The Investment Association
The Depositary and Trustee Association
The Association of Real Estate Funds

MEMBER GUIDANCE

Authorised Fund Suspensions Q&A

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Glossary

CIS	Collective Investment Scheme and, in this Q&A, a generic term used to describe UK authorised unit trusts, open ended investment companies and authorised contractual schemes
COLL	The *FCA's* Collective Investment Schemes Sourcebook
Depositary	A generic term used to describe the Depositary of an open-ended investment company or authorised contractual scheme and the Trustee of an authorised unit trust
Fair Value Pricing	In accordance with the *Manager's* fair pricing policy, the *Manager's* best estimate of the value of one or more securities at the *Valuation Point* of the fund, with the intention of producing a "fairer" dealing price, where there is doubt over the validity of those prices
FCA	The UK's Financial Conduct Authority
FIIA	A Fund Investing in Inherently Illiquid Assets, as defined in the *FCA's* Glossary.
FUND	The *FCA's* Investment Funds Sourcebook
HMRC	HM Revenue and Customs
In specie	'In specie' means literally 'in its actual form'. An *in specie* transfer is the distribution of assets in their present form, rather than selling the assets and distributing the net cash proceeds from that sale
IOSCO	International Organisation of Securities Commissions
ISA	Individual Savings Account
Manager	A generic term used to describe both the authorised fund manager (AFM) of an authorised unit trust and the authorised corporate director (ACD) of an open-ended investment company
NURS	A *CIS* which does not comply with the requirements of the UCITS Directive, but which is subject to the same level of investor protection and can be marketed within the UK to retail investors
QIS	Qualified Investor Schemes are *CIS* that meet the requirements of *COLL* Chapter 8
SIV	A Standing Independent Valuer appointed to value immovables held by a *CIS*
UCITS	A *CIS* that complies with the UCITS Directive
Valuation Point	A valuation point fixed by the *Manager* for the purpose of *COLL* 6.3.4R or *COLL* 8.5.9R

Suspensions Q&A

1. What are the UK regulatory obligations regarding suspensions?

a. *FCA* regulation

i. The decision to suspend

A *UCITS* or *NURS* should be suspended only in exceptional cases where circumstances so require and provided it is in the best interests of unitholders within the fund. Before making the decision to suspend, the *Manager* and/or *Depositary* should ensure that any alternative courses of action have been discounted (*COLL* 7.2.2 G (1)). If after all other options have been considered and the *Manager* decides that it is necessary to invoke a suspension, prior agreement should be obtained from the *Depositary*. The *Depositary* may also invoke a suspension (see below), and in such cases the *Manager* is obliged to comply with the *Depositary's* decision without delay (*COLL* 7.2.1 R (1)). The *Manager* is required to ensure that any suspension is temporary, of minimal duration and is consistent with the provisions of the prospectus and the instrument constituting the scheme (*COLL* 7.2.2 G (2)).

In the case of a feeder scheme referred to in *COLL* 7.2.1A, where its master scheme suspends its units, the *Manager* of such a feeder is entitled to suspend dealing in the feeder's units for the same period of time as the master.

From September 2020[1], a *Manager* of a *NURS* must automatically suspend where the *SIV* has expressed material uncertainty over 20% or more of the fund's assets. Suspension must take place by the end of the second day after material uncertainty has been expressed (*COLL* 7.2.-3 (2)). The rule applies where over 20% of the fund's assets are held in suspended funds. The *Depositary* must be notified before suspension occurs (*COLL* 7.2.-2 (2)) (It would be best practice to notify the *Depositary* whenever the declaration of material uncertainty by a *SIV* has affected the valuation of any assets held by a fund, even if the value of these is less than 20% of the fund's assets and the fund is not required to suspend).

If the *SIV* has expressed material uncertainty, dealing in the fund may continue in certain, limited circumstances, where the *Manager* and *Depositary* agree that suspension would not be in the best interests of unitholders and that dealings may continue. This determination must not be based solely on a fair value price adjustment (*COLL* 7.2.-3 (3)).

In the case of *QIS*, any suspension must only be where the *Manager* has determined on reasonable grounds that there is good and sufficient reason in the interests of unitholders or potential unitholders and the *Manager* must have regard to the interests of all the unitholders in the scheme in reaching such an opinion (*COLL* 8.6.3 R (2)).

ii. Responsibility of the *Manager*

Actions immediately after deciding to suspend

Where the *Manager* makes the decision to suspend the fund, it is its responsibility to inform the *FCA* immediately of the decision, stating the reason for its action, and to confirm this in writing. Whilst the rules do not require pre-notification, the *FCA* encourages early engagement with it regarding potential suspension.

The *Manager* must also write to the Home State regulator in each EEA state in which the *Manager* holds itself out as willing to sell or redeem units of the fund concerned (*COLL* 7.2.1 R (2)) and comply with similar obligations it may have in any other locations the fund is registered in.

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[1] The *FCA* encourages early adoption of the new rules where this is in the best interests of investors and there is no conflict with rules applicable until that date.

Once the decision has been made to suspend a fund, the *Manager* is required to notify unitholders as soon as practicable of the suspension and the reason for suspending (*COLL* 7.2.1 R (2A) and (B)). When deciding the form of communication with unitholders, the *Manager* should take into account the number of unitholders, their profile and the extent to which some or all of them may act as intermediaries for end investors. Publishing a notice on a website may be an adequate means of communication, if the *Manager* has reasonable grounds for thinking all unitholders can be expected to have access to it. Communication by email or telephone is clearly practicable where up-to-date contact details are available. Publishing a notice in the national press could be another approach. If the exceptional conditions causing the suspension are reasonably expected to endure for some time, a hard-copy mailing to unitholders is likely to be the most effective way of meeting the notification requirement.

However, if a suspension is reasonably expected to be of short duration, organising a hard-copy mailing to a large number of retail investors at very short notice might not be the best course of action, particularly if it might involve substantial costs that could then be charged to the fund itself. The *Manager* should consider what would be 'practicable' in the circumstances, including how it intends to communicate the position in response to enquiries from unitholders. Whatever approach is taken, this should be agreed with the *Depositary* and the *FCA*.

If there are some deals that have been received but not priced at the time of suspending dealing in a fund the unitholders must be notified that their deals will not be processed. Depending upon the fund's policy, these may be cancelled to held in a queue until the fund reopens.

An example of a checklist *Managers* may wish to use when suspending a fund can be found in Appendix 1.

For *QIS*, the suspension rules (*COLL* 8.6) state that a *Manager* may, with the prior agreement of the *Depositary* and must without delay if the *Depositary* so requires, within any parameters that are fair and reasonable in respect of all unitholders and that are set out in the prospectus, temporarily suspend dealing in units. It is the *Manager's* responsibility immediately to inform the *FCA* of its decision to suspend the fund, stating the reason for its action (*COLL* 8.6.3 R (3)). Once the decision has been made to suspend a fund, the *Manager* is required to notify unitholders as soon as practicable of the suspension (*COLL* 8.6.3 R (3A)). The *Manager* is required to ensure that any suspension continues only as long as it is justified having regard to the interests of unitholders (*COLL* 8.6.3 R (3B)).

<u>During suspension</u>

For *UCITS* and *NURS*, throughout the period of suspension the *Manager* must ensure that sufficient details are published to keep unitholders informed about the suspension and, if known, its likely duration (*COLL* 7.2.1 R (2C)). When deciding how to keep unitholders updated, the same considerations should be made as mentioned above regarding how to notify unitholders of suspensions.

The *Manager* may choose whether or not to accept dealing instructions during the period of suspension (*COLL* 7.2.1 R (6)). If the *Manager* agrees to accept dealing instructions during the suspension they have a responsibility to inform any person who requests a sale or redemption of units that all dealings have been suspended and that that person has the option either to withdraw their request or to have their request executed at the first available opportunity after the end of the suspension (*COLL* 7.2.2 G (3)). In such cases, all deals accepted during, and those outstanding prior to, the suspension will be undertaken at a price calculated at the first *Valuation Point* after the restart of dealing (*COLL* 7.2.1 R (6)).

Please note that the term "deal in units" used in *COLL* 7 means that the AFM will carry out orders to buy and sell on whatever terms are set out in the fund's prospectus. If the prospectus provides for a deal to be carried out as either a cash amount or a number of units, then those terms continue to apply.
For any deals that have been received but not priced at the time of suspending dealing in a fund it may be decided to give the unitholders the option to withdraw their deals.

If the fund operates limited redemption arrangements, and the reason for suspension affected a *Valuation Point*, the *Manager* must declare an additional *Valuation Point* as soon as possible after the restart of dealings (*COLL* 7.2.1 R (8)).

None of the obligations relating to Dealing (*COLL* 6.2) applies, but *Managers* must comply with as much of *COLL* 6.3 (valuation and pricing) as practicable in the light of the circumstances of the suspension (*COLL* 7.2.1R(3)). This includes the requirement to publish prices; although the *Manager* should consider how and where these would be published to ensure they are not misconstrued as dealing prices.

The *QIS* rules do not contain similar provisions but *Managers* may wish to have regard to the *UCITS* and *NURS* rules when considering the handling of *QIS* suspensions.

The suspension must be formally reviewed by the *Manager* and *Depositary* at least every 28 days and the *FCA* should be informed of the results of this review and any change to the information originally submitted to the *FCA* regarding the decision to suspend (*COLL* 7.2.1 R (4A) for *UCITS* and *NURS*, *COLL* 8.6.3 R (4A) for *QIS*). In addition to the formal reviews, the *Manager* should consider whether there is a need to complete ongoing informal reviews throughout the suspension period and the results of these should be reported to their *Depositary* and the regulator. After completing reviews, it would be good practice to update the communication to unitholders if necessary.

<u>During a period of material uncertainty of valuations, where the fund continues to deal</u>
Where a *Manager* and *Depositary* have agreed that it is in the best interests of unitholders to continue dealing, that decision must be reviewed at least every 14 days (*COLL* 7.2.-1 (2)).

The *Manager* must inform the *FCA* of the result of each review (*COLL* 7.2.-1 (6)).

<u>Cessation of suspension</u>
Suspensions should cease as soon as practicable after the exceptional circumstances have ceased (*COLL* 7.2.1 R (4) for *UCITS* and *NURS*, *COLL* 8.6.3 R (4) for *QIS*). In the case of a *NURS* that has suspended due to material uncertainty over the value of assets, dealing must resume as soon as reasonably practicable after the material uncertainty assessment applies to less than 20% of the fund's assets, provided this is in the best interest of the fund and its unitholders. The *Depositary* must give its approval for the suspension to be removed (*COLL* 7.2.-2 (4)). If the *Manager* and *Depositary* agree that it is in the best interests of the fund and its unitholders for the suspension to remain, then the fund should remain suspended.

It is the *Manager's* responsibility to inform the *FCA* of the proposed date for the restart of dealings (*COLL* 7.2.1 R (5)). The *Manager* is also required to notify the *FCA*, unitholders and the Home State regulator in each EEA state in which the *Manager* holds itself out as willing to sell or redeem units of the fund concerned of the restart of dealings immediately after the restart takes effect (*COLL* 7.2.1 R (5)).

For *QIS*, *Managers* must inform the *FCA* immediately of the resumption of dealings (*COLL* 8.6.3 R (5)).

iii. Responsibility of the *Depositary*
In the case of *UCITS* and *NURS,* a *Manager* must seek the agreement of the *Depositary* to suspend a *CIS*. Before agreeing to such a request, the *Depositary* should ensure that any alternative courses of action have been discounted (*COLL* 7.2.2 G (1)). If a *NURS* is automatically suspended, due to a material uncertainty assessment, there is no need for the *Depositary* to agree to the suspension (*COLL* 7.2.-2 (2)), although, the *Depositary* must be notified that the fund will be suspending dealing. However, if the *Manager* is of the opinion that there are reasonable rounds for dealing to continue in a *NURS*, the *Depositary* must be in agreement if dealing is to continue (*COLL* 7.2.-3 (3)).

The *Depositary* may also require a *Manager* to suspend a *CIS* (*COLL* 7.2.1 R (1)). If the *Depositary* invokes a suspension, the *Manager* is obliged to comply with the *Depositary's* instruction without delay. In such cases it is the responsibility of the *Depositary* immediately to inform the *FCA*, stating the reason for its action, and then to confirm this in writing (*COLL* 7.2.1 R (2)). In such cases, the *Depositary* is also required to write to the Home State regulator in each EEA state in which the *Manager* holds itself out as willing to sell or redeem units of the fund concerned (*COLL* 7.2.1 R (2)). As the *Depositary* may not necessarily know all the relevant EEA jurisdictions, the *Depositary* will wish to liaise with the *Manager* to ensure that the *Depositary* receives details of all such jurisdictions so as to enable it to comply with this requirement.

In the case of *QIS*, a *Manager* must seek the agreement of the *Depositary* to suspend a *CIS*. Before agreeing to such a request, the *Depositary* must be satisfied that the suspension falls within parameters that are fair and reasonable and that are set out in the prospectus (*COLL* 8.6.3 R (1)). Under the same section, the *Depositary* may invoke a suspension.

The suspension must be formally reviewed by the *Manager* and *Depositary* at least every 28 days and the *FCA* should be informed of the results of this review and any change to the information originally submitted to the *FCA* regarding the decision to suspend (*COLL* 7.2.1 R (4A) for *UCITS* and *NURS*, *COLL* 8.6.3 R (4A) for *QIS*).

iv. What are the *FCA's* expectations regarding the invocation of a CIS suspension?

The then FSA stated that: "a suspension can only be considered as an exceptional measure" and that "when necessary and justified, a suspension should protect the interests of unit holders overall". The *FCA's* view stems from the recognition that the act of suspending a fund may adversely affect some existing unit holders, preventing them from being able to access their investments as expected.

In its March 2020 statement on property fund suspensions, the *FCA* did however note that "suspensions can be used by managers of open-ended funds, in line with their obligations under applicable regulations. In these circumstances, suspension is likely to be in the best interests of fund investors".

The *FCA* also expects *Managers* to consider carefully the liquidity profile of both the current and future underlying investments of a fund on an ongoing basis and has stated that "a suspension which arises as a result of poor liquidity management within a scheme is not acceptable".[2]

Should a *CIS* experience (or be close to experiencing) liquidity stresses, the *FCA* expects either the *Manager* or *Depositary* to engage, as early as practicable, with the *Manager's* usual *FCA* contacts or, if they do not have a named *FCA* contact, the *FCA's* Contact Centre.

Managers should refer to the DATA/IA paper, Authorised Funds: Liquidity Management (version 1 and version 2), for further information regarding the management of liquidity.

b. *ISA* Regulations

ISA regulations permit an *ISA* Manager to delay the transfer or withdrawal of units of a suspended fund until 7 days after the end of the suspension (Regulation 4 (8)).

Current regulations require a *Manager* who is ceasing to be an *ISA* Manager to give *ISA* investors 30 days' notice to enable them to arrange a transfer (Regulation 20 (3) (b)). This could prove to be problematic if the *ISA* investments are held within a *CIS* that is suspended. In response to a request by IA, *HMRC* have considered this matter and concluded that there could be many variables, which would make it difficult to legislate in advance of such an event. Given that the situation has not occurred, even under extreme market conditions and that *HMRC* has the power to make legislation retrospectively so could take action to protect *ISA* investors should such circumstances ever arise, *HMRC* have decided not to take legislative action at this stage[3].

[2] Letter from FSA to IMA and DATA dated 18 March 2009

[3] See *IA* Circular 440/09

2. Has any relevant guidance ben produced by *IOSCO*?

Yes. *IOSCO* has published a report "Principles on Suspensions of Redemptions in Collective Investment Schemes" (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD367.pdf). Its stated aim is "to outline the principles against which both the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions" and is intended as a "practical guide for regulators and industry practitioners.".

The report also makes clear that the Principles *"do not provide direct applicable standards to firms".* No change to the UK's regulatory rules and guidance can take place without action on the part of the *FCA*.

One example of a recommendation that does not appear in UK or EU regulatory guidance is the recommendation that prospectuses include non-exhaustive examples of what might constitute "exceptional circumstances" (Guidance accompanying Principle 3). Although, as the *FCA's* rules set out the minimum requirements for a prospectus, there is nothing preventing a *Manager* adding the statements set out in the *IOSCO* principles. Another example relates to the preparation of plans in advance of suspension events. This is covered in Question 4 below. Other aspects of the *IOSCO* guidance are already reflected, in one way or another, in this Q&A.

3. What are the reasons for suspension?

Reasons for suspension fall into a number of broad categories:

a. Market failures/exchange closures and other events which result in an inability to:

- **price a significant proportion of assets accurately or**
- **obtain the sale proceeds from a significant sale of scheme property assets needed to meet unit redemptions**

This category captures failures/closures arising from events such as terrorist attacks like the 9/11 attack. Such market/exchange closures are generally short term in nature. That said, some events such as the sudden and unforeseen imposition of exchange controls, may be longer lasting. An example of this was the imposition of exchange controls in the 1990s Malaysian crisis. Also, it covers unexpected political events like the result of the UK referendum on its membership of the EU. This led to uncertainty in the value of real estate with some real estate funds needing to suspend due to large redemption flows.

As such events are market/exchange specific, they are likely to impact many funds and *Managers*. *Managers* will wish to discuss the situation with their Depositaries as, given their oversight of a number of *Managers*, they may be in a position to advise upon the general industry reactions to the event in question.

The IA has procedures in place for dealing with crisis events. This includes liaison with AREF, DATA and the *FCA* and keeping members informed by issuing regular circulars. DATA, too, has agreed liaison procedures for Depositaries to follow. AREF consults with its members on how it can assist them during a crisis; this includes liaising with regulators on their behalf and facilitating and overseeing discussions between members.

Before determining that it is in the best interests of unitholders to suspend, a *Manager* should ensure that any alternative courses of action such as *Fair Value Pricing* have been considered. In 2016, immediately after the referendum, there was no transactional evidence of how the result to leave the EU had affected property values. Independent valuers for real estate funds introduced an uncertainty clause to their valuations and most real estate funds took the decision to fair value their property portfolios.

If the affected fund assets form only a small part of the portfolio, based on the industry's experience after 9/11, the *FCA* will question the suspension of such funds.

From September 2020, the *FCA* will introduce new rules regarding *NURS*, which will impact real estate funds in particular. In the case of a *SIV* expressing material uncertainty over the value of 20% or more of a fund's assets, the *Manager* must suspend dealing in the fund for as long as the material uncertainty exists. The same applies where a fund invests 20% or more in funds which have suspended. Although it is permissible for a fund to continue dealing if the *Manager* and *Depositary* believe it is the best interests of investors.

b. Liquidity issues

Liquidity issues may be market-wide or may be *CIS* specific. As is noted in the DATA/IA paper Authorised Funds: Liquidity Management (version 1 and version 2), *Managers* are responsible for managing *CISs* so that units/shares can be redeemed on dealing days and, as a consequence, a *Manager* should have in place sound liquidity management arrangements to meet that obligation. Suspension as a result of a lack of liquidity should therefore be a last resort in cases where, despite good liquidity management, the liquidity position of the *CIS* is such that the *Manager* believes that, in the interests of protecting unitholders, dealings in the *CIS* should be suspended.

In February 2016 the *FCA* published "Liquidity management for investment firms: good practice". In this they shared good practice they had observed while reviewing how firms manage their liquidity in their funds.

Additional guidance can be found in:

- *IOSCO's* "Recommendations for Liquidity Risk Management for Collective Investment Schemes" final report February 2018
- AMIC/EFAMA's "Managing fund liquidity risk in Europe" report January 2020

c. Structural issues

This includes the failure of one of the key parties that acts for the *CIS* and, as a consequence, it is believed that, due to exceptional circumstances, it is in the interest of unitholders temporarily to suspend dealings. An example might be the failure of a niche *Manager* that has a particular set of investment management skills in a highly specialist area, and upon which the *CIS* is dependent in order to meet its objectives. If, due to unforeseen circumstances, the *Manager* ceases to be available and the *Depositary* is required to find and appoint a replacement, that could take time. In the interim, the *Depositary* may consider that it is in the interest of all unitholders to suspend dealings.

d. Other, independent events

There may be other events, such as natural disasters or catastrophes, which make it impossible to value, or dispose of and obtain payment for all or some of a *CIS*'s property.

e. Funds winding up and sub-funds terminating

As part of the regulatory process for such events, once winding up or termination has commenced the *Manager* is required to cease selling or redeeming units. This requirement to suspend is an integral part of the rules relating to winding up/termination (*COLL* 7.3, 7.4 and 8.6.2) rather than the suspension rules (*COLL* 7.2 and 8.6.3). This type of suspension of unit dealing is not covered by this paper, which focuses upon the application of the suspension rules in *COLL* 7.2 and 8.6.3. It is, though, a form of suspension.

4. What can *Managers* do to prepare for the possibility of the occurrence of suspension events?

Managers should have procedures in place for dealing with potential suspension events.

IOSCO considers that responsible entities "*should implement a decision-making process and draw up plans/processes for potential suspension events. Thus, to prepare for the possibility of a suspension, the responsible entity should already have in place processes and procedures to react immediately*.". Also, when sharing good practice for liquidity management the *FCA* highlighted as a focus for firms "*operational preparedness – a high degree of reassurance that tools particularly extraordinary measures,* *can be implemented smoothly when required*.” (https://www.fca.org.uk/news/liquidity-management-for-investment-firms-good-practice).

Managers may wish to draw up a suspension process/procedure setting out, for example:

- Personnel within the *Manager* to be involved in making the decision to suspend and their roles.
- For each potential category of suspension, the avenues that should be explored and discounted before reaching the decision to suspend. This should include discussions of any potential issues with the *Depositary* and the *FCA* and should be, where possible, well in advance of the *Manager* deciding to suspend.
- Objective criteria (for the liquidity issue scenario, in particular) for reaching a decision to suspend. The *Manager* should consider whether it is appropriate to set trigger levels, using information on fund inflows and outflows, along with general information on the liquidity of the assets or markets involved. These trigger levels would compel firms to escalate liquidity concerns to the appropriate internal committee or governing body, the *Depositary* or the *FCA* prior to making the decision to suspend.
- Documenting the decision-making process.
- Obtaining the *Depositary’s* prior agreement to suspend.
- Notifying third parties such as transfer agents, fund accountants and lawyers.
- Notifying the *FCA* of the decision to suspend and reasons for the suspension.
- Providing written confirmation of suspension and the reasons for the suspension to the *FCA* and relevant Home State Regulators.
- Communications strategy including a detail plan for contacting unitholders, platforms and distributors and keeping up to date published details of the suspension, such as on the *Manager’s* website. *Managers* should be careful if they engage with unitholders prior to the suspension decision being made, to prevent a spike in redemption requests. In particular, *Managers* must be careful to manage internal conflicts where they have funds that invest in the distressed fund and must make certain that all investors in the fund are treated equally.
- Identifying the person(s) who will be responsible for dealing with queries from unitholders and other parties after suspension and writing a Q&A to be used when receiving queries.
- Other actions to be taken upon the suspension of dealing.
- Undertaking formal reviews of the suspension with the *Depositary* at least every 28 days and informing *FCA* of the results of such reviews.
- Identifying objective criteria to be met in order for the suspension to be lifted.
- Notifying the *FCA* of the proposed resumption of dealings.
- Providing written confirmation to the *FCA*, relevant Home State Regulators and unitholders of resumption of dealings.
- Other actions to be taken upon the resumption of dealings (including, in the case of limited redemption funds, the declaring of an additional *Valuation Point* as soon as possible after the resumption of dealings).

Clearly, the extent and nature of *Managers’* preparation for fund suspensions will be influenced by the asset class or geographical sectors of the funds concerned.

It is important for the *Manager* to involve their transfer agents, fund accountants, *Depositary* and other intermediaries such as platforms in the planning process. They need to establish the effects of suspending a fund on these parties and their capabilities and requirements to ensure a suspension runs as smoothly as possible. Scenarios the *Manager* may wish to discuss with these parties are:

- How to notify unitholders that had placed deals for the *Valuation Point* at which the suspension in dealing had started.
- If the *Manager* wishes to hold deals until the suspension has been lifted, is the transfer agent able to do this?
- If deals are going to be rejected, how would the transfer agent notify unitholders and would they

communicate differently with them depending upon how the deal was placed? What happens to cheques that had been banked for rejected trades?
- How will the following types of instructions be managed:
    - Multi-fund instructions
    - Switches
    - Regular savings
    - Regular withdrawals
    - Re-registrations
    - Unit conversions
    - Cancellation of instructions
- The format of communications to unitholders and intermediaries such as platforms.
- Would platforms and other nominees require reconciliations of uncompleted trade instructions held for nominees?
- Suspended funds can continue to distribute income. Would systems be able to make distribution payments for a suspended fund? What would happen to reinvestments in transit when a fund suspends?
- For funds using swing pricing, on what basis should the fund be priced during the suspension and the day it re-opens?
- The impact on year end accounts.
- The effect on processes depending upon when the decision to suspend is made.

5. What matters should a *Manager* take into consideration prior to making a decision to suspend?
A *Manager* must make the decision to suspend when it is in the best interests of unitholders to do so. Before a *Manager* determines that it is in the best interests of unitholders to suspend, a *Manager* should ensure that any alternative courses of action permitted by the fund's prospectus have been considered and discounted.

A *Manager* should ensure that the relevant committees and Board receive regular management information on the liquidity of its funds and that any issues are escalated immediately to those bodies. Such Committees should be engaged immediately where a *Manager* is considering suspension.

If a *Manager* notes that a fund is experiencing issues, such a liquidity stresses, or a reasonably high level of its assets that will be declared of materially uncertain value at the next *Valuation Point*, it should engage at an early stage with the *Depositary* and the *FCA* to discuss the possibility of suspension at a future *Valuation Point*.

Where a *CIS* is facing liquidity issues, there may be a number of considerations to take into account and judgement calls to be made. *Managers* should refer to the DATA/IA Liquidity Management guide, for further information regarding the management of liquidity.

If there is a sudden and unforeseen increase in illiquid assets, whether that is an issue that necessitates suspension may depend upon a variety of factors such as:
- How the fund was sold and the investor profile. For example, if the fund was sold on the basis that it invests in relatively illiquid assets and primarily to a small number of institutional investors, a *Manager* might be able to discuss the situation with those investors and manage expectations with a view to avoiding the need to suspend. If the fund was sold on the basis that it offers daily liquidity and primarily to retail investors, such an approach will not be viable.
- The expected redemption rate based on past experience of investor behaviour or current market behaviour.
- The liquidity profile of other investments.
- Whether pressure to sell assets would be likely to result in "fire sale" prices.
- The *Manager's* view of the market and, in particular, whether it believes market illiquidity to be

short or long term.
- Effectiveness of liquidity management tools.

Where a *CIS* invests in illiquid assets such as real estate or invests in assets which, whilst originally liquid, have become less so, *Managers* may find it helpful to set out a set of pre-agreed criteria, against which it will judge whether it is necessary to suspend. For example, if the *Manager* believes that for a particular fund and investor profile, a level of illiquidity of X% combined with redemption requests of Y% of the *CIS's* net asset value would be likely to result in sale of assets at "fire sale" prices, it may wish to set that out in advance so that, in the event that such triggers are reached, an objective decision may be reached.

As regards liquidity management tools, borrowing should be used only as a temporary measure and where the potential benefits outweigh the results of the borrowing (cost and gearing). It should not be used as a means of postponing suspension where the *Manager* believes that suspension is likely to be required.

6. At what point should a *Manager* suspend?
As soon as the *Manager* reaches the decision to suspend and has discussed and obtained the agreement of its *Depositary*, suspension should be invoked. As mentioned above, it is useful to have in place a set of pre-agreed criteria against which the *Manager* will judge whether it is necessary to suspend.

Where the *Depositary* requires that a *Manager* suspend, the *Manager* must suspend without delay.

7. Upon taking the decision to suspend, what action should the *Manager* take?
The answer to Questions 1 and 4 includes an indication of the actions a *Manager* must take.

One of the key considerations is putting in place an effective communications strategy. In an intermediated market place, *Managers* may wish to make use of the media (e.g. the wires) to alert unitholders and other interested parties. It will be useful to have a detailed communications plan in place – setting out whom to contact, what to convey and when.

In addition to contacting unitholders *Managers* will wish to contact intermediaries, including platforms and other nominees, as a matter of urgency, so that they can take immediate action, such as to stop taking deals.

Managers may also wish to prepare, for issue and display on their websites, Q&As that answer the likely questions that unitholders and other interested parties may ask. As well as being of help to unitholders and pre-empting potential press/intermediary queries, it should assist with call centre resource management.

Examples of the questions *Managers* might wish to address in Q&As are:
- Why are you temporarily suspending dealing in the XYZ fund and is this common practice?
- Who has made the decision temporarily to suspend dealing?
- How long is dealing in the fund likely to be suspended?
- With redemptions suspended may unitholders still make investments into the fund?
- Will the fund still be valued during the period of suspended redemptions?
- What will happen if unitholders wish to sell shares in the fund while dealing is suspended?
- What happens if an investor has placed a request to buy or sell before or during the period of suspension and then asks to withdraw this request?
- What price does an investor redeem at if he/she has chosen to submit a redemption request during the fund's dealing suspension?
- What are you doing to raise liquidity, what target are you aiming for and how long will this take?
- Does it matter whether the fund is held within an *ISA*?
- What are your short-term expectations for the fund?

- What are your medium-term and long–term expectations for the fund?
- Will unitholders continue to receive income payments?
- What happens if I have chosen to reinvest my income?
- If all dealing is suspended, what is the impact upon regular savers?
- What have you done/are you doing to notify unitholders and advisers of the suspension?
- Does the suspension in dealing in the XYZ fund in any way affect the security of the underlying assets in the portfolio or those in any other funds in XYZ *Manager's* fund range?
- How will XYZ *Manager* keep unitholders informed of developments, including, if known, the likely duration of the suspension?
- How can I contact XYZ *Manager*?
- I am invested in your fund through a platform what should I do?

There may be other questions specific to the type of fund concerned and also in relation to steps other financial services companies have taken. For example, during the 2008 credit crunch a number of life companies offering investments in authorised property funds via unit-linked, with-profits and personal pension products took steps to defer switches and redemptions. In the light of that, a *Manager* that suspended a property *CIS* included the question "Will dealing be suspended for a fixed period similar to that employed by some of the UK property funds that suspended earlier this year?" Another question, in the case of property funds also holding indirect property assets, might be "Why is it not possible to realise sufficient liquidity from the securities and cash element of the fund?"

The answers to some questions may depend upon whether investments are held via a platform (e.g. process for placing deals, notifications of communications). *Managers* will wish to take this into account, too, in preparing Q&As.

8. Does the *Manager* still need to price the fund during periods of suspension?

As far as is practicable in the light of the context of the suspension, *Managers* must continue to comply with as much of *COLL* 6.3 (Valuation and pricing) as feasible and practicable. Indicative prices are helpful to life and pension providers, which have a number of payment obligations (e.g. pension maturities and death) that they are unable to defer until a *CIS* suspension is lifted. The action that life/pension providers may take in respect of other requests (e.g. switches) will depend upon the terms of the policy concerned. These may allow providers to defer such requests for a period of time. They can also be useful to platforms, who charge fees based on the value of the investment.

9. Does the *Manager* still need to distribute income during periods of suspension?

Suspension results in the cessation of "the issue, cancellation, sale and redemption of units" (*COLL* 7.2.1 R (1)) therefore all other aspects of the management of the fund remain unchanged. If an XD and/or distribution date falls within the period of suspension the *Manager* and *Depositary* are expected to undertake their respective duties as normal.

If a fund issues reinvestment units (where a unitholder's income distribution is used to purchase additional units in the fund) and the *Manager* has been unable to identify a process which complies with *COLL* rules and *FCA* guidance and can be operationally supported they should contact the *FCA* for advice.

10. Regular savers

Where a fund has regular savers and the *Manager* has been unable to implement a process which complies with *COLL* rules and *FCA* guidance and can be operationally supported they should inform the *FCA* of this when the fund is suspended to obtain advice on how to treat these unitholders.

11. When should a *Manager* lift a suspension?

A *CIS* suspension should be lifted as soon as practicable after the exceptional circumstances giving rise to the need to suspend have ceased.

Managers may wish to decide upon set criteria, the meeting of which will trigger the resumption of dealing. The existence of pre-agreed and objective criteria can assist in what might otherwise be viewed as entirely a subjective decision.

In the case of a *CIS* that has, as a last resort, suspended due to fund liquidity issues, one of the key pieces of information a *Manager* will need is the expected level of redemptions it needs to meet upon resumption of dealings.

The expected level of redemptions should also be taken into account where a fund has suspended due to material uncertainty over the value of its assets. It is important to note that when the level of material uncertainty over the value of assets falls below 20%, this should not lead the *Manager* to automatically lift the suspension. The *Manager* and *Depositary* should consider discussions they have had with unitholders or intermediaries and whether expected redemptions would lead to a further need to suspend, either because the level of material uncertainty rises above 20% or because of liquidity issues. If such issues are forecast, it may be appropriate for the fund to remain suspended.

If a *Manager* makes clear, in its Q&As, that unitholders may place deals during the suspension period and that these will be dealt with at the first dealing point following the lifting of suspension, that may result in unitholders placing requests to redeem and therefore provide a *Manager* with valuable information as to the level of liquidity it will need to generate in order to meet such redemption requests. This may be beneficial to unitholders, as it could result in the suspension being lifted sooner rather than later.

As indicated in the answer to question 1, *Managers* are required to inform any person who requests a sale or redemption of units that all dealings in units have been suspended and whether that person has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.

It is understood that if an investor holds units/shares in the *CIS* via a platform, it may not be possible for him to submit a redemption request during a period of suspension. *It will be the responsibility of the platforms to discuss the options available to their clients*.

The term 'queuing' is sometimes used. This can be misleading as it suggests that unitholders who place a redemption request early in the suspension period might gain a preference over those who place a deal later date during the suspension period. This would run counter to the fundamental philosophy of authorised funds. Given than all deals received during the suspension period will be dealt with at the first dealing point following the lifting of the suspension, the time and date of placing deals during the suspension period makes no difference to unitholders. *Managers* will wish to consider carefully the language used in their communications with unitholders to ensure that clear information is provided.

Managers will also wish to be in close contact with institutional investors with a view to establishing their dealing plans. Similarly, close contact with intermediaries generally should assist with establishing not just planned redemptions but also potential future redemptions. *Managers* will wish to establish, as far as possible, current and future redemption plans, with a view to ensuring that sufficient liquidity is generated such that they do not need to implement a further suspension shortly after lifting the original suspension.

12. Are there other matters *Managers* may wish to consider in connection with lifting a suspension?

Managers may wish to review the application of their dilution policy with a view to ensuring adherence to their policy, given that scheme property will have been or is likely to be sold in order to meet redemptions.

In July 2016 the *FCA* published guidance on fund suspensions following the decision by some property funds to suspend dealing as they were experiencing higher than normal redemptions after the results of the UK referendum, on its membership of the EU, were known. The guidance stated that funds holding a large proportion of assets that may be, in certain circumstances, illiquid or hard to value, such as commercial property, may consider that the suspension should be lifted and unitholders given the opportunity to redeem at a revised valuation of the units in the fund. In these circumstances, *Managers* should ensure that:

- the revised redemption price and the opportunity to cancel are clearly communicated to unitholders who have submitted a request to redeem their investment before or during the fund's suspension;
- this communication explains the options that are available to unitholders and includes details of how to cancel the redemption requests; and
- unitholders are given sufficient time to make their decision and to seek appropriate advice. This timeframe should take into account the types of investor in the fund and whether communications to these investors need to take place through an intermediary.

13. What if conditions do not improve so as to enable the lifting of a suspension? Is there a point at which other action should be taken?

It is difficult to balance the needs of redeeming and remaining unitholders. Unitholders buy units in *CIS* on the understanding that the units will generally be realisable within the timescales set out in the literature. *Managers* will wish to consider how long a suspension should continue before it takes other action which might allow redeeming unitholders the opportunity to realise some of or all their investment, in a manner which is fair to all unitholders.

Upon suspension a *Manager* may wish to agree a point at which it considers that continued suspension would no longer be appropriate and other action should be taken. In forming a view as to the length of time to be allowed for improvement in market conditions, *Managers* might take into account the way in which the *CIS* was marketed to unitholders. If, for example, it was marketed as a highly liquid fund, it might be appropriate for the period to be shorter than for a *CIS* that was marketed on the basis that assets (e.g. real estate) were not liquid and might take time to sell.

The investor population may also be relevant. If unitholders are primarily retail investors, *Managers* may decide to move more swiftly to the decision to wind up/terminate a fund than if the investor population consists of institutional investors. The latter may better appreciate market conditions and be in a position to wait for improvement. Institutional investors may also wish to retain exposure to a certain asset class and, for that reason too, may be content to remain invested via a suspended *CIS*.

14. What are potential options as regards other action?

Under *COLL*, the potential options are, in the case of *NURS* or *QIS*:

- To introduce limited redemption provisions.
- To wind up/terminate the fund.
- To merge the fund with another fund (subject to such action being in the interests of the receiving fund and the receiving fund remaining in compliance with *COLL*).
- If practicable, to create a new fund that is able to accept the liquid assets of the suspended fund. The purpose would be to enable the unitholders in the suspended fund to receive units in the new fund as well as retaining units in the suspended fund. This would enable unitholders to realise a portion of their overall investment if they so desired.

There are a number of other potential solutions, but these would require changes to legislation and/or *FCA* rules. These include side pockets, *in specie* redemptions and changing the vehicle from an open-ended to a closed-ended one.

Appendix 1

Suspension Actions

1. *Manager* considers suspension and discusses the situation with *Depositary* as soon as possible. *Manager* must receive *Depositary's* agreement before they are able to suspend.	
2. In the case of a *NURS*, the *SIV* declares material uncertainty over 20% of a fund's assets. The *Manager* considers whether there are exceptional circumstances in place to not suspend the fund and discusses its rationale with the *Depositary*. The *Depositary* and *Manager* must agree that suspension is not appropriate by the end of the second day after material uncertainty is declared.	
3. *Manager* makes decision to suspend (need to detail the rationale, i.e. the exceptional circumstances and why it is in the interests of all unitholders in the fund).	
4. In cases where a *SIV* has declared material uncertainty over 20% of a fund's assets, the *Manager*, if it does not consider that there are exceptional circumstances that prevents suspension. informs the *Depositary* of the automatic suspension.	
5. *Manager* complies with any relevant internal procedure (i.e. appropriate committee/board meeting, etc) to ratify decision.	
6. *Manager* immediately informs the *FCA* of this decision.	
7. *Manager* notifies their lawyers, transfer agents and fund accountants.	
8. Follow up by *Manager* providing the *FCA* with a formal written explanation.	
9. For other country registrations, the *Manager* notifies the Home State Regulators.	
10. *Managers* organises communication processes to:	
• Notify all unitholders.	
• TA	
• All platforms	
• All distributors	
• Dealing platforms (EMX, Calastone etc)	
• Update website	
• Fund Accounting process	
11. *Manager* ensures there are processes in place to inform any person who requests a sale or redemption of units that all dealings have been suspended.	
12. *Manager* reviews decision with the *Depositary* at least every 28 days (or more frequently when appropriate) and informs the *FCA* of the results of such reviews. Review and update communication to unitholders where appropriate.	
13. Where a *Manager* and *Depositary* of a *NURS* have agreed that the fund can continue dealing, the decision must be	

reviewed every 14 days while material uncertainty continues.	
14. Prior to cessation of suspension the *Manager* advises the proposed date for restart of dealing to the *FCA* and third party providers and intermediaries such as fund accountants, transfer agents and platforms.	
• *FCA*	
• TA	
• All platforms	
• All distributors	
• Dealing platforms (EMX, Calastone etc)	
• Fund Accountants	
15. Immediately after the restart in dealing in the fund the *Manager*:	
• Must notify the *FCA* and the Home State Regulators in each EEA state in which units in the fund can be traded that the fund is out of suspension.	
• Notifies unitholders	
• Updates communication on website	
• In the case of a fund with limited redemption requirements, declares an additional *Valuation Point*	

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