

# Quarterly Consultation

No.8

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The Financial Conduct Authority invites comments on this Consultation Paper. Comments on chapter 2 should reach us by 6 April 2015 and on all other chapters by 5 May 2015.

Comments may be sent by electronic submission using the form on the FCA's website at [www.fca.org.uk/your-fca/documents/consultation-papers/cp15-08-response-form](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-08-response-form) or by email to [cp15-08@fca.org.uk](mailto:cp15-08@fca.org.uk).

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All responses should be sent to:

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## Abbreviations used in this paper

<b>AFMs</b>	authorised fund managers
<b>AIF</b>	alternative investment fund
<b>AIFM</b>	alternative investment fund manager
<b>AIFMD</b>	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
<b>AML/CFT</b>	anti-money laundering/countering the financing of terrorism
<b>AUM</b>	assets under management
<b>BCD</b>	Banking Consolidation Directive (2006/48/EC)
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	cost benefit analysis
<b>CCP</b>	central counterparty
<b>CMAR</b>	client money asset return
<b>CMP</b>	client money pool
<b>COLL</b>	Collective Investment Schemes sourcebook
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation Paper
<b>CRD IV</b>	Capital Requirements Directive (2013/36/EU)
<b>CRR</b>	Capital Requirements Regulation (EU) No 575/2013 – which forms part of the CRD IV legislative package
<b>DvP</b>	delivery versus payment window
<b>EEA</b>	European Economic Area
<b>EMIR</b>	European Markets Infrastructure Regulation (EU) No 648/2012

<b>EU</b>	European Union which includes the European Economic Area (EEA), unless otherwise stated
<b>FATF</b>	Financial Action Task Force
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000, as amended
<b>FUND</b>	Investment Funds sourcebook
<b>IPRU(INV)</b>	Interim Prudential sourcebook for Investment Business
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>Member State</b>	A member state of the European Union
<b>MiFID</b>	Markets in Financial Instruments Directive (2004/39/EC)
<b>NAV</b>	net asset value
<b>Part 4A permission</b>	A firm's permission granted under Part 4A of FSMA to carry out a regulated activity
<b>PII</b>	professional indemnity insurance
<b>PS</b>	Policy Statement
<b>RAO</b>	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544), as amended
<b>SUP</b>	Supervision manual
<b>TPs</b>	transitional provisions
<b>UCITS</b>	undertaking for collective investments in transferable securities

# 1. Overview

<b>Chapter No</b>	<b>Proposed changes to Handbook</b>	<b>Consultation closing period</b>
2	Minor amendments to CASS and CONC	6 April 2015
3	Changes to remuneration reporting submission method	5 May 2015
4	Changes to the Handbook impacting AIFMs and AIF depositaries	5 May 2015

## 2. Minor amendments to CASS and CONC

### Introduction

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- 2.1** In CP13/5,<sup>1</sup> we consulted on a wide range of rule changes in relation to client money and custody assets. These changes were finalised in PS14/9<sup>2</sup>, which set out our policy and final rules regarding the client assets regime for investment business.
- 2.2** Since the publication of PS14/9, it has come to our attention that four rule changes due to take effect on 1 June 2015 may not fully achieve the policy outcome that was intended. We are therefore consulting on minor amendments to the custody rules (Chapter 6 of the Client Assets sourcebook (CASS 6)) and the client money rules (CASS 7) to ensure the original policy is fully achieved by the planned implementation date of 1 June 2015.
- 2.3** The CASS 6 requirements we are proposing to amend affect:
- external custody reconciliations, and
  - registration and recording of legal title.
- 2.4** The CASS 7 requirements we are proposing to amend affect:
- use of the normal approach to client money segregation in relation to certain regulated clearing arrangements, and
  - the delivery versus payment rules applicable to authorised fund managers and relating to regulated collective investment schemes.
- 2.5** In addition, we are proposing to amend the client money distribution rules (CASS 7A) to clarify the constitution of the client money pool and minimise any risk of an alternative interpretation of the rules which may have arisen from cumulative changes made to CASS and the Handbook Glossary.
- 2.6** Following consultation in CP13/13<sup>3</sup>, in PS14/4<sup>4</sup> we stated that loan-based crowdfunding would be subject to CASS (and associated parts of the Supervision manual (SUP)). We provided transitional provisions which meant that CASS would apply from October 2014, including to firms with interim permission to carry out this activity. At the same time, a transitional provision

<sup>1</sup> CP13/5 *Review of the client assets regime for investment business* (July 2013) [www.fca.org.uk/news/cp13-5-review-of-the-client-assets-regime-for-investment-business](http://www.fca.org.uk/news/cp13-5-review-of-the-client-assets-regime-for-investment-business)

<sup>2</sup> PS14/9 *Review of the client assets regime for investment business* (June 2014) [www.fca.org.uk/news/firms/ps14-09-review-of-the-client-assets-regime-for-investment-business](http://www.fca.org.uk/news/firms/ps14-09-review-of-the-client-assets-regime-for-investment-business)

<sup>3</sup> CP13/13 *The FCA's regulatory approach to crowdfunding (and similar activities)* (October 2013) [www.fca.org.uk/your-fca/documents/consultation-papers/cp13-13](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-13)

<sup>4</sup> PS14/4 *The FCA's regulatory approach to crowdfunding over the internet, and the promotion of non-readily realisable securities by other media* (March 2014) [www.fca.org.uk/news/ps14-04-crowdfunding](http://www.fca.org.uk/news/ps14-04-crowdfunding)

in the Consumer Credit Instrument 2014 (FCA 2014/11) published in PS14/3<sup>5</sup> capturing the more general designated investment business aspects of loan-based crowdfunding had the effect of disapplying CASS, creating a tension between the Consumer Credit sourcebook (CONC) and CASS.

- 2.7** To make it clear that we are carrying out our intentions in CP13/13 and PS14/4, we are consulting on amending the CONC transitional provisions to clarify that the rules apply as stated in PS14/4. Following queries received from industry, we will also take this opportunity to make clear how some of these rules apply during the period of interim permission.
- 2.8** There are no additional requirements other than those consulted on in CP13/13 and published in PS14/4. All the original material published in relation to cost benefit, compatibility and equality and diversity remain as before.
- 2.9** This paper may be of interest to firms that are subject to CASS, if they conduct investment business and hold client money or custody assets in relation to that investment business, and to loan-based crowdfunding firms.
- 2.10** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 2.

## Summary of proposals

### Amendments to CASS 6 and CASS 7

- 2.11** In June 2014 we published PS14/9 which introduced a number of changes to the client assets regime for investment firms.<sup>6</sup> Since publishing PS14/9, it has come to our attention that minor amendments are required to fully achieve the intended policy outcome. The proposed changes are to four rules set out in PS14/9.

### External custody reconciliations of client assets

- 2.12** PS14/9 introduced new rules<sup>7</sup> that clarified that, from 1 June 2015, for firms subject to our custody rules (CASS 6 firms), the third parties whose records and accounts a firm is required to reconcile its own internal records and accounts with must include:

- the third party with whom the firm has deposited the relevant client assets, and
- where the relevant assets have not been deposited with a third party, the third parties responsible for registration or recording of legal title to the relevant assets.

- 2.13** It was brought to our attention that, under the construction of the relevant rules to take effect on 1 June 2015, CASS 6 firms would not be able to use certain third parties' system records to carry out external custody reconciliations relating to Irish, Jersey, Guernsey and Isle of Man securities as technically, at law, these third parties are not responsible for the registration of legal title to these securities.

<sup>5</sup> PS14/3 *Detailed rules for the FCA regime for consumer credit* (February 2014) [www.fca.org.uk/static/documents/policy-statements/ps14-03.pdf](http://www.fca.org.uk/static/documents/policy-statements/ps14-03.pdf)

<sup>6</sup> A summary of changes can be found on pages 11–17 of PS14/9 here: [www.fca.org.uk/static/documents/policy-statements/ps14-09.pdf](http://www.fca.org.uk/static/documents/policy-statements/ps14-09.pdf)

<sup>7</sup> PS14/9 paragraphs 5.62 to 5.70.

- 2.14** This had not been our policy intention on the basis there was no material detriment to client's ownership rights to their assets. We are proposing to amend the relevant rules to allow CASS 6 firms to perform external custody reconciliations against these third parties' system records for uncertified units of securities governed by the relevant uncertified securities regulations in Ireland, Jersey, Guernsey and Isle of Man.

**Q2.1: Do you agree with this proposal to allow CASS 6 firms to perform external custody reconciliations against certain third parties' system records relating to Irish, Jersey, Guernsey and Isle of Man securities?**

**Registration and recording of legal title to client assets**

- 2.15** In PS14/9<sup>8</sup>, we clarified how a CASS 6 firm is expected to register or record legal title to a client's safe custody assets. CASS 6 firms are permitted to deposit client assets with a third party or arrange for client assets to be held by a third party, with certain requirements imposed on the CASS 6 firms where they do so.
- 2.16** Following the amendments in PS14/9, it was brought to our attention that the perimeter between the requirements in CASS 6.2.3R (registration and recording of legal title) and CASS 6.3 (depositing assets and arranging for assets to be deposited with third parties) is not clear to firms. We are proposing to amend the rules to make clear that, when a CASS 6 firm deposits a client's safe custody assets with a third party, the CASS 6 firm need not be the party responsible for registration and recording of legal title to those assets deposited with the third party.

**Q2.2: Do you agree with our proposal relating to registration and recording of legal title to client assets?**

**Use of the normal approach to client money segregation for certain regulated clearing arrangements**

- 2.17** In PS14/9 we made specific rules<sup>9</sup> relating to the flows of client money between a European Market Infrastructure Regulation (EMIR) authorised (or recognised) central counterparty (CCP) and their clearing members. From 1 June 2015, where clearing member firms are required by their arrangements with a CCP to receive mixed payments of house and client money into, and make mixed payments out of, a single bank account, the account the firm must use for this arrangement must be a house bank account.
- 2.18** It has come to our attention that the drafting of the relevant CASS 7 rules as applicable from 1 June 2015 does not accommodate the situation in which, rather than a payment being a mixture of both house and client money, it happens to be purely client money (because it relates purely to client positions rather than house and client positions). We are proposing to amend the relevant CASS 7 rules to ensure that when clearing member firms have entered into arrangements with a CCP and, in accordance with the rules governing, use a single house bank account to receive payments from and make payments to the CCP, the clearing member firm may also use that house bank account to receive payments of pure client money.

<sup>8</sup> PS14/9 paragraphs 5.4 to 5.19.

<sup>9</sup> PS14/9 paragraphs 7.117 to 7.122.

### Q2.3: Do you agree with our proposals regarding client money segregation for certain regulated clearing arrangements?

#### Delivery vs payment rule for regulated collective investment schemes

- 2.19** PS14/9 set out final rules<sup>10</sup> relating to the 'delivery vs payment window' ('DvP window') for authorised fund managers (AFMs) buying and selling units in regulated collective investment schemes. Broadly speaking, these rules give AFMs a one-day 'window' during which they need not comply with the client money rules when receiving money in the context of subscribing for or redeeming units in regulated collective investment schemes for clients whose money would, but for this window, need to be treated by the AFMs as client money.
- 2.20** Where AFMs are required to segregate the client money under the client money rules because they hold it for longer than one day, we have been asked whether the AFM is required to make any payments to third parties directly from the client bank account or whether such monies can be transferred through a corporate account.
- 2.21** While we made clear in PS14/9 that the final client money rules do not prevent AFMs in this context from transferring client money (except cheques) from a client bank account into a corporate account before the money is transferred to a third party, we are proposing to clarify in the rules that AFMs would not be in breach of the client money rules if they do this in this context.

### Q2.4: Do you agree with our proposal relating to the DvP rules for regulated collective investment schemes?

#### Amendments to the client money distribution rules to make clear the constitution of the client money pool

- 2.22** The Lehman Brothers International Europe Supreme Court judgement<sup>11</sup> established that the general notional client money pool (CMP) formed on the occurrence of a primary pooling event under the client money distribution rules (CASS 7A) includes any client money in client bank accounts and client transaction accounts, and any identifiable client money in any house account held by the firm into which client money has been received.
- 2.23** It has come to our attention that cumulative changes to CASS and the Handbook Glossary made in PS12/23<sup>12</sup> and PS14/9 may risk giving rise to an alternative interpretation of the rules which could, in certain circumstances, have the effect of excluding 'identifiable client money' in house accounts from the constitution of the CMP formed on a primary pooling event under CASS 7A.
- 2.24** The cumulative changes to CASS and this alternative interpretation could result in the client money pool being limited to sums held in client bank accounts and client transaction accounts at the time of firm failure. Thereby excluding any identifiable client money held in house accounts, even though these amounts would fall under the statutory trust in CASS 7 as they are amounts of client money. This interpretation would be a departure from our intended policy.
- 2.25** Therefore we are proposing to amend CASS 7A to make the constitution of the CMP clear, in that it should include any client money in client bank accounts and client transaction accounts and any client money identifiable in any house account held by the firm into which client money has been received.<sup>13</sup>

<sup>10</sup> PS14/9 paragraphs 7.36 to 7.53.

<sup>11</sup> [2012] UKSC 6.

<sup>12</sup> PS12/23 *Client assets regime: changes following EMIR* (December 2012) [www.fsa.gov.uk/static/pubs/policy/ps12-23.pdf](http://www.fsa.gov.uk/static/pubs/policy/ps12-23.pdf)

<sup>13</sup> The rules relating to client money sub-pools remain unchanged.

**Q2.5: Do you agree that the proposed wording has the intended legal effect regarding the constitution of the general client money pool?**

**Loan-based crowdfunding and CASS**

- 2.26** We are proposing to amend the CONC transitional provisions published in PS14/3 so that they do not exclude the application of CASS or related parts of SUP for loan-based crowdfunding firms, making it clear these firms are subject to CASS as stated in PS14/4. We are also introducing some transitional provisions in CASS. The amendments to CONC concern the table of the transitional provisions in CONC 12.1.4R, in the sections 'Client Assets (CASS)' and 'Supervision manual (SUP)', in relation to the notification and report on client assets (SUP 3.10) and client money and assets return (CMAR) (SUP 16.14) – but no changes are proposed in SUP itself.
- 2.27** Firms with interim permission to carry out loan-based crowdfunding and which qualify as CASS medium or large firms will not be able to appoint a CF10a (CASS operational oversight function) because they will not have employees exercising significant influence functions. Such firms can still ensure that the relevant functions that would have been carried out by a CF10a are allocated to a suitably senior person, even if the person doing the tasks will not technically be a CF10a.
- 2.28** Firms with interim permission to carry out loan-based crowdfunding and which qualify as CASS small firms have a similar issue, as during interim permission they will not have any employees exercising significant influence functions. We will introduce a transitional provision in CASS making it clear that, while these firms will not have a CF10a or CASS oversight officer, they must allocate the roles and tasks that would have been carried out by a CF10a or CASS oversight officer, to a suitably senior person.
- 2.29** CMAR data is normally collected through a system called GABRIEL, but firms with interim permission only do not have access. In the interim, under SUP 16.14.6R, we may make the return available to firms by another means.

**Q 2.6: Do you agree with our proposals to ensure that CASS applies as stated in PS14/4?**

**Cost benefit analysis**

- 2.30** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 2.31** CP13/5 and PS14/9 contained cost benefit analyses relating to the affected client money and custody rules in this chapter. As we are only making minor amendments to ensure the intended policy in PS14/9 is achieved, these proposals are expected to impose no additional costs from those already considered.
- 2.32** The amendments we are proposing to CONC give effect to the policy covered by the CBA in CP13/13 and in PS14/4. We expect that firms will not incur any additional costs as a result of this. Firms will be following similar procedures as fully authorised firms for a short period until they are able to apply for full authorisation in late 2015.

- 2.33** The principle benefit of the CASS and CONC proposals is to achieve the intended policy and provide clarity to industry participants. Our proposed amendments are intended to rectify the issues identified and remove ambiguity regarding different interpretations of the relevant CASS and CONC rules.
- 2.34** In relation to the proposal regarding CASS 7A and the constitution of the client money pool, the main benefit is to ensure there are appropriate levels of consumer protection in the event of a primary pooling event.
- 2.35** Consumers should not see any change to the normal operation of their investment business.

### Compatibility statement

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- 2.36** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA. In addition, section 138K(2) of FSMA requires us to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 2.37** The proposals in this chapter are intended to advance our operational objective of securing appropriate levels of consumer protection by ensuring that our intended policy as set out in previous policy statements is achieved.
- 2.38** In preparing the proposals in this chapter, we have had regard to the regulatory principles set out in section 3B of FSMA and the importance of taking action intended to minimise financial crime as part of section 1B(5)(b) of FSMA.
- 2.39** Our proposed changes refer to either firms in the investment sector or loan-based crowdfunding firms operating under interim permission, and do not refer 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

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- 2.40** Under the Equality Act 2010, we are required 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 have assessed the likely equality and diversity impacts and rationale of these proposals and concluded they do not give rise to any concerns for particular groups as a result of any protected characteristic. However, we welcome any comments.

# 3.

## Changes to remuneration report submission method

### Introduction

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- 3.1** This chapter sets out our proposals to make amendments to chapter 16 of the Supervision manual (SUP 16). The proposals will be of interest to firms subject to the remuneration reporting requirements in SUP 16.17 in the FCA Handbook.
- 3.2** The changes proposed follow on from the amendments to remuneration reporting consulted on in (CP14/19<sup>14</sup>) with final provisions made in the policy statement (PS14/14<sup>15</sup>).
- 3.3** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 3.

### Summary of proposals

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- 3.4** SUP 16.17 requires certain types of firms to submit regular and comprehensive information about remuneration. This information is provided to assist in benchmarking remuneration trends and to collect remuneration information on high earners. Currently, these returns are submitted manually through an excel spreadsheet emailed to the FCA. Once received the returns are also processed manually by the FCA.
- 3.5** To remove the inefficiency and uncertainty of the manual submission and processing, we propose automating the submission of these returns through the GABRIEL electronic reporting system as new data items REP004 (Remuneration Benchmarking) and REP005 (High Earners Report).
- 3.6** Additionally, we propose making some minor formatting amendments to the reporting forms and accompanying guidance notes for both the Remuneration Benchmarking and High Earners reporting. This will facilitate their use through GABRIEL electronic reporting system.

#### **Q 3.1 Do you agree with our proposals to bring the Remuneration Benchmarking and High Earners reporting into the GABRIEL electronic reporting system?**

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<sup>14</sup> CP14/19 *CRD IV: data collection on remuneration practices* (September 2014)  
[www.fca.org.uk/your-fca/documents/consultation-papers/cp14-19](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-19)

<sup>15</sup> PS14/14 *CRD IV: data collection on remuneration practices* (November 2014)  
[www.fca.org.uk/your-fca/documents/policy-statements/ps14-14](http://www.fca.org.uk/your-fca/documents/policy-statements/ps14-14)

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### Cost benefit analysis

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- 3.7** Sections 138I and 138J of the Financial Services and Markets Act 2000 (FSMA) require us to publish a cost benefit analysis when proposing draft rules. We are required to publish an analysis of the costs and benefits and an estimate of those costs and benefits. This requirement does not apply if there will be no increase in costs or if any increase will be minimal.
- 3.8** We expect that the new submission method will make the collection of data more efficient for both firms and the FCA. We expect the new method of submissions to be less onerous than the current one and as such, should reduce the burden on firms.

#### Q 3.2 Do you have any questions in relation to our cost benefit analysis?

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### Compatibility statement

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- 3.9** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objectives and advances one or more of our operational objectives. We also need to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 3.10** The proposals in this chapter are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. They will also help advance the FCA's objective of enhancing market integrity as indicated in our compatibility statement in Appendix 2 of CP14/19.
- 3.11** The proposed changes in this chapter do not impact on mutual societies.
- 3.12** We have also had regard to the regulatory principles set out in section 3B of FSMA. We believe the proposed minor changes are compatible with all these principles.

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### Equality and diversity

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- 3.13** We have conducted an equality impact assessment on the proposals in this chapter. We do not believe that our plans create any negative impacts on protected groups. As a result we do not believe that there are any equality or diversity implications arising but would welcome your comments.

## 4.

# Changes to the Handbook impacting AIFMs and AIF depositaries

### Introduction

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- 4.1** The Alternative Investment Fund Managers Directive (AIFMD)<sup>16</sup> took effect in the UK on 22 July 2013 and became fully applicable to firms on 22 July 2014, following a one-year transitional period.<sup>17</sup>
- 4.2** Since then, there have been several developments that we propose to address by amending or adding to the rules and guidance that implement AIFMD. The majority of those rules and guidance are in the Investment Funds sourcebook (FUND) but various parts of the FCA Handbook contain affected provisions.
- 4.3** Following the implementation of AIFMD, we received a number of queries on the application of the requirements on asset valuation. In this chapter, we are consulting on proposed questions and answers to clarify the valuation requirements applying to alternative investment fund managers (AIFMs).
- 4.4** We are consulting on new rules and guidance to:
- address potential risks to our objectives when AIFMs perform certain activities under the exclusion in article 72AA(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO)
  - make non-European Economic Area (EEA) AIFMs and small registered UK AIFMs, which do not submit their AIFMD Annex IV reports to us on time, subject to the same administrative fee that applies to full-scope UK AIFMs and small authorised UK AIFMs
  - clarify a number of provisions in the Handbook related to AIFMD, and
  - incorporate some of the AIFMD section of our website within Handbook guidance.
- 4.5** This chapter will be of interest to:
- all UK AIFMs
  - non-EEA AIFMs which manage AIFs marketed in the UK

<sup>16</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 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0061&from=EN>).

<sup>17</sup> PS13/5 *Implementation of the Alternative Investment Fund Managers Directive* (June 2013) <http://www.fca.org.uk/your-fca/documents/ps13-5-implementation-of-the-aifmd>

- alternative investment fund (AIF) depositaries providing services to UK AIFs, and
  - advisers and service providers, such as external valuers.
- 4.6** The proposed amendments, and the statutory powers they are proposed to be made under, are set out in Appendix 4.

## Summary of proposals

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### Questions and answers on the valuation obligations under AIFMD

- 4.7** The AIFMD introduces specific requirements on a full-scope UK AIFM, in FUND 3.9, to ensure that a proper and independent valuation of the assets of the AIFs it manages is performed.<sup>18</sup> We propose adding guidance in FUND 3, in the form of an Annex containing questions and answers, to clarify how we interpret various aspects of the valuation requirements.
- 4.8** FUND 3.9.7R requires the valuation function to be performed by the AIFM or an external valuer. We propose to clarify that the person making the final determination on the value of the asset, or of a portfolio of assets, is considered to be performing that valuation function. The person performing the valuation function may, in certain circumstances, seek the input of third-party advisers or price providers in the valuation of certain assets, while retaining responsibility for making the final determination of their value. We would not consider such third parties to be performing the valuation function, so they would not need to be formally appointed as external valuers.
- 4.9** The board of directors of some corporate AIFs and the trustee(s) of some AIFs may retain a contractual right to override a valuation figure approved by the person who normally makes the final determination of individual asset values on a day-to-day basis (ie, the AIFM or external valuer). As such, we propose to clarify that having such a right does not mean the directors or trustees are undertaking the valuation function, provided that this right of override is only exercised on an exceptional basis.
- 4.10** We propose to clarify what safeguards should be in place to ensure functional independence of the valuation function when performed by the AIFM itself. This includes guidance on the circumstances in which the AIFM's portfolio managers can provide their input to the person performing the valuation function. These proposals aim to mitigate against the conflicts of interest that could prejudice the performance of independent and fair asset valuation, while recognising the contribution that portfolio managers may provide to the valuation function. For example, if the final decisions on valuations are taken by a valuation committee of which portfolio managers are members, portfolio managers may participate in the discussion in an advisory capacity but they may not have a vote on, or a decision-making role in, the determination of the final value of the assets. In such cases, the voting members of the committee should collectively have sufficient seniority and competence to form an independent view on whether the portfolio managers' recommendations are reliable, so that they are not unduly influenced by the managers' views.

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<sup>18</sup> article 19 of AIFMD.

**4.11** The proposed questions and answers also clarify that:

- the valuation function involves valuing all the investments in the AIF, including assets with a negative value and short positions
- the AIFM has ultimate responsibility for the valuation of all the AIF's assets
- an external valuer can be appointed by the AIFM or by the AIF, and
- although the AIFM is responsible for the calculation of the AIF's net asset value (NAV) and the disclosure of the NAV per unit or share of the AIF to the investors, these duties do not form part of the valuation function.

**Q4.1: Do you agree with our proposed questions and answers  
on the valuation obligations under AIFMD?**

**Effects of article 72AA of the RAO on AIFMs**

**4.12** The Government, through the AIFMD UK regulations<sup>19</sup>, introduced an exclusion in article 72AA of the RAO (referred to below as the 'RAO exclusion'). Under this exclusion, firms with a Part 4A permission to carry out the activity of 'managing an AIF' are not required to hold a separate Part 4A permission to carry on any other regulated activity 'in connection with or for the purposes of' managing an AIF. Exceptions to this are insurance and reinsurance mediation activities, as explained in paragraph 4.17, below.

**4.13** As a consequence, full-scope UK AIFMs and small authorised UK AIFMs carrying out certain activities under, and only to the extent they fall into, this exclusion are no longer subject to the relevant Handbook rules which would otherwise apply to regulated activities. We do not expect that the RAO exclusion is widely used by AIFMs, as many regulated activities appear to us to have little to do with the business of managing an AIF, so it seems unlikely any AIFM, if it carried them out at all, would be doing so under the RAO exclusion. Exceptions to this are those activities that are closely linked to collective portfolio management (see below). However, we do not rule out the possibility that an AIFM might wish, for example, to carry on certain consumer credit activities in connection with, or for the purposes of, its management of an AIF. In such cases, the RAO exclusion may be applicable and, if so, the AIFM would not be subject to the provisions of (in our example) the Consumer Credit sourcebook (CONC) which applies generally to firms carrying out consumer credit activities.

**4.14** The effects of the RAO exclusion give rise to consumer protection concerns, as the safeguards which would usually apply to firms carrying out regulated activities would not be in place. There is also the risk of an unlevel playing field between AIFMs and other firms carrying out the same activities, since the latter would still have to comply with the relevant Handbook rules.

**4.15** We considered addressing this by introducing a 'blanket' rule in FUND requiring AIFMs, when carrying out activities under the RAO exclusion, to comply with the relevant Handbook provisions which would otherwise apply. Since this approach would not spell out which specific provisions of the Handbook would apply to each firm, we concluded that it could introduce some uncertainty and we decided not to pursue it at this stage.

**4.16** Instead, to address these concerns, we propose provisions in FUND 1.4 to require firms intending to carry on activities that (but for the RAO exclusion) would be regulated activities in connection with, or for the purposes of managing, an AIF to notify us two months in advance of doing

<sup>19</sup> Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).

so. To facilitate this, there will be a standard notification form requiring an AIFM to tell us the activities it intends to carry on and to explain how these are to be performed in connection with, or for purposes of, its management of an AIF. We would then review the notification and, after discussing it with the AIFM, we may set out specific requirements outlining the rules and guidance which would apply to the activities it proposes or is carrying on. There will be transitional arrangements for any AIFMs that are already carrying out such activities when the rule comes into effect.

- 4.17** However, AIFMs would not be required to notify us when carrying out activities that are closely linked to the activity of collective portfolio management and that, as a consequence, do not pose particular concerns. Our proposed rule lists those activities and excludes them from the notification requirement. Firms carrying out insurance or reinsurance mediation activities are also not required to notify us.<sup>20</sup>
- 4.18** The RAO exclusion also applies to firms with the Part 4A permission for ‘managing a UCITS’. We have considered whether to extend the proposed notification requirements to UCITS managers by consulting on a specific provision in the Collective Investment Schemes sourcebook (COLL). However, we think it is unlikely that UCITS managers would perform regulated activities under the RAO exclusion other than those closely associated with collective portfolio management, so we decided not to put forward this proposal. Should we receive specific feedback on this point as part of this consultation, we will consider a corresponding COLL provision as part of a future consultation.

**Q4.2: Do you agree with our proposed notification requirements for firms carrying on activities under the RAO exclusion in connection with, or for the purposes of, managing an AIF?**

**Q4.3: Do you have any comments on the proposed notification form?**

**Q4.4: Do you think we should consult on similar notification requirements for firms carrying on activities under the RAO exclusion in connection with, or for the purposes of, managing a UCITS?**

#### **Administration fee for late submission of AIFMD Annex IV transparency reports**

- 4.19** Under SUP 16.3.14R, if a full-scope UK AIFM or a small authorised UK AIFM do not submit a complete AIFMD Annex IV transparency report by the date on which it is due, they would be liable to pay an administrative fee of £250. However, since SUP 16.3.14R only applies to ‘firms’ as defined in the FCA Glossary, the provision does not apply to above-threshold non-EEA AIFMs, small non-EEA AIFMs or small registered UK AIFMs subject to AIFMD transparency reporting requirements.
- 4.20** We have the power to make rules providing for the payment to us of fees in connection with the discharge of any of our qualifying functions.<sup>21</sup> These qualifying functions include functions conferred on us under the AIFMD UK regulations.
- 4.21** We intend to exercise this power and to introduce provisions under SUP 16.18 so that above-threshold non-EEA AIFMs, small non-EEA AIFMs and small registered UK AIFMs would also

<sup>20</sup> This is because these activities are specifically excluded from the application of the RAO exclusion and AIFMs are required to hold the relevant Part 4A permissions.

<sup>21</sup> See section 23(1) of Part 3, Schedule 1ZA of the Financial Services and Markets Act 2000 (FSMA).

be subject to a £250 administrative fee should they fail to meet their transparency reporting obligations.

- 4.22** The proposed provisions would ensure a level playing-field between AIFMs subject to transparency reporting obligations and would allow the FCA to recover some of the additional costs relating to the AIFM's failure to report. It should be noted that AIFMs are not subject to other fees for the submission of transparency reports.

**Q4.5: Do you agree with our proposal to make above-threshold non-EEA AIFMs, small non-EEA AIFMs and small registered AIFMs liable to pay a £250 administration fee for failing to report on time to the FCA?**

**Definition of assets under management (AUM) for the calculation of the AIFM professional liability risks requirement**

- 4.23** AIFMs are required to hold either additional capital or professional indemnity insurance (PII) to cover their professional liability risks.<sup>22</sup> The AIFMD Level 2 regulation<sup>23</sup> takes the value of the portfolios of AIFs managed by the AIFM as the basis for calculating the professional liability risks requirement and sets out the method for determining its value.<sup>24</sup> However, the regulation is silent as to whether portfolios of AIFs managed by the AIFM under a delegated mandate should also be accounted for in determining the AUM for the calculation of the professional liability risks requirement.
- 4.24** We propose to clarify in IPRU(INV) 11.3.11AG that an AIFM should take into account, when determining its professional liability risks requirement, both the portfolio of AIFs for which it is the AIFM and those for which it undertakes portfolio management or risk management under delegation. We recognise that other provisions of the AIFMD explicitly exclude portfolios of AIFs managed under delegation from the calculation of the AUM.<sup>25</sup> However, those provisions deal with different matters to the calculation of the professional liability risks requirement. This reflects our long-standing interpretation of the requirement, as outlined in CP12/32 and in SUP 16 Annex 25G. Our interpretation is also supported by Recital 23 of AIFMD which states that *'it is necessary to provide for the calculation of minimum capital requirements (...) to cover the potential exposure of AIFMs to professional liability in respect of all their activities, including the management of all AIFs under a delegated mandate'*.

**Q4.6: Do you agree with our proposed guidance on how to treat portfolios of AIFs managed under delegation for the calculation of the AIFM's professional liability risks requirement?**

**Definition of 'third party' in FUND 3.11.26R**

- 4.25** Under FUND 3.11.26R, AIF depositaries are not allowed to delegate the performance of their functions under AIFMD to a third party, except for the delegation arrangements permitted under FUND 3.11.28R.<sup>26</sup> We have considered whether delegation takes place when functions

<sup>22</sup> See IPRU(INV) 11.3.11G

<sup>23</sup> Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0231&from=EN>).

<sup>24</sup> See articles 14 and 15 of the AIFMD level 2 Regulations.

<sup>25</sup> See article 2 of the AIFMD level 2 Regulations.

<sup>26</sup> See also article 21(11) of AIFMD.

are performed by a branch of the AIF depositary in another EEA member state or by the depositary's head office if the UK firm is an incoming branch of an EEA firm.<sup>27</sup>

- 4.26** We propose guidance in FUND 3.11.27AG to clarify that we consider arrangements where certain depositary tasks are performed by a branch, or by the head office, of the AIF depositary, do not amount to delegation under FUND 3.11.26R. This is because a branch or the head office would not be a separate legal entity from the depositary and, as such, they would not be a third party.
- 4.27** However, AIF depositaries operating under these arrangements should ensure that they continue to meet the FCA threshold conditions. In particular, they should maintain appropriate resources to perform their functions in the UK and have appropriate oversight of any task performed outside the UK. As part of continuing to meet the threshold conditions, AIF depositaries should also ensure that the arrangements do not impede the FCA's ability to supervise effectively the performance of depositary services to UK AIFs.

**Q4.7: Do you agree with our proposed guidance on the AIFMD depositary rules where certain depositary functions are performed outside of the UK but within the same legal entity?**

**Guidance on how to interpret the reference to 'Non-Cooperative Country and Territory' in the AIFMD UK regulation**

- 4.28** Regulation 57 (Marketing under article 36) and regulation 59 (Marketing under article 42) of the AIFMD UK regulations refer to the 'Non-Cooperative Country and Territory' list of the Financial Action Task Force (FATF). FATF has replaced that list by a document, called 'FATF's Public Statement', which consists of two separate parts, listing jurisdictions with:
- a. strategic anti-money laundering/countering the financing of terrorism (AML/CFT) deficiencies and to which counter-measures apply, and
  - b. strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies.

- 4.29** Proposed guidance in FUND 10.5.13G clarifies that references to the 'Non-Cooperative Country and Territory' list in the AIFMD UK regulations should be interpreted as referring to both parts of FATF's Public Statement of 'High-Risk and Non-Cooperative Jurisdictions'.

**Q4.8: Do you agree with our proposed guidance on how to interpret the reference to a 'Non-Cooperative Country and Territory' in the AIFMD UK regulations?**

**Guidance on determining the place of establishment of an AIF**

- 4.30** We propose guidance in FUND 10.5.14G on how to determine the place of establishment of an AIF. This is important as it affects how the AIF may be marketed in the UK.
- 4.31** We considered the Glossary definition of 'established', which for an AIF means 'being authorised or registered' or, if the AIF is not authorised or registered, 'having its registered office in' a given country. We consider an AIF to be 'authorised or registered' when it is authorised or registered

<sup>27</sup> There are no passporting rights for depositaries under AIFMD. A UK branch of an EEA firm would have to obtain the relevant 'top-up' permissions under Part 4A of FSMA to be able to perform depositary services in the UK under AIFMD.

as an AIF with a competent authority or supervisory authority. The proposed guidance also explains how, for unauthorised AIFs without a registered office (such as an unauthorised English limited partnership), we would look at the principal place of business to determine where it is established.

**Q4.9: Do you agree with our proposed guidance on how to determine the place of establishment of an AIF?**

**Reporting frequency for UK AIFMs that manage, but do not market, a non-EEA AIF**

**4.32** EEA AIFMs that manage a non-EEA AIF, but do not market it anywhere in the EEA, are nevertheless required to report on that AIF to their national regulator. The AIFMD Level 2 regulation does not specify the reporting periods, or the end dates for those reporting periods, for this situation although Annex I of the ESMA guidelines<sup>28</sup> implies the reporting frequency is the same as for AIFs marketed in the EEA.

**4.33** Therefore, we propose to clarify in SUP 16.18.9AG that a UK AIFM of a non-EEA AIF that is not marketed in the EEA should report at the same frequency as for AIFs that are marketed in compliance with the provisions in SUP 16.18.6R and SUP 16.18.7D, as applicable.

**Q4.10: Do you agree with our proposed guidance on reporting frequency for non-EEA AIFs that are not marketed in the EEA?**

**Passporting of non-core activities**

**4.34** An external AIFM is allowed to perform only the core and non-core activities listed in FUND 1.4.3R(1) to (6).<sup>29</sup> The core activities comprise:

- AIFM management functions
- managing a UCITS, and
- portfolio management.

**4.35** The non-core activities are:

- investment advice
- safe-keeping and administration in relation to shares or units of collective investment undertakings, and
- reception and transmission of orders.

**4.36** The wording of AIFMD is not explicit about whether an AIFM wishing to carry on any of the non-core activities in another EEA State, without also carrying on one of the core activities there, may do so under the AIFM management passport.

**4.37** We consider an external AIFM which is a full-scope AIFM is allowed to passport non-core activities in another EEA State without also passporting one or more core activities in that State, and propose guidance in FUND 10.2 clarifying this. This is relevant to UK AIFMs wishing

<sup>28</sup> Guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, ESMA/2014/869: [www.esma.europa.eu/content/Guidelines-reporting-obligations-under-Articles-33d-and-241-2-and-4-AIFMD-0](http://www.esma.europa.eu/content/Guidelines-reporting-obligations-under-Articles-33d-and-241-2-and-4-AIFMD-0)

<sup>29</sup> See also article 6 AIFMD.

to passport these activities into another EEA State, as well as EEA AIFMs wishing to passport these activities into the UK.

**Q 4.11: Do you agree with our proposed guidance on passporting of non-core activities under AIFMD?**

**Additional changes**

**4.38** We have also made the following changes either to clarify or to update certain provisions.

- In FUND 3.5.2R we have updated the reference to the provision from the Banking Consolidation Directive (BCD) with the appropriate reference to the relevant provision in the Capital Requirements Regulation (CRR).<sup>30</sup>
- In FUND 3.3.2R we have made some changes to ensure the wording of the rule is consistent with the wording of articles 22 and 24 of AIFMD.

**Q4.12: Do you agree with these proposed additional changes?**

**Q4.13: Are there any other points in our AIFMD rules and guidance that you consider require correction or clarification?**

**Cost benefit analysis**

**4.39** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.

**4.40** CP12/32, CP13/9 and PS13/5 contained cost benefit analyses relating to the implementation of AIFMD itself, with feedback on the responses provided in PS13/5. Several changes outlined in this consultation are consequential amendments to the FCA Handbook arising from the implementation of the AIFMD and providing clearer additional information to firms. The following proposed guidance follows from the implementation of AIFMD and do not require additional CBA to be conducted.

- The proposed questions and answers on AIFMD valuation aim to clarify, among other issues, the independence requirements applying to the AIFM when performing the valuation function. The European Commission's Impact Assessment of the AIFMD extensively covers the risks deriving from conflicts of interest and weak governance arrangements around the valuation function. We already conducted CBA on the AIFMD valuation requirements and consulted on it in CP12/32.
- We clarified in CP12/32 that the own funds and PII requirements to cover professional liability risks must be based on the AIFs under management of the AIFM, to include the AIFs managed under delegation. We did not receive specific feedback on this point which we consider to also be covered in the CBA conducted for CP12/32.

<sup>30</sup> Regulation (EU) No 575/2013 of the European Parliament of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:321:0006:0342:EN:PDF>).

- Guidance on passporting of non-core activities and reporting frequency for AIFs which are not marketed also derive from the implementation of AIFMD and do not require further CBA.

**4.41** The following changes are expected to impose no costs or costs of minimal significance.

- Requiring AIFMs to notify us when performing certain RAO activities under the exclusion in article 72AA of the RAO. There will be an immediate increase in compliance costs for the firms who will be required to notify us. We expect these immediate costs to be negligible. Where we impose a requirement on a firm that we consider appropriate, following the receipt of the notification, there may be consequential costs due to the additional provisions that the firm will be required to comply with. However, we expect firms who have been carrying on those RAO activities now covered by this exclusion are likely to be following the relevant Handbook rules, despite their inapplicability due to the RAO exclusion when done in connection with, or for the purposes of, managing an AIF. If a requirement is imposed, we expect the impact assessment to be covered by the original CBA conducted for the relevant parts of the Handbook that applies to these firms. The benefits of increased consumer protection and in an improved level playing-field are likely to outweigh the immediate and consequential costs for firms.
- For our guidance on the definition of ‘third party’ under FUND 3.11.26R, we understand that arrangements of existing AIF depositaries already follow this interpretation. We remind firms that when adopting such arrangements they should remain compliant with our threshold conditions. We expect this to have minimal impact on firms who should already meet the FCA threshold conditions.
- We also understand that the proposed guidance on how to interpret the reference to ‘Non-Cooperative Country and Territory’ and how to determine the place of establishment of an AIF are in line with current practices adopted by the industry. We have provided some information to this extent on our AIFMD webpages and are now proposing to include specific provisions on this in the Handbook. We expect the impact on firms to be of minimal significance.

**4.42** The proposed rule on the imposition of fees on non-EEA AIFMs and small registered UK AIFMs does not require a CBA. The FCA’s general fee rule-making power under paragraph 23 Schedule 1ZA of FSMA is specifically exempt from the obligation to carry out CBA in accordance with section 138I(6) of FSMA.

### Compatibility statement

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**4.43** We believe that our proposals meet our integrity objective, as well as our consumer protection and competition objectives. We have also taken into consideration the principles of good regulation when preparing this consultation.

### Integrity objective

**4.44** This objective requires us to protect and enhance the integrity of the UK financial system. Our proposals seek to reduce the risk of market disruption and improve the efficiency of the markets. We consult on a number of proposed provisions which aim to increase transparency and reduce risks in the markets for AIFs.

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**Consumer protection objective**

- 4.45** This objective requires us to secure an appropriate degree of protection for consumers. We expect our proposed provisions in FUND 1.4.8R, FUND 1.4.9G and FUND 1.4.10R to appropriately address consumer protection concerns when AIFMs carry out RAO activities in connection with, or for the purposes of, managing an AIF. We do not expect the other proposed rules to have material effects on consumers.

**Competition objective**

- 4.46** Our competition objective requires us, in so far as it is compatible with our other objectives, to promote competition in the interest of consumers. We believe that the competition impact of these proposals is likely to be minimal.

**Mutual societies**

- 4.47** Our proposals refer to firms in the investment sector affected by the AIFMD and do not refer 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**

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- 4.48** We have previously assessed the possible impact of the implementation of the AIFMD on equality and diversity. We are confident that they do not give rise to any concerns but we would welcome your comments on these new proposals affecting AIFMs and AIF depositaries.

# Appendix 1

## List of questions

- Q2.1:** Do you agree with this proposal to allow CASS 6 firms to perform external custody reconciliations against certain third parties' system records relating to Irish, Jersey, Guernsey and Isle of Man securities?
- Q2.2:** Do you agree with our proposal relating to registration and recording of legal title to client assets?
- Q2.3:** Do you agree with our proposals regarding client money segregation for certain regulated clearing arrangements?
- Q2.4:** Do you agree with our proposal relating to the DvP rules for regulated collective investment schemes?
- Q2.5:** Do you agree that the proposed wording has the intended legal effect regarding the constitution of the general client money pool?
- Q2.6:** Do you agree with our proposals to ensure that CASS applies as stated in PS14/4?
- Q3.1:** Do you agree with our proposals to bring the Remuneration Benchmarking and High Earners reporting into the GABRIEL electronic reporting system?
- Q3.2:** Do you have any questions in relation to our cost benefit analysis?
- Q4.1:** Do you agree with our proposed questions and answers on the valuation obligations under AIFMD?
- Q4.2:** Do you agree with our proposed notification requirements for firms carrying on activities under the RAO exclusion in connection with, or for the purposes of, managing an AIF?

- Q4.3:** Do you have any comments on the proposed notification form?
- Q4.4:** Do you think we should consult on similar notification requirements for firms carrying on activities under the RAO exclusion in connection with, or for the purposes of, managing a UCITS?
- Q4.5:** Do you agree with our proposal to make above-threshold non-EEA AIFMs, small non-EEA AIFMs and small registered AIFMs liable to pay a £250 administration fee for failing to report on time to the FCA?
- Q4.6:** Do you agree with our proposed guidance on how to treat portfolios of AIFs managed under delegation for the calculation of the AIFM's professional liability risks requirement?
- Q4.7:** Do you agree with our proposed guidance on the AIFMD depositary rules where certain depositary functions are performed outside of the UK but within the same legal entity?
- Q4.8:** Do you agree with our proposed guidance on how to interpret the reference to a 'Non-Cooperative Country and Territory' in the AIFMD UK regulations?
- Q4.9:** Do you agree with our proposed guidance on how to determine the place of establishment of an AIF?
- Q4.10:** Do you agree with our proposed guidance on reporting frequency for non-EEA AIFs which are not marketed in the EEA?
- Q4.11:** Do you agree with our proposed guidance on passporting of non-core activities under AIFMD?
- Q4.12:** Do you agree with these proposed additional changes?
- Q4.13:** Are there any other points in our AIFMD rules and guidance that you consider require correction or clarification?

# Appendix 2

## Amendments to CASS and CONC

**CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2015****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
  - (3) section 137T (General supplementary powers); and
  - (4) section 139A (Power of the FCA to give guidance).
- 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 [1 June 2015] except for Part 1 of Annex B which comes into force on [1 May 2015].

**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).

(1)	(2)
Glossary of definitions	Annex A
Client Assets sourcebook (CASS)	Annex B
Consumer Credit sourcebook (CONC)	Annex C

**Citation**

- E. This instrument may be cited as Client Assets Sourcebook (Amendment No 8) Instrument 2015.

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

**Annex A****Amendments to the Glossary of definitions**

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

- relevant overseas  
USRs*      the following overseas uncertificated securities regulations:
- (a)      the Jersey Companies (Uncertificated Securities) (Jersey) Order 1999;
  - (b)      the Guernsey Uncertificated Securities (Guernsey) Regulations 2009;
  - (c)      the Isle of Man Companies Act 2006 Uncertificated Securities Regulations 2006; and
  - (d)      the Irish Companies Act 1990 (Uncertificated Securities) Regulations 1996.

## Annex B

## Amendments to the Client Assets sourcebook (CASS)

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

## Part 1: Comes into force on 1 May 2015

## 7A.2 Primary pooling events

Pooling and distribution

...

7A.2.4 R If a primary pooling event occurs, then:

- (1) (a) in respect of ~~either the general pool or a sub-pool,~~ client money held in a client bank account or a client transaction account of the firm relating to that pool the following is treated as a single notional pool of client money for the beneficiaries of that pool:
- (i) any client money held in a client bank account of the firm relating to that sub-pool; and
  - (ii) any client money held in a client transaction account of the firm relating to that sub-pool, except for client money held in a client transaction account at an authorised central counterparty or a clearing member which is, in either case, held as part of a regulated clearing arrangement;
- (b) in respect of the general pool, the following is treated as a single notional pool of client money for the beneficiaries of the general pool:
- (i) any client money held in any client bank account of the firm;
  - (ii) any client money held in a client transaction account of the firm, except for client money held in a client transaction account at an authorised central counterparty or a clearing member which is, in either case, held as part of a regulated clearing arrangement; and
  - (iii) any client money identifiable in any other account held by the firm into which client money has been received;

except, in each case, for *client money* relating to a *sub-pool* which falls under (1)(a)(i) or (1)(a)(ii).

...

## 11.13 Client money distribution in the event of a failure of a firm or approved bank

...

Pooling and distribution after a primary pooling event

11.13.4 R If a *primary pooling event* occurs, then:

(1) all ~~client money~~ *client money*:

...

...

Distribution if client money not transferred to another firm

11.13.5 R Where a *primary pooling event* occurs and the *client money* is not transferred to another *firm* in accordance with CASS 11.13.4R, a *CASS debt management firm* must distribute ~~client money~~ *client money* comprising the notional pool so that each ~~client~~ *client* receives a sum that is rateable to their entitlement to the notional pool calculated in CASS 11.13.4R(2).

...

## Part 2: Comes into force on 1 June 2015

### 6.2 Holding of client assets

...

6.2.3 R Subject to CASS 6.2.3A-1R, A *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* belonging to a *client* in the name of:

...

6.2.3A-1 R *A firm* need not comply with CASS 6.2.3R for *safe custody assets* that it deposits with a third party in accordance with CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties).

...

### 6.3 Depositing assets and arranging for assets to be deposited with third parties

...

6.3.9 R CASS 6.3.6R does not permit a *firm* to agree to a ~~right of set-off of the kind prohibited by either CASS 7.8.1R or CASS 7.8.2R in relation to client money~~ third party having any recourse or right against client money in a client bank account or standing to the credit of a client transaction account of the kind referred to in:

(1) paragraph (d) of CASS 7 Annex 2R; or

(2) paragraph (e) of CASS 7 Annex 3R; or

(3) paragraph (e) of CASS 7 Annex 4R.

...

### 6.6 Records, accounts and reconciliations

...

6.6.35 R In CASS 6.6.34R, the third parties whose records and accounts a *firm* is required to reconcile its own internal records and accounts with must include:

(1) the third parties with which the *firm* has deposited *clients' safe custody assets*; ~~and~~

(2) where the *firm* has not deposited a *client's safe custody asset* with a third party:

(a) the third parties responsible for the registration of legal title to that *safe custody asset*; or

(b) a person acting as an operator for the purposes of any of the relevant overseas USRs if:

(i) the safe custody asset is an uncertificated unit of a security governed by any of the relevant overseas USRs; and

(ii) the firm has reasonable grounds to be satisfied that the records of that person take account of all instructions issued by that person that require an issuer to register on a register of securities a transfer of title to any uncertificated units.

6.6.36 G Examples of the sorts of third parties referred to at CASS 6.6.35R(2)(a) include central securities depositaries, *operators of collective investment schemes*, and administrators of offshore funds.

...

## 7.11 Treatment of client money

...

7.11.21 R (1) Subject to ~~(2)~~ (2)(a), *money* need not be treated as *client money*:

...

(2) (a) Where, in respect of *money* received in any of the circumstances set out in (1), the *authorised fund manager* has not, by close of business on the *business day* following the date of receipt of the *money*, paid this ~~money~~ money to the *depository* of an *AUT* or *ACS*, the *ICVC* or to the *client* as the case may be, the *authorised fund manager* must stop using the exemption under (1) for that transaction.

(b) Paragraph (2)(a) does not prevent a *firm* transferring *client money* segregated under (2)(a) into the *firm's* own account provided this is done only for the purposes of making an immediate payment from that account in accordance with CASS 7.11.34R(1) to CASS 7.11.34R(3) (Discharge of fiduciary duty).

...

## 7.13 Segregation of client money

...

7.13.72 R (1) ...

(2) (a) In either or both of the circumstances described in (1);

(i) the *firm* must pay any *mixed remittances* from its own bank account; and

(ii) the *firm* is allowed to pay any remittances that consist only of *client money* from that same bank account.

(b) In the circumstances described in (1)(a), the *firm* is allowed to receive any remittances that consist only of *client money* from the *authorised central counterparty* into the same bank account that it uses under (2)(a), provided it complies with (c).

(~~b~~c) Where, in the circumstances described in (1)(a) a *mixed remittances remittance* or a remittance that consists only of

client money from an *authorised central counterparty* ~~are~~ is received into a *firm's* own account it must transfer ~~the~~ any *client money* element of the ~~mixed remittance~~ remittance to its *client bank account* promptly and, in any event, no later than the next *business day* after receipt.

- 7.13.73 R (1) ...
- (2) The amount required to be segregated under this *rule* must be an amount that a *firm* reasonably determines would be sufficient, at the time it makes the determination, to protect *client money* against the risk that at any time in the following three months *client money* received from the *authorised central counterparty* and held by the *firm* in its own bank account following receipt of these monies under CASS 7.13.72R(1)(a) and until their transfer in line with CASS 7.13.72R(2)(~~bc~~) may not have been fully segregated in its *client bank account* or may not be (or become) available for pooling under CASS 7A.2.4R(1), were a *primary pooling event* to occur with the effect that the *firm's clearing arrangement mandatory prudent segregation* under this *rule* will reduce, as far as possible, any *shortfall* that might have been produced as a result of this risk on the occurrence of a *primary pooling event*.
- (3) ...

...

## TP 1 Transitional Provisions

...

### 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
...					
-1A	<u>CASS 1A.3.1</u>	<u>R</u>	<u>A firm which has only an interim permission may allocate responsibility for the functions described in this rule to</u>	<u>For as long as the firm has only an interim</u>	

			<u>any director or senior manager.</u>	<u>permission.</u>	
<u>-1B</u>	<u>CASS 1A.3.1C</u>	<u>R</u>	<p><u>A firm which has only an interim permission, and which is in the situation described in this rule:</u></p> <p><u>(1) need not comply with CASS 1A.3.1C (1); and</u></p> <p><u>(2) need only allocate responsibility for the functions described in CASS 1A.3.1C (2) to any director or senior manager.</u></p>	<p><u>For as long as the firm has only an interim permission.</u></p>	

## Annex C

## Amendments to the Consumer Credit sourcebook (CONC)

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

## 12.1 Application and purpose

...

12.1.4 R ...

Module	Disapplication or modification
...	
Client Assets (CASS)	<p>CASS does not apply <u>with respect to credit-related regulated activity to a firm with:</u></p> <p>(1) <del>to a firm with</del> only an <i>interim permission</i>; or</p> <p>(2) <del>with respect to credit-related regulated activity or operating an electronic system in relation to lending for which a firm has an interim permission</del> that is treated as a variation of permission;</p> <p>if the <i>firm</i> acts in accordance with the provisions of paragraphs 3.42 and 3.43 of the Debt management (and credit repair services) guidance (OFT366rev) previously issued by the Office of Fair Trading, as they were in effect immediately before 1 April 2014.</p>
Supervision manual (SUP)	<p>SUP 3 (Auditors), SUP 10A (FCA Approved persons) and SUP 12 (Appointed representatives) (see Note 2) do not apply:</p> <p>(1) to a <i>firm</i> with only an <i>interim permission</i>; or</p> <p>(2) with respect to a <i>credit-related regulated activity</i> or <i>operating an electronic system in relation to lending</i> for which a <i>firm</i> has an <i>interim permission</i> that is treated as a variation of permission<sub>2</sub></p> <p><u>except that SUP 3.10 and SUP 3.11 apply to a firm in relation to its designated investment business that comprises operating an electronic system in relation to lending.</u></p> <p>...</p>

*SUP* 16 (Reporting requirements) does not apply to a *firm* with only an *interim permission* except:

(1) for *SUP* 16.14; and

(2) in relation to data item CCR008.

# Appendix 3

## Reporting changes

**SUPERVISION MANUAL (REMUNERATION REPORTING NO 3)  
INSTRUMENT 2015**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1)
    - (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); and
  - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- 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 Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Remuneration Reporting No 3) Instrument 2015.

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

## Annex

### Amendments to the Supervision manual (SUP)

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

#### 16.17 Remuneration reporting

...

##### Method for submitting remuneration reporting

16.17.2A R *Firms* must submit the reports set out in *SUP 16.17.3R* and *SUP 16.17.4R* online through the appropriate systems accessible from the *FCA's* website.

...

The form in SUP 16 Annex 33AR (Remuneration Benchmarking Information Report) is deleted and is replaced with the text shown on the following page. The deleted text is not shown and the new text is not shown underlined.

Currency: EUR

Currency Units: single

**GROUP REPORTING**

- 1 Is this report on behalf of a group?
- 2 If Yes, list firm reference numbers (FRNs) of all additional firms included in this report.

**NIL RETURN DECLARATION**

- 3 Do you wish to submit a Nil return?

**MAIN DETAILS**

- 4 EEA state to which the data relates

**Information on remuneration of identified staff**

	A	B	C	D	E	F	G	H	I
	Total	MB Supervisory Function	MB Management Function	Investment Banking	Retail Banking	Asset Management	Corporate Functions	Independent Control Functions	All other
5 Number of staff (headcount)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
6 Total number of staff (FTE)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
7 Total net profit in year	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
8 Total remuneration	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
9 Variable remuneration	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Business Areas**

10 Members of management body (headcount)	<input type="text"/>								
11 Number of identified staff (FTE)	<input type="text"/>								
12 Number of identified staff in senior management positions	<input type="text"/>								
13 Total fixed remuneration	<input type="text"/>								
14 Of which: Fixed in cash	<input type="text"/>								
15 Fixed in shares and share-linked instruments	<input type="text"/>								
16 Fixed in other types of instruments	<input type="text"/>								
17 Total variable remuneration	<input type="text"/>								
18 Of which: Variable in cash	<input type="text"/>								
19 Variable in shares and share-linked instruments	<input type="text"/>								
20 Variable in other types of instruments	<input type="text"/>								
21 Total amount of variable remuneration awarded in year which has been deferred	<input type="text"/>								
22 Of which: Deferred variable in cash for year	<input type="text"/>								
23 Deferred variable in shares and share-linked instruments for year	<input type="text"/>								
24 Deferred variable in other types of instruments in year	<input type="text"/>								

**Additional information regarding the amount of total variable remuneration**

25 Article 450h (iii) CRR - total amount of outstanding deferred variable remuneration awarded in previous periods and not in year	<input type="text"/>								
26 Total amount of explicit ex post performance adjustments applied in year for previously awarded remuneration	<input type="text"/>								
27 Number of beneficiaries of guaranteed variable remuneration (new sign-on payments)	<input type="text"/>								
28 Total amount of guaranteed variable remuneration (new sign-on payments)	<input type="text"/>								
29 Number of beneficiaries of severance payments	<input type="text"/>								
30 Total amount of severance payments paid in year	<input type="text"/>								
31 Highest severance payment to a single person in year	<input type="text"/>								
32 Number of beneficiaries of contributions to discretionary pension benefits in year	<input type="text"/>								
33 Total amount of contributions to discretionary pension benefits in year	<input type="text"/>								
34 Total amount of variable remuneration awarded for multi-year periods under programmes which are not revoked annually	<input type="text"/>								

**Supplementary information**

- 35 Please indicate the function of all staff who cannot be included in a business area above and are therefore categorised as 'all other'

**Information on identified staff remunerated EUR 1 million or more in year**

Total remuneration - payment band:

	A	B	C
36 EUR 1 million to below EUR 1.5 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
37 EUR 1.5 million to below EUR 2 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
38 EUR 2 million to below EUR 2.5 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
39 EUR 2.5 million to below EUR 3 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
40 EUR 3 million to below EUR 3.5 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
41 EUR 3.5 million to below EUR 4 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
42 EUR 4 million to below EUR 4.5 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
43 EUR 4.5 million to below EUR 5 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
44 EUR 5 million to below EUR 6 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
45 EUR 6 million to below EUR 7 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
46 EUR 7 million to below EUR 8 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
47 EUR 8 million to below EUR 9 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
48 EUR 9 million to below EUR 10 million	<input type="text"/>	<input type="text"/>	<input type="text"/>
49 Add further payment bands as appropriate	<input type="text"/>	<input type="text"/>	<input type="text"/>
1 EUR <input type="text"/> million to below EUR <input type="text"/> million	<input type="text"/>	<input type="text"/>	<input type="text"/>
2 EUR <input type="text"/> million to below EUR <input type="text"/> million	<input type="text"/>	<input type="text"/>	<input type="text"/>
3 EUR <input type="text"/> million to below EUR <input type="text"/> million	<input type="text"/>	<input type="text"/>	<input type="text"/>

## 16 Annex 33BG Guidance notes for data items in SUP 16 Annex 33AR

...

## (6) Specific guidance on data fields

Field		Guidance
<b>Information on remuneration of identified staff</b>		
<del>3B-I</del> <u>5B-C</u>	Number of staff	The number of staff should be reported as a headcount figure and be based on year end numbers.
<del>4C-I</del> <u>6C-I</u>	Total number of staff	The total number of staff should be expressed in full time equivalents (FTE) and be based on year end numbers.
<del>6B-I</del> <u>8B-I</u>	Total remuneration	The total <i>remuneration</i> figure (fixed and variable) awarded in the <i>remuneration</i> year expressed per function.
<del>7B-I</del> <u>9B-I</u>	Variable remuneration	The total variable <i>remuneration</i> awarded in the <i>remuneration</i> year expressed per function.
<b>Business Areas</b>		
<del>8B-C</del> <u>10B-I</u>	Members of management body	The number of management body members should be reported as a headcount figure and be based on year end numbers.
<del>9D-I</del> <u>11D-I</u>	Number of identified staff	The total number of staff should be expressed in full time equivalents (FTE) and be based on year end numbers.
<del>10D-I</del> <u>12D-I</u>	Number of identified staff in senior management positions	The number of identified staff in senior management positions should be reported as a headcount figure and be based on year end numbers.
<del>11B-18I</del> <u>13D-21I</u>	Fixed remuneration Variable remuneration	Deferred fixed and variable <i>remuneration</i> should not be included in these fields.
<del>19B-</del>	Deferred	Includes deferred variable <i>remuneration</i> .

<u>22I</u>	remuneration	
<u>22B-24I</u>		
<b>Additional information regarding the amount of total variable remuneration</b>		
<u>23B-I</u> <u>25B-I</u>	Total amount of outstanding deferred variable remuneration	This position includes the deferred variable <i>remuneration</i> which was awarded in previous periods and which has not yet vested. Amounts should be reported gross, without any reduction due to the application of the discount rate for deferred variable <i>remuneration</i> .
<u>24B-I</u> <u>26B-I</u>	Total amount of explicit ex post performance adjustments applied in year	Expressed as a monetary value. Explicit ex post performance adjustment in accordance with <i>SYSC 19A.3.51 R</i> and <i>SYSC 19A.3.51A R</i> .
<u>25B-I</u> <u>27B-I</u>	Number of beneficiaries of guaranteed variable remuneration (new sign-on payments)	Expressed as number of individuals.
<u>26B-I</u> <u>28B-I</u>	Total amount of guaranteed variable remuneration (new sign-on payments)	Expressed as a monetary value. Guaranteed variable <i>remuneration</i> in accordance with <i>SYSC 19A.3.40 R</i> .
<u>28B-I</u> <u>30B-I</u>	Severance payments	The total monetary value of severance payments in the financial year.
<u>30B-I</u> <u>32B-I</u>	Number of beneficiaries	The total number of beneficiaries expressed as individuals.
<u>31B-I</u> <u>33B-I</u>	Total amount of contributions to discretionary pension benefits in year	The total amount of contributions should be provided in euros.
<u>32B-I</u> <u>34B-I</u>	Variable remuneration for multi-year periods which are not revolved annually	See Guidance note (3)(c).

<b>Supplementary Information</b>		
<del>33A</del> <u>35A</u>	Staff categorised as 'all other'	For staff included in column H 'all other', <i>institutions</i> must provide explanatory text including the business area in which those staff sit.
<b>Information on identified staff remunerated EUR 1 million or more in year</b>		
<del>34A</del> <del>36A</del> <u>XA</u>	Total remuneration payment band	The number of identified staff within each pay bracket should be expressed in headcount figures. Further brackets should be added in ranges of EUR 1 million where needed.

...

The form in SUP 16 Annex 34AR (High Earners Report) is deleted and is replaced with the text shown on the following page. The deleted text is not shown and the new text is not underlined.

REP005 High Earners Report

Currency: EUR

Currency Units: single

A

**GROUP REPORTING**

- 1 Is this report on behalf of a group?
- 2 If Yes, list firm reference numbers (FRNs) of all additional firms included in this report.

**NIL RETURN DECLARATION**

- 3 Do you wish to submit a nil return

**MAIN DETAILS**

- 4 EEA state to which the data relates
- 5 Payment bracket

**Business Areas**

	A	B	C	D	E	F	G	H
	MB Supervisory Function	MB Management Function	Investment Banking	Retail Banking	Asset Management	Corporate Functions	Independent Control Functions	All other
6 Number of individuals in senior management								
7 Number of individuals in control functions								
8 Number of other staff								
9 Total number of High Earners								
<i>Of which:</i>								
10 Identified Staff								
11 Total fixed remuneration								
<i>Of which:</i>								
12 Fixed in cash								
13 Fixed in shares and share-linked instruments								
14 Fixed in other types of instruments								
15 Total variable remuneration								
<i>Of which:</i>								
16 Variable in cash								
17 Variable in shares and share-linked instruments								
18 Variable in other types of instruments								
19 Total amount of variable remuneration awarded in year which has been deferred								
<i>Of which:</i>								
20 Deferred variable in cash for year								
21 Deferred variable in shares and share-linked instruments for year								
22 Deferred variable in other types of instruments in year								

**Additional information regarding the amount of total variable remuneration**

23 Number of beneficiaries of severance payments								
24 Total amount of severance payments paid in year								
25 Total amount of contributions to discretionary pension benefits in year								
26 Total amount of variable remuneration awarded for multi-year periods under programmes which are not revoked annually								

**Supplementary information**

A

- 27 Please indicate the function of all staff who cannot be included in a business area above and are therefore categorised as 'all other'

## 16 Annex 34B Guidance notes for data items in SUP 16 Annex 34AR

...

**(8) Specific guidance on data fields**

Field		Guidance
<del>3B</del> <u>5A</u>	Payment bracket	Figures should be provided within value brackets of EUR 1 million (e.g. EUR 1 million to less than EUR 2 million, EUR 2 million to less than EUR 3 million etc.).
<b>Business Areas</b>		
<del>4A-6H</del> <del>6B-8H</del>	Individuals	The numbers of staff in the categories should be expressed in <u>full-time equivalents (FTEs) the total number of persons</u> , and be based on year-end numbers.
<del>9A-16H</del> <del>11A-18H</del>	Fixed remuneration Variable remuneration	Deferred fixed and variable <i>remuneration</i> should not be included in these fields.
<del>17A-20H</del> <del>19A-22H</del>	Deferred remuneration	Includes deferred variable <i>remuneration</i> .
<b>Additional information regarding the amount of total variable remuneration</b>		
<del>22A-H</del> <del>24A-H</del>	Severance payments	The total monetary value of severance payments in the financial year.
<del>24A-H</del> <del>26A-H</del>	Variable remuneration for multi-year periods which are not revolved annually	<i>Remuneration</i> awarded based on multi-year accrual periods that do not revolve on an annual basis, i.e. where <i>institutions</i> do not start a new multi-year period every year, should be fully allocated to the performance year in which the <i>remuneration</i> was awarded, without consideration of the point in time when the variable <i>remuneration</i> is effectively paid. These amounts should be reported

		separately to allow a further analysis of fluctuations of the variable <i>remuneration</i> and should not be deducted from the amount of variable <i>remuneration</i> reported.
Supplementary Information		
<del>25A</del> <u>27A</u>	Staff categorised as 'all other'	For staff included in column H 'all other', <i>institutions</i> must provide explanatory text including the business area in which those staff sit.

...

# Appendix 4

## AIFMD

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (NO 3)  
INSTRUMENT 2015**

**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); and
    - (d) paragraph 23(1) of Part 3 (Fees) of Schedule 1ZA (The Financial Conduct Authority);
  - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook; and
  - (3) the power of direction in section 277A (Regular provision of information relating to compliance with requirements for recognition) of the Act.
- 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)
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex A
Supervision manual (SUP)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C
Investment Funds sourcebook (FUND)	Annex D

**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 Alternative Investment Fund Managers Directive (No 3) Instrument 2015.

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

## Annex A

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

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

11.3      **DETAIL OF MAIN REQUIREMENTS**

...

11.3.11A    G    (1)    When calculating the value of the portfolios of AIFs managed for the purposes of covering professional liability risks, a firm should include:

(a)    all AIFs for which it is the AIFM; and

(b)    any assets of an AIF managed by another AIFM if it performs portfolio management or risk management for those assets under a delegated mandate from the AIFM of that AIF.

(2)    This treatment is different to the calculation of funds under management under IPRU(INV) 11.3.2R. Unlike the calculation of funds under management, the calculation of the value of the portfolios of AIFs includes assets of an AIF that a firm is managing as a delegate and does not include assets of a fund that is not an AIF.

[Note: recital 23 of AIFMD]

## Annex B

## Amendments to the Supervision manual (SUP)

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

## 16.18 AIFMD reporting

...

## 16.18.2G

Type of AIFM	Rules	Directions	Guidance	AIFMD level 2 regulation
<i>full-scope UK AIFM</i>	<i>FUND 3.4 (Reporting obligation to the FCA) and SUP 16.18.5R</i>		<u><i>SUP 16.18.9AG, SUP 16.18.12G and SUP 16.18.14G</i></u>	Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4 EU)
<i>small authorised UK AIFM</i>	<i>SUP 16.18.6R</i>		<u><i>SUP 16.18.9AG, SUP 16.18.12G and SUP 16.18.14G</i></u>	Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4 EU)
<i>small registered UK AIFM</i>	<u><i>SUP 16.18.13R</i></u>	<i>SUP 16.18.7D</i>	<u><i>SUP 16.18.9AG, SUP 16.18.12G and SUP 16.18.14G</i></u>	Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)
<i>above-threshold non-EEA AIFM marketing in the UK</i>	<u><i>SUP 16.18.13R</i></u>		<u><i>SUP 16.18.8G and SUP 16.18.14G</i></u>	Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)
<i>small non-EEA AIFM marketing in the UK</i>	<u><i>SUP 16.18.13R</i></u>	<i>SUP 16.18.9D</i>	<u><i>SUP 16.18.14G</i></u>	Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)

...

- 16.18.9A G (1) This guidance is relevant to:
- (a) a full scope UK AIFM;
  - (b) a small authorised UK AIFM; and
  - (c) a small registered UK AIFM.
- (2) Article 110 of the AIFMD level 2 regulation (Reporting to competent authorities) (as replicated in SUP 16.18.4EU) does not specify the reporting periods, or the end dates for those reporting periods, for an AIFM that manages but does not market a non-EEA AIF.
- (3) An AIFM of a non-EEA AIF that is managed but not marketed in the UK or another EEA State should use the same reporting periods and end dates that would apply if the non-EEA AIF was marketed.

[Note: Annex I of ESMA's guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD ([http://www.esma.europa.eu/system/files/2013-1339\\_final\\_report\\_on\\_esma\\_guidelines\\_on\\_aifmd\\_reporting\\_for\\_publication\\_revised.pdf](http://www.esma.europa.eu/system/files/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf))]

...

Failure to submit reports

- 16.18.12    G    (1)    If a *full-scope UK AIFM* or a *small authorised UK AIFM* does not submit a complete report by the date when it is due under this section, it will have to pay an administrative fee of £250 (see SUP 16.3.14R and SUP 16.3.14AG to SUP 16.3.16G).
- (2)    This does not apply to *AIFMs* that are not *firms*. These types of *AIFM* are covered by SUP 16.18.13R where they are required to send reports to the *FCA*.
- 16.18.13    R    Each of the following types of *AIFM* must pay an administrative fee of £250 if it does not submit a complete report covered by this section by the date when it is due:
- (1)    a *small registered UK AIFM*;
- (2)    an *above-threshold non-EEA AIFM marketing in the UK*; and
- (3)    a *small non-EEA AIFM marketing in the UK*.
- 16.18.14    G    An *AIFM* that fails to submit its reports on time may also be subject to other disciplinary sanctions.

## Annex C

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

In this Annex, underlining indicates new text.

## 9.3 Section 272 recognised schemes

...

Annual certificate of compliance

- 9.3.4 D (1) An operator of a scheme recognised under section 272 of the Act must certify to the FCA in writing that it:
- (a) has taken reasonable steps to inform itself of any changes to the regulatory requirements for the relevant type of comparable authorised scheme taking effect during the most recent financial year of the scheme; and
  - (b) considers that these changes, together with any changes to the scheme that have occurred during this period, do not adversely affect the scheme's ability to satisfy section 272(1)(d) of the Act.
- (2) The certificate must be provided to the FCA no later than:
- (a) one month following the publication of the annual report and accounts of the scheme; or
  - (b) if the publication of the annual report and accounts of the scheme is delayed, one month after the last day on which the publication of the annual report and accounts of the scheme was due.
- (3) The certificate must be signed by an authorised signatory of the operator.
- (4) The certificate may apply to multiple sub-funds in an umbrella that are recognised under section 272 of the Act, if the names of each relevant sub-fund and of the umbrella are clearly stated.
- (5) The certificate must be delivered to the FCA by:
- (a) sending a copy by electronic mail addressed to recogniseddcis@fca.org.uk, including the subject line: 'S.277A Certificate – [insert full name(s) of scheme]'; or
  - (b) by post to: Financial Conduct Authority, attn. S.277A Certificates, Fund Supervision, 25 The North Colonnade, Canary Wharf, London E14 5HS, United Kingdom.

- 9.3.5     G     An operator of a scheme recognised under section 272 of the Act need not provide a certificate under COLL 9.3.4D if it has already sent the required information to the FCA within the last 12 months as the result of:
- (1)     a requirement relating to an application for recognition of the scheme under section 274(2)(c) of the Act; or
  - (2)     a direction relating to an alteration of the scheme under section 277(5)(a) of the Act; or
  - (3)     a change to the operator, trustee or depositary under section 277(5)(b) of the Act; or
  - (4)     a previous certificate being provided under section 277A of the Act.
- 9.3.6     G     The operator of a scheme recognised under section 272 of the Act should seek advice from professionals holding appropriate qualifications, such as a qualified solicitor, chartered accountant or compliance consultant, before submitting the certificate to the FCA under COLL 9.3.4D.

## Annex D

## Amendments to the Investment Funds sourcebook (FUND)

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

## 1.4 AIFM business restrictions

...

Notification when carrying on certain activities

- 1.4.8     R     (1)     A UK AIFM must notify the FCA in writing if:
- (a)     it carries on any activity for the purposes of, or in connection with, the management of an AIF; and
  - (b)     that activity would be a regulated activity but for the exclusion in article 72AA of the Regulated Activities Order.
- (2)     The notification requirement in (1) does not apply to the following activities:
- (a)     dealing in investments as principal;
  - (b)     dealing in investments as agent;
  - (c)     arranging (bringing about) deals in investments;
  - (d)     managing investments;
  - (e)     safeguarding and administering investments;
  - (f)     advising on investments; and
  - (g)     agreeing to carry on specified kinds of activity in so far as it relates to an agreement to carry on an activity specified in (a) to (f).
- 1.4.9     G     (1)     A UK AIFM does not need to notify the FCA under FUND 1.4.8R if it carries on insurance mediation or reinsurance mediation in connection with, or for the purposes of, the management of an AIF.
- (2)     This is because the exclusion in article 72AA of the Regulated Activities Order does not apply to these activities (see article 4(4A) of the Regulated Activities Order).

(3) Therefore, an AIFM carrying on these activities would need the relevant Part 4A permission to do so (see SUP App 3.9.7G).

1.4.10 R

(1) A UK AIFM must notify the FCA under FUND 1.4.8R:

(a) at least two months before it intends to start carrying on the activity;

(b) using the form in FUND 1 Annex 1R.

(2) A firm must send the form by attaching it to an electronic mail addressed to [to follow], including the subject line: '[to follow]'.

**1 Annex 1R**

**Notification Form under FUND 1.4.8R**

R The form approved by the FCA for notifications under FUND 1.4.8R may be found at the FCA's website:

...



## NOTIFICATION TO THE FCA UNDER FUND 1.4.8R

### Full-scope UK AIFMs and small authorised UK AIFMs

Firm Name:

Firm Reference Number (FRN):

#### **Important information you should read before completing this form**

**This form is only for completion by full-scope UK AIFMs and small authorised UK AIFMs that are authorised under Part 4A of FSMA to carry on the regulated activity of 'managing an AIF' and that intend to carry on certain other activities in connection with, or for the purposes of, managing an AIF.**

**Under FUND 1.4.8R firms are required to notify the FCA if any of those activities would fall to be regulated activities, but for the exclusion in article 72AA of the Regulated Activities Order (RAO). However,** full-scope UK AIFMs and small authorised UK AIFMs that intend to carry on one or more of the activities listed in FUND 1.4.8R (2) in connection with, or for the purposes of, managing an AIF are not required to submit this notification to the FCA.

Full-scope UK AIFMs and small authorised UK AIFMs that intend to carry on regulated activities other than in connection with, or for the purposes of, managing an AIF should not submit this form but instead complete a Variation of Permissions application to obtain the relevant permissions. More details can be found on our webpages: <http://www.fca.org.uk/firms/being-regulated/variation-of-permission>

Words and phrases used in this form have the same meaning as in the FCA's Handbook unless otherwise stated.

**It is important that you provide complete and accurate information and that you disclose all relevant information. If you do not, you may be committing a criminal offence.**

An electronic copy should be submitted by e-mail to [to follow]

#### **Contents of this form**

Section 1	Contact details for this notification	Page 2
Section 2	Proposed activities and rationale	Page 3
Section 3	Declaration and signature	Page 4

**1 CONTACT DETAILS FOR THIS NOTIFICATION**  
We need this information in case we need to contact you when we review your notification.

**Contact for this notification**

**1.1 Details of the person we should contact about this notification.**

Title	
First name(s)	
Surname	
Job title	
Business address	
Postcode	
Phone number	
Email address	

**1****PROPOSED ACTIVITIES AND RATIONALE**

Tell us which activities you intend to carry on in connection with or for the purposes of managing an AIF.

- 1.1 Please list below each activity you intend to carry on in connection with, or for the purposes of, your management of an AIF and that would fall to be a regulated activity, but for the exclusion in article 72AA of the RAO. Please do not list here any of the activities listed in FUND 1.4.8R (2). When listing each relevant activity below, please indicate under which article of the RAO the activity would fall, if it were a regulated activity but for the exclusion in article 72AA of the RAO.**

- 1.2 Please explain how each proposed activity relates to the management of an AIF. Your response should articulate the link between the performance of the activity by the firm and its management of AIFs. Please also specify which AIFs the proposed activities relate to.**

# 3

## DECLARATION AND SIGNATURE

### Warning

Knowingly or recklessly giving us information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). Our rules (SUP 15.6.1R) require an authorised person 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.

### 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.

### Declaration

By submitting this form:

- ✓ I confirm that the information in this form is accurate and complete to the best of my/our knowledge and belief and that I/we 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 will notify the FCA immediately if there is a significant change to the information given in the notification.

<b>Date</b>	
<b>Name of signatory</b>	
<b>Position of signatory</b>	
<b>Individual Registration Number (if applicable)</b>	
<b>Signature</b>	

### 3.3 Annual report of an AIF

...

3.3.2 R An *AIFM* must, for each *UK AIF* and *EEA AIF* it manages and for each *AIF* it ~~markets~~ in the ~~UK~~ EEA:

...

(3) make the annual report available:

(a) to the *FCA* on request; and,

(b) in the case of an *EEA AIF*, to the *competent authority* of that *AIF*.

...

...

### 3.5 Investment in securitisation positions

...

3.5.2 G To ensure cross-sectoral consistency and remove misalignment between the interests of firms that repackage loans into tradable securities and *originators* within the meaning of ~~article 4(41) of the BCD~~ point (13) of article 4(1) of EU CRR and *AIFMs* ...

...

### 3.11 Depositories

...

3.11.27A G (1) 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. This is because “third party” in *FUND* 3.11.26R 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) In particular, the arrangements should not impede the FCA's ability to effectively supervise the depositary. For example, the FCA's ability to supervise the depositary might be impeded if the depositary performed tasks other than administrative and supporting tasks from its branch or registered office in another EEA State.

After FUND 3 Annex 2R insert the following new annex. The text is not underlined.

### 3 Annex 3G Guidance on the valuation function and calculation of net asset value

<b>Guidance on the valuation function and calculation of net asset value</b>
<p><b>Question 1.1: Who do the questions and answers in this Annex apply to?</b></p> <p>This Annex applies to a <i>full-scope UK AIFM</i> of:</p> <ol style="list-style-type: none"> <li>(1) a <i>UK AIF</i>;</li> <li>(2) an <i>EEA AIF</i>; and</li> <li>(3) a <i>non-EEA AIF</i>.</li> </ol>
<p><b>Question 1.2: What constitutes the valuation function referred to FUND 3.9.7R?</b></p> <p>The valuation function involves valuing the portfolio assets of an <i>AIF</i>, including the exercise of subjective judgement (where necessary) on the valuation of individual assets.</p> <p>The calculation and disclosure of the net asset value does not form part of the valuation function (see questions 1.12 and 1.13).</p>
<p><b>Question 1.3: Who is undertaking the valuation function where more than one person is involved in the valuation process?</b></p> <p>The process of valuing the assets of an <i>AIF</i> could involve more than one <i>person</i> (for example, as outlined in the response to Question 1.9). However, one <i>person</i> must perform the valuation function for each individual asset in an <i>AIF</i>'s portfolio. Where the valuation process involves more than one <i>person</i> it is the <i>person</i> making the final determination of an individual asset's value who undertakes the valuation function for that asset.</p> <p>The board of directors of some corporate <i>AIFs</i> and the trustee(s) of some <i>AIFs</i> have a contractual right to override a valuation figure determined for an asset by the <i>AIFM</i> or <i>external valuer</i>. However, this does not mean that the board of directors or trustee(s) is undertaking the valuation function, provided it only exercises this right on an exceptional basis.</p>
<p><b>Question 1.4: Does the valuation function involve valuing the assets and liabilities of an AIF?</b></p> <p>The valuation function involves valuing all investments held in the <i>AIF</i>'s portfolio. This is regardless of whether the investments constitute assets or liabilities.</p> <p>Therefore, positions in derivatives or short positions, as well as other investments which have a negative value or are held at a loss, are part of the portfolio of an <i>AIF</i> and should be valued as part of the valuation function.</p> <p>The proper valuation of all the liabilities of an <i>AIF</i> is needed to calculate the net asset value of the <i>AIF</i>. This includes valuing liabilities which are not investments so are not required to be valued as part of the valuation function, such as management fees and accruals. The <i>AIFM</i> is</p>

responsible for calculating the net asset value under *FUND* 3.9.2R (see question 1.12).

**Question 1.5: Can there be more than one external valuer for a single AIF?**

Yes. Due to the diversity of assets in which an *AIF* may invest, it could be difficult to find one *external valuer* who can properly value all portfolio assets. Therefore, there may be several *external valuers* for any one *AIF* to ensure the proper valuation of all assets. However, there must not be multiple *external valuers* for the same asset.

**Question 1.6: Can an AIFM performing the valuation function for some of the assets of an AIF appoint an external valuer or external valuers for the remaining assets?**

Yes. Where the *AIFM* performs the valuation function itself for some of the assets of the *AIF*, it may also appoint an *external valuer* or *external valuers* for the remaining assets of the *AIF*.

**Question 1.7: When will an AIFM's valuation function be functionally independent from its portfolio management?**

The valuation function of an *AIFM* will be functionally independent from its portfolio management when the individuals performing the valuation function:

- (1) are not engaged in the performance of activities within the portfolio management function;
- (2) are not directly supervised by those responsible for the performance of the portfolio management function of the *AIFM*; and
- (3) are compensated in accordance with the achievement of the objectives linked to that function, which should not be substantially dependent of the performance of the portfolio management function.

**Question 1.8: Who is responsible for the valuation function?**

The *AIFM* is responsible for the valuation of each of the *AIF*'s assets (*FUND* 3.9.2R) irrespective of the appointment of any *external valuers*. Regulation 24(4) of the *AIFMD UK Regulation* states 'Any liability of a full-scope UK *AIFM* to an *AIF* managed by it, or to an investor of such an *AIF*, arising out of the *AIFM*'s responsibility for the proper valuation of *AIF* assets, the calculation of the net asset value of the *AIF* and the publication of that net asset value, is not affected by the appointment by the *AIFM* of an external valuer in respect of that *AIF*.'

**Question 1.9: Can the person undertaking the valuation function involve others in coming to its valuation?**

Yes. The person undertaking the valuation function may obtain assistance from other contributors in coming to its final valuation, but it must make the final determination of a portfolio asset's value itself. This means it must have discretion to depart from any prices supplied by a third party.

However, it may make use of:

- (1) Price providers: these are third-party providers of standardised information services on quoted prices for particular markets. A price provider does not perform the valuation function if its role is limited to providing quoted market prices to the *person*

undertaking the valuation function. This is because it is not valuing the portfolio assets of a particular *AIF*, but it is providing information on market prices generally. Further, a price provider is not undertaking the valuation function because in its limited role, it does not make the final determination of value.

- (2) Valuation advisers: these are expert providers of bespoke valuation services. The *person* undertaking the valuation function can obtain advice from valuation advisers to make sure it has sufficient information on which to base its final determination of the *AIF* asset's value. The *person* undertaking the valuation function must not be bound to accept the valuation adviser's recommended values for particular assets, otherwise the valuation adviser would be making the final determination of asset values. See question 1.10 for advice provided by portfolio managers of the *AIFM*.

**Question 1.10: Can the AIFM's portfolio managers (or the portfolio management delegates where appointed) provide input to the person undertaking the valuation function?**

The *AIFM* must ensure that the valuation of the *AIF*'s assets is performed impartially. This means that individuals undertaking portfolio management for the *AIF* (either at the *AIFM* or a delegate of the *AIFM*) may not make the final determination of an *AIF* asset's value. However, for some portfolio assets, individuals undertaking portfolio management may be a useful source of advice for the *person* undertaking the valuation function.

The *person* undertaking the valuation function (either *AIFM* or *external valuer*) may accept the advice of individuals undertaking portfolio management for an *AIF* on the value of individual assets if it:

- (1) is not bound to accept the portfolio manager's recommended values for particular assets;
- (2) makes reasonable efforts to independently verify the price recommended by the portfolio manager; and
- (3) is competent to form an independent view on whether the portfolio manager's recommendation is reliable.

The *AIFM* also needs to ensure that the valuation policies and procedures specify:

- (1) when the *person* performing the valuation function may seek the advice of portfolio managers;
- (2) the controls in place to ensure there is an appropriate degree of objectivity in finalising values; and
- (3) the review process for the individual values of the assets (see article 71(2)(f) of the *AIFMD level 2 regulation*).

If a valuation committee which includes portfolio managers makes the final determination of an asset's value, the portfolio managers must:

- (1) participate in an advisory capacity only;
- (2) not exert undue influence on final valuations; and
- (3) not have a vote on the final asset values.

In such cases, the voting members of the committee should collectively have sufficient

seniority and competence to form an independent view on whether the portfolio managers' recommendations are reliable.

**Question 1.11: Who may appoint an external valuer?**

Either the *AIFM* or the *AIF* itself may appoint an *external valuer* to one or more of the *AIF*'s assets. If the *AIF* appoints the *external valuer*, the *AIFM* remains liable to the *AIF* and its investors for the valuation of each asset of the *AIF*.

**Question 1.12: Who is responsible for calculating the AIF's net asset value?**

The *AIFM* is responsible for calculating the *AIF*'s net asset value (*FUND* 3.9.2R). Other *persons*, such as the *AIF*'s administrator, may calculate the *AIF*'s net asset value and the resulting prices per *unit* or *share*, but the final product of those calculations is the responsibility of the *AIFM*.

**Question 1.13: Who is responsible for disclosing to investors the net asset value per unit or share of the AIF?**

The *AIFM* is responsible for ensuring that the net asset value per *unit* or *share* of the *AIF* it manages is disclosed to investors (see *FUND* 3.9.2R and *FUND* 3.9.4R(2)). The *AIFM* does not need to make this disclosure itself, but it must ensure that this disclosure takes place. For example, the *AIF*'s administrator could make the disclosure.

...

**10.2 AIFM management passport and passporting of article 6.4(b) AIFMD services**

...

Application

**10.2.1A G This section also applies to:**

- (1) an external AIFM that is a full-scope UK AIFM and that intends to carry on an activity in FUND 1.4.3R(3) to (6) in another EEA State:
  - (a) by establishing a branch in that EEA State; or
  - (b) under the freedom to provide cross-border services; and
- (2) an external AIFM that is a full-scope EEA AIFM and that intends to carry on an activity in article 6.4 of AIFMD in the UK:
  - (a) by establishing a branch in the UK; or
  - (b) under the freedom to provide cross-border services.

## Management passport for full-scope UK AIFMs

...

- 10.2.2A    G    (1)    The FCA considers that an external AIFM that is a full-scope UK AIFM carrying on any of the activities in FUND 1.4.3R(4) to (6) in the UK may, under the management passport, also carry on any of these activities in another EEA State without also carrying on one of the activities in FUND 1.4.3R(1), (2) or (3) in that EEA State.
- (2)    The FCA will accept a notice of intention to that effect (if it complies with SUP 13.5) and will provide the relevant consent notice to the Host State regulator. However, a Host State regulator might not agree with the FCA's view in (1). The onus is on firms to comply with, where relevant, the laws of other EEA states. Therefore, in cases of doubt, a firm should obtain its own legal advice prior to submitting a notice of intention to the FCA.

## Management passport for full-scope EEA AIFMs

...

- 10.2.3A    G    (1)    The FCA considers that an external AIFM that is a full-scope EEA AIFM may, under the management passport, carry on any of the activities in article 6.4(b)(i) to (iii) of AIFMD in the UK without also carrying on one of the activities in Annex 1 of AIFMD, article 6.2 or article 6.4(a) of AIFMD in the UK.
- (2)    The FCA will accept a notice to that effect from the EEA AIFM's Home State Regulator if it complies with AIFMD.

...

**10.5      National private placement**

...

- 10.5.13    G    (1)    A "Non-Cooperative Country and Territory" in regulation 57 (Marketing under Article 36 of the directive) and regulation 59 (Marketing under Article 42 of the directive) of the AIFMD UK regulation should be interpreted as a jurisdiction that appears in the "FATF's Public Statement" issued by the Financial Action Task Force (FATF).
- (2)    The statement identifies:
- (a)    jurisdictions that have strategic deficiencies in anti-money laundering (AML) and combating the financing of terrorism (CFT) and to which counter-measures apply; and

- (b) jurisdictions with strategic AML and CFT deficiencies that have not made sufficient progress in addressing those deficiencies, or that have not committed to an action plan developed with the FATF to address those deficiencies.

Guidance on determining the place of establishment of an AIF

- 10.5.14 G (1) One of the factors that determines how an AIF may be marketed in the UK is whether the AIF is a UK AIF, an EEA AIF or a non-EEA AIF. This is determined by where the AIF is “established”.
- (2) The Glossary definition of “established” for an AIF means:
- (a) 'being authorised or registered in'; or
- (b) if the AIF is not authorised or registered, 'having its registered office in' a given country.
- (3) (a) In the FCA’s view an AIF is ‘authorised or registered’ if it is authorised or registered as an AIF with a competent authority or a supervisory authority.
- (b) Therefore an unauthorised UK AIF is not “authorised or registered”.
- (4) (a) However, an AIF may not be authorised or registered as an AIF or have a registered office.
- (b) For example, an unauthorised UK AIF in the form of an English limited partnership does not have a “registered office”.
- (c) In these cases, the principal place of business should be used to determine the place where the AIF is established.
- (d) For example, an English limited partnership is required to register its principal place of business with Companies House and the FCA regards this as the equivalent of a registered office for this type of AIF. Therefore, an English limited partnership with a principal place of business in Guernsey would be a non-EEA AIF.
- (e) However, a Guernsey limited partnership with a registered office in Guernsey but a principal place of business in the UK would in the FCA’s view also be a non-EEA AIF because (unlike an English limited partnership) it has a registered office.

...

## TP 1 Transitional Provisions

(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
<u>-1</u>	<u>FUND 1.4.11R</u>	<u>R</u>	<u>A UK AIFM that on [date FUND 1.4.8R comes into force] carries on an activity that it must notify to the FCA under FUND 1.4.8R, or that intends to begin carrying on such an activity within two months of [same date], may make the notification to the FCA within one month of [date FUND 1.4.8R comes into force].</u>	<u>[to follow]</u>	<u>[to follow]</u>
...					



**Financial Conduct Authority**



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