

Chapter 4

Investor Relations

4.3 Approvals and notifications

Application

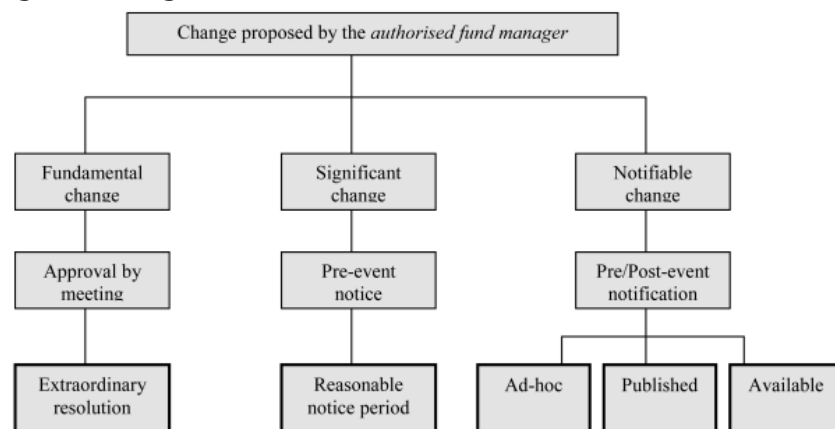
4.3.1 **R** This section applies to an *authorised fund manager*.

Explanation

- 4.3.2 **G**
- (1) The diagram in **COLL 4.3.3 G** explains how an *authorised fund manager* should treat changes it is proposing to a *scheme* and provides an overview of the *rules* and *guidance* in this section.
 - (2) Regulation 21 of the *OEIC Regulations* (The Authority's approval for certain changes in respect of a company), section 261Q of the *Act* (Alteration of contractual schemes and changes of operator or depositary) and section 251 of the *Act* (Alteration of schemes and changes of manager or trustee) require the prior approval of the *FCA* for certain proposed changes to an *authorised fund*, including a change of the *authorised fund manager* or *depositary* or a change to the *instrument constituting the fund*. This should be kept in mind when considering any proposed change.

Diagram: Change event

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



Fundamental change requiring prior approval by meeting

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

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

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

Guidance on fundamental changes

4.3.5

G

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

4.3.6

R

Significant change requiring pre-event notification

- (1) The *authorised fund manager* must give prior written notice to *unitholders*, in respect of any proposed change to the operation of a *scheme* that, in accordance with (2), constitutes a significant change.
- (2) A significant change is a change or event which is not fundamental in accordance with ■ COLL 4.3.4 R but which:
- (a) affects a *unitholder's* ability to exercise his rights in relation to his investment; or
 - (b) would reasonably be expected to cause the *unitholder* to reconsider his participation in the *scheme*; or
 - (c) results in any increased payments out of the *scheme property* to an *authorised fund manager* or any other *director* of an *ICVC* or an *associate* of either; or
 - (d) materially increases other types of payment out of *scheme property*.

- (3) The notice period in (1) must be of a reasonable length (and must not be less than 60 days).

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

Guidance on significant changes

4.3.7

G

- (1) Changes may be significant depending in each case on their degree of materiality and effect on the *scheme* and its *unitholders*. Consequently the *authorised fund manager* will need to determine whether in each case a particular change is significant in nature or not.
- (2) For the purpose of ■ COLL 4.3.6 R a significant change is likely to include:
- (a) a change in the method of *price* publication;
- (b) a change in any operational policy such as dilution policy or allocation of payments policy;
- (c) an increase in the *preliminary charge* where *units* are purchased through a *group savings plan*; or
- (d) a change in the *pricing* arrangements for *units* of the *scheme* so as to cause a *single-priced authorised fund* to become a *dual-priced authorised fund*, or vice versa.
- (3) Where the *directors* of an *ICVC* elect to discontinue holding annual general meetings under paragraph 37A of the *OEIC Regulations*, they are required to give 60 days' written notice to *shareholders*. For the purpose of ■ COLL 4.3.6 R this should be treated as a significant change to the operation of the *scheme*.
- (4) The requirement in ■ COLL 4.3.6A R (1) applies in all cases where the outgoing *authorised fund manager* (whether established in the *United Kingdom* or in another *EEA State*) is to be replaced by an

authorised fund manager established in any other *EEA State* (including the *United Kingdom*).

Notifiable changes

4.3.8

R

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

Guidance on notifiable changes

4.3.9

G

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

Appointment of an AFM without prior written notice to Unitholders

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 ■ COLL 6.5.4 R (3) (Termination of appointment of an *ACD*); or

(b) in the case of an *AUT* or *ACS*, the replacement of the *authorised fund manager* under ■ COLL 6.5.7 R (2) (Replacement of an authorised fund manager of an *AUT* or *ACS*);

must, if the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be notified to *unitholders*.

(2) The new *authorised fund manager* must immediately notify *unitholders* of its appointment under (1) in an appropriate manner.

Change events relating to feeder UCITS and feeder NURS

4.3.11

R

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

- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* or *feeder NURS* in accordance with the *rules* in this section; and
- (2) (a) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*; or
 - (b) for a significant change, give written notice to *unitholders* of that change; or
 - (c) for a notifiable change, comply with ■ COLL 4.3.8 R (Notifiable changes).

4.3.12

R

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

4.3.13

G

- (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master scheme* in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS*. In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme*, the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with ■ COLL 11.2.2 R (Application for approval of an investment in a master UCITS).
- (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder UCITS* or

feeder NURS if the *prices* of its own *units* continue to be published in the same way.

- (3) Where the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* receives insufficient notice of the intended change to the *master UCITS* or *qualifying master scheme* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS* or *feeder NURS*.