

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Implementation of the UCITS V Directive (Policy Statement 16/2)

Lead regulator: FCA

Date of assessment: 29 July 2016

Commencement date: Capital resources for non-bank depositaries – 18 March 2016

Origin: EU

Does this include implementation of a Cutting Red Tape review? N/A

Which areas of the UK will be affected? Whole of UK

Brief outline of proposed new or amended regulatory activity

In addition to the minimum implementation of the UCITS V Directive (which is an EU Directive and therefore exempt from the scoring of the Business Impact Target), we further introduced two requirements in the UK that go beyond the minimum requirements set out in the UCITS V Directive (i.e. gold-plating). The first measure, capital resources requirements for non-bank depositaries, does not change the existing rules within the UK that firms have to comply with and therefore has no impact on business:

1. Capital resources requirements for non-bank depositaries
 - Under COLL rules, existing non-bank depositaries of authorised funds that are not MIFID investment firms are subject to a minimum own funds requirement of £4 million. This has been the case since 1988 and this requirement was extended to depositaries of authorised AIFs which are MiFID investment firms during the implementation of AIFMD.
 - The minimum own funds requirement for non-bank depositaries under UCITS V is €730,000 i.e. a lower figure than under existing rules. We believe that the existing £4 million requirements offers a better level of protection and we will therefore retain the £4 million minimum own funds requirement for FCA authorised depositaries which are investment management firms subject to IPRU (INV) 5 and to apply it to fullscope IFPRU investment firms. Because we are not changing the requirements previously in place and there is no impact on business.
2. Changes to reporting requirements for AFMs and depositaries
 - AFMs of UCITS schemes are required to notify the FCA of the details of their derivative use on a regular basis (at least annually). This notification should include details of the derivatives and forward transactions used in each UCITS scheme. Due the lack of a common reporting template, the FCA has in the past received incomplete information or data that is difficult to compare.

- The submitted data needs to be detailed and accurate so that the FCA can monitor potential risks building up in the sector. In order to facilitate this, we are introducing a Derivative Use report template which firms will be required to use when submitting their data. Firms will not be required to collect any new data, nor will there be any change the frequency to the reporting. The template will be included in COLL 6 Annex 2R.

Which type of business will be affected? How many are estimated to be affected?

1. There are currently 11 non-bank depositary firms in the UK which are subject to the new minimum own funds requirement

2. There are currently 11 AFMS and depositaries which will be subject to the new reporting requirements.

Please set out the impact to business clearly with a breakdown of costs and benefits

1. Capital resource requirements for non-bank depositaries

In the CBA to CP 15/27, we have assessed the impacts of the proposed capital requirements and conclude that it's likely to be negligible. Firms are already subjects to the £4 million minimum own funds requirements that we propose to retain. It could impact incoming EEA depositaries which will have to apply for top-up permission, but we would expect these firms to already hold capital in excess of £4 million.

2. Changes to reporting requirements for AFMs and depositaries

We expect the proposed adoption of a standard Derivative Use Report reporting requirement to have limited impact on firms in terms of costs. We are not proposing to require Authorised Fund Managers of UCITS to gather or report new information, but are introducing a standard tool so they can report the information already required under COLL 6.12.3R (derived from the UCITS Directive).

We have estimated the costs for depositaries to vary between £5,000 and £10,000 per annum, with a total cost for the whole UK depositary industry to vary between £55,000 and £110,000 per annum. These costs take into account only the additional staff time required to fill in and submit the reports, as depositaries will not be asked to produce or collect information that they should not already have. We provide a point estimate to the ongoing costs by rounding this range to £100,000 per annum for the whole industry.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

AFM:	Authorised Fund Manager
AIFMD:	Alternative Investment Fund Managers Directive
COLL:	FCA Handbook on Collective Investment Schemes
EEA:	European Economic Area
IPRU	(INV): Interim Prudential sourcebook for Investment Businesses
MiFID:	Markets in Financial Instruments Directive
UCITS Directive:	Undertakings in Collective Investment Schemes Directive