

Policy Statement

PS16/2

# Implementation of the UCITS V Directive



February 2016



---

# Contents

Abbreviations used in this paper	3
<b>1</b> Overview	5
<b>2</b> Requirements for UCITS managers	10
<b>3</b> Requirements for depositaries of UCITS	21
<b>4</b> Cost benefit analysis	26
<b>Annex</b>	
<b>1</b> List of non-confidential respondents	29
<b>Appendix</b>	
<b>1</b> Made rules (legal instrument)	31

In this Policy Statement we report on the main issues arising from Part I of Consultation Paper 15/27 “UCITS V implementation and other changes to the Handbook affecting investment funds” and publish the final rules.

Please send any comments or enquiries to:

Matteo Basso  
Strategy and Competition Division  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

**Telephone:** 020 7066 2048  
**Email:** cp15-27@fca.org.uk

You can download this Policy Statement from our website: [www.fca.org.uk](http://www.fca.org.uk). All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 706 0790 or email: [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

## Abbreviations used in this paper

<b>ACD</b>	authorised corporate director
<b>ACS</b>	authorised contractual scheme
<b>AIF</b>	alternative investment fund
<b>AIFM</b>	alternative investment fund manager
<b>AIFMD</b>	Alternative Investment Fund Managers Directive (EU Directive 2011/61/EU)
<b>AUT</b>	authorised unit trust
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms
<b>CASS</b>	Client Assets Sourcebook
<b>CBA</b>	cost benefit analysis
<b>COLL</b>	Collective Investment Schemes Sourcebook
<b>CP</b>	consultation paper
<b>CRD</b>	Capital Requirements Directive (EU Directive 2013/36/EU), which forms part of the CRD IV legislative package
<b>CRD IV</b>	the CRR and CRD
<b>CRR</b>	Capital Requirements Regulation (EU Regulation 575/2013), which forms part of the CRD IV legislative package
<b>Commission</b>	the European Commission
<b>EEA</b>	European Economic Area
<b>ELTIF</b>	European long-term investment fund
<b>ELTIF Regulation</b>	European Long-Term Investment Fund Regulation (EU Regulation 2015/760)
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union, which includes the European Economic Area (EEA) unless otherwise stated

---

<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>FUND</b>	Investment Funds Sourcebook
<b>IFPRU</b>	Prudential Sourcebook for Investment Firms
<b>IPRU (INV)</b>	Interim Prudential Sourcebook for Investment Businesses
<b>KIID</b>	key investor information document
<b>MiFID II</b>	Markets in Financial Instruments Directive (EU Directive 2014/65/EU)
<b>NURS</b>	non-UCITS retail scheme
<b>OEIC</b>	open-ended investment company established under the OEIC Regulations
<b>OEIC Regulations</b>	Open-Ended Investment Companies Regulations 2001 (SI 2001/1228) as amended
<b>PS</b>	policy statement
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls Sourcebook
<b>the Treasury</b>	Her Majesty's Treasury
<b>TP</b>	transitional provision
<b>UCITS</b>	undertaking for collective investment in transferable securities
<b>UCITS Directive</b>	Undertakings for Collective Investment in Transferable Securities Directive (EU Directive 2009/65/EC)
<b>UCITS V</b>	Directive amending the UCITS Directive (EU Directive 2014/91/EU)

---

# 1. Overview

## Introduction

- 1.1** In this Policy Statement (PS) we set out Handbook changes affecting managers and depositaries of UCITS and alternative investment funds (AIFs). These changes mainly relate to final rules and guidance for implementing UCITS V.<sup>1</sup> We also give our response to the feedback on Part I of our Consultation Paper (CP) 15/27 *“UCITS V Implementation and other changes to the Handbook affecting investment funds”*.<sup>2</sup>
- 1.2** In Part I of our CP we consulted on proposed rules and guidance for implementing UCITS V requirements, in particular:
- requirements applicable to management companies, including remuneration principles and transparency obligations towards investors, and
  - changes to the regime for depositaries, including eligibility criteria and capital requirements for firms acting as depositaries of UCITS.
- 1.3** Some of the changes consulted on in Part I of CP15/27 affect managers of non-UCITS retail schemes (NURS). In this PS we set out the final rules for managers of NURS. We also outline some final guidance for depositaries of AIFs, which we consulted on in our March 2015 quarterly consultation paper CP15/8.<sup>3</sup>
- 1.4** We must implement UCITS V by 18 March 2016, so the rules and guidance will come into force on this date. The Handbook changes affecting managers and depositaries of AIFs will also take effect on this date. However, there are transitional provisions applying to some of the final requirements which run for up to two years, starting from 18 March 2016.
- 1.5** Please note that in Parts II and III of CP15/27, we consulted on other proposed changes to the Handbook affecting investment funds. However, we have considered the feedback received on Parts II and III separately and the final rules and guidance concerning those proposals are not covered in this PS.<sup>4</sup>

1 UCITS V (Directive 2014/91/EU) is an EU Directive introducing a number of changes to the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (Directive 2009/65/EC).

2 [www.fca.org.uk/news/cp15-27-ucits-v-implementation-and-handbook-changes](http://www.fca.org.uk/news/cp15-27-ucits-v-implementation-and-handbook-changes)

3 [www.fca.org.uk/news/cp15-08-qcp-8](http://www.fca.org.uk/news/cp15-08-qcp-8)

4 More specifically:

- Part II of CP15/27 outlined proposed changes to the Handbook to ensure that the EU Regulation introducing European long-term investment funds (ELTIFs) (Regulation EU 2015/760) will operate effectively and to extend the consumer redress regime to these funds. We published the changes to the Handbook required for the effective transposition of the ELTIF Regulation in Handbook Notice 28 (December 2015) and will outline our final position on redress for ELTIF investors in due course, and
- Part III of CP15/27 set out a number of other proposed changes to the Handbook concerning authorised investment funds and sought preliminary input on some issues where we are considering making proposals. We will cover the final rules we consulted on and respond to the feedback received to Part III of CP15/27 in a separate policy statement or Handbook Notice in due course.

## Who does this Policy Statement affect?

---

**1.6** This PS will affect:

- UCITS management companies and alternative investment fund managers (AIFMs)
- depositaries and custodians of UCITS and AIFs, and
- representative trade bodies, business advisers and consultants, and other advisers involved in or linked to the fund management industry in the UK.

## Is this of interest to consumers?

---

**1.7** UCITS are regulated investment funds that can be marketed to retail investors across Europe. Similarly, NURS are FCA-authorized investment funds that can be marketed to retail investors. Most of the new requirements are quite technical and unlikely to be of direct interest to investors. However, our final rules and guidance aim to ensure an appropriate level of protection for investors and may be of wider interest to consumers and consumer groups.

## Context

---

**1.8** The proposed rules and guidance support our objectives of protecting and enhancing the integrity of the UK market for authorised investment funds and of making sure consumers' interests are adequately protected. They also aid our objective of promoting competition in the interest of consumers. They will create a more level playing field between depositaries and managers of UCITS funds compared to depositaries and managers of other types of retail fund covered by the Alternative Investment Fund Managers Directive (AIFMD).<sup>5</sup>

**1.9** As explained in CP15/27, we are transposing the UCITS V requirements by adopting an 'intelligent copy-out' approach. This means that we adhere closely to the UCITS V wording when implementing relevant provisions in the Handbook, while using alternative wording where needed to align with UK law and practice. Although the UCITS Directive is a 'minimum harmonising' Directive<sup>6</sup>, generally we decided not to impose additional requirements on firms beyond what is strictly required under UCITS V (subject to certain exceptions). We described in CP15/27 the areas where we thought it right to set requirements, or maintain existing requirements, on top of what is required under UCITS V. We explain below how we have considered the feedback received on these proposals.

**1.10** Some of the UCITS V requirements will be supplemented by delegated measures, in the form of a directly applicable Level 2 EU Regulation. The European Commission adopted the draft text of the Regulation on 17 December 2015.<sup>7</sup> If both the European Parliament and the European Council agree to the proposed Regulation, it will come into force during 2016.

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

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

<sup>7</sup> The draft Level 2 Regulation can be found here: <https://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-9160-EN-F1-1.PDF>



- 1.11** In addition, guidelines that the European Securities and Markets Authority (ESMA) can adopt under UCITS V will supplement the remuneration requirements for UCITS management companies.
- 1.12** Finally, Her Majesty's Treasury (the Treasury) will implement a number of the UCITS V provisions into UK legislation. The Treasury has consulted on its draft statutory instrument and intends to lay the final version before Parliament in time for it to become law by 18 March 2016.

### Summary of feedback and our response

---

- 1.13** We received 12 responses to CP15/27. We would like to thank all those who have responded to the consultation for their useful comments and suggestions. We have listed the names of the respondents in Annex 1.
- 1.14** In Chapter 2 we summarise the feedback received on the proposed remuneration code and disclosure requirements for UCITS managers. Various respondents asked for clearer or additional guidance on the application of certain remuneration or disclosure requirements. We have considered these comments and made some changes to our guidance on payments in non-cash instruments. Other comments did not require significant changes to the drafting of our proposed rules and guidance and we deal with the majority of them directly in this PS. In particular, we clarify whether consequential changes to the prospectus and scheme documents, following the implementation of UCITS V, require approval from us.
- 1.15** Some respondents objected to extending to managers of NURS certain UCITS V disclosure requirements, in particular the disclosure of the list of the depositary's delegates and sub-delegates in the prospectus. We have taken this feedback into account, so that managers of NURS will not now be required to disclose in the prospectus the list of the depositary's delegates and sub-delegates. However, we are maintaining some of the disclosure requirements for NURS where they are consistent with the AIFMD.
- 1.16** Chapter 3 outlines the feedback received on our proposed rules for the appointment, operational duties and responsibilities of UCITS depositaries. Most respondents asked how some of the proposed rules will apply in practice and if some of the proposed provisions could be better aligned with the UCITS V requirements. We address these comments in our PS. For example, we clarify our position with regard to the level of infrastructures that non-bank depositaries must have in place when delegating the safekeeping function to a third party. We also clarify that UCITS depositaries would be able to delegate the performance of administrative and technical tasks to a third party. We have also changed our proposed CASS rules to clarify which of the CASS 6.6 requirements will remain applicable to depositaries of UCITS until the Level 2 Regulation comes into force.
- 1.17** Chapter 4 summarises the responses to the cost benefit analysis (CBA) and sets out further analysis in areas where we have modified our original proposals.

## Next steps

---

- 1.18** The rules and guidance implementing the UCITS V requirements will come into force on 18 March 2016. Transitional provisions will apply to certain requirements, in particular:
- managers of UCITS will not have to comply with some of the remuneration requirements until the start of the first full performance period starting after 18 March 2016
  - the prospectus of a UCITS (or a NURS) will not need updating with the relevant new disclosure requirements until 30 September 2016 (extended to 31 March 2017 for a NURS)
  - the key investor information document (KIID) of a UCITS will not need to include the new UCITS V disclosure requirements until it is updated for other reasons, and then only if the relevant information on remuneration is available at the time of the update (otherwise they should be included as part of the 2017 annual update and no later than 18 March 2017), and
  - non-bank depositaries appointed before 18 March 2016 may continue to provide depositary services to their UCITS clients until 18 March 2018, even if they do not meet all the new operational and prudential requirements applicable to them.
- 1.19** It is still unclear when the final text for the Level 2 Regulation will be published in the Official Journal of the European Union and when it will become applicable. However, the draft text allows for a six-month transitional period beginning when the Regulation comes into force. Therefore, we expect that firms will not be subject to the Regulation requirements until the third quarter of 2016 at the earliest. This means there will be a mismatch between the time when the UCITS V requirements come into force on 18 March 2016 and when the detailed provisions supplementing some of these requirements will become applicable to firms. We recognise that this timing gap may create operational difficulties and legal uncertainty for firms, in particular on:
- the minimum terms to be included in the contract between the management company and the depositary
  - the detailed requirements on how the depositary should perform its oversight, cash monitoring, and safekeeping duties
  - the types of financial instruments that the depositary must hold in custody and how these should be segregated from the depositary's own assets
  - the terms and conditions of the depositary's liability for losses of financial instruments, including the circumstances under which financial instruments are considered to be lost
  - the terms of the depositary's delegation of the safekeeping function to third party custodians, and
  - the requirements for independence between the management company and the depositary.
- 1.20** During this period, we expect firms to make efforts to comply with the UCITS V requirements as of 18 March 2016 (unless a relevant transitional provision applies) even if detailed requirements under the Level 2 Regulation are not yet applicable at this date. We will take note in due course of any guidance the European Commission or ESMA may issue on this matter.

- 1.21** If existing Handbook rules (for example in COLL and CASS) cover the matters listed above, firms should continue to comply with those provisions until the Level 2 Regulation becomes applicable. The relevant Handbook provisions would at that point cease to apply, either because of consequential changes to the Handbook that we will consult on, or following the expiry of relevant transitional arrangements set out in our made rules that accompany this PS (as explained in more detail below).
- 1.22** For example, in CP15/27 we proposed deleting the existing rules in COLL 6.6.4R (6) and (7). These apply to the written agreement between the management company and the depositary for EEA management companies managing UK UCITS schemes. We are introducing a new transitional provision stating that COLL 6.6.4R (and the related COLL 6 Annex 1 which sets out the minimum terms of the agreement) will remain in place until the Level 2 Regulation provisions become applicable. We believe this will maintain an appropriate standard of consumer protection, while giving firms sufficient legal certainty to continue carrying out their activities in the UK.
- 1.23** Once the Level 2 Regulation is finalised, we will consider whether any consequential changes to our rules and guidance are needed. If so, we will consult separately on such required changes to the Handbook.
- 1.24** ESMA is expected to finalise its UCITS V remuneration guidelines (ESMA UCITS V remuneration guidelines) in the first quarter of 2016. Once these have been published, we will consider whether any further guidance on applying our UCITS Remuneration Code principles is required. If so, we will consult on further guidance.

### **Equality and diversity**

---

- 1.25** As noted in CP15/27, we have assessed the equality and diversity impact of our proposals and do not believe they will adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. We did not receive any comments to contradict this view during the consultation process.

## 2. Requirements for UCITS managers

- 2.1** This chapter covers our analysis of the responses to the questions in chapter 3 of CP15/27 on the proposed transposition of some of the UCITS V Directive requirements for managers of UCITS.

### Remuneration

---

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

- 2.2** We received six responses to this question. They included general comments on the proposed approach to issuing a specific UCITS management company remuneration code, as well as feedback on some specific areas which are covered in the following paragraphs. One respondent said the proposed policy will undermine European access to non-EU managers. Another suggested merging the UCITS Remuneration Code with the existing AIFMD Remuneration Code, to simplify compliance with the rules for firms. Other respondents supported our proposal of introducing a separate Remuneration Code for UCITS management companies.

#### Our response

We note the comment that the remuneration requirements may undermine European access to non-EU managers. However, we are required to transpose the UCITS remuneration requirements into UK law and have no discretion to disregard articles 14a and 14b of the UCITS Directive.

Although the remuneration requirements under the AIFMD and the UCITS Directive are similar, there are sufficient differences between the two regimes to justify adopting a new remuneration code and this is consistent with our approach to other sectoral remuneration legislation. In addition, we consider that introducing a new remuneration code is the most efficient, proportionate and least disruptive way to implement the new remuneration requirements. We have not changed our approach in the final rules.

---

### UCITS remuneration code staff

- 2.3** One respondent pointed out that the proposed drafting in SYSC 19E.2.2R seems to require all categories of staff listed in SYSC 19E.2.2R (2) to always be classified as UCITS Remuneration Code Staff.

#### Our response

The policy intention was not to take a stricter approach than is needed under the UCITS Directive requirements or the corresponding provisions in the AIFMD remuneration code. We have provided specific guidance in SYSC 19E.2.3G to explain this matter.

### Appointment of non-executive directors

- 2.4** One respondent observed that the proposed rule in SYSC 19E.2.6R, now in SYSC 19E.2.7R, seems to require all management companies to appoint a minimum number of non-executive directors, regardless of the firm's size and whether it has a group remuneration committee. The respondent suggested this would not be proportionate for management companies which undertake limited activities and are not of a significant size.

#### Our response

The rule at SYSC 19E.2.7R transposes the remuneration principle in article 14b (1) (c) of the UCITS Directive and we have no discretion to disregard it.

The provision in article 14b(1), transposed in SYSC 19E.2.4R, states that management companies must comply with the remuneration principles to the extent that is appropriate to their size, internal organisation and nature, scope and complexity of their activities. This would also apply to the principle in SYSC 19E.2.7R. For example, a proportionate application of this principle might mean that non-executive directors would not need to be appointed to the boards of management companies that are part of a group. This would apply if non-executive directors of another entity for the whole group settle remuneration arrangements and perform the tasks listed in SYSC 19E.2.7R (1).

There is a specific provision in the draft ESMA UCITS V remuneration guidelines<sup>8</sup> (paragraph 59) that management companies do not need to establish a remuneration committee if they are part of banking, insurance or investment groups or financial conglomerates within which an entity is obliged to set up a remuneration committee which covers the whole group.

<sup>8</sup> "Guidelines on sound remuneration policies under the UCITS Directive and AIFMD" [www.esma.europa.eu/sites/default/files/library/2015/11/2015-1172\\_cp\\_on\\_ucits\\_v\\_u\\_aifmd\\_remuneration\\_guidelines.pdf](http://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1172_cp_on_ucits_v_u_aifmd_remuneration_guidelines.pdf)

### Application of different sectoral rules

- 2.5** There is guidance in SYSC 19C.1.1BG for BIPRU firms that are also subject to SYSC 19E. One respondent suggested this guidance should be reproduced in SYSC 19A for IFPRU firms also subject to SYSC 19E. The same respondent said management companies should be able to apply whichever sectoral remuneration regime is the most efficient in aligning staff interests with those of investors in the funds.

#### Our response

We explained in CP15/27 (see paragraph 3.22) that we are unable to disapply the remuneration requirements under the Capital Requirements Directive (CRD)<sup>9</sup> or give guidance for IFPRU firms in line with the guidance in SYSC 19C.1.1BG. On the application of different sectoral remuneration requirements, the draft ESMA UCITS V remuneration guidelines (see paragraph 32) propose allowing management companies to apply the sectoral remuneration principles which are most effective in aligning any relevant staff interests with those of investors in the funds. We do not propose to give further guidance on these points at this stage, but we may do so once the ESMA UCITS V remuneration guidelines are finalised.

### Remuneration in scope of SYSC 19E

- 2.6** One respondent noted that the wording in SYSC 19E.2.1R (4) is not aligned with the wording in article 14a (2) of the UCITS Directive. Article 14a (2) states: *“the remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits”*. The Handbook provision states instead: *“the remuneration policies and practices shall include fixed and variable components of remuneration, including salaries and discretionary pension benefits”*.

#### Our response

We have departed from the wording in article 14a (2) to clarify the scope of application of the Directive provision. Our understanding is that salaries do not generally have variable components and discretionary pension benefits are not fixed because of their discretionary nature. We believe the wording in SYSC 19E.2.1R (4) helps to clarify what types of remuneration should be captured by a management company’s remuneration policy, so we are retaining the drafting we proposed.

### Transitional period

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

<sup>9</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

- 2.7** We received five responses to this question, all supporting our proposal. Three respondents commented that the transitional period should be reconsidered if publication of the ESMA UCITS V remuneration guidelines is significantly delayed. One respondent suggested that management companies should be given a minimum of three months to comply after the final ESMA UCITS V remuneration guidelines are published.

#### Our response

We will continue monitoring progress on the ESMA UCITS V remuneration guidelines but we think it would be inappropriate to extend the proposed transitional provision, as there is no basis in the UCITS Directive for doing so.

### Payments in non-cash instruments

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

- 2.8** We received six responses to this question. Four respondents argued that the proposed guidance on payments in non-cash instruments risks creating inconsistencies in how firms apply the requirement to pay a proportion of variable remuneration in non-cash instruments and that the proposed guidance goes further than the requirement under article 14b (1) (m) of the UCITS Directive and the proposed ESMA UCITS V remuneration guidelines. One respondent supported the proposal but suggested that firms should be allowed to set the percentage of variable remuneration paid in non-cash instruments to 0%, where appropriate and subject to prior agreement with us. The same respondent suggested any references made to "*management of UCITS*" should be aligned with the wording of the UCITS Directive and the draft ESMA UCITS V remuneration guidelines, using "*management of the UCITS*" instead. The same respondent also asked if the reference to "*any variable remuneration*" means the remuneration of a specific member of staff with regard to the management of a UCITS.

#### Our response

The remuneration principle in article 14b (1) (m) of the UCITS Directive, transposed in SYSC 19E.2.18R, states in paragraph (1) that a **substantial portion**, and at least 50%, of any variable remuneration component must consist of non-cash instruments. The Directive provision in article 14b (1) (m), transposed in SYSC 19E.2.18R (2), then clarifies that the minimum of 50% does not apply if the management of UCITS is less than 50% of the total portfolio managed by the management company. However, in our view the Directive requirement that a **substantial portion** of variable remuneration must be in non-cash instruments still applies.

SYSC 19E.2.19G (2) simply clarifies that management companies should still determine what an appropriate 'substantial portion' would be in such cases. Management companies' ability to disapply the requirement to pay a substantial portion of variable remuneration in non-cash instruments, when this is justified on the basis of the proportionality principle, is not affected by the proposed

guidance. This is so whether the management of UCITS is more or less than 50% of the total portfolio.

On this basis, we disagree that SYSC 19E.2.19G sets a higher standard than UCITS V requires and we do not intend to change our proposed guidance significantly. However, given the feedback received, we have refined the language in our guidance to make it clearer.

On the suggestion to align the text of SYSC 19E.2.18R (2) and SYSC 19E.2.19G (1) with the wording in article 14b (1) (m) by referring to “the UCITS” rather than “UCITS”, we have been told there is an error in the Directive text and that the provision should have read “*unless the management of UCITS accounts for less than 50% of the total portfolio*”. The European Commission will amend the Directive text and it is likely that ESMA will in the meantime clarify how to interpret references to the ‘total portfolio’ of the management company. We have not changed the reference to “UCITS” in our made rule.

We also agree that the wording “*any variable remuneration*” refers to the remuneration of a specific member of staff with regard to the management of a UCITS, but we do not propose issuing specific guidance on this.

### Payment in units of UCITS

- 2.9** One respondent emphasised that it is often not workable to remunerate staff with units in the specific funds for which they provide their services. They suggested clarifying that where individuals have responsibilities relating to multiple funds, management companies may decide that it is more appropriate to award variable remuneration in other forms depending on their own legal structure and regulatory constraints. Another respondent suggested that we could allow the requirement to pay a proportion of variable remuneration in non-cash instruments to be disregarded where legal, structural or cost benefit considerations would make it impractical. One respondent outlined some practical implications for management companies accepting only aggregated automated deals via platforms and using an “adviser only” model, if they had to pay a proportion of variable remuneration in shares of UCITS. The same respondent also pointed out that some authorised corporate directors (ACDs) have introduced policies precluding directors from investing in shares of the UCITS they oversee.

#### Our response

SYSC 19E.2.18R (1) clarifies that the application of the principle requiring management companies to pay a substantial portion of variable remuneration in non-cash instruments is “*subject to the legal structure of the UCITS and the instrument constituting the fund*”. The same rule also allows management companies to pay variable remuneration, not in shares or units in the fund, but in equivalent non-cash instruments with equally effective incentives. We have no discretion to disregard this principle, but we consider it allows firms a certain level of flexibility in applying the payment in instrument requirements, when legal or structural constraints exist. Once the ESMA UCITS V remuneration guidelines are finalised, further guidance to management companies on the application of the UCITS remuneration code may be useful (similar to the guidance we issued for the AIFMD remuneration code). If so, we will consider consulting on such guidance.



## Proportionality

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

- 2.10** We received seven responses to this question, six of which agreed with our proposed approach to proportionality, although one respondent said the *de minimis* thresholds in the proposed guidance in SYSC 19E.2.13G, now in SYSC 19E.2.17G, are too low and put the UK at a competitive disadvantage compared to other non-EU countries. One respondent disagreed with the application of proportionality to the UCITS remuneration code, commenting that conduct risk is not related to the size or complexity of the firm, as inappropriate remuneration structures could lead to misconduct in a firm of any size. The same respondent said that there is no link to a firm's size and complexity, as the *de minimis* thresholds are applied on the basis of the individual's remuneration. Another respondent said further guidance is needed on the application of the proposed rule in SYSC 19E.2.6R, now in SYSC 19E.2.7R, but we have already covered this in our responses to feedback on question 1.

#### Our response

As explained in CP15/27 (paragraph 3.13) we believe proportionality is a cornerstone of the UCITS Directive and other EU legislation, ensuring a consistent application of the underlying remuneration principles while allowing for the alignment of long-term risk and individual reward. Article 14b (1) of the UCITS Directive states that management companies shall comply with the remuneration principles "*in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities*".

The proposed *de minimis* thresholds are the same in the other SYSC remuneration codes. They ensure that the relevant remuneration requirements are applied to discourage excessive risk taking, but only when the levels of remuneration are material enough to potentially result in a misalignment between the interests of the individuals concerned and those of the investors.

The proposed thresholds take into account paragraph 29 of the draft ESMA UCITS V remuneration guidelines which state that – in addition to the criteria of size, internal organisation and nature, scope and complexity of activity – the structure of staff members' remuneration should be considered when applying the proportionality principle. In particular, the following should be considered:

- the amount of variable remuneration, and
- the percentage of variable remuneration over the fixed remuneration

Following the principles outlined in the ESMA draft remuneration guidelines, our guidance sets two conditions: one for the percentage of variable remuneration over total remuneration and the other for the total amount of remuneration.

Given this, we do not propose to change our position on proportionality or review our guidance, now in SYSC 19E.2.17G, on the application of *de minimis* thresholds.

However, to align the proposed guidance with the draft ESMA UCITS remuneration guidelines, we have removed the reference to disapplying the rules on guaranteed variable remuneration in our final guidance, as the proposed ESMA UCITS remuneration guidelines (see paragraph 24) do not allow this.

As already mentioned, once the ESMA UCITS V remuneration guidelines are finalised we may consider giving further guidance on the application of proportionality in the context of the UCITS remuneration code (similar to the guidance we issued for the AIFMD remuneration code).

---

### Application of SYSC 19E to BIPRU firms

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

- 2.11** We received three responses to this question, all agreeing with the proposed guidance. One respondent suggested there should be a regime for IFPRU firms covering SYSC 19E rules as well and highlighted that firms should be able to opt into a single regime for all their investment activities.

#### Our response

We have already addressed these comments in our responses to the feedback received on question 1 above.

---

### Disclosure

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

- 2.12** We received five responses to this question, which generally agreed with the proposals. One respondent disagreed and commented that without appropriate consumer testing, increased mandatory disclosure is unlikely to increase protection for consumers.

#### Our response

The proposed disclosure requirements implement the UCITS V provisions and we have no discretion to disregard them.

### Extending the prospectus disclosure requirements to NURS

- 2.13** Two respondents asked us to reconsider the proposal to extend the prospectus disclosure requirements to managers of NURS. In particular, they said the proposal to include a list of the depositary's delegates and sub-delegates in the prospectus would have a significant impact

on managers of NURS and depositaries. AIFMD requires the AIFM to give only a list of the depositary's delegates, not the sub-delegates, and some AIFMs give this information outside of the prospectus.

### Our response

We believe the disclosure of potential conflicts of interest between the manager of NURS and other parties in the prospectus will allow potential investors to make more informed investment choices. In addition, managers of NURS are already required to produce the information required under COLL 4.2.5R (8) (f) and (g) (i) and (ii) under existing AIFMD rules so it should already be available to them. In particular, managers of NURS must make the information under points 4.2.5.R (8) (g) (i) and (ii) available to potential investors before they invest, in accordance with FUND 3.2.2R (6).

We do not think there is a strong argument for not disclosing the matters under COLL 4.2.5R (8) (f) and (g) (i) and (ii) in the prospectus of a NURS. Managers of NURS have an overarching obligation to disclose in the prospectus any information an investor would reasonably require to make an informed judgement about the merits of investing in the scheme. We propose to retain these rule changes for NURS as well as UCITS, but we will give managers of NURS a one year transitional period to update the prospectus.

However, we agree there is not a strong case for requiring managers of NURS to list sub-delegates in the prospectus. We also agree that managers of NURS should not be required to maintain a separate statement in the prospectus that up-to-date information about delegation arrangements would be available upon request. We have revised the relevant provisions in COLL 4.2.5R (8) (g) (iii) and (h) to make them applicable only to managers of UCITS.

### Disclosure requirements for the depositary

- 2.14** One respondent recommended including a rule placing responsibility on the depositary to give the management company the required disclosure information to be included in the prospectus. The same respondent also pointed out that there is an obligation on the depositary under article 25 (2) of the UCITS Directive (transposed in COLL 6.6B.3R (3)) to disclose potential conflicts of interests between the depositary, the UCITS and/or the management company to investors in the UCITS. The respondent suggested that specific guidance could clarify that such disclosure can be made in the prospectus.

### Our response

The draft level 2 measures on the information to be included in the contract between the depositary and the management company will require the contract to state: "*the means and procedures by which the depositary transmits to the management company or the investment company all relevant information that it needs in order to perform its duties (...)*" (see article 2 (2) (e)). In addition, the depositary must also ensure that the information disclosed in the prospectus is accurate as part of its ongoing oversight duties. Because of this, we do not believe a specific rule is needed to oblige the depositary to give the management company the relevant information to be disclosed in the prospectus.

On the application of COLL 6.6B.3R (3), there is an equivalent provision for depositaries of AIFs in FUND 3.11.9R and we are not aware of any issues arising from it. We consider that specific guidance on this is not needed and it should be up to the manager and the depositary to identify the most appropriate means (which could be the prospectus) through which such information could be disclosed.

### Changes to delegates and sub-delegates

- 2.15** Three respondents asked for clarification on when a UCITS management company should update the prospectus following changes in the depositary's list of delegates and the list of any sub-delegates. One respondent commented that it would be preferable to keep the information on delegates and sub-delegates on the management company's website and outside the prospectus.

#### Our response

It is a requirement under UCITS V for a list of the depositary's delegates and sub-delegates to be set out in the prospectus. We will require management companies to update the prospectus by 30 September 2016 in accordance with TP 31 and then file it with us in accordance with COLL 4.2.3R.

When there are subsequent changes to the depositary's delegates and sub-delegates, the management company should consider if they are substantial enough to require a prompt update of the prospectus. For example, major changes such as the appointment of a new global custodian resulting in substantial changes in the custody network, are likely to require a prompt update of the prospectus. However, if there are no major changes in the custody chain, the management company could update the list in the prospectus following the next periodic review of the prospectus. This is in line with COLL 4.2.5R (8) (h) which requires management companies to include a statement in the prospectus that an up-to-date list of the depositary's delegates and sub-delegates will be available upon request.

### FCA approval of changes to UCITS scheme documents

- 2.16** Two respondents asked us to clarify whether the consequential changes to the prospectus to include the additional remuneration and depositary information would require prior approval from us.

#### Our response

FSMA and the OEIC Regulations set out when an authorised fund manager must notify the FCA of certain changes in connection with a scheme and seek our approval for them (or await no objection by the FCA).<sup>10</sup> The matters that may require notification to us under those statutory requirements may also give rise to changes in the prospectus.

<sup>10</sup> See section 251 and section 261Q FSMA in respect of AUTs and ACSs and Regulation 21 of the OEICs Regulations in respect of OEICs.

Consequential changes to the prospectus to include the additional remuneration and depositary information required under UCITS V will not normally require our prior approval. However, management companies must update the prospectus by 30 September 2016 in accordance with TP 31 and then file it with us in accordance with COLL 4.2.3R.

We have also considered whether any particular changes to the instrument constituting the fund will be required immediately as a consequence of UCITS V. Such changes may trigger the application of sections 251 or 261Q FSMA or Regulation 21 of the OEIC Regulations. It is for firms to determine whether that is the case, but we believe it is unlikely that such changes would be needed to ensure compliance with UCITS V. One area where we understand that firms may want to make changes is to align provisions in constituting instruments that limit the depositary's liability with the UCITS V depositary liability regime. Our view is that changes to the deed of an AUT or an ACS to that effect would not require our prior approval under sections 251 or 261Q of FSMA. However, as Regulation 21 of the OEIC Regulations specifically refers to "any proposed alteration to the company's instrument of incorporation", such changes to an instrument of incorporation would require notification to us.

Management companies should notify us if making other unconnected changes at the same time as the UCITS V consequential amendments, where those other changes are notifiable to us under the relevant statutory provisions outlined above. For example, a notification to the FCA will be required to replace the depositary or trustee of the UCITS.

---

### Filing a depositary agreement

- 2.17** One respondent asked if we would require an updated depositary agreement to be filed with us, reflecting the changes deriving from the UCITS V Directive.

#### Our response

We confirm that we would not require a revised depositary agreement to be filed with us.

---

### Key investor information

- 2.18** One respondent asked if the management company must disclose information about the availability of the remuneration policy in any KIID published before the 2017 annual update. The same respondent asked us to clarify that there is no obligation to include a postal address in the KIID and that a website address will be sufficient.

#### Our response

If the remuneration policy is available, we expect a statement about it to be added to the KIID when it is next updated after 18 March 2016, even if the update is before the 2017 annual update.

There is no requirement under the UCITS Directive to include a postal address for the management company in the KIID.

### Whistleblowing

---

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

**2.19** We received four responses to this question and all respondents agreed with our proposals.

### Transitional provisions

---

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

**2.20** We received five responses to this question. Four agreed the proposed transitional periods are appropriate, while one respondent commented that a longer transitional period should be considered (but did not say how much longer it should be). Three respondents asked us to consider potential implications for management companies marketing their UCITS cross-border, stemming from the possibility in our proposed rules to update the KIID after 18 March 2016.

#### **Our response**

We have extended the transitional period for updating the prospectus to one year for NURS managers, following the comments on our proposal to extend some of the disclosure requirements to managers of NURS. As the majority of respondents agreed with our proposals, we have not made changes to the other transitional provisions.

---

## 3. Requirements for depositaries of UCITS

- 3.1** This chapter covers the responses to the questions in chapter 4 of CP15/27 on the proposed rules and guidance for depositaries of UCITS, the requirements applicable to management companies in relation to depositaries, the eligibility criteria for firms to act as depositaries of UCITS, their applicable prudential requirements, and adjustments to the client assets rules.

### Depositary requirements

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

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

- 3.2** We received five responses to each question. Two of them supported transposing the depositary rules in COLL, but one respondent would have preferred a consolidation of the depositary rules in FUND. Another respondent noted that the proposed rule in COLL 6.6B.25R does not include the requirement in article 22a (3) (d) of the UCITS Directive (requiring the depositary to take all necessary steps to ensure UCITS assets are protected if the third party becomes insolvent). The same respondent also asked if COLL 6.6B.3R refers to activities that do not form part of the depositary's tasks under the Directive (e.g. fund accounting).

#### Our response

To consolidate the UCITS and AIFMD depositary requirements in FUND would require a significant redrafting of our initial proposals. We have not changed our proposed approach, but may consider this option in the future.

We have amended COLL 6.6B.25R to implement the requirement in article 22a (3) (d) of the UCITS Directive.

On COLL 6.6B.3R, we do not believe additional guidance is required because paragraph (2) of the rule refers to the functional and hierarchical separation of the depositary tasks from other conflicting tasks. This implies that the activities referred to in the first paragraph of the rule fall outside the depositary functions. There is an equivalent provision in FUND which has not created any particular issues.

### Reuse of assets

- 3.3** Two respondents asked for the reference to the ‘best’ interests of the unitholders to be removed from COLL 5.4.3R (1) (b) as this would set a higher standard than the requirement in article 22 (7) (c) of the UCITS Directive (which refers simply to the “the interest of the unitholders”) and create a barrier for management companies entering into stocklending arrangements for the benefit of the UCITS. One respondent also claimed that the proposed requirement in COLL 5.4.3R (2) sets a higher requirement than the one introduced by UCITS V, although it reflects the existing rule in COLL 5.4.3R. The respondent suggested redrafting it as guidance, as it sets out our expectations about when a stocklending agreement can be considered to be in the unit-holders’ interests.

#### Our response

We agree with the comment regarding ‘best’ interests and have removed that word from COLL 5.4.3R (1) (b) in line with article 22 (7) (c) of the UCITS Directive.

On the second point, we have not adopted the suggested changes because the provision in COLL 5.4.3R (2) implements other requirements of the UCITS Directive on the use of efficient portfolio management techniques. In particular, see article 51 (2) of the UCITS Directive and article 11 (1) (b) (iii) of the Eligible Assets Directive.<sup>11</sup>

### Delegating functions

- 3.4** We consulted on proposed guidance for a depositary of UCITS performing tasks via an office located in another EEA country (e.g. an EEA branch of a UK firm or the registered office of a UK branch of an EEA firm). We proposed similar guidance in CP15/8 for depositaries of AIFs and deal with the responses to that consultation in this PS.
- 3.5** One respondent to the AIFMD chapter in CP15/8 agreed with our proposed guidance but asked if it would apply to the performance of tasks by entities based outside of the EEA. The same respondent also suggested transposing Recital 42 of the AIFMD in FUND to clarify that depositaries may delegate the performance of administrative and technical tasks to a third party without breaching the general prohibition on delegation.
- 3.6** Two respondents to CP15/27 also asked us to clarify, through specific guidance in COLL 6.6B, that depositaries of UCITS should be able to delegate administrative and technical tasks to third parties even though this is not directly stated in the UCITS Directive (unlike under the AIFMD).

#### Our response

Guidance on the performance of depositary tasks through an office in another EEA country is in the final instrument in both COLL and FUND, in relation to UCITS and AIFs respectively. It may be possible to perform depositary tasks via an office located outside of the EEA, if the regulatory regime where the office is located offers an equivalent level of protection to the UCITS or AIF and their

<sup>11</sup> Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.



investors. This should be assessed by the UK depositary on a case-by-case basis and we cannot confirm that such arrangements would generally be acceptable.

We see merit in transposing Recital 42 of the AIFMD in FUND and have added a specific provision at FUND 3.11.26R (2).

We have decided not to introduce an equivalent provision in COLL for depositaries of UCITS as this is not explicitly in the UCITS Directive. However, depositaries of UCITS should be able to delegate the performance of technical and administrative tasks to third parties and (if there is no conflict with specific UCITS Directive requirements) use existing delegation arrangements that comply with the AIFMD and Handbook delegation requirements.

### Eligibility criteria for depositaries of UCITS

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

- 3.7** We received five responses to this question and all of them agreed with the proposals. Two respondents requested more clarity on the level of infrastructure required for non-bank depositaries to meet the requirement in COLL 6.6B.11R (1). They noted that the rule, which transposes article 23 (2) (c) second sentence of the UCITS Directive by way of copy-out, could be read as requiring non-bank depositaries to be able to hold assets in custody themselves. For example, it is unclear whether a non-bank depositary delegating the performance of the safekeeping function to a global custodian would be meeting the requirement in COLL 6.6B.11R (1).

#### Our response

We do not believe further guidance is needed. A depositary may delegate the performance of the safekeeping function to third parties subject to the conditions set out in COLL 6.6B.25R and COLL 6.6B.26R. When delegating the safekeeping of assets, a depositary must also be aware of the general outsourcing requirements under SYSC 8.1. When assessing compliance with COLL 6.6B.11R (1), we would take a holistic view of the appropriateness of the depositary's infrastructures including any delegation arrangements that may be in place with third parties, compliant with the requirements above.

### Capital resources requirements for non-bank depositaries

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

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

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

- 3.8** We received four responses to each of these questions. Three respondents agreed with our proposed prudential requirements, but the fourth argued that the proposed rules would create barriers for new entrants in the depositary market. All respondents supported our proposals relating to questions 13 and 14.

**Our response**

We have already discussed in CP15/27 the potential impact that the proposals would have on competition and concluded that they strike the right balance between maintaining an appropriate level of consumer protection and ensuring sufficient competition in the market for depositary services. This has been supported by the responses we received and the only respondent who did not agree with the proposals did not provide any evidence or analysis invalidating our CBA. The final rules are substantially unchanged from our proposal.

**Definition of ‘financial instruments’**

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

- 3.9** We received five responses to this question, all agreeing with our proposal.

**Proposed changes to CASS**

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

- 3.10** We received four responses to this question, including two from industry associations. All respondents generally agreed with our proposals. Three respondents suggested that in future all custody requirements for depositaries should be contained in the investment fund sourcebooks (COLL and FUND). Two respondents asked that we continue allowing a firm acting as trustee or depositary of a UCITS to use the records and accounts maintained by its appointed custodian to meet its CASS record keeping requirements.

**Our response**

We disagree that moving all depositary requirements to the investment fund sourcebooks would be beneficial to firms. While it was suggested that this would reduce complexity and be helpful for potential new entrants to the depositary market, we do not agree, as all custody requirements are found in CASS. We note that certain CASS requirements such as the client money asset

return will also apply to depositaries. Moving the requirements on the custody of assets into the COLL and FUND sourcebooks for depositaries may result in duplication as the custody rules for other firms would still be in CASS.

In relation to the CASS record keeping requirements for firms acting as trustee or depositary of a UCITS, we will consider this once the Level 2 Regulation is finalised.

---

### **Level 2 measures affecting CASS**

- 3.11** As outlined in paragraph 1.16, the Level 2 Regulation will not be in force when the UCITS V Directive requirements come into force on 18 March 2016.
- 3.12** In CP15/27 we did not consult on the requirements in CASS 6.6 (records, accounts and reconciliations) being applicable to firms, as we expected the Level 2 Regulation to cover this. As the Level 2 Regulation will not be applicable when the UCITS V requirements come into force, we are introducing a new rule to continue the application of certain CASS 6.6 requirements to trustees and depositaries of UCITS (to the extent these requirements are in scope or consistent with UCITS V). We expect to consult separately on any consequential changes to CASS once the Level 2 Regulation is finalised. This approach ensures the continuation of the current standard of consumer protection.
- 3.13** As explained in CP15/27 we expect to consult separately on any consequential changes to CASS once the Level 2 Regulation is finalised.

---

### **Transitional provisions for depositaries**

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

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

- 3.14** We received six responses to each of these two questions. All agreed with the proposed transitional periods and did not indicate a need for other transitional arrangements.

## 4. Cost benefit analysis

- 4.1** This chapter covers the feedback we received on our cost benefit analysis (CBA) in CP15/27. We have updated our CBA below to deal with policy changes to the draft rules, as noted in the previous chapters.

### Rules and guidance implementing UCITS V

---

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

- 4.2** We received two responses to this question, both of which generally supported our CBA. One respondent said that even management companies subject to remuneration requirements under other sectoral legislation expect implementation of the UCITS remuneration requirements to be at least as time-consuming and costly as implementation of the AIFMD. However, both respondents disagreed that extending the UCITS V Directive prospectus disclosure requirements to managers of NURS would result in only minimal costs. In particular, these respondents pointed out that the requirement to list the depositary's delegates and sub-delegates would create significant costs for managers, who would have to update their NURS prospectuses, and for depositaries, who would have to review such updates. This is because the AIFMD requirement to disclose such information does not currently specify that it should appear in the prospectus.

#### Our response

We note the comment that management companies, even if already subject to other sectoral rules, would still incur similar costs to those arising from AIFMD implementation. This confirms our analysis, which relies on the breakdown of costs we used previously when implementing the AIFMD. Even so, we believe that firms covered by other sectoral remuneration requirements would be able to use (at least to some extent) systems, expertise and procedures already in place. We expect the impact to be higher for those management companies covered by remuneration requirements for the first time.

On the prospectus disclosure requirements, we accept some of the feedback from respondents and have amended the proposed rules, as noted in paragraph 2.13 above. We have removed the requirement for managers of NURS to disclose the information on the depositary's sub-delegates, and introduced a longer transitional period for their other prospectus updates. Therefore we are satisfied that implementation of the revised rules will have a minimal impact in practice on managers of NURS.

## Prudential requirements for depositaries of UCITS

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

- 4.3** We received three responses to this question, all supporting our CBA. We note in paragraph 3.8 that one respondent to question 12 said the proposed rules might create barriers to potential new entrants in the depositary market.

### Our response

We do not propose changing our CBA. The respondent to question 12 did not provide any additional data or information supporting their view and we have considered the impact of the proposed requirements on potential new entrants and concluded that these do not create significant barriers to entry into this market.

## Update of the CBA in CP 15/27

- 4.4** As explained in this PS, we have made a few small changes to the proposed rules and guidance that were not foreseen in CP15/27. This section provides an overview of the costs and benefits associated with those changes.

### Delegation of the safekeeping function to third parties

- 4.5** If the performance of the safekeeping function is delegated to a third party, article 22a (3) (d) of the UCITS Directive requires the third party to take all necessary steps to ensure that if it becomes insolvent, the assets of the UCITS are 'unavailable for distribution' to its creditors. We have transposed this requirement in COLL 6.6B.25R (4) (d).
- 4.6** This requirement will have the benefit of increasing consumer protection, as it increases protection for the assets of the UCITS if one of the depositary's sub-custodians located outside the EU becomes insolvent by limiting the risk that such assets are transferred to the sub-custodian's creditors.
- 4.7** The requirement will increase operational costs for depositaries and their sub-custodians, who will have to follow the steps outlined in the final Level 2 Regulation.<sup>12</sup> For example, the sub-custodian may have to arrange for independent legal advice for the depositary to confirm that the insolvency law and jurisprudence of the non-EU jurisdiction recognises the segregation of the UCITS' assets from the assets of the sub-custodian and its other clients. This is in line with the draft article 17 of the Level 2 Regulation. A depositary may have to bear the costs of obtaining the required legal opinions for some of its sub-custodians. However, the draft Recital 19 of the Level 2 Regulation recognises that opinions may be combined or issued for each jurisdiction by industry federations or law firms for the benefit of several depositaries, which would help limit the potential cost impact on individual firms.

<sup>12</sup> Article 26b (e) empowers the Commission to adopt delegated acts stating what steps should be taken by the third party to comply with the requirement above. As already explained at the beginning of this PS the European Commission has adopted a draft text of the Regulation that we expect to be finalised in the course of 2016.

- 4.8** The Level 2 Regulation requirements will be directly applicable to firms without any further implementation and modification by us. Therefore, we have considered it disproportionate and 'not reasonably practicable' to spend resources in trying to estimate the costs and benefits associated with these requirements.

**Application of the de minimis thresholds**

- 4.9** Our proposed guidance in SYSC 19E.2.13G allows certain remuneration principles to be disapplied if the individual's remuneration falls below minimum thresholds. SYSC 19E.2.13G (2) (a) would have allowed the requirements in SYSC 19E.2.14R to be disapplied, but this is not expected in the draft ESMA UCITS V remuneration guidelines (as stated in our response to question 4). To ensure consistency of application, and to address the potential risk of legal uncertainty for firms, we have removed the reference to guaranteed variable remuneration from the final version of this guidance, now numbered SYSC 19E.2.17G. We do not expect this to materially change the benefits to consumers and costs to management companies of applying the UCITS V remuneration principles.

---

# Annex 1

## List of non-confidential respondents

Alternative Investment Management Association

Depositary and Trustee Association

ETF Securities (UK) Limited

FE Kii Hub

Financial Services Consumer Panel

Herbert Smith Freehills LLP

Henderson Global Investors

Investment Association

Laven Partners

Omnis Investments Limited

Simmons & Simmons LLP

State Street Corporation





# Appendix 1

## Made rules (legal instrument)

## UCITS V DIRECTIVE INSTRUMENT 2016

### Powers exercised

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

### Commencement

- C. This instrument comes into force on 18 March 2016.

### 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) below.

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex C
Client Assets sourcebook (CASS)	Annex D
Supervision manual (SUP)	Annex E
Collective Investment Schemes sourcebook (COLL)	Annex F
Investment Funds sourcebook (FUND)	Annex G

**Notes**

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

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

By order of the Board  
28 January 2016

## Annex A

### Amendments to the Glossary of definitions

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

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

<i>UCITS custodial assets</i>	<i>financial instruments</i> of a <i>UCITS</i> that can be: <ol style="list-style-type: none"> <li>(a) registered in a <i>financial instruments</i> account opened in the <i>depository's</i> books; or</li> <li>(b) physically delivered to the <i>depository</i>.</li> </ol>
<i>UCITS level 2 regulation</i>	Commission delegated regulation (EU) .../... [ <i>to follow</i> ] supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to the obligations of depositaries.
<i>UCITS Remuneration Code</i>	as set out in SYSC 19E (UCITS Remuneration Code).
<i>UCITS Remuneration Code staff</i>	has the meaning in SYSC 19E.2.2R.
<i>UCITS remuneration principles</i>	the principles set out in SYSC 19E.2.5R to SYSC 19E.2.27R.

Amend the following existing definitions as shown.

<i>custody asset</i>	<ol style="list-style-type: none"> <li>(1) other than when <i>acting as trustee or depository of an AIF or acting as trustee or depository of a UCITS</i>: ...</li> <li>...</li> <li>(3) <u>in relation to acting as trustee or depository of a UCITS in CASS 6</u>:           <ol style="list-style-type: none"> <li>(a) <u>a UCITS custodial asset held by a depository in line with COLL 6.6B.18R (Depository functions: safekeeping of financial instruments); or</u></li> <li>(b) <u>any other asset of a UCITS for which a depository exercises safe-keeping functions in line with COLL 6.6B.19R (Depository functions: safekeeping of</u></li> </ol> </li> </ol>
----------------------	--

		<u>other assets).</u>
<i>established</i>	(1)	(in accordance with article 4(1)(j) <i>AIFMD</i> ):
		...
	(2)	<u>for a <i>depository</i> of a <i>UCITS</i> scheme, 'having its registered office or branch in'.</u>
<i>financial instrument</i>	(1)	(other than in (2), <del>and</del> (3) <u>and</u> (4)) ...
		...
	(4)	<u>(for a <i>UCITS</i> custodial asset) an instrument specified in Section C of Annex I to <i>MiFID II</i>.</u>
<i>management body</i>	(1)	<u>(other than in (2))</u> (in accordance with article 3(7) of <i>CRD</i> ) the <i>governing body</i> and <i>senior personnel</i> of a <i>CRR firm</i> who are empowered to set the firm's strategy, objectives and overall direction, and which oversee and monitor management decision-making.
	(2)	<u>(in <i>COLL</i> and in <i>SYSC</i> 19E and in accordance with article 2(1)(s) of the <i>UCITS Directive</i>), the <i>governing body</i> of a <i>management company</i> or <i>depository</i> of a <i>UCITS</i> scheme or an <i>EEA UCITS</i> scheme, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.</u>
<i>safe custody asset</i>	(a)	in relation to <i>MiFID</i> business, a <i>financial instrument</i> ; <u>or</u>
	(b)	in relation to <i>safeguarding and administering investments</i> that is not <i>MiFID</i> business <del>and/or acting as trustee or depository of a UCITS</del> , a <i>safe custody investment</i> ; <u>or</u>
	(c)	when <i>acting as trustee or depository of an AIF</i> , an <i>AIF custodial asset</i> ; or
	(d)	in relation to <i>excluded custody activities</i> carried on by a <i>small AIFM</i> , a <i>safe custody investment</i> ; <u>or</u>
	(e)	<u>when acting as <i>depository</i> of a <i>UCITS</i>, a <i>UCITS custodial asset</i>.</u>

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

#### 1 Application and purpose

...

#### Annex 1 Detailed application of SYSC

...

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

...

#### 4 General organisation requirements

##### 4.1 General requirements

...

- 4.1.1C R ...
- 4.1.1D R A UK UCITS management company must comply with the UCITS Remuneration Code if it:
- (1) manages a UCITS scheme; or
  - (2) manages an EEA UCITS scheme.
- [Note: article 14a(1) of the UCITS Directive]
- 4.1.1E R A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the UCITS Directive internally through a specific, independent and autonomous channel.
- [Note: article 99d(5) of the UCITS Directive]
- 4.1.1F G SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.

...

## 19C BIPRU Remuneration Code

### 19C.1 General application and purpose

...

19C.1.1A G ...

- 19C.1.1B G (1) The UCITS Remuneration Code (SYSC 19E) also applies to a BIPRU firm that is a UK UCITS management company (that is, a UK UCITS management company that is a UCITS investment firm subject to BIPRU).
- (2) A BIPRU firm that is a UK UCITS management company will meet its obligations under SYSC 19C and SYSC 19E by complying with SYSC 19E.
- (3) Under (1) and (2), the FCA will not require the UK UCITS management company to demonstrate compliance with SYSC 19C.

...

After SYSC 19D insert the following new section. The text is not underlined.

## **19E UCITS Remuneration Code**

### **19E.1 Application**

- 19E.1.1 R (1) The *UCITS Remuneration Code* applies to a *UK UCITS management company* that:
- (a) manages a *UCITS scheme*; or
  - (b) manages an *EEA UCITS scheme*.
- (2) This section does not apply to an *EEA UCITS management company* that manages a *UCITS scheme*.
- (3) In this section, a *firm* under (1)(a) or (1)(b) above, is referred to as a *management company*.
- 19E.1.2 R (1) This chapter applies to a *UK UCITS management company* in relation to *remuneration* paid, provided or awarded by any *person* to the extent that it is paid, provided or awarded in connection with *employment* by a *management company*.
- (2) Paragraph (1) is without prejudice to the meaning of *remuneration* elsewhere in the *Handbook*.
- 19E.1.3 G *Remuneration* includes payments made by a seconding organisation, which is not subject to the *UCITS Remuneration Code*, to a secondee in respect of their employment by a *management company* which is subject to the *UCITS Remuneration Code*.

### **19E.2 Remuneration policies and practices**

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



salaries and discretionary pension benefits.

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

- 19E.2.2 R (1) *UCITS Remuneration Code staff* comprise those categories of staff whose professional activities have a material impact on the risk profiles of:
- (a) the *management company*; or
  - (b) the *UCITS* that the *management company* manages.
- (2) *UCITS Remuneration Code staff* must comprise:
- (a) senior management;
  - (b) risk takers;
  - (c) staff engaged in control functions; and
  - (d) any *employees* receiving total *remuneration* that takes them into the same *remuneration* bracket as senior management and risk takers.

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

- 19E.2.3 G A *management company* need not treat a *person* in SYSC 19E.2.2R(2) as *UCITS Remuneration Code staff* if it can demonstrate that the *person's* professional activities do not have a material impact on the risk profiles of:
- (1) the *management company*; or
  - (2) the *UCITS* that the *management company* manages.

#### Proportionality

- 19E.2.4 R (1) When establishing and applying the *remuneration* policies for *UCITS Remuneration Code staff*, a *management company* must comply with the *UCITS remuneration principles* in a way and to the extent that is appropriate to:
- (a) its size;
  - (b) internal organisation; and
  - (c) the nature, scope and complexity of its activities.
- (2) Paragraph (1) does not apply to the requirement for significant *management companies* to have a *remuneration* committee (SYSC 19E.2.9R).
- (3) The *UCITS remuneration principles* apply to:

- (a) any benefit of any type paid by the *management company*;
- (b) any amount paid directly by the *UCITS* itself, including performance fees, for the benefit of *UCITS Remuneration Code staff*; and
- (c) any transfer of *units* or *shares* of the *UCITS* made for the benefit of *UCITS Remuneration Code staff*.

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

#### UCITS Remuneration Principle 1: Risk management

- 19E.2.5 R A *management company* must ensure that its *remuneration* policy:
- (1) is consistent with, and promotes sound and effective risk management; and
  - (2) does not encourage risk taking which is inconsistent with the risk profiles or the *instrument constituting the fund* of the *UCITS* it manages.

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

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

- 19E.2.6 R A *management company* must ensure that its *remuneration* policy:
- (1) is in line with the business strategy, objectives, values and interests of:
    - (a) the *management company*;
    - (b) the *UCITS* it manages; and
    - (c) the investors in such *UCITS*; and
  - (2) includes measures to avoid conflicts of interest.

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

#### UCITS Remuneration Principle 3: Governance

- 19E.2.7 R (1) A *management company* must ensure that its *management body in its supervisory function*:
- (a) adopts and reviews at least annually the general principles of the *remuneration* policy; and
  - (b) is responsible for the implementation of the general principles of the *remuneration* policy.

- (2) The tasks in (1) must be undertaken only by members of the *management body* who:
- (a) do not perform any executive functions in the *management company* concerned; and
  - (b) have expertise in risk management and *remuneration*.

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

- 19E.2.8 R A *management company* must ensure the implementation of the *remuneration policy* is, at least annually, subject to central and independent internal review for compliance with policies and procedures for *remuneration* adopted by the *management body* in its *supervisory function*.

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

- 19E.2.9 R (1) A *management company* must establish a *remuneration* committee if it is significant in terms of:
- (a) its size; or
  - (b) the size of the *UCITS* that it manages; or
  - (c) the complexity of its internal organisation; or
  - (d) the nature, the scope and the complexity of its activities.
- (2) The *remuneration* committee must be constituted in a way that enables it to exercise competent and independent judgment on:
- (a) *remuneration* policies and practices; and
  - (b) the incentives created for managing risk.
- (3) The *remuneration* committee must be responsible for the preparation of decisions regarding *remuneration*, including those which:
- (a) have implications for the risk and risk management of the *management company* or the *UCITS* concerned; and
  - (b) are taken by the *management body* in its *supervisory function*.
- (4) The chairman and the members of the *remuneration* committee must be members of the *management body* who do not perform any executive function in the *management company*.
- (5) When preparing its decisions, the *remuneration* committee must take into account the long-term interest of investors and other stakeholders and the public interest.

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

UCITS Remuneration Principle 4: Control functions

- 19E.2.10 R A *management company* must ensure that employees engaged in control functions are compensated according to the achievement of the objectives linked to their functions, independent of the performance of the business areas that are within their remit.

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

- 19E.2.11 R A *management company* must ensure the *remuneration* of the senior officers in the risk management and compliance functions is directly overseen by:
- (1) the *remuneration* committee; or
  - (2) if such a committee has not been established, the *management body in its supervisory function*.

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

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

- 19E.2.12 R (1) A *management company* must ensure that, where *remuneration* is performance related, the total amount of *remuneration* is based on a combination of:
- (a) the assessment of the performance of the individual and of the business unit or *UCITS* concerned, and of their risks; and
  - (b) the overall results of the *management company*.
- (2) When assessing individual performance, financial and non-financial criteria must be taken into account.

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

- 19E.2.13 R A *management company* must ensure that the assessment of performance is set in a multi-year framework appropriate to any holding period recommended to the investors of the *UCITS* managed by the *management company* to ensure that the:
- (1) assessment process is based on the long-term performance of the *UCITS* and its investment risks; and
  - (2) actual payment of the performance-based components of *remuneration* is spread over the same period.

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

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

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

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

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

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

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

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

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

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

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

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

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

19E.2.17 G (1) Taking account of the remuneration principles proportionality rule in SYSC 19E.2.4R, the FCA does not generally consider it necessary for a *management company* to apply the rules referred to in (2) where, in relation to an individual (“X”), both the following conditions are satisfied:

- (a) Condition 1 is that X’s variable remuneration is no more than 33% of total remuneration; and
- (b) Condition 2 is that X’s total remuneration is no more than £500,000.

- (2) The *rules* to which (1) applies are those relating to:
- (a) retained *units, shares* or other instruments (*SYSC* 19E.2.18R);
  - (b) deferral (*SYSC* 19E.2.20R); and
  - (c) performance adjustment (*SYSC* 19E.2.22R).

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

- 19E.2.18 R (1) Subject to the legal structure of the *UCITS* and the *instrument constituting the fund*, a *management company* must ensure that a substantial portion, and in any event at least 50%, of any variable *remuneration* component consists of:
- (a) *units* or *shares* of the *UCITS* concerned; or
  - (b) equivalent ownership interests in the *UCITS* concerned; or
  - (c) share-linked instruments relating to the *UCITS* concerned; or
  - (d) equivalent non-cash instruments relating to the *UCITS* concerned with incentives that are equally as effective as any of the instruments referred to in (a) to (c).
- (2) However, if the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of 50% does not apply.
- (3) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives for the *UCITS Remuneration Code staff* with the long-term interests of:
- (a) the *management company*;
  - (b) the *UCITS* it manages; and
  - (c) the investors of such *UCITS*.
- (4) This *rule* applies to:
- (a) the portion of the variable *remuneration* component deferred in line with *SYSC* 19E.2.20R(1); and
  - (b) the portion not deferred.

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

- 19E.2.19 G (1) If the management of *UCITS* accounts for less than 50% of the total portfolio managed by the *management company*, the minimum of

50% in SYSC 19E.2.18R(1) does not apply.

- (2) However, in the circumstances in (1) the *management company* is still required to ensure that a substantial portion of any variable *remuneration* component consists of the instruments in SYSC 19E.2.18R(1) and appropriately reflects the extent of the management of *UCITS* by the *management company*.
- (3) In the circumstances in (1), the *management company* may consider the additional use of instruments other than those in SYSC 19E.2.18R(1) that achieve the alignment of interest referred to in SYSC 19E.2.18R(3).

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

- 19E.2.20 R (1) A *management company* must not award, pay or provide a variable *remuneration* component unless a substantial portion, and in any event at least 40%, of the variable *remuneration* component, is deferred over a period which is:
- (a) appropriate in view of any holding period recommended to the investors of the *UCITS* concerned; and
  - (b) correctly aligned with the nature of the risks of the *UCITS* in question.
- (2) The period referred to in (1) must be at least three years.
- (3) *Remuneration* payable under (1) must vest no faster than on a pro-rata basis.
- (4) For a variable *remuneration* component of a particularly high amount, at least 60% of the amount must be deferred.

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

- 19E.2.21 G (1) £500,000 should be considered a particularly high amount for the purpose of SYSC 19E.2.20R(4).
- (2) While any variable *remuneration* component of £500,000 or more paid to *UCITS Remuneration code staff* should be subject to 60% deferral, *management companies* should also consider whether lesser amounts should be considered to be ‘particularly high’.
- (3) *Management companies* should take into account, for example, whether there are significant differences within *UCITS Remuneration Code staff* in the levels of variable *remuneration* paid.

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

- 19E.2.22 R A *management company* must ensure that any variable *remuneration*,

including a deferred portion, is paid or vests only if it is:

- (1) sustainable according to the financial situation of the *management company* as a whole; and
- (2) justified according to the performance of:
  - (a) the *UCITS*;
  - (b) the business unit; and
  - (c) the individual concerned.

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

- 19E.2.23 G
- (1) The total variable *remuneration* should generally be considerably contracted where subdued or negative financial performance of the *management company* or of the *UCITS* concerned occurs.
  - (2) When considering (1), *management companies* should take into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

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

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

- 19E.2.24 R
- A *management company* must ensure that the measurement of performance used to calculate variable *remuneration* components, or pools of variable *remuneration* components, includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks.

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

#### UCITS Remuneration Principle 7: Pension Policy

- 19E.2.25 R
- A *management company* must ensure that:
- (1) its pension policy is in line with the business strategy, objectives, values and long-term interests of:
    - (a) the *management company*; and
    - (b) the *UCITS* it manages;
  - (2) when an employee leaves the *management company* before retirement, any discretionary pension benefits are held by the *management company* for a period of five years in the form of the instruments referred to in SYSC 19E.2.18R(1); and
  - (3) for an *employee* reaching retirement, discretionary pension benefits



are:

- (a) paid to the employee in the form of instruments referred to in SYSC 19E.2.18R(1); and
- (b) subject to a five-year retention period.

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

UCITS Remuneration Principle 8: Personal investment strategies

19E.2.26 R A *management company* must ensure that its *employees* undertake not to use any of the following to undermine the risk alignment effects embedded in their *remuneration* arrangements:

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

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

UCITS Remuneration Principle 9: Avoidance of the remuneration code

19E.2.27 R A *management company* must ensure that variable *remuneration* is not paid through vehicles or methods that facilitate the avoidance of the requirements of the *UCITS Remuneration Code*.

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

Amend the following as shown.

**TP 3 Remuneration code codes**

**Part A IFPRU Remuneration Code**

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

**Part B UCITS Remuneration Code**

(1)	(2) Material to which the transitional provision applies		(3) Transitional provision	(4) Transitional provision: date in force	(5) Handbook provisions: coming into force
1	The <i>UCITS remuneration principles</i>	R	A <i>management company</i> need not apply the <i>UCITS remuneration principles</i> to	From 18 March 2016 until 18 March 2017	18 March 2016

		<u>any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.</u>		
--	--	---	--	--

## Annex C

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

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

**Transitional Provisions**

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

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

**5 Financial Resources**

**Application**

*Application of Chapter 5*

- 5.1.1 R (1) (a) This chapter applies to an *investment management firm*, other than:

- (i) an incoming EEA firm unless it has a top-up permission for acting as trustee or depositary of a UCITS; or
- (ii) a MiFID investment firm (unless it is an exempt exempt CAD firm for the purpose of calculating its own funds and if it carries on any regulated activity other than MiFID business), as set out in Table 5.1.1(1)(a).

(aa) This chapter applies, as set out in Table 5.1.1(1)(aa), to:

- (i) exempt CAD firms;
- (ii) OPS firms;
- (iii) non-OPS Life Offices and non-OPS Local Authorities; and
- (iv) individuals admitted to membership collectively.

<p><b>Table</b>  <b>5.1.1(1)(a)</b>  <b>5.1.1(1)(aa)</b>          ...</p>	<p><b>APPLICATION OF CHAPTER 5</b></p>
---	--

(c) ...

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

- (a) IPRU(INV) 5.2.1(1)R;
- (b) IPRU(INV) 5.2.1(2)R;
- (c) IPRU(INV) 5.2.1(3)R;
- (d) IPRU(INV) 5.2.2(1)(A)R;
- (e) IPRU(INV) 5.2.3(3)(A)R; and
- (f) IPRU(INV) 5.2.3(3)(E)R.

...

*Financial resources*

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

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

...

...

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

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

...

#### *Determination of requirement*

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

- (i) the *firm* falls within any of the exceptions in rule 5.2.3(2); or
- (ii) the *firm* is an incoming EEA firm with a top-up permission of acting as trustee or depositary of a UCITS.

...

#### *Own funds requirement*

- 5.2.3(3) R The *own funds requirement* for a *firm* subject to rule 5.2.3(2) is the higher of:
- (a)
- (i) ~~£4,000,000 million for a *firm* which is a trustee depositary of an authorised unit trust scheme~~ authorised fund or a depositary of an ICVC or ACS, if the authorised fund is an AIF;
- (ia) €125,000 for a *firm* which is a *depositary* appointed in line with *FUND 3.11.12R* (Eligible depositaries for UK AIFs) or a *UK depositary* of a *non-EEA AIF*; ~~and~~
- (ib) for a *firm* which is a depositary of a UCITS scheme, the higher of:
- (A) the requirement calculated depending on the selected approach in accordance with articles 315 or 317 of the EU CRR; and
- (B) £4million; and
- (ii) £5,000 for any other *firm*.

...

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

...

## Appendix 1: Interpretation

...

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

## Annex D

## Amendments to the Client Assets sourcebook (CASS)

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

## 1.4 Application: particular activities

...

Depositories

...

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

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

...

## 6 Custody rules

### 6.1 Application

...

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

...

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

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

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

custodial assets nor safe custody investments.

...

Trustees and depositaries (except depositaries of AIFs and UCITS)

...

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

...

...

6.1.16IC G ...

Depositaries of UCITS

6.1.16ID R When a firm is acting as trustee or depository of a UCITS, the firm need comply only with the custody rules in the table below:

<u>Reference</u>	<u>Rule</u>
<u>CASS 6.1.1R, CASS 6.1.1BR(3), CASS 6.1.9G, CASS 6.1.16IEG</u>	<u>Application</u>
<u>CASS 6.1.22G to CASS 6.1.24G</u>	<u>General purpose</u>
<u>CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R</u>	<u>Holding of client assets</u>
<u>CASS 6.6.1G to CASS 6.6.5G, CASS 6.6.7R to CASS 6.6.40G, CASS 6.6.42G, CASS 6.6.44R to CASS 6.6.57R(1), CASS 6.6.57R(4) to CASS 6.6.58G</u>	<u>Records, accounts and reconciliations</u>

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

6.1.16IF G (1) A firm (Firm A) to which another firm acting as trustee or depository of a UCITS (Firm B) has delegated safekeeping functions under COLL 6.6B.25R (Delegation: safekeeping) will not itself be acting as trustee or depository of a UCITS for that UCITS scheme.

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

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



## Annex E

### Amendments to the Supervision manual (SUP)

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

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

##### **Notification of intention to provide cross-border services in another EEA state-**

(SUP 13 Annex 6R – Notification under SUP 13.5.2R)

...

#### Purpose of this form

...

You may also use this form if you are a *UK firm* that wishes to notify us (the regulator) of changes to the details of ~~its~~ your current *cross border services*.

...

#### 2 Details of the services to be provided

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

States required	
...	
Bulgaria	<input type="checkbox"/>
<u>Croatia</u>	<input type="checkbox"/>
...	
<del>Slovak Republic</del> <u>Slovakia</u>	<input type="checkbox"/>
...	

...

#### 3 Undertakings for Collective Investment in Transferable Securities

...

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

...

(1) the written ~~agreement~~ contract that has been entered into with the *depository*; and

...

## 16 Reporting requirements

...

### 16.12 Integrated Regulatory Reporting

...

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

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

16.12.20 R The applicable reporting frequencies for submission of data items referred

to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

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

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

<i>Data item</i>	Quarterly	Half yearly	Annual
Solvency statement			3 months
<u>FSA019</u>			<u>2 months</u>
...			
FSA039		30 <i>business days</i>	
<u>FIN072</u>	<u>20 <i>business days</i></u>		
...			

...

In SUP 16 Annex 24R (Data items for SUP 16.12) insert a new data item FIN 072 at the end of the annex. The text is not underlined.

### FIN072 - Financial resources requirements for UCITS depositaries

#### Regulatory Capital

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

In SUP16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R)) insert a new guidance note for FIN 072 at the end of the annex. The text is not underlined.

## **FIN072 – Financial resources requirements for UCITS depositaries**

### **Introduction**

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

### **Defined terms**

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

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

### **Currency**

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

### **Data elements**

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

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

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

Amend the following as shown.

**TP 1 Transitional Provisions**

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: date in force	(6) Handbook provisions: coming into force
...					
18	<u>SUP 16.12.3 R(2) and SUP 16.12.19AR</u>	R	(1) <u>This transitional provision applies to a firm that is required under SUP 16.12.19AR to submit data item FIN072 to the FCA.</u>  (2) <u>Until the FCA has made electronic means available for the submission of data item FIN072 available, a firm in (1) must submit data item FIN072 by electronic email to: <a href="mailto:regulatory.reports@fca.org.uk">regulatory.reports@fca.org.uk</a>.</u>	<u>From 18 March 2016 until 18 March 2017</u>	<u>18 March 2016</u>

## Annex F

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

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

## 4.2 Pre-sale notifications

...

Table: contents of the prospectus

## 4.2.5 R ...

...	
Depository	
8	The following <u>information and particulars</u> <del>of</del> <u>concerning</u> the <i>depository</i> :
	...
(e)	if neither its registered office nor its head office is in the <i>United Kingdom</i> , the address of its principal place of business in the <i>United Kingdom</i> ; <del>and</del>
(f)	a description of its <del>principal business activity</del> <u>duties and conflicts of interest that may arise between the <i>depository</i> and:</u>
	(i) <u>the <i>scheme</i>; or</u>
	(ii) <u>the <i>unitholders</i> in the <i>scheme</i>; or</u>
	(iii) <u>the <i>authorised fund manager</i>;</u>
(g)	(i) <u>a description of any safekeeping functions delegated by the <i>depository</i>;</u>
	(ii) <u>a description of any conflicts of interest that may arise from such delegation; and</u>
	(iii) <u>for a <i>UCITS scheme</i>, a list showing the identity of each delegate and sub-delegate; and</u>
(h)	<u>for a <i>UCITS scheme</i>, a statement that up-to-date information regarding the points covered under (a),(f) and (g), above, will be made available to <i>unitholders</i> on request.</u>
...	
27	...



<u>Remuneration Policy</u>	
28	For a <i>UCITS scheme</i> and in relation to <i>UCITS Remuneration Code staff</i> :
	(a) <u>up-to-date details of the remuneration policy including, but not limited to:</u>
	(i) <u>a description of how remuneration and benefits are calculated; and</u>
	(ii) <u>the identities of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; or</u>
	(b) <u>a summary of the remuneration policy and a statement that:</u>
	(i) <u>up-to-date details of the matters set out in (a) above are available by means of a website, including a reference to that website; and</u>
	(ii) <u>a paper copy of that website information will be made available free of charge upon request.</u>

...

#### 4.5 Reports and accounts

...

Contents of the annual long report

##### 4.5.7 R ...

- (7) An annual long report of a UCITS scheme must also include:
- (a) (i) the total amount of remuneration paid by the authorised fund manager to its staff for the financial year, split into fixed and variable remuneration;
  - (ii) the number of beneficiaries; and
  - (iii) where relevant, any amount paid directly by the UCITS scheme itself, including any performance fee;
  - (b) the aggregate amount of remuneration broken down by categories of UCITS Remuneration Code staff;
  - (c) a description of how the remuneration and the benefits have been calculated;
  - (d) the outcome of the reviews referred to in SYSC 19E.2.7R(1) and SYSC 19E.2.8R, including any irregularities that have occurred; and

- (e) details of any material changes to the adopted remuneration policy since the previous annual long report was prepared.

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

- 4.5.7A G (1) The FCA recognises that the annual long report, including the remuneration related disclosures in COLL 4.5.7R(7), may be required to be made available to unitholders before the completion of the authorised fund manager's first annual performance period in which it has to comply with the UCITS Remuneration Code.
- (2) Under (1), the FCA expects the authorised fund manager to make best efforts to comply with COLL 4.5.7R(7) to the extent possible.
- (3) The authorised fund manager, having made best efforts to achieve compliance with COLL 4.5.7R(7), may omit to disclose information relating to remuneration where the information:
- (a) is not available to the authorised fund manager for the relevant annual accounting period; or
- (b) is available but will not provide materially relevant, reliable, comparable and clear information to unitholders about the remuneration policy of the authorised fund manager, as it affects the particular UCITS scheme.
- (4) Where disclosure is omitted, the authorised fund manager should explain the basis for that omission.

...

## 4.7 Key investor information and marketing communications

...

Key investor information

- 4.7.2 R ...
- (4) *Key investor information* must provide information on the following essential elements in respect of the *UCITS scheme*:
- (a) identification of the scheme and that the FCA is the competent authority of the scheme;
- ...
- (6A) A key investor information document must also include:
- (a) a statement that the details of the up-to-date remuneration policy are available by means of a website, including, but not

limited to, the following:

- (i) a description of how remuneration and benefits are calculated; and
  - (ii) the identities of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee, where such a committee exists; and
- (b) a reference to that website, and that a paper copy of the website information will be made available free of charge upon request.

...

...

## 5.4 Stock lending

...

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

...

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

- (a) for the account of and for the benefit of the scheme; and
- (b) in the interests of its unitholders.

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

Stock lending: requirements

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

...

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

...

...

...

#### Treatment of collateral

5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:

(a) ...

(aa) for a UCITS scheme, received under a title transfer arrangement;

(ab) for a UCITS scheme, at all times equal in value to the market value of the securities transferred by the depositary plus a premium;

(b) for a non-UCITS retail scheme, at all times at least equal in value, at the time of the transfer to the depositary, to the value of the securities transferred by the depositary; and

...

...

- (3) The *depositary* must ensure that the value of the *collateral* at all times ~~is at least equal to the value of the securities transferred by the depositary~~ meets the requirement of either (1)(ab) or (1)(b), as appropriate.

...

...

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

...

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

...

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

...

### General duties of the depositary

#### 6.6.4 R ...

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

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

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

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

...

### 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:

...

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

...

...

...

#### Committees and delegation

6.6.15 R ...

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

...

...

...

#### Delegation: guidance

6.6.16 G ...

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

...

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

...

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

...

- (4) (a) ...
- (b) ...; ~~and~~

- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*; and

- (6) in carrying out its functions act:
  - (a) honestly, fairly, professionally and independently; and
  - (b) solely in the interests of the UCITS scheme and its unitholders.

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

...

#### Appointment of a single depositary

- 6.6A.7 R An authorised fund manager of a UCITS scheme, or a UK UCITS management company of an EEA UCITS scheme, must (for each scheme it manages) ensure that:
- (1) a single depositary is appointed; and
  - (2) the assets of the UCITS are entrusted to the depositary for safekeeping in accordance with:
    - (a) for a UCITS scheme, COLL 6.6B.18R and COLL 6.6B.19R; and
    - (b) for an EEA UCITS scheme, the national laws and regulations in the Home State of the EEA UCITS scheme that implement article 22(5) of the UCITS Directive.

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

#### Eligible depositaries for UCITS schemes

- 6.6A.8 R An authorised fund manager must ensure that the depositary it appoints under COLL 6.6A.7R is a firm established in the United Kingdom that has the Part 4A permission of acting as trustee or depositary of a UCITS and is one of the following:
- (1) a national central bank; or
  - (2) a credit institution; or
  - (3) a firm which:
    - (a) has own funds of not less than the higher of:
      - (i) the requirement calculated in accordance with articles 315 or 317 of the EU CRR; or
      - (ii) £4million; and

- (b) either:
  - (i) is a full-scope IFPRU investment firm; or
  - (ii) is an investment management firm to which IPRU(INV) 5 applies; and
- (c) satisfies the non-bank depositary organisational requirements in COLL 6.6B.11R.

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

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

Eligible depositaries for EEA UCITS schemes

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

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

Written contract

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

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

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

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

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



After COLL 6.6A insert the following new section. The text is not underlined.

## **6.6B UCITS depositaries**

### Application

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

### General obligations

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

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

### Conflicts of interest: depositaries

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

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

### Eligible depositaries for UCITS schemes

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

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

- 6.6B.7 G A *depository* appointed in accordance with COLL 6.6A.8R(3) needs to satisfy the capital requirements in either:
- (1) *IPRU(INV) 5*; or
  - (2) *IFPRU* and the *EU CRR*.
- 6.6B.8 R A *full-scope IFPRU investment firm* which is appointed as a *depository* of a *UCITS scheme* must maintain *own funds* of at least £4million.
- 6.6B.9 G (1) If the *depository* is a *full-scope IFPRU investment firm*, it is subject to the capital requirements of *IFPRU* and the *EU CRR*.
- (2) However, these requirements are not in addition to COLL 6.6B.8R and therefore that *firm* may use the *own funds* required under *IFPRU* and the *EU CRR* to meet the £4million requirement.
- 6.6B.10 G If the *depository* appointed in accordance with COLL 6.6A.8R(3) is an *incoming EEA firm* that has a *top-up permission* for *acting as trustee or depository of a UCITS*, it must comply with the applicable capital requirements set out in *IPRU(INV) 5*.

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

- 6.6B.11 R A *depository* appointed under COLL 6.6A.8R(3) must:
- (1) ensure that it has the infrastructure necessary to keep in custody *UCITS custodial assets* that can be registered in a *financial instruments* account opened in the *depository's* books;
  - (2) establish adequate policies and procedures sufficient to ensure the compliance of the *depository*, including its managers and employees, with its obligations under the *regulatory system*;
  - (3) have:
    - (a) sound administrative and accounting procedures and internal control mechanisms;
    - (b) effective procedures for risk assessment; and
    - (c) effective control and safeguard arrangements for information processing systems;
  - (4) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;

- (5) arrange for records to be kept of all services, activities and transactions that it undertakes, which must be sufficient to enable the *competent authority* to monitor the *firm's* compliance with the requirements under the *regulatory system*;
- (6) take reasonable steps to ensure continuity and regularity in the performance of its *depository* functions by employing appropriate and proportionate systems, resources and procedures to perform its *depository* activities;
- (7) ensure that all members of its *management body* and senior management at all times:
  - (a) are of sufficiently good repute; and
  - (b) possess sufficient knowledge, skills and experience;
- (8) ensure that its *management body* possesses adequate collective knowledge, skills and experience to be able to understand the *depository's* activities, including the main risks; and
- (9) require each member of its *management body* and senior management to act with honesty and integrity.

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

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

#### Written contract

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

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

- 6.6B.14 G The written contract referred to in *COLL* 6.6.B.13R may cover more than one *UCITS scheme*.
- 6.6B.15 G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between the *authorised fund manager* and the *depository*.

## Depositary functions: oversight

- 6.6B.16 R The *depositary* must, for each *UCITS scheme* for which it is appointed:
- (1) ensure that the *sale, issue, repurchase, redemption and cancellation of units* of the *scheme* are carried out in accordance with:
    - (a) the applicable national law;
    - (b) the *instrument constituting the fund*;
    - (c) the *prospectus*; and
    - (d) *COLL 6.2 (Dealing)*;
  - (2) ensure that the price of the *units* of the *UCITS* is calculated in accordance with:
    - (a) the applicable national law;
    - (b) the *instrument constituting the fund*;
    - (c) the *prospectus*; and
    - (d) *COLL 6.3 (Valuation and pricing)*;
  - (3) carry out the instructions of the *authorised fund manager*, unless they conflict with:
    - (a) the applicable national law; or
    - (b) the *instrument constituting the fund*; or
    - (c) the *prospectus*; or
    - (d) *COLL 5 (Investment and borrowing powers)*;
  - (4) ensure that, in transactions involving the assets of the *UCITS scheme*, any consideration is remitted to the *scheme* within the usual time limits; and
  - (5) ensure that the income of the *UCITS scheme* is applied in accordance with:
    - (a) the applicable national law;
    - (b) the *instrument constituting the fund*;
    - (c) the *prospectus*; and
    - (d) *COLL 6.8 (Income: accounting, allocation and distribution)*.

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

Depository functions: cash monitoring

- 6.6B.17 R The *depository* must ensure that the cash flows of each *UCITS scheme* are properly monitored and that:
- (1) all payments made by, or on behalf of, investors upon the subscription of *units* of the *scheme* have been received;
  - (2) all cash of the *scheme* has been booked in cash accounts which are:
    - (a) opened in the name of:
      - (i) the *scheme*; or
      - (ii) the *authorised fund manager*, acting on behalf of the *scheme*; or
      - (iii) the *depository* acting on behalf of the *scheme*; and
    - (b) at:
      - (i) a central bank; or
      - (ii) a *CRD credit institution*; or
      - (iii) a bank authorised in a *third country*; and
    - (c) maintained in accordance with the principles in article 16 (safeguarding of client financial instruments and funds) of the *MiFID implementing directive*; and
  - (3) where cash accounts are opened in the name of the *depository* acting on behalf of the *scheme* in accordance with (2)(a)(iii), the *depository* must ensure that no cash of the entity referred to in (2)(b), and none of the *depository's* own cash, is booked on such accounts.

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

Depository functions: safekeeping of financial instruments

- 6.6B.18 R
- (1) The *depository* of a *UCITS scheme* must hold in custody all *UCITS custodial assets* of the *scheme*.
  - (2) The *depository* must ensure that all *UCITS custodial assets* that can be registered in a *financial instruments* account:
    - (a) are registered in the *depository's* books within segregated accounts opened in the name of:
      - (i) the *UCITS scheme*; or

- (ii) the *authorised fund manager*, acting on behalf of the *scheme*; and
- (b) can be clearly identified as belonging to the *UCITS scheme* at all times in accordance with:
  - (i) the applicable law; and
  - (ii) the applicable provisions in *CASS 6*.

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

Depository functions: safekeeping of other assets

- 6.6B.19 R The *depository* must, for *UCITS scheme property* other than *UCITS custodial assets*:
- (1) verify that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme*, is the owner of the assets based:
    - (a) on information or documents provided by the *authorised fund manager*; and
    - (b) where available, on external evidence; and
  - (2) maintain, and keep up to date, a record of those assets for which it is satisfied that the *UCITS scheme* or the *authorised fund manager*, acting on behalf of the *scheme*, is the owner.

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

Inventory of assets

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

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

Re-use of assets

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

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

Limitation on delegation

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

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

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

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

- 6.6B.24 G (1) (a) If a *depository* performs part of its functions through a *branch* in another *EEA State*, this is not a delegation by the *depository* of its functions to a third party.
- (b) This is because ‘third party’ in *COLL 6.6B.22R* means any party that is not part of the same legal entity as the *depository*.
- (2) Paragraph (1) also applies where the *depository* is the *UK branch* of an *EEA firm* and it performs part of its functions:
- (a) through a *branch* in another *EEA State*; or
- (b) from the *EEA State* where it has its registered office.
- (3) (a) A *depository* that performs part of its functions through a *branch* or registered office in another *EEA State* should ensure that those arrangements do not impede the *depository’s* ability to meet the *threshold conditions*.
- (b) (i) In particular, the arrangements should not impede the *FCA’s* ability to supervise the *depository* effectively.
- (ii) For example, the *FCA’s* ability to supervise the *depository* might be impeded if the *depository* performed tasks other than administrative and supporting tasks from its *branch* or registered office in another *EEA State*.

Delegation: safekeeping

- 6.6B.25 R A *depository* may delegate the functions in *COLL 6.6B.18R* and *COLL 6.6B.19R* to one or more third parties if:
- (1) the tasks are not delegated with the intention of avoiding the requirements of the *UCITS Directive*;

- (2) the *depository* can demonstrate that there is an objective reason for the delegation;
- (3) the *depository*:
  - (a) has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks; and
  - (b) continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring:
    - (i) of any third party to whom it has delegated parts of its tasks; and
    - (ii) of the arrangements of that third party in respect of the matters delegated to it; and
- (4) the *depository* ensures that the third party delegate meets the following conditions at all times:
  - (a) the third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the *UCITS scheme* that have been entrusted to it;
  - (b) (subject to *COLL 6.6B.26R*) for custody tasks in relation to *UCITS custodial assets*, the third party is subject to:
    - (i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned; and
    - (ii) an external periodic audit to ensure that the *financial instruments* remain in its custody;
  - (c) the third party segregates the assets of the *depository's* clients from its own assets and from the assets of the *depository* in such a way that they can, at any time, be clearly identified as belonging to clients of a particular *depository*;
  - (d) the third party takes all necessary steps to ensure that in the event of insolvency of the third party, *UCITS custodial assets* held in custody by the third party are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
  - (e) the third party complies with the general obligations and prohibitions relating to the *depository* in:
    - (i) *COLL 6.6B.2R* (General obligations);



- (ii) *COLL* 6.6B.3R (Conflicts of interests: depositaries);
- (iii) *COLL* 6.6B.13R (Written contract);
- (iv) *COLL* 6.6B.18R (Depositary functions: safekeeping of financial instruments);
- (v) *COLL* 6.6B.19R (Depositary functions: safekeeping of other assets); and
- (vi) *COLL* 6.6B.21R (Reuse of assets).

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

Delegation: third countries

- 6.6B.26 R A *depositary* may delegate custody tasks in relation to *UCITS custodial assets* to an entity in a third country even though that entity does not satisfy the conditions in *COLL* 6.6B.25R(4)(b)(i) if:
- (1) the law of that third country requires those *UCITS custodial assets* to be held in custody by a local entity;
  - (2) no local entity satisfies the conditions in *COLL* 6.6B.25R(4)(b)(i);
  - (3) the *depositary* delegates its functions to such a local entity only:
    - (a) to the extent required by the law of that third country; and
    - (b) for as long as there is no local entity that satisfies the delegation conditions in *COLL* 6.6B.25R(4)(b)(i);
  - (4) the investors of the relevant *UCITS scheme* are informed before their investment:
    - (a) that such delegation is required due to legal constraints in the third country;
    - (b) of the reasons as to why the delegation is necessary; and
    - (c) of the risks involved in such a delegation; and
  - (5) the *authorised fund manager*, acting on behalf of the *UCITS scheme*, has consented to the delegation arrangements before they become effective.

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

Delegation: sub-delegation

- 6.6B.27 R A *depositary* must ensure that a third party to whom the *depositary* has delegated functions under *COLL* 6.6B.25R does not, in turn, sub-delegate

those functions unless the delegate complies with the same requirements that apply to the *depository*, with any necessary changes, in relation to the delegation by the *depository* of its functions in *COLL 6.6B.25R* and *COLL 6.6B.26R*.

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

Delegation: omnibus account

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

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

Provision of information

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

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

Reporting of breaches

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

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

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

Subordinate measures

- 6.6B.32 G Articles 3 to 17 of the *UCITS level 2 regulation* provide detailed rules supplementing this section.

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

Amend the following as shown.

## 12.2 UK UCITS management companies

...

Notification to the UCITS Home State regulator

12.2.7 G (1) A *UK UCITS management company* which applies to operate an *EEA UCITS scheme* in another *EEA State* is advised that it must comply with the requirements of the *Host State regulator* regarding provision to them of the following *documents*:

- (a) the written ~~agreement~~ contract it has entered into with the ~~depository~~ depository of the *EEA UCITS scheme*, as referred to in ~~articles 23 and 33~~ article 22(2) of the *UCITS Directive*; and

...

...

...

## 12.3 EEA UCITS management companies

...

Provision of documentation to the FCA: EEA UCITS management companies

12.3.4 R (1) An *EEA UCITS management company* which applies to manage a *UCITS scheme* under paragraph 15A(1) of Schedule 3 to the *Act* must provide the *FCA* with the following *documents*:

- (a) the written ~~agreement~~ contract that has been entered into with the ~~depository~~ depository of the *scheme*, as referred to in ~~COLL 6.6.4 R (6) (General duties of the depository)~~ article 22(2) of the *UCITS Directive*;

...

...

...

## TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: date in force	(6) Handbook provisions: coming into force
...					
31	<u>COLL 4.2.5R(8)(f), (g) and (h), and COLL 4.2.5R(28)</u>	<u>R</u>	(1) <u>The authorised fund manager of a UCITS scheme need not, for any prospectus issued before 18 March 2016, comply with COLL 4.2.5R(8)(f), (g) and (h) and COLL 4.2.5R(28).</u>  (2) <u>The prospectus must, however, contain a description of the depositary's principal business activity.</u>	<u>From 18 March 2016 until 30 September 2016</u>	<u>18 March 2016</u>
32	<u>COLL 4.2.5R(8)(f) and (g)(i) and (ii)</u>	<u>R</u>	(1) <u>The authorised fund manager of a non-UCITS retail scheme need not, for any prospectus issued before 18 March 2016, comply with COLL 4.2.5R(8)(f), (g)(i) and (ii).</u>  (2) <u>The prospectus must, however, contain a description of the depositary's principal business activity.</u>	<u>From 18 March 2016 until 31 March 2017</u>	<u>18 March 2016</u>
33	<u>COLL 4.5.7R(7)</u>	<u>R</u>	<u>The authorised fund manager need not include the disclosures required under COLL 4.5.7R(7) in an annual long report that relates to an annual accounting period ending before 18 March 2016.</u>	<u>From 18 March 2016 until 18 July 2016</u>	<u>18 March 2016</u>

34	<u>COLL 4.7.2R(4)(a) and (6A)</u>	R	<p><u>(1) Paragraph (2) applies to any key investor information document drawn up by an authorised fund manager before 18 March 2016.</u></p> <p><u>(2) The authorised fund manager need not amend the key investor information document until it is revised as a result of a subsequent revision of the key investor information falling after 18 March 2016, and only if the information required by COLL 4.7.2R(4)(a) and (6A) is available to the authorised fund manager at the time of that revision.</u></p>	<u>From 18 March 2016 until 18 March 2017</u>	<u>18 March 2016</u>
35	<u>The changes set out in Annex F of the UCITS V Directive Instrument 2016 to COLL 6.6.4R(6) and (7), COLL 6 Annex 1R and COLL 12.3.4R(1)</u>	R	<u>The changes to the COLL provisions in column (2) do not apply to an EEA UCITS management company in respect of a UCITS scheme managed by it and the provisions continue to apply as they were in force at 17 March 2016.</u>	<u>18 March 2016 until the earlier of:</u> <u>(1) the date of application of the UCITS level 2 regulation; and</u> <u>(2) the date the EEA UCITS management company enters into a depositary agreement in respect of the scheme that is compliant with the terms of the UCITS level 2 regulation</u>	<u>18 March 2016</u>
36	<u>COLL 6.6A.8R</u>	R	<u>A management company may continue to retain a depositary that does not meet the requirements in COLL 6.6A.8R if the depositary was appointed before 18 March 2016.</u>	<u>From 18 March 2016 until 18 March 2018</u>	<u>18 March 2016</u>

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

## Annex G

## Amendments to the Investment Funds sourcebook (FUND)

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

## 3.11 Depositories

...

- 3.11.26 R (1) A depositary must not delegate its functions to third parties, except as permitted by FUND 3.11.28R.
- (2) The prohibition in (1) does not apply to the delegation by the depositary of supporting administrative or technical tasks that are linked to its depositary functions.

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

...

- 3.11.27A G (1) (a) If a depositary performs part of its functions through a branch in another EEA State this is not a delegation by the depositary of its functions to a third party.
- (b) This is because ‘third party’ in FUND 3.11.26R means any party that is not part of the same legal entity as the depositary.
- (2) Paragraph (1) also applies where the depositary is the UK branch of an EEA firm and it performs part of its functions:
- (a) through a branch in another EEA State; or
- (b) from the EEA State where it has its registered office.
- (3) (a) A depositary that performs part of its functions through a branch or registered office in another EEA State should ensure that those arrangements do not impede the depositary’s ability to meet the threshold conditions.
- (b) (i) In particular, the arrangements should not impede the FCA’s ability to supervise the depositary effectively.
- (ii) For example, the FCA’s ability to supervise the depositary might be impeded if the depositary performed tasks other than administrative and supporting tasks from its branch or registered office in another EEA State.



**PUB REF: 005185**

© Financial Conduct Authority 2016  
25 The North Colonnade Canary Wharf  
London E14 5HS  
Telephone: +44 (0)20 7066 1000  
Website: [www.fca.org.uk](http://www.fca.org.uk)  
All rights reserved