

Consultation Paper **CP26/16****

Registration of authorised fund assets

May 2026

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Chapter 1

Why we are consulting

- 1.1** We support the growth of private markets – such as real estate, infrastructure, private credit/debt and private equity – because they are vital to UK economic growth and the financial sector. UK authorised funds can invest in these assets, in particular authorised funds that are also Alternative Investment Funds (AIFs) under the UK Alternative Investment Funds Managers Directive (AIFMD), ‘authorised AIFs’. These funds provide retail and professional investors, including UK pension schemes, with exposure to these asset types via a UK regulated product.
- 1.2** Depositories are required to safekeep fund property to protect fund investors. Among other safekeeping requirements, rules require the depository of an authorised fund to ensure that fund assets are registered in its name or the name of certain other persons. For the depositories of authorised AIFs managed by full scope AIF Managers (AIFMs), our rules can be interpreted as having the effect that certain private markets asset types in which funds invest can only be registered in the depository’s name, or that of a nominee it controls.
- 1.3** This is because we consider that the relevant depository regulatory safekeeping functions for some of these assets cannot be delegated to a third party (the depository’s own controlled nominee is not a third party). As such, a third party cannot have these assets registered in their name. Such asset types include real estate and some partnership vehicles used to invest in private markets assets.
- 1.4** This results in the depository or its controlled nominee being required to hold legal title for some real estate, including UK commercial real estate. For partnerships, the depository or its controlled nominee must be the partner. This exposes the depositories to ‘ancillary’ legal, reputational and financial risks, especially in areas like UK commercial real estate, where new laws impose potential criminal and financial liabilities on legal owners and their staff. However, the depositories do not manage the assets or make the decision to invest in them.
- 1.5** As a result, depositories of authorised AIFs managed by full scope AIFMs are increasingly unwilling to take on or retain these ancillary risks, threatening the ability of these funds to invest in real estate and other immovables and partnerships. If these authorised AIFs cannot invest in these assets investors would face reduced choice and it would also have a negative impact on the fund managers and the UK fund domicile. Some investors prefer or even need to use authorised AIFs to invest in these assets. Many authorised AIFs that invest in these assets invest in UK based investments, such as UK commercial real estate, and there are aspirations for them to increase their investments in UK infrastructure. A withdrawal of depository services for these funds could reduce investment in UK based long-term private markets assets needed for UK growth.

What we're proposing

1.6 To preserve and promote authorised AIFs' practical ability to invest in private markets assets while continuing to protect their investors, we propose to change our AIFMD derived rules with the effect that depositaries of authorised AIFs managed by full-scope AIFMs are permitted to delegate to a third party their:

- registration function under our 'COLL' authorised fund rules ('COLL registration function'), for assets that are not safe custody investments or AIF custodial assets
- COLL registration function, and custody function under CASS 6, for assets that are safe custody investments but not AIF custodial assets.

We consider that the relevant AIFMD derived provisions do not currently permit such delegations.

1.7 Where the assets are not defined as safe custody investments or AIF custodial assets (such assets include immovables such as real estate and partnerships that are not Collective Investment Schemes (CIS)), our proposed rule changes would allow these depositaries to delegate their COLL registration function to the AFM's affiliates only – and we propose new protections for the fund where this is done. As a result, an AFM's affiliate could have these assets registered in its name. In relation to, for example, UK commercial real estate, the AFM's affiliate could then hold legal title to the fund's assets of this sort.

1.8 Where the assets are defined as safe custody investments but not AIF custodial assets, our rules changes would allow these depositaries to delegate their custody function under CASS 6 to a regulated third party ('depositing assets' with a third party). As a result, these depositaries would no longer have to have these assets registered in their or their controlled nominees' names. These depositaries can currently delegate custody of safe custody investments that are AIF custodial assets to a regulated person under AIFMD provisions, and we are not changing this.

1.9 We also propose rule changes to align the COLL registration function rules for depositaries of authorised AIFs managed by 'small' AIFMs with those for the depositaries of 'full scope' authorised AIFs.

1.10 We do not propose changes to the COLL registration function requirements for the depositaries of UK Undertakings for Collective Investment in Transferable Securities (UCITS) funds as they do not face the same issues. But we propose a rule to confirm that a UCITS Manager cannot act as delegate for the depositary for any task.

1.11 In addition to funds provisions, depositaries are also subject to some of the custody rules in CASS 6. This consultation paper sets out how relevant CASS 6 custody rules work and where applicable, how they interact with the COLL registration function rules and other provisions relevant for funds (including those derived from AIFMD/UCITS). We are proposing small changes to the custody rules to clarify how they interact with funds provisions. These would be applicable to depositaries of UCITS and authorised AIFs, and some are also relevant for the depositaries of unauthorised AIFs. This paper also sets out our view on the AIF/UCITS custodial assets definitions. This includes our view

on their application to partnerships, relevant for all AIFs and UCITS funds investing in partnership vehicles.

- 1.12** We also propose to replace the Modification by Consent for COLL 5.6.22R (in respect of COLL 5.5.9R, on guarantees and indemnities) with a permanent rule change.

Outcome we are seeking

- 1.13** We aim to ensure UK authorised AIFs can continue to invest in private markets assets, in particular immovables and partnership assets, while maintaining fund investor protection, to avoid the harms set out above. Success will be monitored through industry feedback and supervision.
- 1.14** We are also mindful of Parliament’s intentions in writing laws that apply potential criminal liability to the owners of some UK buildings, and also ‘one level down only’, to the Directors, partners, managers etc of bodies corporate that own such assets where applicable. We consider that our proposals do not undermine those intentions.

Who should read this

- 1.15** This consultation will be of direct interest to the Managers and depositaries of all AIFs and UCITS funds. It will be of particular interest to:
- depositaries and AFMs of authorised AIFs that invest, or may wish to invest, in directly held real estate and other immovables and in partnership vehicles
 - the depositaries and AFMs of unauthorised AIFs that may invest in partnerships
 - the CASS auditors of AIFs and UCITS depositaries
- 1.16** The following stakeholders may also be interested in this consultation:
- Those with an interest in UK building safety requirements
 - Consumer interest advocacy groups
 - Financial services law firms more generally

Next steps

- 1.17** We welcome feedback on our proposals by 9th July 2026 using the details on the contents page. We will consider all feedback.

Chapter 2

The wider context

Background: regulation of authorised funds and their Managers

- 2.1** Provisions within the Financial Services and Markets Act 2000 (FSMA) and its secondary legislation (principally the OEIC Regulations 2001) set out certain high-level requirements for authorised funds, authorised fund managers (AFMs), and the fund depositaries. Under FSMA, depositaries must 'safekeep' all fund property and be independent from AFMs to protect investors' interests and reduce the risk of asset loss or misappropriation. Any proposed rule changes need to take account of the overarching FSMA requirements.
- 2.2** FSMA requirements for authorised funds (and their AFMs and depositaries) are supplemented by our rules and other legislation, including assimilated law derived from the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive. Our authorised fund rules are found in the 'COLL' Sourcebook. Our rules implementing the main requirements of the AIFMD are in the 'FUND' Sourcebook. The requirements that apply to a given authorised fund differ depending on:
- a.** the legal form of the fund – whether the fund is an authorised unit trust (AUT), authorised contractual scheme (ACS), or authorised open-ended investment company (OEIC);
 - b.** whether the authorised fund is a UCITS scheme or an alternative investment fund (AIF); and
 - c.** for authorised funds that are AIFs;
 - whether the fund has been authorised as a non-UCITS retail scheme (NURS), qualified investor scheme (QIS) or long-term asset fund (LTAF), and also
 - whether the AIF Manager (AIFM) is a 'full-scope' UK AIFM (managing funds above certain asset thresholds) attracting the full suite of AIFMD requirements, or a 'small' UK AIFM subject only to a more limited set of FCA rules. For authorised AIFs, the AIFM is also an AFM.
- 2.3** AFMs/AIFMs and fund depositaries are also subject to other FCA rules. Among other duties, depositaries are subject to certain rules in the Client Assets sourcebook (CASS 6, the 'custody rules'), to help deliver the principle under the AIFMD and UCITS Directives that depositaries should hold many asset types in custody. All authorised fund types can be used by professional and retail investors, although QIS typically have a professional investor base.
- 2.4** We acknowledge that there are different possible interpretations of the rules and law in this area. Subject to feedback, we aim to clarify how some of these rules interact and we propose some changes, but meaningful simplification will only be possible after the UK completes its process of replacing certain relevant assimilated law with FCA Handbook

rules. In particular, prior to this process, it is not practical for us to fully simplify the rules relating to AIFMs/AIFs. We are committed to simplifying the rules in this area overall in the repeal and replace processes.

Authorised fund depositary safekeeping and the 'registration function' rules

- 2.5** FSMA and the OEIC Regulations 2001 require the property of an OEIC or an ACS to be 'entrusted for safekeeping' to the depositary. For AUTs, the depositary, also known as a trustee, must hold the fund's property on trust for the fund investors. We consider that these provisions achieve the same outcome for fund investors.
- 2.6** Reflecting FSMA and the OEIC Regulations our COLL rules say that the depositary is responsible for the safekeeping of all of the scheme property and require the depositary to:
- a.** ensure scheme property in 'registered form' is 'registered in the name of' the depositary or certain other persons – the depositary's 'COLL registration function'
 - b.** carry out other tasks such as ensuring income due to the fund is received, etc.
- 2.7** The COLL registration function rules are COLL 6.6.12R(1)(b) for UCITS schemes and NURS; COLL 8.5.4R(2)(c) for QIS; and COLL 15.7.7R(1) for LTAFs. The 'scheme property in registered form' that can be held by a fund includes immovables such as UK real estate, equities (listed or unlisted), partnership interests and many other securities and asset types. Therefore, a depositary's COLL registration function applies to both financial and non-financial assets.

Fund assets that are defined as safe custody investments or AIF/UCITS custodial assets

- 2.8** We consider that the COLL registration function can be interpreted in the context of modern custody arrangements for securities, including dematerialised securities, as being consistent with CASS 6 and other applicable custody requirements for depositaries for assets that are safe custody investments or AIF/UCITS custodial assets (these terms are explained below). We do not consider that the COLL registration function rules prevent modern dematerialised security custody chains, in which assets are ultimately registered in the name of the person (or their nominee) at the end of the custody chain.
- 2.9** There is one interaction between the COLL registration function rules and the custody regimes for assets that are safe custody investments or AIF/UCITS custodial assets, to do with a depositary having fund assets registered in its own name, which we propose to address with a small rule change as set out below. Other than that specific proposed change, we are not proposing to change the wording of nor provide new Handbook guidance on the COLL registration function rules in respect of these asset types in this CP. We will consider this matter holistically as part of our repeal and replace processes and broader review of rules for depositaries.

Fund assets that are not defined as safe custody investments or AIF custodial assets

- 2.10** For assets not defined as safe custody investments or AIF custodial assets (principally immovables such as real estate and partnerships that are not CIS, see below) we consider that the COLL registration function rules are best interpreted as imposing an obligation on the depositary to ensure that the assets are registered in its own name or that of its own controlled nominee (including a subsidiary entity of the depositary), or in the name of a delegate (where permitted). We consider that where an asset of this sort is registered in the name of person other than the depositary or its controlled nominee, this is a delegation of the COLL registration function and that person is the delegate.

OEICs, FSMA safekeeping and the COLL registration function

- 2.11** OEICs have legal personality and so in principle could have legal title to assets (where relevant) registered in their name, or could become a partner.
- 2.12** Regulation 5 of the OEIC Regulations allows the FCA to make rules so that the safekeeping duties for the depositary cease to apply to designated OEIC scheme property. If we were to relieve an OEIC's depositary of its safekeeping duties in respect of some property in registered form, the COLL registration function rules would not apply and the OEIC would likely be able to hold legal title etc to that property. We have not used this power except for tangible movable property for UCITS and NURS. This is because we think it would undermine investor protection if an OEIC depositary was relieved of its FSMA-derived safekeeping duties for other property.
- 2.13** The OEIC Regulations allow a depositary to entrust safekeeping of the fund's assets to a 'third party'. We do not consider that the OEIC itself is a 'third party'. Our view here is consistent with the long-standing position in the authorised funds rules.
- 2.14** We are also of the view that an OEIC's AFM is not a 'third party' either (as the OEIC's AFM can be and usually is the sole director of the OEIC), and so the AFM too cannot act as a delegate for the depositary in respect of (FSMA) safekeeping tasks.

CASS 6 rules, UCITS and AIFMD provisions, and the COLL registration function

CASS 6 custody rules: overview

- 2.15** In addition to funds provisions relating to the custody of 'AIF/UCITS custodial assets' (see below) which apply to depositaries of all UCITS and those AIFs managed by full-scope UK AIFMs (which we refer to below as 'full-scope' AIFs), CASS 6 rules apply alongside or, in some scenarios, instead of these funds provisions.
- 2.16** Our CASS 6 rules require firms to protect clients' custody assets. They aim to safeguard clients' ownership rights at all times, including firm insolvency. All UK depositaries are subject to certain rules in CASS 6, including the CASS rule on 'registration and recording of legal title' of client assets (CASS 6.2.3 R), among other requirements.

- 2.17** UCITS depositaries and depositaries of authorised AIFs must also apply certain of the CASS 6 rules to those custody assets which are not AIF or UCITS custodial assets but are 'safe custody investments'. The safe custody investments definition encompasses assets that are defined as 'securities' under the FSMA Regulated Activities Order (RAO) where the firm is accountable for the assets. It includes equity and debt securities (transferable or not), and units in a Collective Investment Scheme (CIS), including interests in partnerships that are a CIS, among other financial assets. While many of these assets are also AIF/UCITS custodial assets, not all are (as explained below). CASS 6 also applies to these depositaries in respect of custody assets that are not safe custody investments or AIF or UCITS custodial assets (principally immovables such as real estate and interests in partnerships that are not CIS) 'in a manner appropriate to the nature and value' of those assets (CASS 6.1.1BR (2)(b) and (3)(b)). UCITS schemes are not currently permitted to invest in these.
- 2.18** Under CASS 6.2.3R on 'registration and recording of legal title' of client assets, a firm is only able to register or record legal title to a safe custody asset in the name of the firm in very limited circumstances. As above, this rule applies to depositaries. As noted above, the COLL registration function rules allow an authorised fund depositary to have fund assets in registered form registered in its name, which in some cases will also involve the depositary holding legal title or equivalent. We are proposing rule changes in CASS 6 and COLL for authorised AIF/UCITS depositaries to set out that depositaries can hold safe custody investments that are partnerships that are CIS (but that are not AIF or UCITS custodial assets) in their own name when doing so under the COLL registration function rules. We are also proposing other amendments in CASS 6, for example, to clarify that depositaries can 'delegate' custody to third parties under CASS 6.3 ('depositing assets' with thirds parties) where AIFMD/UCITS provisions don't apply. See Chapter 3.

AIF/UCITS custodial assets

- 2.19** The definition of AIF/UCITS 'custodial assets' under assimilated law is similar to that for RAO securities/safe custody investments, in that they broadly cover securities, units in collective investment vehicles etc. The maximum scope of the AIF/UCITS custodial assets definitions is financial instruments as defined in Part 1 of Schedule 2 of the RAO, which reflects the MIFID definition. Immovable assets such as real estate and partnerships that are not a collective investment vehicle (defined as a collective investment undertaking, CIU) are not financial instruments under these definitions. However, in contrast to the RAO securities definition, securities need to be transferable to be AIF/UCITS custodial assets, except for Money Market Instruments.
- 2.20** To be AIF/UCITS custodial assets there is also a requirement for assets to be able to be registered in a financial instruments account, or physically delivered to the depositary. Some interests in partnerships which are CIUs may not meet this requirement so, or for other reasons, will not be an AIF/UCITS custodial asset. Recital 103 of the AIFMD level 2 Regulation refers to interests in partnerships as being an example of an asset not to be held in custody.
- 2.21** Certain financial assets that are directly registered only with the issuer in the name of the fund, or manager on behalf of the fund, are also not AIF/UCITS custodial assets. However, there are provisions that prevent such assets being registered in the name

of the fund or its manager. These are found in the OEIC Regulations as above, and also in provisions derived from AIFMD/UCITS as applicable, or in COLL 6.6.15(4) and COLL 8.5.5R(2) for authorised AIFs managed by small AIFMs. These provisions do not allow the depositary to delegate any functions, including the COLL registration function and 'custody' duties where applicable, to the AFM or fund (with the exception of an UCITS AFM – and as below, we are proposing to change this). So for authorised funds there are assets that are safe custody investments (held in custody under CASS 6) but that are not AIF/UCITS custodial assets.

2.22 Table showing which asset types fall into which category for authorised funds:

For authorised funds (UCITS and all authorised AIFs)		
AIF/UCITS custodial asset	RAO security (safe custody investment) but not AIF/UCITS custodial asset	Not a RAO security (safe custody investment) or an AIF custodial asset*
<ul style="list-style-type: none"> i. transferrable securities (equity, debt, etc) ii. Money market instruments (MMIs)**, iii. those CIU units that can be held in a financial instruments account 	<ul style="list-style-type: none"> i. Non-MMI, non-transferrable, securities ii. partnerships that are a CIS but the units cannot be held in a financial instruments account 	<ul style="list-style-type: none"> i. Immovables (such as real estate) ii. partnerships that are not a CIS

* UCITS are not currently permitted to invest in assets that are not safe custody investments
 ** Includes some short term debt securities that are not transferrable

Depositaries delegating custody: overview

2.23 A depositary may make a commercial decision to delegate custody to a third party. If a UCITS depositary or the depositary of a full-scope AIF (authorised or not) chooses to delegate custody of a client asset that is an AIF/UCITS custodial asset, it is only required to follow AIFMD/UCITS derived rules on the delegation of custody. The AIFMD/UCITS delegation provisions are in part contained in the assimilated level 2 Regulations. As set out in Chapter 3, we propose rule changes to clarify that where a depositary delegates in accordance with AIFMD/UCITS delegation provisions, CASS 6.2.3R and CASS 6.3 need not be complied with.

2.24 When delegating custody of a safe custody investment that is not a UCITS custodial asset, we consider that a UCITS depositary needs to do so 'in accordance' with CASS 6.3 requirements. We consider that 'delegating custody' is akin to the concept CASS 6.3 refers to as 'depositing assets with a third party'. Were the depositary of a full scope authorised AIF not otherwise prevented from delegating custody of a safe custody investment that is not an AIF custodial asset (explained below), we consider that it would also need to delegate 'in accordance' with CASS 6.3 requirements. For the depositary of an authorised AIF managed by a small UK AIFM, we consider that delegating custody of any safe custody investment or AIF custodial asset also needs to be done 'in accordance' with CASS 6.3 (AIFMD requirements do not apply to small AIFMs).

2.25 Delegating custody in accordance with CASS 6.3 engages CASS 6.2.3-A R which then turns off CASS 6.2.3R (the rule on 'registration and recording of legal title') which could otherwise prevent these depositaries' use of custody delegates. We intend to make a rule change setting out that the CASS 6.3 requirements that depositaries need to follow in these situations are limited to those in CASS 6.3.1 R – CASS 6.3.4B G. That is in line with the CASS 6.3 rules that apply for depositaries of CIS that are neither AIFs nor UCITS. See Chapter 3. AIFMD/UCITS derived rules on delegation of custody, and the CASS 6.3 rules referred to above, include requirements that the delegate, whether it carries out the activity in the UK or not, is regulated (with limited exceptions).

In summary

2.26 Overall, we consider that the COLL registration function rules, working in combination with other COLL rules, CASS 6 and AIFMD/UCITS derived provisions where applicable, deliver certain key protections for authorised funds. They mean the AFM cannot have assets registered in its name or be part of the custody chain. Therefore, the AFM's insolvency is unlikely to impact the integrity of the fund's property interests in its assets, or cause a delay in accessing them, especially where legal title or partner status is involved. We consider this to be an appropriate outcome for authorised funds, in line with the principle of separation of AFM and depositary duties.

2.27 Fund provisions allow some depositary functions, including the COLL registration function and CASS 6 custody function, to be delegated to others. We consider that the ability to delegate currently varies by asset type and category of authorised fund, as below.

The requirements for depositaries of authorised AIFs with full-scope UK AIFMs

2.28 FUND 3.11.26 R provides that a depositary of full-scope authorised AIFs must not delegate its functions to third parties except as permitted by FUND 3.11.28 R. FUND 3.11.28 R only permits the delegation of functions in FUND 3.11.21 R and FUND 3.11.23 R. FUND 3.11.21 R (and the relevant articles in the level 2 Regulation) concerns its custody function, in respect of AIF custodial assets only.

2.29 The AIFMD regime in isolation (i.e., for unauthorised AIFs) requires the depositary to verify that fund assets that are not AIF custodial assets are owned by the AIF or the AIFM acting on behalf of the AIF (*'ownership verification and record keeping'*, FUND 3.11.23 R and article 90 of the level 2 Regulation).

2.30 However, FUND 3.11.23 R does not concern CASS 6 custody nor the COLL registration function in respect of assets that are not AIF custodial assets. So FUND can be interpreted as preventing delegation of custody (relevant for safe custody investments) and the COLL registration function (for assets that are not safe custody investments) to a third party, where the assets are also not AIF custodial assets.

2.31 This means that a third party must not have assets that are not AIF custodial assets registered in its name. For some of these assets that are not safe custody investments, such as registered land (for example UK commercial real estate), the COLL registration

function relates to holding legal title. The inability to delegate the COLL registration function for such fund assets is the reason that the depositaries of these funds (or their controlled nominees) must hold legal title to them. However, the COLL registration function applies to all the fund's assets in registered form and it may not always involve the registration of legal title or partner status, even for some types of assets that are not safe custody investments (for example, see COLL 5.6.18R(2)(c)).

- 2.32** For these 'full scope' funds, AIF custodial assets are defined in Article 88 of the level 2 Regulation and in our Handbook Glossary definition (which reflects the AIFMD Level 1 definition of the term).
- 2.33** The AIFM cannot act as a delegate for the depositary (FUND 3.11.7R). As above, we consider that the OEIC Regulations impose the same restriction in respect of FSMA safekeeping functions (and also prevent the OEIC from being the depositary's delegate).

The requirements for depositaries of authorised AIFs managed by small UK AIFMs

- 2.34** AIFMD requirements do not apply to small UK AIFMs or, by extension, to the depositary that an authorised AIF managed by such a AIFM must have under FSMA.
- 2.35** The COLL rules (6.6.15R) allow a depositary of NURS managed by a small UK AIFM (AFM) to delegate functions like "custody or control", such as the COLL registration function, to anyone except the AFM, the OEIC or other directors of the OEIC. For a QIS with a small AIFM, under COLL 8.5.5R, this is the same except that delegation to the OEIC itself isn't prevented by that rule, but in practice the OEIC Regulations prevent this as explained above.
- 2.36** So, in all cases, the fund (OEIC) or the AFM can't be given these custody or control responsibilities, including the COLL registration function (and CASS 6 custody function), but any other person can where the depositary chooses to delegate them. Therefore, for these funds, the depositary or its controlled nominee does not need to hold legal title to, for example, real estate, if the depositary properly delegates this function.

The requirements for depositaries of UK UCITS funds

- 2.37** We are not aware of any problems related to the COLL registration function and UCITS depositaries.
- 2.38** As above, we consider that the fund (OEIC), or the AFM of an OEIC, cannot be a delegate for the depositary for any FSMA safekeeping-related task (COLL registration function or CASS 6 custody) due to the OEIC Regulations. Technically there may be no direct block on the UCITS depositary delegating any task, including custody of assets that are safe custody investments, to the AFM of an AUT. However, in our view this would be inappropriate, and may not be compliant with COLL 6.6B.3R on preventing depositary/AFM conflicts of interest. As set out in Chapter 3, we are proposing to change rules to make it clear that an UCITS AFM cannot act as the depositary's delegate for any task.

- 2.39** UCITS-derived rules require the depositary to carry out '*ownership verification and record keeping*' for assets that are not UCITS custodial assets. These requirements, while still applicable, are in practice supplemented by CASS 6 custody requirements, because we consider that all permitted assets of a UCITS scheme that are not UCITS custodial assets will be safe custody investments.

Depositary liability

- 2.40** Under COLL rules a depositary is responsible for safekeeping an authorised fund's assets, including the registration function for all assets in registered form. Under the rules in CASS 6, the depositary is responsible for holding the fund's assets that are safe custody investments or AIF/UCITS custodial assets in custody. A "private person" may be able to bring a claim against the depositary if they suffer loss as a result of the depositary's breach of our rules. A breach of our rules could also enable an AFM to bring a claim against the depositary for negligence or breach of contract on behalf of the fund. Investors who are eligible complainants under the FCA's Complaints Resolution rules may also be able to complain to the depositary and, if dissatisfied with the outcome, refer their complaint to the Financial Ombudsman Service.
- 2.41** The COLL registration function rules, and CASS 6 custody rules when applied to assets that are not AIF/UCITS custodial assets, are not 'implementing provisions' (specific laws or regulatory rules that previously implemented EU Directives in UK law). The depositary (strict) liability provisions of the AIFMD/UCITS Directive are unlikely to apply to these matters.

Liability when delegating the COLL registration function

- 2.42** If the depositary of a NURS managed by a small UK AIFM (AFM) delegates the COLL registration function (which is part of custody or control) to an associate of the AFM (which includes an 'affiliate' of the AFM), or an associate of a director of an OEIC, the depositary retains the same liability as if it had not delegated.
- 2.43** For QIS managed by small AIFMs, the depositary is not responsible for any act or omission of any delegate under the COLL rules, as long as the depositary can show it took reasonable care in selecting and overseeing the delegate (COLL 8.5.5R(3)).

The harm we are trying to reduce and prevent

The risk of harm and its causes

- 2.44** As explained, in respect of 'full scope' authorised AIFs, for certain fund assets such as UK real estate, only the depositary or its controlled nominee can hold legal title. It is likely that only 'full scope' funds are currently impacted by the issues this causes.

- 2.45** Owners of the legal title of buildings are exposed to significant safety and environmental duties and possible liabilities, and often licensing duties (e.g., alcohol, public entertainment), and related reputational risks. But depositaries do not directly control the buildings or make the decision to invest in them – the AFM does.
- 2.46** There are also possible liabilities and issues for depositaries when they are formally the partner in a partnership, on behalf of a fund. For example, if a dispute arises in the partnership, or if the General Partner asks for money from the partners but the fund cannot pay, the depositary might have to cover a shortfall.
- 2.47** None of these ‘ancillary’ risks or liabilities relate to the core role of an authorised fund depositary under the regulatory regime. There has been a long-standing industry consensus that the fund, the AFM, or a person connected to the AFM, rather than the depositary, should be permitted to be the legal owner of some fund assets, in particular real estate and partnerships, and so be exposed to the related ancillary risks related to such assets instead of the depositary.
- 2.48** Stakeholders have told us that these ancillary risks and liabilities have significantly escalated in recent years, especially for depositaries of authorised AIFs invested in UK real estate. They have cited the:
- Building Safety Act 2022 (BSA), which is now in force
 - Terrorism (Protection of Premises) Act 2025 (“Martyn’s Law”), which is due to come into force in the next few years and will impact more UK buildings than the BSA
 - Regulatory Reform (Fire Safety) Order 2005 (as amended).
- 2.49** Under some of these laws there is or will be potential criminal liability for the registered legal owners of certain properties – so for the depositaries or their controlled nominees. This potential liability also applies to depositary staff, where they are Directors (or managers/similar officers) of the depositary/nominee. Beyond this, there is also the possibility of direct and potentially significant financial liabilities being imposed on depositaries under some of these laws where the buildings are not managed properly.
- 2.50** Fund depositaries no longer wish to carry these escalating ancillary legal and financial risks associated with legally owning these asset types where it is unavoidable (e.g., registered land). So, with the full support of relevant asset managers, they have called for us to change our rules.
- 2.51** Representatives of the depositary industry have stated that without change, individual depositaries may stop offering depositary services to authorised AIFs invested in assets that would give rise to potential criminal liability for their staff. We consider that this could involve a depositary refusing to allow new investments in such assets and/or may even (indirectly) result in the AFM having to sell assets already held. This could negatively impact investors and fund managers. Overall, our engagement with stakeholders leads us to conclude that it is likely that many depositaries would independently choose to take such action in the absence of an effective solution.
- 2.52** This issue is also generally limiting the uptake of LTAFs and the investment options available to them – in particular, in respect of real estate and the partnership vehicles LTAF AFMs want their funds to invest in.

- 2.53** If we do not address this issue, we think there is a risk of harm. There is a risk that investors and managers would lose access to key private markets asset classes through authorised AIFs. These funds are an important way that some retail and professional investors, including UK pension schemes (local government schemes and others) access UK-based 'long term' investments such as commercial real estate and infrastructure. Some of these investors prefer or even need to use authorised AIFs to invest in these asset types. Withdrawal of depositary services could reduce investment in these UK long-term assets and harm the UK fund domicile, both of which would negatively impact UK growth.
- 2.54** We have made the Financial Services Consumer Panel, Markets Practitioner Panel and Joint Listing Authority Advisory Panel aware of these proposals.

How it links to our objectives

Consumer protection

- 2.55** Our proposals aim to advance our objective of 'securing an appropriate degree of consumer protection' by retaining adequate protection for authorised fund investors.

Competition

- 2.56** Our proposals aim to advance our objective of 'promoting effective competition in the interests of consumers' via promoting 1) the ability of investors to access these asset types via authorised funds, and 2) greater competition for depositary services.

Secondary international competitiveness and growth objective

- 2.57** Our proposals facilitate our secondary international competitiveness & growth objective by avoiding the harms above. As such our proposals are 'pro UK growth'.

Wider effects of this consultation

UK building safety issues

- 2.58** This policy area has linkages with UK building safety issues and the aims of UK legislators and regulators in respect of building safety regimes and protections. These connections and considerations are covered in Chapter 3.

Chapter 3

New delegation options and clarificatory COLL and CASS 6 changes

- 3.1** Our proposed rule changes would mean that a depositary of a 'full-scope' authorised AIF (one with a full-scope UK AIFM) would no longer need to have fund assets that are not AIF custodial assets registered in its name or that of its controlled nominees in certain circumstances.
- 3.2** For assets that are not safe custody investments or AIF custodial assets (principally immovables and partnerships that are not a CIS), our rule changes would allow the depositary to delegate the COLL registration function to persons 'affiliated' with the AFM. These persons would be able to have the assets registered in their name instead, including the legal title or partner status. This should facilitate the ongoing practical ability of full-scope authorised AIFs to invest in these important asset types.
- 3.3** We propose rules changes to align the COLL registration function regime for depositaries of authorised AIFs managed by small UK AIFMs with our proposed position for the depositaries of the full-scope authorised AIFs for assets that are not safe custody investments or AIF custodial assets. This would significantly narrow the range of persons to whom such a 'small AIFM' depositary can delegate this function for these assets.
- 3.4** In each case, we are also proposing to add new requirements that aim to ensure an appropriate degree of protection is provided for the investors in the authorised AIF.
- 3.5** For assets that are safe custody investments but are not AIF custodial assets (we consider that this includes certain partnerships that are a CIS), the effect of our proposed changes to FUND would be to allow the depositary of a full-scope authorised AIF to delegate custody of such assets to a third party. We are clarifying that the depositary delegating custody for these assets can do so under CASS 6.3 ('depositing such assets with third parties'), but that person cannot be the AFM.
- 3.6** We are also consulting on rules changes and guidance to clarify how the COLL registration function and elements of CASS 6 apply, and to prevent a UCITS AFM acting as a delegate for the depositary.
- 3.7** Overall, we are proposing to change our rules in these ways as we consider that doing so would avoid the significant downsides and risks of harm set out in Chapter 2 in respect of full-scope authorised AIFs, while ensuring that the residual additional risks of losses to authorised funds are kept extremely low. Subject to feedback, we think the benefits of these proposals will outweigh the costs.
- 3.8** We are consulting on these changes in advance of the wider transfer of powers to the FCA under the UK AIFMD (and UCITS) 'repeal and replace' process. Subject to consultation feedback, we think we should make these changes as soon as possible to

avoid the harms set out in Chapter 2. But we are interested in views on timing and ask a consultation question on the sequencing of this work.

- 3.9** We are not otherwise addressing the delegation rules for depositaries of authorised AIFs and UCITS funds for their other duties, or for the AIFMs, in this CP. But we welcome general feedback on depositary custody duties as we prepare our consultations on the AIFMD/UCITS repeal and replace processes.

Authorised AIFs with full-scope UK AIFMs: proposal to allow delegation of relevant functions for assets that are not AIF custodial assets

- 3.10** A long-standing feature of our authorised fund regime has been to prevent the AFM or the fund itself (OEICs) being the depositary's delegate for functions related to the depositary's control of scheme property, under both our rules for funds and the OEIC Regulations. We are not proposing to change this. The AFM's insolvency should not be capable of potentially impacting the integrity of the fund's interests in its assets, or causing a delay in access to them, especially in cases where legal title is held. Our proposals should resolve the core problem, which is the need for the depositary or its controlled nominee to have the assets registered in their names (including legal title or partner status where relevant).

Assets that are not safe custody investments or AIF custodial assets.

- 3.11** As noted in Chapter 2, we consider that the FSMA requirement for an authorised fund depositary to 'safekeep' all fund assets means that it is responsible for those assets. We cannot change this FSMA requirement and we need to take account of it. Our COLL registration function rules form part of delivering what we consider to be the over-arching policy intention behind FSMA 'safekeeping', in particular for assets that are not safe custody investments or AIF custodial assets. Therefore, the only potential solution, in respect of authorised AIFs with full-scope AIFMs, is to restore the depositary's ability to *delegate* the COLL registration function for such assets to others.
- 3.12** For assets that are not safe custody investments and not AIF custodial assets, principally immovables and partnerships that are not a CIS, our rule changes would allow the depositary to delegate the COLL registration function to persons 'affiliated' with the AFM. These persons would be able to have the assets registered in their name instead, including the legal title and partner status, which will usually be relevant. This should facilitate the ongoing practical ability of these authorised AIFs to invest in these important asset types.
- 3.13** We propose that the AFM's affiliate for this purpose be defined as a person in the same group as the AFM (we plan to use the existing definition of an 'affiliate' in the FCA Handbook). So the affiliate would not need to be directly controlled by the AFM. They could be domiciled in any jurisdiction, although see our proposal for the delegation of the registration function for UK immovables below.

- 3.14** We see no utility in allowing any other person to have this activity delegated to them for these asset types. Historically, no commercial third party wanted this role. We are not aware of any doing so where it is still permitted (small AIFM funds). Given the increasing challenges associated with being the registered legal owner etc of some of these asset types, we do not think any commercial third party would want to take on such responsibilities, especially those associated with some real estate. Our Handbook term 'associate' offers an alternative definition of persons related to the AFM, but we consider its scope is too wide.
- 3.15** We are not comfortable with a third-party entity (i.e., one not affiliated to the AFM), that acts as a delegated portfolio manager (PM) for the fund on the AFM's behalf, or such a PM's own delegates, acting as delegate in respect of the COLL registration function for these assets. We think this type of arrangement could dilute the principle that the AFM is in charge of the fund and make it harder for the AFM to dispense with the third-party delegated PM's services as, in that situation, some of the fund's property (for example real estate) would almost certainly need to be re-registered. We assume that the AFM's affiliate could consult with and take instructions from either the AFM or any delegated PM (from a third party group or not) in respect of, for example, building management matters.
- 3.16** Allowing – but not requiring – this new delegation option for these assets will avoid firms having to change registered names, and/or registered legal title where relevant, of all these assets at once. Stakeholders have said that this continuity is vital. We also see no reason to prevent the depositary or its controlled nominee from having these assets registered in their names, including the legal title where relevant.

Other public policy objectives and UK immovables

- 3.17** The BSA 2022's criminal liability for safety failings applies to a building owner, and 'one level down only', to the Directors, partners, managers etc of an owning entity that is not a natural person (i.e., that is not a human). But not all bodies corporate must have a natural person as a Director. Some entity types, UK domiciled or not, might not be subject to a requirement to have natural persons in officer holder positions. In some cases there may not otherwise be natural persons in decision-making roles and thus liable under this legislation. Other applicable laws, including as mentioned in Chapter 2, have criminal liability for failings that apply in similar ways.
- 3.18** The FCA is mindful of Parliament's intentions in writing laws that work in this way and we want to avoid making rules changes that could undermine those intentions.
- 3.19** Under the UK Companies Act (CA) 2006, UK domiciled companies must have at least one natural person as a Director. The FCA also considers it would promote the protection of the authorised fund's interests if legal title to UK real estate that the fund invests in is held by a UK company operating under the CA 2006. The CA 2006 sets certain minimum standards for companies and their Directors that may not be present for other entities, including overseas entities. UK companies are subject to the jurisdiction of UK courts and authorities. The FCA is not aware of any *need* for overseas entities to own legal title to UK real estate that a fund invests in.

3.20 In light of these considerations we are proposing that for 'immovables' located in the UK (buildings and land), the persons permitted to act as the depositary's delegate for its COLL registration function (and so able to take legal title), should be 'affiliates' of the AFM that also take the form of a company subject to the CA 2006.

Additional protections to apply when the depositary delegates

3.21 If the AFM (or whichever person controls the AFM's affiliate) is wound up, it should not directly impact the AFM's affiliate. But the AFM's affiliate could be wound up, possibly with debts to creditors outstanding. This could theoretically expose fund investors to loss if an insolvency practitioner were able to treat the fund's property as part of the insolvent estate—particularly where the AFM's affiliate holds legal title to the fund's assets. An AFM (or a person in its group) could more easily transfer legal title to the fund's assets improperly if it controlled the AFM's affiliate holding that title.

3.22 Either of these events would not cause the fund an actual loss, unless the depositary was either a) able to avoid some or all liability for making good any losses that arose or b) unable to avoid such liability, but did not have sufficient financial resources of its own to make good the losses. Our proposed protections seek to mitigate these residual risks, except with regards to depositaries' financial resilience, which we consider to be already sufficiently provided for by existing regulation.

3.23 We are proposing to make rules that would require the depositary, when delegating the COLL registration function for these assets (those that are not AIF custodial assets or safe custody investments), to ensure that:

- i.** an AFM's affiliate holds the assets on trust for the depositary (the affiliate could not hold assets directly for the fund in any case, to avoid a clash with FSMA requirements) – and the affiliate cannot sub-delegate the function by arranging for another person to have the assets registered in that other person's name
- ii.** an AFM's affiliate doing so keeps records (the 'full scope' fund depositary will also be keeping its own records, under FUND 3.11.23R)
- iii.** where legal title to fund assets is registered in the AFM's affiliate's name, this title must not be capable of being transferred without the depositary's consent
- iv.** direct control of the AFM's affiliate must not be capable of being transferred without the depositary's consent
- v.** it is satisfied, after taking external legal advice, that the arrangements would ensure these outcomes.

3.24 The protections at (i-ii) aim to promote the protection of the depositary's (and ultimately the fund's) interests in the property in the event of the insolvency of the affiliate, especially where the holding of legal title is involved. Those at (iii-iv) aim to minimise the risk of improper transfer of (legal) title to the fund's assets.

3.25 Although we recognise that the depositary will already be highly motivated to ensure a function for which it remains significantly responsible is carried out properly by its delegate, the protection at (v) is intended to give strong external assurance and make it even more likely that arrangements will operate as planned. We recognise that the costs

involved may ultimately and indirectly be passed onto the fund, and we are keen that our cost-benefit analysis (CBA) for this protection is informed with stakeholder feedback. See **Annex 2** for our full CBA.

- 3.26** In relation to transactions in UK real estate, we also propose guidance that states that the COLL registration function rules do not prevent a depositary appointing a second person to act as trustee in order to effect a sale or transfer with good title of scheme property which is an immovable. This is relevant for achieving 'overreaching', a legal process necessary for many UK property transactions. Following real estate industry practice, AFMs and depositaries may also choose to have AFM affiliate(s) dedicated to being the registered owner(s) of a specific real estate asset.

Assets that are safe custody investments but are not AIF custodial assets

- 3.27** Our changes to the AIFMD derived rules in FUND would allow the depositaries of full-scope authorised AIFs to delegate the CASS 6 custody duty for assets that are safe custody investments but are not AIF custodial assets (which would need to be done under certain of the requirements of CASS 6.3, 'depositing assets with third parties'). In summary, to a person, operating in the UK or not, who is a regulated custodian, with few exceptions. We consider that this category of assets includes certain partnerships that are a CIS. See Chapter 2 for more.

Note on the draft rules

- 3.28** Our proposed changes to FUND 3.11.26 R would mean that its restriction on delegation can no longer be interpreted as applying to the delegation of the COLL registration function and CASS 6 custody duty for assets that are not AIF custodial assets. This is relevant for depositaries of authorised AIFs managed by full scope AIFMs. Such delegations will instead come under COLL (with the proposed protections also in COLL) for such assets that are not safe custody investments, and the existing CASS 6 rules for such assets that are.

Question 1: Do you agree that we should allow the depositary of an authorised AIF managed by a full-scope UK AIFM the option of delegating its COLL registration function and CASS 6 custody function for assets that are not AIF custodial assets?

Question 2: Do you agree that the persons able to act as the delegate of a depositary of an authorised AIF managed by a full-scope UK AIFM, for its COLL registration function in respect of assets that are not safe custody investments or AIF custodial assets, should only be 'affiliates' of the AFM?

- Question 3:** Do you agree with our proposed additional protections, to apply when the depositary of authorised AIF managed by a full-scope UK AIFM delegates its COLL registration function in respect of assets that are not safe custody investments or AIF custodial assets to the AFM's affiliates?
- Question 4:** Do you agree that in the case of immovables located in the UK, the persons able to act as the delegate of the depositary of an authorised AIF managed by a full scope UK AIFM, for its COLL registration function, should only be 'affiliates' of the AFM that also take the form of a UK company subject to the Companies Act 2006?
- Question 5:** Do you have any feedback on matters relevant for UK property overreaching?

Authorised AIFs with small UK AIFMs: proposal to align the COLL registration function rules in respect of assets that are not safe custody investments or AIF custodial assets

- 3.29** The COLL registration function rules for the depositary of an authorised AIF with a small UK AIFM are set out in Chapter 2. We propose to change these by:
- a.** limiting the persons to whom the depositary can delegate the COLL registration function, in respect of assets that are not safe custody investments or AIF custodial assets, to 'AFM's affiliates' only
 - b.** imposing the same 'additional protections' as we have proposed for full-scope authorised AIFs in respect of that delegation for such assets.
- 3.30** We also propose to remove the derogation that, subject to conditions, reduces the liability under our COLL rules that depositaries of QIS managed by small UK AIFMs have in respect of delegating the COLL registration function (for assets that are not safe custody investments or AIF custodial assets).
- 3.31** We are proposing these changes because we consider that the COLL registration function requirements for authorised AIFs should be similar for these asset types, irrespective of the AIFM's small or full-scope status. Many retail investors use authorised AIFs, whereas an AIFM's regulatory status is largely driven by its assets under management (AuM) rather than its client base. We do not think varying AIFM AuM levels should drive differences in the level of protection delivered by the COLL registration function rules in the context of an authorised fund.

- 3.32** We also consider that our rules should seek to avoid a problematic 'break point' when an AIFM's business grows so that it can no longer be a small UK AIFM. A problematic 'break point' would in this context be a situation in which legal title to an existing fund asset would need to be re-registered in the name of a different person, causing costs and inconveniences, purely for regulatory reasons.
- 3.33** This situation could arise if we do not narrow the set of permitted delegates for small AIFM authorised funds to the same set of persons we are proposing for the full scope authorised funds, for assets that are not safe custody investments or AIF custodial assets. And if our proposed 'additional protections' are not applied to funds managed by small UK AIFMs in respect of such a delegation, at the point the AIFM becomes full-scope the delegation arrangements might have to be 'repapered', again with associated costs etc. Investors in an authorised AIF managed by a small UK AIFM would also potentially have had less protection without being aware of this.
- 3.34** There may not currently be many (or possibly any) authorised funds with small UK AIFMs investing in assets that are not safe custody investments or AIF custodial assets. We have no data on whether the depositaries for such funds have delegated their COLL registration function for these assets. See the CBA in **Annex 2** for further discussion of the possible impact of these proposals on existing funds with small UK AIFMs. Subject to feedback, we think the benefits of these proposals will outweigh the likely costs.
- 3.35** Overall, we want this consultation to lead to as stable a policy setting as possible for the COLL registration function requirements for all authorised AIFs. In addition, some of the ideas set out in our 'engagement paper' on the repeal and replacement of the AIFMD could, if taken forward, lead to more AIFMs being classified as small AIFMs.

Question 6: Do you agree with our proposed changes to the COLL registration function requirements for depositaries of authorised AIFs managed by small UK AIFMs, in respect of assets that are neither safe custody investments nor AIF custodial assets?

Depositaries of UK UCITS funds

- 3.36** We are not proposing to change the COLL registration function requirements for UCITS depositaries (except for the proposed general changes to the COLL registration function requirements for all authorised fund depositaries covered in the section immediately below). But we are proposing to change rules to make it clear that an UCITS AFM cannot act as the depositary's delegate for any task.

Question 7: Do you agree with a rule change preventing a UCITS AFM from acting as a delegate for the depositary for any task?

Question 8: Do you have any other feedback on COLL registration function (or custody) issues for UCITS funds?

Proposed clarificatory changes for the COLL registration function rules

- 3.37** In Chapter 2, we set out our view on how the COLL registration rules work for assets not defined as safe custody investments or AIF custodial assets. We propose rule changes to clarify that for these assets, the reference to 'its nominee' in the rules is the depositary's own controlled nominee (for example a subsidiary entity of the depositary).
- 3.38** We also propose a COLL registration function rule change that, for safe custody investments, the depositary can only have the assets registered in its own name in the case of partnerships that are a CIS but that are not AIF or UCITS custodial assets. CASS 6.2.3R does not generally allow safe custody investments to be registered in the name of the depositary itself – although as below we are proposing to align CASS rules with this rule change in COLL (see below).
- 3.39** We are also taking the opportunity to correct the unrelated FUND 3.11.4 rule cross reference error in the Handbook definition of a depositary.

Question 9: Do you agree with our proposed re-drafting of the COLL registration function rules and the new guidance which aim to clarify their requirements in respect of assets that are neither safe custody investments nor AIF custodial assets?

Question 10: Do you agree with our proposed change to the COLL registration function rules that, for safe custody investments, the depositary can only have the assets registered in its own name in the case of partnerships that are a CIS but that are not AIF or UCITS custodial assets?

Proposed clarificatory CASS 6 changes

- 3.40** We are proposing CASS rule changes to enable the implementation of the proposed changes for delegation of the COLL registration function and to provide clarity on how the CASS rules for registration of title and the COLL registration function rules work together, and to address potential gaps in the CASS rules for depositaries.
- 3.41** We are proposing:
- 1.** a rule change to CASS 6.2.3 R for depositaries of authorised AIFs and UCITS to set out that, for safe custody investments that are partnerships that are a CIS but that are not AIF or UCITS custodial assets, they can hold title to such fund assets in their own name when doing so under COLL registration function rules

2. guidance in CASS 6.1 stating that in respect of assets that are not safe custody investments or AIF/UCITS custodial assets, a depositary of an authorised AIF or UCITS following the COLL registration function rules has applied CASS 6 'in a manner appropriate' as required. This is relevant for:
 - a. the depositary holding title to such fund assets in its own name
 - b. use of the AFM's affiliate to hold title to the assets
3. clarificatory rules changes in CASS 6.1 and 6.2 setting out that when:
 - a. a UCITS depositary or depositary of any AIF managed by a full scope AIFM delegates custody of an AIF/UCITS custodial asset, it is required only to follow AIFMD/UCITS-derived rules on custody delegation, and it is not required to comply with CASS 6.2.3 R or CASS 6.3 (proposed CASS 6.2.3-B R and proposed changes to CASS 6.1.16IA R and 6.1.16ID R)
 - b. a UCITS depositary or depositary of an authorised AIF managed by a full scope AIFM delegates custody of a safe custody investment that is not an AIF/UCITS custodial asset, it must do so 'in accordance' with certain of the requirements in CASS 6.3 ('depositing assets with third parties'), specifically, those set out in CASS 6.3.1R – CASS 6.3.4BG (proposed changes to CASS 6.1.16IA R and 6.1.16ID R)
 - c. the depositary of an authorised AIF managed by a small UK AIFM delegates custody of a safe custody investment or AIF custodial asset, it must do so 'in accordance' with certain of the requirements in CASS 6.3 ('depositing assets with third parties'), again, specifically, those set out in CASS 6.3.1R – CASS 6.3.4BG (proposed changes to CASS 6.1.16IA R).

3.42 We are also proposing to amend the glossary definition of 'custody assets' to ensure it is clear that the relevant CASS 6 custody rules apply to all fund assets for depositaries of authorised AIFs managed by small UK AIFMs (this would be 'in a manner appropriate' in respect of assets that are neither AIF custodial assets nor safe custody investments). This will ensure appropriate consumer protection and is in line with FCA Principle 10 on the protection of client assets.

3.43 We want to ensure these proposed CASS 6 changes would not cause unintended consequences to our custody rules, reduce client assets protection, or weaken market integrity.

Question 11: Do you agree with our interpretation of CASS 6's application to UCITS and AIF depositaries as set out in this CP and do you agree with our proposed CASS 6 rules changes and new guidance?

Question 12: Do you think any of these proposed CASS 6 rules changes and new guidance could create unintended consequences that would negatively impact the protection of client assets?

Overall timing and sequencing considerations

- 3.44** We consider that the CASS 6 changes proposed above are necessary, alongside our COLL and other funds provisions changes, to achieve our policy objectives. As stated, we consider that all of these proposed CASS 6 changes clarify the current situation, rather than set new policy. We understand that the depositary industry is keen for a solution to the COLL registration function issues, especially for immovables, at the earliest opportunity. We do not think it is practical or desirable to attempt to address COLL registration function issues just for assets that are not safe custody investments or AIF custodial assets (such as immovables) without still making most or all of the CASS changes above.
- 3.45** We are working with the Treasury to develop a revised regulatory framework for UK AIFMs (under the 'repeal and replace' exercise for the UK AIFMD and UCITS regimes), which will include the regulation of depositaries of UK AIFs. We intend to publish a first consultation paper relatively shortly, explaining our proposals for the unauthorised AIF depositary regime which mostly aim to give more options to firms. A second paper including consultation on detailed rules for depositaries will follow, probably in early 2027, leading to a final set of rules later in 2027. This gives us an opportunity to carry out a more fundamental review of depositary requirements, such as the exact definition of an AIF custodial asset, which might then impact the effect of the proposals in this paper.
- 3.46** We are therefore interested in stakeholder's views on the sequencing of our work. Subject to feedback, it is our intention to proceed with the package of COLL registration function-related (including CASS 6) changes in this CP at the earliest opportunity. However, we welcome views on whether stakeholders would prefer those changes to be delayed until at least late 2027, so that they can be brought in at the same time as any wider changes that may stem from our planned broader review of the rules for depositaries, including in relation to custody and similar tasks.

Question 13: Do you agree that, should feedback indicate that our objectives would be advanced by the rule changes in this CP, we should proceed to make them at the earliest opportunity, and before any later changes that may stem from our planned broader review of depositary rules?

The FSMA perimeter for COLL registration function delegates and assets that are not securities

- 3.47** A person operating in the UK that has an asset that is not a 'security or a contractually based investment' ('security') registered in their name as the depositary's COLL registration function delegate will not be carrying out the regulated activity of 'safeguarding and administration' (FSMA RAO Art 40), in respect of holding that asset. Such assets are not in scope for Art 40.

3.48 We assume depositaries and asset management groups will usually prefer to use AFM's affiliates that are Special Purpose Vehicles (SPVs) for this task in respect of such assets. Following real estate industry practice, they may well choose to have SPV(s) dedicated to being the registered owner(s) of a specific real estate asset where relevant. Such entities would not require FCA authorisation for this activity. Nothing in our proposals for this purpose and for these asset types requires the AFM's affiliate to be regulated.

Chapter 4

Replacing a Modification by Consent

- 4.1** Some years ago we published a Modification by Consent for COLL 5.6.22R (which relates to rules for guarantees and indemnities given on behalf of the fund) which has been widely used. In this chapter we propose to replace it by a permanent rule change.

Background

- 4.2** Under the unmodified current rules (COLL 5.5.9R, as applied by COLL 5.6.22R), in the case of UCITS schemes and NURS, the ICVC (an OEIC), or the depositary for the account of the fund, are prevented from providing a guarantee or indemnity to any person. They are also unable to use scheme property to discharge any related obligations.
- 4.3** For a NURS that wishes to invest in immovable property such as real estate (UCITS schemes cannot make such investments), this rule can cause difficulty in relation to contracts for transferring commercial real estate to the fund. Many of these contracts impose certain obligations or liabilities on the transferee, for which the transferee must give a guarantee of performance to the transferor (the seller). In this case, the transferee will be the fund or someone acting for the fund.
- 4.4** The current COLL 5.6.22R Modification by Consent that is available has the effect of modifying COLL 5.5.9R for firms and funds to whom the modification applies. The modification to COLL 5.5.9R enables the NURS depositary for the account of the fund, or the NURS ICVC (OEIC), to provide guarantees and indemnities backed by scheme property to third parties where required by the terms of the purchase of immovable property for the fund. The modification applies certain conditions on the depositary in respect of the granting, or allowing the granting, of such guarantees and indemnities. For example, it must be satisfied on reasonable grounds that the terms of the guarantee or indemnity will not result in undue risk for fund investors.

FCA proposals

- 4.5** We are proposing to replace the Modification by Consent with new rules that deliver the same outcome. This will involve changes to COLL 5.6.22R such that COLL 5.5.9R will be disapplied from NURS in respect of the acquisition of immovables where some conditions apply (essentially the conditions currently required as part of the modification).
- 4.6** We have published [information](#) about the Modification on our website, in respect of the need for the depositary to be satisfied that the terms of the guarantee (etc) will not result in undue risk for fund investors. We say that we would expect the depositary to base its assessment on appropriate expert advice as to whether the obligations or

liabilities are normal commercial terms for a property of that type in that market. We would continue to expect this of depositaries, were we to replace the Modification with permanent rules.

- 4.7** We would revoke the COLL 5.6.22R Modification by Consent once these new rules are in force.

Question 14: Do you agree that we should replace the Modification by Consent for COLL 5.6.22R with permanent rule changes?

Annex 1

Questions in this paper

- Question 1:** Do you agree that we should allow the depositary of an authorised AIF managed by a full-scope UK AIFM the option of delegating its COLL registration function and CASS 6 custody function for assets that are not AIF custodial assets?
- Question 2:** Do you agree that the persons able to act as the delegate of a depositary of an authorised AIF managed by a full-scope UK AIFM, for its COLL registration function in respect of assets that are not safe custody investments or AIF custodial assets, should only be 'affiliates' of the AFM?
- Question 3:** Do you agree with our proposed additional protections, to apply when the depositary of authorised AIF managed by a full-scope UK AIFM delegates its COLL registration function in respect of assets that are not safe custody investments or AIF custodial assets to the AFM's affiliates?
- Question 4:** Do you agree that in the case of immovables located in the UK, the persons able to act as the delegate of the depositary of an authorised AIF managed by a full scope UK AIFM, for its COLL registration function, should only be 'affiliates' of the AFM that also take the form of a UK company subject to the Companies Act 2006?
- Question 5:** Do you have any feedback on matters relevant for UK property overreaching?
- Question 6:** Do you agree with our proposed changes to the COLL registration function requirements for depositaries of authorised AIFs managed by small UK AIFMs, in respect of assets that are neither safe custody investments nor AIF custodial assets?
- Question 7:** Do you agree with a rule change preventing a UCITS AFM from acting as a delegate for the depositary for any task?
- Question 8:** Do you have any other feedback on COLL registration function (or custody) issues for UCITS funds?

- Question 9:** Do you agree with our proposed re-drafting of the COLL registration function rules and the new guidance which aim to clarify their requirements in respect of assets that are neither safe custody investments nor AIF custodial assets?
- Question 10:** Do you agree with our proposed change to the COLL registration function rules that, for safe custody investments, the depositary can only have the assets registered in its own name in the case of partnerships that are a CIS but that are not AIF or UCITS custodial assets?
- Question 11:** Do you agree with our interpretation of CASS 6's application to UCITS and AIF depositaries as set out in this CP and do you agree with our proposed CASS 6 rules changes and new guidance?
- Question 12:** Do you think any of these proposed CASS 6 rules changes and new guidance could create unintended consequences that would negatively impact the protection of client assets?
- Question 13:** Do you agree that, should feedback indicate that our objectives would be advanced by the rule changes in this CP, we should proceed to make them at the earliest opportunity, and before any later changes that may stem from our planned broader review of depositary rules?
- Question 14:** Do you agree that we should replace the Modification by Consent for COLL 5.6.22R with permanent rule changes?

Annex 2

Cost benefit analysis

Summary

1. We propose to make changes to our rules for authorised Alternative Investment Funds (AIFs) managed by full scope AIF Managers (AIFMs), which we refer to as 'full-scope funds'. These AIFMs require FCA authorisation and can also be referred to as Authorised Fund Managers (AFMs) as their funds are authorised.
2. Our main proposed change is to remove a restriction on the depositary of such full-scope funds delegating its COLL registration and CASS 6 custody functions for assets that are not AIF custodial assets. Delegation of the custody function for such assets where they are 'safe custody investments' would be to a regulated custodian under existing CASS 6 rules ('depositing assets with third parties'). The depositary would be permitted to delegate its COLL registration function to an affiliate of the AFM where such an asset is not a safe custody investment. This means the depositary or its own controlled nominees would no longer have to hold legal title to, for example, land or formally be a partner in a partnership for the fund.
3. Currently, in many cases, the depositary or its controlled nominees are no longer content to hold the legal title or equivalent for these asset types. This is due to some 'ancillary' risks set out in the CP (such as criminal liability for safety failings in a real estate property) being held by the depositaries and their staff, who do not control how these risks are managed. Without an effective solution, this could result in depositaries choosing not to allow new or ongoing investment in private markets asset types, such as real estate and infrastructure assets, by these funds. We consider that there is a high risk of this occurring. If it did, it could reduce investor choice and damage the UK fund domicile, and reduce investment into UK based long term private markets assets, harming UK economic growth.
4. Our proposed new delegation options would enable firms to manage risks more proportionately and for these ancillary risks to be allocated more efficiently as, where applicable, the depositary or its controlled nominees would no longer have to hold legal title or be a partner. Our proposal aims to ensure that full-scope funds do not lose their ability to invest in private markets asset types such as real estate and infrastructure assets (and to promote the ability of these funds to use partnership investment vehicles to access private markets assets). The main benefit is in preventing the harms that would arise from such a loss. These benefits will accrue to the fund depositaries, AFMs, and investors, and to the UK economy (all unquantified).
5. Alongside our rules changes to deliver the substantive policy change as above, we are also proposing changes to rules (and guidance) for the COLL registration function and CASS 6 to clarify the existing rules. We do not consider that any of these changes represent policy change or will lead to changes to firms' practices, but they will be of interest to all UK depositaries of AIFs and UCITS funds.

6. We estimate our proposals would result in a total one-off direct familiarisation cost of £60,000 to the relevant depositaries and AFMs. There may be additional costs for depositaries, AFMs, and investors for each one off delegation made. These costs are unquantified except in the case of our proposal for each delegation in respect of assets that are not safe custody investments or AIF custodial assets to be set up with external legal advice (£5,000 per delegation). We do not consider these additional costs sufficiently large to prevent use of it. We do not expect any additional ongoing costs.
7. Overall, we expect that the benefits of reducing the risk of the harms outlined above will outweigh the costs associated with our proposed intervention, meaning our proposals are likely to be proportionate.

Introduction

8. The Financial Services and Markets Act (2000) requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
9. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide a qualitative explanation of their impacts. Our proposals are based on weighing up all the impacts we expect and reaching a judgement about the appropriate level of regulatory intervention.

The Market

10. The relevant market for our substantive proposal comprises all (full scope) UK authorised AIFs investing in assets that are not AIF custodial assets, with these funds' depositaries being the firms most directly impacted. Many of these assets are private markets assets that are not listed on public markets. These include real estate, infrastructure assets, and the investment vehicles used to invest in such assets (such as partnerships). For some authorised AIFs, the ability to invest in such assets is an important part of their strategy. For technical reasons specific to authorised funds, as set out in the CP, a small minority of the relevant assets here are also CASS 6 safe custody investments (for example, partnerships that are a CIS).
11. Authorised AIFs that invest in real estate and partnerships are most likely to be impacted by the asset registration issue our proposals intend to address. These funds provide retail and professional investors (including UK pension schemes) with exposure to these asset types via a UK regulated product. Some investors prefer or may even need to use authorised AIFs to invest in these asset types.
12. Many authorised AIFs whose investment strategies are focused on these asset types invest in UK based investments, e.g., UK commercial property, and there are aspirations that they will also increasingly invest in UK infrastructure assets.

Product types

13. While the retail UK commercial real estate property funds sector, which usually uses Non-UCITS Retail Scheme (NURS) funds, has shrunk in recent years, there are other authorised property funds. For example, Qualified Investor Scheme (QIS) funds aimed at professional clients such as UK pension schemes also invest in UK real estate, and this sector of funds is stable.
14. NURS and QIS are the two longstanding types of authorised AIF, but investors can also invest in these asset types through the more recently introduced Long-Term Asset Fund (LTAF). Introduced in 2021, the LTAF product type represents a relatively new product that also offers access to private markets assets such as real estate, infrastructure assets and private credit (with some of these typically accessed via partnership vehicles), some with a focus on UK based investments. The first LTAF investors have mostly been professional clients, such as UK pension schemes, but access has recently expanded to retail investors. The aspiration is that LTAFs help channel (especially) UK pension savings into UK based long term assets important for UK economic growth.

Market size

15. In the UK, 18 AFMs (of the 58 AFMs who manage authorised AIFs) manage a total of 30 authorised AIFs that invest in real estate. This is a small portion of the wider authorised AIF market, as these 30 funds hold a NAV of £17.4bn (of which £13.1bn is in real estate), whilst in the wider AIF market there are over 1,000 authorised AIFs which have a total NAV of approximately £780bn (based on AIFMD reporting data as at December 2025). This is lower than the UK UCITS sector, which had a larger NAV at that date. 8 of 12 authorised AIF depositaries are involved with these 30 AIFs. However, the remaining UK depositaries of UCITS and authorised AIFs will be interested in the proposed clarification of how the COLL registration function and CASS 6 rules work. In addition, some of our clarificatory proposed changes to CASS could be of relevance to depositaries of unauthorised AIFs. Since some depositaries have multiple permissions, our proposals are of relevance to a total of 45 depositaries.
16. As we do not have data for the use or desired use of other asset types relevant to our proposals (other types of assets that are not AIF custodial assets), in particular partnership vehicles, the total number of funds that may be impacted by the asset registration issue may be higher. Some of the 19 LTAFs are known to have had issues with partnerships. Industry has said that this issue has already caused some investments not to be made for authorised AIFs, but it is not possible to estimate this.
17. As noted in the CP, there are likely few (or no) authorised AIFs with small AFMs (AFMs) currently affected by the COLL registration function issues for assets that are not safe custody investments or AIF custodial assets.

Problem and rationale for intervention

The harm

- 18.** As above, for full-scope funds, only the depositary or its own controlled nominee can hold legal title or equivalent to some private market asset types such as real estate (those not defined as AIF custodial assets). Owners of the legal title for real estate have safety duties and other responsibilities, all of which are sources of possible liabilities, and there are also risks for depositaries when they are the partner in a partnership. But depositaries do not directly control the assets or make the decision to invest in them – the AFM does this. None of these 'ancillary' risks or liabilities relate to a depositary's core regulatory role.
- 19.** Stakeholders have told us that these ancillary risks and liabilities have significantly escalated under new laws in recent years, especially for depositaries of authorised funds invested in UK real estate. Under some of these laws there is or will be potential criminal liability for the registered owners of certain properties – so for the depositaries or their nominees. This potential liability also applies to depositary staff, where they are Directors etc of the depositary/nominee. There is also the risk of direct and potentially significant financial liabilities being imposed on depositaries.
- 20.** Fund depositaries no longer wish to carry these ancillary legal and financial risks associated with legally owning these asset types (e.g., real estate) or with being a partner on behalf of the fund. Representatives of the depositary industry have stated that without change, individual depositaries may well choose to stop offering depositary services to authorised AIFs invested in assets that give rise to potential criminal liability. This is also limiting the investment options for LTAFs, including with regard to partnership vehicles.
- 21.** We think there is a risk that harms will crystallise if we do not address this issue. There is a risk that investors will face reduced choice if they cannot invest in important private markets asset classes via authorised AIFs, with an impact on the managers too. Some investors prefer or even need to use authorised AIFs to invest in these asset types. As noted, many such funds that invest in these asset types invest in UK based investments, such as UK commercial real estate, and there are aspirations for them to invest in UK infrastructure. Therefore, a withdrawal of depositary services for such funds could reduce investment in UK based long-term 'private markets' assets needed for UK growth, as well as damaging the UK fund domicile.

Drivers of harm

- 22.** We consider that the main driver of harm is a regulatory failure, caused by our rules becoming outdated and therefore poorly suited to the growth in private markets. This is because our rules require registration of certain private market assets in the name of the depositary or its controlled nominees which, due to the level of ancillary risk to the depositary that is now involved, is a hindrance to normal market function.
- 23.** With the introduction of the Building Safety Act (BSA) in 2022, staff of depositaries now face a higher risk of a criminal penalty in the event of a failing in the management of a relevant building, controlled by the AFM, in respect of a high minimum standard of safe building management. 'Martyn's Law' has similar features and will apply to a larger

number of UK real estate assets. The depositary has no formal control over the decision to invest in these assets or the management of these risks. This legislation means that the misplacement of risk between parties, caused by our rules, is increasingly likely to cause harm, so we have opted to intervene.

Alternative options

- 24.** As explained in the CP, we consider that the FSMA 'safekeeping' requirements fundamentally involve the depositary being responsible for all the fund property. And that in line with this, we have explained why we consider that it is appropriate and necessary for us to retain 'registration function' duties on depositaries via our COLL rules, especially for assets that are neither safe custody investments nor AIF custodial assets. In this context, we believe our only option for intervention involves a new permitted delegation model, as described below.
- 25.** Alternatively, we could do nothing. We think this could quickly lead to the harms set out above and could be a missed opportunity for us to make rule changes that support the growth of the UK economy. However, please note our consultation question 13 around the timing of implementation. We could implement our proposals at a later date, alongside wider changes that may stem from our planned broader depositary and custody rules reviews. This may save a portion of duplicate familiarisation cost for the small group of depositaries the registration proposals apply to (8), but will delay the benefits of transferring the asset title risk that we believe industry are asking for.

Our proposed intervention

- 26.** We consider that the market cannot resolve the market failures itself. We consider that it is likely that there is no reasonable price that would persuade the depositary to continue to expose its staff to potential criminal liability for risks they cannot control. Nor that monetary compensation set at a practical level would reliably persuade sufficient depositary staff to retain such personal risks indefinitely. Even if criminal liability was not in play, we consider that the extra compensation that would be needed for a depositary to continue to take the reputational and possible financial risks that do not relate to core depositary functions (in a context where the depositary does not directly control the risks) would be too high to be affordable for an AIFM/the fund/the fund investors who may well ultimately pay.
- 27.** Our core proposal is to remove an existing restriction on the depositary of an authorised AIF with a 'full scope' AIFM delegating its COLL registration function and CASS 6 custody function (as relevant) for assets that are not AIF custodial assets to third parties. We propose to allow such delegations to a regulated custodian where the asset is a safe custody investment, as would be required under the relevant CASS 6 requirements for depositing assets with a third party which would also apply, and to an affiliate of the AFM where such an asset is not a safe custody investment (with new proposed protections as below in this latter case). This would mean the depositary or its controlled nominees would no longer have to hold legal title to, for example, registered land or be partners in partnerships for funds. As stated above, it is likely that most or all of the funds impacted

by this issue are managed by full scope AIFMs. Our proposal should help them continue to invest in these assets.

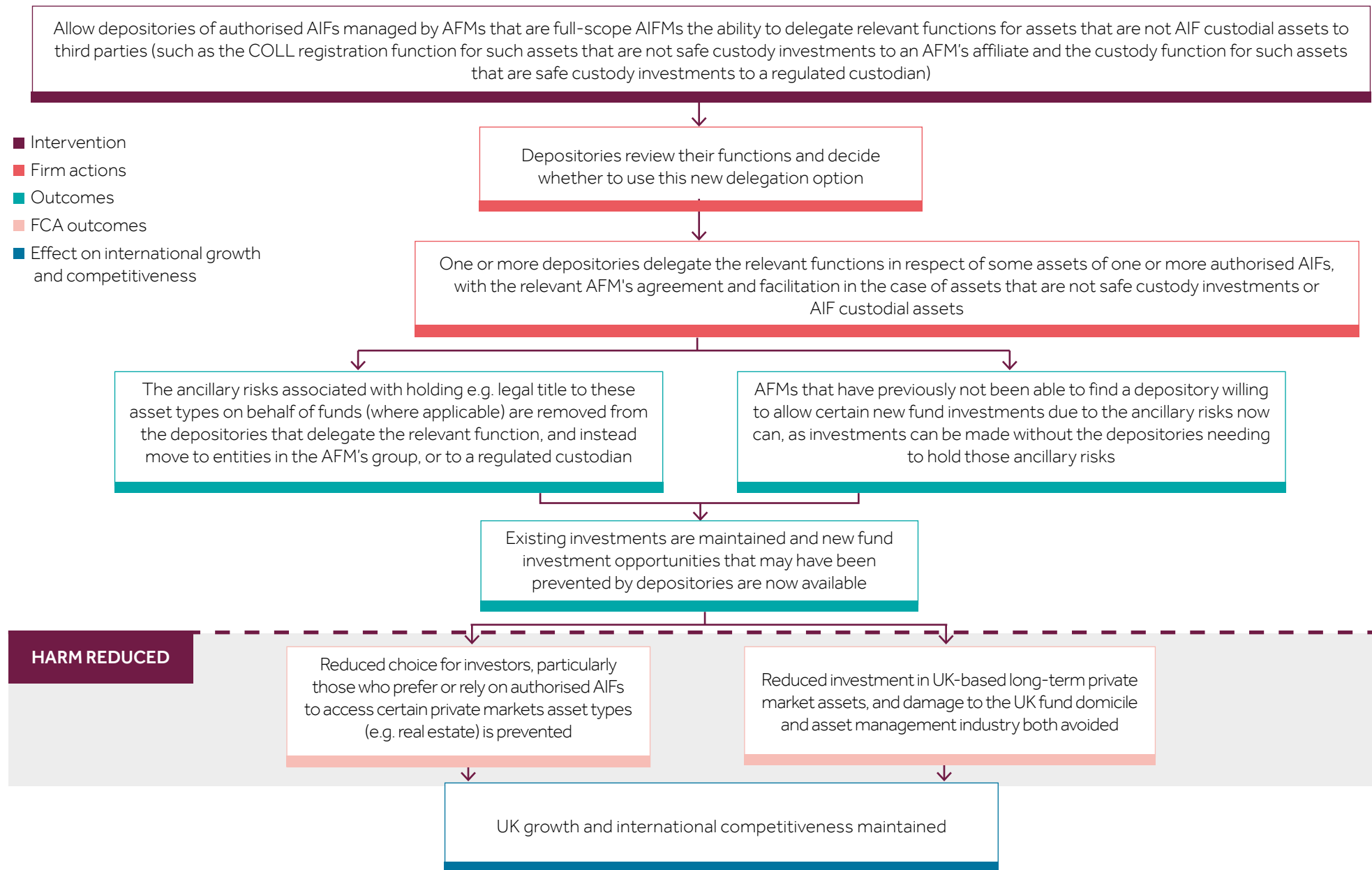
- 28.** Additionally, we are proposing that for 'immovables' located in the UK (this includes buildings and land) the persons permitted to act as the depositary's delegate for the COLL registration function should be 'affiliates' of the AFM that also take the form of a UK company subject to the CA 2006. This is to safeguard both Parliament's policy intentions with regard to (in particular) UK building safety, and the protection of the funds' interests, for the reasons explained in the CP.
- 29.** We are also proposing 'additional protections' for delegations of the COLL registration function for assets that are not safe custody investments or AIF custodial assets, to mitigate the residual risks. See Chapter 3.
- 30.** Overall, we are proposing rule changes for 'full scope' funds as we consider doing so would avoid the significant downsides and risks of harm set out in the CP while ensuring that the residual and theoretical additional risks of losses to the authorised funds associated with this new option are kept at an appropriate, very low, level.
- 31.** We are also proposing to change the existing COLL registration function requirements and delegation options for the depositary of an authorised AIF with a Small AIFM by:

 - a.** limiting the persons to whom the depositary can delegate the function in respect of assets that are not safe custody investments or AIF custodial assets to 'AFM's affiliates' only
 - b.** imposing the same 'additional protections' as we have proposed for when the depositary of a 'full scope' fund delegates this in respect of such assets.
- 32.** In addition, another proposed rule change will impose a stronger liability in respect of the delegation of the COLL registration function on depositaries of QIS with small AIFMs than currently for such assets. It will ensure that their level of liability will remain unaffected even when delegating the function.
- 33.** We are proposing these changes because we consider that the COLL registration function regime for authorised AIFs should be adequately similar for these types of fund assets, irrespective of the AIFM's status, for the reasons set out in the CP. In summary, to avoid costly cliff edge effects and to ensure a similar level of protection.
- 34.** The proposed changes to rules (and guidance) for the COLL registration function and CASS 6 clarify existing rules or explain our view on how they already work and what they require. We do not consider that any of these changes will lead to policy change or changes to firms' practices, although 45 depositaries of AIFs and UCITS in total will incur familiarisation costs.

Causal chain

- 35.** The causal chain (Figure 1) sets out how we expect our proposals to reduce the potential harms.
- 36.** In the causal chain, we assume that many depositaries will want to take up this new option once our rules are implemented. Therefore, the harms avoided are those set out in the 'Harms' section that would arise in our baseline scenario.

Figure 1: Our causal chain



Baseline and key assumptions

- 37.** If we do not intervene to allow new delegation options for depositaries of full scope authorised AIFs for assets that are not AIF custodial assets, we assume that depositaries will not allow the funds impacted by the registration issue to, for example, continue to hold existing UK real estate assets, or make new investments in these, even if desired by the AFM. This is because depositaries would still need to hold the ancillary risks that they have little or no control over the management of, leading to the harms identified above. We think this would particularly be the case in respect of assets that bring potential criminal liability for the depositaries and their staff.
- 38.** We also think that AFMs could face a decreasing choice in terms of the investments their authorised AIFs could make. In particular, this would be in respect of long-term private markets assets (that are, or are accessed via, the relevant asset types), such as infrastructure investments. This would also be an effect of the withdrawal of depositary support for such investments.
- 39.** In response to our intervention, we assume that many depositaries will want to take up this new option once our rules are implemented.
- 40.** Finally, we use standard assumptions from our [Statement of Policy](#) on CBAs:
- An appraisal period of 10 years is used.
 - A discount rate of 3.5% is applied to determine the present value of the stream of costs and benefits we expect to occur in future years.
 - All values are in 2025 prices.

Summary of Impacts

- 41.** We anticipate that our proposals will support the continued functioning of the market by enabling firms to manage risks more proportionately and for these risks to be allocated more efficiently among firms. Overall, we expect that the benefits – reducing the harms that we otherwise expect to arise in the baseline – would outweigh the costs associated with our proposed interventions for full scope authorised AIFs, meaning our proposals are likely to be net beneficial and are suitably proportionate.
- 42.** The expected impacts of our proposals are summarised in Table 1, assessed relative to the baseline described above. Whilst we have estimated these benefits and costs with the assumption that many firms will use our new delegation option for full scope funds, firms will be free to decide whether taking up the option best suits their interests and business model.
- 43.** The Equivalised Annual Net Direct Cost to Business is negligible. This is because the only direct cost we expect is the one-off familiarisation cost of £60,000 to firms affected by both our main substantive proposal and our rule clarifications. Whilst we anticipate that some further indirect costs to industry may occur, it is not practical to robustly estimate the total cost to industry given firms can choose how to respond to our proposals.

- 44.** We do not estimate total ongoing costs as we consider that it is not possible to estimate how many new delegations of the relevant functions by depositaries of 'full scope' funds would occur if we made these rules, nor how many would involve a change in legal title or equivalent to a fund asset moving to a regulated custodian or an AFM's affiliate(s) as applicable. From our engagement with industry, we expect that all or almost all depositaries currently holding legal title to real estate assets affected by potential criminal liability for their staff will insist on AFMs' affiliates taking this on instead. There may be costs for fund depositaries, AIFMs, and investors per delegation option taken up. These are unquantified except in the case of our proposal for each delegation of an asset that is not a safe custody investment or AIF custodial asset to be set up with external legal advice (£5,000 per delegation). We do not consider that these costs would be so large as to render the new option delegation unusable.
- 45.** The proposals also avoid any problematic 'break points' at the point that an AIFM's business grows such that it can no longer be a small AIFM, and deliver the same protection to investors irrespective of the AIFM (AFM)'s status. We consider these benefits outweigh the possible costs there could be in relation to current arrangements made for small AIFMs funds that might need to change. Subject to feedback, we assume there are no such arrangements.

Table 1: Summary of benefits and costs

Group(s) affected	Type of impact	Impact (£)
Costs (one-off) – direct		
AFMs and depositaries	Familiarisation and gap analysis	£60,000 (across industry)
Costs (ongoing) – indirect		
Depositaries (may be passed to AFMs)	Costs per delegation (excepting the external legal advice), e.g., staff time to arrange and oversee	Unquantified but we assume they are unlikely to be so large as to render the new option we intend to deliver unusable
	The 'external legal advice', per delegation	£5,000 per delegation, for an asset that is not a safe custody investment or an AIF custodial asset
AFMs/their groups (may be passed onto the fund if permitted)	There will be some costs in respect of an asset that is not a safe custody investment or an AIF custodial asset: <ul style="list-style-type: none"> • associated with any choice to set-up new AFMs' affiliate entities to act as delegate • per delegation, e.g., staff time to arrange and oversee (as above, AFMs may bear some costs that the depositary passes on)	Unquantified but we assume they will usually be relatively low

Group(s) affected	Type of impact	Impact (£)
Funds and their investors (Authorised AIFs with full-scope AIFMs)	Where applicable, costs of legal title re-registration (e.g., for UK commercial real estate) may be borne by the fund (as above, funds may also bear some costs that the AFM passes on)	Unquantified. UK commercial real estate legal title re-registration estimated to be 0.5-1.5% of the asset's value
Benefits		
depositories of authorised AIFs with full scope AIFMs	Enabling these depositories to avoid the 'ancillary' risks and liabilities associated with having some private markets asset types such as real estate registered in their name, while retaining this depositary business	Unquantified
AFMs/their groups	Ability to retain existing, and make new, investments in many types of private markets assets for authorised AIFs	Unquantified
Fund investors	Continued access to important types of 'private markets' asset types via authorised funds	Unquantified
UK economy	Potential negative effects of reduced investment in UK based 'private markets'/long-term assets avoided Avoid damage to UK fund domicile	Unquantified

Table note: 'Direct' costs are those that are unavoidable for firms as they must incur these costs to remain compliant with our rules. 'Indirect' costs depend on how firms respond. Most of the costs here would be 'indirect', as most of our proposals are optional and firms can decide how to respond to our new rules.

Benefits

46. The benefits of our proposals arise through avoiding the harms we expect to arise in the baseline, as we expect that many depositories will want to take up this new option, especially with regard to UK real estate assets. We consider that our intervention would avoid these harms by enabling depositories of full scope authorised AIFs to avoid the 'ancillary' risks and liabilities associated with having private market asset types covered in this CP, such as real estate, registered in their name, while still offering depositary services to funds that invest in these.

- 47.** As a result, the ongoing practical ability of authorised AIFs to invest in important types of private market assets should be safeguarded, benefitting the managers of such funds. This will also benefit investors needing or preferring exposure to these private markets assets via authorised funds. We consider that an appropriate level of protection for investors in authorised funds will remain.
- 48.** In the absence of our proposed rule change, there could be a reduction in investment in and attractiveness of UK long term private markets assets, as well as damage to the UK fund domicile, which would be negative for the UK economy. See the 'Wider economic impacts' section below.
- 49.** We do not consider it reasonable to quantify the effects of our proposals in maintaining the functioning of the market and preserving market access to the relevant asset types via authorised AIFs. The baseline represents what we expect to occur if we do not intervene. However, as these harms have not yet fully materialised, it is not practical to estimate them reliably, especially without collecting new data. Similarly, although we expect most firms to take up our proposed option for the most impacted asset types such as real estate, we cannot reasonably estimate exactly how many would do so or when.
- 50.** Our proposals for 'small AIFM' funds have the benefit of avoiding problematic 'break points' when an AIFM (AFM)'s business grows such that it can no longer be a small AIFM, which brings benefits in terms of costs avoided (such as legal title re-registration costs). They will also deliver the same amount of protection to investors irrespective of the AIFM (AFM)'s small/full-scope status, something investors cannot control, generating further benefits.

Costs

Familiarisation and gap analysis

- 51.** We expect 18 AFMs and 45 depositaries (i.e., all firms with AIF or UCITS depositary permissions) to incur one-off compliance costs to familiarise themselves with the changes and perform gap analysis to assess their impact. These are estimated using our standardised cost model (SCM). More detail on the SCM, including why it is used, can be found in our [Statement of Policy on Cost Benefit Analysis](#).
- 52.** These costs will vary by firm size and business type, although the average cost per firm associated is expected to be small. We estimate that the total one-off cost to the industry overall, for the firms who could be impacted by or make use of these changes, to be £60,000.

Authorised AIFs with full-scope AIFMs: proposal to allow delegation of the depositary COLL registration function for assets that are not AIF custodial assets to certain persons

- 53.** Our proposed rule changes loosen existing requirements for the depositaries of 'full scope' funds by providing for a new delegation **option** in relation to some of their functions, for assets that are not AIF custodial assets (such assets may be safe custody investments too, although most are not). As described in 'Baseline', we assume that many depositaries will want to delegate the relevant functions, especially for immovables.
- 54.** We describe costs by the immediate group affected in the value chain – depositaries, AIFMs/their groups, funds and investors – although it is possible that costs incurred by each group are passed along the value chain.

Costs to depositaries (for all assets that are not AIF custodial assets)

- 55.** Firstly, we expect there to be some internal costs to depositaries incurred per delegation of the relevant function for all assets that are not AIF custodial assets, whether to a regulated custodian (for safe custody investments) or to an AFM's affiliate for other assets. For example, the cost of staff time to arrange and oversee the set-up of the delegation.

Costs to depositaries for such assets that are not safe custody investments

- 56.** There are likely to be some costs associated with the additional protections we require for depositaries where the COLL registration function for assets that are not safe custody investments or AIF custodial assets is delegated to AFMs' affiliates. Overall, we consider that these costs will likely vary depending on the size of the depositary and the processes it decides to use, and it is not reasonably possible to quantify them. While unquantifiable, we consider that the first 4 protections ((i-iv) would likely involve low costs, especially as we consider that a depositary would very likely implement 'i' and 'iii' at a minimum in any case, given its ongoing responsibility within this delegation model, and the affiliate would need to do (i) to avoid a clash with FSMA. We do not believe that these costs will prevent depositaries from using the new option.
- 57.** Secondly, under our draft rules in this area, we envisage external legal advice being required each time a delegation of the COLL registration function is carried out for these assets (protection (v)). We envisage that for many depositaries, the chosen set-up and contracts with AFMs' affiliates will become relatively standardised over time for the main asset types. As such, we expect more involvement and time required of external legal advisors for the first delegation arrangements than for those that follow. This would mean that the initial cost is higher for the first delegations but should be relatively lower once the processes are standardised. It is also possible that in the early stages of our new regime, industry associations pay for legal advice resulting in templates that depositaries can use.

58. We estimate the costs of this 'standardised' external legal advice additional protection, per delegation of these asset types, to be £5,000. This is based on our judgement of an estimated average cost of £500 per billable hour, for 10 hours of legal advice on average per delegation (FCA judgement).
59. The total costs to industry will depend on the number of delegations each depositary makes over our 10-year appraisal period.

Costs to AFMs/their groups for such assets that are not safe custody investments

60. We expect that AFMs may face some costs in setting up the COLL registration function delegation arrangement for such assets that are not safe custody investments. These may primarily arise through a choice to set up new affiliates for asset registration, including, where relevant, the holding of legal title. Because each AFM may approach this differently considering their pre-existing business model or structure, we do not think it is reasonably possible to quantify these costs.
61. We assume some AFM groups will choose to set up new affiliates that are simple corporate shells, whose Directors would be existing personnel from the AFM or its group and who would not need additional compensation to take on the roles. While such personnel would be taking on potential criminal liability in respect of some UK real estate assets that the affiliate owns, we assume that they are content to do that (for no additional compensation) as they will have direct control over the matters that could cause that criminal liability to arise. Individuals can choose whether to take on roles at the AFMs' affiliates. For real estate and other relevant non-safe custody investment asset types, we consider it likely that an arrangement could be put in place that avoids the need for FCA authorisation of an AFM's affiliate carrying out this role in the UK.
62. We think there would be some internal costs to AFMs and affiliates per delegation again related to overseeing the execution of that delegation that would be unquantifiable but not likely so large as to render the new option unusable. We do not envisage the AFM's affiliate keeping records (new protection (ii)) being onerous. We assume that the affiliate will be a registered owner of a relatively low number of assets for which turnover is relatively low (holding periods in months and usually longer), and that it can keep simple records. We think new protection (iv) could usually be implemented relatively simply and cheaply at the point of setting up the AFM's affiliate, perhaps by granting the depositary a special share with voting rights that deliver the desired outcome.
63. AFMs may also face some costs passed down by depositaries through their fee charging structure, such as those incurred for legal advice. It is not possible to quantify these costs and we do not know to what extent they would pass down their costs, though we always assume at least some cost pass-through.

Costs to funds and their investors for such assets that are not safe custody investments

64. We estimate costs of legal title re-registration for UK commercial real estate to be 0.5-1.5% of an asset's value, where applicable (based on FCA's desk-based research). Such costs may be met by the fund.

65. Some costs that come to be borne by AFMs may be passed onto the fund by the AFM, where so doing is permitted.

Authorised AIFs managed by Small AIFMs: proposal to align the COLL registration function requirements for assets that are not safe custody investments or AIF custodial assets with that for the full scope funds.

66. Our proposed changes to the delegation of the COLL registration function for assets that are not safe custody investments or AIF custodial assets by depositaries of authorised AIFs managed by small AIFMs (AFMs) is a narrowing of the existing options, with new 'additional protections' also proposed. In practice there are likely no or few authorised AIFs managed by small AIFMs affected by this issue. It is nonetheless possible that depositaries of some such funds are currently delegating the COLL registration function for these asset types. We have no data on this, but will update this assumption if we receive evidence on this.
67. We are not aware of any authorised AIFs with small AIFMs for which our proposals, if finalised, would cause, for example, a need for legal title to some of their assets to be re-registered if a delegate could no longer be used. If there were any, there would be costs similar to those covered elsewhere. Subject to feedback, we assume there are no such existing arrangements. In addition, if any depositaries of authorised AIFs managed by small AIFMs have delegated this task for these assets, or do so in the future, per the analysis above, our new external legal advice 'additional protection' would cause the same additional costs as in relation to full-scope funds.
68. We do not consider that it is possible to estimate what increased costs there may be for depositaries of QIS managed by small AIFMs, in respect of our proposal to impose a stronger liability in respect of the delegation of the COLL registration function for these assets than applies currently.

Replacement of a Modification by Consent

69. As set out in Chapter 4, we propose to replace the current Modification by Consent for COLL 5.6.22R with a permanent rule change that delivers the same outcome.
70. We do not expect material incremental costs. ICVCs and depositaries already operate under the Modification by Consent, so their behaviour will not materially change. The main benefit of replacing the Modification by Consent with permanent rules is that it will remove the administrative burden of waiver applications, reducing friction for firms and the FCA.

Wider economic impacts, including on secondary objective

71. Some investors prefer or may need to use authorised AIFs to invest in the private market asset types covered by the proposals in this CP. Many authorised AIFs whose investment strategies are focused on these asset types invest in UK based long term private

markets assets needed for UK economic growth. If we do not address this issue, there is a high risk that investors will no longer be able to gain exposure to these important asset classes via authorised funds in practice. Therefore, this could reduce investment in those UK long term assets needed for economic growth, as well as damaging the UK fund domicile. Our proposals are designed to avoid this, and as such promote the competitiveness and growth of the UK economy in line with our secondary objective. We consider that it is not reasonably possible to quantify these wider benefits.

Monitoring and evaluation

- 72.** Our intended outcome is to facilitate the ongoing practical ability of UK authorised funds to invest in important 'private markets' asset types, in the absence of harm to fund investors stemming from our proposed new delegation option.
- 73.** We will monitor success via industry feedback. We aim for no ongoing complaints about our rules preventing funds from making or maintaining investments in these asset types. We will also monitor potential crystallised harm to fund investors resulting directly from these proposals (if finalised), via our usual channels, such as our funds and firm supervisory work. As part of our 'business as usual' supervision of depositaries and authorised funds, we can also monitor the compliance of any delegations of, for example, the COLL registration function with our final rules.

Appendix 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules (a) is compatible with its general duty, under section 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, (b) so far as reasonably possible, advances the secondary international competitiveness and growth objective, under section 1B(4A) FSMA, and (c) complies with its general duty under section 1B(5)(a) FSMA to have regard to the regulatory principles in section 3B FSMA. The FCA is also required by s 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

- 7.** The proposals set out in this consultation are primarily intended to advance the FCA's operational objectives of:

 - Building competitive markets – promoting effective competition in the interests of consumers.
 - Delivering consumer protection – securing an appropriate degree of protection for consumers.
- 8.** Our proposals aim to advance our competition objective by promoting the ongoing ability of investors in authorised funds to gain exposure to private markets assets and facilitating greater competition for depositary services for such funds. Our proposals are compatible with the FCA's duty to promote effective competition in the interests of consumers, as they support increased choice in depositary services and continued access to diverse investment opportunities which ultimately benefits consumers.
- 9.** Our proposals aim to retain an appropriate level of protection for investors in these funds, which advances our consumer protection objective. We set out how we consider our proposals comply with this objective in more detail in Chapter 3.
- 10.** In line with the recommendations made by HMT in the 'remit letter' of 14 November 2024, these proposals are relevant to the FCA's secondary objective to facilitate the international competitiveness and growth of the UK economy in the medium to long term. Many of our authorised funds whose investment strategies are focused on private markets assets invest in UK based investments e.g., UK commercial real estate, and there are increasing aspirations for these funds to invest in UK infrastructure assets. Some investors prefer or even need to use authorised funds to invest in these asset types. Therefore, a withdrawal of depositary services for these funds would reduce investors' options for accessing exposure to UK-based long-term private markets assets needed for UK growth and likely reduce investment in such assets. There would also be damage to the UK fund domicile. Both results would be negative for UK growth and competitiveness.
- 11.** We consider these proposals to be compatible with the FCA's strategic objective of ensuring that the relevant markets function well. We consider that our AIFMD rules banned delegation of the depositary's COLL registration function and other functions for assets such as real estate and partnerships. This created a negative externality whereby the ancillary risks for some asset types had to be held by the depositary, even though the depositary has no control over the decision to invest in these assets or the management of these risks. Our proposals aim to tackle this market failure to facilitate the ongoing practical ability of authorised funds to invest in these assets.
- 12.** In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s 3B FSMA.

The need to use our resources in the most efficient and economic way

13. We believe the proposals set out in this consultation tackle the market failure mentioned above with an efficient and economic use of our resource. In addition, replacing the current modification by consent process with permanent rules reduces the need for repeated approvals, removing burdensome requirements on firms.

Our proposals are concerned with the principle that a burden or restriction should be proportionate to the benefits

14. As set out in the cost benefit analysis we are satisfied that the likely benefits of these proposals outweigh and justify the likely costs.

The need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets)

See the 'Environmental, social & governance considerations' below. The general principle that consumers should take responsibility for their decisions

15. The proposals do not depart from the fundamental responsibilities of investors for their investment choices. The changes do not alter product features, risk profiles, or disclosure obligations, rather they promote the ongoing ability of investors to invest in private markets assets via authorised funds.

The responsibilities of senior management

16. It will be the responsibility of relevant Senior Managers (in, for example, the depositaries) to ensure that their firms comply with the rules changes that we are proposing, if made. Senior Managers must have regard to their responsibilities under the Senior Managers and Certification Regime.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

17. Our rules recognise the differences between depositaries of authorised AIFs managed by full scope AIFMs and Small AIFM funds. Our new proposed regime avoids problematic 'breakpoints' when an AIFM's business grows such that it can no longer be a Small AIFM.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

18. We do not consider that our proposals are inconsistent with this principle.

The principle that we should exercise of our functions as transparently as possible

19. We have developed the proposals in this consultation paper in close collaboration with industry and other external stakeholders.

In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) FSMA)

20. The proposals are not relevant for minimising the extent to which business is connected with financial crime.
21. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies. The proposals are not relevant for mutual societies.

Equality and diversity

22. We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. We do not consider that the proposals involve acting in a way which discriminate on grounds of sex, disability, race, religion/belief, sexual orientation, age, pregnancy/maternity, gender reassignment, or marriage/civil partnership.
23. We have also had due regard to the need to promote equality, eliminate discrimination and foster good relations, in relation to sex, disability, race, religion/belief, sexual orientation, age, pregnancy/maternity and gender reassignment and have not identified any adverse impact that the proposals in this chapter would have on any of the groups with these protected characteristics under the Equality Act 2010. In Northern Ireland, the Equality Act is not enacted but other anti-discrimination legislation applies.
24. We will continue to consider equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

Environmental, social & governance considerations

25. In developing this Consultation Paper, we have considered the environmental, social and governance (ESG) implications of our proposals and our duty under ss. 1B(5) and s.3B(1) (c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under s. 5 of the Environment Act 2021. While

these proposals are not directly environmental measures, they can indirectly support these objectives by reducing friction for authorised funds investing in long-term, sustainability-linked real assets and infrastructure.

26. We will keep this issue under review during the course of the consultation period and when considering whether to make the final rules. We welcome your input on this.

Legislative and Regulatory Reform Act 2006 (LRRRA)

27. We have had regard to the principles in the LRRRA and Regulators' Code (together the 'Principles') for the parts of the proposals that consist of general policies, principles or guidance. We consider that these parts of our proposals are compliant with the five LRRRA principles – that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- Transparent – We are consulting on our proposed changes with all relevant stakeholders.
 - Accountable – We will publish any final rules after considering all consultation feedback received. We are acting within our statutory powers, rules and processes.
 - Proportionate – We recognise that some firms may be required to make changes to how they carry out their business and have proposed an implementation period to give them time to do so (in respect of authorised funds managed by Small AIFMs). The CBA sets out further detail on the costs and benefits of our proposals.
 - Consistent – Our approach would apply in a consistent manner across authorised AIFs.
 - Targeted – Our proposals are targeted on the specific restriction on depositaries that we have identified to be causing a market failure.
 - Regulators' Code – Our proposals are carried out in a way that supports firms to comply and grow through our consideration of their feedback via the CP and refining our proposals where necessary. Our CP, CBA, draft instrument, accompanying annexes, public communications and communications with firms are provided in a simple, straightforward, transparent and clear way to help firms meet their responsibilities.

Annex 4

Abbreviations used in this paper

Abbreviation	Description
ACS	Authorised Contractual Scheme
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
AIFMD L2	Alternative Investment Fund Managers Directive Level 2 Regulations
AFM	Authorised Fund Manager
AFMs	Authorised Fund Managers
AIFMs	Alternative Investment Fund Managers
AUT	Authorised Unit Trust
BSA	Building Safety Act 2022
CA 2006	Companies Act 2006
CASS 6	Client Assets Sourcebook
CBA	Cost Benefit Analysis
CIS	Collective Investment Scheme
CIU	Collective Investment Undertaking
COLL	Collective Investment Schemes Sourcebook, our authorised fund rules
CP	Consultation Paper
ESG	Environmental, Social & Governance
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000

Abbreviation	Description
FUND	The FCA Handbook's Fund Sourcebook
ICVC	Investment Company with Variable Capital
LTAf	Long-Term Asset Fund
MIFID	Markets in Financial Instruments Directive
NAV	Net Asset Value
NURS	Non-UCITS Retail Scheme
OEIC	Open-Ended Investment Company
PM	Portfolio Manager
QIS	Qualified Investor Scheme
RAO	Regulated Activities Order
SPV	Special Purpose Vehicle
UCITS	Undertakings for Collective Investment in Transferable Securities
UK	United Kingdom

Appendix 1

Draft Handbook text

**COLLECTIVE INVESTMENT SCHEMES (REGISTRATION OF ASSETS)
INSTRUMENT 2026**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 247 (Trust scheme rules); and
 - (e) section 261I (Contractual scheme rules);
 - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) 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 provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the 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
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 “*Editor’s 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 Collective Investment Schemes (Registration of Assets) Instrument 2026.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Amend the following definition as shown.

- control* ...
- (2B) (in *MIFIDPRU 5*, *COLL 6.6*, *COLL 8.5* and *COLL 15.7*) the relationship between a parent undertaking and a subsidiary undertaking, as defined in section 1162 of the Companies Act 2006, or the accounting standards to which an undertaking is subject under section 403(1) of the Companies Act 2006, or a similar relationship between a natural or legal *person* and an undertaking.
- ...
- custody asset* ...
- (2) in relation to *acting as trustee* or *depository of an AIF* in *CASS 6*:
- (a) an *AIF custodial asset* held by a *depository* in line with *FUND 3.11.21R* (Depository functions: safekeeping of financial instruments); or
- (b) any other asset of an *AIF* in respect of which a *depository* exercises safe-keeping functions in line with *FUND 3.11.23R* (Depository functions: safekeeping of other assets); or
- (c) any asset of an *authorised AIF* managed by a *small authorised UK AIFM* in respect of which a *depository* is required to exercise safe-keeping functions under *COLL 6.6.12R* (Control by the depository over the scheme property) or *COLL 8.5.4R* (Duties of the depository).
- ...
- depository* (1) (except in *UKLR*):
- ...
- (e) (for an *AIF* managed by a *full-scope UK AIFM* (other than an *AIF* which is an *ICVC*, an *AUT* or an *ACS*)) the *person* fulfilling:
- (i) the function of a *depository* in accordance with ~~*FUND 3.4.11R*~~ *FUND 3.11.4R*; or

...

...

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

6 Custody rules

6.1 Application

...

6.1.1B R ...

6.1.1BA G (1) If a *depository* within (2) or (3) complies with its obligations under *COLL* 6.6.12R(1)(b), *COLL* 8.5.4R(2)(c) or *COLL* 15.7.7R(1) in relation to a *custody asset* which is neither a *safe custody asset* nor a *safe custody investment*, it should be regarded as having applied *CASS* 6.2.3R and *CASS* 6.3 in a manner appropriate to the nature and value of that asset.

(2) The *depository* of an *authorised AIF* is within this paragraph where:

(a) in accordance with *CASS* 6.1.1BR(2), the *firm* is required to apply the *custody rules* in relation to a *custody asset* which is neither an *AIF custodial asset* nor a *safe custody investment*, in a manner appropriate to the nature and value of the *custody asset*; and

(b) in accordance with *CASS* 6.1.16IAR, the *firm* is required to comply with *CASS* 6.2.3R.

(3) The *depository* of an *UCITS scheme* is within this paragraph where:

(a) in accordance with *CASS* 6.1.1BR(3), the *firm* is required to apply the *custody rules* in relation to a *custody asset* which is neither an *UCITS custodial asset* nor a *safe custody investment*, in a manner appropriate to the nature and value of the *custody asset*; and

(b) in accordance with *CASS* 6.1.16IDR, the *firm* is required to comply with *CASS* 6.2.3R.

...

Depositories of AIFs

6.1.16IA R ...

- (2) When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules in (1), also comply with the custody rules in the table below:

Reference	Rule
CASS 6.1.1BR(2)	Application
<u>CASS 6.3.1R to CASS 6.3.4BG, subject to (3)</u>	<u>Depositing safe custody assets with third parties</u>
...	...

- (3) CASS 6.3 does not apply in respect of AIF custodial assets of AIFs managed by full-scope UK AIFMs, the custody of which can be delegated in accordance with FUND 3.11.28R and the UK AIFM regime.

...

Depositaries of UCITS

- 6.1.16ID R (1) When a firm is acting as trustee or depositary of a UK UCITS, the firm need comply only with the custody rules in the table below:

Reference	Rule
...	...
CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R	Holding of client assets
<u>CASS 6.3.1R to CASS 6.3.4BG, subject to (2)</u>	<u>Depositing safe custody assets with third parties</u>
...	...

- (2) CASS 6.3 does not apply in respect of UCITS custodial assets, the custody of which can be delegated in accordance with COLL 6.6B and the UCITS level 2 regulation.

...

6.2 Holding of client assets

...

Registration and recording of legal title

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

...

(4) the *firm* if either:

(a) it is not a *trustee firm* but is prevented from registering or recording legal title in the way set out in (1), (2) or (3) and provided that:

...

(ii) the *firm* has notified the *client* if a *professional client*, or obtained prior written consent if a *retail client*;

(b) it is a *trustee firm* and is prevented from registering or recording legal title in the way set out in (1) or (2); or

(c) (in respect of a *unit* in a *collective investment scheme* which is an interest in a *partnership* and is neither an *AIF custodial asset* nor a *UCITS custodial asset*) it is a *depository* of an *authorised AIF* or *UCITS scheme* and the asset is registered in accordance with *COLL 6.6.12R(1)(b)*, *COLL 8.5.4R(2)(c)* or *COLL 15.7.7R(1)*.

6.2.3-A R ...

6.2.3-B R A *firm* which is a *depository* need not comply with *CASS 6.2.3R* for any *AIF custodial asset* or *UCITS custodial asset*, the custody of which has been delegated in accordance with either:

(1) *FUND 3.11.28R* and other relevant provisions in the *UK AIFM regime*, if the *firm* is a *depository* of an *AIF* managed by a *full-scope UK AIFM* in respect of an *AIF custodial asset*; or

(2) *COLL 6.6B* and the *UCITS level 2 regulation*, if the *firm* is a *depository* of a *UCITS* in respect of a *UCITS custodial asset*.

...

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

5 Investment and borrowing powers

...

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

Cash, borrowing, lending and other provisions

5.6.22 R The following *rules* in Chapter 5 apply to a *non-UCITS retail scheme*:

...

(9) subject to COLL 5.6.22AR, COLL 5.5.9R (Guarantees and indemnities).

5.6.22A R In respect of any acquisition or holding of an immovable permitted under COLL 5.6.18R and COLL 5.6.19R, an ICVC or a depositary for the account of a non-UCITS retail scheme may provide a guarantee or indemnity in respect of an obligation of the scheme or the depositary on behalf of the scheme only if:

(1) the depositary of the scheme is satisfied on reasonable grounds that any guarantee or indemnity given to a third party would not result in any undue risk to unitholders;

(2) the depositary has taken reasonable steps to mitigate any risks that may exist; and

(3) none of the scheme property is used to discharge any obligation arising under such a guarantee or indemnity where the depositary fails to perform an obligation by reason of negligence, default, breach of duty, breach of trust or breach of contract on its own part, or that of any other person on whom it has placed reliance.

...

6 Operating duties and responsibilities

...

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

...

Control by the depositary over the scheme property

6.6.12 R (1) The *depositary* of an *authorised fund* is responsible for the safekeeping of all of the *scheme property* (other than tangible movable property) entrusted to it and must:

...

(b) subject to (1A) and (1B), ensure that *scheme property* in registered form is, as soon as practicable, registered in the name of the *depositary*, its nominee, or:

(i) ~~(in the case of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM*)~~ where the *scheme property* is a *safe custody investment* or an *AIF custodial asset*, a *person* retained by it under *COLL* 6.6.15R(4) (Committees and delegation); or

(ii) in the case of a *non-UCITS retail scheme* where the *scheme property* is neither a *safe custody investment* nor an *AIF custodial asset*, a *person* to whom this registration function has been delegated in accordance with *COLL* 6.6.15R(4B) (Committees and delegation);

...

(d) ...

(1A) For *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, the reference in (1)(b) to ‘its nominee’ is to a *person* who is controlled by the *depositary*.

(1B) *Scheme property* which is a *safe custody asset* or a *safe custody investment* must not be registered in the name of the *depositary* itself unless it is a *unit* in a *collective investment scheme* which is an interest in a *partnership* and is not a *safe custody asset*.

...

(4) Where the *authorised fund* is a *UCITS scheme*, this rule applies to the *scheme’s depositary* to the extent the provisions are consistent with the requirements of *COLL* 6.6B and the *UCITS level 2 regulation*.

- (5) Where the *authorised fund* is a *non-UCITS retail scheme* managed by a *full-scope UK AIFM*, this *rule* applies to the *scheme's depositary* to the extent the provisions are consistent with the requirements of FUND 3.11 and the *AIFMD level 2 regulation*.

6.6.12A G (1) The *depositary* of a *non-UCITS retail scheme* or a *UCITS scheme* is reminded of the obligations in *CASS 6* which apply in addition to those in *COLL 6.6*. For example, *CASS 6.3.1R* to *CASS 6.3.4BG* are relevant for the depositing of *safe custody assets* or *safe custody investments* with third parties except in respect of:

- (a) *AIF custodial assets* of *AIFs* managed by *full-scope UK AIFMs*, the custody of which can be delegated in accordance with *FUND 3.11.28R* and the *UK AIFM regime*; or
- (b) *UCITS custodial assets*, the custody of which can be delegated in accordance with *COLL 6.6B* and the *UCITS level 2 regulation*.

- (2) The duty in *COLL 6.6.12R(1)(b)* does not prevent a *depositary* appointing a second *person* to act as trustee in order to effect a sale or transfer of *scheme property* which is an *immovable*.

...

Committees and delegation

6.6.15 R ...

- (4) The *Subject to (4A)*, the *depositary* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM* may delegate any function to any *person* save:
- (a) the *ICVC* or any *director* of the *ICVC* or the *authorised fund manager* of a *scheme*, to assist the *depositary* to perform:
- (i) any function of oversight in respect of the *scheme*, its *directors* or the *authorised fund manager* as the case may be; or
- (ii) any function of *custody* or control of the *scheme property*;
- (b) an *associate* of the *ICVC* or of any of the *directors* of the *ICVC* or of the *authorised fund manager* of the *scheme* (as the case may be) to assist the *depositary* to perform any function in (a)(i); or

- (c) a *nominee company* or anyone else to assist it to perform the function of being a *custodian of documents* evidencing title to *scheme property* of the *scheme* unless the arrangements with the *custodian* prohibit the *custodian* from releasing the *documents* into the possession of a third party without the consent of the *depository*.
- (4A) The *depository* of a *non-UCITS retail scheme* managed by a *small authorised UK AIFM* may not delegate the function of registering *scheme property* referred to in COLL 6.6.12R(1)(b) in respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, except in accordance with (4B).
- (4B) In respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, the *depository* of a *non-UCITS retail scheme* may only delegate the function of registering *scheme property* referred to in COLL 6.6.12R(1)(b) subject to the following conditions:
- (a) The delegation must be to a *person* who is an *affiliated company* of the *authorised fund manager* of the *scheme*.
- (b) The *person* must not be permitted to further delegate or sub-delegate the function.
- (c) Where the *scheme property* is an immovable in the *United Kingdom*, the *person* must be a *company* registered under the Companies Act 2006.
- (d) The *scheme property* must be registered in the name of the *person*.
- (e) The *person* must hold the *scheme property* on trust for the *depository* and maintain up-to-date and detailed records of all the *scheme property* so held.
- (f) Title to the *scheme property* must not be capable of being transferred to any *person* without the express written consent of the *depository*.
- (g) Direct control of the *person* must not be capable of being changed without the express written consent of the *depository*.
- (h) The *depository* must be satisfied, based on external legal advice, that the arrangements meet the requirements in (a) to (g).
- (5) ...

(5A) Where a *depository* delegates the function of registering *scheme property* under (4B), its liability for those services shall remain unaffected.

...

...

6.6B UCITS depositaries

...

Conflicts of interest: depositaries

6.6B.3 R ...

6.6B.3A R A *depository* must not delegate any function to the *authorised fund manager*.

...

8 Qualified investor schemes

...

8.5 Powers and responsibilities

...

Duties of the depository

8.5.4 R ...

(2) The *depository* must:

...

(c) subject to (2A) and (2B), ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or ~~delegate~~, as ~~appropriate~~;

(i) in the case of a *scheme* managed by a *small authorised UK AIFM* where the *scheme property* is a *safe custody investment* or an *AIF custodial asset*, a *person* to whom this registration function has been delegated in accordance with *COLL 8.5.5R(2) (Delegation)*; or

(ii) where the *scheme property* is neither a *safe custody investment* nor an *AIF custodial asset*, a *person to whom this registration function has been delegated in accordance with COLL 8.5.5AR (Delegation)*;

...

(i) ...

(2A) In respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, the reference in (2)(c) to ‘its nominee’ is to a *person who is controlled by the depositary*.

(2B) *Scheme property* which is an *AIF custodial asset* or a *safe custody investment* must not be registered in the name of the *depositary* itself unless it is a *unit* in a *collective investment scheme* which is an interest in a *partnership* and is not an *AIF custodial asset*.

...

(4) This rule applies to the *depositary* of a *scheme* managed by a *full-scope UK AIFM* to the extent the provisions are consistent with FUND 3.11 and the requirements of the *AIFMD level 2 regulation*.

...

Delegation

8.5.5 R ...

(2) (a) ~~The~~ Subject to (b) and (c), the *depositary* of a *scheme* managed by a *small authorised UK AIFM* has the power to delegate any function to anyone, including in the case of an *ICVC* a *director*, to assist the *depositary* to perform its functions.

(b) ~~However, it~~ The *depositary* must not retain the services of the *authorised fund manager* or, in the case of an *ICVC*, any other *director* to perform any part of its functions of safe custody of the *scheme property*.

(c) The *depositary* must not delegate the function of registering *scheme property* referred to in COLL 8.5.4R(2)(c) in respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, except in accordance with COLL 8.5.5AR.

(3) ...

- 8.5.5A R In respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, the *depository* of a *qualified investor scheme* may only delegate the function of registering *scheme property* in *COLL 8.5.4R(2)(c)* subject to the following conditions:
- (1) The delegation must be to a *person* who is an *affiliated company* of the *authorised fund manager* of the *scheme*.
 - (2) The *person* must not be permitted to further delegate or sub-delegate the function.
 - (3) Where the *scheme property* is an immovable in the *United Kingdom*, the *person* must be a *company* registered under the *Companies Act 2006*.
 - (4) The *scheme property* must be registered in the name of the *person*.
 - (5) The *person* must hold the *scheme property* on trust for the *depository* and maintain up-to-date and detailed records of all the *scheme property* so held.
 - (6) Title to the *scheme property* must not be capable of being transferred to any *person* without the express written consent of the *depository*.
 - (7) Direct control of the *person* must not be capable of being changed without the express written consent of the *depository*.
 - (8) The *depository* must be satisfied, based on external legal advice, that the arrangements meet the requirements in (1) to (7).

- 8.5.5B R Where a *depository* delegates the function of registering *scheme property* under *COLL 8.5.5AR*, its liability for those services shall remain unaffected.

Delegation and responsibility for regulatory obligations: guidance

- 8.5.6 G (1) *Directors* of an *ICVC*, *authorised fund managers* and *depositories* should also have regard to *SYSC 8* (Outsourcing). *SYSC 8.1.6R* states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.
- (2) The *depository* of a *qualified investor scheme* is reminded of the obligations in *CASS 6* which apply in addition to those in *COLL 8.5*. For example, *CASS 6.3.1R* to *CASS 6.3.4BG* is relevant for the depositing of *AIF custodial assets* or *safe custody investments* with third parties except in respect of *AIF custodial assets* of *AIFs*

managed by full-scope UK AIFMs, the custody of which can be delegated in accordance with FUND 3.11.28R and the UK AIFM regime.

- (3) The duty in COLL 8.5.4R(2)(c) does not prevent a depositary appointing a second person to act as trustee in order to effect a sale or transfer of scheme property which is an immovable.

...

15 Long-term asset funds

...

15.7 Powers and responsibilities of the authorised fund manager and the depositary

...

Delegation

15.7.7 R (1) The *depositary* must also:

- (+) (a) subject to (2), ensure that any scheme property in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate, where the scheme property is not a safe custody investment or an AIF custodial asset, a person to whom this registration function has been delegated in accordance with COLL 15.7.7AR; and

- (2) (b) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions.

- (2) Scheme property which is an AIF custodial asset or a safe custody investment must not be registered in the name of the depositary itself unless it is a unit in a collective investment scheme which is an interest in a partnership and is not an AIF custodial asset.

- (3) This rule applies to the depositary of a long-term asset fund to the extent the provisions are consistent with the requirements of FUND 3.11 and the AIFMD level 2 regulation.

15.7.7A R In respect of scheme property which is neither a safe custody investment nor an AIF custodial asset, the depositary of a long-term asset fund may only delegate the function referred to in COLL 15.7.7R(1) subject to the following conditions:

- (1) The delegation must be to a *person* who is an *affiliated company* of the *authorised fund manager* of the *scheme*.
- (2) The *person* must not be permitted to further delegate or sub-delegate the function.
- (3) Where the *scheme property* is an immovable in the *UK*, the *person* must be a *company* registered under the Companies Act 2006.
- (4) The *scheme property* must be registered in the name of the *person*.
- (5) The *person* must hold the *scheme property* on trust for the *depository* and maintain up-to-date and detailed records of all the *scheme property*.
- (6) Title to the *scheme property* must not be capable of being transferred to any *person* without the express written consent of the *depository*.
- (7) Direct control of the *person* must not be capable of being changed without the express written consent of the *depository*.
- (8) The *depository* must be satisfied, based on external legal advice, that the arrangements meet the requirements in (1) to (7).

- 15.7.7B R (1) In respect of *scheme property* which is neither a *safe custody investment* nor an *AIF custodial asset*, the reference in *COLL 15.7.7R(1)* to ‘its nominee’ is to a *person* who is *controlled* by the *depository*.
- (2) Where a *depository* retains the services of a *person* under *COLL 15.7.7AR*, its liability for those services shall remain unaffected.

Delegation: guidance

- 15.7.8 G ...
- (2) ...
- (3) The *depository* of a *long-term asset fund* is reminded of the obligations in *CASS 6* which apply in addition to those in *COLL 15.7*. For example, *CASS 6.3.1R* to *CASS 6.3.4BG* is relevant for the depositing of *safe custody investments* with third parties except in respect of *AIF custodial assets*, the custody of which can be delegated in accordance with *FUND 3.11.28R* and the *UK AIFM regime*.

- (4) The duty in COLL 15.7.7R(1) does not prevent a *depository* appointing a second *person* to act as trustee in order to effect a sale or transfer of *scheme property* which is an immovable.

...

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
...					
68
<u>Amendments made by the Collective Investment Schemes (Registration of Assets) Instrument 2025</u>					
69	<u>The amendments to COLL 6.6 and COLL 8.5</u>	<u>G</u>	<u>The amendments to the <i>rules</i> and <i>guidance</i> specified in column (2) do not apply to the <i>depository</i> of an <i>authorised fund</i> managed by a <i>small authorised UK AIFM</i>.</u>	<u>[Editor's note: insert the date on which this instrument comes into force until 6 months afterwards]</u>	<u>[Editor's note: insert the date on which this instrument comes into force]</u>

Annex D

Amendments to the Investment Funds sourcebook (FUND)

In this Annex, underlining indicates new text.

3 Requirements for alternative investment fund managers

...

3.11 Depositaries

...

Delegation: general prohibition

3.11.26 R (1) *A depositary must not delegate its functions referred to in FUND 3.11 to third parties, except as permitted by FUND 3.11.28R.*

...

[Note: recital 42 and article 21(11) first paragraph of AIFMD]

3.11.26A G The function of registering *scheme property* of an *authorised AIF* which is neither an *AIF custodial asset* nor a *safe custody investment* may be delegated under COLL 6.6.15R(4B), COLL 8.5.5AR or COLL 15.7.7AR.

...

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