

# UCITS V implementation and other changes to the Handbook affecting investment funds

September 2015





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We are asking for comments on:

Part I of this Consultation Paper by Monday 9 November 2015

Part II of the Paper by Monday 5 October 2015

Part III of the Paper by Monday 7 December 2015.

You can send them to us using the form on our website at:

[www.fca.org.uk/your-fca/documents/consultation-papers/cp15-27-response-form](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-27-response-form).

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Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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## Abbreviations used in this document

<b>AFM</b>	authorised fund manager
<b>AFR</b>	annual funding requirement
<b>AIF</b>	alternative investment fund
<b>AIFM</b>	alternative investment fund manager
<b>AIFMD</b>	Alternative Investment Fund Managers Directive (EU Directive 2011/61/EU)
<b>AIFMD Level 2 Regulation</b>	Alternative Investment Fund Managers Regulation (EU Regulation 694/2015)
<b>AUT</b>	authorised unit trust
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms
<b>CAIF</b>	charity authorised investment fund
<b>CASS</b>	Client Assets sourcebook
<b>CCP</b>	central counterparty
<b>CESR</b>	Committee of European Securities Regulators
<b>CIS</b>	collective investment scheme
<b>COBS</b>	Conduct of Business sourcebook
<b>COLL</b>	Collective Investment Schemes sourcebook
<b>Commission</b>	the European Commission
<b>CP</b>	consultation paper
<b>CPM</b>	collective portfolio management firm
<b>CPMI</b>	collective portfolio management investment firm
<b>CRA</b>	credit rating agency

<b>CRD</b>	Capital Requirements Directive (EU Directive 2013/36/EU), which forms part of the CRD IV package
<b>CRD IV</b>	the CRR and CRD
<b>CRR</b>	Capital Requirements Regulation (EU Regulation 575/2013) which forms part of the CRD IV legislative package
<b>DATA</b>	Depositary and Trustee Association
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>DRMP</b>	derivative risk management process
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>ELTIF</b>	European long-term investment fund
<b>ELTIF Regulation</b>	European Long-Term Investment Funds Regulation (EU Regulation 2015/760)
<b>EMIR</b>	European Market Infrastructure Regulation (EU regulation 648/2012)
<b>ESA</b>	European Supervisory Authority
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union, which includes the European Economic Area (EEA) unless otherwise stated
<b>EUSEF</b>	a qualifying social entrepreneurship fund as defined in the EuSEF Regulation (EU Regulation 346/2013)
<b>EUVECA</b>	a qualifying venture capital fund as defined in the EuVECA Regulation (EU Regulation 345/2013)
<b>FAIF</b>	fund of alternative investment funds
<b>FCA</b>	Financial Conduct Authority
<b>FEES</b>	Fees manual
<b>FOS</b>	Financial Ombudsman Service
<b>FS Register</b>	Financial Services Register published on the FCA website
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>FUM</b>	funds under management
<b>FUND</b>	Investment Funds sourcebook
<b>GaPS</b>	government and public securities

<b>ICAAP</b>	internal capital adequacy assessment process
<b>ICVC</b>	investment company with variable capital
<b>IFPRU</b>	Prudential sourcebook for Investment Firms
<b>IMA</b>	The Investment Association, formerly called the Investment Management Association
<b>IPRU (INV)</b>	Interim Prudential sourcebook for Investment Businesses
<b>ISIN</b>	international securities identification number
<b>KIID</b>	key investor information document
<b>Member State</b>	a Member State of the European Union
<b>MiFID or MiFID I</b>	Markets in Financial Instruments Directive (EU Directive 2004/39/EC)
<b>MiFID II</b>	Markets in Financial Instruments Directive (EU Directive 2014/65/EU)
<b>NURS</b>	non-UCITS retail scheme
<b>OEIC</b>	open-ended investment company established under the OEIC Regulations
<b>OEIC Regulations</b>	Open-Ended Investment Companies Regulations 2001 (SI 2001/1228) (as amended)
<b>OTC</b>	over the counter
<b>PAIF</b>	property authorised investment fund
<b>PRA</b>	Prudential Regulation Authority
<b>PRN</b>	product reference number
<b>QIS</b>	qualified investor scheme
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>the Treasury</b>	Her Majesty's Treasury
<b>TP</b>	transitional provision
<b>UCITS</b>	undertaking for collective investment in transferable securities
<b>UCITS IV or the UCITS Directive</b>	Undertakings for collective Investment in Transferable Securities Directive (EU Directive 2009/65/EC)
<b>UCITS V</b>	Directive amending the UCITS Directive (EU Directive 2014/91/EU)
<b>VaR</b>	value at risk



# 1. Overview

## Content of our consultation

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- 1.1** This consultation paper (CP) contains three sets of proposals relating to the regulation of authorised investment funds.
- 1.2** In Part I we consult on rules and guidance to give effect to a new set of changes to the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive.<sup>1</sup> These changes are informally referred to as UCITS V<sup>2</sup>; they require amendments to both primary and secondary legislation, as well as the FCA Handbook. HM Treasury (Treasury) and the FCA are working closely together as part of the implementation process. This paper covers those UCITS V provisions that fall to the FCA to transpose. The Treasury will consult separately on changes to primary and secondary legislation.
- 1.3** In Part II of this paper we consult on changes to the Handbook to ensure the EU Regulation introducing European long-term investment funds (ELTIFs)<sup>3</sup> will operate effectively. As with the implementation of UCITS V, changes to primary and secondary legislation are required and we are working closely with the Treasury to set a framework for ELTIFs to be authorised in the UK.
- 1.4** In Part III we take the opportunity to consult on a number of changes to the Handbook to keep our rules and guidance for authorised investment funds up to date. We also seek stakeholders' feedback on some discussion points that we will consider consulting on in future if there is a case for changing our rules.

## Implementing UCITS V

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- 1.5** We are required to transpose UCITS V by 18 March 2016. In Part I of this paper, we are consulting on:
- the requirements applicable to management companies, including the remuneration principles and the transparency obligations towards investors, and
  - changes to the regime for depositaries, including the eligibility criteria for firms acting as depositaries of UCITS and the capital requirements applicable to them.

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1 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

2 Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

3 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (ELTIFs).

- 1.6** We propose to transpose these requirements by adopting an ‘intelligent copy-out’ approach.<sup>4</sup> This is consistent with the approach we took when we transposed the Alternative Investment Fund Managers Directive (AIFMD).<sup>5</sup> Although the UCITS Directive is generally a minimum harmonising Directive<sup>6</sup>, our proposed approach is to avoid imposing any new requirements on firms over and above what is required by UCITS V, subject to certain exceptions. The main area where we believe it is justifiable to set additional requirements, or to retain existing requirements where they are higher than the Directive standards, is the prudential treatment of depositaries that are not national central banks or credit institutions. Our proposals are set out in chapters 3 and 4 of this consultation paper, together with an explanation of the areas where the Commission’s Level 2 measures will set additional detailed requirements.

### The ELTIF Regulation

- 1.7** The ELTIF Regulation becomes applicable on 9 December 2015. It will create a new cross-border product framework for long-term investments aimed at increasing the amount of non-bank finance available to companies and projects in the EU that require access to long-term capital.
- 1.8** In chapter 5 of this paper, we consult on changes to our Handbook arising from the ELTIF Regulation, including our current rules for depositaries wishing to act for an ELTIF. We also set out our proposed fees for authorising and supervising ELTIFs.
- 1.9** In chapter 6, we set out our views on the redress model that should be applied to these funds and their managers to bring them within the scope of the Financial Ombudsman Service and the Financial Services Compensation Scheme.
- 1.10** In addition, the European Commission must adopt delegated acts relating to several aspects of the operation of ELTIFs. The European Securities and Markets Authority (ESMA) has provided technical advice to the Commission on these matters.<sup>7</sup> However, we do not expect further changes to the Handbook as a consequence of these delegated acts.

### Other miscellaneous changes to fund regulation

- 1.11** Part III of this paper outlines a number of proposed additional changes to rules and guidance in the Handbook relating to authorised investment funds. These proposed changes aim generally to:
- clarify and standardise some of our reporting requirements
  - introduce greater operational flexibility and efficiency in certain areas
  - clarify ambiguities in the application of certain rules, and

<sup>4</sup> A ‘intelligent copy-out’ approach means adhering closely to the wording of UCITS V when drafting the relevant provisions in the Handbook, but using alternative wording where appropriate to align with UK law and practice.

<sup>5</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

<sup>6</sup> A minimum harmonising Directive means that Member States have discretion to apply additional requirements or requirements that differ from those in the Directive.

<sup>7</sup> <http://www.esma.europa.eu/system/files/2015-1239.pdf>.

- bring the Handbook up-to-date with market practices, deleting obsolete provisions.

**1.12** We expect that the following proposals in chapter 7 could have some material effects on fund managers, funds and investors:

- a tailored regime for charity authorised investment funds (CAIFs)<sup>8</sup>
- the introduction of a standard reporting template for UCITS management companies, to facilitate reporting their use of derivatives
- enhanced requirements for depositaries of authorised funds to report information on breaches and visit reports periodically to the FCA
- a revised definition of feeder funds and rules allowing authorised funds to invest in feeder funds
- clarification of government and public securities to which the Collective Investment Schemes sourcebook (COLL) spread rules apply, and
- changes to COLL affecting the calculation of the preliminary charge of a retail authorised fund.

**1.13** In chapter 8, we set out our initial thinking on various matters that we would like to explore with stakeholders before we develop proposals for consultation. These matters include:

- allowing fund managers to cease temporarily accepting new subscriptions into a fund to protect the interests of existing investors
- amending the rules about which entities can be counterparties to an over-the-counter derivative transaction in a UCITS scheme, and
- understanding whether changes to our Handbook might enhance the attractiveness of ELTIF as a new type of fund, for both the institutional and retail markets.

### Next steps

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**1.14** Please send us your responses to Part I of this paper (Implementing UCITS V) by **Monday 9 November 2015**. This consultation period of nine weeks is slightly shorter than the three months we usually aim to give stakeholders, but the shorter period is necessary to enable us to finalise our rules and guidance for implementing UCITS V before the deadline of 18 March 2016. Given the nature of our proposals, we consider that the reduced consultation period should be sufficient and appropriate to allow stakeholders to provide their feedback to Part I. We will consider your feedback and intend to publish our Policy Statement in early 2016.

**1.15** As explained in more detail in the next chapter, we expect to consult on consequential changes to the Handbook once we have a clearer idea of the European Commission's proposals for Level 2 measures. Currently, we cannot confirm the timing of this second consultation but we hope it will be by the end of 2015 so that we could make the final rules by March 2016. However, this will depend when the final Level 2 measures are published.

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<sup>8</sup> CAIFs are funds authorised by the FCA and registered by the Charity Commission under the Charities Act 2011.

**1.16** With regard to Part II of the paper (The ELTIF Regulation), please send us your responses by **Monday 5 October 2015**. This consultation period runs for only one month so we can have the rules and guidance required for the authorisation of ELTIFs in place by 9 December 2015, when the ELTIF Regulation becomes applicable. Since our proposals are consequential changes required to accommodate ELTIFs in the UK regulatory framework, and the ELTIF Regulation will be directly applicable to firms from 9 December 2015, we consider the reduced consultation period to be appropriate. We aim to publish a summary of your feedback and our response to it by 9 December 2015.

**1.17** Finally, you are invited to submit your responses to Part III of this paper (Other miscellaneous changes to fund regulation) by **Monday 7 December 2015**. Since the proposals outlined in this part do not depend on EU deadlines, we can maintain the usual consultation period of three months. We aim to publish the final rules in a Policy Statement in 2016.

#### Who should read this CP?

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**1.18** This paper will interest management companies and depositaries of UCITS and other authorised funds. It will also interest representative trade bodies, business advisers and consultants, and other advisers involved in or linked to the fund management industry in the UK.

**1.19** Most of the matters covered in this paper are quite technical and unlikely to be of direct interest to retail or professional investors. However, we welcome any feedback from consumers and their representatives, and draw attention to the following points which are likely to be of particular interest to them:

- redress arrangements applying to investments in ELTIFs (chapter 6)
- the discussion on whether it should be made easier for fund managers to limit or refuse investors' subscriptions to funds (chapter 8 paragraphs 1 to 7), and
- the discussion on broadening access to ELTIFs by modifying how other funds and insurance companies might be able to invest in them (chapter 8 paragraphs 12 to 18).

# Part I – Implementing UCITS V

## 2. The EU framework for UCITS V

- 2.1** This chapter provides an overview of the key changes introduced by UCITS V. It also explains our approach to the implementation of UCITS V and outlines the ongoing European work.

### UCITS V

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- 2.2** UCITS are regulated investment funds that can be sold to the general public throughout the EU. Although UCITS IV, which was introduced in 2011, removed a number of barriers to cross-border efficiency and improved investor disclosure, it did not address some of the wider issues and risks which emerged during the financial crisis. UCITS V aims to address these issues, increase protection and improve investor confidence in UCITS by:

- enhancing the rules on the responsibilities of depositaries
- introducing remuneration policy requirements for management companies, and
- ensuring that all EU regulators responsible for the supervision of UCITS schemes and their management companies have a common minimum set of powers available to them to investigate and sanction any breaches of Directive requirements.

- 2.3** UCITS V also brings the rules on depositaries and remuneration of management companies into line with (and in certain cases goes further than) the corresponding AIFMD requirements.

#### The implementation process

- 2.4** In this consultation paper, we outline our proposed rules and guidance to implement the Level 1 requirements under UCITS V which apply to management companies and depositaries of UCITS which fall under our responsibility to implement.

- 2.5** The European Commission is also empowered under UCITS V to adopt delegated acts, also referred to as the Level 2 measures, which will set out most of the detailed requirements that depositaries and management companies of UCITS will have to comply with. For the Level 2 measures to come into force, they need to be adopted by the European Commission and agreed by the European Parliament and the European Council. At the time of publication of this paper, this process has not yet begun. The European Commission has also yet to confirm whether the Level 2 measures will take the form of a Directive or a Regulation. In paragraph 4.6 we outline the key areas expected to be covered by the Level 2 measures.

- 2.6** We expect the Level 2 measures to be broadly in line with the AIFMD Level 2 Regulation<sup>9</sup>, but we are unable at this stage to describe their full effect on firms. Under UCITS V, the Commission has greater scope to adopt delegated rules with regard to depositaries than under the AIFMD. More specifically, the Level 2 measures for UCITS V will set out the independence requirements between the management company and the depositary, and the steps to be undertaken to protect the assets of the UCITS if a third-party delegated custodian becomes insolvent. The European Securities and Markets Authority (ESMA) provided its technical advice to the Commission on these two subjects on 28 November 2014.<sup>10</sup> ESMA was not asked to provide technical advice on any of the other Level 2 measures.
- 2.7** In the likely event that the Level 2 measures take the form of a directly-applicable EU Regulation, there will be no need to transpose it in FCA rules. However, as noted, consequential changes to existing rules and guidance may need to be made. We will consult separately on any required consequential changes once we know the exact Level 2 requirements. In our final rules, we may also include references to the relevant parts of the Regulation where we think it would help firms to understand the interaction between the Level 1 and Level 2 requirements.
- 2.8** Finally, in addition to the delegated acts that will form the Level 2 measures, UCITS V requires ESMA to issue:
- Level 3 guidelines on sound remuneration policies and practices for management companies (the ESMA guidelines)<sup>11</sup>, and
  - draft implementing technical standards to be adopted by the Commission, determining the procedures and forms to allow national competent authorities to submit information to ESMA on penalties and measures imposed on management companies in accordance with article 99 of the UCITS Directive.<sup>12</sup>

9 Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers.

10 ESMA's technical advice to the European Commission on delegated acts required by the UCITS V Directive <http://www.esma.europa.eu/system/files/2014-1417.pdf>.

11 See article 14a(4) of the UCITS Directive.

12 See article 99e(3) of the UCITS Directive.

## 3. Requirements for managers of UCITS

- 3.1** This chapter outlines the new remuneration and operational requirements which will apply to management companies of UCITS. It also describes the areas which remain contingent on further developments at EU level.

### Remuneration

- 3.2** UCITS V aims to make management companies of UCITS subject to remuneration requirements which are broadly in line with those applicable to alternative investment fund managers (AIFMs). AIFMs are already subject to the FCA Remuneration Code in chapter 19B of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), deriving from AIFMD.
- 3.3** ESMA will issue guidelines on sound remuneration policies and practices under article 14b of the UCITS Directive. ESMA published its consultation paper on the proposed guidelines on 23 July 2015.<sup>13</sup> We explain how the work carried out by ESMA could impact our implementation of UCITS V.

### Remuneration principles

- 3.4** We propose to implement the remuneration requirements introduced by UCITS V<sup>14</sup> in a new Remuneration Code in SYSC 19E of the Handbook. The proposed UCITS Remuneration Code is broadly similar to the AIFMD Remuneration Code because of the similarities of the risks and incentives in the two sectors, so we have followed closely the structure and approach adopted for full-scope UK AIFMs in SYSC 19B.
- 3.5** Management companies will be required to establish and apply remuneration policies and practices that are consistent with, and promote, effective risk management.<sup>15</sup> Such policies and practices must not encourage excessive risk-taking which is inconsistent with the profile of the relevant UCITS or which affects the management company's duty to act in the best interest of the UCITS.<sup>16</sup> The UCITS Remuneration Code will apply to those staff working for the management company whose professional activities have a material impact on the risk profiles of the firm or the UCITS under its management (UCITS Remuneration Code staff).<sup>17</sup>

13 Guidelines on sound remuneration policies under the UCITS Directive and AIFMD [http://www.esma.europa.eu/system/files/2015-1172\\_cp\\_on\\_ucits\\_v\\_aifmd\\_remuneration\\_guidelines.pdf](http://www.esma.europa.eu/system/files/2015-1172_cp_on_ucits_v_aifmd_remuneration_guidelines.pdf). At the time of the publication of this paper, ESMA is still consulting on the proposed guidelines. Once a final version of the guidelines is approved by the ESMA Board of Supervisors, the FCA must follow the 'complain or explain' procedure in relation to them.

14 Articles 14a and 14b of the UCITS Directive.

15 SYSC 19E.2.1R(1). See article 14a(1) of the UCITS Directive.

16 SYSC 19E.2.1R(2). See article 14a(1) of the UCITS Directive.

17 SYSC 19E2.2R. See article 14a(3) of the UCITS Directive. The UCITS Remuneration Code staff will include senior management, risk takers, staff engaged in control functions and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

- 3.6** The remuneration structures and policies of the management company will have to include or have regard to:
- the assessment of the individual member of staff's performance
  - restrictions on the awarding of guaranteed variable remuneration
  - the balance between fixed and variable remuneration
  - the payment of remuneration in the form of units or shares in the UCITS under management, or of other instruments with the same incentives
  - a mandatory deferral period, of at least three years, for the payment of a substantial portion of the variable remuneration component on a pro-rata basis, and
  - the reduction or cancellation of remuneration in the case of under-performance.

- 3.7** In line with the approach taken for the other existing remuneration codes, we clarify that a firm will have to comply with the SYSC 19E remuneration principles for new awards of variable remuneration from its first full performance period starting on or after 18 March 2016 (the date when UCITS V becomes applicable). However, firms should note that, when finalising our rules, we might have to review the proposed application dates in the light of the ESMA guidelines (depending on when these will be published in their final form).

**Q1: Do you agree with the proposed Remuneration Code in SYSC 19E?**

**Q2: Do you agree that management companies should apply the SYSC 19E Code to their first full performance period beginning after 18 March 2016?**

#### **Payments in non-cash instruments**

- 3.8** UCITS V requires a management company, when the management of UCITS consists of more than 50% of its total portfolio<sup>18</sup>, to ensure that a substantial portion, no less than 50%, of any variable remuneration consists of non-cash instruments. Such non-cash instruments may include:
- units or shares in the UCITS concerned
  - equivalent ownership interests in the UCITS concerned
  - share-linked instruments relating to the UCITS concerned, or
  - other equivalent non-cash instruments relating to the UCITS.<sup>19</sup>

- 3.9** However, the Directive also specifies that when the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the minimum of 50% remuneration in non-cash instruments does not apply.<sup>20</sup> We propose to partner this provision with specific guidance on how firms should comply with the requirement to pay part of the

<sup>18</sup> The draft ESMA guidelines propose to clarify that the relevant total portfolio to be considered should not include the AIFs managed by the management company. See paragraphs 36 to 38 of the ESMA consultation paper.

<sup>19</sup> SYSC 19E.2.17R(1). See also article 14b(1)(m) of the UCITS Directive.

<sup>20</sup> SYSC 19E.2.17R(2). See also article 14b(1)(m) of the UCITS Directive.

variable remuneration in non-cash instruments, when the management of the UCITS accounts for less than 50% of the total portfolio.

**3.10** Our proposed guidance clarifies that, in such cases, the management company should determine the appropriate percentage of remuneration consisting of non-cash instruments to reflect how the management of the UCITS is weighted in the total portfolio of the management company.<sup>21</sup>

**3.11** In circumstances where less than 50% of the variable remuneration consists of non-cash instruments, a management company should consider whether it might be appropriate to include other non-cash instruments (for example, shares, interests or instruments of the management company, or of its parent) as part of the variable remuneration to align the incentives of the UCITS Remuneration Code staff with those of the management company, the UCITS and the investors in the UCITS.<sup>22</sup>

**Q3: Do you agree with our proposed guidance on payments of variable remuneration in non-cash instruments?**

**Proportionality**

**3.12** Similarly to other EU legislation, the UCITS Directive allows a proportionate approach in the application of the remuneration principles. The Directive states that management companies shall comply with the remuneration principles *'in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities'*.<sup>23</sup>

**3.13** The FCA believes that the principle of proportionality is a cornerstone of the UCITS Directive. Proportionality ensures a consistent application of the underlying principles that govern remuneration, allowing for the alignment between long-term risk and individual reward. This ensures a close correlation of a firm's remuneration policies and practices with its prudential and conduct risk profile. All the other Remuneration Codes, including SYSC 19B for AIFMs, allow firms to disapply certain remuneration requirements on the grounds of proportionality. Given the similar wording on proportionality in the UCITS Directive, the AIFMD and other EU legislation, we consider it appropriate to take the same approach for management companies of UCITS. On this basis, we are proposing specific guidance<sup>24</sup>, allowing certain remuneration principles to be disapplied when the remuneration paid to a member of the UCITS Remuneration Code staff falls below certain minimum thresholds.

**3.14** The final ESMA guidelines will clarify how the proportionality principle should be read in the context of the UCITS Directive. The draft guidelines adopt the same approach to proportionality as the existing AIFMD remuneration guidelines.<sup>25</sup> However, since ESMA is required to co-operate closely with the European Banking Authority (EBA) to ensure a consistent approach, ESMA's consultation also seeks feedback on the impact that the alternative approach to proportionality in EBA's proposed Guidelines on sound remuneration policies in the context of the Capital

21 SYSC 19E.2.18G(2).

22 SYSC 19E.1.18G(3).

23 Article 14b(1) of the UCITS Directive.

24 SYSC 19E.2.13G.

25 Guidelines on sound remuneration policies under the AIFMD <http://www.esma.europa.eu/system/files/2013-201.pdf>.

Requirements Directive (CRD) (the EBA guidelines)<sup>26</sup> would have on UCITS management companies.<sup>27</sup>

- 3.15** When the wider EU discussions on proportionality have concluded and the final ESMA guidelines are published, we will look at whether further guidance or changes to our proposed rules on proportionality in reference to UCITS are required. In the meantime, we encourage firms and other stakeholders with an interest in this matter to provide their feedback to the ESMA consultation by 23 October 2015.

**Q4: Do you agree with our proposed approach to proportionality?**

**UCITS management companies: subsidiaries of a credit institution**

- 3.16** A number of existing management companies are subsidiaries of a credit institution. In a banking group, the CRD remuneration requirements apply at the group, parent and subsidiary levels, including those subsidiaries of credit institutions that are not subject to CRD.<sup>28</sup> Management companies which are part of a banking group must nevertheless comply with the UCITS V remuneration principles.

- 3.17** Under the proposed EBA guidelines, certain staff of a management company which is part of a banking group could be deemed to be 'identified staff' for the purpose of the CRD remuneration requirements. This is also recognised by the draft ESMA guidelines which include specific provisions on how management companies should apply diverging sectoral rules (as explained in more detail below).

- 3.18** We expect EBA's and ESMA's final guidelines to clarify how firms should address this issue.<sup>29</sup> Because of this ongoing work at EU level, we do not intend to issue further guidance, at this stage, on how asset managers which are part of a banking group should apply the different remuneration principles under CRD IV and UCITS V.

**UCITS management companies carrying on MiFID-regulated investment activities**

- 3.19** A UCITS management company, like an external AIFM<sup>30</sup>, is able to become authorised to perform certain additional investment activities, such as individual portfolio management, under its UCITS authorisation.<sup>31</sup> Those additional activities are subject to the rules of MiFID<sup>32</sup>, so are referred to as 'MiFID investment activities'. Such a management company is defined in

26 Draft Guidelines on sound remuneration policies under articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under article 450 of Regulation (EU) No 575/2013 <http://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+%28CP+on+GLs+on+Sound+Remuneration+Policies%29.pdf>.

27 In its consultation, the EBA suggested a revised reading of the principle of proportionality which diverges from that under the existing Committee of European Banking Supervisors' (CEBS) remuneration guidelines, and the ESMA guidelines on AIFMD. Under this revised approach, the neutralisation (total or partial) of the remuneration principles in CRD IV should not be allowed. In accordance with this reading, the CRD principles are the minimum standards that all institutions should comply with and only the application of stricter standards, when justified by proportionality, is contemplated.

28 Article 92(1) of the CRD.

29 The draft EBA guidelines published for consultation state in paragraph 63 that 'where specific CRD requirements conflict with the sectorial requirements (e.g. under the AIFMD or UCITS Directive), the remuneration policy should set out for the concerned identified staff which requirements should apply within the entity on an individual basis, taking into account the specific sectoral legislation (e.g., entities subject to the AIFMD or the UCITS Directive should pay the variable remuneration in the alternative investment funds instruments or UCITS instruments (Annex II (1)(m) of AIFMD and Article 14(b)(m) of UCITS V)'.  
30 Article 6(6) of the AIFMD.

31 Article 6(3) of the UCITS Directive.

32 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

the Glossary as a 'UCITS investment firm', which is a type of 'collective portfolio management investment firm' (also referred to as 'CPMI firm').<sup>33</sup>

- 3.20** A management company which is a CPMI firm will fall under the definition of either an IFPRU investment firm or a BIPRU firm, when undertaking MiFID investment activities.<sup>34</sup> As a result, it will be subject to both the new UCITS Remuneration Code and the relevant remuneration code under SYSC 19A (for IFPRU firms) or SYSC 19C (for BIPRU firms).
- 3.21** For a management company subject to the BIPRU Remuneration Code in SYSC 19C, we propose to take the same approach as for UK full-scope AIFMs.<sup>35</sup> Specific new guidance in the BIPRU Remuneration Code<sup>36</sup> clarifies that a management company complying with the proposed SYSC 19E will also be considered to be in compliance with SYSC 19C. Since the BIPRU Remuneration Code is now purely UK law (i.e. it no longer implements the requirements of an EU Directive) we have the discretion to disapply it when the firm meets the UCITS Remuneration Code requirements.
- 3.22** The IFPRU Remuneration Code implements the remuneration requirements under the CRD, so we have limited discretion to disapply it. Also, as noted above, there is still uncertainty over the final requirements of the EBA guidelines, which will apply to IFPRU firms, and the ESMA guidelines. It should be noted that ESMA is required by the UCITS Directive to address, in close cooperation with the EBA, how different sectoral remuneration principles should apply when employees of the management company perform services subject to different Directives.<sup>37</sup> For those reasons, we do not propose to issue specific guidance for management companies subject to the IFPRU Remuneration Code at this stage.

**Q5: Do you agree with our proposed guidance on the application of the UCITS Remuneration Code to management companies that are BIPRU firms?**

**UCITS management companies that are also full-scope UK AIFMs**

- 3.23** The majority of UK UCITS management companies are also authorised as full-scope UK AIFMs. These firms will be subject to both the AIFMD and the UCITS Remuneration Codes, so their remuneration policies will have to clarify how staff to whom both Codes apply should be remunerated.
- 3.24** The following requirements are unique to the UCITS Remuneration Code (i.e. they do not appear in the AIFMD Remuneration Code):
- a UCITS management company must have remuneration policies which do not impair its duty to act in the best interest of the UCITS and which include fixed and variable components, including salaries and discretionary pension benefits<sup>38</sup>

33 The Glossary definition of CPMI firm includes both AIFMs and UCITS management companies carrying out MiFID investment activities.

34 An IFPRU investment firm is an investment firm authorised by the FCA which is subject to CRD IV (see Glossary definition of IFPRU investment firm in the FCA Handbook). A BIPRU firm is an investment firm authorised by the FCA which is subject to the provisions of CRD as at 31 December 2013 (see Glossary definition of BIPRU firm in the FCA Handbook).

35 SYSC 19C.1.1AG.

36 SYSC 19C.1.1BG.

37 Article 14b(2) of UCITS. Paragraph 32 of the draft ESMA guidelines sets out two alternative options which could be followed when staff of the management company perform services subject to different sectoral remuneration principles. Such staff could be remunerated either (a) based on the activities carried out on a pro-rata basis or (b) when there is a conflict between different sectoral principles, by applying the sectoral principles which are considered more effective in discouraging excessive risk taking and aligning the interest of the relevant staff with those of the investors in the funds they manage.

38 SYSC 19E.2.1R(3) and (4).

- responsibility for implementing and reviewing the remuneration policy is allocated to non-executive members of the management body with suitable expertise<sup>39</sup>
- the decisions of the remuneration committee must take into account the long-term interests of investors and other stakeholders and the public interest<sup>40</sup>, and
- the assessment of the performance, when remuneration is performance-related, will have to take into account not only the performance of the individual and the relevant business unit (as it would under the AIFMD Remuneration Code) but also the relevant risks associated with them.<sup>41</sup>

**3.25** The following requirements in the UCITS Remuneration Code differ from the corresponding requirements in the AIFMD Remuneration Code.

- The remuneration principles will apply to 'performance fees' paid directly by the UCITS itself for the benefit of the UCITS Remuneration Code staff.<sup>42</sup> The corresponding provision in the AIFMD Remuneration Code refers to 'carried interest'.<sup>43</sup> The draft ESMA guidelines define the term 'performance fees'<sup>44</sup> so our proposed rules do not include a specific Glossary definition for this term.
- The assessment of performance must be carried out over a multi-year framework and the variable remuneration must be deferred over a period which takes into account any 'holding period recommended to the investors'.<sup>45</sup> The corresponding AIFMD Remuneration Code provisions require instead the relevant multi-year framework to be appropriate to the life-cycle<sup>46</sup> and redemption policy<sup>47</sup> of the AIF.
- The variable remuneration must be deferred over a period of at least three years.<sup>48</sup> The corresponding provision in the AIFMD Remuneration Code requires variable remuneration to be deferred over a period of at least three to five years.<sup>49</sup>

**3.26** We do not propose to be prescriptive as to how firms should apportion the remuneration of staff subject to both SYSC 19B and SYSC 19E because, as noted in paragraph 3.22, we expect the issue to be addressed in the final ESMA guidelines.<sup>50</sup>

### Disclosure to investors

**3.27** UCITS V requires additional information to be disclosed to investors in various documents, including:

- a description in the prospectus of potential conflicts of interest that may arise between the

39 SYSC 19E.2.6R (2).

40 SYSC 19E.2.8R(5).

41 SYSC 19E.2.11R(1)(b).

42 SYSC 19E.2.3R(3)(b).

43 SYSC 19E.2.6R(2).

44 See page 11 of the ESMA consultation paper cited in footnote 13 above.

45 SYSC 19E.2.12R and SYSC 19E.2.19R(1)(a).

46 SYSC 19B.1.13R.

47 SYSC 19B.1.18R(1).

48 SYSC 19E.2.19R(2).

49 SYSC 19B.1.18R(2).

50 See footnote 37, above.

management company, the UCITS or the investors in the UCITS and the depositary<sup>51</sup>

- a description in the prospectus of any delegated safe-keeping functions, including a full list of delegated custodians and sub-custodians and of any potential conflicts of interest<sup>52</sup>
- details of the management company's remuneration policy and arrangements to be disclosed in the prospectus or on a website<sup>53</sup> and a signpost in the key investor information document (KIID) explaining how to get that information<sup>54</sup>
- details of the remuneration paid by the UCITS management company to its staff and other information about its remuneration practices, to be disclosed in the fund's annual long report.<sup>55</sup>

**3.28** We propose to modify COLL 4.2.5R(8) to include the additional information in relation to the depositary in the prospectus. This change will also apply to managers of non-UCITS retail schemes but we expect it to have a minimal impact in practice, because the same information (except for COLL 4.2.5R(8)(h) on the availability of updated information) is already required to be disclosed to NURS investors.<sup>56</sup>

**3.29** A management company might be required to produce the annual long report for a UCITS it manages before the firm has reached the end of the first financial year after 18 March 2016 during which the UCITS Remuneration Code becomes applicable. Similarly, there might be situations where a newly-authorized management company takes over the management of an existing UCITS. In this case, the annual long report might become due before the management company has completed the first full performance period since its authorisation. It follows that some of the remuneration information to be disclosed, for example the outcome of the reviews referred to in COLL 4.5.7R(7)(d), might not be available when the annual long report is prepared.

**3.30** We propose to clarify in COLL 4.5.7AG that, in such cases, the UCITS management company should comply with COLL 4.5.7R(7) as far as is practicable and include in the annual report all the information which is available at the time the report is due. When any of the information required under COLL 4.5.7R(7) is not available, the UCITS management company could consider omitting this information and explaining in the annual report the reason for the omission.

**3.31** We think it is unlikely that the Level 2 measures will also include further details on how the remuneration information should be disclosed in the UCITS annual report, as is the case under the AIFMD Level 2 Regulation.<sup>57</sup>

**Q6: Do you agree with how we propose to transpose the investor disclosure requirements under UCITS V?**

51 COLL 4.2.5R(8)(f). See also Annex 1, Schedule A, point 2.1 of the UCITS Directive.

52 COLL 4.2.5R(8)(g). See also Annex 1, schedule A, point 2.2 of the UCITS Directive.

53 COLL 4.2.5R(28)(a) and (b). See also article 69(1) of the UCITS Directive.

54 COLL 4.7.2R(6A). See also article 78(4) of the UCITS Directive.

55 COLL 4.5.7R(7). See also article 69(3) of the UCITS Directive.

56 FUND 3.2.2R and Article 36 of the AIFMD Level 2 Regulation.

57 See Article 107 of the AIFMD Level 2 Regulation.

## Whistleblowing arrangements

**3.32** The new Article 99d of the UCITS Directive requires Member States of the EU to encourage the reporting of potential and actual breaches of the relevant national provisions implementing the Directive. They should:

- establish appropriate mechanisms for allowing individuals to report these breaches
- ensure such reporting is not considered an infringement of any restriction on the disclosure of information imposed by contract or law, and
- ensure that it does not result in any kind of liability for the person who is reporting the breaches.

These provisions are mainly for the Treasury to implement, to the extent further implementation measures are needed given the existing legal framework for whistleblowing.

**3.33** In addition, management companies and depositaries must adopt appropriate procedures for their employees to report, internally, any potential or actual breaches of the relevant rules governing UCITS. We are proposing to transpose this requirement by a specific rule for management companies in SYSC 4.1.1ER and an equivalent rule for depositaries in COLL 6.6B.30R.

**3.34** Earlier this year we consulted, in conjunction with the PRA, on proposed whistleblowing requirements for deposit-takers, PRA-designated investment firms and insurers.<sup>58</sup> We are currently finalising our rules which we intend to publish in the near future. We will take these into account when making our final rules and guidance implementing the whistleblowing requirements under UCITS V.

**Q7: Do you agree with how we propose to transpose the whistle-blowing requirements for management companies and depositaries?**

## Transitional provisions

**3.35** UCITS V, unlike the AIFMD, has only limited transitional provisions. As we explain in chapter 4, they relate to depositaries of UCITS which do not, as of 18 March 2016, meet the requirements introduced by the Directive.<sup>59</sup>

**3.36** The lack of other transitional measures could cause difficulties for management companies, who will have to update the relevant documentation in the prospectus and the KIID and file this information with (and, in many cases, obtain prior approval of the prospectus changes from) the FCA. Hence, we propose that UCITS management companies will:

- be able to update the relevant information in the prospectus at the next planned update and, in any case, within six months from 18 March 2016, and
- be allowed to update the KIID at the next annual update after 18 March 2016.

<sup>58</sup> FCA CP15/4 and PRA CP6/15, Whistleblowing in deposit-takers, PRA-designated investment firms and insurers, February 2015: <https://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-04>.

<sup>59</sup> Article 23(4) of the UCITS Directive.

**3.37** In the meantime, we suggest it would be good practice for UCITS management companies to publish on a website the additional information about the depositary and the management company's remuneration arrangements, as far as it is available

**Q8: Do you agree with our proposed transitional provisions for firms to update their fund documents?**

## 4.

# Requirements for depositaries of UCITS

- 4.1** This chapter outlines our proposed rules and guidance for depositaries of UCITS schemes, as well as the requirements that apply to management companies in relation to depositaries. It includes our proposed eligibility criteria for firms to act as depositaries of UCITS, the applicable prudential requirements and adjustments to the client asset rules.

### **Operating duties and responsibilities in relation to the depositary**

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- 4.2** Our proposed rules and guidance cover:
- the general obligations applicable to the depositary
  - the duties of the depositary in dealing with potential conflicts of interest
  - the obligation of the management company to appoint a single depositary
  - the eligibility criteria to act as depositary, for firms that are neither national central banks nor credit institutions
  - the scope of the depositary's cash monitoring, safekeeping and oversight functions
  - delegation of the safekeeping function
  - reuse of the assets of the UCITS by the depositary, and
  - whistleblowing requirements applicable to the depositary.<sup>60</sup>
- 4.3** Other UCITS V requirements, such as those relating to the depositary's liability for losses of financial instruments, will be transposed by the Treasury regulations and will not be included in the Handbook.
- 4.4** The current rules setting out the operating duties and responsibilities of depositaries of UCITS schemes can be found primarily in COLL 6, in particular in COLL 6.6. These rules and guidance implement the existing requirements of the UCITS Directive, as well as national rules and guidance applicable to all depositaries of retail authorised funds. We propose to transpose the new UCITS V requirements in a dedicated section in COLL 6.6B applicable to UCITS depositaries only. We will move some existing Directive requirements for UCITS depositaries from COLL 6.6 to COLL 6.6B.
- 4.5** This approach allows us to demarcate clearly the additional rules applicable only to UCITS depositaries (COLL 6.6.B) from those that also apply to depositaries of retail authorised funds –

<sup>60</sup> We have discussed the whistleblowing requirements in chapter 3 of this paper.

UCITS schemes and non-UCITS retail schemes (NURS) – in the UK (COLL 6.6). It will also allow us to retain existing standards without having to carry out significant changes to COLL. From 18 March 2016 onwards, depositaries of UCITS will be subject to the requirements in COLL 6 generally and COLL 6.6B specifically.

**Q9: Do you agree with our approach to implementing the rules applicable to depositaries of UCITS in COLL?**

**Contents of the Level 2 measures**

**4.6** Many of the detailed depositary requirements introduced by UCITS V will appear in the Level 2 measures. We expect these to cover the following matters:

- what terms must be included as a minimum in the contract between the depositary and the management company
- how the depositary should perform its oversight, cash monitoring and safekeeping functions
- the types of financial instrument in the scope of the depositary's custody duties and how they should be segregated from the depositary's own assets
- the depositary's liability, including the circumstances under which assets are considered to be lost and external events giving rise to loss which are outside of the depositary's liability
- the steps to be taken to ensure that if a third-party delegated custodian outside the EU becomes insolvent, the assets of the UCITS are returned to the depositary and not distributed to the creditors of the delegate, and
- the requirements for independence between the management company and the depositary.

**Obligations of the management company and the depositary**

**4.7** UCITS V introduces obligations that apply directly both to the depositary (which we propose to transpose in COLL 6.6B) and to the management company, in relation to the depositary (which we propose to transpose in COLL 6.6A).

**4.8** For example, UCITS V follows the pattern of AIFMD by requiring the management company to appoint a single depositary for each scheme and ensure that the scheme's assets are entrusted to the depositary for safekeeping.<sup>61</sup> The management company must ensure the depositary is eligible to act in that capacity, as explained below. The appointment of the depositary must be evidenced by a written contract.<sup>62</sup> The Level 2 measures will set out the minimum information to be included in the contract so we propose to delete the existing requirements concerning the written agreement between the management company and the depositary in COLL 6.6.4R.

**4.9** Under article 25(2), first paragraph, of the UCITS Directive, the management company and the depositary both have a duty to act in the best interests of the scheme and its investors by acting honestly, fairly, professionally and independently.<sup>63</sup>

**4.10** COLL 6.9 sets out our current guidance on independence between the depositary and the operator of an authorised fund. However, the Level 2 measures will specify the conditions for

<sup>61</sup> COLL 6.6A.7R.

<sup>62</sup> COLL 6.6A.11R and COLL 6.6B.13R.

<sup>63</sup> COLL 6.6A.2R(6) and COLL 6.6B.2R.

the management company and the depositary to fulfil the obligation to act independently.<sup>64</sup> Once the Level 2 measures are finalised, we will consider any changes to COLL 6.9.

- 4.11** The scope of the depositary's cash monitoring, safekeeping and oversight duties is set out in COLL 6.6B. The Level 2 measures will contain detailed obligations for performing those duties.
- 4.12** UCITS V sets specific restrictions and conditions on the depositary's ability to reuse assets of UCITS. We propose to integrate most of them into the existing requirements in COLL 5.4, which prescribes the conditions for authorised funds to enter into stock-lending transactions and repo contracts. The effect of these modifications to COLL 5.4 will be to apply some of the Directive's standards to NURS, but we do not believe they will make any substantive difference to what managers and depositaries of NURS are currently permitted or required to do when entering into stock-lending or repo.
- 4.13** UCITS V limits the depositary's ability to delegate its duties under the Directive to third parties.<sup>65</sup> Only the safekeeping function may be delegated, provided specific conditions are met.<sup>66</sup> Any delegate of the depositary must comply with the general obligations and prohibitions relating to the depositary.<sup>67</sup> As a result COLL 6.6.15R, which currently regulates how the depositary may delegate its functions, will no longer apply to depositaries of UCITS schemes.<sup>68</sup>
- 4.14** We also propose specific guidance in COLL 6.6B.24G for a depositary performing functions through a branch or at its head office, when these are located in another EEA state, in line with the treatment of AIFMD depositaries which we proposed in chapter 4 of CP15/8.<sup>69</sup>

**Q10: Do you agree with how we propose to transpose the depositary requirements in COLL 6.6B, and the requirements for management companies in relation to depositaries in COLL 6.6A?**

**Who can act as depositary of a UCITS?**

- 4.15** Under the existing UCITS Directive requirements a depositary must be an institution which is subject to prudential regulation and ongoing supervision. Member States have discretion to determine which entities can act as depositaries.<sup>70</sup>
- 4.16** UCITS V introduces more detailed eligibility criteria, so that only the following types of institution can be appointed as depositaries:<sup>71</sup>
- a national central bank
  - a credit institution<sup>72</sup> or
  - another legal entity subject to capital adequacy requirements not less than the requirements

<sup>64</sup> Article 26b(h) of the UCITS Directive.

<sup>65</sup> COLL 6.6B.22R.

<sup>66</sup> COLL 6.6B.25R to COLL 6.6B.28G.

<sup>67</sup> COLL 6.6B.25R(4)(d).

<sup>68</sup> We explain the changes to COLL 6.6.15R, to clarify the scope of its application, in Part III of this paper (paragraph 7.46).

<sup>69</sup> Quarterly Consultation (No.8), March 2015: <https://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-08>.

<sup>70</sup> See article 23(2) and (3) of the UCITS Directive in their previous, i.e. pre-UCITS V, form. These requirements have been transposed under Schedule 6 of FSMA. Firms must demonstrate that they meet the Threshold Conditions set out in Schedule 6 to obtain authorisation from either the PRA or the FCA, as the case may be, with the permission to 'act as trustee or depositary of a UCITS'.

<sup>71</sup> Eligibility criteria for depositaries of UCITS, set out in article 23 of the UCITS Directive, differ from the equivalent eligibility criteria for depositaries of AIFs in article 21 of the AIFMD.

<sup>72</sup> This must be a credit institution authorised in accordance with the CRD (article 23(2)(b) of the UCITS Directive).

of articles 315 or 317 of the EU CRR (depending on the selected approach); and which has own funds of at least €730,000 (the minimum amount of initial capital required under article 28(2) of the CRD).

**4.17** UCITS V maintains each Member State's discretion to determine which of the entities above are eligible to perform depositary services for UCITS established in their territory.

**4.18** Entities that are neither central banks nor credit institutions ('non-bank depositaries') must be subject to prudential regulation and ongoing supervision, and must meet specific minimum operational and organisational requirements.<sup>73</sup> We believe that the categories of firm capable of meeting these requirements are:

- full-scope IFPRU investment firms, as these are already subject to at least the capital requirements mentioned above both through IFPRU and the EU CRR, and
- those investment management firms which meet new specific capital resources requirements in IPRU (INV) 5, described in detail below.

**4.19** In addition, the depositary must have its registered office or be established in the UK (this flows from the existing requirement in article 23(1)) and must hold the Part 4A permission for 'acting as trustee or depositary of a UCITS'.<sup>74</sup> The UCITS Directive does not define 'established' so we propose to extend the same definition used under the AIFMD to UCITS depositaries: a UCITS depositary will be considered to be established in the UK when it has its registered office or a branch in the UK.<sup>75</sup>

**Q11: Do you agree with the proposed eligibility criteria for a depositary of UCITS funds, including the definition of when a depositary is established in the UK?**

**Capital resources requirements for non-bank depositaries**

**4.20** As set out in paragraph 4.16, non-bank depositaries will be subject to specific capital resources requirements under UCITS V.

**4.21** Under our current rules, existing non-bank depositaries of authorised funds that are not MiFID investment firms are subject to a minimum own funds requirement of £4 million.<sup>76</sup> This has been the case since 1988 and we extended this requirement to depositaries of authorised AIFs which are MiFID investment firms when we implemented the AIFMD. As a consequence, this requirement now applies not only to UCITS depositaries but also to depositaries of authorised AIFs.<sup>77</sup>

**4.22** We consider the existing £4 million requirement to offer a better level of protection to investors in UCITS schemes than the €730,000 UCITS V requirement as it ensures depositaries have sufficient resources to meet potential liabilities deriving from their depositary activity. It also places non-bank depositaries on a more equal footing with bank depositaries, which are subject to a comparable minimum capital requirement of €5 million under the CRD.<sup>78</sup> We propose to retain the £4 million minimum own funds requirement for FCA-authorised depositaries which

<sup>73</sup> COLL 6.6B.11R and article 23(2), second paragraph, of the UCITS Directive.

<sup>74</sup> COLL 6.6A.8R and COLL 6.6B.4G.

<sup>75</sup> COLL 6.6A.9G, COLL 6.6B.6G and the revised Glossary term 'established'.

<sup>76</sup> IPRU (INV) 5.2.3(3)R(a)(i)

<sup>77</sup> FUND 3.11.16R

<sup>78</sup> See article 12(1) of the CRD.

are investment management firms subject to IPRU (INV) 5 and to apply it to full-scope IFPRU investment firms.<sup>79</sup>

**4.23** We propose to clarify that the own funds must be computed in accordance with article 4(1) (118) of the EU CRR. The firm has a choice whether to comply with the basic indicator approach in article 315 of the EU CRR or the standardised approach in article 317. We propose guidance that a firm should notify us in advance if intends to use the standardised approach.<sup>80</sup>

**4.24** UCITS V requires all depositaries to comply with the 'Pillar I' CRR operational risk requirements. Depositaries that are credit institutions or full-scope IFPRU investment firms are also subject to the 'Pillar II' requirements that require firms to carry out an internal capital assessment process (ICAAP)<sup>81</sup> and allow the FCA to impose capital add-ons.<sup>82</sup> We propose to make FCA-authorized depositaries, which are investment management firms subject to IPRU (INV) 5, comply with the Pillar II requirements in IFPRU 2, to the extent that they apply to non-significant investment firms.<sup>83</sup> A significant investment firm is subject to stricter requirements, which we do not believe should apply to non-bank depositaries of UCITS.

**4.25** We believe this proposal will increase investor protection and ensure fair competition between depositaries, while also allowing a depositary to match its capital resources requirement to the riskiness of its operations. However, the 'Pillar II' requirements do not apply to the depositary on a solo basis if the firm complies with them on a consolidated or sub-consolidated basis.<sup>84</sup> Transitional provisions will apply, as explained in 4.39 and 4.40 below.

**4.26** There are no single market passporting rights for depositaries, but an EEA incoming firm that has a right of establishment in the UK under another Directive may apply under Part 4A of FSMA for its UK branch to obtain a 'top-up permission' to be able to provide depositary services to UK UCITS schemes. We propose that, in such cases, the incoming EEA firm must comply with the UK-specific capital resources requirements.<sup>85</sup>

**Q12: Do you agree with our proposed capital resources requirements for non-bank depositaries?**

**Q13: Do you agree with our proposed approach to cross-refer to the 'Pillar II' requirements in IFPRU 2?**

### Reporting requirements for depositaries

**4.27** We propose new reporting requirements for non-bank depositaries so we can monitor their compliance with the proposed capital resources requirements. These reporting requirements will fall under Regulated Activity Group 6 in chapter 16 of the Supervision manual (SUP). The reporting changes will consist of a new capital adequacy return for firms which are depositaries of a UCITS scheme (FIN072) and a requirement to complete the FSA019 (Pillar 2 information) return. There will be no changes to the reporting requirements for depositaries that are IFPRU investment firms.

79 COLL 6.6B.8R.

80 IPRU (INV) 5.2.2(1)(A)R and IPRU (INV) 5.2.3(3)(C)G.

81 Firms have to conduct an ICAAP to demonstrate that they have implemented methods and procedures to ensure adequate capital resources, with due attention to all material risks.

82 These are additional capital charges resulting from the supervisory review and evaluation process) performed by the relevant regulator which aim to cover inadequacies in the firm's risk and capital management.

83 IPRU (INV) 5.2.3(3)(E)R. IFPRU 1.2.3R sets out the conditions for a firm to be classified as a significant investment firm.

84 See IPRU (INV) 5.2.3(3)(F)G referring to the relevant provisions in IFPRU 2.2.45R to IFPRU 2.2.49R.

85 IPRU (INV) 5.1.1(A)R.

**Q14: Do you agree with our proposed revised reporting requirements for non-bank depositaries subject to IPRU (INV) 5?**

**Definition of financial instruments**

**4.28** UCITS V adopts the definition of ‘financial instruments’ under MiFID II.<sup>86</sup> This differs from the AIFMD which takes the definition of financial instruments used in MiFID I. Although MiFID II will not come into effect until 3 January 2017, UCITS V will apply the new definition of ‘financial instruments’ to management companies and depositaries of UCITS schemes from 18 March 2016. We are thus proposing to use the definition under MiFID II for our Glossary definition of ‘financial instruments’ in relation to UCITS custodial assets.

**Q15: Do you have any comments on using the definition of ‘financial instruments’ under MiFID II for UCITS schemes?**

**Proposed changes to CASS**

**4.29** This section sets out our proposals to amend rules and guidance in the Client Assets sourcebook (CASS) for depositaries of UCITS, and explains our thinking on other matters relevant to CASS and to the safekeeping duties of depositaries of UCITS.

**4.30** The custody rules (CASS 6) apply to a firm acting as trustee or depositary of a UCITS. CASS 6 is designed primarily to restrict the commingling of client assets and the firm’s assets. The rules minimise the risk of the client’s safe custody assets being used by the firm without the client’s agreement or contrary to the client’s instructions, or being treated as the firm’s own assets in the event of its insolvency. When holding safe custody assets belonging to clients, a firm acting as trustee or depositary of a UCITS is required, for example, to:

- introduce adequate organisational arrangements to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence, and
- make adequate arrangements so as to safeguard clients’ ownership rights, especially in the event of the firm’s insolvency.

**4.31** CASS 6 sets out a specialist regime for trustee firms and depositaries, which applies to firms acting as depositary of a UCITS that satisfy the conditions in CASS 6.1.16FR. A separate regime applies to depositaries of AIFs under CASS 6.1.16IAR.

**4.32** We have reviewed the CASS rules and propose amendments to the specialist regime for trustees and depositaries of UCITS to make it consistent with the UCITS V Level 1 requirements and the changes proposed in COLL. We propose that depositaries of UCITS will have a new specialist regime, whilst maintaining the existing regime for any other trustee firms or depositaries.

<sup>86</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

- 4.33** We propose to retain the CASS 6 provisions that are outside the scope of, or are consistent with, UCITS V. Minor differences will remain between the CASS regimes applicable to depositaries of UCITS and depositaries of AIFs. Under this proposal, one rule<sup>87</sup> would be applied to a UCITS depositary that is not within the current regime under CASS 6.1.16FR. The proposed new regime applicable to trustees and depositaries of UCITS would not include all the CASS 6 rules that are applied to depositaries of AIFs under CASS 6.1.16IAR(1).
- 4.34** We are not currently consulting on changes which may be required by the UCITS V Level 2 measures, as explained in paragraph 1.15. We expect to consult on any consequential changes to CASS once we have the European Commission's proposals for the Level 2 measures. However, we expect any proposed amendments to CASS, following the publication of the Level 2 measures, to follow a similar approach to the way we are implementing Level 1.
- 4.35** We propose to maintain the existing separation of requirements for depositaries in the respective sourcebooks; that is, for COLL 6.6 to introduce the UCITS V obligations that apply directly both to the depositary and to the management company, and for CASS 6 to include other domestic requirements on the depositary when it holds a client's safe custody assets. We believe this offers the greatest clarity and convenience for the majority of Handbook users and is similar to the approach taken for AIFMD.
- 4.36** UCITS V mainly impacts CASS where it:
- places limitations on the reuse of the client's safe custody assets held in custody by the depositary
  - refers to the definition of '*financial instruments*' under MiFID II, and
  - outlines the liability requirements on the depositary.
- 4.37** Apart from CASS 6, the provisions in the remainder of CASS (and provisions elsewhere in the Handbook that relate to CASS) will continue to apply as they currently do to depositaries of UCITS, to the extent that the provisions are outside the scope of or are consistent with UCITS V and provide client protection. This means that the following Handbook chapters will broadly continue to apply:
- CASS 1A and SUP 10.7 (CASS firm classification and operational oversight)
  - CASS 3 (collateral)
  - CASS 8 (mandates)
  - CASS 9 (prime brokerage)
  - CASS 10 (CASS resolution pack)
  - SUP 16.14 (client money and asset return (CMAR)), and
  - SUP 3.10 and SUP 3.11 (annual CASS audit).
- 4.38** UCITS V requires Member States to ensure that, in the event of insolvency of the depositary and/or of any third party located in the EU to which custody of UCITS assets has been delegated,

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87 CASS 6.2.3AR.

the assets of a UCITS held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such third party. We are considering this requirement with the Treasury.

**Q16: Do you agree with the proposed application of CASS and CASS-related Handbook provisions in relation to depositaries of UCITS? If not, please provide reasons.**

### **Transitional provisions for depositaries**

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**4.39** UCITS V allows depositaries appointed before 18 March 2016, if they do not meet the operational and capital resources requirements in article 23(2), to continue acting as depositaries until 18 March 2018. Our proposed rules allow this transitional period to apply to a depositary appointed in line with current requirements and to the management company responsible for its appointment.

**4.40** In addition, we clarify that the same transitional period applies to our proposed 'Pillar II' requirements for non-bank depositaries subject to IPRU (INV) 5.

**Q17: Do you agree with the proposed transitional provisions for depositaries of UCITS?**

**Q18: Are any other transitional arrangements required for non-bank depositaries to be able to comply with our proposed capital requirements?**

## **Part II – The European Long Term Investment Fund (ELTIF) Regulation**

## 5. ELTIFs: operational matters

- 5.1** This chapter sets out Handbook changes we propose to make in relation to the European Long Term Investment Funds Regulation (the ELTIF Regulation).<sup>88</sup>
- 5.2** The ELTIF Regulation is directly applicable under EU law and does not require implementation by the FCA. However, with the Treasury, we have identified areas of the UK regulatory framework that will require adaptations so that the ELTIF Regulation can function properly in the UK, while also making sure our objective of investor protection continues to be met.

### Background

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- 5.3** ELTIFs are a new type of fund that will invest in assets with a long-term time horizon, such as infrastructure projects and unlisted small or medium-sized enterprises. The ELTIF Regulation aims to create a cross-border framework for long-term investments, to stimulate demand from institutional and/or retail investors for assets requiring ‘patient capital’. Investors’ money will be locked in for a considerable amount of time, with few opportunities to redeem.
- 5.4** ELTIFs will operate within the AIFMD regime. The prospective manager of an ELTIF must be authorised as a full-scope AIFM under the AIFMD. ELTIFs will be authorised as funds by their competent authority which, for an ELTIF domiciled in the UK, will be the FCA.
- 5.5** AIFMD-authorised managers of ELTIF funds may be able to market their ELTIF to retail investors, provided they meet certain extra requirements in the ELTIF Regulation. The manager must carry out an internal assessment of the ELTIF, taking into account its intended duration and investment strategy, before deciding whether it is fit for retail marketing. All sales to retail investors must be made under advice so the manager, or the distributor of the ELTIF, will be required to perform a suitability test to ensure the product is appropriate for the investor. Managers will also need to meet specific requirements for marketing to retail investors under article 30 of the ELTIF Regulation. Depositaries of retail ELTIFs will need to meet specific requirements in article 29 of the Regulation, as explained below.<sup>89</sup>
- 5.6** These chapters on the ELTIF Regulation will be of interest to:
- UK AIFMs considering the launch of an ELTIF in the UK or another Member State
  - EEA AIFMs which intend to manage and market ELTIFs in the UK
  - UK depositaries of AIFs and UCITS providing services to UK ELTIFs, and
  - advisers and distributors of ELTIFs.

<sup>88</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_2015\\_123\\_R\\_0010&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_2015_123_R_0010&from=EN).

<sup>89</sup> For full requirements, see articles 26 to 30 of the ELTIF Regulation.

## Changes arising from the ELTIF Regulation: AIFMs and depositaries

**5.7** We propose a new section of the Investment Funds sourcebook (FUND), called 'European AIF Regimes,' to include rules and guidance relating to ELTIFs. FUND 4.2 will set out the interaction between:

- a. the ELTIF Regulation and FCA rules, in particular for the depositary of an ELTIF marketed to retail investors (as explained below), and
- b. ELTIFs and authorised funds.<sup>90</sup>

### Permissions

**5.8** A full-scope UK AIFM of an ELTIF will need to have the Part 4A permission of acting as a manager of an authorised AIF. Similarly, a depositary of an ELTIF will need to have the Part 4A permission of acting as a trustee or depositary of an authorised AIF. This is because the requirements for an AIFM or a depositary of an ELTIF are more similar to the requirements for the current types of authorised AIF (non-UCITS retail schemes and qualified investor schemes) than they are for other types of AIF. We propose guidance in FUND 4.2 to explain these points and how the adoption of the ELTIF Regulation will affect the Part 4A permissions.

### Depositaries

**5.9** The ELTIF Regulation requires the appointment of a depositary, in line with the AIFMD. This means that the AIFM and the depositary of an ELTIF need to comply with the applicable requirements of both the AIFMD and the ELTIF Regulation. However, article 29 of the ELTIF Regulation contains specific provisions concerning the depositary of an ELTIF that is marketable to retail clients, which have the effect of amending the corresponding provisions of the AIFMD.

**5.10** As a result, the depositary of an ELTIF marketed to retail investors:

- a. must be 'of the type referred to in article 23(2) of the UCITS directive'<sup>91</sup>; the types of entity referred to in this article have been amended by UCITS V which will apply from 18 March 2016 (see chapter 4)
- b. will not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party<sup>92</sup>
- c. will not be able to exclude or limit its liability by agreement and any agreement that contravenes this requirement will be void<sup>93</sup>, and
- d. will need to comply with restrictions on the re-use of the assets held in custody.<sup>94</sup>

**5.11** These requirements are stricter than the standard AIFMD requirements for the appointment of a depositary.<sup>95</sup> Similarly, the limitations on the re-use of assets differ from the AIFMD requirement in FUND 3.11.24R. We propose rules in FUND 4.2 to disapply these more permissive provisions where an ELTIF may be marketed to retail investors.

<sup>90</sup> An authorised fund, as defined in the Glossary, is an open-ended collective investment scheme authorised by the FCA in accordance with Part XVII of FSMA. Although ELTIFs are funds and will be authorised by the FCA, their authorisation does not stem from FSMA so they will not generally fall within the definition of an authorised fund, except in the instances specified in this chapter.

<sup>91</sup> Article 29(1) of the ELTIF Regulation.

<sup>92</sup> Article 29(2) of the ELTIF Regulation.

<sup>93</sup> Articles 29(3) and 29(4) of the ELTIF Regulation.

<sup>94</sup> Article 29(5) ELTIF Regulation.

<sup>95</sup> FUND 3.11.10R to FUND 3.11.15G.

**5.12** A transitional provision allows an AIFM of a UK unauthorised AIF to have a depositary based in another EEA jurisdiction.<sup>96</sup> This provision makes use of the option in article 61(5) of the AIFMD. We do not propose to extend this transitional provision to depositaries of ELTIF, because there is no such provision in the ELTIF Regulation. Since an ELTIF will be authorised and supervised by the FCA, in our view the depositary of a UK ELTIF should be authorised for that activity in the UK. However other Member States may take a different view and extend the transitional provision to depositaries of ELTIFs domiciled in their jurisdiction. This could mean that a UK depositary could be appointed as a depositary for an EEA ELTIF. We will update our transitional provisions to take account of this possibility and ensure FUND 3.11.24R on the re-use of assets does not apply to a credit institution appointed as the depositary of an EEA ELTIF.

### Marketing of ELTIFs

**5.13** To market an ELTIF the AIFM must comply with article 31 of the AIFMD for domestic marketing, or article 32 of the AIFMD for cross-border marketing, and in both cases must supply the additional information and documentation required by article 31(4) of the ELTIF Regulation. We propose guidance in FUND 4.2 to explain these requirements. We also propose to require the additional marketing information and documentation to be submitted using the form in FUND 4 Annex 1R.

**Q19: Do you agree with our proposal rules and guidance in FUND 4.2?**

**Q20: Do you agree with our view that the AIFMD transitional provision should not be extended for ELTIF depositaries?**

### ELTIF fees: FCA

**5.14** We are funded by the organisations we regulate and recover our costs mainly through:

- a. application fees – one-off payments towards our costs of processing certain applications, e.g., when a new entrant to the financial services market is seeking authorisation or registration
- b. periodic fees – annual payments to recover our ongoing costs of regulating authorised firms and other bodies

**5.15** The level of the application fee depends on the complexity of the relevant application and reflects our work in processing the application, while aiming not to create a barrier to entry into the market.

**5.16** The periodic fee charged for a particular firm does not reflect the actual amount of work we put into regulating it, because tailoring fees across all regulated firms would not be practicable. Instead, we allocate firms to 'fee-blocks', based on the regulated activities they are permitted to undertake. We then allocate the proportion of our total annual funding requirement (AFR) that represents the costs of the resources we will require to regulate the firms covered by each fee-block and charge firms a fee-rate based on the amount of the permitted regulated activity they undertake.

<sup>96</sup> FUND TP 1.2.

### Application fees for ELTIFs

- 5.17** The current application fees payable in relation to collective investment schemes and AIFs are set out in our FEES manual.<sup>97</sup> To reflect our work in processing an application for the authorisation of an AIF as an ELTIF we propose to charge an application fee of £2,400 for a single fund and £4,800 for an umbrella fund. This is the same as the application fee we charge to authorise a qualified investor scheme.
- 5.18** The application fee is payable when the application for the authorisation of an ELTIF is submitted to us.

### Periodic fees for ELTIFs

- 5.19** The current periodic fees payable in relation to authorised regulated funds are set out in FEES 4.2.11R and FEES 4 Annex 4R, Part 1 which we refer to as the 'C' fee-block. The AFR allocated to the 'C' fee-block is recovered from fee-payers in proportion to the number of funds or sub-funds operated by a firm, as at 31 March before the relevant fee-year. We propose to include authorised ELTIFs in the 'C' fee-block for periodic fees purposes. The proposed periodic fees are the same as the fees charged for other types of funds authorised by the FCA.
- 5.20** ELTIFs authorised before 31 March 2016 will be charged the level of periodic fees that apply for the fee-year 1 April 2015 to 31 March 2016 (2015/16), as currently set out under FEES 4 Annex 4R, Part 1. Each year we consult on the periodic fees that will apply in the following fee-year, so the periodic fees for ELTIFs for the fee-year 2016/17 will be consulted on in our annual fees rates consultation paper, scheduled to be published in March 2016.

### Periodic fees for A.7 and A.9 fee-blocks

- 5.21** FEES 4 Annex 1AR sets out the basis for calculating fees payable by firms based on their fee-block. The AIFM of an ELTIF will be in fee-blocks A.7 (portfolio managers) and A.9 (managers and depositaries of investment funds and operators of collective investment schemes), and the depositary of an ELTIF will be in fee-block A9. In summary the following measures ('tariff data') of permitted regulated activity and valuation dates will apply:
- a.** A.7 – funds under management (FUM) valued at 31 December of the year before the start of the fee-year to which the fee applies. For example, in 2016/17, periodic fees will be based on a firm's FUM as at 31 December 2015
  - b.** A.9 – annual gross income, valued at the most recent financial year ended before the 31 December that occurs before the start of the fee-year to which the fee applies. For example, a firm with a financial year ending 31 January will have its periodic fees for the fee-year 2016/17 based on the gross income for its financial year ending 31 January 2015.
- 5.22** Firms will need to ensure that, when they send us their tariff data for fee-years from 2016/17, they include the tariff data relating to ELTIFs in line with the requirements in FEES 4 Annex 1AR.

### **Q21: Do you have any comments on our proposals to charge application fees and periodic fees for ELTIFs?**

<sup>97</sup> FEES 3.2.7R and FEES 3 Annex 2R, part 2.

### Other consequential changes arising from the ELTIF Regulation

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- 5.23** To take account of the requirements under the ELTIF Regulation, we propose to make the following consequential changes to the Handbook.
- 5.24** A closed-ended corporate AIF is defined in the Glossary as an AIF that is a body corporate and not a collective investment scheme. This term is mainly used to help define the scope of cover for the Financial Ombudsman Service and the Financial Services Compensation Scheme. We are proposing to remove this term and redraft references to it to clarify how the Handbook describes ELTIFs structured in that way.
- 5.25** COBS 4.12.4R sets out some exemptions to the restrictions on the promotion of non-mainstream pooled investments. We have taken the opportunity to clarify the drafting of COBS 4.12.4R(5) by moving EuSEF and EuVECA from category 3 (enterprise and charitable funds) to category 11 (excluded communications) where they properly belong.
- 5.26** COBS 18.5.10AR specifies certain disclosures that a full-scope UK AIFM must provide to a retail client when it markets an unauthorised AIF. This rule will not apply where the ELTIF is being marketed to retail investors. Instead, the ELTIF manager will be required to comply with the rules under article 23 of the ELTIF Regulation.

**Q22: Do you agree with these consequential changes to implement the ELTIF Regulation?**

**Q23: Are there any other necessary changes that we have not taken into account?**

## 6. ELTIFs: consumer redress

### The Financial Ombudsman Service and the Financial Services Compensation Scheme

- 6.1** The Financial Ombudsman Service (the ombudsman service) and the Financial Services Compensation Scheme (FSCS) aim to protect consumers against failures by regulated firms. The ombudsman's role is to resolve disputes between consumers and regulated firms quickly and informally. The FSCS can pay compensation where an authorised firm is unable, or likely to be unable, to meet consumers' claims against it. Ombudsman awards and case fees are paid by the firm that has caused the consumer harm, while the FSCS payments are funded by a levy on authorised firms.
- 6.2** The powers to make rules relating to the Financial Ombudsman Service are shared between the FCA and the ombudsman service. So this chapter is issued jointly by the FCA and the ombudsman service and, where relevant, references to 'we' are to the FCA and the ombudsman service.
- 6.3** **Scope of the ombudsman service and the FSCS**  
The activities of managers and depositaries of AIFs authorised by the FCA under FSMA are already within the scope of the ombudsman service and the FSCS. EEA fund managers that manage UK-authorized AIFs, on a branch or a services basis, are also within the scope of the ombudsman service and the FSCS.
- 6.4** We propose to apply a similar approach to ELTIFs authorised by the FCA under the ELTIF Regulation. We believe this provides the appropriate level of protection for investors and is in line with consumer expectations, when investing in a UK fund that has been authorised by the FCA.
- 6.5** For the scope of the ombudsman service, we propose to amend the Dispute Resolution: Complaints sourcebook (DISP) by including AIFM management of an ELTIF in DISP 1.1.3R.
- 6.6** For the scope of the FSCS, we propose to amend the definition of an authorised fund for the purpose of the Compensation sourcebook (COMP) and add it to the category of protected investment business.

**Q24: Do you agree with our proposal to apply a similar approach to redress for ELTIF investors as applies to authorised AIFs?**

**6.7** This proposal will also affect the scope of cover in the following areas, as explained below:

- a. investment companies
- b. depositaries, and
- c. cross-border activities.

***Redress and investment companies***

**6.8** An investment company is set up to carry on the activity of investing and holding assets. Investment companies may be listed or traded on a regulated market (such as investment trusts and capital trusts) or they can also be unlisted. ELTIFs will be allowed to be set up as investment companies and seek admission to trading or listing on a regulated market.

**6.9** Currently, the managers and depositaries of closed-ended investment companies are not within the scope of the ombudsman service and the FSCS. When we implemented the AIFMD we took the view that shareholders in investment companies should have the same rights as shareholders in other trading or holding companies set up under Companies Act legislation. These shareholders would not usually expect to be compensated through the ombudsman service or the FSCS for the mismanagement or failure of a company in which they hold equity. We also thought that shareholders in investment companies are, in general, better placed than investors in collective investment schemes to resolve disputes and hold directors to account through their own initiative.

**6.10** However, for ELTIFs, we think the scope of redress should be widened to include managers and depositaries of ELTIFs that are set up as investment companies. ELTIFs, unlike closed-ended investment companies, will be authorised by the FCA. We believe consumers expect a higher degree of protection in relation to an FCA-authorised entity and, therefore, expect managers and depositaries of ELTIFs set up as investment companies to be within the scope of the ombudsman service and the FSCS.

**6.11** For the ombudsman service, we propose to amend DISP 1.1.5R(5) and (6), DISP 1.1.5-AG and DISP 1 Annex 2G, on the application of DISP 1 to types of respondents/complaints and DISP 2.7.6R(3A).

**6.12** For the FSCS, we propose to add to the category of protected investment business to ensure that managers and depositaries of ELTIFs are fully covered and amend the definition of an authorised fund for the purpose of COMP.

**Q25: Do you agree with our approach to ELTIFs set up as investment companies?**

***Redress and ELTIF depositaries***

**6.13** Currently, the activities of depositaries of UK-authorised funds are covered by the ombudsman service. We intend to add depositaries of ELTIFs to the list of entities covered by the ombudsman service. This is consistent with treating ELTIFs in a similar way to other authorised AIFs. As UK ELTIFs will be authorised by the FCA, we believe retail investors will expect the same high degree of protection for this new type of fund as for authorised funds.

**6.14** As we have proposed to extend the scope of the ombudsman service and the FSCS to cover the activities of ELTIFs set up as investment companies, we also propose to extend the scope of coverage, as explained above, to depositaries of those ELTIFs.

**6.15** For the ombudsman service, this proposal will require us to amend DISP 1.1.5R(6), DISP 1 Annex 2G and DISP 2.7.6R.

**6.16** For the FSCS, we propose to amend the definition of an authorised fund for the purpose of COMP and add to the category of protected investment business.

**Q26: Do you agree that investors in an ELTIF that are eligible complainants should be able to complain to the ombudsman service about the depositary?**

**Q27: Do you agree that investors in an ELTIF that are eligible claimants should be able to claim from the FSCS in relation to the depositary?**

#### ***Redress and cross-border activities***

**6.17** The AIFMD introduced a passport allowing AIFMs authorised in one Member State to manage AIFs established in another Member State. Managers of ELTIFs will also be able to take advantage of this passport.

**6.18** SUP 13A Annex 1G provides guidance on the application of our Handbook to incoming EEA firms. We propose to update this guidance to explain how the Dispute Resolution: Complaints sourcebook (DISP) will apply to incoming EEA managers of ELTIF funds as a result of the proposed changes set out below.

#### ***Coverage of the ombudsman service***

**6.19** The ombudsman service's compulsory jurisdiction usually covers activities carried on from an establishment in the UK. This includes branches of EEA firms, as well as UK firms carrying out cross-border activities from the UK on a services passport. When implementing the AIFMD, we extended coverage under the compulsory jurisdiction to EEA AIFMs managing FCA-authorised funds on a services basis, from an establishment outside the UK. To be consistent with that approach, we intend to apply the same approach for EEA AIFMs managing FCA-authorised ELTIFs.

**6.20** The ombudsman service also has a voluntary jurisdiction, which businesses can sign up to for certain types of complaint *not* covered by the service's compulsory jurisdiction. The ombudsman service proposes to amend the standard terms for the voluntary jurisdiction to align with the changes that the FCA proposes to make to the compulsory jurisdiction.

**6.21** It is possible, particularly with the application of the Alternative Dispute Resolution (ADR) Directive<sup>98</sup>, that an EEA AIFM managing an FCA-authorised ELTIF on a cross-border services passport, will have opted (or will be required) to use a dispute resolution scheme in its home state.

**6.22** The ombudsman service might decide to dismiss a complaint without considering its merits if it is being dealt with by a comparable dispute resolution scheme in another Member State. The ombudsman service has the power to refer the dispute to a scheme in the home state of the EEA AIFM if it considers the matter would be better dealt with by that scheme, and if the complainant consents. In certain circumstances, if the consumer does not consent to the referral the ombudsman may decide to dismiss the case without consent, but it is a matter for the ombudsman to decide.

<sup>98</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR)

- 6.23** This proposal would require the FCA to amend DISP 2.6.1R(2)(b) and DISP 2.6.2G(2)(b).
- 6.24** The ombudsman service proposes to amend the standard terms for the voluntary jurisdiction to align with the changes mentioned above that the FCA proposes to make to the compulsory jurisdiction.

**Q28: Do you agree that the current compulsory and voluntary jurisdictions of the ombudsman service should also apply to ELTIF funds?**

***Coverage of FSCS***

- 6.25** As part of the AIFMD implementation, FSCS cover was defined as covering cross-border fund management activities only where the fund is an FCA-authorized fund. This means that the FSCS's scope:
- a.** includes an EEA AIFM managing a UK-authorized fund on a branch or services passport
  - b.** does not include a UK AIFM managing a non-UK fund, and
  - c.** unless the incoming firm is a branch and tops up, does not include an EEA AIFM managing an unauthorised fund domiciled in the UK.
- 6.26** If the Treasury decides to amend its regulations<sup>99</sup>, we propose to extend the FSCS's scope in relation to activities covered under the AIFMD to include UK-authorized ELTIFs. We believe this provides the appropriate level of protection for investors and is in line with consumer expectations when investing in a UK fund that has been authorised by the FCA. This will include EEA AIFMs that manage a UK fund on a services basis – and AIF managers that only manage ELTIFs set up as investment companies, including self-managed investment companies.
- 6.27** For the FSCS, we would amend the definition of an authorised fund for the purpose of COMP, so no further changes would be required.

**Q29: Do you agree that an AIFM that manages a UK-authorized ELTIF on a cross-border basis should be required to be within the scope of the FSCS?**

**ELTIF fees: ombudsman service fees and FSCS levies**

***The ombudsman service***

- 6.28** Firms covered by the ombudsman service must pay the ombudsman service's annual levy. UK managers of ELTIFs will already be paying these fees as they are authorised as UK AIFMs. Therefore, we do not propose to levy a further fee from an AIFM for the ombudsman service in relation to the management of an ELTIF, unless that AIFM is subject to these fees for the first time. In that case, it will need to pay the same fees as other UK AIFMs.
- 6.29** There is also a charge for each complaint brought to the ombudsman service. Currently, the ombudsman allows 25 free cases per firm per year (across all products), after which the firm has to pay a fee of £550 for each case.
- 6.30** Any EEA AIFM wishing to manage a UK-authorized ELTIF will need to pay the fees for the ombudsman service if they are not currently managing any other UK-authorized funds and therefore do not currently fall within the scope of the ombudsman service. They will also

<sup>99</sup> Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (S.I. 2001/1783)

have to pay the complaint case fee, if the number of complaints against them each year goes above 25.

***The FSCS***

**6.31**

The FSCS is funded by levies on authorised firms. Under our rules, the FSCS can levy firms to meet its compensation costs and management expenses. UK managers of ELTIFs will already be paying these levies as they are authorised as UK AIFMs. Therefore, there is no need for us to amend our rules to enable the FSCS to levy UK managers of ELTIFs. Any EEA AIFMs wishing to manage a UK-authorised ELTIF will need to pay the levy for the FSCS, if they are not currently managing any other UK-authorised funds and therefore do not currently fall within the scope of the FSCS.

## Part III Other miscellaneous changes to fund regulation

## 7. Proposed rule changes

- 7.1** In this section, we discuss a range of issues of detail about how we regulate authorised funds. In this chapter we set out proposals for a number of changes, all of relatively low impact, to clarify our requirements, introduce additional flexibility and remove or correct out-of-date measures. In the next chapter we also set out our thinking on some subjects where we plan to do further work, and ask for feedback to help us develop proposals. We have included tables after the draft instruments in the appendix, showing which rules and guidance relate to each point of this chapter.

### Reporting to the FCA

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- 7.2** We propose to update our existing reporting requirements in two areas; reporting by authorised fund managers (AFMs) of UCITS of their use of derivatives, and reporting by depositaries of breaches of our rules and their monitoring of AFMs.

### Reporting by authorised fund managers of UCITS schemes

- 7.3** An AFM of UCITS schemes is currently required, under COLL 6.12.3R(2), to notify details of its derivative risk management process (DRMP) to the FCA on a regular basis (and at least annually).<sup>100</sup> The AFM's notification should include details of the derivatives and forward transactions used in each UCITS scheme, together with the underlying risks and any quantitative limits, and the methods for estimating the relevant risks. However, the format for submitting this information to us is not currently defined. As a consequence, we have found that the information we currently receive is often incomplete or in a format that is not easy to assess or compare.<sup>101</sup>
- 7.4** We need the DRMP information provided by AFMs to be detailed and accurate to enable us to focus our supervisory work on the most relevant funds and monitor potential risks building up in the sector. To assist AFMs to submit complete and comparable information in compliance with COLL 6.12.3R, we propose to introduce a standard DRMP reporting template. The template will be included in COLL 6 Annex 2R and AFMs will be required to submit the proposed report to us via the GABRIEL system. We clarify that AFMs will have to submit an annual report on the last business day of November each year, containing information on the DRMP as of 15 October of the same year. We do not propose to change the frequency of the reporting, but we clarify that AFMs will be able to submit additional DRMP reports at any time during the year (for example, if there have been material changes to a fund's risk profile). Since the template in COLL 6 Annex 2R overlaps with the existing FSA 042 report, we propose to remove FSA 042 and to make the required consequential amendments to SUP 16.12.

<sup>100</sup> See also article 51(1) and (3) of the UCITS Directive and article 45(1) of the UCITS Implementing Directive.

<sup>101</sup> See our Fund Authorisation and Supervision update of 20 February 2015:

[www.fca.org.uk/firms/firm-types/fund-authorisation-and-supervision/fund-supervision/fund-authorisation-supervision-update](http://www.fca.org.uk/firms/firm-types/fund-authorisation-and-supervision/fund-supervision/fund-authorisation-supervision-update).

**7.5** The template contains fields for providing the following information for each UCITS managed by the AFM:

- the name and scheme (or, if applicable sub-fund) product reference number (PRN) of the relevant fund. We are currently considering assigning PRNs at sub-fund level for all types of authorised schemes (UCITS and non-UCITS) and publishing them on the FS Register. We will take into account, when finalising our rules and guidance, the timing when PRNs will be available to firms.<sup>102</sup> Please note that we do not assign PRNs to EEA schemes managed by a UK AFM. We propose that, for these schemes, the AFM should indicate the relevant scheme or, if applicable, sub-fund legal entity identifier (LEI)
- the fund's assets under management (AUM) and its gross long and short derivative positions
- confirmation as to whether the derivatives are used for investment (as opposed to efficient portfolio management) purposes
- details of the risk measures used (commitment approach, absolute or relative value at risk (VaR))
- information on the fund's leverage, calculated according to EU guidelines<sup>103</sup>, and the relevant fund leverage limits if defined in the prospectus, and
- basic information on the types of derivative used by the AFM.

**Q30: Do you agree with our proposal to introduce a standard DRMP reporting template?**

**Q31: Do you have any specific comments on the proposed template in COLL 6 Annex 2R?**

### Reporting by depositaries

**7.6** Section 6 of chapter 16 of the Supervision manual (SUP 16.6) contains requirements for depositaries to report certain breaches of COLL rules by AFMs on a quarterly basis. They must submit returns covering the number of negative boxes<sup>104</sup> not corrected in accordance with our guidance, along with material pricing errors and immaterial pricing errors, where the depositary did not consider the AFM's controls to be adequate.

**7.7** Although these returns contain valuable information, they do not detail the nature of the breaches and are limited in scope, focusing mainly on material pricing errors and negative boxes. The requirements also give the depositary the flexibility not to report breaches that it considers isolated. As 'isolated' is not defined in this context, this provision may lead to inconsistent reporting.

**7.8** We reached an informal agreement with members of the Depositary and Trustee Association (DATA) in November 2014 that they would voluntarily begin reporting full details of all COLL and FUND breaches they record on behalf of the funds they oversee, together with any findings

<sup>102</sup> Note that authorised AIFs have already been assigned PRNs at sub-fund level for the purpose of AIFMD Annex IV transparency reporting but these are not yet published on the FS Register.

<sup>103</sup> CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788): [http://www.esma.europa.eu/system/files/10\\_788.pdf](http://www.esma.europa.eu/system/files/10_788.pdf).

<sup>104</sup> A negative box occurs when the AFM has sold more units than are in existence but does not take prompt action to make up the deficit.

that arise from their respective monitoring programs. This information is already collected on a regular basis by depositaries.

**7.9** As part of the agreement with DATA members, we undertook to consult on putting the enhanced reporting measures on a permanent basis. We now propose to modify SUP 16.6 by replacing the current quarterly reporting requirements with:

- monthly reporting of COLL and FUND breaches recorded by a fund's depositary including a declaration, for each AFM for which the depositary provides oversight, as to whether the depositary considers the AFM's controls over valuation and pricing and box management to be adequate, and
- quarterly reporting of issues that arise as a result of depositaries' monitoring of AFMs' operations.

**7.10** Sup 16 Annex 12AR will replace Annex 12G and will contain templates for breach and monitoring reporting. Reporting will be limited to UK authorised funds and the related operations of the AFM. We also propose to give guidance on these proposed reporting requirements in SUP 16 Annex 12 BG.

**7.11** Information provided to us by depositaries will be used in conjunction with other data sources and analysis, to enable us to form a view on risks within the UK authorised funds population. We may also consider publishing summary information in future (for example total number of breaches reported, numbers by breach type, etc.) if stakeholders would find it useful. All data will remain confidential and it is subject to our usual disclosure restrictions as set out in section 348 of the Financial Services and Markets Act 2000 (FSMA) and the exceptions permitted by section 349 of FSMA.

**Q32: Do you agree with our proposed changes to the depositary reporting requirement in SUP 16?**

### Identifying funds in customer documents

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**7.12** The FCA uses PRNs to identify each fund that we authorise. As mentioned in paragraph 7.5, we are now working to assign a PRN to each sub-fund of an umbrella scheme and to publish them on the FS Register. This will make it easier for stakeholders to find out the regulatory status of a fund. We propose rules and guidance to encourage the use of the PRN for both sub-funds and stand-alone schemes in documents provided to investors.

**7.13** We propose to amend COLL 4.2.5R and COLL 8.3.4R, outlining the required contents of an authorised fund's prospectus, to require the prospectus to include a fund's PRN or, for an umbrella, the PRN of each relevant sub-fund. A transitional provision will apply so this can be done when the prospectus is next updated for other purposes.

**7.14** We also propose to include specific guidance in COLL 4.7.3AG to clarify that the KIID may include the fund's PRN. In such cases, the PRN could be included in the KIID section containing the information identifying the scheme.<sup>105</sup> We recognise that current practice is to include other identification codes, for example the fund's international securities identification number (ISIN), in the KIID. Firms can continue including other identification codes in this section of the

<sup>105</sup> See article 4(4) of the KII Regulation.

KIID so long as, when the PRN is also used, it can be easily distinguished from other codes. We do not expect the PRN to be added to a KIID until it is updated for other reasons.

**Q33: Do you agree with proposed rules and guidance to encourage the use of PRNs in the fund's documentation?**

### Charity authorised investment funds

**7.15** A charity fund is a collective investment scheme (CIS) or another type of vehicle in which only charities are allowed to invest. The fund is eligible for registration as a charity in its own right and enjoys the same tax-exempt status as charities. Most charity funds fall outside of FSMA and are regulated by the Charity Commission but not by the FCA.

**7.16** As announced by the Treasury in the Budget published in March this year<sup>106</sup>, we have been working with the Treasury, the Charity Commission and other key stakeholders to enable AFMs to launch new authorised funds which can be registered as charities. Discussions are making steady progress and we now propose a number of changes to COLL to introduce the concept of a charity authorised investment fund (CAIF). Existing charity funds will continue under the present rules, although their managers may choose to wind them up and replace them with CAIFs in due course.

**7.17** A CAIF will be an authorised fund, hence supervised and regulated by the FCA, which is also registered as a charity under Part 4 of the Charities Act 2011 and regulated as such by the Charity Commission. Our proposal is to introduce a new section in COLL (COLL 14) setting out specific rules and guidance applicable to the manager and the depositary of a CAIF.

#### Registration as a charity

**7.18** We propose that the AFM and the depositary of a CAIF will have to notify the FCA, without undue delay, of both the registration of the fund in the Charities register and the cancellation of that registration.

#### Advisory committees

**7.19** Some existing charity funds have particular governance arrangements, such as a board of charity trustees who oversee aspects of the fund manager's activities and who have certain rights to approve or reject the manager's decisions. We have considered whether these kinds of model can be accommodated in the rules for CAIFs. There are some difficulties with this because of the way the rules (in many cases, implementing EU Directive requirements) assign responsibilities to the authorised fund manager and the depositary. There are some similarities with the role that might be performed by additional directors of an ICVC, although we understand that charity trustees might not wish to undertake director roles.

**7.20** Following discussions with stakeholders, we believe it should instead be possible for a CAIF to be established with an advisory committee, performing a consultative role only, through which charity investors are represented. The committee would have no right to take decisions on matters that are the responsibility of the AFM and/or the depositary, but it could be given certain rights to receive information and to be explicitly consulted on issues affecting investors' rights and the continued charitable status of the fund.

<sup>106</sup> See page 81 of the Budget 2015 published on 18 March 2015: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416330/47881\\_Budget\\_2015\\_Web\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416330/47881_Budget_2015_Web_Accessible.pdf).

- 7.21** When the instrument constituting the CAIF requires or permits the appointment of an advisory committee, the following proposed provisions will apply:
- the roles and responsibilities of the advisory committee must be set out in the instrument constituting the fund
  - the prospectus must contain information on the operation of the advisory committee and in particular a summary of its roles and responsibilities; its membership; a description of how its members are nominated and terminated; and how its meetings are called and operated, including the quorum
  - the AFM must ensure that an annual report on the functioning of the advisory committee is prepared and made available to investors of the CAIF free of charge, upon request (this could be done by including it in the fund's annual long report)
  - the AFM and the depositary of the CAIF must retain appropriate records of any dealings with the advisory committee for a period of at least five years, and
  - the advisory committee will have the power to request the convening of a general meeting of the unitholders.

### **Income payments**

- 7.22** Some existing charity funds are able to allocate and distribute their income and capital in ways that are not allowed under the current FCA rules in COLL 6.8 for authorised funds. In particular, these are the ability to:
- smooth income payments by holding back some of the income available for distribution using an income reserve account, then paying it out at a later date to allow the generation of a stable income stream, which is important for charity investors, and
  - adopt a total return approach, which allows capital growth to be treated as income for the purpose of meeting a pre-determined target.

- 7.23** We propose new rules and guidance to allow a CAIF to have these features. Under the proposed provisions on income distribution and capital allocation, the manager and the depositary of a CAIF will be able to smooth income or to adopt a total return approach to investment if the instrument constituting the fund and its prospectus make provision for them. Since both the CAIF and its investors will be tax-exempt, we believe the adoption of these features will not result in the avoidance of tax provisions.

### **Q34: Do you agree with our proposed rules and guidance on CAIFs?**

### **Money market funds**

- 7.24** EU guidelines on money-market funds, issued by the Committee of European Securities Regulators (CESR) in 2010, are implemented as Handbook rules in COLL 5.9.<sup>107</sup> They set harmonised standards for risk-spreading, asset quality and liquidity in funds that can be

<sup>107</sup> Guidelines – Common definition of European money market funds [http://www.esma.europa.eu/system/files/10-049\\_cesr\\_guidelines\\_mmfs\\_with\\_disclaimer.pdf](http://www.esma.europa.eu/system/files/10-049_cesr_guidelines_mmfs_with_disclaimer.pdf).

promoted as a low-risk product comparable to a deposit account. The guidelines were modified in 2014 by an ESMA Opinion<sup>108</sup> to remove references to reliance on the ratings of credit rating agencies (CRAs), so our rules need to be changed in the same way.

**7.25** The ESMA Opinion affects COLL 5.9.6R which specifies the criteria a money-market instrument must meet to be considered of high quality. Previously, 'high quality' was defined as having been awarded one of the two highest available short-term credit ratings by each recognised CRA. Since the EU Regulation<sup>109</sup> on CRAs came into force, a manager can no longer rely solely or mechanically on ratings issued by a CRA and must instead perform its own assessment of an instrument's credit quality.

**7.26** We propose to reflect this by deleting the current definition of 'high quality' in COLL 5.9.6R and replacing it with a requirement on the AFM to conduct its own assessment. We will add new guidance at COLL 5.9.6AG to reflect the amended CESR guidelines, including the flexibility for money-market funds that are not short-term funds to invest in instruments of lower quality.

**Q35: Do you have any comments on our proposed treatment of the revised CESR guidelines on money market funds?**

**Feedback on previous consultations**

**7.27** In chapter 8 of CP12/27<sup>110</sup>, published in October 2012, we consulted on a number of issues, some of which we did not take forward at the time. We now return to these topics and set out below the feedback we received on two issues and our responses to them. The third issue (netting between unit classes) is covered in chapter 8.

**Investing in government and public securities**

**7.28** We proposed changes to the COLL rules on government and public securities (GaPS) to correct a mismatch between the investment powers allowed by the UCITS Directive and the standard Glossary definition of GaPS which derives from the Regulated Activities Order.<sup>111</sup> The Glossary definition allows a UCITS scheme to invest more than 35% in value of its scheme property in securities issued or guaranteed by a local authority in any state, whereas the Directive allows only local authorities of an EEA State to be the issuers or guarantors. Thus, a UCITS scheme investing in securities issued or guaranteed by a single non-EEA local authority could inadvertently breach the diversification limits in the UCITS Directive.

**7.29** Our rules should reflect the UCITS Directive accurately, since UCITS schemes can be sold throughout the EU and to protect investors it is important for all funds to respect rules on eligible assets and risk-spreading. So, in CP12/27 we proposed to correct the relevant COLL rules by removing references to the Glossary-defined term 'government and public securities' and replacing them with a fuller description of the categories of issuer or guarantor permitted by the Directive. We proposed to extend the same provision to NURS, as the benefit of having consistency between UCITS and NURS rules on this point was thought to outweigh any burden created by imposing a non-mandatory restriction on NURS.

<sup>108</sup> The substance of the Opinion (ESMA/2014/1103) is included in the guidelines – see the preceding footnote.

<sup>109</sup> Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) 1060/2009 on credit rating agencies.

<sup>110</sup> Quarterly Consultation (No.34), October 2012: <http://www.fsa.gov.uk/static/pubs/cp/cp12-27.pdf>.

<sup>111</sup> Article 78 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (as amended).

- 7.30** Feedback came from the IMA, DATA and three firms; all of them supported the change in principle but DATA (supported by IMA) suggested that the purpose of the change would be better achieved by amending the Glossary definition of GaPS. DATA also noted that some further consequential changes were needed. One firm suggested there should be a transitional period to assist any funds that had inadvertently breached the spread rules in COLL 5.2.11R.
- 7.31** We have considered the feedback suggestions and accepted some of them, although we do not think it would be practical to change the Glossary definition of GaPS. We have also identified some further changes that could be made to clarify COLL, which include deleting paragraph 4 of COLL 5.2.12R, as investor disclosure requirements are dealt with elsewhere in the sourcebook. Some time has passed since we first made these proposals in 2012, so we think it is appropriate to reconsult on them and the new version appears in the draft instrument in Appendix III.
- 7.32** We do not propose to include a transitional period for UCITS schemes to comply with the 35% limit when introducing these rules, because they will be correcting our Handbook to bring it into line with Directive requirements and there is no basis in EU law for us to allow an extension of this kind. There will be however a transitional period of six months for NURS.

**Q36: Do you agree with our revised proposal for defining the Government and public securities available for investment by UCITS schemes and NURS?**

**Calculating preliminary charges**

- 7.33** In CP12/27, we consulted on changes to COLL rules for calculating the preliminary charge of a retail authorised fund. Our aim was to make the rules consistent with the equivalent requirements of the directly-applicable KII Regulation. We received responses from the IMA, DATA and three firms on this proposal. They were generally supportive but one firm disagreed, saying the proposal did not take account of our rules for calculating the prices of a dual-priced fund and had potentially significant operational implications.
- 7.34** We have reconsidered this issue and now propose to re-consult on revised wording, to take account of the concerns expressed in the feedback. The new version of COLL 6.7.7R sets out the different ways a preliminary charge may be calculated. We have added guidance to make it clearer that, whichever method is used for a UCITS scheme, the actual amount of the charge – when expressed as a percentage of the amount the investor contributes – must not exceed the amount disclosed as the entry charge in the KII document for the fund. We no longer think it is necessary to amend COLL 4.2.5R (21), concerning the information to be disclosed in the prospectus on this point.

**Q37: Do you agree with our revised proposal for calculating the preliminary charge?**

**Feeder funds**

- 7.35** We have identified some aspects of the rules concerning the use of non-UCITS feeder funds which we think were either unintended, or inhibit fund managers from making good use of the master-feeder structure. We propose the following changes to improve the efficiency of these rules.

### Pension feeder funds

**7.36** The Glossary term 'feeder fund' is not generic but refers specifically to funds that are relevant pension schemes under pensions legislation. We think it has become confusing for this term to have such a specific meaning, now that there are definitions for feeder UCITS and feeder NURS, so we propose to modify the defined term to 'pension feeder fund', keeping the same definition, to avoid ambiguity.

**7.37** COLL does not state clearly which rules apply to a pension feeder fund. We think this should be clarified for pension feeder funds structured as UCITS schemes or NURS, so we propose guidance at COLL 1.2.5G explaining that they should follow the requirements for a feeder UCITS and a feeder NURS, respectively. We will also make consequential changes to COLL 5.6.7R and the Glossary definition of 'feeder NURS'. The rule restates the current position that a pension feeder fund may not invest in units of a non-UK UCITS unless it is a recognised scheme in the UK.

### Q38: Do you agree with our proposals for pension feeder funds?

### Non-UCITS retail schemes investing in feeder funds

**7.38** COLL 5.6.10R prevents a NURS from investing in another CIS if that CIS is more than 15% invested in other CIS.<sup>112</sup> Consequently, a NURS cannot invest in a feeder fund of any kind. This rule aims to prevent circularity of investment and the layering of funds where no useful purpose is served by the layered structure, but there may be valid reasons why a NURS should have access to a feeder fund. We have been asked to allow a NURS to invest in units of property authorised investment funds (PAIFs) which, for reasons of tax efficiency, usually adopt a master-feeder structure. There may be other situations where it is tax-efficient for the NURS to invest in a feeder fund, or where the master fund only accepts investment through feeder funds.

**7.39** We propose a new rule COLL 5.6.10AR to allow managers of NURS that are not FAIFs flexibility to invest through certain types of feeder fund, subject to some limitations. We would allow investment in units of a feeder UCITS, a feeder NURS or a feeder fund linked to a PAIF or a recognised scheme. The conditions are that:

- a. the master fund must be either a UCITS, a NURS or a recognised scheme offering equivalent protection
- b. the master fund must comply with the requirement not to have more than 15% exposure to units of other CIS
- c. the NURS cannot have more than 35% of its portfolio in units of feeder funds of any kind, and
- d. the authorised fund manager must be able to show on reasonable grounds that the use of a master-feeder structure would not disadvantage NURS investors, taking account of risks and costs (e.g., that it is tax-efficient or is the only way to gain exposure to certain investments).

### Q39: Do you agree with our proposal to allow all NURS some ability to invest in feeder funds?

<sup>112</sup> A NURS that is a fund of alternative investment funds (FAIF) is not subject to this rule because of COLL 5.7.3R. A FAIF can invest in feeder funds provide they meet the requirements set out in COLL 5.7.

**Preventing excessive layering of investments**

- 7.40** When we introduced the rules for feeder NURS in 2012, we did not make any provision to prevent circularity and layering of investment for a master UCITS or a master NURS. The UCITS Directive achieves this by stating that a feeder UCITS cannot invest in another feeder UCITS or in a fund that invests in units of another feeder UCITS. We propose to add an equivalent clause to COLL 5.6.26R, which governs the eligibility of a master scheme into which a feeder NURS feeds.

**Q40: Do you have any comments on the proposed anti-layering rule?****Property authorised investment funds**

- 7.41** We have granted a number of rule modifications to managers of PAIFs where there is a feeder fund dedicated to investing in a master PAIF. The modifications change the standard rules concerning dealing arrangements between the feeder and the master, when the two funds have the same valuation points.
- 7.42** The experience of granting modifications of the same rules for multiple firms suggests there is a case for introducing a general rule in COLL for PAIFs that operate in a synchronised master-feeder structure. This change will allow all dealing instructions received for the feeder by the dealing cut-off point to be reflected in the aggregated order passed through to the master for the same valuation point, resulting in the price of the feeder tracking the price of the master as closely as possible. We propose a new rule at COLL 6.2.25R and a modification of COLL 6.3.9R to achieve this.
- 7.43** Although other master-feeder structures are likely to experience similar operational challenges, we are not proposing a general exemption for all feeder funds. We think this flexibility is appropriate for PAIFs because the feeder fund will normally be the only investor in the PAIF and investors do not wish to access the master fund directly. If the feeder invested in the master alongside other direct investors, there would be a risk of unfair treatment of these other investors in the master, so we do not support widening the scope of this treatment.

**Q41: Do you agree with the proposed flexible dealing arrangements for a feeder fund investing in a PAIF?****Alignment with AIFMD**

- 7.44** When we created the FUND sourcebook in July 2013 to implement AIFMD, we did not review COLL to consider whether it needed changing to align it with FUND. At the time, we intended to transfer the contents of COLL to FUND at a later date, but we have since reconsidered this idea. Experience since 2013 suggests that such a significant change is not necessary at present and could create unnecessary burdens both for us and for stakeholders, at a time when many other regulatory changes are taking place. We have decided not to make the changes we outlined in chapter 2 of CP12/32<sup>113</sup>, but we have identified a few areas where we think modifications to COLL and FUND are appropriate or additional guidance would be helpful.
- 7.45** We propose to revise the guidance in COLL 1.2 on NURS and QIS to explain their status as alternative investment funds under AIFMD. We will also add guidance in various places (including FUND 3.3) to clarify the relationship between FUND rules on (for example) investor

<sup>113</sup> Implementation of the Alternative Investment Fund Managers Directive Part 1, November 2012: <http://www.fsa.gov.uk/static/pubs/cp/cp12-32.pdf>.

disclosure, fund valuation and delegation that apply to all AIFMs, and the COLL rules on the same subjects that apply only to managers of UK authorised funds.

**7.46** Regarding delegation, the COLL rules no longer apply to a full-scope UK AIFM or the depositary of the AIFs it manages, as AIFMD has imposed maximum-harmonising measures. However, COLL still applies where a NURS or QIS is managed by a small authorised UK AIFM and we will amend the application clauses to state this.<sup>114</sup>

**7.47** We propose to delete the draft chapter headings in FUND as we do not expect to use them in the short to medium term, except for chapter 4 as explained in paragraph 5.7.

**Q42: Do you have any comments regarding the rules and guidance on the application of COLL to AIFMs? Are there any other matters of this kind we should address?**

#### Calculation of borrowing limits under COLL 5.5.5R

**7.48** COLL 5.5.5R sets out the borrowing limits applying to authorised funds and requires the AFM to ensure that the fund's borrowing on any day does not exceed 10% of the value of the scheme property. One risk that we have identified is that an AFM may net off long and short positions between different currencies when calculating the fund's borrowing levels. This could artificially reduce the total borrowing level of the fund which might, if all the borrowing in all currencies were taken into account, otherwise exceed the 10% borrowing limit in COLL 5.5.5R(1). To address this risk we propose guidance in COLL 5.5.5AG to clarify that, when calculating the fund's borrowing levels, an AFM must not net between different currencies.

**Q43: Do you agree with the proposed guidance on the calculation of the borrowing limits for the purposes of COLL 5.5.5R?**

#### Removing out-of-date provisions

**7.49** We have identified some rules and guidance that are now obsolete or no longer appropriate, which we intend to delete. Where the scheme's constituting instrument and prospectus refer to any of the items mentioned in this section, there is no need for the AFM to amend the documents solely to remove such references; this can be done when changes are being made for other purposes.

#### Stamp Duty Reserve Tax

**7.50** Stamp Duty Reserve Tax (SDRT) was formerly applied to certain transactions in the units of authorised funds, under Schedule 19 part 2 of the Finance Act 1999 (for AUTs) and equivalent secondary legislation for ICVCs. The Government revoked those provisions by section 114 of the Finance Act 2014 and they ceased to apply from 30 March 2014. Consequently, all references in the Handbook to an SDRT provision chargeable under Schedule 19 are obsolete and will be removed, including the prospectus disclosure requirement in COLL 4.2.5R(19) and the valuation rule in COLL 6.3.7R.

<sup>114</sup> The change for NURS will be made as part of the implementation of UCITS V, because COLL 6.6.15R will no longer apply to depositaries of UCITS either. Depositaries of UCITS will be subject to the proposed specific delegation rules in COLL 6.6B and depositaries of authorised AIFs managed by full-scope UK AIFMs are already subject to the specific delegation rules in FUND 3.11.

### Historic pricing

**7.51** Our current rules allow AFMs to carry out some sales and redemptions of units using historic pricing (i.e., dealing at the prices calculated at the last valuation point before the customer's dealing order was received) as an alternative to the standard procedure of forward pricing. Dealing at historic prices was once the industry norm, but it is no longer considered in investors' interests because of the risk of using a unit price that does not reflect the current market value of the underlying assets. We believe that no AFMs are using historic pricing or are likely to in future, so we propose to abolish the COLL rules permitting dealing at historic prices.

### Bearer certificates

**7.52** The trust deed and prospectus of an authorised unit trust may allow bearer certificates to be issued, in which case the units they represent would not be recorded in the unit register. As far as we are aware, no manager currently uses this power and the ability to issue such certificates is regarded as obsolete. Moreover, recent changes to the Companies Act 2006<sup>115</sup> will require any bearer shares issued by companies to be registered or redeemed, so it seems appropriate for our rules to follow that example.

**7.53** We propose to delete the rules that permit authorised unit trusts to issue bearer certificates. The OEIC Regulations permit ICVCs to issue bearer certificates and the Treasury will consider whether a similar change should be made to those regulations.

### Periodic closure of unit registers

**7.54** COLL 6.4.4R(6)(c) requires the manager of an authorised unit trust to make the register generally available for inspection by unitholders, but allows it to close the register for up to 30 business days a year. We believe the power to close a register is not used in practice and is obsolete (it reflects a former power for company registrars that was abolished by the Companies Act 2006). We propose to delete the part of the rule permitting temporary closure of the register. The equivalent provision for ICVCs, which was part of the OEIC Regulations, was abolished in 2011.<sup>116</sup>

### **Q44: Do you have any comments on the proposed deletion of out-of-date provisions?**

### Minor editorial changes

**7.55** We have also identified some minor errors to be corrected and references which need to be brought up to date. These include:

- correcting the Glossary definition of a 'large deal' to remove an erroneous reference to dilution adjustment
- updating the references to RICS Valuation Standards in COLL 5.6.20R and COLL 8.4.13R to refer to the current edition
- removing a reference in COLL 5.4.4R to the US Office of Thrift Supervision, which is now merged with the Office of the Comptroller of the Currency

<sup>115</sup> Section 84 of the Small Business, Enterprise and Employment Act 2015.

<sup>116</sup> The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (SI 2011/1265) Schedule 2 paragraph 14.

- correcting mistakes in cross-references between rules, and
- listing the requirements in the record-keeping and modification schedules for COLL and FUND.

**Q45: Do you have any comments on any of these changes?  
Are you aware of any other similar errors or out-of-date  
references we should correct?**

## 8. Topics for discussion

- 8.1** In this chapter we set out our thinking on various matters that we would like to explore with stakeholders and give feedback on a topic we previously consulted on. We are not proposing rules or guidance on these matters and will use the feedback to this paper to develop our proposals for consultation at a later date.

### Liquidity management and 'soft closure'

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- 8.2** Fund managers may sometimes wish to restrict the flow of new money into one of their funds because they see it as the best option to safeguard the interests of the existing investors. The manager's ability to continue running an actively-managed fund in line with its investment aims can be hampered if, for example, there is a temporary shortage of attractive investment opportunities at which to target the new money.
- 8.3** COLL 6.2.18R allows AFMs of retail authorised funds to limit the issue of units in certain circumstances, without affecting the ability of unitholders to sell their units. To introduce limited issue to an existing fund, the AFM is required to review and change the prospectus for each fund it manages and (if the fund is an ICVC) must receive FCA approval before those changes can be made.
- 8.4** We have been asked by some AFMs and trade associations to look at allowing more flexibility to restrict or cease the issue of units to investors at short notice – a practice sometimes referred to as 'soft closure' of a fund, although the term has no established definition and can refer to a range of practices.
- 8.5** We recognise there may be benefits to allowing AFMs to restrict inflows to a fund at fairly short notice, from a liquidity management perspective. Indeed, a manager could be in a situation where too much money is flowing into the fund, so that it cannot invest on a scale that would be adequate to maintain the performance of the fund, particularly in times of poor market liquidity. In such circumstances, the ability to restrict inflows to the fund quickly could be very beneficial in not exposing the fund to new risks.
- 8.6** We also note there are different degrees of restriction a manager might wish to apply, with complete closure to new investment being one option. However, for the purpose of this paper and future consultation on changes to COLL, we understand soft closure to mean the temporary restriction, by an AFM, of the issue of units/shares in a fund to unitholders.
- 8.7** We are keen to understand the potential effects and risks to investors of modifying this rule, as well as the distribution model for these funds. Closure to new investment at short notice could create problems, given that many investors use both financial advisers and intermediaries (such as platform service providers), who need to be aware of the AFM's intentions so they, in turn, can stop accepting new investments. We also wish to look at the benefits and risks of other options that might be attractive to AFMs, such as allowing existing regular savings investments to continue while closing to new lump-sum investments.

- 8.8** We may also need to take account of other national and international workstreams that are considering issues related to liquidity management. Part of that work might involve wider discussions around the kinds of mechanism that fund operators and regulators should have at their disposal to manage fund liquidity, so we would wish to ensure any proposals to change our rules on limited issue are coherent with the wider view of this subject.

**Q46: What would be the practical benefits and risks, for firms and investors, of changing the limited issue rule?**

**Q47: What specific changes, if any, do you think would strike the best balance between the interests of the manager, existing investors and prospective new investors?**

### Eligible counterparties for derivative transactions

- 8.9** The UCITS Directive requires us to make rules about which bodies can be counterparties to an over-the-counter (OTC) derivative transaction undertaken on behalf of a UCITS scheme. We transposed that requirement in COLL 5.2.23R, where we set out the categories of approved counterparties.
- 8.10** In discussions with AFMs, it has been suggested our rules on this point are stricter than the requirements of the Directive and would benefit from more flexibility about who can be an approved counterparty. With this in mind and in the light of recent developments in European legislation, such as the application of the European Market Infrastructure Regulation (EMIR)<sup>117</sup> and the introduction of central clearing for OTC derivatives, it may be appropriate to review this rule to see if it achieves the right balance between protecting investors and allowing operational flexibility to fund managers, to make it easier for them to access particular markets or products.
- 8.11** EMIR has introduced central clearing obligations for OTC derivatives and created a new taxonomy for the classification of central counterparties (CCPs). As such, it seems appropriate to reflect the requirements under the EMIR Regulation in COLL 5.2.23R and to consider adding the non-EEA CCPs that are authorised or recognised by ESMA in relation to EMIR.
- 8.12** Aside from reflecting the changes of EMIR, or allowing counterparties authorised or recognised by ESMA under EMIR, there are additional options that could be explored. For example, we could consider extending the list to:
- all entities defined in COLL 5.4.4.R as acceptable counterparties for the purpose of our stock lending rules
  - other specific non-EU jurisdictions, based on our own assessment of the prudential requirements for entities in those jurisdictions
  - a set of generally applicable criteria, based on prudential requirements, which would not be jurisdiction-specific and would allow fund managers to apply the criteria and decide whether the entity is an eligible counterparty (similar to the operation of the eligible markets rule in COLL 5.2.10R).

<sup>117</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

**Q48: What are the challenges fund managers face in applying our rules defining eligible counterparties for OTC derivative contracts?**

**Q49: Which of these options, if any, do you prefer and why? Are there others we should consider?**

### Investment in ELTIFs

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**8.13** We would like to know more about whether prospective ELTIF managers see authorised funds and unit-linked life funds as potential long-term investors in an ELTIF, and conversely whether the managers of those funds think ELTIFs might be target assets for their existing or new funds. In that context, we are considering whether our current rules would allow the various categories of authorised fund and unit-linked life fund to invest in units or shares of ELTIF funds.

#### Authorised funds in COLL

**8.14** Under certain circumstances, shares of ELTIFs which are constituted as closed-ended funds might be capable of fulfilling the criteria in COLL 5.2.7AR and COLL 5.2.7CR, which would allow them to be treated as eligible transferable securities for a UCITS scheme. If so, they would also be eligible for investment by a NURS or a QIS on that basis.

**8.15** A NURS (including a NURS operating as a FAIF) might be able to invest in an ELTIF because it is allowed to invest in units of unregulated funds, subject to investment limits as prescribed in COLL 5.6.10R. However, this would only be possible if the ELTIF could meet the criterion relating to investor redemption rights at a price related to NAV (if for example its shares were regularly traded on a secondary market).

**8.16** A QIS would have fairly broad scope to invest in shares of ELTIFs that meet the criteria of COLL 8.4.5R, since there is no specific requirement for an ELTIF to provide regular redemption rights for its investors during its stated lifespan.

**8.17** We would like to explore with stakeholders whether our existing rules are likely to provide adequate opportunities for authorised funds to gain exposure to ELTIFs. We would also like to explore whether greater flexibility in those rules could support that aim without compromising the degree of risk that an investor in an authorised fund would reasonably expect to be exposed to.

**Q50: Do you think you can use UCITS, NURS, and QIS to invest in ELTIFs under existing rules? If not, what would you suggest changing?**

**Q51: Do you think investment in ELTIF is likely to be more attractive to certain types of funds and, if so, which?**

#### Permitted links in COBS 21

**8.18** Permitted links rules in COBS 21 govern linked long-term insurance business and allow firms some flexibility in the choice of assets in which they can invest. The rules set out high-level principles that apply to firms engaging in unit-linked long term insurance business, as well as the types of asset they can use to back this business. The policy intention behind these rules, where the policyholder or the beneficiary is a natural person and bears direct risks in the assets

used, is to ensure that they are protected from inappropriate risks. So, through COBS 21.3, we have restricted the type of assets that can be invested in.

- 8.19** UCITS, NURS and recognised schemes can be used in line with COBS 21.3 to back benefits without restriction. QIS, their EEA equivalents, and unauthorised funds can also be used, but only if the fund invests only in assets on the list in COBS 21.3 and publishes its prices regularly. Also, this type of fund cannot represent more than 20% of a linked fund's gross assets where the linked policy holders are not institutional linked policy holders. An ELTIF might meet the criteria to be treated as an unauthorised fund for this purpose.

**Q52: Do you think it will be possible to invest in ELTIFs through permitted links? If not, what amendments to the rules could facilitate investment in ELTIFs?**

### Netting between unit classes

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- 8.20** We consulted in CP12/27 on changing rules in COLL 6.2 to allow the netting of unit issues and cancellations between unit classes with different charging structures. We received responses from the IMA, DATA and three firms, all supporting the principle of greater flexibility. However, several drafting changes were suggested and we were asked to expand the rules relating to box conversions. Some of the respondents also suggested that the controls to be exercised by the depositary should be framed as guidance, rather than a rule.
- 8.21** It appears that fund managers and depositaries do not consider the original proposals to be satisfactory or certain to achieve their intended purpose. Conversely, we are not yet persuaded that their suggested changes would ensure adequate investor protection. We have not seen much evidence so far that AFMs, or their delegated administrators, already have systems in place to handle the kinds of complex processing that would be possible under the recast rules. In view of these factors, we do not intend to proceed with these proposals at the present time.
- 8.22** We would like to look further at how firms currently handle unit conversions, what existing capacity they have to handle more complex operations of that type and what further systems developments might be needed to support cross-class conversions (including costs and timescales). This information would be used to support a revised proposal in due course.

# Annex 1

## Cost benefit analysis (CBA)

1. FSMA requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made’. It also requires us to include an estimate of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
2. This Annex provides a CBA of the policy proposals outlined in chapters 3 to 7. Mirroring the structure of the CP, this Annex is divided into three sections:
  - implementation of UCITS V
  - changes to the Handbook linked to the ELTIF Regulation, and
  - other proposed changes to rules for authorised funds

The relevant costs and benefits of each set of proposals are discussed in the corresponding sections of the CBA.

### Implementing UCITS V

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3. In implementing UCITS V, we have no discretion to go below the minimum standards introduced by the Directive. Instead, given that the UCITS Directive is generally a minimum-harmonising directive, we are able (in terms of EU law) to go further than it requires. In implementing the new requirements, we have generally adopted an ‘intelligent copy-out’ approach and do not propose to introduce higher standards than those set out by the Directive and those already applying to firms under national law and regulation. We identify the instances in this CP and CBA where we go beyond minimum standards, notably in relation to prudential requirements imposed on non-bank depositaries. Therefore, for those proposals that represent the minimum standards that we have to implement, we have undertaken only a high-level CBA as we consider it would be disproportionate, and hence ‘not reasonably practicable’, to spend a significant amount of resources on estimating the costs and benefits associated with these requirements.
4. UCITS V will apply to a well-defined population of firms (management companies and depositaries) and funds (UCITS schemes) operating under the existing UCITS regime. It will not require us to set up a new authorisation process or supervisory approach for firms entering the regulatory perimeter for the first time, as we had to when implementing AIFMD.

5. More specifically, UCITS V will affect:
- approximately 150 firms with a Part 4A permission for ‘managing a UCITS’
  - 11 firms with a Part 4A permission for ‘acting as depositary of a UCITS’, and
  - approximately 2,300 UCITS schemes authorised in the UK.<sup>118</sup>
6. In Part I of this CP we outline proposals for implementing the UCITS V requirements affecting:
- managers of UCITS (see chapter 3), and
  - depositaries of UCITS (see chapter 4).

### Requirements concerning managers of UCITS

#### *Remuneration requirements*

7. As described in chapter 3, UCITS V introduces remuneration requirements for managers of UCITS which we propose to implement in a new UCITS Remuneration Code in SYSC 19E. As we have noted, it is difficult to estimate what the full impact of these new requirements will be on firms, since ESMA has not yet finalised its guidelines which will clarify a number of significant matters (such as the application of the principle of proportionality and of different sectoral rules). Therefore, we encourage firms who will be impacted by the ESMA guidelines to respond to ESMA’s consultation, which will close on 23 October 2015, with any comments on the likely impact and costs.
8. The main benefits introduced by the UCITS V remuneration provisions are underlined in the Commission’s impact assessment.<sup>119</sup> In particular, these requirements aim to address risks from misaligned incentives between management companies and investors caused by unclear and ineffective remuneration practices. They also aim to improve transparency by disclosing remuneration information in the UCITS annual report and offering documents. We consider these to be the main benefits brought by the remuneration requirements introduced by UCITS V.
9. The majority of existing management companies (two-thirds of the population) are already subject to remuneration provisions under one or more of the existing remuneration codes in our Handbook. These firms are either:
- a CPMI firm subject to the IFPRU Remuneration Code (SYSC 19A), or
  - a CPMI firm subject to the BIPRU Remuneration Code (SYSC 19B), and/or
  - a full-scope UK AIFM subject to the AIFMD Remuneration Code (SYSC 19C).
- Of the remaining one-third of management companies not currently directly subject to any of the Remuneration Codes, some might nevertheless be indirectly subject to the CRD remuneration requirements if they are a subsidiary of a banking group.
10. As a result, we expect the majority of management companies to already have some remuneration arrangements in place. This will limit the impact that the additional UCITS V remuneration requirements will have on these firms.

<sup>118</sup> Note this figure includes both umbrella and sub-funds.

<sup>119</sup> Commission Staff Working Document Impact Assessment (SWD/2012/0185 final) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0185&from=EN>.

11. The remaining UCITS management companies will be subject to remuneration requirements for the first time. For these firms, we believe we can broadly read across the cost estimates we used to assess the impact of the BIPRU and the AIFMD Remuneration Codes in CP10/19<sup>120</sup> and CP 12/32<sup>121</sup>, respectively. Some of those estimated costs will also be relevant for those firms which are already subject to other remuneration codes (see for example the costs relating to the production of remuneration information in the UCITS annual report). These costs are set out in Table 1 below.

**Table 1: Costs for management companies from applying the Remuneration Code**

Costs (per firm)	Incremental costs	
	One-off	Ongoing (annual)
<b>For changing:</b>	£0 to £300,000	£0 to £50,000
<ul style="list-style-type: none"> <li>• the way remuneration policies are set</li> <li>• systems and controls</li> <li>• additional data collection reporting and</li> <li>• record keeping requirements.</li> </ul>		
Issuing an annual remuneration statement	£0 to £100,000	£0 to £30,000
Senior management board or committee time	N/A	£0 to £24,000
Enhanced risk management function	N/A	£0 to £31,000
Adjusting remuneration structures	£0 to £47,000	£0 to £50,000

### **Disclosure requirements**

12. UCITS V introduces additional disclosure requirements for management companies to:
- include information on the firm's remuneration arrangements in the UCITS prospectus, KIID and annual long report
  - provide additional information on the fund's depositary
  - describe any conflicts which may arise between the management company and the depositary, and
  - provide information on any arrangements for the delegation of the depositary's safekeeping function, including the identity of any delegates and any conflicts that may arise from the delegation.

These provisions have the benefit of increasing transparency so investors have all the information they need to make informed investment decisions.

13. Management companies are already required to produce a prospectus and a KIID for each UCITS they manage. The new provisions will require firms to produce only limited new documentation (for example, the new KIID rules will require a management company to make available information about the firm's remuneration policy on its website and to provide a paper copy of such information to investors free of charge and upon request) and to update the existing fund documentation. We propose to introduce transitional provisions, as explained in chapter 3, to allow firms more time to amend their documents. This should help to minimise any practical

120 Revising the Remuneration Code, July 2010 [http://www.fsa.gov.uk/pubs/cp/cp10\\_19.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_19.pdf).

121 Implementation of the Alternative Investment Fund Managers Directive, November 2012 <http://www.fsa.gov.uk/static/pubs/cp/cp12-32.pdf>.

difficulties firms would otherwise experience in updating the relevant documentation by 18 March 2016. We expect any increase in costs to be of minimal significance.

#### ***Whistleblowing requirements***

14. In chapter 3 we outline the new requirement in UCITS V for firms to have appropriate procedures in place to report internally any breaches of the rules governing UCITS. As noted in chapter 3, a similar requirement will apply to depositaries. This section covers our assessment of the impact on both management companies and depositaries.
15. This requirement has the main benefit of incentivising compliance and improving the culture of the firm by creating mechanisms for staff to report and escalate breaches. This will ultimately result in increased protection for investors in the UCITS concerned.
16. Some firms will already have appropriate whistleblowing mechanisms in place and would already be subject to our existing whistleblowing rules and guidance in SYSC. Other firms might not have whistleblowing procedures in place. We expect that creating or updating existing procedures, training material and controls will result in some costs for firms. However, we expect these costs to have minimal impact.

#### ***Requirements concerning depositaries of UCITS Impacts of requirements for depositaries***

17. In chapter 4 we outline the new operational requirements applicable to depositaries of UCITS. Depositaries will be subject to harmonised rules requiring them to monitor cash flows, safe-keep the assets of the UCITS and oversee certain operational functions. We also outline the new eligibility criteria and capital resources requirements applicable to depositaries (the analysis conducted in relation to our proposed additional capital resources requirements is described in the next section).
18. Most of the details around the new obligations applicable to depositaries of UCITS will be formalised in the Level 2 measures so it is difficult, at this stage, to estimate what the full impact on firms will be.
19. The new requirements have the benefits of increasing protection for investors, by enhancing the responsibilities of the depositary and by ensuring that the depositary has sufficient capital resources to meet any potential liabilities deriving from the performance of its functions and from the new standard of strict liability for losses of financial instruments held in custody.
20. There are currently 11 firms authorised to act as depositaries of UCITS in the UK, of which 10 are also depositaries of AIFs. The UCITS V depositary requirements are broadly in line with those of the AIFMD. Also, depositaries of UCITS are already subject under our existing COLL rules to detailed requirements of oversight, safekeeping and monitoring of cash held by the fund. To the extent that the Level 2 measures will be in line with the corresponding AIFMD Level 2 Regulation, most firms will already have most of the systems, procedures and organisational arrangements in place to carry out the cash-monitoring, safekeeping and oversight duties mandated under UCITS V.
21. We recognise that where UCITS V diverges from the AIFMD there might be additional costs for depositaries arising from:
  - the new limitations on the re-use of assets of the UCITS, which are broadly in line with the existing COLL rules on stocklending

- the ban on the depositary from transferring the liability for losses of financial instruments held in custody (which is allowed in limited circumstances under the AIFMD), and
  - the independence and delegation requirements which will be in the Level 2 measures.
22. There might also be an increase in costs for depositaries deriving from the enhanced cash-monitoring obligations introduced by UCITS V. In particular, these could require system changes and additional operations and compliance staff. The actual costs deriving from these additional obligations will vary depending on the complexity of the operations of the clients of the depositary (e.g. number of accounts opened) and size of the depositary's operations.
23. These additional costs might be recovered through higher depositary fees charged to the UCITS scheme or the management company. However, there are a number of other factors influencing the level of depositary fees such as, for example, competition in the market for depositary services, the risk profiles of the UCITS and the management company, and the size and complexity of the UCITS.
24. Although management companies already have depositary agreements in place, we expect the existing contracts will have to be reviewed and renegotiated with the relevant depositaries. This exercise could also result in additional costs for management companies and depositaries.
25. As explained in paragraph 3 of this CBA, the proposed changes to the existing requirements applicable to depositaries reflect the minimum requirements under the UCITS Directive. So, we consider it would be disproportionate, and hence 'not reasonably practicable', to spend a significant amount of resources on estimating the costs and benefits associated with these requirements.
- Capital resources requirements for non-bank depositaries***
26. In chapter 4 we describe our proposals with regard to capital requirements for non-bank depositaries. There are currently three such firms authorised by the FCA to act as depositaries of UCITS, who will be directly affected by the proposed requirements.
27. We have assessed the impact that our proposed capital requirements will have on those firms and conclude that it is likely to be negligible. This is because the firms are already subject to the £4 million minimum own funds requirement that we propose to retain, and to the proposed Pillar II requirements on a consolidated or sub-consolidated basis. The proposed £4 million minimum own funds requirement could impact incoming EEA depositaries who will have to apply for top-up permissions. However we expect these firms to already hold capital in excess of £4 million. There will be some consequential changes to their reporting requirements but they will not be required to produce additional information. Therefore, we do not expect a significant increase in costs from our proposed rules and guidance.
28. In terms of impact on competition in the market for depositary services, the proposed new capital resources requirements could represent a barrier to entry for potential new depositaries that are not banks or part of a banking group.
29. We have observed that under the current capital resources requirements (which are not particularly different to the proposed new requirements) the number of depositaries of UCITS has increased from 7 to 11 over the last three years. As such, we do not expect the proposed requirements would pose a significant barrier to competition in this market.
30. The higher capital resources should offer increased protection to customers in case of the loss of financial instruments held in custody by the depositary or its delegates. We also anticipate

that maintaining comparable capital requirements between bank and non-bank depositaries and between depositaries for UCITS and other types of retail scheme will help to avoid potential distortions in competition.

### ***Proposed changes to CASS***

31. This section concerns the impact of the proposed amendments to CASS 6 on depositaries of UCITS schemes.
32. The proposed changes to CASS 6 are similar to the changes that were made to CASS 6 for depositaries of AIFs when we implemented the AIFMD. Our permissions data indicates that almost all regulated depositaries and trustees of UCITS in the UK also have the regulatory permission to act as a depositary or trustee of an AIF. This suggests that depositaries of UCITS should already largely have the necessary systems in place to comply with our changes to CASS 6.
33. Overall, the proposed changes to CASS 6 reduce the regulatory burden under CASS on UCITS depositaries, compared to the current regime of CASS 6 provisions applicable to UCITS depositaries. While firms may incur some one-off costs to amend relevant processes and policies, there should be a decrease in ongoing costs as a result of the reduced regulatory burden. We expect that any increased one-off costs resulting from our proposed changes will be of minimal significance.
34. As highlighted in chapter 4, we propose to retain only those CASS 6 provisions that are either outside the scope of, or are consistent with, UCITS V. We consider the requirements under UCITS V, which will be transposed in COLL, to be equivalent to the current CASS 6 requirements that we are disapplying to UCITS depositaries. Therefore, we believe that the level of consumer protection will not be reduced by disapplying certain CASS 6 protections while switching the new UCITS V requirement on.

**Q53: *Do you agree with our cost benefit analysis for changes to the Handbook implementing the UCITS V requirements?***

**Q54: *Do you agree with our assessment that the proposed new capital requirements will have a limited effect on competition in the market for depositary services and potential new business models?***

### **European long-term investment funds (ELTIFs)**

35. As the ELTIF Regulation is a EU Regulation directly applicable to firms, we are not required to conduct a CBA for the requirements it introduces. We are however required under FSMA to take into account the costs and benefits deriving from any consequential changes we make to the Handbook to take account of the new framework for ELTIFs.
36. The ELTIF Regulation will create a new cross-border framework for long-term investments, in an attempt to stimulate institutional and/or retail investor demand for assets requiring 'patient capital'. Only managers who are authorised under the AIFMD will be able to offer ELTIFs.
37. It is difficult to estimate how many firms will be affected by our rules because this will largely depend on the take-up of ELTIFs and also on how many issuers decide to design them for retail

investors. However, in the vast majority of cases, fund managers intending to offer ELTIFs will have already been authorised under AIFMD and will, for the most part, already fall within the scope of the ombudsman service.

- 38.** In the retail sector, ELTIFs might be expected to draw investors currently investing in UCITS and NURS funds. The new pension rules allow retired consumers greater freedom to invest their money, which may lead more retail investors to invest in such funds. However, we do not expect the proportion of individual portfolios suited to long-term commitments to be significant, due to the general need for individuals to be able to access their money quickly and due to the high initial amount required<sup>122</sup> to invest in one or more ELTIFs. ELTIFs could nevertheless be a product of interest for small institutional clients who are required to invest in retail products by their mandate.

#### **Complaints and redress**

- 39.** The ELTIF Regulation requires fund managers who wish to market ELTIF to retail consumers to have internal procedures in place to deal with complaints from such consumers. We consult in chapter 6 of this paper on giving retail investors in ELTIFs access to the ombudsman service and to the Financial Services Compensation Scheme.

#### **Ombudsman service access**

- 40.** The total cost to a firm of being within the jurisdiction of the ombudsman service depends on the volume of complaints it receives. Currently, the ombudsman service allows 25 free cases per firm each year (across all products), after which a fee of £550 becomes payable for each case. Firms subject to the ombudsman service must also pay an annual levy and will incur additional administrative costs for dealing with cases which have been referred to the ombudsman service.
- 41.** As ELTIFs may be sold to retail investors, we have considered the number of complaints received concerning the two other categories of funds marketable to retail investors, UCITS and NURS, to estimate the number of complaints we might expect on ELTIFs; while taking into account that we do not expect ELTIF sales to be on the same scale.
- 42.** The ombudsman records complaints about funds in relation to their legal form which can be an authorised unit trust, an open-ended investment company (OEIC) or an authorised contractual scheme. These are included as part of the category 'investment-linked products' in the ombudsman's annual review. The ombudsman service primarily receives complaints about the suitability of the investments concerned for the individual consumer involved.<sup>123</sup> In 2014/15, 3,128 complaints were received in relation to investment linked products, 93 of them about unit trusts. This is a decrease of 15% compared to 2013/14, when the number of new complaints regarding unit trusts stood at 109.<sup>124</sup> The ombudsman service has not published specific information about other legal forms so we have used unit trusts as a proxy for our CBA.
- 43.** We expect the number of complaints about ELTIFs to be a small fraction of the number of complaints about UCITS and NURS set up as unit trusts if sales are proportionately lower, for the reasons noted above. With this in mind, we have assumed that, on average, approximately 20 complaints per year could relate to ELTIFs.

<sup>122</sup> Article 30 of the ELTIF Regulation requires that, where the financial instrument portfolio of a potential retail investor does not exceed €500,000, the manager of the ELTIF or any distributor, after having performed the suitability test and having provided appropriate advice, shall ensure, on the basis of the information submitted by the potential retail investor, that the potential retail investor does not invest an aggregate amount exceeding 10% of that investor's financial instrument portfolio in ELTIFs and that the initial minimum amount invested in one or more ELTIFs is €10,000.

<sup>123</sup> <http://www.financial-ombudsman.org.uk/publications/ar15/ar15.pdf> See p72.

<sup>124</sup> <http://www.financial-ombudsman.org.uk/publications/ar15/ar15.pdf> See p47.

**Table 2: Impacts of complaints and redress proposal**

<b>Benefits</b>		
Additional protection for investors who would otherwise be left without an independent assessor for their complaint		Unquantifiable benefit <sup>125</sup>
Benefits to firms from increased investor confidence in the ELTIF brand		Unquantifiable benefit <sup>126</sup>
Estimated additional redress paid to consumers by Retail ELTIF Managers	Up to £319,000	A benefit for consumers which is a transfer from firms (aggregate) <sup>127</sup>
<b>Costs</b>		
Estimated additional redress paid to consumers by Retail ELTIF Managers	Up to £319,000.	A cost to firms which is a transfer to consumers (aggregate) <sup>128</sup>
Additional ombudsman service case fees incurred	Up to £11,000	Ongoing cost (aggregate) <sup>129</sup>
Industry administrative costs for processing increased number of complaints	c.£1500	On-going costs (aggregate) <sup>130</sup>
Potential one-off compliance costs for firms to set up complaints handling process	£250 per firm	One-off cost <sup>131</sup>

125 We do not think it is practicable to quantify these benefits because they relate to positive outcomes for consumers that have not yet materialised, in a sector that does not yet exist. Complaints are consumer feedback and, as such, are an opportunity for businesses to learn from them, ultimately improving the ELTIF brand.

126 Ibidem.

127 We have used the €500,000 portfolio limit for the suitability requirements to apply under article 30 of the ELTIF Regulation, associated with the 10% of portfolio limit a retail investor with up to €500,000 can invest in ELTIFs. This gives us a maximum amount of redress paid to each consumer of up to €50,000. At industry level, if we estimate that the number of complaints will average 20 per year and if we follow the uphold rate for complaints concerning other types of investment funds sold to retail investors (around 45% upheld), the maximum cost to the industry would be €450,000. On 10 August 2015, the exchange rate was £1 = €1.4116, so €450,000 was worth approximately £319,000.

128 Ibidem

129 Not taking into account any free case, the maximum amount of case fees incurred by the ELTIF industry would be 550 x 20 = £11,000. This additional amount is likely to impact larger firms rather than small firms or self-managed ELTIFs because of the 25 free cases threshold in place.

130 The FSA previously estimated the cost of handling a complaint in line with DISP rules to range between £30 and £120. We are assuming an average cost per complaint of £75.

131 Retail ELTIF Managers will be AIFMD managers and will already be required to have complaints processes in place. However, AIFMD managers of investment companies have not had to meet those requirements and will need to set up complaints handling processes for the first time if they wish to manage an ELTIF set up as an investment company. We do not believe it is practicable to estimate how many retail ELTIFs will be set up as investment companies as the ELTIF market still needs to develop. We estimated that firms would need to spend on average 1 day to understand and establish complaints handling processes – which we cost at £250 a day.

**Financial Services Compensation Scheme (FSCS) cover**

44. The FSCS is funded by levies on authorised firms. The precise method by which FSCS levies are calculated can be found in the FEES module of the Handbook. Broadly, a firm's share of the FSCS levies is based on the amount of business it does.
45. There are three types of FSCS levy:
- base costs levy: costs of running the FSCS
  - specific costs: costs attributable to particular FSCS funding classes, the investment provision sub-class
  - compensation costs: each claimant can get up to a maximum of £50,000 for the total of their investment claims against a particular firm.
46. The specific costs and compensation costs levies on firms in the investment provision class are based on a firm's 'annual eligible income' (as defined in our rules) from activities that fall within that class.
47. In practice, as ELTIF managers will be authorised under AIFMD, they will already be meeting these costs through AIFMD. Managers of investment companies will, however, need to meet these costs for the first time if they do not manage any other types of fund.
48. Historically, there have been no compensation claims in relation to a fund manager's default. The total compensation costs cannot be reliably estimated, as they depend on the number of firm failures, the number of claimants and size of their claims. In effect, any increase in the compensation costs would be a transfer from levy payers (the financial firms that contribute to the funding of the FSCS) to the customers of the failed firm.
49. The benefits of the FSCS are to improve consumer confidence, increase consumer protection and contribute to financial stability. The main consumer protection benefit is the reduced financial loss to consumers in the event of a firm failure. However, as mentioned above, it is difficult to estimate the likely number of firm failures, the size of claims and therefore the potential reduction in financial losses to consumers due to FSCS compensation.
50. Most managers of ELTIFs will already be within the scope of the FSCS due to our AIFMD rules, so these changes should not give rise to any additional compliance costs for these firms. Firms that will fall within the scope of the FSCS for the first time will incur some additional compliance costs to ensure they can comply with the rules in COMP, but we expect these costs to be of minimal significance.

**Q55: Do you agree with our cost benefit analysis for changes to the Handbook linked to the ELTIF Regulation?**

### Miscellaneous changes

51. In this section, we outline our CBA for the proposed changes to the Handbook described in chapter 7 of this CP.

#### Reporting to the FCA

52. The proposed changes to the reporting requirements for AFMs and depositaries aim to introduce a standardised format to collect DRMP data from authorised funds. This will allow us to identify potential risks early and to intervene promptly, ensuring that the interests of investors of authorised funds are adequately protected. It will also enable us to better focus our supervisory work on funds that pose higher risks to consumers and to the integrity of the UK market in CIS.

53. We expect the proposed adoption of a standard DRMP reporting requirement to have limited impact on firms in terms of costs. We are not proposing to require AFMs of UCITS to gather or report new information, but are introducing a standard tool so they can report the information already required under COLL 6.12.3R (these requirements derive from the UCITS Directive). The staff time required to produce and submit the report will be minimal and firms will not have to build new systems to produce the required information.

54. The proposed requirement for depositaries to report their assessment of AFMs (on a quarterly basis) and authorised fund breaches (on a monthly basis) aims to formalise an informal arrangement with the members of DATA, which already report this information to the FCA on a voluntary basis. We have estimated the costs for depositaries to comply with these requirements to vary between £5,000 and £10,000 per annum, with a total cost for the whole UK depositary industry to vary between £55,000 and £110,000 per annum. These costs take into account only the additional staff time required to fill in and submit the reports, as depositaries will not be asked to produce or collect information that they should not already have, or to build new systems.

#### Identifying funds in customer documents

55. The proposed rules requiring firms to use the fund PRN in the fund's prospectus and the guidance on using it in the KIID will have the benefit of increasing transparency by allowing investors to easily identify, on the FS Register, those funds that are authorised and supervised by the FCA. We expect the costs required for updating the relevant documentation to be minimal in nature and we will ask firms to update the fund's prospectus only when it is updated for other reasons.

#### Charity authorised investment funds

56. By becoming authorised by the FCA, CAIFs will be subject to ongoing supervision and regulation offering increased protection for the investing charities which are often classified as retail investors. In addition, if a charity fund opts to become authorised as an OEIC or an AUT, it will have the additional benefit of making the fund manager exempt from liability to VAT on its investment management fee. This could potentially result in savings for the charity sector of up to £13 million per annum.<sup>132</sup>
57. Most of our proposed rules and guidance for CAIFs will apply only to those funds that opt to have certain features (i.e., the ability to smooth income or to distribute capital and the appointment of an advisory committee). These features are already available to unauthorised

<sup>132</sup> Source: State Street, based on Common Investment Fund assets under management as at 31st December 2014 and stated investment management fees.

charity funds (e.g., common investment funds) and would otherwise not be available to them if they were to be authorised as CAIFs under the current COLL rules.

#### **Money market funds**

58. The proposed changes should not result in any costs for firms, since the obligation on fund managers to avoid reliance on ratings issued by CRAs is already embodied in Handbook rules. These changes are merely a clarification of how the existing obligation applies when carrying out the portfolio management of a money market fund.

#### **Investing in government and public securities**

59. The proposed rule change will ensure that the UCITS Directive is correctly implemented in UK regulation and that investors in UCITS schemes are exposed to an appropriate spread of investment risk. Although the change will nominally restrict the ability of fund managers to gain exposure to securities issued or guaranteed by local authorities outside the EU, this is a consequence of operating a UCITS scheme. We think that the impact of the change is likely to be relatively low. Some fund managers may have to sell off all or part of certain existing investments to comply with the revised rule although, as we already consulted on this matter in 2012, all managers have been on notice since 2012 that they would have to do so eventually. We believe it would be a disproportionate use of resources to estimate the resulting costs and benefits as we are exercising little or no discretion when implementing the UCITS Directive in this case.

#### **Calculating preliminary charges**

60. The proposed rule change does not impose any new obligation on firms but clarifies the degree of flexibility available in calculating a preliminary charge. The benefit is to enable AFMs to choose which method of calculation they think is appropriate and publish the resulting charge without misleading investors. We do not believe it should have any material impact on consumers or affect their investment choices.

#### **Feeder funds**

61. The proposed rules and guidance for pension feeder funds should not give rise to any costs for firms since they clarify existing obligations but do not create any new ones. The proposed rules and guidance allowing NURS to invest in feeder funds, and modifying the dealing arrangements for feeder funds investing in PAIFs, are optional and impose no obligations on the managers or the feeder funds and master funds they invest in.
62. Allowing NURS to invest in feeder funds and QIS to do so more easily will benefit the manager of a NURS or a QIS with the power to invest in units of other CIS, by increasing the choice of funds available to it. This may make such funds more attractive to investors and encourage the launch of new products. The benefits of the rules concerning PAIFs will be to increase operational efficiency, especially where the feeder and the master have the same manager, and to ensure investors in the feeder fund receive, as much as possible, the same economic exposure to the master fund that they would get by investing directly in it.
63. The rule preventing excessive layering of investments will prevent some NURS from investing in certain funds that are currently available to them. We do not believe any funds are currently investing in a way that would be contrary to the proposed rule, so there should be no cost to firms in implementing it. Although the rule restricts choice, we believe it will benefit investors by ensuring that funds cannot enter into complex multi-layered structures which may offer no advantage in investment performance but result in additional costs that are not clearly disclosed to the investor.

**Alignment with AIFMD**

64. We do not consider that the proposed rules and guidance will give rise to any costs to firms, since they merely state explicitly what is already required by AIFMD for firms within its full scope, while clarifying how the Handbook applies to AFMs that are small authorised UK AIFMs. There are no cost implications for consumers.

**Removing out-of-date provisions**

65. In the case of SDRT, the rules are obsolete as a result of a change in the law and revoking them will not create costs or benefits. As for the rules permitting both historic pricing and bearer certificates, we believe that no authorised fund managers are operating under these rules or are likely to in future, so they may be regarded as obsolete in practice. The same is true for the power to close the unit register temporarily.
66. In each case, revoking the rules should not give rise to costs for the FCA or firms. If some respondents tell us that they are operating under any of these rules, we will work with them to determine what would be the costs of ceasing to do so.
67. Some scheme instruments and prospectuses may include references to these rules, in which case those documents will eventually need to be updated to remove them, but we do not expect firms to carry out a specific review for that purpose. Any changes can be made as and when convenient, so that firms do not incur any additional costs.

**Q56: *Do you agree with our cost benefit analysis for the other miscellaneous changes to the Handbook affecting authorised funds?***

## Annex 2

# Compatibility statement

### Introduction and statement of purpose

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1. This Annex sets out how the proposals outlined in our CP satisfy the requirements in section 138I of FSMA.
2. When consulting on new rules, we are required by FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective of ensuring that the relevant markets function well, advances one or more of our operational objectives, and has regard to the statutory principles in section 3B of FSMA.
3. We are also required by section 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
4. This Annex also sets out our view of how the proposed rules are compatible with the duty on us to carry out our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). This duty applies insofar as promoting competition is compatible with advancing either or both of our consumer protection and integrity objectives.
5. This Annex must be read in conjunction with the rest of the consultation paper as confirmation that we meet our statutory duties and objectives.

### Compatibility with our objectives and general duties

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6. In discharging our general functions, our duty is, as far as is reasonably possible, to act in a way that is compatible with our strategic objective, i.e. to ensure that the relevant markets function well, and to advance one or more of our operational objectives.
7. Our proposed rules and guidance outlined in this CP aim primarily to meet our consumer protection and market integrity objectives, but we have also considered the impact on our competition objective, where relevant.

### Integrity objective

8. This objective requires us to protect and enhance the integrity of the UK financial system.
9. In Part I, our proposed rules and guidance implement remuneration requirements under UCITS V which aim to discourage excessive risk-taking by the UCITS management company and its staff. The proposed capital requirements applicable to non-bank depositaries will also

strengthen the prudential position of such depositaries, reducing the risk of financial disruption arising from financial failure of one of these firms.

10. In Part III, our proposed rules and guidance concerning the reporting requirements applicable to depositaries and management companies aim to enable us to identify funds which pose higher risks to the UK financial system and to spot particular risks building up in the sector.

#### **Consumer protection objective**

11. This objective requires us to secure an appropriate degree of protection for consumers.
12. In Part I, the proposed rules and guidance implementing the UCITS V requirements will generally aim to enhance consumer protection by increasing the duties and responsibilities of the depositary to keep assets safe and provide independent oversight of investors' interests. The remuneration rules will help to align the interests of the management company and its staff with those of the UCITS and its investors. Investors will also benefit from the improved disclosure requirements which will result in increased transparency and improve investors' ability to make informed decisions when investing in the UCITS.
13. In Part II, the proposed rules and guidance in relation to consumer redress aim to increase consumer protection, by giving access to the ombudsman service and the FSCS to those investors in an ELTIF who are eligible for them.
14. In Part III, the proposed reporting requirements for depositaries and management companies aim to increase consumer protection by allowing us to identify at early stage funds posing particular risks to investors and to intervene accordingly. The proposed rules and guidance aimed to encourage the use of PRNs in the relevant fund documents will increase transparency by making it easier for investors to check on the FCA Register whether a fund is authorised by the FCA. The proposed framework for CAIFs will increase protection for charity investors by allowing charity funds to be authorised and regulated under the FCA rules applicable to authorised funds.

#### **Competition objective**

15. Overall, the requirements introduced by UCITS V bring the requirements applicable to management companies and depositaries of UCITS broadly in line with those applicable to managers and depositaries of other authorised funds which are not UCITS. These requirements will level the playing field between the key service providers (i.e., manager and depositaries) to these different types of retail funds.
16. With regard to our proposed prudential requirements applicable to non-bank depositaries, we have considered the potential competition implications that these will have on the market for depositary services. As outlined in our CBA, we do not expect the proposed requirements would pose a significant barrier to entry for new depositaries.

#### **Compatibility with the need to have due regard to the principles of good regulation**

17. Under section 1B (5) of FSMA, we must consider the specific matters set out below, when carrying out our general functions.

#### **Need to use resources in the most efficient and economic way**

18. We propose to allow different consultation periods for the different parts of our CP to balance both the intention of allowing stakeholders sufficient time to consider our proposals and the

necessity of meeting the EU deadlines in relation to UCITS V and ELTIF. More details can be found in chapter 1 of this CP.

19. With regard to Part II, the introduction of specific fees and levies for managers of ELTIFs will ensure that other firms will not have to subsidise the costs deriving from the supervision and authorisation of these funds.
20. Overall, the other proposals we are consulting on in this CP will result in increased supervisory work to monitor compliance with the proposed new rules. We expect this will be absorbed as part of our ongoing supervisory work.

**Principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected**

21. We have undertaken a cost-benefit analysis of our proposals which is outlined in Annex 1 of this CP. We have also referred to CBA considerations, where relevant, in the chapters outlining our proposals. With regard to the requirements imposed on firms by UCITS V we have, apart from limited areas which are highlighted in our CP, decided not to impose additional requirements to those introduced by the Directive. We have also introduced, where possible, transitional provisions which should reduce the one-off costs for firms to begin complying with the proposed new requirements. In summary, whilst firms will incur compliance costs, we do not consider these costs to be excessive compared to the anticipated benefits to investors in retail funds.

**Principle that consumers should take responsibility for their own decisions**

22. This principle is not directly relevant to this CP, since our proposals do not remove consumers' responsibility for their financial decisions. However, the increased transparency deriving from the UCITS V disclosure requirements will improve investors' ability to make informed decisions and to take responsibility for such decisions.

**Desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

23. With regard to Part I of our CP, our overall approach to, in general, applying the minimum requirements introduced by UCITS V and, where possible, not seeking to change current policy should help our firms to limit any overall increase in costs.
24. In Part III, we are making a number of changes to the Handbook to update our current rules and remove unnecessary burdens for firms.

**Responsibilities of those who manage the affairs of authorised persons**

25. Our proposals put responsibility on firms and their management to ensure that conduct and prudential standards proposed in each part of this CP are properly followed. The remuneration requirements introduced by UCITS V will also make senior persons and material risk takers within management companies more accountable for their decisions affecting the firm and the UCITS it manages.

**Desirability of exercising our functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons**

26. Our overall approach adopted in this CP is to ensure that we recognise, where possible, the differences between different firms. With this in mind, we have in particular outlined in chapter 3 our views of how the principle of proportionality in relation to the UCITS V remuneration requirements should be interpreted.

**Desirability of publishing information relating to persons**

27. One of our proposals outlined in chapter 3 will require a management company to disclose information concerning the remuneration paid to some of its staff in its annual long report. This implements a requirement of UCITS V which already exists in other EU legislation, such as the AIFMD, and is already implemented in our rules.

**Principle that we should exercise our functions as transparently as possible**

28. We have engaged with trade associations and firms throughout this process in relation to our overall approach to UCITS V transposition, and other proposed changes to the Handbook, including our timeline for this consultation process. We will continue to engage with stakeholders throughout this consultation process.

**Expected effect on mutual societies**

29. Our proposals refer to firms in the investment sector affected by the UCITS Directive and by the AIFMD and do not refer specifically to mutual societies. Therefore, we do not believe that the changes described in this chapter will have a different impact on mutual societies compared to other authorised persons.

**Equality and diversity**

30. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
31. Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We would nevertheless welcome any comments respondents may have on any equality issues they believe may arise.

## Annex 3

# List of questions

- Q1:** Do you agree with the proposed Remuneration Code in SYSC 19E?
- Q2:** Do you agree that management companies should apply the SYSC 19E Code to their first full performance period beginning after 18 March 2016?
- Q3:** Do you agree with our proposed guidance on payments of variable remuneration in non-cash instruments?
- Q4:** Do you agree with our proposed approach to proportionality?
- Q5:** Do you agree with our proposed guidance on the application of the UCITS Remuneration Code to management companies that are BIPRU firms?
- Q6:** Do you agree with how we propose to transpose the investor disclosure requirements under UCITS V?
- Q7:** Do you agree with how we propose to transpose the whistle-blowing requirements for management companies and depositaries?
- Q8:** Do you agree with our proposed transitional provisions for firms to update their fund documents?
- Q9:** Do you agree with our approach to implementing the rules applicable to depositaries of UCITS in COLL?
- Q10:** Do you agree with how we propose to transpose the depositary requirements in COLL 6.6B, and the requirements for management companies in relation to depositaries in COLL 6.6A?
- Q11:** Do you agree with the proposed eligibility criteria for a depositary of UCITS funds, including the definition of when a depositary is established in the UK?
- Q12:** Do you agree with our proposed capital resources requirements for non-bank depositaries?

- Q13:** Do you agree with our proposed approach to cross-refer to the Pillar II requirements in IFPRU 2?
- Q14:** Do you agree with our proposed revised reporting requirements for non-bank depositaries subject to IPRU (INV) 5?
- Q15:** Do you have any comments on using the definition of 'financial instruments' under MiFID II for UCITS schemes?
- Q16:** Do you agree with the proposed application of CASS and CASS-related Handbook provisions in relation to depositaries of UCITS? If not, please provide reasons.
- Q17:** Do you agree with the proposed transitional provisions for depositaries of UCITS?
- Q18:** Are any other transitional arrangements required for non-bank depositaries to be able to comply with our proposed capital requirements?
- Q19:** Do you agree with our proposal rules and guidance in FUND 4.2?
- Q20:** Do you agree with our view that the AIFMD transitional provision should not be extended for ELTIF depositaries?
- Q21:** Do you have any comments on our proposals to charge application fees and periodic fees for ELTIFs?
- Q22:** Do you agree with these consequential changes to implement the ELTIF Regulation?
- Q23:** Are there any other necessary changes that we have not taken into account?
- Q24:** Do you agree with our proposal to apply a similar approach to redress for ELTIF investors as applies to authorised AIFs?
- Q25:** Do you agree with our approach to ELTIFs set up as investment companies?
- Q26:** Do you agree that investors in an ELTIF that are eligible complainants should be able to complain to the ombudsman service about the depositary?
- Q27:** Do you agree that investors in an ELTIF that are eligible claimants should be able to claim from the FSCS in relation to the depositary?
- Q28:** Do you agree that the current compulsory and voluntary jurisdictions of the ombudsman service should also apply

to ELTIF funds?

- Q29:** Do you agree that an AIFM that manages a UK-  
authorised ELTIF on a cross-border basis should be  
required to be within the scope of the FSCS?
- Q30:** Do you agree with our proposal to introduce a standard  
DRMP reporting template?
- Q31:** Do you have any specific comments on the proposed  
template in COLL 6 Annex 2R?
- Q32:** Do you agree with our proposed changes to the  
depository reporting requirement in SUP 16?
- Q33:** Do you agree with proposed rules and guidance to  
encourage the use of PRNs in the fund's documentation?
- Q34:** Do you agree with our proposed rules and guidance on  
CAIFs?
- Q35:** Do you have any comments on our proposed treatment  
of the revised CESR guidelines on money market funds?
- Q36:** Do you agree with our revised proposal for defining  
the Government and public securities available for  
investment by UCITS schemes and NURS?
- Q37:** Do you agree with our revised proposal for calculating  
the preliminary charge?
- Q38:** Do you agree with our proposals for pension feeder  
funds?
- Q39:** Do you agree with our proposal to allow all NURS some  
ability to invest in feeder funds?
- Q40:** Do you have any comments on the proposed anti-  
layering rule?
- Q41:** Do you agree with the proposed flexible dealing  
arrangements for a feeder fund investing in a PAIF?
- Q42:** Do you have any comments regarding the rules and  
guidance on the application of COLL to AIFMs? Are there  
any other matters of this kind we should address?
- Q43:** Do you agree with the proposed guidance on the  
calculation of the borrowing limits for the purposes of  
COLL 5.5.5R?
- Q44:** Do you have any comments on the proposed deletion of  
out-of-date provisions?

- Q45:** Do you have any comments on any of these changes? Are you aware of any other similar errors or out-of-date references we should correct?
- Q46:** What would be the practical benefits and risks, for firms and investors, of changing the limited issue rule?
- Q47:** What specific changes, if any, do you think would strike the best balance between the interests of the manager, existing investors and prospective new investors?
- Q48:** What are the challenges fund managers face in applying our rules defining eligible counterparties for OTC derivative contracts?
- Q49:** Which of these options, if any, do you prefer and why? Are there others we should consider?
- Q50:** Do you think you can use UCITS, NURS, and QIS to invest in ELTIFs under existing rules? If not, what would you suggest changing?
- Q51:** Do you think investment in ELTIF is likely to be more attractive to certain types of funds and, if so, which?
- Q52:** Do you think it will be possible to invest in ELTIFs through permitted links? If not, what amendments to the rules could facilitate investment in ELTIFs?
- Q53:** Do you agree with our cost benefit analysis for changes to the Handbook implementing the UCITS V requirements?
- Q54:** Do you agree with our assessment that the proposed new capital requirements will have a limited effect on competition in the market for depositary services and potential new business models?
- Q55:** Do you agree with our cost benefit analysis for changes to the Handbook linked to the ELTIF Regulation?
- Q56:** Do you agree with our cost benefit analysis for the other miscellaneous changes to the Handbook affecting authorised funds?

# Appendix 1

## Draft Handbook text for Part I

## UCITS V DIRECTIVE INSTRUMENT 2016

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
1. the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137H (General rules about remuneration);
    - (c) section 137T (General supplementary powers);
    - (d) section 139A (Power of the FCA to give guidance);
    - (e) section 247 (Trust scheme rules);
    - (f) section 248 (Scheme particular rules);
    - (g) section 261I (Contractual scheme rules); and
    - (h) section 261J (Contractual scheme particular rules);
  2. regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2011/128);
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on [*date*].

### Amendments to the FCA Handbook

- D. The modules of the FCA’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
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex C
Client Assets sourcebook (CASS)	Annex D
Supervision sourcebook (SUP)	Annex E
Collective Investment Schemes sourcebook (COLL)	Annex F

### Notes

- E. 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**

- F. This instrument may be cited as the UCITS V Directive Instrument 2016.

By order of the Board of the Financial Conduct Authority  
[*date*]

## Annex A

### Amendments to the Glossary of definitions

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

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

<i>UCITS custodial assets</i>	<i>financial instruments</i> of a <i>UCITS</i> that can be: <ul style="list-style-type: none"> <li>(a) registered in a <i>financial instruments</i> account opened in the <i>depository's</i> books; or</li> <li>(b) physically delivered to the <i>depository</i>.</li> </ul>
<i>UCITS level 2 regulation</i>	[to follow]
<i>UCITS Remuneration Code</i>	as set out in SYSC 19E (UCITS Remuneration Code).
<i>UCITS Remuneration Code staff</i>	has the meaning in SYSC 19E.2.2R.
<i>UCITS remuneration principles</i>	the principles set out in SYSC 19E.2.4R to SYSC 19E.2.26R.

Amend the following existing definitions as shown.

<i>custody asset</i>	<ul style="list-style-type: none"> <li>(1) other than when <i>acting as trustee or depository of an AIF or acting as trustee or depository of a UCITS</i>:                 <ul style="list-style-type: none"> <li>...</li> <li>...</li> </ul> </li> <li>(3) <u>in relation to acting as trustee or depository of a UCITS in CASS 6</u>:                 <ul style="list-style-type: none"> <li>(a) <u>a UCITS custodial asset held by a depository in line with COLL 6.6B.18R (Depository functions: safekeeping of financial instruments); or</u></li> <li>(b) <u>any other asset of a UCITS for which a depository exercises safe-keeping functions in line with COLL 6.6B.19R (Depository functions: safekeeping of other assets).</u></li> </ul> </li> </ul>
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<i>established</i>	<p>(1) (in accordance with article 4(1)(j) <i>AIFMD</i>):</p> <p>...</p> <p>(2) <u>for a <i>depository</i> of a <i>UCITS scheme</i>, 'having its registered office or branch in'.</u></p>
<i>financial instrument</i>	<p>(1) (other than in (2), <del>and</del> (3) and (4)) ...</p> <p>...</p> <p>(4) <u>(for a <i>UCITS custodial asset</i>) an instrument specified in Section C of Annex I to <i>MiFID II</i>.</u></p>
<i>management body</i>	<p>(1) (other than in (2)) (in accordance with article 3(7) of <i>CRD</i>) the <i>governing body</i> and <i>senior personnel</i> of a <i>CRR firm</i> who are empowered to set the firm's strategy, objectives and overall direction, and which oversee and monitor management decision-making.</p> <p>(2) <u>(in <i>COLL</i> and in <i>SYSC 19E</i> and in accordance with article 2(1)(s) of the <i>UCITS Directive</i>), the <i>governing body</i> of a <i>management company</i> or <i>depository</i> of a <i>UCITS scheme</i> or an <i>EEA UCITS scheme</i>, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.</u></p>
<i>safe custody asset</i>	<p>...</p> <p>(b) in relation to <i>safeguarding and administering investments</i> that is not <i>MiFID business</i> <del>and/or acting as trustee or depository of a UCITS</del>, a <i>safe custody investment</i>;</p> <p>...</p> <p>(e) <u>when acting as <i>depository</i> of a <i>UCITS</i>, a <i>UCITS custodial asset</i>.</u></p>

## 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, unless otherwise indicated.

#### 1 Annex 1 Detailed application of SYSC

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 4	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, managing agents the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
SYSC 4.1.1CR	...	...	...	...
<u>SYSC 4.1.1DR</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 4.1.1ER</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 4.1.1FG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

...

#### 4 General organisation requirements

##### 4.1 General requirements

...

4.1.1C R ...

4.1.1D R *A UK UCITS management company must comply with the UCITS Remuneration Code if it:*

- (1) manages a UCITS scheme; or
- (2) manages an EEA UCITS scheme.

[Note: articles 14a(1) of the UCITS Directive]

4.1.1E     R     A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the UCITS Directive internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the UCITS Directive]

4.1.1F     G     SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

...

## **BIPRU Remuneration Code (SYSC 19C)**

...

### **19C        BIPRU Remuneration Code**

#### **19C.1     General application and purpose**

...

19C.1.1   G     ...  
A

19C.1.1   G     (1)     The UCITS Remuneration Code (SYSC 19E) also applies to a BIPRU firm that is a UK UCITS management company (i.e., a UK UCITS management company that is a UCITS investment firm subject to BIPRU).

(2)     A BIPRU firm that is a UK UCITS management company will meet its obligations under SYSC 19C and SYSC 19E by complying with SYSC 19E.

(3)     Under (1) and (2), the FCA will not require the UK UCITS management company to demonstrate compliance with SYSC 19C.

...

Insert the following new section after SYSC 19D. All the text is new and not underlined.

### **19E        UCITS Remuneration Code**

#### **19E.1     Application**

- 19E.1.1 R (1) The *UCITS Remuneration Code* applies to a *UK UCITS management company* that:
- (a) manages a *UCITS scheme*; or
  - (b) manages an *EEA UCITS scheme*.
- (2) This section does not apply to an *EEA UCITS management company* that manages a *UCITS scheme*.
- (3) In this section, a *firm* under (1)(a) or (1)(b) above, is referred to as a *management company*.
- 19E.1.2 R (1) This chapter applies to a *UK UCITS management company* in relation to *remuneration* paid, provided or awarded by any *person* to the extent that is paid, provided or awarded in connection with *employment* by a *management company*.
- (2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.
- (3) For example, *remuneration* includes payments made by a seconding organisation, which is not subject to the *UCITS Remuneration Code*, to a secondee in respect of their employment by a *management company* which is subject to the *UCITS Remuneration Code*.

## 19E.2 Remuneration policies and practices

- 19E.2.1 R A *management company* must establish and apply *remuneration* policies and practices for *UCITS Remuneration Code staff* that:
- (1) are consistent with, and promote, sound and effective risk management;
  - (2) do not encourage risk-taking which is inconsistent with the risk profiles or the *instrument constituting the fund* or the *prospectus*, as applicable, of the *UCITS* it manages;
  - (3) do not impair the *management company's* compliance with its duty to act in the best interests of the *UCITS* it manages; and
  - (4) include fixed and variable components of *remuneration*, including salaries and discretionary pension benefits.

[**Note:** article 14a(1) and (2) of the *UCITS Directive*]

- 19E.2.2 R (1) *UCITS Remuneration Code staff* comprise those categories of staff whose professional activities have a material impact on the risk profiles of:
- (a) the *management company*; or

- (b) the *UCITS* that the *management company* manages.
- (2) *UCITS Remuneration Code staff* must comprise :
- (a) senior management;
  - (b) risk takers;
  - (c) staff engaged in control functions; and
  - (d) any *employees* receiving total *remuneration* that takes them into the same *remuneration* bracket as senior management and risk takers.

[**Note:** article 14a(3) of the *UCITS Directive*]

#### Proportionality

- 19E.2.3 R (1) When establishing and applying the *remuneration* policies for *UCITS Remuneration Code staff*, a *management company* must comply with the *UCITS remuneration principles* in a way and to the extent that is appropriate to:
- (a) its size;
  - (b) internal organisation; and
  - (c) the nature, scope and complexity of its activities.
- (2) Paragraph (1) does not apply to the requirement for significant *management companies* to have a *remuneration* committee (*SYSC 19E.2.8R*).
- (3) The *UCITS remuneration principles* apply to:
- (a) any benefit of any type paid by the *management company*;
  - (b) any amount paid directly by the *UCITS* itself, including performance fees, for the benefit of *UCITS Remuneration Code staff*; and
  - (c) any transfer of *units* or *shares* of the *UCITS* made for the benefit of *UCITS Remuneration Code staff*.

[**Note:** article 14b(1), (3) and (4) of the *UCITS Directive*]

#### UCITS Remuneration Principle 1: Risk management

- 19E.2.4 R A *management company* must ensure that its *remuneration* policy:
- (1) is consistent with, and promotes sound and effective risk management; and

- (2) does not encourage risk-taking which is inconsistent with the risk profiles or the *instrument constituting the fund* of the *UCITS* it manages.

[**Note:** article 14b(1)(a) of the *UCITS Directive*]

UCITS Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interests

19E.2.5 R A *management company* must ensure that its *remuneration policy*:

- (1) is in line with the business strategy, objectives, values and interests of:
  - (a) the *management company*;
  - (b) the *UCITS* it manages; and
  - (c) the investors in such *UCITS*; and
- (2) includes measures to avoid conflicts of interest.

[**Note:** article 14b(1)(b) of the *UCITS Directive*]

UCITS Remuneration Principle 3: Governance

19E.2.6 R (1) A *management company* must ensure that its *management body in its supervisory function*:

- (a) adopts and reviews at least annually the general principles of the *remuneration policy*; and
  - (b) is responsible for the implementation of the general principles of the *remuneration policy*.
- (2) The tasks in (1) must be undertaken only by members of the *management body* who:
- (a) do not perform any executive functions in the *management company* concerned; and
  - (b) have expertise in risk management and *remuneration*.

[**Note:** article 14b(1)(c) of the *UCITS Directive*]

19E.2.7 R A *management company* must ensure the implementation of the *remuneration policy* is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body in its supervisory function*.

[**Note:** article 14b(1)(d) of the *UCITS Directive*]

- 19E.2.8 R (1) A *management company* must establish a *remuneration* committee if it is significant in terms of:
- (a) its size; or
  - (b) the size of the *UCITS* that it manages; or
  - (c) the complexity of its internal organisation; or
  - (d) the nature, the scope and the complexity of its activities.
- (2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgement on:
- (a) *remuneration* policies and practices; and
  - (b) the incentives created for managing risk.
- (3) The *remuneration* committee must be responsible for the preparation of decisions regarding remuneration, including those which:
- (a) have implications for the risk and risk management of the *management company* or the *UCITS* concerned; and
  - (b) are taken by the *management body in its supervisory function*.
- (4) The chairman and the members of the *remuneration* committee must be members of the *management body* who do not perform any executive function in the *management company*.
- (5) When preparing its decisions, the *remuneration* committee must take into account the long-term interest of investors and other stakeholders and the public interest.

[**Note:** article 14b(4) of the *UCITS Directive*]

#### UCITS Remuneration Principle 4: Control functions

- 19E.2.9 R A *management company* must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas that are within their remit of responsibility.

[**Note:** article 14b(1)(e) of the *UCITS Directive*]

- 19E.2.10 R A *management company* must ensure the remuneration of the senior officers in the risk management and compliance functions:
- (1) is directly overseen by the *remuneration* committee; or
  - (2) if such a committee has not been established, by the *management*

*body in its supervisory function.*

[**Note:** article 14b(1)(f) of the *UCITS Directive*]

UCITS Remuneration Principle 5(a): Remuneration structures – assessment of performance

- 19E.2.11 R (1) A *management company* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of the assessment as to:
- (a) the performance of the individual and of the business unit or *UCITS* concerned; and
  - (b) their risks and of the overall results of the *management company*.
- (2) When assessing individual performance, financial and non-financial criteria must be taken into account.

[**Note:** article 14b(1)(g) of the *UCITS Directive*]

- 19E.2.12 R A *management company* must ensure that the assessment of performance is set in a multi-year framework appropriate to any holding period recommended to the investors of the *UCITS* managed by the *management company* to ensure that the:
- (1) assessment process is based on long-term performance of the *UCITS* and its investment risks; and
  - (2) actual payment of performance-based components of *remuneration* is spread over the same period.

[**Note:** article 14b(1)(h) of the *UCITS Directive*]

- 19E.2.13 G (1) Taking account of the remuneration principles proportionality rule in SYSC 19E.2.4R, the *FCA* does not generally consider it necessary for a *management company* to apply the *rules* referred to in (2) where, in relation to an individual (“X”), both the following conditions are satisfied:
- (a) Condition 1 is that X’s variable *remuneration* is no more than 33% of total *remuneration*; and
  - (b) Condition 2 is that X’s total *remuneration* is no more than £500,000.
- (2) The *rules* referred to in (1) are those relating to:
- (a) guaranteed variable *remuneration* (SYSC 19E.2.14R);
  - (b) retained *units, shares* or other instruments (SYSC

19E.2.17R);

- (c) deferral (*SYSC* 19E.2.19R); and
- (d) performance adjustment (*SYSC* 19E.2.21R).

UCITS Remuneration Principle 5(b): Remuneration structures – guaranteed variable remuneration

19E.2.14 R A *management company* must not award, pay or provide guaranteed variable *remuneration* unless it:

- (1) is exceptional;
- (2) occurs only in the context of hiring new staff; and
- (3) is limited to the first year of engagement.

[**Note:** article 14b(1)(i) of the *UCITS Directive*]

UCITS Remuneration Principle 5(c): Remuneration structures – fixed and variable components of total remuneration

19E.2.15 R A *management company* must ensure that:

- (1) fixed and variable components of total *remuneration* are appropriately balanced; and
- (2) the fixed component represents a sufficiently high proportion of the total *remuneration* to allow the operation of a fully flexible policy on variable *remuneration* components, including the possibility to pay no variable *remuneration* component.

[**Note:** article 14b(1)(j) of the *UCITS Directive*]

UCITS Remuneration Principle 5(d): Remuneration structures – payments related to early termination

19E.2.16 R A *management company* must ensure that payments related to the early termination of a contract:

- (1) reflect performance achieved over time and
- (2) are designed in a way that does not reward failure.

[**Note:** article 14b(1)(k) of the *UCITS Directive*]

UCITS Remuneration Principle 5(e): Remuneration structures – retained units, shares or other instruments

19E.2.17 R (1) Subject to the legal structure of the *UCITS* and the *instrument constituting the fund*, a *management company* must ensure that a substantial portion, and in any event at least 50%, of any variable

*remuneration* component, consists of:

- (a) *units* or *shares* of the *UCITS* concerned; or
  - (b) equivalent ownership interests in the *UCITS* concerned; or
  - (c) share-linked instruments relating to the *UCITS* concerned; or
  - (d) equivalent non-cash instruments relating to the *UCITS* concerned with equally effective incentives as any of the instruments referred to in (a) to (c).
- (2) However, if the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of 50% does not apply.
- (3) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives for the *UCITS Remuneration Code staff* with the long-term interests of:
- (a) the *management company*;
  - (b) the *UCITS* it manages; and
  - (c) the investors of such *UCITS*.
- (4) This *rule* applies to:
- (a) the portion of the variable *remuneration* component deferred in line with *SYSC* 19E.2.19R(1); and
  - (b) the portion not deferred.

[**Note:** article 14b(1)(m) of the *UCITS Directive*]

- 19E.2.18 G
- (1) If the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of 50% in *SYSC* 19E.2.17R(1) does not apply.
  - (2) However, in the circumstances in (1) the *management company* should determine the percentage of any variable *remuneration* component that should consist of the instruments in *SYSC* 19E.2.17R(1)(a), (b), (c) and (d) that appropriately reflects the extent of the management of *UCITS* by the *management company*.
  - (3) Where the percentage determined under (2) is less than 50% of the variable *remuneration* component, the management company should consider the use of instruments other than those referred to in *SYSC* 19E.1.17R(1)(a), (b), (c) and (d) and that achieve the alignment of interest referred to in *SYSC* 19E.2.17R(3). In the *FCA*'s view, at least 50% of the variable remuneration component should normally consist of those instruments and those referred to in *SYSC*

19E.1.17R(1)(a), (b), (c) and (d).

UCITS Remuneration Principle 5(f): Remuneration structures – deferral

- 19E.2.19 R (1) A *management company* must not award, pay or provide a variable *remuneration* component unless a substantial portion, and in any event at least 40%, of the variable *remuneration* component, is deferred over a period which is:
- (a) appropriate in view of any holding period recommended to the investors of the *UCITS* concerned and;
  - (b) is correctly aligned with the nature of the risks of the *UCITS* in question.
- (2) The period referred to in (1) must be at least three years.
- (3) *Remuneration* payable under (1) must vest no faster than on a pro-rata basis.
- (4) For a variable *remuneration* component of a particularly high amount, at least 60% of the amount must be deferred.

[**Note:** article 14b(1)(n) of the *UCITS Directive*]

- 19E.2.20 G (1) £500,000 should be considered a particularly high amount for the purpose of SYSC 19E.2.19R(4).
- (2) While any variable *remuneration* component of £500,000 or more paid to *UCITS Remuneration code staff* should be subject to 60% deferral, *management companies* should also consider whether lesser amounts should be considered to be “particularly high”.
- (3) *Management companies* should take into account, for example, whether there are significant differences within *UCITS Remuneration Code staff* in the levels of variable *remuneration* paid.

UCITS Remuneration Principle 5(g): Remuneration structures – performance adjustment, etc.

- 19E.2.21 R A *management company* must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is:
- (1) sustainable according to the financial situation of the *management company* as a whole; and
  - (2) justified according to the performance of:
    - (a) the *UCITS*;
    - (b) the business unit; and

- (c) the individual concerned.

[**Note:** first sub-paragraph of article 14b(1)(o) of the *UCITS Directive*]

- 19E.2.22 G
- (1) The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the *management company* or of the *UCITS* concerned occurs.
  - (2) When considering (1), *management companies* should take into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[**Note:** second sub-paragraph of article 14b(1)(o) of the *UCITS Directive*]

#### UCITS Remuneration Principle 6: Measurement of performance

- 19E.2.23 R
- A *management company* must ensure that the measurement of performance used to calculate variable *remuneration* components, or pools of variable remuneration components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

[**Note:** article 14b(1)(l) of the *UCITS Directive*]

#### UCITS Remuneration Principle 7: Pension Policy

- 19E.2.24 R
- A *management company* must ensure that:
- (1) its pension policy is in line with the business strategy, objectives, values and long-term interests of:
    - (a) the *management company*; and
    - (b) the *UCITS* it manages;
  - (2) when an employee leaves the *management company* before retirement, any discretionary pension benefits are held by the *management company* for a period of five years in the form of instruments in *SYSC* 19E.2.17R(1); and
  - (3) for an *employee* reaching retirement, discretionary pension benefits are:
    - (a) paid to the employee in the form of instruments referred to in *SYSC* 19E.2.17R(1); and
    - (b) subject to a five-year retention period.

[**Note:** article 14b(1)(p) of the *UCITS Directive*]

#### UCITS Remuneration Principle 8: Personal investment strategies

19E.2.25 R *A management company* must ensure that its *employees* undertake not to use any of the following to undermine the risk alignment effects embedded in their *remuneration* arrangements:

- (1) personal hedging strategies; or
- (2) *remuneration*-related insurance ; or
- (3) liability-related insurance.

[**Note:** article 14b(1)(q) of the *UCITS Directive*]

UCITS Remuneration Principle 9: Avoidance of the remuneration code

19E.2.26 R *A management company* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *UCITS Remuneration Code*.

[**Note:** article 14b(1)(r) of the *UCITS Directive*]

Amend the following text as shown.

**TP 3 Remuneration code codes**

Part A IFPRU Remuneration Code

...		
-----	--	--

Part B UCITS Remuneration Code

(1)	(2) <u>Material to which the transitional provision applies</u>	(3)	(4) <u>Transitional provision</u>	(5) <u>Transitional provision: date in force</u>	(6) <u>Handbook provisions: coming into force</u>
<u>1</u>	<u>The UCITS remuneration principles</u>	<u>R</u>	<u>A management company need not apply the UCITS remuneration principles to any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.</u>	<u>From 18 March 2016 until 18 March 2017</u>	<u>18 March 2016</u>

## Annex C

**Amendments to the Interim Prudential sourcebook for Investment Business  
(IPRU(INV))**

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

### Transitional Provisions

#### 1 Table Transitional provisions applying to IPRU(INV)

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
...					
13	<u>IPRU(INV) 5.2.3(3)R(a)(ib)(A) and IPRU (INV) 5.2.3(3)(A)R</u>	R	<u>A depositary of a UCITS scheme appointed before 18 March 2016 need not calculate its own funds requirement under article 315 or 317 of the EU CRR.</u>	<u>From 18 March 2016 until 18 March 2018</u>	<u>18 March 2016</u>
14	<u>IPRU(INV) 5.2.3(3)(E)R</u>	R	<u>A depositary of a UCITS scheme appointed before 18 March 2016 need not comply with IPRU(INV) 5.2.3(3)(E)R.</u>	<u>From 18 March 2016 until 18 March 2018</u>	<u>18 March 2016</u>

...

## 5 Financial Resources

### Application

#### *Application of Chapter 5*

- 5.1.1 R (1) (a) This chapter applies to an *investment management firm*: other than;
- (i) an incoming EEA firm unless it has a top-up permission of acting as trustee or depositary of a UCITS; or

(ii) a MiFID investment firm (unless it is an exempt CAD firm for the purpose of calculating its own funds and if it carries on any regulated activity other than MiFID business), as set out in Table 5.1.1(1)(a).

(aa) This chapter applies to:

(i) exempt CAD firms;

(ii) OPS firms;

(iii) non-OPS Life Offices and non-OPS Local Authorities; and

(iv) individuals admitted to membership collectively,

as set out in Table 5.1.1(1)(aa).

...

Table 5.1.1(1)(a) 5.1.1(1)(aa)	Application of Chapter 5
...	

5.1.1(A) R An incoming EEA firm with a top-up permission of acting as a trustee or depositary of a UCITS must comply with:

(a) IPRU(INV) 5.2.1(1)R;

(b) IPRU(INV) 5.2.1(2)R;

(c) IPRU(INV) 5.2.1(3)R;

(d) IPRU(INV) 5.2.2(1)(A)R;

(e) IPRU(INV) 5.2.3(3)(A)R; and

(f) IPRU(INV) 5.2.3(3)(E)R.

...

*Financial resources*

5.2.1(3) R A ~~firm's~~ firm's financial resources means:

(a) its own funds, if the firm is subject to an own funds requirement under rule 5.2.3(2) or IPRU(INV) 5.2.3(3)(A)R; or

...

...

5.2.2(1) R *A firm must calculate its own funds in accordance with Table 5.2.2(1), unless the firm has a Part 4A permission of acting as a trustee or depositary of a UCITS.*

5.2.2(1) R For a firm that has a Part 4A permission of acting as a trustee or depositary of a UCITS, own funds has the meaning in article 4(1)(118) of the EU CRR.  
(A)

...

*Determination of requirement*

5.2.3(1) R The *financial resources requirement* for a firm is a *liquid capital requirement*, determined in accordance with paragraph (a) of rule 5.2.3(4),  
(a) unless: ~~the firm falls within any of the exceptions in rule 5.2.3(2).~~

(i) the firm falls within any of the exceptions in rule 5.2.3(2); or

(ii) the firm is an incoming EEA firm with a top-up permission of acting as a trustee or depositary of a UCITS.

...

*Own funds requirement*

5.2.3(3) R The *own funds requirement* for a firm subject to rule 5.2.3(2) is the higher  
(a) of:

(i) ~~£4,000,000 for a firm which is a trustee depositary of an authorised unit trust scheme~~ authorised fund or a depositary of an ICVC or ACS, if the authorised fund is not a UCITS scheme;

(ia) €125,000 for a firm which is a *depositary* appointed in line with *FUND 3.11.12R* (Eligible depositaries for UK AIFs) or a *UK depositary* of a *non-EEA AIF*; ~~and~~

(ib) for a firm which is a depositary of a UCITS scheme, the higher of:

(A) the requirement calculated depending on the selected approach in accordance with article 315 or 317 of the EU CRR; and

(B) £4,000,000; and

(ii) £5,000 for any other firm.

...

- 5.2.3(3) (A) R The financial resources requirement for an incoming EEA firm with a top-up permission of acting as a trustee or depositary of a UCITS is the own funds requirement in IPRU(INV) 5.2.3(3)(a)(ib)R.
- 5.2.3(3) (B) G In accordance with IPRU(INV) 5.2.3(a)(ib)(A)R and IPRU(INV) 5.2.3(3)(A)R, a firm which is a depositary of a UCITS scheme has a choice between:
- (a) the basic indicator approach in article 315 of the EU CRR; and
- (b) the standardised approach in article 317 EU CRR.
- 5.2.3(3) (C) G If a firm that is the depositary of a UCITS scheme is seeking to determine its own funds requirement on the basis of the standardised approach in article 317 EU CRR, it should notify the FCA in advance.
- 5.2.3(3) (D) G The effect of IPRU(INV) 5.2.3(3)(A)R is to apply the financial resources requirement to an incoming EEA firm with a top-up permission of acting as a trustee or depositary of a UCITS in relation to its activity in the United Kingdom of acting as depositary or trustee of a UCITS.
- 5.2.3(3) (E) R A firm which is the depositary of a UCITS scheme must comply with the rules in IFPRU 2 as if it were an IFPRU investment firm that is not a significant IFPRU investment firm.
- 5.2.3(3) (F) G A firm to which IPRU(INV) 5.2.3(3)(E)R applies is, in particular, reminded of the rules in IFPRU 2 that determine whether a firm must apply the ICAAP rules on an individual basis or comply with them on a consolidated or sub-consolidated basis (see IFPRU 2.2.45R to IFPRU 2.2.49R).

...

## Appendix 1: Interpretation

...

<i>own funds</i>	has the meaning given in rule 5.2.2(1) ( <del>Calculation of own funds and liquid capital</del> ) and <u>IPRU(INV) 5.2.2(1)(A)R, as applicable.</u>
<i>own funds requirement</i>	has the meaning given in rule 5.2.3(3)(a) and <u>IPRU(INV) 5.2.3(3)(A)R (Own funds requirement), as applicable.</u>

## Annex D

### Amendments to the Client Assets sourcebook (CASS)

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

#### 1.4 Application: particular activities

...

Depositories

...

1.4.6B G *Firms acting as trustee or depositary of a UCITS* are reminded of the obligations in *COLL 6.6B* (UCITS depositories) which apply in addition to those in *CASS*.

1.4.7 R Subject to *CASS 1.4.6R* *CASS* applies to a *depository*, when acting as such, with the following general modifications: '*client*' means '*trustee*', '*trust*', '*AIF*', '*AIFM* acting on behalf of the *AIF*', '*UCITS scheme*', '*authorised fund manager* acting on behalf of the *UCITS scheme*' or '*collective investment scheme*', as appropriate.

...

#### 6 Custody rules

##### 6.1 Application

...

6.1.1B R (1) *Firms* to which the *custody rules* apply by virtue of *CASS 6.1.1R(1B)*, ~~(1D)~~ or ~~CASS 6.1.1R~~ (1E) must also apply the *custody rules* to those *custody assets* which are not *safe custody investments* in a manner appropriate to the nature and value of those *custody assets*.

...

(3) *firms* to which the *custody rules* apply by virtue of *CASS 6.1.1R(1D)* must also apply the *custody rules*:

(a) to those *custody assets* which are not *UCITS custodial assets* but are *safe custody investments*;

(b) in a manner appropriate to the nature and value of those *custody assets*, to those *custody assets* which are neither *UCITS*

custodial assets nor safe custody investments.

...

...

Trustees and depositaries (except depositaries of AIFs and UCITS)

...

6.1.16F R When a *trustee firm* or *depositary* acts as a *custodian* for a trust or *collective investment scheme*, (except for a *firm acting as trustee or depositary of an AIF* and a *firm acting as trustee or depositary of a UCITS*), and:

...

...

Depositaries of UCITS

6.1.16I R When a *firm* is *acting as trustee or depositary of a UCITS* the *firm* need  
D comply only with the custody rules in the table below:

<u>Reference</u>	<u>Rule</u>
<u>CASS 6.1.1R, CASS 6.1.1BR(3), CASS 6.1.9G, CASS 6.1.16IEG</u>	<u>Application</u>
<u>CASS 6.1.22G to CASS 6.1.24G</u>	<u>General purpose</u>
<u>CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R</u>	<u>Holding of client assets</u>

6.1.16I G *Firms acting as trustee or depositary of a UCITS* are reminded of the  
E obligations in COLL 6.6B (UCITS depositaries) which apply as well as those in CASS 6.

6.1.16I G (1) A firm (Firm A) to which another firm acting as trustee or depositary  
F of an UCITS (Firm B) has delegated safekeeping functions under COLL 6.6B.23R (Limit on delegation) will not itself be acting as trustee or depositary of an UCITS for that UCITS scheme.

(2) CASS 6.1.16IDR will not apply to Firm A for that UCITS scheme.

(3) However, Firm A may be safeguarding and administering investments in respect of that UCITS scheme.

...

**Annex E**  
**Amendments to the Supervision sourcebook (SUP)**

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

**13**            **Passporting: UCITS Directive**  
**Annex**  
**6R**

[*Editor's note*: The form set out at Annex 6 is amended as set out at the end of this paper]

...

**16**            **Reporting requirements**

...

**16.12**        **Integrated Regulatory Reporting**

...

16.12.19 R     The applicable *data items* referred to in *SUP* 16.12.4R are set out according  
A                    to the type of *firm* in the table below:

Description of data item	Firm's prudential category and applicable data item (note 1)			
	<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 9	<i>IPRU(INV)</i> Chapter 13
...				
Capital adequacy	FSA033	FSA034 or FSA035 or <u>FIN072</u> (note 4)	FSA031	FSA032 or Sections D1 and D2 RMAR (notes 5 and 7)
...				
Client money and client assets	...			
<u>Pillar 2 questionnaire</u>		<u>FSA019</u> (note 8)		
...				
Note 4	FSA034 must be completed by a <i>firm</i> not subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R. FSA035 must be completed by a <i>firm</i> subject to the exemption in <i>IPRU(INV)</i> 5.2.3(2)R, other than a <i>firm</i> which is the <i>depository</i> of a			

Description of data item	Firm's prudential category and applicable data item (note 1)			
	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13
	<u>UCITS scheme.</u> <u>FIN072 must be completed by a firm if it is the depositary of a UCITS scheme.</u>			
...				
Note 8	<u>Only applicable to a firm that is the depositary of a UCITS scheme.</u>			

16.12.20 R The applicable reporting frequencies for submission of data items referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

Solvency statement	Annually
<u>FSA019</u>	<u>Annually</u>
...	
FSA039	...
<u>FIN072</u>	<u>Quarterly</u>
...	

16.12.21 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

Data item	Quarterly	Half yearly	Annual
Solvency statement			
<u>FSA019</u>			<u>2 months</u>
...			
FSA039		...	
<u>FIN072</u>	<u>20 business days</u>		
...			

...

In SUP16 Annex 24R (Data items for SUP 16.12) insert the following data item at the end of the annex. The text is not underlined.

[*Editor's note*: The new data item FIN 072 is set out at the end of this paper]

...

In SUP16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R)) insert the following guidance note at the end of the annex. The text is not underlined.

[*Editor's note*: The guidance note for FIN 072 is set out at the end of this paper]

**Annex F**

**Amendments to the Collective Investment Schemes sourcebook (COLL)**

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

**4.2 Pre-sale notifications**

...

Table: contents of the prospectus

4.2.5 R ...

...		
<u>Depository</u>		
8	The following <u>information and particulars concerning</u> <del>of</del> the <i>depository</i> :	
	...	
(e)	if neither its registered office nor its head office is in the <i>United Kingdom</i> , the address of its principal place of business in the <i>United Kingdom</i> ; <del>and</del>	
(f)	a description of its <del>principal business activity</del> <u>duties and conflicts of interest that may arise between:</u>	
	(i)	<u>the scheme, the unitholders in the scheme or the authorised fund manager; and</u>
	(ii)	<u>the depository;</u>
(g)	(i)	<u>a description of any safekeeping functions delegated by the depository;</u>
	(ii)	<u>a description of any conflicts of interest that may arise from such delegation; and</u>
	(iii)	<u>a list showing the identity of each delegate and sub-delegate; and</u>
(h)	<u>a statement that up-to-date information regarding the points covered under (a),(f) and (g), above, will be made available to unitholders on request.</u>	
...		
<u>Remuneration Policy</u>		
<u>2</u> <u>8</u>	For a <i>UCITS scheme</i> and in relation to <i>UCITS Remuneration Code staff</i> :	
(a)	<u>up-to-date details of the remuneration policy, including, but not limited to:</u>	

	(i)	a description of how <i>remuneration</i> and benefits are calculated; and
	(ii)	the identities of persons responsible for awarding the <i>remuneration</i> and benefits including the composition of the <i>remuneration</i> committee, where such a committee exists; or
(b)		a summary of the <i>remuneration</i> policy and a statement that:
	(i)	up-to-date details of the matters set out in (a), above, are available by means of a website, including a reference to that website; and
	(ii)	a paper copy will be made available free of charge upon request.

...

## 4.5 Reports and accounts

...

Contents of the annual long report

### 4.5.7 R ...

- (7) An annual long report of a UCITS scheme must also include:
- (a) (i) the total amount of remuneration paid by the authorised fund manager to its staff for the financial year, split into fixed and variable remuneration;
  - (ii) the number of beneficiaries; and
  - (iii) where relevant, any amount paid directly by the UCITS scheme itself, including any performance fee;
  - (b) the aggregate amount of remuneration broken down by categories of UCITS Remuneration Code staff;
  - (c) a description of how the remuneration and the benefits have been calculated;
  - (d) the outcome of the reviews referred to in SYSC 19E.2.6R(1) and SYSC 19E.2.7R, including any irregularities that have occurred; and
  - (e) details of any material changes to the adopted remuneration policy since the previous annual long report was prepared.

[**Note:** article 69(3) second paragraph of the *UCITS Directive*]

- 4.5.7A G (1) The FCA recognises that the annual long report, including the remuneration related disclosures in COLL 4.5.7R(7), may be required

to be made available to *unitholders* before the *authorised fund manager* has completed its first annual performance period in which it has to comply with the *UCITS Remuneration Code*.

- (2) Under (1), the *FCA* expects the *authorised fund manager* to make best efforts to comply with *COLL 4.5.7R(7)* to the extent possible.
- (3) The *authorised fund manager* having made best efforts to achieve compliance with *COLL 4.5.7R(7)* may omit to disclose information relating to *remuneration* where the information:
  - (a) is not available to the *authorised fund manager* for the relevant *annual accounting period*; or
  - (b) is available but will not provide materially relevant, reliable, comparable and clear information to *unitholders* about the *remuneration policy* of the *authorised fund manager*, as it affects the particular *UCITS scheme*.
- (4) Where disclosure is omitted, the *authorised fund manager* should note or explain the basis for that omission.

...

#### 4.7 Key investor information and marketing communications

...

Key investor information

4.7.2 R ...

- (4) *Key investor information* must provide information on the following essential elements in respect of the *UCITS scheme*:
  - (a) identification of the scheme and that the *FCA* is the *competent authority* of the *scheme*;

...

(6A) A *key investor information document* must also include:

- (a) a statement that the details of the up-to-date *remuneration policy*, including, but not limited to the following:
  - (i) a description of how *remuneration* and benefits are calculated; and
  - (ii) the identities of persons responsible for awarding the *remuneration* and benefits, including the composition of the *remuneration committee*, where such a *remuneration committee* exists,

are available by means of a website;

- (b) a reference to that website, and that a paper copy will be made available free of charge upon request.

...

...

## 5.4 Stock lending

...

5.4.1A G COLL 6.6B sets out additional FCA rules applicable to a depositary of a UCITS scheme in relation to the reuse of UCITS custodial assets.

...

5.4.3 R (1) ~~An authorised fund may only enter into a stock lending arrangement or repo contract in accordance with the rules in this section if it reasonably appears to the ICVC or authorised fund manager of an AUT or ACS to be appropriate to do so with a view to generating additional income for the authorised fund with an acceptable degree of risk if the arrangement or contract is:~~

(a) for the account of and for the benefit of the scheme; and

(b) in the best interests of its unitholders.

(2) An arrangement or contract in (1) is not in the interests of unitholders unless it reasonably appears to the ICVC or authorised fund manager of an authorised fund to be appropriate with a view to generating additional income for the authorised fund with an acceptable degree of risk.

Stock lending: requirements

5.4.4 R (1) ~~An ICVC, or the depositary at the request of an authorised fund of the ICVC, or the depositary of an AUT or ACS at the request acting in accordance with the instructions of the authorised fund manager, may enter into a repo contract, or a stock lending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:~~

...

- (c) high quality and liquid collateral is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the collateral is:

...

...

- 5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:
- (a) ...
  - (aa) for a UCITS scheme, received under a title transfer arrangement;
  - (ab) for a UCITS scheme, at all times equal in value to the market value of the securities transferred by the depositary plus a premium;
  - (b) for a non-UCITS retail scheme, at all times at least equal in value, at the time of the transfer to the depositary, to the value of the securities transferred by the depositary; and
- ...
- ...
- (3) The *depositary* must ensure that the value of the *collateral* at all times is ~~at least equal to the value of the securities transferred by the depositary~~ meets the requirement of either (1)(ab) or (1)(b), as appropriate;
- ...

...

## 6.5 Appointment and replacement of the authorised fund manager and the depositary

...

- 6.5.2A G COLL 6.6A and COLL 6.6B set out additional FCA rules and guidance applicable to the authorised fund manager and depositary of a UCITS scheme in relation to the appointment and duties of the depositary.

...

## 6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

## 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 for the account of the scheme within the usual time limits; [deleted]~~
- (6) ~~Where the UCITS scheme is being managed by an EEA UCITS management company, the depositary must enter into a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform its functions in accordance with COLL 6.6.5R. [deleted]~~
- (7) The agreement in (6):
  - (a) ~~may cover more than one UCITS scheme; and~~
  - (b) ~~must as a minimum contain the information set out in COLL 6 Annex 1. [deleted]~~

~~[Note: articles 22(3)(a), (d) and (e), 23(5), 32(3) and 33(5) of the UCITS Directive and article 36 first sentence of the UCITS implementing Directive]~~

## Provision of information

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

~~[Note: articles 23(4) and 33(4) of the UCITS Directive] [deleted]~~

...

## Control by the depositary over the scheme property

6.6.12 R (1) ...

- (c) take into its ~~eustody~~ custody or under its control documents of title to the scheme property other than for transactions in derivatives or forward transactions; and

...

...

## Committees and delegation

6.6.15 R ...

- (4) The ~~depository of a *scheme*~~ *non-UCITS retail scheme* managed by a *small authorised UK AIFM* may delegate any function to any person save:

...

...

...

Delegation: guidance

6.6.16 G ...

- (4) *COLL 6.6B sets out the FCA's rules and guidance that apply to a depository of a UCITS scheme seeking to delegate any of its functions.*

...

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

...

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

...

- (4) (a) ...  
(b) ...; ~~and~~
- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*; and
- (6) in carrying out its functions act:  
(a) honestly, fairly, professionally, independently; and  
(b) solely in the interest of the *UCITS scheme* and its *unitholders*.

[**Note:** article 22(4) of the *UCITS Implementing Directive* and article 25(2) first paragraph of the *UCITS Directive*]

...

After COLL 6.6A.6R insert the following new provisions. All text is new and not underlined.

### Appointment of a single depositary

- 6.6A.7 R An *authorised fund manager* of a *UCITS scheme*, or a *UK UCITS management company* of an *EEA UCITS scheme*, must (for each *scheme* it manages) ensure that:
- (1) a single *depositary* is appointed; and
  - (2) the assets of the *UCITS* are entrusted to the *depositary* for safekeeping in accordance with:
    - (a) (for a *UCITS scheme*) *COLL 6.6B.19R* and *COLL 6.6B.20R*; and
    - (b) (for an *EEA UCITS scheme*) the national laws and regulations in the *Home State* of the *EEA UCITS scheme* that implement article 22(5) of the *UCITS Directive*.

[**Note:** article 22(1) and (5) of the *UCITS Directive*]

### Eligible depositaries for UCITS schemes

- 6.6A.8 R An *authorised fund manager* must ensure that the *depositary* it appoints under *COLL 6.6A.7R* is a *firm established* in the *United Kingdom* that has the *Part 4A permission* of acting as trustee or depositary of a *UCITS* and is one of the following:
- (1) a national central bank;
  - (2) a *credit institution*; or
  - (3) a *firm* which:
    - (a) has *own funds* of not less than the higher of:
      - (i) the requirement calculated in accordance with article 315 or 317 of the *EU CRR*; and
      - (ii) £4 million; and
    - (b) either:
      - (i) is a *full-scope IFPRU investment firm*; or
      - (ii) is an *investment management firm* to which *IPRU(INV) 5* applies; and
    - (c) satisfies the non-bank depositary organisational requirements in *COLL 6.6B.11R*.

[**Note:** article 23(2)(a), (b) and (c) (first sentence) of the *UCITS Directive*]

- 6.6A.9 G For a *depository* to be *established* in the *United Kingdom*, it must have its registered office or *branch* in the *United Kingdom*.

Eligible depositories for EEA UCITS schemes

- 6.6A.10 R A *UK UCITS management company* must ensure the *depository* it appoints for each *EEA UCITS scheme* it manages is *established* in the *Home State* of the *EEA UCITS scheme* and is eligible to be a *depository* in that *Home State*.

[**Note:** article 23(2) of the *UCITS Directive*]

Written contract

- 6.6A.11 R (1) An *authorised fund manager* of a *UCITS scheme*, or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that the appointment of the *depository* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depository* to perform its functions for the *scheme*.

[**Note:** article 22(2) of the *UCITS Directive*]

- 6.6A.12 G The written contract referred to in *COLL 6.6A.11R* may cover more than one *scheme*.

- 6.6A.13 G Article [*to follow*] of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between:

- (1) (a) the *authorised fund manager* of a *UCITS scheme*; or
- (b) a *UK UCITS management company* of an *EEA UCITS scheme*; and
- (2) the *depository*.

After *COLL 6.6A* insert a new section. All text is new and not underlined.

## **6.6B UCITS depositories**

### Application

- 6.6B.1 R This section applies to the *depository* of a *UCITS scheme* managed by an *authorised fund manager*.

### General obligations

- 6.6B.2 R A *depository* in carrying out its functions must act:
- (1) honestly, fairly, professionally, independently; and
- (2) solely in the interest of the *UCITS scheme* and its *unitholders*.

[**Note:** article 25(2) first paragraph of the *UCITS Directive*]

Conflicts of interest: depositaries

- 6.6B.3 R A *depositary* must not carry out activities with regard to the *UCITS scheme*, or the *authorised fund manager*, acting on behalf of the *scheme*, that may create conflicts of interest between the *scheme*, the investors in the *scheme* or the *authorised fund manager* and itself, unless:
- (1) the *depositary* has properly identified any such potential conflicts of interest;
  - (2) the *depositary* has functionally and hierarchically separated the performance of its *depositary* tasks from its other potentially conflicting tasks; and
  - (3) the potential conflicts of interest are properly managed, monitored and disclosed to the investors of the *scheme*.

[**Note:** article 25(2) second paragraph of the *UCITS Directive*]

Eligible depositaries for UCITS schemes

- 6.6B.4 G A *depositary* of a *UCITS scheme* must be a *firm established in the United Kingdom* that has the *Part 4A permission of acting as trustee or depositary of a UCITS*.
- 6.6B.5 G *COLL 6.6A.8R* sets out the categories of *firms* that may be appointed by an *authorised fund manager* as the *depositary* of a *UCITS scheme*.
- 6.6B.6 G For a *depositary* to be *established in the United Kingdom*, it must have its registered office or *branch* in the *United Kingdom*.

Depositaries appointed under *COLL 6.6A.8R(3)* (non-bank depositaries): Capital requirements

- 6.6B.7 G A *depositary* appointed in accordance with *COLL 6.6A.8R(3)* needs to satisfy the capital requirements in either:
- (1) *IPRU(INV) 5*; or
  - (2) *IFPRU* and the *EU CRR*.
- 6.6B.8 R A *full-scope IFPRU investment firm* which is appointed as a *depositary* of a *UCITS scheme* must maintain *own funds* of at least £4 million.
- 6.6B.9 G (1) If the *depositary* is a *full-scope IFPRU investment firm*, it is subject to the capital requirements of *IFPRU* and the *EU CRR*.

- (2) However, these requirements are not in addition to *COLL 6.6B.8R* and, therefore, that *firm* may use the *own funds* required under *IFPRU* and the *EU CRR* to meet the £4 million requirement.

6.6B.10 G If the *depository* appointed in accordance with *COLL 6.6A.8R(3)* is an *incoming EEA firm* that has a *top-up permission of acting as trustee or depository of a UCITS*, it must comply with the applicable capital requirements set out in *IPRU(INV) 5*.

Depositories appointed under *COLL 6.6A.8R(3)* (non-bank depositories):  
organisational requirements

6.6B.11 R A *depository* appointed under *COLL 6.6A.8R(3)* must:

- (1) ensure that it has the infrastructure necessary to keep in custody *UCITS custodial assets* that can be registered in a *financial instruments* account opened in the *depository's* books;
- (2) establish adequate policies and procedures sufficient to ensure compliance of the *depository*, including its managers and employees, with its obligations under the *regulatory system*;
- (3) have:
  - (a) sound administrative and accounting procedures, internal control mechanisms;
  - (b) effective procedures for risk assessment; and
  - (c) effective control and safeguard arrangements for information processing systems;
- (4) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- (5) arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable the *competent authority* to monitor the *firm's* compliance with the requirements under the *regulatory system*;
- (6) take reasonable steps to ensure continuity and regularity in the performance of its *depository* functions by employing appropriate and proportionate systems, resources and procedures to perform its *depository* activities;
- (7) ensure that all members of its *management body* and senior management are, at all times, of sufficiently good repute, possess sufficient knowledge, skills and experience;

- (8) ensure that its *management body* possesses adequate collective knowledge, skills and experience to be able to understand the *depository's* activities, including the main risks; and
- (9) require that each member of its *management body* and senior management acts with honesty and integrity.

[**Note:** article 23(2) (c) (second sentence) of the *UCITS Directive*]

- 6.6B.12 G A *firm's* attention is also drawn to the organisational requirements in *SYSC*. The rules and guidance in *SYSC* apply to a *depository* appointed under *COLL* 6.6A.8R(3), in accordance with the application provisions summarised in *SYSC* 1.1A (Application) and in detail in *SYSC* 1 Annex 1.

#### Written contract

- 6.6B.13 R (1) A *depository* must ensure that its appointment as *depository* of a *UCITS scheme* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depository* to perform its functions for the *scheme*.

[**Note:** article 22(2) of the *UCITS Directive*]

- 6.6B.14 G The written contract referred to in *COLL* 6.6.B.13R may cover more than one *UCITS scheme*.

- 6.6B.15 G Article [*to follow*] of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between the *authorised fund manager* and the *depository*.

#### Depository functions: oversight

- 6.6B.16 R The *depository* must, for each *UCITS scheme* for which it is appointed:
- (1) ensure that the *sale, issue, repurchase, redemption and cancellation* of *units* of the *scheme* are carried out in accordance with:
    - (a) the applicable national law;
    - (b) the *instrument constituting the fund*;
    - (c) the *prospectus*; and
    - (d) *COLL* 6.2 (Dealing);
  - (2) ensure that the price of the *units* of the *UCITS* is calculated in accordance with:
    - (a) the applicable national law;
    - (b) the *instrument constituting the fund*;

- (c) the *prospectus*; and
  - (d) COLL 6.3 (Valuation and pricing);
- (3) carry out the instructions of the *authorised fund manager*, unless they conflict with:
- (a) the applicable national law; or
  - (b) the *instrument constituting the fund*; or
  - (c) the *prospectus*; or
  - (d) COLL 5 (Investment and borrowing powers);
- (4) ensure that, in transactions involving the assets of the *UCITS scheme*, any consideration is remitted to the *scheme* within the usual time limits; and
- (5) ensure that the income of the *UCITS scheme* is applied in accordance with:
- (a) the applicable national law;
  - (b) the *instrument constituting the fund*;
  - (c) the *prospectus*; and
  - (d) COLL 6.8 (Income: accounting, allocation and distribution).

[**Note:** article 22(3) of the *UCITS Directive*]

**Depositary functions: cash monitoring**

- 6.6B.17 R The *depositary* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:
- (1) all payments made by, or on behalf of, investors upon the subscription of *units* of the *scheme* have been received;
  - (2) all cash of the *scheme* has been booked in cash accounts:
    - (a) opened in the name of:
      - (i) the *scheme*; or
      - (ii) the *authorised fund manager*, acting on behalf of the *scheme*; or
      - (iii) the *depositary* acting on behalf of the *scheme*; and
    - (b) at:

- (i) a central bank; or
  - (ii) a *CRD credit institution*; or
  - (iii) a bank authorised in a *third country*; and
- (c) maintained in accordance with the principles in article 16 (safeguarding of client financial instruments and funds) of the *MiFID implementing directive*; and
- (3) where cash accounts are opened in the name of the *depository* acting on behalf of the *scheme* in accordance with (2)(a)(iii), the *depository* must ensure that no cash of the entity referred to in (2)(b), and none of the *depository's* own cash, is booked on such accounts.

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

Depository functions: safekeeping of financial instruments

- 6.6B.18 R (1) The *depository* of a *UCITS scheme* must hold in custody all *UCITS custodial assets* of the *scheme*.
- (2) The *depository* must ensure that all *UCITS custodial assets* that can be registered in a *financial instruments* account:
- (a) are registered in the *depository's* books within segregated accounts opened in the name of:
    - (i) the *UCITS scheme*; or
    - (ii) the *authorised fund manager*, acting on behalf of the *scheme*; and
  - (b) can be clearly identified as belonging to the *UCITS scheme* at all times in accordance with:
    - (i) the applicable law; and
    - (ii) the applicable provisions in *CASS 6*.

[**Note:** article 22(5)(a) of the *UCITS Directive*]

Depository functions: safekeeping of other assets

- 6.6B.19 R The *depository* must, for *UCITS scheme property* other than *UCITS custodial assets*:
- (1) verify that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme* is the owner of the assets based on:
    - (a) information or documents provided by the *authorised fund manager*; and,

- (b) where available, on external evidence; and
- (2) maintain, and keep up to date, a record of those assets for which it is satisfied that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme*, is the owner.

[**Note:** article 22(5)(b) of the *UCITS Directive*]

#### Inventory of assets

- 6.6B.20 R The *depository* must provide a comprehensive inventory of all the assets comprising the *scheme property* of the *UCITS scheme* to the *authorised fund manager* on a regular basis.

[**Note:** article 22(6) of the *UCITS Directive*]

#### Reuse of assets

- 6.6B.21 R (1) The *depository* must not reuse *UCITS custodial assets* except:
- (a) where permitted under *COLL 5.4* (stock lending); and
  - (b) when carrying out the instructions of the *authorised fund manager* on behalf of the *scheme*.
- (2) Reuse of the *UCITS custodial assets* comprises any transaction in relevant *scheme property* including, but not limited to, transferring, pledging, selling and lending.

[**Note:** article 22(7) first paragraph of the *UCITS Directive*]

#### Limitation on delegation

- 6.6B.22 R A *depository* must not delegate its oversight function in *COLL 6.6B.16R* or its cash monitoring function in *COLL 6.6B.17R* to a third party.

[**Note:** article 22a(1) of the *UCITS Directive*]

- 6.6B.23 G The use of services provided by securities settlement systems, as specified in the *Settlement Finality Directive*, or similar services provided by third-country securities settlement systems, does not constitute a delegation by the *depository* of its functions for the purposes of *COLL 6.6B.22R*.

[**Note:** article 22a(4) of the *UCITS Directive*]

- 6.6B.24 G (1) (a) If a *depository* performs part of its functions through a *branch* in another *EEA State* this is not a delegation by the *depository* of its functions to a third party.
- (b) This is because “third party” in *COLL 6.6B.22R* means any party that is not part of the same legal entity as the *depository*.

- (2) Paragraph (1) also applies where the *depository* is the *UK branch* of an *EEA firm* and it performs part of its functions:
  - (a) through a *branch* in another *EEA State*; or
  - (b) from the *EEA State* where it has its registered office.
- (3) (a) A *depository* that performs part of its functions through a *branch* or registered office in another *EEA State* should ensure that those arrangements do not impede the *depository's* ability to meet the *threshold conditions*.
  - (b) (i) In particular, the arrangements should not impede the *FCA's* ability to effectively supervise the *depository*.
  - (ii) For example, the *FCA's* ability to supervise the *depository* might be impeded if the *depository* performed tasks other than administrative and supporting tasks from its *branch* or registered office in another *EEA State*.

Delegation: safekeeping

- 6.6B.25 R A *depository* may delegate the functions in *COLL 6.6B.18R* and *COLL 6.6B.19R* to one or more third parties if:
- (1) the tasks are not delegated with the intention of avoiding the requirements of the *UCITS Directive*;
  - (2) the *depository* can demonstrate that there is an objective reason for the delegation;
  - (3) the *depository*:
    - (a) has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
    - (b) continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
      - (i) of any third party to whom it has delegated parts of its tasks; and
      - (ii) of the arrangements of that third party in respect of the matters delegated to it;
  - (4) the *depository* ensures that the third party delegate meets the following conditions at all times:
    - (a) the third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of

- the *UCITS scheme* that have been entrusted to it;
- (b) (subject to *COLL 6.6B.26R*) for custody tasks in relation to *UCITS custodial assets*, the third party is subject to:
    - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
    - (ii) an external periodic audit to ensure that the *financial instruments* remain in its custody;
  - (c) the third party segregates the assets of the *depository's* clients from its own assets and from the assets of the *depository* in such a way that they can, at any time, be clearly identified as belonging to clients of a particular *depository*;
  - (d) the third party complies with the general obligations and prohibitions relating to the *depository* in:
    - (i) *COLL 6.6B.2R* (General obligations);
    - (ii) *COLL 6.6B.3R* (Conflicts of interests: depositaries);
    - (iii) *COLL 6.6B.13R* (Written contract);
    - (iv) *COLL 6.6B.18R* (Depository functions: safekeeping of financial instruments);
    - (v) *COLL 6.6B.19R* (Depository functions: safekeeping of other assets); and
    - (vi) *COLL 6.6B.21R* (Reuse of assets).

[**Note:** article 22a(2) and (3) of the *UCITS Directive*]

Delegation: third countries

- 6.6B.26 R A *depository* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in a third country that does not satisfy the conditions in *COLL 6.6B.25R(4)(b)(i)* if:
- (1) the law of that third country requires those *UCITS custodial assets* to be held in custody by a local entity;
  - (2) no local entity satisfies the conditions in *COLL 6.6B.25R(4)(b)(i)*;
  - (3) the *depository* delegates its functions to such a local entity only:
    - (a) to the extent required by the law of that third country; and
    - (b) for as long as there is no local entity that satisfies the

delegation conditions in *COLL 6.6B.25R(4)(b)(i)*;

- (4) the investors of the relevant *UCITS scheme* are informed before their investment:
  - (a) that such delegation is required due to legal constraints in the third country;
  - (b) of the reasons as to why the delegation is necessary; and
  - (c) of the risks involved in such a delegation; and
- (5) the *authorised fund manager* acting on behalf of the *UCITS scheme*, has consented to the delegation arrangements before they become effective.

[**Note:** article 22a(3) of the *UCITS Directive*]

Delegation: sub-delegation

- 6.6B.27 R A *depository* must ensure that a third party to whom the *depository* has delegated functions under *COLL 6.6B.25R* does not, in turn, sub-delegate those functions unless the delegate complies with the same requirements that apply to the *depository*, with any necessary changes, in relation to the delegation by the *depository* of its functions in *COLL 6.6B.25R* and *COLL 6.6B.26R*.

[**Note:** article 22a(3) third paragraph of the *UCITS Directive*]

Delegation: omnibus account

- 6.6B.28 G A *depository* may delegate the safe-keeping of assets to a third party that maintains an omnibus account for multiple *UCITS schemes*, provided it is a segregated common account that is segregated from the third party's own assets.

[**Note:** recital 22 of the *UCITS Directive*]

Provision of information

- 6.6B.29 G The requirements of *SUP 2* (Information gathering by the FCA on its own initiative) apply to the *depository*, under which it must enable the *FCA* to obtain, on request, all information that the *depository* has obtained while discharging its duties and that the *FCA* considers necessary.

[**Note:** article 26a first paragraph of the *UCITS Directive*]

Reporting of breaches

- 6.6B.30 R A *depository* must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the *UCITS Directive* internally through a specific, independent and autonomous

channel.

[**Note:** article 99d(5) of the *UCITS Directive*]

- 6.6B.31 G *SYSC 18* (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

Subordinate measures

- 6.6B.32 G Articles [to follow] to [to follow] of the *UCITS level 2 regulation* provide detailed rules supplementing this section.

COLL 6 Annex 1R is deleted in its entirety. The text is not shown struck through.

Amend the following text as shown.

## 12.2 UK UCITS management companies

...

Notification to the UCITS Home State regulator

- 12.2.7 G (1) A *UK UCITS management company* which applies to operate 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 *documents*:
- (a) the written ~~agreement~~ contract it has entered into with the ~~depository~~ depository of the *EEA UCITS scheme*, as referred to in ~~articles 23 and 33~~ article 22(2) of the *UCITS Directive*; and

...

...

## 12.3 EEA UCITS management companies

...

Provision of documentation to the FCA: 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 *FCA* with the following *documents*:
- (a) the written ~~agreement~~ contract that has been entered into with the ~~depository~~ depository of the *scheme*, as referred to in ~~COLL 6.6.4 R (6) (General duties of the depository)~~ article

22(2) of the UCITS Directive;

...

**TP 1 Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: date in force	(6) Handbook provisions: coming into force
...					
<u>31</u>	<u>COLL 4.2.5R(8)(f), (g) and (h),</u> <u>COLL 4.2.5R(28)</u>	<u>R</u>	(1) <u>The authorised fund manager need not, for any prospectus issued before 18 March 2016, comply with COLL 4.2.5R(8)(f), (g) and (h) and COLL 4.2.5R(28).</u>  (2) <u>The prospectus must, however, contain a description of the depositary's principal business activity.</u>	<u>From 18 March 2016 until 30 September 2016</u>	<u>18 March 2016</u>
<u>32</u>	<u>COLL 4.5.7R(7)</u>	<u>R</u>	<u>The authorised fund manager need not include the disclosures required under COLL 4.5.7R(7) in an annual long report that relates to an annual accounting period ending before 18 March 2016.</u>	<u>From 18 March 2016 until 18 July 2016</u>	<u>18 March 2016</u>
<u>33</u>	<u>COLL 4.7.2R(4)(a) and (6A)</u>	<u>R</u>	(1) <u>Paragraph (2) applies to any key investor information document drawn up by an authorised fund manager before 18 March 2016.</u>  (2) <u>The authorised fund manager need not amend the key investor information document until it is revised as a result of the next annual review of the key investor information falling after 18</u>	<u>From 18 March 2016 until 18 March 2017</u>	<u>18 March 2016</u>

			<u>March 2016.</u>		
<u>34</u>	<u>COLL 6.6A.8R</u>	<u>R</u>	<u>A management company may continue to retain a <i>depository</i> that does not meet the requirements in <i>COLL 6.6A.8R</i> if the <i>depository</i> was appointed before 18 March 2016.</u>	<u>From 18 March 2016 until 18 March 2018</u>	<u>18 March 2016</u>
<u>35</u>	<u>COLL 6.6B.8R and COLL 6.6B.11R</u>		<u>A <i>depository</i> that does not meet the requirements in <i>COLL 6.6B.8R</i> and <i>COLL 6.6B.11R</i> may continue to act as <i>depository</i> of a <i>UCITS scheme</i> if it was appointed before 18 March 2016.</u>	<u>From 18 March 2016 until 18 March 2018</u>	<u>18 March 2016</u>

**FIN072 - Financial resources requirements for UCITS depositaries**

**Regulatory Capital**

		<b>A</b>
<b>1</b>	<i>Common Equity Tier 1</i> Paid up capital instruments	
<b>2</b>	Share premium	
<b>3</b>	Retained earnings	
<b>4</b>	Other reserves	
<b>5</b>	All other CET1 capital elements	
<b>6</b>	Deductions / Adjustments from CET1	
<b>7</b>	TOTAL	
	<i>Additional Tier 1</i>	
<b>8</b>	AT1 Capital elements	
<b>9</b>	Deductions / Adjustments from AT1	
<b>10</b>	TOTAL	
	<i>Tier 2</i>	
<b>11</b>	Subordinated loans	
<b>12</b>	Other T2 capital elements	
<b>13</b>	Deductions / Adjustments from T2	
<b>14</b>	TOTAL	
<b>15</b>	OWN FUNDS	
<b>Regulatory capital test</b>		
<b>16</b>	Higher of:	
<b>17</b>	£4,000,000; and Operational risk requirement	
<b>18</b>	SURPLUS / DEFICIT OF OWN FUNDS	

## Guidance Notes for the reporting form to be inserted at SUP 16 Annex 25G

### FIN072 – Financial resources requirements for UCITS depositaries

#### Introduction

The report provides a framework for the collection of prudential information required by the *FCA* for its supervision activities. The data item is intended to reflect the underlying prudential requirements in *IPRU(INV)* 5 and allows monitoring against those requirements.

#### Defined terms

Where terms used in these notes are defined by the Companies Act 2006, as appropriate, or the provisions of the *firm's* accounting framework (usually UK GAAP or *IFRS*) they should have that meaning. The descriptions in these notes are designed to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the *firm's* accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act 2006 as appropriate) or *IFRS*.
- The data item should be completed on an unconsolidated basis.
- The data item should be in agreement with the underlying accounting records.
- Accounting policies should be consistent with those adopted in the *firm's annual report and accounts* and consistently applied.
- Information required should be prepared in line with generally accepted accounting standards.
- The data item should not give a misleading impression of the *firm*. A data item is likely to give a misleading impression if a *firm* wrongly omits or includes a material item or presents a material item in the wrong way.

#### Currency

You should report in the currency of your annual audited accounts, i.e. in Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s.

#### Data elements

These are referred to by row first, then by column, so data element 2A will be the element numbered 2 in column A.

<b>Regulatory capital</b>		
	1 to 15	The numbers in this section should be consistent with those submitted in FSA029 for the same reporting period and should be allocated based on <i>EU CRR</i> definitions of regulatory capital. Deductions should be reported as a minus figure.
<b>Regulatory capital test</b>		
<i>Own funds test for a UCITS Depositary</i>		

£4,000,000	16	This is the minimum capital resources requirement.
Operational risk requirement	17	This is the requirement calculated depending on the selected approach in accordance with article 315 or 317 of the <i>EU CRR</i> .
SURPLUS / DEFICIT OF OWN FUNDS	18	This is 15 less whichever is the higher of 16 and 17.



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



**Notification of intention to provide cross-border services in another EEA state.**  
(SUP 13 Annex 6R – Notification under SUP 13.5.2R)

<b>FIRM NAME:</b>
<b>FRN:</b>

**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 (“the *UCITS Directive*”).

You may also use this form if you are a *UK firm* that wishes to notify us (the regulator) 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 *UCITS Directive* (see Schedule 3 to 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**

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 4.
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 4.
3. 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.

---

**If solo regulated send to:**

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

**Telephone:** +44 (0)20 7066 7188  
**Website:** [www.fca.org.uk](http://www.fca.org.uk)  
**E-mail:** [passport.notifications@fca.org.uk](mailto:passport.notifications@fca.org.uk)

**If dual regulated send to:**

The Prudential Regulation Authority  
20 Moorgate  
London  
EC2R 6DA

**Telephone:** +44(0)20 361 7000  
**Website:** [www.bankofengland.co.uk](http://www.bankofengland.co.uk)  
**E-mail:** [pra-passporting@bankofengland.co.uk](mailto:pra-passporting@bankofengland.co.uk)

# 1 Contact details

## 1.1 Details of the person we will contact about this notification

Firm reference number	
Contact name	
Telephone number	
Fax number	
Email address	

## 2 Details of the services to be provided

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

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"/>

**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).

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 <i>UCITS</i>	<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 those portfolios include one or more of the instruments listed in Section C of Annex I to <i>MIFID</i> .	<input type="checkbox"/>
Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MIFID</i> .	<input type="checkbox"/>
Safekeeping and administration in relation to <i>units</i> 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 envisaged according to article 6(2) and (3) 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 State*.

**Note: Other Requirements for UCITS management companies**

In addition to the submission of this notice to the *FCA*, *management companies* should note, where the application is to manage a *UCITS* in another *EEA 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 contract 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 *management company* already manages other *UCITS* of the same type as the company is proposing to manage in the *UCITS Home State*, 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

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 *PRA/FCA* 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	
IRN (if applicable)	
Signature	
Date	dd/mm/yy

I enclose the following sections

Section 1 – Contact details

Section 2 – Details of the services

Section 3 – Undertakings for Collective Investment in Transferable Securities

Section 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*.

# **Appendix 2**

## **Draft Handbook text for Part II**

**EUROPEAN LONG-TERM INVESTMENT FUNDS REGULATION  
INSTRUMENT 2015**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes the rules and fixes and varies the standard terms for Voluntary Jurisdiction participants relating to the Voluntary Jurisdiction as set out in Annex E to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

- C. The Financial Conduct Authority (the “FCA”) makes this instrument in the exercise of the following powers and related provisions of the Act:
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 137R (Financial promotion rules);
  - (4) section 139A (Power of the FCA to give guidance);
  - (5) section 213 (The compensation scheme);
  - (6) section 214 (General);
  - (7) section 226 (Compulsory jurisdiction); and
  - (8) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority).
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The FCA approves the standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

**Commencement**

- F. This instrument comes into force on *[insert date]*.

**Amendments to the FCA’s Handbook**

- G. The modules of the FCA’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
Fees manual (FEES)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Supervision manual (SUP)	Annex D
Dispute Resolution: Complaints sourcebook (DISP)	Annex E
Compensation sourcebook (COMP)	Annex F
Investment Funds sourcebook (FUND)	Annex G

## Notes

- H. 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.

## European Union Legislation

- I. Although European Union legislation is reproduced in this instrument, only European Union legislation in the on-line edition of the Official Journal of the European Union is deemed authentic.

## Citation

- J. This instrument may be cited as the European Long-Term Investment Funds Regulation Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited  
*[insert date]*

By order of the Board of the Financial Conduct Authority  
*[insert date]*

## 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.

<i>EEA ELTIF</i>	an <i>ELTIF</i> authorised by a <i>competent authority</i> other than the <i>FCA</i> under the <i>ELTIF regulation</i> .
<i>ELTIF</i>	a European long-term investment fund (as defined in the <i>ELTIF regulation</i> ) authorised under the <i>ELTIF regulation</i> .
<i>ELTIF regulation</i>	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.
<i>UK ELTIF</i>	an <i>ELTIF</i> authorised by the <i>FCA</i> under the <i>ELTIF regulation</i> .

Amend the following definitions as shown.

<i>authorised fund</i>	(a) <u>(other than in <i>FEES 6</i> and <i>COMP</i>) an <i>ICVC</i>, <i>ACS</i> or an <i>AUT</i>.</u>
	(b) <u>(in <i>FEES 6</i> and <i>COMP</i>) an <i>ICVC</i>, an <i>ACS</i>, an <i>AUT</i> or a <i>UK ELTIF</i>.</u>
<i>holder</i>	(a) (in relation to a <i>unit</i> in an <i>authorised fund</i> ):
	(i) the <i>shareholder</i> ; or
	(ii) the <i>unitholder</i> ; or
	(iii) <u>(in <i>FEES 6</i> and <i>COMP</i>, where the <i>authorised fund</i> is a <i>UK ELTIF</i>), the <i>person</i> whose name is entered in the record of the holder of <i>units</i> in the <i>ELTIF</i> as the holder of that <i>unit</i>;</u>
	(b) ...

Delete the following definitions as shown.

<del><i>closed-ended corporate AIF</i></del>	<del>an <i>AIF</i> which is a <i>body corporate</i> and not a <i>collective investment scheme</i>.</del>
<del><i>internally managed corporate AIF</i></del>	<del>a <i>closed-ended corporate AIF</i> which is an <i>internally managed AIF</i>.</del>

**Annex B**

**Amendments to the Fees manual (FEES)**

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

**1 Fees Manual**

**1.1 Application and Purpose**

Application

...

1.1.2 R This manual applies in the following way:

...

(2) *FEES* 1, 2 and 4 apply to:

...

(ca) every AIFM of a UK ELTIF;

...

...

**3 Application, Notification and Vetting Fees**

...

**3.2 Obligation to pay fees**

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

<b>Part 1: Application, notification and vetting fees</b>		
<b>(1) Fee payer</b>	<b>(2) Fee payable</b>	<b>Due date</b>
...	...	..
(d) Applicants for an <i>authorisation order</i> for, or recognition under section 272 of the <i>Act</i> of, a <i>collective investment scheme</i>	<i>FEES</i> 3 Annex 2R, part 2	On or before the application is made

<u>(da) Applicants for the authorisation of an AIF as a UK ELTIF</u>	<u>FEES 3 Annex 2R, part 2A</u>	<u>On or before the date the application is made</u>
...	...	...

...

**3 Annex 2R Application and notification fees payable in relation to collective investment schemes, ELTIFs and AIFs marketed in the UK**

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee (£)	Umbrell a factor
...	...	...	...	...
<b>Part 2 Application fees payable for firms to be subject to <i>COLL</i></b>				
...	...	...	...	...
Section 272 of the <i>Act</i>	...	...	...	...
<b>Part 2A – Application fees payable for firms applying for a UK AIF to be authorised under the <u>ELTIF</u> regulation</b>				
<u>Article 5 of the <i>ELTIF</i> regulation</u>	<u>On application for an AIF to be authorised under the <i>ELTIF</i> regulation</u>	<u>An applicant</u>	<u>2,400</u>	<u>2</u>
...	...	...	...	...

...

**4 Periodic fees**

...

**4.2 Obligation to pay periodic fees**

...

4.2.11 R Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified
-------------	---------------	------------	--

			periodic fee
...			
<i>Persons who, under the constitution or founding arrangements of a recognised scheme, is are responsible for the management of the property held for or within the scheme</i>			
<u>AIFM of a UK ELTIF</u>	In relation to each <u>ELTIF</u> the amount specified in part 1 of <u>FEES 4 Annex 4</u>	(1) Unless (2) applies, on or before 1 August or, if later, within 30 days of the date of the invoice.  (2) If an event in column 4 occurs during the course of a fee year, 30 days after the occurrence of that event.	The <u>ELTIF</u> is authorised by the <u>FCA</u> under the <u>ELTIF regulation</u>
...	...	...	

...

**4 Annex 4R Periodic fees in relation to collective investment schemes, AIFs marketed in the UK and small registered UK AIFMs payable for the period 1 April 2015 to 31 March 2016**

Part 1 – Periodic fees payable

Scheme type	Basic fee	Total funds/ sub-funds aggregate	Fund factor	Fee (£)
...	595	1-2	1	595

FCA restricted

<i>ACS,</i>		3-6	2.5	1,488
<i>UK ELTIFs,</i>		7-15	5	2,975
Section 264 of the <i>Act,</i>		16-50	11	6,545
...		>50	22	13,090

**Annex C**

**Amendments to the Conduct of Business sourcebook (COBS)**

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

**4 Communicating with clients, including financial promotions**

...

**4.12 Restrictions on the promotion of non-mainstream pooled investments**

...

Exemptions from the restrictions on the promotion of non-mainstream pooled investments

4.12.4 R ...

(5)

Title of Exemption	Promotion to:	Promotion of a non-mainstream pooled investment which is:
...	...	...
<p>3. <del>Enterprise and charitable</del> <u>Charitable</u> funds</p>	<p>A <i>person</i> who is eligible to participate or invest in an arrangement constituted under:</p> <p>(1) the Church Funds Investment Measure 1958;</p> <p>(2) section 96 or 100 of the Charities Act 2011; <u>or</u></p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964; <u>or</u></p> <p>(4) <del>the Regulation on European Venture Capital Funds ('EuVECA's');</del> <u>or</u> [deleted]</p> <p>(5) <del>the Regulation on European Social Entrepreneurship Funds ('EuSEFs');</del> [deleted]</p>	<p>...</p>
...	...	...

...

## 18 Specialist Regimes

...

### 18.5 Residual CIS operators, UCITS management companies and AIFMs

#### Application

...

- 18.5.1 R (1) ~~Only~~ The following apply to a full-scope UK AIFM that is an external AIFM in relation to its AIF management functions:
- B
- (a) COBS 18.5.1R to COBS 18.5.2-AG;
  - (b) COBS 18.5.3R;
  - (c) COBS 18.5.4AR<sub>2</sub>;
  - (d) COBS 18.5.4CR to COBS 18.5.4DG<sub>3</sub> and
  - (e) COBS 18.5.10AR, except as set out in (2) apply to a full-scope UK AIFM<sub>2</sub>.
- (2) ~~with the exception that~~ COBS 18.5.10AR does not apply to a full-scope UK AIFM that is an external AIFM of:
- (a) a UK ELTIF or an EEA ELTIF; or
  - (b) an unauthorised AIF which is not a collective investment scheme.
- (3) Only COBS 18.5.4CR to COBS 18.5.4DG only apply to a full-scope UK AIFM that is an internally managed AIF.

## Annex D

### Amendments to the Supervision manual (SUP)

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

#### 10A FCA Approved Persons

##### 10A.1 Application

...

Internally managed corporate AIFs

10A.1.2 G In accordance with section 59(7C) of the *Act* this chapter does not apply to  
4 an ~~internally managed corporate AIF~~ internally managed AIF which is a body corporate and not a collective investment scheme.

...

#### 13A Qualifying for authorisation under the Act

...

#### 13A Application of the Handbook to Incoming EEA firms

Annex

1G

...		
<b>(1) Module of Handbook</b>	<b>(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</b>	<b>(3) 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</b>
...		
<i>DISP</i>	... For an <i>incoming EEA AIFM branch</i> <i>DISP</i> applies (subject to some limitations, see <i>DISP</i> 1.1.3R), except for an <i>incoming EEA AIFM branch of a closed-ended corporate AIF</i> <u>an AIF that is a body corporate (and not a collective investment scheme or an ELTIF)</u> , when <i>DISP</i> does	Generally does not apply ( <i>DISP</i> 1.1.1G). However, <del>for</del> <u><i>DISP</i> applies</u> (subject to some limitations, see <i>DISP</i> 1.1.3R) to: <u>(a) an incoming EEA firm which is a UCITS management company</u>

	not apply.	managing a <i>UCITS scheme</i> ; or <u>(b) an AIFM managing an authorised AIF; or a UK ELTIF</u> <del><i>DISP</i> applies (subject to some limitations, see <i>DISP</i> 1.1.3R).</del>
...		

## Annex E

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

...

Application to firms

1.1.3 R ...

...

- (4) This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for complaints from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a UK ELTIF under the freedom to provide *cross-border services*.

...

1.1.5 R This chapter does not apply to:

...

- (5) a *full-scope UK AIFM*, *small authorised UK AIFM* or an *incoming EEA AIFM*, for complaints concerning *AIFM management functions* carried on for a ~~closed-ended corporate AIF~~ an AIF that is a body corporate unless it is:

(a) a collective investment scheme; or

(b) an ELTIF; and

- (6) a *depository*, for complaints concerning activities carried on for:

(a) ~~an unauthorised AIF which is not a charity AIF~~ an AIF that is a body corporate unless it is:

(i) a collective investment scheme; or

(ii) an ELTIF; or

(b) ~~any closed-ended corporate AIF~~ another type of AIF unless it

is:

- (i) an authorised AIF;
- (ii) an ELTIF; or
- (iii) a charity AIF.

1.1.5-A G References in *DISP* 1.1.5R to a *full-scope UK AIFM* and *small authorised UK AIFM* carrying on *AIFM management functions* ~~for a closed-ended corporate AIF~~ include firms that are ~~internally managed corporate AIFs~~ internally managed AIFs.

...

**1 Annex Application of DISP 1 to type of respondent / complaint  
2G**

...

Type of respondent / complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm (other than a UCITS management company when providing collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme) in relation to complaints concerning non-MiFID business (except as specifically provided for below)</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> ( <i>DISP</i> 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
...						
<i>a full-scope UK AIFM, small authorised UK</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<i>AIFM</i> or an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM</i> <i>management functions</i> carried on for a <del><i>closed-ended corporate AIF</i></del> <i>body corporate</i> (unless it is a <i>collective investment scheme</i> or an <i>ELTIF</i> )						
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>authorised AIF</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>			
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>ELTIF</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>			
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for a <i>charity AIF</i> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i> or an <i>ELTIF</i> )	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>			
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <del><i>an</i></del> <i>unauthorised AIF</i> (where the <i>AIF</i> is not a <i>charity AIF</i> ) or a <del><i>closed-ended corporate AIF</i></del>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

<p><u>other types of AIF, i.e. an AIF that is not an authorised AIF, an ELTIF or a charity AIF (other than a body corporate that is not a collective investment scheme or an ELTIF)</u></p>						
<p>an <i>incoming EEA AIFM</i>, for <i>complaints concerning AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <i>UK ELTIF</i> under the freedom to provide <i>cross-border services</i></p>	<p>Applies for <i>eligible complainants</i></p>	<p>Does not apply</p>				

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.6 What is the territorial scope of the relevant jurisdiction?

#### Compulsory Jurisdiction

2.6.1 R (1) ...

(2) The *Compulsory Jurisdiction* also covers *complaints* about:

(a) ...

(b) *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF*;

from an establishment in another *EEA State* under the freedom to provide *cross-border services*.

...

2.6.2 G This:

...

- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* (other than:
- (a) *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* in managing a *UCITS scheme*; and
  - (b) *complaints* about *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a *UK ELTIF*).

...

## 2.7 Is the complainant eligible?

...

### Eligible complainants

...

- 2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

- (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is:
- (a) the *operator* of a *scheme*;
  - (b) the *depository* of an *authorised fund*; ~~or~~
  - (c) the *depository* of a *charity AIF*; or
  - (d) the depository of an ELTIF;
- (3A) the complainant is the holder, or the beneficial owner, of *units* or *shares* in an *AIF* that is not a collective investment scheme where the *respondent* is:
- (a) ~~the AIFM of an unauthorised AIF (apart from a closed-ended corporate AIF); [deleted]~~
  - (b) the *AIFM* or *depository* of an ~~authorised AIF~~ ELTIF; ~~or~~
  - (c) the *AIFM* or *depository* of a *charity AIF* ~~(apart from a charity~~

~~*AIF which is a closed-ended corporate AIF*~~ , unless the *AIF* is a *body corporate*; or

(d) the *AIFM* of another type of *AIF* unless the *AIF* is a *body corporate*;

...

## Annex F

### Amendments to the Compensation sourcebook (COMP)<sup>1</sup>

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

#### 5 Protected claims

...

#### 5.5 Protected investment business

5.5.1 R *Protected investment business* is:

...

(5) the activities of the *manager* or *depository* of an *ELTIF*, provided that the *claim* is made by a *holder*;

provided that the territorial scope condition in *COMP* 5.5.2R is satisfied and, for a *firm* acting as the *manager* or *depository* of a *fund*, one of the conditions in *COMP* 5.5.3R is satisfied.

...

#### Managers and depositaries of funds

5.5.3 R The conditions referred to in *COMP* 5.5.1R for a *manager* or *depository* of a *fund* are:

- (1) for the activities of *managing an AIF* or *establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:
  - (a) an *authorised fund*; or
  - (b) any other *fund* which has its registered office or head office in the *UK* or is otherwise domiciled in the *UK* ~~and is not a closed-ended corporate AIF~~ unless it is an *AIF* that is a *body corporate* and not a *collective investment scheme*;
- (2) where a *firm* is *acting as depository of an AIF* and in so doing is carrying on the activity of *acting as trustee or depository of an AIF* or *safeguarding and administering assets*, the *claim* is in respect of their activities for;

---

<sup>1</sup> The changes shown anticipate that the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (SI 2001/1783) will be amended to include ELTIFs in the same way as other types of fund authorised by the FCA.

- (a) an *authorised AIF*; or
- (b) a *charity AIF* ~~which is not a closed-ended corporate AIF~~  
unless it is a *body corporate* that is not a *collective investment scheme*.

## Annex G

### Amendments to the Investment Funds sourcebook (FUND)

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

## 1 Introduction

...

### 1.1 Application and purpose

1.1.1 R The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
...	
<i>full-scope UK AIFM of an authorised AIF</i>	Chapters 1, 3 and 10
<u><i>full-scope UK AIFM of an ELTIF</i></u>	<u>Chapters 1, 3, 4.2 and 10</u>
...	
<i>depository of an AIF managed by a full-scope UK AIFM</i>	Chapters 1 and 3
<u><i>depository of a UK ELTIF managed by a full-scope UK AIFM</i></u>	<u>Chapters 1, 3 and 4.2</u>
<u><i>depository of a UK ELTIF managed by a full-scope EEA AIFM</i></u>	<u>Chapters 1, 3 and 4.2</u>

...

### 1.2 Structure of the investment funds sourcebook

Structure of the investment funds sourcebook

1.2.1 G *FUND* is structured as follows:

...

- (4) FUND 4 sets out some requirements in relation to European AIF regimes.

...

### 3 Requirements for alternative investment fund managers

...

#### 3.12 Marketing in the home Member State of the AIFM

...

##### Marketing an ELTIF

- 3.12.7 G To market an ELTIF a full-scope UK AIFM should submit a notice to the FCA using the form in:

- (1) FUND 3 Annex 1D (Notification of intention to market an AIF in the United Kingdom)/ SUP 13 Annex 8BR (Passporting: AIFMD); and
- (2) FUND 4 Annex 1R (Additional documentation and information to market an ELTIF).

...

### 4 ~~Common requirements for all retail funds~~ European AIF regimes

#### 4.1 [to follow]

The following text is new and is not underlined.

#### 4.1 Application

- 4.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

Type of <i>firm</i>	Applicable sections
<i>Full-scope UK AIFM of a UK ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>
<i>Full-scope UK AIFM of an EEA ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>
<i>UK depositary of a UK ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>

## 4.2 ELTIFs

### Application

- 4.2.1 R This section applies to:
- (1) a *full-scope UK AIFM* of:
    - (a) a *UK ELTIF*; or
    - (b) an *EEA ELTIF*; and
  - (2) a *UK depositary* of a *UK ELTIF*.

### The ELTIF regulation

- 4.2.2 G
- (1) The *ELTIF regulation* lays down uniform rules on the authorisation, investment policies and operating conditions of *EEA AIFs*, or compartments of *EEA AIFs*, that are *marketed* in the *EEA* as European long-term investment funds (*ELTIFs*).
  - (2) The *ELTIF regulation* is a directly applicable *EU* regulation.

### Interaction between the ELTIF regulation and AIFMD

- 4.2.3 G
- (1) To be eligible to manage an *ELTIF*, an *AIFM* needs to be:
    - (a) a *full-scope UK AIFM*; or
    - (b) a *full-scope EEA AIFM*.
  - (2) This means that the *AIFM* and the *depositary* of an *ELTIF* need to comply with the applicable requirements of:
    - (a) *AIFMD*; and
    - (b) the *ELTIF regulation*.

### Specific depositary provisions where an ELTIF is marketed to retail investors

- 4.2.4 G
- (1) Article 29 of the *ELTIF regulation* contains specific provisions concerning the *depositary* of an *ELTIF* that is *marketed to retail clients*, which have the effect of amending the corresponding provisions of *AIFMD*.
  - (2) Article 29 of the *ELTIF regulation* is replicated in *FUND 4.2.5EU*.
  - (3) These specific provisions and the corresponding *AIFMD* provisions and *UK* transposition are summarised in *FUND 4.2.6G*.

- (4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disapplied in *FUND* 4.2.7R.

4.2.5

EU

Specific provisions concerning the depositary of an ELTIF marketed to retail investors

1.	By way of derogation from article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in article 23(2) of Directive 2009/65/EC.
2.	By way of derogation from the second subparagraph of article 21(13) and article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3.	The liability of the depositary referred to in article 21(12) of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
4.	Any agreement that contravenes paragraph 3 shall be void.
5.	The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.
	The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that:
(a)	the reuse of the assets is executed for the account of the ELTIF;
(b)	the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF;
(c)	the reuse is for the benefit of the ELTIF and in the interests of the unit- or shareholders; and
(d)	the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement.
	The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

[**Note:** Article 29 of the *ELTIF regulation*]

Summary of specific provisions concerning the depositary of an ELTIF marketed to retail investors

4.2.6	G	<i>ELTIF</i> regulation	<i>AIFMD</i> reference	<i>UK</i> transposition
	(1)	Article 29(1) of the <i>ELTIF regulation</i>	Article 21(3) of <i>AIFMD</i>	<i>FUND</i> 3.11.10R to <i>FUND</i> 3.11.15G and <i>FUND</i> 3.11.18R
	(2)	Article 29(2) of the <i>ELTIF regulation</i>	Second paragraph of article 21(13) and 21(14) of <i>AIFMD</i>	Regulations 30(4) and 32 of the <i>AIFMD UK regulation</i>
	(3)	Article 29(3) of the <i>ELTIF regulation</i>	Article 21(12) of <i>AIFMD</i>	Regulation 30(3) of the <i>AIFMD UK regulation</i>
	(4)	Article 29(5) of the <i>ELTIF regulation</i>	Article 21(10) third paragraph of <i>AIFMD</i>	<i>FUND</i> 3.11.24R

Disapplication of *FUND* depositary provisions for an ELTIF marketed to retail investors

4.2.7 R The following provisions do not apply when an *ELTIF* is marketed to a retail client:

- (1) *FUND* 3.11.10R to *FUND* 3.11.15G (Eligible depositaries for UK AIFs);
- (2) *FUND* 3.11.18R (Eligible depositaries for EEA AIFs); and
- (3) *FUND* 3.11.24R (Reuse of assets).

Documentation and information required to market an ELTIF

- 4.2.8 G (1) To market an *ELTIF* an *AIFM* is required to:
- (a) notify its *competent authority* in accordance with article 31 of *AIFMD*, if it wishes to market the *ELTIF* in the *Home State* of the *AIFM* (see article 31(1) of the *ELTIF regulation*);
  - (b) notify its *competent authority* in accordance with article 32 of *AIFMD*, if it wishes to market the *ELTIF* in a *Host State* of the *AIFM* (see article 31(2) of the *ELTIF regulation*); and
  - (c) provide the following additional documentation and information to its *competent authority* (see article 31(4) of the *ELTIF regulation*):
    - (i) the prospectus of the *ELTIF*;

- (ii) the key information document of the *ELTIF* in the event that it is *marketed to retail clients*; and
    - (iii) information on the facilities referred to in article 26 of the *ELTIF regulation*.
  - (2) To *market* an *ELTIF* an *full-scope UK AIFM* should submit a notice to the *FCA* using the form in:
    - (a) *FUND 3 Annex 1D* (Notification of intention to market an AIF in the United Kingdom)/ *SUP 13 Annex 8BR* (Passporting: AIFMD) to *market* an *ELTIF* in the *Home State* of the *AIFM* or a *Host State* of the *AIFM*; and
    - (b) *FUND 4 Annex 1R* (Additional documentation and information to market an *ELTIF*) (as required by *FUND 4.2.9R*).
- 4.2.9 R The *AIFM* of an *ELTIF* must submit a notice to the *FCA* using the form in *FUND 4 Annex 1R* (Additional documentation and information to market an *ELTIF*) to *market* the *ELTIF*.

#### Interaction between *ELTIFs* and authorised funds

- 4.2.10 G (1) The requirements in relation to an *ELTIF* are set out in the *ELTIF regulation* rather than in *FCA rules*.
  - (2) (a) As a result the *Glossary* term of an *authorised fund* has only limited application to an *ELTIF*.
  - (b) This is to avoid all the requirements for an *authorised AIF* applying to an *AIFM* or *depository* of an *ELTIF*.
  - (3) (a) The *Glossary* term of an *authorised fund* only applies to an *ELTIF* in *FEES 6* and *COMP*.
  - (b) This is to allow the *rules* and *guidance* in *FEES 6* and *COMP* to apply to an *ELTIF* in the same way as other types of *fund* that are authorised by the *FCA*.
- 4.2.11 G (1) However, a *full-scope UK AIFM* of a *UK ELTIF* needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.
  - (2) Similarly, the *depository* of a *UK ELTIF* needs to obtain the *permission of acting as trustee or a depository of an AIF* that is an *authorised AIF*.
  - (3) (a) This is because where the requirements for an *AIFM* or a *depository* of an *ELTIF* are concerned, an *ELTIF* more nearly resembles an *authorised AIF* than an *unauthorised AIF*.

- (b) As a result, *firms* that do not have the *permission* to *manage an AIF* that is an *authorised AIF* or *act as a trustee or depositary of an AIF* that is an *authorised AIF* will need to vary their *permission* to be able to act as the *AIFM* or *depositary* of an *ELTIF*.

**4 Annex 1R Additional documentation and information to market an ELTIF**

*[For text of form see end of instrument]*

Amend the following as shown.

**10 Operating on a cross-border basis**

...

**10.3 AIFM marketing passport**

...

Marketing an ELTIF

10.3.7 G To market an ELTIF a full-scope UK AIFM should submit a notice to the FCA using the form in:

- (1) FUND 3 Annex 1D (Notification of intention to market an AIF in the United Kingdom)/ SUP 13 Annex 8BR (Passporting: AIFMD); and
- (2) FUND 4 Annex 1R (Additional documentation and information to market an ELTIF).

...

**Transitional Provisions and Schedules**

**TP 1 Transitional Provisions**

TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
-----	-----	-----	-----	-----	-----

	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
...					
2	<i>FUND 3.11.10R</i>	R	An <i>AIFM</i> may ensure the appointment of a <i>credit institution</i> that is <i>established</i> in an <i>EEA State</i> other than the <i>UK</i> for each <i>UK AIF</i> it manages that is an <i>unauthorised AIF</i> , <u>unless the <i>AIF</i> is an <i>ELTIF</i>.</u>	From 22 July 2013 until 22 July 2017.	22 July 2013
...					
6	<i>FUND 3.11.24R</i>	R	<i>FUND 3.11.24R</i> does not apply to a <i>credit institution</i> established in the <i>UK</i> and appointed as a <i>depository</i> of an <i>EEA ELTIF</i> managed by a <i>full-scope UK AIFM</i> or a <i>full-scope EEA AIFM</i> in accordance with article 61(5) of <i>AIFMD</i> in relation that <i>ELTIF</i> .	From <i>[date of instrument]</i> until 22 July 2017	<i>[Date of instrument]</i>



## Additional documentation and information to market an ELTIF (FUND 4 Annex 1R)

<b>AIFM name</b>	
<b>FRN</b>	
<b>AIF name</b>	
<b>PRN</b>	

### **Purpose of this form**

You should complete this form if you are a *full-scope UK firm* that wishes to *market* an *ELTIF*. This form sets out the information required by the *ELTIF regulation* that is in addition to the information required by article 31 or 32 of *AIFMD*.

You may also use this form if you are a *full-scope UK firm* that wishes to notify the *FCA* of changes to the additional marketing information that was supplied previously.

### **Important information**

A *full-scope UK AIFM* that wishes to *market* an *ELTIF* also needs to complete the form in *FUND 3 Annex 1D* (Notification of intention to market an AIF in the United Kingdom)/ *SUP 13 Annex 8BR* (Passporting: AIFMD).

### **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 3.
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 3.
3. All firms should answer sections 1, 2 and 3.
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.

### **This form should be sent to:**

*Fund Authorisation and Supervision Team  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS*

An electronic copy must be submitted by email to [fundsupervision@fca.org.uk](mailto:fundsupervision@fca.org.uk)

## 1 Contact details

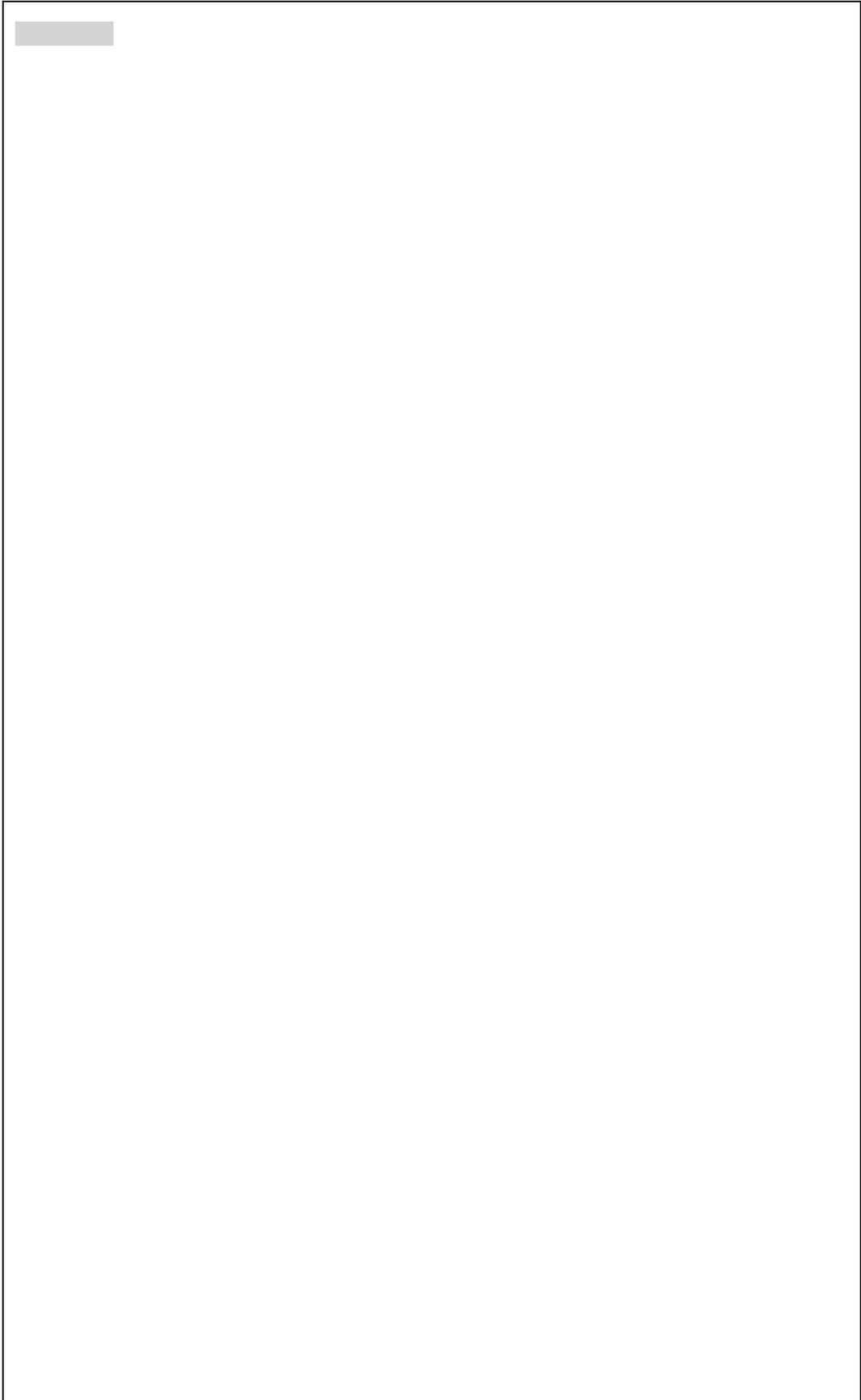
### 1.1 Details of the contact for this application

Contact name	
Position	
Firm	
Telephone number	
Fax number	
Email address	

## 2 Additional information to market an ELTIF

Please provide the following documentation and information

- 2.1 A copy of the prospectus of the *ELTIF*  Attached
- 2.2 A copy of the key information document of the *ELTIF* in the event that it is marketed to retail clients  Attached
- 2.3 Information on the facilities referred to in article 26 of the *ELTIF* regulation (continue on an additional sheet if required)



## 3 Declaration

### Warning

Knowingly or recklessly giving us information that is false or misleading in a material particular is a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). We expect you to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us. It should not be assumed that issues are known to us just because they are in the public domain or have previously been disclosed to us or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway. 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.

### Data protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the firm concerned.

### Declaration

By submitting this notification form:

- **I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case**
- **I am aware that it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.**
- **I confirm that I am authorised to sign on behalf of the firm.**

Tick here to confirm you have read and understood the declaration.

Name	<input type="text"/>
Position	<input type="text"/>
Signature	<input type="text"/>
Date (dd/mm/yy)	<input type="text"/>

**FCA restricted**

*I enclose the following sections*

Section 1 – Contact details	<input type="checkbox"/>
Section 2 – Additional information to market an ELTIF	<input type="checkbox"/>
Section 3 – Declaration	<input type="checkbox"/>

**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*.

# **Appendix 3**

## **Draft Handbook text for Part III**

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK  
(AMENDMENT NO 9) INSTRUMENT 2016**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (the “Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 137T (General supplementary powers);
    - (c) section 139A (Power of the FCA to give guidance);
    - (d) section 247 (Trust scheme rules);
    - (e) section 248 (Scheme particular rules);
    - (f) section 261I (Contractual scheme rules); and
    - (g) section 261J (Contractual scheme particular rules); and
  - (2) regulation 6(1) (FCA 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 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*insert date*].

**Amendments to the FCA Handbook**

- D. The modules of the FCA’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
Supervision manual (SUP)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C
Investment Funds sourcebook (FUND)	Annex D

**Citation**

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016.

By order of the Board of the Financial Conduct Authority  
[*insert date*]

## 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 definition in the appropriate alphabetical order. The text is not underlined.

*charity authorised investment fund* an *authorised fund* that has been registered as a charity with the Charity Commission under Part 4 of the Charities Act 2011.

Amend the following as shown.

*bearer certificate* (in *COLL*) for an *ICVC* or a *recognised fund*, a certificate or other documentary evidence of title, for which provision is made in the *instrument constituting the fund*, which indicates that:

- (a) the *holder* of the document is entitled to the *units* specified in it; and
- (b) no entry will be made on the *register* identifying the *holder* of those *units*.

*feeder NURS* a *non-UCITS retail scheme* which:

- (a) does not operate as:
  - (i) a *FAIF*; or
  - (ii) ~~a *feeder fund*~~; or [deleted]
  - (iii) a *scheme dedicated to units* in a single *property authorised investment fund*; and
- (b) is *dedicated to units* in either:
  - (i) a single *qualifying master scheme*; or
  - (ii) a single *sub-fund* of a *qualifying master scheme* that is an *umbrella*; and

which, in the case of either (i) or (ii), is:

- (A) a *UCITS*; or
- (B) a *non-UCITS retail scheme*; or
- (C) a *recognised scheme*.

- large deal* (in *COLL*) a transaction (or *series of transactions*) in one *dealing period*) by any *person* to *buy, sell* or exchange *units* in an *authorised fund*, of any value as set out in the *prospectus*, for the purposes of:
- (a) ~~an *SDRT provision*; [deleted]~~
  - (b) a *dilution levy*; or
  - (c) ~~a *dilution adjustment*; or [deleted]~~
  - (d) calculating the *prices*, for a *dual-priced authorised fund*, at which *units* may be *sold* or *redeemed*.
- pension feeder fund* an *AUT* or *ACS* that is a *relevant pension scheme* and *dedicated to units* in a single *regulated collective investment scheme*.
- SDRT provision* ~~a *charge* of such amount or at such rate as is determined by the *authorised fund manager* to be made as a provision for stamp duty reserve tax for which the *ICVC* may become liable under the Stamp Duty and Stamp Duty Reserve Tax (Open Ended Investment Companies) (Amendment No.2) Regulations 2000 or the *trustee* may become liable under Schedule 19 to the Finance Act 1999 in respect of a surrender of *units* to the *authorised fund manager*.~~
- unitholder*
- (a) (in relation to an *ICVC*, *ACS* or an *AUT* as appropriate, and subject to *COLL* 4.4.4R (Special meaning of unitholder in *COLL* 4.4)):
    - (i) (in relation to a ~~*unit share*~~ in an *ICVC* which is represented by a *bearer certificate*) the *person* who holds that certificate; or
    - (ii) (in relation to a *unit* that is not represented by a *bearer certificate*) the *person* whose name is entered on the *register* in relation to that *unit*; or
  - (b) (in relation to a *unit* in a *collective investment scheme* not within (a)):
    - (i) the holder of a the *bearer certificate* representing that *unit*; or
    - (ii) the *person* who is entered on the *register* of the *scheme* as the holder of that *unit*.

## Annex B

### Amendments to the Supervision manual (SUP)

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

#### 16 Reporting requirements

...

#### 16.6 Compliance reports

...

##### 16.6.2 G Applicable provisions of this section (see SUP 16.6.1G)

Category of firm	Applicable provisions
<i>Bank</i>	<i>SUP 16.6.4R - SUP 16.6.5R</i>
<i>Trustee of an AUT</i> <i>Depositary of an ICVC</i> <i>Depositary of an ACS</i> <i>Depositary of an authorised fund</i>	<i>SUP 16.6.6R - SUP 16.6.9G</i>

...

~~Trustees of authorised unit trust schemes, depositaries of ICVCs and authorised contractual schemes, Depositories of authorised funds and OPS firms~~

16.6.6 R A firm within a category listed in the left-hand column of SUP 16.6.7R must submit compliance reports in accordance with SUP 16.6.7R.

16.6.7 R Compliance reports from ~~trustees of AUTs, depositaries of ICVCs and ACSs~~ authorised funds, and OPS firms (see SUP 16.6.6R)

Report	Frequency	Due date
<del>Report</del> <u>Breach report from a trustee depositary of an AUT authorised fund on the manager's authorised fund manager's failures breaches as set out in SUP 16.6.8R(1) SUP 16.6.8R(1A)</u>	<del>Quarterly</del> <u>Monthly</u>	<del>1 month</del> <u>30 business days after quarter month end</u> (Note)
<del>Report from a depositary of an ACS on failures by the authorised contractual scheme manager as set out in SUP 16.6.8R(2A)</del>	<del>Quarterly</del>	<del>1 month after quarter end</del> (Note)

Report from a <i>depository</i> of an <i>ICVC</i> on failures by the <i>authorised corporate director</i> as set out in <i>SUP 16.6.8R(2)</i>	Quarterly	1 month after quarter end (Note)
Oversight report from a <i>depository</i> of an <i>authorised fund</i> on its oversight visits as set out in <i>SUP 16.6.8R(1B)</i>	Quarterly	30 <i>business days</i> after quarter end (Note)
...		
Note = The quarter ends are 31 March, 30 June, 30 September, 31 December.		

- 16.6.8 R (1) The report from a *trustee* of an *AUT* to the *FCA* must state, in relation to the *manager* of each *AUT* for which it is a *trustee*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *manager* had failed (materially or otherwise) to:
- (a) give correct instructions to the *trustee* to create or cancel *units* in the *AUT* when the *manager* should have done so, and the error:
    - (i) resulted in the creation of too few *units* or in the cancellation of too many *units*; and
    - (ii) was not corrected in accordance with the *FCA's* guidance as set out in *COLL 6.2.12G*;
  - (b) price *units* in the *AUT* in accordance with *COLL 6.3* where the pricing error was:
    - (i) greater than 0.5% of the price of a *unit*; or
    - (ii) less than 0.5% of the price of a *unit*, and the *trustee* did not consider the *manager's* controls to be adequate;

unless the failure was an isolated incident. [deleted]
- (1A) The breaches report from a *depository* of an *authorised fund* to the *FCA* must include, for each *authorised fund* for which it is a *depository*:
- (a) details of any breaches of *COLL* or *FUND* during the previous *month* by an *authorised fund manager*;
  - (b) details of any breaches that have been previously reported that remain unresolved or have been resolved since the last

report; and

(c) whether the *authorised fund manager* has, in the opinion of the *depository*, adequate controls over:

(i) box management as detailed in COLL 6.2 (Dealing); and

(ii) valuation and pricing as detailed in COLL 6.3 (Valuation and pricing).

(1B) The oversight report from the *depository* to the *FCA* must include:

(a) details of each *authorised fund manager* visited during the previous quarter; and

(b) for each area reviewed:

(i) the findings and concerns raised by the *depository*;

(ii) its recommendations; and

(iii) the *authorised fund manager's* response and comments.

(2) The report from a *depository* of an *ICVC* to the *FCA* must state, in relation to the *authorised corporate director* of each *ICVC* for which the *firm* is a *depository*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *authorised corporate director* had failed (materially or otherwise) to:

(a) arrange for the *issue* or cancellation of *shares* in the *ICVC* when the *authorised corporate director* should have done so, and the error:

(i) resulted in the creation of too few *shares* or in the cancellation of too many *shares*; and

(ii) was not corrected in accordance with the *FCA's* guidance as set out in COLL 6.2.12G;

(b) price *shares* in the *ICVC* in accordance with the provisions of COLL 6.3, where the pricing error was:

(i) greater than 0.5% of the price of a *share*; or

(ii) less than 0.5% of the price of a *share*, and the *depository* did not consider the *authorised corporate director's* controls to be adequate;

unless the failure was an isolated incident. [deleted]

- (2A) ~~The report from a *depository* of an *ACS* to the *FCA* must state, in relation to the *authorised contractual scheme manager* of each *ACS* for which the *firm* is a *depository*, the number of times during the quarter in which facts came to the *firm's* knowledge from which it appeared, or might have appeared, that the *authorised contractual scheme manager* had failed (materially or otherwise) to:~~
- ~~(a) arrange for the *issue* or cancellation of *units* in the *ACS* when the *authorised contractual scheme manager* should have done so, and the error:~~
    - ~~(i) resulted in the creation of too few *units* or in the cancellation of too many *units*; and~~
    - ~~(ii) was not corrected in accordance with the *FCA's* guidance as set out in *COLL* 6.2.12G;~~
  - ~~(b) price *units* in the *ACS* in accordance with the provisions of *COLL* 6.3, where the pricing error was:~~
    - ~~(i) greater than 0.5% of the price of a *unit*; or~~
    - ~~(ii) less than 0.5% of the price of a *unit*, and the *depository* did not consider the *authorised contractual scheme manager's* controls to be adequate;~~

~~unless the failure was an isolated incident. [deleted]~~

...

16.6.9 G ~~*SUP* 16 Annex 12G provides *guidance* on the completion of the report from a *trustee* of an *AUT* on a *manager's* failures as set out in *SUP* 16.6.8R(1), and the report from a *depository* of an *ICVC* or *ACS* on failures by the *authorised corporate director* or *authorised contractual scheme manager* as set out in *SUP* 16.6.8R(2) and *SUP* 16.6.8R(2A). This *guidance* includes suggested formats for the submission of the reports. An *authorised fund manager* should ensure that all breaches are reported to its *depository* with sufficient information to enable the *depository* to comply with *SUP* 16.6.8R.~~

- 16.6.10 R (1) *A depository* must submit its breaches report under *SUP* 16.6.8R(1A) using Form 1 in *SUP* Annex 12AR.
- (2) *A depository* must submit its oversight report under *SUP* 16.6.8R(1B) using Form 2 in *SUP* Annex 12AR.
- (3) *A depository* must submit Form 1 and Form 2 in *SUP* Annex 12AR online through the appropriate systems accessible from the *FCA's* website.

...

**16.12 Integrated Regulatory Reporting**

...

Regulated Activity Group 4

...

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>							
	<i>IFPRU investment firms and BIPRU firms</i>		<i>Firms other than BIPRU firms or IFPRU investment firms</i>					
	<i>IFPRU</i>	<i>BIPRU</i>	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 11 (collective portfolio management firms only)</i>	<i>IPRU (INV) Chapter 12</i>	<i>IPRU (INV) Chapter 13</i>
...								
UCITS (note 22)						FSA042		
...								
Note 22	<del>Only applicable to firms that have permission for managing a UCITS. [deleted]</del>							
...								

...

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	<i>Firms' prudential category</i>					
	<i>IFPRU 730K firm</i>	<i>IFPRU 125K firm and collective portfolio management investment firm</i>	<i>IFPRU 50K firm</i>	<i>BIPRU firm</i>	<i>UK consolidation group or defined liquidity group</i>	<i>Firm other than BIPRU firms or IFPRU investment firms</i>
...						

FSA042		Quarterly				Quarterly
...						

...

16.12.17 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.16R, unless indicated otherwise.

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
...						
FSA042				<del>20 business days</del>		
...						

...

SUP 16 Annex 12G (Reports from depositaries of ICVCs, AUTs and ACSs) is deleted in its entirety. The text is not shown.

Insert SUP 16 Annex 12AR as follows. The text is new and is not underlined.

**Annex 12AR Reports from depositaries of authorised funds**

*[For the text of the annex see end of instrument]*

Insert SUP 16 Annex 12BG as follows. The text is new and is not underlined.

**Annex 12BG Guidance notes on reports from depositaries of authorised funds**

**Form 1: Monthly Return of Notifiable Breaches – Authorised Funds**

New breaches	Breaches reported for the first time within a reporting period.
Existing breaches	Breaches reported in previous reporting periods that were not closed in those reporting periods.

Breach Resolution Date	The date when a breach was closed following the implementation of any corrective actions and payment of any necessary recompense to the <i>scheme</i> and <i>unitholders</i> .
Breach Identification Date	The date when the breach was identified.
Breach description	A brief statement describing the nature of the breach, and why and how it occurred.
Action taken	The corrective action implemented in resolving the breach and the final outcome. If resolution will require a long-term (>6 <i>months</i> ) project, timelines should be included.

**Form 2: Quarterly Return of Oversight visits – Authorised Funds**

Findings	A brief description of findings and conclusions, including illustrative examples.
Recommendations	Actions requested of the <i>authorised fund manager</i> by the <i>depository</i> to remedy any findings. If resolution will require a long-term (>6 <i>months</i> ) project, timelines should be included.
<i>AFM</i> response and comments	Any statement from the <i>authorised fund manager</i> in response to the depository's findings and recommendations.

...

**16 Annex 24R Data items for SUP 16.12**

Delete FSA042 as shown.

**FSA042**

**UCITS**

**A**

- |   |   |                                     |
|---|---|-------------------------------------|
| 1 | <del>Do you operate one or more UK authorised UCITS schemes?</del>  | <input type="text" value="Yes/No"/> |
| 2 | <del>If Yes to 1A, do you use derivatives in the scheme(s)?</del>   | <input type="text" value="Yes/No"/> |
| 3 | <del>If Yes to 2A, are you using derivatives for investment purposes in your UK authorised UCITS schemes?</del> | <input type="text" value="Yes/No"/> |

...

## Annex 25G Guidance notes for data items in SUP 16 Annex 24R

Delete guidance notes for FSA042 as shown.

### ~~FSA042 – UCITS~~

<b>Description</b>	<b>Data element</b>	<b>Guidance</b>
<del>Do you operate one or more UK authorised UCITS scheme?</del>	<del>1A</del>	<del>That is, are you the <i>authorised fund manager</i> or <i>ACD</i> of at least one <i>UCITS scheme</i> that is authorised by the <i>appropriate regulator</i> (not simply notified under section 264 of the <i>Act</i>)?</del>
<del>Do you use <i>derivatives</i> in the <i>UCITS scheme(s)</i>?</del>	<del>2A</del>	<del><b>Handbook Glossary Definition:</b> <i>Derivative: a contract for differences, a future or an option.</i></del>
<del>Are you using derivatives for investment purposes?</del>	<del>3A</del>	<del>“Using derivatives for investment purposes” is a term with which we believe managers are familiar. This term suggests that derivatives are not being used in pursuit of efficient portfolio management.</del>

## Annex C

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### 1 Introduction

...

#### 1.2 Types of authorised fund

...

Types of authorised fund - explanation

##### 1.2.2 G ...

- (2) (a) *Non-UCITS retail schemes* are schemes that do not comply with all the conditions set out in the *UCITS Directive*.
- (b) A non-UCITS retail scheme is an alternative investment fund and must be managed by an alternative investment fund manager.
- (c) Under article 43 of AIFMD, where an AIF can be marketed to retail clients, Member States may impose stricter requirements on the AIFM or the AIF than the requirements that apply to an AIF marketed only to professional clients.
- (d) This sourcebook contains the stricter requirements for a non-UCITS retail scheme.
- (e) A full-scope UK AIFM must also comply with the requirements in FUND and any other applicable provisions of AIFMD.
- (f) ~~Such schemes~~ *Non-UCITS retail schemes* could become *UCITS schemes*, provided they are changed, so as to comply with the conditions set out in the *UCITS Directive*.
- (g) *Non-UCITS retail schemes* operating as *FAIFs* have wider powers to invest in *collective investment schemes* than other *non-UCITS retail schemes*.

...

- (3) (a) Qualified investor schemes may only be promoted to:
- (i) ~~professional investors~~ professional clients; and
  - (ii) retail clients who are sophisticated investors, on the same terms as ~~unregulated collective investment schemes~~ non-mainstream pooled investments.
- (b) A qualified investor scheme is an alternative investment fund and must be managed by an alternative investment fund manager.
- (c) Under article 43 of AIFMD, where an AIF can be marketed to retail clients, Member States may impose stricter requirements on the AIFM or the AIF than the requirements that apply to an AIF marketed only to professional clients.
- (d) This sourcebook contains the stricter requirements for a qualified investor scheme.
- (e) A full-scope UK AIFM must also comply with the requirements in FUND and any other applicable provisions of AIFMD.
- (f) ~~Such schemes~~ Qualified investor schemes could change to become non-UCITS retail schemes or UCITS schemes.

...

#### Pension feeder funds

- 1.2.5 G (1) Except for (2) all provisions of the Handbook that apply:
- (a) to a feeder UCITS are also applicable to a pension feeder fund that is constituted as a UCITS scheme; and
  - (b) to a feeder NURS are also applicable to a pension feeder fund that is constituted as a non-UCITS retail scheme.
- (2) A pension feeder fund may not invest in units of an EEA UCITS scheme unless that scheme is a recognised scheme under section 264 of the Act (see COLL 5.6.27R and COLL 5.8.2AR).

...

3 **Constitution**

...

3.2 **The instrument constituting the fund**

...

Relationship between the instrument constituting the fund and the rules

3.2.2 R (1) The *instrument constituting the fund* must not contain any provision that:

(a) conflicts with any *rule* ~~in this sourcebook~~;

...

...

...

Table: contents of the instrument constituting the fund

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

...	
	<b>Government and public securities: investment in one issuer</b>
8	Where relevant, for a <i>UCITS scheme</i> , a statement in accordance with <i>COLL 5.2.12R</i> (Spread: government and public securities) <del>as to</del> <u>with the names of the individual states, local authorities or public international bodies issuing or guaranteeing the transferable securities or approved money-market instruments in which over more than 35% of the in value of the scheme property may be invested in government and public securities.</u>
...	
	<b>Certificates</b>
15	A statement:-
	(1) for <i>ICVCs</i> <del>and <i>AUTs</i></del> , authorising the issue of <i>bearer certificates</i> if any, and how such <i>holders</i> are to identify themselves; and
	...
...	

...

#### 4 Investor Relations

...

#### 4.2 Pre-sale notifications

...

Publishing the prospectus

4.2.2 R ...

- (2) The *authorised fund manager* must ensure that the *prospectus*:
  - (a) contains the information required by *COLL 4.2.5R* (Table: contents of the prospectus);
  - (aa) for a non-UCITS retail scheme managed by a full-scope UK AIFM, contains the information required by:
    - (i) FUND 3.2.2R and FUND 3.2.3R (Prior disclosure of information to investors); and
    - (ii) FUND 3.2.5R and FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the scheme's most recent annual report or half-yearly report;
- ...
- (c) does not contain any provision that conflicts with any *rule in this sourcebook*; and
- ...

...

Table: contents of the prospectus

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

...	...
<b>Authorised fund</b>	
2	A description of the <i>authorised fund</i> including:
	(a) its name;
	(aa) <u>its FCA product reference number (PRN);</u>

	...	
...		
<b>Umbrella Schemes</b>		
2B	For a <i>UCITS scheme</i> or <i>non-UCITS retail scheme</i> which is an <i>umbrella</i> ;	
	(a)	a statement detailing whether each specific <i>sub-fund</i> is a <i>feeder UCITS</i> , a <i>feeder NURS</i> , a <i>fund of alternative investment funds</i> or a <i>property authorised investment fund</i> , as appropriate; and
	(b)	the <i>FCA</i> product reference number (PRN) of each <i>sub-fund</i> .
<b>Investment objectives and policy</b>		
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :	
	...	
	(i)	where <i>COLL 5.2.12R(3)</i> (Spread: government and public securities) applies;
	(i)	a prominent statement as to the fact that more than 35% <u>in value</u> of the <i>scheme property</i> is or may be invested in <del>government and public securities</del> <i>transferable securities</i> or <i>approved money-market instruments</i> issued or guaranteed by a single state, local authority or public international body; and
	(ii)	the names of the individual states, local authorities or public international bodies <del>in whose securities the authorised fund may invest</del> <u>issuing or guaranteeing the securities in which more than 35% in value of the scheme property may be invested</u> ;
	...	
<b>Characteristics of the units</b>		
5	Information as to:	
	...	
	(b)	where the <del>instrument constituting the fund</del> <i>instrument of incorporation</i> of an <i>ICVC</i> provides for the <i>issue</i> of <i>bearer</i>

		<i>certificates</i> , that fact and what procedures will operate for them;
	...	
...		
<b><u>SDRT provision Large deals</u></b>		
19	An explanation of:	
	(a)	what is meant by <del>stamp duty reserve tax, SDRT provision and large deals</del> ; and
	(b)	<del>the authorised fund manager's policy on imposing an SDRT provision including its policy on large deals, and the occasions, and the likely frequency of the occasions, in which an SDRT provision may be imposed and the maximum rate of it (a usual rate may also be stated).</del>
<b><u>Forward and historic pricing</u></b>		
20	The authorised fund manager's normal basis of pricing under <i>COLL</i> 6.3.9R (Forward <del>and historic</del> pricing).	
...		

...

Guidance on contents of prospectus

4.2.6

G ...

- (7) (a) A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should ensure that the prospectus of the scheme includes the information required under FUND 3.2 (Investor information) and COLL 4.2.5R.
- (b) The authorised fund manager need not state the same information twice to satisfy both sets of requirements.

...

#### 4.4 Meetings of unitholders and service of notices

...

Special meaning of unitholder in COLL 4.4

4.4.4

R ...

- (3) For the purposes of (2), in *COLL* 4.4.6R (Quorum) to *COLL* 4.4.11R (Chairman, adjournments and minutes) "unitholders" in relation to those units means:
- (a) the *persons* entered on the *register* at a time to be determined by the *authorised fund manager* and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting; or
  - (b) in the case of bearer *units shares* in an *ICVC*, *unitholders shareholders* of bearer *units shares* which were in *issue* at the time applicable under (a).

...

## 4.5 Reports and accounts

...

### Full-scope UK AIFM of a non-UCITS retail scheme

- 4.5.2A      G      (1)      *A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should comply with both:*
- (a)      *FUND 3.3 (Annual report of an AIF); and*
  - (b)      *this chapter regarding the preparation and publication of annual reports.*
- (2)      *The authorised fund manager need not state the same information twice to satisfy both sets of requirements.*
- (3)      *The authorised fund manager, when preparing the half-yearly long report, needs to comply only with this chapter.*

...

### Provision of short report

- 4.5.13      R      ...
- (2)      The *authorised fund manager* must send a copy of the report:
- (a)      to each *unitholder* (or to the first named of joint *unitholders*) entered in or entitled to be entered in the *register* at the close of business on the last *day* of the relevant accounting period; and
  - (b)      ~~to each *unitholder* of bearer *units* at his request; and~~  
[deleted]

...

...

...

## 4.6 Simplified Prospectus provisions

...

Contents of the simplified prospectus

- 4.6.8 R This table belongs to the rule on production and publication of a simplified prospectus (*COLL 4.6.2R* and *COLL 4.6.6R*)

Contents of simplified prospectus

...	
Economic information	
(13)	the <i>scheme's</i> applicable tax regime, including:
	...
<p><del>Note: This information should include a statement in relation to <i>SDRT provision</i>, explaining how the <i>scheme</i> may suffer stamp duty reserve tax as a result of transactions in <i>units</i> and whether the <i>operator's</i> policy is such that an <i>SDRT provision</i> may be imposed.</del></p>	
...	

...

## 4.7 Key investor information and marketing communications

...

Form and content of a key investor information document

...

- 4.7.3A G
- (1) The key investor information document may include the *scheme's* FCA product reference number (PRN).
  - (2) The PRN enables investors to identify the *scheme* on the FS register.
  - (3) The PRN could be included in the information identifying the *scheme* (as required by article 4(4) of the *KII Regulation*).
  - (4) The PRN could be indicated in addition to other identification codes currently used (for example the ISIN) as long as the different identification codes can easily be distinguished.

...

## 5 Investment and borrowing powers

...

### 5.2 General investment powers and limits for UCITS schemes

...

Spread: general

5.2.11 R (1) This *rule*, ~~except for paragraph (10)~~, does not apply ~~to government and public securities~~ in respect of a transferable security or an approved money-market instrument to which COLL 5.2.12R (Spread: government and public securities) applies.

...

(10) In applying the limits in (3),(4),(5), (6) and (7) to investments in a single body, and subject to (5A), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:

- (a) *transferable securities* (including *covered bonds*) or *approved money-market instruments* issued by that body; or
- (b) *deposits* made with that body; or
- (c) *exposures from OTC derivatives transactions* made with a ~~single~~ that body.

...

Spread: government and public securities

5.2.12 R (1) This *rule* applies ~~to government and public securities~~ in respect of a transferable security or an approved money-market instrument (“such securities”) that is issued by:

- (a) an EEA State;
- (b) a local authority of an EEA State;
- (c) a non-EEA State; or
- (d) a public international body to which one or more EEA States belong.

...

- (3) An *authorised fund* may invest more than 35% in value of the *scheme property* in such *securities* issued by any one body provided that:

...

- (d) the disclosures in ~~(4) COLL 3.2.6R(8) (Table: contents of the instrument constituting the fund) and COLL 4.2.5R(3)(i) (Table: contents of the prospectus)~~ have been made.

- ~~(4) Where it is intended that (3) may apply, the *instrument constituting the scheme*, and the most recently published *prospectus*, must prominently state:~~

- ~~(a) the fact that more than 35% of the *scheme property* is or may be invested in such *securities* issued by one issuer; and~~
- ~~(b) the names of the individual states, the local authorities or public international bodies issuing such *securities* in which the *authorised fund* may invest over 35% of its assets. [deleted]~~

...

- ~~(6) Notwithstanding COLL 5.2.11R(1) and subject to (2) and (3), in applying the 20% limit in COLL 5.2.11R(10) with respect to a single body, *government and public securities* issued by that body shall be taken into account. [deleted]~~

...

#### Investment in other group schemes

5.2.16 R ...

- (4) In this *rule*:
- (a) any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the second *scheme*, which is applied for the benefit of the second *scheme* and is, or is like, a *dilution levy* made in accordance with COLL 6.3.8R (Dilution) ~~or SDRT provision made in accordance with COLL 6.3.7 (SDRT provision)~~ is to be treated as part of the *price* of the *units* and not as part of any charge; and
- (b) ...

...

Derivatives: general

5.2.19

R ...

- (4) Where a *scheme* invests in an index based *derivative*, provided the relevant index falls within ~~COLL 5.2.33R (Relevant indices)~~ COLL 5.2.20AR (Financial indices underlying derivatives) the underlying constituents of the index do not have to be taken into account for the purposes of COLL 5.2.11R and COLL 5.2.12R.

...

...

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

5.2.34

- G (1) *Authorised fund managers of UCITS schemes* should bear in mind that where a *UCITS scheme*, or an *EEA UCITS scheme* that is a *recognised scheme* under section 264 of the *Act*, employs particular investment strategies such as those in (2) ~~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 4.13.2R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.
- (2) Examples of investment strategies that require these additional disclosures include:
- (a) investing more than 35% in value of its *scheme property* in the types of *government and public securities* specified in COLL 5.2.12R (Spread: *government and public securities*);  
or
- (b) investing principally in *units in collective investment schemes, deposits or derivatives*; or
- (c) replicating an index.

...

## 5.4 Stock lending

...

Stock lending: requirements

5.4.4 R (1) An *ICVC*, or the *depository* at the request of the *ICVC*, or the *depository* of an *AUT* or *ACS* at the request of the *authorised fund manager*, may enter into a *repo* contract, or a *stock lending* arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:

(a) ...

(b) the counterparty is:

...

(iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives* by at least one of the following federal banking supervisory authorities of the United States of America:

...

(D) ~~the Office of Thrift Supervision; and [deleted]~~

...

...

## 5.5 Cash, borrowing, lending and other provisions

...

Borrowing limits

...

5.5.5A G An authorised fund manager should ensure when calculating the authorised fund's borrowing for COLL 5.5.5R(1) that:

(1) the figure calculated is the total of all borrowing in all currencies by the authorised fund; and

(2) long and short positions in different currencies are not netted off against each other.

...

## 5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

Spread: general

5.6.7 R (1) This *rule* does not apply in respect of ~~government and public securities~~ a transferable security or an approved money-market instrument to which COLL 5.6.8R (Spread: government and public securities) applies.

...

(6) Except for a ~~feeder fund~~, a feeder NURS or a *scheme dedicated to units* in a single *property authorised investment fund*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

...

...

Spread: government and public securities

5.6.8 R (1) This *rule* applies in respect of ~~government and public securities~~ a transferable security or an approved money-market instrument (“such securities”) that is issued or guaranteed by:

(a) an EEA State; or

(b) a local authority of an EEA State; or

(c) a non-EEA State; or

(d) a public international body to which one or more EEA States belong.

(2) The requirements in COLL 5.2.12R (Spread: government and public securities) apply to investment in ~~government and public securities~~ such securities by a *non-UCITS retail scheme*, except for COLL 5.2.12R(3)(d), which ~~will apply~~ applies to such a *scheme* only to the extent that it concerns the most recently published *prospectus* of the *scheme*.

...

Investment in collective investment schemes

5.6.10 R A *non-UCITS retail scheme*, except for a *feeder NURS* (which must instead comply with COLL 5.6.26R), must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme*

meets each of the requirements at (1) to (5):

...

- (3) the second *scheme* is prohibited from having more than 15% in value of the property of that *scheme* consisting of *units* in *collective investment schemes* (unless *COLL 5.6.10AR* applies);

...

#### Investment in feeder schemes

- 5.6.10A     R     (1)     A non-UCITS retail scheme that is not a feeder NURS may, if the conditions in (2) to (4) are met, invest in units of:
- (a)     a feeder UCITS; or
- (b)     a feeder NURS; or
- (c)     a scheme dedicated to units in a single property authorised investment fund; or
- (d)     a scheme dedicated to units in a recognised scheme.
- (2)     The relevant master UCITS, qualifying master scheme, property authorised investment fund or recognised scheme must comply with COLL 5.6.10R(2) to (5) as if it were the second scheme for the purpose of that rule.
- (3)     Not more than 35% in value of the scheme property of the non-UCITS retail scheme may consist of units of one or more schemes permitted under (1)(a) to (d).
- (4)     The authorised fund manager of the non-UCITS retail scheme must be able to show on reasonable grounds that an investment in one or more schemes permitted under (1)(a) to (d) is:
- (a)     in the interests of investors; and
- (b)     no less advantageous than if the non-UCITS retail scheme had held units directly in the relevant:
- (i)     master UCITS; or
- (ii)     qualifying master scheme; or
- (iii)     property authorised investment fund; or
- (iv)     recognised scheme.
- 5.6.10B     G     When determining whether an investment is no less advantageous for COLL 5.6.10AG(4)(b), an authorised fund manager should have regard in

particular to:

- (1) the risk profile of the *non-UCITS retail scheme*; and
- (2) the total costs borne by the *non-UCITS retail scheme*.

5.6.10C      G      A *non-UCITS retail scheme* that is a *feeder NURS* is required to comply with *COLL* 5.6.26R instead of *COLL* 5.6.10AR.

...

Standing independent valuer and valuation

5.6.20      R      ...

- (3)      The following requirements apply in relation to the functions of the *standing independent valuer*:

...

- (f)      any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (~~6<sup>th</sup>~~ 9<sup>th</sup> edition published ~~January 2008~~ November 2013), or in the case of overseas immovables on an appropriate basis, but subject to *COLL* 6.3 (Valuation and pricing).

...

Qualifying collective investment schemes for feeder NURS

5.6.26      R      The *authorised fund manager* of a *feeder NURS* must ensure that the *feeder NURS* does not invest in the *qualifying master scheme*, unless the *qualifying master scheme* meets ~~both of the requirements in (1) and (2)~~ (1) to (3):

- (1)      the *qualifying master scheme*:
  - (a)      satisfies the conditions necessary for it to enjoy the rights conferred by the *UCITS Directive*; or
  - (b)      is a *recognised scheme*; or
  - (c)      is a *non-UCITS retail scheme*; ~~and~~
- (2)      where the *qualifying master scheme* is an *umbrella*, the provisions in *COLL* 5.6.7R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*; and
- (3)      the *qualifying master scheme*:
  - (a)      is not:

- (i) a feeder UCITS; or
  - (ii) a feeder NURS; or
  - (iii) otherwise dedicated to units in a single collective investment scheme; and
- (b) does not hold units in:
- (i) a feeder UCITS; or
  - (ii) a feeder NURS; or
  - (iii) a scheme otherwise dedicated to units in a single collective investment scheme.

5.6.27 R An EEA UCITS scheme that is not a recognised scheme under section 264 of the Act is not a qualifying master scheme for COLL 5.6.26R(3) for a pension feeder fund that is a feeder NURS.

...

## **5.7 Investment powers and borrowing limits for NURS operating as FAIFs**

...

Spread: general

5.7.5 R (1) This rule does not apply in respect of ~~government and public securities~~ a transferable security or an approved money-market instrument to which COLL 5.6.8R (Spread: government and public securities) applies.

...

...

## **5.8 Investment powers and borrowing limits for feeder UCITS**

...

Permitted types of scheme property

...

5.8.2A R The authorised fund manager of a pension feeder fund that is a feeder UCITS must ensure that the single master UCITS is:

- (1) a UCITS scheme; or
- (2) an EEA UCITS scheme that is a recognised scheme under section 264 of the Act.

## 5.9 Investment powers and other provisions for money market funds

...

### High quality money market instruments

5.9.6 R In determining whether *approved money-market instruments* are high quality in accordance with *COLL 5.9.3R(3)*, the *authorised fund manager* must take into account a range of factors including, but not limited to:

- (1) the credit quality of the instrument based on the *authorised fund manager's* own documented assessment of its credit quality; ~~an instrument will be considered not to be high quality unless it is:~~
  - (a) ~~an *approved money-market instrument* which has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the *authorised fund manager's* internal rating process; or~~
  - (b) ~~for a *money market fund*, an *approved money-market instrument* of investment grade quality which is issued or guaranteed by one of the following:~~
    - (i) ~~a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation; or~~
    - (ii) ~~a regional or local authority of an *EEA State*; or~~
    - (iii) ~~the European Central Bank or a central bank of an *EEA State*; or~~
    - (iv) ~~the European Union or the European Investment Bank;~~

...

- 5.9.6A G
- (1) When assessing the credit quality of an *approved money-market instrument* the *authorised fund manager* should have regard to credit ratings of that instrument provided by one or more credit rating agencies registered and supervised by *ESMA*.
  - (2) However, the *authorised fund manager* should not rely solely or mechanistically on those credit ratings.
  - (3) The *authorised fund manager* should undertake a new assessment of an instrument to ensure it continues to be of appropriate credit quality, if any credit rating agency registered and supervised by

ESMA that has rated the instrument issues:

- (a) a downgrade of that instrument below the two highest short-term credit ratings; or
  - (b) for an instrument referred to in (4), a downgrade to below investment grade or any other equivalent rating grade.
- (4) The authorised fund manager of a money market fund may hold an approved money market instrument of a lower internally-assigned credit quality if the instrument is issued or guaranteed by one of the following:
- (a) a central authority of an EEA State or, if the EEA State is a federal state, one of the members making up the federation; or
  - (b) a regional or local authority of an EEA State; or
  - (c) the European Central Bank or a central bank of an EEA State; or
  - (d) the European Union or the European Investment Bank.
- (5) The guidance in (4) does not apply to the authorised fund manager of a short-term money market fund.

...

## **6 Operating duties and responsibilities**

### **6.1 Introduction and Application**

...

Explanation of this chapter

6.1.3

G ...

- (2) (a) The *authorised fund manager* does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other *persons*.
- (b) The *rules* in this chapter set out the parameters of such delegation, except for a non-UCITS retail scheme managed by a full-scope UK AIFM, where this chapter supplements FUND 3.10 (Delegation).

...

## 6.2 Dealing

...

### Payment for units issued

- 6.2.13 R (1) The *authorised fund manager* must, by the close of business on the fourth *business day* following the issue of any *units*, arrange for payment to the *depository* of an *AUT* or *ACS* or the *ICVC* of:
- (a) in the case of a *single-priced authorised fund*, the *price* of the *units* and any payments required under ~~COLL 6.3.7R (SDRT provision)~~ and *COLL 6.3.8R* (Dilution); or
  - (b) in the case of a *dual-priced authorised fund*, the *issue price* of the *units* ~~and any payment required under COLL 6.3.7R~~.

...

### Payment for cancelled units

- 6.2.14 R (1) On *cancelling units* the *authorised fund manager* must, before the expiry of the fourth *business day* following the *cancellation* of the *units* or, if later, as soon as practicable after delivery to the *depository* of the *AUT* or *ACS* or the *ICVC* of such evidence of title to the *units* as it may reasonably require, require the *depository* to pay:
- (a) in the case of a *single-priced authorised fund*, the *price* of the *units* (less any deduction required under ~~COLL 6.3.7R and COLL 6.3.8R~~); or
  - (b) in the case of a *dual-priced authorised fund*, the *cancellation price* of the *units* ~~(less any deduction under COLL 6.3.7R)~~;

...

...

### Sale and redemption

- 6.2.16 R ...
- (6) Except where (7) applies, and subject to *COLL 6.2.21R* (Deferred redemption), the *authorised fund manager* must *sell* or *redeem units* at a *price* determined no later than the end of the *business day* immediately following the receipt and acceptance of an instruction to do so, or at the next *valuation point* for the purposes of *dealing in units* if later ~~(or, for a sale or redemption at an historic price, at the price determined at the last valuation point)~~.

...

#### Sale and redemption : guidance

- 6.2.17 G (1) The *prospectus* of an *authorised fund* ~~that does not operate on the basis of historic prices~~ may allow the *authorised fund manager* to identify a point in time in advance of a *valuation point* (a cut-off point) after which it will not accept instructions to *sell* or *redeem units* at that *valuation point*...

...

...

#### Property Authorised Investment Funds

...

- 6.2.25 R (1) The *authorised fund manager* of a *property authorised investment fund (PAIF)* may accept and carry out an instruction for the *sale* or *redemption* of a *unit* on the following terms if:
- (a) the instruction meets the requirements in (2);
  - (b) the *depository* has agreed to these terms in advance; and
  - (c) the *prospectus* of the *PAIF* sets out the detail of these terms.
- (2) The instruction in (1) must:
- (a) be received on a *dealing day* from a *unitholder* which is a *non-UCITS retail scheme* or a *qualified investor scheme* that is *dedicated to units* in the *PAIF* (a ‘*feeder scheme*’);
  - (b) relate only to instructions to *deal* in the *units* of the *feeder scheme* that were received and accepted by the *authorised fund manager* of the *feeder scheme* before the *valuation point* of the *PAIF* on that *dealing day*; and
  - (c) be received and accepted by the *authorised fund manager* of the *PAIF* before a time on that *dealing day* that:
    - (i) is before the next *valuation point* of the *PAIF* (if the *PAIF* has more than one *valuation point* on a *dealing day*);
    - (ii) has been agreed between the *authorised fund manager* and the *depository* of the *PAIF* as a cut-off point for that purpose; and
    - (iii) is stated in the *prospectus* of the *PAIF*.

- (3) For COLL 6.2.8R(1), the *authorised fund manager* of the *PAIF* may take into account an instruction to *redeem units* that meets the requirements in (2).
- (4) For COLL 6.2.16R(6), the *price* at which the *authorised fund manager* sells or *redeems units* in accordance with an instruction that meets the requirements of (2) is the *price* at the *valuation point* that would have applied if the instruction had been received and accepted before:
  - (a) the cut-off point for that *valuation point* in the *PAIF's prospectus*; or
  - (b) that *valuation point* (if the *PAIF* does not have a cut-off point).

...

### 6.3 Valuation and pricing

...

Purpose

6.3.2

G

- (2) An *authorised fund manager* is responsible for valuing the *scheme property* of the *authorised fund* it manages and for calculating the *price* of *units* in the *authorised fund*. This section protects clients by:
  - (a) ...
  - (b) allowing for the *authorised fund manager* to mitigate the effects of any *dilution* (reduction) in the value of the *scheme property* caused by:
    - (i) ~~payment of stamp duty reserve tax (SDRT) in relation to certain *unit* transactions; and~~
    - (ii) buying and selling underlying investments as a result of the *issue* or *cancellation* of *units*; and
  - (c) ~~making appropriate provision to ensure *clients* are treated fairly where *units* are being *dealt in* at a known (*historic*) *price*; and [deleted]~~

...

...

(5) A full-scope UK AIFM that is the authorised fund manager of a non-UCITS retail scheme should comply with the requirements of:

(a) FUND 3.9 (Valuation); and

(b) this chapter.

...

#### Valuation points

6.3.4

R ...

(8) The *authorised fund manager* may determine to have an additional *valuation point* for an *authorised fund* as a result of market movement ~~under COLL 6.3.9R (Forward and historic pricing)~~ or otherwise, in which case it must inform the *depository*.

...

#### Sale and redemption prices for single-priced authorised funds

6.3.5A

R The *authorised fund manager* of a *single-priced authorised fund* must not:

(1) *sell* a *unit* for more than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, to which may be added any *preliminary charge* permitted and any ~~payments required~~ payment made under ~~COLL 6.3.7R and~~ COLL 6.3.8R; or

(2) *redeem* a *unit* for less than the *price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted and any ~~deductions~~ deduction under ~~COLL 6.3.7R and~~ COLL 6.3.8R.

#### Sale and redemption prices parameters for dual-priced authorised funds

6.3.5B

R (1) The *authorised fund manager* of a *dual-priced authorised fund* must not:

(a) *sell* a *unit* for more than the maximum *sale price* of a *unit* of the relevant *class* at the relevant *valuation point*, ~~to which may be added any payment required under COLL 6.3.7R;~~ or

(b) *redeem* a *unit* for less than the *cancellation price* of a *unit* of the relevant *class* at the relevant *valuation point*, less any *redemption charge* permitted ~~and any deduction under COLL 6.3.7R.~~

...

...

Valuation and pricing guidance

- 6.3.6 G Table: This table belongs to *COLL 6.3.2G(2)(a)* and *COLL 6.3.3R* (Valuation).

<b>Valuation and pricing</b>		
...		
<b>5</b>	<b>The rectification of pricing breaches</b>	
	(1)	<del>COLL 6.6.3R(1)</del> <i>COLL 6.6.3R(3)(c)</i> (Functions of the authorised fund manager) places a duty on the <i>authorised fund manager</i> to take action to reimburse affected <i>unitholders</i> , former <i>unitholders</i> , and the <i>scheme</i> itself, for instances of incorrect <i>pricing</i> , except if it appears to the <i>depository</i> that the breach is of minimal significance.
	...	
...		

**SDRT Provision**

- 6.3.7 R (1) ~~The authorised fund manager may, in accordance with the prospectus, require the payment of an SDRT provision for the issue or sale of units or any class of units or the deduction of an SDRT provision for the redemption or cancellation of units or any class of units.~~
- (2) ~~Any such payment or deduction becomes due at the same time as payment or transfer of property becomes due for the issue, sale, redemption or cancellation.~~
- (3) ~~Any payment referred to in (1) must be paid to the depository to become part of scheme property as soon as practicable after receipt.~~
- (4) ~~As soon as practicable after each valuation point, the authorised fund manager must notify the depository of the transactions, or types of transactions for which an SDRT provision is applied and the amounts or rates of those SDRT provisions. [deleted]~~

...

**Forward and historic pricing**

- 6.3.9 R (1) For the *sale* and *redemption* of *units*, ~~the authorised fund manager must, in accordance with the prospectus of an authorised fund, operate on the basis of forward price only or historic prices~~ all deals must be at a forward price, unless (1A) applies.

- (1A) ~~For the sale or redemption of a unit in a property authorised investment fund (PAIF) where the instruction is received and accepted after the valuation point of the PAIF in accordance with COLL 6.2.25R, the deal must be at the price calculated at that valuation point.~~
- (2) ~~If forward prices only are to be used, all deals must be at a forward price. [deleted]~~
- (3) ~~Forward prices for the sale and redemption of units must be used:~~
- ~~(a) for a higher volatility fund;~~
  - ~~(b) where the regular valuation points are more than one business day apart;~~
  - ~~(c) if the request to deal reaches the authorised fund manager through the post or by any similar form of non-interactive communication;~~
  - ~~(d) for an issue or cancellation under COLL 6.2.7 (Issue and cancellation of units through an authorised fund manager);~~
  - ~~(e) if the applicant for the sale or redemption so requests; or~~
  - ~~(f) where the authorised fund manager has reason to believe at any time that the price that would reflect the current value of the scheme property would vary by more than 2% from the last calculated price, unless the authorised fund manager has decided to carry out an additional valuation. [deleted]~~
- (4) ~~If an authorised fund manager operates historic prices, the prospectus must detail the circumstances under which deals in the authorised fund, individually or otherwise, will nevertheless be carried out on a forward price basis or when the authorised fund will elect to move to forward prices or declare an additional valuation point. [deleted]~~
- (5) ~~Where the authorised fund elects to move to forward prices temporarily in accordance with (4), such election will only apply until the next valuation point. [deleted]~~
- (6) ~~All sub-funds of a scheme which is an umbrella must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a forward price basis temporarily under this rule. [deleted]~~

#### Historic pricing: guidance

- 6.3.10 G ~~The authorised fund manager should advise the depositary of the date and time of any decision to use forward prices. [deleted]~~

...

## 6.4 Titles and registers

...

### Explanation of this section

- 6.4.3 G (1) (a) This section deals with matters relating to the *register* of *unitholders* of *units* in an *AUT* or *ACS* including its establishment and contents.
- (b) The *authorised fund manager* or *depository* may be responsible for the *register*.
- (c) In any event, the *person* responsible for the *register* must be stated in the *trust deed* or *contractual scheme deed* and this section details what his duties are.
- (d) The provisions relating to *documents evidencing title to units*, ~~including the issue of *bearer certificates*~~ are dependent on the provisions in the *trust deed* or *contractual scheme deed* and their operation should be set out in the *prospectus*.

...

### Register: general requirements and contents

- 6.4.4 R ...
- (3) The *register* must contain:
- (a) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered) ~~other than *units* represented by *bearer certificates*~~;
- (b) the number of *units* of each *class* held by each *unitholder* ~~(other than *units* represented by *bearer certificates*)~~;
- (c) the date on which the *unitholder* was registered for *units* standing in his name ~~(other than *units* represented by *bearer certificates*)~~; and
- (d) the number of *units* of each *class* currently in *issue*, ~~including *bearer certificates* and the number of *units* of those *bearer certificates*~~.

...

- (6) The *person* responsible for the *register* in (1) must:

...

- (c) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or *authorised fund manager*), during office hours, but it may be closed for periods not exceeding *30 business days* in any one year;

...

#### The authorised fund manager as unitholder

- 6.4.5 R (1) Subject to (3), if no *person* is entered in the *register* as the *unitholder* of a *unit*, the *authorised fund manager* must be treated as the *unitholder* of each such *unit* which is in issue ~~(other than a *unit* which is represented by a *bearer certificate*).~~

...

...

#### Transfer of units by act of parties: AUTs and ACSs

- 6.4.6 R (1) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless:
- (a) it is permitted by the *trust deed* or *prospectus*; ~~and~~
  - (b) ~~the transfer is excluded by Schedule 19 of the Finance Act 1999 from a charge to stamp duty reserve tax, or there has been paid to the *trustee*, for the account of the *AUT*, an amount agreed between the *trustee* and the *manager* not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the *units* being transferred. [deleted]~~

#### Certificates ~~(including bearer certificates)~~

- 6.4.7 R ...
- (3) ~~*Bearer certificates* may only be issued for *AUTs* if they are permitted by the *instrument constituting the fund*. [deleted]~~
  - (4) *Bearer certificates* may not be issued for *AUTs* or *ACSs*.

...

## 6.6 Powers and duties of the scheme, the authorised fund manager, and the depositary

...

### Functions of the authorised fund manager

- 6.6.3 R (1) The *authorised fund manager* must manage the *scheme* in accordance with:
- (a) ...
  - (b) the *rules* ~~in this sourcebook~~;
  - ...
- (2) The *authorised fund manager* must take such steps as necessary to ensure compliance with the *rules* ~~in this sourcebook~~ that impose obligations upon the *ICVC*.

...

...

### General duties of the depositary

- 6.6.4 R ...
- (4) The *depositary*:
- (a) must also take reasonable care to ensure that;
    - (i) the *authorised fund manager* considers whether or not to exercise the power provided by ~~COLL 6.3.7R (SDRT provision) or COLL 6.3.8R (Dilution)~~ (as the case may be) and, if applicable, the rate or amount of any ~~SDRT provision, dilution levy or dilution adjustment~~ that is imposed;
  - ...

...

...

### Committees and delegation

...

- 6.6.15A R (1) This *rule* applies to:
- (a) an *authorised fund manager* (other than an *EEA UCITS*)

*management company*) of an *AUT*, *ACS* or an *ICVC* where such *AUT*, *ACS* or *ICVC* is a *UCITS scheme* ~~or a non-UCITS retail scheme~~; and

(aa) a small authorised UK AIFM that is the authorised fund manager of an *AUT*, *ACS* or an *ICVC* that is a non-UCITS retail scheme; and

...

...

## 6.7 Payments

...

Charges on buying and selling units

6.7.7 R ...

(2) An *authorised fund manager* must not make any charge or levy in connection with:

(a) the *issue* or *sale of units* except where a *preliminary charge* is made in accordance with the *prospectus* of the *scheme* which must be either:

(i) a fixed amount; or

(ii) calculated as a percentage of the *price* of a *unit*; or

(iii) calculated as a percentage of the amount being invested; or

(b) ...

(3) This rule is subject to ~~*COLL 6.3.7R*~~ (~~SDRT provision~~); *COLL 6.3.8R* (Dilution) and *COLL 11.3.11R* (Obligations on the master UCITS).

Charges on buying and selling units: guidance

6.7.8 G ...

(4) (a) For a *UCITS scheme*, article 10(2)(a) of the *KII Regulation* requires the *KII document* to disclose the maximum percentage that might be deducted as an entry charge from the investor's capital commitment.

(b) Where a *preliminary charge* is charged as a fixed amount or is calculated as a percentage of the *price* of a *unit*, the *AFM* should ensure that the actual amount charged, if it were

expressed as a percentage of the amount being invested, does not exceed the maximum percentage stated as the entry charge in the *KII document*.

(5) When a *preliminary charge* is calculated as a percentage of the *price* of a *unit*, the percentage amount should be added to:

(a) the *price* of a *unit* (for a *single-priced authorised fund*); or

(b) the *issue price* (for a *dual-priced authorised fund*).

...

## 6.12 Risk management policy and risk measurement

...

Risk management process

...

6.12.3A R An authorised fund manager must notify the FCA of the details of the risk management process under COLL 6.12.3R(2):

(1) annually by 30 November in each year with information that is accurate as of 15 October in that year;

(2) using the form in COLL 6 Annex 2R; and

(3) online through the appropriate systems accessible from the FCA's website.

6.12.3B G In addition, an authorised fund manager should submit a notification to the FCA if there have been material changes to the fund's risk profile since its last report by submitting the form in COLL 6 Annex 2R to [fundsupervision@fca.org.uk](mailto:fundsupervision@fca.org.uk).

...

After COLL 6 Annex 1 insert the following new annexes. The text is not underlined.

**6 Annex 2R Authorised fund managers of UCITS schemes – derivatives use reports.**

*[For the text of this annex see end of instrument]*

**6 Annex 3G Guidance notes on authorised fund managers of UCITS schemes – derivatives use reports.**

<b>Description</b>	<b>Guidance</b>
Fund name	This is the name of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> as it appears on the FS Register or, for an <i>EEA UCITS scheme</i> , in the <i>prospectus</i> .
Fund authorisation	Whether the <i>fund</i> is authorised and regulated in the <i>United Kingdom</i> or in another <i>EEA state</i> .
PRN or LEI	For a <i>UCITS schemes</i> , this is the product reference number of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> which appears on the FS Register.  <i>EEA UCITS schemes</i> are not assigned a PRN. The <i>authorised fund manager</i> should instead indicate the legal entity identifier (LEI) of the <i>scheme</i> or, where applicable, of the <i>sub-fund</i> . Where the LEI is not available, please leave the cell blank.
Derivative	A <i>forward</i> , a <i>future</i> , an <i>option</i> , a <i>swap</i> , a <i>warrant</i> or another type of derivative instrument.
Derivatives used for investment purposes	This means that derivatives are not being used in pursuit of efficient portfolio management.
Risk measures	For each <i>scheme</i> or, where applicable, <i>sub-fund</i> the <i>authorised fund manager</i> should provide information only for one of the risk measures (commitment approach, absolute VaR or relative VaR) indicated in the table.

Amend the following as shown.

**7 Suspension of dealings and termination of authorised funds**

...

**7.4 Winding up an AUT and terminating a sub-fund of an AUT**

...

When an AUT is to be wound up or a sub-fund terminated

7.4.3 R ...

(2) The events referred to in (1) are:

...

- (g) the date on which a *relevant pension scheme* is notified in writing by ~~the Occupational Pensions Schemes Regulatory Authority~~ The Pensions Regulator that the *scheme* is no longer registered under the Welfare and Pensions Reform Act 1999 as a *stakeholder pension scheme*.

...

...

## 8 Qualified investor schemes

...

### 8.3 Investor relations

...

Drawing up and availability of prospectus

8.3.2 R ...

(1A) A full-scope UK AIFM that is the authorised fund manager of a qualified investor scheme must also ensure that the prospectus contains the information for investors required by:

- (i) FUND 3.2.2R and FUND 3.2.3R (Prior disclosure of information to investors); and
- (ii) FUND 3.2.5R and FUND 3.2.6R (Periodic disclosure), unless the up-to-date information has been published in the scheme's most recent annual report or half-yearly report.

...

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to COLL 8.3.2R.

...	
<b>2</b>	<b>Description of the authorised fund</b>
	Information detailing:
(1)	the name of the <i>authorised fund</i> ;
(1A)	its <i>FCA</i> product reference number (PRN);

	...	
...		
<b>14</b>	<b>Valuation of scheme property</b>	
	Details as to:	
	...	
	(3)	how the <i>price</i> of <i>units</i> of each <i>class</i> will be determined, including whether a forward or <i>historic price</i> basis is to be applied.
...		
<b>17</b>	<b>Information on the umbrella</b>	
	In the case of a <i>scheme</i> which is an <i>umbrella</i> , the following information:	
	...	
	(6)	<u>the FCA product reference number (PRN) of each <i>sub-fund</i>.</u>
...		

Reports and accounts

8.3.5 R ...

(3) The *authorised fund manager* must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any *unitholder*.

(3A) The timing of the publication of the annual report in (3) is subject to FUND 3.3.3R if the *authorised fund manager* is a *full-scope UK AIFM*.

...

...

**8.4 Investment and borrowing powers**

...

Standing independent valuer and valuation

8.4.13 R ...

- (2) The following apply in relation to the functions of the *standing independent valuer*:

...

- (f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (~~6th~~ 9th edition published ~~January 2008~~ November 2013), or in the case of overseas immovables on an appropriate basis, but is subject to any provisions of the *instrument constituting the fund*.

...

...

## 8.5 Powers and responsibilities

...

### Functions of the authorised fund manager

- 8.5.2 R (1) The *authorised fund manager* must manage the *scheme* in accordance with:

- (a) ...  
(b) the *rules in this sourcebook*;

...

- (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules in this sourcebook* that impose obligations on the *authorised fund manager* or the *ICVC*, as appropriate.

...

...

### Delegation

- 8.5.5 R (1) ~~The *authorised fund manager*~~ A *small authorised UK AIFM* (or in addition any other *director* in the case of an *ICVC* managed by a *small authorised UK AIFM*) may delegate any function to any *person*.
- (2) (a) The *depository of a scheme managed by a small authorised UK AIFM* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depository* to perform its functions.

- (b) ~~save that~~ However, it must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.

...

...

## 11 Master-feeder arrangements under the UCITS Directive

...

### 11.3 Co-ordination and information exchange for master and feeder UCITS

...

#### Obligations of the master UCITS

...

#### 11.3.11 R ...

- (2) Where the *authorised fund manager* of a *master UCITS* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* by a *feeder UCITS* which is, or is like, a *dilution levy* made in accordance with *COLL 6.3.8R (Dilution)* ~~or *SDRT provision* made in accordance with *COLL 6.3.7R (SDRT provision)*~~, it is to be treated as part of the *price* of the *units* and not as part of any charge.

...

## 13 Operation of feeder NURS

...

### 13.2 Operational requirements for feeder NURS

...

#### Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

#### 13.2.4 R ...

- (2) In this *rule*, where the *operator* of a *qualifying master scheme* or *authorised fund manager* of a *qualifying master scheme* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master scheme* which is, or is equivalent in effect to, a *dilution levy* made in accordance with *COLL 6.3.8R (Dilution)* ~~or *SDRT provision* made~~

~~in accordance with COLL 6.3.7R (SDRT Provision)~~, it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

...

After COLL 13 (Operation of feeder NURS) insert the following new chapter. The text is not underlined.

## **14 Charity Authorised Investment Funds**

### **14.1 Introduction**

#### Application

14.1.1 R This chapter applies to:

- (1) an *authorised fund manager* of a *charity authorised investment fund*;
- (2) an *ICVC* that is a *charity authorised investment fund*;
- (3) the *depository* of a *charity authorised investment fund*; and
- (4) the *authorised fund manager* and the *depository* of an *authorised fund* that was previously registered as a charity with the Charity Commission.

#### Purpose

14.1.2 G This chapter sets out modifications to the *rules* and *guidance* in this sourcebook for *authorised fund managers* and *depositories* of *charity authorised investment funds*.

#### Types of charity authorised investment fund

14.1.3 G (1) A *charity authorised investment fund* may be:

- (a) a *UCITS*; or
- (b) a *non-UCITS retail scheme*; or
- (c) a *qualified investor scheme*.

(2) A *charity authorised investment fund* may be structured as:

- (a) an *authorised unit trust (AUT)*; or
- (b) an *investment company with variable capital (ICVC)*; or
- (c) an *authorised contractual scheme (ACS)*.

## 14.2 Registration with the charity commission

- 14.2.1 R The *authorised fund manager* of a *charity authorised investment fund* must notify the *FCA* without undue delay when it receives its registration as a charity from the Charity Commission.
- 14.2.2 R The *authorised fund manager* and the *depository* of an *authorised fund* that was previously registered as a charity with the Charity Commission must notify the *FCA* without undue delay when it ceases to be registered as a charity with the Charity Commission.

## 14.3 Advisory committee

- 14.3.1 G A *charity authorised investment fund* may have an advisory committee which is independent from the *authorised fund manager* and the *depository* if the advisory committee has a consultative function only.
- 14.3.2 R If the *charity authorised investment fund* has an advisory committee the *authorised fund manager* must ensure that:
- (1) the *instrument constituting the fund* contains the role and responsibilities of the advisory committee; and
  - (2) the *prospectus* contains the following information about the advisory committee:
    - (a) a description of its role and responsibilities;
    - (b) its membership;
    - (c) how its members are nominated and terminated; and
    - (d) how meetings are called and operated, including the quorum.
- 14.3.3 R If the *charity authorised investment fund* has an advisory committee, the *authorised fund manager* must ensure that an annual report on the functioning of the advisory is:
- (1) prepared on a timely basis; and
  - (2) supplied free of charge to any investor on request.
- 14.3.4 G The *authorised fund manager* may satisfy the requirement to report on the functioning of the advisory committee by including the information in the annual long report of the *authorised fund*.
- 14.3.5 R (1) An advisory committee of a *charity authorised investment fund*

may request the convening of a general meeting of *unitholders* by a notice which must:

- (a) state the objects of the meeting;
- (b) be dated;
- (c) be signed by or on behalf of the advisory committee; and
- (d) be sent to the *authorised fund manager* or the *depository*.

(2) The *authorised fund manager* or the *depository* must, on receipt of a notice that complies with (2), immediately convene a general meeting of the *authorised fund* for a date no later than eight weeks after receipt of the requisition.

14.3.6 R The *authorised fund manager* and *depository* of a *charity authorised investment fund* must keep records of any dealings with an advisory committee for at least five years.

#### 14.4 Income allocation and distribution

Income reserve account

14.4.1 R As an exception to *COLL* 6.8.3R(3) (Incoming allocation and distribution), a *charity authorised investment fund* is not required to transfer income to a *distribution account* where this is allowed by *COLL* 14.4.2R.

14.4.2 R (1) The *manager* and the *depository* of a *charity authorised investment fund* may establish an income reserve account for the *scheme* if this is provided for in:

- (a) the *instrument constituting the fund*; and
- (b) the *prospectus*.

(2) (a) The *manager* may instruct the *depository* to transfer up to 15% of the income available for allocation or distribution on an *annual income allocation date* to the income reserve account.

(b) Any income transferred under (a) remains part of the *income property* of the *scheme* but is not available for allocation or distribution.

(c) The transfer in (a) must be for the sole purpose of avoiding fluctuations in the income available for allocation or distribution for the *annual accounting period*.

(3) The *manager* may instruct the *depository* to transfer income in the

income reserve account to the *income account*.

- (4) The *manager* and the *depository* must treat:
- (a) any income transferred from the income reserve account to the *income account* as income available for allocation or distribution at the next *annual income allocation date*; and
  - (b) any interest or other amounts earned on the income in the income reserve account as income due to the *scheme*.

14.4.3 R The *authorised fund manager* of a *charity authorised investment fund* with an income reserve account must not allow a payment that has been allocated to *income property* in the first instance to be made from the *capital account* if that payment could be met, in whole or in part, by transferring income from the income reserve account to the *income account*.

- 14.4.4 R (1) *COLL* 14.4.1R ceases to apply if the *scheme* commences winding up or termination in accordance with:
- (a) *COLL* 7.3.6R (Consequences of commencement of winding up or termination) for an *ICVC*; or
  - (b) *COLL* 7.4.3R (When an *AUT* is to be wound up or a sub-fund terminated) for an *AUT*; or
  - (c) *COLL* 7.4A.4R (When an *ACS* is to be wound up or a sub-fund of a co-ownership scheme terminated) for an *ACS*.
- (2) Any income in the income reserve account must be transferred to the *income account* as soon as practicable after the winding up or termination commences.

#### Total return approach

- 14.4.5 R (1) The *authorised fund manager* and *depository* of a *charity authorised investment fund* may adopt a total return approach to the allocation or distribution of income where this is provided for in:
- (a) the *instrument constituting the fund*; and
  - (b) the *prospectus*.
- (2) Under a total return approach the *manager* may make a transfer from the *capital account* to the *income account* in addition to those in *COLL* 6.8.3R(3A)(c).
- (3) The *manager* and *depository* must ensure that any transfer under a total return approach:
- (a) is solely for the purpose of meeting the pre-determined

target amount disclosed in the *prospectus* in accordance with *COLL* 14.2.13R(1); and

- (b) is consistent with the explanation given in the *prospectus* in accordance with *COLL* 14.2.13R(2).

14.4.6 R If the *charity authorised investment fund* has adopted a total return approach to the allocation or distribution of income, the *authorised fund manager* must ensure that the *prospectus* contains:

- (1) the pre-determined target of the income available for allocation or distribution in any *annual accounting period*; and
- (2) an explanation of how the target amount is consistent with the investment objective and policy and the distribution policy of the *scheme*.

Amend the following as shown.

## Transitional Provisions and Schedules

### TP 1 Transitional Provisions

#### COLL TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>31</u>	<u>COLL 3.2.6R</u>	<u>R</u>	<u>An authorised fund manager is not required to update the instrument constituting the fund due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</u> <u>(a) COLL 3.2.6R(8); and</u>	<u>From [date of instrument] to [two years after date of instrument]</u>	<u>From [date of instrument]</u>

			(b) <u>COLL 3.2.6R(15)</u> .		
32	<u>COLL 4.2.5R</u>	R	<p><u>An authorised fund manager is not required to update its prospectus due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</u></p> <p>(a) <u>COLL 4.2.5R(2)(aa);</u>  (b) <u>COLL 4.2.5R(2B)(b);</u>  (c) <u>COLL 4.2.5R(3)(i);</u>  (d) <u>COLL 4.2.5R(5); and</u>  (e) <u>COLL 4.2.5R(19).</u></p>	From <u>[date of instrument]</u> to <u>[one year after date of instrument]</u>	From <u>[date of instrument]</u>
33	<u>COLL 8.3.4R</u>	R	<p><u>An authorised fund manager is not required to update its prospectus due to the amendments to the following provisions by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016 until it is updated for other purposes:</u></p> <p>(a) <u>COLL 8.3.4R(2)(1A);</u>  (b) <u>COLL 8.3.4R(17)(6); and</u>  (c) <u>COLL 8.3.4R(14)(3).</u></p>	From <u>[date of instrument]</u> to <u>[one year after date of instrument]</u>	From <u>[date of instrument]</u>
34	<u>COLL 3.2.6R(8), COLL 4.2.5R(3), COLL 5.6.7R(1), COLL 5.6.8R and COLL 5.7.5R</u>	R	<p><u>An authorised fund manager of a Non-UCITS retail schemes is not required to comply with the amendments to the rules in column (2) in relation to government and public securities made by the Collective Investment Schemes Sourcebook (Amendment No 9) Instrument 2016.</u></p>	From <u>[date of instrument]</u> to <u>[six months after date of instrument]</u>	From <u>[date of instrument]</u>

...

**Sch 1 Record keeping requirements**

Sch 1.1 G Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COLL</i> 8.5.10R(4)	...	...	...	...
<u><i>COLL</i></u> <u>14.3.6R</u>	<u>Dealings with an advisory committee</u>	<u>Details</u>	<u>As implicit from the rules in <i>COLL</i></u>	<u>5 years</u>
...				

Sch 2 Notification requirements

...

Sch 2.2 G Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL</i> 11.4.3R	...	...	...	...
<u><i>COLL</i></u> <u>14.2.1R</u>	<u>Registration as a charity with the Charity Commission</u>	<u>Details</u>	<u>Registration as a charity with the Charity Commission</u>	<u>Without undue delay</u>
<u><i>COLL</i></u> <u>14.2.2R</u>	<u>De-registration as a charity with the Charity Commission</u>	<u>Details</u>	<u>De-registration as a charity with the Charity Commission</u>	<u>Without undue delay</u>

## Annex D

### Amendments to the Investment Funds sourcebook (FUND)

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

#### 1 Introduction

#### 1.2 Structure of the investment funds sourcebook

1.2.1 G *FUND* is structured as follows:

...

(2) ~~[A description of FUND 2 will follow when this section in FUND is introduced]~~ [deleted]

(3) ...

~~[A description of FUND 4 to 9 will follow when the relevant sections in FUND are introduced]~~ [deleted]

...

#### 2 ~~Authorisation~~ [not used]

~~[To follow]~~

...

#### 3 Requirements for alternative investment fund managers

...

#### 3.3 Annual report of an AIF

...

Provision of an annual report

...

3.3.3 R Subject to *FUND* 3.3.4R(2) and *FUND* 3.3.4AR, an AIFM must make the annual report available, in line with *FUND* 3.3.2R(1), no later than six months after the end of the financial year.

...

3.3.4A     R     FUND 3.3.3R does not apply to a full-scope UK AIFM of a non-UCITS retail scheme.

3.3.4B     G     A full-scope UK AIFM of a non-UCITS retail scheme is required to make available and publish its annual report within four months after the end of each annual accounting period (see COLL 4.5.14R (Publication and availability of annual and half-yearly long report)).

...

**5**     ~~**Additional requirements for retail alternative investment funds**~~ [*not used*]  
[*To follow*]

**6**     ~~**Additional requirements for qualified investor alternative investment funds**~~ [*not used*]  
[*To follow*]

**7**     ~~**Additional requirements for UCITS funds**~~ [*not used*]  
[*To follow*]

**8**     ~~**Additional requirements for UCITS and AIF master-feeder arrangements**~~ [*not used*]  
[*To follow*]

**9**     ~~**Suspension of dealings and termination of authorised funds**~~ [*not used*]  
[*To follow*]

...

**11**     ~~**Recognised funds**~~ [*not used*]  
[*To follow*]

...

## Schedule 1 Record keeping requirements

Sch 1.1 G *[to follow]*

<u>Handbook reference</u>	<u>Subject of record</u>	<u>Contents of record</u>	<u>When record must be made</u>	<u>Retention period</u>
<i>FUND</i> 3.11.21R(2)	<i>AIF custodial assets</i>	<u>Details</u>	Upon the holding of <i>AIF custodial assets in custody</i> .	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>
<i>FUND</i> 3.11.23R(2)	<i>Assets of an AIF that are not AIF custodial assets</i>	<u>Details</u>	Upon a <i>depository</i> satisfying itself that the <i>AIF</i> , or the <i>AIFM</i> acting on behalf of the <i>AIF</i> , is the owner of the assets.	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>
<i>FUND</i> 3.11.33R(1)	<i>AIF custodial assets and assets of an AIF that are not AIF custodial assets</i>	<u>Details</u>	When an entity assumes responsibility for carrying out the duties referred to in <i>FUND</i> 3.11.21R(2) or 3.11.23R(2)	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>

## Schedule 2 Notification requirements

Sch 2.1 G *[to follow]*

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
---------------------------	------------------------------	---------------------------------	----------------------	---------------------

<u>FUND 3.9.11R</u>	<u>Appointment of an external valuer</u>	<u>Details</u>	<u>Appointment of the external valuer</u>	<u>One month before the appointment takes effect</u>
<u>FUND 3.10.2R(1) and FUND 3.10.2AR</u>	<u>The carrying out of any function of an AIFM by a delegate</u>	<u>Details</u>	<u>Upon agreement of delegation arrangement</u>	<u>Before delegation arrangements become effective</u>
<u>FUND 3.10.4R(2) and FUND 3.10.4AR</u>	<u>The sub-delegation of any function of an AIFM by a delegate</u>	<u>Details</u>	<u>When an AIFM's delegate carries out a sub-delegation</u>	<u>Before the sub-delegation arrangements become effective</u>

**SUP 16: Reporting requirements**

**Annex 12AR**

**Form 1** [New Monthly Breach Returns Form from Depositaries]

Monthly Return of Breaches – Authorised funds

Authorised Fund Manager	FRN	Scheme name	Scheme PRN	Fund Name	Sub – Fund PRN [If applicable]	Breach Type	New or Existing Breach	Max percentage error (if applicable)	Breach Start Date	Breach Resolution Date	Breach Identification Date	Depositary Breach Reference	AFM Breach Reference	Breach Description	Status / Action Taken	Closed Y/N

Monthly Return of Authorised Fund Manager Status

Authorised Fund Manager	FRN	Number of Schemes overseen by depositary	Number of sub-funds overseen by depositary	In respect of box management, what is the current status of the authorised fund manager and did the status change in the month? (Note)	In respect of valuation and pricing, what is the current status of the authorised fund manager and did the status change in the month? (Note)

Note = From "controls adequate" to "controls inadequate" and vice versa. Where the authorised fund manager's status changed, the report should state the date of that change.

Firm reference number (FRN) and product reference number (PRN) are available from the FS Register

The information provided above has been provided to the FCA in accordance with SUP 16.6.8R(1A).

**SUP 16: Reporting requirements**

**Annex 12AR**

**Form 2** [New Quarterly Returns Form from Depositaries]

Quarterly Return of oversight visits – Authorised funds

Authorised Fund Manager	FRN	Date of visit	Area reviewed	Findings	Recommendations	AFM response & comments

The information provided above has been provided to the FCA in accordance with SUP 16.6.8R(1B)

**COLL 6 Annex 2R – Form 1**

Fund name	Fund authorisation (UK or EEA)	PRN (for UK funds) or LEI (for EEA funds)	Assets under management	Date	Gross long derivative positions	Gross short derivative positions	Derivatives used for investment purposes (Yes/No)	Risk measure (use only one)							Leverage (applicable if using VaR)										
								Commitment approach	Absolute VaR			Relative VaR				Mean average leverage value over the past 12 months*#	Leverage limit as defined in prospectus								
									Highest level over the past 12 months	Mean average level over the past 12 months*	VaR limit	Benchmark or reference portfolio	Highest level over the past 12 months	Mean average level over the past 12 months*	VaR limit										
Fund A																									
Fund B																									
Fund C																									
Fund D																									

\* The average of all calculations made for regular reporting purposes during the preceding 12 months  
 # In line with the CESR guidelines this should be calculated as the sum of notionals of the derivatives used

Derivative type	Commodity	Equity	FX	Index	Interest rate	Commodity	Fixed income	Index	Interest rates	FX	Commodity	Equity	Fixed income	FX	Index	Interest rates	Swaption	CDS. Equity	CDS. Index	CFD. Equity	CFD. Index	Interest rate swap	Total return swap	Equity		
Please check the box if that derivative type is used	Forward	Forward	Forward	Forward	Forward	Future	Future	Future	Future	Future	Option	Option	Option	Option	Option	Option	Option	Swap	Swap	Swap	Swap	Swap	Swap	Warrant	Other	
Fund A																										
Fund B																										
Fund C																										
Fund D																										

# Appendix 4

## Cross-references tables for Part III

## Cross references between Chapter 7 and Collective Investment Schemes Instrument

Index to Chapter 7 of this paper and related items in the Collective Investment Schemes Sourcebook (Amendment No. 9) Instrument 2016

<b>Paragraphs</b>	<b>Subject</b>	<b>Relevant rules / guidance</b>
7.3 to 7.5	Reporting by authorised fund managers of UCITS schemes	SUP 16.12 & Annexes COLL 6.12.3AR, 16.12.3BG & Annexes
7.6 to 7.11	Reporting by depositaries	SUP 16.6 & Annexes
7.12 to 7.14	Identifying funds in customer documents	COLL 4.2.5R (2) & (2B) & TP1.1 (32) COLL 4.7.3AG COLL 8.3.4R (2) & (17) & TP1.1 (33)
7.15 to 7.23	Charity authorised investment funds	COLL 14 Glossary: 'charity authorised investment fund'
7.24 to 7.26	Money market funds	COLL 5.9.6R & 5.9.6AG
7.28 to 7.32	Investing in government and public securities	COLL 3.2.6R (8) & TP1.1 (31) COLL 4.2.5R (3)(i) & TP1.1 (32) COLL 5.2.11R & 5.2.12R COLL 5.2.34G COLL 5.6.7R (1) & 5.6.8R COLL 5.7.5R
7.33 to 7.34	Calculating preliminary charges	COLL 6.7.7R & 6.7.8G
7.36 to 7.37	Pension feeder funds	COLL 1.2.5G COLL 5.6.7R (6) COLL 5.6.27R COLL 5.8.2AR Glossary: 'pension feeder fund', 'feeder NURS'
7.38 to 7.39	NURS investing in feeder funds	COLL 5.6.10R, 5.6.10AR & 5.6.10BG
7.40	Preventing excessive layering	COLL 5.6.26R
7.41 to 7.43	PAIFs	COLL 6.2.25R COLL 6.3.9R (1A)
7.44 to 7.47	Alignment with AIFMD	COLL 1.2.2G COLL 3.2.2R COLL 4.2.2R COLL 4.2.6G COLL 4.5.2AG COLL 6.1.3G

		COLL 6.3.2G (5) COLL 6.6.3R COLL 6.6.15AR COLL 8.3.2R COLL 8.3.5R COLL 8.5.2R & 8.5.5R Annex D – FUND
7.48	Calculation of borrowing limits	COLL 5.5.5AG
7.50	SDRT	COLL 4.2.5R (19) & TP1.1 (32) COLL 4.6.8R COLL 5.2.16R COLL 6.2.13R & 6.2.14R COLL 6.3.2G (2)(b) COLL 6.3.5AR & 6.3.5BR COLL 6.3.7R COLL 6.4.6R COLL 6.6.4R COLL 11.3.11R COLL 13.2.4R Glossary: ‘SDRT provision’
7.51	Historic pricing	COLL 4.2.5R (20) COLL 6.2.16R & 6.2.17G COLL 6.3.2G (2)(c) COLL 6.3.4R (8) COLL 6.3.9R (except 1A) & 6.3.10G COLL 8.3.4R (14) & TP1.1 (33)
7.52 to 7.53	Bearer certificates	COLL 3.2.6R (15) & TP1.1 (31) COLL 4.2.5R (5) & TP1.1 (32) COLL 4.4.4R COLL 4.5.13R COLL 6.4.3G, 6.4.4R (3) and 6.4.5R COLL 6.4.7R Glossary: ‘bearer certificate’, ‘unitholder’
7.54	Periodic closure of unit registers	COLL 6.4.4R (6)
7.55	Minor editorial changes	COLL 5.2.19R COLL 5.4.4R COLL 5.6.20R COLL 6.3.6G COLL 7.4.3R COLL 8.4.13R Glossary ‘large deal’

Index to items in the Collective Investment Schemes Sourcebook (Amendment No. 9)  
Instrument 2016 and the parts of Chapter 7 of this paper to which they relate

<b>Rule / guidance</b>	<b>Relevant paragraphs</b>	<b>Subject</b>
SUP 16.6	7.6 to 7.11	Reporting by depositaries
SUP 16.12 & Annexes	7.3 to 7.5	Reporting by authorised fund managers of UCITS schemes
COLL 1.2.2G	7.44 to 7.47	Alignment with AIFMD
COLL 1.2.5G	7.36 to 7.37	Pension feeder funds
COLL 3.2.2R	7.44 to 7.47	Alignment with AIFMD
COLL 3.2.6R 8	7.28 to 7.32	Investing in government and public securities
COLL 3.2.6R 15	7.52 to 7.53	Bearer certificates
COLL 4.2.2R	7.44 to 7.47	Alignment with AIFMD
COLL 4.2.5R 2 & 2B	7.12 to 7.14	Identifying funds in customer documents
COLL 4.2.5R 3(i)	7.28 to 7.32	Investing in government and public securities
COLL 4.2.5R 5	7.52 to 7.53	Bearer certificates
COLL 4.2.5R 19	7.50	SDRT
COLL 4.2.5R 20	7.51	Historic pricing
COLL 4.2.6G	7.44 to 7.47	Alignment with AIFMD
COLL 4.4.4R	7.52 to 7.53	Bearer certificates
COLL 4.5.2AG	7.44 to 7.47	Alignment with AIFMD
COLL 4.5.13R	7.52 to 7.53	Bearer certificates
COLL 4.6.8R	7.50	SDRT
COLL 4.7.3AG	7.12 to 7.14	Identifying funds in customer documents
COLL 5.2.11R & 5.2.12R	7.28 to 7.32	Investing in government and public securities
COLL 5.2.16R	7.50	SDRT
COLL 5.2.19R	7.55	Minor editorial changes
COLL 5.2.34G	7.28 to 7.32	Investing in government and public securities
COLL 5.4.4R	7.55	Minor editorial changes
COLL 5.5.5AG	7.48	Calculation of borrowing limits
COLL 5.6.7R (1) & 5.6.8R	7.28 to 7.32	Investing in government and public securities
COLL 5.6.7R (6)	7.36 to 7.37	Pension feeder funds
COLL 5.6.10R to 5.6.10CG	7.38 to 7.39	NURS investing in feeder funds
COLL 5.6.20R	7.55	Minor editorial changes
COLL 5.6.26R	7.40	Preventing excessive layering
COLL 5.6.27R	7.36 to 7.37	Pension feeder funds
COLL 5.7.5R	7.28 to 7.32	Investing in government and public securities
COLL 5.8.2AR	7.36 to 7.37	Pension feeder funds
COLL 5.9.6R & 5.9.6AG	7.24 to 7.26	Money market funds

COLL 6.1.3G	7.44 to 7.47	Alignment with AIFMD
COLL 6.2.13R & 6.2.14R	7.50	SDRT
COLL 6.2.16R & 6.2.17G	7.51	Historic pricing
COLL 6.2.25R	7.41 to 7.43	PAIFs
COLL 6.3.2G (2)(b)	7.50	SDRT
COLL 6.3.2G (2)(c)	7.51	Historic pricing
COLL 6.3.2G (5)	7.44 to 7.47	Alignment with AIFMD
COLL 6.3.4R	7.51	Historic pricing
COLL 6.3.5AR & 6.3.5BR	7.50	SDRT
COLL 6.3.6G	7.55	Minor editorial changes
COLL 6.3.7R	7.50	SDRT
COLL 6.3.9R & 6.3.10G	7.51	Historic pricing
COLL 6.3.9R (1A)	7.41 to 7.43	PAIFs
COLL 6.4.3G & 6.4.4R (3)	7.52 to 7.53	Bearer certificates
COLL 6.4.4R (6)	7.54	Periodic closure of unit registers
COLL 6.4.5R	7.52 to 7.53	Bearer certificates
COLL 6.4.6R	7.50	SDRT
COLL 6.4.7R	7.52 to 7.53	Bearer certificates
COLL 6.6.3R	7.44 to 7.47	Alignment with AIFMD
COLL 6.6.4R	7.50	SDRT
COLL 6.6.15AR	7.44 to 7.47	Alignment with AIFMD
COLL 6.7.7R & 6.7.8G	7.33 to 7.34	Calculating preliminary charges
COLL 6.12.3AR & 6.12.3BG & Annexes	7.3 to 7.5	Reporting by authorised fund managers of UCITS schemes
COLL 7.4.3R	7.55	Minor editorial changes
COLL 8.3.2R	7.44 to 7.47	Alignment with AIFMD
COLL 8.3.4R 2 & 17	7.12 to 7.14	Identifying funds in customer documents
COLL 8.3.4R 14	7.51	Historic pricing
COLL 8.3.5R	7.44 to 7.47	Alignment with AIFMD
COLL 8.4.13R	7.55	Minor editorial change
COLL 8.5.2R & 8.5.5R	7.44 to 7.47	Alignment with AIFMD
COLL 11.3.11R	7.50	SDRT
COLL 13.2.4R	7.50	SDRT
COLL 14	7.15 to 7.23	Charity authorised investment funds
FUND	7.44 to 7.47	Alignment with AIFMD

Financial Conduct Authority



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