R.
- (2) The *authorised fund manager* must make the payment referred to in (1) in cash or cleared funds unless ■ COLL 6.2.15 R (In specie issue and cancellation) applies.
- (3) Where the *authorised fund manager* has not complied with (1), it must reimburse the *authorised fund* for any lost interest unless the amount involved is not, in the *depository's* opinion, material to the *authorised fund*.

#### Payment for cancelled units

- (1) On *cancelling units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *depository* of the *AUT* or *ACS* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay :
  - (a) in the case of a *single-priced authorised fund*, the *price* of the *units* (less any deduction required under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R; or

6.2.14

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(b) in the case of a *dual-priced authorised fund*, the *cancellation price* of the *units* (less any deduction required under ■ COLL 6.3.7 R);

to the *authorised fund manager* or, where relevant, the *unitholder* or, for a *relevant pension scheme*, in accordance with the relevant provisions of the *trust deed* or *contractual scheme deed*.

- (2) If the *authorised fund manager* has not ensured that the *scheme property* includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in ■ COLL 5 (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.
- (3) If (2) applies, the *authorised fund manager* must take reasonable steps to rectify the currency shortage as quickly as possible.
- (4) This *rule* does not apply where ■ COLL 6.2.15 R is in operation.
- (5) Nothing in this section requires an *ICVC*, a *depository* or an *authorised fund manager* to part with *money* or to transfer *scheme property* for a *cancellation* or *redemption* of *units* where any *money* due on the earlier *issue* or *sale* of those *units* has not been received.

**In specie issue and cancellation**

6.2.15  
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The *depository* may take into or pay out of *scheme property* assets other than cash as payment for the *issue* or *cancellation* of *units* but only if:

- (1) it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of *unitholders*; and
- (2) the *instrument constituting the fund* so provides.

**Sale and redemption**

6.2.16  
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- (1) In accordance with ■ COLL 4.2.5R (17) (Table: contents of the prospectus), the *authorised fund manager* must describe the arrangements for the *sale* and *redemption* of *units* in the *prospectus*.
- (2) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* in the *authorised fund*, in accordance with the conditions in the *instrument constituting the fund* and the *prospectus* unless:
  - (a) it has reasonable grounds to refuse such *sale*; or

- (b) the *issue* of *units* is prevented under ■ COLL 6.2.18 R (Limited issue).
- (3) Subject to ■ COLL 6.2.19 R (Limited redemption) and ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must, at all times during the *dealing day*, on request of any qualifying *unitholder*, effect the *redemption* of *units* in accordance with the conditions in the *instrument constituting the fund* and the *prospectus* unless it has reasonable grounds to refuse such *redemption*.
- (4) On agreeing to a *redemption* of *units* in (3), the *authorised fund manager* must pay the *unitholder* the appropriate proceeds of *redemption* within the period specified in (5) unless the *authorised fund manager* has reasonable grounds for withholding all or any part of the proceeds.
- (5) Except where (5A) applies the period in (4) expires at the close of business on the fourth *business day* following the later of:
- (a) the *valuation point* at which the *price* for the *redemption* was determined; or
  - (b) the time when the *authorised fund manager* has all the duly executed instruments and authorisations to effect (or enable the *authorised fund manager* to effect) the transfer of title to the *units*.
- (5A) Where a *non-UCITS retail scheme* operating as a *FAIF* operates *limited redemption arrangements*, the period in (4) expires no later than the expiry of a period of 185 *days* from the date of receipt and acceptance of the instruction to *redeem*.
- (6) Except where (7) applies, and subject to ■ COLL 6.2.21 R (Deferred redemption), the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of *dealing in units* if later (or, for a *sale* or *redemption* at an *historic price*, at the *price* determined at the last *valuation point*).
- (7) Where the *authorised fund* operates *limited redemption arrangements*, the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the expiry of a period of 185 *days* from the date of the receipt and acceptance of the instruction to *sell* or *redeem*.
- (8) [deleted]

(9) [deleted]

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

### Sale and redemption: guidance

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- (1) The *prospectus* of an *authorised fund* that does not operate on the basis of *historic prices* may allow the *authorised fund manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem units* at that *valuation point*. In order to protect *customers'* interests, the cut-off point should be no earlier than the close of business on the *business day* before the *valuation point* it relates to. If there is more than one *valuation point* in a *day* the cut-off should not be before any previous *valuation point*.
- (2) Where the *authorised fund* operates *limited redemption arrangements*, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185 *day* limit in ■ COLL 6.2.16 R (7) (Sale and redemption) is complied with.
- (3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to *sell* or *redeem* to the *authorised fund manager* but not to differentiate between *unitholders* or potential *unitholders*.
- (4) CESR's *guidelines on a common definition of European money market funds* recommend that, for a UCITS *scheme* which is a *short-term money market fund* or a *money market fund*, the settlement period in ■ COLL 6.2.16 R (5) should expire at the close of business on the third *business day*.

[Note: paragraph 14 of CESR's *guidelines on a common definition of European money market funds*]

### Limited issue

6.2.18

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- (1) If an *authorised fund* limits the *issue* of any *class* of *unit*, the *prospectus* of an *authorised fund* must provide for the circumstances and conditions when *units* will be issued.
- (2) Where (1) applies, the *authorised fund manager* may not provide for the further *issue* of *units* unless, at the time of the *issue*, it is satisfied on reasonable grounds that the proceeds of that subsequent *issue* can be invested without compromising the *scheme's* investment objective or materially prejudicing existing *unitholders*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for the *issue* of *units* provided there is no prejudice to the interests of any *unitholder*.

6.2.19  
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**Limited redemption**

- (1) The *instrument constituting the fund* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF*, or that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.
- (2) Where (1) applies, the *scheme* must provide for *sales and redemptions* at least once in every six *months*.
- (3) Within a *scheme*, *unit classes* may operate different arrangements for *sales and redemptions* of *units* provided there is no prejudice to the interests of any *unitholder*.
- (4) The *scheme* may provide for *sales* of *units* of any *class* to be executed at a greater frequency than *redemptions* of *units* of the same *class*.

**Limited redemption: guidance**

6.2.20  
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The conditions for *limited redemption arrangements* in ■ COLL 6.2.19 R should be considered, for *AUTs* and *ACs* as well as for *ICVCs*, in conjunction with PERG 9 (Meaning of an open-ended investment company) and PERG 9.8 (The investment condition: the 'expectation test' (section 236(3)(a) of the *Act*)).

**Deferred redemption**

6.2.21  
FCA

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- (1) Subject to (1A) and (3) the *instrument constituting the fund* and the *prospectus* of an *authorised fund* which has at least one *valuation point* on each *business day*, may permit deferral of *redemptions* at a *valuation point* to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.
  - (1A) Subject to (3) the *instrument constituting the fund* and the *prospectus* of a *non-UCITS retail scheme* operating as a *FAIF* may permit deferral of *redemptions* at a *valuation point* to a following *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund's* value.
- (2) Any deferral of *redemptions* under (1) or (1A) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:
  - (a) the consistent treatment of all *unitholders* who have sought to *redeem units* at any *valuation point* at which *redemptions* are deferred; and

- (i) payment of stamp duty reserve tax (SDRT) in relation to certain *unit* transactions; and
  - (ii) buying and selling underlying investments as a result of the *issue* or *cancellation* of *units*;
  - (c) making appropriate provision to ensure *clients* are treated fairly where *units* are being *dealt* in at a known (*historic*) *price*; and
  - (d) ensuring that *prices* are made public in an appropriate manner.
- (3) The requirements in this section are to be applied separately to each *sub-fund* of a *scheme* which is an *umbrella*, and, if appropriate, the currency of a *sub-fund* may be used instead of the *base currency* of the *umbrella*. Consequently different methods of *pricing units* may be applied by an *authorised fund manager* to different *sub-funds* of an *umbrella*.
  - (4) The *authorised fund manager* must follow the same method of *pricing* for each *class* of *units* in an *authorised fund*, or in a *sub-fund* of an *umbrella*.

#### Valuation

6.3.3

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- (1) To determine the *price* of *units* the *authorised fund manager* must carry out a fair and accurate valuation of all the *scheme property* in accordance with the *instrument constituting the fund* and the *prospectus*.
- (2) For a *dual-priced authorised fund*, each valuation of the *scheme property* must consist of two parts, carried out on an *issue* basis and a *cancellation* basis respectively.

#### Accounting procedures

6.3.3A

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- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure the employment of the accounting policies and procedures referred to in ■ SYSC 4.1.9 R (Accounting policies), so as to ensure the protection of *unitholders*.
- (2) Accounting for the *scheme* shall be carried out in such a way that all assets and liabilities of the *scheme* can be directly identified at all times.
- (3) If the *scheme* is an *umbrella*, separate accounts must be maintained for each *sub-fund*.

[Note: article 8(1) of the *UCITS implementing Directive*]

6.3.3B

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An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the *UCITS Home State*, so as to ensure that the calculation of the net asset value of each *scheme* it manages

is accurately effected, on the basis of the accounting, and that subscription and *redemption* orders can be properly executed at that net asset value.

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

6.3.3C

FCA

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- (1) The accounting policies and procedures referred to in ■ COLL 6.3.3B R should enable the *authorised fund manager* of a *UCITS scheme* to value the *scheme property* accurately at each *valuation point* and to calculate *dealing prices* by reference to that valuation.
- (2) Where different share or *unit classes* exist, it should be possible to extract from the accounting records the net asset value of each different *class*.

[Note: recital (9) of the *UCITS implementing Directive*]

6.3.3D

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An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each *scheme* it manages.

[Note: article 8(3) of the *UCITS implementing Directive*]

#### Valuation points

6.3.4

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- (1) An *authorised fund* must not have fewer than two regular *valuation points* in any *month* and if there are only two *valuation points* in any *month*, the regular *valuation points* must be at least two weeks apart.
- (2) The *prospectus* of a *scheme* must contain information about its regular *valuation points* for the purposes of *dealing in units* in accordance with ■ COLL 4.2.5R (16) (Table: contents of the prospectus).
- (3) Where a *scheme* operates *limited redemption arrangements*, (1) does not apply and the *valuation points* must be stated in the *prospectus* but must not be set more than six *months* apart.
- (4) Where a *scheme* operates *limited redemption arrangements*, it must be valued and *prices* published in the manner set out in ■ COLL 6.3.11 R (Publication of prices) at least once in every *month*.
- (5) In (4), a *valuation point* for the purpose of publishing *prices* only, does not make it a *valuation point* for the purpose of (2) unless it is disclosed as such in the *prospectus*.
- (6) *Higher volatility funds* must have at least one *valuation point* every *business day* except where the *scheme* is a *non-UCITS retail scheme* operating as a *FAIF*.

- (6A) *Qualifying money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost basis.
- (6B) *UCITS schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost or mark to market basis.
- (6C) *Non-UCITS retail schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* or, where the scheme is marketed solely through employee savings schemes or to a specific category of investors that is subject to *redemption* restrictions, at least one every week at which the valuation is carried out on an amortised cost or mark to market basis.
- (6D) *Money market funds* must value with the appropriate frequency as required in (6B) or (6C) on a mark to market basis.
- (7) No *valuation points* are required during the period of any *initial offer*.
- (8) The *authorised fund manager* may determine to have an additional *valuation point* for an *authorised fund* as a result of market movement under ■ COLL 6.3.9 (Forward and historic pricing) or otherwise, in which case it must inform the *depository*.

**Price of a unit**

6.3.5

FCA

R

- (1) An *authorised fund manager* must ensure that the *price* of a *unit* of any *class* is calculated:
  - (a) by reference to the net value of the *scheme property*; and
  - (b) in accordance with the provisions of both the *instrument constituting the fund* and the *prospectus*.
- (2) Any *unit price* calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.
- (3) For each *class* of *units* in a *single-priced authorised fund*, a single *price* must be calculated at which *units* are to be *issued* and *cancelled*.

6.3.5A  
FCA

R

**Sale and redemption prices for single-priced authorised funds**

The *authorised fund manager* of a *single-priced authorised fund* must not:

- (1) *sell a unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any payments required under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R; or
- (2) *redeem a unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deductions under ■ COLL 6.3.7 R and ■ COLL 6.3.8 R.

6.3.5B  
FCA

R

**Sale and redemption price parameters for dual-priced authorised funds**

(1) The *authorised fund manager* of a *dual-priced authorised fund* must not:

- (a) *sell a unit* for more than the maximum *sale price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any payment required under ■ COLL 6.3.7 R; or
- (b) *redeem a unit* for less than the *cancellation price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any deduction under ■ COLL 6.3.7 R.

(2) The maximum *sale price* of *units* under (1)(a) is the total of:

- (a) the *issue price*; and
- (b) the current *preliminary charge*.

(3) The *sale price* of *units* under (1)(a) must not be less than the relevant *redemption price* under (1)(b).

(4) The *redemption price* under (1)(b) must not exceed the relevant *issue price* of the relevant *units*.

(5) Subject to ■ COLL 6.7.9 R (Charges for the exchange of units in an umbrella), in the case of an *umbrella*:

- (a) the maximum *price* at which *units* in one *sub-fund* that is a *dual-priced authorised fund* may be acquired in exchange for *units* in another *sub-fund* must not exceed the relevant maximum *sale price* (less any *preliminary charge*) of the new *units*; and

- (e) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or *authorised fund manager* becomes entitled to those *units* (until those *units* are either cancelled or re-sold and paid for); and
- (f) carry out any conversion of *units* allowed for by ■ COLL 6.4.8 R (Conversion of units) after consultation with the *manager* or *trustee* or the *authorised fund manager* or *depository*, as appropriate.

**The authorised fund manager as unitholder**

6.4.5  
FCA

R

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

6

**Transfer of units by act of parties: AUTs and ACSs**

6.4.6  
FCA

R

- (1) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless:
  - (a) it is permitted by the *trust deed* or *prospectus*; and
  - (b) the transfer is excluded by Schedule 19 of the Finance Act 1999 from a charge to stamp duty reserve tax, or there has been paid to the *trustee*, for the account of the *AUT*, an amount agreed between the *trustee* and the *manager* not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the *units* being transferred.
- (1A) Provided:
  - (a) the requirements in ■ COLL 6.4.6A R (Transfer of units in an ACS) are satisfied; and
  - (b) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*;

- every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (2) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a *body corporate*, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
  - (3) In the case of an *AUT* or *ACS*, every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
    - (a) any necessary documents that may be required by legislation; and
    - (b) any other evidence reasonably required by the *person* responsible for the *register*.
  - (4) In the case of an *AUT* or *ACS*, the details of instruments of transfer must be kept for a period of six years from the date of its registration.
  - (5) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.

**Transfer of units in an ACS**

6.4.6A

FCA

R

- (1) Where transfer of *units* in an *ACS* is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the *ACS* must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 3.2.6 R(27G) (*ACS*s: *UCITS* and *NURS* transfer of units) and ■ COLL 4.2.5 R(5B) (*ACS*s: *UCITS* and *NURS* transfer of units), *units* in an *ACS* may only be transferred to a *person* that is a:
  - (a) *professional ACS investor*; or
  - (b) *large ACS investor*; or

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Authorised fund manager of an AUT or ACS</i>	<i>Depositary of an AUT or ACS</i>
6.6.12R				X		X
6.6.13R		X	X	X	X	X
6.6.14R		X		X	X	X
6.6.15R	X	X	X	X		X
6.6.15AR*		X			X	
6.6.16G		X		X	X	X
6.6.17R		X	X	X	X	X
6.6.18G		X	X	X	X	X
Notes:	(1)	"x" means "applies", but not every paragraph in every rule will necessarily apply.				
	(2)	* COLL 6.6.3A R and COLL 6.6.3B R only apply to authorised contractual scheme managers of ACSs.				
	(3)	* COLL 6.6.5A R and COLL 6.6.5B G only apply to ACDs of ICVCs which are umbrellas and authorised contractual scheme managers of co-ownership schemes which are umbrellas.				
	(4)	* COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).				

**Functions of the authorised fund manager**

6.6.3  
FCA

**R**

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
  - (a) the *instrument constituting the fund*;
  - (b) the *rules* in this sourcebook;
  - (c) the most recently published *prospectus*; and
  - (d) for an *ICVC*, the *OEIC Regulations*.
  
- (2) The *authorised fund manager* must take such steps as necessary to ensure compliance with the *rules* in this sourcebook that impose obligations upon the *ICVC*.
  
- (3) The *authorised fund manager* must:

- (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
- (b) instruct the *depositary* in writing how rights attaching to the ownership of the *scheme property* are to be exercised, but not where ■ COLL 6.6.13 R (2) (Exercise of rights in respect of the *scheme property*) applies; and
- (c) take action immediately to rectify any breach of ■ COLL 6.3 and, where the breach relates to the incorrect pricing of *units* or to the late payment in respect of the *issue* of *units*, the rectification must, (unless the *depositary* otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of *money*:
  - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
  - (ii) by the *ACD* to the *ICVC*;
  - (iii) by the *ICVC* to the *ACD*;
  - (iv) by the *authorised fund manager* to the *depositary* of the *AUT* or *ACS*; or
  - (v) by the *depositary* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*.
- (4) Rectification under (3)(c) need not, unless the *depositary* so directs, extend to any such reimbursement or payment where it appears to the *depositary* such breach, is of minimal significance.

**Functions of the authorised contractual scheme manager in relation to ACS units**

6.6.3A  
FCA

**R**

- (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *UCITS scheme* or a *non-UCITS retail scheme* must take reasonable care to ensure that ownership of *units* in the *scheme* is only recorded in the *register* for a:
  - (a) *professional ACS investor*; or
  - (b) *large ACS investor*; or
  - (c) *person* who already holds *units* in the *scheme*.
- (2) The *authorised contractual scheme manager* of an *authorised contractual scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder*, unless that *person* meets the criteria within (1)(a) to (c).

- (3) The *authorised contractual scheme manager* will be regarded as complying with (1) and (2) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

**Redemption of ACS units by an authorised contractual scheme manager**

6.6.3B

FCA

R

The *authorised contractual scheme manager* of an *authorised contractual scheme* must *redeem units* in the *scheme* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in ■ COLL 6.6.3AR (1)(a) to ■ (c).

**General duties of the depositary**

6.6.4

FCA

R

- (1) The *depositary* of an *authorised fund* must take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
- (a) ■ COLL 5 (Investment and borrowing powers);
  - (b) ■ COLL 6.2 (Dealing);
  - (c) ■ COLL 6.3 (Valuation and pricing);
  - (d) ■ COLL 6.8 (Income: accounting, allocation and distribution); and
  - (e) any provision of the *instrument constituting the fund* or *prospectus* that relates to the provisions referred to in (a) to (d).
- (2) The *depositary* must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:
- (a) the *authorised fund manager* is adopting appropriate procedures to ensure that the *price* of a *unit* is calculated for each *valuation point* in accordance with ■ COLL 6.3 ; and
  - (b) the *authorised fund manager* has maintained sufficient records to show compliance with ■ COLL 6.3 .
- (3) The *depositary*, when acting in its capacity as *depositary*, must act solely in the interests of the *unitholders*.
- (4) The *depositary*:
- (a) must also take reasonable care to ensure that;
    - (i) the *authorised fund manager* considers whether or not to exercise the power provided by ■ COLL 6.3.7 R (SDRT provision) or ■ COLL 6.3.8 R (Dilution) (as the case may be) and, if applicable, the rate or amount of any *SDRT*

*provision, dilution levy or dilution adjustment* that is imposed;

- (ii) the *authorised fund manager* has in relation to (i), taken account of all factors that are material and relevant to the *authorised fund manager's* decision; and
- (iii) when the *authorised fund manager* considers whether or not to exercise the power under ■ COLL 6.3.8 R, the *authorised fund manager* has acted in accordance with the restrictions imposed by that *rule*; and

(b) has no duty in respect of the *authorised fund manager's* exercise of the discretion referred to in (a).

(5) The *depositary* of a *UCITS scheme* must ensure that in transactions involving the *scheme property* of a *UCITS scheme*, any consideration is remitted for the account of the *scheme* within the usual time limits.

(6) Where the *UCITS scheme* is being managed by an *EEA UCITS management company*, the *depositary* must enter into a written agreement with the *management company* regulating the flow of information deemed necessary to allow it to perform its functions in accordance with ■ COLL 6.6.5 R.

(7) The agreement in (6):

- (a) may cover more than one *UCITS scheme*; and
- (b) must as a minimum contain the information set out in ■ COLL 6 Annex 1.

[Note: articles 22(3)(a), (d) and (e), 23(5), 32(3) and 33(5) of the *UCITS Directive* and article 36 first sentence of the *UCITS implementing Directive*]

6.6.4A

FCA

G

The requirements of ■ SUP 2 (Information gathering by the FCA on its own initiative) apply to the *depositary* of a *UCITS scheme*, under which it must enable the *FCA* to obtain, on request, all information that the *depositary* has obtained while discharging its duties and that is necessary for the *FCA* to supervise the *scheme's* compliance with the requirements referred to in ■ COLL 6.6.4 R (6).

[Note: articles 23(4) and 33(4) of the *UCITS Directive*]

**Duties of the authorised fund manager and the depositary under the general law**

6.6.5

FCA

R

(1) The duties and powers of the *authorised fund manager*, the *directors* of an *ICVC* and the *depositary* under the *rules* in this sourcebook and under the *instrument constituting the fund* are in addition to the powers and duties under the general law.

- (2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the *rules* in this sourcebook or the *instrument constituting the fund* or the *OEIC Regulations*.

**Duties of the ACD of an ICVC or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes**

6.6.5A  
FCA

**R**

Where reasonable grounds exist for an *ACD* of an *ICVC* or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 3.2.6 R (22A) (*ICVCs: Umbrella schemes - principle of limited recourse*) and ■ COLL 3.2.6 R(22B) (*Co-ownership schemes: Umbrella schemes - principle of limited recourse*) ) the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

6.6.5B  
FCA

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In deciding what steps are appropriate to remedy the inconsistency, the *ACD* of an *ICVC* or the *authorised contractual scheme manager* of a *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the *foreign law contract*.

**Maintenance of records**

6.6.6  
FCA

**R**

- (1) The *authorised fund manager* must make and retain for six years such records as enable:
  - (a) the *scheme* and the *authorised fund manager* to comply with the *rules* in this sourcebook and the *OEIC Regulations*; and
  - (b) it to demonstrate at any time that such compliance has been achieved.
- (2) The *authorised fund manager* must make and retain for six years a daily record of the *units* in the *scheme* held, acquired or disposed of by the *authorised fund manager*, including the *classes* of such *units*, and of the balance of any acquisitions and disposals.
- (3) Where relevant, an *authorised fund manager* must make and retain for a period of six years a daily record of:

6

6.6.6A

FCA

**R**

- (a) how it calculates and estimates *dilution*; and
  - (b) its policy and method for determining the amount of any *dilution levy* or *dilution adjustment*.
- (4) The *authorised fund manager* must on the request of the *depositary* immediately supply it with such information concerning the management and administration of the *authorised fund* as the *depositary* may reasonably require.
- (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*, a *depositary*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*; and
  - (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.
- (2) ■ COLL 6.6A.6 R ((Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).
- (3) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

**Maintenance of capital: notification**

6.6.7

FCA

**R**

The *ACD* must immediately notify the *FCA* in writing if the *ICVC's* capital falls below the minimum or exceeds the maximum stated in the *instrument of incorporation*.

**Auditor: AUTs or ACSs**

6.6.8

FCA

**R**

- (1) The *authorised fund manager* of an *AUT* or *ACS* must, upon any vacancy for the position of auditor for an *AUT* or *ACS*, with the approval of the *depositary*, appoint as auditor for the *AUT* or *ACS* a *person* qualified for appointment as auditor of an *authorised person*.
- (2) The audit fees of the auditor are determined by the *authorised fund manager* with the approval of the *depositary*.
- (3) The *authorised fund manager* of an *AUT* or *ACS* may, with the approval of the *depositary*, at any time, remove the auditor

of an *AUT* or *ACS*; this power exists notwithstanding anything in any agreement between the *persons* concerned.

**Returns: AUTs**

6.6.9

FCA

R

The *manager* of an *AUT* must prepare and supply to the *trustee* the returns required to be submitted by the *trustee* to HM Revenue and Customs.

**Dealings in scheme property**

6.6.10

FCA

R

(1) The *authorised fund manager* may give instructions to deal in the property of the *scheme*.

(2) The *authorised fund manager* must obtain the consent of the *depositary* for the acquisition or disposal of immovable property.

(3) Where the *depositary* is of the opinion that a deal in property is not within the *rules* in this sourcebook and the *instrument constituting the fund*, the *depositary* may require the *authorised fund manager* to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.

(4) Where the *depositary* is of the opinion that:

- (a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a *person* other than the *depositary*; and
- (b) the *depositary* cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other *person*;

the *authorised fund manager* must, if the *depositary* so requests, either cancel the transaction or make a corresponding disposal.

**Duty to inform the FCA**

6.6.11

FCA

G

■ SUP 15.3 (General notification requirements) contains *rules* and *guidance* on matters that should be notified to the *FCA*. Such matters include, but are not limited to, any circumstance that the *depositary* becomes aware of whilst undertaking its functions or duties in ■ COLL 6.6.4 R (1) (General duties of the depositary) that the *FCA* would reasonably view as significant.

**Control by the depositary over the scheme property**

6.6.12

FCA

R

(1) The *depositary* of an *authorised fund* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:

- (a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the *scheme*;

6

- (b) ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depositary*, its nominee or a *person* retained by it under ■ COLL 6.6.15 R (1) (Committees and delegation);
  - (c) take into its *custody* or under its control documents of title to the *scheme property* other than for transactions in *derivatives* or forward transactions; and
  - (d) ensure that any transaction in *derivatives* or a forward transaction is entered into so as to ensure that any resulting benefit is received by the *depositary*.
- (2) The *depositary* is responsible for the collection of income due to be paid for the account of the *authorised fund*.
  - (3) The *depositary* must keep for six years such records as are necessary:
    - (a) to enable it to comply with the *rules* in this sourcebook; and
    - (b) to demonstrate that it has achieved such compliance.

**Exercise of rights in respect of the scheme property**

6.6.13

FCA

R

- (1) The *depositary* must take all necessary steps to ensure that instructions given to it by the *authorised fund manager* for the exercise of rights attaching to the ownership of *scheme property* are carried out.
- (2) Where the *scheme property* of an *authorised fund* contains *units* in any other *scheme* managed or otherwise operated by the *authorised fund manager* of the *AUT* or *ACS* or, as the case may be, by any *director* of the *ICVC* or by any *associate* of either, the *depositary* must exercise any voting rights associated with those *units* in accordance with what he reasonably believes to be the interests of the *unitholders* in the *authorised fund*.

**Duties of the depositary and the authorised fund manager: investment and borrowing powers**

6.6.14

FCA

R

- (1) The *authorised fund manager* must avoid the *scheme property* being used or invested contrary to ■ COLL 5, or any provision in the *instrument constituting the fund* or the *prospectus* as referred to in ■ COLL 5.2.4 R (Investment powers: general) and ■ COLL 5.6.4 R (Investment powers: general), except to the extent permitted by (3)(b).
- (2) The *authorised fund manager* must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).

- (3) The *authorised fund manager* must restore compliance with *COLL 5* as soon as reasonably practicable having regard to the interests of the *unitholders* and, in any event, within the period specified in (5) or, when applicable, (6) where:
- (a) the *scheme property* is:
    - (i) used or invested contrary to ■ *COLL 5* (other than a provision excusing a failure to comply on a temporary basis); and
    - (ii) the contravention is beyond the control of both the *authorised fund manager* and the *depositary*; or
  - (b) there is a transaction ("subsequent transaction") deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an *investment* ('original investment') of the scheme if:
    - (i) the subsequent transaction, but for this *rule* would constitute a breach of ■ *COLL 5*; and
    - (ii) at the time of the acquisition of the original *investment*, it was reasonable for the *authorised fund manager*, to expect that a breach would not be caused by the subsequent transaction; and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the *depositary* or the *authorised fund manager*.
- (4) Immediately upon the *depositary* becoming aware of any breach of any provision listed in (1), it must ensure that the *authorised fund manager* complies with (2).
- (5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):
- (a) for six *months*; or
  - (b) where the transaction in question was a transaction in *derivatives* or a forward transaction under ■ *COLL 5.2.20 R* (Permitted transactions (derivatives and forwards)) or *COLL 5.6.13R* (Permitted transactions (derivatives and forwards)), until the close of business five *business days* later; or
  - (c) where the transaction relates to an immovable, for two years.
- (6) The period specified at (5)(b) is extended where:
- (a) the transaction involved a delivery of a *commodity*, from five to twenty *business days*;

- (b) the reason for the contravention in (3)(a) is the inability of the *authorised fund manager* to *close out* a transaction because of a limit in the number or value of transactions imposed by an *eligible derivatives* market, until five *business days* after:
  - (i) the inability resulting from any such limit is removed; or
  - (ii) it becomes, to the knowledge of the *authorised fund manager*, reasonably practicable and reasonably prudent for the transaction to be *closed out* in some other way.

**Committees and delegation**

6.6.15  
FCA

**R**

- (1) The *directors* of an *ICVC* may delegate to any one or more of their number any of the *directors'* powers or duties but remain responsible for the acts or omissions of any such *directors*.
- (1A) The *directors* of an *ICVC* have the power to retain the services of anyone to assist in the performance of their functions, subject to the duty of the *ACD* to comply with ■ COLL 6.6.15A R.
- (2) [deleted]
- (3) [deleted]
- (4) The *depositary* of a *scheme* may delegate any function to any *person* save:
  - (a) the *ICVC* or any *director* of the *ICVC* or the *authorised fund manager* of a *scheme*, to assist the *depositary* to perform:
    - (i) any function of oversight in respect of the *scheme*, its *directors* or the *authorised fund manager* as the case may be; or
    - (ii) any function of *custody* or control of the *scheme property*;
  - (b) an *associate* of the *ICVC* or of any of the *directors* of the *ICVC* or of the *authorised fund manager* of the *scheme* (as the case may be) to assist the *depositary* to perform any function in (a)(i); or
  - (c) a *nominee company* or anyone else to assist it to perform the function of being a *custodian* of *documents* evidencing title to *scheme property* of the *scheme* unless the arrangements with the *custodian* prohibit the *custodian* from releasing the *documents* into the possession of a third party without the consent of the *depositary*.

distributed, the shortfall must, as from the end of that period, be charged to the *capital account* and must not subsequently be transferred to the *income account*.

**Allocation of payments to income or capital: guidance**

6.7.11

FCA

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

FCA

R

- (1) No payment may be made from *scheme property* to any *person*, other than a payment to the *authorised fund manager* permitted by the *rules* in *COLL*, for the acquisition or promotion of the *sale of units* in an *authorised fund*.
- (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *simplified prospectus*, *key investor information document*, *key features document* or *key features illustration*, provided the *prospectus* states, in accordance with ■ COLL 4.2.5 R (13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

**Prohibition on promotional payments: guidance**

6.7.13

FCA

G

Examples of payments which are not permitted by ■ COLL 6.7.12 R include:

- (1) *commission* payable to intermediaries (such payments should normally be borne by the *authorised fund manager*);
- (2) payments or costs in relation to the preparation or dissemination of *financial promotions* (other than costs allowed under ■ COLL 6.7.12 R (2)).
- (3) [deleted]

**Movable or immovable property**

6.7.14

FCA

R

An *ICVC* must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary

for the direct pursuit of its business or held in accordance with its investment objectives.

**Payment of liabilities on transfer of assets**

6.7.15

FCA

R

- (1) Where the property of an *authorised fund* is transferred to a second *authorised fund* (or to the *depository* for the account of the *authorised fund*) in consideration of the *issue* of *units* in the second *authorised fund* to *unitholders* in the first *scheme*, (2) applies.
- (2) The *ICVC* or the *depository* of the *ICVC*, *ACS* or *AUT* as the successor in title to the property transferred, may pay out of the *scheme property* any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:
  - (a) there is nothing in the *instrument constituting the fund* of the *authorised fund* expressly forbidding the payment; and
  - (b) the *authorised fund manager* is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

**Exemptions from liability to account for profits**

6.7.16

FCA

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An *affected person* is not liable to account to another *affected person* or to the *unitholders* of any *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

**Allocation of scheme property**

6.7.17

FCA

R

For a *scheme* which is an *umbrella*, any assets to be received into, or any payments out of, the *scheme property* which are not attributable to one *sub-fund* only, must be allocated by the *authorised fund manager* between the *sub-funds* in a manner which is fair to the *unitholders* of the *umbrella* generally.



## 6.8 Income: accounting, allocation and distribution

### Application

6.8.1  
FCA

R

- (1) This section applies to an *authorised fund manager*.
- (2) ■ COLL 6.8.4 R (1) (Unclaimed, de minimis and joint unitholder distributions) also applies to the *depository* of an *authorised fund*.
- (3) Except in the case of ■ COLL 6.8.2 R (1) (Accounting periods) and ■ COLL 6.8.3 R (1) (Income allocation and distribution), ■ COLL 6.8 applies as if each *sub-fund* were a separate *authorised fund*.

### Accounting periods

6.8.2  
FCA

R

- (1) An *authorised fund* must have:
  - (a) an *annual accounting period*;
  - (b) a *half-yearly accounting period*; and
  - (c) an *accounting reference date*.
- (2) A *half-yearly accounting period* begins when an *annual accounting period* begins and ends on:
  - (a) the *day* which is six *months* before the last *day* of that *annual accounting period*; or
  - (b) some other reasonable date as set out in the *prospectus* of the *scheme*.
- (3) The first *annual accounting period* of a *scheme* must begin:
  - (a) on the first *day* of any period of *initial offer*; or
  - (b) in any other case, on the date of the relevant *authorisation order*;

and in either case must end on the next *accounting reference date*, except where (4) applies.

- (4) When the *accounting reference date* of a *scheme* falls less than *six months* after the beginning of the first *annual accounting period*, that period may be extended until the subsequent *accounting reference date*.
- (5) Each *annual accounting period* of a *scheme* subsequent to the first period must begin immediately after the end of the previous period and must end on the next *accounting reference date*, except where (6) or (6A) applies.
- (5A) Each *annual accounting period* or *half-yearly accounting period* must end either at the end of the *day* determined under this *rule* or, if the *authorised fund manager* so decides, at the last *valuation point* on that *day*.
- (6) Following a revision to the *prospectus* of the *scheme* that includes a change to the *accounting reference date*, the *annual accounting period* may be shortened, or extended by up to *six months*, so as to end on the new *accounting reference date*.
- (6A) If the *authorised fund manager* notifies the *depository* that a particular *annual accounting period* or *half-yearly accounting period* is to end on a specified *day*, which is not more than *seven days* after, and not more than *seven days* before, the *day* on which the period would otherwise end under this *rule*, that notice is to have effect provided it is given before the *day* on which the period would otherwise end.
- (7) The *authorised fund manager* must consult the *depository* and the *scheme's* auditor before shortening or extending an accounting period in accordance with (4) or (6).

6.8.2A  
FCA

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When the *annual accounting period* of a *scheme* is extended under ■ COLL 6.8.2 R (4) or ■ (6), resulting in a longer than usual period before the publication of reports to *unitholders*, the *authorised fund manager* should make summary information about the investment activities of the *scheme* available to *unitholders* during that period, in accordance with *Principles 6* (Customers' interests) and *7* (Communications with clients).

6.8.2B  
FCA

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**Income allocation and distribution**

The allocation or distribution of the income of a *UCITS scheme* must be determined in accordance with its *instrument constituting the fund*, its *prospectus* and the general law of the *United Kingdom*.

[Note: article 86 of the *UCITS Directive*]

6.8.3  
FCA

R

- (1) An *authorised fund* must have an *annual income allocation date*, which must be within four *months* of the end of the relevant *annual accounting period*.

- (2) An *authorised fund* may have *interim income allocation dates* and one or more *interim accounting periods* for each of those dates and, if it does, the *interim income allocation date* must be within four *months* of the end of the relevant *interim accounting period(s)*.
- (3) An *authorised fund* must have a *distribution account* to which the amount of income allocated to *classes of units* that distribute income is transferred as at the end of the relevant accounting period.
- (3A) The amount available for income allocations must be calculated by:
  - (a) taking the net revenue after taxation determined in accordance with the *IMA SORP*;
  - (b) making any transfers, to the extent permitted by the *prospectus*, between the *income account* and the *capital account* in order that the amount available for income allocations is calculated as if the revenue from *debt securities* had been determined disregarding the effect of:
    - (i) the change in the Retail Prices Index during the period, provided that the policy is to invest predominantly in *index-linked securities* and the transfer relates only to amounts in respect of index-linked gilt-edged securities; or
    - (ii) amortisation, provided that the amount available for income allocations is not less than if such transfers had not been made;
  - (c) making any other transfers between the *income account* and the *capital account* that are required in relation to:
    - (i) stock dividends;
    - (ii) *income equalisation* included in income allocations from other *collective investment schemes*;
    - (iii) the allocation of payments in accordance with **COLL 6.7.10 R** (Allocation of payments to income or capital);
    - (iv) taxation;
    - (v) the aggregate amount of *income property* included in *units issued* , *cancelled* and converted during the period; and
    - (vi) amounts determined by the *authorised fund manager* to be the reportable income of other *collective investment schemes*.

- (4) If income is allocated during an accounting period:
- (a) with effect from the end of the relevant *annual* or *interim accounting period*, the amount of income allocated to *classes of units* that accumulate income becomes part of the *capital property* and requires an adjustment to the proportion of the value of the *scheme property* to which they relate if other *classes of units* are in *issue* during the period;
  - (b) the adjustment in (a) must ensure the *price of units* remains unchanged despite the transfer of income; and
  - (c) the amount of any interim allocation may not be more than the amount which, in the opinion of the *authorised fund manager*, would be available for allocation if the *interim accounting period* and all previous *interim accounting periods* in the same *annual accounting period*, taken together, were an *annual accounting period*.

**Allocation of income to different classes of unit**

6.8.3A  
FCA

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In the case of *sub-funds* with more than one *class of units* in issue, the proportionate interests of each *class of units* in the amount available for income allocations should be determined in accordance with the *instrument constituting the fund*.

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

6.8.4  
FCA

R

- (1) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the *prospectus*, must become part of the *capital property*.
- (2) The *authorised fund manager* and the *depository* may agree a *de minimis* amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.
- (3) Distributions made to the first named joint *unitholder* on the *register* will be as effective a discharge to the *trustee* and *manager*, as if the first named joint *unitholder* had been a sole *unitholder*.

**Guidance: contents of the prospectus**

6.8.5  
FCA

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■ COLL 4.2.5 R (Table: contents of prospectus) requires the details of ■ COLL 6.8.2 R, ■ COLL 6.8.3 R (1) and ■ COLL 6.8.3 R (2) and ■ COLL 6.8.4 R (1) and ■ COLL 6.8.4 R (2) to be contained in the *prospectus* as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.

- (3) The *FCA* is unlikely to approve a name of an *authorised fund* that includes the word "guaranteed" unless:
  - (a) the guarantee is given by:
    - (i) an *authorised person*;
    - (ii) a *person* authorised by a *Home State regulator*; or
    - (iii) a *person* subject to prudential supervision in accordance with criteria defined by *EU* law or prudential rules at least as stringent as those laid down by *EU* law;
 

other than the *authorised fund manager* or the *depository*.
  - (b) the *authorised fund manager* can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;
  - (c) the guarantee covers all *unitholders* within the *authorised fund* and is legally enforceable by each *unitholder* who is intended to benefit from it or by a *person* acting on that *unitholder's* behalf;
  - (d) the guarantee relates to the total amount paid for a *unit* which includes any charge or other costs of buying or selling *units* in the *authorised fund*;
  - (e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and
  - (f) where the guarantee applies to different *classes* of *unit*, it is identical in its application to all *classes* except for the differences attributable to income already received or charges already suffered by the different *classes* of *unit*.
- (4) The name of an *authorised fund* may indicate a guaranteed capital return or income return or both but only if the total amount paid for a *unit* is guaranteed in accordance with (3).
- (5) The *FCA* is unlikely to approve a name of an *authorised fund* that includes words implying a degree of capital security (such as "capital protected" or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the *prospectus*, and:
  - (a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a *unit*; or
  - (b) the investment objective and investment policy for the *authorised fund* are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a *unit*.
- (6) When determining whether (5) is complied with, the *FCA* will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

**Undesirable or misleading names: umbrellas**

The *authorised fund manager* must ensure that the name of a *sub-fund* or of a *class of unit* is not undesirable or misleading.

6.9.8  
FCA

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**Undesirable or misleading names: umbrellas - guidance**

When deciding whether ■ COLL 6.9.7R is complied with, the FCA will take into account ■ COLL 6.9.6G. ■ COLL 6.9.7R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

6.9.8A  
FCA

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**Restrictions on the use of the term 'money market fund'**

An *authorised fund* or a *sub-fund* may only be named or marketed as a 'money market fund' if it is:

- (1) a *qualifying money market fund*; or
- (2) a *short-term money market fund*; or
- (3) a *money market fund*.

[Note: Box 1, paragraph 2 of CESR's guidelines on a common definition of European money market funds]

6.9.9  
FCA

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**Restrictions of business for UCITS management companies**

A *UCITS management company* must not engage in any activities other than:

- (1) [deleted]
- (1A) *managing a UCITS*;
- (1B) *managing an AIF*;
- (1C) *acting as a residual CIS operator*;
- (2) activities for the purposes of or in connection with those in (1A), (1B) or (1C);
- (3) collective portfolio management, including without limitation:
  - (a) investment management;
  - (b) administration:
    - (i) legal and fund management accounting services;
    - (ii) *customer enquiries*;
    - (iii) valuation and pricing (including tax returns);
    - (iv) regulatory compliance monitoring;
    - (v) maintenance of *unitholder register*;
    - (vi) distribution of income;
    - (vii) *unit issues and redemptions*;
    - (viii) contract settlements (including certificate dispatch); and

- (ix) record keeping; and
- (c) marketing;
- (4) *managing investments* where the relevant portfolio includes one or more *financial instruments* ;
- (5) *advising on investments* where:
  - (a) the *firm* has a *permission* for the activity in (4); and
  - (b) each of the instruments are *financial instruments*; and
- (6) safeguarding and administration of *collective investment scheme units* where the *firm* has a *permission* for the activity in (4).

**Connected activities: guidance**

6.9.10

FCA

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- (1) Examples of the connected activities referred to in ■ COLL 6.9.9 R (2) include management of *group plans*, as long as they are dedicated to *investments* in *unit trust schemes*, *co-ownership schemes*, *limited partnership schemes* and *OEICs* for which the *firm* acts as an *authorised fund manager*.
- (2) The restrictions of business imposed by ■ COLL 6.9.9R reflect the position under Article 6 of the *UCITS Directive*. In accordance with recital (12) of the Directive the activities referred to at ■ COLL 6.9.9R (3) (a) to ■ COLL 6.9.9R (3) (c) may be performed on behalf of *EEA UCITS management companies*.

6

6.9.11

FCA

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**Notification to the FCA in its role as registrar of ICVCs**

An *ICVC* must notify the *FCA* within 14 *days* of the occurrence of any of the following:

- (1) any amendment to the *instrument of incorporation*;
- (2) any change in the address of the head office of the *ICVC*;
- (3) any change of *director*;
- (4) any change of *depository*;
- (5) in respect of any *director* or *depository*, any change in the information mentioned in regulation 12(1)(b) or (c) of the *OEIC Regulations* (Applications for authorisation);
- (6) any change of the auditor of the *ICVC*;
- (7) any order in respect of the *ICVC* made by virtue of regulation 70 of the *OEIC Regulations* (Mergers and divisions).



## 6.10 Senior personnel responsibilities

### Application

6.10.1

FCA

R

- (1) This section applies to:
  - (a) an *authorised fund manager* of a *UCITS scheme*; and
  - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
  
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

### Senior personnel responsibilities

6.10.2

FCA

R

In complying with ■ SYSC 4.3.1 R (Responsibility of senior personnel), an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel*:

- (1) are responsible for the implementation of the general investment policy for each *scheme* it manages, as defined, where relevant, in the *prospectus* or the *instrument constituting the fund*;
- (2) oversee the approval of investment strategies for each *scheme* it manages;
- (3) are responsible for ensuring that the *authorised fund manager* or *UK UCITS management company* has a permanent and effective compliance function as referred to in ■ SYSC 6.1 (Compliance), even if this function is performed by a third party;
- (4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the *risk limit system* of each *scheme* it manages are properly and effectively implemented

and complied with, even if the risk management function is performed by a third party;

- (5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each *scheme* it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and
- (6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in ■ COLL 6.12.5 R (Risk management policy), including the *risk limit system* for each *scheme* it manages.

[Note: article 9(2) of the *UCITS implementing Directive*]

6.10.3

FCA

R

An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel* receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in ■ COLL 6.10.2R (2) to ■ COLL 6.10.2R (5).

[Note: article 9(5) of the *UCITS implementing Directive*]



## 6.11 Risk control and internal reporting

### Application

6.11.1

FCA

R

- (1) This section applies to:
  - (a) an *authorised fund manager* of a *UCITS scheme*; and
  - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
  
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

### Permanent risk management function

6.11.2

FCA

R

- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish and maintain a permanent risk management function.
  
- (2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the *authorised fund manager's* or *UK UCITS management company's* business and of each *scheme* it manages.
  
- (3) The *authorised fund manager* or *UK UCITS management company* must be able to demonstrate that:
  - (a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and
  - (b) its risk management process satisfies the requirements of ■ COLL 6.12.3 R (Risk management process) or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*.

- (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the *UCITS*;
  - (d) establish, implement and maintain a *risk limit system* for each *UCITS*;
  - (e) ensure that the current level of risk complies with that *risk limit system*; and
  - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that *risk limit system*, result in timely remedial actions in the best interests of *unitholders*.
- (3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* or the *UK UCITS management company* and the *UCITS* it manages and be consistent with the *UCITS*' risk profile.

[Note: articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10

FCA

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*UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in ■ COLL 6.12.9R (1)(b) are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 41 and 43 of the *UCITS implementing Directive*.

6.12.11

FCA

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- (1) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must employ an appropriate *liquidity risk* management process in order to ensure that each *UCITS* it manages is able to comply at any time with ■ COLL 6.2.16 R (Sale and redemption) or the equivalent *UCITS Home State* measures implementing article 84(1) of the *UCITS Directive*.
- (2) Where appropriate, the *authorised fund manager* or *UK UCITS management company* must conduct stress tests to enable it to assess the *liquidity risk* of the *UCITS* under exceptional circumstances.

[Note: article 40(3) of the *UCITS implementing Directive*]

6.12.12

FCA

R

An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that, for each *UCITS* it manages, the liquidity profile of the investments of the *scheme* is appropriate to the *redemption* policy laid down in the *instrument constituting the fund* or the *prospectus*.

[Note: article 40(4) of the *UCITS implementing Directive*]

6.12.13

FCA

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**CESR guidelines: Risk management principles for UCITS**

*Authorised fund managers* are advised that CESR issued guidelines prior to the revision of the *UCITS Directive* in 2009 which, to the extent they remain compatible with the *rules* and other *guidance* in *COLL*, should be complied with in applying the *rules* in this section. These guidelines are available at:

Guidelines - Risk management principles for UCITS (CESR/09-178)

<http://www.esma.europa.eu/content/Guidelines-Risk-management-principles-UCITS>

**Particulars of the standard agreement between an EEA UCITS management company and a depositary**

**FCA**

This table belongs to ■ COLL 6.6.4 R (7)(b) (General duties of the depositary) on the conclusion and prescribed minimum content of a standard agreement between an *EEA UCITS management company* (which is an *authorised fund manager* of a *UCITS scheme*) and the *depositary* of that *scheme*.

**Contents of the standard agreement**

- (1) **Provisions related to the procedures to be followed by the parties to the agreement:**
  - (a) a description of the procedures, included those relating to the safekeeping, to be adopted for each type of asset of the *UCITS scheme* that is entrusted to the *depositary*;
  - (b) a description of the procedures to be followed where the *authorised fund manager* envisages a modification of the *instrument constituting the fund* or the *prospectus* of the *UCITS scheme*, and identifying when the *depositary* should be informed, or where a prior agreement from the *depositary* is needed to proceed with the modification;
  - (c) a description of the means and procedures by which the *depositary* will transmit to the *authorised fund manager* all relevant information that the *authorised fund manager* needs to perform its duties, including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the *authorised fund manager* and the *UCITS scheme* to have timely and accurate access to information relating to the accounts of the *UCITS scheme*;
  - (d) a description of the means and procedures by which the *depositary* will have access to all relevant information it needs to perform its duties;
  - (e) a description of the procedures by which the *depositary* has the ability to enquire into the conduct of the *authorised fund manager* and to assess the quality of information transmitted, including by way of on-site visits; and
  - (f) a description of the procedures by which the *authorised fund manager* can review the performance of the *depositary* in respect of the *depositary's* contractual obligations.

[Note: article 30 of the *UCITS implementing Directive*]
- (2) **Provisions related to the exchange of information and to obligations on confidentiality and money laundering:**
  - (a) a list of all the information that needs to be exchanged between the *UCITS scheme*, its *authorised fund manager* and *depositary* related to the *issue, cancellation, sale and redemption of units* of the *UCITS scheme*;

Contents of the standard agreement

- (b) the confidentiality obligations applicable to the parties to the agreement. These obligations must be drawn up so as not to impair the ability of either the *FCA* or the *Home State regulator* of the *EEA UCITS management company* to gain access to relevant *documents* and information; and
- (c) information on the duties and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

[Note: article 31 of the *UCITS implementing Directive*]

(3) Provisions related to the appointment of third parties:

In cases where the parties to the agreement envisage the appointment of third parties to carry out their duties, the following provisions:

- (a) an undertaking by both parties to provide details, on a regular basis, of any third parties appointed by the *depository* or the *authorised fund manager* to carry out their respective duties;
- (b) an undertaking that on request by one of the parties, the other will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party; and
- (c) a statement that a *depository's* liability as referred to at COLL 6.6.15 R (5) (Committees and delegation) will not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.

[Note: article 32 of the *UCITS implementing Directive*]

(4) Provisions related to potential amendments and the termination of the agreement:

- (a) the period of validity of the agreement;
- (b) the conditions under which the agreement may be amended or terminated; and
- (c) conditions which are necessary to facilitate transition to another *depository* and, in the event of that transition, the procedure by which the *depository* should send all relevant information to the other *depository*.

[Note: article 33 of the *UCITS implementing Directive*]

(5) Applicable law:

A provision specifying that the law of the *United Kingdom* applies to the agreement.

[Note: article 34 of the *UCITS implementing Directive*]

(6) Electronic transmission of information:

In cases where the parties to the agreement agree to the use of electronic transmission for part or all of the information that is to flow between them, a provision ensuring that a record is kept of that information.

[Note: article 35 of the *UCITS implementing Directive*]

(7) Scope of the agreement:

Where the agreement is to cover more than one *UCITS scheme* managed by the *authorised fund manager*, a provision listing the *UCITS schemes* covered by the agreement.

- (2) The *authorised fund manager* will need to ensure that any suspension, while maintaining *unitholders'* interests, is temporary, of minimal duration and is consistent with the provisions of the *prospectus* and the *instrument constituting the fund*.
- (3) During a suspension, the *authorised fund manager* should inform any *person* who requests a *sale* or *redemption* of *units* that all *dealings* in *units* have been suspended and that that *person* has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.



## 7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

### Explanation of COLL 7.3

7.3.1  
FCA

G

- (1) The winding up of an *ICVC* may be carried out under this section instead of by the court provided the *ICVC* is solvent and the steps required under regulation 21 the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the *ACD* and any other *directors* of the *ICVC*.
- (2) The termination of a *sub-fund* may be carried out under this section , instead of by the court, provided the *sub-fund* is solvent and the steps required under regulation 21 of the *OEIC Regulations* are complied with . Termination can only commence once the proposed alterations to the *ICVC's instrument of incorporation* and *prospectus* have been notified to the *FCA* and permitted to take effect. On termination, the assets of the *sub-fund* will normally be realised, and the *unitholders* in the *sub-fund* will receive their respective share of the proceeds net of liabilities and the expenses of the termination.
- (3) A *sub-fund* or *ICVC* may also be terminated or wound up in connection with a *scheme of arrangement*. *Unitholders* will become entitled to receive *units* in another *regulated collective investment scheme* in exchange for their *units*.
- (4) ■ COLL 7.3.3 G gives an overview of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FCA rules*, assuming *FCA* approval.

### Special meanings for termination of a sub-fund of an ICVC

7.3.2  
FCA

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In this section, where a *sub-fund* of an *ICVC* is being terminated, references to:

- (1) *units*, are references to *units* of the *class* or *classes* related to the *sub-fund* to be terminated;
- (2) a resolution, or *extraordinary resolution*, are references to such a resolution passed at a meeting of *unitholders* of *units* of the *class* or *classes* referred to in (1);
- (3) *scheme property*, are references to the *scheme property* allocated or attributable to the *sub-fund* to be terminated; and

- (g) the rules applicable respectively to the transfer of assets and the exchange of *units*; and
- (h) in the case of a *UCITS merger* where the *receiving UCITS* or the *sub-fund* is being specially formed for the purpose, the *instrument constituting the fund* of the newly constituted *receiving UCITS*.

[Note: article 40(1) of the *UCITS Directive*]

7.7.8

FCA

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The *management companies* of the *merging UCITS* and the *receiving UCITS* may decide to include further items in the common draft terms of the *UCITS merger*.

[Note: article 40(2) of the *UCITS Directive*]

#### Verification by the depositary

7.7.9

FCA

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The *depositary* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must verify that the statements in the common draft terms of merger required under ■ COLL 7.7.7 R (2)(a), ■ (f) and ■ (g), to the extent they relate to the *scheme* for which it is the *depositary*, conform with the provisions of the *regulatory system* and the *instrument constituting the fund*.

[Note: article 41 of the *UCITS Directive*]

#### Information to be given to unitholders

7.7.10

FCA

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- (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must ensure that a *document* containing appropriate and accurate information on the merger is provided to the *unitholders* of that *scheme* so as to enable them to:
  - (a) make an informed judgment about the impact of the proposal on their investment;
  - (b) exercise their rights under regulation 12 (Right of redemption) of the *UCITS Regulations 2011*; and
  - (c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with ■ COLL 7.7.4 R (2)(a) (*UCITS mergers*).
- (2) Where a *UCITS scheme* is the *merging UCITS* in a *domestic UCITS merger* or *cross-border UCITS merger*, its *authorised fund manager* must provide the information *document* in (1):
  - (a) to the *unitholders* of the *merging UCITS* and (in the case of a *domestic UCITS merger*) the *receiving UCITS* only after the *FCA* has given its approval to the *UCITS merger* proposal under regulation 9 of the *UCITS Regulations 2011*; and

- (b) where the *receiving UCITS* (in the case of a *cross-border UCITS merger*) is an *EEA UCITS scheme*, to the *unitholders* of that *scheme* only after the *Home State regulator* of each *merging UCITS* has authorised the *UCITS merger* proposal under national measures implementing article 39 of the *UCITS Directive*;

and in either case must do so at least 30 days before the last date by which *unitholders* may request repurchase or *redemption* of their *units* or, where applicable, conversion without additional charge.

- (3) The information *document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:
  - (a) the background to and the rationale for the proposed *UCITS merger*;
  - (b) the possible impact of the proposed *UCITS merger* on *unitholders*, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the *UCITS merger*;
  - (c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:
    - (i) the right to obtain additional information;
    - (ii) the right to obtain a copy of the report of the independent auditor or the *depository* on request prepared for the purposes of regulation 11 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*;
    - (iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*; and
    - (iv) the last date for exercising that right;
  - (d) the relevant procedural aspects and the planned effective date of the merger; and
  - (e) a copy of the *key investor information* of the *receiving UCITS*.

- (4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the *information document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant *Host State* in which *units* of the *UCITS scheme* are to be marketed, or in a language approved by its *Host State regulator*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the *information document*.

[Note: article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

**General rules regarding the content of merger information to be provided to unitholders**

7.7.11

FCA

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- (1) The *information document* that must be provided to *unitholders* under ■ COLL 7.7.10 R (Information to be given to unitholders) by the *authorised fund manager* of a *UCITS scheme* must be written in a concise manner and in non-technical language.
- (2) In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.
- (3) The information to be provided to the *unitholders* of the *merging UCITS* must meet the needs of investors who have no prior knowledge of the features of the *receiving UCITS* or of the manner of its operation, drawing their attention to the *key investor information* of the *receiving UCITS* and emphasising the desirability of reading it.
- (4) The information to be provided to the *unitholders* of the *receiving UCITS* must focus on the operation of the merger and its potential impact on the *receiving UCITS*.

[Note: article 3 of the *UCITS implementing Directive No 2*]

7.7.12

FCA

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- (1) The information provided to *unitholders* under ■ COLL 7.7.10 R and ■ COLL 7.7.13 R on any proposed *merger* should reflect the different needs of the *unitholders* of the *merging UCITS* and the *receiving UCITS* and assist their understanding of what is being proposed.
- (2) The reference to "conversion" in ■ COLL 7.7.10 R (2) means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* or *EEA UCITS scheme* that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[Note: recital (1) of the *UCITS implementing Directive No 2*]

**Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS**

7.7.13

FCA

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- (1) Where the *merging UCITS* is a *UCITS scheme*, the information *document* that its *authorised fund manager* must provide to its *unitholders* under ■ COLL 7.7.10 R (3)(b) must also include:
  - (a) details of any differences in the rights of *unitholders* of the *merging UCITS* before and after the proposed *UCITS merger* takes effect;
  - (b) if the *key investor information* of the *merging UCITS* and the *receiving UCITS* show *synthetic risk and reward indicators* in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
  - (c) a comparison of all charges, fees and expenses for both *schemes*, based on the amounts disclosed in their respective *key investor information*;
  - (d) if the *merging UCITS* applies a performance-related fee, an explanation of how it will be applied up to the point at which the *merger* becomes effective;
  - (e) if the *receiving UCITS* applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those *unitholders* who previously held *units* in the *merging UCITS*;
  - (f) in cases where costs associated with the preparation and the completion of the *merger* may be charged to either the *merging* or the *receiving UCITS* or any of their *unitholders*, details of how those costs are to be allocated; and
  - (g) an explanation of whether the *authorised fund manager* of the *merging UCITS* itself intends to undertake any *rebalancing of the portfolio* before the merger takes effect.
  
- (2) The information to be provided under ■ COLL 7.7.10 R (3)(c) must also include:
  - (a) details of how any accrued income in each *scheme* is to be treated; and
  - (b) an indication of how the report of the independent auditor or the *depository* may be obtained.
  
- (3) The information to be provided in accordance with ■ COLL 7.7.10 R (3)(d) must include:
  - (a) where required by ■ COLL 7.6.2 R (Schemes of arrangement: requirements), the procedure by which *unitholders* will be

- asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;
- (b) the details of any intended suspension of *dealing in units* to enable the merger to be carried out efficiently; and
  - (c) when the merger will take effect in accordance with regulation 13 of the *UCITS Regulations 2011*.
- (4) The information to be provided to the *unitholders* of the *merging UCITS* must include:
- (a) the period during which those *unitholders* will be able to continue making subscriptions and requesting *redemptions* of *units* in the *scheme*;
  - (b) the time when those *unitholders* not making use of their rights granted under regulation 12 of the *UCITS Regulations 2011*, within the relevant time limit, will be able to exercise their rights as *unitholders* of the *receiving UCITS*; and
  - (c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the *unitholders* of the *merging UCITS*, those *unitholders* who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the *UCITS Regulations 2011* within the relevant time limit, will become *unitholders* of the *receiving UCITS*.
- (5) If a summary of the key points of the merger proposal is provided at the beginning of the *document* providing information on the merger proposal, it must cross-refer to the parts of the *document* where further information is provided.

[Note: article 4 of the *UCITS implementing Directive No 2*]

**Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS**

- (1) Where the *receiving UCITS* is a *UCITS scheme*, the information that its *authorised fund manager* must provide to its *unitholders* under ■ COLL 7.7.10 R (3)(b) must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the *receiving UCITS*, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.
- (2) In addition to (1), the *authorised fund manager* of the *receiving UCITS* must provide to its *unitholders* the information referred to in ■ COLL 7.7.13 R (2), ■ (3), and ■ (5).

[Note: article 4 of the *UCITS implementing Directive No 2*]

7.7.14

FCA

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PAGE  
45

7

7.7.15  
FCA

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- (1) An *authorised fund manager* may add other information to that which is required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R if it considers that it is relevant in the context of the proposed *UCITS merger*. For example, it may be appropriate for the information provided in accordance with ■ COLL 7.7.13 R (3)(a) to contain a recommendation by the respective *authorised fund manager* of an *AUT* or *ACS* or the *directors* of an *ICVC* as to the course of action the *unitholders* should take.
- (2) Where an *authorised fund manager* chooses to include a summary of the key points as allowed by ■ COLL 7.7.13 R (5), its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.

[Note: recitals (2) and (3) and article 4(6) of the *UCITS implementing Directive No 2*]

#### Key investor information

7.7.16  
FCA

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The *authorised fund manager* of a *merging UCITS* must provide an up-to-date version of the *key investor information* of the *receiving UCITS* to its existing *unitholders*.

[Note: article 5(1) of the *UCITS implementing Directive No 2*]

7.7.17  
FCA

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- (1) Where a *UCITS scheme* is the *receiving UCITS* in a *cross-border UCITS merger*, its *authorised fund manager* must ensure that an up-to-date version of the *key investor information document* of the *receiving UCITS* is made available to the *management company* of the *merging UCITS* for the purpose of providing it to investors in that *UCITS*.
- (2) Where the *key investor information document* of the *receiving UCITS* has been amended for the purpose of (1), the *authorised fund manager* of the *receiving UCITS* must also provide it to all its existing *unitholders*.

[Note: article 5(2) of the *UCITS implementing Directive No 2*]

#### New unitholders

7.7.18  
FCA

R

Between the date when the information required under ■ COLL 7.7.10 R is provided to *unitholders* and the date when the merger takes effect, the information document and the up-to-date *key investor information* of the *receiving UCITS* must be provided to each *person* who purchases or subscribes for *units* in either the *merging UCITS* or the *receiving UCITS* or who asks to receive copies of the *instrument constituting the fund*, *prospectus* or *key investor information* of either *scheme*.

[Note: article 6 of the *UCITS implementing Directive No 2*]

#### Method of providing merger information to unitholders

7.7.19  
FCA

R

The *authorised fund manager* of the *merging UCITS* and the *receiving UCITS* must provide the information required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R to *unitholders* in a *durable medium*.

- (3) In addition to (1), the *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must take reasonable care to ensure that ownership of *units* in that *scheme* is only recorded in the *register* for a *person* that meets the criteria set out in ■ COLL 8 Annex 2 R (ACS Qualified Investor Schemes: eligible investors).

#### Qualified investor schemes - explanation

8.1.4

FCA

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- (1) *Qualified investor schemes* are *authorised funds* which are intended only for *professional clients* and for *retail clients* who are sophisticated investors. For this reason, *qualified investor schemes* are subject to a restriction on promotion under ■ COBS 4.12.3 R. See also ■ COBS 4.12.13 G.
- (1A) The *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must take reasonable care to ensure that subscription in relation to the *units* of this type of *scheme* should only be in relation to a *person* to whom such *units* may be promoted under ■ COBS 4.12.4 R and who also meets the criteria in ■ COLL 8 Annex 2 R.
- (2) Accordingly, *qualified investor schemes* have a more relaxed set of *rules* governing their operation and in particular their investment powers than for *retail schemes*. A *qualified investor scheme* is essentially a mixed asset type of *scheme* where different types of permitted asset may be included as part of the *scheme property*, depending on the investment objectives and policy of that *scheme* and within any restrictions in the *rules*.

#### Application and notification procedures

8.1.5

FCA

G

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

## 8.2 Constitution

### Application

8.2.1

FCA

R

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

### Classes of unit

8.2.2

FCA

R

A *qualified investor scheme* may issue such *classes of unit* as are set out in the *instrument constituting the fund*, provided the rights of any *class* are not unfairly prejudicial as against the interests of the *unitholders* of any other *class of units* in that *scheme*.

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

8.2.3

FCA

R

- (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class of unit* is not undesirable or misleading.
- (2) An *authorised fund* or a *sub-fund* may only be named or marketed as a 'money market fund' if it is:
  - (a) a *short-term money market fund*; or
  - (b) a *money market fund*.

[Note: Box 1, paragraph 2 of *CESR's guidelines on a common definition of European money market funds*]

### Undesirable and misleading names

8.2.4

FCA

G

■ COLL 6.9.6 G (Undesirable or misleading names) contains *guidance* as to names which may be undesirable or misleading.

### Instrument constituting the fund

8.2.5

FCA

R

The statements and provisions required by ■ COLL 8.2.6 R must be included in the *instrument constituting the fund* of a *qualified investor scheme*.

8.2.6

FCA

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**Table: contents of the instrument constituting the fund**

This table belongs to ■ COLL 8.2.5 R

- 1 Description of the authorised fund**
- Information detailing:**
- (1) the name of the *authorised fund*;
  - (2) that the *authorised fund* is a *qualified investor scheme*; and
  - (3) in the case of an *ICVC*, whether the head office of the *company* is situated in England and Wales or Wales or Scotland or Northern Ireland.
- Property Authorised Investment Funds**
- 1A For a *property authorised investment fund*, a statement that:**
- (1) it is a *property authorised investment fund*;
  - (2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and
  - (3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* in accordance with 6A if the *authorised fund manager* reasonably considers such action to be:
    - (a) necessary in order to enable an orderly reduction of the holding to below 10%; and
    - (b) in the interests of the *unitholders* as a whole.
- 2 Constitution**
- The following statements:**
- (1) the *scheme property* of the *scheme* is entrusted to a *depository* for safekeeping (subject to any exception permitted by the *rules*);
  - (2) if relevant, the duration of the *scheme* is limited and, if so, for how long;
  - (3) charges and expenses of the *scheme* may be taken out of *scheme property*;
  - (4) for an *ICVC*:
    - (a) what the maximum and minimum sizes of the *scheme's* capital are; and
    - (b) the *unitholders* are not liable for the debts of the *company*;
  - (4A) for an *ICVC* which is an *umbrella*, a statement that the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities

of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;

- (4B) for a *co-ownership scheme* which is an *umbrella*, the property subject to a *sub-fund* is beneficially owned by the participants in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the *participants* in that *sub-fund*;
- (4C) for a *limited partnership scheme*, that the *scheme* prohibits pooling as is mentioned in section 235(3)(a) of the *Act* in relation to separate parts of the *scheme property*, with the effect that the *scheme* cannot be an *umbrella*;
- (5) for an *AUT*:
  - (a) the *trust deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions; and
    - (iii) authorises and requires the *trustee* and the *manager* to do the things required or permitted of them by its terms;
  - (b) subject to the provisions of the *trust deed* and all the *rules* made under section 247 of the *Act* (Trust scheme rules):
    - (i) the *scheme* (other than sums held to the credit of the distribution account) is held by the *trustee* on trust for the *unitholders* according to the number of *units* held by each *unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and
    - (ii) the sums standing to the credit of any *distribution account* are held by the *trustee* on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);
  - (c) a *unitholder* is not liable to make any further payment after he has paid the *price* of his *units* and that no further liability can be imposed on him in respect of the *units* he holds; and

- (d) payments to the *trustee* by way of *remuneration* are authorised to be paid (in whole or in part) out of the *scheme property*; and
- (6) for an *ACS*:
  - (a) the *contractual scheme deed*:
    - (i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;
    - (ii) is binding on each *unitholder* as if he had been a party to it and that he is bound by its provisions;
    - (iii) authorises and requires the *depository* and the *authorised contractual scheme manager* to do the things required or permitted of them by its terms; and
    - (iv) states that *units* may not be *issued* to a *person* other than a *person* :
      - (A) who is a:
        - (i) *professional ACS investor*;
        - (ii) *large ACS investor*; or
        - (iii) *person* who already holds *units* in the *scheme*; and
      - (B) to whom *units* in a *qualified investor scheme* may be promoted under **COBS 4.12.4 R**;
    - (v) states that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (iv)(A) and (B);
    - (vi) states that for a *co-ownership scheme*:
      - (A) the *scheme property* is beneficially owned by the *participants* as tenants in common (or, in Scotland, is the common property of the *participants*);
      - (B) the arrangements constituting the *scheme* are intended to constitute a *co-ownership scheme* as defined in section 235A(2) of the *Act*; and
      - (C) the *operator* and *depository* are required to wind up the *scheme* if directed to do so by the *FCA* in exercise of its power

under section 261X (Directions) or section 261Z (Winding up or merger of master UCITS) of the *Act*;

(vii) states:

(A) whether the transfer of *units* in the *ACS* scheme or, for a *co-ownership scheme* which is an *umbrella (sub-funds)* of which pursue differing policies in relation to transfer of *units*, in each particular *sub-fund*, is either:

(i) prohibited; or

(ii) allowed;

(B) where transfer of *units* is allowed by the *scheme* or, where appropriate the *sub-fund*, in accordance with (A)(ii), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :

(i) who is a:

(1) *professional ACS investor*; or

(2) *large ACS investor*; or

(3) *person* who already holds *units* in the *scheme*; and

(ii) to whom *units* in a *qualified investor scheme* may be promoted under COBS 4.12.4 R; and

(viii) states that for a *limited partnership scheme*, the *scheme* is not dissolved on any *person* ceasing to be a *limited partner* or *nominated partner* provided that there remains at least one *limited partner*;

(b) subject to the provisions of the *contractual scheme deed* and all the *rules* made under section 261I of the *Act* (Contractual scheme rules) and for the time being in force:

(i) the *scheme property* (other than sums standing to the credit of the *distribution account*) is held by, or to the order of, the *depository* for and on behalf of the *unitholders* according to the number of *units* held by each

*unitholder* or, where relevant, according to the number of individual shares in the *scheme property* represented by the *units* held by each *unitholder*; and

- (ii) the sums standing to the credit of any *distribution account* are held by the *depository* to distribute or apply them in accordance with COLL 8.5.15 R(Income); and
- (c) a *unitholder* in a *co-ownership scheme* is not liable to make any further payment after he has paid the price of his *units* and that no further liability can be imposed on him in respect of the *units* he holds;
- (d) a *unitholder* in a *limited partnership scheme* is not liable for the debts or obligations of the *limited partnership scheme* beyond the amount of the *scheme property* which is available to the *authorised contractual scheme manager* to meet such debts or obligations, provided that the *unitholder* does not take part in the management of the partnership business;
- (e) the exercise of rights conferred on *limited partners* by *FCA* rules does not constitute taking part in the management of the partnership business;
- (f) the *limited partners*, other than the *nominated partner*, are to be the *participants* in the *scheme*; and
- (g) the *operator* of a *co-ownership scheme* is authorised to:
  - (i) acquire, manage and dispose of the *scheme property*; and
  - (ii) enter into contracts which are binding on *unitholders* for the purposes of, or in connection with, the acquisition, management or disposal of *scheme property*.

### 3 Investment objectives

A statement of the object of the *scheme*, in particular the types of *investments* and assets in which it and each *sub-fund* (where applicable) may invest and that the object of the *scheme* is to invest in property of that kind with the aim of spreading investment risk.

### 4 Units in the scheme

A statement of:

- (1) the *classes* of *units* which the *scheme* may issue, indicating, for a *scheme* which is an *umbrella*, which *class* or *classes* may be issued in respect of each *sub-fund*; and

(2) the rights attaching to *units* of each *class* (including any provisions for the expression in two denominations of such rights).

## 5 Limitation on issue of and redemption of units

Details as to:

- (1) the provisions relating to any restrictions on the right to redeem *units* in any *class*; and
- (2) the circumstances in which the issue of the *units* of any particular *class* may be limited.

## 6 Income and distribution

Details of the *person* responsible for the calculation, transfer, allocation and distribution of income for any *class* of *unit* in issue during the accounting period.

## Redemption or cancellation of units on breach of law or rules

6A A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

## 7 Base currency

A statement of the *base currency* of the *scheme*.

## 8 Meetings

Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for *unitholders*.

## 9 Powers and duties of the authorised fund manager and depositary

Where relevant, details of any function to be undertaken by the *authorised fund manager* and *depositary* which the *rules* in *COLL* require to be stated in the *instrument constituting the fund*.

## 10 Termination and suspension

Details of:

- (1) the grounds under which the *authorised fund manager* may initiate a suspension of the *scheme* and any associated procedures; and
- (2) the methodology for determining the rights of *unitholders* to participate in the *scheme property* on winding up.

## 10A Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles*, a statement that the purpose of that *intermediate holding*

*vehicle* or series of *intermediate holding vehicles* will be to enable the holding of overseas immovables by the *scheme*.

**11 Other relevant matters**

Details of those matters which enable the *scheme*, *authorised fund manager* or *depository* to obtain any privilege or power conferred by the *rules* in *COLL* which is not otherwise provided for in the *instrument constituting the fund*.

**Limited issue**

8.2.7

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*Units* whose *issue* may be limited can only be issued if permitted by the *instrument constituting the fund*, under the conditions set out in the *prospectus* and provided that this will not materially prejudice any existing *unitholders* in the *scheme*.

## 8.3 Investor relations

### Application

8.3.1

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

### Drawing up and availability of prospectus

8.3.2

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- (1) An *authorised fund manager* must ensure that a *prospectus* of a *qualified investor scheme* is drawn up which contains the information, specified in ■ COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the *authorised fund manager* must:
  - (a) revise the *prospectus* immediately upon the occurrence of any materially significant change in the information required to be stated within it;
  - (b) include the date of any revision in a prominent manner in the revised *prospectus* ;
  - (c) send a copy of the original and any revised *prospectus* to the *FSA* ; and
  - (d) review the *prospectus* periodically and revise it to take account of any significant change or new matter.
- (2) The *prospectus* must not contain any provision which is unfairly prejudicial to the interests of *unitholders* generally or to the *unitholders* of any *class* of *units*.
- (3) An *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must offer a copy of the *scheme's* most recent *prospectus* free of charge to any *person* eligible to invest in a *qualified investor scheme* prior to the purchase of any *units*.

### False or misleading prospectus

8.3.3

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The *authorised fund manager* must ensure that the *prospectus* does not contain any untrue or misleading statement or omit any matter required by the *rules* in this sourcebook to be included in it.

8.3.4

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**Table: contents of qualified investor scheme prospectus**

This table belongs to ■ COLL 8.3.2 R.

- 1 Document status**
- A statement that this document is the *prospectus* of the *authorised fund* valid as at a particular date which shall be the date of the *document*.
- 2 Description of the authorised fund**
- Information detailing:**
- (1) the name of the *authorised fund*;
  - (2) that the *authorised fund* is either an *ICVC*, *ACS* or an *AUT*;
  - (3) that the *scheme* is a *qualified investor scheme*;
  - (4) where relevant, that the *unitholders* in an *ICVC* are not liable for the debts of the *authorised fund*;
  - (5) where relevant, the address of the *ICVC's* head office and the address in the *United Kingdom* for service on the *ICVC* of documents required or authorised to be served on it;
  - (6) the effective date of the *authorisation order* made by the *FCA* and, if the duration of the *authorised fund* is not unlimited, when it will or may terminate;
  - (7) the *base currency* for the *authorised fund*;
  - (8) where relevant, the maximum and minimum sizes of the *ICVC's* capital;
  - (9) the circumstances in which the *authorised fund* may be wound up under the *rules* in *COLL* and a summary of the procedure for, and the rights of *unitholders* under, such a winding up; and
  - (10) for an *ACS* that is a *limited partnership scheme*, the address of the proposed principal place of business of the *limited partnership scheme*.
- 3 Investment objectives and policy**
- (1) Sufficient information to enable a *unitholder* to ascertain:
    - (a) the investment objectives of the *authorised fund*;
    - (b) the *authorised fund's* investment policy for achieving those investment objectives, including:
      - (i) the general nature of the portfolio and any intended specialisation;
      - (ii) the policy for the spreading of risk in the *scheme property*; and
      - (iii) the policy in relation to the exercise of borrowing powers;

- (c) a description of any restrictions in the assets in which investment may be made; and
  - (d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.
- (2) For investment in immovables :
- (a) the countries or territories of immovables in which the *authorised fund* may invest;
  - (b) the policy of the *authorised fund manager* in relation to insurance of immovables forming part of the *scheme property*; and
  - (c) the policy of the *authorised fund manager* in relation to the granting of options over immovables in the *scheme property* and the purchase of options on immovables.
- (3) If intended, whether the *scheme property* may consist of *units in collective investment schemes* ("second schemes") which are managed by or operated by the *authorised fund manager* or by one of its *associates* and a statement as:
- (a) to the basis of the maximum amount of the charges in respect of transactions in a second *scheme*; and
  - (b) the extent to which any such charges will be reimbursed to the *scheme*.
- (4) If intended, whether the *scheme* may enter into *stock lending* transactions and, if so, what procedures will operate and what *collateral* will be required.
- (5) Where a *scheme* is a *feeder scheme* which (in respect of investment in *units* in a single *collective investment scheme*) is *dedicated* to *units* in a *collective investment scheme*, details of the *master scheme* and the minimum (and, if relevant, maximum) investment that the *feeder scheme* may make in it;
- (6) Where the *scheme* is a *money market fund* or a *short-term money market fund*, a statement identifying it as such a fund and a statement that the *scheme's* investment objectives and policies will meet the conditions in the definition of *money market fund* or *short-term money market fund*, as appropriate.

#### 4 Distributions and accounting dates

Relevant details of accounting and distribution dates and a description of the procedures:

- (1) for determining and applying income (including how any distributable income is paid); and
- (2) relating to unclaimed distributions.

## 5 The characteristics of units in the authorised fund

### Information as to:

- (1) the names of the *classes of units* in issue or available for *issue* and the rights attached to them in so far as they vary from the rights attached to other *classes*;
- (2) how *unitholders* may exercise their voting rights and what these are; and
- (3) the circumstances where a mandatory *redemption, cancellation* or conversion of *units* from one *class* to another may be required.

## 5A Issue of units in ACSs: eligible investors

- (1) A statement that *units* may not be *issued* to a *person* other than to a *person* :
  - (a) who is a:
    - (i) *professional ACS investor*; or
    - (ii) *large ACS investor*; or
    - (iii) *person* who already holds *units* in the *scheme*; and
  - (b) to whom *units* in a *qualified investor scheme* may be promoted under **COBS 4.12.4 R**.
- (2) A statement that the *authorised contractual scheme manager* of an *ACS* must *redeem units* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in (1).

## 5B Transfer of units in ACSs

- (1) A statement whether the transfer of *units* in the *ACS scheme* is either:
  - (a) prohibited; or
  - (b) allowed;
 by the *instrument constituting the fund* and prospectus.
- (2) A statement that where transfer of *units* is allowed by the *instrument constituting the fund* and *prospectus* in accordance with (1)(b), *units* may only be transferred in accordance with the conditions specified by *FCA rules*, including that *units* may not be transferred to a *person* other than a *person* :
  - (a) who is a:

- (i) *professional ACS investor*; or
    - (ii) *large ACS investor*; or
    - (iii) *person* who already holds *units* in the *scheme*; and
  - (b) to whom *units* in a *qualified investor scheme* may be promoted under **COBS 4.12.4 R**.
  - (3) For a *co-ownership scheme* which is an *umbrella*, a statement in accordance with (1)(a) or (1)(b) and, where appropriate, a statement in accordance with (2), must also be made for the *sub-funds*. Where individual *sub-funds* have differing policies in relation to transfer of *units*, separate statements are required.
- 6 The authorised fund manager**
- The following particulars of the *authorised fund manager*:
- (1) its name and the nature of its corporate form;
  - (2) the country or territory of its incorporation;
  - (3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
  - (4) if it is a *subsidiary*, the name of its ultimate *holding company* and the country or territory in which that *holding company* is incorporated;
  - (5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the *United Kingdom*;
  - (6) the amount of its issued share capital and how much of it is paid up;
  - (7) for an *ICVC*, a summary of the material provisions of the contract between the *ICVC* and the *authorised fund manager* which may be relevant to *unitholders* including provisions (if any) relating to termination, compensation on termination and indemnity; and
  - (8) for an *AUT*, the names of the *directors* of the *authorised fund manager*.
- 7 Directors of an ICVC, other than the ACD**
- Other than for the *ACD*:
- (1) the names and positions in the *ICVC* of the *directors*; and
  - (2) the manner, amount and calculation of the *remuneration* of the *directors*.
- 8 The depositary**

The following particulars of the *depository*:

- (1) its name and the nature of its corporate form;
- (2) the country or territory of its incorporation;
- (3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and
- (4) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*.

**9 The investment adviser**

If an *investment adviser* is retained in connection with the business of the *authorised fund*, its name and whether or not it is authorised by the *FCA*.

**10 The auditor**

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

**11 The register of unitholders**

Details of the address in the *United Kingdom* where the *register of unitholders* is kept and can be inspected by *unitholders*.

**12 Payments out of the scheme property**

The payments that may be made out of the *scheme property* to any *person* whether by way of *remuneration* for services, or reimbursement of expense and for each category of *remuneration* or expense, the following should be specified:

- (1) the current rates or amounts of such *remuneration*;
- (2) how the *remuneration* will be calculated and accrue and when it will be paid;
- (3) if notice has been given to *unitholders* of the *authorised fund manager's* intention to:
  - (a) introduce a new category of *remuneration* for its services; or
  - (b) increase the basis of any current charge; or
  - (c) change the basis of the treatment of a payment from the *capital property* set out in **COLL 8.5.13 R (2)** (Payments);

particulars of that introduction or increase and when it will take place;

- (4) the types of any other charges and expenses that may be taken out of the *scheme property*; and
- (5) if, in accordance with **COLL 8.5.13 R (2)**, all or part of the *remuneration* or expense are to be treated as a capital charge:

- (a) that fact; and
- (b) the basis of the charge which may be so treated.
- 13 Dealing**
- Details of:**
- (1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale* and *redemption* of *units*;
  - (2) the procedures for effecting:
    - (a) the *issue* and *cancellation* of *units*;
    - (b) the *sale* and *redemption* of *units*; and
    - (c) the settlement of transactions;
  - (3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in **COLL 8.5.11 R (3) (Sale and redemption)** may be applied;
  - (4) the circumstances in which the *redemption* of *units* may be suspended;
  - (5) the *days* and times in the *day* on which recalculation of the *price* will commence;
  - (6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
    - (a) any one *person* may hold; and
    - (b) may be the subject of any one transaction of *sale* or *redemption*;
  - (7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption* of *units* in specie;
  - (8) the circumstances in which the further *issue* of *units* in any particular *class* may be limited and the procedures relating to this;
  - (9) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *depository* of an *AUT* or *ACS* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*; and
  - (10) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer.
- 14 Valuation of scheme property**
- Details as to:**

- (1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a description of any circumstance where the *scheme property* may be specially valued;
- (2) in relation to each purpose for which the *scheme property* must be valued, the basis on which it will be valued; and
- (3) how the *price* of *units* of each *class* will be determined, including whether a forward or *historic price* basis is to be applied.

#### 15 Sale and redemption charges

If the *authorised fund manager* makes any charges on *sale* or *redemption* of *units*, details of the charging structure and how notice will be provided to *unitholders* of any increase.

#### 15A Property Authorised Investment Funds

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

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

#### 16 General information

Details as to:

- (1) when annual and half- yearly reports will be published; and
- (2) the address at which copies of the *instrument constituting the fund*, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

#### 17 Information on the umbrella

In the case of a *scheme* which is an *umbrella*, the following information:

- (1) that a *unitholder* may exchange *units* in one *sub-fund* for *units* in another *sub-fund* and that such an exchange is treated as a *redemption and sale*;
- (2) what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;
- (3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;
- (4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price of units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*; and
- (5) for an *ICVC* or a *co-ownership scheme*, that:
  - (a) for an *ICVC*, its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose;
  - (aa) for a *co-ownership scheme*, the property subject to a *sub-fund* is beneficially owned by the *participants* in that *sub-fund* as tenants in common (or, in Scotland, is the common property of the *participants* in that *sub-fund*) and must not be used to discharge any liabilities of, or meet any claims against, any *person* other than the participants in that *sub-fund*; and
  - (b) for an *ICVC* or a *co-ownership scheme*, while the provisions of the *OEIC Regulations*, and section 261P (Segregated liability in relation to umbrella co-ownership schemes) of the *Act* in the case of *co-ownership schemes*, provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations* or, as the case may be, section 261P of the *Act*.

## 18 Application of the prospectus contents to an umbrella

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

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

**18A Investment in overseas property through an intermediate holding vehicle**

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles* a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* is to enable the holding of overseas immovables by the *scheme*.

**18B Information on authorised contractual schemes**

A statement that:

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

**19 Additional information**

Any other material information which is within the knowledge of the *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS*, or which the *directors* or *authorised fund manager* would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the *prospectus*, for the purpose of making an informed judgement about the merits of investing in the *authorised fund* and the extent and characteristics of the risks accepted by so participating.

8.3.5

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**Report and accounts**

- (1) The *authorised fund manager* must prepare a report in respect of each *annual accounting period* and *half-yearly accounting period*.
- (2) [deleted]
- (2A) Where the first *annual accounting period* of a *scheme* is less than 12 *months*, a half-yearly report need not be prepared.
- (3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.
- (4) [deleted]
- (5) The *authorised fund manager* must provide free of charge on the request of any *person* eligible to invest in the *scheme* a copy of the latest annual or half-yearly report before the conclusion of any sale to such *person*.
- (6) The *authorised fund manager* must provide a copy of each annual and half-yearly report to the *FCA*.
- (7) For a *scheme* which is an *umbrella*, any annual report provided under (3) or (5) may be a report prepared under ■ COLL 8.3.5A R (3), but the *authorised fund manager* must nevertheless provide free of charge the report prepared under ■ COLL 8.3.5A R (2) if a *unitholder* or any other *person* eligible to invest in the *scheme* requests it.

**Contents of the annual report**

8.3.5A

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- (1) An annual report, other than for a *scheme* which is an *umbrella*, must contain:
  - (a) the accounts for the *annual accounting period* prepared in accordance with the requirements of the *IMA SORP*;
  - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R (Authorised fund manager's report);
  - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R (Report of the depository); and
  - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor).
- (2) An annual report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:

- (a) for each *sub-fund*, the accounts required by (1)(a) and the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
  - (b) an aggregation of the accounts required by (a);
  - (c) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
  - (d) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further annual report for any one or more individual *sub-funds* of the *umbrella*, in which case it must contain:
- (a) for the *sub-fund*, the accounts required by (1)(a) and the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R;
  - (b) the report of the *depository* in accordance with ■ COLL 8.3.5D R; and
  - (c) the report of the auditor in accordance with ■ COLL 4.5.12 R.
- (4) The *directors* of an *ICVC* or the *authorised fund manager* of an *AUT* or *ACS* must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the *scheme property* of the *authorised fund* or *sub-fund* for the relevant *annual accounting period*, and of the financial position of the *authorised fund* or *sub-fund* as at the end of that period.

#### Contents of the half-yearly report

8.3.5B

FCA

R

- (1) A half-yearly report on an *authorised fund* or *sub-fund* must contain:
  - (a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and
  - (b) the report of the *authorised fund manager* in accordance with ■ COLL 8.3.5C R.
- (2) For a *scheme* which is an *umbrella*, the *authorised fund manager* may choose whether the half-yearly report is prepared for the *umbrella* as a whole, or for each individual *sub-fund*, or both.

8.3.5C

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**Authorised fund manager's report**

The report of the *authorised fund manager* must include:

- (1) a review of the investment activities during the period to which the report relates;
- (2) particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report; and
- (3) any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

**Report of the depositary**

8.3.5D

FCA

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- (1) The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
- (2) The *depositary's* report must contain:
  - (a) a description, which may be in summary form, of the duties of the *depositary* under ■ COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
  - (b) a statement whether in any material respect:
    - (i) the *issue, sale, redemption and cancellation* and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the fund*; and
    - (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

**Signing of annual and half-yearly reports**

8.3.5E

FCA

R

The annual reports in ■ COLL 8.3.5AR (1) and ■ (2) and the half-yearly reports in ■ COLL 8.3.5BR (1) must:

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

- (2) in the case of an *AUT* or *ACS*, if the *authorised fund manager* has:
  - (a) more than one director, be signed by at least two directors of the *authorised fund manager*; or
  - (b) only one director, be signed by the director of the *authorised fund manager*.

#### Alterations to the scheme and notices to unitholders

8.3.6

FCA

R

- (1) Any proposed change which would be reasonably considered to be a fundamental change to the *scheme* requires the prior sanction of an ordinary resolution of the *unitholders*.
- (2) Any proposed change to the *scheme* which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to *unitholders* to become effective.
- (3) Alterations affecting only a particular *sub-fund* or *class of units* may be approved in accordance with (1) or (2) for the particular *sub-fund* or *class of units*, with the consent of, or, as the case may be, notice to, the relevant *unitholders*.
- (4) This *rule* and ■ COLL 8.3.8 R (Meetings) will apply (unless the context requires otherwise) to alterations concerning *unitholders* of a particular *sub-fund* or *class of units* rather than the *scheme* or *sub-fund* as a whole.

#### Alterations to the scheme and notices to unitholders: guidance

8.3.7

FCA

G

Although account should be taken of the *guidance* on fundamental changes (■ COLL 4.3.5 G (Guidance on fundamental changes)) and significant changes (■ COLL 4.3.7 G (Guidance on significant changes)) the impact of any change to the *scheme* should be assessed individually based on the nature of the *scheme* and its investor profile.

#### Meetings

8.3.8

FCA

R

- (1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the *instrument constituting the fund* and be reasonable and fair as between all relevant parties.
- (2) The *authorised fund manager* must record and keep minutes for six years of all proceedings to which ■ COLL 8.3.6 R (Alterations to the scheme and notices to unitholders) and this *rule* are relevant.
- (3) The provisions in ■ COLL 4.4.12 R (Notices to unitholders), ■ COLL 4.4.13 R (Other notices) and ■ COLL 4.4.14 G (References to writing and electronic documents) apply in relation to *qualified investor schemes*.

## 8.4 Investment and borrowing powers

### Application

8.4.1

FCA

R

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

8.4.1A

FCA

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- (1) Where this section refers to a second *scheme*, and the second *scheme* is a feeder *scheme*, which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to *units* in a single *collective investment scheme*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which the feeder *scheme's* master *scheme* invests.
- (2) Where this section refers to a second *scheme*, and the second *scheme* is a master *scheme* to which (in respect of investment in *units* in *collective investment schemes*) the relevant *qualified investor scheme* is *dedicated*, the reference in this section to the second *scheme* must be read as if it were a reference to any *scheme* into which that master *scheme* invests.

### Spread of risk

8.4.2

FCA

R

An *authorised fund manager* must take reasonable steps to ensure that the *scheme property* of a *qualified investor scheme* provides a spread of risk, taking into account the investment objectives and policy of the *scheme* as stated in the most recently published *prospectus*, and in particular, any investment objective as regards return to the *unitholders* (whether through capital appreciation or income or both).

### Investment powers: general

8.4.3

FCA

R

- (1) The *scheme property* of a *qualified investor scheme* may, subject to the *rules* in this chapter, comprise any assets or *investments* to which it is *dedicated*.
- (2) The *instrument constituting the fund* and the *prospectus* may further restrict:

- (a) the kinds of assets in which the *scheme property* may be invested;
- (b) the types of transactions permitted and any relevant limits; and
- (c) the borrowing powers of the *scheme*.

#### Qualified investor schemes: general

8.4.4

FCA

R

The *scheme property* of a *qualified investor scheme* must, except where otherwise provided by the *rules* in this chapter, consist only of one or more of the following to which it is *dedicated*:

- (1) any *specified investment*:
  - (a) within articles 74 to 86 of the *Regulated Activities Order*; and
  - (b) within article 89 (Rights to or interests in investments) of the *Regulated Activities Order* where the right or interest relates to a *specified investment* within (a);
- (2) an interest in an immovable under ■ COLL 8.4.11 R (Investment in property);
- (3) *precious metals*; or
- (4) a *commodity contract* traded on an *RIE* or a *recognised overseas investment exchange*.

#### Money market funds

8.4.4A

FCA

R

The *authorised fund manager* of a *qualified investor scheme* which operates as a *money market fund* or *short-term money market fund* must satisfy the conditions in ■ COLL 5.9.3 R (Investment conditions: short-term money market funds) and ■ COLL 5.9.5 R (Investment conditions: money market funds) respectively.

[Note: box 2 and box 3 of *CESR's guidelines on a common definition of European money market funds*]

8.4.4B

FCA

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*Approved money market instruments* held within a *qualified investor scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in ■ COLL 5.2.7F R to ■ COLL 5.2.7H R (*Approved money-market instruments*).

#### Investment in collective investment schemes

PAGE  
27

8.4.5

FCA

R

- (1) A *qualified investor scheme* may invest in *units* in a *scheme* (a '*second scheme*') only if the *second scheme* is:
  - (a) a *regulated collective investment scheme*; or
  - (b) a *scheme* not within (a) where the *authorised fund manager* has taken reasonable care to determine that:

- (i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;
- (ii) the calculation of the net asset value of each of the second *schemes* and the maintenance of their accounting records is segregated from the investment management function;
- (iii) (unless it is a master *scheme* to whose *units* the relevant *qualified investor scheme* is dedicated) it is prohibited from investing more than 15% of its value in *units* of *schemes* or, if there is no such prohibition, the *qualified investor scheme's authorised fund manager* is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made; and
- (iv) it operates in accordance with the principle of risk spreading as described in ■ COLL 8.4.2 R.

(2) A *qualified investor scheme* must not invest more than 20% in value of the *scheme property* in *units* in second *schemes* which are unregulated *schemes* or *qualified investor schemes* unless the *authorised fund manager* has carried out appropriate due diligence on each of the second *schemes* and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second *scheme* complies with relevant legal and regulatory requirements.

(3) The *authorised fund manager* of a *qualified investor scheme* with more than 20% in value of the *scheme property* invested in one or more second *schemes* which are unregulated *schemes* or *qualified investor schemes* must carry out appropriate due diligence on those *schemes* on an ongoing basis.

#### Investment in a collective investment scheme that is an umbrella

8.4.5A

FCA

R

Where the second *scheme* in ■ COLL 8.4.5 R is an *umbrella*, the provisions apply to each *sub-fund* as if it were a separate *scheme*.

8.4.5B

FCA

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- (1) The *guidance* at ■ COLL 5.7.11 G applies to an *authorised fund manager* of a *qualified investor scheme* carrying out due diligence for the purpose of ■ COLL 8.4.5 R, as if that *guidance* related to ■ COLL 8.4.5 R.
- (2) Where ■ COLL 5.7.11 G (10) refers to ■ COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to ■ COLL 8.5.9 R (Valuation, pricing and dealing).
- (3) In addition to the *guidance* at ■ COLL 5.7.11 G the *authorised fund manager* should, as part of its due diligence process, consider whether the property of each of the second *schemes* is held in safekeeping by a third party, which

8.4.11B

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- (2) An *intermediate holding vehicle* must be wholly owned by the *scheme* or another *intermediate holding vehicle* or series of *intermediate holding vehicles* wholly owned by the *scheme*, unless and to the extent that local legislation or regulation relating to the *intermediate holding vehicle* holding the immovable requires a proportion of local ownership.
- (1) The *authorised fund manager* may transfer capital and income between an *intermediate holding vehicle* and the *scheme* by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the *authorised fund manager* should ensure the following:
- (a) a record of inter-company debt is kept in order to provide an accurate audit trail; and
  - (b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the *intermediate holding vehicle's* reasonable running costs (including tax).
- (2) An *intermediate holding vehicle* should undertake the purchase, sale and management of immovables on behalf the *scheme* in accordance with the *scheme's* investment objectives and policy.
- (3) Wherever reasonably practicable, an *intermediate holding vehicle* should have the same auditor and accounting reference date as the *scheme*.
- (4) The accounts of any *intermediate holding vehicle* should be consolidated into the annual and interim reports of the *scheme*.
- (5) The *authorised fund manager* should provide sufficient information to enable the *depository* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

#### Investment limits for immovables

8.4.12

FCA

R

The following limits apply in respect of immovables held as part of the *scheme property*:

- (1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an *appropriate valuer* under ■ COLL 8.4.11 R (2)(c) or ■ COLL 8.4.11 R (2)(d) or ■ COLL 8.4.13 R, as appropriate;
- (2) no option may be granted to a *person* to buy or obtain an interest in any immovable comprised in the *scheme property* if this might unduly prejudice the ability to provide *redemption*; and
- (3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the *scheme value* in any 12 *month* period, calculated at the date of the granting of the option.

8.4.13

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**Standing independent valuer and valuation**

- (1) In relation to the appointment of a valuer the *authorised fund manager* must:
- (a) at the outset appoint the *standing independent valuer* with the approval of the *depository* and likewise upon any vacancy; and
  - (b) ensure that any immovables in the *scheme property* are valued by an *appropriate valuer* (*standing independent valuer*) appointed by the *authorised fund manager*.
- (2) The following apply in relation to the functions of the *standing independent valuer*:
- (a) the *authorised fund manager* must ensure that the *standing independent valuer* appointed under (1), procures the valuation of all the immovables held within the *scheme property*, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;
  - (b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;
  - (c) the *authorised fund manager* must ensure that the *standing independent valuer* values the immovables, on the basis of a review of the last full valuation, at least once a *month*;
  - (d) if either the *authorised fund manager* or the *depository* becomes aware of any matter which appears likely to:
    - (i) affect the outcome of a valuation of an immovable; or
    - (ii) cause the valuer to decide to value under (a), instead of under (c),
 it must immediately inform the *standing independent valuer* of that matter;
  - (e) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and
  - (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but is subject to any provisions of the *instrument constituting the fund*.
- (3) In relation to immovables:

- (a) any valuation under this *rule* has effect, until the next valuation under this *rule*, for the purposes of the value of immovables; and
- (b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

8.4.14

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In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of ■ COLL 8.4.13 R (2)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.



## 8.5 Powers and responsibilities

### Application

8.5.1

FCA

R

This section applies to an *ICVC* which is a *qualified investor scheme* and the *authorised fund manager* any other *directors* of an *ICVC* and the *depository* of a *qualified investor scheme*.

### Functions of the authorised fund manager

8.5.2

FCA

R

- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
  - (a) the *instrument constituting the fund*;
  - (b) the *rules* in this sourcebook;
  - (c) the most recently published *prospectus*; and
  - (d) for an *ICVC*, the *OEIC Regulations*.
  
- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* in this sourcebook that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
  
- (3) The *authorised fund manager* must:
  - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
  - (b) instruct the *depository* how rights attaching to the ownership of *scheme property* are to be exercised;
  - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
    - (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
    - (ii) by the *ACD* to the *ICVC*;

- (iii) by the *ICVC* to the *ACD*;
  - (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
  - (v) by the *depository*; (for the account of the *AUT* or *ACS*) to the *authorised fund manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the *OEIC Regulations*;
  - (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the *rules* in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
  - (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the *classes* of such *units*, and of the balance of any acquisitions and disposals.

#### **Duties of the authorised fund manager: investment and borrowing powers**

- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 8.4 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 8.4 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

#### **Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes**

Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a *foreign law contract* entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership*

8.5.3

FCA

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8

PAGE  
37

8.5.3A

FCA

R

*scheme* (see ■ COLL 8.2.6 R(2)(4A) and ■ COLL 8.2.6 R(2)(4B) ), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

8.5.3B

FCA

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In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the *foreign law contract* in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the *foreign law contract*.

#### Duties of the depositary

8.5.4

FCA

R

- (1) The *depositary* is responsible for the safekeeping of all the *scheme property*.
- (2) The *depositary* must:
  - (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
  - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
  - (c) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;
  - (d) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions;
  - (e) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
  - (f) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 8.5.15 R (Income);
  - (g) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
    - (i) ■ COLL 8.4 (Investment and borrowing powers);
    - (ii) ■ COLL 8.5.9 R (Valuation, pricing and dealing); and

- (iii) ■ COLL 8.5.15 R (Income);
  - (h) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
  - (i) be responsible for any other duties as set out in the *instrument constituting the fund*.
- (3) If a relevant ICVC ceases to have any *directors*, the *depository* may act in accordance with ■ COLL 6.5.6 R (ICVC without a director).

### Delegation

8.5.5

FCA

R

- (1) The *authorised fund manager* (or in addition any other *director* in the case of an ICVC) may delegate any function to any *person*.
- (2) The *depository* has the power to delegate any function to anyone, including in the case of an ICVC a *director*, to assist the *depository* to perform its functions, save that it must not retain the services of the *authorised fund manager* or, in the case of an ICVC, any other *director* to perform any part of its functions of safe custody of the *scheme property*.
- (3) Subject to any provisions of the *OEIC Regulations*, the delegator in (1) and (2) will not be responsible under the *rules* in COLL for any act or omission of the delegate provided that the delegator can show:
  - (a) that it was reasonable for the delegator to obtain assistance to perform the function in question;
  - (b) that the delegate was and remained competent to provide that assistance; and
  - (c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

### Delegation and responsibility for regulatory obligations

8.5.6

FCA

G

*Directors* of an ICVC, *authorised fund managers* and *depositories* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

### Conflicts of interest

PAGE  
39

8.5.7

FCA

R

- (1) The *authorised fund manager* and the *depository* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.

- (2) Paragraph (1) is subject to any provision in the *instrument constituting the fund* and the *prospectus* imposing a prohibition in relation to any type of transaction.

#### The register of unitholders: AUTs or ACSs

8.5.8

FCA

R

- (1) The *authorised fund manager* or the *depository* of an AUT or ACS (in accordance with their responsibilities as set out in the *instrument constituting the fund*) must maintain a *register of unitholders* as a *document* in accordance with this *rule*.
- (2) The *register* must contain:
- (a) the name and address of each *unitholder* (for joint *unitholders* no more than four need to be registered);
  - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
  - (c) the date on which the *unitholder* was registered in the *register* for the *units* standing in his name.
- (3) The *authorised fund manager* or the *depository* of an AUT or ACS (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *authorised fund manager* must immediately notify the *depository* of an AUT or ACS of any information he receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

#### Valuation, pricing and dealing

8.5.9

FCA

R

- (1) The value of the *scheme property* is the net value of the *scheme property* after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).
- (2) Any part of the *scheme property* which is not an *investment* (save an immovable) must be valued at fair value.
- (3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.

- (4) The value of the *scheme property* of an *authorised fund* must, save as otherwise provided in this section, be determined in accordance with the provisions of the *instrument constituting the fund* and the *prospectus*, as appropriate.
- (4A) Where a *scheme* operates as a *short-term money market fund*, the value of the *scheme property* must be determined either on an amortised cost or mark to market basis.
- (4B) Where a *scheme* operates as a *money market fund*, the value of the *scheme property* must be determined on a mark to market basis.
- (5) Subject to (5A), the *scheme* must have a *valuation point* on each *dealing day*.
- (5A) Where a *scheme* operates as a *money market fund* or a *short-term money market fund* which is marketed solely through employee savings schemes or to a specific category of investors that are subject to *redemption* restrictions, the *scheme* may have at least one *valuation point* every week.
- (6) The *authorised fund manager* must prepare a valuation in accordance with (4) for each relevant type of *unit* at each relevant *valuation point*.
- (7) The price of a *unit* must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between *unitholders*.
- (8) [deleted]
- (9) The *authorised fund manager* must publish in an appropriate manner the *price* of any type of *unit* based on the valuation carried out in accordance with (6).
- (10) The *authorised fund manager* must also provide on request to any *unitholder* at any time an estimated price for any type of *unit* in the *scheme*.
- (11) The period of any *initial offer* and how it should end must be set out in the *prospectus* and must not be of unreasonable length.

**Maintaining the value of a short-term money market fund**

8.5.9A

FCA

R

The *authorised fund manager* of a *short-term money market fund* which values *scheme property* on an amortised cost basis must:

- (1) carry out a valuation of the *scheme property* on a mark to market basis at least once a week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and
- (2) ensure that the value of the *scheme property* when valued on a mark to market basis, does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.

[Note: paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]

8.5.9B

FCA

G

The *authorised fund manager* should advise the *depository* when the mark to market value of a *short-term money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *short-term money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.

**Issues and cancellations of units**

8.5.10

FCA

R

- (1) The *authorised fund manager* must:
  - (a) ensure that at each *valuation point* there are at least as many *units* in issue of any *class* as there are *units* registered to *unitholders* of that *class*; and
  - (b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a *unitholder* or potential *unitholder*.
- (2) For the purposes of (1) the *authorised fund manager* may take into account *sales* and *redemptions* after the *valuation point*, provided it has systems and controls to ensure compliance with (1).
- (3) The *authorised fund manager* must arrange for the *issue* and *cancellation* of *units* and pay money or assets to or from the *depository* for the account of the *scheme* as required by the *prospectus*.
- (4) The *authorised fund manager* must keep a record of *issues* and *cancellations* made under this *rule*.
- (5) The *authorised fund manager* may arrange for the *ICVC*, or instruct the *depository* of the *AUT* or *ACS* to *issue* or *cancel*

*units* where the *authorised fund manager* would otherwise be obliged to *sell* or *redeem* the *units* in the manner set out in the *prospectus*.

- (6) Where the *authorised fund manager* has not complied with (1), it must correct the error as soon as possible and must reimburse the *scheme* any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the *prospectus*.

#### Issue and cancellation of units in multiple classes

8.5.10A

FCA

R

If a *qualified investor scheme* has two or more *classes* of *unit* in *issue*, the *authorised fund manager* may treat any or all of those *classes* as one for the purpose of determining the number of *units* to be *issued* or *cancelled* by reference to a particular *valuation point*, if:

- (1) the *depository* gives its prior agreement; and
- (2) the relevant *classes*:
  - (a) have the same entitlement to participate in, and the same liability for *charges*, expenses and other payments that may be recovered from, the *scheme property*; or
  - (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the *price* of the *units* in each *class* is calculated by reference to undivided shares in the *scheme property*.

#### Transfer of units in an ACS

8.5.10B

FCA

R

- (1) Where transfer of *units* in an ACS is allowed by its *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *FCA rules*, the *authorised contractual scheme manager* of the ACS must take reasonable care to ensure that *units* are only transferred if the conditions specified by the *FCA* under (2) are met.
- (2) The *FCA* specifies that for the purposes of (1), and for the purposes of ■ COLL 8.2.6R(2)(6)(a)(vii)(B) (Table: contents of the instrument constituting the fund) and ■ COLL 8.3.4R(5B)(2) (Table: contents of qualified investor scheme prospectus), *units* in the ACS may only be transferred to a *person* :
  - (a) who is a:
    - (i) *professional ACS investor*; or
    - (ii) *large ACS investor*; or
    - (iii) *person* who already holds *units* in the *scheme*; and

- (b) to whom *units* in a *qualified investor scheme* may be promoted under ■ COBS 4.12.4 R.

8.5.10C

FCA

G

The FCA recognises that some transfers of *units* arise by operation of law (such as upon death or bankruptcy of the *unitholder*, or otherwise) and are accordingly outside the control of the *authorised contractual scheme manager*. The *authorised contractual scheme manager* is expected to comply with its responsibilities under ■ COLL 8.5.10E R (Redemption of ACS units in a QIS by an authorised contractual scheme manager) in those cases by redeeming those *units*.

#### Responsibilities of the authorised contractual scheme manager in relation to ACS units

8.5.10D

FCA

R

- (1) The *authorised contractual scheme manager* of an *authorised contractual scheme* which is a *qualified investor scheme* must take reasonable care to ensure that rights or interests in *units* in the *scheme* are not acquired by any *person* from or through an *intermediate unitholder* in a *qualified investor scheme*, unless:
- (a) that *person* is a:
- (i) *professional ACS investor*; or
  - (ii) *large ACS investor*; or
  - (iii) *person* who already holds *units* in the *scheme*; and
- (b) *units* in a *qualified investor scheme* may be promoted to that *person* under ■ COBS 4.12.4 R.
- (2) The *authorised contractual scheme manager* will be regarded as complying with (1) to the extent that it can show that it was reasonable for it to rely on relevant information provided by another *person*.

#### Redemption of ACS units in a QIS by an authorised contractual scheme manager

8.5.10E

FCA

R

The *authorised contractual scheme manager* of a *qualified investor scheme* which is an ACS must *redeem units* in the *scheme* as soon as practicable after becoming aware that those *units* are vested in anyone (whether as a result of subscription or transfer of *units*) other than a *person* meeting the criteria in ■ COLL 8 Annex 2 R(1) and (2) (ACS Qualified Investor Schemes: eligible investors).

#### Sale and redemption

8.5.11

FCA

R

- (1) The *authorised fund manager* must, at all times during the *dealing day*, be willing to effect the *sale* of *units* to any eligible investor (within any conditions in the *instrument constituting the fund* and the *prospectus* which must be fair and reasonable

as between all *unitholders* and potential *unitholders*) for whom the *authorised fund manager* does not have reasonable grounds to refuse such *sale*.

- (2) The *authorised fund manager* must, at all times during the *dealing day*, effect a *redemption* on the request of any eligible *unitholder* (within any conditions in the *instrument constituting the fund* and the *prospectus*) of *units* owned by that *unitholder*, unless the *authorised fund manager* has reasonable grounds to refuse such *redemption*.
- (3) On agreeing to a *redemption* of *units* within (2), the *authorised fund manager* must pay the full proceeds of the *redemption* to the *unitholder* within any reasonable period specified in the *instrument constituting the fund* or the *prospectus*, unless it has reasonable grounds for withholding payment.
- (4) Payment of proceeds on *redemption* must be made by the *authorised fund manager* in any manner provided for in the *prospectus* which must be fair and reasonable as between redeeming *unitholders* and continuing *unitholders*.

#### Limited redemption periods

8.5.12

FCA

G

The maximum period between *dealing days* for a *qualified investor scheme* will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the *scheme*. For instance, for a *scheme* aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between *dealing days* for liquidity reasons than for a *scheme* investing predominantly in listed *securities*.

#### Property Authorised Investment Funds

8.5.12A

FCA

R

- (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the "maximum allowable").
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
  - (a) notify the *body corporate* of that event;
  - (b) not pay any income distribution to the *body corporate*; and
  - (c) redeem or cancel the *body corporate's* holding down to the maximum allowable within a reasonable time-frame.
- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably

considers to be appropriate having regard to the interests of the *unitholders* as a whole.

8.5.12B

FCA

G

Reasonable steps to monitor the maximum allowable include:

- (1) regularly reviewing the *register*; and
- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

### Payments

8.5.13

FCA

R

- (1) An *ICVC* must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.
- (2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

### Exemption from liability to account for profits

8.5.14

FCA

G

An *affected person* is not liable to account to another *affected person* or to the *unitholders* of the *scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

- (1) *dealings* in the *units* of a *scheme*; or
- (2) any transaction in *scheme property*; or
- (3) the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*.

### Income

8.5.15

FCA

R

- (1) A *qualified investor scheme* must have:
  - (a) an *annual accounting period*;
  - (b) a *half-yearly accounting period*; and
  - (c) an *accounting reference date*;
 the details of which must be set out in the *prospectus*.
- (1A) ■ COLL 6.8.2 R (2) to ■ COLL 6.8.2 R (7) (Accounting periods) also apply to the *half-yearly accounting period* and *annual accounting period* of a *qualified investor scheme*.



## 9.2 Section 264 recognised schemes

9.2.1

G

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

9.2.2

FCA

G

### Marketing of units of an EEA UCITS scheme

- (1) The *units* of an *EEA UCITS scheme* in respect of which a notification has been transmitted to the *FSA* by the *competent authority* of the *UCITS Home State* in accordance with article 93 of the *UCITS Directive* may be marketed in the *United Kingdom*. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the *Act*.
- (2) Where a *management company* wishes to market the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or providing any other services in the *United Kingdom*, a *management company* passport is not required for such *marketing* activities.
- (3) In this Chapter references to an *EEA UCITS scheme* include its *sub-funds*.

[Note: article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]



## 9.3 Section 272 recognised schemes

9.3.1

FCA

D

### Information and documents to be supplied for a section 272 application

- (1) If the *operator* of a *scheme* makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the application must include the information in paragraph (4).
- (2) The *documents* must be in English or accompanied by a translation in English.
- (3) The *documents* must be certified by the *operator* to be true copies of the originals.
- (4) The *operator* of the *scheme* must provide the following information and *documents* with the application:
  - (a) the name of the *scheme*;
  - (b) the legal form of the *scheme*;
  - (c) the name and address of the *operator*;
  - (d) the address of the place in the *United Kingdom* for service on the *operator* of notices or other *documents*;
  - (e) whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;
  - (f) the name and address of any *person* to whom the property subject to the *scheme* is entrusted for safekeeping;
  - (g) the address of the place in the *United Kingdom* where *scheme* facilities (see ■ COLL 9.4) will be maintained;
  - (h) details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:
    - (i) the proposed commencement date;
    - (ii) whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;
  - (i) a copy of the *instrument constituting the fund*;
  - (j) a copy of the *prospectus* or any similar document giving details of the *scheme*;

- (k) a copy of the latest annual report and any subsequent half-yearly report; and
- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme* .

#### Additional information required in the prospectus for an application under section 272

9.3.2

FCA

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An *operator* of a *scheme* recognised under section 272 of the *Act* must ensure the *prospectus*:

- (1) contains a statement that "Complaints about the operation of the *scheme* may be made to the *FCA*."; and
- (2) states whether or not investors in the *scheme* would be covered by the *compensation scheme*, and if so, it must state how they are covered and who they would need to contact for further information.

#### Preparation and maintenance of prospectus

9.3.3

FCA

R

- (1) An *operator* of a *scheme* which is a *recognised scheme* by virtue of section 272 of the *Act* must comply with the requirements set out in ■ COLL 4.2 (Pre-sale notifications).
- (2) Where a *scheme* recognised under section 272 of the *Act* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of ■ COLL 4.2.5 R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

## 9.4 Facilities in the United Kingdom

### General

9.4.1

FCA

R

- (1) The *operator* of a *recognised scheme* under section 264 or section 272 of the *Act* must maintain facilities in the *United Kingdom* in order to satisfy the requirements of ■ COLL 9.4.2 R to ■ COLL 9.4.6 R.
- (2) In this section, a facility is a place of business that complies with ■ COLL 9.4.6 R (Place of facilities).

### Documents

9.4.2

FCA

R

- (1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the obtaining (free of charge, in the case of the *documents* at (c), (d) and (e) , and otherwise at no more than a reasonable charge) of copies in English of:
  - (a) the *instrument constituting the fund*;
  - (b) any instrument amending the *instrument constituting the fund*;
  - (c) the latest *prospectus* (which must include the address where the facilities are maintained and details of those facilities);
  - (d) for a section 264 *recognised scheme*, the *EEA key investor information document*; and
  - (e) the latest annual and half-yearly reports.
- (1A) For a section 264 *recognised scheme*, the requirement in (1) for documents to be in English applies only to the *EEA key investor information document* referred to in (1)(d).
- (2) In relation to notices and *documents* sent by *operators* and *depositories* to and from the *United Kingdom*, ■ COLL 4.4.12 R (Notice to unitholders) and ■ COLL 4.4.13 R (Other notices) apply.

9.4.3

FCA

R

**Price and redemption**

- (1) The *operator* must maintain facilities in the *United Kingdom* for any *person* where:
  - (a) information in English can be obtained about prices of *units* in the *scheme*; and
  - (b) a *participant* may *redeem* or arrange for *redemption* of *units* in the *scheme* and obtain payment.
- (2) An *operator* is treated as complying with paragraph (1) if it ensures *participants* may sell their *units* on an investment exchange at a price not significantly different from net asset value; and if so, must inform *participants* of the investment exchange.

**Bearer certificates and characteristics of units in the scheme**

9.4.4

FCA

R

- (1) The *operator* must maintain facilities in the *United Kingdom* at which the *unitholder* of a *bearer certificate* may obtain free of charge:
  - (a) payment of dividends; and
  - (b) details or copies of any notices which have been given or sent to *participants* in the *scheme*.
- (2) The *operator* must state:
  - (a) the nature of the right represented by the *units* in the *scheme*; and
  - (b) whether *persons* other than *unitholders* can vote at meetings of *unitholders* and, if so, who those *persons* are.

**Complaints**

9.4.5

FCA

R

The *operator* must maintain facilities in the *United Kingdom*, at which any *person* who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

**Place of facilities**

9.4.6

FCA

R

- (1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.
- (2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address, such other address in the *United Kingdom* where the *operator* can be contacted.
- (3) [deleted]



## 11.2 Approval of a feeder UCITS

### Explanation

11.2.1

FCA

G

- (1) Section 283A(1) (Master-feeder structures) of the *Act*, in implementation of article 59(1) of the *UCITS Directive*, provides that the *operator* of a *UCITS scheme* may not invest a higher proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FCA* implementing article 55 of the *UCITS Directive*, unless the investment is approved by the *FCA* in accordance with that section.
- (2) The *FCA* has implemented article 55(1) of the *UCITS Directive* in ■ COLL 5.2.11 R (9), which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

### Application for approval of an investment in a master UCITS

11.2.2

FCA

R

- (1) An application for approval of an investment in a *master UCITS* under section 283A of the *Act* must be accompanied by the following documents:
  - (a) the *instrument constituting the fund* of the *feeder UCITS* and of the *master UCITS*;
  - (b) the *prospectus* and the *key investor information* referred to in ■ COLL 4.7.2 R (Key investor information) of the *feeder UCITS* and of the *master UCITS*;
  - (c) the *master-feeder agreement* or the internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules);
  - (d) where applicable, the information to be provided to *unitholders* in accordance with ■ COLL 4.8.3 R (Information to be provided to unitholders);
  - (e) if the *master UCITS* and the *feeder UCITS* have different *depositories*, the information-sharing agreement in accordance with ■ COLL 11.4.1R (2) (Information-sharing agreement between depositories); and
  - (f) if the *master UCITS* and the *feeder UCITS* have different auditors, the information-sharing agreement in accordance

with ■ COLL 11.5.1 R (Information-sharing agreement between auditors).

- (2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation by the *master UCITS's Home State regulator* that the *master UCITS*:
  - (a) is an *EEA UCITS scheme* or a *sub-fund* of it; and
  - (b) fulfils the conditions set out in article 58(3)(b) and (c) of the *UCITS Directive*.
- (3) The *documents* referred to in (1) and (2) must be provided in English.

[Note: article 59(3) of the *UCITS Directive*]

the publication of *dealing prices*, in order to avoid market timing in their *units*, preventing arbitrage opportunities.

- (2) Where either the *master UCITS* or *feeder UCITS* is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[Note: article 60(2) of the *UCITS Directive*]

#### **Obligations of the feeder UCITS**

11.3.7

**R**

**FCA**

- (1) An *authorised fund manager* of a *feeder UCITS* must monitor effectively the activity of the *master UCITS*.
- (2) In performing this obligation, the *authorised fund manager* of the *feeder UCITS* may rely on information and *documents* received from the *master UCITS*, or where applicable, the *master UCITS' management company*, *depository* or auditor, unless there is a reason for doubting their accuracy.

[Note: article 65(1) of the *UCITS Directive*]

#### **Inducements**

11.3.8

**R**

**FCA**

Where, in connection with an investment in the *units* of the *master UCITS*, a distribution fee, commission or other monetary benefit is received by:

- (1) a *feeder UCITS*; or
- (2) an *authorised fund manager* of a *feeder UCITS*; or
- (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder UCITS*.

[Note: article 65(2) of the *UCITS Directive*]

#### **Obligations of the master UCITS**

11.3.9

**R**

**FCA**

The *authorised fund manager* of a *master UCITS* must immediately inform the *FCA* of the identity of each *feeder UCITS* which invests in its *units*.

[Note: article 66(1) first sentence of the *UCITS Directive*]

11.3.10

**G**

**FCA**

Where the *FCA* is informed in accordance with ■ COLL 11.3.9 R that a *feeder UCITS* which is an *EEA UCITS scheme* has invested in *units* of the *master UCITS*, section 261A and section 261Z4 (Information for home state regulator) of the *Act* and regulation 29A (Information for home state regulator) of the *OEIC Regulations* require the *FCA* to inform the *Home State regulator* of the *feeder UCITS* immediately.

[Note: article 66(1) second sentence of the *UCITS Directive*]

11.3.11  
FCA

**R**

- (1) An *authorised fund manager* of a *master UCITS* must not impose any *preliminary charge* or *redemption charge* on the *feeder UCITS* for the *issue, sale, redemption* or *cancellation* of *units* in the *master UCITS*.
- (2) Where the *authorised fund manager* of a *master UCITS* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* by a *feeder UCITS* which is, or is like, a *dilution levy* made in accordance with ■ COLL 6.3.8 R (Dilution) or *SDRT provision* made in accordance with ■ COLL 6.3.7 R (SDRT provision), it is to be treated as part of the *price* of the *units* and not as part of any charge.

[Note: article 66(2) of the *UCITS Directive*]

11.3.12  
FCA

**R**

An *authorised fund manager* of a *master UCITS* must ensure the timely availability of all information that is required in accordance with its obligations under the *regulatory system*, the general law and the *instrument constituting the fund*, to:

- (1) the *feeder UCITS* (or where applicable its *management company*);
- (2) the *competent authority* of the *feeder UCITS*;
- (3) the *depository* of the *feeder UCITS*; and
- (4) the auditor of the *feeder UCITS*.

[Note: article 66(3) of the *UCITS Directive*]

#### **Obligations to unitholders of a master UCITS**

11.3.13  
FCA

**R**

The *authorised fund manager* of a *UCITS scheme* that operates, or intends to operate, as a *master UCITS* must:

- (1) not enter into a *master-feeder agreement* or, where applicable, internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) unless it is satisfied on reasonable grounds that the arrangements with the *feeder UCITS* will not unfairly prejudice the interests of any other *unitholder* or *class* of *unitholders* in the *master UCITS*;
- (2) consider, in relation to:
  - (a) each item of information it makes available to the *feeder UCITS* or its *management company*; and
  - (b) each matter notified by the *depository* of the *master UCITS* in accordance with ■ COLL 11.4.3 R (Notification of irregularities);

whether it would unfairly prejudice the interests of those *unitholders* in the *master UCITS* other than the *feeder UCITS* by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and

- (3) in relation to any matter within (2)(b) where it does not notify other *unitholders* at the same time:
  - (a) record the grounds for determining that the interests of those *unitholders* are not unfairly prejudiced by its decision; and
  - (b) inform all *unitholders* of that matter in an appropriate manner and timescale.

**11.3.14**

**FCA**

**G**

- (1) The appropriate manner and timescale of notification referred to in ■ COLL 11.3.13R (2) and ■ (3)(b) will depend on the nature and significance of the matter. Consequently, the *authorised fund manager* will need to assess each matter individually.
- (2) An appropriate manner of notification could include sending an immediate notification to the *unitholders*, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.
- (3) Where ■ COLL 11.3.13R (3)(b) applies, it might be appropriate to include the information in the next long report of the *scheme*.

## 11.4 Depositaries

### Information-sharing agreement between depositaries

11.4.1  
FCA

R

- (1) An *authorised fund manager* of a *feeder UCITS* is responsible for communicating to the *depositary* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depositary's* regulatory obligations.
- (2) Where a *master UCITS* and its *feeder UCITS* have different *depositaries*, the *depositaries* must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[Note: article 61(1) first and fourth paragraphs of the *UCITS Directive*]

### Contents of the information-sharing agreement between depositaries

11.4.2  
FCA

R

- (1) The information-sharing agreement referred to in ■ COLL 11.4.1R (2) must include:
  - (a) identification of the *documents* and categories of information which are to be routinely shared between both *depositaries*, and whether that information or those *documents* are provided by one *depositary* to the other or made available on request;
  - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depositary* of the *master UCITS* to the *depositary* of the *feeder UCITS*;
  - (c) the co-ordination of the involvement of both *depositaries*, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
    - (i) the procedure for calculating the net asset value of each *scheme*, including any measures appropriate to protect against the activities of market timing in accordance with ■ COLL 11.3.6 R (Avoidance of opportunities for market timing);
    - (ii) the processing of instructions by the *feeder UCITS* to purchase, subscribe or request the repurchase or

*redemption of units* in the *master UCITS*, and the settlement of those transactions, including any arrangement to transfer assets in kind;

- (d) the co-ordination of accounting year-end procedures;
  - (e) what details the *depositary* of the *master UCITS* must provide to the *depositary* of the *feeder UCITS* of breaches by the *master UCITS* of the law and the *instrument constituting the fund* and how and when those details will be provided;
  - (f) the procedure for handling ad hoc requests for assistance from one *depositary* to the other; and
  - (g) identification of particular contingent events which ought to be notified by one *depositary* to the other on an ad hoc basis, and how and when this will be done.
- (2) Where a *master-feeder agreement* exists in accordance with ■ COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that:
- (a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement; and
  - (b) both *depositaries* agree to the exclusive jurisdiction of the courts of that *EEA State*.
- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that:
- (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and
  - (b) both *depositaries* agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.

[Note: articles 24 and 25 of the *UCITS implementing Directive No 2*]

#### Notification of irregularities

- (1) Where a *depositary* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depositary* must immediately inform:

- (a) the *FCA* ;
  - (b) the *feeder UCITS* or, where applicable, its *management company*; and
  - (c) the *depository* of the *feeder UCITS*.
- (2) The irregularities referred to in (1) include, but are not limited to:
- (a) errors in the valuation of the *scheme property* performed in accordance with ■ COLL 6.3.3 R (Valuation);
  - (b) errors in transactions for or settlement of the *sale, issue, repurchase* or *redemption* of *units* in the *scheme* undertaken by the *feeder UCITS*;
  - (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
  - (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the fund*, the *prospectus* or the *key investor information*; and
  - (e) breaches of investment and borrowing limits set out in *COLL*, the *instrument constituting the fund*, the *prospectus* or the *key investor information*.

[Note: article 61(2) of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No 2*]

11.4.4

FCA

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- (1) When notifying the *FCA* of any irregularities in accordance with ■ COLL 11.4.3R (1), the *depository* of the *master UCITS* should also inform the *depository* of the *feeder UCITS* how the *master UCITS* or its *authorised fund manager* has resolved or proposes to resolve the irregularity.
- (2) Where the *depository* of a *UCITS scheme* that is a *feeder UCITS* is informed by the *depository* of a *master UCITS* of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the *directors*.

[Note: recital (16) to the *UCITS implementing Directive No 2*]

#### Disclosure by a trustee or depository

Section 351A (Disclosure under the UCITS directive) of the *Act* provides that where a *trustee* of an *AUT* or the *depository* of an *ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.

11.4.5

FCA

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**Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction**

11.6.2

FCA

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- (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and, where applicable, the *competent authorities* of the *feeder UCITS Home State*, informing them of the binding decision to wind up the *master UCITS*.
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding the compulsory liquidation of *AUTs*, *ACs* or *ICVCs*.

[Note: article 60(4) last sentence of the *UCITS Directive*]

**Application for approval by a feeder UCITS where a master UCITS is wound up**

11.6.3

FCA

**R**

Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that its *master UCITS* is to be wound up, it must submit to the *FCA* the following:

- (1) where the *authorised fund manager* of the *feeder UCITS* intends to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS*:
  - (a) its application for approval under section 283A of the *Act* for that investment;
  - (b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act*, section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) or regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* of any proposed amendments to its *instrument constituting the fund*;
  - (c) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) (Provision and filing of the prospectus) and ■ COLL 4.7.7 R (1) (Revision and filing of key investor information); and
  - (d) the other *documents* required in accordance with ■ COLL 11.2.2 R (Application for approval of an investment in a master UCITS);
- (2) where the *authorised fund manager* of the *feeder UCITS* intends to convert it into a *UCITS scheme* that is not a *feeder UCITS*:
  - (a) its application for approval under section 252A or section 261S of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to its *instrument constituting the fund*; and

(b) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1); and

(3) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[Note: article 20(1) of the *UCITS implementing Directive No 2*]

**Timing of applications for approval: winding up of a master UCITS**

11.6.4

FCA

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(1) The information in ■ COLL 11.6.3 R must be submitted no later than two *months* after the date on which the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up.

(2) By way of derogation from (1), where the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up more than five *months* before the date at which the winding up will start, the *authorised fund manager* must submit the information to the *FCA* at the latest three *months* before the day the winding up will start.

[Note: article 20(1) first sentence and article 20(2) of the *UCITS implementing Directive No 2*]

**Application for approval by a feeder UCITS where a master UCITS merges or divides**

11.6.5

FCA

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Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that the *master UCITS* is to merge with another *UCITS scheme* or *EEA UCITS scheme* or divide into two or more such *schemes*, it must submit to the *FCA* the following:

(1) where the *authorised fund manager* of the *feeder UCITS* intends it to continue to be a *feeder UCITS* of the same *master UCITS*:

(a) its application under section 283A of the *Act*, for approval;

(b) where applicable, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the fund*; and

(c) where applicable, the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);

(2) where the *authorised fund manager* of the *feeder UCITS* intends it to become a *feeder UCITS* of another *master UCITS* resulting

from the proposed merger or division of the *master UCITS*, or intends the *feeder UCITS* to invest at least 85% in value of the *scheme property in units* of another *master UCITS* not resulting from the merger or division:

- (a) its application under section 283A of the *Act* for approval of that investment;
  - (b) where applicable, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the fund*;
  - (c) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);
  - (d) the other *documents* required in accordance with ■ COLL 11.2.2 R;
- (3) where the *authorised fund manager* of the *feeder UCITS* intends it to convert into a *UCITS scheme* that is not a *feeder UCITS*:
- (a) its application for approval under section 252A or section 261S of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to the *instrument constituting the fund*; and
  - (b) the amendments to its *prospectus* and its *key investor information* in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1); and
- (4) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[Note: article 22(1) of the *UCITS implementing Directive No 2*]

#### Interpretation of COLL 11.6.5R

- (1) For the purposes of ■ COLL 11.6.5R (1), a *feeder UCITS* will be considered as continuing to be a *feeder UCITS* of the same *master UCITS* where:
  - (a) the *master UCITS* is the *receiving UCITS* in a proposed *UCITS merger*; or
  - (b) the *master UCITS* is to continue materially unchanged as one of the resulting *UCITS schemes* or *EEA UCITS schemes* in a proposed division.

11.6.6

FCA

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PAGE  
21

11

- (2) For the purposes of ■ COLL 11.6.5R (2), a *feeder UCITS* will be considered as becoming a *feeder UCITS* of another *master UCITS* resulting from the merger or division of the *master UCITS* where:
- (a) the *master UCITS* is the *merging UCITS* and, as a result of the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
  - (b) the *feeder UCITS* as a result of the division becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* that is materially different to the *master UCITS*.

[Note: article 22(2) of the *UCITS implementing Directive No 2*]

**Timing of applications for approval: merger or division of a master UCITS**

11.6.7  
FCA

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- (1) The information in ■ COLL 11.6.5 R must be submitted to the *FCA* no later than one *month* after the date on which the *authorised fund manager* of the *feeder UCITS* has received the information of the planned merger or division in accordance with regulation 13(6) of the *UCITS Regulations 2011*.
- (2) By way of derogation from (1), where the *master UCITS* provides the information referred to in, or comparable with, ■ COLL 7.7.10 R (Information to be given to unitholders) to the *authorised fund manager* of the *feeder UCITS* more than four *months* before the proposed effective date of the merger or division of the *master UCITS*, the *authorised fund manager* must submit the information to the *FCA* at least three *months* before the proposed effective date.

[Note: article 22(1) first sentence and article 22(3) of the *UCITS implementing Directive No 2*]

**Repurchase or redemption of units in a master UCITS**

11.6.8  
FCA

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Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FCA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.

11.6.9  
FCA

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- (1) Where:
  - (a) the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ COLL 11.6.5R (2) and ■ (3); and
  - (b) does not receive the necessary approvals from the *FCA* by the *business day* preceding the last *day* on which the *authorised fund manager* of the *feeder UCITS* can request repurchase or *redemption* of its *units* in the *master UCITS*;

the *authorised fund manager* of the *feeder UCITS* must exercise the right to repurchase or *redeem* its *units* in the *master UCITS* under regulation 12(4) of the *UCITS Regulations 2011*.

- (2) The *authorised fund manager* of the *feeder UCITS* must also exercise the right in (1) to ensure that the right of its own *unitholders* to request repurchase or *redemption* in the *feeder UCITS* in accordance with ■ COLL 4.8.3 R (1)(d) (Information to be provided to unitholders) is not affected.
- (3) Before exercising the right in (1), the *authorised fund manager* of the *feeder UCITS* must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own *unitholders*.
- (4) Where the *authorised fund manager* of the *feeder UCITS* requests repurchase or *redemption* in accordance with (1), it must receive one of the following:
  - (a) the repurchase or *redemption* proceeds in cash; or
  - (b) some or all of the repurchase or *redemption* proceeds as a transfer in kind, where the *authorised fund manager* of the *feeder UCITS* so wishes and where its *instrument constituting the fund* and the *master-feeder agreement* provide for it.
- (5) Where (4)(b) applies, the *authorised fund manager* of the *feeder UCITS* may realise any part of the transferred assets for cash at any time.

[Note: articles 23(4) and 23(5) of the *UCITS implementing Directive No 2*]

**Conditions on reinvestment of cash**

Where:

- (1) the *FCA* approves an application under sections 283A (Master-feeder structures) , 252A or 261S (Proposal to convert to a non-feeder *UCITS*) of the *Act* or regulation 22A of the *OEIC Regulations* that arises as a result of the winding-up, merger or division of the *master UCITS* (other than an application pursuant to ■ COLL 11.6.5R (1)); and
- (2) the *authorised fund manager* of the *feeder UCITS* holds or receives cash in accordance with ■ COLL 11.6.9R (4) or as a result of a winding-up;

the *authorised fund manager* may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the *feeder UCITS* invests in *units* of the *master UCITS* in accordance with

11.6.10

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**FCA**

PAGE  
23

**11**

■ COLL 11.3.2R (3) (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[Note: article 23(6) of the *UCITS implementing Directive No 2*]

11.6.11

FCA

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■ COLL 11.6.10 R gives effect to sections 283A(4), 252A(8) and 261S(8) of the *Act* and regulation 22A(4) of the *OEIC Regulations* which require the *FCA* to impose certain conditions when approving the re-investment of cash received from a *master UCITS* which has been wound up.

#### Requirements following approval by the FCA

11.6.12

FCA

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Where the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under ■ COLL 11.6.3R (1), ■ COLL 11.6.3R (2), ■ COLL 11.6.5R (1), ■ COLL 11.6.5R (2) or ■ COLL 11.6.5R (3) and has received written notice of any required approvals from the *FCA*, it must:

- (1) inform the *master UCITS* of those approvals; and
- (2) in the case of the required approvals received in respect of *documents* submitted under ■ COLL 11.6.3 R (1) and ■ COLL 11.6.5 R (2), take the necessary measures to comply with the requirements of ■ COLL 4.8.3 R as soon as possible.

[Note: articles 21(2), 21(3), 23(2) and 23(3) of the *UCITS implementing Directive No 2*]

#### Notification by feeder UCITS of intention to be wound up

11.6.13

FCA

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Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FCA* under section 251 or section 261Q of the *Act* or regulation 21 of the *OEIC Regulations* that it intends to wind up the *scheme*, it must inform:

- (1) the *unitholders* of the *feeder UCITS*; and
- (2) where notice is given under ■ COLL 11.6.5R (4) (Application for approval by a feeder UCITS where a master UCITS merges or divides), the *authorised fund manager* of the *master UCITS*;

of its intention without undue delay.

[Note: articles 20(3) and 22(4) of the *UCITS implementing Directive No 2*]

## Contents of the standard master-feeder agreement

FCA

This table belongs to the *rule* on the conclusion and prescribed content of a standard *master-feeder agreement* (■ COLL 11.3.2R (1)).

- (1) Provisions related to access to information by a *master UCITS* and a *feeder UCITS*:
- (a) how and when the *master UCITS* provides the *feeder UCITS* with a copy of it *instrument constituting the fund, prospectus and key investor information* or any amendment of them;
  - (b) how and when the *master UCITS* informs the *feeder UCITS* of a delegation of investment management and risk management functions to third parties in accordance with COLL 6.6.15AR;
  - (c) where applicable, how and when the *master UCITS* provides the *feeder UCITS* with internal operational documents, such as its risk management process and its compliance reports;
  - (d) what details of breaches by the *master UCITS* of:
    - (i) the law;
    - (ii) the *instrument constituting the fund*; and
    - (iii) the *master-feeder agreement*;must be notified to the *feeder UCITS* and the manner and timing thereof;
  - (e) where a *feeder UCITS* uses *derivatives* for hedging purposes, how and when the *master UCITS* will provide the *feeder UCITS* with information about its actual exposure to *derivatives* to enable the *feeder UCITS* to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and
  - (f) a statement that the *master UCITS* must inform the *feeder UCITS* of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the *master UCITS* makes those other information-sharing arrangements available to the *feeder UCITS*.

[Note: article 8 of the *UCITS implementing Directive No 2*]

- (2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:
- (a) a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*;
  - (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
  - (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 9 of the *UCITS implementing Directive No 2*]

**(3) Provisions related to standard dealing arrangements:**

- (a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of *units*;
- (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, including, where applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that the *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*;
- (g) procedures to ensure enquiries and complaints from *unitholders* are handled appropriately; and
- (h) where the *instrument constituting the fund* and prospectus of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 10 of the *UCITS implementing Directive No 2*]

**(4) Provisions related to events affecting dealing arrangements:**

- (a) the manner and timing of a notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
- (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 11 of the *UCITS implementing Directive No 2*]

**(5) Provisions related to the standard arrangements for the audit report:**

- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
- (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 12 of the *UCITS implementing Directive No 2*]

**(6) Provisions related to changes to the standing arrangements:**

**How and when notice is to be given:**

- (a) by the *master UCITS* of proposed and effective amendments to its *instrument constituting the fund, prospectus* and *key investor information*, if these details differ from the standard arrangements for notification of *unitholders* laid down in the *instrument constituting the fund* or *prospectus* of the *master UCITS*;**
- (b) by the *master UCITS* of a planned or proposed winding up, *merger* or *division*;**
- (c) by either the *feeder UCITS* or the *master UCITS* that it has ceased or will cease to meet the qualifying conditions to be a *feeder UCITS* or a *master UCITS* respectively;**
- (d) by either the *feeder UCITS* or the *master UCITS* that it intends to replace its *management company*, its *depository*, its auditor or any third party which is mandated to carry out investment management or risk management functions; and**
- (e) by the *master UCITS* of other changes to standing arrangements that it undertakes to provide.**

**[Note: article 13 of the *UCITS implementing Directive No 2*]**



## Contents of the internal conduct of business rules

**FCA**

This table belongs to the *rule* on the conclusion and prescribed content of the internal conduct of business rules ( ■ COLL 11.3.2R (2)).

- (1) Provisions related to conflicts of interest
- (a) The internal conduct of business rules referred to in COLL 11.3.2R (2) must include appropriate measures to mitigate conflicts of interest that may arise between:
- (i) the *feeder UCITS* and the *master UCITS*; or
  - (ii) the *feeder UCITS* and other *unitholders* of the *master UCITS*;
- to the extent that these are not sufficiently addressed by the measures applied by the *management company* in order to meet the requirements of the provisions listed in (b).
- (b) The provisions referred to in (a) are:
- (i) SYSC 10.1.4 R (Types of conflicts);
  - (ii) SYSC 10.1.6 R (Record of conflicts);
  - (iii) SYSC 10.1.10 R (Conflicts policy);
  - (iv) SYSC 10.1.11 R (Contents of policy);
  - (v) SYSC 10.1.17 R (Additional requirements for a management company);
  - (vi) SYSC 10.1.19 R (Structure and organisation of a management company);
  - (vii) SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);
  - (viii) SYSC 10.1.21 R (Disclosure of conflicts for a management company); and
  - (ix) COLL 6.6A.6 R (Strategies for the exercise of voting rights);
- or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the *UCITS Directive* and Chapter III of the *UCITS implementing Directive*.

[Note: article 15 of the *UCITS implementing Directive No 2*]

- (2) Provisions related to the basis of investment and divestment by the *feeder UCITS*:
- (a) a statement of which *classes of units* of the *master UCITS* are available for investment by the *feeder UCITS*;
  - (b) the charges and expenses to be borne by the *feeder UCITS* and details of any rebate or retrocession of charges or expenses by the *master UCITS*; and
  - (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the *feeder UCITS* to the *master UCITS*.

[Note: article 16 of the *UCITS implementing Directive No 2*]

**(3) Provisions related to standard dealing arrangements:**

- (a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of *units*;
- (b) co-ordination of transmission of dealing orders by the *feeder UCITS*, including, where applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that *units* of the *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) where necessary, appropriate measures to ensure compliance with the requirements in **COLL 11.3.6 R** (Avoidance of opportunities for market timing);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*; and
- (g) where the *instrument constituting the fund* and *prospectus* of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

[Note: article 17 of the *UCITS implementing Directive No 2*]

**(4) Provisions related to events affecting dealing arrangements:**

- (a) the manner and timing of notification by either the *master UCITS* or the *feeder UCITS* of the temporary suspension and resumption of repurchase, *redemption*, purchase or subscription of its *units*; and
- (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

[Note: article 18 of the *UCITS implementing Directive No 2*]

**(5) Provisions related to the standard arrangements for the audit report:**

- (a) where the *feeder UCITS* and the *master UCITS* have the same accounting years, the co-ordination of the production of their periodic reports; and
- (b) where the *feeder UCITS* and the *master UCITS* have different accounting years, arrangements for the *feeder UCITS* to obtain any necessary information from the *master UCITS* to enable it to produce its periodic reports on time and which ensure that the auditor of the *master UCITS* is in a position to produce an ad hoc report on the closing date of the accounting year of the *feeder UCITS* in accordance with **COLL 11.5.4 R** (Preparation of the audit report).

[Note: article 19 of the *UCITS implementing Directive No 2*]

- (3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales ( ■ COLL 5.1 (Introduction) to ■ COLL 5.5 (Cash, borrowing, lending and other provisions), ■ COLL 5.8 (Investment powers and borrowing limits for feeder UCITS), ■ COLL 6.12 (Risk management policy and risk measurement) and ■ COLL 11 (Master-feeder arrangements under the UCITS Directive));
- (4) the value of the *scheme property* and the accounting of the *UCITS scheme* (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing) (unless disapplied));
- (5) the calculation of the *issue* or *redemption price*, and errors in the net asset value and related investor compensation (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing));
- (6) the distribution or reinvestment of the *income property* (■ COLL 6.8 (Income: accounting, allocation and distribution));
- (7) the disclosure and reporting requirements of the *UCITS scheme*, including the *prospectus*, *key investor information document* and periodic reports (■ COLL 4.1 (Introduction), ■ COLL 4.2 (Pre-sale notifications), ■ COLL 4.5 (Reports and accounts) and ■ COLL 4.7 (Key investor information and marketing communications));
- (8) the arrangements made for *marketing* ■ COBS 4 (Communicating with clients, including financial promotions), ■ COBS 14 (Providing product information to clients) and ■ COLL 4.7 (Key investor information and marketing communications));
- (9) the relationship with *unitholders* ( ■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications) and ■ COLL 4.4 (Meetings of unitholders and service of notices));
- (10) the merging, restructuring, winding up and liquidation of the *UCITS scheme* (■ COLL 7.1 (Introduction) and ■ COLL 7.3 (Winding up a solvent ICVC and terminating a sub-fund of an ICVC) to ■ COLL 7.7 (UCITS mergers) (including ■ COLL 7.6.2 R (3) to ■ COLL 7.6.2 R (6));
- (11) where applicable, the content of the *register* ( ■ COLL 6.4 (Title and registers));
- (12) the exercise of *unitholders'* voting rights and other *unitholders'* rights in relation to (1) to (11) (including ■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications), ■ COLL 4.4 (Meetings of unitholders), Dispute resolution: Complaints sourcebook) (*DISP*

- see ■ DISP 1 Annex 2 G for a summary of the relevant requirements that apply) and the Compensation sourcebook (*COMP*)); and

(13) the application and periodic fees of the *UCITS scheme (FEES)*).

[Note: articles 16(3) and 19(3) of the *UCITS Directive*]

**Requirement to make information available to the public or the FCA**

12.3.6

FCA

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- (1) An *EEA UCITS management company* that manages a *UCITS scheme* must establish appropriate procedures and arrangements to make information available at the request of the public or the *FCA*.
- (2) The *EEA UCITS management company* must ensure that the procedures and arrangements it establishes in accordance with (1), enable the *FCA* to obtain any information it requests directly from the *management company*.

[Note: article 15 second paragraph and article 21(2) third paragraph, of the *UCITS Directive*]

**EEA UCITS management companies: compliance with FCA rules**

12.3.7

FCA

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An *EEA UCITS management company* that operates a *UCITS scheme* is advised that in particular it needs to comply with:

- (1) ■ COLL 6.6.3 R (Functions of the authorised fund manager) requiring it to fulfil the obligations placed on it by the *instrument constituting the fund* and the *prospectus* of that *scheme*;
- (2) Dispute resolution: Complaints sourcebook (*DISP* - see ■ DISP 1 Annex 2 G for a summary of the relevant requirements that apply, which include the *complaints handling rules* (under which the *management company* is required to be subject to the *Compulsory Jurisdiction* of the *UK's Financial Ombudsman Service*) as set out in *DISP* 2 and 3, but note that the application of many of the requirements in *DISP* differs depending on whether the *collective portfolio management* services are being provided from a *branch* in the *UK* or under the freedom to provide *cross border services*);
- (3) and to the extent applicable, the Compensation sourcebook (*COMP*) requiring it to participate in the *UK's Financial Services Compensation Scheme* which provides compensation cover where valid claims relating to a *UCITS scheme* arise from the default of a *management company*.

[Note: article 16(3), 19(4) and 19(6) of the *UCITS Directive*]

**EEA UCITS management companies: conduct of business rules**

12.3.8

FCA

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- (1) In addition to the requirements of this section, an *EEA UCITS management company* that provides *collective portfolio management* services from a *branch* in the *United Kingdom* must comply with the following *rules* that implement the requirements of article 14(1) of the *UCITS Directive*:

- (a) ■ COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
  - (b) ■ COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
  - (c) ■ COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
  - (d) SYSC, to the extent indicated in column A+ (Application to a management company) of Part 3 of ■ SYSC 1 Annex 1 (Detailed application of SYSC); and
  - (e) COBS, to the extent indicated at paragraph 9.1 of Part 3 of ■ COBS 1 Annex 1 (Application).
- (2) The effect of article 18(3) of the *UCITS Directive* is that an *EEA UCITS management company* managing a *UCITS scheme* under the freedom to provide *cross border services* without establishing a *branch* in the *United Kingdom*, has to comply with the relevant conduct of business rules drawn up by its *Home State regulator* that implement the requirements of article 14(1) of the Directive. So the *rules* set out at (1) do not apply to such a *management company*. However, such *management companies* must comply in all respects with the *fund application rules* referred to in ■ COLL 12.3.5 R.

**[Note: articles 14, 16(3), 17(4), 18(3) and article 19(3) of the *UCITS Directive*]**

## 12.4 UCITS product passport

### Application

12.4.1

FCA

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(1) This section applies to:

- (a) an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*;
- (b) any other *director* of an *ICVC*; and
- (c) an *ICVC*;

which is a *UCITS scheme* whose *units* may be marketed in another *EEA State* (the *Host State*).

(2) The *marketing of units* of a *UCITS scheme* in the *Host State* may not commence until the *FCA* has, in accordance with paragraph 20B(5) (Notice of intention to market) of Schedule 3 to the *Act*, notified the *authorised fund manager*, in response to the application of that *firm*, that it has transmitted a *UCITS marketing notification* to the appropriate *Host State regulator*.

12.4.2

FCA

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The effect of article 58(4) (b) of the *UCITS Directive* is that a *UCITS scheme* that is a *master UCITS* which only has one or more *feeder UCITS* in another *EEA State* and therefore does not raise capital directly from the public in that *EEA State* will not thereby be exercising its right to market its *units* in that *Host State* in accordance with Chapter XI of the *UCITS Directive*.

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

### Availability of facilities

12.4.3

FCA

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The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* should be aware that it may be required by the laws, regulations and administrative provisions of the *Host State regulator* to maintain facilities in that State, including for making payments to *unitholders*, repurchasing or redeeming *units* and making available the information which is required to be provided in relation to the *scheme*.

[Note: article 92 of the *UCITS Directive*]

### Keeping fund documentation up to date and notification of changes

12.4.4

FCA

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(1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in the *Host State* must ensure that:

- (a) its *instrument constituting the fund*, its *prospectus* and, where appropriate, its latest annual report and any subsequent half-yearly report; and
  - (b) its *key investor information document*;
- together with their translations (wherever necessary), are kept up to date.
- (2) The *authorised fund manager* must notify any amendments to the *documents* referred to in (1) to each relevant *Host State regulator* and must indicate to them where those *documents* can be obtained electronically.
  - (3) In the event of a change in the information regarding the arrangements made for *marketing*, communicated in the notification letter submitted to the *FCA* under paragraph 20B of Schedule 3 to the *Act*, or a change regarding the *classes of units* to be marketed, the *authorised fund manager* must give written notice of the change to each relevant *Host State regulator* before implementing the change.
  - (4) For the purposes of (2) and (3), the *authorised fund manager* may give written notice of the change by sending an e-mail to the e-mail address maintained by each relevant *Host State regulator*.
  - (5) The e-mail referred to in (4) notifying the update or amendment may:
    - (a) describe the update or the amendment that has been made; or
    - (b) provide the new version of the *document* as an attachment, in which case it must be provided in a commonly used electronic format.

[Note: articles 93(2), 93(7) second and third sentences and 93(8) of the *UCITS Directive* and article 32(2) and article 32(3) of the *UCITS implementing Directive No 2*]

#### Provision of information and documents

- (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that investors within the territory of that *Host State* are provided with all the information and *documents* which it is required by the *Handbook* to provide to investors in the *United Kingdom*.
- (2) The information and *documents* referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the *Host State* and in compliance with the following provisions:

12.4.5

FCA

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PAGE  
13

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- (a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by its *Host State regulator*;
  - (b) information or *documents* other than the *key investor information document* (including the *prospectus*, the *instrument constituting the fund* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language approved by its *Host State regulator*, or provided in a language customary in the sphere of international finance; and
  - (c) accurate translations of information or *documents* under (a) or (b) must be produced under the responsibility of the *authorised fund manager*.
- (3) The requirements in this *rule* also apply to any changes to the information or *documents* referred to in (1) and (2).

[Note: articles 94(1) and 94(2) of the *UCITS Directive*]

12.4.6  
FCA

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The frequency of the publication of the *issue, sale, cancellation, repurchase or redemption prices* of *units* of the *UCITS scheme* when they are marketed in another *EEA State* is governed by ■ COLL 6.3.11 R (Publication of prices).

[Note: article 94(3) of the *UCITS Directive*]

#### Reference to the scheme's legal form

12.4.7  
FCA

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For the purpose of pursuing its *marketing* activities in another *Host State*, an *authorised fund manager* of a *UCITS scheme* may use the same reference to the *scheme's* legal form (such as *open-ended investment company* or *investment company with variable capital* or *authorised unit trust* or, for an *authorised contractual scheme*, either a *co-ownership scheme* or a *limited partnership scheme* ) in its designation in the *Host State* as is used in the *United Kingdom*.

[Note: article 96 of the *UCITS Directive*]

#### UCITS Host State's access to documents and updates of documents

12.4.8  
FCA

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- (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that an electronic copy of each *document* referred to in ■ COLL 12.4.4 R (1) is made available on:
  - (a) the website of the *UCITS scheme* or the *authorised fund manager*; or
  - (b) another website designated by the *authorised fund manager* in the notification letter submitted to the *FCA* under