

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"> (a) registered in a <i>financial instruments</i> account opened in the <i>depository's</i> books; or (b) physically delivered to the <i>depository</i>.
<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"> (1) other than when <i>acting as trustee or depository of an AIF or acting as trustee or depository of a UCITS</i>: (3) <u>in relation to acting as trustee or depository of a UCITS in CASS 6:</u> <ol style="list-style-type: none"> (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> (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>
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		<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), and (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 and/or acting as trustee or depository of a UCITS , 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

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Annex 1 Detailed application of SYSC

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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>
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4 General organisation requirements

4.1 General requirements

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- 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.

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19C BIPRU Remuneration Code

19C.1 General application and purpose

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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.

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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

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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
<u>1</u>	<u>The UCITS remuneration principles</u>	<u>R</u>	<u>A management company need not apply the UCITS remuneration principles to</u>	<u>From 18 March 2016 until 18 March 2017</u>	<u>18 March 2016</u>

		<u>any awards of variable remuneration until it commences its first full performance year starting on or after 18 March 2016.</u>		
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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)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
...					
13	<u>IPRU(INV)</u> <u>5.2.3(3)R(a)(ib)(A)</u> <u>and</u>	<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>
14	<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>Table</p> <p>5.1.1(1)(a)</p> <p>5.1.1(1)(aa)</p> <p>...</p>	<p>APPLICATION OF CHAPTER 5</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~~ million for a ~~firm~~ *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) (Calculation of own funds and liquid capital) and IPRU(INV) 5.2.2(1)(A)R, as applicable.
<i>own funds requirement</i>	has the meaning given in rule 5.2.3(3)(a) and IPRU(INV) 5.2.3(3)(A)R (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 depositaries) which apply in addition to those in CASS.

1.4.7 R Subject to CASS 1.4.6R, CASS applies to a *depositary*, 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"/>
...	
Slovak Republic <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>			
...				
<u>Note 8</u>	<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

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

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.

Regulatory capital		
	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.
Regulatory capital test		
<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	<p>(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></p> <p>(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: regulatory.reports@fca.org.uk.</u></p>	From <u>18 March 2016</u> until <u>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 of concerning the <i>depository</i></u> :
	...
(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> ; and
(f)	a description of its principal business activity <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	<u>For a UCITS scheme and in relation to UCITS Remuneration Code staff:</u>
	(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>
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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.