



Draft FSA Handbook Instrument

UCITS DIRECTIVE INSTRUMENT 2011

Powers exercised

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

Commencement

- C. The Annex to this instrument comes into force on [1 July 2011].

Amendments to the Handbook

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

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

Conduct of Business sourcebook (COBS)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties Manual (DEPP)	Annex E
Dispute Resolution: Complaints (DISP)	Annex F
Compensation (COMP)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H

Material outside the Handbook

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

Notes

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

Citation

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

By order of the Board
[.....2011]

Annex A

Amendments to the Glossary of definitions

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

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

<u>collective portfolio management</u>	<u>in relation to a UCITS management company, the activity of management of UCITS schemes, EEA UCITS schemes or other collective investment undertakings not covered by the UCITS Directive that the firm is permitted to carry on in accordance with article 6.2 of the UCITS Directive. This includes the functions mentioned in Annex II to that directive.</u>
<u>counterparty risk</u>	<u>(in COLL and in accordance with article 3.7 of the UCITS implementing Directive) the risk of loss for a UCITS scheme 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.</u>
<u>cross-border UCITS merger</u>	<u>(in COLL and in accordance with article 2(1)(q) of the UCITS Directive) a UCITS merger of two or more UCITS:</u> <u>(a) at least two of which are established in different EEA States;</u> <u>or</u> <u>(b) established in the same EEA State into a newly constituted UCITS established in another EEA State;</u> <u>but at least one of which is established in the United Kingdom.</u>
<u>domestic UCITS merger</u>	<u>(in COLL and in accordance with article 2.1(r) of the UCITS Directive) a UCITS merger between two or more UCITS schemes in relation to which a notification pursuant to article 93 of the UCITS Directive has been made in respect of at least one of the relevant schemes.</u>
<u>EEA key investor information document</u>	<u>a document that:</u> <u>(a) relates to an EEA UCITS scheme which is a recognised scheme;</u> <u>(b) complies with the requirements of the KII Regulation; and</u> <u>(c) is provided in a language stipulated by article 94.1(b) of the UCITS Directive.</u>
<u>EEA UCITS scheme</u>	<u>a collective investment scheme established in accordance with the</u>

	<u>UCITS Directive in an EEA State other than the United Kingdom.</u>
<u>feeder UCITS</u>	(in accordance with article 58.1 of the <u>UCITS Directive</u>): <ul style="list-style-type: none"> (a) <u>a UCITS scheme or a sub-fund of a UCITS scheme which has been approved by the FSA; or</u> (b) <u>an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the competent authority of the UCITS Home State;</u> to invest at least 85% of its assets in the <u>units of a single master UCITS.</u>
<u>fund application rules</u>	<u>(in COLL and SUP) the rules set out in COLL 12.3.9R (COLL fund rules under the management company passport: the fund application rules) that an EEA UCITS management company must comply with when acting as the operator of a UCITS scheme whether from a branch in the United Kingdom or under the freedom to provide cross border services, as required by article 19.3 of the UCITS Directive.</u>
<u>key investor information</u>	<u>key information for investors on the essential elements of a UCITS scheme or EEA UCITS scheme, as detailed in article 78 of the UCITS Directive and in the KII Regulation.</u>
<u>key investor information document</u>	<u>a short document containing key investor information for investors on the essential elements of a UCITS scheme, as detailed in COLL 4.7 (Key investor information).</u>
<u>KII Regulation</u>	<u>Commission Regulation (EU) No.583/2010, specifying the form and contents of key investor information.</u>
<u>master-feeder agreement</u>	<u>(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).</u>
<u>master UCITS</u>	(in accordance with article 58.3 of the <u>UCITS Directive</u>) a <u>UCITS scheme, an EEA UCITS scheme or a sub-fund of such a scheme where:</u> <ul style="list-style-type: none"> (a) <u>at least one of its unitholders is a feeder UCITS;</u> (b) <u>it is not itself a feeder UCITS; and</u> (c) <u>it does not hold units of a feeder UCITS.</u>
<u>merging UCITS</u>	<u>(in COLL) in relation to a UCITS merger, the UCITS scheme, EEA UCITS scheme or sub-fund of such a scheme, that under the proposed arrangements will be transferring all its assets and</u>

	<u>liabilities to the receiving UCITS.</u>
<u>qualifying management company holding</u>	<u>(in COLL) a direct or indirect holding in a management company which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists; and for this purpose the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, shall be taken into account.</u>
<u>rebalancing of the portfolio</u>	<u>(in COLL and in accordance with article 2.1 of the UCITS implementing Directive No. 2) means a significant modification of the composition of the scheme property of a UCITS scheme or the portfolio of an EEA UCITS scheme.</u>
<u>receiving UCITS</u>	<u>(in COLL) in relation to a UCITS merger, the UCITS scheme or EEA UCITS scheme or sub-fund of such scheme, whether it is an existing scheme (or sub-fund thereof) or one that is being formed for the purpose of the merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more merging UCITS.</u>
<u>risk limit system</u>	<u>(in COLL) a documented system of internal limits concerning the measures used by an authorised fund manager to manage and control the relevant risks for each UCITS scheme it manages, taking into account all the risks which may be material to the UCITS scheme, as referred to COLL 6.12.4R(2) (Risk management policy) and ensuring consistency with the UCITS scheme's risk profile.</u>
<u>supervisory function</u>	<u>(in relation to a UCITS management company and in accordance with article 3.6 of the UCITS implementing Directive) the relevant persons or body or bodies responsible for the supervision of its senior management and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with its obligations under the UCITS Directive.</u>
<u>synthetic risk and reward indicator</u>	<u>(in COLL and in accordance with article 2.2 of the UCITS implementing Directive No. 2) a synthetic indicator within the meaning of article 8 of the KII Regulation.</u>
<u>UCITS</u>	<u>undertakings for collective investment in transferable securities.</u>
<u>UCITS Home State</u>	<u>the Member State in which the UCITS scheme or EEA UCITS scheme is authorised pursuant to article 5 of the UCITS Directive.</u>
<u>UCITS implementing Directive</u>	<u>Commission Directive (2010/43/EC) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV)</u>

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

Commission Directive (2010/44/EC) 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.

UCITS merger

(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 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 absorption”);
- (b) two or more *merging UCITS*, on being dissolved without going into liquidation, transfer all of their 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 their net assets to another *receiving UCITS* or to another *sub-fund* of the same *receiving UCITS*;

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

UCITS Regulations 2011

the Undertaking for Collective Investment in Transferable Securities Regulations 2011 (SI ...)

UK UCITS management company

a *management company* that is established in the *United Kingdom* and is *authorised* and regulated by the *FSA*.

Amend the following as shown.

client (1) ...
...

(b) “client” includes:

...

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

...

control

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

...

(2A) (in relation to a management company carrying on collective portfolio management) control as defined in Articles 1 and 2 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive).

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

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

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

...

depository

(1) (except in *LR*):

...

(ca) (in relation to an EEA UCITS scheme) the person fulfilling the function of a depository as defined by article 2.1(a) of the UCITS Directive;

...

durable medium

(a) ...

(b) ...

(in relation to MiFID or equivalent third country business or collective portfolio management) if the relevant rule implements the MiFID implementing Directive or the UCITS implementing Directive No. 2) the instrument must be:

...

[**Note:** article 2(f) and Recital 20 of the *Distance Marketing Directive*, article 2(12) of the *Insurance Mediation Directive*, and articles 2(2), 3(1) and 3(3) of the *MiFID implementing Directive* and article 7 of the UCITS

implementing Directive No. 2]

<i>EEA firm</i>	(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> : ... (f) (from 13 February 2004 <u>1 July 2011</u>) a <u>management company</u> <i>management company</i> (as defined in article 1(a) of the <i>UCITS Directive</i> which has been authorised under article 5 of that directive by its <i>Home State regulator</i> ; ...
<i>EEA simplified prospectus</i>	a marketing document which contains information about an EEA simplified prospectus scheme and meets the requirements of Article 28 of the UCITS Directive.
<i>EEA simplified prospectus scheme</i>	a UCITS scheme which is a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States).
<i>EEA UCITS management company</i>	(as defined in article 1a (2) of the UCITS Directive) any incoming EEA firm, the regular business of which is the management of UCITS in the form of unit trusts or common funds or of investment companies (collective portfolio management of UCITS) or of both; this includes the functions mentioned in Annex II. <u>any incoming EEA firm that is a management company.</u>
<i>execution criteria</i>	the criteria set out in <i>COBS</i> 11.2.6R, that is: ... (d) the characteristics of the <i>execution venues</i> to which that order can be directed ; <u>and</u> (e) <u>for a management company, the objectives, investment policy and risks specific to the scheme, as indicated in its prospectus or in its instrument constituting the scheme.</u>
<i>execution venue</i>	for the purposes of the provisions relating to best execution in <i>COBS</i> 11.2 <u>and in COLL</u> , execution venue means ...
<i>Home State regulator</i>	... (2) (in relation to a <i>UK firm</i> <u>or UCITS scheme</u>) the <i>FSA</i> (5) <u>(in relation to an EEA UCITS scheme) the competent authority of the EEA State in which the scheme is</u>

	<u>authorised.</u>
<i>instrument constituting the scheme</i>	<p>...</p> <p>(ba) <u>(in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme;</u></p> <p>(c) (in relation to a <i>collective investment scheme</i> other than an <i>authorised fund</i> or an <i>EEA UCITS scheme</i>) any instrument to which....</p>
<i>key features scheme</i>	<p>a <i>scheme</i> that is not:</p> <p>(a) a <i>simplified prospectus UCITS scheme</i> or an <i>EEA UCITS scheme</i>;</p> <p>...</p>
<i>liquidity risk</i>	<p>(1) <u>(in COLL) the risk that a position in a UCITS scheme's portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short time frame and that the ability of the scheme to comply at any time with COLL 6.2.16R (Sale and redemption) is thereby compromised.</u></p> <p><u>[Note: article 3.8 of the UCITS implementing Directive]</u></p> <p>(2) <u>(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.</u></p>
<i>management company</i>	<p>means a company as defined in article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)-</p> <p><u>(as defined in article 2.1(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6.3 of that Directive.</u></p> <p><u>[Note: article 2.1(b) of the UCITS Directive]</u></p>
<i>manager</i>	<p>(1) (in relation to an AUT) the <i>firm</i>, including, if relevant, an <i>EEA UCITS management company</i>, which is the manager of the AUT in accordance with the <i>trust deed</i>.</p> <p>...</p>
<i>market risk</i>	<p>(1) <u>(in COLL) the risk of loss for a UCITS scheme resulting</u></p>

from fluctuation in the market value of positions in the scheme's portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's credit worthiness.

[Note: article 3.9 of the UCITS implementing Directive]

- operational risk*
- (2) (except in COLL) (in relation to a firm) the risks that arise from fluctuations in values of, or income from, assets or in interest or exchange rates.
 - (1) (in COLL and in accordance with article 3.1 of the UCITS implementing Directive) the risk of loss for a UCITS scheme resulting from inadequate internal processes and failures in relation to the people and systems of the management company or from external events; it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the scheme.
 - (2) (except in COLL) (in accordance with Article 4(22) of the Banking Consolidation Directive) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.
- participant firm*
- (1) (except in FEES 1 and FEES 6) a firm or member other than:
 - (a) (in accordance with section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an incoming EEA firm which is:
 - (i) a credit institution;
 - (ii) a MiFID investment firm; or
 - (iii) a UCITS management company; ~~[deleted]~~
 - (iv) both (i) and (ii); or
 - (v) an IMD insurance intermediary or an IMD reinsurance intermediary which is neither (i) or (ii);
- ~~in relation to its passported activities, unless it has top-up cover (and in the case of a UCITS management company, only in relation to the services referred to in Article 5(3) of the UCITS Directive, that is managing investments (other than of a collective investment scheme), advising on investments or safeguarding and~~

~~administering investments;~~

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

(i) *collective portfolio management* activity for a *UCITS scheme*; or

(ii) *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments* (the services referred to in article 6.3 of the *UCITS Directive*), but only if it has *top-up cover*;

...

relevant person

(2) any of the following:

...

(d) a natural person who is directly involved in the provision of services to the *firm* or its *appointed representative* (or where applicable, *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*]

scheme of arrangement

...

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

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

senior management

(1) (in *BIPRU 7.10*) ...

- (2) (in relation to a UCITS management company and in accordance with article 3.4 of the UCITS implementing Directive) the person or persons who effectively conduct the business of a UCITS management company.
- simplified prospectus scheme* (a) ~~a UCITS scheme that is not a recognised scheme under section 264 of the Act (Schemes constituted in other EEA States); or~~
- (b) ~~a key features scheme in respect of which a simplified prospectus has been, or will be, produced instead of a key features document (see COBS 13.1.3R(2)).~~
- sub-fund* (a) ...
- (aa) (in relation to an EEA UCITS scheme) any part of that scheme that constitutes an investment compartment for the purposes of the UCITS Directive;
- (b) (in relation to a collective investment scheme that is not an authorised fund or an EEA UCITS scheme) any part of that scheme...
- UCITS firm* a firm which:
- (a) ~~is the operator of a UCITS scheme a management company,~~ including where in addition the firm is also the operator of a collective investment scheme which is not a UCITS scheme; and
- (b) does not have a Part IV permission (or an equivalent permission from its Home State regulator) to carry on any regulated activities other than those which are in connection with, or for the purpose of, such schemes.
- UCITS investment firm* a firm which:
- ~~(1)~~ is the operator of a UCITS scheme a management company
- (a) (whether or not it is also the operator of other ~~schemes~~ collective investment schemes); and
- ~~(2)~~ has a Part IV permission (or an equivalent permission from its
- (b) Home State regulator) to manage investments where:
- (a) the investments managed include one or more of the
- (i) instruments listed in section C of Annex 1 to MiFID; and
- (b) the permission extends to activities permitted by ~~article~~ 5(3) article 6.3 of the UCITS Directive as well as those permitted by ~~article 5(2) article 6.2.~~

UCITS management company ...

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

UCITS scheme

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

(i) with the sole object of collective investment in transferable securities or in other liquid financial instruments permitted by COLL 5.2 (General investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

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

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

unless;

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

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

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

[Note: article 1 of the UCITS Directive]

unitholder

~~(in COLL)~~

(a) ...

Annex B

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

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

...

SYSC 1 Annex 1

Detailed application of SYSC

...

Part 2 Application of the common platform requirements (SYSC 4 to 10)

...

- 2.7A G EEA UCITS management companies are also reminded that they must comply with:
- (1) the common platform requirements indicated in Column A+ (Application to a management company) in Part 3 of this Annex;
 - (2) the common platform record-keeping requirements; and
 - (3) the common platform requirements on financial crime;
- in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 14 of the UCITS Directive, EEA UCITS management companies should note that such matters may also be subject to the rules of its Home State regulator.
- [Note: articles 12.1(b), 14.1(c),14.1(d), 17.4, 18.3 and 19.1 of the UCITS Directive and articles 4.1(e), 10.1, 10.2 and 10.3 of the UCITS implementing Directive]**

What?

2.8

R ...

- (3) *ancillary activities*; ~~and~~
- (4) in relation to *MiFID business, ancillary services*; ~~;~~ and

(5) collective portfolio management.

...

Where?

...

2.16 R The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a firm that is not a UK UCITS management company in relation to *passport activities* carried on by it from a *branch* in another *EEA State*.

2.16A R (1) The common platform requirements referred to in Column A + of Part 3 (below) apply to a UK UCITS management company in relation to passport activities carried on by it from a branch in another EEA State.

(2) Any other common platform requirement applies to a UK UCITS management company in relation to passport activities carried on by it from a branch in another EEA State to the extent that the requirement addresses matters within the scope of article 12 of the UCITS Directive.

2.16B G The matters referred to in SYSC 2.16A may also be subject to the rules of the UK UCITS management company's Host State regulator.

...

Part 3	Table summarising the application of the common platform requirements to different types of firm		
3.1	G	The <i>common platform requirements</i> apply in the following two <u>three</u> ways (subject to the provisions in Part 2 of this Annex).	
...			
3.2A	G	<u>For a management company, they apply in accordance with Column A+ in the table below.</u>	
...			
Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 4	Application to a common platform firm other than to a	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the

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

<i>SYSC 4.1.10 R</i>	Rule	<u>Rule</u>	Guidance - except reference to <i>SYSC 4.1.9 R</i> which does not apply to these <i>firms</i>
<i>SYSC 4.1.10A G</i>	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC 4.1.11 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 4.2.1 R</i>	Rule	<u>Rule</u>	<ul style="list-style-type: none"> • UK branch of <i>non-EEA bank</i> - rule applies. • Other <i>firms</i> - Guidance
<i>SYSC 4.2.1A G</i>	Not applicable	<u>Not applicable</u>	<ul style="list-style-type: none"> • Guidance
<i>SYSC 4.2.2 R</i>	Rule	<u>Rule</u>	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> - Rule applies • Other <i>firms</i> - this provision does not apply
<i>SYSC 4.2.3 G - 4.2.5 G</i>	Guidance	<u>Guidance</u>	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> - Guidance • Other <i>firms</i> - these provisions do not apply
<i>SYSC 4.2.6 R</i>	Rule	<u>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</u>	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> - Rule applies • Other <i>firms</i> - this provision does not apply
<i>SYSC 4.3.1 R</i>	Rule	<u>Rule</u>	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms</i> or <i>UCITS qualifiers</i>)
<i>SYSC 4.3.2 R</i>	Rule	<u>Rule</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms</i> or <i>UCITS qualifiers</i>)
<i>SYSC 4.3.2A G</i>	Not applicable	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms</i> or

			<i>UCITS qualifiers</i>)
<i>SYSC 4.3.3</i> <i>G</i>	Guidance	<u>Guidance</u>	Guidance (but not applicable to <i>incoming EEA firms</i> , <i>incoming Treaty firms</i> or <i>UCITS qualifiers</i>)
<i>SYSC 4.4.1</i> <i>R</i>	Not applicable	<u>Not applicable</u>	<p>Rule applies this section only to:</p> <p>(1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i>;</p> <p>(2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is:</p> <p>(a) an <i>oil market participant</i>;</p> <p>(b) a <i>service company</i>;</p> <p>(c) an <i>energy market participant</i></p> <p>(d) a wholly-owned subsidiary of:</p> <p>(i) a local authority</p> <p>(ii) a registered social landlord;</p> <p>(e) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i>;</p> <p>(3) an <i>incoming Treaty firm</i>, an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i>, (but only <i>SYSC 4.4.5 R (2)</i> applies for these <i>firms</i>); and</p> <p>(4) a <i>sole trader</i>, but only if he</p>

			employs any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements).
<i>SYSC 4.4.2</i> <i>G</i>	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in <i>SYSC 4.4.1 R</i>
<i>SYSC 4.4.3</i> <i>R</i>	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in <i>SYSC 4.4.1 R</i>
<i>SYSC 4.4.4</i> <i>G</i>	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in <i>SYSC 4.4.1 R</i>
<i>SYSC 4.4.5</i> <i>R</i>	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in <i>SYSC 4.4.1 R</i>

<i>Provision</i>	COLUMN A	<u>COLUMN A+</u>	COLUMN B
<i>SYSC 5</i>	Application to a common platform firm	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 5.1.1 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 5.1.2 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.3 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.4 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.4A G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.5 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.5A G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.6 R</i>	Rule	<u>Rule</u>	Guidance
<i>SYSC 5.1.7 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 5.1.7A G</i>	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 5.1.8 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.9 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.10 G</i>	Guidance	<u>Guidance</u>	Guidance

<i>SYSC 5.1.11 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 5.1.12 R</i>	Rule	<u>Rule</u>	Guidance
<i>SYSC 5.1.12A G</i>	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC 5.1.13 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 5.1.14 R</i>	Rule	<u>Rule</u>	Guidance
<i>SYSC 5.1.15 G</i>	Not applicable	<u>Not applicable</u>	Guidance

<i>Provision</i>	COLUMN A	<u>COLUMN A+</u>	COLUMN B
<i>SYSC 6</i>	Application to a common platform firm	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 6.1.1 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 6.1.2 R</i>	Rule	<u>Rule</u>	Guidance
<i>SYSC 6.1.2A G</i>	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC 6.1.3 R</i>	Rule	<u>Rule</u>	<ul style="list-style-type: none"> • Guidance • This provision shall be read with the following additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance

			function, the firm should also take into account 6.1.3 R and 6.1.4 R as guidance."
SYSC 6.1.3A G	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.4 R	Rule	<u>Rule</u>	(1) (3) and (4) Guidance (2) <ul style="list-style-type: none"> • Rule for firms which carry on designated <i>investment</i> business with or for retail clients or professional clients. • Guidance for all other firms.
<u>SYSC 6.1.4 -A G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance</u>
<u>SYSC 6.1.4A R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule for firms which carry on designated <i>investment</i> business with or for retail clients or professional clients.</u>
SYSC 6.1.5 R	Rule	<u>Rule</u>	<ul style="list-style-type: none"> • Guidance • "<i>investment</i> services and activities" shall be read as "financial services and activities"
SYSC 6.1.6 R	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.2.1 R	Rule	<u>Rule</u>	Guidance
SYSC 6.2.1A G	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.2.2 G	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.1	Rule	<u>Rule</u>	Rule

<i>R</i>			
<i>SYSC 6.3.2 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 6.3.3 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 6.3.4 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 6.3.5 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 6.3.6 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 6.3.7 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 6.3.8 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 6.3.9 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 6.3.10 G</i>	Guidance	<u>Guidance</u>	Guidance

<i>Provision</i>	COLUMN A	<u>COLUMN A+</u>	COLUMN B
<i>SYSC 7</i>	Application to a common platform firm	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 7.1.1 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 7.1.2 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 7.1.2A G</i>	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance

<u>SYSC 7.1.2B G</u>	Not applicable	<u>Guidance</u>	Not applicable
SYSC 7.1.3 R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.4 R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.4A G	Not applicable	Not applicable to a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.5 R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.6 R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.7 R	Rule	Rule for a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
SYSC 7.1.7A G	Not applicable	Not applicable to a <u>UCITS investment firm</u> ; otherwise <u>guidance</u>	Guidance
<u>SYSC 7.1.7B G</u>	<u>Guidance applies only to a BIPRU firm</u>	Guidance for a <u>UCITS investment firm</u> ; otherwise <u>not applicable</u>	<u>Guidance</u>
SYSC 7.1.8 G (1), (2)	(1) Guidance applies only to a <u>BIPRU firm</u> (2) Guidance	Guidance for a <u>UCITS investment firm</u> ; otherwise <u>not applicable</u>	(1) Not applicable (2) Guidance
SYSC 7.1.9 R	Rule applies only to a <u>BIPRU firm</u>	Rule for a <u>UCITS investment firm</u> ; otherwise <u>not applicable</u>	Not applicable
SYSC 7.1.10 R	Rule applies only to a <u>BIPRU firm</u>	Rule for a <u>UCITS investment firm</u> ; otherwise <u>not applicable</u>	Not applicable

<i>SYSC 7.1.11 R</i>	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable
<i>SYSC 7.1.12 G</i>	Guidance applies only to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable
<i>SYSC 7.1.13 R - 7.1.16 R</i>	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable

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

<i>SYSC 8.1.5A G</i>	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.6 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 8.1.7 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.8 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.9 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.10 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.11 R</i>	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.11A G</i>	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC 8.1.12 G</i>	Guidance	<u>Guidance</u>	Guidance
<u><i>SYSC 8.1.13R</i></u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u><i>SYSC 8.1.14G</i></u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
<i>SYSC 8.2</i>	MiFID investment firms only	<u>UCITS investment firms only</u>	Not applicable
<i>SYSC 8.3</i>	MiFID investment firms only	<u>UCITS investment firms only</u>	Not applicable

<i>Provision</i>	COLUMN A	<u>COLUMN A+</u>	COLUMN B
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SYSC 9	Application to a common platform firm	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 9.1.1 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 9.1.2 R</i>	Rule applies only in relation to <i>MiFID business</i>	<u>Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i></u>	Not applicable
<i>SYSC 9.1.3 R</i>	Rule applies only in relation to <i>MiFID business</i>	<u>Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i></u>	Not applicable
<i>SYSC 9.1.4 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 9.1.5 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 9.1.6 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 9.1.7 G</i>	Guidance applies only in relation to <i>MiFID business</i>	<u>Guidance applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i></u>	Not applicable

<i>Provision</i>	Column A	<u>COLUMN A+</u>	Column B
<i>SYSC 10</i>	Application to a common platform firm	<u>Application to a management company</u>	Application to all other firms apart from insurers, managing agents and the Society
<i>SYSC 10.1.1 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC 10.1.2 G</i>	Guidance	<u>Guidance</u>	Guidance
<i>SYSC 10.1.3 R</i>	Rule	<u>Rule</u>	Rule
<i>SYSC</i>	Rule	<u>Rule</u>	Guidance - but applies as a

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

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

10.2.5 G			
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...

4.1 General requirements

4.1.1 R ...

[Note: article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID* and article 12.1(a) of the *UCITS Directive*]

...

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

[Note: article 12.1, second paragraph, of the *UCITS Directive*]

Resources for management companies

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

[Note: articles 12.1(a) and 14.1(c) of the *UCITS Directive*]

...

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

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

procedures at all levels of the *firm*; ~~and~~

(3) (if it is a *common platform firm*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; ~~and~~

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

[Note: articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the MiFID implementing Directive and articles 4.1, final paragraph, 4.1(a), 4.1(c) and 4.1(d) of the UCITS implementing Directive]

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

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

[Note: article 5(2) of the MiFID implementing Directive and article 4.2 of the UCITS implementing Directive]

...

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

[Note: article 5(3) of the MiFID implementing Directive, ~~and~~ annex V paragraph 13 of the Banking Consolidation Directive and article 4.3 of the UCITS implementing Directive]

...

Accounting policies

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

[Note: article 5(4) of the *MiFID implementing Directive* and article 4.4 of the *UCITS implementing Directive*]

Regular monitoring

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

[Note: article 5(5) of the *MiFID implementing Directive* and article 4.5 of the *UCITS implementing Directive*]

...

4.2 Persons who effectively direct the business

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

[Note: article 9(1) of *MiFID*, article 7.1(b) of the *UCITS Directive* and article 11(1) second paragraph of the *Banking Consolidation Directive*]

...

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

[Note: article 9(4) first paragraph of *MiFID*, article 7.1(b) of the *UCITS Directive* and article 11(1) first paragraph of the *Banking Consolidation Directive*]

...

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

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

...

4.3 Responsibility of senior personnel

4.3.1 R A *firm* ...

[Note: article 9(1) of the MiFID implementing Directive and article 9.1 and 9.3 of the UCITS implementing Directive]

4.3.2 R A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) and a *management company*, must ensure that :

...

[Note: article 9(2) and article 9(3) of the MiFID implementing Directive and article 9.4 and 9.6 of the UCITS implementing Directive]

...

Skills, knowledge and expertise

5.1.1 R A *firm* must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[Note: article 5(1)(d) of the MiFID implementing Directive, articles 12.1(a) and 14.1(c) of the UCITS Directive and article 5.1 of the UCITS implementing Directive]

...

Segregation of functions

5.1.6 R *A common platform firm and a management company* must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[Note: article 5(1)(g) of the MiFID implementing Directive and article 5.3 of the UCITS implementing Directive]

...

Awareness of procedures

5.1.12 R *A common platform firm and a management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[Note: article 5(1)(b) of the MiFID implementing Directive and article 4.1(b) and 4.5 of the UCITS implementing Directive]

General

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

[Note: article 5(5) of the MiFID implementing Directive and article 4.5 of the UCITS implementing Directive]

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

[Note: article 5(1) final paragraph of the MiFID implementing Directive and article 4.1, final paragraph, and article 5.4 of the UCITS implementing Directive]

...

6.1 Compliance

...

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

[Note: article 13(2) of MiFID and article 12.1(a) of the UCITS Directive]

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

[Note: article 6(1) of the MiFID implementing Directive and article 10.1 of the UCITS implementing Directive]

...

- 6.1.3 R A *common platform firm* and a *management company* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2 R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
 - (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[Note: article 6(2) of the MiFID implementing Directive and article 10.2 of the UCITS implementing Directive]

...

- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* and a *management company* must ensure that the following conditions are satisfied:
- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
 - (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2 R;
 - (3) the *relevant persons* involved in the compliance function must not be involved in the performance of services or activities they monitor;
 - (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[Note: article 6(3) of the *MiFID implementing Directive* and article 10.3 of the *UCITS implementing Directive*]

...

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

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

[Note: article 6(3) second paragraph of the *MiFID implementing Directive* and article 10.3, second paragraph, of the *UCITS implementing Directive*]

...

6.2 Internal audit

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

...

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

...

7.1 Risk control

...

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

...

8.1 General outsourcing requirements

...

Additional requirements for a management company

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

[Note: article 5.2 of the UCITS implementing Directive]

8.1.14 G A management company should be aware that *SUP* 15.8.6 R (Delegation by UCITS management companies) and *COLL* 6.6.15 R (Committees and delegations) contain requirements implementing article 13 of the *UCITS Directive* in relation to delegation that will apply to them.

...

9.1 General rules on record-keeping

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

[Note: article 13(6) of MiFID and article 5(1)(f) of the *MiFID implementing Directive* and article 12.1(a) of the *UCITS Directive* and article 4.1(e) of the *UCITS implementing Directive*]

...

10.1 Application

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

...

Types of conflict

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

...

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

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

[Note: Article 21 of *MiFID implementing Directive* and article 17.1 of the *UCITS implementing Directive*]

...

Record of conflicts

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

[Note: Article 23 of MiFID implementing Directive and article 20.1 of the UCITS implementing Directive]

...

Disclosure of conflicts

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

...

Conflicts policy

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

[Note: Article 22(1) of MiFID implementing Directive and article 18.1 of the UCITS implementing Directive]

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following:
- (a) it must identify in accordance with SYSC 10.1.3 R and SYSC 10.1.4 R, by reference to the specific services and activities

carried out by or on behalf of the *common platform firm or management company*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and

...

- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *common platform firm or the management company* and of the *group* to which ~~it~~ either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; and
 - (b) include each of the following as are necessary and appropriate for the *common platform firm or the management company* to ensure the requisite degree of independence:

...

- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *common platform firm and a management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[Note: Article 22(2) and (3) of MiFID implementing Directive and articles 18.2, 19.1 and 19.2 of the UCITS implementing Directive]

...

Additional requirements for a management company

10.1.17 **R** A management company, when identifying the types of conflict of interests for the purposes of SYSC 10.1.4 R, must take into account:

- (1) the interests of the firm, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the firm towards the UCITS scheme it manages; and
- (2) the interests of two or more UCITS schemes it manages.

[Note: article 17.2 of the UCITS implementing Directive]

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

Structure and organisation of a management company

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

[Note: articles 12.1(b) and 14.1(d) of the UCITS Directive]

Avoidance of conflicts of interest for a management company

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

[Note: articles 12.1(b) and 14.1(d) of the UCITS Directive]

Disclosure of conflicts of interest for a management company

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

[Note: articles 20.2 and 20.3 of the UCITS implementing Directive]

...

SYSC Sch 1 Record keeping requirements

...

Sch 1.2	G	Record keeping requirements
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...

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

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Annex 1 (Application)

...

Part 3: Guidance

9 UCITS Directive: effect on territorial scope

9.1 **G** The *UCITS Directive* covers undertakings for collective investment in transferable securities (*UCITS*) meeting the requirements of the Directive, and their ~~management companies~~ *management companies* and depositaries. The *rules* in this sourcebook within the Directive's scope (all of which will apply to a *management company*) are those in:

- (1) COBS 2.1 (Acting honestly, fairly and professionally);
- (2) COBS 2.3 (Inducements);
- (3) COBS 11.2 (Best execution);
- (4) COBS 11.3 (Client order handling);
- (5) COBS 14 (Providing product information to clients) relating to the distribution of a ~~simplified prospectus~~ *key investor information* by the ~~management company~~ *management company* (in addition to applying to a *management company*, *COBS 14* also applies to an *ICVC* that is a *UCITS scheme*); and
- (6) COBS 16.2 (Occasional reporting).

9.1A **G** The majority of the *COBS rules* referred to in 9.1 are rules of conduct which each *EEA State* must draw up under article 14.1 of the *UCITS Directive* which *management companies* authorised in that State must observe at all times. The exception is *COBS 14* which forms part of the *FSA's fund application rules* and which is the responsibility of the *UCITS Home State* (for a *UCITS scheme*, the *FSA* - see *COLL 12.3.9 R (COLL fund rules under the management company passport: the fund application rules)* and article 19).

9.1B **G** Where a *UCITS management company* is pursuing *collective portfolio management* activities for a *UCITS* established in a different Member State, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the *UCITS management company's Home State*, but when a *branch* is established it will be the responsibility of

the *Host Member State (UCITS Home State)* (see articles 17.4 and 17.5).

9.1C G Those *rules* are the responsibility of the *Home State* of the UCITS. The Directive explicitly permits other *EEA States* in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field governed by the Directive. The Directive also applies certain rules derived from *MiFID* to management companies in relation to certain business activities. (See articles 1(6) and 44 of the *UCITS Directive*).

Under the *UCITS Directive* certain *Host State* marketing and *MiFID*-specific rules might also apply to a *UCITS management company* pursuing *collective portfolio management* activity for a *UCITS* established in a different Member State. Consequently an *EEA UCITS management company* should note that under *COBS* certain of the *FSA's rules* apply to them, including the *financial promotion rules*.

9.1D G *EEA UCITS management companies* should be aware, however, that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS 18.5* (Operators of collective investment schemes).

9.2 G Accordingly, the territorial scope of this sourcebook is modified so that:

- (1) the *rules* relating to the distribution of a *simplified prospectus* apply to the management company (*operator*) of a UCITS whose *Home State* is the *United Kingdom* when marketing in other *EEA States*;
- (2) those *rules* do not apply to a management company of a UCITS whose *Home State* is another *EEA State* when marketing in the *United Kingdom*; other *rules*, such as the *financial promotion rules* and the information gathering and suitability rules (see *COBS 9* Suitability (including basic advice) apply without modification of this territorial scope, but subject to section 266 of the *Act*. [deleted]

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

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

...

2.1 Acting honestly, fairly and professionally

The client's best interests rule

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

...

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

Directive]

...

2.3 Inducements

Rule on inducements

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

[**Note:** article 26 of the *MiFID implementing Directive* and article 29.1 and 29.2 of the *UCITS implementing Directive*]

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

(1) references to a *client*, were references to the *scheme*; and

(2) in (2)(b) and (c) and (3) of that *rule*, references to *MiFID or equivalent third country business* were also references to the *collective portfolio management activities of investment management and administration for the scheme*.

[**Note:** article 29.1 of the *UCITS implementing Directive*]

...

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

[**Note:** article 29.2 of the *UCITS implementing Directive*]

...

Where? Modifications to comply with EU law

4.1.9 G ...

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

...

...

The fair, clear and not misleading rule

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

...

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

...

Marketing communications relating to UCITS schemes or EEA UCITS schemes

- 4.2.7 R (1) *A firm must ensure that a marketing communication (other than a key investor information document or EEA key investor information document) that comprises an invitation to purchase units in a UCITS scheme or EEA UCITS scheme:*
- (a) *where it contains specific information about the scheme, 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 invests 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 State, local authorities, third countries or public international bodies in the securities of which the scheme intends to invest or has invested.*
- (3) *Where a UCITS scheme or EEA UCITS scheme invests principally in units in collective investment schemes, deposits or derivatives, or replicates an index in accordance with COLL 5.2.31 R (Schemes replicating an index) or equivalent national measures, 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:** article 54.3 and articles 70.2, 70.3 and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

- 4.2.8 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 85% or more of its assets in units of its master UCITS.

[**Note:** article 63.4 of the *UCITS Directive*]

...

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

...

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

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

...

- 4.6.4B G ...
- (2) This guidance does not apply to a prospectus, key investor information document or simplified prospectus drawn up in accordance with COLL.

...

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

- 4.7.5A G COBS 4.2.7R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.2.8R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for firms in relation to marketing communications (other than key investor information) that concern particular investment strategies of a UCITS

scheme or EEA UCITS scheme.

...

Disclosure of commission (or equivalent) for packaged products

6.4.3 R ...

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

...

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

...

...

11.2 Best execution

Obligation to execute orders on terms most favourable to the client

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

[**Note:** article 21(1) of *MiFID* and article 25.2, first sentence, of the *UCITS implementing Directive*]

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

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

[**Note:** article 25.1 of the *UCITS implementing Directive*]

...

Management companies: execution and transmission of orders

11.2.5A G (1) A *management company* should for each *scheme* it manages act in the best interests of the *scheme* when directly *executing* orders to deal on behalf of it or by transmitting such orders to third parties.

(2) When *executing* orders on behalf of any *scheme* it manages, a

management company is expected to take all reasonable steps to obtain the best possible result for the scheme on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

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

Best execution criteria

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

...

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

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

[**Note:** article 44(1) of the *MiFID implementing Directive* and article 25.2, second sentence, of the *UCITS implementing Directive*]

...

Requirement for order execution arrangements including an order execution policy

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

[**Note:** article 21(2) of *MiFID* and article 25.3, first paragraph, of the *UCITS implementing Directive*]

...

Information on execution policy

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

[**Note:** article 25.3, second part of the second paragraph, of the *UCITS implementing Directive*]

...

Client consent to execution policy and execution of orders outside a regulated

market or MTF

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

[**Note:** paragraph 2 of article 21(3) of *MiFID* and article 25.3, first part of the second paragraph, of the *UCITS implementing Directive*]

...

Monitoring the effectiveness of execution arrangements and policy

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

[**Note:** article 21(4) of *MiFID* and article 25.4 of the *UCITS implementing Directive*]

Review of the order execution policy

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

[**Note:** article 46(1) of the *MiFID implementing Directive* and article 25.4, second paragraph, of the *UCITS implementing Directive*]

Demonstration of execution of orders in accordance with execution policy

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

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

[**Note:** article 21(5) of *MiFID* and article 25.5 of the *UCITS implementing Directive*]

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

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

[**Note:** article 45(1) of *MiFID implementing Directive* and article 26.1 of the *UCITS implementing Directive*]

...

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

[**Note:** article 45(3) of the *MiFID implementing Directive* and article 26.1 of the *UCITS implementing Directive*]

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

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

[**Note:** paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive* and article 26.2, first paragraph, of the *UCITS implementing Directive*]

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

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

[**Note:** paragraph 1 of article 45(5) of the *MiFID implementing Directive* and second paragraph of article 27.2 of the *UCITS implementing Directive*]

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

[**Note:** paragraph 2 of article 45(5) of the *MiFID implementing Directive* and second paragraph, last sentence, of article 26.2 of the *UCITS implementing Directive*]

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

[**Note:** first paragraph of article 45(6) of the *MiFID implementing Directive* and first paragraph of article 26.3 of the *UCITS implementing Directive*]

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

[**Note:** second paragraph of article 45(6) of the *MiFID implementing Directive* and second paragraph of article 26.3 of the *UCITS implementing Directive*]

UCITS management companies placing orders to deal with other entities for execution

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

[**Note:** article 26.4 of the *UCITS implementing Directive*]

...

Execution of orders or decisions to deal

- 11.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see COBS 11.2.30 R to COBS 11.2.33 G) will not apply when the *firm* which provides the service of *portfolio*

management or collective portfolio management and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases the

requirements of this section for *firms* who execute orders apply (see *COBS* 11.2.1 R to *COBS* 11.2.29 R).

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

11.3 Client order handling

General principles

- 11.3.1 R (1) A firm (other than a UCITS management company providing collective portfolio management services) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.

[**Note:** paragraph 1 of article 22(1) of *MiFID*]

- (2) ...

- (3) A UCITS management company providing collective portfolio management services, must establish and implement procedures and arrangements in respect of all client orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS scheme or EEA UCITS scheme it manages.

[**Note:** article 27.1, first paragraph, of the *UCITS implementing Directive*]

- 11.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:

...

[**Note:** article 47(1) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 27.1, second paragraph, of the *UCITS implementing Directive*]

...

- 11.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or executes the order itself in the course of collective portfolio management, it must take all reasonable steps to ensure that any *client financial instruments* or *client* funds received in settlement of that

executed order are promptly and correctly delivered to the account of the appropriate *client*.

[**Note:** article 47(2) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 27.1, third paragraph, of the UCITS implementing Directive]

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

[**Note:** article 47(3) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 27.2 of the UCITS implementing Directive]

...

Aggregation and allocation of orders

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

[**Note:** article 48(1) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 28.1 of the UCITS implementing Directive]

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

[**Note:** article 48(2) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 28.2 of the UCITS implementing Directive]

Aggregation and allocation of transactions for own account

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

[**Note:** article 49(1) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 28.3 of the *UCITS implementing Directive*]

- 11.3.10 R (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.
- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[**Note:** article 49(2) of *MiFID implementing Directive* and article 19(1) of *MiFID* and article 28.4 of the *UCITS implementing Directive*]

...

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

...

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

...

...

11.7 Personal account dealing

Rule on personal account dealing

11.7.1 R A *firm* that conducts *designated investment business* must ...

(1) ...

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

...

[**Note:** article 12(1) of *MiFID implementing Directive* and article 13.1 of the *UCITS implementing Directive*]

...

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

[**Note:** article 12(2) of *MiFID implementing Directive* and article 13.2 of the *UCITS implementing Directive*]

Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to ...

[**Note:** article 12(3) of *MiFID implementing Directive* and article 13.3 of the *UCITS implementing Directive*]

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

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

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

...

13.1 The obligation to prepare product information

...

Exceptions

13.1.3 R A firm is not required to prepare:

...

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

...

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

...

The provision rules

- 14.2.1 R A *firm* that sells:
- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a UCITS scheme, simplified prospectus scheme or ~~an EEA simplified prospectus scheme~~ an EEA UCITS scheme which is a recognised scheme);
 - ...
 - (6) a *unit* in ~~an EEA simplified prospectus scheme~~ an EEA UCITS scheme which is a recognised scheme to a *client*, must ~~offer~~ provide an up-to-date copy of the *scheme's EEA simplified prospectus EEA key investor information document* to that *client*- and at the same time, unless already provided, provide separately the information required by (5)(a) and (b) and COBS 13.3.1 R (2) (General requirements);
 - (7) a *unit* in a *UCITS scheme*, must provide a copy of the *scheme's key investor information document* to that *client* and at the same time, unless already provided, provide separately the information required by (5)(a) and (b) and COBS 13.3.1 R (2) (General requirements).
 - ...
- [**Note:** in respect of (5) and (6) and (7) articles 1, 33(1) and 44 80 and 82 of the *UCITS Directive*]

- 14.2.1A R
- (1) This rule applies to an authorised fund manager of a UCITS scheme that is either an authorised unit trust or an ICVC, and an ICVC that is a UCITS scheme.
 - (2) An authorised fund manager and an ICVC in (1) that sells units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the key investor information document for the scheme in good time before their proposed subscription of units in such scheme.
 - (3) An authorised fund manager and an ICVC in (1) that does not sell units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that the key investor information document for the scheme is provided on request to product manufacturers and intermediaries selling, or advising investors on, potential investments in such UCITS schemes or in products offering exposure to such UCITS schemes.
 - (3) The key investor information document must be provided to investors

free of charge.

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

Method of provision of key investor information

- 14.2.1B R (1) An authorised fund manager and an ICVC in (1) must provide the key investor information document in a durable medium or by means of a website.
- (2) An ICVC that is a UCITS scheme and an authorised fund manager must deliver a paper copy of the key investor information document to the investor on request and free of charge.
- (3) In addition to (1) and (2), an up-to-date version of the key investor information document must be made available to investors on the website of the ICVC or authorised fund manager.

[**Note:** article 81 of the *UCITS Directive*]

...

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

14.2.5 R A firm is not required to provide:

...

- (4) a simplified prospectus if:
- (a) ~~another person is required to offer the simplified prospectus to the client by the rules of another EEA State; or [deleted]~~
- (b) ...

...

[**Note:** in respect of (4), ~~articles 1, 33(1) and 44 of the UCITS Directive~~]

...

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

14.2.9 R A firm is not required to provide a key features document, a key features illustration or a simplified prospectus for a key features scheme or simplified prospectus scheme if:

...

[**Note:** ~~articles 1, 33(1) and 44 of the UCITS Directive~~]

14.2.9A R For the purposes of the provision rules in relation to a *key investor information document*, a *firm* is not required to consider as a new transaction, subscription to *units* in a *UCITS scheme* in which the *client* already has a holding, or where the *client* is switching from one class of *units* to another in the same *scheme*, if the most up-to-date version of the *key investor information document* for the *scheme* or the relevant class of *units* has already been provided to that *client*.

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

...

Exception to the provision rules: aggregated scheme documents

14.2.11 R A *firm* may provide a single *document*, which describes more than one *key features scheme*, ~~or *simplified prospectus scheme* or *EEA simplified prospectus scheme*~~, or any combination of those *schemes*, if:

...

(3) (in the case of a *simplified prospectus scheme* ~~or an *EEA simplified prospectus scheme*~~) the *firm* also offers ~~copies~~ a copy of the relevant ~~prospectuses~~ prospectus to the *client*.

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

...

The timing rules

14.2.14 R When the *rules* in this section require a *firm* to:

(1) offer a *simplified prospectus* ~~or an *EEA simplified prospectus scheme*~~ to a *client*, that prospectus must be offered free of charge before the conclusion of the contract; or

(2) provide a *key features document*, a *simplified prospectus*, ~~an *EEA simplified prospectus scheme*~~ or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business.

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

...

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

14.2.16 R (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the

contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.

(2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1 R and COBS 14.2.1A R.

14.2.17 R (1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:

(1)(a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (COBS 5 Annex 2R) orally to the *client*;

(2)(b) if the ~~client~~ *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information (COBS 5 Annex 1R) orally to the ~~client~~ *client*;

(3)(c) in the case of (1)(a) or (2)(b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

(2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1 R and COBS 14.2.1A R.

...

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

...

Information about UCITS schemes

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

...

- 14.3.12 G A ~~simplified prospectus~~ key investor information document provides sufficient information in relation to the costs and associated charges in respect of the *UCITS scheme* itself. ...

...

Execution of orders other than when managing investments

- 16.2.1 R ...

- (6) In relation to subscription and redemption orders for units in a UCITS scheme executed by an authorised fund manager, paragraphs (1), (3) and (5) of this rule apply as if:
- (a) references to a client and to a retail client were references to a unitholder in the scheme; and
 - (b) the reference to trade confirmation information in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).
- (7) The notice referred to in paragraph (1)(b) must, for subscription and redemption orders for units in a UCITS scheme executed by an authorised fund manager, include the following information:
- (a) the identification of the UCITS management company;
 - (b) the name or other designation of the unitholder;
 - (c) the date and time of receipt of the order and method of payment;
 - (d) the date of execution;
 - (e) the identification of the UCITS scheme;
 - (f) the nature of the order (subscription or redemption);
 - (g) the number of units involved;
 - (h) the unit value at which the units were subscribed or redeemed;
 - (i) the reference value date;
 - (j) the gross value of the order including charges for subscription or net amount after charges for redemptions; and
 - (k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

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

and article 24 of the *UCITS implementing Directive*]

...

Additional application of COBS rules for UCITS management companies

18.5.2A R A UCITS management company must in addition to complying with the COBS rules specified in COBS 18.5.2 R, comply with COBS 11.7 (Personal account dealing).

[**Note:** article 13.1 to 13.4 of the *UCITS implementing Directive*]

18.9 ICVCs

18.9.1 R (1) ~~Only the~~ The financial promotion rules in COBS apply to an ICVC.
 (2) COBS 14.2 (Providing product information to clients) applies to an ICVC which is a UCITS scheme.

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions : coming into force
...					
<u>2.6A</u>	<u>COBS 14.2 and COBS 14.3</u>		<u>A firm is not required to provide a key investor information document to a client in accordance with COBS 14.2 and COBS 14.3 in relation to the proposed sale of a unit in a UCITS scheme, if instead it provides the client with a simplified prospectus that meets the requirements of the rules of the Handbook as at 30 June 2011 in relation to the preparation and provision of a simplified prospectus, as if those rules were still in force in relation to a UCITS scheme.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>

	[Note: article 118.2 of the <i>UCITS Directive</i>]
--	--

...

Annex D

Amendments to the Supervision manual (SUP)

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

Exercise of passport rights by UK firms

SUP
13.1

Application and purpose

Application

...

13.1.3 G This chapter does not apply to:

- (1) ...
- (4) the marketing of a *UCITS scheme* by its ~~operator~~ management company in another *EEA State* under the *UCITS Directive* (see *COLLG 2.1.8 G paragraph 20B* of Part III of Schedule 3 to the *Act* and *COLL 12.4 (UCITS product passport)*).

13.1.4 G ...

SUP
13.3

Establishing a branch in another EEA State

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

- (1) ...
- (2) the *FSA* has given notice (known as a *consent notice*) to the *Host State regulator*; ~~and~~
- (2A) if the *UK firm's EEA right* relates to the activity of *collective portfolio management*, the *FSA* has provided to the *Host State regulator*:
 - (a) confirmation that the *firm* has been *authorised* as a *management*

company pursuant to the provisions of the UCITS Directive;

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

(3)

- (a) ...
- (b) in any other case:
 - (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established ; or
 - (ii) ...

...

Issue of a consent notice to the Host State regulator

13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~or *MiFID* or the *UCITS Directive*~~, the *FSA* ...

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

(2) ...

13.3.6 G

(1) ...

(2) ...

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

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

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

...

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

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

SUP
13.4

Providing cross border services into another EEA State

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G

- (1) If the UK firm's EEA right derives from MiFID, the Banking Consolidation Directive or the UCITS Directive, paragraph 20(3) of Part III of Schedule 3 to the Act requires the FSA to send a copy of the notice of intention to the Host State Regulator within one month of receipt. ~~However, a~~ A UK firm passporting under the Banking Consolidation Directive ~~or MiFID~~ may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2 G).
- (2) ...
- (2B) Where a consent notice is given under the UCITS Directive, the FSA will at the same time:
 - (a) communicate to the Host State regulator details of the compensation scheme intended to protect investors; and
 - (b) provide to the Host State regulator:
 - (i) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS Directive;
 - (ii) a description of the scope of the firm's authorisation; and
 - (iii) details of any restriction on the types of EEA UCITS scheme that the firm is authorised to manage.

...

13.4.6 G Applicable provisions for cross border services

- (1) ~~If the UK firm is passporting under the UCITS Directive, then when the Host State regulator receives the notice of intention, it should inform the UK firm of any applicable provisions. [deleted]~~
- (2) ...

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

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

SUP
13.5 **Notices of intention**

...

Specified contents: notice of intention to provide cross border services

- 13.5.2 R A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right must submit a notice in the form set out in:
 - (1) ...
 - (4) SUP 13 Annex 6 R, if the UK firm is a management company passporting under the UCITS Directive.

...

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

- R This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fsa.gov.uk/Pages/doing/index.shtml>
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 1R

Passporting

Notification of intention to establish a branch in another EEA state



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

Full name of firm

Purpose of this form

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

Important information you should read before completing this form

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

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

Filling in the Form

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

...

9 Undertakings for Collective Investment in Transferable Securities

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

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

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

Note to Question 9.2

Provide a programme of operations setting out the activities and services according to article 56(2) and (3) envisaged and the organisational structure of the branch which must include a description of the risk management process.

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

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

Note: Other Requirements for UCITS management companies

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

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

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

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

...

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

Section 1 – Contact Details (mandatory)

...

Section 9 - Undertakings for Collective Investments in Transferable Securities Directive

Section ~~9~~10 – Declaration (mandatory)

...

910 Declaration

...

...

SUP 13

Annex Passporting: UCITS Directive

6

R This annex consists of only one or more forms. Forms can be completed online now by <http://www.fsa.gov.uk/Pages/doing/index.shtml>

The forms are also to be found through the following address:

Passporting: Insurance Mediation Directive - SUP 13 Annex 6R

Note: SUP 13 Annex 6R is new and is not underlined.

Passporting

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



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

Full name of firm

Purpose of this form

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

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

Important information you should read before completing this form

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

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

Filling in the form

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

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

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: www.fsa.gov.uk

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

2 Details of the services to be provided

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

Note to Question 2.1

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

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

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

Yes ▶

No ▶

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

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

3 Undertakings for Collective Investment in Transferable Securities

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

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

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

Note to Question 3.2

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

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

Note: Other Requirements for UCITS management companies

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

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

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

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

4 Declaration

Note to Declaration

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

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

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

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

- I confirm that I am authorised to sign on behalf of the *firm*.

Name	
Position	
Signature	
Date	dd/mm/yy

I enclose the following sections (mark the appropriate section)

- Section 1 – Contact details (mandatory)
- Section 2 – Details of the services (mandatory)
- Section 3 – Undertakings for Collective Investment in Transferable Securities directive
- Section 4 – Declaration (mandatory)

Where to send this form

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

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

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

SUP
13A

Qualifying for authorisation under the Act

- ...
- 13A.3.1 G (1) C Under paragraph 15A.(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right relating to collective portfolio management for a UCITS scheme must, before it undertakes that activity, obtain the FSA's approval to manage that UCITS scheme. Firms should use the application form set out in SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom) for this purpose.
- (2) If the FSA refuses the application referred to SUP 13A.3.1C G (1) it will give a notice to the firm and the firm's Home State regulator in accordance with section 15A of Part II to Schedule 3 to the Act. Before refusing an application, the FSA will consult with the firm's Home State regulator.
- (3) Under paragraph 15B.(1) of Part II of Schedule 3 to the Act, if any representations are made to the FSA by a firm to which the notice referred to in SUP 13A.3.1C G (2) has been given, the FSA is required to decide whether to withdraw that notice. If FSA decides not to withdraw that notice it must give the firm a decision notice.
- (4) For details of the FSA's procedures for the giving of notices see DEPP 2 (Statutory notices and allocation of decision making).
- ...
- 13A.3.2 G (1) On qualifying for *authorisation*, subject to ~~SUP 13A.3.2G(2)~~ SUP 13A.3.1C G (1), an EEA firm will have *permission* to carry on each *permitted activity* (see (3) below) which is a *regulated activity*.
- (2) (a) ~~Paragraph (1) does not apply to the activity of dealing in units in a collective investment scheme in the United Kingdom where:~~
- (i) ~~the firm is an EEA UCITS management company;~~
 - (ii) ~~the firm satisfies the establishment conditions in SUP 13A.4.1 G; and~~
 - (iii) ~~the FSA notifies the EEA firm and the EEA firm's Home State regulator that the way in which it intends to market a relevant scheme in the United Kingdom does not comply with the law in force in the United Kingdom.~~
- (b) ~~The FSA's notice under (2)(a)(iii) has to be given to the EEA firm within two months of receiving the consent notice (see paragraph 13(1) of Part II of Schedule 3 to the Act) and will be~~

~~similar to a warning notice.~~

- (e) ~~For details of the FSA's procedures for the giving of warning notices see DEPP 2 (Statutory notices and allocation of decision making)-[deleted].~~

(3) ...

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

The conditions for establishing a branch

13A.4.1 ...
A

13A.4.1 A G An EEA UCITS management company exercising an EEA right relating to collective portfolio management from a branch in the UK for a UCITS scheme may not undertake that activity until approved by the FSA to do so (see SUP 13A.3.1 C G).

...

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

...

The conditions for providing cross border services into the United Kingdom

13A.5.3 G (1) Before an *EEA firm* other than an *EEA pure reinsurer* 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) ...

(3) (a) An EEA UCITS management company exercising an EEA right relating to collective portfolio management on a cross border services basis for a UCITS scheme may not undertake that activity until approved by the FSA to do so (see SUP 13A.3.1C G).

The notification procedure

13A.5.4 G

- (1) Unless the *EEA firm* other than an *EEA pure reinsurer* is passporting under the *Insurance Mediation Directive*, if the *FSA* receives a regulator's notice or, where no notice is required (in the case of an *EEA*

firm passporting under the *Banking Consolidation Directive*), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *FSA* will, under paragraphs 14(2)(b) 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 *FSA* received the regulator's notice or was informed of the *EEA firm's* intention.

(2) ...

13A.5.5 G An *EEA firm* that has satisfied the *service conditions* in paragraph 14 of Part II of Schedule 3 to the *Act* is subject to SUP 13A.5.3 G, entitled to start providing *cross border services* into the *United Kingdom*. However, an *EEA firm* that wishes to start providing *cross border services* but has not yet received notification of the *applicable provisions* may wish to contact the *FSA's* Passport Notifications Unit (see SUP 13A.8.1 G (2)).

...

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

G ...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(2) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
---------------------------------	---	--

...

SYSC

...
SYSC 1 Annex 1.2.7G reminds *EEA MiFID investment firms* that they must comply with the *common-platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

SYSC 1 Annex 1, Part 2, 2.7A G provides guidance on the application of the *common platform requirements* to the *UK*

branch of an EEA UCITS
management company.

...

...

COLL

The following provisions of
COLL apply to an EEA UCITS
management company providing
collective portfolio management
services for a UCITS scheme:

As column (2)(a) to (e) and the
other parts of COLL specified.

(a) COLL 12.3.8R
(Arrangements and
organisational requirements
necessary to ensure compliance
with COLL);

(b) the fund application rules
(see COLL 12.3.9R (COLL fund
rules under the management
company passport: the fund
application rules));

(c) COLL 6.6A.2R (Duties of
AFMs of UCITS schemes to act
in the best interests of the
UCITS scheme and its
unitholders);

(d) COLL 6.6A.4R (Due
diligence requirements of AFMs
of UCITS schemes); and

(e) COLL 6.6A.5R (Compliance
with the regulatory requirements
applicable to the conduct of

business activities of a UCITS management company).

EEA UCITS management company providing collective portfolio management services for a UCITS scheme should be aware that they will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, COLL apply if the firm:

~~(a) is the management company operator or depositary of an AUT or ICVC; or [deleted]~~

~~(b) wishes to apply for an authorisation order to establish an AUT or ICVC as a UCITS scheme; or~~

~~(c) (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~~

~~(d) is the operator of a recognised scheme; or~~

~~(e) wishes to apply for recognition of a recognised scheme.~~

...

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

Introduction

...

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

- 8 Whilst the *common platform requirements* (located in *SYSC* 4 – *SYSC* 10) do not generally apply to *incoming EEA firms* (but for *EEA UCITS management companies*, see 8A below), *EEA MiFID investment firms* must comply with the *common platform record-keeping requirements* in relation to a *branch* in the *United Kingdom*.

Application of SYSC to EEA UCITS management companies

- 8A *SYSC* 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7A G provides guidance on the application of the *common platform requirements* to the *UK branch* of an *EEA UCITS management company*.

...

Requirements under the UCITS Directive

- 11A Article 19.8 of the *UCITS Directive* prohibits Member States from imposing additional requirements on a *management company* pursuing the activity of *collective portfolio management* for a *UCITS* in its territory on a cross-border basis by establishing a *branch* or under the freedom to provide *cross border services* in respect of the subject matter of the *UCITS Directive*, except in the cases expressly permitted (see 11B below).
- 11B. A *management company*, however, which pursues the activity of *collective portfolio management* from a *branch* in another *EEA State*, is obliged under article 17.4 to comply with the applicable rules of the *Host State regulator* drawn up under article 14 that ensure a *management company*:
- (1) acts honestly and fairly in conducting its business activities in the best interests of the *UCITS* it manages and the integrity of the market;
 - (2) acts with due skill, care and diligence, in the best interests of the *UCITS* it manages and the integrity of the market;
 - (3) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;

- (4) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and
- (5) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

11C In addition, a *management company* which pursues the activity of *collective portfolio management* activity on a cross-border basis by establishing a *branch* in another *EEA State* or under the freedom to provide services must comply with the *rules* of the *UCITS Home State* which relate to the constitution and functioning of the *UCITS*. Where the *UCITS Home State* is the *United Kingdom*, the applicable *FSA rules* that the *EEA UCITS management company* must comply with are as follows:

- (1) COLL 12.3.8 R (Arrangements and organisational decisions necessary to ensure compliance with COLL);
- (2) the fund application rules (see COLL 12.3.9 R (COLL fund rules under the management company passport: the fund application rules).
- (3) COLL 6.6A.2 R (Duties of AFMs of UCITS schemes to act in the best interests of the UCITS scheme and its unitholders) (branch only);
- (4) COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes); and
- (5) COLL 6.6A.5 R (Compliance with regulatory requirements).

...

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

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

<u>Application by an EEA UCITS management company to manage one or more UCITS established in the United Kingdom (paragraph 15A.(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).</u>	
<u>Name and registered address of Management Company:</u>	

<u>Contact details for the person submitting the application (including telephone number and email address):</u>	
<u>Member state in which management company is authorised:</u>	
<u>Details of competent authority providing authorisation of the management company:</u>	
<u>Set out details of the scope of authorisation of the management company including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation:</u>	
<u>Name of each UCITS to which this application for approval relates:</u>	
<u>Is the management company authorised to manage the type of UCITS to which this approval relates? If not provide details:</u>	
<u>Has the management company submitted the information required by COLL 12.3.4R (Provision of documentation to the FSA: EEA UCITS Management Companies)(depository agreement and information on delegation arrangements)? Provide details:</u>	
<u>Signed by:</u> <u>Title:</u> <u>Dated:</u>	
<u>When completed send this form to:</u> <u>CIS Authorisations</u> <u>The Financial Services Authority</u> <u>25 the North Colonnade</u> <u>London. E14 5HS</u> <u>Or electronically to: cis@fsa.gov.uk</u>	

...

SUP
15.8

Notification in respect of particular products and services

...

Delegation by UCITS management companies

15.8.6 R ~~A UCITS management company must notify the FSA as soon as reasonably practicable if it delegates any of its functions to a third party.~~

If a UCITS management company intends to delegate to a third party

any one or more of its functions for a more efficient conduct of its business, it must first inform the FSA in an appropriate manner.

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

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

...

SUP APP 3

Guidance on passporting issues

...

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

...

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

...

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

...

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

...

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

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

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

...

Annex F

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Note that CP 10/21 proposes amendments to the Handbook text at DISP 1.2.1R and DISP 1.3.1AR. It is proposed that those amendments will come into force on 1 July 2011. This draft Instrument is drafted as if those amendments, which are currently subject to consultation, were in force.

...

INTRO 1 Introduction

...

Chapter 1: Treating complainants fairly

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

...

1.1 Purpose and application

Purpose

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

...

Application to firms

...

- 1.1.3 R ...
- (3) The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United*

Kingdom- or activities carried on by an EEA firm in the United Kingdom under the freedom to provide cross border services.

...

Application to UCITS management companies

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

(1) the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and

(2) this chapter, as modified in (1), also applies in respect of activities carried on from a branch in another EEA State.

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

(1) where the activities are carried on from a branch in the United Kingdom, the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and

(2) this chapter, except the consumer awareness rules, complaints handling rules, the complaints recording rule and complaints data publication rules, also applies to an EEA UCITS management company carrying on activities in the United Kingdom under the freedom to provide cross border services.

...

1.2 Consumer awareness rules

Publishing and providing summary details

1.2.1 R ...

[Note: article 15 of the UCITS Directive]

...

1.3 Complaints handling rules

1.3.1 R ...

[Note: article 10 of the MiFID implementing Directive and article 6.1 of

the UCITS implementing Directive]

1.3.1A R ...

[Note: article 6.3 of the UCITS implementing Directive]

Procedures for UCITS management companies

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

- (1) there are no restrictions on unitholders exercising their rights in the event that the UCITS scheme is authorised in an EEA State other than the United Kingdom; and
- (2) unitholders are allowed to file complaints in any of the official languages of the Home State of the UCITS scheme or EEA UCITS Scheme or any EEA State to which a notification has been transmitted by the competent authority of the scheme's home Member State in accordance with article 93 of the UCITS Directive.

[Note: article 15 of the UCITS Directive]

...

1.5 Complaints resolved by close of the next business day

1.5.1 R ...

- (4) ...if the complaint does not relate to MiFID business or collective portfolio management activities for a UCITS scheme or an EEA UCITS scheme;

...

1.9 Complaints record rule

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

- (1) at least five years where the complaint relates to MiFID business or collective portfolio management activities for a UCITS scheme or an EEA UCITS scheme carried out under the UCITS Directive; and

- (2) three years for all other *complaints*;
from the date the *complaint* was received.

[Note: article 10 of the *MiFID implementing Directive* and article 6.2 of the *UCITS implementing Directive*]

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

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

...

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

Type of respondent	DISP1.2 Consumer awareness rules	DISP1.3 Complaint handling rules	DISP1.4 Complaint resolution rules etc	DISP1.9 Complaints record rule	DISP1.10 Complaints reporting rules	DISP1.10A Complaints data publication rules
<i>Firm (other than a UCITS management company when carrying on collective portfolio management activity in respect of a UCITS scheme or an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	...					
<i>Firm in relation to complaints concerning MiFID business</i>	...					
<i><u>UK UCITS management company when carrying on collective portfolio management activity in respect of a UCITS scheme, or an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.</u></i>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<i>Branch of a UK firm (other than a UK UCITS management company when carrying on collective portfolio management</i>	...					

<u>activity in respect of an EEA UCITS scheme) in another EEA State in relation to complaints concerning non MiFID business</u>						
<i>Branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	...					
<u>incoming branch of an EEA firm (other than EEA UCITS management company when carrying on collective portfolio management activity in respect of an EEA UCITS scheme) in relation to complaints concerning non MiFID business</u>	...					
<i>Branch of an EEA firm in relation to complaints concerning MiFID business</i>	...					
<u>EEA UCITS management company when carrying on collective portfolio management activities in respect of a UCITS scheme in the United Kingdom from a branch</u>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>
<u>EEA UCITS</u>	<u>Does not</u>	<u>Does not</u>	<u>Applies for</u>	<u>Does not</u>	<u>Applies for</u>	<u>Does not</u>

management company when carrying on collective portfolio management activities in respect of a UCITS scheme in the United Kingdom under the freedom to provide cross border services

apply

apply

eligible complainants

apply

eligible complainants

apply

...

...

DISP Sch 1 Record keeping requirements

...

DISP Sch 1.2 G

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

Annex G

Amendments to the Compensation sourcebook (COMP)

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

...

- 5.5.2 R COMP 5.5.1 R only applies if the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; or
 - (2) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm*; or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than ~~of a collective investment scheme~~ collective portfolio management), *advising on investments* or *safeguarding and administering investments*);and the *claim* is an *ICD claim*; or
 - (3) both (1) and (2); ~~or~~
 - (4) (a) a UK branch of an EEA UCITS management company; or
 - (b) an establishment of such an EEA UCITS management company in its Home State from which cross border services are being carried on;and in either case the *management company* is providing collective portfolio management activities for a UCITS scheme but only if the claim relates to that activity.

...

- 6.2.2 G (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, or a MiFID investment firm ~~or a UCITS management company~~, and its *appointed representatives* are not *relevant persons* in relation to the *firms' s* *passport activities*, unless it has *top-up cover* (and in the case of a *UCITS management company*, only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*). (See definition of “*participant firm*”).

- (2) An EEA UCITS management company providing collective portfolio management activities for a UCITS scheme from a branch in the United Kingdom or under the freedom to provide cross border services, is a relevant person to the extent that it carries on such activities.
- (3) An EEA UCITS management company carrying on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments), is a not a relevant person in relation to such activities, unless it has top-up cover.

...

- 14.1.4 G (1) An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, or an MiFID investment firm or a UCITS management company is not a participant firm in relation to its passported activities unless it “tops-up” into the compensation scheme (for a UCITS management company, this is only for certain passported activities). This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the Electing Participants Regulations (Persons not to be regarded as relevant persons). If an incoming EEA firm also carries on non-passported activities (or, for a UCITS management company, certain passported activities) for which the compensation scheme provides cover, it will be a participant firm in relation to those activities and will be covered by the compensation scheme for those activities in the usual way.
- (2) Whether an incoming EEA firm which is an EEA UCITS management company is a participant firm in relation to its passported activities depends on the nature of its activities. In so far as it carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments, it is not a participant firm unless it “tops-up” into the compensation scheme. To the extent that such a firm carries on collective portfolio management activity for a UCITS scheme from a branch in the United Kingdom or under the freedom to provide cross border services, it is a participant firm in respect of such activity.

- 14.1.5 G In relation to an incoming EEA firm’s passported activities, its Home State compensation scheme must provide compensation cover in respect of business within the scope of the Deposit Guarantee Directive, Investors Compensation Directive and ~~article 5(3)~~ article 6.3 of the UCITS Directive, whether that business is carried on from a UK branch or on a cross border services basis. (For a an EEA UCITS management company, this is only for certain passported activities, namely managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments). ...

...

14.5 EEA UCITS management companies

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

...

Annex H

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

...

Application

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

...

EEA territorial scope: compatibility with European law

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

...

EEA UCITS management companies of UCITS schemes

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

accordingly apply to them, unless otherwise indicated – see *COLL* 12.3 (EEA UCITS management companies) for further details.

UCITS management company and product passport

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

...

Umbrella schemes

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

[Note: article 1.2, second paragraph, of the *UCITS Directive*]

...

UCITS schemes

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

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

Master UCITS

- 1.2.4 R *A master UCITS* may satisfy the requirement that a *UCITS scheme* must invest capital raised from the public if it has at least two *feeder UCITS* as *unitholders*.

[Note: article 58.1 of the *UCITS Directive*]

...

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

- 2.1.5 G *An EEA UCITS management company* that proposes to act as the *manager* of an *AUT* or the *ACD* of an *ICVC* that is a *UCITS scheme* should be aware that it is required under paragraph 15A (1) of Schedule 3 to the *Act* to apply to the *FSA* for approval to do so. The form that the *firm* must use for this purpose is set out in *SUP* 13A Annex 3R – *EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom*. In addition, such *firms* are required to provide to the *FSA* certain fund documentation, as specified by *COLL* 12.3.4 R (*Provision of documentation to the FSA: EEA*

UCITS management companies).

[Note: article 20.1 of the UCITS Directive]

Table: contents of the instrument constituting the scheme

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

...

7	Object of the scheme
	...
	<u>Feeder UCITS</u>
<u>7D</u>	<u>For a feeder UCITS, a statement that it is a feeder UCITS and as such will permanently invest 85% or more of its assets in units of a single master UCITS.</u>
	...

...

UCITS obligations

3.2.8 R ...

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

...

Availability of prospectus and long report

- 4.2.3 R (1) An ICVC or the manager of an AUT must:
- (a) ~~supply provide~~ a copy of the scheme's most recent prospectus drawn up and published in accordance with *COLL* 4.2.2 R (Publishing the prospectus) free of charge to any person on request; and
 - (b) file a copy of the scheme's original prospectus, together with all revisions thereto, with the FSA and, where a UCITS scheme is managed by an EEA UCITS management company, with that

company's Home State regulator on request.

- (1A) The prospectus may be provided in a durable medium or by means of a website that meets the website conditions.
- (2) An ICVC or the manager of an AUT which in either case is a UCITS scheme intending to market units in the territory of another EEA State must:
- (a) ensure that the following documents are drawn up in the, or one of the, official languages of the EEA State or a language approved by the Host State regulator:
 - (i) the prospectus;
 - (ii) the instrument constituting the scheme; and
 - (iii) the latest annual and half-yearly long reports of the scheme;
 - (b) supply copies of the most recent version of the documents in (a) to any purchaser of units free of charge on request; and
 - (c) file copies of the most recent version of the documents in (a) with the competent authority of each such Host State, provided in the language or one of the languages of that State or a language approved by the competent authority of that State. [deleted]

...

[Note: articles 74, 75.1 and 75.2 of the UCITS Directive]

Filing and provision of the prospectus of a master UCITS

- 4.2.3A R The authorised fund manager of a feeder UCITS which is a UCITS scheme must:
- (1) file a copy of the prospectus of its master UCITS and any amendments thereto with the FSA; and
 - (2) where requested by a unitholder, deliver a copy of the prospectus of its master UCITS to that unitholder free of charge.

[Note: articles 63.3 and 63.5 of the UCITS Directive]

...

Table: contents of the prospectus

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

...

Investment objectives and policy

3 The following particulars of the investment objectives and policy of the *authorised fund*:

...

(ka) where a *scheme* is a feeder *scheme* (other than a *feeder UCITS*), 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;

...

(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*.

...

Contracts and other relationships with parties

11 The following relevant details:

...

(g) ~~what functions (if any) the *authorised fund manager* has delegated and to whom; and~~

a list of the functions which the *authorised fund manager* has been allowed to delegate, and has delegated, in accordance with *FSA rules*; and

...

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 85% or more of its assets in *units* of that *master UCITS*;

(b) the investment objective and policy, including the risk profile and whether the performance 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]

...

Appointment of a new ACD or manager

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

Guidance on significant changes

4.3.7 G ...

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

...

Appointment of an AFM without prior written notice to unitholders

- 4.3.10 R (1) In the case of a UCITS scheme, the appointment of a new authorised fund manager as a result of:
- (a) in the case of an ICVC, the termination of the appointment of the previous ACD under COLL 6.5.4 R (2) or (3) (Termination of appointment of an ACD); or
- (b) in the case of an AUT, the replacement of the manager under COLL 6.5.7 R (2) (Replacement of a manager);
- must, if the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be notified to unitholders.
- (2) The new authorised fund manager must immediately notify unitholders of its appointment under paragraph (1) in an appropriate manner.

Change events relating to feeder UCITS

- 4.3.11 R Where the authorised fund manager of a feeder UCITS which is a UCITS scheme is notified of any change in respect of its master UCITS which has the effect of a change to the feeder UCITS, the authorised fund manager must:
- (1) classify it as a fundamental change, significant change or a notifiable change to the feeder UCITS in accordance with the rules in this section; and
- (2) take the steps required by this section that result from that classification.

...

Contents of a short report

- 4.5.5 R (1) ...
- (a) (i) the name of the scheme or sub-fund; and
- (ii) its stated investment objectives and policy for achieving

those objectives;

- (iii) a brief assessment of its risk profile;
- (iv) in the case of a UCITS scheme, the figure for the risk and reward indicator disclosed in its most recent key investor information document and any changes to that figure that have taken place during that period; and
- (v) the name and address of the *authorised fund manager*;

(1A) The short report of a feeder UCITS which is a UCITS scheme must also include:

- (a) a statement on the aggregate charges of the feeder UCITS and the master UCITS;
- (b) a description of how the annual and half-yearly long reports of its master UCITS can be obtained; and
- (c) where the master UCITS is a UCITS scheme, a description of how its annual and half-yearly short reports can be obtained.

...

Contents of the annual long report

4.5.7 R ...

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

- (a) a statement on the aggregate charges of the feeder UCITS and the master UCITS; and
- (b) a description of how the annual long report of its master UCITS can be obtained.

[Note: article 63.2 of the UCITS Directive]

Contents of the half-yearly long report

4.5.8 R

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

[Note: article 63.2, second subparagraph, of the UCITS Directive]

Authorised fund manager's report

4.5.9 R ...

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

...

Publication and availability of annual and half-yearly long report

4.5.14 R ...

(2) ...

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

[Note: article 74 of the UCITS Directive]

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

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

(1) file a paper copy of the annual and half yearly long reports of its master UCITS with the FSA; and

(2) where requested by a unitholder, deliver a copy of the annual and half yearly long reports of its master UCITS to that unitholder free of charge.

[Note: articles 63.3 and 63.5 of the UCITS Directive]

...

4.7 Key investor information and other marketing literature

Application

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

Key investor information

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

information (a “key investor information document”) for investors.

- (2) The words “key investor information” must be clearly stated in the document in (1).
- (3) Key investor information must include appropriate information about the essential characteristics of the UCITS scheme concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.
- (4) Key investor information must provide information on the following essential elements in respect of the UCITS scheme concerned:
 - (a) identification of the UCITS scheme;
 - (b) a short description of its investment objectives and investment policy;
 - (c) past performance presentation or, where relevant, performance scenarios;
 - (d) costs and associated charges; and
 - (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS scheme.
- (5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.
- (6) A key investor information document must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which such information is available to investors.
- (7) Key investor information must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.
- (8) Key investor information must be used without alterations or supplements, except translation, in all EEA States where a notification in accordance with COLL 12.4 (UCITS product passport) has been made so as to enable the scheme’s units to be marketed in that State.

Note: article 78 of the UCITS Directive

Form and content of a key investor information document

- 4.7.3 G The KII Regulation sets out the form and content of a *key investor information document*. The Regulation is directly applicable in the *United Kingdom* and accordingly is binding on all *firms* to which it applies. All *authorised fund managers* must ensure that each *key investor information document* they produce for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in *COLL 4.7 Annex 1*.

Translation of a key investor information document

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

Pre-contractual information

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

[Note: article 79 of the *UCITS Directive*]

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

Filing and revision of key investor information

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

- (2) An authorised fund manager must keep up to date the essential elements of the key investor information document for each UCITS scheme which it manages.
- (3) An authorised fund manager of a feeder UCITS must, in addition to (1) and (2), file the key investor information document of its master UCITS, and any amendments thereto, with the FSA.

[Note: articles 63.3 and 82 of the UCITS Directive]

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

- 4.7.8 G Authorised fund managers are advised that CESR has issued two separate guidelines regarding the methodology that should be used in calculating the risk and reward indicator (“CESR’s guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document: 1 July 2010” (CESR/10-673)) and the ongoing charges figure (“Guidelines – Methodology for calculation of the ongoing charges figure in the Key Investor Information Document: 1 July 2010” (CESR/10-674)), both of which must be disclosed in the key investor information document for each UCITS scheme which they manage. In line with the KII Regulation, firms in producing their key investor information documents should take account of CESR’s methodologies in calculating the figures for the risk and reward indicators and for ongoing charges to be disclosed in such documents. For ease of reference links to these guidelines are enclosed below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII

[http://www.cesr-
eu.org/index.php?page=document_details&from_title=Documents&id=6961](http://www.cesr.eu.org/index.php?page=document_details&from_title=Documents&id=6961)

Methodology for the calculation of the ongoing charges figure in the KII

[http://www.cesr-
eu.org/index.php?page=document_details&from_title=Documents&id=6962](http://www.cesr.eu.org/index.php?page=document_details&from_title=Documents&id=6962)

Firms should note that these methodologies are likely to become directly applicable obligations in the light of the European Securities and Markets Authority’s new powers to develop implementing technical standards in this area.

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

[Note: to be completed when these guidelines are published on CESR’s website]

Marketing communications (other than key investor information)

- 4.7.10 G COBS 4.2.7 R (1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) requires an *authorised fund manager* to ensure that any of its marketing communications that contain an invitation to purchase the *units* in a *UCITS scheme*, indicate that a *prospectus* and a *key investor information document* exist, specifying where they may be obtained by the public or how the public may have access to them.

COLL 4.7 Annex 1 : The KII Regulation

[TEXT]

...

Conversion of existing UCITS into feeder UCITS and change of master UCITS

Application

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

Purpose

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

Information to be provided to unitholders

- 4.8.3 R (1) An *authorised fund manager* of a *feeder UCITS* which already pursues activities as a *UCITS scheme*, including those of a *feeder UCITS* of a different *master UCITS*, must provide the following information to its *unitholders*:
- (a) a statement that the *FSA* has approved the investment of the *feeder UCITS* in *units* of such *master UCITS*;
 - (b) the *key investor information* of the *feeder UCITS* and the *master UCITS*;
 - (c) the date when the *feeder UCITS* is to start to invest in the *master UCITS* or, if it has already invested therein, the date when its investment will exceed the limit applicable under *COLL 5.2.11R (9)* (Spread: general);
 - (d) a statement that the *unitholders* have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or *redemption* of their *units* without any charges other

than those retained by the UCITS scheme to cover disinvestment costs.

- (2) The information in (1) must be provided at least 30 calendar days before the date referred to in (1)(c).
- (3) Where a feeder UCITS has been notified by the FSA in accordance with paragraph 20B (4) of Part III of Schedule 3 to the Act, the authorised fund manager of the feeder UCITS must ensure that an accurate translation of the information in COLL 4.8.3 R (1) is provided to unitholders in:
 - (a) the official language, or one of the official languages of the feeder UCITS' Host State; or
 - (b) a language approved by the Host State regulator.
- (4) A feeder UCITS must not invest in units of the given master UCITS in excess of the limit applicable in COLL 5.2.11 R (9) before the period of 30 calendar days referred to in (2) has elapsed.

[Note: article 64 of the UCITS Directive]

Method of providing information

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

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

...

Application

- 5.1.1 R (1) Subject to 1(A), COLL 5.1 to COLL 5.5 apply to the authorised fund manager and the depositary of an authorised fund, and to an ICVC, which is or ever has been a UCITS scheme.
- (1A) The only sections of COLL 5 that apply to the authorised fund manager and the depositary of a feeder UCITS and to an ICVC which is a feeder UCITS are COLL 5.3 and COLL 5.8, although particular rules in COLL 5.1, COLL 5.2 and COLL 5.5 are incorporated by reference.

...

5.2.2 R This table belongs to COLL 5.2.1 R

Rule	ICVC	ACD	Manager of an AUT	Depositary of an ICVC	Trustee of an AUT
...					

<u>5.2.23C R</u>	<u>X</u>	<u>X</u>		
5.2.24 R	X	X		
5.2.25 R	X	X	X	X
...				
<u>5.2.34 G</u>	<u>X</u>	<u>X</u>		

...

UCITS schemes: permitted types of scheme property

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

...

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

...

[Note: articles ~~19(1)~~ 50.1 (in conjunction with other rules in this section) and ~~(2)(e)~~ 50.3 of the *UCITS Directive*]

...

Spread: general

5.2.11 R ...

~~(11) For the purpose of calculating the limits in (7) and (10), the exposure in respect of any *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (12). [deleted]~~

~~(12) The conditions referred to in (11) are that the collateral:-~~

~~(a) is marked to market on a daily basis and exceeds the value of the amount at risk;~~

~~(b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;~~

~~(c) is held by a third party custodian not related to the provider or legally secured from the consequences of a failure of a related party; and~~

- (d) ~~can be fully enforced by the UCITS scheme at any time. [deleted]~~
- (13) For the purpose of calculating the limits in (7) and (10), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) ~~comply with the conditions set out in Section 3 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the *Banking Consolidation Directive*; and~~
- (b) ~~are based on legally binding agreements. [deleted]~~
- (14) In applying this rule, all *derivatives* transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
- (a) ~~it is backed by an appropriate performance guarantee; and~~
- (b) ~~it is characterised by a daily mark to market valuation of the *derivative* positions and an at least daily margining. [deleted]~~

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

Guidance on spread: general

5.2.11 G
A

- (1) ~~*COLL 5.2.11R*(11) to (14) reflect the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this Section referred to as “the Commission Recommendation on the use of financial derivative instruments”). This Recommendation may be accessed via www.europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_199/l_19920040607en00240029.pdf. [deleted]~~
- (2) ~~The attention of *authorised fund managers* is specifically drawn to condition (d) in *COLL 5.2.11 R* (12) under which the collateral has to be legally enforceable at any time. It is the *FSA's* view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross border dimension. *Depositaries* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under *COLL 6.6.4 R* (General duties of the depositary). [deleted]~~
- (3) In applying the spread ...
- ...

Counterparty risk and issuer concentration

5.2.11 R
B

- (1) An authorised fund manager of a UCITS scheme must ensure that counterparty risk arising from an OTC derivative is subject to the limits set out in COLL 5.2.11 R (7) and (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 they are able legally to enforce netting agreements with the counterparty on behalf of the UCITS scheme.
- (4) The netting agreements in (3) are permissible only with respect to OTC derivatives with the same counterparty and not in relation to any other exposures the UCITS scheme may have with that same counterparty.
- (5) An authorised fund manager of a UCITS scheme may reduce the exposure of scheme property to a counterparty of an OTC derivative 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.
- (6) 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 5.2.11 R (7) when it passes collateral to an OTC counterparty on behalf of the UCITS scheme.
- (7) Collateral passed in accordance with (6) 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.
- (8) An authorised fund manager of a UCITS scheme must calculate the issuer concentration limits referred to in COLL 5.2.11 R (7) on the basis of the underlying exposure created through the use of OTC derivatives pursuant to the commitment approach.
- (9) In relation to the exposure arising from OTC derivatives as referred to in COLL 5.2.11 R (10), the authorised fund manager must include any exposure to OTC derivative counterparty risk in the calculation.

[Note: article 43 of the UCITS implementing Directive]

...

Derivatives: general

5.2.19 R (1) ...

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

...

5.2.20 G
B

- (1)
- (2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *UCITS scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in *COLL 5.3.3R 5.3.3A R* and spread set out in *COLL 5.2.11 R*.

...

Requirement to cover sales

5.2.22 R

- ...
- (3) Paragraph (1) does not apply where:
 - (a) ~~the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or~~
 - (b) ~~the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:~~
 - (i) ~~cash;~~
 - (ii) ~~liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or~~
 - (iii) ~~other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant). [deleted]~~
- (4) ~~In the asset classes referred to in (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market. [deleted]~~

Guidance on requirement to cover sales

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

...

Valuation of OTC derivatives

5.2.23 R (1) For the purposes of COLL 5.2.23 R (2), an authorised fund manager of
C a UCITS scheme must:

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

[Note: articles 44.2 and 44.4 of the UCITS implementing Directive]

Risk management

- 5.2.24 R (1) ~~An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme's positions and their contribution to the overall risk profile of the scheme. [deleted]~~
- (2) ~~The following details of the risk management process must be notified by the authorised fund manager to the FSA in advance of the use of the process as required by (1):~~
- (a) ~~the methods for estimating risks in derivative and forward transactions; and~~
 - (b) ~~the types of derivatives and forwards to be used within the scheme together with their underlying risks and any relevant~~

quantitative limits. [deleted]

- (3) The *authorised fund manager* must notify the *FSA* in advance of any material alteration to the details in (2)(a) or (b). [deleted]

Risk management process

- 5.2.25 G (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*. [deleted]
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL* 6.6.4 R (General duties of the depository) and *COLL* 6.6.14 R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate. [deleted]
- (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic on non-linear dependence in the value of a position to its underlying. [deleted]
- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC* 3.1 (Systems and controls). [deleted]
- (5) The risk management process should enable the analysis required by *COLL* 5.2.24 R to be undertaken at least daily or at each valuation point whichever is the more frequent. [deleted]
- (6) *Firms* carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to measure market risk) of the Commission Recommendation on the use of financial derivative instruments. [deleted]
- (7) In assessing the risk of *OTC derivatives*, *firms* should note the methodologies set out in Article 5.3 (Invitation to use standards laid down in Directive 2000/12/EC as a first reference) of the Commission Recommendation on the use of financial *derivative* instruments. [deleted]
- (8) An *authorised fund manager* should undertake the risk assessment with the highest care when the counterparty to the *derivative* is an *associate* of the *authorised fund manager* or the credit issuer. [deleted]

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

...

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

5.2.34 G Authorised fund managers of UCITS schemes or EEA UCITS schemes should bear in mind that where a UCITS scheme or EEA UCITS scheme (being marketed in the United Kingdom as a recognised scheme under section 264 of the Act) employs particular investment strategies such as investing more than 35% of its scheme property in government and public securities, or investing principally in units in collective investment schemes, deposits or derivatives, or replicating an index, COBS 4.2.7 R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.2.8 R (Marketing communications relating to feeder UCITS) contain additional disclosure requirements in relation to marketing communications (other than the key investor information document) that concern such investment strategies.

...

Cover for transactions in derivatives and forward transactions

- 5.3.3 R (1) ~~A transaction in derivatives or forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2). [deleted]~~
- (2) ~~Exposure is covered globally if adequate cover from within the scheme property is available to meet the scheme's total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions. [deleted]~~
- (3) ~~Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of (2). [deleted]~~
- (4) ~~Property the subject of a transaction under COLL 5.4 (Stock lending) is only available for cover if the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required. [deleted]~~
- (5) ~~The global exposure relating to derivatives held in a UCITS scheme may not exceed the net value of the scheme property (Article 2(1) of the Commission Recommendation 2004/383/EC). [deleted]~~

Cover for investment in derivatives

- 5.3.3A R A UCITS scheme may invest in derivatives and forward transactions as part of its investment policy provided:
- (1) its global exposure relating to derivatives and forward transactions held in the UCITS scheme does not exceed the net value of the scheme property;
and

- (2) its global exposure to the underlying assets does not exceed in aggregate the investment limits laid down in COLL 5.2.11 R.

[Note: article 51.3, first and third paragraphs, of the UCITS Directive]

Daily calculation of global exposure

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

[Note: article 41.2 of the UCITS implementing Directive]

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

[Note: article 51.3, second paragraph, of the UCITS Directive]

Guidance on cover

- 5.3.4 G (1) An authorised fund manager should note that the scope of ~~COLL 5.3.3R~~ COLL 5.3.3C R is extended in relation to underwriting commitments by COLL 5.5.8 R (4) (General power to accept or underwrite placings).
- (2) Property the subject of a transaction under COLL 5.4 (Stock lending) should be available for cover only if the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

...

Continuing nature of limits and requirements

- 5.3.6 R (1) An authorised fund manager must, (as frequently as necessary), re-calculate the amount of cover required in respect of derivatives and forward positions already in existence under this section. ~~[deleted]~~
- (2) Derivatives and rights under forward transaction may be retained in the scheme property only so long as they remain covered globally under ~~COLL 5.3.3 R. [deleted]~~

Calculation of global exposure

- 5.3.7 R An authorised fund manager must calculate the global exposure of any UCITS scheme it manages either as:
- (1) the incremental exposure and leverage generated through the use of derivatives and forward transactions (including embedded derivatives as referred to in COLL 5.2.19 R (3A) (Derivatives: general), which may not exceed 100% of the net value of the scheme property; or

(2) the market risk of the scheme property.

[Note: article 41.1 of the UCITS implementing Directive]

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

[Note: articles 41.3 and 41.4 of the UCITS implementing Directive]

Commitment approach

- 5.3.9 R Where an authorised fund manager of a UCITS scheme uses the commitment approach for the calculation of global exposure, it must:
- (1) ensure that it applies this approach to all derivative and forward transactions (including embedded derivatives as referred to in COLL 5.2.19 R (3A) (Derivatives: general)), whether used as part of the scheme's general investment policy, for the purposes of risk reduction or for the purposes of efficient portfolio management in accordance with COLL 5.4 (Stock lending); and
 - (2) convert each derivative or forward transaction into the market value of an equivalent position in the underlying asset of that derivative or forward (standard commitment approach).

[Note: articles 42.1 and 42.2, first paragraph, of the UCITS implementing Directive]

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

[Note: articles 42.2, final paragraph, 42.3, 42.4 and 42.5 of the UCITS implementing Directive]

CESR guidelines

- 5.3.11 G
- CESR has issued guidelines which, in accordance with the *UCITS implementing Directive*, authorised fund managers should comply with in applying the *rules* in this section (“Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS: 28 July 2010”)(CESR/10-788). These guidelines are available at: http://www.cesr.eu.org/index.php?page=document_details&from_title=Documents&id=7000.

Firms should note that these guidelines are likely to become directly applicable obligations in the light of the European Securities and Markets Authority’s new powers to develop implementing technical standards in this area.

...

General power to accept or underwrite placings

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

...

Derivatives: general

- 5.6.12 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *non-UCITS retail scheme* unless the transaction is:
- (a) of a kind specified in *COLL 5.6.13 R* (Permitted transactions (derivatives and forwards)); and
 - (b) covered, as required by ~~*COLL 5.3.3 R* (Cover for transactions in derivatives and forward transactions)~~ *COLL 5.3.3A R* (Cover for investment in derivatives).

...

Investment powers and borrowing limits for feeder UCITS

Application

- 5.8.1 R (1) This section applies to:
- (a) the authorised fund manager of a feeder UCITS;
 - (b) the depositary of a feeder UCITS; and
 - (c) an ICVC which is a feeder UCITS,
- where the scheme is a UCITS scheme.
- (2) Where this section refers to a rule or guidance in COLL 5.1 to COLL 5.5, these rules and guidance, and any rules and guidance to which they refer, must be read as if a reference to a UCITS scheme were a reference to a feeder UCITS.
- (3) Where the sub-fund of a UCITS scheme is a feeder UCITS, the provisions in this section apply to each sub-fund as they would for an authorised fund.

Permitted types of scheme property

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

[Note: article 58.1 of the UCITS Directive]

Balance of scheme property: investment restrictions on a feeder UCITS

- 5.8.3 R A feeder UCITS may hold up to 15% of scheme property in one or more of the following:
- (1) cash or near cash in accordance with COLL 5.5.3 R (Cash and near cash);

- (2) derivatives and forward transactions which may be used only for the purposes of hedging and in accordance with COLL 5.2.19 R (Derivatives: general); and
- (3) (for an ICVC) movable and immovable property which is essential for the direct pursuit of the business.

[Note: article 58.2, first subparagraph, of the UCITS Directive]

Exposure to derivatives

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

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

[Note: article 58.2 second subparagraph of the UCITS Directive]

Prudent spread of risk

5.8.5 R An authorised fund manager must ensure that to the extent 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 R The scheme property of a feeder UCITS must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the instrument constituting the scheme may restrict the investment powers of a scheme further than the relevant restrictions in this section.

Dilution and SDRT provision

5.8.7 R 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.

Cash, borrowing, lending and other provisions

5.8.8 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 5.2.19 R* (1), (2) and (4) (Derivatives: general);
- (6) *COLL 5.2.20 R* (Permitted transactions (derivatives and forwards));
- (7) *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);
- (8) *COLL 5.2.21 R* (Transactions for the purchase of property);
- (9) *COLL 5.2.22 R* (Requirement to cover sales);
- (10) *COLL 5.2.23 R* (OTC Transactions in derivatives), *COLL 5.2.23AR* and *COLL 5.2.23B R* (OTC Transactions in derivatives);
- (11) *COLL 5.2.23C R* (Valuation of OTC derivatives);
- (12) *COLL 5.2.26 R* (Investment in deposits);
- (13) *COLL 5.5.1R* to *COLL 5.5.7A G* (Cash, borrowing, lending and other provisions); and
- (14) *COLL 5.5.9 R* (Guarantees and indemnities) and *COLL 5.5.10 G* (Guidance on restricting payments).

...

Application

6.3.1 R (1) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.

- (2) COLL 6.3.3A R (Accounting procedures) to COLL 6.3.3D R:
- (a) apply 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; and
 - (b) do not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

...

Accounting procedures

- 6.3.3A R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the employment of 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 kept in such a way that all assets and liabilities of the scheme can be directly identified at all times.
- (3) If the scheme is an umbrella, separate accounts must be maintained for each sub-fund.

[Note: article 8.1 of the UCITS implementing Directive]

- 6.3.3B R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS Home State, so as to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8.2 of the UCITS implementing Directive]

- 6.3.3C G Where different share or unit classes exist, it should be possible to extract from the accounting records, the net asset value of each different class.

[Note: recital (9) of the UCITS implementing Directive]

- 6.3.3D R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages, as consistent with the requirements of COLL 6.3.

[Note: article 8.3 of the UCITS implementing Directive]

...

General duties of the depositary

6.6.4 R ...

- (5) The depositary of a UCITS scheme must ensure that in transactions involving the scheme property of a UCITS scheme, any consideration is remitted to 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 the rules of the Handbook, the Act, the OEIC Regulations and all other laws, regulations or administrative provisions with which a depositary must comply in the United Kingdom.
- (7) The agreement in (6) must as a minimum contain the information set out in COLL 6 Annex 1.

[Note: article 22.3(d), article 23.5 and 33.5 of the UCITS Directive]

6.6.4A G

The requirements of SUP 2 (Information gathering by the FSA on its own initiative) apply to the depositary of a UCITS scheme, under which it must enable the FSA to obtain, on request, all information that the depositary has obtained while discharging its duties and that is necessary for the FSA to supervise the scheme's compliance with the requirements referred to in COLL 6.6.4 R (6).

[Note: article 23.4 of the UCITS Directive]

...

6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

6.6A.1 R

- (1) This section applies to:
 - (a) an authorised fund manager of a UCITS scheme, a depositary, an ICVC and any other director of an ICVC which is 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 activities for a UCITS scheme under the freedom to provide cross border services.

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders

6.6A.2 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

- (1) ensure that the unitholders of any such scheme it manages are treated fairly;
- (2) refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders;
- (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- (4)
 - (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each scheme it manages, in order to comply with the duty to act in the best interests of the unitholders; and
 - (b) be able to demonstrate that the investment portfolio of each such scheme it manages is accurately valued; and
- (5) act in such a way as to prevent undue costs being charged to any such scheme it manages and its unitholders.

[Note: article 22 of the UCITS implementing Directive]

6.6A.3 G Examples of malpractices for the purposes of COLL 6.6A.2 R (2) would include market timing and late trading, which may have detrimental effects on unitholders and may undermine the functioning of the market.

[Note: recital (18) of the UCITS implementing Directive]

Due diligence requirements of AFMs of UCITS schemes

6.6A.4 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

- (1) ensure a high level of diligence in the selection and ongoing monitoring of scheme property, in the best interests of the scheme and the integrity of the market;

- (2) ensure it has adequate knowledge and understanding of the assets in which any *scheme* it manages are invested;
- (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;
- (4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:
 - (a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the *scheme* before carrying out the investment; and
 - (b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;
- (5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
- (6) before entering into any arrangements of the type referred to in (5):
 - (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
 - (b) establish methods for the on-going assessment of the standard of performance of the third party.

[Note: article 23 of the *UCITS implementing Directive*]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 R The authorised fund manager of a *UCITS scheme* or the *UK UCITS management company* of an *EEA UCITS scheme* must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14.1(e) of the *UCITS Directive*]

Strategies for the exercise of voting rights

6.6A.6 R (1) An authorised fund manager of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property* are to be exercised, to the

exclusive benefit of the *scheme* concerned.

- (2) The strategy referred to in (1) must determine measures and procedures for:
- (a) monitoring relevant corporate events;
 - (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant *scheme*; and
 - (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.
- (3) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make available to unitholders a summary description of the strategies referred to in (1).
- (4) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make available to unitholders free of charge and on their request details of the actions taken on the basis of the strategies referred to in (1).

[Note: article 21 of the UCITS implementing Directive]

...

Charges on buying and selling units

6.7.7 R

...

- (3) This rule is subject to *COLL* 6.3.7R (SDRT provision), ~~and~~ *COLL* 6.3.8R (Dilution) and *COLL* 11.3.12R (Obligations of the master UCITS).

...

Distribution and reinvestment of income

6.8.2B R

The distribution or reinvestment of the income of a UCITS scheme must be determined in accordance with both the law of the United Kingdom and the instrument constituting the scheme.

[Note: article 86 of the UCITS Directive]

...

6.10 Senior management responsibilities

Application

6.10.1 R

- (1) This section applies to:

- (a) an authorised fund manager of a UCITS scheme; and
 - (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.
- (2) This section does not apply to an EEA UCITS management company providing collective portfolio management activities for a UCITS scheme under the freedom to provide cross border services.

Senior management responsibilities

6.10.2 R In complying with SYSC 4.3.1R (Responsibility of senior personnel), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure that its senior management:

- (1) is responsible for the implementation of the general investment policy for each scheme it manages, as defined, where relevant, in the prospectus or the instrument constituting the scheme;
- (2) oversees the approval of investment strategies for each scheme it manages;
- (3) is 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) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits 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) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each scheme it manages, so as to ensure that these decisions are consistent with the approved investment strategies; and
- (6) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing this policy, as referred to in COLL 6.12.4 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 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 management receives on a regular basis written reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2 R (2) to (5).

[Note: article 9.5 of the UCITS implementing Directive]

6.11 Risk control and internal reporting

Application

- 6.11.1 R (1) This section applies to:
- (a) an authorised fund manager of a UCITS scheme; and
 - (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.
- (2) This section does not apply to an EEA UCITS management company providing collective portfolio management activities for a UCITS scheme under the freedom to provide cross border services.

Permanent risk management function

- 6.11.2 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish and maintain a permanent risk management function.
- (2) The function referred to in (1) must, where 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 and be hierarchically and functionally independent from operating units.
- (3) The authorised fund manager or UK UCITS management company must be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of COLL 6.12.2 R (Risk management process) or, where appropriate, the rules of the relevant UCITS Home State implementing article 51 of the UCITS Directive.

[Note: article 12.1 and 12.2 of the UCITS implementing Directive]

- 6.11.3 G Where an authorised fund manager or UK UCITS management company is not required under COLL 6.11.2R to maintain a risk management function, it should nevertheless be able to demonstrate that its risk management process satisfies the requirements of COLL 6.12.2 R (Risk management process) and that in particular, appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities.

[Note: article 12.2, third paragraph, of the UCITS implementing Directive]

Duties of the permanent risk management function

- 6.11.4 R (1) The permanent risk management function must:
- (a) implement the risk management policy and procedures;
 - (b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as required by COLL 5.3 (Derivative exposure) or, where appropriate, the rules of the relevant *UCITS Home State* implementing articles 41, 42 and 43 of the *UCITS implementing Directive*;
 - (c) provide advice to the board of directors or equivalent governing body, as regards the identification of the risk profile of each *scheme* it manages;
 - (d) provide regular reports to the board of directors or equivalent governing body and, where it exists, the *supervisory function* on:
 - (i) the consistency between the current level of risk incurred by each *scheme* it manages and the risk profile agreed for that *scheme*;
 - (ii) the compliance of each *scheme* it manages with the *risk limit system* referred to in (b);and
 - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
 - (e) provide regular reports to the senior management outlining the current level of risk incurred by the relevant *scheme* and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and
 - (f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in COLL 5.2.23 R (OTC transactions in derivatives), COLL 5.2.23C R (Valuation of OTC derivatives) and in this rule or, where appropriate, the rules of the relevant *UCITS Home State* implementing article 44 of the *UCITS implementing Directive*.
- (2) The permanent risk management function must have the necessary authority and access to all relevant information necessary to fulfil the duties set out in (1).

[Note: articles 12.3, 12.4 and 44.3 of the UCITS implementing Directive]

6.12 Risk management policy and risk measurement

Application

- 6.12.1 R (1) This section applies to an *authorised fund manager* of a *UCITS scheme*.
- (2) This section does not apply to a *UK UCITS management company* providing *collective portfolio management* activities for an *EEA UCITS scheme*.

Risk management process

- 6.12.2 R (1) An *authorised fund manager* of a *UCITS scheme* must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.
- (2) The following details of the risk management process must be regularly notified by the *authorised fund manager* to the *FSA* and at least on an annual basis:
- (a) a true and fair view of the types of *derivatives* and *forward transactions* to be used within the *scheme* together with their underlying risks and any relevant quantitative limits; and
- (b) the methods for estimating risks in *derivative* and *forward transactions*.

[Note: article 51.1, first and third paragraphs, of the UCITS Directive and article 45.1 of the UCITS implementing Directive]

- 6.12.3 G (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
- (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL 6.6.4 R* (General duties of the depository) and *COLL 6.6.14 R* (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.

- (3) An authorised fund manager is expected to demonstrate more sophistication in its risk management process for a scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
- (4) An authorised fund manager should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).
- (5) The risk management process should enable the analysis required by COLL 6.12.2 R to be undertaken at least daily or at each valuation point, whichever is more frequent.
- (6) An authorised fund manager should undertake the risk assessment with the highest care when the counterparty to the derivative is an associate of the authorised fund manager or the credit issuer.

[Note: CESR's UCITS eligible assets guidelines with respect to article 8.2(d) of the UCITS eligible assets Directive]

Risk management policy

- 6.12.4 R
- (1) An authorised fund manager of a UCITS scheme must establish, implement and maintain an adequate and documented risk management policy which identifies the risks the scheme it manages are or might be exposed to.
 - (2) The risk management policy must comprise such procedures as are necessary to enable the authorised fund manager to assess for each UCITS scheme it manages the exposure of that scheme to market, liquidity and counterparty credit risks, and the exposure of the scheme to all other risks, including operational risks, which might be material.
 - (3) The risk management policy must address at least the following elements:
 - (a) the techniques, tools and arrangements that enable the authorised fund manager to comply with the obligations set out in COLL 5.3 (Derivative exposure);
 - (b) the allocation of responsibilities within the authorised fund manager pertaining to risk management; and

- (c) the terms, contents and frequency of reporting of the risk management function referred to in COLL 6.11.2 R (Permanent risk management function) to the board of directors or equivalent governing body, senior management and, where appropriate, to the supervisory function referred to in COLL 6.11.4 R (1)(d) (Duties of the permanent risk management function).
- (4) In adopting policies to meet its obligations in (1), (2) and (3) an authorised fund manager must take into account the nature, scale and complexity of its business and of the UCITS schemes it manages.

[Note: article 38 of the UCITS implementing Directive]

Monitoring of risk management policy

- 6.12.5 R (1) An authorised fund manager of a UCITS scheme must assess, monitor and periodically review:
- (a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in COLL 6.12.4 R;
 - (b) the level of compliance with the risk management policy and with those arrangements, processes and techniques set out in the risk management policy; and
 - (c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.
- (2) The authorised fund manager must notify the FSA of any material changes to the risk management process.

[Note: article 39 of the UCITS implementing Directive]

Measurement and management of risk

- 6.12.6 R (1) An authorised fund manager of a UCITS scheme must adopt adequate and effective arrangements, processes and techniques in order to:
- (a) measure and manage at any time the risks which the scheme it manages are or might be exposed to; and
 - (b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with COLL 5.2.11B R (Counterparty risk and issuer concentration) and COLL 5.3 (Derivative exposure).

- (2) For the purposes of (1) the *authorised fund manager* must take the following actions for each *UCITS scheme* it manages:
- (a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
 - (b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
 - (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the *UCITS scheme*;
 - (d) establish, implement and maintain a *risk limit system* for each *UCITS scheme* it manages;
 - (e) ensure that the current level of risks complies with the *risk limit system* for each *UCITS scheme*; and
 - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the *risk limit system* of the *UCITS scheme*, 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* and the *UCITS scheme* it manages and be consistent with the *scheme's* risk profile.

[Note: articles 40.1 and 40.2 of the *UCITS implementing Directive*]

- 6.12.7 R (1) An *authorised fund manager* must employ an appropriate liquidity risk management process in order to ensure that each *UCITS scheme* it manages is able to comply at any time with *COLL 6.2.16 R* (Sale and redemption).
- (2) Where appropriate, the *authorised fund manager* must conduct stress tests which enable assessment of the *liquidity risk* of the *UCITS scheme* under exceptional circumstances.

[Note: article 40.3 of the *UCITS implementing Directive*]

6.12.8 R An authorised fund manager must ensure that for each UCITS scheme it manages the liquidity profile of the investments of the scheme is appropriate to the redemption policy laid down in the instrument constituting the scheme or the prospectus.

[Note: article 40.4 of the UCITS implementing Directive]

CESR guidelines: Risk management principles for UCITS

6.12.9 G Authorised fund managers are advised that CESR has produced guidelines which should be complied with in applying the rules in this section (“Risk management principles for UCITS”: 27 February 2009)(CESR/09-178). These guidelines are available at:

http://www.cesr-eu.org/index.php?page=document_details&from_title=Documents&id=5620

6.13 Record keeping

Application

- 6.13.1 R (1) This section applies to:
- (a) an authorised fund manager of a UCITS scheme; and
 - (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.
- (2) This section does not apply to an EEA UCITS management company providing collective portfolio management activities for a UCITS scheme under the freedom to provide cross border services.

Recording of portfolio transactions

- 6.13.2 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure, for each portfolio transaction relating to a scheme it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.
- (2) The record referred to in (1) must include:
- (a) the name or other designation of the scheme and of the person acting on behalf of the scheme;

- (b) the details necessary for the instrument in question;
- (c) the quantity;
- (d) the type of the order or transaction;
- (e) the price;
- (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the *person* to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;
- (g) the name of the *person* transmitting the order or executing the transaction;
- (h) where applicable, the reasons for the revocation of an order; and
- (i) for executed transactions, the counterparty and *execution venue* identification.

[Note: article 14 of the *UCITS implementing Directive*]

Recording of subscription and redemption orders

- 6.13.3 R (1) An authorised fund manager of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must take all reasonable steps to ensure that every subscription and redemption order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of any such order.
- (2) The record referred to in (1) must include information on the following:
- (a) the relevant *scheme*;
 - (b) the *person* giving or transmitting the order;
 - (c) the *person* receiving the order;
 - (d) the date and time of the order;
 - (e) the terms and means of payment;
 - (f) the type of the order;

- (g) the date of execution of the order;
- (h) the number of *units* subscribed or redeemed;
- (i) the subscription or redemption price for each *unit*;
- (j) the total subscription or redemption value of the *units*; and
- (k) the gross value of the order including charges for subscription or net amount after charges for redemption.

[Note: article 15 of the UCITS implementing Directive]

Recordkeeping requirements

- 6.13.4 R
- (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the retention of the records referred to in COLL 6.13.2 R and COLL 6.13.3 R for a period of at least five years or, in exceptional circumstances, for such longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FSA to exercise its supervisory functions under the UCITS Directive.
 - (2) Following the termination of its authorisation, an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme if required by the FSA, must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the scheme to another authorised fund manager or management company, must make arrangements so as to ensure that such records for the past five years are accessible to that other manager.
 - (3) The authorised fund manager or the UK UCITS management company must retain the records referred to in COLL 6.13.2 R and COLL 6.13.3 R in a medium that allows the storage of information in a way accessible for future reference by the FSA, and in such a form and manner that the following conditions are met:
 - (a) the FSA must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
 - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and
 - (c) it must not be possible for the records to be otherwise manipulated or altered.

[Note: article 16 of the UCITS implementing Directive]

Electronic data processing

- 6.13.5 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with COLL 6.13.2 R (Recording of portfolio transactions) and COLL 6.13.4 R (Recording of subscription and redemption orders).

[Note: article 7.1 of the UCITS implementing Directive]

- 6.13.6 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure a high level of security during the electronic data processing referred to in COLL 6.13.5 R as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7.2 of the UCITS implementing Directive]

...

COLL 6 Annex 1

Particulars of the standard agreement between an EEA UCITS management company and a depositary

- R This table belongs to COLL 6.6.4 R (7) (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 entrusted to the depositary;
 - (b) a description of the procedures to be followed where the authorised fund manager envisages a modification of the instrument constituting the scheme or the prospectus of the UCITS scheme, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;

- (c) a description of the means and procedures by which the *depository* will transmit to the *authorised fund manager* all relevant information that the *AFM* 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 *AFM* 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 *depository* will have access to all relevant information it needs to perform its duties;
- (e) a description of the procedures by which the *depository* has the ability to enquire into the conduct of the *AFM* 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 *AFM* can review the performance of the *depository* in respect of the *depository'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 *depository* related to the *issue*, *cancellation*, *sale* and *redemption of units* of the *UCITS scheme*;
 - (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 *competent authorities* of the *UCITS management company's Home State* or the *FSA* in gaining 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:

- (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 case of such 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 such 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; and

[Note: article 36 of the UCITS implementing Directive]

(8) Service level agreement:

The parties to the agreement may include either in the agreement or in a separate written agreement the details of the means and procedures referred to in (1)(c) and (d) above.

[Note: article 37 of the UCITS implementing Directive]

...

7.1 Introduction

Application

- 7.1.1 R (1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of an *ICVC*, a *depository* of an *ICVC*, a *manager* of an *AUT* and a *trustee* of an *AUT*, where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme* in accordance with *COLL 7.1.2* (Table of application).
- (2) *COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.*

Table of application

- 7.1.2 R This table belongs to *COLL 7.1.1R*.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of ICVC</i>	<i>Depository of an ICVC</i>	<i>Manager</i>	<i>Trustee</i>
...						
7.7	x	x	x	x	x	x

...

Temporary suspension of units of a master UCITS

7.2.1A

R Where:

- (1) an authorised fund manager of a UCITS scheme which is a master UCITS temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FSA; or
- (2) a management company of an EEA UCITS scheme which is a master UCITS temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of its Home State regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) is entitled to suspend the issue, cancellation, sale and redemption of its units for the same period of time as the master UCITS.

[Note: article 60.3 of the UCITS Directive]

...

Schemes of arrangement: explanation

7.6.1

G ...

- (3) COLL 7.6.2 R (3) to (6) apply to a domestic UCITS merger or cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.

...

7.7

UCITS mergers

Application

7.7.1

R This section applies to an ICVC, an authorised fund manager of an AUT or ICVC, any other director of an ICVC and the depositary of any such scheme where, in each case, the AUT or ICVC is a UCITS scheme that is a party to:

- (1) a domestic UCITS merger; or
- (2) a cross-border UCITS merger.

7.7.2

- G (1) The effect of COLL 7.7.1 R, and in particular the narrow *Glossary* definition of *domestic UCITS merger* which is drafted in accordance with article 2.1(r) of the *UCITS Directive*, is that this section will have no application in relation to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them has notified its intention to market its *units* in an *EEA State* other than the *United Kingdom* in accordance with the provisions of the *UCITS Directive*.
- (2) For arrangements to constitute a *cross-border UCITS merger*, at least two of the relevant *UCITS* must be:
- (a) established in different *EEA States*; or
 - (b) established in the same *EEA State* and merging into a newly constituted *UCITS* established in another *EEA State*.
- (3) Under the *UCITS Directive* three different kinds of merger operation are recognised by the definition of merger in article 2.1(p), any one of which may form the basis of either a *domestic merger* or a *cross-border merger*. These are in essence:
- (a) an operation where one or more *merging UCITS*, on being dissolved without going into liquidation, transfer all their assets and liabilities to an existing *UCITS* or to any of its *sub-funds* (the *receiving UCITS*), 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 value of those *units*;
 - (b) an operation where two or more *merging UCITS*, on being dissolved without going into liquidation, transfer all their existing assets and liabilities to a *UCITS* or to any of its *sub-funds* (a *receiving UCITS*), which they form for the purpose, 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 value of those *units*;
 - (c) an operation where one or more *merging UCITS*, which continue to exist until the liabilities have been discharged, transfer their net assets to another *sub-fund* of the same *UCITS*, to a *UCITS* which they form for the purpose or to another existing *UCITS* or to any of its *sub-funds* (the *receiving UCITS*).

The Directive does not, however, require all Member States to introduce all of the above three techniques into their national law for the purposes of a *UCITS merger*, but each Member State should recognise a transfer of assets resulting from those techniques. The position under the *UCITS Regulations 2011* is that only the merger technique described at (3)(c) is recognised for those merger purposes, the method that has always been recognised in this country for domestic fund mergers.

- (4) The critical point under the Directive is that in a *cross-border UCITS merger*, the *Home State regulator* of the *receiving UCITS* cannot impose conditions on the merger technique used; only the regulator of the *merging UCITS* has the right to decide whether a technique is permissible or not. The *United Kingdom* must therefore accept *cross-border UCITS mergers* where the *United Kingdom* is the country of the *receiving UCITS* and an *EEA UCITS scheme* (the *merging UCITS*) is terminated and merged under any of the three techniques described in (3), including those at (3)(a) or (b) which are not recognised in this country. Likewise, where a *UCITS scheme* (the *merging UCITS*) wishes to merge into an *EEA UCITS scheme* (the *receiving UCITS*), it may do so under the merger technique described at (3)(c), even though that technique may be unknown in the country in which the *receiving UCITS* is established or indeed in most other Member States.

References to a UCITS scheme

7.7.3 R In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS*, a *receiving UCITS* or to an *EEA UCITS scheme* include the *sub-fund* of any such *scheme*;
- (2) the *management company* of an *EEA UCITS scheme* are, where the *scheme* is an investment company that has not designated a *management company*, to be read as applying to the *scheme* itself.

[Note: article 37 of the *UCITS Directive*]

UCITS mergers

7.7.4 R A *domestic UCITS merger* between one or more *UCITS schemes* or a *cross-border UCITS merger* between one or more *UCITS schemes* which is or are the *merging UCITS* and one or more *EEA UCITS schemes* is permissible provided:

- (1) it is effected in accordance with the requirements of:
- (a) the *UCITS Regulations 2011*, which include the need for the *FSA* to have made a prior order approving the proposed merger (which may be made subject to (2)); and
- (b) this Chapter; and
- (2) as required by *COLL 7.7.19 R* (Approval by unitholders), the required majority (75%) of the relevant *unitholders* of each of the relevant *UCITS schemes* have given their approval for the proposed *UCITS merger* by way of the passing of an *extraordinary resolution of unitholders* in accordance with *COLL 4.3.4 R* (Fundamental change requiring prior approval by

meeting.

[Note: articles 39.1, 39.4 and 44 of the UCITS Directive]

UCITS Regulations 2011

- 7.7.5 G (1) The requirements and the process which must be followed to give effect to a proposal for a UCITS merger as specified by Chapter VI of the UCITS Directive (see articles 37 to 48) have been implemented in the United Kingdom by the provisions of Part 2 of the UCITS Regulations 2011. The main features of the regime include:
- (a) the need for the FSA to give prior approval to the proposed merger under both:
 - (i) regulation 9 (Application for authorisation) of the UCITS Regulations 2011; and
 - (ii) section 251 (Alteration of schemes and changes of manager or trustee) of the Act or regulation 21 (The Authority's approval for certain changes in respect of a company) of the OEIC Regulations;
- where the arrangements proposed constitute either:
- (iii) a domestic UCITS merger; or
 - (iv) a cross-border UCITS merger in which the merging UCITS is a UCITS scheme (a UK UCITS);
- (b) the information that has to be given to the FSA in order to obtain the approval under (a);
 - (c) the need for draft terms of merger to be prepared;
 - (d) the role of the relevant depositaries and auditors;
 - (e) the need for appropriate and accurate information to be prepared for the benefit of unitholders;
 - (f) rights of redemption and suspension of dealing in units in the relevant schemes;
 - (g) a prohibition on any of the legal, advisory or administrative costs in connection with the proposed merger being charged to the relevant schemes or their unitholders;
 - (h) the consequences of the proposed merger; and
 - (i) compliance with COLL 7.6.2 R (3) to (6) (Schemes of arrangement:

requirements) under which 75% of the *unitholders* need to approve the proposed merger by way of the passing of an *extraordinary resolution*.

- (2) A summary of how the regime for UCITS mergers operates is to be found at COLLG [].

Common draft terms of merger

7.7.6

- R (1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger, must in conjunction with any other authorised fund manager or, as the case may be, management company of an EEA UCITS scheme that is a party to the proposed merger, draw up common draft terms of the proposed UCITS merger.
- (2) The common draft terms of the UCITS merger must set out the following particulars:
- (a) an identification of the type of UCITS merger and of the schemes involved;
 - (b) the background to and the rationale for the proposed UCITS merger;
 - (c) the expected impact of the proposed UCITS merger on the unitholders of both the merging UCITS and the receiving UCITS;
 - (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the scheme on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the UCITS Regulations 2011;
 - (e) the calculation method of the exchange ratio;
 - (f) the planned effective date of the UCITS merger;
 - (g) the rules applicable, respectively to the transfer of assets and the exchange of units; and
 - (h) in the case of a UCITS merger where the receiving UCITS or the sub-fund, is being specially formed for the purpose, the instrument constituting the scheme of the newly constituted receiving UCITS.

[Note: article 40 of the UCITS Directive]

7.7.7

- G The management companies of the merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of the UCITS merger.

[Note: article 40.2 of the UCITS Directive]

Verification by the depositary

- 7.7.8 R The depositary of a UCITS scheme that is the merging UCITS or the receiving UCITS in relation to a proposed UCITS merger must verify that the particulars of the common draft terms of the UCITS merger corresponding to points (a), (f) and (g) of COLL 7.7.6 R (2) are in conformity with the provisions of the regulatory system that transpose the UCITS Directive and the instrument constituting the scheme of the UCITS scheme for which it is the depositary.

[Note: article 41 of the UCITS Directive]

Information to be given to unitholders

- 7.7.9 R (1) The authorised fund manager of a UCITS scheme that is either a merging UCITS or a receiving UCITS in relation to a proposed UCITS merger must ensure that appropriate and accurate information on the merger is provided to its unitholders so as to enable them to:
- (a) make an informed judgement 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) exercise their right to vote on whether or not to approve the merger in accordance with COLL 7.7.20 R (Approval by unitholders) or, if applicable, the equivalent national implementing measure of the EEA UCITS scheme's Home State.
- (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 in (1) to:
- (a) the unitholders of the merging UCITS and (in the case of a domestic UCITS merger) the receiving UCITS only after the FSA has given its approval to the UCITS merger proposal under regulation 9 of the UCITS Regulations 2011; and
 - (b) where the receiving UCITS (in the case of a cross-border UCITS merger) is an EEA UCITS scheme, to the unitholders of that scheme only after the Home State competent authority 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 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 depositary on request;
 - (iii) the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge under regulation 12 of the UCITS Regulations 2011 or, if applicable, the equivalent national implementing measure of the EEA UCITS scheme's 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 notification in respect of the merging UCITS or receiving UCITS has been made in accordance with COLL 12.4 (UCITS product passport), the information referred to in (3) shall 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 competent authority. The authorised fund manager of the relevant UCITS scheme must provide an accurate translation of the information.

[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

- 7.7.10 R (1) The information that must be provided to unitholders under COLL 7.7.9 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 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*]

- 7.7.11 G (1) The information provided to *unitholders* under *COLL 7.7.9 R* and *COLL 7.7.12 R* on any proposed *merger* should reflect the different needs of the *unitholders* of the *merging* and the *receiving UCITS* and assist their understanding of what is being proposed.
- (2) The reference to “conversion” in *COLL 7.7.9 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

- 7.7.12 R (1) Where the *merging UCITS* is a *UCITS scheme*, the information that its *authorised fund manager* must provide to its *unitholders* under *COLL 7.7.9 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 *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 7.7.9 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 7.7.9 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 2010 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 information document, it must cross-refer to the parts of the information document where further information is provided.

[Note: article 4 of the UCITS implementing Directive No.2]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

- 7.7.13 R (1) Where the receiving UCITS is a UCITS scheme, the information that its authorised fund manager must provide to its unitholders under COLL 7.7.9R (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 7.7.12 R (2), (3), and (5).

[Note: article 4 of the UCITS implementing Directive No.2]

- 7.7.14 G (1) An authorised fund manager may add other information to that which is required by COLL 7.7.11 R to COLL 7.7.13 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 7.7.12 R (3)(a) to contain a recommendation by the respective manager of the AUT or the directors of an ICVC as to the course of action the unitholders should take.
- (2) Where an authorised fund manager chooses to include a summary of the key points as allowed by COLL 7.7.12 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) of the UCITS implementing Directive No.2]

Key investor information

- 7.7.15 R The authorised fund manager of a merging UCITS must provide an up-to-date version of the key investor information of the receiving UCITS to its existing unitholders.

[Note: article 5.1 of the UCITS implementing Directive No. 2]

- 7.7.16 R (1) Where the receiving UCITS in a cross-border UCITS merger is a UCITS scheme, 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 COLL 7.7.15 R or the equivalent national implementing measure in its Home State.
- (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

- 7.7.17 R Between the date when the information document pursuant to COLL 7.7.9 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 asks to receive copies of the instrument constituting the scheme, prospectus or key investor information of either scheme.

[Note: article 6 of the UCITS implementing Directive No.2]

Method of providing merger information to unitholders

- 7.7.18 R The authorised fund manager of the merging UCITS and the receiving UCITS must provide the information pursuant to COLL 7.7.9 R to COLL 7.7.13 R to unitholders in a durable medium.

[Note: article 7 of the UCITS implementing Directive No.2]

Approval by unitholders

- 7.7.19 R (1) COLL 7.6.2 R (3) and (4) (Schemes of arrangement: requirements) apply to the authorised fund manager of, and an ICVC that is, a UCITS scheme that is a merging UCITS in a domestic or cross-border UCITS merger.
- (2) COLL 7.6.2 R (5) and (6) apply to the authorised fund manager of, and an ICVC that is, a UCITS scheme that is a receiving UCITS in a domestic or cross-border UCITS merger.

[Note: article 44, first paragraph, of the UCITS Directive]

Meetings of unitholders

- 7.7.20 G (1) The effect of COLL 7.7.19 R is that the 75% majority that is needed in support for an extraordinary resolution of unitholders to be passed is without prejudice to the presence quorum that is required by COLL 4.4.6 R (Quorum).
- (2) Any meeting of unitholders that is needed to give effect to a proposed UCITS merger is subject to the requirements of COLL 4.4 (Meeting of unitholders and service of notices).

Effective merger date, exchange ratio calculation date and publication of merger

- 7.7.21 G (1) For a domestic merger and a cross-border merger where the receiving UCITS is established in the United Kingdom:
- (a) the effective date of the merger will be the date specified by the FSA in its order authorising the proposed merger in accordance with regulation 9 of the UCITS Regulations 2011; and
- (b) the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash will be the date specified in the merger document for that purpose.
- (2) For a domestic merger and a cross-border merger where the receiving UCITS is established in the United Kingdom, the FSA will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the Act in accordance with regulation 14 of the UCITS Regulations 2011.

[Note: article 47 of the UCITS Directive]

Merger costs

- 7.7.22 R The authorised fund manager of a UCITS scheme that is either a merging UCITS or a receiving UCITS must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the UCITS merger are not charged to either scheme or to any of its unitholders.

[Note: article 46 of the UCITS Directive]

...

9.2 Section 264 recognised schemes

COLL 9.2.1 G (Information and documents to be supplied with a section 264 notification) is deleted in its entirety. The text is not shown struck through.

Marketing of units of an EEA UCITS scheme

- 9.2.2 G (1) The units of an EEA UCITS scheme in respect of which a notification has been transmitted to the FSA by the competent authority of the scheme's home Member 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) In this Chapter references to an EEA UCITS scheme include its sub-funds.

[Note: article 91.1 and 91.4 of the UCITS Directive]

...

9.4 Facilities in the United Kingdom

...

Documents

- 9.4.2 R (1) ...
- (d) for a section 264 recognised scheme, the *simplified prospectus* EEA key investor information document; and

...

Chapter 11

Master-feeder arrangements under the UCITS Directive

11.1 **Introduction**

Application

11.1.1 R This chapter applies to an *ICVC*, an *ACD*, any other *director* of an *ICVC*, a *depository* of an *ICVC*, a *manager* of an *AUT* and a *trustee* of an *AUT*, where such *AUT* or *ICVC* is a *feeder UCITS* or a *master UCITS* in accordance with *COLL 11.1.2 R* (Table of application).

Table of application

11.1.2 R This table belongs to *COLL 11.1.1 R*

<u>Rule</u>	<u>ICVC</u>	<u>ACD</u>	<u>Any other directors of an ICVC</u>	<u>Depository of an ICVC</u>	<u>Manager</u>	<u>Trustee</u>
<u>11.1.1 R</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>11.1.3 G</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>11.2.1 G</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.2.2 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.1 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.2R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.3 G</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.4 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.5 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.6 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.7 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.8 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.9 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.10 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.11 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.12 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	

<u>11.3.13 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.3.14 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.4.1 R</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>11.4.2 R</u>				<u>x</u>		<u>x</u>
<u>11.4.3 R</u>				<u>x</u>		<u>x</u>
<u>11.4.4 R</u>				<u>x</u>		<u>x</u>
<u>11.4.5 R</u>				<u>x</u>		<u>x</u>
<u>11.5.1 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.5.2 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.5.3 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.5.4 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.5.6 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.1 G</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
<u>11.6.2 R</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	
<u>11.6.3 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.4 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.5 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.6 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.7 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.8 G</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.9 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.10 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.11 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.12 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11.6.13 R</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>COLL</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>	
<u>11</u>						

Annex 1

COLL
11

x

x

x

x

Annex 2

Note 1: “x” means “applies”, but not every paragraph in every rule will necessarily apply.

Note 2: COLL 11.5 (with the exception of COLL 11.5.6R) also applies to auditors.

Purpose

- 11.1.3 G (1) This chapter sets out:
- (a) the notification requirements for a UCITS scheme to be approved as a feeder UCITS under section 283A (Master-feeder structures) of the Act.
 - (b) the requirements which apply to a feeder UCITS where its master UCITS is wound up, merges with another UCITS or is divided into one or more UCITS.
- (2) This chapter also ensures there is a flow of information and documents between a feeder UCITS and its master UCITS. In particular, it allows the authorised fund manager, auditor and depositary of a feeder UCITS to obtain all information and documents necessary to perform their functions.

11.2 **Approval of a feeder UCITS**

Explanation

- 11.2.1 G (1) Section 283A (1) (Master-feeder structures) of the Act, in implementation of article 59.1 of the UCITS Directive, provides that the operator of a UCITS scheme may not invest a higher proportion of scheme property in units of another UCITS than is permitted by rules made by the FSA implementing article 55 of the UCITS Directive, unless the investment is approved by the FSA in accordance with that section.
- (2) The FSA has implemented article 55.1 of the UCITS Directive in COLL 5.2.11 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 R (1) An application for approval of an investment in a master UCITS under section 283A of the Act must be accompanied by the following documents:

- (a) the instrument constituting the scheme of the feeder UCITS and 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 master UCITS;
 - (c) the master-feeder agreement or the internal conduct of business rules in accordance with COLL 11.3.2 R (2);
 - (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 depositaries the information-sharing agreement in accordance with COLL 11.4.1 R (2) (Information sharing agreement between depositaries); 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' Home State regulator that the master UCITS:
- (a) is an EEA UCITS scheme or a sub-fund thereof; 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 or in a language approved by the FSA.

[Note: article 59.3 of the UCITS Directive]

11.3

Coordination and information exchange for master and feeder UCITS

Authorised fund managers of a master UCITS: provision of documentation

- 11.3.1 R The authorised fund manager of a master UCITS must provide the management company of its feeder UCITS with all documents and information necessary for the latter to meet its regulatory obligations under the UCITS Directive.

[Note: article 60.1, first paragraph, first sentence, of the UCITS Directive]

Master-feeder agreement and internal conduct of business rules

- 11.3.2 R (1) For the purposes of COLL 11.3.1 R the authorised fund manager of a feeder UCITS must enter into a master-feeder agreement which, at a minimum,

complies with COLL 11 Annex 1.

- (2) Where a *master UCITS* and a *feeder UCITS* are managed by the same *management company*, the *master-feeder agreement* may be replaced by internal conduct of business rules which, at a minimum, comply with COLL 11 Annex 2.
- (3) The *authorised fund manager* of a *feeder UCITS* must not invest in *units of the master UCITS* in excess of the limit applicable under COLL 5.2.11 R (9) (20%) until the following have become effective:
- (a) the *master-feeder agreement*, or, if applicable under (2), the internal conduct of business rules;
 - (b) the *information-sharing agreement* of the *depositaries* in accordance with COLL 11.4.1 R (2) (*Information sharing agreement between depositaries*); and
 - (c) the *information-sharing agreement* of the *auditors* in accordance with COLL 11.5.1 R (*Auditors*).
- (4) An *authorised fund manager* of a *feeder UCITS* must make a copy of the *master-feeder agreement* or, where applicable, the internal conduct of business rules, available to *unitholders* free of charge on their request.

[Note: article 60.1, first paragraph, last sentence, second and third paragraph, article 61.1 second paragraph and article 62.1 second paragraph of the UCITS Directive]

- 11.3.3 R Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in COLL 11 Annex 1 and COLL 11 Annex 2 to *COLL rules* implementing provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as referring to the corresponding provisions in that *EEA State*.

Law applicable to the master-feeder agreement

- 11.3.4 R (1) Where the *feeder UCITS* and the *master UCITS* are *UCITS schemes*, the *master-feeder agreement* must provide that the law of part of the *UK* applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the *UK*.
- (2) Where the *feeder UCITS* and the *master UCITS* are established in different *EEA States*, the *master-feeder agreement* must provide that the applicable law shall be either:
- (a) the law of the *EEA State* in which the *feeder UCITS* is established;
or

(b) the law of the EEA State in which the master UCITS is established, and that both parties agree to the exclusive jurisdiction of the courts of the EEA State whose law they have stipulated to be applicable to the agreement.

[Note: article 14 of the UCITS implementing Directive No.2]

11.3.5 G In relation to the requirement in COLL 11 Annex 1 (3), where the dealing arrangements between a master UCITS and a feeder UCITS do not differ from those applying to all non-feeder UCITS unitholders of the master UCITS, the master-feeder agreement does not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the prospectus of the master UCITS.

[Note: recital (8) to the UCITS implementing Directive No.2]

Conflicts of interest

11.3.6 R The internal conduct of business rules referred to in COLL 11.3.2 R (2) must include appropriate measures to mitigate conflicts of interest that may arise between:

(a) the feeder UCITS and the master UCITS; or

(b) 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:

(c) SYSC 10.1.4 R (Types of conflict);

(d) SYSC 10.1.6 R (Record of conflicts);

(e) SYSC 10.1.10 R (Conflicts policy);

(f) SYSC 10.1.11 R (Contents of policy);

(g) SYSC 10.1.17 R (Additional requirements for a management company);

(h) SYSC 10.1.19 R (Structure and organisation of a management company);

(i) SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);

(j) SYSC 10.1.21 R (Disclosure of conflicts for UCITS firms and UCITS investment firms); and

(k) 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]

Publication of net asset value of scheme portfolio

- 11.3.7 R (1) The authorised fund managers of a master UCITS and its feeder UCITS must take appropriate measures to coordinate the timing of their net asset value calculation and publication 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 a management company established in an EEA State other than the UK the authorised fund manager must coordinate with that management company.

[Note: article 60.2 of the UCITS Directive]

Obligations of the feeder UCITS

- 11.3.8 R (1) An authorised fund manager of a feeder UCITS must monitor effectively the activity of a 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, depositary or auditor, unless there is reason to doubt their accuracy.

[Note: article 65.1 of the UCITS Directive]

Inducements

- 11.3.9 R Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by:
- (a) a feeder UCITS;
- (b) an authorised fund manager of a feeder UCITS; or
- (c) any person acting on behalf of either the feeder UCITS or the authorised fund manager,

the 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

- 11.3.10 R The authorised fund manager of a master UCITS must immediately inform the FSA of the identity of each feeder UCITS which invests in its units.

[Note: article 66.1 of the UCITS Directive]

- 11.3.11 G Where the FSA is informed in accordance with COLL 11.3.10 R that a feeder UCITS which is an EEA UCITS scheme has invested in units of a master UCITS, section 261A (Information for home state regulator) of the Act and regulation 29A (Information for home state regulator) of the OEIC Regulations require the FSA to inform the Home State regulator of the feeder UCITS immediately.
- 11.3.12 R 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..

[Note: article 66.2 of the UCITS Directive]

- 11.3.13 R An authorised fund manager of a master UCITS must ensure the timely availability of all information that is required in accordance with its regulatory obligations, EU law, national law or the instrument constituting the scheme, to:
- (1) the feeder UCITS, (or where applicable its management company);
 - (2) the competent authority of the feeder UCITS;
 - (3) the depositary 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

- 11.3.14 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 11.3.2 R (2) unless it is satisfied on reasonable grounds that the arrangements with the feeder UCITS will not unfairly prejudice the interests of any 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 depositary of the master UCITS in accordance with COLL 11.4.3 R;

whether it is in the interests of the unitholders in the master UCITS other than the feeder UCITS to make that information available to them, or

- notify them of that matter at the same time; and
- (3) in relation to any matter within (2)(b) where it does not notify to other unitholders at the same time, record the reasons for its decision not to do so.

11.4

Depositories

Information sharing agreement between depositories

- 11.4.1 R (1) An authorised fund manager of a feeder UCITS is responsible for communicating to the depository of the scheme any information about the master UCITS which is required for the completion of the depository's regulatory obligations.
- (2) Where a master UCITS and its feeder UCITS have different depositories, the depositories 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 depositories

- 11.4.2 R (1) The information-sharing agreement referred to in COLL 11.4.1 R (2) must include:
- (a) identification of the documents and categories of information which are to be routinely shared between both depositories, and whether such information or documents are provided by one depository to the other or made available on request;
- (b) the manner and timing, including any applicable deadlines, of the transmission of information by the depository of the master UCITS to the depository of the feeder UCITS;
- (c) the coordination of the involvement of both depositories, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
- (i) the procedure for calculating the net asset value of each scheme, including any measures appropriate to protect against the activities of market timing in accordance with COLL 11.3.7 R (Publication of net asset value of scheme portfolio);
- (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 such transactions, including any arrangement to transfer assets in

kind:

- (d) the coordination of accounting year-end procedures;
 - (e) what details the *depository* of the *master UCITS* must provide to the *depository* of the *feeder UCITS* of breaches by the *master UCITS* of the law and the *instrument constituting the scheme* and how and when such details will be provided;
 - (f) the procedure for handling ad hoc requests for assistance from one *depository* to the other; and
 - (g) identification of particular contingent events which ought to be notified by one *depository* to the other on an ad hoc basis, and how and when this will be done.
- (2) Where a *master-feeder agreement* exists in accordance with COLL 11.3.2 R (1) the information-sharing agreement between the *depositories* of the *master UCITS* and the *feeder UCITS* must provide that:
- (a) the law of the *EEA State* applying to the *master-feeder agreement* shall also apply to the information-sharing agreement; and
 - (b) both *depositories* agree to the exclusive jurisdiction of the courts of that *EEA State*.
- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with COLL 11.3.2 R (2), the information-sharing agreement between the *depositories* of the *master UCITS* and the *feeder UCITS* must provide that:
- (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and
 - (b) both *depositories* agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information sharing agreement.

[Note: articles 24 and 25 of the *UCITS implementing Directive No.2*]

Notification of irregularities

- 11.4.3 R (1) Where a *depository* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depository* must immediately inform:
- (a) the *FSA*;
 - (b) the *feeder UCITS* or, where applicable, its *management company*; and
 - (c) the *depository* of the *feeder UCITS*.
- (2) The irregularities referred to in (1) include, but are not limited to:
- (a) errors in the valuation of the *scheme property* performed in accordance with *COLL 6.3.3 R (Valuation)*;
 - (b) errors in transactions for or settlement of the *sale, issue, repurchase or redemption of units* in the *scheme* undertaken by the *feeder UCITS*;
 - (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
 - (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the scheme*, the *prospectus* or the *key investor information*; and
 - (e) breaches of investment and borrowing limits set out in *UK law*, the *instrument constituting the scheme*, the *prospectus* or the *key investor information*.

[Note: article 61.2 of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No.2]*

- 11.4.4 G (1) When notifying the *FSA* of any irregularities in accordance with *COLL 11.4.3 R (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 *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 interest of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the directors.

[Note: recital (16) to the *UCITS implementing Directive No.2]*

Disclosure by a trustee or depository

- 11.4.5 G Section 351A (Disclosure under the UCITS directive) of the *Act* provides that where a *trustee* of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any person acting on their behalf, makes a disclosure to comply with *rules implementing Chapter VIII of the UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for *feeder UCITS* and *master UCITS* which are structured as *ICVCs*.

11.5 Auditors

Information-sharing agreement between auditors

- 11.5.1 R Where a *master UCITS* and a *feeder UCITS* have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with *COLL 11.5.3 R* and *COLL 11.5.4 R* (Preparation of the audit report).

[Note: article 62.1, first paragraph, of the *UCITS Directive*]

Contents of the information-sharing agreement between auditors

- 11.5.2 R (1) The information-sharing agreement referred to in *COLL 11.5.1 R* must include:
- (a) identification of the documents and categories of information which are to be routinely shared between both auditors;
 - (b) whether the information or documents referred to in (a) are to be provided by one auditor to the other or made available on request;
 - (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the *master UCITS* to the auditor of the *feeder UCITS*;
 - (d) the coordination of the involvement of each auditor in the accounting year-end procedures for their respective *scheme*;
 - (e) identification of matters that must be treated as irregularities and disclosed in the audit report for the *master UCITS* for the purposes of *COLL 11.5.3 R* (2);
 - (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the *master UCITS*; and

- (g) provisions regarding the preparation of the audit reports referred to in COLL 11.5.3 R and COLL 4.5.12R (Report of the auditor) and the manner and timing for the provision of the audit report for the master UCITS (and drafts thereof) to the auditor of the feeder UCITS.
- (2) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report as required by COLL 11.5.4 R and to provide it (and drafts thereof) to the auditor of the feeder UCITS.
- (3) Where the authorised fund manager of a feeder UCITS and the authorised fund manager of a master UCITS have entered into a master-feeder agreement the information-sharing agreement must provide that:
 - (a) the law of the EEA State applying to the master-feeder agreement shall also apply to the information-sharing agreement between auditors; and
 - (b) both auditors agree to the exclusive jurisdiction of the courts of that EEA State.
- (4) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2 R (2) (Internal conduct of business rules) the information-sharing agreement must provide that:
 - (a) the law applying to the information-sharing agreement between both auditors shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and
 - (b) both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information sharing agreement.

Preparation of the audit report

11.5.3 R When preparing its audit report, the auditor of a feeder UCITS must:

- (1) take into account the audit report of the master UCITS; and
- (2) report on any irregularities revealed in the audit report of the master UCITS and their impact on the feeder UCITS.

[Note: article 62.2, first paragraph, first sentence and second paragraph of the UCITS Directive]

- 11.5.4 R Where a *master UCITS* and one or more of its *feeder UCITS* have different accounting years, the auditor of the *master UCITS* shall make an ad hoc report on the closing date of the accounting year of each *feeder UCITS*.

[Note: article 62.2, first paragraph, second sentence, of the *UCITS Directive*]

Disclosure by an auditor

- 11.5.5 G Section 351A of the *Act* provides that where an auditor of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any person acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for *feeder UCITS* and *master UCITS* which are structured as *ICVCs*.

Responsibility of authorised fund managers

- 11.5.6 R The *authorised fund managers* of a *master UCITS* and a *feeder UCITS* must ensure that the auditors of their respective *schemes* comply with the *rules* in this section.

11.6 Winding up, merger and division of master UCITS

Explanation

- 11.6.1 G (1) Section 258A (1) and (2) (Winding up or merger of master UCITS) of the *Act*, as inserted by the *UCITS Regulations 2011*, in implementation of article 60 of the *UCITS Directive*, provide that where a *master UCITS* is wound up, for whatever reason, the *FSA* is to direct the *manager* and *trustee* of any *AUT* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) the *FSA* approves under section 283A (Master-feeder structures) of the *Act* the investment by the *feeder UCITS* of at least 85% of its *scheme property* in *units* of another *master UCITS*; or
- (b) the *FSA* approves under section 252A (Proposal to convert to a non-feeder UCITS) of the *Act* an amendment of the *trust deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A (3) and (4) of the *Act* further provide that where a

master UCITS merges with another UCITS or is divided into two or more UCITS, the FSA is to direct the manager and trustee of any AUT which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

- (a) the FSA approves under section 283A of the Act the investment by the feeder UCITS of at least 85% of its scheme property in units of:
 - (i) the master UCITS which results from the merger;
 - (ii) one of the UCITS resulting from the division; or
 - (iii) another UCITS or master UCITS; or
 - (b) the FSA approves an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS under section 252A of the Act.
- (3) The OEIC Regulations (see regulations 33A and 33B respectively) contain corresponding provisions for feeder UCITS which are structured as ICVCs.

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FSA direction

- 11.6.2 R (1) The winding up of a master UCITS must take place no sooner than 3 months after a notification is made to its unitholders and the competent authorities of the feeder UCITS Home State, informing them of the binding decision to wind up the master UCITS.
- (2) (1) is without prejudice to any provision of the insolvency legislation in force in the United Kingdom regarding the compulsory liquidation of AUTs or ICVCs.

[Note: article 60.4, last sentence, of the UCITS Directive]

Application for approval by a feeder UCITS where a master UCITS is wound up

- 11.6.3 R Where the authorised fund manager of a feeder UCITS is notified that its master UCITS is to be wound up, it must submit to the FSA the following:
- (1) where the authorised fund manager of a feeder UCITS intends to invest at least 85% of its scheme property in units of another master UCITS:
 - (a) its application for approval under section 283A of the Act for that investment;

- (b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the Act or regulation 21 (The Authority's approval for certain changes in respect of a company) of the OEIC Regulations of any proposed amendments to its instrument constituting the scheme;
 - (c) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) (Filing and provision of the prospectus of a master UCITS) and COLL 4.7.7 R (1) (Filing and revision 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 a feeder UCITS intends to convert into a UCITS scheme that is not a feeder UCITS:
- (a) its application for approval under section 252A of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to its instrument constituting the scheme; and
 - (b) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1); and
- (3) where the authorised fund manager of a feeder UCITS intends to wind up the scheme, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of a proposal to that effect.

[Note: article 20.1 of the UCITS implementing Directive No.2]

Timing of applications for approval: winding up of a master UCITS

- 11.6.4 R (1) The information in COLL 11.6.3 R must be submitted no later than two months after the date on which the master UCITS informs 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 informs the authorised fund manager of its feeder UCITS of the binding decision to be wound up more than five months before the date at which the winding up will start, the authorised fund manager must submit the information to the FSA at the latest three months before the day the winding-up will start.

[Note: article 20.2 of the UCITS implementing Directive No.2]

Application for approval by a feeder UCITS where a master UCITS

merges or divides

- 11.6.5 R Where the authorised fund manager of a feeder UCITS is notified that the master UCITS is to merge with another UCITS scheme or EEA UCITS scheme or divide into two or more such schemes, it must submit to the FSA the following:
- (1) where the authorised fund manager of a feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:
 - (a) its application under section 283A of the Act for approval thereof;
 - (b) where applicable, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to the instrument constituting the scheme; and
 - (c) where applicable, the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1);
 - (2) where the authorised fund manager of a feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its scheme property in another master UCITS not resulting from the merger or division:
 - (a) its application under section 283A of the Act for approval of that investment;
 - (b) where applicable, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to its instrument constituting the scheme;
 - (c) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) 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 a feeder UCITS intends to convert into a UCITS scheme that is not a feeder UCITS:
 - (a) its application for approval under section 252A of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to the instrument constituting the scheme; and
 - (b) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) and COLL 4.7.7 R (1); and

- (4) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[Note: article 22.1 of the *UCITS implementing Directive No.2*]

Interpretation of COLL 11.6.5R

- 11.6.6 R (1) For the purposes of COLL 11.6.5 R (1) a *feeder UCITS* will be considered as continuing to be a *feeder UCITS* of the same *master UCITS* where:
- (a) the *master UCITS* is the *receiving UCITS* in a proposed *UCITS merger*; or
 - (b) the *master UCITS* is to continue materially unchanged as one of the resulting *UCITS schemes* or *EEA UCITS schemes* in a proposed division.
- (2) For the purposes of COLL 11.6.5 R (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, due to the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
 - (b) the *feeder UCITS* becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* resulting from a division that is materially different to the *master UCITS*.

[Note: article 22.2 of the *UCITS implementing Directive No.2*]

Timing of applications for approval: merger or division of a master UCITS

- 11.6.7 R (1) The information in COLL 11.6.5 R must be submitted to the *FSA* no later than one month after the date on which the *authorised fund manager* of the *feeder UCITS* receives the information of the planned merger or division in accordance with regulation 13 (5) 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 7.7.9 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, the *authorised fund manager* must submit the information to the *FSA* at least three months before the proposed effective date of the merger or division of the *master UCITS*.

[Note: article 22.1 first sentence and article 22.3 of the *UCITS*]

implementing Directive No.2]

Repurchase or redemption of units in a master UCITS

11.6.8 G Regulation 12(4) (Right of redemption) of the UCITS Regulations 2011 provides that where a master UCITS merges with another scheme the master UCITS must enable its feeder UCITS to repurchase or redeem all the units of the master UCITS in which they have invested before the consequences of the merger become effective, unless the FSA approves the continued investment by the feeder UCITS in a master UCITS resulting from the merger.

11.6.9 R (1) Where:

(a) the authorised fund manager of a feeder UCITS has submitted the documents required under COLL 11.6.5 R (2) and (3); and

(b) does not receive the necessary approvals from the FSA by the working day preceding the last day on which the authorised fund manager of the feeder UCITS can request repurchase and 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 available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(4) Where the authorised fund manager of the feeder UCITS requests repurchase or redemption in accordance with (1), it must receive one of the following:

(a) the repurchase or redemption proceeds in cash; or

(b) some or all of the repurchase or redemption proceeds as a transfer in kind, where the authorised fund manager of the feeder UCITS so wishes and where its instrument constituting the scheme and the master-feeder agreement provide for it.

(5) Where (4)(b) applies, the authorised fund manager of the feeder UCITS may realise any part of the transferred assets for cash at any time.

[Note: articles 23.4 and 23.5 of the UCITS implementing Directive No.2]

Conditions on approval by the FSA

11.6.10 R Where:

- (1) the FSA approves an application under sections 283A (Master-feeder structures) or 252A (Proposal to convert to a non-feeder UCITS) of the Act or regulation 22A of the OEIC Regulations that arises as a result of the winding-up, merger or division of the master UCITS (other than an application pursuant to COLL 11.6.5 R(1)); and
- (2) the authorised fund manager of the feeder UCITS holds or receives cash in accordance with COLL 11.6.9 R(4) or as a result of a winding-up,

the authorised fund manager may not re-invest that cash before the date on which the feeder UCITS is to start to invest in the master UCITS or in accordance with its new investment objectives and policy, except for the purpose of efficient cash management.

[Note: article 23.6 of the UCITS implementing Directive No.2]

11.6.11 G COLL 11.6.10 R gives effect to sections 283A (4) and 252A (4) of the Act and regulation 22A(4) of the OEIC Regulations which require the FSA to impose certain conditions when approving the re-investment of cash received from a master UCITS which has been wound up.

Requirements following approval by the FSA

11.6.12 R Where the authorised fund manager of a feeder UCITS submits the documents required under COLL 11.6.3 R (1), COLL 11.6.3 R (2), COLL 11.6.5 R (1), COLL 11.6.5 R (2) or COLL 11.6.5 R (3) and receives written notice of any required approvals from the FSA it must:

- (1) inform the master UCITS of those approvals; and
- (2) in the case of the required approvals received pursuant to 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 R Where the authorised fund manager of a feeder UCITS gives notice to the FSA under section 251 of the Act or regulation 21 of the OEIC Regulations that it intends to wind up the scheme, it must inform the unitholders of the feeder UCITS of its intention without undue delay.

[Note: articles 20.3 and 22.4 of the UCITS implementing Directive No.2]

COLL 11 Annex 1

This table belongs to the rule on the conclusion and prescribed content of a standard master-feeder agreement (COLL 11.3.2R (1)).

Contents of the standard master-feeder agreement

- (1) Provisions related to access to information by a master UCITS and a feeder UCITS:
- (a) how and when the master UCITS provides the feeder UCITS with a copy of its instrument constituting the scheme, prospectus and key investor information or any amendment thereof;
 - (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 6.6.15 R (Committees and delegation);
 - (c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;
 - (d) what details of breaches by the master UCITS of:
 - (i) the law;
 - (ii) the instrument constituting the scheme; and
 - (iii) the master-feeder agreement,must be notified to the feeder UCITS and the manner and timing thereof;
 - (e) where a feeder UCITS uses derivatives for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to derivatives to enable the feeder UCITS to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and
 - (f) a statement that the master UCITS must inform the feeder UCITS of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.
- (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*.

(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 *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) where necessary, other appropriate measures to ensure compliance with the requirements in *COLL 11.3.6 R* (Publication of net asset value of scheme portfolio);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*;
- (g) procedures to ensure enquiries and complaints from *unitholders* are handled appropriately; and
- (h) where the *instrument constituting the scheme* and *prospectus* of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

(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 *dealing* in its *units*; and

(b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.

(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 coordination 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 *feeder UCITS* in accordance with COLL 11.5.3 R.

(6) **Provisions related to changes to the standing arrangements:**

How and when notice is to be given:

(a) by the *master UCITS* of proposed and effective amendments to its instrument constituting the scheme, prospectus and key investor information, if these details differ from the standard arrangements for notification of *unitholders* laid down in the instrument constituting the scheme or prospectus of the *master UCITS*;

(b) by the *master UCITS* of a planned or proposed liquidation, 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: articles 8, 9, 10, 11, 12 and 13 of the *UCITS implementing Directive No.2*]

COLL 11 Annex 2

This table belongs to the *rule* on the conclusion and prescribed content of the internal conduct of business rules (COLL 11.3.2 R (2)).

Contents of the internal conduct of business rules

(1) 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*.

(2) 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 *master UCITS* or the *feeder UCITS* are listed or traded on a secondary market;
- (d) appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Conflicts of interest);
- (e) where the *units* of the *feeder UCITS* and the *master UCITS* are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or *redemptions* of *units* of the *master UCITS* including, where agreed between the parties, the terms on which the *master UCITS* may settle *redemption* requests by a transfer of assets in kind to the *feeder UCITS*, notably where a *master UCITS* is wound up, merges with another *UCITS scheme* or *EEA UCITS scheme* or divides into two or more such *schemes*; and
- (g) where the *instrument constituting the scheme* and *prospectus* of the *master UCITS* give it certain rights or powers in relation to *unitholders*, and the *master UCITS* chooses to limit or forego the exercise of all or any such rights and powers in relation to the *feeder UCITS*, a statement of the terms on which it does so.

(3) 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 *dealing in its units*; and
 - (b) the arrangements for notifying and resolving pricing errors in the *master UCITS*.
- (4) **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 coordination 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 11.5.3 R* (Publication of net asset value of scheme portfolio).

[Note: articles 16, 17, 18 and 19 of the *UCITS implementing Directive No.2*]

Chapter 12

Management company and product passport under the UCITS Directive

12.1 Introduction

Application

12.1.1

R This chapter applies to:

- (1) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
- (2) (a) an *EEA UCITS management company* that acts as:
 - (i) the *manager* of an *AUT*; or
 - (ii) the *ACD* of an *ICVC*;
- (b) any other director of an *ICVC*; and
- (c) an *ICVC*;

that is a UCITS scheme.

Purpose

12.1.2

- G (1) This chapter contains rules and guidance relating to the operation of the management company passport under the UCITS Directive and explains how the passporting regime applies to:
- (a) a UK UCITS management company that operates an EEA UCITS scheme; and
- (b) an EEA UCITS management company that acts as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme;
- whether from a branch it establishes in an EEA State other than the one in which it is established or under the freedom to provide cross border services.
- (2) COLL 12.4 (UCITS product passport) contains rules and guidance relating to the operation of the product passport under the UCITS Directive under which a UCITS established in one EEA State may passport into and be marketed in another EEA State.

12.2 **UK UCITS management companies**

Application

12.2.1

- R This section applies to a UK UCITS management company that operates an EEA UCITS scheme.

References in COLL to authorised fund manager

12.2.2

- R Where this chapter refers to rules in any other part of this sourcebook, references in those rules and any relevant guidance to an authorised fund manager, AFM or operator of a UCITS scheme are to be interpreted as if they are referring to a UK UCITS management company of the EEA UCITS scheme.

Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

12.2.3

- R A UK UCITS management company that operates an EEA UCITS scheme by establishing a branch or under the freedom to provide cross border services must in relation to such business activities comply with the FSA's rules which relate to:
- (1) the organisation of the management company, including delegation arrangements;

- (2) risk-management procedures;
- (3) prudential rules and supervision;
- (4) operating conditions; and
- (5) reporting requirements.

[Note: article 19.1 of the UCITS Directive]

Fund rules: UK UCITS management companies operating either from a branch or on a services basis in another Member State

12.2.4

- G A UK UCITS management company which carries on the activity of collective portfolio management for an EEA UCITS scheme in another EEA State by establishing a branch or under the freedom to provide cross border services has in relation to such business activities to comply with the rules drawn up by the EEA State in which that scheme is established, in implementation of its obligations under articles 19.3, 19.4 and 19.6 of the UCITS Directive – see COLL 12.3.9 R (COLL fund rules under the management company passport: the fund application rules), COLL 6.6.3R (Functions of the authorised fund manager) and COLL 12.3.8 R (Arrangements and organisational requirements necessary to ensure compliance with COLL) respectively for the FSA’s equivalent rules.

[Note: articles 19.3, 19.4 and 19.6 of the UCITS Directive]

Rules of conduct: UK UCITS management companies operating on a branch basis in another Member State

12.2.5

- G (1) Each EEA State, including the United Kingdom, is required to implement article 14 of the UCITS Directive by drawing up rules of conduct which management companies authorised in that State must observe at all times. The implementing measures that have been transposed in the United Kingdom are described further in COLL 12.2.6 G.
- (2) A UK UCITS management company when operating an EEA UCITS scheme from a branch in a EEA State other than the UK, should be aware that it will have to comply with the rules of conduct drawn up by that Host State in implementation of its obligations under article 14.

[Note: articles 14 and 17.4 of the UCITS Directive]

Rules of conduct: UK UCITS management companies operating on a services basis in another Member State

12.2.6

G The effect of article 18.3 of the *UCITS Directive* is that a *UK UCITS management company* pursuing *collective portfolio management* activities for an *EEA UCITS scheme* under the freedom to provide *cross border services* (otherwise than by establishing a *branch* in that State) has to comply with the relevant requirements of the *FSA Handbook* in relation to such business, as follows:

- (1) *COLL 6.6A.2 R* (Duties of AFMs of UCITS schemes to act in the best interests of the UCITS scheme and its unitholders);
- (2) *COLL 6.6A.4 R* (Due diligence requirements of AFMs of UCITS schemes);
- (3) *COLL 6.6A.5 R* (Compliance with regulatory requirements);
- (4) *SYSC 4.1.2C R* (Resources for management companies); and
- (5) *SYSC 10.1.20 R* (Avoidance of conflicts of interests for a management company).

[Note: article 14 and article 18.3 of the *UCITS Directive*]

Notification to the UCITS Home State regulator

12.2.7

- G** (1) A *UK UCITS management company* which applies to manage an *EEA UCITS scheme* in another *EEA State* is advised that it must comply with the requirements of the *Host State regulator* regarding provision to them of the following documentation:
- (a) the written agreement it has entered into with the depositary of the *EEA UCITS scheme*, as referred to in articles 23 and 33 of the *UCITS Directive*; and
 - (b) information on delegation arrangements (if any), regarding functions of investment management and administration which are to be delegated to a third party.
- (2) If the *UCITS management company* already manages other *UCITS* of the same type in the *EEA State* referred to in (1), reference to the documentation already provided should be sufficient.
- (3) Any subsequent material modifications of the documentation referred to in (1) must be notified by the *UK UCITS management company* to the *Host State regulator*.

[Note: article 20.1 and 20.4 of the *UCITS Directive*]

Requirement to make information available to the public or the competent authority of the scheme's Home Member State

- 12.2.8 G *A UK UCITS management company which pursues the activity of collective portfolio management for an EEA UCITS scheme by establishing a branch in another EEA State or in accordance with the freedom to provide cross border services is advised that in accordance with the requirements of the Host State regulator it must establish appropriate procedures and arrangements to make information available at the request of the public or that regulator.*

12.3 EEA UCITS management companies

Application

- 12.3.1 R *This section applies to an EEA UCITS management company of an AUT or an ICVC which is a UCITS scheme.*

Purpose

- 12.3.2 G (1) *An EEA UCITS management company may be the manager of an AUT or the ACD of an ICVC, that is a UCITS scheme (see the EEA rights of such a firm under Schedule 3 to the Act).*
- (2) *An EEA UCITS management company that acts as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme may do so from a branch in the UK or under the freedom to provide cross border services (without establishing a branch in the UK).*
- (3) *The Glossary definition of an “authorised fund manger” includes such a firm.*
- (4) *This section provides for the application of COLL to such a firm.*

[Note: article 16.1 of the UCITS Directive]

Further reading on the UCITS management company passport regime

- 12.3.3 G *A summary of how the passport for UCITS management companies established by the UCITS Directive is intended to operate, including the processes for applying for the necessary approvals and describing the regulatory split of responsibilities between the competent authorities of the relevant Home State and Host State, is to be found at Chapter 2 of COLLG.*

[Link]

Provision of documentation to the FSA: EEA UCITS management companies

- 12.3.4 R (1) An EEA UCITS management company which applies to manage a UCITS scheme under paragraph 15A (1) of Schedule 3 to the Act must provide the FSA with the following documentation:
- (a) the written agreement that has been entered into with the depositary of the scheme, as referred to in COLL 6.6.4 R (6) (General duties of the depositary); and
 - (b) information on delegation arrangements it has made regarding the functions of investment management and administration, as referred to in Annex II of the UCITS Directive.
- (2) The requirement in (1) is in addition to submission of the form required under SUP 13A Annex 3R – EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom.
- (3) If the EEA UCITS management company already manages other UCITS schemes of the same type in the United Kingdom, reference to the documentation already provided to the FSA is sufficient compliance with (1).
- (4) If any subsequent material modification is made to any of the documents referred to in (1), the EEA UCITS management company must promptly notify the FSA of those changes.

[Note: article 20.1, first and second paragraphs, and article 20.4 of the UCITS Directive]

UCITS management company passport: COLL rules that must be complied with by EEA UCITS management companies operating either on a branch or services basis

- 12.3.5 R An EEA UCITS management company which pursues the activity of collective portfolio management for a UCITS scheme either by establishing a branch in the United Kingdom or in accordance with the freedom to provide cross border services must comply with the following rules of COLL:

- (1) the fund application rules (see COLL 12.3.9 R) which relate to the constitution and functioning of the UCITS scheme; and
- (2) COLL 6.6.3 R (Functions of the authorised fund manager) and COLL 12.3.8 R (Arrangements and organisational requirements necessary to ensure compliance with COLL).

[Note: articles 16.3, 19.3, 19.4 and 19.6 of the UCITS Directive]

Conduct of business rules for branch operations: EEA UCITS management companies

12.3.6 R In addition to COLL 12.3.5 R, an EEA UCITS management company which pursues the activity of collective portfolio management from a branch in the United Kingdom by acting as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme must comply with the following rules:

- (1) COLL 6.6A.2 R (Duties of AFMs of UCITS schemes to act in the best interests of the UCITS scheme and its unitholders);
- (2) COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes);
- (3) 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
- (4) COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company).

[Note: articles 14, 16.3 and 17.4 of the UCITS Directive]

Conduct of business rules for service operations: EEA UCITS management companies

12.3.7 G The effect of article 18.3 of the UCITS Directive is that an EEA UCITS management company carrying on collective portfolio management activities for a UCITS scheme on a cross-border basis under the freedom to provide cross border services has, in addition to complying with the fund application rules for UCITS schemes (see COLL 12.3.9 R) and COLL 12.3.8 R (Arrangements and organisational requirements necessary to ensure compliance with COLL), 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.

[Note: article 18.3 and article 19.3 of the UCITS Directive]

Arrangements and organisational decisions necessary to ensure compliance with COLL

12.3.8

R An EEA UCITS management company which pursues the activity of collective portfolio management in the United Kingdom, by acting as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme, either by establishing a branch in the United Kingdom or in accordance with the freedom to provide cross border services must decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the fund application rules and with the obligations set out in the instrument constituting the scheme and the prospectus of that scheme.

[Note: articles 16.3 and 19.6 of the UCITS Directive]

COLL fund rules under the management company passport: the fund application rules

12.3.9

R An EEA UCITS management company which pursues the activity of collective portfolio management in the United Kingdom, by acting as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme, either by establishing a branch or in accordance with the freedom to provide cross border services must comply with the rules of the FSA Handbook which relate to the constitution and functioning of the UCITS scheme, as follows:

- (1) the setting up and authorisation of the UCITS scheme (COLL 1 (Introduction), COLL 2 (Authorised fund applications), COLL 3 (Constitution), COLL 6.5 (Appointment and replacement of the authorised fund manager and the depositary), COLL 6.6 (Powers and duties of the scheme, the authorised fund manager and the depositary) (unless disapplied), COLL 6.7 (Payments), COLL 6.9.1 R (Application) to COLL 6.9.8 G (Undesirable or misleading names: umbrellas – guidance) and COLL 6.9.11 R (Notification to the FSA in its role as registrar of ICVCs);
- (2) the issue and redemption of units (COLL 6.1 (Introduction and application), COLL 6.2 (Dealing) (with the exception of COLL 6.2.19 R (Limited redemption) and COLL 6.2.20 G (Limited redemption: guidance) and COLL 7.2 (Suspension and restart of dealings);
- (3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales (COLL 5.1 (Introduction) to COLL 5.5 (Cash, borrowing, lending and other provisions), COLL 5.8 (Investment powers and borrowing limits for feeder UCITS), COLL 6.12 (Risk management policy and risk measurement) and COLL 11 (Master-

feeder arrangements under the UCITS directive);

- (4) the value of the *scheme property* and the accounting of the *UCITS scheme* (COLL 6.1(Introduction and application) and COLL 6.3 (Valuation and pricing));
- (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) to COLL 4.7 (Key investor information and other marketing literature));
- (8) the arrangements made for *marketing* (COLL 4.7 (Key investor information and other marketing literature), COBS 4.2 (Fair, clear and not misleading communications) and COBS 4.3 (Communications with retail clients));
- (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 (6));
- (11) where applicable, the content of the *unitholder 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) and COLL 4.4 (Meetings of unitholders)); and
- (13) the application and periodic fees of the *UCITS scheme (FEES)*.

[Note: articles 16.3 and 19.3 of the UCITS Directive]

Requirement to make information available to the public or the FSA

- 12.3.10 R (1) An EEA UCITS management company which pursues the activity of collective portfolio management in the United Kingdom, by acting as

the manager of an AUT or the ACD of an ICVC that is a UCITS scheme, either by establishing a branch in the United Kingdom or in accordance with the freedom to provide cross border services must establish appropriate procedures and arrangements to make information available at the request of the public or the FSA.

- (2) The EEA UCITS management company must ensure that the procedures and arrangements it establishes in accordance with (1), enable the FSA to obtain any information it requests directly from the management company.

[Note: articles 15, second paragraph and 21.2, third paragraph, of the UCITS Directive]

12.4 UCITS product passport

Application

12.4.1 R This section applies to:

- (1) an authorised fund manager of an AUT or ICVC;
(2) any other director of an ICVC; and
(3) an ICVC;

which is a UCITS scheme in respect of which the FSA has in accordance with paragraph 20B (4) (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 the requisite information referred to in paragraph 20B(2) has been transmitted to the appropriate Host State regulator and whose units may therefore be marketed in that EEA State.

12.4.2 G The effect of article 58.4 (b) of the UCITS Directive is that a master UCITS which only has one or more feeder UCITS in another EEA State and therefore does not raise capital from the public in that EEA State will not be exercising its right to market its units in accordance with Chapter XI of the UCITS Directive and is therefore not considered a UCITS scheme for the purposes of this section.

[Note: article 58.4(b) of the UCITS Directive]

Availability of facilities

12.4.3 G The authorised fund manager of a UCITS scheme whose units are being marketed in another EEA State should be aware that it will be required by the rules of the Host State regulator to maintain facilities in that EEA State, including for making payments to unitholders, repurchasing or redeeming

units and making available the information which is required to be provided in relation to the *scheme*.

[Note: article 92 of the UCITS Directive]

Keeping fund documentation up to date and notification of changes

- 12.4.4 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in another *EEA State* must ensure that:
- (a) its *instrument constituting the scheme*, its *prospectus* and, where appropriate, its latest annual report and any subsequent half-yearly report; and
 - (b) its *key investor information document*;
- together with their translations, are kept up to date.
- (2) The *authorised fund manager* must notify any amendments to the documents referred to in (1) to the *competent authority* of any *Member State* in which *units* of the *scheme* are being marketed and shall 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 notice of intention made to the *FSA* in accordance with paragraph 20B of Schedule 3 to the *Act*, or a change regarding the share *classes* to be marketed, the *authorised fund manager* must give written notice of the change to the *Host State regulator* of each *EEA State* in which *units* are being marketed before implementing the change.
- (4) For the purposes of (3), the *authorised fund manager* may give written notice of the change to each *Host State regulator* by sending an e-mail to the e-mail address, as below, designated and maintained by the *FSA* and to which each relevant *Host State regulator* has electronic access in accordance with paragraph 20B (3) (Information for host state regulator) of Schedule 3 to the *Act*.
- [email address]**
- (5) The e-mail referred to in (4) notifying the update or amendment may either describe the update or the amendment that has been made, or 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 32.3 of the UCITS implementing

Directive No.2]

Provision of information and documents

- 12.4.5 **R** (1) Where the *units* of a *UCITS scheme* are being marketed in another *EEA State*, the *authorised fund manager* of the *scheme* must ensure that investors within the territory of such *EEA State* (the *Host State*) are provided with all the information and documents which it is required by the *FSA Handbook* to provide to investors in the *United Kingdom*.
- (2) The information and documents referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the *Host State* and in compliance with the following provisions:
- (a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by the *Host State regulator* of that State;
- (b) information or documents other than the *key investor information document* (the *prospectus*, the *instrument constituting the scheme* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language approved by the *Host State regulator* of that State or provided in a language customary in the sphere of international finance; and
- (c) accurate translations of information or documents under (1)(a) or (b) must be produced under the responsibility of the *authorised fund manager*.
- (3) Where the *units* of a *UCITS scheme* are being marketed in another *Member State*, the *authorised fund manager* of the *scheme* must ensure that it makes available to the investors within the territory of the *Host State* copies of the most recent versions of the *prospectus*, the *instrument constituting the scheme* and the latest annual and half-yearly long reports of the *scheme* in the manner specified in the *prospectus* and the *key investor information document*, supplying paper copies of them to any purchaser of *units* free of charge on request.
- (4) The requirements in (1) also apply to any changes to the information or documents referred to in that paragraph.

[Note: articles 94.1 and 94.2 of the *UCITS Directive*]

12.4.6 G The frequency of the publication of the *issue*, sale, repurchase or *redemption* price of *units* of the *UCITS* scheme when they are marketed in another Member 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 R For the purpose of pursuing its *marketing* activities in another *EEA State*, an *authorised fund manager* of a *UCITS* scheme may use the same reference to the scheme's legal form (such as *open-ended investment company* or *investment company with variable capital* or *authorised unit trust*) in its designation in a *Host State* as is used in the *United Kingdom*.

[Note: article 96 of the *UCITS Directive*]

UCITS Host Member State's access to documents and updates of documents

12.4.8 R (1) Where the *units* of a *UCITS* scheme are being marketed in another *EEA State*, the *authorised fund manager* of the *UCITS* scheme 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* of the *UCITS* scheme in the notification letter submitted to the *FSA* under paragraph 20B of Schedule 3 to the *Act* or any updates thereof.

(2) Any document that is made available on a website referred to in (1) must be provided in an electronic format in common use.

(3) The *authorised fund manager* of the *UCITS* scheme must ensure that each *Host State regulator* of an *EEA State* in which its *units* are or are to be marketed has access to the website referred to in (1).

[Note: article 31 of the *UCITS implementing Directive No.2*]

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COLL TP 1 Transitional Provisions

COLL TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
	Extra time provisions				
...					
<u>17</u>	<u>COLL 4.5.5 R (1)(a)(iv) and COLL 4.5.9 R (9A)</u>	<u>R</u>	<u>An AFM need not include in its short report or the authorised fund manager’s report for a UCITS scheme the figure for the risk and reward indicator that would have been disclosed in its most recent key investor information document for as long as marketing for the scheme is done on the basis of a simplified prospectus that meets the requirements of the Handbook.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
	<u>[Note: article 118.2 of the UCITS Directive]</u>				
<u>18</u>	<u>Each and every rule in COLL that relates to key investor information</u>	<u>R</u>	<u>(1) This rule applies to:</u> <u>(a) an authorised fund manager of a UCITS scheme; and</u> <u>(b) any other director of an ICVC and an ICVC which is a UCITS scheme.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>

(2)	<u>A person in (1) need not comply with any rule in COLL that relates to key investor information provided it continues to produce, publish, provide, and meet all other applicable regulatory requirements in relation to, a simplified prospectus for the UCITS scheme as set out in COLL 4.6 (Simplified Prospectus provisions) (as it stands at 30 June 2011), and all references in any rule in COLL to key investor information should be read as references to the simplified prospectus.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
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[Note: article 118.2 of the UCITS Directive]

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COLL Sch 1 Record keeping requirements

COLL Sch 1.1	G	Record keeping requirements		
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Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
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<u>COLL 6.13.2 R</u>	<u>Portfolio transactions made relating to UCITS</u>	<u>Full details</u>	<u>After transaction</u>	<u>5 years</u>
<u>COLL 6.13.3 R</u>	<u>Subscription and redemption orders</u>	<u>Full details</u>	<u>After receipt of order</u>	<u>5 years</u>
<u>COLL 6.13.4 R</u>	<u>Records referred to in COLL 6.13.2 R and COLL 6.13.3 R</u>	<u>Full details</u>	<u>After termination of authorisation of UCITS management company</u>	<u>Outstanding term of 5 year period</u>

...

COLL Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>COLL 6.12.2 R</u>	<u>Risk management process</u>	<u>Details in COLL 6.12.2R (a) and (b) and any material alterations thereof</u>	<u>On first use of process</u>	<u>On a regular basis and at least annually</u>
...				
<u>COLL 11.3.10 R</u>	<u>Identity of investing feeder UCITS</u>	<u>Full details</u>	<u>After investment</u>	<u>Immediate</u>
<u>COLL 11.4.3 R</u>	<u>Notification of irregularities relating to a master UCITS</u>	<u>Full details</u>	<u>Detection</u>	<u>Immediate</u>

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Annex I

Amendments to the Perimeter Guidance Manual (PERG)

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

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PERG 13.2 General

PERG ...
13.2

Q6. We are a UCITS management company that, in addition to managing unit trusts and investment companies, provides portfolio management services to third parties. How does MiFID apply to us?

If you are the ~~management company~~ management company of a *UCITS scheme* with a permission to manage investments including MiFID financial instruments pursuant to ~~article 5.3~~ article 6.3 *UCITS Directive*, certain MiFID provisions apply to you when you provide investment services to third parties (see ~~article 5.4~~ article 6.4 *UCITS Directive*). These include capital endowment, organisational and conduct of business requirements. You are a *UCITS investment firm* for the purposes of the FSA Handbook. ~~Article 5.4~~ Article 6.4 *UCITS Directive* is reflected in paragraph (3) of the *Handbook* definition of “MiFID investment firm”.

...