Implementation of the Alternative Investment Fund Managers Directive

June 2013
Contents

Abbreviations used in this paper ................................................. 3

1. Overview ........................................................................... 7

2. Implementation and scope ............................................... 12

3. Operating requirements for full-scope and sub-threshold AIFMs .................................................. 19

4. Prudential requirements for fund managers ......................... 24

5. Consumer redress: the ombudsman service and the FSCS ................................................................. 31

6. Depositaries ....................................................................... 34

7. Marketing ........................................................................... 42

8. Fees .................................................................................. 47

9. Other matters ..................................................................... 52

10. Cost benefit analysis ...................................................... 55

Annex

1. List of non-confidential respondents to CP12/32 ...................... 59

2. List of non-confidential respondents to CP13/9 ...................... 61

3. Prudential classification for investment fund managers ............... 63

Appendix

1. Made rules (legal instrument) ........................................... 65
In this Policy Statement we report on the main issues arising from Consultation Papers 12/32 and 13/9 (Implementation of the Alternative Investment Fund Managers Directive) and publish the final rules.

Please send any comments or enquiries to:

Investment Funds team
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Email: AIFMDQueries@fca.org.uk

You can download this Policy Statement from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.
## Abbreviations used in this paper

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIF</td>
<td>alternative investment fund</td>
</tr>
<tr>
<td>AIFM</td>
<td>alternative investment fund manager</td>
</tr>
<tr>
<td>AIFMD UK regulation</td>
<td>The Alternative Investment Fund Managers Regulations 2013</td>
</tr>
<tr>
<td>BIPRU</td>
<td>Prudential sourcebook for Banks, Building Societies and Investment Firms of the FCA Handbook</td>
</tr>
<tr>
<td>CASS</td>
<td>Client Assets sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>CBA</td>
<td>cost benefit analysis</td>
</tr>
<tr>
<td>CDF</td>
<td>common deposit fund</td>
</tr>
<tr>
<td>CIF</td>
<td>common investment fund</td>
</tr>
<tr>
<td>CIS</td>
<td>collective investment scheme</td>
</tr>
<tr>
<td>CIU</td>
<td>collective investment undertaking</td>
</tr>
<tr>
<td>COBS</td>
<td>Conduct of Business sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>COLL</td>
<td>Collective Investment Schemes sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>Commission</td>
<td>European Commission</td>
</tr>
<tr>
<td>CP</td>
<td>consultation paper</td>
</tr>
<tr>
<td>CPM firm</td>
<td>collective portfolio management firm</td>
</tr>
<tr>
<td>CPMI firm</td>
<td>collective portfolio management investment firm</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>EIS</td>
<td>enterprise investment scheme</td>
</tr>
<tr>
<td>ESMA</td>
<td>European Securities and Markets Authority</td>
</tr>
<tr>
<td>EU</td>
<td>European Union, which includes the European Economic Area (EEA) unless otherwise stated</td>
</tr>
<tr>
<td>EuSEF</td>
<td>European social entrepreneurship fund</td>
</tr>
<tr>
<td>EuVECA</td>
<td>European venture capital fund</td>
</tr>
<tr>
<td>FCA</td>
<td>Financial Conduct Authority</td>
</tr>
<tr>
<td>FOS</td>
<td>Financial Ombudsman Service</td>
</tr>
<tr>
<td>FSCS</td>
<td>Financial Services Compensation Scheme</td>
</tr>
<tr>
<td>FSMA</td>
<td>Financial Services and Markets Act 2000, as amended</td>
</tr>
<tr>
<td>FUND</td>
<td>Investment Funds sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>GENPRU</td>
<td>General Prudential sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>IPRU (INV)</td>
<td>Interim Prudential sourcebook for Investment Business of the FCA Handbook</td>
</tr>
<tr>
<td>level 1 Directive</td>
<td>see AIFMD</td>
</tr>
<tr>
<td>Member State</td>
<td>a Member State of the European Union</td>
</tr>
<tr>
<td>NURS</td>
<td>non-UCITS retail scheme</td>
</tr>
<tr>
<td>Part 4A permission</td>
<td>a firm’s permission granted under FSMA to carry on a regulated activity</td>
</tr>
<tr>
<td>PE</td>
<td>private equity</td>
</tr>
<tr>
<td>PERG</td>
<td>Perimeter Guidance manual of the FCA Handbook</td>
</tr>
<tr>
<td>PII</td>
<td>professional indemnity insurance</td>
</tr>
<tr>
<td>PS</td>
<td>policy statement</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>QIS</td>
<td>qualified investor scheme</td>
</tr>
<tr>
<td>RAO</td>
<td>Financial Services and Markets Act (Regulated Activities) Order 2001 (SI 2001/544)(as amended)</td>
</tr>
<tr>
<td>REIT</td>
<td>real estate investment trust</td>
</tr>
<tr>
<td>SUP</td>
<td>Supervision manual of the FCA Handbook</td>
</tr>
<tr>
<td>SYSC</td>
<td>Senior Management Arrangements, Systems and Controls sourcebook of the FCA Handbook</td>
</tr>
<tr>
<td>the Treasury</td>
<td>Her Majesty’s Treasury</td>
</tr>
<tr>
<td>UCIS</td>
<td>unregulated collective investment scheme</td>
</tr>
<tr>
<td>UCITS</td>
<td>undertaking for collective investment in transferable securities</td>
</tr>
<tr>
<td>UPRU</td>
<td>Prudential sourcebook for UCITS firms of the FCA Handbook</td>
</tr>
</tbody>
</table>
1. Overview

**Introduction**

1.1 We are setting out our rules for implementing the Alternative Investment Fund Managers Directive (AIFMD or ‘the Directive’), and providing our response to the feedback to our consultation.

1.2 In November 2012 we published Consultation Paper (CP) 12/32 Implementation of the Alternative Investment Fund Managers Directive Part I.\(^1\) We consulted on matters where we have a degree of national discretion on how to implement this Directive, in particular on how fund managers should meet the required prudential standards and on what regime should be put in place for depositaries of alternative investment funds (AIFs).

1.3 In March 2013 we published CP13/9 which was Part II of the same consultation.\(^2\) In it, we consulted on a range of topics including guidance on the perimeter of the Directive’s scope, how systems and controls and conduct of business rules and guidance will apply to different categories of alternative investment fund manager (AIFM), which consumer redress rules will apply to AIFMs, and what fees will be charged. We also consulted on further aspects of some matters we covered in Part I of our consultation, such as prudential and depositary requirements and marketing issues.

1.4 The rules will come into force on 22 July 2013, the date by which we must implement the Directive, although there are some transitional reliefs for firms for up to one year from then.

**Who is affected by this?**

1.5 This Policy Statement (PS) will be of particular interest to:

- investors (retail and professional)
- fund managers, including managers of UCITS schemes
- depositaries and custodians
- MiFID investment firms
- listed and unlisted investment companies not currently subject to FSMA authorisation

---

• service providers to the fund management industry, such as prime brokers, valuers, administrators and outsourcing specialists
• representative trade bodies and associations, and
• business advisers and consultants, and other advisers involved, serving in or linked to the fund management industry in the UK.

Is this of interest to consumers?

1.6 AIFMD is mainly directed at firms offering asset management services to professional investors. Many of these firms do not promote their products or services to consumers more generally. However, given that one of the main objectives of AIFMD is to achieve an appropriate level of investor protection for retail, professional and institutional investors, our rules may be of wider interest to consumers.

Context

1.7 The new rules will support our objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers. Firms that have a full authorisation under AIFMD have the right to manage and market funds throughout the EU, which supports our objective of promoting effective competition in the interests of consumers.

1.8 As we explained in the two CPs, many of the Directive requirements are supported by implementing measures in the form of a directly-applicable level 2 regulation. This was published in the Official Journal of the EU on 22 March 2013.3 We will not reproduce the whole regulation text in our Handbook, but in some places we will include extracts and add references to relevant sections, to help connect our rules with the corresponding part of the level 2 regulation.

1.9 There are, or will be, other EU rules and guidelines arising from work carried out by the European Securities and Markets Authority (ESMA). These include binding technical standards and guidelines on types of AIFM and AIF, guidelines on remuneration of key personnel, and a consultation on guidelines on reporting requirements. Each of these is covered in more detail in the relevant chapter of this paper, but readers are advised to refer to the material published by ESMA.4

1.10 We also explained in our CPs that the Treasury is responsible for implementing many aspects of AIFMD in the UK. The Treasury has laid its draft statutory instrument before Parliament, containing its AIFMD regulations and consequential changes to primary and secondary legislation (“the AIFMD UK regulation”).5 As at the date of publication of this paper, the statutory instrument is proceeding through Parliament and the Treasury expects it to be made law by 22 July.

1.11 Here, we generally address only the matters that we asked questions about in the CPs. This paper does not aim to tell firms everything they need to know about how to comply with the requirements of AIFMD. We address various operational aspects, such as the process for obtaining an authorisation or variation of permission to manage AIFs, on our website.6

1.12 We will also try to answer questions from firms addressed to the usual supervisory contacts, where the firm has considered the issue and is uncertain how best to proceed. But ultimately it will be for firms to review and consider all the published material described above and to take professional advice as appropriate, to determine what their obligations are and how to comply with them.

Summary of feedback and our response

1.13 We received 33 responses to CP12/32 (three of them confidential) and 32 responses to CP13/9. We are grateful to all those who replied for the comments and suggestions they made. Lists of the stakeholders who sent non-confidential responses to each CP appear in Annexes 1 and 2.

1.14 In Chapter 2 we summarise feedback received on our draft perimeter guidance (PERG). The responses were very diverse, with requests for further guidance on a wide range of topics. We have made a few changes to reflect common themes, especially concerning capital raising, whether certain types of structure will be AIFs, and how UK delegates of a non-EEA AIFM will be treated.

1.15 Chapter 3 focuses on systems and controls and conduct of business rules, as they apply to AIFMs in the full scope of AIFMD and small AIFMs that are not subject to all its requirements. Respondents mostly asked us to clarify how the rules will work, although there were objections to the way they will apply to internally managed investment companies that will become Part 4A authorised firms. However, we have not made significant changes to our proposals.

1.16 Chapter 4 deals with the prudential rules for AIFMs but also affects UCITS management companies. The rules are largely unchanged from what we consulted on except in relation to internally managed AIFMs, where we are taking a stricter interpretation of the Directive’s additional own-funds requirement.

1.17 Chapter 5 deals with the application of the ombudsman service rules and the Financial Services Compensation Scheme (FSCS) to AIFMs and depositaries of AIFs. Very few issues were raised in the responses and we have not changed our proposals.

1.18 Chapter 6 covers our proposals for depositaries of AIFs, which most respondents were broadly content with. We have changed our approach to UK firms carrying out depositary services for non-EEA AIFs, to make the rules more flexible and encourage competition.

1.19 Chapter 7 gives feedback on our proposed guidance on marketing, which we have adjusted to take account of comments on own-initiative approaches from investors and whether listing and trading on a secondary market constitute marketing. We also cover matters related to the notification of cross-border marketing activity.

---

6 [www.fca.org.uk/firms/markets/international-markets/aifmd](http://www.fca.org.uk/firms/markets/international-markets/aifmd)
1.20 Chapter 8 deals with our proposed fee arrangements for authorised and registered AIFMs and depositaries. Feedback was mostly supportive so these are little changed, although we have set lower fee tariffs for small registered AIFMs.

1.21 Chapter 9 covers the rules applying to remuneration of an AIFM’s key personnel and outlines further work to be done in this area. It also explains our approach to implementing, at a later date, the prospective EU passport for non-EEA AIFMs and AIFs.

1.22 Chapter 10 summarises responses to the cost benefit analysis in each CP and sets out further analysis in areas where we have modified our original proposals.

Equality and diversity

1.23 As noted in CP12/32 and CP13/9, we have assessed the equality and diversity impact of our proposals and do not believe they will give rise to any equality or diversity issues. We did not receive any comments to contradict this view during the consultation process.

Next steps

1.24 The rules will come into effect on 22 July 2013. Firms that are already carrying on management of AIFs, or providing services as a depository, custodian or valuer, may be able to take account of the transitional provisions set out in the Treasury’s AIFMD UK regulation, until 21 July 2014. All firms that will become AIFMs should plan what they will need to do to have gained a Part 4A permission to manage an AIF, or to have been registered with the FCA, by that date.

1.25 Firms intending to act as depository for an unauthorised AIF can, if they are currently authorised persons, begin providing the service as soon as they are able to comply fully with the requirements of the Directive and the level 2 regulation. This transitional provision expires on 21 July 2014, by which point they will need to hold a Part 4A permission to act as trustee or depositary of an AIF. Firms that are not yet authorised persons must become authorised with the relevant Part 4A permission before they can begin to provide the service.

1.26 Legislation creating two new forms of European-wide collective investment undertaking will also come into effect on 22 July 2013. Regulations for European venture capital funds (EuVECAs) and European social entrepreneurship funds (EuSEFs) were published in April 2013, which will allow small authorised and registered AIFMs to manage and market two new types of alternative investment fund.\(^7\) As these regulations are directly applicable in law, they come into force without consultation, but we have taken account of them in our final Handbook instrument and in this paper, to reflect their position within the current regulatory structure.

1.27 To prioritise our resources effectively and achieve timely transposition, we have deferred consulting on some matters that do not have to be in place from 22 July. These include:

---


• consequential changes for all parts of the FCA and PRA Handbooks

• rules on fees for managers of EuSEFs and EuVECAs (see chapter 8 of this paper)

• rules for the eventual implementation of European passports for non-EEA AIFMs managing EEA AIFs and for non-EEA AIFs being marketed in the EEA (see chapter 9)

• integration into the Handbook of ESMA guidelines on key concepts of the AIFMD, remuneration of key personnel, and reporting by AIFMs

• guidance on a proportionality framework for remuneration requirements (see chapter 9), and

• the transition of rules and guidance affecting UK-authorised funds from the Collective Investment Schemes sourcebook (COLL) to the Investment Funds sourcebook (FUND).

1.28 We expect to consult on at least some of these matters later in 2013.
2. Implementation and scope

2.1 This chapter covers our analysis of the responses to the questions in chapter 3 of CP12/32 and chapter 2 of CP13/9 on implementing the Directive, and in particular its scope.

CP12/32 – Scope

Q1: Although we will return to this issue in a later consultation, once ESMA has completed its work on types of AIFM, do you have any concerns or questions regarding our approach to AIFMD scope as described in this chapter?

2.2 We received 14 responses. They did not raise concerns with our general approach but made a variety of specific points, although there were some common themes. Some responses offered views or requested guidance on the treatment of joint ventures, structured products and special purpose vehicles. Others expressed concerns about the timeline for implementation, a matter which is largely determined by factors we do not control.

2.3 Three respondents asked questions about delegation arrangements. Two wanted guidance in the case of a non-EEA AIFM delegating to a UK MiFID firm. The other respondent asked for guidance on the extent to which the board of an investment company can retain an element of supervision, monitoring and control over an externally appointed manager and still properly treat the external manager as the AIFM.

2.4 Other comments raised points which have since been clarified, for example whether internally managed investment companies will be subject to AIFMD.

Our response

We have not changed our general approach to AIFMD scope, given that respondents did not disagree with our analysis. A number raised points in subject areas which we subsequently addressed in CP13/9, for example about the treatment of joint ventures, structured products and special purpose vehicles.

Our comments on delegation arrangements can be found in the response below.
CP13/9 – PERG guidance

Q1: Do you have any comments on the proposed PERG guidance?

2.5 We received 22 responses to this question. They broadly welcomed the PERG guidance, but each raised comments in a variety of specific areas. However, there were common themes, which we reflect below. All references in this chapter are to the numbered questions and answers in PERG 16 as it appears in Appendix 1 of this paper, unless otherwise indicated.

2.6 Our draft guidance was based on the draft versions of the ESMA Guidelines on Key Concepts of the AIFMD published in December 2012, and the AIFMD UK regulation and associated legislation consulted on by the Treasury in January 2013. Since then, ESMA has published the final version of its Guidelines on Key Concepts of the AIFMD (referred to in this chapter as the ‘ESMA guidelines’).ESMA has made changes to some of the key characteristics it proposed, for example the definition of an ‘ordinary company with general commercial purpose’. As a result of that change and others, our guidance has been modified to follow the ESMA guidelines, over and above any changes reflecting feedback to our own consultation.

2.7 The Treasury has laid the final draft of the AIFMD UK regulation, and we have also taken account of changes to that instrument from the draft available when we published CP13/9. We note below where changes made by ESMA or the Treasury, rather than the FCA, have a bearing on issues raised by respondents.

Capital raising

2.8 Several respondents wanted PERG to make clear that the definition of AIF requires capital to be raised from a number of investors in accordance with a defined investment policy. Several respondents also wanted confirmation that the fact that an undertaking’s shares can be bought and sold on a stock exchange is not, of itself, the raising of capital.

2.9 Similarly, another respondent stated that an entity would not be an AIF where there are two investors but one of them is investing only a nominal amount. In such a case, the respondent suggested there would no capital raising from the second investor; there would be no pooling and the nominal capital would not be applied in line with an investment policy.

Our response

ESMA’s guidelines emphasise the link between capital raising and the defined investment policy, which has been reflected in the answer to question 2.10. We agree that the fact that an undertaking’s shares can be bought and sold on a stock exchange is not of itself the raising of capital by the undertaking, and explain this in the answer to question 2.10.

We have also expanded the answer to question 2.11 to say that a limited partnership in which there is a single limited partner making a substantive contribution and a general partner making a nominal £1 contribution, will not be an AIF, subject to question 2.12. This is linked to the answer to question 2.1 which states that a collective investment undertaking (CIU) will be an AIF where, among other things, it raises capital from a number of investors with a view to investing that capital for the benefit of those investors in line with a
defined policy. A wholly nominal investment by an investor would not, in our view, meet the requirement for capital to be invested for the benefit of such an investor in accordance with a defined investment policy.

**Ordinary commercial business**

2.10 The answer to the draft question 2.18 in the CP set out various factors which, if present, may be relevant in determining whether an entity is a CIU. Respondents asked us to state explicitly whether or not each factor points to an undertaking being a CIU.

2.11 Two respondents commented on the statement in the draft question 2.23 that the AIFMD treats a fund as investing if its ultimate underlying assets are investments, in the sense of financial instruments such as shares and debt securities. They suggested this is not a helpful way to distinguish between a fund and an ordinary company, for example where the ordinary company is the holding company for a group, or a financial institution is acting as broker dealer or investment bank.

**Our response**

We have amended the answer to question 2.18 to take into account certain changes made to the ESMA guidelines. We have also made it clearer how the various factors point towards, or away from, determining whether an undertaking is a CIU.

We state in the answer to question 2.22 that an undertaking will not be set up for general commercial or industrial purposes if its underlying business relates to financial assets, a distinction which is consistent with the definition of ‘general commercial or industrial purpose’ in the ESMA guidelines. However, the answer to question 2.22 now makes it clear that the fact that a business acts through a subsidiary will not of itself mean that the business is a financial business.

**Is a real estate investment trust (REIT) caught?**

2.12 Six respondents commented in this area. Five of them supported our approach, while one respondent asked for criteria to be given to determine whether or not a UK REIT is an AIF.

**Our response**

As most respondents agreed with our approach to REITs, we have not modified our guidance.

**Carried interest and co-investment vehicles**

2.13 Regarding the answer to draft question 2.35, some respondents asked whether carried interest vehicles would be AIFs where, for example, the manager or family trusts invested, in addition to the employees themselves. Similarly, one respondent wanted us to acknowledge other types of co-investment vehicle, for example those where managers and executives invest.
Our response

We have reflected in the answers to questions 2.35 and 2.52 that a carried interest or co-investment vehicle does not necessarily become an AIF just because the manager and employees (or family trusts) invest in it.

Structured products

2.14 Two respondents said that the exemption described in the answer to draft question 2.37, dealing with securitisation vehicles, should be widened to include certain structured products. Four respondents asked us to be clear on the treatment of structured products.

Our response

The answer to question 2.44 now states that we will assume that a special purpose vehicle issuing debt securities in the way described will not be an AIF, if the arrangements meet the exclusion in paragraph 5 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (Debt securities).

Individual investment management agreements

2.15 The answer to draft question 2.40 proposed that if investments as provided in the investment management agreement were carried out in ‘lock step’ (i.e. at the same time), this may result in the scheme being a CIU. One respondent said it is possible to have individual but synchronised co-investment arrangements, provided the investors were making the investment decisions.

Our response

We agree that it may be possible to have individual but synchronised co-investment management agreements if the investors are making the investment decisions. So we have amended the answer to question 2.40 to allow for this interpretation.

Enterprise investment schemes (EIS)

2.16 A respondent wanted the guidance to focus on the difference between proper individual portfolio management arrangements (where an investor entrusts a manager with a sum of money, to be invested in EIS shares on a discretionary basis, based on the individual circumstances of the particular investor), and EIS funds, where the manager would not be making investments on the basis of their suitability for any individual investor. This respondent also found the reference to MiFID confusing, given their view that an EIS fund – while not a collective investment scheme – is properly considered a CIU, so that its manager is exempt from MiFID in this respect.

Our response

We agree with the comments about EIS, which have now been reflected in our answer to question 2.43.
Joint ventures

2.17 While responses largely supported our proposed guidance on joint ventures, six respondents asked us to clarify the position of real estate joint venture vehicles, in particular those established as limited partnerships. Several of these respondents said the proposed statement ‘each of the parties should have a continuous involvement in the overall strategic management of the undertaking’ was troublesome. Limited partners cannot exercise control directly without losing their limited liability status, but in fact exercise control indirectly through a separate entity – the general partner.

Our response

The answer to question 2.47 now discusses limited partnership structures, whose investors may exercise control through the general partner and may participate economically through their limited partnership interests.

Application of the CIU definition to MiFID

2.18 Four respondents, referring to the answer to draft question 2.52, expressed concern that the definition of an AIF should not be elided or merged in any sense with the definition of a CIU for MiFID purposes.

Our response

We changed the answer to Question 2.66 so it now explains that the meaning of ‘collective investment undertaking’ in PERG 16 is not relevant to its meaning in other EU Directives, such as MiFID.

Investment compartments

2.19 A number of respondents asked for the approach to umbrella funds with investment compartments (sub-funds) to be clarified. One respondent welcomed the guidance generally but wanted us to clarify that where an AIFM chooses to market a sub-fund in the EU, this would not necessarily constitute marketing of each sub-fund in the same umbrella. Another respondent felt that the two issues to consider were whether the manager of the AIF or the manager of the sub-fund were the AIFM, and that for the purpose of some of the rules it would appear more logical for the sub-fund to be treated as the AIF (eg with respect to leverage or reporting).

Our response

In our view an AIFM may choose to market one or more sub-funds of an umbrella AIF in the UK or another Member State, without marketing the entire umbrella. We would expect notifications under Articles 31, 36 or 42 to market AIFs in the UK, or requests to us to notify authorities in other Member States of marketing under Article 32, to specify which sub-funds in an umbrella are to be marketed.

An umbrella which is an AIF will be required to have in place a single AIFM for the umbrella as a whole. However, as explained in the following section on reporting, ESMA is consulting on guidelines which propose that if an AIF
is formed as an umbrella with several compartments or sub-funds, portfolio-specific information should be reported at the level of those compartments or sub-funds.

Managing an AIF

2.20 Six respondents took issue with the final paragraph of the answer to draft question 3.8. They said that where an AIFM becomes a letter box entity, its delegate should not automatically be deemed to be the AIFM. The delegate has limited ability to assess whether the appointing AIFM has failed to comply with its obligations and thus to know whether by default it (the delegate) has become the deemed AIFM. This was particularly a concern with third-party arrangements, where the delegate’s knowledge of the AIFM’s activities may be limited.

Our response

Since we published CP13/9, the Treasury has revised its amendments to the Regulated Activities Order (the RAO). Article 51ZC(3) of the RAO now states that a person does not manage an AIF if the functions it performs for the AIF have been delegated to it by another person, provided that such other person is not an AIFM that has delegated such functions to the extent that it is a letter-box entity. We have reflected this in the answers to questions 3.7 and 3.10.

We also give further guidance on the situation of a UK firm acting as the delegate of a non-EEA AIFM. If delegation by an AIFM results in it becoming a letter-box entity, its UK delegate may be considered to be managing an AIF. It is important that firms are appropriately authorised, and do not carry out regulated activities which they are not authorised to perform.

Reporting

Q2: Do you agree with the proposed reporting frequency for sub-threshold AIFMs and the proposed reporting period end dates for all AIFMs?

2.21 We received four responses to this question, of which three supported the proposal. The fourth pointed out that many AIFs currently report on March and June year ends, and to change the reporting period may be expensive, or difficult to effect, for example where the AIFM is part of a large group and is required to report on the same date as its parent. They suggested that the reporting date should be set at the AIFM’s existing year-end reporting date, with matching adjustments for quarterly and biannual reporting.
Our response

Since we published CP13/9, ESMA has published for consultation its draft guidelines on reporting obligations under Article 3 and Article 24 of AIFMD, which include proposals for reporting end dates. 9 Our proposals are consistent with those draft ESMA guidelines, so we will leave these unchanged.

The FCA's powers to direct small registered UK AIFMs and small non-EEA AIFMs on the manner and content of their reporting requirements will come into effect only when the Treasury’s AIFMD UK regulation is in force. We expect to make these directions in July 2013 and publish them in the next Handbook Notice.

---

9 Consultation paper on ESMA's guidelines on AIFMD reporting obligations under Articles 3 and 24 of the AIFMD, May 2013.
3. Operating requirements for full-scope and sub-threshold AIFMs

3.1 This chapter covers our analysis of the responses to the questions in chapter 3 of CP13/9 regarding applying the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Conduct of Business sourcebook (COBS) to:

- full-scope UK AIFMs
- small authorised UK AIFMs of authorised AIFs, and
- small authorised UK AIFMs of unauthorised AIFs.

3.2 The Treasury has now significantly revised its proposed regime for small authorised UK AIFMs of authorised AIFs, which means that most of the proposals we made for applying rules to this category of firm are no longer relevant. We do not provide feedback on responses to those proposals.

Applying SYSC and COBS to full-scope UK AIFMs

3.3 We proposed to apply a small number of SYSC rules and guidance to full-scope UK AIFMs where we think adequate investor protection measures need to be in place and AIFMD is silent on the matter. We also proposed to amend the rules in COBS that govern operators of unregulated collective investment schemes (CIS), to apply them more widely to full-scope UK AIFMs where appropriate. This affects both the rules that apply when the AIFM manages the assets of an AIF and the information it must provide to retail investors in an unregulated CIS.

Q3: Do you agree with the proposed application of rules and guidance in SYSC and COBS to full-scope AIFMs? Are there any other matters that should be addressed in these sourcebooks?

3.4 We received four responses to this question. Two respondents asked why, through COBS 18.5.3R (1A), we are amending COBS 2.1.1R (the client’s best interests rule) so that references to ‘client’ must also be construed as referring to the investors in the fund.

3.5 One respondent suggested that certain COBS rules should be amended to comply with AIFMD. They cited COBS 18.5.4AR, which would modify how certain COBS provisions on best execution apply to AIFMs, but does not refer to the level 2 regulation provision that best execution obligations do not apply to AIFMs where there is no choice of execution venue.
3.6 Another respondent questioned the case for applying a number of the SYSC and COBS requirements to internally managed closed-ended investment companies. They cited various reasons for this: for example, that an investment company does not provide services and does not have clients, and that an investment company should not be considered to be a firm.

3.7 They also stated that certain provisions of SYSC and COBS should not be imposed on investment companies, because such requirements do not arise from AIFMD, as follows:

- guidance in SYSC 4.2.5G on decision-making where more than two individuals effectively direct the firm’s business
- the various provisions on financial crime at SYSC 6.1.1R and 6.3
- the distance marketing requirements of COBS 5.1.1R
- the electronic commerce requirements of COBS 5.2.1R, and
- periodic disclosure requirements for the use of dealing commission in COBS 11.6.15R – 11.6.19R.

3.8 The respondent referred to rules such as COBS 1.1.1CR relating to auction bidding and SYSC 10.2 relating to Chinese walls, which they felt are unlikely to be applicable to internally managed investment companies.

**Our response:**

Rather than amend the client’s best interests rule in the way proposed, we now include a new rule COBS 2.1.4R copying out Article 12(1)(a) and (b) of AIFMD, which will apply to full-scope UK AIFMs. The existing client’s best interests rule will apply to all other authorised AIFMs, UCITS management companies and residual CIS operators.

COBS 18.5.4AR is unchanged from what we consulted on; it does not restate the level 2 regulation position that best execution obligations do not apply to AIFMs where there is no choice of execution venue, because any rule in COBS 11.2 that conflicts with the level 2 regulation is disapplied.

Internally managed investment companies that will become full-scope UK AIFMs will in our view be firms, because they will require a Part 4A permission. We have, however, clarified that the AIF, not the underlying investors, will be considered the client of an AIFM, which is consistent with our current approach for a CIS.

With respect to SYSC 4.2.5G, guidance does not impose additional obligations on a firm, so the statement that each individual should be able to address dishonesty and irregularities by ‘the other individual’ would in our view be met where the governing body of the AIF is involved in all decisions. We believe this guidance is helpful in determining what amounts to sound governance for any AIFM regardless of its structure.

Even though the provisions on financial crime in SYSC 6.1 and 6.3 are not specified by AIFMD, we believe they are an integral part of an authorised
person's compliance arrangements and meet our legal obligations to protect consumers. These rules provide an important consumer protection, as it is not impossible for closed-ended investment companies to accept money directly from investors or make payments to them. We see no case for such companies, when they obtain authorisation under FSMA as internally managed AIFMs, to be treated differently to other firms in this regard. The rules require procedures to be proportionate to the nature, scale and complexity of the firm's activities, so an internally managed AIFM is able to tailor procedures to its particular business model provided the risks are adequately managed.

We also believe that the electronic commerce requirements of COBS 5.2.1R are in principle applicable to AIFMs when managing AIFs. In practice, many AIFMs might not carry out the relevant activities to which these requirements apply, but where they do, we see no case for providing an exemption or exclusion. However, we have removed the reference to distance marketing disclosure rules (COBS 5.1) from the table in COBS 18.5.2R, since a firm when carrying on scheme management activity (or, in the case of an AIFM, when carrying on investment management functions), is not required to comply with the Distance Marketing Directive.10

Article 24 of the level 2 regulation does not prescribe requirements for the use of dealing commission or its disclosure, but it permits us to impose additional requirements in this area.11 We are applying these disclosure requirements as we believe this gives clients important information on levels of commissions and the use of fund assets to pay for third-party services.

The rules and guidance at COBS 11.8 relate to the recording of telephone conversations and electronic communications. We believe these provisions are a valuable means of gathering evidence in the context of market abuse and related regulatory breaches. We think these provisions lie outside the scope of AIFMD and are just as relevant to the activities of internally managed investment companies as to other types of AIFM, to whom they also apply.

We acknowledge that certain firms, or types of firms, might never carry out some activities to which rules or guidance apply, for example auction bidding (COBS 1.1.1CR). However, we do not believe this is a reason to exempt them from the rules; if firms ever do carry out the relevant activity, the rule and/or guidance will apply in the usual way.

**Small authorised UK AIFMs of authorised AIFs**

Q4: *Do you agree that our rules and guidance will correctly implement the Treasury’s proposed regime for small authorised UK AIFMs of authorised AIFs?*

11 Article 16 of the level 2 regulation allows us to use “at least” the criteria laid down in Section 1 of Chapter III (of which Article 24 forms a part).
3.9 We initially proposed that small authorised UK AIFMs\textsuperscript{12} of authorised AIFs would be subject to generally the same requirements as full-scope UK AIFMs, but with a few exceptions. The Treasury has now modified the legislation so that these firms will remain generally subject to existing requirements, plus the additional requirements specific to sub-threshold firms under the Directive. As a result, we have modified our original proposals so that these firms will not be subject to the same requirements as full-scope UK AIFMs.

3.10 Owing to these changes by the Treasury and our subsequent modifications to the Handbook, this question is no longer relevant.

Small authorised UK AIFMs of unauthorised AIFs

3.11 We noted in the CP that sub-threshold AIFMs of unauthorised AIFs are currently likely to be either operators or managers of unregulated CIS, or firms managing other entities that are not CIS, such as investment companies. We said that we would bring both groups under a single set of rules, closely following the current regime for operators of unregulated CIS.

Q5: Do you agree that our rules and guidance will correctly implement the Treasury’s proposed regime for small authorised UK AIFMs of unauthorised AIFs?

3.12 We received very few responses to this question. Regarding certain SYSC provisions, one respondent asked why – in the context of internally managed investment companies – AIFMD provisions have not been copied out, as opposed to applying rules and guidance which contain similar but not identical wording; for example, SYSC 10.1.8R contains similar wording to the proposed new rule SYSC 10.1.26R and Article 36 of the level 2 regulation.

Our response

For full-scope UK AIFMs, we decided that there is enough difference between the provisions of AIFMD and the relevant existing rules in SYSC and COBS to justify introducing new rules specific to those AIFMs. We think this is preferable to trying to graft extra requirements on to existing rules, which results in further complexity. We have also had to disapply requirements in SYSC and COBS that overlap with the directly applicable level 2 regulation.

In the case of small authorised UK AIFMs, the AIFMD UK regulation allows us to continue to apply existing requirements but not to apply new ones that reproduce AIFMD requirements. We believe that these existing requirements provide important protections for investors: for example, the requirement to disclose conflicts of interest to clients in the situation foreseen by SYSC 10.1.8R (i.e. where the firm cannot be sure it can manage the conflict so as to prevent risk of damage to a client's interests). Since the level 2 regulation does not apply either to small authorised UK AIFMs, we have not had to amend the application of SYSC and COBS to them to the same extent as for full-scope UK AIFMs.

So for example, SYSC 10.1.26R is a new rule specific to full-scope UK AIFMs, which implements the level 1 requirement of the Directive and is supplemented by...
by Article 36 of the level 2 regulation, whereas SYSC 10.1.18R is an existing rule outside the scope of the Directive that continues to apply as it does now.

None of the above is applicable to a sub-threshold AIFM that is an internally managed closed-ended investment company. Those companies will be registered with the FCA, but will not have a Part 4A authorisation and will not be subject to our rules.
4. Prudential requirements for fund managers

4.1 This chapter covers our analysis of the responses to the questions in:

- chapter 5 of CP12/32 on the proposed prudential regime for all types of AIFM, including capital requirements, professional negligence risks, the liquid assets requirement and financial reporting matters; and

- chapter 4 of CP13/9 on the consequential rules and proposed prudential regime for small authorised UK AIFMs.

4.2 This includes certain changes to our prudential rules affecting UCITS management companies.

CP12/32

CPM firms and internally managed AIFs

4.3 We explained how we proposed to apply the AIFMD’s prudential requirements to a firm carrying out collective portfolio management (CPM). We proposed not to require internally managed AIFs to meet the requirements based on either funds under management or expenditure (Article 9(3) and (5)). We asked:

**Q2:** Do you agree with our proposed approach to the capital and PII requirements for CPM firms and internally managed AIFs?

4.4 There were 12 responses and most agreed with the proposal or had no comment. One respondent suggested that the Prudential sourcebook for UCITS firms (UPRU) should be retained, as it is too complicated to make the necessary changes to the interim Prudential sourcebook for Investment Businesses (IPRU (INV)).

4.5 The questions and answers on transposition issues published by the Commission services\(^\text{13}\) say that the requirements in Article 9(3) to (6) apply to internally managed AIFs. The basis for the Commission’s answer is that AIFMD does not differentiate between types of AIFM when it applies these requirements. We did not propose this approach, based upon our policy analysis.

---

Our response:

- We do not intend to make any changes to the proposal to discontinue UPRU, for the reasons we gave before. We do not expect that IPRU (INV) will be too complicated for firms to understand as a result of the changes.

- In the light of the Commission's published view that Article 9(3) to (6) applies to internally managed AIFs, we have amended our requirements in IPRU (INV) chapter 11 to this effect. This means they are treated as CPM firms. Our analysis of the impact of this change is that we believe most of the affected firms already hold sufficient capital to meet any increased requirements arising from the amended rules. We explain this further in our revised cost benefit analysis in chapter 10.

Collective Portfolio Management Investment Firm (CPMI firm)

4.6 We proposed that an AIFM which conducts the additional activities that are permitted under Article 6(4) and regulated under MiFID should be treated as a BIPRU limited licence firm, but subject to any additional requirements of AIFMD. This is consistent with the way we treat UCITS management companies that also provide services regulated under MiFID. We asked:

Q3: Do you agree that we should treat an AIFM that also undertakes MiFID services as a BIPRU limited licence firm?

4.7 Of 12 respondents to this question, eight argued it is not appropriate to treat such firms as BIPRU limited licence firms. Their main justification is that other EU jurisdictions will adopt a different approach and there should be a greater consistency in this regard.

Our response

Our analysis showed that a significant number of AIFMs already undertake MiFID-scope business as limited licence firms. It has not been practical to carry out a detailed analysis of how other Member States intend to treat this issue, because in many cases the information is not yet available. As respondents have not provided any other reasons for us to revisit our policy analysis, we will proceed with the proposal.

Professional negligence risks and the liquid assets requirement

4.8 We explained how we proposed to implement the requirement for AIFMs to hold either own funds or professional indemnity insurance (PII) to cover liability risks arising from professional negligence. We also explained how we intended to apply the requirement for an AIFM’s own funds to be invested in liquid assets or assets readily convertible to cash in the short term. We asked:

Q4: Do you agree with our proposed approach to professional negligence risks and the liquid assets requirement?
4.9 The eight firms that responded raised the following issues:

- three asked for confirmation that a group PII policy can be used

- two argued there should be no requirement to cover PII policy exclusions with additional capital

- one argued that either the minimum capital requirement should be increased to reduce the severe imbalance with the PII requirement, or the capital option should be dropped

- one asked for guidance on when we might impose a higher capital requirement

- one asked for international agreement on the meaning of ‘assets readily convertible to cash’, and

- one raised issues about its proposed group approach to compliance, internal audit and remuneration policy requirements.

Our response:

- We can accept a group PII policy if it provides adequate cover to comply with the relevant requirements. We have included provisions in IPRU (INV) 11.3.16R and GENPRU 2.1.72R to reflect this.

- No new reasons were raised why we should not continue with our proposal for PII policy exclusions. If we allowed an AIFM to take out PII policies without any capital coverage for the likely liability, then such policies might not provide adequate cover, potentially leaving AIFs and the investors in them exposed.

- We cannot modify the way the capital and PII requirements are applied to firms, as they are set out in the level 2 regulation which applies directly to firms.

- The higher capital requirement is a power given under the level 2 regulation, and we must provide reasons when we exercise it. We expect these would be determined by the individual circumstances of a firm and we may develop some guidance in due course, in the light of experience in dealing with such cases.

- The Commission’s questions and answers on transposition issues\(^{14}\) say it is not possible to indicate a limitative list of specific types of liquid asset. The emphasis instead should be on specific features that warrant the liquid nature of the asset. However, the Commission encourages ESMA to do more work on this issue to achieve a common approach, so we will contribute to any such work and consult on amending our rules and guidance in this respect as the need arises.

- Our view is that it would be proportionate (and therefore acceptable) for an AIFM in a group to rely on a group-level approach to compliance, internal audit and remuneration issues, provided there is an adequate focus on the individual circumstances of the AIFM.

\(^{14}\) European Commission questions and answers cited in footnote 13, ID 1153.
4.10 We also explained how we proposed to apply the liquid assets requirement to a UCITS management company, whether or not it also manages AIFs. We asked:

**Q5:** Do you agree with our intention to apply the liquid assets requirement also to UCITS management companies that do not manage any AIFs?

4.11 Only four respondents commented on this question, but three of them did not agree with the proposed approach. They argued that this was not a requirement of the UCITS Directive and that UCITS firms are not exposed to risks associated with a funding model relying on deposits.

**Our response**

Respondents did not provide any substantive new arguments, so we intend to proceed with this proposal. We believe this is appropriate and proportionate, as the risks addressed are the same whether or not the UCITS management company also manages at least one AIF, so the requirement should be the same.

**Financial reporting forms**

4.12 We explained what consequential changes we planned to make to our existing reporting forms and requirements in our Supervision manual (SUP). We asked:

**Q6:** Do you agree with the proposed changes to SUP 16.12 and that the proposed new forms and guidance notes will provide us with sufficient information to assess whether firms are complying with the capital and PII requirements?

4.13 Seven respondents commented on this question, raising the following issues:

- one asked for a separate form for internally managed AIFs
- one suggested the form should be submitted annually by internally managed AIFs
- one asked us to clarify whether UCITS firms need to submit FSA042
- two suggested the forms should be piloted by a sample of firms first
- two asked us to ensure that the forms should not collect data required under the level 2 regulation, and
- two suggested there should be international coordination over the forms as far as possible.

**Our response:**

- We will continue with our plan to use one form, as this reduces the cost of the project. Also, as the capital requirements for internally managed AIFs now need to comply with Article 9(3) to (6), even if we provided two forms there would be little difference between them.
We will proceed with the proposal for quarterly returns, as we think this is a proportionate requirement to ensure that we can supervise firms’ compliance with the relevant rules.

We have considered the rules on the application of FSA042 and think they are sufficiently clear, so we will not add further guidance.

In our view a pilot project would be too labour-intensive to justify the potential benefits. We are confident that firms will be able to complete the forms without difficulty.

We do not believe there is any overlap with data required to be collected by the level 2 regulation.

It would be impractical to effect a coordinated international approach to reporting forms. COREP\textsuperscript{15} is the only current harmonised reporting process, but in our view it would be too onerous for many of the firms that will be regulated as AIFMs.

We have clarified in the Guidance Notes for the reporting forms FIN066 and FIN067\textsuperscript{16} that the definition of ‘funds’, for the purposes of the funds under management requirement (based on Article 9(3)) is different to that used for the professional negligence requirement (based on Article 9(7)). The latter includes funds managed under delegation (as explained in Recital 23) whereas the former does not (as per Article 9(4)).

4.14 To minimise the impact on firms, we have delayed implementing the new SUP 16.12 capital reporting forms until periods ending on or after 31 January 2014, to coincide with planned reporting system developments.

4.15 We have included a transitional provision at SUP TP 1.8.2R, which requires firms that are subject to the new capital reporting requirements to report using existing capital reporting forms until that date.

CP13/9

4.16 In CP13/9 we published proposals for rules that would apply to small authorised UK AIFMs of authorised AIFs, reflecting proposals made by the Treasury. Since the Treasury has now decided not to proceed with those proposals, we do not comment on the feedback we received on this subject. We also proposed some consequential changes to the prudential rules in IPRU (INV) and UPRU. We asked:

Q6: Do you agree with our proposed approaches to amending IPRU (INV) and deleting UPRU, as explained above?

\textsuperscript{15} COREP is the Common Reporting framework for the supervisory reporting of prudential requirements by credit institutions and investment firms.

\textsuperscript{16} These reporting forms have been rebadged by the FCA with the prefix FIN instead of FSA.
4.17 Four respondents raised the following issues:

- One suggested that IPRU (INV) should be available electronically in HTML format like the rest of the Handbook, as the current PDF version is cumbersome.

- One expressed a number of concerns about the proposed amended Glossary definition of ‘funds under management’. They are concerned that the definition should encompass only assets under management of AIFs in the scope of AIFMD and think it should exclude:
  
a. funds invested in entities referred to in Article 2(3);

b. AIFs of the types referred to in Article 61(3) and (4); and

c. CIS that are not AIFs.

- The same respondent also suggested that the definition should specifically require derivative instruments to be converted into their equivalent positions in the underlying assets of such instruments, using the conversion methodologies set out in Article 10 of the level 2 regulation, and valued on the basis of that equivalent position.

- One pointed out that, despite our statement in paragraph 4.6 that we do not intend to make any changes to the prudential regime for small authorised UK AIFMs of unauthorised AIFs, some such firms that manage investments under a delegation agreement with the fund management company will see a change. They are currently MIFID-scope firms and therefore BIPRU limited licence firms, with the fund as their only client. However, under AIFMD these firms will seek authorisation as a small authorised UK AIFM of an unauthorised AIF and, as shown by the Table in Annex 4 of the CP, will be subject to IPRU (INV) chapter 5.

Our response

- We have renumbered chapter 7 of IPRU (INV) as chapter 11.

- We accept that it would be better if IPRU (INV) were available in HTML format. However, this is beyond the scope of the AIFMD implementation project, although we will keep it under review as part of the ongoing maintenance of the functionality of the FCA Handbook.

- We do not agree that it would be appropriate to exclude all the suggested types of funds from the definition of ‘funds under management’. Article 9(3), which sets the capital requirement using funds under management as a basis, refers only to the value of portfolios with no exclusions specified. However, where AIFs benefit from the transitional provisions of Article 61(3) or (4)\(^{17}\), we accept it is appropriate to allow the AIFM to exclude them from the calculation of its funds under management requirement, professional negligence capital requirement or PII excess capital requirement, and have introduced transitional provision (TP)7 in IPRU (INV) 11 and TP16.5R in GENPRU to this effect.

- We also accept that it would be appropriate to refer to the conversion methodologies set out in Article 10 of the level 2 regulation, as this approach

\(^{17}\text{As transposed in regulations 74(1) and 75(1) of the AIFMD UK regulation.}\)
is consistent with that used for the determination of whether a firm is above or below the AIFMD threshold, so we have amended the definition to this effect.

• Our understanding of the circumstances the respondent outlined is that a firm managing investments under delegation is currently authorised for a MiFID-scope activity although it may also be undertaking AIF management. Under AIFMD, it would choose only to undertake AIF management (and not the MiFID-scope activity also) so it would be categorised as an IPRU (INV) chapter 5 firm. So the change in the prudential categorisation is caused by the change in the nature of the firm’s permitted activities.

4.18 We have updated in Annex 3 the table summarising how the prudential rules will apply to managers within the scope of the AIFMD or the UCITS Directive. The main difference in this version is the impact of the changed approach to small authorised UK AIFMs of authorised AIFs. They will be subject to IPRU (INV) chapter 5 rather than chapter 11 (if undertaking fund management activities only) or will be BIPRU limited licence firms rather than collective portfolio management investment (CPMI) firms (if they also undertake MiFID-scope activities).

Auditor rules

4.19 An internally managed AIF is subject to the audit requirement as set out in FUND 3. It therefore cannot take full advantage of the small companies audit exemption.18

4.20 An external AIFM is not subject to any specific audit requirement under our rules or the Companies Act 2006, so it can use the small companies audit exemption. However, it should not include reserves unless they are audited, or interim profits unless verified, in the initial capital and own funds computations set out in IPRU (INV) chapter 11. That implies the need for an audit or verification if the firm wants to use those items (which is different to the approach under IPRU (INV) chapter 5).

Our response

• We have introduced guidance in Table 11.4 of IPRU (INV) to clarify that a firm using the small companies audit exemption cannot include retained profits or interim profits in the initial capital or own funds calculation, unless it appoints an auditor to audit or verify these items respectively.

• We will propose, in a subsequent consultation, consequential amendments to SUP 3 to reflect CPM firms and CPMI firms and how the auditor rules apply to them. We will also propose to cross-refer in SUP 3 to the FUND 3 requirement for an internally managed AIF.

---

18 Section 477 of the Companies Act 2006 entitles a small company to an exemption from audit if it satisfies certain criteria relating to number of employees, turnover and assets.
5. Consumer redress: the ombudsman service and the FSCS

5.1 In chapter 5 of CP13/9 we consulted on some changes to the scope of the ombudsman service and the Financial Services Compensation Scheme (FSCS), to reflect changes in the scope of regulation under AIFMD.\(^\text{19}\)

5.2 Our consultation proposals covered the following areas:

- whether investors in investment companies should be able to complain to the ombudsman service or claim from the FSCS about the management of the company
- whether investors in unregulated CIS (including charity funds) should be able to complain to the ombudsman service or claim from the FSCS about the fund’s depositary, and
- how we should amend the territorial scope of the ombudsman service and the FSCS in view of the new passport for EEA AIFMs and the management of non-EEA AIFs by UK AIFMs.

5.3 The FCA and the ombudsman service jointly own the rules setting out who is able to complain to the ombudsman service. So we consulted jointly on the proposals relating to the eligibility of investors to complain to the ombudsman service about an investment company or a depositary. These rules will be made jointly by the FCA and the ombudsman service.

**Investment companies**

We asked:

**Q7:** Do you agree that investors in investment companies should not be able to complain to the ombudsman service or claim from the FSCS about the management of the company?

5.4 We received two responses to this question. The first respondent agreed with our proposals, arguing that they reflect the unique features of investment companies. They said if the ombudsman service made an award to an investor in an investment company, the award would need to be paid at the expense of the other shareholders, which would not be fair. They also argued that most complaints were likely to affect all the shareholders in a class, rather than an individual shareholder. They advocated the use of collective action by shareholders to hold the company’s directors to account. This could include voting out Board members who did not perform as required.

5.5 The other respondent thought that investors in investment companies should be able to complain to the ombudsman service or claim from the FSCS. They argued there are no inherent

---

\(^{19}\) In CP13/9 we referred to the Financial Ombudsman Service (FOS) but we use ‘ombudsman service’ throughout this PS.
constitutional features of investment companies which make malpractice more or less likely than in other kinds of fund.

**Our response**

We intend to implement our proposals as consulted on. Our reason for differentiating between investment companies and CIS in this way is not that we think one type of vehicle is any more or less likely to be mismanaged than the other. Shareholders in investment companies have means of influencing the behaviour of the company’s directors which investors in CISs generally do not, so investment company shareholders are better placed to resolve disputes and hold directors to account through their own efforts.

**Fund depositaries**

With the implementation of AIFMD in the UK, charity funds such as common investment funds (CIFs) and common deposit funds (CDFs) established under the Charities Act 2011 or its predecessors, will be considered AIFs. We asked:

- **Q8:** Do you agree that investors in UCIS (except for CIFs and CDFs) should not be able to complain to the ombudsman service or claim from the FSCS about the depositary of the fund?

- **Q9:** Do you agree that investors in investment companies should not be able to complain to the ombudsman service or claim from the FSCS about the depositary of the fund?

- **Q10:** Do you agree that investors in CIFs and CDFs should be able to complain to the ombudsman service or claim from the FSCS about the depositary of the fund (subject to the usual criteria)?

5.6 We did not receive any responses to questions 8 or 10. We received one response to question 9, which agreed with our proposal. They argued that investors in an investment company would not have a direct contractual relationship with the depositary, and that the company itself would take action on behalf of all its shareholders.

**Our response**

Since no respondents raised any objections to our proposals, we intend to implement our proposals as consulted on.
Consumer redress and cross-border AIFM activities

5.7 We asked:

Q11: Do you agree that the ombudsman service’s compulsory jurisdiction and our complaints handling rules should cover AIFMs managing FCA-authorised funds, whether from the UK or the EEA?

Q12: Do you agree that, where an AIFM is not managing an FCA-authorised fund, the ombudsman service’s compulsory jurisdiction and our complaints handling rules should cover its activities where they are carried on from an establishment in the UK?

Q13: Do you agree that an AIFM carrying out cross-border fund management activities should be required to be within scope of the FSCS, but only for the activity of managing an FCA-authorised fund?

Q14: Do you agree that an EEA AIFM operating from a UK branch which is not required to be within scope of the FSCS should be eligible to obtain top-up cover?

5.8 We received one response, saying that our cross-border compensation arrangements were too complex and that investors and intermediaries would find it increasingly hard to make sense of disclosures about compensation. They argued that this complexity would cause a greater tendency for compensation to be sought from intermediaries, rather than other operators that may be at fault.

Our response

We intend to implement our proposals as consulted on. The complexity of our compensation arrangements reflects the diversity of funds and fund management structures, including those of a cross-border nature that arise from EU legislation establishing a single market for fund management services.

If a firm receives a complaint about an issue for which it is reasonably satisfied that another firm is responsible, it can forward the complaint to that firm rather than investigating the complaint itself.\(^{20}\)

\(^{20}\) See DISP 1.7.1R.
6. Depositaries

6.1 In chapter 9 of CP12/32 we consulted on proposals for the regulatory regime for depositaries of AIFs. In chapter 6 of CP13/9 we consulted on further proposals for how the client assets rules should apply to depositaries of AIFs. This chapter gives feedback on both sets of proposals.

CP12/32

Depositaries of authorised AIFs

6.2 We explained that we did not propose to alter or review the capital requirements for depositaries of authorised AIFs for the time being. We said we would await the outcome of EU negotiations on ‘UCITS V’ which are expected to apply new rules to depositaries of UCITS, similar to those introduced in AIFMD. We asked:

Q8: Are the proposed capital requirements for firms that act as depositaries for authorised AIFs fair and appropriate?

6.3 Of the seven responses to this question, five agreed, one did not offer an opinion, and one said the figure was too high and would deter new entrants to the market from acting for property authorised investment funds. They suggested that the capital requirement of €730,000 applicable to a MiFID investment firm acting as an AIF depositary, would be more appropriate.

Our response

As stated in the CP, we will not make any changes to these rules at this time. We will reconsider the matter when there is certainty on any future changes to the UCITS Directive affecting depositaries.

The ‘private equity (PE) AIF depositary model’

6.4 We proposed that a wide range of firms should be able to use the concession in Article 21(3) of AIFMD.21 Its aim is to offer more flexibility and choice for funds, such as private equity and real estate vehicles, which currently do not have depositaries or custodians. We referred in the CP to ‘private equity (PE) AIF depositaries’ which we use in this paper also as a term of convenience. We asked:

---

21 This applies to AIFs which have no redemption rights exercisable during the period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody or generally invest in issuers or non-listed companies in order to potentially acquire control over them.
Q9:  Do you agree with our approach permitting authorised professional firms and other suitably qualified firms to be authorised to carry on the activity of acting as a PE AIF depositary?

Q10: What standards should we apply to determine that a firm, which is not a professional firm, is fit and proper to perform this function?

Q11: Do you agree that it may be necessary or desirable for PE AIF depositaries to be able to hold financial assets in custody?

6.5 All of the 16 respondents to question 9 agreed with the general proposal, although DATA (the representative body for depositaries of authorised open-ended funds) and one other existing depositary said that the same regulatory and prudential standards should apply to new entrants as to existing firms, to ensure a level playing-field.

6.6 Only seven respondents commented on question 10, and there was no consistent view. One said the standards applicable to MiFID investment firms should apply here too, another said no additional standards should be imposed. Others suggested some form of specific test should be applied or developed; two responses mentioned the audit and assurance standard AAF 01/06.

6.7 There were 13 responses to question 11, and all but one agreed that it would be necessary or desirable for PE AIF depositaries to hold financial instruments in custody in some circumstances. They mentioned the situation of a private equity fund exiting an underlying company after it has been listed, and the possibility of a unit trust holding units or shares in another fund, which would then be registered in the name of the trustee. DATA and one other existing depositary said the same standards of custody should apply to these firms as to other depositaries.

Our response

We continue to believe that our proposals will help to open up a competitive market for the provision of depositary services, while maintaining an adequate standard of investor protection. So we are proceeding with our proposal to allow any authorised firm to apply to act as a ‘PE AIF depositary’, provided there is no fundamental conflict of interest with its other regulated activities (e.g. it is not an AIFM or a UCITS management company).

Depositaries of authorised AIFs (and UCITS) have specific investor protection obligations set out in COLL, and we are not persuaded that all other AIF depositaries need to adhere to them too. So, given that not all depositaries have exactly the same responsibilities, we do not consider it necessary to apply the same prudential requirements to all of them. In all other respects, the same rules will apply to PE AIF depositaries as to depositaries of other unauthorised UK AIFs.

We do not think there is a need for specific rules or guidance on the standards that should apply to PE AIF depositaries. Our Authorisations team, as part of their work in assessing applications from firms to be a depositary, will review the firm’s arrangements for systems and controls. Evidence of compliance with
relevant standards such as AAF 01/06 may be taken into account as part of this process.

We recognise most or all PE AIF depositaries will need to hold (or delegate to a custodian to hold) some financial instruments in custody. Although any one AIF might not hold any such instruments for most of the time, a depositary acting for numerous AIFs could frequently need to hold assets in custody. So when PE AIF depositaries are granted the Part 4A permission of acting as a depositary of AIFs, they will be given a standard limitation on the types of AIF they can act for, but will have no compulsory limitation on the functions (including custody) that they can perform for those AIFs.

We also take the view that AIFs may hold a limited long-term exposure to such instruments – that is, the general requirement not to hold them relates to the degree of exposure, not just its duration. We have provided further guidance in FUND 3.11.13G on what we believe is meant by AIFs that ‘generally do not invest in assets that must be held in custody’.

**Capital requirements for firms acting as PE AIF depositaries**

6.8  We proposed to set an own funds requirement of at least €125,000 for firms wishing to act as PE AIF depositaries. We suggested that additional requirements, such as a higher level of own funds or an expenditure-based requirement, might be appropriate where the firm performs, or is responsible for, custody of financial instruments. We asked:

**Q12:** Do you agree with the proposed approach to setting capital requirements for firms acting as PE AIF depositaries? If not, please give reasons.

**Q13:** Should such depositaries be subject to different requirements, depending on whether or not they may hold financial instruments in custody? If not, what type of requirement would be most appropriate for these higher-risk firms: more own funds, an expenditure-based requirement, or some other method of calculation (please specify)?

6.9 All but one of the ten respondents to both questions agreed with the proposal for a minimum of €125,000 own funds, although two respondents queried whether a firm operating in several European jurisdictions would have to meet the capital requirement separately in each. One respondent said a lower figure would be suitable, unless the firm carries out custody as well as verification of ownership.

6.10 Seven respondents favoured the idea of higher capital where custody is part of the service, although two said this should only be where relevant financial instruments form the majority of the portfolio. One firm supported a higher own-funds requirement and opposed an expenditure-based requirement, whereas others were open as to the method. The other three respondents rejected the need for any additional requirement to be imposed.
Our response

The feedback from prospective PE AIF depositaries indicates that most of them regard €125,000 as a reasonable level of capital, which will provide adequate assurance of the firm’s financial soundness without setting too high a barrier to market entry. We intend to proceed on the basis we consulted on. This capital requirement is a condition of authorisation in the UK and has no bearing on any requirements that a regulatory authority in another Member State might impose.

Given that firms interested in entering this market are likely to make provision of custody an integral part of the service they offer, we are not convinced we can justify applying additional capital requirements to them as a matter of course. They would probably all consider it necessary to comply with any higher requirement for firms that provide or arrange custody, so a €125,000 threshold that applied only to PE AIF depositaries not offering custody would probably be redundant.

There may be a case for applying reporting requirements in order to monitor the custody activities of PE AIF depositaries. We did not propose any specific reporting requirements for AIF depositaries in either of our CPs, but we intend to look further at this and may bring forward proposals in due course.

Independence of depositaries

6.11 We proposed that for all unauthorised AIFs, it should generally be possible for the AIFM and the depositary to be entities within the same group, provided there is proper management of conflicts of interest. We noted, however, that allowing custody to be performed by an entity in the same group as the AIFM might not be in the best interests of investors. We asked:

Q14: Do you agree with our approach permitting AIF depositaries to be in the same group as the AIFM so long as Directive requirements are met?

Q15: What additional safeguards, if any, should there be to ensure effective management of conflicts of interest, especially in relation to custody of AIF assets?

6.12 Of the 12 responses to question 14, 11 were in favour (though one thought it might be contrary to the aims of the Directive) and one opposed it. Some of those in favour emphasised that proper management of conflicts would be essential, while others endorsed the proposal without any further qualification.

6.13 One respondent to question 15 opposed the idea that the AIFM and depositary should be allowed to be part of the same group. Of the other nine, four thought that no additional safeguards were necessary, whereas five were in favour of them but had various suggestions as to what they might be.
Our response

Although the AIFM and the depositary must be separate entities, nothing in AIFMD prohibits them from being members of the same group. AIFMD addresses several situations where different units within the same entity can perform potentially conflicting functions, provided there is proper separation between them, so we think the same principle should apply here.

We agree that proper identification and management of potential and actual conflicts of interest is a fundamental safeguard of investors’ interests. AIFMD requires both the AIFM and the depositary to act independently and in the interests of the AIF and its investors, and places specific obligations on both parties concerning conflicts of interest. We do not think there is a need at this stage to provide further guidance on how such conflicts should be managed where the AIFM and depositary are entities in the same group.

Nor do we think there is a clear case at present for applying additional requirements where custody is performed within the same group. To do so might make intra-group custody an expensive and unattractive option for AIFMs, and it is likely that any additional costs would be passed on to the AIFs themselves. So it is not clear that the benefits to investors would justify these potential additional costs. It would however be appropriate for us to review in due course how the market develops following implementation, and to consider whether commercial arrangements are working effectively and in the interests of investors.

Depositaries for non-EEA AIFs

6.14 Article 36 of AIFMD imposes certain depositary requirements where an EEA AIFM manages a non-EEA AIF and wishes to market it in a Member State by national private placement. The three functions of cash monitoring, safekeeping of assets and oversight of the AIFM must be carried out for such AIFs, although other aspects of the depositary regime do not apply. We proposed that UK firms wishing to perform any of the depositary functions under Article 36 would need to hold the Part 4A permission to act as a depositary of AIFs, and that a single UK firm should be appointed for each AIF where any of the duties are performed in the UK. Such firms would have to hold own funds of at least €730,000 unless they were acting only as PE AIF depositaries. We asked:

Q16: Do you agree with our approach requiring UK firms providing depositary services under Article 36 to hold a Part IV permission to be an AIF depositary?

6.15 We received ten responses, of which seven (coming from DATA and regulated firms) supported the proposal. The other three, which came from law firms and associations, said the proposed rule would not be proportionate and was potentially anti-competitive. We have also received other feedback from firms, though not as part of a consultation response, indicating their concern that the proposal for a single UK entity to provide depositary services was unnecessary and would constrain their ability to make efficient and cost-effective arrangements for non-EEA funds. One respondent said Article 36 depositary firms should be able to limit their activities (i.e. not have to carry out all three functions) and benefit from a reduced capital requirement.
Our response

We have reconsidered this proposal and decided to change it so that UK firms can perform each of the three functions separately. In each case they would still need to be authorised to act as depositary of an AIF. A depositary that acts for UK AIFs will not require any additional permission to perform services for non-EEA AIFs.

Alternatively, a firm could be authorised to provide services for non-EEA AIFs only, in which case we would grant it a Part 4A permission with a limitation to that effect. A firm might for example provide only the service of oversight, in which case it would still need to apply for the Part 4A permission of acting as depositary of an AIF, but with a limitation to perform oversight of non-EEA AIFs only.

We have also reconsidered what capital requirements would be appropriate for firms that provide one or more depositary services under Article 36 only. To avoid undue regulatory burden and stimulate competition, we think it is reasonable to set a lower initial capital requirement than we originally proposed. To be consistent with firms authorised under MiFID that are able to carry on safeguarding and administration of assets and hold client money, we have set the minimum figure for all depositaries in this category at €125,000. This is also consistent with the requirement for PE AIF depositaries. This requirement will apply whether the firm performs one, two or all three of the specified functions, as long as it acts only for non-EEA AIFs in each case. We comment further on this in our revised cost benefit analysis in chapter 10.

Transitional arrangements for appointing non-UK depositaries

6.16 We proposed that, in accordance with the transitional provision in Article 61(5), an EEA (non-UK) credit institution could be appointed as the depositary of a UK unauthorised AIF until 2017. This would potentially make it easier for AIFMs of UK AIFs to appoint suitable depositaries and could help to stimulate competition in the provision of depositary services. The transitional arrangement would not be open to authorised AIFs (NURS and QIS), which already have depositaries in place who are familiar with the specific UK retail funds regime. We asked:

Q17: Do you agree that EEA credit institutions should be allowed to act as depositary to UK AIFs? If you expect to be an AIFM of UK AIFs from 2013, would you consider using such a firm as depositary?

Q18: Should authorised funds be excluded from this arrangement?

6.17 There were ten responses to question 17, and all agreed in principle with the first part of the question. DATA and one existing depositary were concerned that such firms should be able to demonstrate relevant knowledge and expertise in the UK market. Another firm said that this would make little difference to AIFMs of private equity and real estate funds, who would not look to credit institutions to provide depositary services. No prospective AIFMs responded positively to the second part of the question.

6.18 Of seven responses to question 18, five agreed with the proposal, one said it risked an uneven playing-field in terms of costs, and the other said the similarities between the underlying assets of authorised funds and unregulated CIS would not necessarily justify excluding authorised funds.
Our response

We have included transitional rules in FUND so that a UK AIFM of an unauthorised AIF can appoint an EEA credit institution (not established in the UK) as its depositary until 2017. AIFMs that wish to appoint such firms to act for their UK AIFs should notify us as part of their application for authorisation. We expect to contact the relevant depositary directly and obtain written confirmation that it is willing and organisationally ready to act.

The AIFMD UK regulation will allow a credit institution established in the UK to be appointed as a depositary for an EEA AIF. In that case it will be carrying on the regulated activity of acting as trustee or depositary of an AIF, so our rules will make it subject to FUND 3.11 when doing so.

We intend to proceed with our proposal to exclude authorised funds from these arrangements. Although there are arguably benefits to be gained from increased competition, we do not think this would be in the best interests of investors in authorised funds, especially given its temporary nature.

Cost benefit analysis

6.19 In the cost benefit analysis of CP12/32, we noted that our proposals would have cost implications for some firms that wished to act as PE AIF depositaries. Feedback on this issue is given in chapter 10.

CP13/9

6.20 In CP13/9 we set out our proposals for changes to both Chapter 6 (Custody rules) of the Client Assets sourcebook (CASS) and other CASS and CASS-related provisions as part of our implementation of AIFMD. We asked:

Q15: Do you agree with the proposed application of CASS and CASS-related Handbook provisions in relation to each type of depositary as noted above? If not, please provide reasons.

6.21 We received two detailed responses. One queried why we did not propose to apply all of CASS 6.3 (Depositing assets and arranging for assets to be deposited with third parties) to depositaries, particularly given the requirements of Article 98 of the AIFMD level 2 regulation. The respondent also questioned the application of prime brokerage daily reporting.

6.22 This respondent also asked whether a third party, to whom safekeeping of assets has been delegated by a depositary, must limit the use of an omnibus account so that it could include only the assets of AIFs, and not of any other clients of the third party.

6.23 The other respondent questioned whether the specialist regime for the depositaries of unauthorised AIFs constitutes the bespoke private equity regime referred to by the UK Investment Management Strategy produced by the Treasury.22

22 HM Treasury, the UK investment management strategy, March 2013.
Our response

We are applying only a limited number of the provisions within CASS 6.3 to a firm acting as a depositary of an AIF. Those provisions are in accordance with the principles set out in Article 16 of the MiFID Implementing Directive\(^{23}\), to which Article 21(8) of AIFMD refers. In any event the level 2 regulation is directly applicable so it would be wrong to duplicate its requirements in our rules.

The new guidance provides for the situation where a prime broker has entered into an agreement under Article 91 of the level 2 regulation (Reporting obligations for prime brokers), and makes available to the depositary statements as specified by Article 91. In that situation, if the prime broker firm sends the same statements to its client, the prime broker firm would be considered to have met the obligations under CASS 9.2.1R.

We confirm that the omnibus account referred to in FUND 3.11.31G can include the assets of AIFs and other clients of the third party, as long as these assets are segregated from the third party’s own assets. We have amended the guidance accordingly.

Our rules implementing the specialist depositary regime for private equity AIFs and similarly-structured funds are explained earlier in this chapter. The new specialist regimes in CASS 6 are applicable to all firms acting as a trustee or depositary of an AIF in relation to their safekeeping duties, but vary depending on whether the AIF is authorised or unauthorised. Unauthorised AIFs include, but are not limited to, private equity and other funds with the characteristics set out in FUND 3.11.12R.

Based on the above, we are proceeding with the proposed changes to CASS 6, and the other CASS and CASS-related provisions.

Depositary responsibilities for cash monitoring

6.24 We continue to engage with stakeholders about the practical application of the requirements for cash monitoring by depositaries. We do not propose any changes to the Handbook on this matter at this stage, but will keep this under review.

Wider CASS policy review

6.25 As stated in CP13/9 we are also carrying out a wider policy review of certain chapters of CASS, including CASS 6. We expect to publish the results of this review in a Consultation Paper later this summer.

---

7. Marketing

7.1 In chapter 7 of CP13/9, we consulted on proposals concerning AIFMD marketing, including a new section of PERG providing guidance on what constitutes marketing under the Directive, and new notification forms relating to marketing. This chapter covers the responses to the questions in CP13/9 regarding AIFMD marketing. We did not ask any questions in CP12/32 about AIFMD marketing.

PERG guidance on marketing

7.2 We proposed a new section of PERG covering a number of marketing issues, such as the meaning of offering and placement, the territorial scope of marketing, and passive marketing. This guidance was based on the then current draft of the Treasury’s AIFMD UK regulation. We asked:

Q16: Do you have any comments on our proposed marketing guidance in PERG? Are there any other issues related to AIFMD marketing that should be included in the guidance?

7.3 We received 17 responses to this question. Several of them were detailed, and there were recurring issues, which we group under the headings below.

Passive marketing – marketing at the initiative of the investor

7.4 Thirteen respondents raised concerns about our proposed guidance on passive marketing, which they found overly restrictive. For example, they were concerned that we might consider an investor’s approach to an AIFM as not being at his/her own initiative where:

- general background information concerning an AIFM, such as its existence, team and track record, is generally available, even if published on a website
- an existing investor in an AIF managed by the AIFM has received communications from the AIFM
- the investor has no prior knowledge of the AIF in question, or
- the investor has had previous dealings or involvement with that AIFM.

7.5 Several respondents focused on the communications between an investor and the AIFM or its agents. One recommended we should clarify that, for communications to be deemed to have been solicited at the investor’s request, such a request need only be made once in the course of dealings. The AIFM could then rely on that request until the investor indicated that it no longer wished to receive further communications.
7.6 Another respondent noted that retail investors will still be protected by the UK’s financial promotion and scheme promotion regimes, and that the passive marketing exemption was inserted into the Directive to ensure that EEA professional investors continue to have access to AIFs in which they wish to invest. Consequently, they suggested that the passive marketing exemption should cover a much wider range of circumstances where the investor positively requests that an offer should be made to it.

7.7 A UK institutional investor in AIFs welcomed our proposal to clarify the meaning of marketing at the initiative of the investor. This respondent emphasised the importance of being able to approach investment managers at its own initiative without them being deterred by a substantial regulatory compliance burden.

7.8 One respondent explained that, for MiFID purposes, a service is presumed to be provided at the client’s initiative unless the MiFID firm has made a personalised communication to the client which contains an invitation or is intended to influence the client. The same respondent asked whether an investment firm, or an intermediary acting on behalf of an AIFM, can rely on the initiative of an investor or must verify there has been no other marketing to the investor by the AIFM or others.

Our response

We have made consequential changes to our guidance, to reflect amendments to the Treasury’s AIFMD UK regulation since we published our proposals. These include:

- the change in the scope of the marketing definition, which has been narrowed to AIFMs and persons acting at their initiative, or on their behalf, and

- marketing under the EuSEF and EuVECA designations (PERG 8.37.12G).

Some of the responses we received relate to policy positions taken by the Treasury in their regulation, rather than any FCA interpretation. We note this below as appropriate.

In response to feedback, we have greatly simplified our guidance on marketing at the investor’s own initiative. Rather than trying to give exhaustive guidance on this topic, we have removed material on how to determine whether the marketing is at the investor’s initiative and on scenarios that caused concerns to respondents, such as the investor’s prior knowledge of the AIF or previous involvement with the AIFM. Instead, we simply explain that firms may generally rely on a confirmation from an investor that the approach is at his/her own initiative. However, in supervising this area we will take account of any evidence suggesting that marketing activity has been going on, as that might point to circumvention of the Directive’s obligations.

We would expect that intermediaries acting on behalf of an AIFM might need to verify with the AIFM whether a particular investor’s request is at his/her initiative, but this would be dependent on the circumstances such as the distribution agreement in place, etc.

Effect of listing
7.9 Several respondents suggested we state in PERG that if a firm maintains a listing on a public market for an AIF that it manages, this fact should not be considered marketing under AIFMD.

**Our response**

We agree with respondents that listing an AIF is not in itself marketing under the Directive, and have revised PERG 8.37.5G (3) accordingly. We note that the process of listing an AIF may however be accompanied by marketing activity, which would be captured.

**Secondary offerings**

7.10 Several respondents noted that marketing restrictions would also apply to secondary offerings of units or shares of an AIF. They distinguished secondary offerings from primary offerings, arguing that the terms ‘offering’ and ‘placement’ which define AIFMD marketing, relate only to primary offerings.

**Our response**

We have revised PERG 8.37.5G (3) on the definition of AIFMD marketing, which now includes a condition that the offering or placement seeks to raise capital in the AIF. As a result, many secondary offerings will not be considered within scope of AIFMD marketing, except where there is an indirect offering or placement, such as where a placement agent has purchased units in an AIF for distribution to investors.

**The meaning of an offering or placement**

7.11 Two respondents noted their satisfaction with the guidance on the meaning of an offering or placement. However, a few others were concerned that the phrase ‘make units or shares of an AIF available’, which we used, is too wide and is inconsistent with the general understanding of marketing.

**Our response**

We have revised PERG 8.37.5G by adding a condition that the offering or placement seeks to raise capital in the AIF. We have also made it clearer that this definition applies regardless of whether the marketing to the investor constitutes a contractual offer or an invitation to make an offer.

**Territorial scope of the marketing provisions, and location of investor**

7.12 Several respondents noted that according to PERG, the provisions would capture marketing to UK or EEA nationals located outside the EEA. They asked whether they would be required to look through a nominee structure to the underlying investor, to determine its domicile or registered office. Respondents also asked for more guidance on the meaning of ‘domicile’ as used in the Directive, and suggested that it should be a residence test.
The Treasury revised regulations 49 and 50 of the AIFMD UK regulation to limit the scope of marketing to the territory of the UK. However, regulation 45 still refers to the ‘domicile’ of an investor. Stakeholders should construe the reference to ‘domicile’ in line with its meaning in AIFMD, i.e. its meaning under EU law, which may be different to the UK definition of a person’s domicile for tax purposes.

As to who should be treated as the investor, our guidance now says that the person making the investment decision should be considered as the investor for these purposes.

### Offering of feeder funds

7.13 Two respondents asked us to confirm that the marketing of a feeder AIF does not amount to the indirect marketing of its underlying master AIF and to clarify whether, when marketing a non-EEA feeder AIF to UK investors, it would be necessary to enter both the feeder and master AIFs on the Article 42 private placement register. One respondent asked whether an AIFM may market a non-EEA feeder AIF that it does not manage, in the case where that feeder AIF invests into a master AIF managed by that same AIFM.

**Our response**

It is unnecessary to make separate notifications for both a non-EEA feeder AIF and its corresponding non-EEA master AIF, unless the master AIF will also be directly offered to investors. However, on the notification form for a non-EEA feeder AIF, we will ask for some information about the master fund, such as its full name and statutory authority. The question of whether such a non-EEA master AIF will additionally have to report to us about its portfolio, even if it is not notified to us, is part of the recent ESMA consultation on AIFMD reporting.

When an AIFM markets the funds of another AIFM, it will be treated the same as any other third party marketing an AIF on behalf of its manager. So the AIFM would be able to market a non-EEA feeder AIF that it does not manage, where that non-EEA feeder AIF invests into a master AIF that is managed by that AIFM, provided the correct notification is made for the feeder AIF.

### Draft documentation

7.14 Some respondents agreed with our interpretation that sending potential investors draft documentation is not marketing, but were worried that other Member States might not agree with us. This might result in firms making early applications for a marketing passport under the Directive, to be able to send draft documentation to investors in other Member States where the communication of draft documentation would be considered marketing.

**Our response**

In the absence of EU guidance on whether the communication of draft documentation is marketing, there will be uncertainties over this point and others concerning marketing in other Member States. We have noted this in a new paragraph PERG 8.37.6G (3).
Notifications of marketing

7.15 The Directive permits UK and EEA AIFMs to operate on a cross-border basis from 22 July 2013. We proposed forms for these AIFMs to notify us of the cross-border marketing of a UK and EEA AIF, and the passporting of management services to another Member State. We asked:

Q17: Do you have any comments on the information required on the forms for passporting? Are there any other matters relating to marketing under AIFMD that should be addressed in rules or guidance?

7.16 There were five responses to this question. One respondent supported transitional arrangements for firms applying Article 42 of the Directive (private placement of funds managed by non-EEA AIFMs). This respondent also argued for an efficient and practical private placement regime, which does not introduce additional provisions to those required by the Directive. In particular, they noted there is no requirement in the Directive for an AIF marketed under the private placement regime to have a single AIFM.

Our response

The Treasury has revised parts of the AIFMD UK regulation for the private placement regime, taking into account most of the concerns noted above. The regime is now structured as a notification regime, and under regulation 59 the relevant funds are not required to have a single AIFM. However, the AIFM making the notification must be the person responsible for complying with the relevant requirements in AIFMD.

The FCA’s powers to direct small registered UK AIFMs and small non-EEA AIFMs on the manner and content of their reporting requirements will come into effect only when the Treasury’s AIFMD UK regulation is in force. We expect to make these directions in July 2013 and publish them in the next Handbook Notice.

Charity funds

7.17 Charity funds such as CDFs and CIFs established under the Charities Act 2011 or its predecessors will be considered AIFs. However, the regulation of the funds as charities will remain with the national charity regulator. To allow CDFs to make a promotion to eligible charities, we proposed extending the marketing exemption in COBS 4.12. We asked:

Q18: Do you agree with the proposal to permit CDFs to be marketed to eligible charities?

7.18 We received no responses to this question. The Treasury has not made any changes to the treatment of charity funds since we published CP13/9, so we will proceed with our proposal.
8. Fees

8.1 In chapter 8 of CP13/9 we consulted on changes to the fees regime for firms within the scope of AIFMD. This was to reflect the changes to the scope of regulation and the definitions in the RAO, as part of the implementation of AIFMD.

Authorised AIFMs and depositaries

Q19: Do you agree with our proposed structure of application and periodic fees for authorised AIFMs and depositaries?

8.2 We had one response to this question, disagreeing with our proposal to charge authorised internally managed investment companies by using an income proxy based on assets under management. The respondent argued that the range of fees an external manager might charge varies significantly and there is no way to make such an estimate without creating an arbitrary figure. In their view, the 1% figure chosen may represent a significant under-estimate for some asset classes and an over-estimate for others.

Our response

We do not intend to change our proposals.

We proposed to put authorised internally managed AIFs into fee-block A9 (Managers and depositaries of investment funds and operators of CIS or personal pension schemes). The tariff base for this fee-block is gross income from charges to the fund. Since internally managed AIFs do not generate income from charges to the fund, we proposed that these firms should treat an amount of 1% of the value of the AIF assets under their management as a proxy for their income.

The alternative would be to create a new fee-block for authorised internally managed investment companies. This would require a change to our systems, incurring additional costs which we would recover from the firms concerned. In the absence of a suitable income measure, the fees for authorised internally managed investment companies in a separate fee-block would most likely be based on the value of their assets under management. So the distribution of fees between them would be identical to the distribution under our proposals.
We expect there to be a relatively small number of authorised internally managed investment companies and we believe that these can be accommodated within our existing fee structure. So we intend to include them in fee-block A9 with an income proxy of 1% of assets under management, as we proposed.

Registered AIFMs

Q20: Do you agree with our proposed structure of application and periodic fees for registered AIFMs?

8.3 We received one response to this question, which disagreed with our proposed application and periodic fee rates for registered AIFMs, arguing that they were too high in comparison to the proposed rates for non-EEA AIFMs marketing AIFs under Article 42 AIFMD.

Our response

We have revised our proposals since there will now be more than one kind of registered AIFM.

Registered internally managed investment companies

Our supervisory processes for registered AIFMs will be different to those for non-EEA AIFMs marketing AIFs under Article 42.

In the case of registered internally managed investment companies, we must register the AIFM and ensure that it complies with certain requirements. For example, the AIFM should not be on the register if any of the individuals responsible for its management have been convicted of any offence involving fraud or dishonesty, or are subject to a prohibition order, or could be made subject to a disqualification order.

Because of these differences in the scope of regulation, we consider it appropriate to charge different fees to registered AIFMs. Nevertheless, having further considered our application and supervisory processes for registered internally managed investment companies, we intend to set both the application fee and the periodic fee at the lower level of £750 each. These fees will be kept under review as we gain more experience in registering and supervising these firms.

Registered managers of property funds

The Treasury changed its draft AIFMD UK regulation after the publication of CP13/9. In particular, sub-threshold managers of property funds will now be subject to a registration regime rather than being classed as small authorised UK AIFMs. The fees we consulted on for authorised AIFMs included sub-threshold managers of property funds. However, if those firms are to be registered rather than authorised, this will reduce the amount of resource we require to process their application and to supervise them on an ongoing basis.
We have reviewed the fees that these firms should pay. Under the new regime, registered managers of property funds will be subject to a similar regime to registered internally managed investment companies. We therefore intend to charge them the same fees, which will be an application fee and a periodic fee of £750 each.

Registered managers of EuSEFs or EuVECAs
Since the publication of CP13/9, the final EuSEF and EuVECA Regulations have been published in the Official Journal and the Treasury has updated its Regulations to include a process for registering EuSEF and EuVECA managers from 22 July 2013.

We currently do not consider it appropriate to charge registered EuSEF and EuVECA managers a different fee to that levied on other categories of registered AIFMs. This is an application fee and a periodic fee of £750 each. We will keep these arrangements under review. We would consult on any proposal to levy a different fee in the usual way.

We expect that most firms applying for registration as a EuSEF or EuVECA manager will already be, or will shortly become, authorised AIFMs. The fees we intend to charge registered EuSEF or EuVECA managers will be in addition to any fees they might pay as authorised AIFMs and are designed to cover the additional work required to process their EuSEF or EuVECA application and supervise their compliance with those Regulations. For example, we will need to check that the investment strategies of the EuSEF or EuVECA funds fulfil the criteria in the relevant Regulations. On a provisional basis, we intend to charge EuSEF and EuVECA managers the same fees as other registered AIFMs. This will be an application fee and a periodic fee of £750 each.

The FCA’s powers to make fees rules for registered AIFMs will come into effect only when the Treasury’s legislation is in force. We therefore expect to make these rules in July 2013 and publish them in the next Handbook Notice.

AIFs marketed under national private placement

Q21: Do you agree with the proposed fees structure for recording and maintaining AIFs on the national private placement registers?

8.4 We received one response to this question, which agreed with our approach.

Our response
The updated AIFMD UK regulation includes a number of changes in relation to marketing AIFs in the UK under national private placement. In particular, the application process for these AIFs has been replaced with a notification process, and the FCA will no longer need to maintain a public register of these AIFs.
So we have reconsidered whether our proposed application fees for AIFs marketed in the UK under national private placement are appropriate. Under the notification process, the AIFM will still need to provide us with information, similar to what would have been required under the proposed application process, and we will still need to check the notification is complete and fulfils the required criteria. We will also still need to maintain a list of AIFs marketed in the UK under national private placement, but we will not need to publish it. In view of these considerations, we have decided to lower the fee rates to the following:

Table 8.1

<table>
<thead>
<tr>
<th>Type of fund</th>
<th>Fee per fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIF managed by full-scope non-EEA AIFM</td>
<td>£250</td>
</tr>
<tr>
<td>AIF managed by sub-threshold non-EEA AIFM</td>
<td>£125</td>
</tr>
<tr>
<td>Non-EEA AIF managed by EEA AIFM, where the AIFM is not otherwise paying any FCA fee as an AIFM</td>
<td>£250</td>
</tr>
</tbody>
</table>

The FCA’s powers to make fees rules for national private placement notifications will come into effect only when the Treasury’s AIFMD UK regulation is in force. We expect to make these rules in July 2013 and publish them in the next Handbook Notice.

Recognised schemes

**Q22:** Do you agree with the proposed new fee structure for recognised schemes?

**8.5** We did not receive any responses to this question, so we intend to make the rules as consulted on.

Ombudsman service and FSCS levies

**Q23:** Do you agree with our proposed changes to the regimes for funding the ombudsman service and FSCS?

**8.6** We did not receive any responses to this question, so we intend to make the rules as consulted on.

Applications by EEA AIFMs to market AIFs to non-professional UK investors

**8.7** Under regulation 54(4)(b) of the AIFMD UK regulation, a full-scope EEA AIFM can apply directly to the FCA for approval to market a fund to non-professional investors in the UK. This will allow an EEA AIFM to market AIFs to those categories of non-professional investor to whom unregulated CIS can be marketed under UK law (e.g. sophisticated or high net worth individuals). If the EEA AIFM wants to market an AIF to ordinary retail investors, it will instead need to apply for the AIF to be authorised or recognised by the FCA.
8.8 On receiving an application to market AIFs to non-professional investors in the UK, the FCA will need to check whether the fund is allowed to be marketed to the categories of investor specified in the application under UK law.

8.9 We do not currently propose to levy a fee for this application. We will, however, keep the costs of processing these applications under review. We would consult on any proposal to levy a fee in the usual way.
9. Other matters

9.1 This chapter covers our analysis of the responses to the questions in chapter 7 of CP12/32 on the proposed remuneration regime and how firms that will be subject to both the existing FCA remuneration code (‘the Code’) and the AIFMD regime should comply with these requirements.

9.2 In this chapter, we also provide further information regarding:

- the implementation of the ESMA guidelines on remuneration, and
- rules for the eventual implementation of European passports for non-EEA AIFMs managing EEA AIFs and for non-EEA AIFs being marketed in the EEA.

**AIFMD remuneration**

9.3 The remuneration rules and principles in AIFMD will overlap with the existing rules of the FCA Remuneration Code (the Code) where an AIFM is a subsidiary of a credit institution and where an AIFM carries on the additional MiFID investment activities permitted under Article 6(4). We proposed that if an AIFM is subject to both remuneration regimes and is compliant with the AIFMD remuneration regime, that compliance will satisfy the requirements of the Code. We asked:

**Q7:** *Do you agree with our proposal for aligning the existing requirements under the FSA Remuneration Code with the new AIFMD remuneration rules? Do you have any specific concerns regarding:*

- **Our proposed treatment of AIFMs which are part of a banking group?**
- **AIFMs doing MiFID investment business?**

9.4 Thirteen respondents replied to this question, and the majority agreed with our proposal. One firm was concerned by the prospect of having to implement three remuneration regimes (based on CRD, AIFMD and a potential new regime under the UCITS Directive) for employees working on similar portfolios.

9.5 Several respondents agreed that complying with the AIFMD remuneration regime should be deemed to be complying with the Code where both regimes may apply to a firm, such as where a firm is part of a banking group or doing MiFID investment business. However, one respondent asked if it would be possible to comply with both the AIFMD remuneration regime and the Code within a firm by applying these rules proportionately, based on the extent of its business under each Directive.
9.6 We did not consult on proportionality with respect to remuneration, but several respondents expressed a preference for an AIFMD framework similar to that set out in the Code, and to align the proportionality levels so that similar-sized firms would be treated similarly under both regimes. One respondent suggested that proportionality under the AIFMD regime should allow firms solely to apply the Code, where the firm is part of a banking group and its AIFMD business represents a small portion of its business.

**Our response**

We intend to proceed with our guidance that complying with the AIFMD remuneration regime will be deemed to be complying with the Code. We believe this should be less burdensome to AIFMs than having to comply with overlapping regimes. Firms that are doing both MiFID and AIFMD business may choose to apply both regimes to their employees, based on the amounts of an employee’s work or the firm’s business undertaken under each Directive.

The CRD IV legislative package, when implemented, will introduce caps on variable remuneration.\(^24\) As the precise scope of these provisions is not known at the time of publication, we may have to change our policy in respect of some firms in the future.

We have not yet proposed guidance on an AIFMD proportionality framework, but we will take these responses into account in developing it. We will consult on such a framework in due course.

**ESMA guidelines on sound remuneration policies under the AIFMD**

9.7 Article 13(2) of the Directive requires ESMA to develop guidelines for the application of AIFMD remuneration rules. ESMA published its final report on these guidelines in February 2013.\(^25\) Once ESMA publishes the official version of the guidelines, which is expected very shortly, we have two months to notify ESMA of whether we will comply with them. As of the date of publication of this PS, we have not yet determined whether we will comply in full with these guidelines. We expect to decide shortly, and we will then publish a statement on our website.

9.8 The guidelines allow an AIFM to disapply certain rules, such as deferral of variable remuneration, where it is proportionate to do so based on the firm’s size, internal organisation and the nature, scope and complexity of its activities.\(^26\) The guidelines provide more detail on each of these non-exhaustive criteria. A competent authority is allowed discretion to develop its proportionality framework, taking into account the specific nature of AIFMs in its jurisdiction.

9.9 As noted above, we intend to consult on a proportionality framework but, in the meantime, we expect firms to consider their situation against the proportionality criteria provided in the ESMA guidelines. Firms should be able to justify any disapplications that they intend to make against these criteria.


\(^26\) See paragraphs 23-31 in the Final Report, Guidelines on sound remuneration policies under the AIFMD.
Passporting of non-EEA AIFMs and AIFs

9.10 AIFMD contains provisions for AIFMs established outside the EEA to be given passporting rights for the management and marketing of AIFs. These rights will be equivalent to the single market rights of an AIFM established within the Union. However, they are not immediately operative, and will not become so until 2015 or 2016 at the earliest, following a review to be carried out by ESMA for the Commission. ESMA would also need to develop a large number of binding technical standards governing the operation of this third-country passport.

9.11 The Treasury and FCA consider it necessary for the level 1 measures to be transposed into UK law and regulation now, rather than when they come into effect, so that the UK has carried out its legal duty to transpose the Directive fully. This is consistent with the view set out in the Commission services questions and answers on transposition issues.27

9.12 The Treasury will execute the measures for which it is responsible by making a statutory instrument in July.

9.13 The FCA will also have to make rules on certain matters. There is insufficient time for us to consult on draft rules and then make final rules by 22 July 2013, so we have agreed a special procedure with the Treasury. The statutory instrument will modify the s.138I FSMA consultation requirements on the FCA so that, instead of having to consult before we make the rules, it will be sufficient for us to consult and carry out a cost benefit analysis subsequently on the rules that have been made, or on their proposed replacements, before they come into force on or after 22 July 2015. These provisions will consist of a copy-out representing the minimum needed to transpose AIFMD correctly.

9.14 At a later date (though well in advance of the date at which the third-country passport might be implemented in practice), we will review the rules and carry out our normal procedure of publishing a consultation paper with a cost benefit analysis, inviting responses from stakeholders.

9.15 The instrument containing the relevant rules will be published in the Handbook notice for July 2013.

27 European Commission questions and answers cited in footnote 13, ID 1189 in relation to Article 66.
10. Cost benefit analysis

10.1 This section covers the feedback we received to our cost benefit analysis (CBA) in CP12/32 and CP13/9. Additionally, where we are making policy changes to the draft rules, as noted in previous sections of this paper, we update our CBA with respect to these changes below.

CP12/32 - CBA

10.2 In CP12/32, we published a CBA that covered the impacts of implementation of both the Directive and the level 2 regulation. We used a variety of data sources in assessing potential compliance and capital costs to AIFMs; market impacts to business models, competition and consumers; and benefits. Several areas, such as the impacts of requirements for depositaries and benefits of AIFMD, could not be assessed quantitatively, due to the scale of the changes and the uncertainties over the impact of the Directive. Additionally, the scale of the changes would make it disproportionate to estimate all the costs and benefits in detail, given that we are mandated to implement AIFMD. The areas where we have discretion are likely to have little influence on the overall costs.

10.3 We asked a specific question about the cost implications for some firms that wished to act as PE AIF depositaries:

Q19: Do you agree with our assessment of the impact of capital requirements for PE AIF depositaries?

10.4 Of the six responses to this question, four agreed with the assessment. One respondent was concerned that the definition of leverage would put many smaller real estate managers above the threshold of assets under management at which the full requirements of AIFMD, including appointment of a depositary, take effect, but they would not have the means to generate additional income to cover such costs. They suggested that the costs of establishing a separate legal entity to perform the depositary function would be about £150,000 a year.

Our response

The issues that have been noted in feedback are a direct consequence of the Directive and the related level 2 implementing measures, so the FCA cannot modify their application to firms. We believe that we have provided as much flexibility as we reasonably can in the way we propose to implement the depositary regime envisaged in Article 21(3), in the expectation that this will have a marginally beneficial effect on stimulating competition to provide such services.
More generally, for the whole CBA, we asked:

Q20: Do you agree with our analysis of costs and benefits?

We received seven responses to this question. Several respondents replied that it was too early in the implementation process to determine whether the CBA was correct. Others believed that the CBA was likely to understate the costs of AIFMD implementation. Two responses indicated that the costs would be significantly greater than the benefits of AIFMD.

With respect to specific costs, one respondent expected the fees for external valuers of real estate assets to increase substantially because of their increased liability, the sector’s lack of competition, and the lack of appropriate professional indemnity insurance.

Three other responses referred to depositary issues in their comments on the CBA. One noted the costs to closed-ended investment companies of the requirement to appoint a depositary where none currently exists. Another suggested that depositary costs might amount to an additional 3 to 10 basis points a year on fund charges, with higher one-off costs in the first year after implementation. Another noted that the depositary requirements were analysed in a qualitative manner, even though these provisions were generally considered to be one of the most costly parts of the Directive. As a result, the aggregate costs of implementation were significantly understated.

Our response

As noted, we have limited scope for discretion on the implementation of AIFMD, because it aims to harmonise the regulatory framework across the EU. As such, we are required to transpose the rules in many areas where a cost benefit analysis would otherwise have contributed to informing our policy proposals. Given this constraint, we would be unable to alleviate these costs in any meaningful way, even if we were to accept that the costs would be significantly greater than the benefits.

With regard to the specific feedback on external valuers’ fees, we did indeed note in the CP that there is particular uncertainty for real estate firms, as they may not currently rely on external valuation. So, although the external valuers’ fees may indeed rise, the sector would not necessarily persist in its current form following the implementation of this requirement. We would expect the increase in demand for such services to encourage entry in the market and, even if valuers’ fees may rise in the short term due to increased liability and the perceived lack of competition, the long-term effect is much less certain.

In relation to the costs arising from the depositary requirements, we restate that they arise almost entirely because of requirements outside our discretion.

We noted in the CP that we were unable to quantify these costs precisely, due to a lack of data and the uncertainties of the Directive’s impact. However, we reported a range of estimates from both internal and external sources. At the time, the additional costs were in the range of 10 to 25 basis points under a lenient regime. The only additional piece of information we received since then is the consultation response mentioned above, which suggests that our initial estimates were not unreasonable.
We only have limited flexibility on the rules regarding the appointment of depositaries. In this regard and considering the feedback received to the CP, we have eased some of the requirements for non-EEA AIFs (see chapter 6). These adjustments may lead to a decrease in depositary charges, and consequently limit the costs for these AIFs, although the relative cost reduction is unlikely to be significant.

**CP13/9 - CBA**

10.9 In CP13/9, we considered the impacts of a limited number of proposed changes related to:

- the regime for sub-threshold AIFMs
- additional prudential rules
- consumer redress: FSCS and the ombudsman service
- depositaries, and
- marketing.

10.10 There was no specific question on the CBA in the CP, and we received no comments or questions regarding it.

10.11 As stated in our consultation, we are not aware of any mutual societies within the scope of the proposed rules. So we do not believe that the changes described in this paper will have a different impact on authorised persons which are mutual societies, compared to other authorised persons.

**Update of the CBA in CP12/32 and CP13/9 following changes made in the draft rules**

10.12 As explained in the main body of this paper, we are making some changes to the draft rules and guidance that we consulted upon in CP12/32 and CP13/9. This section provides our view on the costs and benefits of these changes.

**Sub-threshold managers of authorised AIFs**

10.13 As we explain in chapter 3, the Treasury has changed its proposals for small authorised UK AIFMs of authorised AIFs. These firms will now remain subject to existing requirements and will not be subject to the same requirements as full-scope UK AIFMs, as we envisaged in CP13/9. So, we have modified a number of areas in the Handbook so that these firms will not be subject to the same requirements as full-scope UK AIFMs.

10.14 In CP13/9, we assessed the costs and benefits of the original proposal. Based on our discussions with industry and an analysis of regulatory reports by firms, we found that the resulting compliance costs would be small (up to £15,000 per firm as a one-off cost and up to £1700 a year per firm). We considered that the proposal would benefit investor protection because of the disclosure and operational requirements.
10.15 Given that these requirements will now not be applied to these sub-threshold managers, the costs and benefits associated with the original proposals will not materialise.

**Prudential requirements for internally managed AIFs**

10.16 As we explain in chapter 4, the Commission has clarified that the requirements in Article 9(3) to (6) of the Directive should apply to internally managed AIFs. Previously (in CP12/32) we proposed not to apply these provisions to such firms but, due to the Commission’s stated view, we have changed our approach.

10.17 As these firms are not currently regulated by the FCA, we do not have data available on their capital resources. So, as we expect few firms in this category, we have assessed the impact of the increased prudential requirement by a review of publicly available financial information and discussions with the largest firms. Based on this, it appears that firms should be able to meet the increased requirement from their current resources and that they would not need to increase them to maintain a similar buffer above the required minimum.

10.18 Therefore, we do not expect any material cost or benefit to arise from this new requirement.

**Depositaries for non-EEA AIF**

10.19 In response to feedback, we are making some changes to the requirements regarding depositaries for non-EEA AIFs, which we mentioned in chapter 6. Our initial proposal in CP12/32 was that a single UK firm should be appointed for each AIF where any of the duties (cash monitoring, safekeeping of assets and oversight of the AIFM) are performed in the UK, and that such firms would have to hold own funds of at least €730,000 (unless they were acting only as PE AIF depositaries). We have reconsidered this proposal, and will now permit UK firms to perform each of the three depositary functions separately. In addition, we have lowered the capital requirement to €125,000 for all depositaries in this category.

10.20 In CP12/32, we noted that the requirements for depositaries under the Directive were of particular concern to market participants. We provided some estimates on the impact of various aspects of the requirement, but primarily discussed these costs qualitatively because of the uncertainties of the Directive’s impacts. With respect to benefits, we explained that the requirements for depositaries should result in additional protection for investors.

10.21 In lowering the own funds requirement, we expect this to result in decreased capital costs to firms or no change in costs, depending upon their current capital holdings and the capital amount they choose to hold in excess of our requirements. Our proposal that a firm may perform separately each of the three depositary functions for a non-EEA AIF, permits firms to be more flexible in providing services, and as a result we would not expect any additional costs to be incurred.

10.22 The new proposals may marginally stimulate competition in the market for providing depositary services to non-EEA AIFs, as firms specialising in one or more of the three depositary functions can operate.

10.23 The decreased capital requirements in our new proposal will, however, reduce the benefit to investor protection in this area.
Annex 1
List of non-confidential responses to CP12/32

1. Association for Financial Markets in Europe
2. Association of Investment Companies
3. Alternative Investment Management Association
4. Association of Real Estate Funds
5. Augentius
6. Aztec Group
7. Baillie Gifford & Co
8. BlackRock
9. British Property Federation
10. British Private Equity and Venture Capital Association
11. Capita Financial Managers Limited
12. CBRE Global Investors
13. Chartered Financial Analyst Society of the United Kingdom
14. City of London Law Society
15. Depositary and Trustee Association
16. Eversheds LLP
17. Hargreaves Lansdown
18. Henderson Global Investors Limited
19. International Underwriting Association
20. Investment Management Association
21. Ipes (Guernsey) Limited
22. JP Morgan
23. Kingfisher Property Partnerships Limited
24. Langham Hall UK LLP
25. Law Society of England and Wales
26. Macfarlanes
27. Managed Funds Association
28. Pantheon Ventures
29. Royal Institution of Chartered Surveyors
30. State Street Corporation
Annex 2
List of non-confidential responses to CP13/9

1. Association of Investment Companies
2. Association of Real Estate Funds
3. Alternative Investment Management Association
4. Baillie Gifford & Co
5. Barclays Bank plc
6. Bingham McCutchen (London) LLP
7. BlackRock
8. British Property Federation
9. British Private Equity and Venture Capital Association
10. City of London Law Society
11. Complyport Limited
12. Depositary and Trustee Association
13. Enterprise Investment Scheme Association
14. European Public Real Estate Association
15. Financial Supervision Commission (Isle of Man)
16. Freshfields Bruckhaus Deringer LLP
17. Hugh Aldous
18. Investment Management Association
19. Investment Property Forum
20. Joint Associations Committee on Retail Structured Products
21. King’s Cross Central Limited Partnership
22. Joint response from: Kirkland & Ellis International LLP, Bingham McCutchen (London) LLP,
23. Law Society of England and Wales
24. Managed Funds Association
25. Nabarro LLP
26. Segro plc
27. Simmons & Simmons LLP
28. St James’s Place Wealth Management
29. State Street Corporation
30. The British Land Company plc
31. UBS
32. Wellcome Trust
### Prudential classification for investment fund managers

<table>
<thead>
<tr>
<th>Type of fund manager</th>
<th>CIS</th>
<th>AIF</th>
<th>Non-CIS AIF(^1) (e.g. companies)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residual CIS(^2)</td>
<td>UCITS(^3)</td>
<td>Authorised AIF (NURS and QIS)(^4)</td>
<td>Unauthorised AIF</td>
</tr>
<tr>
<td>Investment management firm</td>
<td>UCITS firm</td>
<td>Full-scope UK AIFM</td>
<td></td>
</tr>
<tr>
<td>IPRU(INV) 5</td>
<td>Collective portfolio management firm – IPRU (INV) 11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Below the threshold</td>
<td>UCITS firm</td>
<td>Small authorised UK AIFM</td>
<td>Small registered UK AIFM</td>
</tr>
<tr>
<td></td>
<td>Investment management firm IPRU (INV) 11</td>
<td>Investment management firm IPRU (INV) 5</td>
<td>No prudential requirements apply(^7)</td>
</tr>
<tr>
<td>Above the threshold</td>
<td>UCITS investment firm</td>
<td>AIFM investment firm(^7)</td>
<td></td>
</tr>
<tr>
<td>MiFID investment firm</td>
<td>Collective portfolio management investment firm GENPRU / BIPRU</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GENPRU / BIPRU</td>
<td>N/A(^10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Below the threshold</td>
<td>UCITS investment firm</td>
<td>Small authorised UK AIFM</td>
<td>Small registered UK AIFM</td>
</tr>
<tr>
<td></td>
<td>Collective portfolio management investment firm GENPRU / BIPRU</td>
<td>MiFID investment firm GENPRU / BIPRU</td>
<td></td>
</tr>
</tbody>
</table>

---

1. Non-CIS AIFs are alternative investment funds that are not collective investment schemes.
2. Residual CIS are arrangements which fall within the definition of a collective investment scheme in s.238 FSMA, but which are not UCITS or AIFs.
3. A firm can manage both UCITS and AIFs, in which case it will either be a CPM firm or a CPMI firm depending on whether it undertakes additional MiFID activities.
4. A firm can manage both authorised and unauthorised AIFs, in which case it will either be a CPM firm or a CPMI firm depending on whether it undertakes additional MiFID activities.
5. To simplify matters, we have assumed for the purposes of this table that an internally managed AIF will not be structured as a collective investment scheme.
6. AIFMD sets a threshold of assets under management of the AIFM of €100m for leveraged AIFs and €500m for unleveraged AIFs with no redemptions for 5 years. These thresholds are only relevant for AIFs.
7. Small registered UK AIFMs are not authorised persons in relation to their activities as an AIFM.
8. AIFMs above the threshold and UCITS management companies are limited in the MiFID activities they may perform by Article 6(4) AIFMD and Article 6(3) of the UCITS Directive. AIFMs below the threshold are not limited in the MiFID activities they may perform by AIFMD and may perform any MiFID activities provided they have permission to do so.
9. This firm is also a full-scope UK AIFM.
10. Internally managed AIFs above the threshold are not allowed to carry out additional MiFID activities (see Article 6(3) AIFMD).
Appendix 1

Made rules (legal instrument)
Powers exercised by the Financial Conduct Authority

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

   (1) the following sections of the Act:

      (a) section 137A (The FCA’s general rules);
      (b) section 137B (FCA general rules: clients’ money, right to rescind etc);
      (c) section 137H (General rules about remuneration);
      (d) section 137R (Financial promotion rules);
      (e) section 137T (General supplementary powers);
      (f) section 138D (Actions for damages);
      (g) section 139A (Power of the FCA to give guidance);
      (h) section 213 (The compensation scheme);
      (i) section 214 (General);
      (j) section 223 (Management expenses);
      (k) section 226 (Compulsory jurisdiction);
      (l) section 234 (Industry funding);
      (m) section 238 (Restrictions on promotion);
      (n) section 247 (Trust scheme rules);
      (o) section 248 (Scheme particulars rules);
      (p) section 261I (Contractual scheme rules);
      (q) section 261J (Contractual scheme particulars rules);
      (r) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority);
      (s) paragraph 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of schedule 3 (EEA Passport Rights); and
      (t) paragraph 13(4) (FCA’s procedural rules) of schedule 17 (The Ombudsman Scheme) to the Act;

   (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook; and

   (3) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

Making the Investment Funds sourcebook (FUND)

D. The Financial Conduct Authority makes the rules and gives the guidance in Annex A to this instrument.

Amendments to the Handbook

E. 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.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex B</td>
</tr>
<tr>
<td>Principles for Businesses (PRIN)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Senior Management Arrangements, Systems and Controls sourcebook</td>
<td>Annex D</td>
</tr>
<tr>
<td>(SYSC)</td>
<td></td>
</tr>
<tr>
<td>General Provisions sourcebook (GEN)</td>
<td>Annex E</td>
</tr>
<tr>
<td>Fees manual (FEES)</td>
<td>Annex F</td>
</tr>
<tr>
<td>General Prudential sourcebook (GENPRU)</td>
<td>Annex G</td>
</tr>
<tr>
<td>Prudential sourcebook for Banks, Building Societies and Investment</td>
<td>Annex H</td>
</tr>
<tr>
<td>Firms (BIPRU)</td>
<td></td>
</tr>
<tr>
<td>Prudential sourcebook for UCITS Firms (UPRU)</td>
<td>Annex I</td>
</tr>
<tr>
<td>Interim Prudential sourcebook for Investment Businesses (IPRU(INV))</td>
<td>Annex J</td>
</tr>
<tr>
<td>Conduct of Business sourcebook (COBS)</td>
<td>Annex K</td>
</tr>
<tr>
<td>Client Assets sourcebook (CASS)</td>
<td>Annex L</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex M</td>
</tr>
<tr>
<td>Dispute Resolution: Complaints sourcebook (DISP)</td>
<td>Annex N</td>
</tr>
<tr>
<td>Compensation sourcebook (COMP)</td>
<td>Annex O</td>
</tr>
</tbody>
</table>

Amendments to the Perimeter Guidance manual (PERG)

F. PERG is amended in accordance with Annex P. The general guidance in PERG does not form part of the Handbook.

Notes

G. 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.

European Union Legislation

H. Although European Union legislation is reproduced in this instrument, only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

Citation
I. This instrument may be cited as the Alternative Investment Fund Managers Directive Instrument 2013.

J. The sourcebook in Annex A to this instrument may be cited as the Investment Funds sourcebook (FUND).

By order of the Board of the Financial Conduct Authority
27 June 2013
Annex A
Making the Investment Funds sourcebook (FUND)

In this Annex, all of the text is new and is not underlined.

1. Introduction

1.1 Application and purpose

Application

1.1.1 R (1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>full-scope UK AIFM of an unauthorised AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>full-scope UK AIFM of an authorised AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>full-scope UK AIFM of an EEA AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>full-scope UK AIFM of a non-EEA AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>small authorised UK AIFM of an authorised AIF</td>
<td>Chapter 1</td>
</tr>
<tr>
<td>small authorised UK AIFM of an unauthorised AIF</td>
<td>Chapter 1</td>
</tr>
<tr>
<td>incoming EEA AIFM branch of a UK AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>depositary of an AIF managed by a full-scope UK AIFM</td>
<td>Chapters 1 and 3</td>
</tr>
</tbody>
</table>

(2) A residual CIS operator is not subject to the requirements in FUND.

(3) FUND 10 will apply to a UK AIFM or incoming EEA AIFM which intends to passport or market on a cross-border basis.

Compatibility with European law

1.1.2 R Handbook rules which conflict with either a rule which transposes AIFMD or a provision in the AIFMD level 2 regulation are modified to the extent necessary
to be compatible with European law.

Interaction between FUND and COLL

1.1.3 A full-scope UK AIFM of an authorised AIF is subject to the requirements in FUND and COLL. The effect of FUND 1.1.2R is that if a rule in COLL which applies to a UK AIFM, an ICVC that is an AIF, or a UK depositary of an AIF conflicts with either a rule in FUND transposing AIFMD or the AIFMD level 2 regulation, the COLL rule is modified to the extent necessary to be compatible with the FUND rule or the AIFMD level 2 regulation.

1.2 Structure of the investment funds sourcebook

Structure of the investment funds sourcebook

1.2.1 FUND is structured as follows:

(1) FUND 1 sets out the broad application of FUND and describes the types of fund manager to whom FUND applies.

(2) [A description of FUND 2 will follow when this section in FUND is introduced]

(3) FUND 3 sets out the baseline requirements that apply to all full-scope UK AIFM.

[A description of FUND 4 to 9 will follow when the relevant sections in FUND are introduced]

(10) FUND 10 sets out the requirements that apply to an AIFM that operates on a cross-border basis.

1.3 Types of fund manager

Types of fund manager within the scope of European legislation

1.3.1 The UK regulatory regime provides that an undertaking which manages an AIF or UCITS in the UK and is within the scope of AIFMD or the UCITS Directive must fall into one or both of the following categories:

(1) an AIFM; or

(2) a UCITS management company.

Types of fund manager outside the scope of European legislation

1.3.2 An authorised person that operates a collective investment scheme in the UK and falls entirely outside the scope of AIFMD or the UCITS Directive will be a
residual CIS operator.

AIFMs

1.3.3 G An AIFM with a Part 4A permission of managing an AIF will be a UK AIFM and must fall into at least one of the following categories:

1. a full-scope UK AIFM;

2. a small authorised UK AIFM of an authorised AIF; and

3. a small authorised UK AIFM of an unauthorised AIF.

Full-scope UK AIFM

1.3.4 G (1) A full-scope UK AIFM is a UK AIFM which is authorised in accordance with AIFMD and, therefore, subject to its full requirements.

(2) A full-scope UK AIFM must be either:

(a) an external AIFM; or

(b) an internally managed AIF.

(3) PERG 16, question 3.6 provides guidance on where an AIFM is acting as an external AIFM or an internally managed AIF.

(4) A full-scope UK AIFM is permitted under FUND 1.4.3R(3) to (6) to provide certain additional services. Where it carries on those services it is also an AIFM investment firm and subject to additional requirements for those services.

Small AIFM

1.3.5 G (1) AIFMD provides that an AIFM which has assets under management below certain thresholds (a “small AIFM”) may be subject to limited requirements under AIFMD. However, this is subject to the right of EEA States to impose stricter requirements.

(2) In the UK, the regulatory regime provides that a small AIFM with a registered office in the UK may be either:

(a) a small authorised UK AIFM; or

(b) a small registered UK AIFM.

Small authorised UK AIFM

1.3.6 G (1) A small authorised UK AIFM will be carrying on the regulated activity of managing an AIF and will be subject to FCA rules in respect of that activity. The application of FCA rules to a small authorised UK AIFM will depend on whether it manages an authorised AIF or an unauthorised AIF. A small authorised UK AIFM which manages an
authorised AIF will be subject to the requirements in COLL, but a small authorised UK AIFM of an unauthorised AIF will not be subject to COLL.

(2) A small authorised UK AIFM may also opt in to the full requirements in AIFMD, in which case it will become a full-scope UK AIFM.

Small registered UK AIFM

1.3.7 G A small registered UK AIFM will not be carrying on a regulated activity in respect of its activities as an AIFM for an AIF for which it is entitled to be registered. Regulation 10 of the AIFMD UK regulation provides for three categories of small registered UK AIFM:

(1) to fall within the first category the AIFM must:
   (a) have a registered office in the UK;
   (b) be a small AIFM;
   (c) be an internally managed AIF of an AIF which is a body corporate and is not a collective investment scheme; and
   (d) not be an external AIFM.

(2) to fall within the second category the AIFM must:
   (a) have a registered office in the UK;
   (b) be a small AIFM; and
   (c) only manage AIFs which:
      (i) are collective investment schemes;
      (ii) are not authorised AIFs;
      (iii) holds the majority of their assets as land, directly or indirectly, through an entity which also meets the conditions in (ii) to (iv) of this sub-paragraph (but this condition does not apply during the first 180 days and the last 180 days of the period during which the undertaking is an AIF); and
      (iv) do not hold any specified investments other than:
         (aa) contracts of insurance which relate to land held by the AIF; and
         (bb) shares through which the AIF holds land.
   (v) Are operated, or will be established and operated, by a person with a Part 4A permission to carry on the
regulated activity of establishing, operating or winding up a collective investment scheme.

(3) to fall within the third category the AIFM must:

(a) have a registered office in the UK;

(b) be a small AIFM; and

(c) have applied for registration as a EuSEF manager or EuVECA manager and meet the conditions for such registration.

1.3.8 G Under regulation 16 of the AIFMD UK regulation, a small registered UK AIFM may apply to the FCA for a Part 4A permission to manage an AIF. In its application, a small registered UK AIFM may apply to become:

(1) a small authorised UK AIFM; or

(2) a full-scope UK AIFM, in accordance with article 3(4) of AIFMD.

1.4 AIFM business restrictions

Single AIFM

1.4.1 R A full-scope UK AIFM must ensure that, for each AIF it is appointed to manage, it is the only AIFM of that AIF, and is responsible for ensuring compliance with AIFMD.

[Note: article 5(1) of AIFMD]

Internally managed AIFs

1.4.2 R An internally managed AIF which is a full-scope UK AIFM must not engage in any activities other than AIFM management functions in respect of that AIF.

[Note: article 6(3) of AIFMD]

External AIFMs

1.4.3 R An external AIFM that is a full-scope UK AIFM must not engage in any activities other than:

(1) AIFM management functions;

(2) the management of UCITS, for which it is subject to authorisation under the UCITS Directive;

(3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for pension funds and institutions for occupation retirement provisions in accordance with article 19(1) of Directive 2003/41/EC;
(4) investment advice;
(5) safe-keeping and administration in relation to shares or units of collective investment undertakings; and
(6) reception and transmission of orders in relation to financial instruments.

[Note: article 6(2) and (4) of AIFMD]

1.4.4 R An external AIFM that is a full-scope UK AIFM must not provide:

(1) only the services in FUND 1.4.3R(3) to (6); or
(2) only the services in FUND 1.4.3R(4) to (6) without also having been authorised to provide the services in FUND 1.4.3R(3); or
(3) only the AIFM management functions in point 2 of Annex I of AIFMD; or
(4) the AIFM investment management function in point 1(a) (portfolio management) of Annex I of AIFMD without also providing the AIFM investment management function in point 1(b) (risk management) of Annex I of AIFMD or vice versa.

[Note: article 6(5) of AIFMD]

1.4.5 G Where a full-scope UK AIFM carries on the activities in FUND 1.4.3R(3) and (4) in relation to assets which are not financial instruments and it is not carrying on the activities of managing investments or advising on investments, the FCA will deem the firm as having been authorised to carry on such activities by virtue of its authorisation as an AIFM. However, for such an AIFM to be able to carry on the activity in FUND 1.4.3R(4) in relation to assets which are financial instruments or the activities in FUND 1.4.3R(5) and (6) it must have a Part 4A permission to manage investments.

[Note: article 6(5) of AIFMD]

1.4.6 G In the FCA’s view, an AIFM is permitted under FUND 1.4.3R to carry out AIFM management functions for a collective investment undertaking the management of which falls outside the scope of AIFMD or the UCITS Directive.

AIFM management functions

1.4.7 G AIFM management functions are set out in Annex I of AIFMD as follows:

(1) the AIFM investment management functions of:
   (a) portfolio management; and
   (b) risk management; and
(2) other functions that an AIFM may additionally perform in the course of the collective management of an AIF:

(a) administration:
   (i) legal and fund management accounting services;
   (ii) customer enquiries;
   (iii) valuation and pricing (including tax returns);
   (iv) regulatory compliance monitoring;
   (v) maintenance of unit/share holder register;
   (vi) distribution of income;
   (vii) unit issues and redemptions;
   (viii) contract settlements (including certificate dispatch); and
   (ix) record keeping;

(b) marketing; and

(c) activities related to the assets of AIFs, namely:
   (i) services necessary to meet the fiduciary duties of the AIFM;
   (ii) facilities management;
   (iii) real estate administration activities;
   (iv) advice to undertakings on capital structure, industrial strategy and related matters;
   (v) advice and services relating to mergers and the purchase of undertakings; and
   (vi) other services connected to the management of the AIF and the companies and other assets in which it has invested.

[Note: Annex I of AIFMD]

2. Authorisation

[To follow]
3. **Requirements for alternative investment fund managers**

3.1 **Application**

Application

3.1.1 **G** The application of this chapter is summarised in the following table; the detailed application is provided in each section.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable sections</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Full-scope UK AIFM of a UK AIF.</em></td>
<td>All of chapter 3.</td>
</tr>
<tr>
<td><em>Full-scope UK AIFM of an EEA AIF operating from an establishment in the UK.</em></td>
<td>All of chapter 3.</td>
</tr>
<tr>
<td><em>Full-scope UK AIFM of an EEA AIF operating from a branch in another EEA state.</em></td>
<td>All of chapter 3 with the exception of <em>FUND 3.8 (Prime brokerage firms).</em></td>
</tr>
<tr>
<td><em>Incoming EEA AIFM branch which manages a UK AIF.</em></td>
<td><em>FUND 3.8 (Prime brokerage firms).</em></td>
</tr>
<tr>
<td><em>Full-scope UK AIFM of a non-EEA AIF marketed in the UK.</em></td>
<td>All of chapter 3 with the exception of <em>FUND 3.12 (Marketing in the home Member State of the AIFM).</em></td>
</tr>
<tr>
<td><em>Full-scope UK AIFM of a non-EEA AIF not marketed in the UK.</em></td>
<td>All of chapter 3 with the exception of *FUND 3.3 (Annual report of an AIF), *FUND 3.11 (Depositaries) and <em>FUND 3.12 (Marketing in the home Member State of the AIFM).</em></td>
</tr>
<tr>
<td><em>UK depositary of a UK AIF or a non-EEA AIF.</em></td>
<td><em>FUND 3.11 (Depositaries).</em></td>
</tr>
</tbody>
</table>

3.2 **Investor information**

Application

3.2.1 **R** This section applies to a *full-scope UK AIFM* of:

1. a *UK AIF*;
2. an *EEA AIF*; and
(3) a **non-EEA AIF**.

Prior disclosure of information to investors

3.2.2 R An **AIFM** must, for each **UK AIF** and **EEA AIF** that it manages, and for each **AIF** it *markets* in the **EEA**, make available to **AIF** investors before they invest, in line with the *instrument constituting the fund*, the following information and any material changes to it:

(1) (a) a description of the investment strategy and objectives of the **AIF**;

   (b) if the **AIF** is a *feeder AIF*, information on where the *master AIF* is established;

   (c) if the **AIF** is a fund of funds, information on where the underlying funds are established;

   (d) a description of the types of assets in which the **AIF** may invest;

   (e) the investment techniques that the **AIF**, or the **AIFM** on behalf of the **AIF**, may employ and all associated risks;

   (f) any applicable investment restrictions;

   (g) the circumstances in which the **AIF** may use *leverage*;

   (h) the types and sources of *leverage* permitted and the associated risks;

   (i) any restrictions on the use of *leverage* and any *collateral* and asset reuse arrangements; and

   (j) the maximum level of *leverage* which the **AIFM** is entitled to employ on behalf of the **AIF**;

(2) a description of the procedures by which the **AIF** may change its investment strategy or investment policy, or both;

(3) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, the applicable law and the existence or absence of any legal instruments providing for the recognition and enforcement of judgments in the territory where the **AIF** is established;

(4) the identity of the **AIFM**, the **AIF’s depositary**, the auditor and any other service providers and a description of their duties and the investors’ rights;
(5) a description of how the AIFM complies with the requirements referred to in IPRU(INV) 11.3.11G (Professional negligence) or GENPRU 2.1.67G (Requirements relevant to collective portfolio management investment firms) relating to professional liability risk;

(6) a description of:

(a) any AIFM management function delegated by the AIFM;
(b) any safe-keeping function delegated by the depositary;
(c) the identity of each delegate appointed in accordance with FUND 3.10 (Delegation); and
(d) any conflicts of interest that may arise from such delegations;

(7) a description of the AIF’s valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing any hard-to-value assets, in line with FUND 3.9 (Valuation);

(8) a description of the AIF’s liquidity risk management, including the redemption rights of investors in normal and exceptional circumstances, and the existing redemption arrangements with investors;

(9) a description of all fees, charges and expenses, and the maximum amounts directly or indirectly borne by investors;

(10) a description of how the AIFM ensures a fair treatment of investors;

(11) whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of:

(a) that preferential treatment;
(b) the type of investors who obtain such preferential treatment; and
(c) where relevant, their legal or economic links with the AIF or AIFM;

(12) the procedure and conditions for the issue and sale of units or shares;

(13) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in line with FUND 3.9 (Valuation);

(14) the latest annual report, in line with FUND 3.3 (Annual report of an AIF);

(15) where available, the historical performance of the AIF;

(16) (a) the identity of the prime brokerage firm;
(b) a description of any material arrangements of the AIF with its prime brokerage firm and the way any conflicts of interest are managed;

(c) the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets; and

(d) information about any transfer of liability to the prime brokerage firm that may exist; and

(17) a description of how and when the information required under FUND 3.2.5R and FUND 3.2.6R will be disclosed.

[Note: article 23(1) of AIFMD]

3.2.3 R (1) An AIFM must inform investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability, in accordance with regulation 30 of the AIFMD UK Regulation.

(2) The AIFM must also inform investors without delay of any changes with respect to depositary liability.

[Note: article 23(2) of AIFMD]

3.2.4 R Where the AIF is required to publish a prospectus under section 85 of the Act or the equivalent provision implementing article 3 of the Prospectus Directive in the AIF’s Home State, only information referred to in FUND 3.2.2R and 3.2.3R that is additional to that contained in the prospectus needs to be disclosed, either separately or as additional information in the prospectus.

[Note: article 23(3) of AIFMD]

Periodic disclosure

3.2.5 R An AIFM must, for each UK AIF and EEA AIF it manages, and each AIF it markets in the EEA, disclose to investors periodically:

(1) the percentage of the AIF’s assets that are subject to special arrangements arising from their illiquid nature;

(2) any new arrangements for managing the liquidity of the AIF; and

(3) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

[Note: article 23(4) of AIFMD]

3.2.6 R An AIFM that manages a UK AIF or an EEA AIF or markets an AIF in the EEA must, for each such AIF that employs leverage, disclose on a regular
basis:

(1) any changes to:

(a) the maximum level of leverage that the AIFM may employ on behalf of the AIF; and

(b) any right of reuse of collateral or any guarantee granted under the leveraging arrangement; and

(2) the total amount of leverage employed by that AIF.

[Note: article 23(5) of AIFMD]

Subordinate measures

3.2.7 G Articles 108 and 109 of the AIFMD level 2 regulation provide detailed rules supplementing this section.

3.3 Annual report of an AIF

Application

3.3.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;

(2) an EEA AIF; and

(3) a non-EEA AIF marketed in the UK.

Provision of an annual report

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

(1) make an annual report available to investors for each financial year;

(2) provide the annual report to investors on request; and

(3) make the annual report available to the FCA and, in the case of an EEA AIF, to the competent authority of that AIF.

[Note: article 22(1) first paragraph and article 24(3)(a) of AIFMD]

3.3.3 R Subject to FUND 3.3.4R(2), an AIFM must make the annual report available, in line with FUND 3.3.2R(1), no later than six months after the end of the financial year.

[Note: article 22(1) first paragraph of AIFMD]
3.3.4 R (1) Where the AIF is required to make an annual financial report public under DTR 4.1.3R (Publication of annual financial reports) or an equivalent provision implementing article 4.1 of the Transparency Directive in the Home State of the AIF, only information referred to in FUND 3.3.5R that is additional to the annual financial report needs to be provided to investors on request, either separately or as an additional part of the annual financial report.

(2) Where additional information in (1) is provided as an addition to the annual financial report, that report must be made public no later than four months following the end of the financial year, under DTR 4.1.3R (Publication of annual financial reports) or an equivalent provision implementing article 4.1 of the Transparency Directive in the Home State of the AIF.

[Note: second paragraph, article 22(1) of AIFMD]

Contents of the annual report

3.3.5 R The annual report must contain:

(1) a balance sheet or a statement of assets and liabilities;
(2) an income and expenditure account for the financial year;
(3) a report on the activities of the financial year;
(4) any material changes in the information required to be made available to investors under FUND 3.2.2R (Prior disclosure of information to investors) during the financial year covered by the report;
(5) (a) the total amount of remuneration paid by the AIFM to its staff for the financial year, split into fixed and variable remuneration, including, where relevant, any carried interest paid by the AIF; and
(b) the number of beneficiaries; and
(6) the aggregate amount of remuneration of the AIFM Remuneration Code staff, broken down by senior management and members of staff.

[Note: article 22(2) of AIFMD]

Accounting information in the annual report

3.3.6 R The accounting information given in the annual report must be:

(1) prepared in accordance with the accounting standards of the Home State of the AIF (or, for a non-EEA AIF, the accounting standards of the third country where it is established) and with the accounting rules set out in the AIF’s instrument constituting the fund; and
(2) audited by one or more persons empowered by law to audit accounts under the Audit Directive (or for a non-EEA AIF, under international auditing standards in force in the country where the non-EEA AIF is established).

[Note: article 22(3) of AIFMD]

3.3.7 R The auditor’s report, including any qualifications, must be reproduced in full in the annual report.

[Note: second paragraph article 22(3) of AIFMD]

Subordinate measures

3.3.8 G Articles 103 to 107 of the AIFMD level 2 regulation provide detailed rules supplementing this section.

3.4 Reporting obligations to the FCA

Application

3.4.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;

(2) an EEA AIF; and

(3) a non-EEA AIF.

Reporting obligations

3.4.2 R An AIFM must regularly report to the FCA on behalf of each AIF it manages:

(1) the main instruments in which it is trading;

(2) the principal markets of which it is a member or where it actively trades; and

(3) the principal exposures and most important concentrations of each AIF it manages.

[Note: article 24(1) of AIFMD]

Content of reporting information

3.4.3 R An AIFM must, for each UK AIF and EEA AIF it manages, and for each AIF it markets in the EEA, provide the following to the FCA:

(1) the percentage of the AIF’s assets that are subject to special arrangements arising from their illiquid nature;
(2) any new arrangements for managing the liquidity of the AIF;

(3) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks, including operational risk;

(4) information on the main categories of assets in which the AIF is invested; and

(5) the results of the stress tests performed in accordance with FUND 3.6.3R(2) (Liquidity systems and procedures) and FUND 3.7.5R(2)(b) (Risk management systems).

[Note: article 24(2) of AIFMD]

3.4.4 R An AIFM must, at the FCA’s request, provide at the end of each quarter a detailed list of all AIFs which it manages.

[Note: article 24(3)(b) of AIFMD]

AIFs that employ leverage on a substantial basis

3.4.5 R An AIFM managing an AIF that employs leverage on a substantial basis must make the following information available to the FCA about that AIF:

(1) the overall level of leverage employed by the AIF;

(2) a breakdown of leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives;

(3) the extent to which the AIF’s assets have been reused under leveraging arrangements; and

(4) the identity of the five largest sources of borrowed cash or securities for the AIF, and the amounts of leverage received from each of those sources.

[Note: article 24(4) of AIFMD]

Meaning of employing leverage on a substantial basis

3.4.6 EU Use of leverage on a ‘substantial basis’

1. Leverage shall be considered to be employed on a substantial basis for the purposes of Article 24(4) of Directive 2011/61/EU when the exposure of an AIF as calculated according to the commitment method under Article 8 of this Regulation exceeds three times its net asset value.

[Note: article 111(1) of the AIFMD level 2 regulation]
3.4.7 G Articles 110 and 111 of the AIFMD level 2 regulation provide detailed rules supplementing this section.

3.5 Investment in securitisation positions

Application

3.5.1 G This section applies to a full-scope UK AIFM of:

(1) a UK AIF;
(2) an EEA AIF; and
(3) a non-EEA AIF.

3.5.2 G To ensure cross-sectoral consistency and remove misalignment between the interests of firms that repackage loans into tradable securities and originators within the meaning of article 4(41) of the BCD and AIFMs that invest in those securities or other financial instruments, the AIFMD level 2 regulation sets out:

(1) requirements that must be met by the originator, the sponsor or the original lender, for an AIFM to be allowed to invest on behalf of the AIF in securities or other financial instruments of this type issued after 1 January 2011; and
(2) qualitative requirements that must be met by AIFMs which invest in these securities or other financial instruments on behalf of the AIF.

[Note: article 17 of AIFMD]

Subordinate measures

3.5.3 G Articles 50 to 56 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions in AIFMD on investment in securitisation positions.

3.6 Liquidity

Application

3.6.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;
(2) an EEA AIF; and

(3) a non-EEA AIF.

Alignment of investment strategy, liquidity profile and redemption policy

3.6.2 R An AIFM must ensure that the investment strategy, liquidity profile and redemption policy of each AIF it manages are consistent.

[Note: article 16(2) of AIFMD]

Liquidity systems and procedures

3.6.3 R An AIFM must, for each AIF it manages that is not an unleveraged closed-ended AIF:

(1) employ an appropriate liquidity management system and adopt procedures which:

(a) enable it to monitor the liquidity risk of the AIF; and

(b) ensure that the liquidity profile of the investments of the AIF complies with the AIF’s underlying obligations; and

(2) regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the AIF and monitor that risk.

[Note: article 16(1) of AIFMD]

Subordinate measures

3.6.4 G Articles 46 to 49 of the AIFMD level 2 regulation provide detailed rules supplementing this section.

3.7 Risk management

Application

3.7.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;

(2) an EEA AIF; and

(3) a non-EEA AIF.

Functional and hierarchical separation

3.7.2 R (1) An AIFM must functionally and hierarchically separate the functions of risk management from the operating units, including from the
functions of portfolio management.

(2) An AIFM must, in any event, be able to demonstrate that:

(a) specific safeguards against conflicts of interest allow for the independent performance of risk management activities; and

(b) the risk management process satisfies the requirements of this section and is consistently effective.

[Note: article 15(1) of AIFMD]

<table>
<thead>
<tr>
<th>3.7.3 EU</th>
<th>Functional and hierarchical separation of the risk management function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The risk management function shall be considered as functionally and hierarchically separated from the operating units, including the portfolio management function, only where all the following conditions are satisfied:</td>
<td></td>
</tr>
<tr>
<td>(a) persons engaged in the performance of the risk management function are not supervised by those responsible for the performance of the operating units, including the portfolio management function, of the AIFM;</td>
<td></td>
</tr>
<tr>
<td>(b) persons engaged in the performance of the risk management function are not engaged in the performance of activities within the operating units, including the portfolio management function;</td>
<td></td>
</tr>
<tr>
<td>(c) persons engaged in the performance of the risk management function are compensated in accordance with the achievement of the objectives linked to that function, independently of the performance of the operating units, including the portfolio management function;</td>
<td></td>
</tr>
<tr>
<td>2. The functional and hierarchical separation of the risk management function in accordance with paragraph 1 shall be ensured throughout the whole hierarchical structure of the AIFM, up to its governing body. It shall be reviewed by the governing body and, where it exists, the supervisory function of the AIFM.</td>
<td></td>
</tr>
</tbody>
</table>

[Note: article 42(1) and (2) of the AIFMD level 2 regulation]

<table>
<thead>
<tr>
<th>3.7.4 EU</th>
<th>Safeguards against conflicts of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The safeguards against conflicts of interest referred to in Article 15(1) of Directive 2011/61/EU shall ensure, at least, that:</td>
<td></td>
</tr>
<tr>
<td>(a) decisions taken by the risk management function are based on reliable data, which are subject to an appropriate degree of</td>
<td></td>
</tr>
</tbody>
</table>
control by the risk management function;

(b) the remuneration of those engaged in the performance of the risk management function reflects the achievement of the objectives linked to the risk management function, independently of the performance of the business areas in which they are engaged;

(c) the risk management function is subject to an appropriate independent review to ensure that decisions are being arrived at independently;

(d) the risk management function is represented in the governing body or the supervisory function, where it has been established, at least with the same authority as the portfolio management function;

(e) any conflicting duties are properly segregated.

2. Where proportionate, taking into account the nature, scale and complexity of the AIFM, the safeguards referred to in paragraph 1 shall also ensure that:

(a) the performance of the risk management function is reviewed regularly by the internal audit function, or, if the latter has not been established, by an external party appointed by the governing body;

(b) where a risk committee has been established, it is appropriately resourced and its non-independent members do not have undue influence over the performance of the risk management function.

3. The governing body of the AIFM and, where it exists, the supervisory function shall establish the safeguards against conflicts of interest laid down in paragraphs 1 and 2, regularly review their effectiveness and take timely remedial action to address any deficiencies.

[Note: article 43 of the AIFMD level 2 regulation]

Risk management systems

3.7.5 R (1) An AIFM must implement adequate risk management systems to identify, measure, manage and monitor all risks relevant to each AIF investment strategy and to which each AIF is, or may be, exposed.

(2) An AIFM must, at least:
(a) implement an appropriate, documented and regularly updated
due diligence process when investing on behalf of the AIF,
according to the investment strategy, objectives and risk
profile of the AIF;

(b) ensure that the risks associated with each investment position
of the AIF and their overall effect on the AIF’s portfolio can
be properly identified, measured, managed and monitored on
an ongoing basis, including through the use of appropriate
stress testing procedures; and

(c) ensure that the risk profile of the AIF corresponds to the size,
portfolio structure and investment strategies and objectives of
the AIF as set out in the instrument constituting the fund,
prospectus and offering documents.

[Note: article 15(2) first paragraph and article 15(3) of AIFMD]

Review of risk management systems

3.7.6 R An AIFM must:

(1) review the risk management systems with appropriate frequency and,
in any event, at least once a year; and

(2) adapt them whenever necessary.

[Note: article 15(2) second paragraph of AIFMD]

Maximum leverage levels

3.7.7 R (1) An AIFM must:

(a) set a maximum level of leverage which it may employ on
behalf of each AIF it manages; and

(b) where the leveraging arrangement allows the right to reuse
collateral or the granting of a guarantee, set out the extent of
that right or guarantee.

(2) An AIFM, in complying with (1), must take into account relevant
matters including:

(a) the type of AIF;

(b) the investment strategy of the AIF;

(c) the sources of leverage of the AIF;

(d) any other link or relevant relationship with other financial
services institutions which could pose systemic risk;
(e) the need to limit the exposure to any single counterparty;

(f) the extent to which the leverage is collateralised;

(g) the asset-liability ratio; and

(h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

[Note: article 15(4) of AIFMD]

3.7.8 R An AIFM must demonstrate that the leverage limits it sets under FUND 3.7.7R(1)(a) are reasonable and that it complies with those limits at all times.

[Note: article 25(3) first sentence of AIFMD]

3.7.9 G To comply with FUND 3.7.8R, an AIFM should report to the FCA any changes to the leverage limits it sets.

Subordinate measures

3.7.10 G Articles 6 to 11 of the AIFMD level 2 regulation provide detailed rules on the calculation of levels of leverage, articles 38 to 47 of the AIFMD level 2 regulation provide detailed rules on risk management and article 112 of the AIFMD level 2 regulation provides detailed rules on circumstances when competent authorities may impose leverage limits or other restrictions on the management of AIFs.

3.8 Prime brokerage firms

Application

3.8.1 R This section applies to:

(1) a full-scope UK AIFM of:

   (a) a UK AIF;

   (b) an EEA AIF managed or marketed from an establishment in the UK; and

   (c) a non-EEA AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF.

Selection of a prime brokerage firm

3.8.2 R An AIFM must exercise due skill, care and diligence in the selection and appointment of a prime brokerage firm.
Prime brokerage firm contract

3.8.3 R Where the AIFM, on behalf of an AIF, uses the services of a prime brokerage firm, the terms must be in a written contract. In particular, any possibility of transfer and reuse of AIF assets must be provided for in that contract and must comply with the AIF’s instrument constituting the fund. The contract must provide for the depositary to be informed of the contract.

3.9 Valuation

Application

3.9.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;
(2) an EEA AIF; and
(3) a non-EEA AIF.

Responsibility of the AIFM

3.9.2 R An AIFM is responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value.

Standard of care of the valuation

3.9.3 R An AIFM must ensure that any valuation of an AIF’s assets is performed impartially and with all due skill, care and diligence.

Establishment of procedures for valuation of assets

3.9.4 R An AIFM must ensure that, for each AIF it manages, appropriate and consistent procedures are established so that under the rules laid down in the applicable national law of the country where the AIF is established and the instrument constituting the fund:

(1) a proper and independent valuation of the assets of the AIF can be performed; and
(2) the net asset value per unit or share of the AIF is calculated and disclosed to investors.
Frequency of valuation of assets and calculation of net asset value

3.9.5 R (1) An AIFM must ensure that the valuation procedure in FUND 3.9.4R provides for the assets of any AIF under the AIFM’s management to be valued and the net asset value per unit or share to be calculated at least once a year.

(2) Where an AIF is open-ended, such valuations and calculations must also be carried out at a frequency that is appropriate both to the assets held by the AIF and its issuance and redemption frequency.

(3) Where an AIF is closed-ended, such valuations and calculations must also be carried out in case of an increase or decrease of the capital by the relevant AIF.

Informing investors of valuations of assets and calculations of net asset value

3.9.6 R An AIFM must ensure that investors in the AIFs under its management are informed of the valuations and calculations in the manner set out in the relevant instrument constituting the fund.

Performance of the valuation function

3.9.7 R (1) An AIFM may perform the valuation itself, provided that:

(a) the valuation task is functionally independent from the portfolio management; and

(b) the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees involved is prevented.

(2) An AIFM that does not perform the valuation function itself must ensure that the function is performed by an external valuer.

(3) An external valuer appointed under (2) must be a person independent from:

(a) the AIF in respect of which the valuation function is performed;

(b) the AIFM; and

(c) any other persons with close links to the AIF or the AIFM.
Appointment of the depositary as an external valuer

3.9.8 R The depositary appointed for an AIF may not be appointed as an external valuer of that AIF unless:

1. it has functionally and hierarchically separated the performance of its depositary functions from its tasks as an external valuer; and

2. the potential conflicts of interests are properly identified, managed, monitored and disclosed to the investors of the AIF.

[Note: article 19(4) second paragraph of AIFMD]

Appointment of an external valuer

3.9.9 R Where an external valuer performs the valuation function, the AIFM must be able to demonstrate that:

1. the external valuer is subject to mandatory professional registration recognised by law or legal or regulatory provisions or rules of professional conduct;

2. the external valuer can provide sufficient professional guarantees to be able to perform the relevant valuation function effectively under this section; and

3. the appointment of the external valuer complies with the requirements of FUND 3.10.2R (General delegation arrangements) and the AIFMD level 2 regulation.

[Note: article 19(5) of AIFMD]

Delegation by an external valuer

3.9.10 G AIFMs should be aware that regulation 24(2) of the AIFMD UK regulation prohibits an external valuer from delegating valuation to a third party.

Notification of appointment of an external valuer

3.9.11 R An AIFM must notify the appointment of an external valuer to the FCA.

[Note: article 19(7) first part of first paragraph of AIFMD]

3.9.12 G Under regulation 24(3) of the AIFMD UK regulation, the FCA may require an AIFM to appoint another external valuer where it considers that the appointment does not comply with FUND 3.9.9R.

Subordinate measures

3.9.13 G Articles 67 to 74 of the AIFMD level 2 regulation provide detailed rules supplementing this section.
3.10 Delegation

Application

3.10.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF;
(2) an EEA AIF; and
(3) a non-EEA AIF

in relation to the delegation of those AIFM management functions for which it is responsible, other than supporting tasks such as administrative or technical functions.

[Note: recital 31 of AIFMD]

General delegation requirements

3.10.2 R An AIFM must ensure the following conditions are met when a delegate carries out any function on its behalf:

(1) the AIFM has notified the FCA of the delegation before the delegation arrangements become effective; and

(2) (a) the AIFM is able to justify its entire delegation structure with objective reasons;
(b) the delegate has sufficient resources to perform the respective activity and the persons who effectively conduct the business of the delegate are of sufficiently good repute and experience;
(c) (subject to FUND 3.10.7G) the delegation of AIFM investment management functions is conferred only on a delegate that is authorised or registered for the purpose of asset management and subject to supervision;
(d) in addition to (c), where the delegation of AIFM investment management functions is conferred on a third-country delegate, cooperation between the FCA and the supervisory authority of the delegate is ensured;
(e) the delegation does not prevent the FCA from supervising the AIFM effectively and, in particular, does not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors; and
(f) the AIFM is able to demonstrate that:
(i) the delegate is qualified and capable of undertaking the functions in question;

(ii) it was selected with all due care; and

(iii) the AIFM can monitor the delegated activity effectively at any time, give further instructions to the delegate at any time and withdraw the delegation with immediate effect when this is in the interest of investors.

[Note: article 20(1) of AIFMD]

3.10.3 G For the purposes of FUND 3.10.2R(2)(d) cooperation is ensured between the FCA and the supervisory authorities of a third-country delegate where a cooperation arrangement is in place between the two authorities in accordance with AIFMD and article 78(3) of the AIFMD level 2 regulation.

Sub-delegation

3.10.4 R An AIFM must ensure the following conditions are met when any of its delegates carries out a sub-delegation:

(1) the AIFM has consented to the sub-delegation before the sub-delegation arrangements become effective;

(2) the AIFM has notified the FCA of the sub-delegation before the sub-delegation arrangements become effective; and

(3) the conditions in FUND 3.10.2R(2) (General delegation requirements) are satisfied in relation to the sub-delegation, with references to ‘delegate’ and ‘delegation’ replaced by references to ‘sub-delegate’ and ‘sub-delegation’.

[Note: article 20(4) of AIFMD]

3.10.5 R An AIFM must comply with the rules in this section which are applicable to a sub-delegation in relation to any further sub-delegation of its functions by a sub-delegate.

[Note: article 20(6) of AIFMD]

Delegation of AIFM investment management functions

3.10.6 R An AIFM must not delegate or consent to the sub-delegation of AIFM investment management functions to:

(1) the depositary or a delegate of the depositary; or

(2) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless:
(a) that entity has functionally and hierarchically separated the performance of its AIFM investment management function from its other potentially conflicting tasks; and

(b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

[Note: article 20(2) and (5) of AIFMD]

3.10.7 G The FCA may consent to the delegation by a full-scope UK AIFM of its AIFM investment management functions to an entity which is not authorised or registered for the purpose of asset management and subject to supervision in accordance with regulation 26 of the AIFMD UK regulation.

Letterbox entity

3.10.8 R An AIFM must not delegate its functions to the extent that, in essence, it can no longer be considered to be the AIFM of the AIF and to the extent that it becomes a letter-box entity.

[Note: article 20(3) of AIFMD]

3.10.9 EU Letter-box entity and AIFM no longer considered to be managing an AIF

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>An AIFM shall be deemed a letter-box entity and shall no longer be considered to be the manager of the AIF at least in any of the following situations:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions in particular in relation to the implementation of the general investment policy and investment strategies;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the AIFM loses its contractual rights to inquire, inspect, have access or give instructions to its delegates or the exercise of such rights becomes impossible in practice;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the AIFM delegates the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the AIFM itself. When assessing the extent of delegation, competent authorities shall assess the entire delegation structure taking into account not only the assets managed under delegation but also the following qualitative criteria:</td>
<td></td>
</tr>
</tbody>
</table>
(i) the types of assets the AIF or the AIFM acting on behalf of the AIF is invested in, and the importance of the assets managed under delegation for the risk and return profile of the AIF;

(ii) the importance of the assets under delegation for the achievement of the investment goals of the AIF;

(iii) the geographical and sectoral spread of the AIF’s investments;

(iv) the risk profile of the AIF;

(v) the type of investment strategies pursued by the AIF or the AIFM acting on behalf of the AIF;

(vi) the types of tasks delegated in relation to those retained; and

(vii) the configuration of delegates and their sub-delegates, their geographical sphere of operation and their corporate structure, including whether the delegation is conferred on an entity belonging to the same corporate group as the AIFM.

[Note: Article 82(1) of the AIFMD level 2 regulation]

### Liability for delegated functions

3.10.10 G An AIFM’s liability towards the AIF and its investors is not affected by the AIFM delegating functions to a third party, or by any further sub-delegation (see regulation 28(1) of the AIFMD UK regulation).

### Review of delegation and sub-delegation

3.10.11 R An AIFM must review on an ongoing basis the services provided by each:

1. delegate appointed under FUND 3.10.2R; and

2. sub-delegate appointed under FUND 3.10.4R.

[Note: article 20(1) and 20(4) of AIFMD]

3.10.12 G An AIFM should make each of its delegates aware of the requirement to review the services provided by each of its sub-delegates on an ongoing basis (see regulation 28(2) of the AIFMD UK regulation).

### Subordinate measures

3.10.13 G Articles 75 to 82 of the AIFMD level 2 regulation provide detailed rules supplementing this section.
3.11 Depositaries

Application

3.11.1 This section applies in accordance with the table in *FUND* 3.11.2R and *FUND* 3.11.3R.

3.11.2 This table belongs to *FUND* 3.11.1R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Full-scope UK AIFM of a UK AIF or an EEA AIF</th>
<th>Full-scope UK AIFM of a non-EEA AIF which is marketed in the UK</th>
<th>UK depositary of a UK AIF managed by a full-scope UK AIFM or an EEA AIFM</th>
<th>UK depositary of a non-EEA AIF</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.11.4R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.5R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.7R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.9R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.10R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.12R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.14R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.16R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.18R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.19R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.20R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.21R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.23R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.24R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.25R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.26R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.11.28R</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.11.3 R A UK depositary of a non-EEA AIF that does not perform all of the functions of cash monitoring, safekeeping and oversight for the AIF need only comply with the following rules that are applicable to the functions it performs:

1. **FUND 3.11.20R** if it performs only the cash monitoring function;
2. **FUND 3.11.21R** and **FUND 3.11.23R** if it performs only the safekeeping function;
3. **FUND 3.11.25R** if it performs only the oversight function;
4. **FUND 3.11.20R**, **FUND 3.11.21R** and **FUND 3.11.23R** if it performs only the cash monitoring and safekeeping functions;
5. **FUND 3.11.20R** and **FUND 3.11.25R** if it performs only the cash monitoring and oversight functions; and
6. **FUND 3.11.21R**, **FUND 3.11.23R** and **FUND 3.11.25R** if it performs only the safekeeping and oversight functions.

Appointment of a single depositary

3.11.4 R An AIFM must, for each AIF it manages, ensure that:

1. a single depositary is appointed; and
2. the assets of the AIF are entrusted to the depositary for safekeeping in accordance with **FUND 3.11.21R** and **FUND 3.11.23R**.

[Note: article 21(1) and (8) of AIFMD]

General obligations

3.11.5 R An AIFM and a depositary must, in the context of their respective roles, act honestly, fairly, professionally, independently and in the interest of the AIF and its investors.

[Note: article 21(10) first paragraph of AIFMD]

3.11.6 G The Act specifies that the trustee of an AUT and the depositary of an ACS must be independent of its authorised fund manager, and the OEIC Regulations specify that the depositary of an ICVC must be independent of the ICVC and its directors. However, these requirements do not apply to AIFs which are not authorised funds, and, therefore, an AIFM and a depositary of an unauthorised
AIF may be from within the same group, but only if conflicts of interest are avoided and there is sufficient organisational separation between the two entities.

Conflicts of interest: AIFM

3.11.7 R To avoid conflicts of interest between the depositary, the AIFM, the AIF and its investors, an AIFM must ensure that:

1. it does not act as a depositary or a delegate of a depositary; and
2. a prime brokerage firm acting as counterparty to an AIF does not act as the depositary for that AIF, unless:
   a. the prime brokerage firm has functionally and hierarchically separated the performance of its depositary functions from its tasks as a prime brokerage firm; and
   b. potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF by the AIFM.

[Note: article 21(4) of AIFMD]

3.11.8 G A depositary may delegate custody tasks to one or more prime brokerage firms provided the depositary complies with FUND 3.11.26R to FUND 3.11.30R. In addition to the delegated custody tasks, prime brokerage firms are allowed to provide prime brokerage services to the AIF. Those prime brokerage services do not form part of the delegation arrangement.

[Note: recital 43 of AIFMD]

Conflicts of interest: depositaries

3.11.9 R A depositary must not carry out activities with regard to the AIF, or the AIFM on behalf of the AIF, that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless:

1. the depositary has properly identified any such potential conflicts of interest;
2. the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks; and
3. the potential conflicts of interest are properly managed, monitored and disclosed to the investors of the AIF.

[Note: article 21(10) second paragraph of AIFMD]

Eligible depositaries for UK AIFs
3.11.10 R Subject to FUND 3.11.12R, an AIFM must, for each UK AIF it manages, ensure the appointment of a depositary which is a firm established in the UK and which is one of the following:

(1) a credit institution; or

(2) a MiFID investment firm which:
   (a) has own funds of not less than €730,000; and
   (b) provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients; or

(3) another category of institution that is subject to prudential regulation and ongoing supervision and which, on 21 July 2011, fell within the categories of institution eligible to be a trustee of an AUT or a depositary of an ICVC.

[Note: article 21(3)(a) to (c) and (5)(a) of AIFMD]

3.11.11 G For a depositary to be established in the UK, it must have its registered office or branch in the UK. A MiFID investment firm that has its registered office in the UK must be a full scope BIPRU investment firm to meet the requirements of FUND 3.11.10R(2). A MiFID investment firm that has a branch in the UK is not subject to the requirements of GENPRU and BIRPU, but must meet the equivalent capital requirements to a full scope BIPRU investment firm in its Home State to meet the requirements of FUND 3.11.10R(2).

3.11.12 R An AIFM that manages a UK AIF which:

(1) has no redemption rights exercisable during the period of five years from the date of the initial investments; and

(2) in accordance with its core investment policy:
   (a) does not generally invest in AIF custodial assets; or
   (b) generally invests in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with regulation 35 of the AIFMD UK regulation

may appoint, as its depositary, a firm which is established in the UK and which complies with FUND 3.11.14R.

3.11.13 G For the purposes of FUND 3.11.12R(2)(a), an AIF does not generally invest in AIF custodial assets if it invests in such assets on a temporary basis or if those assets do not constitute a significant proportion of its overall assets. However, in line with FUND 3.11.12R(2)(b), an AIF may invest in AIF custodial assets if it invests in issuers to acquire control of such companies in accordance with regulation 35 of the AIFMD UK regulation or if it is in the process of
divesting its investment in an issuer which it controls or previously controlled.

3.11.14 R An AIFM must ensure that a depositary appointed in line with FUND 3.11.12R is a firm:

(1) which has the Part 4A permission of acting as trustee or depositary of an AIF; and

(2) which has own funds of at least €125,000.

[Note: article 21(3) second paragraph after (c) and (5)(a) of AIFMD]

3.11.15 G For certain types of closed-ended AIFs (such as private equity, venture capital and real estate funds) a wider range of entities than those specified in FUND 3.11.10R may perform the relevant depositary functions. The FCA requires such entities to obtain authorisation as a depositary to demonstrate that they can meet the commitments inherent in those functions, but imposes a lower level of capital requirements in recognition of the different degree of risk implied by the characteristics of the AIF. The capital requirements of such firms are contained in IPRU(INV) 5 (particularly IPRU(INV) 5.2.3R(3)(a)(ia)) (Own funds requirement) or in GENPRU and BIPRU if the firm undertakes MiFID business.

[Note: recital 34 of AIFMD]

Additional requirements for depositaries of authorised AIFs

3.11.16 R A MiFID investment firm (other than a PRA-authorised person) which is appointed as a depositary for an authorised AIF in accordance with FUND 3.11.10R(2) must maintain own funds of at least £4 million.

3.11.17 G Where the firm referred to in FUND 3.11.16R is a full scope BIPRU investment firm which is a depositary for an authorised AIF appointed in line with FUND 3.11.10R(2), it is subject to the capital requirements of GENPRU and BIPRU. However, these requirements are not in addition to FUND 3.11.16R and, therefore, a firm subject to this rule may use the own funds required under GENPRU and BIPRU to meet the £4 million requirement.

Eligible depositaries for EEA AIFs

3.11.18 R An AIFM must, for each EEA AIF it manages, ensure the appointment of a depositary which is established in the Home State of the AIF and which is eligible to be a depositary in that Home State in accordance with article 21(3) of AIFMD.

[Note: article 21(3) and (5)(a) of AIFMD]

Written contract

3.11.19 R An AIFM and a depositary must ensure that the appointment of the depositary is evidenced by a written contract. The contract must regulate the flow of information deemed necessary to allow the depositary to perform its functions
for the AIF for which it has been appointed as depositary.

[Note: article 21(2) of AIFMD]

Depositary functions: cash monitoring

3.11.20 R A depositary must ensure that the AIF’s cash flows are properly monitored and that:

(1) all payments made by, or on behalf of, investors upon the subscription of units or shares of an AIF have been received;

(2) all cash of the AIF has been booked in cash accounts opened:

(a) in the name of:

(i) the AIF; or

(ii) the AIFM acting on behalf of the AIF; or

(iii) the depositary acting on behalf of the AIF; and

(b) at:

(i) a central bank; or

(ii) a BCD credit institution; or

(iii) a bank authorised in a third country; or

(iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as EU law and are effectively enforced and in accordance with the principles set out 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 depositary acting on behalf of the AIF in accordance with (2)(a)(iii), the depositary must ensure that no cash of the entity referred to in (2)(b), and none of the depositary’s own cash, is booked on such accounts.

[Note: article 21(7) of AIFMD]

Depositary functions: safekeeping of financial instruments

3.11.21 R (1) A depositary must hold in custody all AIF custodial assets.

(2) The depositary must ensure that all AIF custodial assets that can be registered in a financial instruments account are registered in the depositary’s books within segregated accounts opened in the name of
the AIF, or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF at all times in accordance with the applicable law and CASS 6.1.16IAR (Depositaries of AIFs).

[Note: article 21(8)(a) of AIFMD]

### 3.11.22 EU

#### Financial instruments to be held in custody

1. **Financial instruments belonging to the AIF or to the AIFM acting on behalf of the AIF which are not able to be physically delivered to the depositary** shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:

   (a) they are transferable securities including those which embed derivatives as referred to in the last subparagraph of Article 51(3) of Directive 2009/65/EC and Article 10 of Commission Directive 2007/16/EC, money market instruments or units of collective investment undertakings;

   (b) they are capable of being registered or held in an account directly or indirectly in the name of the depositary.

2. Financial instruments which, in accordance with applicable national law, are only directly registered in the name of the AIF with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody.

3. **Financial instruments belonging to the AIF or the AIFM acting on behalf of the AIF which are able to be physically delivered to the depositary** shall always be included in the scope of the custody duties of the depositary.

[Note: Article 88 of the AIFMD level 2 regulation]

#### Depositary functions: safekeeping of other assets

3.11.23 R **For assets of the AIF that are not AIF custodial assets, a depositary must:**

   (1) verify that the AIF, or the AIFM acting on behalf of the AIF, is the owner of the assets based on information or documents provided by the AIF or the AIFM and, 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 AIF, or the AIFM acting on behalf of the AIF, is the owner.

[Note: article 21(8)(b) of AIFMD]

#### Reuse of assets

3.11.24 R **A depositary must not reuse the assets of the AIF without the prior consent of**
the AIF or the AIFM acting on behalf of the AIF.

[Note: article 21(10) third paragraph of AIFMD]

Depositary functions: oversight

3.11.25 R A depositary must:

(1) ensure that the sale, issue, repurchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the applicable national law and the instrument constituting the fund;

(2) ensure that the value of the units or shares of the AIF is calculated in accordance with the applicable national law, the instrument constituting the fund and FUND 3.9 (Valuation);

(3) carry out the instructions of the AIFM, unless they conflict with the applicable national law or the instrument constituting the fund;

(4) ensure that in transactions involving the AIF’s assets, any consideration is remitted to the AIF within the usual time limits; and

(5) ensure that an AIF’s income is applied in accordance with the applicable national law and the instrument constituting the fund.

[Note: article 21(9) of AIFMD]

Delegation: general prohibition

3.11.26 R A depositary must not delegate its functions to third parties, except as permitted by FUND 3.11.28R.

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

3.11.27 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 depositary of its functions.

[Note: article 21(11) fifth paragraph of AIFMD]

Delegation: safekeeping

3.11.28 R A depositary may delegate the functions in FUND 3.11.21R and FUND 3.11.23R to third parties, subject to the following conditions:

(1) the tasks are not delegated with the intention of avoiding the requirements of AIFMD;

(2) the depositary can demonstrate that there is an objective reason for the delegation;
(3) the depositary:

(a) has exercised all due skill, care and diligence in the selection and appointment of any third party to whom it wants 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;

(4) the depositary 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 AIF, or the AIFM acting on behalf of the AIF, that have been entrusted to it;

(b) (subject to FUND 3.11.29R) for custody tasks in relation to AIF 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 depositary’s clients from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

(d) the third party does not make use of the assets unless it has:

(i) obtained the prior consent of the AIF, or the AIFM acting on behalf of the AIF; and

(ii) given prior notification to the depositary; and

(e) the third party complies with the general obligations and prohibitions relating to the depositary in FUND 3.11.5R, FUND 3.11.9R, FUND 3.11.21R, FUND 3.11.23R and FUND 3.11.24R.

[Note: article 21(11) second paragraph of AIFMD]
Delegation: third countries

3.11.29 R A depositary may delegate custody tasks in relation to AIF custodial assets to an entity in a third country that does not satisfy the conditions in FUND 3.11.28R(4)(b), provided that:

(1) the law of that third country requires those AIF custodial assets to be held in custody by a local entity;

(2) no local entity satisfies the conditions in FUND 3.11.28R(4)(b);

(3) the depositary delegates its functions to such a local entity only to the extent required by the law of that third country and only for as long as there is no local entity that satisfies the delegation conditions in FUND 3.11.28R(4)(b);

(4) the investors of the relevant AIF are informed before their investment that such delegation is required due to legal constraints in the third country and of the reasons as to why the delegation is necessary; and

(5) the AIF, or the AIFM on behalf of the AIF, has consented to the delegation arrangements before they become effective.

[Note: article 21(11) third paragraph of AIFMD]

Delegation: sub-delegation

3.11.30 R A depositary must ensure that a third party to whom the depositary has delegated functions does not, in turn, sub-delegate those functions unless the delegate complies with the same requirements that apply to the depositary, with any necessary changes, in relation to the delegation by the depositary of its functions in FUND 3.11.26R to FUND 3.11.29R.

[Note: article 21(11) fourth paragraph of AIFMD]

Delegation: omnibus account

3.11.31 G A depositary may delegate the safe-keeping of assets to a third party that maintains a common account for multiple AIFs, a so-called ‘omnibus account’, provided it is a segregated common account that is segregated from the third party’s own assets.

[Note: recital 40 of AIFMD]

Provision of information

3.11.32 G The requirements of SUP 2 (Information gathering by the FCA on its own initiative) apply to the depositary, under which it must enable the FCA to obtain, on request, all information that the depositary has obtained while discharging its duties and that the FCA considers necessary.
AIFM of a non-EEA AIF

3.11.33 R An AIFM of a non-EEA AIF which is marketed in the UK must:

(1) ensure that the duties referred to in FUND 3.11.20R, FUND 3.11.21R, FUND 3.11.23R and FUND 3.11.25R are carried out in relation to that AIF by one or more:

(a) firms that are established in the UK and which have the Part 4A permission of acting as trustee or depositary of an AIF, where the duties are carried out in the UK; or

(b) entities that are not established in the UK, where the duties are not carried out in the UK;

(2) not perform the duties referred to in (1) itself; and

(3) provide the FCA with information about the identity of those entities responsible for carrying out the duties referred to in (1).

Subordinate measures

3.11.34 G Articles 83 to 102 of the AIFMD level 2 regulation provide detailed rules supplementing this section.

3.12 Marketing in the home Member State of the AIFM

Application

3.12.1 G This section applies to:

(1) a full-scope UK AIFM of:

(a) a UK AIF; and

(b) an EEA AIF; and

(2) a full-scope EEA AIFM of:

(a) a UK AIF; and

(b) an EEA AIF.

Marketing application

3.12.2 D [Direction in relation to marketing application to follow]
3.12.3 G If the UK AIF or EEA AIF is a feeder AIF, the master AIF needs to be an AIF that is not managed by a non-EEA AIFM or is not a non-EEA AIF for it to be marketed in accordance with regulation 54 of the AIFMD UK regulation. If the master AIF is managed by a non-EEA AIFM or is a non-EEA AIF, the AIF may be marketed in the UK in accordance with regulation 57 (Marketing under article 36 of the directive) of the AIFMD UK regulation (see FUND 10.5.3G (Marketing under article 36 of AIFMD)).

3.12.4 G (1) A full-scope UK AIFM may use the form set out in FUND 3 Annex 1D to apply to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF) to professional clients and/or retail clients.

(2) A full-scope UK AIFM may inform the FCA of its intention to market such an AIF in the UK in its application to become authorised as a full-scope UK AIFM, in which case the firm does not also have to submit the form in FUND 3 Annex 1D in respect of that marketing.

3.12.5 G (1) A full-scope EEA AIFM that wishes to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF) to professional clients should do so using the marketing passport provided for under AIFMD and should, therefore, apply to its Home State regulator for permission to do so.

(2) In accordance with regulation 49 (Marketing by full-scope EEA AIFMs of certain AIFs) of the AIFMD UK regulation, a full-scope EEA AIFM may market such an AIF to retail clients in the UK if the FCA has received a regulator’s notice in relation to the marketing in accordance with Schedule 3 to the Act (EEA Passport rights) or if the AIFM has applied to the FCA for permission to market the AIF using the form in FUND 3 Annex 1D and the FCA has approved such marketing.

(3) As such, a full-scope EEA AIFM may use the form in FUND 3 Annex 1D to apply to market such an AIF in the UK to retail clients, but should not use this form to apply to market such an AIF to professional clients in the UK.

3.12.6 G A full-scope UK AIFM or a full-scope EEA AIFM that intends to market to retail clients should consider the application of the financial promotions regime and ensure it is compliant with the relevant requirements (see PERG 8.37.14G (Application of the financial promotion and scheme promotion restrictions)).

4. Common requirements for all retail funds

[To follow]

5. Additional requirements for retail alternative investment funds
6. Additional requirements for qualified investor alternative investment funds

[To follow]

7. Additional requirements for UCITS funds

[To follow]

8. Additional requirements for UCITS and AIF master-feeder arrangements

[To follow]

9. Suspension of dealings and termination of authorised funds

[To follow]

10. Operating on a cross-border basis

10.1 Application and purpose

Application

10.1.1 G (1) This chapter applies to the following types of firm in relation to the activities in (2):

(a) a full-scope UK AIFM;

(b) a full-scope EEA AIFM;

(c) a small non-EEA AIFM; and

(d) an above-threshold non-EEA AIFM.

(2) The activities to which this chapter relates are the management and marketing on a cross-border basis, into or from the UK of:

(a) a UK AIF;

(b) an EEA AIF; and
(c) a non-EEA AIF.

Purpose

10.1.2 G The purpose of this chapter is to provide guidance on the requirements that apply to the types of firm set out in FUND 10.1.1G when operating on a cross-border basis into or from the UK.

Introduction

10.1.3 G An AIFM operates on a cross-border basis when it manages or markets an AIF in an EEA State other than the state in which it has its registered office (which may include, in certain cases, a state which is a non-EEA State).

10.1.4 G (1) AIFMD allows certain types of AIFM to operate on a cross-border basis using a passport. There are two types of passport that are provided for in AIFMD:

(a) a management passport, which allows an AIFM to establish a branch in, or provide cross-border services into, another EEA State to manage an AIF; and

(b) a marketing passport, which allows an AIFM to provide cross-border services into another EEA State to market an AIF to investors that are professional clients.

(2) The following types of AIFM are allowed to operate on a cross-border basis using the management and marketing passport:

(a) a full-scope UK AIFM of:

(i) a UK AIF; and

(ii) an EEA AIF; and

(b) a full-scope EEA AIFM of:

(i) a UK AIF; and

(ii) an EEA AIF.

10.1.5 G (1) AIFMD also contains specific provisions for third country AIFs and AIFMs (ie, in relation to non-EEA AIFs and non-EEA AIFMs) and the marketing of a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF.

(2) In line with these provisions, the following types of AIFM are allowed to manage a non-EEA AIF from an EEA State:

(a) a full-scope UK AIFM; and

(b) a full-scope EEA AIFM.
In addition, EEA States may allow the marketing by the following types of AIFM in their territory only:

(a) a full-scope UK AIFM of:
   (i) a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and
   (ii) a non-EEA AIF;

(b) a full-scope EEA AIFM of:
   (i) a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and
   (ii) a non-EEA AIF; and

(c) a non-EEA AIFM of:
   (i) a UK AIF;
   (ii) an EEA AIF; and
   (iii) a non-EEA AIF.

10.2 AIFM management passport

Application

10.2.1 G This section applies to:

(1) a full-scope UK AIFM that intends to manage an EEA AIF:
   (a) by establishing a branch in another EEA State; or
   (b) under the freedom to provide cross-border services; and

(2) a full-scope EEA AIFM that intends to manage a UK AIF:
   (a) by establishing a branch in the UK (an incoming EEA AIFM branch); or
   (b) under the freedom to provide cross-border services.

Management passport for full-scope UK AIFMs

10.2.2 G Information on the use of the management passport by a full-scope UK AIFM is contained in SUP 13 (exercise of passport rights by UK firms), which
includes:

(1) guidance on the conditions for establishing a branch to manage an AIF in an EEA State other than the UK (SUP 13.3.2G);

(2) guidance on the conditions for providing cross-border services to manage an AIF in an EEA State other than the UK (SUP 13.4.2G);

(3) the notice of intention that a full-scope UK AIFM must submit to establish a branch in an EEA State other than the UK (SUP 13 Annex 1R);

(4) the notice of intention that a full-scope UK AIFM must submit to provide cross-border services to manage an AIF in an EEA State other than the UK (SUP 13 Annex 8AR);

(5) guidance on changes to branches (SUP 13.6.9CG); and

(6) guidance on changes to cross-border services to manage an AIF in an EEA State other than the UK (SUP 13.7.13BG).

Management passport for full-scope EEA AIFMs

10.2.3 G Information on the use of the management passport by a full-scope EEA AIFM is contained in SUP 13A (Qualifying for authorisation under the Act) and SUP 14 (Incoming EEA firms changing details, and cancelling qualification for authorisation), which include:

(1) guidance on the conditions for establishing a branch to manage an AIF in the UK (SUP 13A.4.1G);

(2) guidance on the conditions for providing cross-border services to manage an AIF in the UK (SUP 13A.5.3G);

(3) guidance on Handbook provisions that apply to an incoming EEA AIFM branch (SUP 13A Annex 1G);

(4) guidance on the matters that are reserved to a firm’s Home State regulator (SUP 13A Annex 2G);

(5) guidance on changes to branches (SUP 14.2.15G and SUP 14.2.16G); and

(6) guidance on changes to cross-border services to manage an AIF (SUP 14.3.8G to SUP 14.3.10G).

10.3 AIFM marketing passport

Application
10.3.1 G This section applies to:

(1) a full-scope UK AIFM of:
   (a) a UK AIF; and
   (b) an EEA AIF;

that intends to market the AIF it manages in an EEA State other than the UK; and

(2) a full-scope EEA AIFM of:
   (a) a UK AIF; and
   (b) an EEA AIF;

that intends to market the AIF it manages in the UK.

Feeder AIFs

10.3.2 G If the UK AIF or EEA AIF is a feeder AIF, the full-scope UK AIFM or full-scope EEA AIFM may only market the AIF using the marketing passport if the master AIF is a UK AIF or an EEA AIF that is managed by a full-scope UK AIFM or a full-scope EEA AIFM. However, the AIFM of such an AIF will be entitled to market the AIF if it meets the conditions in regulation 57 (Marketing under Article 36 of the directive) of the AIFMD UK regulation, as explained in FUND 10.5.3G to FUND 10.5.5G.

Marketing passport for full-scope UK AIFMs

10.3.3 G Information on the use of the marketing passport by a full-scope UK AIFM is contained in SUP 13 (exercise of passport rights by UK firms), which includes:

(1) guidance on the conditions for providing cross-border services to market an AIF in an EEA State other than the UK (SUP 13.4.2FG);

(2) the notice of intention that a full-scope UK AIFM must submit to provide cross-border services to market an AIF (SUP 13 Annex 8BR); and

(3) guidance on changes to cross-border services to market an AIF in an EEA State other than the UK (SUP 13.7.14G).

Marketing passport for full-scope EEA AIFMs

10.3.4 G Information on the use of the marketing passport by a full-scope EEA AIFM is contained in SUP 13A (Qualifying for authorisation under the Act) and SUP 14 (Incoming EEA firms changing details, and cancelling qualification for authorisation), which include:
(1) guidance on the conditions for providing cross-border services to market an AIF into the UK (SUP 13A.5.3G); and

(2) guidance on changes to cross-border services to market an AIF in the UK (SUP 14.3.9G and SUP 14.3.10G).

10.3.5 G In accordance with article 32(5) of AIFMD arrangements for the marketing of AIFs (referred to in point (h) of Annex IV of AIFMD) are subject to the laws and supervision of the Host State of the AIFM. This means that a full-scope EEA AIFM that is marketing an AIF in the UK using the marketing passport should have regard to the financial promotions regime, as explained in PERG 8.37.6G(3) (Communications with investors in relation to draft documentation).

Further guidance on marketing an AIF

10.3.6 G Further guidance on marketing an AIF can be found in PERG 8.37 (AIFMD Marketing).

10.4 AIFM third country management

Application

10.4.1 G This section applies to a full-scope UK AIFM of a non-EEA AIF that is not marketed in the EEA to EEA investors.

Applicable requirements

10.4.2 G A full-scope UK AIFM may manage a non-EEA AIF subject to the satisfaction of certain conditions. If the AIF is not marketed, these conditions are that:

(1) the AIFM complies with the full requirements of AIFMD in respect of that AIF, except article 21 (Depositaries) and article 22 (Annual reporting); and

(2) (in accordance with regulation 33 of the AIFMD UK regulation) appropriate cooperation arrangements are in place between the competent authorities of the Home State of the AIFM and the supervisory authorities of the third country where the non-EEA AIF is established in order to ensure an efficient exchange of information that allows the competent authority of the Home State of the AIFM to carry out its duties in accordance with AIFMD.

10.4.3 G As a result, a full-scope UK AIFM of a non-EEA AIF that is not marketed is required to comply with:

(1) all of FUND 3 with the exception of FUND 3.3 (Annual report of an AIF), FUND 3.11 (Depositaries) and FUND 3.12 (Marketing in the home Member State of the AIFM); and
(2) such other provisions of the FCA Handbook as are applicable to a full-scope UK AIFM.

10.4.4 G If a full-scope UK AIFM wishes to market in the UK a non-EEA AIF that it manages, the AIFM must comply with the relevant requirements, as explained in FUND 10.5.3G to FUND 10.5.5G (Marketing under article 36 of AIFMD).

10.5 National private placement

Application

10.5.1 G This section applies to the following types of AIFM that intend to market an AIF in the UK:

(1) a full-scope UK AIFM of:

(a) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and

(b) a non-EEA AIF;

(2) a full-scope EEA AIFM of:

(a) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and

(b) a non-EEA AIF;

(3) a small non-EEA AIFM of:

(a) a UK AIF;

(b) an EEA AIF; and

(c) a non-EEA AIF; and

(4) an above-threshold non-EEA AIFM of:

(a) a UK AIF;

(b) an EEA AIF; and

(c) a non-EEA AIF.

Introduction

10.5.2 G AIFMD permits EEA States to allow the marketing in their territory only of the types of AIF set out in FUND 10.5.1G, subject to certain conditions. This
has been implemented in the UK by Part 6 (Marketing) of the AIFMD UK regulation. In accordance with these provisions, an AIFM of the type set out in FUND 10.5.1G may market an AIF in the UK providing it has notified the FCA of its intention to market, it meets the relevant conditions in the AIFMD UK regulation and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF. The AIFM is entitled to market the AIF as soon as a notification containing all of the required information has been sent to the FCA.

Marketing under article 36 of AIFMD

10.5.3 G In accordance with regulation 57 (Marketing under Article 36 of the directive) of the AIFMD UK regulation, a full-scope UK AIFM and a full-scope EEA AIFM that manages the following types of AIF may market those AIFs in the UK by submitting a notification to the FCA in the form in FUND 10 Annex 1D:

(1) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and

(2) a non-EEA AIF.

10.5.4 G To allow the AIFM to comply with regulation 57(4), the notification includes a statement from the AIFM confirming that the following conditions are met:

(1) subject to (2), the AIFM complies with the requirements of AIFMD in respect of that AIF;

(2) the AIFM is not required to comply with the requirements of article 21 (Depositaries) of AIFMD provided the AIFM:

(a) ensures that one or more entities, other than the AIFM, are appointed to carry out the duties in article 21(7) to (9) of AIFMD; and

(b) informs the FCA about the identity of each entity;

(3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the FCA and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with AIFMD; and

(4) the third country where the non-EEA AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.5 G (1) As a result of marketing an AIF in the UK, a full-scope UK AIFM is required to comply with:

(a) all of FUND 3, except certain sections of FUND 3.11 (Depositaries) (as set out in FUND 3.11.33R (AIFM of a non-
EEA AIF)) and FUND 3.12 (Marketing in the home Member State of the AIFM); and

(b) such other provisions of the FCA Handbook that apply to a full-scope UK AIFM of a UK AIF.

(2) A full-scope UK AIFM managing a non-EEA AIF that is not marketed should note that the rules it needs to comply with will change in relation to that AIF as a result of the AIF being marketed (see FUND 10.4.3G for details of the rules that apply to a full-scope UK AIFM managing a non-EEA AIF that is not marketed). In particular, an AIFM will be subject to the annual report requirements in FUND 3.3 (Annual report of an AIF) and some of the depositary provisions in FUND 3.11 (Depositaries) (as set out in FUND 3.11.33R (AIFM of a non-EEA AIF)).

Marketing of AIFs managed by small third-country AIFMs

10.5.6 G In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the AIFMD UK regulation, a small non-EEA AIFM may market an AIF in the UK managed by it by submitting a notification to the FCA in the form set out in FUND 10 Annex 1D.

10.5.7 G To allow the AIFM to comply with the requirements of regulation 58(2), the notification includes a statement from the AIFM confirming that the following conditions are met:

(1) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF (as explained in FUND 10.5.8G); and

(2) the AIFM is a small non-EEA AIFM.

10.5.8 G As a result of marketing an AIF in the UK, a small non-EEA AIFM is required to provide the FCA with information on:

(1) the main instruments in which the AIFM trades; and

(2) the principal exposures and most important concentrations of the AIFs it manages,

in accordance with SUP 16.18 (AIFMD reporting).

Marketing under Article 42 of the directive

10.5.9 G In accordance with regulation 59 (Marketing under article 42 of the directive) of the AIFMD UK regulation, an above-threshold non-EEA AIFM may market a UK AIF, an EEA AIF or a non-EEA AIF in the UK managed by it by submitting a notification to the FCA in the form in FUND 10 Annex 1D.

10.5.10 G To allow the AIFM to comply with the requirements of regulation 59(2), the notification includes a statement from the AIFM confirming that the following
conditions are met:

(1) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF (see FUND 10.5.11G);

(2) the AIFM complies with the requirements of articles 22 to 24 AIFMD in so far as such provisions are relevant to the AIFM and the AIF to be marketed;

(3) if applicable, the AIFM complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the AIFMD UK regulation in relation to the AIF to be marketed;

(4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:

(a) the FCA and, if applicable, the competent authorities of the other EEA State where the AIF is established; and

(b) the supervisory authorities of the country where the non-EEA AIFM is established and, if applicable, of the country where the non-EEA AIF is established,

to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with AIFMD; and

(5) the third country where the non-EEA AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 G As a result of marketing an AIF in the UK, an above-threshold non-EEA AIFM is required to comply with:

(1) the requirements that apply to a full-scope UK AIFM in FUND 3.2 (Investor information), FUND 3.3 (Annual report of an AIF) and FUND 3.4 (Reporting obligations to the FCA) in so far as such provisions are relevant to the AIFM and the AIF; and

(2) if applicable, Part 5 (AIFs which acquire control of non-listed companies and issuers) of the AIFMD UK regulation.

Further guidance on marketing an AIF

10.5.12 G Further guidance on marketing an AIF can be found in PERG 8.37 (AIFMD marketing).

10 Annex 1 National private placement notification
11. Recognised funds

[To follow]

Appendices

[To follow]

Transitional Provisions and Schedules

TP 1 Transitional Provisions

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: date in force</td>
<td>Handbook provisions: coming into force</td>
</tr>
<tr>
<td>1</td>
<td>FUND 3.11.2R</td>
<td>R</td>
<td>A credit institution established in the UK and appointed as a depositary of an EEA AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM in accordance with article 61(5) of AIFMD must comply with the provisions of FUND 3.11 that apply to a UK depositary of a UK AIF managed by a full-scope UK AIFM or an EEA AIFM.</td>
<td>From 22 July 2013 until 22 July 2017.</td>
<td>22 July 2013</td>
</tr>
<tr>
<td>2</td>
<td>FUND 3.11.10R</td>
<td>R</td>
<td>An AIFM may ensure the appointment of a credit institution that is</td>
<td>From 22 July 2013 until 22 July 2013</td>
<td>22 July 2013</td>
</tr>
<tr>
<td></td>
<td><strong>FUND</strong> 3.11.14R(1)</td>
<td>R</td>
<td><strong>FUND</strong> 3.11.14R(1)</td>
<td>R</td>
<td><strong>FUND</strong> 3.11.14R(1)</td>
</tr>
<tr>
<td>---</td>
<td>----------------------</td>
<td>---</td>
<td>----------------------</td>
<td>---</td>
<td>----------------------</td>
</tr>
<tr>
<td>3</td>
<td>An AIFM may ensure the appointment of a depositary in line with <strong>FUND</strong> 3.11.12R of a firm that does not have a Part 4A permission of acting as trustee or depositary of an AIF.</td>
<td>From 22 July 2013 until 21 July 2014.</td>
<td>22 July 2013</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>FUND</strong> 3.11.18R</th>
<th>R</th>
<th><strong>FUND</strong> 3.11.18R</th>
<th>R</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>An AIFM may ensure the appointment of a depositary that is a credit institution established in an EEA State other than the Home State of the AIF for each EEA AIF it manages if this is permitted by the laws and regulations of the Home State of the AIF.</td>
<td>From 22 July 2013 until 22 July 2017.</td>
<td>22 July 2013</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th><strong>FUND</strong> 3.11.33R(1)(a)</th>
<th>R</th>
<th><strong>FUND</strong> 3.11.33R(1)(a)</th>
<th>R</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>An AIFM may ensure the duties referred to in <strong>FUND</strong> 3.11.20R, <strong>FUND</strong> 3.11.21R, <strong>FUND</strong> 3.11.23R and <strong>FUND</strong> 3.11.25R are carried out in relation to that AIF by one or more firms that do not have a Part 4A permission of acting as trustee or depositary of an AIF.</td>
<td>From 22 July 2013 until 21 July 2014.</td>
<td>22 July 2013</td>
<td></td>
</tr>
</tbody>
</table>

**Schedule 1**  Record keeping requirements

Sch 1.1  G 1  Record keeping requirements

[to follow]

**Schedule 2**  Notification requirements
Sch 2.1 G 1 Notification requirements

[to follow]

Schedule 3 Rights of action for damages

Sch 3.1 G

The table below sets out the rules in FUND where contravention by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed ‘For private person’, the rule may be actionable by a private person under section 138D, unless a Yes appears in the column headed ‘Removed’. A Yes in the column headed ‘Removed’ indicates that the FCA has removed the right of action under section 138F(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

(1) any individual, except when acting in the course of carrying on a regulated activity; and

(2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

Sch 3.2 G

1. Actions for damages: Investment Funds sourcebook

<table>
<thead>
<tr>
<th>Chapter/ Appendix</th>
<th>Section/ Annex</th>
<th>Paragraph</th>
<th>Right of action section 138D</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>For private person?</td>
</tr>
<tr>
<td>All rules in FUND</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>
Schedule 4  Rules that can be waived

The FCA has the formal power to waive rules under sections 138A or section 250 of the Act (Modification or waiver of rules). However, the large majority of the rules in FUND are derived from AIFMD and it is not possible for the FCA to grant a waiver that would be incompatible with the UK’s responsibilities under that directive. In practice, the ability of the FCA to waive rules in FUND is, therefore, severely constrained.
Annex B

Amendments to the Glossary of definitions

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

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

**above-threshold non-EEA AIFM**

A non-EEA AIFM that is not a small AIFM.

**acting as trustee or depositary of an AIF**

The regulated activity, specified in article 51ZD of the Regulated Activities Order, which is, in summary, acting as:

(a) a depositary of an AIF falling within article 51ZD(2) of the Regulated Activities Order;

(b) the trustee of an authorised unit trust which is an AIF that does not fall within article 51ZD(2) of the Regulated Activities Order;

(c) the depositary of an open-ended investment company or of an authorised contractual scheme which is an AIF that does not fall within article 51ZD(2) of the Regulated Activities Order.

**acting as trustee or depositary of a UCITS**

The regulated activity, specified in article 51ZB of the Regulated Activities Order which is, in summary, acting as:

(a) a trustee of an authorised unit trust scheme; or

(b) a depositary of an open-ended investment company; or

(c) a depositary of an authorised contractual scheme;

where that company or scheme is a UCITS.

**AIF**

Alternative investment fund.

**AIF custodial assets**

Financial instruments of an AIF that can be:

(a) registered in a financial instruments account opened in the depositary’s books; or

(b) physically delivered to the depositary.

[Note: recital 100 and articles 88 (Financial instruments to be held in custody) and 89(3) (Safekeeping duties with regard to assets]
held in custody) of the AIFMD level 2 regulation.]

**AIFM**  
*alternative investment fund manager.*

**AIFM investment firm**  
a *firm* which:

(a) is:

(i) a *full-scope UK AIFM*; or

(ii) an *incoming EEA AIFM branch*; and

(b) has a *Part 4A permission* (or an equivalent permission from its *Home State regulator*) for managing *investments* where:

(i) the *investments* managed include one or more *financial instruments*; and

(ii) the *permission* is limited to the activities permitted by article 6(4) of AIFMD.

**AIFM investment management functions**  
investment management functions of an AIFM as set out in 1(a) (portfolio management) or (b) (risk management) of Annex I to AIFMD.

**AIFM management functions**  
the management functions of an AIFM listed in Annex I to AIFMD.

**AIFM qualifier**  
an EEA AIFM which is *marketing*, or has *marketed*, an AIF in the UK by:

(a) exercising its EEA right to *market* under Schedule 3 of the Act (EEA Passport Rights); and

(b) is not exercising a right to manage a UK AIF under Schedule 3 of the Act.

**AIFM Remuneration Code**  
as set out in SYSC 19B (AIFM Remuneration Code).

**AIFM Remuneration Code staff**  
(for an AIFM) has the meaning given in SYSC 19B.1.3R.

**AIFM remuneration principles**  
the principles set out in SYSC 19B.1.5R to SYSC 19B.1.24R.

**AIFMD**  
**AIFMD host state requirements**

*Handbook rules* transposing articles 12 and 14 of *AIFMD* and which fall under the responsibility of the *Host State* to supervise where an *AIFM* manages or *markets* an *AIF* through a *branch* in that EEA State, namely:

(a) *FUND* 3.8;

(b) *SYSC* 4.1.2CR;

(c) *SYSC* 10.1.22R to *SYSC* 10.1.26R; and

(d) *COBS* 2.1.4R.

**AIFMD level 2 regulation**


**AIFMD UK regulation**

the Alternative Investment Fund Managers Regulations 2013 (SI 2013/...)

**alternative investment fund**

(in accordance with article 4(1)(a) of *AIFMD*) a collective investment undertaking, including investment compartments thereof, which:

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(b) does not require authorisation pursuant to article 5 of the *UCITS Directive*.

**authorised AIF**

an *AIF* which is an *authorised fund*.

**carried interest**

a share in the profits of the *AIF* accrued to the *AIFM* as compensation for the management of the *AIF*, and excluding any share in the profits of the *AIF* accrued to the *AIFM* as a return on any investment by the *AIFM* into the *AIF*.

**charity AIF**

an *AIF* constituted under:

(a) the Church Funds Investment Measure 1958; or

(b) section 96 of the Charities Act 2011; or

(c) section 25 of the Charities Act (Northern Ireland) 1964; or
(d) section 100 of the Charities Act 2011.

**closed-ended corporate AIF**
an AIF which is a body corporate and not a collective investment scheme.

**collective portfolio management investment firm**
a firm which has a Part 4A permission for managing investments and which is:

(a) an AIFM investment firm; or

(b) a UCITS investment firm.

**collective portfolio management firm**
a firm which:

(a) (i) is a full-scope UK AIFM; and

(ii) does not have a Part 4A permission to carry on any regulated activities other than those in connection with, or for the purpose of, managing collective investment undertakings; or

(b) is a UCITS firm that has a Part 4A permission for managing a UCITS.

**EEA AIF**
an AIF, other than a UK AIF, which:

(a) is authorised or registered in an EEA State under the applicable national law; or

(b) is not authorised or registered in an EEA State but has its registered office or head office in an EEA State.

**EEA AIFM**
an AIFM which has its registered office in an EEA State other than the UK.

**ESMA AIFMD key concepts guidelines**
ESMA’s guidelines on key concepts of the AIFMD.

**established**
in accordance with article 4(1)(j) AIFMD:

(a) for AIFMs, ‘having its registered office in’;

(b) for AIFs, ‘being authorised or registered in’ or, if the AIF is not authorised or registered, ‘having its registered office in’; or

(c) for depositaries, ‘having its registered office or branch in’.

**EuSEF manager**
the manager of a qualifying social entrepreneurship fund (as defined in the EuSEF Regulation) that is registered in accordance
with article 15 of the *EuSEF Regulation*.


**EuVECA manager** the manager of a qualifying venture capital fund (as defined in the *EuVECA Regulation*) that is registered in accordance with article 14 of the *EuVECA Regulation*.


**external AIFM** (in accordance with regulation 4(3)(a) of the *AIFMD UK regulation*) an AIFM appointed by, or on behalf of, an AIF and which, through that appointment, is responsible for managing the AIF.

**external valuer** a person who performs the valuation function described in article 19 of the *AIFMD* in respect of an AIF managed by a full-scope UK AIFM, and is not the AIFM of that AIF.

**feeder AIF** (in accordance with article 4(1)(m) of *AIFMD*) an AIF which:

(a) invests at least 85% of its assets in units or shares of another AIF (the ‘master AIF’); or

(b) invests at least 85% of its assets in two or more AIFs where those AIFs (the ‘master AIFs’) have identical investment strategies; or

(c) otherwise has an exposure of at least 85% of its assets to such a master AIF.

**full-scope EEA AIFM** an EEA AIFM which is authorised by its Home State in accordance with article 6(1) of *AIFMD*.

**full-scope UK AIFM** a UK AIFM which:

(a) is not a small AIFM; or

(b) is a small AIFM but has opted in to *AIFMD* in accordance with article 3(4) of *AIFMD*.

**fund** an AIF or a collective investment scheme.

**funds under management requirement** (1) (in *IPRU(INV)* 11) an amount of own funds that a collective portfolio management firm must hold under *IPRU(INV)* 11.3.2R (Funds under management requirement).

(2) (in *GENPRU*) an amount of own funds that a collective
portfolio management investment firm must hold under GENPRU 2.1.66R (Requirements for collective portfolio management investment firms).

**incoming EEA AIFM** an incoming EEA firm which is an AIFM and exercising its rights under AIFMD.

**incoming EEA AIFM branch** an incoming EEA firm which is an AIFM and exercising its right to establish a branch under AIFMD.

**internally managed AIF** (in accordance with regulation 4(3)(b) of the AIFMD UK regulation) an AIF where the legal form permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM.

**internally managed corporate AIF** a closed-ended corporate AIF which is an internally managed AIF.

**leverage** (in accordance with article 4(1)(v) of AIFMD) any method by which an AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.

**managing a UCITS** the regulated activity, specified in article 51ZA of the Regulated Activities Order of carrying on collective portfolio management within the meaning of the UCITS Directive, in relation to a UCITS.

**managing an AIF** the regulated activity, specified in article 51ZC of the Regulated Activities Order, which is, in summary, performing at least risk management or portfolio management for an AIF.

**master AIF** (in accordance with article 4(1)(y) of AIFMD) an AIF in which another AIF (a feeder AIF) invests or has an exposure in accordance with the definition of ‘feeder AIF’.

**non-EEA AIF** an AIF which is not a UK AIF or an EEA AIF.

**non-EEA AIFM** an AIFM which is not a UK AIFM or an EEA AIFM.

**non-listed company** (in accordance with article 4(1)(ac) of AIFMD) a company which has its registered office in the EEA and the shares of which are not admitted to trading on a regulated market.

**PII capital requirement (1)** (in IPRU(INV) 11) an amount of own funds that a collective portfolio management firm must hold in relation to its professional indemnity insurance policy to cover any defined excess (as set out in article 15 of the AIFMD level 2 regulation (professional indemnity insurance) (as replicated in IPRU(INV) 11.3.15EU)) and exclusions to that policy (see IPRU(INV) 11.3.16R (Professional negligence)).
(2) (in GENPRU) an amount of own funds that a collective portfolio management investment firm must hold in relation to its professional indemnity insurance policy to cover any defined excess (as set out in article 15 of the AIFMD level 2 regulation (professional indemnity insurance) (as replicated in GENPRU 2.1.71EU)) and exclusions to that policy (as set out in GENPRU 2.1.72R (Requirements for collective portfolio management investment firms)).

professional negligence capital requirement (1) (in IPRU(INV) 11) an amount of own funds that a collective portfolio management firm must hold professional liability risks as set out in article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in IPRU(INV) 11.3.14EU) (Professional negligence).

(2) (in GENPRU) an amount of own funds that a collective portfolio management investment firm must hold for professional liability risks as set out in article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in GENPRU 2.1.70EU (Requirements for collective portfolio management investment firms)).

residual CIS operator a firm with a Part 4A permission to carry on the activity specified in article 51ZE (Establishing etc. a collective investment scheme) of the Regulated Activities Order.


small AIFM an AIFM which meets the conditions in regulation 9 (meaning of “small AIFM”) of the AIFMD UK regulation.

small authorised UK AIFM a UK AIFM which:

(a) is a small AIFM; and

(b) has not opted in to AIFMD in accordance with article 3(4) of AIFMD to become a full-scope UK AIFM.

small non-EEA AIFM a non-EEA AIFM that is a small AIFM.

small registered UK AIFM a small AIFM that is registered by the FCA in accordance with regulation 10 of the AIFMD UK regulation.

supervisory authority (1) (in accordance with article 4(1)(al) of AIFMD) (for a non-EEA AIF) the national authority or authorities of the non-EEA State empowered by law or regulation to supervise
AIFs in that non-EEA State.

(2) (in accordance with article 4(1)(am) of AIFMD) (for a non-EEA AIFM) the national authority or authorities of the non-EEA State empowered by law or regulation to supervise AIFMs in that non-EEA State.

UK AIF an AIF that is:

(a) an authorised fund; or

(b) not an authorised fund but has its registered office or head office in the UK;

UK AIFM an AIFM established in the UK and with a Part 4A permission to carry on the regulated activity of managing an AIF.

UK depositary a depositary established in the UK.

unauthorised AIF an AIF which is not an authorised fund.

unauthorised fund a fund which is not an authorised fund.

Amend the following existing definitions as shown.

advising on investments (1) (except in SUP 10A (Approved Persons) and APER) the regulated activity, specified in article 53 of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

…

(2) (in SUP 10A (Approved Persons) and APER) the regulated activity specified in article 53 (Advising on investments) of the Regulated Activities Order. For these purposes, advising on investments includes any activities that would be included but for the exclusion in article 72AA (Managers of UCITS and AIFs) of the Regulated Activities Order.

alternative investment fund manager (1) (in GENPRU 3.1) a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking which is outside the EEA and which would require authorisation in accordance with Directive 2011/61/EU if it had its registered office within the EEA.

(2) (except in GENPRU 3.1 and in accordance with article 4(1)(b) of AIFMD) a legal person whose regular business is performing AIFM investment management functions for one
or more AIF.

**applicable asset**

…

(b) in relation to safeguarding and administering investments that is not MiFID business, acting as trustee or depositary of a UCITS, and/or acting as trustee or depositary of an AIF, a designated investment.

**authorised contractual scheme manager**

a firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM, which is the authorised fund manager of the ACS in accordance with the contractual scheme deed.

**authorised corporate director**

the director of an ICVC who is the authorised corporate director of the ICVC in accordance with COLL 6.5.3R (Appointment of an ACD) including, if relevant, an EEA UCITS management company or incoming EEA AIFM.

**base capital resources requirement**

(1) (except in IPRU(INV)) an amount of capital resources that an insurer must hold as set out in GENPRU 2.1.30R (Table: Base capital resources requirement for an insurer) or a BIPRU firm must hold under GENPRU 2.1.41R (Base capital resources requirement for a BIPRU firm) and GENPRU 2.1.48R (Table: Base capital resources requirement for a BIPRU firm) or, as the case may be, GENPRU 2.1.60R (Calculation of the base capital resources requirement for banks authorised before 1993).

(2) (in IPRU(INV)) an amount of own funds that a collective portfolio management firm must hold in line with IPRU(INV) 11.3.1R (Base capital resources requirement).

**BIPRU 125k firm**

has the meaning in BIPRU 1.1.19R (Types of investment firm: BIPRU 125K firm) which in summary is a BIPRU investment firm that satisfies the following conditions:

…

(4) it is not a UCITS investment firm collective portfolio management investment firm; and

…

**BIPRU 50k firm**

has the meaning in BIPRU 1.1.20R (Types of investment firm: BIPRU 50K firm) which in summary is a BIPRU investment firm that satisfies the following conditions:

…

(c) it is not a UCITS investment firm collective portfolio management investment firm; and
BIPRU 730k firm has the meaning in BIPRU 1.1.21R (Types of investment firm: BIPRU 730K firm) which in summary is a BIPRU investment firm that is not a UCITS investment firm collective portfolio management investment firm, a BIPRU 50K firm or a BIPRU 125K firm.

BIPRU investment firm has the meaning set out BIPRU 1.1.8R (Definition of a BIPRU investment firm), which is in summary one of the following types of BIPRU firm:

... including a UCITS investment firm collective portfolio management investment firm that is not excluded under BIPRU 1.1.7R (Exclusion of certain types of firm from the definition of BIPRU firm).

branch ...

(i) (in relation to an AIFM)

(i) a place of business which is a part of an AIFM that has no legal personality and provides the services for which the AIFM has been authorised;

(ii) for the purpose of (i), all places of business established in the same EEA State by an AIFM with its registered office in another EEA State shall be regarded as a single branch.

[Note: article 4(1)(c) of AIFMD]

client (1) (except in PROF and except in relation to a home finance transaction) has the meaning....

... 

(b) “client” includes:

... 

(iii) a collective investment scheme fund even if it does not have separate legal personality.

... 

client money ...

(2A) (in CASS 6, CASS 7, CASS 7A and CASS 10 and, in so far as it relates to matters covered by CASS 6, CASS 7, or
*COBS, GENPRU or IPRU(INV) 11* subject to the client money rules, money of any currency:

... 

**close links**

(1) (in relation to MiFID business or in FUND) a situation in which two or more persons are linked by: 

... 

[Note: article 4(1)(31) of MiFID]

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

[Note: article 4(1)(31) of MiFID and article 4(1)(e) of AIFMD]

... 

**collateral**

(1) (in COLL and FUND) any form of security, guarantee or indemnity provided by way of security for the discharge of any liability arising from a transaction.

... 

**competent authority**

... 

(8) (for an AIF) the national authorities of an EEA State which are empowered by law or regulation to supervise AIFs.

(9) (for an AIFM) a national authority in an EEA State which is empowered by law or regulation to supervise AIFMs.

**control**

... 


**counterparty risk**

(in COLL and FUND and in accordance with article 3(7) of the UCITS implementing Directive) the risk of loss for a UCITS or AIF resulting from the fact that the counterparty to a transaction may default on its obligations prior to the settlement of the transaction’s cash flow.

**custody asset**

(A) (in the FCA Handbook)

(1) other than when acting as trustee or depositary of an AIF:
(a) a designated investment held for or on behalf of a client;

(b) any other asset which is or may be held with a designated investment held for, or on behalf of, a client.

(2) in relation to acting as trustee or depositary of an AIF in CASS 6:

(a) an AIF custodial asset held by a depositary in line with FUND 3.11.21R (Depositary functions: safekeeping of financial instruments); or

(b) any other asset of an AIF in respect of which a depositary exercises safe-keeping functions in line with FUND 3.11.23R (Depositary functions: safekeeping of other assets).

depository

(1) …

c) (in relation to any other unit trust scheme other than an AIF specified in (e)) the person holding the property of the scheme on trust for the participants;

…

d) (in relation to any other collective investment scheme fund other than an AIF specified in (e)) any person to whom the fund property subject to the scheme is entrusted for safekeeping;

e) (for an AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM (other than an AIF which is an ICVC, an AUT or an ACS)) the person fulfilling:

(i) the function of a depositary in accordance with article 21(1) of AIFMD; or

(ii) one or more of the functions of cash monitoring, safekeeping or oversight for a non-EEA AIF, in line with FUND 3.11.33R(1)(a) (AIFM of a non-EEA AIF).

…

designated investment business

any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business:

…
(n) agreeing to carry on a regulated activity in (a) to (h) and (m) (article 64); 

(o) [deleted] 

(p) managing a UCITS; 

(q) acting as trustee or depositary of a UCITS; 

(r) managing an AIF; 

(s) acting as trustee or depositary of an AIF; 

(t) establishing, operating or winding up a collective investment scheme. 

EEA firm

(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights)) any of the following, if it does not have its relevant office in the United Kingdom: 

… 

(hh) an AIFM which is authorised (under article 6 of AIFMD) by its Home State regulator; 

in this definition, relevant office means: 

establishing, operating or winding up a collective investment scheme the regulated activity, specified in article 51(1)(a) or 51ZE of the Regulated Activities Order (Establishing etc. a collective investment scheme), of establishing, operating or winding up a collective investment scheme. 

fixed overheads requirement (1) (except in IPRU(INV)) the part of the capital resources requirement calculated in accordance with GENPRU 2.1.53R (Calculation of the fixed overheads requirement). 

(2) (in IPRU(INV)) the part of the own funds requirement calculated in accordance with IPRU(INV) 11.3.3R (Fixed overheads requirement). 

funds under management (1) (in UPRU and GENPRU) 

(++) (a) collective investment schemes other than OEICS managed by the firm including schemes where it has delegated the management function but excluding schemes that it is managing as delegate; and
OEICs for which the firm is the designated management company.

(2) (b) (in IPRU(INV) and GENPRU) funds managed by the firm, calculated as the sum of the absolute value of all assets of all funds managed by the firm, including assets acquired through the use of leverage and, for such purpose, derivative instruments shall be converted into their equivalent positions in the underlying assets using the conversion methodologies in article 10 of the AIFMD level 2 regulation and valued on the basis of that equivalent position. This includes funds where the firm has delegated the management function but excludes funds that it is managing as a delegate.

Home State

(13) (for an AIF) the EEA State in which:

(a) the AIF is authorised or registered under applicable national law; or

(b) if the AIF is neither authorised nor registered in an EEA State, the EEA State in which the AIF has its registered office and/or head office.

[Note: article 4(1)(p) of AIFMD]

(14) (for an AIFM) the EEA State in which the AIFM has its registered office.

[Note: article 4(1)(q) of AIFMD]

Host State

(5) (for an AIFM) means:

(a) an EEA state, other than the Home State, in which an EEA AIFM or UK AIFM manages EEA AIFs or UK AIFs; or

(b) an EEA state, other than the Home State, in which an EEA AIFM or UK AIFM markets units or shares of an EEA AIF or UK AIF;

[Note: article 4(1)(r) of AIFMD]

initial capital

(3A) (in IPRU(INV) 11) capital calculated in line with IPRU(INV) Table 11.4 (Method of calculating initial capital and own funds) composed of the specified items in that
Table.

... instrument constituting the scheme fund ...

(b) (for an AIF other than an ICVC, an AUT or an ACS) the fund rules, instrument of incorporation or other constituting documents of such an AIF;

... (in relation to a collective investment scheme other than an authorised fund AIF or an EEA UCITS scheme a UCITS) any instrument to which the operator is a party setting out any arrangements with any other person relating to any aspect of the operation or management of the scheme.

... investment management firm (subject to BIPRU TP 1.3R (Revised definition of investment management firm for certain transitional purposes)), a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, BIPRU investment firm, building society, collective portfolio management firm, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU-INV 3 or IPRU-INV 13 (Personal investment firms) and which is within (a), (b) or (c):

... (c) ...

(ii) ...

(Ca) managing an AIF;

... (Db) acting as trustee or depositary of an AIF;

(Dc) acting as trustee or depositary of a UCITS;
**issuer** (A) (in the FCA Handbook)

(1) (except in LR, PR and DTR as otherwise provided for below):

...

...

(6) (in FUND) means an issuer within the meaning of article 2(1)(d) of the Transparency Directive where that issuer has its registered office in the EEA and where its shares are admitted to trading on a regulated market.

**manager**

(1) (in relation to an AUT) the firm, including, if relevant an EEA UCITS management company or incoming EEA AIFM, which is the manager of the AUT in accordance with the trust deed.

(1A) (in relation to an OEIC which is an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive or which is an AIF, and which has appointed a person to manage the scheme) the person appointed to manage the scheme.

...

**market risk**

(1) (in COLL and FUND and in accordance with article 3(9) of the UCITS implementing Directive) the risk of loss of a UCITS or AIF resulting from fluctuation in the market value of positions in the scheme’s fund’s portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer’s credit worthiness.

(2) (except in COLL and FUND) (in relation to a firm) the risks that arise from fluctuations in values of, or income from, assets or in interest or exchange rates.

**marketing**

(1) (in COLL) (in relation to marketing units in a regulated collective investment scheme in a particular country or territory):

...

(2) (except in COLL) a direct or indirect offering or placement, at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages, to or with investors domiciled or with a registered office in the EEA.

[Note: article 4(1)(x) of AIFMD]
**MiFID investment firm**

(in summary) a firm to which MiFID applies including, for some purposes only, a credit institution and UCITS investment firm.

(collective portfolio management investment firm)

(in full) a firm which is:

…

(3) a UCITS investment firm collective portfolio management investment firm (only when providing the services referred to in article 6(4) AIFMD or Article 6(3) of the UCITS Directive in relation to the rules implementing the articles of MiFID referred to in article 6(6) of AIFMD or Article 6(4) of that Directive the UCITS Directive and for a full-scope UK AIFM the rules implementing article 12(2)(b) of AIFMD);

unless, and to the extent that, MiFID does not apply to it as a result of Article 2 (Exemptions) or Article 3 (Optional exemptions) of MiFID.

**operational risk**

(1) (in COLL and in accordance with article 3(10) of the UCITS implementing Directive and FUND) the risk of loss for a UCITS or AIF resulting from inadequate internal processes and failures in relation to the people and systems of the management company or AIFM or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the scheme fund.

(2) (except in COLL and FUND) (in accordance with Article 4(22) of the Banking Consolidation Directive) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

**own funds**

…

(2A) (in IPRU(INV) 11) the own funds of a firm calculated in line with IPRU(INV) Table 11.4 (Method of calculating initial capital and own funds).

…

**participant firm**

(1) (except in FEES 1 and FEES 6) a firm or a member other than:

(a) …

(vi) an AIFM managing an unauthorised AIF or providing the services in article 6(4) of AIFMD.
... (k) an AIFM qualifier.

... personal investment firm (subject to BIPRU TP 1 (Revised definition of personal investment firm for certain transitional purposes)) a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, BIPRU investment firm, building society, collective portfolio management firm, credit union, energy market participant, friendly society, ICVC, insurer, media firm, media firm, oil market participant, service company, service company, incoming EEA firm, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

... prime brokerage firm (1) (except in FUND) a firm that provides prime brokerage services to a client and which may do so acting as principal.

(2) (in FUND) a credit institution, regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional clients primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services, such as clearing and settlement of trades, custodial services, stock lending, customised technology and operational support facilities.

[Note: article 4(1)(af) of AIFMD]

proprietary trading (in SUP 10A (Approved Persons) and APER) dealing in investments as principal as part of a business of trading in specified investments. For these purposes dealing in investments as principal includes any activities that would be included but for the exclusion in Article 15 (Absence of holding out), or Article 16 (Dealing in contractually based investments) or, for a UK AIFM or UK UCITS management company, article 72AA (Managers of UCITS and AIFs) of the Regulated Activities Order.

prospectus (1) (in LR, PR, and FEES and FUND 3 (Requirements for managers of alternative investment funds)) a prospectus required under the prospectus directive.
qualifying capital instrument (in UPRA and IPRA(INV)) means that part of a firm's capital which is a security of indeterminate duration, or other instrument, that fulfils the following conditions:

qualifying capital item (in UPRA and IPRA(INV)) means that part of a firm's capital which has the following characteristics:

qualifying subordinated loan

(1) (in UPRA) has the meaning given in IPRA(INV) 5.2.5(1) to (7) (Qualifying subordinated loans).

(2) (in IPRA(INV) 11) has the meaning given in IPRA(INV) 11.5 (Qualifying subordinated loans).

readily realisable investment

(1) (except in UPRA and IPRA(INV))

(a) a packaged product;

(b) a readily realisable security.

(2) (in UPRA and IPRA(INV)) means a unit in a regulated collective investment scheme, a life policy or any marketable investment other than one which is traded on or under the rules of a recognised or designated investment exchange so irregularly or infrequently:

regulated activity

(A) in the PRA Handbook:

(in accordance with section 22 of the Act (Regulated activities)) any of the following activities specified in Part II of the Regulated Activities Order (Specified Activities):

... 

(n) acting as the depositary or sole director of an open-ended investment company (article 51(1)(c))

(na) managing a UCITS (article 51ZA);

(nb) acting as trustee or depositary of a UCITS (article 51ZB);

(nc) managing an AIF (article 51ZC);

(nd) acting as trustee or depositary of an AIF (article 51ZD);
(ne) establishing, operating or winding up a collective investment scheme (51ZE).

... 

**safe custody asset**

(a) in relation to MiFID business, a financial instrument; or

(b) in relation to safeguarding and administering investments that is not MiFID business and/or acting as trustee or depositary of a UCITS, a safe custody investment; or

(c) when acting as trustee or depositary of an AIF, an AIF custodial asset.

**securities and futures firm**

(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a firm whose permitted activities include designated investment business or bidding in emissions auctions, which is not an authorised professional firm, bank, BIPRU investment firm (unless it is an exempt BIPRU commodities firm), building society, collective portfolio management firm, credit union, friendly society, ICVC, insurer, media firm, service company, incoming EEA firm (without a top-up permission), incoming Treaty firm (without a top-up permission), UCITS management company or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g) or (h):

... 

**Single Market Directives**

(d) the Insurance Mediation Directive; and

(e) the UCITS Directive; and

(f) **AIFMD**.

**sponsor**

(1) ...

(2) (in BIPRU and FUND), in accordance with Article 4(42) of the Banking Consolidation Directive (Definitions) and in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation) an undertaking other than an originator that establishes and manages an asset backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities.
sub-fund …

(b) (in relation to a collective investment scheme fund that is not an authorised fund or an EEA UCITS scheme) any part of that scheme that is equivalent to (a).

top-up cover cover provided by the compensation scheme for claims against an incoming EEA firm (which is a credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary or, a MiFID investment firm, or a UCITS management company or an AIFM) in relation to the firm’s passported activities and in addition to, or due to the absence of, the cover provided by the firm’s Home State compensation scheme (see COMP 14 (Participation by EEA firms))

trading book …

(2) (in BIPRU, GENPRU and, BSOCS and IPRU(INV) 11 and in relation to a BIPRU firm) has the meaning in BIPRU 1.2 (Definition of the trading book) which is in summary, all that firm’s positions in CRD financial instruments and commodities held either with trading intent or in order to hedge other elements of the trading book, and which are either free of any restrictive covenants on their tradability or able to be hedged.

…

UCITS firm a firm which:

(a) is a management company, including where in addition the firm is also the operator of a collective investment scheme which is not a UCITS scheme an AIFM; and

(b) does not have a Part 4A permission (or an equivalent permission from its Home State regulator) to carry on any regulated activities other than those which are in connection with, or for the purpose of, such schemes managing collective investment undertakings.

unit (1) (in relation to a collective investment scheme) the investment, specified in article 81 of the Regulated Activities Order (Units in a collective investment scheme) and defined in section 237(2) of the Act (Other definitions)), which is the right or interest (however described) of the participants in a collective investment scheme; this includes:

…

(b) (in relation to an ICVC) a share in the ICVC; and
(2) (in relation to an alternative investment fund) the right or interest (however described) of an investor in an alternative investment fund.

Part II – to come into force on 22 July 2014

designated investment business any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business:

... 

(i) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); for the purposes of the permission regime, this is sub-divided into:

(ii) establishing, operating or winding up a regulated collective investment scheme;

(iii) establishing, operating or winding up an unregulated collective investment scheme;

(j) acting as trustee of an authorised unit trust scheme (article 51(1)(b));

(k) acting as the depositary or sole director of an open-ended investment company (article 51(1)(c));

(ka) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));

...
Annex C

Amendments to the Principles for Businesses (PRIN)

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

1.1 Application and purpose

Application

1.1.1 G The Principles (see PRIN 2) apply in whole or in part to every firm. The application of the Principles is modified for firms conducting MiFID business, incoming EEA firms, incoming Treaty firms, and UCITS qualifiers and AIFM qualifiers. PRIN 3 (Rules about application) specifies to whom, to what and where the Principles apply.

3 Rules about application

3.1 Who?

3.1.1 R PRIN applies to every firm, except that:

...  

(4) for a UCITS qualifier and AIFM qualifier, only Principles 1, 2, 3, 7, and 9 apply, and only with respect to the activities in PRIN 3.2.2R (Communication and approval of financial promotions);
### Annex D

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

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

### 1 Annex 1 Detailed application of SYSC

<table>
<thead>
<tr>
<th>Part</th>
<th>Application of the common platform requirements (SYSC 4 to 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Who?</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.6A</td>
<td></td>
</tr>
<tr>
<td>2.6B</td>
<td><strong>R</strong> Subject to SYSC 1 Annex 1 2.6CR, the <em>common platform requirements</em> do not apply to a <em>full-scope UK AIFM</em> of an <em>unauthorised AIF</em> except for:</td>
</tr>
<tr>
<td></td>
<td>(1) SYSC 4.1.1R to SYSC 4.1.2R and SYSC 4.1.2BR to SYSC 4.1.2DR;</td>
</tr>
<tr>
<td></td>
<td>(2) SYSC 4.2.1R, SYSC 4.2.1BR, SYSC 4.2.2R to 4.2.5G, SYSC 4.2.7R and SYSC 4.2.8G;</td>
</tr>
<tr>
<td></td>
<td>(3) SYSC 6.1.1R, which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the <em>firm</em> (including its <em>managers</em> and <em>employees</em>) might be used to further <em>financial crime</em>;</td>
</tr>
<tr>
<td></td>
<td>(4) SYSC 6.1.4-AG;</td>
</tr>
<tr>
<td></td>
<td>(5) SYSC 6.3;</td>
</tr>
<tr>
<td></td>
<td>(6) SYSC 7.1.7BG;</td>
</tr>
<tr>
<td></td>
<td>(7) SYSC 10.1.1R and SYSC 10.1.22R to 10.1.26R; and</td>
</tr>
<tr>
<td></td>
<td>(8) SYSC 10.2.</td>
</tr>
<tr>
<td>2.6C</td>
<td><strong>R</strong> The <em>common platform requirements</em> apply to an <em>AIFM investment firm</em> which is a <em>full-scope UK AIFM</em> in respect of its <em>MiFID business</em> in line with Column A of Part 3.</td>
</tr>
<tr>
<td>2.6D</td>
<td><strong>R</strong> The <em>common platform requirements</em> apply to a <em>full-scope UK AIFM</em> of an <em>authorised AIF</em> in line with column A++ of Part 3.</td>
</tr>
</tbody>
</table>
2.6E | G | The common platform requirements apply to a small authorised UK AIFM in line with Column B of Part 3 (unless such a firm is also a common platform firm, in which case they must comply with Column A).

2.6F | R | The common platform requirements do not apply to an incoming EEA AIFM branch in respect of its management of a UK AIF, except for:

1. those common platform requirements which are AIFMD host state requirements;

2. SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers and employees) might be used to further financial crime; and

3. SYSC 6.3.

Where?

2.16C | R | The common platform requirements apply to a full-scope UK AIFM in respect of its management of an AIF where carried on from an establishment in the UK.

2.16D | R | The common platform requirements, except those which are AIFMD host state requirements, apply to a full-scope UK AIFM in respect of its management of an EEA AIF from a branch in another EEA State.

2.16E | R | The common platform requirements apply to an AIFM investment firm which is a full-scope UK AIFM in respect of its MiFID business where carried on from an establishment in the UK.

2.16F | R | The common platform requirements, except the common platform requirements on financial crime and the common platform record-keeping requirements, apply to an AIFM investment firm in respect of its MiFID business where carried on from a branch in another EEA State.

Part 3 | Tables summarising the application of the common platform requirements to different types of firm

3.1 | G | The common platform requirements apply in the following three ways (subject to the provisions in Part 2 of this Annex).
3.2B | R | For a full-scope UK AIFM of an authorised AIF, they apply in line with Column A++ in the table below.

3.3 | G | For all other firms apart from insurers, managing agents, and the Society and full-scope UK AIFMs of unauthorised AIFs, they apply in line with Column B in the table below. For these firms, where a rule is shown modified in Column B as ‘Guidance’, it should be read as guidance (as it “should” appeared in that rule instead of “must”) and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s business.

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
<th>COLUMN B</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4.1.1R</td>
<td>Rule but SYSC 4.1.1R(2) applies only to a BIPRU firm</td>
<td>Rule but SYSC 4.1.1R(2) applies only to a BIPRU firm</td>
<td>Rule but SYSC 4.1.1R(2) applies only to a BIPRU firm</td>
<td>Rule but SYSC 4.1.1R(2) applies only to a third country BIPRU firm</td>
</tr>
<tr>
<td>SYSC 4.1.1AR</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.1BR</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.2R</td>
<td>…</td>
<td>…</td>
<td>Rule</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.1.2AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.1.2BR</td>
<td>…</td>
<td>…</td>
<td>Rule</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.1.2CR</td>
<td>…</td>
<td>…</td>
<td>Rule</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.1.2DR</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.3R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>--------</td>
<td>--------</td>
<td>-----</td>
<td>-----</td>
<td>----------------</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.4R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.4AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.5R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.6R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.7R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.7AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.8G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.9R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.10R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.1.10AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.11G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.13G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.1.14G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.1R</td>
<td>...</td>
<td>...</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.1AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.2R</td>
<td>...</td>
<td>...</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 4.2.3G -</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>SYSC 4.2.5G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
<td>...</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.6R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.7R</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.8R</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.2.9G</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.3.1R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.3.2R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC</td>
<td>4.3.2AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 4.3.3G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.1R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.2G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.3R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.4G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.5R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 4.4.6G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
<th>COLUMN B</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 5</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents and the Society, and full-scope UK AIFMs of unauthorised AIFs</td>
</tr>
<tr>
<td>SYSC 5.1.1R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>..</td>
</tr>
<tr>
<td>SYSC 5.1.2G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.3G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.4G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.4AG</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.5G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.5AG</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.6R</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.7R</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.7AG</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.8G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>Provision</td>
<td>COLUMN A</td>
<td>COLUMN A+</td>
<td>COLUMN A++</td>
<td>COLUMN B</td>
</tr>
<tr>
<td>-----------</td>
<td>----------</td>
<td>-----------</td>
<td>------------</td>
<td>---------</td>
</tr>
<tr>
<td>SYSC 6</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents, and the Society and full-scope UK AIFMs of unauthorised AIFs</td>
</tr>
<tr>
<td>SYSC 6.1.1R</td>
<td>…</td>
<td>…</td>
<td>Rule but only for the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its ...</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.9G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.10G</td>
<td>…</td>
<td>…</td>
<td>Guidance, but not applicable for the segregation of risk management functions</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.11G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.12R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.12AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.13R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.14R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 5.1.15G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
</tbody>
</table>
Managers and employees might be used to further financial crime

<table>
<thead>
<tr>
<th>SYSC 6.1.1AG</th>
<th>Guidance</th>
<th>Guidance</th>
<th>Guidance</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 6.1.2R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.2AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.3R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.3AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.4R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.4-AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.4-BG</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Guidance</td>
<td>Not applicable</td>
</tr>
<tr>
<td>SYSC 6.1.4AR</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.5R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.6G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.1.7R</td>
<td>Rule</td>
<td>Rule for a UCITS investment firm; otherwise not applicable</td>
<td>Not applicable</td>
<td>Guidance</td>
</tr>
<tr>
<td>SYSC 6.2.1R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.2.1AG</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.2.2G</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.1R</td>
<td>…</td>
<td>…</td>
<td>Rule</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.2G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.3R</td>
<td>…</td>
<td>…</td>
<td>Rule</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.4G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.5G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.6G</td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 6.3.7G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 6.3.8R</td>
<td>...</td>
<td>...</td>
<td>Rule</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 6.3.9R</td>
<td>...</td>
<td>...</td>
<td>Rule</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 6.3.10G</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 6.3.11G</td>
<td>Guidance</td>
<td>Guidance</td>
<td>Guidance</td>
<td>Guidance</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
<th>COLUMN B</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 7</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents, and the Society, and full-scope UK AIFMs of unauthorised AIFs</td>
</tr>
<tr>
<td>SYSC 7.1.1G</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.2R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.2AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.2BG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.3R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.4R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.4AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.4BG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.5R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.6R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.7R</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.7AG</td>
<td>...</td>
<td>...</td>
<td>Not applicable</td>
<td>...</td>
</tr>
<tr>
<td>SYSC 7.1.7BG</td>
<td>...</td>
<td>...</td>
<td>Guidance</td>
<td>...</td>
</tr>
<tr>
<td><strong>SYSC 7.1.7BA</strong></td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Guidance</td>
<td>Not applicable</td>
</tr>
<tr>
<td>------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>----------</td>
<td>----------------</td>
</tr>
<tr>
<td><strong>SYSC 7.1.7CG</strong></td>
<td>…</td>
<td>…</td>
<td>Guidance</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.8G(1), (2)</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.9R</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.10R</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.11R</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.12G</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.13R - 7.1.16R</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 7.1.16AG</strong></td>
<td>Guidance applies to a BIPRU firm</td>
<td>Guidance for a UCITS investment firm otherwise not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>SYSC 7.1.16BG</strong></td>
<td>Guidance applies to a BIPRU firm</td>
<td>Guidance for a UCITS investment firm otherwise not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

**Provision**

<table>
<thead>
<tr>
<th><strong>SYSC 8</strong></th>
<th><strong>COLUMN A</strong> Application to a common platform firm other than to a UCITS investment firm</th>
<th><strong>COLUMN A+</strong> Application to a UCITS management company</th>
<th><strong>COLUMNS A++</strong> Application to a full-scope UK AIFM of an authorised AIF</th>
<th><strong>COLUMN B</strong> Application to all other firms apart from insurers, managing agents, and the Society, and full-scope UK AIFMs of unauthorised AIFs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SYSC 8.1.1R</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 8.1.1AG</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 8.1.2G</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td><strong>SYSC 8.1.3G</strong></td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>Provision</td>
<td>COLUMN A</td>
<td>COLUMN A+</td>
<td>COLUMN A++</td>
<td>COLUMN B</td>
</tr>
<tr>
<td>------------</td>
<td>---------</td>
<td>-----------</td>
<td>-----------</td>
<td>---------</td>
</tr>
<tr>
<td>SYSC 9</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents, and the Society, and full-scope UK AIFMs of unauthorised AIFs</td>
</tr>
<tr>
<td>SYSC 9.1.1R</td>
<td>…</td>
<td>…</td>
<td>Rule but only for the requirement to arrange for</td>
<td>…</td>
</tr>
<tr>
<td>Provision</td>
<td>Column A</td>
<td>COLUMN A+</td>
<td>COLUMN A++</td>
<td>Column B</td>
</tr>
<tr>
<td>-----------</td>
<td>----------</td>
<td>-----------</td>
<td>------------</td>
<td>----------</td>
</tr>
<tr>
<td>SYSC 10</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>COLUMNA+ Application to a UCITS management company</td>
<td>COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents, and the Society, and full-scope UK AIFMs of unauthorised AIFs</td>
</tr>
<tr>
<td>SYSC 10.1.1R</td>
<td>…</td>
<td>…</td>
<td>Not applicable</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 10.1.1AR</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

 orderly records to be kept of its business and internal organisation which do not relate to portfolio transactions and subscription and redemptions orders

Rule but only for records specified by the modified application of SYSC 9.1.1R

Not applicable

Guidance

Not applicable

Not applicable

Not applicable
| SYSC 10.1.2G | ... | ... | Not applicable | ... |
| SYSC 10.1.3R | ... | ... | Not applicable | ... |
| SYSC 10.1.4R | ... | ... | Not applicable | ... |
| SYSC 10.1.4AG | ... | ... | Not applicable | ... |
| SYSC 10.1.5G | ... | ... | Not applicable | ... |
| SYSC 10.1.6R | ... | ... | Not applicable | ... |
| SYSC 10.1.6AG | ... | ... | Not applicable | ... |
| SYSC 10.1.7R | ... | ... | Not applicable | ... |
| SYSC 10.1.8R | ... | ... | Not applicable | ... |
| SYSC 10.1.8AR | ... | ... | Not applicable | ... |
| SYSC 10.1.9G | ... | ... | Not applicable | ... |
| SYSC 10.1.10R | ... | ... | Not applicable | ... |
| SYSC 10.1.11R | ... | ... | Not applicable | ... |
| SYSC 10.1.11AG | ... | ... | Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G to SYSC 10.1.15G | ... |
| SYSC 10.1.12G - SYSC 10.1.15G | ... | ... | Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G to SYSC 10.1.15G | ... |
| SYSC 10.1.16R | ... | ... | Not applicable | ... |
| SYSC 10.1.17R | ... | ... | Not applicable | ... |
| SYSC 10.1.18G | ... | ... | Not applicable | ... |
| SYSC 10.1.19R | ... | ... | Not applicable | ... |
| SYSC 10.1.20R | ... | ... | Not applicable | ... |
| SYSC 10.1.21R | ... | ... | Not applicable | ... |
4.1 General requirements

4.1.1 R …

[Note: article 22(1) of the Banking Consolidation Directive, article 13(5) second paragraph of MiFID and, article 12(1)(a) of the UCITS Directive, and article 18(1) of AIFMD]

4.1.1A R A full-scope UK AIFM must comply with the AIFM Remuneration Code.

[Note: article 13(1) of AIFMD]

4.1.1B R A full-scope UK AIFM must, in particular:

1. have rules for personal transactions by its employees or for the holding or management of investments it invests on its own account;

2. ensure that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and

3. ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the instrument constituting the fund and the legal provisions in force.

[Note: article 18(1) second paragraph of AIFMD]

4.1.2 R For a common platform firm, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the common platform firm’s activities and
must take into account the specific technical criteria described in SYSC 4.1.7R, SYSC 5.1.7R, SYSC 7 and (for a BIPRU firm and a third country BIPRU firm) SYSC 19A, or (for a full-scope UK AIFM) SYSC 19B.

... 4.1.2B  R For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R and SYSC 4.1.1AR must also take account of the UCITS schemes and EEA UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.

[Note: article 12(1) second paragraph of the UCITS Directive and article 18(1) second paragraph of AIFMD]

Resources for management companies and AIFMs

4.1.2C  R A management company, a full-scope UK AIFM and an incoming EEA AIFM branch must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 12(1)(c) of AIFMD]

4.1.2D  R A full-scope UK AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

[Note: article 18(1) first paragraph of AIFMD]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

4.1.2E  G Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 12(1) of AIFMD, articles 57 to 66 of the AIFMD level 2 regulation provide detailed rules supplementing articles 12 and 18 of AIFMD.

... 4.2.1  R The senior personnel of a common platform firm, a management company, a full-scope UK AIFM, or of the UK branch of a non-EEA bank must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm.

[Note: article 9(1) of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 11(1) second paragraph of the Banking Consolidation Directive]
Responsibility of senior personnel of an AIFM

4.2.1B R For a full-scope UK AIFM, the senior personnel must, in complying with SYSC 4.2.1R, be sufficiently experienced in relation to the investment strategies pursued by the AIFs it manages.

[Note: article 8(1)(c) of AIFMD]

4.2.2 R A common platform firm, a management company, a full-scope UK AIFM and the UK branch of a non-EEA bank must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R and, for a full-scope UK AIFM, SYSC 4.2.7R.

[Note: article 9(4) first paragraph of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 11(1) first paragraph of the Banking Consolidation Directive]

…

4.2.4 G At least two independent minds should be applied to both the formulation and implementation of the policies of a common platform firm, a management company, a full-scope UK AIFM and the UK branch of a non-EEA bank. Where such a firm nominates just two individuals to direct its business, the appropriate regulator will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business ...

4.2.5 G Where there are more than two individuals directing the business of a common platform firm, a management company, a full-scope UK AIFM or the UK branch of a non-EEA bank, the appropriate regulator does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction ...

…

4.2.6 R If a common platform firm, (other than a credit institution or AIFM investment firm) or the UK branch of a non-EEA bank, is:

(1) a natural person; or

(2) a legal person managed by a single natural person

it must have alternative arrangements in place which ensure sound and prudent management of the firm.

…

4.2.7 R A full-scope UK AIFM must notify the FCA of the names of the senior personnel of the firm and of every person succeeding them in office.

[Note: article 8(1)(c) of AIFMD]
4.2.8 G Where the senior personnel of a full-scope UK AIFM will carry out a governing function and the firm has applied for the FCA’s approval under section 59 of the Act, this will be considered sufficient to comply with SYSC 4.2.8R.

...

6.1.4-B G In setting the method of determining the remuneration of relevant persons involved in the compliance function, full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.

...

7.1.2C G Full-scope UK AIFMs should be aware that FUND 3.7 and articles 38 to 47 of the AIFMD level 2 regulation contain further requirements in relation to risk management.

...

7.1.7BA G In setting the method of determining the remuneration of employees involved in the risk management function full-scope UK AIFMs will need to comply with the AIFM Remuneration Code.

...

10 Conflicts of interest

10.1 Application

...

10.1.1A R This section also applies to:

(1) a full-scope UK AIFM of:

(i) a UK AIF;

(ii) an EEA AIF managed or marketed from an establishment in the UK; and

(iii) a non-EEA AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF.

...

Collective portfolio management investment firms
10.1.22 **R** A collective portfolio management investment firm which manages investments other than for an AIF or UCITS for which it has been appointed as manager, must obtain approval from its client before it invests all or part of the client’s portfolio in units or shares of an AIF or UCITS it manages.

[Note: article 12(2)(a) of the UCITS Directive and article 12(2)(a) of AIFMD]

Additional requirements for an AIFM

10.1.23 **R** An AIFM must take all reasonable steps to identify conflicts of interest that arise, in the course of managing AIFs, between:

1. the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and an AIF managed by the AIFM or the investors in that AIF; or
2. an AIF or the investors in that AIF, and another AIF or the investors in that AIF; or
3. an AIF or the investors in that AIF, and another client of the AIFM; or
4. an AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
5. two clients of the AIFM.

[Note: article 14(1) first paragraph of AIFMD]

10.1.24 **R** An AIFM must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors, and to ensure that the AIFs it manages are fairly treated.

[Note: article 12(1)d of AIFMD]

10.1.25 **R** An AIFM must:

1. maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors;

2. segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and

3. assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF’s investors.
[Note: article 14(1) second and third paragraphs of AIFMD]

10.1.26 R If the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors’ interests will be prevented, the AIFM must:

(1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and

(2) develop appropriate policies and procedures.

[Note: article 14(2) of AIFMD]

Subordinate measures for alternative investment fund managers

10.1.27 G Articles 30 to 37 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 14 of AIFMD.

…

19A Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 …

19A.1.1 G The AIFM Remuneration Code (SYSC 19B) also applies to a BIPRU firm which is a full-scope UK AIFM (ie a full-scope UK AIFM that is an AIFM investment firm). Such a full-scope UK AIFM that complies with all of SYSC 19B will also comply with all of the provisions of SYSC 19A. In such cases, the FCA will not require the full-scope UK AIFM to demonstrate compliance with SYSC 19A.

Insert the following section after SYSC 19A. The following text is all new and is not underlined.

19B AIFM Remuneration Code

19B.1 Application

19B.1.1 R The AIFM Remuneration Code applies to a full-scope UK AIFM of:
(1) a UK AIF;
(2) an EEA AIF; and
(3) a non-EEA AIF.

Remuneration policies and practices

19B.1.2 R An AIFM must establish, implement and maintain remuneration policies and practices for AIFM Remuneration Code staff that are consistent with, and promote, sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profile of the instrument constituting the fund of the AIFs it manages.

[Note: article 13(1) of AIFMD]

19B.1.3 R AIFM Remuneration Code staff comprise those categories of staff whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs the AIFM manages. This includes senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

[Note: article 13(1) of AIFMD]

19B.1.4 R (1) When establishing and applying the total remuneration policies for AIFM Remuneration Code staff (inclusive of salaries and discretionary pension benefits), an AIFM must comply with the AIFM remuneration principles in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities.

(2) Paragraph (1) does not apply to the requirement for significant AIFMs to have a remuneration committee (SYSC 19B.1.9R).

(3) The AIFM remuneration principles apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF made to the benefits of AIFM Remuneration Code staff.

[Note: paragraph 1 and 2 of Annex II of AIFMD]

AIFM Remuneration Principle 1: Risk management

19B.1.5 R An AIFM must ensure that its remuneration policy is consistent with, and promotes, sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles of the instrument constituting the fund of the AIFs it manages.

[Note: paragraph 1(a) of Annex II of AIFMD]
AIFM Remuneration Principle 2: Supporting business strategy, objectives, values and interests, and avoiding conflicts of interest

19B.1.6 R An AIFM must ensure that its remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest.

[Note: paragraph 1(b) of Annex II of AIFMD]

AIFM Remuneration Principle 3: Governance

19B.1.7 R An AIFM must ensure that the governing body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation.

[Note: paragraph 1(c) of Annex II of AIFMD]

19B.1.8 R An AIFM 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 governing body in its supervisory function.

[Note: paragraph 1(d) of Annex II of AIFMD]

19B.1.9 R (1) An AIFM that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a remuneration committee.

(2) The remuneration committee must be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices, and the incentives created for managing risk.

(3) The chairman and the members of the remuneration committee must be members of the governing body who do not perform any executive function in the AIFM.

(4) The remuneration committee must be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are taken by the governing body in its supervisory function.

[Note: paragraph 3 of Annex II of AIFMD]

AIFM Remuneration Principle 4: Control functions

19B.1.10 R An AIFM 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 they control.
19B.1.11 R An AIFM must ensure the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, or, if such a committee has not been established, by the governing body in its supervisory function.

19B.1.12 R An AIFM must ensure that, where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM. When assessing individual performance, financial and non-financial criteria are taken into account.

19B.1.13 R An AIFM must ensure that the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM to ensure that:

(1) the assessment process is based on longer term performance; and

(2) the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks.

19B.1.14 R An AIFM 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 service.

19B.1.15 R An AIFM must set appropriate ratios between the fixed and variable components of total remuneration and 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: paragraph 1(j) of Annex II of AIFMD]

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

19B.1.16 R An AIFM must ensure that payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

[Note: paragraph 1(k) of Annex II of AIFMD]

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

19B.1.17 R (1) Subject to the legal structure of the AIF and the instrument constituting the fund, an AIFM must ensure that a substantial portion, and in any event at least 50% of any variable remuneration, consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments. However, if the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, the minimum of 50 % does not apply.

(2) The instruments in (1) must be subject to an appropriate retention policy designed to align incentives with the long-term interests of the AIFM and the AIFs it manages and the investors of such AIFs.

(3) This rule applies to the portion of the variable remuneration component deferred in line with SYSC 19B.1.18R(1) and the portion not deferred.

[Note: paragraph 1(m) of Annex II of AIFMD]

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

19B.1.18 R (1) An AIFM 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 appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

(2) The period referred to in (1) must be at least three to five years, unless
the life cycle of the AIF concerned is shorter.

(3) Remuneration payable under (1) must vest no faster than on a pro-rata basis.

(4) In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount must be deferred.

[Note: paragraph 1(n) of Annex II of AIFMD]

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

19B.1.19 R An AIFM must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole and justified according to the performance of the AIF, the business unit and the individual concerned.

[Note: paragraph 1(o) first sub-paragraph of Annex II of AIFMD]

19B.1.20 G The total variable remuneration should generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

[Note: paragraph 1(o) second sub-paragraph of Annex II of AIFMD]

AIFM Remuneration Principle 6: Measurement of performance

19B.1.21 R An AIFM must ensure 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: paragraph 1(l) of Annex II of AIFMD]

AIFM Remuneration Principle 7: Pension policy

19B.1.22 R An AIFM must ensure that:

(1) its pension policy is in line with its business strategy, objectives, values and long-term interests of the AIFs it manages;

(2) when an employee leaves the firm before retirement, any discretionary pension benefits are held by the firm for a period of five years in the form of instruments in SYSC 19B.1.17R(1); and

(3) in the case of an employee reaching retirement, discretionary pension benefits are paid to the employee in the form of instruments referred to in SYSC 19B.1.17R(1) and subject to a five-year retention period.
AIFM Remuneration Principle 8: Personal investment strategies

19B.1.23 R An AIFM must ensure that its employees undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

AIFM Remuneration Principle 9: Avoidance of the remuneration code

19B.1.24 R An AIFM must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the AIFM Remuneration Code.

Amend the following as shown.

Additional guidance on governance arrangements

21.1.1 G (1) This chapter provides additional guidance on risk-centric governance arrangements for effective risk management. It expands upon the general organisational requirements in SYSC 2, SYSC 3, SYSC 4, and SYSC 7 and FUND 3.7, and so applies to the same extent as SYSC 3.1.1R (for insurers, managing agents and the Society), and SYSC 4.1.1R (for every other firm) and FUND 3.7 (for a full-scope UK AIFM of an authorised AIF).

(2) Firms should, taking account of their size, nature and complexity, consider whether in order to fulfil the general organisational requirements in SYSC 2, SYSC 3, SYSC 4, and SYSC 7 and (for a full-scope UK AIFM of an authorised AIF) FUND 3.7 their risk control arrangements should include:

…

TP 2 Firms other than common platform firms, insurers, managing agents and the Society

<p>| | | | | | | |
|   |   |   |   |   |   |   |
|---|---|---|---|---|---|
|   |   |   |   |   |   |</p>
<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transitional provision: dates in force</th>
<th>Handbook provisions: Coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2 The changes to SYSC set out in Annex D of the Alternative Investment Fund Managers Directive Instrument 2013</td>
<td>(1) Where a <em>firm</em> meets the conditions in (2) the changes effected by the Annex listed in column (2) do not apply and, therefore, the provisions in SYSC amended by that Annex will continue to apply as they were in force as at 21 July 2013. (2) the conditions are: (a) the <em>firm</em> falls within regulation 72(1) of the AIFMD UK regulation; and (b) the <em>firm</em> does not have a Part 4A permission to manage an AIF.</td>
<td>From 22 July 2013 until 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td>2.3 SYSC 4.2.2R to SYSC 4.2.5G, SYSC 9.1.2R and SYSC 9.1.3R</td>
<td>A small authorised UK AIFM of an unauthorised AIF which, prior to 22 July 2013, was a common platform firm must continue to comply with column (2) in respect of its activities as an AIFM.</td>
<td>From 22 July 2013 until 31 July 2015</td>
<td>22 July 2013</td>
</tr>
</tbody>
</table>
Annex E  
Amendments to the General Provisions sourcebook (GEN)

After GEN TP 2.2 insert TP 3, as set out below. The following text is all new and not underlined.


Table: 1 Transitional Provisions applying across the FCA Handbook

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>On 22 July 2013, the Alternative Investment Fund Managers Directive Instrument 2013 came into force. This instrument transposed provisions contained in the AIFMD into UK national law through provisions in the FCA Handbook.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>The entry into force of the Alternative Investment Fund Managers Directive Instrument 2013 requires a number of further consequential changes to be made to the FCA Handbook. These will be made in due course.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>Until that time, all provisions in the FCA Handbook must be interpreted in the light of the amendments made to the FCA Handbook by the Alternative Investment Fund Managers Directive Instrument 2013, unless the context requires otherwise. This is necessary to comply with the rule in GEN 2.2.1R. It should achieve the result that most people would probably expect to apply in any event.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table: 2 Transitional Provision applying across the FCA and PRA Handbooks

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>Every provision in the FCA Handbook, unless the context requires otherwise</td>
<td>R</td>
<td>All provisions in the FCA Handbook must be interpreted as far as possible in a manner giving effect to, or achieving the purpose of, the amendments made to the FCA Handbook by the Alternative Investment Fund Managers Directive</td>
<td>From 22 July 2013 until 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Paragraph 1</td>
<td>G</td>
<td>For example, where a provision of the FCA Handbook refers (or is to be read as referring) to a provision or a Glossary term which was replaced by the Alternative Investment Fund Managers Directive Instrument 2013 with a provision(s) or Glossary term(s) relating to substantially the same subject matter, the provision making the reference should be read, so far as the context permits, as if it was referring to the replacement provision(s) or Glossary term(s).</td>
<td>From 22 July 2013 until 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td>3</td>
<td>Amendments made to the FCA Handbook by the Alternative Investment Fund Managers Directive Instrument 2013</td>
<td>R</td>
<td>References to the “EEA” must be read as references to the “EU”.</td>
<td>From 22 July 2013 until such time as AIFMD is annexed to the EEA Agreement in accordance with article 102 of the EEA Agreement</td>
<td>22 July 2013</td>
</tr>
</tbody>
</table>
Annex F

Amendments to the Fees manual (FEES)

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

1 Fees Manual

Application

...

1.1.2 R This manual applies in the following way:

...

(2) FEES 1, 2 and 4 apply to:

(a) every firm (except an AIFM qualifier, ICVC or UCITS qualifier)

...

...

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

<table>
<thead>
<tr>
<th>(1) Fee payer</th>
<th>(2) Fee payable</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>..</td>
</tr>
<tr>
<td>(d) Applicants for an authorisation order for, or recognition under section 272 of the Act of, a collective investment scheme</td>
<td>FEES 3 Annex 2R, part 1, part 2</td>
<td>On or before the application is made</td>
</tr>
<tr>
<td>(e) The operator management company of a scheme making a notification under</td>
<td>FEES 3 Annex 2R, part 2, part 3</td>
<td>On or before the date the application is made</td>
</tr>
</tbody>
</table>
3 Annex 1R Authorisation fees payable

<table>
<thead>
<tr>
<th>Activity grouping</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.7</td>
<td>Fund managers Portfolio managers</td>
</tr>
<tr>
<td>A.9</td>
<td>Operators, trustees and depositaries of collective investment schemes, operators of personal pensions schemes and operators of stakeholder pension schemes Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes</td>
</tr>
</tbody>
</table>

3 Annex 2R Application and notification fees payable in relation to collective investment schemes

<table>
<thead>
<tr>
<th>Legislative provision</th>
<th>Nature and purpose of fee</th>
<th>Payable by</th>
<th>Amount of fee (£)</th>
<th>Umbrella factor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part 2 Application fees payable for firms to be subject to COLL</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 272 of the Act</td>
<td>On application for an order declaring a scheme to be an individually recognised overseas scheme</td>
<td>An applicant</td>
<td>14,000</td>
<td>2</td>
</tr>
<tr>
<td>Scheme Description</td>
<td>Fee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>an EEA AIF equivalent to a non-UCITS retail scheme</td>
<td>1,500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>an EEA AIF equivalent to a qualified investor scheme</td>
<td>2,400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a non-EEA AIF equivalent to a non-UCITS retail scheme or a qualified investor scheme</td>
<td>8,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part 3 – (notifications)

<table>
<thead>
<tr>
<th>Section 270 of the Act</th>
<th>On giving notice under section 270 of the Act</th>
<th>The operator</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>600</td>
</tr>
</tbody>
</table>

Section 270 of the Act...

4 Periodic fees

4.2 Obligation to pay periodic fees

Modifications for persons becoming subject to periodic fees during the course of a fee year

4.2.6 R (1) ...

(a) firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers) in accordance with FEES 4.2.7R and FEES
4.2.8R;

...  

4.2.7  R  A firm (other than an AIFM qualifier, ICVC or UCITS qualifier) which becomes authorised or registered, or whose permission and/or payment service activities are extended, during the course of the fee year must pay a fee which is calculated by:

...

<table>
<thead>
<tr>
<th>4.2.11 R</th>
<th>1 Fee payer</th>
<th>2 Fee payable</th>
<th>3 Due date</th>
<th>4 Events occurring during the period leading to modified periodic fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any firm (except an AIFM qualifier, ICVC, or a UCITS qualifier)</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Any manager of an authorised unit trust;</td>
<td>In relation to each unit trust, the amount specified in part 1 of FEES 4 Annex 4R</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Any authorised fund manager of an authorised contractual scheme;</td>
<td>For each authorised contractual scheme the amount specified in part 1 of FEES 4 Annex 4R</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Any ACD of an ICVC; and</td>
<td>In relation to each ICVC, the amount specified in part 1 of FEES 4 Annex 4R</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Persons who, under</td>
<td>In relation to</td>
<td>The relevant</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
the constitution or founding arrangements of a recognised scheme, is responsible for the management of the property held for or within the scheme, each recognised scheme the amount specified in part 1 of FEES 4 Annex 4R, scheme becomes a recognised collective investment scheme

| ... | ... | ... |

4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

4.3.1 The periodic fee payable by a firm (except an AIFM qualifier, ICVC or a UCITS qualifier) is:

| ... |

4 Annex 1AR FCA Activity groups, tariff bases and valuation dates

Part 1
This table shows how the FCA links the regulated activities for which a firm has permission to activity groups (fee-blocks). A firm can use the table to identify which fee-blocks it falls into based on its permission.

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Fee payer falls in the activity group if</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>A.7 Fund-managers Portfolio managers</td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>(3) the firm is a venture capital firm (a firm falling within this category is a class (3) firm if it is not a class (1) or (2) firm).</td>
</tr>
<tr>
<td></td>
<td>OR</td>
</tr>
<tr>
<td></td>
<td>(4) its permission includes managing an AIF or managing a UCITS</td>
</tr>
<tr>
<td>Note:</td>
<td></td>
</tr>
</tbody>
</table>
Class (1) firms are subdivided into three classes:

A.9 
Operators, Trustees and Depositaries of collective investment schemes and Operators of personal pension schemes or stakeholder pension schemes 
Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes

(1) its permission:
(a) includes one or more of the following:
managing an AIF;
managing a UCITS;
acting as trustee or depositary of an AIF;
acting as trustee or depositary of a UCITS;
...
AND
(b) PROVIDED the firm is NOT one of the following:
...
a firm which would be a venture capital firm but for the inclusion of managing an AIF on its permission; but only where the firm is managing an AIF exclusively in respect of AIFs which only invest in venture capital investments.

OR
...

Part 3
This table indicates the tariff base for each fee-block set out in Part 1.

<table>
<thead>
<tr>
<th>Activity group</th>
<th>Tariff base</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>A.7</td>
<td>FUNDS UNDER MANAGEMENT (FuM)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes on FuM
(a) For except for funds under management where the fund is an AIF, for the purposes of calculating the value of funds under management, assets means all assets that consist of or include any investment which is a designated investment or those assets in respect of which the arrangements for their management are such that the assets may consist of or include such investments, and either the assets have at any time since 29 April 1988 done
so or the arrangements have at any time (whether before or after that date) been held out as arrangements under which the assets would do so.

(aa) for funds under management, where the fund is an AIF, assets means all assets or property of any description of the fund.

... 

<table>
<thead>
<tr>
<th>A.9</th>
<th>GROSS INCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>For AIFMs (excluding internally managed AIFs), management companies, operators (including ACDs and authorised fund managers of unit trusts or authorised contractual schemes but excluding operators of a personal pension scheme or a stakeholder pension scheme) and residual CIS operators, gross income from the activity relating to fee-block A.9 is defined as: the amount of the annual charge on funds invested in regulated or unregulated collective investment scheme investments in the fund received or receivable in the latest accounting period (this is calculated as a % of funds invested, typically 1% p.a.); ...</td>
</tr>
<tr>
<td>(2)</td>
<td>For depositaries (including trustees of collective investment schemes and ICVC or ACS depositaries): The amount of the annual charge levied on funds in regulated collective investment scheme investments in funds for which they act as depositary (typically a % of the total funds for which they act as depositary).</td>
</tr>
<tr>
<td>(3)</td>
<td>For operators of a personal pension scheme or a stakeholder pension scheme gross income from the activity relating to fee block A.9 is defined as: ... Note: Only the gross income corresponding to United Kingdom business is relevant.</td>
</tr>
<tr>
<td>(4)</td>
<td>Internally managed AIFs must use a proxy for gross income for the activities relating to fee block A.9. This is the total value of funds under management (as defined in fee block A.7) multiplied by 0.01.</td>
</tr>
</tbody>
</table>

...
Part 1 – Periodic fees payable

<table>
<thead>
<tr>
<th>Scheme type</th>
<th>Basic fee</th>
<th>Total funds/sub-funds aggregate</th>
<th>Fund factor</th>
<th>Fee (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ICVC, AUT, ACS, Section 264 of the Act, Section 270 of the Act (for fee year 2013/2014 only), schemes formerly recognised under section 270 of the Act, as in force immediately before 22 July 2013, schemes other than non-EEA AIFs recognised under section 272 of the Act,</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Section 272 of the Act</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Non-EEA AIFs recognised under section 272 of the Act (from fee year 2014/2015), schemes formerly recognised under section 270 of the Act, as in force immediately before 22 July 2013</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

5 Financial Ombudsman Service Funding

5 Annex 1R Annual General Levy Payable in relation to the Compulsory Jurisdiction for 2013/2014

...
### Compulsory jurisdiction – general levy

<table>
<thead>
<tr>
<th>Industry block</th>
<th>Tariff base</th>
<th>General levy payable by firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>5. Fund managers</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>5. Portfolio managers (including those holding <em>client money/assets</em> and not holding <em>client money/assets</em>)</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>6. Operators, trustees and depositaries of collective investment schemes and operators of personal pensions schemes or stakeholder pension schemes</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>6. Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

#### 6 Financial Services Compensation Scheme Funding

…

#### 6 Annex 3AR Financial Services Compensation Scheme – classes

This table belongs to *FEES 6.4.7AR* and *FEES 6.5.6AR*

<table>
<thead>
<tr>
<th>Class D1</th>
<th>Investment provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firms with <em>permission</em> for:</td>
<td>Any of the following:</td>
</tr>
<tr>
<td></td>
<td><em>managing investments</em>;</td>
</tr>
<tr>
<td></td>
<td><em>managing an AIF</em>;</td>
</tr>
<tr>
<td></td>
<td><em>managing a UCITS</em>;</td>
</tr>
<tr>
<td></td>
<td><em>acting as trustee or depositary of an AIF</em>;</td>
</tr>
<tr>
<td>acting as trustee or depositary of a UCITS:</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
1.2 Adequacy of financial resources

... 

1.2.11 G The adequacy of a firm's financial resources needs to be assessed in relation to all the activities of the firm and the risks to which they give rise and so this section applies to a firm in relation to the whole of its business. In the case of a UCITS investment firm collective portfolio management investment firm this means that this section is not limited to designated investment business excluding scheme management activity. It also applies to scheme management activity and to activities that are not designated investment business its activities in relation to the management of AIFs and/or UCITS.

... 

2.1 Calculation of capital resources requirement

... 

2.1.8 G (3) In the case of a UCITS investment firm collective portfolio management investment firm this section implements article 9 of AIFMD and (in part) Article 7 of the UCITS Directive.

... 

Calculation of the variable capital requirement for a BIPRU firm

2.1.45 R Table: Calculation of the variable capital requirement for a BIPRU firm This table belongs to GENPRU 2.1.40R

<table>
<thead>
<tr>
<th>Firm category</th>
<th>Capital requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
| BIPRU limited licence firm (including UCITS investment firm collective portfolio) | the higher of (1) and (2):
| (1) the sum of: |
| (a) the credit risk capital requirement; and |
FCA 2013/51

Adjustment of the variable capital requirement calculation for UCITS investment firm collective portfolio management investment firms

2.1.46 R When a UCITS investment firm collective portfolio management investment firm calculates the credit risk capital requirement and the market risk capital requirement for the purpose of calculating the variable capital requirement under GENPRU 2.1.40R it must do so only in respect of designated investment business. For this purpose scheme management activity managing an AIF or managing a UCITS is excluded from designated investment business.

Table: Base capital resources requirement for a BIPRU firm

2.1.48 R This table belongs to GENPRU 2.1.47R

<table>
<thead>
<tr>
<th>Firm category</th>
<th>Amount: Currency equivalent of</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>UCITS investment firm collective portfolio management investment firm</td>
<td>€125,000 plus, if the funds under management exceed €250,000,000, 0.02% of the excess, subject to a maximum of €10,000,000.</td>
</tr>
</tbody>
</table>

Requirements for collective portfolio management investment firms

2.1.63 R A collective portfolio management investment firm must maintain capital resources which equal or exceed the higher of (1) and (2).

(1) (a) The higher of:

(i) the funds under management requirement (in line with GENPRU 2.1.66R); and

(ii) the fixed overheads requirement (in line with GENPRU 2.1.53R); plus

(b) whichever is applicable of:

(i) the professional negligence capital requirement (in line with GENPRU 2.1.67G(1)(a); or

(ii) the PII capital requirement (in line with GENPRU 2.1.67G(1)(b).
2.1.67G(1)(b).

(2) The amount specified in the table in GENPRU 2.1.45R.

[Note: article 9(5) and 9(7) of AIFMD and article 7(1)(a)(iii) of the UCITS Directive]

2.1.64 R A collective portfolio management investment firm must hold liquid assets (in line with GENPRU 2.1.73R) which equal or exceed:

(1) the higher of:

(a) the funds under management requirement (in line with GENPRU 2.1.66R) less the base capital resources requirement in GENPRU 2.1.48R; and

(b) the fixed overheads requirement (in line with GENPRU 2.1.53R); plus

(2) whichever is applicable of:

(a) the professional negligence capital requirement (in line with GENPRU 2.1.67G(1)(a)); or

(b) the PII capital requirement (in line with GENPRU 2.1.67G(1)(b)).

2.1.65 G (1) The professional negligence capital requirement applies for a collective portfolio investment management firm which, in line with GENPRU 2.1.67G(1)(a), decides to cover professional liability risks by way of own funds.

(2) The PII capital requirement applies for a collective portfolio management investment firm which, in line with GENPRU 2.1.67G(1)(b), decides to cover professional liability risks by way of professional indemnity insurance.

2.1.66 R The funds under management requirement is (subject to a maximum of €10,000,000) the sum of:

(1) the base capital resources requirement; plus

(2) 0.02% of the amount by which the funds under management exceed €250,000,000.

[Note: article 9(3) of AIFMD and article 7(1)(a)(i) of the UCITS Directive]

2.1.67 G A firm should:

(1) cover the professional liability risks in article 12 of the AIFMD level 2 regulation (professional liability risks) (as replicated in GENPRU 2.1.68EU) by either:
FCA 2013/51

(a) maintaining an amount of own funds in accordance with article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in GENPRU 2.1.70EU) (the professional negligence capital requirement); or

(b) holding professional indemnity insurance and maintaining an amount of own funds to meet the PII capital requirement in accordance with article 15 of the AIFMD level 2 regulation (professional indemnity insurance) (as replicated in GENPRU 2.1.71EU) and GENPRU 2.1.72R; and

(2) comply with the qualitative requirements addressing professional liability risks in article 13 of the AIFMD level 2 regulation (qualitative requirements addressing professional liability) (as replicated in GENPRU 2.1.69EU).

2.1.68 EU Professional liability risks

1. The professional liability risks to be covered pursuant to Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

2. Professional liability risks as defined in paragraph 1 shall include, without being limited to, risks of:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>loss of documents evidencing title of assets of the AIF;</td>
</tr>
<tr>
<td>(b)</td>
<td>misrepresentations or misleading statements made to the AIF or its investors;</td>
</tr>
<tr>
<td>(c)</td>
<td>acts, errors or omissions resulting in a breach of:</td>
</tr>
<tr>
<td></td>
<td>(i) legal and regulatory obligations;</td>
</tr>
<tr>
<td></td>
<td>(ii) duty of skill and care towards the AIF and its investors;</td>
</tr>
<tr>
<td></td>
<td>(iii) fiduciary duties;</td>
</tr>
<tr>
<td></td>
<td>(iv) obligations of confidentiality;</td>
</tr>
<tr>
<td></td>
<td>(v) AIF or incorporation;</td>
</tr>
<tr>
<td></td>
<td>(vi) terms of appointment of the AIFM by the AIF;</td>
</tr>
<tr>
<td>(d)</td>
<td>failure to establish, implement and maintain appropriate procedures to prevent dishonest, fraudulent or malicious acts;</td>
</tr>
<tr>
<td>(e)</td>
<td>improperly carried out valuation of assets or calculation of unit/share prices;</td>
</tr>
</tbody>
</table>
(f) losses arising from business disruption, system failures, failure of transaction processing or process management.

3. Professional liability risks shall be covered at all times either through appropriate additional own funds determined in accordance with Article 14 or through appropriate coverage of professional indemnity insurance determined in accordance with Article 15.

[Note: article 12 of the AIFMD level 2 regulation]

<table>
<thead>
<tr>
<th>2.1.69</th>
<th>EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualitative requirements addressing professional liability risks</td>
<td></td>
</tr>
<tr>
<td><strong>1.</strong></td>
<td>An AIFM shall implement effective internal operational risk management policies and procedures in order to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. The operational risk management activities shall be performed independently as part of the risk management policy.</td>
</tr>
<tr>
<td><strong>2.</strong></td>
<td>An AIFM shall set up a historical loss database, in which any operational failures, loss and damage experience shall be recorded. This database shall record, without being limited to, any professional liability risks as referred to in Article 12(2) that have materialised.</td>
</tr>
<tr>
<td><strong>3.</strong></td>
<td>Within the risk management framework the AIFM shall make use of its internal historical loss data and where appropriate of external data, scenario analysis and factors reflecting the business environment and internal control systems.</td>
</tr>
<tr>
<td><strong>4.</strong></td>
<td>Operational risk exposures and loss experience shall be monitored on an ongoing basis and shall be subject to regular internal reporting.</td>
</tr>
<tr>
<td><strong>5.</strong></td>
<td>An AIFM’s operational risk management policies and procedures shall be well documented. An AIFM shall have arrangements in place for ensuring compliance with its operational risk management policies and effective measures for the treatment of non-compliance with these policies. An AIFM shall have procedures in place for taking appropriate corrective action.</td>
</tr>
<tr>
<td><strong>6.</strong></td>
<td>The operational risk management policies and procedures and measurement systems shall be subject to regular review, at least on an annual basis.</td>
</tr>
<tr>
<td><strong>7.</strong></td>
<td>An AIFM shall maintain financial resources adequate to its assessed risk profile.</td>
</tr>
</tbody>
</table>

[Note: article 13 of the AIFMD level 2 regulation]
### Additional own funds

1. This Article shall apply to AIFMs that choose to cover professional liability risks through additional own funds.

2. The AIFM shall provide additional own funds for covering liability risks arising from professional negligence at least equal to 0.01% of the value of the portfolios of AIFs managed.

   The value of the portfolios of AIFs managed shall be the sum of the absolute value of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value.

3. The additional own funds requirement referred to in paragraph 2 shall be recalculated at the end of each financial year and the amount of additional own funds shall be adjusted accordingly.

   The AIFM shall establish, implement and apply procedures to monitor on an ongoing basis the value of the portfolios of AIFs managed, calculated in accordance with the second subparagraph of paragraph 2. Where, before the annual recalculation referred to in the first subparagraph, the value of the portfolios of AIFs managed increases significantly, the AIFM shall without undue delay recalculate the additional own funds requirement and shall adjust the additional own funds accordingly.

4. The competent authority of the home Member State of the AIFM may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied — on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment — that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0.008% of the value of the portfolios of AIFs managed by the AIFM.

5. The competent authority of the home Member State of the AIFM may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM’s additional own funds are insufficient.

[Note: article 14 of the AIFMD level 2 regulation]
### 2.1.71 EU

**Professional indemnity insurance**

| 1. | This Article shall apply to AIFMs that choose to cover professional liability risks through professional indemnity insurance. |
| 2. | The AIFM shall take out and maintain at all times professional indemnity insurance that: |
|     | (a) shall have an initial term of no less than one year; |
|     | (b) shall have a notice period for cancellation of at least 90 days; |
|     | (c) shall cover professional liability risks as defined in Article 12(1) and (2); |
|     | (d) is taken out from an EU or non-EU undertaking authorised to provide professional indemnity insurance, in accordance with Union law or national law; |
|     | (e) is provided by a third party entity. |

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with Article 9(1) and (3) of Directive 2011/61/EU.

| 3. | The coverage of the insurance for an individual claim shall be equal to at least 0.7% of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2). |
| 4. | The coverage of the insurance for claims in aggregate per year shall be equal to at least 0.9% of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2). |
| 5. | The AIFM shall review the professional indemnity insurance policy and its compliance with the requirements laid down in this Article at least once a year and in the event of any change which affects the policy’s compliance with the requirements in this Article. |

[Note: article 15 of the AIFMD level 2 regulation]

### 2.1.72 R

If a firm satisfies the requirement referred to in GENPRU 2.1.67G with professional indemnity insurance, it must, in addition to maintaining an amount of own funds to cover any defined excess, hold adequate own funds to cover any exclusions in the insurance policy that would otherwise result in the firm having insufficient resources to cover liabilities arising. A firm may satisfy its requirements for professional indemnity insurance with a policy that also provides cover to one or more entities other than the firm, provided the policy satisfies the conditions of the AIFMD level 2.
2.1.73 R In GENPRU 2.1.64R, liquid assets are assets which:

(1) are readily convertible to cash within one month; and

(2) have not been invested in speculative positions.

2.1.74 G Examples of liquid assets that are acceptable for the purposes of GENPRU 2.1.73R include cash, readily realisable investments that are not held for short-term resale, and debtors.

[Note: article 9(8) of AIFMD]

Please insert the following text after TP 15, all of the text is new and is not underlined.

TP 16 AIFMD

Application

16.1 R GENPRU TP 16 applies to a collective portfolio management investment firm.

Duration of transitional

16.2 R GENPRU TP 16.4 applies from 22 July 2013 until 21 July 2014.

16.3 R GENPRU TP 16.5 applies from 22 July 2013.

Transitional provision

16.4 R (1) Where a firm meets the conditions in (2), the changes effected by Annex G of the Alternative Investment Fund Managers Directive Instrument 2013 do not apply and, therefore, the provisions in GENPRU amended by that Annex will continue to apply as they were in force as at 21 July 2013.

(2) The conditions referred to in (1) are:

(a) the firm falls within regulation 72(1) of the AIFMD UK regulation; and

(b) the firm does not have a Part 4A permission to manage an AIF.

16.5 R Where a firm falls within regulation 74(1) or 75(1) of the AIFMD UK regulation it need not include AIFs managed by it that fall within those regulations in the calculation of its funds under management requirement, professional negligence capital requirement or PII excess capital requirement.
Annex H

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

1.1 Application

... 

1.1.3 G In the main BIPRU only applies to a UCITS investment firm collective portfolio management investment firm in respect of designated investment business (excluding scheme management activity managing an AIF and managing a UCITS). However BIPRU 2.2 (Internal capital adequacy standards), BIPRU 2.3 (Interest rate risk in the non-trading book), BIPRU 8 (Group risk - consolidation) and BIPRU 11 (Disclosure) apply to the whole of its business.

... 

1.1.8 R A firm falling within BIPRU 1.1.6R(3) to BIPRU 1.1.6R(5) is a BIPRU investment firm. A BIPRU investment firm includes a UCITS investment firm collective portfolio management investment firm that is not excluded under BIPRU 1.1.7R.

... 

Alternative classification of BIPRU investment firms

1.1.18 R BIPRU investment firm are divided into the following classes for the purposes of the calculation of the base capital resources requirement and for the purpose of any other provision of the Handbook that applies this classification:

(1) a UCITS investment firm collective portfolio management investment firm;

... 

Types of investment firm: BIPRU 125K firm

1.1.19 R A BIPRU 125K firm means a BIPRU investment firm that satisfies the following conditions:

... 

(4) it is not a UCITS investment firm collective portfolio management investment firm; and,
Types of investment firm: BIPRU 50K firm

1.1.20 R A BIPRU 50K firm means a BIPRU investment firm that satisfies the following conditions:

…

(3) it is not a UCITS investment firm collective portfolio management investment firm; and

…

Types of investment firm: 730K firm

1.1.21 R A BIPRU investment firm that is not a UCITS investment firm collective portfolio management investment firm, a BIPRU 50K firm or a BIPRU 125K firm is a BIPRU 730K firm. A BIPRU investment firm that operates a multilateral trading facility is a BIPRU 730k firm.

…

8.5 Basis of consolidation

…

Basis of inclusion of UCITS investment firms collective portfolio management investment firms in consolidation

8.5.7 R GENPRU 2.1.46R (Adjustment of the variable capital requirement calculation for UCITS investment firms collective portfolio management investment firms) does not apply for the purpose of this chapter.

8.5.8 G In general a UCITS investment firm collective portfolio management investment firm only calculates its capital and concentration risk requirements in relation to its designated investment business and does not calculate them with respect to scheme management activity managing an AIF or managing a UCITS. The effect of BIPRU 8.5.7R is that this does not apply on a consolidated basis. For the purpose of this chapter the calculations are carried out with respect to the whole of the activities of a UCITS investment firm collective portfolio management investment firm.

…

Please insert the following text after TP 34, all of the text is new and is not underlined.
TP 35  AIFMD

Application

35.1  R  **BIPRU TP 35 applies to a collective portfolio management investment firm.**

Duration of transitional

35.2  R  **BIPRU TP 35 applies from 22 July 2013 until 21 July 2014**

Transitional provision

35.3  R  (1)  Where a firm meets the conditions in (2), the changes effected by Annex H of the Alternative Investment Fund Managers Directive Instrument 2013 do not apply and, therefore, the provisions in **BIPRU** amended by that Annex will continue to apply as they were in force as at 21 July 2013.

(2)  The conditions referred to in (1) are:

(a)  the firm falls within regulation 72(1) of the **AIFMD UK regulation**; and

(b)  the firm does not have a **Part 4A permission to manage an AIF**.
Annex I

Amendments to the Prudential sourcebook for UCITS firms (UPRU)

In this Annex new text is underlined and struck through text is deleted unless otherwise indicated.

Part I: Comes into force on 22 July 2013

1.1 Introduction

Application

1.1.1 R This Subject to 1.1.4R, this sourcebook and any provisions of the Interim Prudential sourcebook for investment businesses incorporated into this sourcebook by reference, apply to every UCITS firm.

... 

1.1.4 R This sourcebook does not apply to a UCITS firm to which IPRU(INV) 11 (Collective Portfolio Management Firms) applies.

1.1.5 G IPRU(INV) TP 5 allows a UCITS firm that is authorised as such on or before 21 July 2013 to continue to comply, if it so wishes, with UPRU rather than IPRU (INV) 11 until 21 July 2014 or the date it becomes a UK AIFM (if earlier).

1.1.6 G This sourcebook will be deleted in its entirety on 22 July 2014 and, from this date, a UCITS firm must comply with IPRU(INV) 11.

Part II: Comes into force on 22 July 2014

This sourcebook is deleted in its entirety.
Annex J
Amendments to the Interim Prudential sourcebook for Investment Business (IPRU(INV))

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

Contents

Chapter

…

10 [deleted]

11 Collective Portfolio Management Firms

…

Transitional provisions

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>IPRU(INV) 11</td>
<td>R</td>
<td>A UCITS firm authorised on or before 21 July 2013 need not comply with IPRU(INV) 11 until 22 July 2014 or the date it becomes a UK AIFM (if earlier), provided it continues to comply instead with UPRU.</td>
<td>22 July 2013 to 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td>6</td>
<td>The changes to IPRU(INV) in Annex J of the Alternative Investment Fund Managers Directive Instrument</td>
<td>R</td>
<td>(1) Where a firm meets the conditions in (2) the changes effected by the Annex listed in column (2) do not apply and the provisions in IPRU(INV) amended by that Annex will continue to apply as they were in force as at 21 July 2013. (2) The conditions are: (a) the</td>
<td>From 22 July 2013 until 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td>Year</td>
<td>Regulation</td>
<td>Section</td>
<td>Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
<td>---------</td>
<td>-------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>firm falls within regulation 72(1) of the AIFMD UK regulation; and (b) the firm does not have a Part 4A permission to manage an AIF.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>IPRU(INV) 11</td>
<td>R</td>
<td>Where a firm falls within regulation 74(1) or 75(1) of the AIFMD UK regulation it need not include AIFs managed by it that fall within those regulations in the calculation of its funds under management requirement, professional negligence capital requirement or PII excess capital requirement. From 22 July 2013</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

Chapter 1: Application and General Provisions

1.2.1 R The Glossary applies to the transitional provisions, this chapter (IPRU(INV) 1), IPRU(INV) 2, IPRU(INV) 4, IPRU(INV) 6, IPRU(INV) 11 and IPRU(INV) 13.

1.2.2 R (1) IPRU(INV) applies to:

- a credit union which is a CFT provider; and
- an exempt CAD firm; and
- a collective portfolio management firm.

1.2.3 G For the avoidance of doubt, IPRU(INV) does not apply to any of the following:

- a UCITS qualifier; or
- a UCITS management company.

1.2.5 R Table
Chapter 2: Authorised professional firms

2.1.2 R …

(2) The type of authorised professional firm to which (1) applies is one:

…

(d) which acts as the trustee or operator of a regulated collective investment scheme;

(da) which acts as a small authorised UK AIFM or a residual CIS operator;

(db) which acts as a depositary;

…

2.1.4 R This table belongs to IPRU(INV) 2.1.1R

<table>
<thead>
<tr>
<th>TYPE OF BUSINESS ACTIVITY</th>
<th>CHAPTER OF SOURCEBOOK</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>(iv) acting as the ACD or depositary of an ICVC, or [deleted]</td>
<td>…</td>
</tr>
<tr>
<td>(iva) acting as trustee or depositary of a UCITS; or</td>
<td>…</td>
</tr>
<tr>
<td>(ivb) managing an AIF; or</td>
<td>…</td>
</tr>
</tbody>
</table>
(ivc) acting as trustee or depositary of an AIF; or

(v) establishing, operating or winding up other collective investment schemes acting as a residual CIS operator; or

…

2.1.7 G The activities that a full-scope UK AIFM and a UCITS management company are allowed to perform are restricted by article 6 of AIFMD and article 6 of the UCITS Directive to the management of AIFs and/or UCITS and the additional investment activities permitted by article 6(4) of AIFMD and article 6(3) of the UCITS Directive (as applicable). As such, an authorised professional firm cannot be a collective portfolio management firm or a collective portfolio management investment firm.

APPENDIX 1 – GLOSSARY OF TERMS FOR IPRU(INV) 3

investment business means any of the following regulated activities specified in Part II of the Regulated Activities Order and which is carried on by way of business:

…

(i) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); [deleted]

(ia) managing a UCITS (article 51ZA);

(ib) acting as trustee or depositary of a UCITS (article 51ZB);

(ic) managing an AIF (article 51ZC);

(id) acting as trustee or depositary of an AIF (article 51ZD);

(ie) acting as a residual CIS operator (article 51ZE);

(j) acting as a trustee of an authorised unit trust scheme (article 51(1)(b)) or acting as the depositary of an authorised contractual scheme (article 51(1)(bb)); [deleted]

(k) acting as the depositary or sole director of an open-ended
investment company (article 51(1)(c)); [deleted]

...

scheme management activity means the management by an operator of a collective investment scheme of the property held for or within a collective investment scheme of which it is the operator and includes the management of the property of an open-ended investment company by the company itself as its operator but excludes the management of an open-ended investment company by another person as its operator (and excludes in all cases activities relating to transactions in units, shares or interests in the collective investment scheme); [deleted]

...

5 Chapter 5: Financial Resources

...

Exceptions from the liquid capital requirement

5.2.3(2) R ...

(i) is an exempt CAD firm which is also an operator of a collective investment scheme a residual CIS operator or a small authorised UK AIFM and that scheme or AIF only invests in venture capital investments for non-retail clients; or

(ii) ...

(c) the firm is a trustee of an authorised unit trust scheme whose permitted business consists only of trustee activities and does not include any other activity constituting specified trustee business or the firm is a depositary of an ICVC or ACS or a depositary appointed in line with FUND 3.11.12R (Eligible depositaries for UK AIFs) or a UK depositary of a non-EEA AIF whose permitted business consists only of depositary activities.

(d) the firm's permitted business limits it to acting as the operator of a collective investment scheme a residual CIS operator or a small authorised UK AIFM whose where the main purpose of the collective investment scheme or AIF (as applicable) is to invest in permitted immovables whether in the UK or abroad.

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)  £4,000,000 for a *firm* which is a trustee of an authorised unit trust scheme or a depositary of an ICVC or ACS;

(i)  €125,000 for *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

(ii) £5,000 for any other *firm*.

---

Table 5.2.3(5)(b) POSITION RISK REQUIREMENT

---

F  Determination of disallowed value of units

The disallowed value of units held in a *UCITS management company*’s box is the difference between:

(a)  the amount at which stocks of units in the box are valued in the balance sheet; and

(b)  the adjusted value of the units, being the value of the units calculated at cancellation prices less the value calculated at cancellation prices of the units multiplied by the following percentages based on the types of *investments* in the individual *UCITS schemes*:

- *Quoted, fixed or floating rate interest bearing securities:* 3%
- *Equities*:
  - USA, Japan, Canada 5%
  - Europe 6%
  - Far East and other 10%

Note

This can be illustrated as follows: 100 units, comprising Far East equities, with unit cancellation price of 100 pence:

\[
\begin{array}{l|l|l}
\text{Balance sheet value} & 104 \\
\text{Value of cancellation price} & 100 \\
\text{Less £100 x 10%} & 10 \\
\text{90} & \\
\end{array}
\]
Note

The percentages in the requirement column are applied to the market value (unless otherwise stated) of gross positions i.e. both longs and shorts in each category; netting and offsetting are prohibited. The long or short position in a particular instrument is the net of any long or short positions held in that same instrument. [deleted]

Table 5.2.3(5)(e) OTHER ASSETS REQUIREMENT

... PART II RISK FACTORS

Assets and Off-Balance Sheet Items | Risk Factor
--- | ---
Assets | 
Cash at bank and in hand and equivalent items | NIL
Assets secured by acceptable collateral including deposits and certificates of deposit with lending institutions | NIL

Appendix 1 (Interpretation)

Glossary of Terms for Chapter 5 (Former IMRO Firms)

... funds under management (1) collective investment schemes other than OEICs managed by the firm including schemes where it has delegated the management function but excluding schemes that it is managing as delegate; and [deleted]

(2) OEICs for which the firm is the designated management company. [deleted]

... specified trustee business 1. means any investment business carried on in the UK by a trustee firm, but excluding each of the following activities:
[...]

(d) Establishing, operating or winding up a collective investment scheme including or acting as trustee of an authorised unit trust scheme but only to the extent that such activities do not otherwise constitute specified trustee business.

[...]

Please insert the following chapter after IPRU(INV) 10, the text is all new and is not underlined.

11 Chapter 11: Collective Portfolio Management Firms

11.1 Introduction

Application

11.1.1 R This chapter applies to a collective portfolio management firm.

11.1.2 G A collective portfolio management firm that manages an AIF is an internally managed AIF or an external AIFM. This affects the firm’s base capital resources requirement (see IPRU(INV) 11.3.1R). An internally managed AIF is not permitted to engage in activities other than the management of that AIF, whereas an external AIFM may manage AIFs and/or UCITS, provided it has permission to do so. A firm that is an external AIFM and/or a UCITS management company may undertake any of the additional investment activities permitted by article 6(4) of AIFMD or article 6(3) of the UCITS Directive (as applicable), provided it has permission to do so, but if so it is subject to GENPRU and BIPRU rather than IPRU(INV) and is classified as a collective portfolio management investment firm, as opposed to a collective portfolio management firm.

Relevant accounting principles

11.1.3 R (1) Except where a rule makes a different provision, terms in this chapter must have the meaning given to them in the Companies Act 2006 or the firm’s accounting framework (usually UK generally accepted accounting principles or IFRS) where defined in that Act or framework.

(2) Accounting policies must be the same as those adopted in the firm’s annual report and accounts and must be consistently applied.

Purpose
11.1.4 G (1) This chapter amplifies threshold condition 2D (Appropriate resources) by providing that a firm must meet, on a continuing basis, a minimum capital resources requirement. This chapter also amplifies Principles 3 and 4 which require a firm to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems, and to maintain adequate financial resources by setting out a capital resources requirement for a firm according to the regulated activity or activities it carries on.

(2) This chapter also implements relevant requirements of AIFMD and the UCITS Directive, which includes imposing capital and professional indemnity insurance requirements on an AIFM and a UCITS management company.

11.2 Main requirements

Collective portfolio management firm

11.2.1 R A collective portfolio management firm must:

(1) when it first becomes a collective portfolio management firm, hold initial capital of not less than the applicable base capital resources requirement (in line with IPRU(INV) 11.3.1R);

(2) at all times, maintain own funds which equal or exceed:

(a) the higher of:

   (i) the funds under management requirement (in line with IPRU(INV) 11.3.2R); and
   (ii) the fixed overheads requirement (in line with IPRU(INV) 11.3.3R); plus

(b) whichever is applicable of:

   (i) the professional negligence capital requirement (in line with IPRU(INV) 11.3.11G(1)(a)); or
   (ii) the PII capital requirement (in line with IPRU(INV) 11.3.11G(1)(b)); and

(3) at all times, hold liquid assets (in line with IPRU(INV) 11.3.17R) which equal or exceed:

(a) the higher of:

   (i) the funds under management requirement (in line with IPRU(INV) 11.3.2R) less the base capital resources requirement (in line with IPRU(INV) 11.3.1R); and
   (ii) the fixed overheads requirement (in line with
IPRU(INV) 11.3.3R); plus
(b) whichever is applicable of:
   (i) the professional negligence capital requirement (in line with IPRU(INV) 11.3.11G(1)(a)); or
   (ii) the PII capital requirement (in line with IPRU(INV) 11.3.11G(1)(b)).

[Note: article 9(5) and 9(7) of AIFMD and article 7(1)(a)(iii) of the UCITS Directive]

Professional negligence

11.2.2 G (1) The professional negligence capital requirement applies to a firm that manages an AIF (ie, an external AIFM or an internally managed AIF) and which, in line with IPRU(INV) 11.3.11G(1)(a), covers professional liability risks by way of own funds.

(2) The PII capital requirement applies to a firm that manages an AIF and which, in line with IPRU(INV) 11.3.11G(1)(b), decides to cover professional liability risks by professional indemnity insurance.

11.3 Detail of main requirements

Base capital resources requirement

11.3.1 R The base capital resources requirement for a collective portfolio management firm is:

   (1) €125,000 for a firm that is a UCITS firm or an external AIFM; and
   (2) €300,000 for an internally managed AIF.

[Note: article 9(1), (2) and (10) of AIFMD and article 7(1)(a) of the UCITS Directive]

Funds under management requirement

11.3.2 R The funds under management requirement is (subject to a maximum of €10,000,000) the sum of:

   (1) the base capital resources requirement; plus
   (2) 0.02% of the amount by which the funds under management exceed €250,000,000,

[Note: article 9(3) of AIFMD and article 7(1)(a)(i) of the UCITS Directive]

Fixed overheads requirement
11.3.3 R  The fixed overheads requirement is one quarter (13/52) of the firm’s relevant fixed expenditure calculated in line with IPRU(INV) 11.3.4R.

[Note: article 9(5) of AIFMD and article 7(1)(a)(iii) of the UCITS Directive]

11.3.4 R  In IPRU(INV) 11.3.3R, and subject to IPRU(INV) 11.3.6R to IPRU(INV) 11.3.9R, a firm’s relevant fixed expenditure is the amount described as total expenditure in its final income statement (FSA030) for the previous financial year, less the following items (if they are included within such expenditure):

1. staff bonuses, except to the extent that they are guaranteed;
2. employees’ and directors’ shares in profits, except to the extent that they are guaranteed;
3. other appropriations of profits;
4. shared commission and fees payable which are directly related to commission and fees receivable which are included within total revenue;
5. interest charges in respect of borrowings made to finance the acquisition of the firm’s readily realisable investments;
6. interest paid to customers on client money;
7. interest paid to counterparties;
8. fees, brokerage and other charges paid to clearing houses, exchanges and intermediate brokers for the purposes of executing, registering or clearing transactions;
9. foreign exchange losses; and
10. other variable expenditure.

11.3.5 G  The income statement (FSA030) should be completed on a cumulative basis, so that the final income statement in a firm’s financial year (ie the period that ends on the firm's accounting reference date) relates to the entire year.

11.3.6 R  The relevant fixed expenditure of a firm is:

1. where its final income statement (FSA030) for the previous financial year does not relate to a twelve-month period, an amount calculated in accordance with IPRU(INV) 11.3.4R, pro-rated so as to produce an equivalent twelve-month amount; or
2. where it has not completed twelve months’ trading, an amount based on forecast expenditure included in the budget for the first twelve months' trading, as submitted with its application for authorisation.
11.3.7 R A firm must adjust its relevant fixed expenditure calculation so far as necessary to the extent that since the submission of its final income statement (FSA030) for the previous financial year or since the budget was prepared (if IPRU(INV) 11.3.6R(2) applies):

(1) its level of fixed expenditure changes materially; or

(2) the regulated activities comprised within its permission change.

11.3.8 G In IPRU(INV) 11.3.4R to IPRU(INV) 11.3.7R, fixed expenditure is expenditure which is inelastic relative to fluctuations in a firm's levels of business. Fixed expenditure is likely to include most salaries and staff costs, office rent, payment for the rent or lease of office equipment, and insurance premiums. It may be viewed as the amount of funds which a firm would require to enable it to cease business in an orderly manner, should the need arise. This is not an exhaustive list of such expenditure and a firm will itself need to identify which costs amount to fixed expenditure.

11.3.9 R If a firm has a material proportion of its expenditure incurred on its behalf by another person and such expenditure is not fully recharged by that person, then the firm must adjust its relevant fixed expenditure calculation by adding back in the whole of the difference between the amount of the expenditure and the amount recharged.

11.3.10 G Under IPRU(INV) 11.3.9R, the FCA would consider 10% of a firm's expenditure incurred on its behalf by other persons as material.

Professional negligence

11.3.11 G A firm that manages an AIF should:

(1) cover the professional liability risks set out in article 12 of the AIFMD level 2 regulation (professional liability risks) (as replicated in IPRU(INV) 11.3.12EU) by either:

(a) maintaining an amount of own funds in line with article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in IPRU(INV) 11.3.14EU) (the professional negligence capital requirement); or

(b) holding professional indemnity insurance and maintaining an amount of own funds to meet the PII capital requirement under article 15 of the AIFMD level 2 regulation (professional indemnity insurance) (as replicated in IPRU(INV) 11.3.15EU) and IPRU(INV) 11.3.16R; and

(2) comply with the qualitative requirements addressing professional liability risks in article 13 of the AIFMD level 2 regulation (qualitative requirements addressing professional liability risks) (as replicated in IPRU(INV) 11.3.13EU).
11.3.12 EU Professional liability risks

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The professional liability risks to be covered pursuant to Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.</td>
</tr>
<tr>
<td>2.</td>
<td>Professional liability risks as defined in paragraph 1 shall include, without being limited to, risks of:</td>
</tr>
<tr>
<td></td>
<td>(a) loss of documents evidencing title of assets of the AIF;</td>
</tr>
<tr>
<td></td>
<td>(b) misrepresentations or misleading statements made to the AIF or its investors;</td>
</tr>
<tr>
<td></td>
<td>(c) acts, errors or omissions resulting in a breach of:</td>
</tr>
<tr>
<td></td>
<td>(i) legal and regulatory obligations;</td>
</tr>
<tr>
<td></td>
<td>(ii) duty of skill and care towards the AIF and its investors;</td>
</tr>
<tr>
<td></td>
<td>(iii) fiduciary duties;</td>
</tr>
<tr>
<td></td>
<td>(iv) obligations of confidentiality;</td>
</tr>
<tr>
<td></td>
<td>(v) AIF rules or instruments of incorporation;</td>
</tr>
<tr>
<td></td>
<td>(vi) terms of appointment of the AIFM by the AIF;</td>
</tr>
<tr>
<td></td>
<td>(d) failure to establish, implement and maintain appropriate procedures to prevent dishonest, fraudulent or malicious acts;</td>
</tr>
<tr>
<td></td>
<td>(e) improperly carried out valuation of assets or calculation of unit/share prices;</td>
</tr>
<tr>
<td></td>
<td>(f) losses arising from business disruption, system failures, failure of transaction processing or process management.</td>
</tr>
<tr>
<td>3.</td>
<td>Professional liability risks shall be covered at all times either through appropriate additional own funds determined in accordance with Article 14 or through appropriate coverage of professional indemnity insurance determined in accordance with Article 15.</td>
</tr>
</tbody>
</table>

[Note: article 12 of the AIFMD level 2 regulation]

11.3.13 EU Qualitative requirements addressing professional liability risks

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>An AIFM shall implement effective internal operational risk</td>
</tr>
</tbody>
</table>
management policies and procedures in order to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. The operational risk management activities shall be performed independently as part of the risk management policy.

2. An AIFM shall set up a historical loss database, in which any operational failures, loss and damage experience shall be recorded. This database shall record, without being limited to, any professional liability risks as referred to in Article 12(2) that have materialised.

3. Within the risk management framework the AIFM shall make use of its internal historical loss data and where appropriate of external data, scenario analysis and factors reflecting the business environment and internal control systems.

4. Operational risk exposures and loss experience shall be monitored on an ongoing basis and shall be subject to regular internal reporting.

5. An AIFM’s operational risk management policies and procedures shall be well documented. An AIFM shall have arrangements in place for ensuring compliance with its operational risk management policies and effective measures for the treatment of non-compliance with these policies. An AIFM shall have procedures in place for taking appropriate corrective action.

6. The operational risk management policies and procedures and measurement systems shall be subject to regular review, at least on an annual basis.

7. An AIFM shall maintain financial resources adequate to its assessed risk profile.

[Note: article 13 of the AIFMD level 2 regulation]

<table>
<thead>
<tr>
<th>11.3.14 EU</th>
<th>Additional own funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>This Article shall apply to AIFMs that choose to cover professional liability risks through additional own funds.</td>
</tr>
<tr>
<td>2.</td>
<td>The AIFM shall provide additional own funds for covering liability risks arising from professional negligence at least equal to 0,01 % of the value of the portfolios of AIFs managed. The value of the portfolios of AIFs managed shall be the sum of the absolute value of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value.</td>
</tr>
</tbody>
</table>
3. The additional own funds requirement referred to in paragraph 2 shall be recalculated at the end of each financial year and the amount of additional own funds shall be adjusted accordingly. The AIFM shall establish, implement and apply procedures to monitor on an ongoing basis the value of the portfolios of AIFs managed, calculated in accordance with the second subparagraph of paragraph 2. Where, before the annual recalculation referred to in the first subparagraph, the value of the portfolios of AIFs managed increases significantly, the AIFM shall without undue delay recalculate the additional own funds requirement and shall adjust the additional own funds accordingly.

4. The competent authority of the home Member State of the AIFM may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied — on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment — that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0.008% of the value of the portfolios of AIFs managed by the AIFM.

5. The competent authority of the home Member State of the AIFM may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM’s additional own funds are insufficient.

[Note: article 14 of the AIFMD level 2 regulation]

<table>
<thead>
<tr>
<th>11.3.15 EU</th>
<th>Professional indemnity insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>This Article shall apply to AIFMs that choose to cover professional liability risks through professional indemnity insurance.</td>
</tr>
<tr>
<td>2.</td>
<td>The AIFM shall take out and maintain at all times professional indemnity insurance that:</td>
</tr>
<tr>
<td></td>
<td>(a) shall have an initial term of no less than one year;</td>
</tr>
<tr>
<td></td>
<td>(b) shall have a notice period for cancellation of at least 90 days;</td>
</tr>
<tr>
<td></td>
<td>(c) shall cover professional liability risks as defined in Article 12(1) and (2);</td>
</tr>
<tr>
<td></td>
<td>(d) is taken out from an EU or non-EU undertaking authorised to</td>
</tr>
</tbody>
</table>
provide professional indemnity insurance, in accordance with Union law or national law;

(e) is provided by a third party entity.

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with Article 9(1) and (3) of Directive 2011/61/EU.

3. The coverage of the insurance for an individual claim shall be equal to at least 0.7% of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2).

4. The coverage of the insurance for claims in aggregate per year shall be equal to at least 0.9% of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2).

5. The AIFM shall review the professional indemnity insurance policy and its compliance with the requirements laid down in this Article at least once a year and in the event of any change which affects the policy’s compliance with the requirements in this Article.

**[Note: article 15 of the AIFMD level 2 regulation]**

11.3.16 R If a firm satisfies the requirement referred to in IPRU(INV) 11.3.11G with professional indemnity insurance it must, in addition to maintaining an amount of own funds to cover any defined excess, hold adequate own funds to cover any exclusions in the insurance policy that would otherwise result in the firm having insufficient resources to cover liabilities arising. A firm may satisfy its requirements for professional indemnity insurance with a policy that also provides cover to one or more entities other than the firm, provided that the policy satisfies the conditions of the AIFMD level 2 regulation, exclusive of the cover provided to other entities.

Liquid assets

11.3.17 R For the purposes of this chapter, liquid assets are assets which:

(1) are readily convertible to cash within one month; and

(2) have not been invested in speculative positions.

11.3.18 G Examples of liquid assets that are acceptable under IPRU(INV) 11.3.17R include cash, readily realisable investments that are not held for short-term resale, and debtors.

**[Note: article 9(8) of AIFMD]**

11.4 Method of calculating initial capital and own funds
A firm must calculate its initial capital and own funds as shown below, subject to the detailed requirements set out in Part II.

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Category</th>
<th>Part II</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART I</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TIER 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) Paid-up share capital (excluding preference shares)</td>
<td>A</td>
<td>2</td>
</tr>
<tr>
<td>(2) Share premium account</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Audited reserves and interim profits</td>
<td></td>
<td>3 and 4</td>
</tr>
<tr>
<td>(4) Non-cumulative preference shares</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Eligible LLP members' capital</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Initial capital = A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Investments in own shares</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td>(7) Intangible assets</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>(8) Material current year losses</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>(9) Excess LLP members' drawings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(10) Material holdings in credit and financial institutions</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Tier 1 capital = (A-B) =</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td><strong>TIER 2</strong></td>
<td>1(b)</td>
<td></td>
</tr>
<tr>
<td>(11) Revaluation reserves</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>(12) Fixed-term cumulative preference share capital</td>
<td></td>
<td>1(a)</td>
</tr>
<tr>
<td>(13) Long-term qualifying subordinated loans</td>
<td></td>
<td>1(a); 9</td>
</tr>
</tbody>
</table>
1 Ratios

(a) The total of fixed-term cumulative preference share capital (item 12) and long-term qualifying subordinated loans (item 13) that may be included in Tier 2 capital (D) is limited to 50 per cent of Tier 1 capital (C); and

(b) Tier 2 capital (D) must not exceed 100 per cent of Tier 1 capital (C).

2 Non corporate entities

(a) In the case of partnerships, the following terms should be substituted, as appropriate, for items 1 to 4 in initial capital:

(i) partners' capital accounts (excluding loan capital);

(ii) partners' current accounts (excluding unaudited profits and loan capital); and

(iii) proprietor's account (or other term used to signify the sole trader's capital but excluding unaudited profits).

(b) Loans other than qualifying subordinated loans shown within partners' or proprietors' accounts must be classified as Tier 2 capital under item 14.

(c) For the calculation of initial capital and own funds, partners' current accounts figures are subject to the following adjustments for of a defined benefit occupational pension scheme:

(i) a firm must derecognise any defined benefit asset: and

(ii) a firm may substitute for defined benefit liability the firm's deficit reduction amount. The election must be applied consistently in any one financial year.
### Note

A firm should keep a record of and be ready to explain to its supervisory contacts in the FCA the reasons for any difference between the *deficit reduction amount* and any commitment the firm has made in a public document to provide funding for a *defined benefit occupational pension scheme*.

### 3 Audited Reserves (Item 3)

For the calculation of *initial capital* and *own funds*, the following adjustments apply to the audited reserves figure:

- **(a)** a firm must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of *financial instruments* measured at cost or amortised cost:

- **(b)** for a *defined benefit occupational pension scheme*, a firm must derecognise any *defined benefit asset*; and

- **(c)** a firm may substitute for a *defined benefit liability* the firm's *deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

### Note

A firm should keep a record of, and be ready to explain to its supervisory contacts in the FCA, the reasons for any difference between the *deficit reduction amount* and any commitment the firm has made in a public document to provide funding for a *defined benefit occupational pension scheme*.

- **(d)** a firm must not include any unrealised gains from investment property.

### Note

Unrealised gains from investment property should be reported as part of revaluation reserves.

- **(e)** where applicable, a firm must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax.

### Note
If the firm uses the exemption in Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts then it will not be able to include its reserves under this Item (3), unless it appoints an auditor.

### 4 Interim profits (Item 3)

Non-trading book interim profits may only be included in Tier 1 of the calculation if they have been independently verified by the firm’s auditor.

For this purpose, the auditor should normally undertake at least the following:

- **(a)** satisfy himself that the figures forming the basis of the interim profits have been properly extracted from the underlying accounting records;

- **(b)** review the accounting policies used in calculating the interim profits so as to obtain comfort that they are consistent with those normally adopted by the firm in drawing up its annual financial statements;

- **(c)** perform analytical review procedures on the results to date, including comparisons of actual performance to date with budget and with the results of prior periods;

- **(d)** discuss with management the overall performance and financial position of the firm;

- **(e)** obtain adequate comfort that the implications of current and prospective litigation, all known claims and commitments, changes in business activities and provisions for bad and doubtful debts have been properly taken into account in arriving at the interim profits; and

- **(f)** follow up problem areas of which the auditor is already aware in the course of auditing the firm’s financial statements.

A firm wishing to include interim profits in Tier 1 capital must obtain a verification report signed by its auditor which states whether the interim results are fairly stated.

Profits on the sale of capital items or arising from other activities which are not directly related to the designated investment business of the firm may also be included within the calculation of own funds if they can be separately verified by the firm’s auditor. Such profits can form part of the firm’s Tier 1 capital as audited profits.
### Note

If the *firm* uses the exemption in Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) for the audit of accounts then it will not be able to include its interim profits under Item (3), unless it appoints an auditor.

### 5 Eligible LLP members' capital (Item 5)

Members' capital of a *limited liability partnership* may only be included in *initial capital* (see item 5) if the conditions in *IPRU(INV)* Annex A 2.2R (Specific conditions for eligibility) and *IPRU(INV)* Annex A 2.3R (General conditions for eligibility) are satisfied.

### 6 Intangible assets (Item 7)

Intangible assets comprise:

- (a) formation expenses to the extent that these are treated as an asset in the *firm's* accounts;
- (b) goodwill, to the extent that it is treated as an asset in the *firm's* accounts; and
- (c) other assets treated as intangibles in the *firm's* accounts.

### 7 Material current year losses (Item 8)

Losses in current year operating figures must be deducted when calculating Tier 1 capital if such losses are material. For this purpose, profits and losses must be calculated quarterly, as appropriate. If this calculation reveals a net loss it shall only be deemed to be material for the purposes of this Table if it exceeds 10 per cent of the *firm's* Tier 1 capital.

### 8 Material holdings in credit and financial institutions (Item 10)

Material holdings comprise:

- (a) where the *firm* holds more than 10 per cent of the equity share capital of a *credit institution* or *financial institution*, the value of that holding and the amount of any subordinated loans to that institution and the value of holdings in *qualifying capital*.
9 Long term qualifying subordinated loans (Item 13)

Loans having the characteristics prescribed by IPRU(INV) 11.5.1R may be included in item 13, subject to the limits in paragraph (1).

10 Qualifying arrangements (Item 15)

A firm may only include an arrangement in item 15 if it is a qualifying capital instrument or a qualifying capital item.

11.5 Qualifying subordinated loans

Characteristics of long-term qualifying subordinated loans

11.5.1 R A long-term qualifying subordinated loan (item (13) of Table 11.4) must have the following characteristics:

(1) the loan is repayable only on maturity or on the expiration of a period of notice under (3) below, or on the winding up of the firm;

(2) in the event of the winding up of the firm, the loan ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

(3) either:

(a) the minimum original maturity of the loan is five years; or

(b) the loan does not have a minimum or fixed maturity but requires five years notice of repayment; and

(4) the loan is fully paid-up.
Amount allowable in the calculation of own funds

11.5.2 R A firm may only take into account the paid-up amount of a long term qualifying subordinated loan in the calculation of its own funds. This amount must be amortised on a straight-line basis over the five years prior to the date of repayment.

Form of qualifying subordinated loan agreement

11.5.3 R A qualifying subordinated loan must be in the form prescribed for Chapter 5 of IPRU(INV) by Annex D to IPRU(INV) with the following changes:

(1) the reference to “Chapter 5” in Recital B on page 2 deleted and replaced with “Chapter 11”; and

(2) the references to “rule 5.2.1(1) of Chapter 5” in clause 3(b) (Interest) deleted and replaced with “rule 11.2.1 (collective portfolio management firm) of Chapter 11”.

Requirements on a firm in relation to qualifying subordinated loans

11.5.4 R A firm including a qualifying subordinated loan in its calculation of own funds must not:

(1) secure all or any part of the loan; or

(2) redeem, purchase or otherwise acquire any of the liabilities of the borrower in respect of the loan; or

(3) amend or concur in amending the terms of the loan agreement; or

(4) repay all or any part of the loan otherwise than in line with the terms of the loan agreement; or

(5) take or omit to take any action which may terminate, impair or adversely affect the subordination of the loan or any part thereof.

Amend the following provisions.

Chapter 14: Consolidated Supervision for Investment Businesses

...
14.1.4 R A firm need not meet the requirements in rules 14.3.1 and 14.3.2 if:

... 

(2) no firm in the group deals in investments as principal, except where it is an operator of a collective investment scheme dealing solely as a result of its activity of operating a collective investment scheme, or where the firm's positions fulfil the CAD article 3 exempting criteria; 

...

Annex A: LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS’ CAPITAL

1 Introduction

Application

1.1 R This annex applies to any firm:

(1) that is a limited liability partnership; and

(2) that is a kind of firm to whom the provisions of this sourcebook apply, or which is a UCITS firm.

...

1.5 G The following rules allow inclusion of members’ capital within a firm’s capital if it meets the conditions in this annex:

<table>
<thead>
<tr>
<th>Chapter</th>
<th>IPRU(INV) rule</th>
<th>How eligible LLP members’ capital should be treated for the purposes of the IPRU(INV) rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Table 10-61(1)A Table 10-61(1)B Table 10-62(2)A Table 10-62(2)B Table 10-62(2)C</td>
<td>Eligible LLP members’ capital may be counted as initial capital within the relevant table.</td>
</tr>
<tr>
<td>11</td>
<td>Table 11.4</td>
<td>Eligible LLP members’ capital may be counted as Item (5) in Table 11.4.</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex K

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex underlining indicates new text and striking though indicates deleted text.

1 Annex 1 Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application rule according to activities

<table>
<thead>
<tr>
<th>7</th>
<th>Modified meaning of regulated activities for UK AIFMs and UK UCITS management companies</th>
</tr>
</thead>
</table>

7.1 In determining whether a provision in COBS applies to a UK AIFM or a UK UCITS management company, an activity carried on by the firm which would be a regulated activity but for article 72AA (Managers of UCITS and AIFs) of the Regulated Activities Order, must be treated as a regulated activity carried on by the firm.

Part 3: Guidance

<table>
<thead>
<tr>
<th>10.</th>
<th>AIFMD: effect on territorial scope</th>
</tr>
</thead>
</table>

10.1 PERG 16 contains general guidance on the businesses to which AIFMD applies. FUND 1 contains guidance on the types of AIFM.

10.2 The only rule in this sourcebook which implements AIFMD is COBS 2.1.4R, which applies to:

1. A full-scope UK AIFM operating from an establishment in the UK or a branch in another EEA State; and
2. An incoming EEA AIFM branch.

10.3 The other rules in COBS which apply to a full-scope UK AIFM or incoming EEA AIFM (including an AIFM qualifier) fall outside the scope of AIFMD and are, therefore, not affected by its territorial scope.

...
2.1 Acting honestly, fairly and professionally

AIFMs

2.1.4 A full-scope UK AIFM and an incoming EEA AIFM branch must, for all AIFs it manages:

1. act honestly, fairly and with due skill care and diligence in conducting their activities;

2. act in the best interests of the AIF it manages or the investors of the AIF it manages and the integrity of the market;

3. treat all investors fairly; and

4. not allow any investor in an AIF to obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF’s instrument constituting the fund.

[Note: article 12(1)(a), (b) and (f) and article 12(1) last paragraph of AIFMD]

Subordinate measures for alternative investment fund managers

2.1.5 Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the relevant provisions of Article 12(1) of AIFMD.

…

3.2 Clients

…

Who is the client?

3.2.3 In relation to business that is neither MiFID or equivalent third country business, if a firm provides services to a collective investment scheme fund that does not have separate legal personality, that collective investment scheme fund will be the firm’s client.

…

4.12 Unregulated collective investment schemes

4.12.1 …
(4) Promotion to: Promotion of an unregulated collective investment scheme which is:

<table>
<thead>
<tr>
<th>...</th>
<th>Any such collective investment scheme</th>
</tr>
</thead>
</table>
| Category 3 person  
A person who is eligible to participate in a scheme constituted under:  
(1) the Church Funds Investment measure 1958;  
(2) section 96 of the Charities Act 2011; or  
(3) section 25 of the Charities Act (Northern Ireland) 1964; or  
(4) section 100 of the Charities Act 2011. | ... |

### 18.5 Operators of collective investment schemes Residual CIS operators, UCITS management companies and AIFMs

**Application**

18.5.1 **R** This Subject to COBS 18.5.1AR, this section applies to a firm which is an operator of a collective investment scheme:

1. a UCITS management company;
2. a full-scope UK AIFM;
3. a small authorised UK AIFM;
4. a residual CIS operator; or
5. an incoming EEA AIFM branch.

18.5.1 **R** COBS 18.5.3R(2) and COBS 18.5.5R to COBS 18.5.18E do not apply to a small authorised UK AIFM of an unauthorised AIF which is not a collective investment scheme.

**Application or modification of general COBS rules for operators**

18.5.2 **R** An operator a firm when it is carrying on scheme management activity or, for an AIFM, AIFM investment management functions:
(1) must comply with the COBS rules specified in the table, as modified by this section; and

(2) need not comply with any other rule in COBS.

18.5.2- A G For activities carried on by firms which are not scheme management activities or, for an AIFM, AIFM investment management functions, the COBS rules apply under the general application rule, as modified in COBS 1 Annex 1.

Table: Application of conduct of business rules

<table>
<thead>
<tr>
<th>Chapter, section or rule</th>
<th>Description</th>
<th>Modifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
<td></td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Inducements</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
<td></td>
</tr>
<tr>
<td>4.2.1 - 4.2.3</td>
<td>Fair, clear and not misleading communications</td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>Distance communications</td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>E-Commerce</td>
<td></td>
</tr>
<tr>
<td>6.1G.2</td>
<td>Re-registration requests: firms acting as registrars</td>
<td>In the case of an unregulated collective investment scheme, COBS 18.5.4R (Modification of best execution) applies instead of COBS 11.2 in the circumstances set out in COBS 18.5.4R.</td>
</tr>
<tr>
<td>11.2</td>
<td>Best execution</td>
<td></td>
</tr>
<tr>
<td>11.3</td>
<td>Client order handling</td>
<td></td>
</tr>
<tr>
<td>11.5</td>
<td>Record keeping: client</td>
<td></td>
</tr>
<tr>
<td>orders and decisions to deal</td>
<td>11.6</td>
<td>Use of dealing commission</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td></td>
<td>11.8</td>
<td>Recording telephone conversations and electronic communications</td>
</tr>
<tr>
<td></td>
<td>18.5</td>
<td>Operators of collective investment schemes</td>
</tr>
</tbody>
</table>

This table belongs to COBS 18.5.2R

<table>
<thead>
<tr>
<th>Chapter, section, rule</th>
<th>Full-scope UK AIFM</th>
<th>Small authorised UK AIFM and a residual CIS operator</th>
<th>Incoming EEA AIFM branch</th>
<th>UCITS management company</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Does not apply</td>
<td>Applies</td>
<td>Does not apply</td>
<td>Applies</td>
</tr>
<tr>
<td>2.1.4</td>
<td>Applies</td>
<td>Does not apply</td>
<td>Applies</td>
<td>Does not apply</td>
</tr>
<tr>
<td>2.3</td>
<td>Does not apply</td>
<td>Applies</td>
<td>Does not apply</td>
<td>Applies</td>
</tr>
<tr>
<td>2.4</td>
<td>Does not apply</td>
<td>Applies</td>
<td>Does not apply</td>
<td>Applies</td>
</tr>
<tr>
<td>4.2.1 – 4.2.3</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>5.2</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>6.1G.2</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>11.2</td>
<td>Applies as modified by COBS 18.5.4AR</td>
<td>Applies to a small authorised UK AIFM of an authorised AIF. Applies (as modified by COBS 18.5.4AR) to a small authorised UK AIFM of an unauthorised AIF or residual CIS operator</td>
<td>Applies as modified by COBS 18.5.4AR</td>
<td>Applies</td>
</tr>
<tr>
<td>11.3</td>
<td>Does not apply</td>
<td>Applies</td>
<td>Does not apply</td>
<td>Applies</td>
</tr>
<tr>
<td>11.5</td>
<td>Does not apply</td>
<td>Applies as rules</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td></td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>11.6</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>11.8</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
<tr>
<td>16.3</td>
<td>Does not apply</td>
<td>Applies to a small authorised UK AIFM of an unauthorised AIF which is not a collective investment scheme, as modified by COBS 18.5.4BR. Otherwise does not apply.</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>18.5</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
<td>Applies</td>
</tr>
</tbody>
</table>

... General modifications

18.5.3 R The Where COBS rules specified in the table in COBS 18.5.2R apply to an operator when it is carrying on scheme management activity with the following modifications a firm carrying on scheme management activities or, for an AIFM, AIFM investment management functions, the following modifications apply:

1. subject to (2), references to customer or client are to be construed as references to any scheme fund in respect of which the operator firm is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on;

2. in the case of an unregulated collective investment scheme a small authorised UK AIFM of an unauthorised AIF or a residual CIS operator, when an operator a firm is required by the rules in COBS to provide information to, or obtain consent from, a customer or client, the operator firm must ensure that the information is provided to, or consent obtained from, a participant an investor or a potential participant investor in the scheme fund as the case may be;

3. references to the service of portfolio management in COBS 11.2 (Best execution), and 11.3 (Client order handling) and 11.5 (Record keeping: client orders and transactions) are to be read as references to the management by an operator a firm of financial instruments held for or within the scheme fund of which it is the operator; and

4. references to investment firm in COBS 11.5 are to be read as references to small authorised UK AIFM or residual CIS operator.

Modification of best execution operators of unregulated collective investment schemes

18.5.4 R The best execution provisions applying to an operator of a collective investment scheme a small authorised UK AIFM of an unauthorised AIF or
a residual CIS operator do not apply in relation to an unregulated collective investment scheme a fund whose scheme fund documents include a statement that best execution does not apply in relation to the scheme fund and in which:

(1) no participant investor is a retail client; or

(2) no current participant investor in the scheme fund was a retail client on joining the scheme when it invested in the fund as a participant.

18.5.4A R Only the following provisions in COBS 11.2 apply to a full-scope UK AIFM:

(1) COBS 11.2.5G;

(2) COBS 11.2.17G;

(3) COBS 11.2.23AR, but references to management company should be read as references to an AIFM and references to unitholders are to be read as references to investors. This obligation only applies for the execution policy required under article 27(3) of the AIFMD level 2 regulation (Execution of decisions to deal on behalf of the managed AIF);

(4) COBS 11.2.24R;

(5) COBS 11.2.25R(1) and COBS 11.2.26R, but only where an AIF itself has a governing body which can provide prior consent; and

(6) COBS 11.2.27R, but only regarding the obligation on an AIFM to notify the AIF of any material changes to their order execution arrangements or execution policy.

Modification of periodic reporting requirements

18.5.4B R A small authorised UK AIFM of an unauthorised AIF which is not a collective investment scheme must comply with COBS 16.3 (Periodic reporting) with references to managing investments to be construed as providing AIFM investment management functions.

Scheme documents for an unregulated collective investment scheme unauthorised fund

18.5.5 R An operator of an unregulated collective investment scheme A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must not accept a retail client as a participant an investor in the scheme fund unless it has taken reasonable steps to offer and, if requested, provide to the potential participant investor, scheme fund documents which adequately describe how the operation of the scheme fund is governed.

Distance marketing

18.5.5A G Firms should also be aware that if they are carrying on distance marketing
activity from an establishment in the UK, with or for a consumer in the UK or another EEA State, COBS 5.1 applies specific requirements for that activity.

**Format and content of scheme fund documents**

18.5.6 G An operator’s scheme The fund documents required under COBS 18.5.5R may consist of any number of documents provided that it is clear that collectively they constitute the scheme fund documents and provided the use of several documents in no way diminishes the significance of any of the statements which are required to be given to the potential participant investor.

18.5.7 G The scheme fund documents of an unregulated collective investment scheme unauthorised fund managed by a small authorised UK AIFM or a residual CIS operator (if the fund documents exist) should make it clear that if a participant an investor is reclassified as a retail client, this reclassification will not affect certain scheme management activities of the firm operator of the scheme. In particular, despite such a reclassification, the operator firm will not be required to comply with the best execution provisions applying to an operator of a collective investment scheme. It should be noted that there is no requirement that scheme fund documents must be produced by an unregulated collective investment scheme a small authorised UK AIFM of an unauthorised fund or a residual CIS operator.

18.5.8 R Where the scheme fund is an unregulated collective investment scheme unauthorised fund managed by a small authorised UK AIFM or a residual CIS operator and no current participant investor in the scheme fund was a retail client on joining the scheme as a participant when it invested in the fund, the scheme fund documents must include a statement that:

1. explains that if a participant an investor is reclassified as a retail client subsequent to joining the scheme as a participant investing in the fund, then the operator firm may continue to treat all participants investors in the scheme fund as though they were not retail clients;

2. explains that if a participant an investor is reclassified as a retail client subsequent to joining the scheme as a participant investing in the fund, then the modification of best execution (see COBS 18.5.5R 18.5.4R) will continue to apply to that scheme fund; and

3. explains that, in the event of such a reclassification, the operator firm will not be required to provide best execution in relation to the scheme fund.

18.5.9 G The operator A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator will still have to comply with other COBS provisions as a result of the reclassification of a participant an investor as a retail client. For example, the firm must provide periodic statements to participants.
investors who are retail clients in an unregulated collective investment scheme unauthorised fund (see the rule on periodic statements for an unregulated collective investment scheme unauthorised fund (COBS 18.5.11R)).

Adequate information

18.5.10 E (1) In order to provide adequate information to describe how the operation of the scheme fund is governed, an operator of an unregulated collective investment scheme a small authorised UK AIFM of an unauthorised AIF or a residual CIS operator should include in the scheme fund documents a provision about each of the items of relevant information set out in the following table (Content of scheme fund documents).

... 

Table: Content of scheme fund documents

<table>
<thead>
<tr>
<th>Content of scheme fund documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>The scheme fund documents should include provision about:</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>(2) Services</td>
</tr>
<tr>
<td>the nature of the services that the operator firm will provide in relation to the scheme;</td>
</tr>
<tr>
<td>(3) Payments for services</td>
</tr>
<tr>
<td>details of any payment for services payable by the scheme fund or from the property of the scheme fund or participants investors in the scheme fund to the operator firm, including where appropriate:</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>(d) whether or not any other payment is receivable by the operator firm (or to its knowledge by any of its associates) in connection with any transactions effected by the operator firm with or for the scheme fund, in addition to or in lieu of any fees;</td>
</tr>
<tr>
<td>(4) Commencement</td>
</tr>
<tr>
<td>when and how the operator firm is appointed;</td>
</tr>
<tr>
<td>(5) Accounting</td>
</tr>
<tr>
<td>the arrangements for accounting to the scheme fund or participants investors in the scheme fund for any transaction effected;</td>
</tr>
<tr>
<td>(6) Termination method</td>
</tr>
</tbody>
</table>
(7) **Complaints procedure**
how to complain to the operator firm and a statement that the participants investors in the scheme fund may subsequently complain direct to the Financial Ombudsman Service;

(8) **Compensation**
whether or not compensation may be available from the compensation scheme should the operator firm be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable compensation scheme, the extent and level of cover and how further information can be obtained;

(9) **Investment objectives**
the investment objectives for the portfolio of the scheme fund;

(10) **Restrictions**

(a) any restrictions on:

(i) the types of investments or property which may be included in the portfolio of the scheme fund;

(ii) the markets on which investments or property may be acquired for the portfolio of the scheme fund;

(iii) the amount or value of any one investment or asset, or on the proportion of the portfolio of the scheme fund which any one investment or asset or any particular kind of investment or asset may constitute; or

(11) **Holding scheme fund assets**

(a) if it is the case, that the operator firm will:

(i) hold money on behalf of the scheme fund or be the custodian of investments or other property of the scheme fund; or

(ii) arrange for some other person to act in either capacity and, if so, whether that person is an associate of the operator firm identifying that person and describing the nature of any association; and

(b) in either case:

...
(ii) the arrangements for recording and separately identifying registrable investments of the scheme fund and, where the registered holder is the operator's firm's own nominee, that the operator firm will be responsible for the acts and omissions of that person;

(iii) the extent to which the operator firm accepts liability for any loss of the investment of the scheme fund;

(iv) the extent to which the operator firm or any other person mentioned in (11)(a)(ii), may hold a lien or security interest over investments of the scheme fund;

(v) where investments of the scheme fund will be registered collectively in the same name, a statement that the entitlements of the scheme fund may not be identifiable by separate certificates or other physical documents of title, and that, should the operator firm default, any shortfall in investments of the scheme fund registered in that name may be shared proportionately among all schemes funds and any other customers of the operator firm whose investments are so registered;

(vi) whether or not investments or other property of the scheme fund can be lent to, or deposited by way of collateral with, a third party and whether or not money can be borrowed on behalf of the scheme fund against the security of those investments or property and, if so, the terms upon which they may be lent or deposited;

(vii) the arrangements for accounting to the scheme fund for investments of the scheme fund, for income received (including any interest on money and any income earned by lending investments or other property) of the scheme fund, and for rights conferred in respect of investments or other property of the scheme fund;

(viii) the arrangements for determining the exercise of any voting rights conferred by investments of the scheme fund; and

(ix) where investments of the scheme fund may be held by an eligible custodian outside the United Kingdom, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those investments, may apply;

(12) Clients' money outside the United Kingdom if it is the case, that the operator firm may hold the money of the
| (13) | Exchange rates  
if a liability of the scheme fund in one currency is to be matched by an asset in a different currency, or if the services to be provided to the operator firm for the scheme fund may relate to an investment denominated in a currency other than the currency in which the investments of the scheme fund are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the investments of the scheme fund; |
| (14) | Stabilised investments  
if it is the case, that the operator firm is to have the right under the scheme fund documents to effect transactions in investments the prices of which may be the subject of stabilisation; |
| (15) | Conflict of interest and material interest  
if it is the case, that the operator firm is to have the right under the agreement or instrument constituting the scheme instrument constituting the fund to effect transactions on behalf of the scheme fund in which the operator firm has directly or indirectly a material interest (except for an interest arising solely from the participation investment of the operator firm as agent for the scheme fund), or a relationship of any description with another party which may involve a conflict with the operator's firm duty to the scheme fund, together with a disclosure of the nature of the interest or relationship; |
| (16) | Use of dealing commission  
if the operator firm receives goods or services in addition to the execution of its customer orders in accordance with the section on the use of dealing commission, the prior disclosure required by the rule on prior disclosure (see COBS 11.6.2R); |
| (17) | Acting as principal  
if it is the case, that the operator firm may act as principal in a transaction with the scheme fund; |
| (18) | Stock lending  
if it is the case, that the operator firm may undertake stock lending activity with or for the scheme fund specifying the type of assets of the scheme fund to be lent, the type and value of relevant collateral from the borrower and the method and amount of payment due to the scheme fund in respect of the lending; |
| (19) | Transactions involving contingent liability investments  
(a) if it is the case, that the agreement or instrument constituting the scheme instrument constituting the fund allows the
operator firm to effect transactions involving contingent liability investments for the account of the portfolio of the scheme fund;

... 

(c) if applicable, that the operator firm has the authority to effect transactions involving contingent liability investments otherwise than under the rules of a recognised investment exchange or designated investment exchange and in a contract traded thereon;

... 

(21) Valuation
the bases on which assets comprised in the portfolio of the scheme fund are to be valued;

(22) Borrowings
if it is the case, that the operator firm may supplement the funds in the portfolio of the scheme fund and, if it may do so:

(a) the circumstances in which the operator firm may do so;

(b) whether there are any limits on the extent to which the operator firm may do so and, if so, what those limits are; and

... 

(23) Underwriting commitments
if it is the case, that the operator firm may for the account of the portfolio of the scheme fund underwrite or sub-underwrite any issue or offer for sale of securities, and:

... 

(24) Investments in other collective investment schemes funds
whether or not the portfolio may contain units in a collective investment scheme invest in funds either operated managed or advised by the operator firm or by an associate of the operator firm or in a collective investment scheme fund which is not a regulated collective investment scheme;

(25) Investments in securities underwritten by the operator firm
whether or not the portfolio may contain securities of which any issue or offer for sale was underwritten, managed or arranged by the operator firm or by an associate of the operator firm during the preceding 12 months.

Application of COBS 18.5.10E to a full-scope UK AIFM
A full-scope UK AIFM which markets an unauthorised AIF to a retail client must, in addition to providing the information in FUND 3.2, take reasonable steps to offer and, if requested, provide to that potential investor information about the following items in the COBS 18.5.10E table (content of fund documents):

1. (1) (Regulator);
2. (4) (Commencement);
3. (5) (Accounting);
4. (6) (Termination method);
5. (7) (Complaints procedure);
6. (8) (Compensation);
7. (13) (Exchange rates);
8. (14) (Stabilised investments);
9. (16) (Use of dealing commission);
10. (17) (Acting as principal);
11. (23) (Underwriting commitments);
12. (24) (Investments in other funds); and
13. (25) (Investments in securities underwritten by the firm).

Periodic statements for an unregulated collective investments scheme unauthorised fund

An operator of an unregulated collective investment scheme A small authorised UK AIFM, of an unauthorised AIF or a residual CIS operator must, subject to the exceptions from the requirement to provide a periodic statement, provide to participants investors in the scheme fund, promptly and at suitable intervals, a statement in a durable medium which contains adequate information on the value and composition of the portfolio of the scheme fund at the beginning and end of the period of the statement.

Promptness, suitable intervals and adequate information

An operator A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator should act in accordance with the provisions in the right hand column of the periodic statements table (see COBS 18.5.15E) to fulfil the requirement to prepare and issue periodic statements indicated in the left hand column against these provisions.
Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue periodic statements.

Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue periodic statements.

Exceptions from the requirement to provide a periodic statement

18.5.13 R (1) An operator of an unregulated collective investment scheme A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator need not provide a periodic statement:

(a) (i) to a participant an investor in the scheme fund who is a retail client ordinarily resident outside the United Kingdom; or

(ii) to a participant an investor in the scheme fund who is a professional client; if the participant investor has so requested or the operator firm has taken reasonable steps to establish that the participant investor does not wish to receive it; or

For a firm acting as an outgoing ECA provider, the exemption for retail client participants investors ordinarily resident outside the United Kingdom applies only to a participant an investor in the scheme fund who is a retail client ordinarily resident outside the EEA.

Record keeping requirements

18.5.14 R An operator of an unregulated collective investment scheme A small authorised UK AIFM of an unauthorised AIF or a residual CIS operator must make a copy of any periodic statement it has provided in accordance with the requirement to prepare and issue periodic statements to participants investors in the scheme fund. The record must be retained for a minimum period of three years.

18.5.15 E Table: Periodic statements
This table belongs to COBS 18.5.12E.

<table>
<thead>
<tr>
<th>Suitable intervals</th>
<th>(1) A periodic statement should be provided at least:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>
(b) once in any other period, not exceeding 12 months, which has been mutually agreed between the operator firm and the participant investor in the scheme fund.

<table>
<thead>
<tr>
<th>Adequate information</th>
<th>(2)</th>
<th>(a)</th>
<th>A periodic statement should contain:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(B)</td>
<td></td>
<td>where the portfolio of the scheme fund includes uncovered open positions in contingent liability investments, the additional information in the table listing the contents of a periodic statement (see COBS 18.5.15E 18.5.18E) in respect of contingent liability investments; or</td>
</tr>
<tr>
<td></td>
<td>(ii)</td>
<td></td>
<td>such information as a participant an investor who is a retail client ordinarily resident outside the United Kingdom, or a professional client, has on his own initiative agreed with the operator firm as adequate.</td>
</tr>
</tbody>
</table>

...  

18.5.17 E Table: General contents of a periodic statement  
This table belongs to COBS 18.5.15E.

<table>
<thead>
<tr>
<th>General contents of periodic statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>(i)</td>
</tr>
<tr>
<td>(ii)</td>
</tr>
<tr>
<td>(iii)</td>
</tr>
</tbody>
</table>

2 Basis of valuation
A statement of the basis on which the value of each investment has been calculated and, if applicable, a statement that the basis for valuing a particular investment has changed since the previous periodic statement. Where any investments are shown in a currency other than the usual one used for valuation of the portfolio of the scheme fund, the relevant currency exchange rates must be shown.

3 Details of any assets loaned or charged
(a) A summary of those investments (if any) which were, at the closing date, loaned to any third party and those investments (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the scheme fund; and

4 Transactions and changes in composition
Except in the case of a portfolio which aims to track the performance of an external index:
(a) a statement that summarises the transactions entered into for the portfolio of the scheme fund during the period; and
(b) the aggregate of money and a summary of all investments transferred into and out of the portfolio of the scheme fund during the period; and
(c) the aggregate of any interest payments, dividends and other benefits received by the operator firm for the portfolio of the scheme fund during that period.

5 Charges and remuneration
If not previously advised in writing, a statement for the account period:
(a) of the aggregate charges of the operator firm and its associates; and
(b) of any remuneration received by the operator firm or its associates or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the scheme fund.
6 Movement in value of portfolio
A statement of the difference between the value of the portfolio at the
closing date and its value at the starting date of the account period,
having regard at least, during the account period, to the following:

(a) the aggregate of assets received from participants in the
scheme fund and added to the portfolio of the scheme fund;

(b) the aggregate of the value of assets transferred, or of amounts
paid, to the scheme fund;

(c) the aggregate income received on behalf of the scheme fund in
respect of the portfolio; and

(d) the aggregate of realised and unrealised profits or gains and
losses attributable to the assets comprised in the portfolio of the
scheme fund.

Notes:
For the purposes of Item 1, where the scheme fund is a property enterprise
trust, it will be sufficient for the periodic statement to disclose the number
of properties held in successive valuation bands where this is appropriate to
the size and composition of the scheme fund, rather than the value of each
asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-
£5m, £1-£2.5m and under £1m would be appropriate, unless an operator a
firm could show that different bands were justifiable in the circumstances.
The statement to be provided under Item 6 is not intended to be an indicator
of the performance of the portfolio of the scheme fund.
An operator A firm may wish to distinguish capital and income, and
thereby provide more information than referred to in this table. If the
statement includes some measure of performance, the basis of measurement
should be stated.

18.5.18 E Table: Contents of a periodic statement in respect of contingent liability
investments
This table belongs to COBS 18.5.15E.

<table>
<thead>
<tr>
<th>Contents of a periodic statement in respect of contingent liability investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Changes in value</td>
</tr>
<tr>
<td>The aggregate of money transferred into and out of the portfolio of the scheme fund during the account period.</td>
</tr>
<tr>
<td>(2) Open positions</td>
</tr>
<tr>
<td>In relation to each open position in the portfolio of the scheme fund at the end of the account period, the unrealised profit or loss to the portfolio of the scheme fund (before deducting or adding any commission which would be payable on closing out).</td>
</tr>
</tbody>
</table>
Closed positions
In relation to each transaction effected during the account period to close out a position of the scheme fund, the resulting profit or loss to the portfolio of the scheme fund after deducting or adding any commission. (Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the scheme fund in each contract)

Aggregate of contents
The aggregate of each of the following in, or relating to, the portfolio of the scheme fund at the close of business on the valuation date:

(d) commissions attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the participant investor.

Option account valuations
In respect of each open option comprising the portfolio of the scheme fund on the valuation date:

Options account valuations may show an average trade price and market price in respect of an option series where a number of contracts within the same series have been purchased on behalf of the scheme fund.

18.10 UCITS qualifiers, AIFM qualifiers and service companies

18.10.2 R COBS 4 and COBS 12.4 apply to an AIFM qualifier.

TP 1 Transitional Provisions relating to Client Categorisation
<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transitional provision: date in force</th>
<th>Handbook provisions: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.23 The changes to COBS set out in Annex K of the Alternative Investment Fund Managers Directive Instrument 2013</td>
<td>R</td>
<td>(1) Where a firm meets the conditions in (2), the changes effected by the Annex listed in column (2) do not apply and, therefore, the provisions in COBS amended by that Annex will continue to apply as they were in force as at 21 July 2013.</td>
<td>From 22 July 2013 until 21 July 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) the conditions are: (a) the firm falls within regulation 73(1) of the AIFMD UK regulation; and (b) the firm does not have a Part 4A permission to manage an AIF.</td>
<td>22 July 2013</td>
</tr>
</tbody>
</table>
Annex L

Amendments to the Client Assets sourcebook (CASS)

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

Part I: Comes into force on 22 July 2013

1 Application and general provisions

... 

1.4 Application: particular activities

... 

Depositaries

...

1.4.6A **G** Firms acting as trustee or depositary of an AIF are reminded of the obligations in FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the AIFMD level 2 regulation which apply in addition to those in CASS.

1.4.7 **R** The remainder of Subject to CASS 1.4.6R, CASS applies to a depositary, when acting as such, with the following general modifications: 'client' means 'trustee', 'trust', 'AIF', 'AIFM acting on behalf of the AIF', or 'collective investment scheme', as appropriate.

(1) except in the mandate rules, 'client' means 'trustee', 'trust' or 'collective investment scheme' as appropriate; and

(2) in the mandate rules, 'client' means 'trustee', 'collective investment scheme' or 'collective investment scheme instrument' as appropriate.

...

6 Custody rules

6.1 Application

6.1.1 **R** This chapter (the custody rules) applies to a firm:

... 

(1A) when it holds financial instruments belonging to a client in the course
of its MiFID business; and/or

(1B) when it is safeguarding and administering investments, in the course of business that is not MiFID business;

(1C) when it is acting as trustee or depositary of an AIF; and/or

(1D) when it is acting as trustee or depositary of a UCITS.

Firms to which the custody rules apply by virtue of CASS 6.1.1R (1B), (1C) or (1D) 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.

Managers of AIFs and UCITS

The custody rules do not apply to a firm that is managing an AIF or managing a UCITS in relation to activities which are carried on by that firm in connection with, or for the purposes of, managing the AIF or UCITS.

Trustees and depositaries (except depositaries of AIFs)

When a trustee firm or depositary acts as a custodian for a trust or collective investment scheme, (except for a firm acting as trustee or depositary of an AIF), and:

Depositaries of AIFs

Subject to (2), when a firm is acting as trustee or depositary of an AIF the firm need comply only with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1R, CASS 6.1.9G, CASS 6.1.9AG and CASS 6.1.16IBG</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.1.22G to CASS 6.1.24G</td>
<td>General purpose</td>
</tr>
<tr>
<td>CASS 6.2.3R and CASS 6.2.4R to CASS 6.2.6G</td>
<td>Registration and recording</td>
</tr>
</tbody>
</table>
When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules in (1), also comply with the custody rules in the table below:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 6.1.1B R</td>
<td>Application</td>
</tr>
<tr>
<td>CASS 6.5.4G(1A) to CASS 6.5.4G(4), CASS 6.5.5R, CASS 6.5.7AG, CASS 7.5.8AG, CASS 6.5.9G and CASS 6.5.15G</td>
<td>Records, accounts and reconciliations</td>
</tr>
</tbody>
</table>

Firms acting as trustee or depositary of an AIF are reminded of the obligations in FUND 3.11 (Depositaries) and Chapter IV (Depositary) of the AIFMD level 2 regulation which apply in addition to those in CASS 6.

A firm (Firm A) to which another firm acting as trustee or depositary of an AIF (Firm B) has delegated safekeeping functions in line with FUND 3.11.25R (Delegation: safekeeping) will not itself be acting as trustee or depositary of an AIF for that AIF. CASS 6.1.16IAR will not apply to Firm A in respect of that AIF. However, Firm A may be safeguarding and administering investments in respect of that AIF.

6.5 Records, accounts and reconciliations

(1A) For a firm acting as trustee or depositary of an AIF that is an authorised AIF, carrying out internal reconciliations of the safe custody assets held for each client with the safe custody assets held by the firm and third parties is an important step in the discharge of the firm’s obligations under article 89(1)(b) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation and, where relevant, SYSC 4.1.1R (General requirements) and SYSC 6.1.1R (Compliance).
6.5.7A G If a firm acting as trustee or depositary of an AIF that is an authorised AIF deposits safe custody assets belonging to a client with a third party, under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation, the firm should seek to ensure that the third party will deliver to the firm a statement as at a date or dates specified by the firm which details the description and amounts of all the safe custody assets credited to the account, and that this statement is delivered in adequate time to allow the firm to carry out the periodic reconciliations required under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation.

6.5.8A G A firm acting as trustee or depositary of an AIF that is an authorised AIF should perform the reconciliation under article 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation:

(1) as regularly as is necessary; and

(2) as soon as reasonably practicable after the date to which the reconciliation relates;

to ensure the accuracy of its internal accounts and records against those of third parties by whom safe custody assets are held.

6.5.13 R A firm must inform the FCA in writing without delay:

(1A) if it is a firm acting as trustee or depositary of an AIF and has not complied with, or is materially unable to comply with, the requirements in CASS 6.5.1R and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation; or

Audit of compliance with the MiFID custody rules

8 Mandates
8.1 Application

... 

8.1.2A R The mandate rules do not apply to a firm:

... 

(2) in relation to safe custody assets that the firm is holding, or in respect of which the firm is carrying on safeguarding and administration of assets (without arranging), acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS in accordance with CASS 6; or

...

...

8.2 Definition of mandate

8.2.1 R A mandate is any means that give a firm the ability to control a client’s assets or liabilities, which meet the conditions in (1) to (5):

...

(4) they put the firm in a position where it is able to give any or all of the types of instructions described in (a) to (d):

...

(c) instructions to another person in relation to an asset of the client, where that other person is responsible to the client for holding that asset (including where that other person is safeguarding and administering investments, acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS);

...

9 Prime brokerage

...

9.2 Prime broker’s daily report to clients

...

9.2.2 G Where a firm has entered into an agreement with a client under article 91
(Reporting obligations for prime brokers) of the AIFMD level 2 regulation, and to the extent that the firm makes available to the client the same statements as specified by that article that it is required to provide to the relevant depositary, the FCA will treat the obligations under CASS 9.2.1R as satisfied by the firm.

9.3 Prime brokerage agreement disclosure annex

9.3.2 G …

(2) Subject to paragraph (3), a prime brokerage firm should not enter into "right to use arrangements" for a client's safe custody assets unless:

…

are each satisfied that the firm has adequate systems and controls to discharge its obligations under Principle 10 which include (where applicable):

…

(3) Paragraph (2) does not apply where the prime brokerage firm is also acting as trustee or depositary of an AIF which is an unauthorised AIF and exercises a right of reuse for a safe custody asset of that unauthorised AIF under FUND 3.11.24R (Reuse of assets).

10 CASS resolution pack

10.1 Application, purpose and general provisions

Application

10.1.1 R (1) Subject to (2) this chapter applies to a firm when it:

(a) holds financial instruments, or is safeguarding and administering investments, is acting as trustee or depositary of an AIF or is acting as trustee or depositary of a UCITS, in accordance with CASS 6; and/or

…

…

Sch 2 Notification requirements
### Sch 2.1G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 6.5.13R(1A)</td>
<td>Non-compliance or material inability to comply with the requirements in CASS 6.5.1 R (Records and accounts) and/or articles 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation</td>
<td>The fact that the firm has not complied or is materially unable to comply with the requirements and the reasons for that</td>
<td>Non-compliance or material inability to comply with the requirement</td>
<td>Without delay</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Part II: Comes into force on 22 July 2014

#### 6 Custody rules

##### 6.1 Application

... Operators of regulated collective investment schemes

6.1.16B R The custody rules do not apply to a firm when it acts as the operator of a regulated collective investment scheme, in relation to activities carried on for the purpose of, or in connection with, the operation of the scheme. [deleted]
Annex M

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking though indicates deleted text except where indicated otherwise.

Part I: Comes into force on 22 July 2013

3 Auditors

3.10 Duties of auditors: notification and report on client assets

3.10.5 R Client assets report

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(3)</td>
<td>in the case of an investment management firm, personal investment firm, a UCITS firm, securities and futures firm, firm acting as trustee or depositary of an AIF, firm acting as trustee or depositary of a UCITS or BIPRU investment firm, when a subsidiary of the firm is during the period a nominee company in whose name custody assets of the firm are registered during the period, that nominee company has maintained throughout the period systems for the custody, identification and control of custody assets which:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3 Annex 1R Auditor's client assets report

Instructions for Part I:

** In accordance with SUP 3.10.5R(3), the opinion relating to the nominee company is only required to be included in the case of a nominee company in whose name custody assets are registered where that company is a subsidiary of an investment management firm, personal investment firm, a UCITS firm, securities and futures firm, firm acting as a depositary of an AIF or a UCITS or
BIRPU investment firm.

10A FCA Approved Persons

10A.1 Application

... Internally managed corporate AIFs

10A.1.24 G In accordance with section 59(7C) of the Act this chapter does not apply to an internally managed corporate AIF.

10A.6 FCA governing functions

... What the FCA governing functions include

10A.6.3 R Each of the FCA governing functions includes:

(1) (where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R (or, for a full-scope UK AIFM apportioned under article 60(1) of the AIFMD level 2 regulation))

... Compliance oversight function (CF10)

10A.7 FCA required functions

... Compliance oversight function (CF10)

10A.7.8 R The compliance oversight function is the function of acting in the capacity of:

(1) a director or senior manager who is allocated the function set out in SYSC 3.2.8R or SYSC 6.1.4R(2); or

(2) for a full-scope UK AIFM, a person allocated the function in article 61(3)(b) of the AIFMD level 2 regulation.
10A.8 Systems and controls functions

... Full-scope UK AIFM

10A.8.5 For a full-scope UK AIFM, the requirement to have an employee responsible for reporting to the governing body of the firm or the audit committee for matters in SYSC 10A.8.1R(2) and (3) is derived from the AIFMD level 2 regulation, which imposes obligations on such firms to have a permanent risk management function and, where appropriate and proportionate for their business, an internal audit function.

... 13 Exercise of passport rights by UK firms

... 13.2 Introduction

... 13.2.5 A UK firm that is an AIFM will only be entitled to carry on an activity under AIFMD under a passport in another EEA State if it is a full-scope UK AIFM.

... 13.3 Establishing a branch in another EEA State

... The conditions for establishing a branch

... 13.3.2 A UK firm other than a UK pure reinsurer cannot establish a branch in another EEA State for the first time under an EEA right unless the relevant conditions in paragraphs paragraph 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a UK firm which is not an authorised person to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:
If the UK firm’s EEA right relates to providing collective portfolio management services under the UCITS Directive, the FCA has provided to the Host State regulator:

(2A) …

(3) …

(b) in any other case (except for a firm passporting under AIFMD):

(4) Where a consent notice is given under the AIFMD it must include confirmation that the UK firm has been authorised by the FCA

13.3.4-A G If a UK firm is passporting under AIFMD, it may establish a branch in another EEA State as soon as the conditions in SUP 13.3.2G(1) and (2) are met.

Issue of a consent notice to the Host State regulator

13.3.5 G …

(1B) Where the UK firm’s EEA right derives from AIFMD, the FCA will give the Host State regulator a consent notice within two months of having received the notice of intention and immediately inform the UK firm pursuant to SUP 13.3.6G if the FCA is satisfied that the firm complies, and continues to comply with:

(a) the provisions implementing the AIFMD; and

(b) any directly applicable EU regulation made under that directive.

…
under AIFMD.

13.3.7 G …

(2) If the appropriate UK regulator decides to refuse to give a consent notice, then paragraph 19(12) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to give the UK firm a decision notice within three months of the date on which it received the UK firm's notice of intention (two months in the case of a UK firm which is a UCITS management company or an AIFM). The UK firm may refer the matter to the Tribunal.

…

13.4 Providing cross-border services into another EEA State

…

13.4.2 G A UK firm, other than a UK pure reinsurer or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross-border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, AIFMD, MiFID or the UCITS Directive, paragraph 20(4B) of Part III of Schedule 3 to the Act. It is an offence for a UK firm which is not an authorised person to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). The conditions are that:

…

(3) if the UK firm is passporting under the Insurance Mediation Directive and the EEA State in which the UK firm is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, one month has elapsed beginning with the date on which the UK firm received written notice from the appropriate UK regulator as described in SUP 13.4.5G (paragraph 20 (3B)(c) of Schedule 3 to the Act; or

(4) if the UK firm is passporting under AIFMD, the firm has received written notice from the FCA as described in SUP 13.4.4-AG(1)(c).
A UK firm that is an AIFM may exercise an EEA right to market a UK AIF or EEA AIF managed by it under AIFMD when the following conditions are satisfied:

(1) the UK firm has given the FCA a notice of intention to market the AIF under SUP 13.5.2R; and

(2) the FCA has sent a copy of the notice of intention to the Host State regulator where the AIF will be marketed and has given the UK firm written notice that it has done so.

Issuing a consent notice or notifying the Host State regulator

If the UK firm's EEA right derives from AIFMD (other than the EEA right to market an AIF referred to in (3)) and the condition in (2) is met, paragraph 20(3D) of Part III of Schedule 3 to the Act requires the FCA to:

(a) send a copy of the notice of intention to the Host State regulator within one month of receipt;

(b) include confirmation that the UK firm has been authorised by the FCA under AIFMD; and

(c) immediately inform the UK firm that the notice of intention and confirmation have been sent to the Host State regulator;

The condition referred to in (1) is that the FCA is satisfied that the firm complies and will continue to comply with:

(a) the provisions implementing AIFMD, and

(b) any directly applicable EU regulation made under AIFMD.
If the UK firm's EEA right derives from AIFMD and relates to the EEA right to market an AIF and both the conditions in (4) are met, paragraph 20C of Part III of Schedule 3 to the Act requires the FCA to:

(a) send a copy of the notice of intention to the Host State regulator within 20 working days of receipt;

(b) include confirmation that the UK firm has been authorised by the FCA to manage AIFs with a particular investment strategy; and

(c) where the notice of intention relates to an EEA AIF, inform the competent authority of the EEA AIF that the UK firm may start marketing the AIF in the EEA States covered by the notice of intention.

The conditions referred to in (3) are that:

(a) the FCA is satisfied that the UK firm complies, and will continue to comply with, AIFMD and any directly applicable EU regulation made under AIFMD; and

(b) where the AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by a full-scope UK AIFM or a full-scope EEA AIFM.

If the FCA refuses to send a copy of the notice of intention to the Host State regulator it must notify the AIFM in writing and include the reasons for such refusal. In such case, the AIFM may refer the matter to the Tribunal.

13.4.5 G When the appropriate UK regulator sends a copy of a notice of intention or if it gives a consent notice to the Host State regulator, it must inform the UK firm in writing that it has done so (paragraphs 20(3B)(b), (3D)(a)(iii) and (4) and 20C(9) of Schedule 3 to the Act).

13.5 Notices of intention
Specified contents: notice of intention to provide cross-border services

13.5.2 R A UK firm wishing to provide cross-border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

... 

(5) SUP 13 Annex 8AR, if the UK firm is providing cross-border services under AIFMD to manage an AIF in another EEA State.

(6) SUP 13 Annex 8BR, if the UK firm is providing cross-border services under AIFMD to market an AIF in another EEA State.

... 

13.6 Changes to branches

... 

Firms passporting under AIFMD

13.6.9C G (1) If a UK firm has exercised an EEA right under AIFMD and established a branch in another EEA State, the UK firm must not make a material change in the requisite details of the branch or the identity of the AIFs it manages in the EEA State in which it has established a branch (see SUP 13 Annex 1), unless:

(a) it has complied with regulation 17A(4) for a planned change; or
(b) it has complied with regulation 17A(5) for an unplanned change.

(2) The requirements in regulation 17A(4) for a planned change are that:

(a) the UK firm has given notice to the FCA stating the details of the proposed change; and

(b) either the FCA:

(i) has consented to the change; or
(ii) has not objected to the change in the period of one month beginning on the day on which the UK firm gave notice.

(3) The requirements in regulation 17A(5) for an unplanned change are that:

(a) the UK firm has given notice to the FCA immediately after an unplanned change has occurred; and

(b) the FCA has consented to the change.

Changes arising from circumstances beyond the control of a UK firm

13.6.10 G …

(3) Neither this This guidance nor that set out at SUP 13.6.4G or 13.6.5G is not applicable to MiFID investment firms or AIFMs.

The process

13.6.11 G When the appropriate UK regulator receives a notice from a UK firm other than a MiFID investment firm (see SUP 13.6.5G(1) and SUP 13.6.7G(1)), or a pure reinsurer (see SUP 13.6.9BR) or an AIFM (see SUP 13.6.9CG) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one month from the day on which it received the notice.

…

The process: AIFMs

13.6.18 G (1) When the FCA receives a notice from an AIFM (see SUP 13.6.9CG) for a planned change and such change means the AIFM no longer complies with AIFMD, the FCA must inform the AIFM without undue delay that:

(a) the FCA objects to the change, including reasons for its decision; and

(b) the AIFM must not implement the change.
In these circumstances the AIFM may refer the matter to the Tribunal.

(2) If a planned change is implemented or an unplanned change takes place and results in the AIFM no longer complying with an implementing provision of AIFMD, the FCA must:

(a) take steps to ensure that the AIFM complies with that provision or ceases to exercise the EEA right; and

(b) give notice to the AIFM with reasons for taking such steps.

In these circumstances, the AIFM may refer the matter to the Tribunal.

(3) If a planned change is implemented or an unplanned change takes place and results in no change to the AIFM's compliance with an implementing provision, the FCA must:

(a) give a notice to the Host State regulator informing it of the change; and

(b) inform the firm that it has given the notice, stating the date on which it did so.

13.7 Changes to cross-border services

13.7.1 Where a UK firm is exercising an EEA right under the UCITS Directive, MiFID or the Insurance Directives or AIFMD and is providing cross-border services into another EEA State, any changes to the details of the services are governed by the EEA Passport Rights Regulations…

…

Firms passporting under AIFMD

13.7.13B If a UK firm has exercised an EEA right under AIFMD to provide cross-border services to manage an AIF, regulation 17A(2) states that the UK firm must not make a material change to:
(1) the programme of operations, or the EEA activities, to be carried out in exercise of that right; or

(2) the EEA States in which it manages AIFs; or

(3) the identity of the AIFs it manages in those EEA States;

unless the UK firm complies with the relevant requirements in regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see SUP 13.6.9CG(2) and(3)).

13.7.14 G If a UK firm has exercised an EEA right deriving from AIFMD to provide cross-border services to market an AIF, regulation 17A(3) states that it must not make a material change to any of the following:

(1) the programme of operations identifying the AIF the AIFM intends to market and information on where the AIF is established;

(2) the AIF rules or instruments of incorporation;

(3) the depositary of the AIF;

(4) the description of, or information on, the AIF available to investors;

(5) if the AIF is a feeder AIF, the jurisdiction where the master AIF is established;

(6) any additional information referred to in FUND 3.2.2R (Prior disclosure of information to investors), for each AIF the AIFM intends to market;

(7) the EEA States in which the AIFM intends to market the units or shares of the AIF to an investor that is a professional client; and

(8) information about arrangements made for the marketing of the AIF and, where relevant, arrangements to prevent the AIF from being marketed to an investor that is a retail client, including where the AIFM relies on the activities of independent entities to provide investment services for the AIF;

unless the UK firm complies with regulation 17A(4) for a planned change or regulation 17A(5) for an unplanned change (see SUP 13.6.9CG(2) and
13.8 Changes of details: provision of notices to the appropriate UK regulator

13.8.1 R (1) Where a firm is required to submit a notice of a change to a branch referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9BR and SUP 13.6.10G(1), and SUP 13.6.9CG or a notice of a change to cross-border services referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.5G(1), and SUP 13.7.6G, SUP 13.7.13G and SUP 13.7.14G it must complete and submit that notice in accordance with the procedures set out in SUP 13.5 for notifying the establishing of a branch or the provision of cross-border services.

13 Annex 1R Passporting: Notification of intention to establish a branch in another EEA state
Notification of intention to establish a branch in another EEA state (excluding the Payment Services Directive and Electronic Money Directive)

**FIRM NAME:**

**FRN:**

... 

**Filling in the Form**

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 10 11.

2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 10 11.

3. All firms should answer sections 1, 2, and 10 11. Sections 3-9 refer to specific directives and only relevant sections should be completed. However, please answer all questions in the sections relevant to you.

4. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.
### Alternative Investment Fund Managers Directive (‘AIFMD’)

#### 10.1 You must select those activities that you wish to carry out under AIFMD as listed in article 6(2) and 6(4) of AIFMD.

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of AIFs</td>
<td>☐</td>
</tr>
<tr>
<td>Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis.</td>
<td>☐</td>
</tr>
<tr>
<td>Investment advice</td>
<td>☐</td>
</tr>
<tr>
<td>Safekeeping and administration in relation to units of collective investment undertakings.</td>
<td>☐</td>
</tr>
<tr>
<td>Reception and transmission of orders in relation to financial instruments.</td>
<td>☐</td>
</tr>
</tbody>
</table>

#### 10.2 Please give details of the firm’s programme of operations.

**Note to Question 10.2**

Provide a programme of operations stating in particular the services which the AIFM intends to perform and the organisational structure of the branch.

Please also identify the AIFs that the AIFM intends to manage and the domiciles of these AIFs.

For a suggested template firms may adhere to the template provided in section 3.3 when preparing a programme of operations.
### 11 Declaration

...  

*I enclose the following sections* *(mark the appropriate section)*  

<table>
<thead>
<tr>
<th>Section</th>
</tr>
</thead>
</table>
| Section 1 – Contact Details (mandatory) | ☐  
| ... |  
| Section 10 – Alternative Investment Fund Managers Directive | ☐  
| Section 10.11 – Declaration (mandatory) | ☐  

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.
After SUP 13 Annex 7 insert the following annex. The text is new and is not underlined.

13 Annex  8R  Passporting: AIFMD

This annex consists of one or more forms. Forms can be completed online now by visiting [FCA web address to follow]

The forms are also to be found through the following address:

Passporting: AIFMD - cross border services (management) - SUP 13 Annex 8AR

Passporting: AIFMD - cross border services (marketing) - SUP 13 Annex 8BR
Notification of intention to provide cross-border services in another EEA state with respect to managing an AIF

FIRM NAME:

FRN:

Purpose of this form

You should complete this form if you are a UK firm that wishes to exercise a passport right to provide cross border services in another EEA State under the Alternative Investment Fund Managers Directive (“AIFMD”) to manage an EEA AIF.

You may also use this form if you are a UK firm that wishes to notify us (the FCA) of changes to the details of that cross border services.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of AIFMD (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take legal advice both in the United Kingdom and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the specific activity included in its Scope of Permission and must be a full scope UK AIFM.

Filling in the Form

5. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.

6. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.

7. All firms should answer sections 1, 2, 3 and 4.

8. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

Applications should be sent to:

AIFMD Team
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: +44 (0)20 7066 7188
Website: www.fca.org.uk
E-mail: passport.notifications@fca.org.uk
1 Contact details

1.1 Details of the person we will contact about this application.

<table>
<thead>
<tr>
<th>Firm reference number †</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Title †</td>
<td></td>
</tr>
<tr>
<td>Contact name †</td>
<td></td>
</tr>
<tr>
<td>Address Line 1 †</td>
<td></td>
</tr>
<tr>
<td>Address Line 2 †</td>
<td></td>
</tr>
<tr>
<td>Postcode †</td>
<td></td>
</tr>
<tr>
<td>Country †</td>
<td></td>
</tr>
<tr>
<td>Telephone number †</td>
<td></td>
</tr>
<tr>
<td>Fax number †</td>
<td></td>
</tr>
<tr>
<td>Email address †</td>
<td></td>
</tr>
</tbody>
</table>

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7
2 Details of the services to be provided

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

<table>
<thead>
<tr>
<th>States required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
</tr>
<tr>
<td>Belgium</td>
</tr>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Croatia</td>
</tr>
<tr>
<td>Cyprus</td>
</tr>
<tr>
<td>Czech Republic</td>
</tr>
<tr>
<td>Denmark</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Finland</td>
</tr>
<tr>
<td>France</td>
</tr>
<tr>
<td>Germany</td>
</tr>
<tr>
<td>Gibraltar</td>
</tr>
<tr>
<td>Greece</td>
</tr>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>Iceland</td>
</tr>
<tr>
<td>Ireland</td>
</tr>
<tr>
<td>Italy</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Liechtenstein</td>
</tr>
<tr>
<td>Lithuania</td>
</tr>
<tr>
<td>Luxembourg</td>
</tr>
<tr>
<td>Malta</td>
</tr>
<tr>
<td>Netherlands</td>
</tr>
<tr>
<td>Norway</td>
</tr>
<tr>
<td>Poland</td>
</tr>
<tr>
<td>Portugal</td>
</tr>
<tr>
<td>Romania</td>
</tr>
<tr>
<td>Slovak Republic</td>
</tr>
<tr>
<td>Slovenia</td>
</tr>
<tr>
<td>Spain</td>
</tr>
<tr>
<td>Sweden</td>
</tr>
</tbody>
</table>
| All States                 | ☑

Note to Question 2.1
UK firms have the right to provide cross border services to Gibraltar. References in this form to an EEA State include references to Gibraltar (see the Financial Services and Markets Act (Gibraltar) Order 2001).

2.2 If the firm intends to provide services into more than one EEA State, will these services vary for each State?

Yes ☑ (If yes please provide a separate application form for each state)
No ☐

2.3 Tell us the proposed date for the business to start.

Date dd/mm/yy
3.1 You must select those activities that you wish to carry out under AIFMD as listed in article 6(2) and 6(4) of AIFMD.

- Management of AIFs
- Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis.
- Investment advice
- Safekeeping and administration in relation to units of collective investment undertakings.
- Reception and transmission of orders in relation to financial instruments.

3.2 Please give details of the firm’s programme of operations.

Note to Question 3.2
Provide a programme of operations stating in particular the services which the AIFM intends to perform.
Please also identify the AIFs that the AIFM intends to manage and the domiciles of these AIFs.
**4 Declaration**

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please take appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. And failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

- **I understand it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.**

- **I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.**

- **I confirm that I am authorised to sign on behalf of the firm.**

<table>
<thead>
<tr>
<th>Name†</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Position†</td>
<td></td>
</tr>
<tr>
<td>Signature*</td>
<td></td>
</tr>
<tr>
<td>Date† dd/mm/yy</td>
<td></td>
</tr>
</tbody>
</table>

*I enclose the following sections (mark the appropriate section)*

- Section 1 – Contact Details (mandatory)
- Section 2 – Details of the services to be provided (mandatory)
- Section 3 – Alternative Investment Fund Managers Directive
- Section 4 – Declaration (mandatory)

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.
Notification of intention to provide cross-border services in another EEA state with respect to marketing an AIF

AIFM name: 
FRN: 
AIF name: 

Purpose of this form
You should complete this form if you are a UK firm that wishes to exercise a passport right to provide the cross border services in another EEA State under the Alternative Investment Fund Managers Directive ("AIFMD") to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF) to professional clients. You may also use this form if you are a UK firm that wishes to notify us (the FCA) of changes to the details of that cross border service.

Important information you should read before completing this form
A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of AIFMD (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take legal advice both in the United Kingdom and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the specific activity included in its Scope of Permission and must be a full scope UK AIFM.

Filling in the Form
9. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
10. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
11. All firms should answer sections 1, 2, 3 and 4.
12. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

Applications should be sent to:
AIFMD Team
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

An electronic copy must be submitted by email to AIFMDAuthorisations@fca.org.uk
Website: www.fca.org.uk
## 1 Contact details

### 1.2 Details of the person we will contact about this application.

<table>
<thead>
<tr>
<th>Contact name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone number</td>
<td></td>
</tr>
<tr>
<td>Fax number</td>
<td></td>
</tr>
<tr>
<td>Email address</td>
<td></td>
</tr>
</tbody>
</table>
2 Details of the services to be provided

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

<table>
<thead>
<tr>
<th>States required</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>☐</td>
</tr>
<tr>
<td>Belgium</td>
<td>☐</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>☐</td>
</tr>
<tr>
<td>Croatia</td>
<td>☐</td>
</tr>
<tr>
<td>Cyprus</td>
<td>☐</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>☐</td>
</tr>
<tr>
<td>Denmark</td>
<td>☐</td>
</tr>
<tr>
<td>Estonia</td>
<td>☐</td>
</tr>
<tr>
<td>Finland</td>
<td>☐</td>
</tr>
<tr>
<td>France</td>
<td>☐</td>
</tr>
<tr>
<td>Germany</td>
<td>☐</td>
</tr>
<tr>
<td>Gibraltar</td>
<td>☐</td>
</tr>
<tr>
<td>Greece</td>
<td>☐</td>
</tr>
<tr>
<td>Hungary</td>
<td>☐</td>
</tr>
<tr>
<td>Iceland</td>
<td>☐</td>
</tr>
<tr>
<td>Ireland</td>
<td>☐</td>
</tr>
<tr>
<td>Italy</td>
<td>☐</td>
</tr>
<tr>
<td>Latvia</td>
<td>☐</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>☐</td>
</tr>
<tr>
<td>Lithuania</td>
<td>☐</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>☐</td>
</tr>
<tr>
<td>Malta</td>
<td>☐</td>
</tr>
<tr>
<td>Netherlands</td>
<td>☐</td>
</tr>
<tr>
<td>Norway</td>
<td>☐</td>
</tr>
<tr>
<td>Poland</td>
<td>☐</td>
</tr>
<tr>
<td>Portugal</td>
<td>☐</td>
</tr>
<tr>
<td>Romania</td>
<td>☐</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>☐</td>
</tr>
<tr>
<td>Slovenia</td>
<td>☐</td>
</tr>
<tr>
<td>Spain</td>
<td>☐</td>
</tr>
<tr>
<td>Sweden</td>
<td>☐</td>
</tr>
<tr>
<td>All States</td>
<td>☐</td>
</tr>
</tbody>
</table>

Note to Question 2.1
UK firms have the right to provide cross border services to Gibraltar. References in this form to an EEA State include references to Gibraltar (see the Financial Services and Markets Act (Gibraltar) Order 2001).

2.2 Please tell us the proposed start date for the marketing.

Date dd/mm/yy
Alternative investment fund managers

Please provide the following documentation and information

3.1 Details of the firm’s programme of operations

Note to Question 3.1

Provide a programme of operations stating in particular the services which the AIFM intends to perform.

Please also identify the AIF that the AIFM intends to market by providing the legal name and national identification code of the AIF.
### 3.2 The EEA state in which the AIF is established.

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

### 3.3 A copy of the instrument constituting the fund  
[ ] Attached

### 3.4 The identity of the depositary of the AIF.

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

### 3.5 A description of, or any information on, the AIF available to investors.

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

### 3.6 If the AIF is a feeder AIF, the jurisdiction in which the master AIF is established.  

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

### 3.7 Any additional information referred to in FUND 3.2.2R (Prior disclosure of information to investors), for the AIF the AIFM intends to market.

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
</table>

---

1 Where the AIF is a feeder AIF the right to market the AIF using the marketing passport is subject to the condition that the master AIF is an EEA AIF that is managed by a full scope UK AIFM or full scope EEA AIFM.
3.8 Information about arrangements made for the marketing of the AIF.

3.9 Where relevant, arrangements established to prevent the AIF from being marketed to an investor that is a retail client, including in the case where the AIFM relies on the activities of independent entities to provide investment services in respect of the AIF.
Declaration

It is a criminal offence to knowingly or recklessly give us information that is false or misleading. If necessary, please seek appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. And failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

- I understand it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.
- I confirm that the information in this form is accurate and complete to the best of my knowledge and belief.
- I confirm that I am authorised to sign on behalf of the firm.

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Position</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date dd/mm/yy</th>
<th>dd/mm/yy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I enclose the following sections (mark the appropriate section)

- [ ] Section 1 – Contact details
- [ ] Section 2 – Details of the services to be provided
- [ ] Section 3 – Alternative investment fund managers
- [ ] Section 4 – Declaration

Note to Declaration
If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the firm.
Amend the following provisions.

13A Qualifying for authorisation under the Act

13A.1 Application

... 

13A.1.3 G (1) Under the Gibraltar Order made under section 409 of the Act, a Gibraltar firm is treated as an EEA firm under Schedule 3 to the Act if it is:

... 

(d) authorised in Gibraltar under the MiFID;

(e) authorised in Gibraltar under the UCITS Directive.

... 

13A.4 EEA firms establishing a branch in the United Kingdom

... 

The notification procedure

13A.4.4 G ... 

(2) Although the appropriate UK regulator is not required to notify the applicable provisions to an EEA firm passporting under the Insurance Mediation Directive, or MiFID or AIFMD, these provisions are set out in SUP 13A Annex 1G (Application of the Handbook to Incoming EEA Firms).

... 

13A.5 EEA firms providing cross-border services into the United Kingdom

... 

The notification procedure
(2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive*, or *MiFID* or *AIFMD* these provisions are set out in *SUP 13A Annex 1G* (Application of the Handbook to Incoming EEA Firms).

### 13A Annex 1G

**Application of the Handbook to Incoming EEA firms**

| (1) Module of Handbook | (2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom | (3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom |

---

**SYSC**

The *common platform requirements* in *SYSC 4 - 10* apply as set out in Part 2 of *SYSC 1 Annex 1* (Application of the common platform requirement).

*SYSC 1 Annex 1 row 2.6F* provides that the *common platform requirements* do not apply to an *incoming EEA AIFM branch*, except the *AIFMD host state requirements* and certain requirements regarding *financial crime*.

...  

*SYSC 19A and 19B does not apply.*
| **DISP** | Applies Generally applies (DISP 1.1.1G) and applies but in a limited way in relation to MiFID business. For an incoming EEA AIFM branch **DISP** applies (subject to some limitations, see DISP 1.1.3R), except for an incoming EEA AIFM branch of a closed-ended corporate AIF when **DISP** does not apply. | Does Generally does not apply (DISP 1.1.1G). However, for an incoming EEA firm which is a UCITS management company managing a UCITS scheme or an AIFM managing an authorised AIF, **DISP** applies (subject to some limitations, see DISP 1.1.3R). |
| **COMP** | Applies, except in relation to the passported activities of an MiFID investment firm, a BCD credit institution (other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive), an IMD insurance intermediary, or a UCITS management company acting in that capacity other than in relation to a UCITS scheme carrying on non-core services under article 6.3 of the UCITS Directive and an incoming AIFM branch carrying on either AIFM management functions for an unauthorised AIF or non-core services under article 6.4 of AIFMD (see the definition of “participant firm”). However, a MiFID investment firm, BCD credit institution, an IMD insurance intermediary or a UCITS management company (when carrying on permitted MiFID business) a firm specified above may be able to apply for top-up cover in relation to its passported activities (see COMP 14 (Participation by EEA firms)). | Does not apply in relation to the passported activities of an MiFID investment firm, or a BCD credit institution, an IMD insurance intermediary, or a UCITS management company acting in that capacity other than in relation to a UCITS scheme (see the definition of “participation firm”) carrying on non-core services under article 6.3 of the UCITS Directive or an incoming EEA AIFM carrying on AIFM management functions for an unauthorised AIF or providing non-core services under article 6.4. Otherwise, COMP may apply, but the coverage of the compensation scheme is limited for non-UK activities (see COMP 5). |
| **COLL** | A. The following provisions of … … B. Subject to FUND 1.1.2R, COLL applies to an incoming EEA AIFM as relevant. | For an EEA UCITS management company providing collective portfolio management services for a UCITS scheme, As column (2) A.(d), (e), (f) and (g) and the other parts of COLL specify. For an incoming EEA AIFM, as column (2) B. |
| **FUND** | FUND 3.8 (Prime brokerage firms) applies to an incoming EEA AIFM | Does not apply, except FUND 10 (Operating on a cross border) |
**FUND 10 (Operating on a cross-border basis), provides guidance for an incoming EEA AIFM branch.**

<table>
<thead>
<tr>
<th>13A</th>
<th>Matters reserved to a Home State regulator</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annex 2G</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Requirements in the interest of the general good</td>
</tr>
<tr>
<td>2.</td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>the Single Market Directives expressly reserve responsibility for the prudential supervision of a MiFID investment firm, BCD credit institution, UCITS management company, AIFM or passporting insurance undertaking to the Firm's Home State regulator. The Insurance Mediation Directive reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the FCA, as Host State regulator, is entitled to regulate only the conduct of the firm’s business within the United Kingdom;</td>
</tr>
<tr>
<td>(2)</td>
<td>there is no explicit &quot;general good&quot; provision in MiFID or AIFMD. Rather, MiFID states exactly what the Host State regulator regulates (see paragraphs 8 - 10) the responsibilities for a Host State regulator under MiFID are contained in paragraphs 8 to 10 and under AIFMD are contained in paragraphs 11G to 11J;</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Requirements under AIFMD</td>
</tr>
<tr>
<td>11G</td>
<td>Article 33(5) of AIFMD prohibits Host States from imposing additional requirements on an AIFM to matters covered by AIFMD if the firm is managing an AIF on a cross-border basis by establishing a branch or providing cross-border services to manage an AIF in that EEA State, except as expressly permitted (see 11H below).</td>
</tr>
<tr>
<td>11H</td>
<td>Under article 45(2) (Responsibility of competent authorities in Member States) of AIFMD the supervision of an AIFM’s compliance with articles 12 (General principles) and 14 (Conflicts of interest) are the responsibility of the Host State of the AIFM where the AIFM manages and/or markets an AIF through a branch in that EEA State.</td>
</tr>
</tbody>
</table>
As a result, an *incoming EEA AIFM branch* is required to comply with the *AIFMD Host State requirements* (as set out below):

- (a) **FUND 3.8**;
- (b) **SYSC 4.1.2CR**;
- (c) **SYSC 10.1.22R to SYSC 10.1.26R**; and
- (d) **COBS 2.1.4R**.

Under article 32(5) of *AIFMD*, arrangements in point (h) of Annex IV of *AIFMD* for the *marketing* of AIFs is subject to the laws and supervision of the *Host State* of the AIFM.

A full-scope EEA AIFM that is *marketing* an AIF in the UK using the *marketing* passport should have regard to the *financial promotions* regime, as explained in *PERG 8.37.5G(2)* (Communications with investors in relation to draft documentation).

### 14  
**Incoming EEA firms changing details, and cancelling qualification for authorisation**

...  

### 14.2  
**Changes to branch details**

...  

Firms passporting under *AIFMD*

**14.2.15 G**  
Where an *EEA AIFM* has established a *branch* in the UK, it must not make a material change to:

1. the requisite details of the *branch*; or
2. the identity of the AIFs that the *EEA AIFM* intends to manage;

unless it has complied with the relevant requirement in regulation 7A(3).

**14.2.16 G**  
The relevant requirement in regulation 7A(3) is that the *Home State regulator* has informed the *FCA* that it has approved the proposed change.
14.3 Changes to cross-border services

14.3.1 Where an incoming EEA firm passporting under the MiFID, UCITS Directive or Insurance Directives or AIFMD is exercising an EEA right and is providing cross-border services into the United Kingdom, the EEA Passport Rights Regulations govern any changes to the details of those services. Where an incoming EEA firm has complied with the relevant requirements in the EEA Passport Rights Regulations, then the firm’s permission given under Schedule 3 to the Act is to be treated as varied accordingly.

…

Firms passporting under AIFMD

14.3.8 Where an EEA AIFM is providing cross-border services to manage an AIF in the UK, it must not make a material change to:

(1) the particulars of the programme of operations to be carried out in the UK, including the description of the particular EEA activities; or

(2) the identity of the AIFs that the EEA AIFM intends to manage;

unless it has complied with the relevant requirement in regulation 7A(3).

14.3.9 Where an EEA AIFM is providing cross-border services to market an AIF in the UK, it must not make a material change to:

(1) the documents and information referred to in Annex IV to AIFMD; or

(2) the statement that the EEA AIFM is authorised to manage AIFs with a particular management strategy;

unless it has complied with the relevant requirement in regulation 7A(3).

14.3.10 The relevant requirement in regulation 7A(3) is that the Home State regulator has informed the FCA that it has approved the proposed change.

15 Notifications to the FCA or PRA

…

15.3 General notification requirements

…

Breaches of rules and other requirements in or under the Act
15.3.11 R (1) A firm must notify the appropriate regulator of:

...  

(f) it exceeding (or becoming aware that it will exceed) the limit in BIPRU 10.5.6R; or  

(g) a breach of the AIFMD UK regulation; or  

(h) a breach of any directly applicable EU regulation made under AIFMD;  

...  

UK AIFMs  

15.3.26 R A full-scope UK AIFM must notify the FCA before implementing any material changes to the conditions under which it was granted permission to manage an AIF, in particular to the information it provided in its application for that permission.  

[Note: article 10(1) of AIFMD]  

15.3.27 G Changes that the FCA would expect to be notified of under SUP 15.3.26R include:  

(1) an AIFM being appointed to manage another AIF;  

(2) the appointment of a different depositary for an AIF the AIFM manages; and  

(3) the appointment of any new senior personnel if the AIFM is not required to apply for the FCA’s approval for that appointment under section 59 of the Act.  

15.3.28 R Where a small authorised UK AIFM no longer meets the conditions in regulation 11 of the AIFMD UK regulation (within the meaning of Chapter 1 of the AIFMD level 2 regulation) it must:  

(1) immediately notify the FCA; and  

(2) within 30 calendar days, apply to the FCA for a variation of its permission to become a full-scope UK AIFM.  

[Note: article 3(3) second and third paragraphs of AIFMD]  

...  

16 Reporting requirements
16.1 Application

... 

16.1.1C G The directions and guidance in SUP 16.18 apply for the following types of AIFM:

(1) a small registered UK AIFM;

(2) an above-threshold non-EEA AIFM marketing in the UK; and

(3) a small non-EEA AIFM marketing in the UK.

... 

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

<table>
<thead>
<tr>
<th>(1) Sections(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUP 16.14</td>
<td>A CASS large firm and a CASS medium firm</td>
<td>Entire section</td>
</tr>
<tr>
<td>SUP 16.18</td>
<td>A full-scope UK AIFM and a small authorised UK AIFM</td>
<td>SUP 16.18.3R</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note 3 = The application of SUP 16.18 for the types of AIFMs specified in SUP 16.1.1CG is set out in SUP 16.18.2G.

... 

16.3 General provisions on reporting

... 

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

... 

(11) client money and asset return (SUP 16.14); and

...
(14) remuneration reporting \((SUP\, 16.17)\); and

(15) AIFMD reporting \((SUP\, 16.18)\).

---

16.12 Integrated Regulatory Reporting

---

Reporting requirement

---

16.12.4 Table of applicable rules containing \textit{data items}, frequency and submission periods

<table>
<thead>
<tr>
<th>RAG number</th>
<th>Regulated Activities</th>
<th>Provisions containing:</th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>applicable \textit{data items}</td>
<td></td>
<td>reporting frequency/period</td>
<td>due date</td>
<td></td>
</tr>
<tr>
<td>RAG 4</td>
<td>• managing investments</td>
<td>(SUP, 16.12.14R)</td>
<td>(SUP, 16.12.14R)</td>
<td>(SUP, 16.12.15R)</td>
<td>(SUP, 16.12.16R)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• establishing, operating or winding up a regulated collective investment scheme</td>
<td>(SUP, 16.12.14R)</td>
<td>(SUP, 16.12.14R)</td>
<td>(SUP, 16.12.15R)</td>
<td>(SUP, 16.12.16R)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• establishing, operating or winding up an unregulated collective investment scheme</td>
<td>(SUP, 16.12.16R)</td>
<td>(SUP, 16.12.17R)</td>
<td>(SUP, 16.12.17R)</td>
<td>(SUP, 16.12.17R)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• establishing, operating or winding up a stakeholder pension scheme</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• establishing, operating or winding up a personal pension scheme</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulated Activity Group 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>RAG 6</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- acting as a trustee of an authorised unit trust</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- acting as the depositary of an authorised contractual scheme</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- safeguarding and administration of assets (without arranging)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- arranging safeguarding and administration of assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- acting as depository or sole director of an OEIC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- <em>acting as trustee or depositary of an AIF</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- <em>acting as trustee or depositary of a UCITS</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16.12.11 R The applicable *data items* referred to in *SUP 16.12.4R* are set out according to *firm* type in the table below:
### Description of data item

<table>
<thead>
<tr>
<th>Firms prudential category and applicable data items (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BIPRU firms</strong> (note 17)</td>
</tr>
<tr>
<td>730K</td>
</tr>
<tr>
<td><strong>IPRU (INV) Chapter 3</strong></td>
</tr>
<tr>
<td>...</td>
</tr>
</tbody>
</table>

**Capital adequacy**

| ... | ... | ... | ... | ... |

**Supplementary capital data for collective portfolio management investment firms**

| FIN067 (note 35) | ... | ... | ... | ... |

**Note 35**

Only applicable to firms that are collective portfolio management investment firms.

---

16.12.12 R The applicable reporting frequencies for data items referred to in SUP 16.12.4R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>BIPRU 730K firm</th>
<th>BIPRU 125K firm and UCITS investment firm collective portfolio management investment firm</th>
<th>BIPRU 50K firm</th>
<th>UK consolidation group or defined liquidity group</th>
<th>Firm other than BIPRU firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
16.12.13  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 16.12.12R, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA058</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FIN067</td>
<td></td>
<td></td>
<td></td>
<td>Quarterly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Regulated Activity Group 4

...  

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

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firms’ prudential category and applicable data items (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>BIPRU firms</strong></td>
</tr>
<tr>
<td>730K</td>
<td>125K and UCITS investment firms collective portfolio management investment firms</td>
</tr>
<tr>
<td></td>
<td>IPRU (INV) Chapter 3</td>
</tr>
<tr>
<td></td>
<td>IPRU (INV) Chapter 9</td>
</tr>
<tr>
<td></td>
<td>IPRU (INV) Chapter 11</td>
</tr>
<tr>
<td></td>
<td>IPRU (INV) Chapter 13</td>
</tr>
<tr>
<td>Section</td>
<td>Format</td>
</tr>
<tr>
<td>--------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td><em>Annual report and accounts</em></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>Solvency statement (note 11)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Balance sheet</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Income statement</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Capital adequacy</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Supplementary capital data for collective portfolio manage-</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Volumes and types of business (note 21)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Client money and client assets</strong></td>
<td></td>
</tr>
<tr>
<td>Data item</td>
<td>BIPRU 730K firm</td>
</tr>
<tr>
<td>-----------</td>
<td>-----------------</td>
</tr>
<tr>
<td>FSA041</td>
<td>Annually</td>
</tr>
<tr>
<td>FSA042</td>
<td>Quarterly</td>
</tr>
<tr>
<td>FSA058</td>
<td>…</td>
</tr>
</tbody>
</table>

16.12.16 R The applicable reporting frequencies for data items referred to in SUP 16.12.15R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm’s accounting reference date, unless indicated otherwise.

Note 21 Only applicable to firms that have a managing investments permission [deleted]

Note 22 Only applicable to firms that have permission for establishing, operating or winding up a regulated collective investment scheme managing a UCITS.

Note 32 Only applicable to firms that are collective portfolio management investment firms.
16.12.17  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 16.12.16R, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA041</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>30 business days</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA058</td>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FIN066</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>20 business days</td>
<td></td>
</tr>
<tr>
<td>FIN067</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>20 business days</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Regulated Activity Group 7

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

<table>
<thead>
<tr>
<th>Description of Data item</th>
<th>Firms’ prudential category and applicable data item (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIPRU 730k firm</td>
<td>BIPRU 125k firm and UCITS investment firm collective portfolio</td>
</tr>
<tr>
<td>BIPRU 50k firm</td>
<td>Exempt CAD firms subject to IPRU(INV) Chapter 13</td>
</tr>
<tr>
<td></td>
<td>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</td>
</tr>
<tr>
<td></td>
<td>Firms that are also in one or more of RAGs 1 to 6 and not subject to</td>
</tr>
</tbody>
</table>
### Supplementary capital data for collective portfolio management investment firms

<table>
<thead>
<tr>
<th>Data item</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unconsolidated BIPRU investment firm</td>
<td>Annual regulated business revenue up to and including £5 million</td>
</tr>
<tr>
<td>Solo consolidated BIPRU investment firm</td>
<td>Annual regulated business revenue over £5 million</td>
</tr>
<tr>
<td>UK Consolidation Group or defined liquidity group</td>
<td></td>
</tr>
<tr>
<td>FIN067</td>
<td>Quarterly</td>
</tr>
</tbody>
</table>

**Note 28**

Only applicable to firms that are collective portfolio management investment firms.

---

16.12.23 R The applicable reporting frequencies for data items referred to in SUP 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>FSA058</td>
<td>... ... ...</td>
</tr>
<tr>
<td>FIN067</td>
<td>Quarterly</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

16.12.24 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 16.12.23R**, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA058</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FIN067</td>
<td>20 business days</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

...  

16.14  **Client money and asset return**  
...

Report  
...

16.14.4  **R** For the purposes of the *CMAR*:
...

(2) *safe custody assets* are those to which the *custody rules* in *CASS 6* apply but only in relation to the holding of *financial instruments* (in the course of *MiFID business*) and, the *safeguarding and administration of assets* (without arranging) (in the course of business that is not *MiFID business*), *acting as trustee or depositary of an AIF* and *acting as trustee or depositary of a UCITS*.

After SUP 16.17 insert the following chapter. The text is new and is not underlined.

16.18  **AIFMD reporting**

Application

16.18.1  **G** This section applies to the following types of *AIFM* in line with *SUP 16.18.2G*:

(1) a *full-scope UK AIFM*;
(2) a small authorised UK AIFM;

(3) a small registered UK AIFM;

(4) an above-threshold non-EEA AIFM marketing in the UK; and

(5) a small non-EEA AIFM marketing in the UK.

<table>
<thead>
<tr>
<th>16.18.2 G Type of AIFM</th>
<th>Rules</th>
<th>Directions</th>
<th>Guidance</th>
<th>AIFMD level 2 regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>full-scope UK AIFM</td>
<td>FUND 3.4 (Reporting obligation to the FCA) and SUP 16.18.5R</td>
<td></td>
<td>Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)</td>
<td></td>
</tr>
<tr>
<td>small authorised UK AIFM</td>
<td>SUP 16.18.6R</td>
<td></td>
<td>Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)</td>
<td></td>
</tr>
<tr>
<td>small registered UK AIFM</td>
<td>SUP 16.18.7D</td>
<td></td>
<td>Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)</td>
<td></td>
</tr>
<tr>
<td>above-threshold non-EEA AIFM marketing in the UK</td>
<td>SUP 16.18.8G</td>
<td></td>
<td>Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)</td>
<td></td>
</tr>
<tr>
<td>small non-EEA AIFM marketing in the UK</td>
<td>SUP 16.18.9D</td>
<td></td>
<td>Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU)</td>
<td></td>
</tr>
</tbody>
</table>

Purpose

16.18.3 G This section specifies the end dates for reporting periods for AIFMs and the reporting period for small AIFMs for the types of AIFM to whom this section applies. Although article 110 of the AIFMD level 2 regulations
(Reporting to competent authorities) (as replicated in SUP 16.18.4EU) applies certain reporting requirements directly to AIFMs, it does not specify the end dates for reporting periods for an AIFM and, for small AIFMs, it does not specify the reporting period. Therefore, competent authorities are required to specify these requirements.

Article 110 of the AIFMD level 2 regulation

<table>
<thead>
<tr>
<th>16.18.4</th>
<th>EU</th>
<th>Reporting to competent authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td>In order to comply with the requirements of the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU, an AIFM shall provide the following information when reporting to competent authorities:</td>
</tr>
<tr>
<td></td>
<td>(a)</td>
<td>the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the AIF’s investment strategies and their geographical and sectoral investment focus;</td>
</tr>
<tr>
<td></td>
<td>(b)</td>
<td>the markets of which it is a member or where it actively trades;</td>
</tr>
<tr>
<td></td>
<td>(c)</td>
<td>the diversification of the AIF’s portfolio, including, but not limited to, its principal exposures and most important concentrations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>For each of the EU AIFs they manage and for each of the AIFs they market in the Union, AIFMs shall provide to the competent authorities of their home Member State the following information in accordance with Article 24(2) of Directive 2011/61/EU:</td>
</tr>
<tr>
<td></td>
<td>(a)</td>
<td>the percentage of the AIF’s assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in point (a) of Article 23(4) of Directive 2011/61/EU;</td>
</tr>
<tr>
<td></td>
<td>(b)</td>
<td>any new arrangements for managing the liquidity of the AIF;</td>
</tr>
<tr>
<td></td>
<td>(c)</td>
<td>the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;</td>
</tr>
<tr>
<td></td>
<td>(d)</td>
<td>the current risk profile of the AIF, including:</td>
</tr>
<tr>
<td></td>
<td>(i)</td>
<td>the market risk profile of the investments of the AIF,</td>
</tr>
</tbody>
</table>
including the expected return and volatility of the AIF in normal market conditions;

(ii) the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF’s assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;

(e) information on the main categories of assets in which the AIF invested including the corresponding short market value and long market value, the turnover and performance during the reporting period; and

(f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU.

3. The information referred to in paragraphs 1 and 2 shall be reported as follows:

(a) on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU but do not exceed EUR 1 billion, for each of the EU AIFs they manage and for each of the AIFs they market in the Union;

(b) on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the EU AIFs they manage, and for each of the AIFs they market in the Union;

(c) on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;

(d) on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.

4. By way of derogation from paragraph 3, the competent authority of the home Member State of the AIFM may deem it appropriate and necessary for the exercise of its function to require all or part of the
information to be reported on a more frequent basis.

5. AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under Article 24(4) of Directive 2011/61/EU at the same time as that required under paragraph 2 of this Article.

6. AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.

7. In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent authorities of the home Member State shall mean the competent authority of the Member State of reference.

[Note: Article 110 of the AIFMD level 2 regulation]

Reporting periods and end dates

16.18.5 R The reporting period of a full-scope UK AIFM must end on the following dates:

   (1) for AIFMs that are required to report annually, on 31 December each calendar year;

   (2) for AIFMs that are required to report half-yearly, on 30 June and 31 December in each calendar year; and

   (3) for AIFMs that are required to report quarterly, on 31 March, 30 June, 30 September and 31 December in each calendar year.

16.18.6 R A small authorised UK AIFM must report annually and its reporting period must end on 31 December in each calendar year.

16.18.7 D [To follow]

16.18.8 G In accordance with regulation 59(3)(a) of the AIFMD UK regulation, an above-threshold non-EEA AIFM that is marketing in the UK is required to comply with the implementing provisions of the AIFMD UK regulation that apply to a full-scope UK AIFM and relate to articles 22 to 24 AIFMD in so far as such provisions are relevant to the AIFM and the AIF. Therefore, such an AIFM should comply with the provisions in SUP 16.18.5R that are applicable to a full-scope UK AIFM.

16.18.9 D [To follow]

16.18.10 G All periods in this section should be calculated by reference to London time.
SUP 16 Annex 24R  Data items for SUP 16.12

Form FSA041 is deleted.

FIN066 and FIN067 are added as follows, the text of these forms is new and is not underlined).
## Capital adequacy (for collective portfolio management firms)

### Regulatory Capital

**Tier 1**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Paid up share capital (excluding preference shares)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Share premium account</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Audited reserves</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Non-cumulative preference shares</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Eligible LLP member's capital</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Initial capital</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Investment in own shares</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Intangible assets</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Material current year losses</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Excess LLP member's drawings</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Material holdings in credit and financial institutions</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Total deductions</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Tier 1 capital</td>
<td></td>
</tr>
</tbody>
</table>

**Tier 2**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Revaluation reserves</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Fixed term cumulative preference share capital</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Long term Qualifying Subordinated Loans</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Other cumulative preference share capital and debt capital</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Qualifying arrangements</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Own funds</td>
<td></td>
</tr>
</tbody>
</table>

### Regulatory capital tests

**Own funds test for collective portfolio management firms**

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>Own funds</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Higher of:</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Funds under management requirement</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>and</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Fixed overheads requirement</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>+ (either) Professional negligence capital requirement</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>+ (or) PII capital requirement</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Total capital requirement</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Surplus / deficit of own funds</td>
<td></td>
</tr>
</tbody>
</table>
Liquid assets test
27 Liquid assets requirement
28 Liquid assets held
29 Surplus / deficit of liquid assets

Calculation of relevant annual fixed expenditure

30 Total expenditure (per income statement)
31 Less: Staff bonuses, except to the extent they are guaranteed
32 Employees’ and Directors shares in profits, except to the extent they are guaranteed
33 Other appropriations of profits
34 Allowable commission and fees
35 Interest charges in respect of borrowings made to finance the acquisition of
   the firm's readily realisable investments
36 Interest paid to customers on client money
37 Interest paid to counterparties
38 Fees, brokerage and other charges paid to clearing houses, exchanges and
   intermediate brokers for the purposes of executing, registering or clearing transactions
39 Foreign exchange losses
40 Other variable expenditure
41 Relevant fixed expenditure
42 Relevant annualised fixed expenditure

Professional indemnity insurance

43 Specify whether your firm holds additional own funds or PII in accordance with IPRU (INV) 11.3.11R

44 If PII is held, provide the following policy details

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>J</th>
<th>K</th>
<th>L</th>
<th>M</th>
</tr>
</thead>
<tbody>
<tr>
<td>PII policy</td>
<td>Annualised premium</td>
<td>Insurer (from list)</td>
<td>Start date</td>
<td>Renewal date</td>
<td>Currency of indemnity limits</td>
<td>Limit of indemnity required</td>
<td>Single</td>
<td>Aggregate</td>
<td>Limit of indemnity received</td>
<td>Single</td>
<td>Aggregate</td>
</tr>
</tbody>
</table>

1
Capital adequacy - supplemental (for collective portfolio management investment firms)

1. Own funds

   Higher of:

   Higher of:

   2. Funds under management requirement

   and

   3. Fixed overheads requirement

   

   4. * (either) Professional negligence capital requirement

   and

   5. * (or) PII capital requirement

   

   6. Variable capital requirement

7. Total requirement

8. Surplus / (deficit) of financial resources

Liquid assets test

9. Liquid assets requirement

10. Liquid assets held

11. Surplus / deficit of liquid assets

Professional indemnity insurance

12. Specify whether your firm holds additional own funds or PII in accordance with GENPRU 2.1.6R

13. If PII is held, provide the following policy details

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>J</th>
<th>K</th>
<th>L</th>
<th>M</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIL policy</td>
<td>Annualised premium</td>
<td>Insurer (from list)</td>
<td>Start date</td>
<td>Renewal date</td>
<td>Currency of indemnity limits</td>
<td>Limit of indemnity required</td>
<td>Limit of indemnity received</td>
<td>PIL detailed information</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   | Single | Aggregate | Single | Aggregate | Business line (from list) | Policy excess | Policy exclusions |

   | | | | | | | | |
FIN066 – Capital Adequacy (for collective portfolio management firms)

Introduction
FIN066 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) 11 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, ie 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 2B will be the element numbered 2 in column B.

<table>
<thead>
<tr>
<th>Regulatory capital</th>
<th>1 to 19</th>
<th>The figures in this section should be consistent with those submitted in FSA029 for the same reporting period.</th>
</tr>
</thead>
</table>

Regulatory capital test
### Own funds test for collective portfolio management firms

<table>
<thead>
<tr>
<th>Own funds</th>
<th>20B</th>
<th>The amount of <em>own funds</em> calculated in line with <em>IPRU(INV)</em> 11.4. This is the figure entered at 19B.</th>
</tr>
</thead>
</table>
| Funds under management requirement | 21B | Up to a maximum of €10,000,000, this is the *base capital resources requirement* plus 0.02% of the amount by which the firm’s *funds under management* exceeds €250,000,000.  
If the data item is not submitted with figures in Euros, then the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.  
The appropriate definition of *funds under management* to be used in this calculation is that set out in the *FCA Handbook* Glossary of definitions. |
| Fixed overheads requirement | 22B | This is one quarter of the annualised fixed expenditure calculated in line with *IPRU(INV)* 11.3.3R.  
The amount to be entered in this element is calculated using elements 30 to 42 in the fourth quarter of the preceding financial year. Each of the four quarters in any financial year should use the figure calculated in the fourth quarter of the preceding year.  
Where there was no preceding year, the figure entered is that determined in line with *IPRU(INV)* 11.3.6R. |
| Professional negligence capital requirement | 23B | The amount of additional *own funds* used to cover potential liability risks arising from professional negligence for *AIFM* activities in lieu of professional indemnity insurance, as per *IPRU(INV)* 11.3.11G(1)(a).  
When calculating this amount, *firms* should include the amount of any assets under management that are delegated to the firm by mandate, see *IPRU(INV)* 11.3.14EU. Note that this treatment is different from that prescribed for the *funds under management requirement* (see the guidance in line 21B).  
If a firm makes an entry in 23B it should not make an entry in 24B. |
| PII capital requirement | 24B | The amount of any additional *own funds* required to cover any defined excess and exclusions in the insurance policy, as required by *IPRU(INV)* 11.3.11G(1)(b).  
If a firm makes an entry in 24B it should not make an entry in 23B. |
| Total capital requirement | 25B | This is the higher of 21B and 22B, plus either 23B or |

---

**Note:** *IPRU(INV)* refers to the Individual Prudential Rules for Investment Firms, parts of which are mandated by the FCA. **AIFM** stands for Alternative Investment Fund Manager.
**Surplus / deficit of own funds**  
24B.  
This is 20B less 25B.

| **Liquid assets test** |  
| --- | --- | --- | --- |  
| Liquid assets requirement | 27B | For a collective portfolio management firm, this is the amount required by IPRU(INV) 11.2.1R(3). |  
| Liquid assets held | 28B | This is the amount of liquid assets held by the firm at the reporting date. Assets are regarded as liquid if they are readily convertible to cash within one month. This figure must not include speculative positions. |  
| Surplus / deficit of liquid assets | 29B | This is 28B less 27B. |  

**Calculation of relevant annual expenditure for forthcoming year**  
30 to 42  
This section of the data item must be completed when the reporting period end date is equal to the firm’s accounting reference date, ie the fourth quarter. This does not need to be completed during the other three quarters. Where appropriate, figures entered should match those on FSA030 for the same reporting period.  

When, as per IPRU(INV) 11.3.6R(2), the firm is using projected figures, these should be entered in this section.

| **Total expenditure (per income statement)** | 30B | This should be the amount entered in element 22A of FSA030 for the same reporting period. FSA030 should be completed on a cumulative basis, so the amounts entered in the fourth quarter represent the entire financial year up to the accounting reference date. |  
| **Deductions from expenditure** | 31A to 40A | Deductions from expenditure should be made in line with IPRU(INV) 11.3.4R |  
| **Relevant fixed expenditure** | 41B | This is 30B less the sum of 31A to 40A |  
| **Relevant annualised fixed expenditure** | 42B | If the figures submitted in FSA030 for the period ending on the firm’s accounting reference date do not include twelve month’s trading, then the amount calculated in 41B must be pro-rated to an equivalent annual amount. This situation may occur if the firm has changed its accounting reference date.  
Where a firm has not completed a full year since the commencement of its permitted business, an amount based on forecast expenditure included in its budget for the first twelve months’ trading, as submitted with its application for membership, should be entered. |  

**Professional Indemnity Insurance**  
Specify whether your firm holds additional own funds or PII in accordance with IPRU(INV) 7.3.12R  
43B  
The firm should report either “Own funds” or “PII”. Where a firm has PII but also holds own funds to cover any excesses and/or exclusions on the policy, the firm should report “PII”.  

**PII Basic information**

<table>
<thead>
<tr>
<th>44</th>
<th><em>Firms</em> should enter details on all relevant PII policies, using a separate line for each policy. <strong>A firm</strong> may satisfy its requirements for professional indemnity insurance with a policy that also provides cover to one or more entities other than the <strong>firm</strong>, provided the policy satisfies the conditions of the <strong>AIFMD level 2 regulation</strong> in respect of the <strong>firm</strong>, exclusive of the cover provided to other entities by the policy. If such a policy is held, each <strong>firm</strong> covered by the policy should include the policy information on their return.</th>
</tr>
</thead>
<tbody>
<tr>
<td>44A</td>
<td>This should state the premium payable (in descending order of size, where relevant), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.</td>
</tr>
<tr>
<td>44B</td>
<td>Select the PII insurer from the list provided. If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select ‘Other’. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select ‘multiple’.</td>
</tr>
<tr>
<td>44C</td>
<td>Enter the start date of the policy.</td>
</tr>
<tr>
<td>44D</td>
<td>Enter the renewal date of the policy.</td>
</tr>
<tr>
<td>44E</td>
<td>Using the appropriate International Organization for Standardization ISO 4217 three digit code (eg, GBP), enter the currency in which the indemnity limits in fields 44F to 44J are reported.</td>
</tr>
<tr>
<td>44F</td>
<td>You should record the required indemnity limits on the <strong>firm</strong>’s PII policy or policies, in relation to single claims. A <strong>firm</strong> should calculate this amount with reference to <strong>IPRU(INV) 11.3.15EU</strong> and include the amount of any assets under management that are delegated to the <strong>firm</strong> by mandate. Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td>44G</td>
<td>You should record here the required indemnity limits on the <strong>firm</strong>’s PII policy or policies, in aggregate. A <strong>firm</strong> should calculate this amount with reference to <strong>IPRU(INV) 11.3.15EU</strong> and include the amount of any assets under management that are delegated to the <strong>firm</strong> by mandate. Where these are denominated in a currency other than...</td>
</tr>
</tbody>
</table>
the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.

**Limit of indemnity received: single**

44H You should record here the indemnity limits on the firm’s PII policy or policies, received in relation to single claims.

Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.

**Limit of indemnity received: aggregate**

44J You should record here the indemnity limits on the firm’s PII policy or policies, received in aggregate.

Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.

**PII detailed information**

**Business line (from list)**

44K For policies that cover all business lines, firms should select ‘All’ from the list provided.

Where the policy contains different excesses for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 44L. Once these ‘non-standard’ excesses have been identified, the remaining business lines should be reported under ‘All other’.

**Policy excess**

44L For policies that cover all business lines with no difference in excesses, this should be the excess applicable. Otherwise, it should contain the highest excess for each business line that differs.

In line with IPRU(INV) 11.3.11G(1)(b), a firm should include additional own funds sufficient to cover the highest excess in the amount reported in 24B.

**Policy exclusions**

44M If there are exclusions in the firm’s PII policy, the business type(s) to which they relate should be selected here from the list provided.

In line with IPRU(INV) 11.3.11G(1)(b), a firm should include additional own funds sufficient to cover any liabilities arising in the amount reported in 24B.
**Internal validations**

Data elements are referenced by row, then column.

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6B</td>
<td>$\Sigma(1B:5B)$</td>
</tr>
<tr>
<td>2</td>
<td>12B</td>
<td>$\Sigma(7A:11A)$</td>
</tr>
<tr>
<td>3</td>
<td>13B</td>
<td>$6B - 12B$</td>
</tr>
<tr>
<td>4</td>
<td>19B</td>
<td>$\Sigma(13B:18B)$</td>
</tr>
<tr>
<td>5</td>
<td>20B</td>
<td>$19B$</td>
</tr>
<tr>
<td>6</td>
<td>25B</td>
<td>(higher of $21B$ and $22B$) + $23B + 24B$</td>
</tr>
<tr>
<td>7</td>
<td>26B</td>
<td>$20B - 25B$</td>
</tr>
<tr>
<td>10</td>
<td>41B</td>
<td>$30B - \Sigma(31A:40A)$</td>
</tr>
</tbody>
</table>

**External validations**

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>30B</td>
<td>FSA030.22A</td>
</tr>
</tbody>
</table>

**FIN067 – Capital adequacy – supplemental (for collective portfolio management investment firms)**

**Introduction**

FIN067 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 GENPRU 2.1.63R to 2.1.74R and allows monitoring against those requirements.

**Defined terms**

Where terms used in these notes are defined by the Companies Acts 2006, as appropriate, or the provisions of the firm’s accounting framework (usually UK GAAP or IFRS) they should have that meaning. The descriptions indicated in these notes are designed simply 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 Acts 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 annual report and accounts and should be 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, ie 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 2B will be the element numbered 2 in column B.

<table>
<thead>
<tr>
<th>Own funds</th>
<th>1A</th>
<th>This amount should be equal to the figure entered in element 57A of FSA003 for the same reporting period.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funds under management requirement</td>
<td>2A</td>
<td>The base capital resources requirement plus the amount which is 0.02% of funds under management that exceeds €250,000,000, up to a maximum of €10,000,000.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If the data item is not submitted with figures in Euros, then the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The appropriate definition of funds under management to be used in this calculation is that set out in the FCA Handbook Glossary of definitions.</td>
</tr>
<tr>
<td>Fixed overheads requirement</td>
<td>3A</td>
<td>The amount calculated in line with GENPRU 2.1.53R. The amount should equal element 104A on FSA003 for the same reporting period.</td>
</tr>
<tr>
<td>Professional negligence capital requirement</td>
<td>4A</td>
<td>The amount of additional own funds used to cover potential liability risks arising from professional negligence in relation to AIFM activities in lieu of professional indemnity insurance, as per GENPRU 2.1.67G(1)(a).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>When calculating this amount, firms should include the amount of any assets under management that are delegated to the firm by mandate, as set out in GENPRU 2.1.70EU. Note that this treatment is different from that prescribed for the funds under management requirement (see the guidance in line 2A).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If a firm makes an entry in 4A it should not make an entry in 5A.</td>
</tr>
<tr>
<td>PII capital requirement</td>
<td>5A</td>
<td>The amount of any additional own funds required to cover any defined excess and exclusions in the</td>
</tr>
</tbody>
</table>
insurance policy, as required by *GENPRU* 2.1.67G(1)(b).

If a *firm* makes an entry in 5A it should not make an entry in 4A.

<table>
<thead>
<tr>
<th>Variable capital requirement</th>
<th>6A</th>
<th>The amount calculated in line with <em>GENPRU</em> 2.1.45R. The amount should equal element 70A on FSA003 for the same reporting period.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total requirement</td>
<td>7A</td>
<td>This is the higher of 2A and 3A plus 4A or 5A, and 6A.</td>
</tr>
<tr>
<td>Surplus / deficit of own funds</td>
<td>8A</td>
<td>This is 1A less 7A.</td>
</tr>
</tbody>
</table>

**Liquid assets test**

<table>
<thead>
<tr>
<th>Liquid assets requirement</th>
<th>9A</th>
<th>The amount of <em>own funds</em> required by <em>GENPRU</em> 2.1.64R.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquid assets held</td>
<td>10A</td>
<td>The amount of liquid assets held by the <em>firm</em> at the reporting date. Assets are regarded as liquid if they are readily convertible to cash within one month. This figure must not include speculative positions.</td>
</tr>
<tr>
<td>Surplus / deficit of liquid assets</td>
<td>11A</td>
<td>This is 10A less 9A.</td>
</tr>
</tbody>
</table>

**Professional Indemnity Insurance**

<table>
<thead>
<tr>
<th>Does your firm hold additional own funds or PII in accordance with <em>GENPRU</em> 2.1.67G</th>
<th>12A</th>
<th>The <em>firm</em> should report either “Own funds” or “PII”. Where a <em>firm</em> has PII but also holds <em>own funds</em> to cover any excesses and/or exclusions on the policy, the <em>firm</em> should report “PII”.</th>
</tr>
</thead>
</table>

**PII Basic information**

<table>
<thead>
<tr>
<th>Annualised premium</th>
<th>13A</th>
<th>This should state the premium payable (in descending order of size, where relevant), net of tax and any other add-ons. If the premium covers a period other than 12 months, it should be annualised before ranking.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurer (from list)</td>
<td>13B</td>
<td>Select the PII insurer from the list provided. If you have more than one policy with the same insurer, they should be combined. If the insurer is not listed, select ‘Other’. If a policy is underwritten by more than one insurance undertaking or Lloyd's syndicate, you should select ‘multiple’.</td>
</tr>
<tr>
<td>Start date</td>
<td>13C</td>
<td>Enter the start date of the policy.</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Renewal date</td>
<td>13D</td>
<td>Enter the renewal date of the policy.</td>
</tr>
<tr>
<td>Currency of indemnity limits</td>
<td>13E</td>
<td>Using the appropriate International Organization for Standardization ISO 4217 three digit code (e.g., GBP), enter the currency in which the indemnity limits, in fields 13F to 13J are reported.</td>
</tr>
<tr>
<td>Limit of indemnity required: single</td>
<td>13F</td>
<td>You should record here the required indemnity limits on the firm’s PII policy or policies for single claims. A firm should calculate this amount with reference to GENPRU 2.1.71EU and include the amount of any assets under management that are delegated to the firm by mandate. Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td>Limit of indemnity required: aggregate</td>
<td>13G</td>
<td>You should record here the required indemnity limits on the firm’s PII policy or policies, in aggregate. A firm should calculate this amount with reference to GENPRU 2.1.71EU and include the amount of any assets under management that are delegated to the firm by mandate. Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td>Limit of indemnity received: single</td>
<td>13H</td>
<td>You should record here the indemnity limits on the firm’s PII policy or policies received in relation to single claims. Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td>Limit of indemnity received: aggregate</td>
<td>13J</td>
<td>You should record here the indemnity limits on the firm’s PII policy or policies, received in aggregate. Where these are denominated in a currency other than the currency of the report, the figure should be converted to the currency of the submission using the closing mid-market rate of exchange on the reporting period end date.</td>
</tr>
<tr>
<td>PII detailed information</td>
<td>13K</td>
<td>For policies that cover all business lines, firms should select ‘All’ from the list provided. Where the</td>
</tr>
</tbody>
</table>
policy contains different excess for different business lines, firms should identify these business lines from the list (or the closest equivalent) and report the (highest) excess for that business line in data element 13L. Once these ‘non-standard’ excesses have been identified, the remaining business lines should be reported under ‘All other’.

Policy excess 13L For policies that cover all business lines with no difference in excesses, this should be the excess applicable. Otherwise, it should contain the highest excess for each business line that differs.

In line with GENPRU 2.1.67G(1)(b), a firm should include additional own funds sufficient to cover the highest excess in the amount reported in 5A.

Policy exclusions 13M If there are exclusions in the firm’s PII policy, the business type(s) to which they relate should be selected from the list provided.

In line with GENPRU 2.1.67G(1)(b), a firm should include additional own funds sufficient to cover any liabilities arising in the amount reported in 5A.

FIN067 – Capital adequacy – supplemental (for collective portfolio management investment firms) validations

Internal validations

Data elements are referenced by row, then column.

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>7A</td>
<td>Higher of ((Higher of 2A and 3A) + 4A + 5A) and 6A</td>
</tr>
<tr>
<td>2</td>
<td>8A</td>
<td>1A – 7A</td>
</tr>
<tr>
<td>3</td>
<td>11A</td>
<td>10A – 9A</td>
</tr>
</tbody>
</table>

External validations

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1A</td>
</tr>
<tr>
<td>2</td>
<td>3A</td>
</tr>
<tr>
<td>3</td>
<td>6A</td>
</tr>
</tbody>
</table>

...
Please insert the following text after TP 1.7. The text is new and is not underlined.

**TP 1.8  AIFMD**

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: date in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>The changes to <em>SUP</em> 16.12 set out in Annex M of the Alternative Investment Fund Managers Directive Instrument 2013, other than those relating to FSA041.</td>
<td>R</td>
<td>(1) Where a <em>firm</em> meets the conditions in (2) the changes effected by the Annex listed in column (2) do not apply and, therefore, the provisions in <em>SUP</em> 16.12 amended by that Annex will continue to apply as they were in force as at 21 July 2013.</td>
<td>From 22 July 2013 until 21 July 2014</td>
<td>22 July 2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2) The conditions are: (a) the <em>firm</em> falls within regulation 73(1) of the <em>AIFMD UK regulation</em>; and (b) the <em>firm</em> does not have a <em>Part 4A permission to manage an AIF</em>.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>The changes to <em>SUP</em> 16.12 set out in Annex M of the Alternative Investment Fund Managers Directive Instrument 2013, other than those relating to FSA041.</td>
<td>R</td>
<td>(1) Where a <em>firm</em> meets the conditions in (2) the changes effected by the Annex listed in column (2) do not apply provided that: (a) for a <em>firm</em> which is an existing <em>firm</em> on 21 July 2013, it continues to comply with the requirements applicable to that <em>firm</em> on 21 July 2013; or (b) for a <em>firm</em> that was not an existing <em>firm</em> on 21 July 2013, it complies with the requirements applicable to a <em>firm</em> that was establishing, operating or</td>
<td>From 22 July 2013 until 30 January 2014</td>
<td>22 July 2013</td>
</tr>
</tbody>
</table>

From 22 July 2013 until 30 January 2014
winding up a regulated collective investment scheme on 21 July 2013 (with the exception of FSA042 if the firm does not manage a UCITS).

(2) The conditions are that the firm has a Part 4A permission to (a) manage an AIF; and/or (b) manage a UCITS.

Part II: Comes into force on 22 July 2014

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 3

...

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

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>BIPRU firms (note 17)</th>
<th>Firms other than BIPRU firms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>730 K</td>
<td></td>
</tr>
<tr>
<td></td>
<td>125K and collective portfolio management investment firms</td>
<td></td>
</tr>
<tr>
<td></td>
<td>50K</td>
<td></td>
</tr>
<tr>
<td></td>
<td>IPO (INV) Chapter 3</td>
<td>IPO (INV) Chapter 5</td>
</tr>
<tr>
<td></td>
<td>IPO (INV) Chapter 9</td>
<td>IPO (INV) Chapter 13</td>
</tr>
<tr>
<td>Annual report and accounts</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

...
16.12.12 R The applicable reporting frequencies for data items referred to in SUP 16.12.4R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>BIPRU 730K firm</th>
<th>BIPRU 125K firm and collective portfolio management investment firm</th>
<th>BIPRU 50K firm</th>
<th>UK consolidation group or defined liquidity group</th>
<th>Firm other than BIPRU firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>FSA036</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>Quarterly</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

16.12.13 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 16.12.12R, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA036</td>
<td></td>
<td></td>
<td></td>
<td>20 business days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Regulated Activity Group 4

...  

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

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firms’ prudential category and applicable data items (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>BIPRU firms</td>
</tr>
<tr>
<td></td>
<td>730 K</td>
</tr>
<tr>
<td>Solvency statement (note 11)</td>
<td>...</td>
</tr>
<tr>
<td>Balance sheet</td>
<td>...</td>
</tr>
<tr>
<td>Income statement</td>
<td>...</td>
</tr>
<tr>
<td>Capital adequacy</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
16.12.16 R The applicable reporting frequencies for data items referred to in SUP 16.12.15R are set out in the table below according to firm type. Reporting frequencies are calculated from a firm's accounting reference date, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Firms’ prudential category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>BIPRU 730K firm</td>
</tr>
<tr>
<td>FSA036</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16.12.17 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 16.12.16R, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSA036</td>
<td></td>
<td></td>
<td></td>
<td>20 business days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Regulated Activity Group 6

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

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firm’s prudential category and applicable data item (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>IPRU(INV)</em> Chapter 3</td>
</tr>
<tr>
<td>Solvency statement (note 6)</td>
<td>...</td>
</tr>
<tr>
<td>Balance sheet</td>
<td>...</td>
</tr>
<tr>
<td>Income statement</td>
<td>...</td>
</tr>
<tr>
<td>Capital adequacy</td>
<td>...</td>
</tr>
<tr>
<td>Client money and client assets</td>
<td>...</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Reporting frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSA036</td>
<td>Quarterly</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA036</td>
<td>20 business days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Regulated Activity Group 8

...
Client money and client assets

... ... ... ... ... ... ... FSA039

... ...

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP 16.12.25AR* are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>BIPRU 730K firm</th>
<th>BIPRU 125K firm</th>
<th>BIPRU 50K firm</th>
<th>UK consolidation group or defined liquidity group</th>
<th>Firms other than BIPRU firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA036</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Quarterly</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

16.12.27 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 16.12.26R*, unless indicated otherwise.

<table>
<thead>
<tr>
<th>Data item</th>
<th>Daily</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Half yearly</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FSA036</td>
<td></td>
<td></td>
<td></td>
<td>20 business days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SUP 16 Annex 24R** Data items for SUP 16.12

Form FSA036 is deleted.

**SUP 16 Annex 25G** Guidance notes for data items in SUP 16 Annex 24R

Guidance notes on Form FSA036 are deleted.
Annex N
Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1.1 Purpose and application

Application to firms

1.1.3 R …

1.1.5 R This chapter does not apply to:

(3) an authorised professional firm in respect of expressions of dissatisfaction about its non-mainstream regulated activities; and

(4) complaints in respect of auction regulation bidding;

(5) a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions carried on for a closed-ended corporate AIF; and

(6) a depositary, for complaints concerning activities carried on for:

(a) an unauthorised AIF which is not a charity AIF; or

(b) any closed-ended corporate AIF.

1.1.5-A G References in DISP 1.1.5R to a full-scope UK AIFM and small authorised UK AIFM carrying on AIFM management functions for a closed-ended corporate AIF include firms that are internally managed corporate AIFs.

1 Annex Application of DISP 1 to type of respondent / complaint
<table>
<thead>
<tr>
<th>Type of respondent / complaint</th>
<th>DISP 1.2 Consumer awareness rules</th>
<th>DISP 1.3 Complaints handling rules</th>
<th>DISP 1.4 – 1.8 Complaints resolution rules etc.</th>
<th>DISP 1.9 Complaints record rule</th>
<th>DISP 1.19 Complaints reporting rules</th>
<th>DISP 1.10A Complaints data publication rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM for complaints concerning AIFM management functions carried on for a closed-ended corporate AIF</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>a depositary, for complaints concerning activities carried on for an unauthorised AIF (where the AIF is not a charity AIF) or a closed-ended corporate AIF</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
<td>Does not apply</td>
</tr>
<tr>
<td>an incoming EEA AIFM, for</td>
<td>Applies for eligible</td>
<td>Applies for eligible complain-</td>
<td>Applies for eligible complain-</td>
<td>Applies for eligible complain-</td>
<td>Applies for eligible complain-</td>
<td>Does not apply</td>
</tr>
</tbody>
</table>
complaints concerning AIFM management functions carried on for an authorised AIF under the freedom to provide cross-border services

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R (1) …

(2) The Compulsory Jurisdiction also covers complaints about:

(a) collective portfolio management services provided by an EEA UCITS management company managing a UCITS scheme; and

(b) AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF:

from an establishment in another EEA State under the freedom to provide cross-border services.

2.6.2 G This:

…

(2) excludes complaints about business conducted in the United Kingdom on a services basis from an establishment outside the United Kingdom (other than complaints about collective portfolio management services provided by an EEA UCITS management company in managing a UCITS scheme, and complaints about AIFM management functions provided by an incoming EEA AIFM managing an authorised AIF).
Annex O
Amendments to the Compensation sourcebook (COMP)

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

1.4 EEA firms

1.4.1 G Incoming EEA firms which are conducting regulated activities in the United Kingdom under a BCD, IMD, or MiFID or UCITS Directive passport are not required to participate in the compensation scheme in relation to those passported activities. They may apply to obtain the cover of, or ‘top-up’ into, the compensation scheme if there is no cover provided by the incoming EEA firm’s Home State compensation scheme or if the level or scope of the cover is less than provided by the compensation scheme. This is covered by COMP 14.

1.4.4 G Incoming EEA firms which are passporting into the UK under the UCITS Directive or AIFMD passport, to manage a UCITS scheme or authorised AIF, are required to participate in the compensation scheme.

1.4.5 G Incoming EEA firms which are passporting into the UK under an AIFMD passport, to manage an unauthorised AIF or to provide the services in article 6(4) of AIFMD, are not required to participate in the compensation scheme for those activities, but may choose to ‘top-up’ into the compensation scheme if they carry on those activities from a branch in the UK and there is no cover provided by the incoming EEA firm’s Home State compensation scheme, or if the level or scope of the cover is less than provided by the compensation scheme.

4.2 Who is eligible to benefit from the protection provided by the FSCS?

4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to COMP 4.2.1R

| (18) | Alternative investment funds, and anyone who is the AIFM or depositary of an alternative investment fund. |
5.5 Protected investment business

5.5.1 Protected investment business is:

... provided that the territorial scope condition in COMP 5.5.2 R is satisfied and, for a firm acting as the manager or depositary of a fund, one of the conditions in COMP 5.5.3 R is satisfied.

Territorial scope condition

5.5.2 COMP 5.5.1 R only applies if the territorial scope condition is that the protected investment business was carried on from:

... (4) ... and in either case the management company is providing collective portfolio management services for a UCITS scheme but only if the claim relates to that activity; or

(5) an establishment of an incoming EEA AIFM in another EEA State if the claim relates to providing AIFM management functions on a cross-border services basis for an authorised AIF.

Managers and depositaries of funds

5.5.3 The conditions referred to in COMP 5.5.1 R for a manager or depositary of a fund are:

(1) for the activities of managing an AIF or establishing, operating or winding up a collective investment scheme, the claim is in respect of an investment in:

(a) an authorised fund; or

(b) any other fund which has its registered office or head office in the UK or is otherwise domiciled in the UK and is not a closed-ended corporate AIF;

(2) where a firm is acting as depositary of an AIF and in so doing is carrying on the activity of acting as trustee or depositary of an AIF or safeguarding and administering assets, the claim is in respect of their activities for:

(a) an authorised AIF; or
(b) a charity AIF which is not a closed-ended corporate AIF;

6.2 Who is a relevant person?

6.2.2 G …

(4) An incoming EEA AIFM managing an authorised AIF from a branch in the UK or under the freedom to provide cross-border services, is a relevant person in respect of that activity.

(5) An incoming EEA AIFM managing an unauthorised AIF is not a relevant person in respect of that activity unless it has top-up cover.

(6) An incoming EEA AIFM providing the services in article 6(4) of AIFMD is not a relevant person in relation to those activities, unless it has top-up cover.

14.1 Application and Purpose

Application

14.1.2 R This chapter also applies to an incoming EEA firm which is a credit institution, or an MiFID investment firm (or both), an IMD insurance intermediary, a UCITS management company or an AIFM.

Purpose

14.1.3 G This chapter provides supplementary rules and guidance for an incoming EEA firm which is a credit institution, an IMD insurance intermediary, an MiFID investment firm, a UCITS management company or an AIFM. It reflects in part the implementation of the Deposit Guarantee Directive, Investors Compensation Directive, and UCITS Directive. This sourcebook applies in the usual way to an incoming EEA firm which is exercising EEA rights under the Insurance Directives. Such a firm is not affected by the Deposit Guarantee Directive, the Investors Compensation Directive or the UCITS Directive.

14.1.4A R For an incoming EEA firm which is an AIFM, the question of whether it is a
participant firm for its passported activities depends on the type of activities it carries on under that passport. If it manages an authorised AIF from a branch in the UK or under the freedom to provide cross-border services, it is a participant firm for that activity. If it manages an unauthorised AIF, or provides the services in article 6(4) of AIFMD from a branch in the UK or on a cross-border services basis, it is not a participant firm for that activity; however, it may choose to obtain top-up cover for those activities if carried on from a branch in the UK.

14.1.5 G In relation to an incoming EEA firm’s passporting activities, its Home State compensation scheme must provide compensation cover in respect of business within the scope of the Deposit Guarantee Directive, Investors Compensation Directive, and article 6(3) of the UCITS Directive and article 6(4) of AIFMD, whether that business is carried on from a UK branch or on a cross-border services basis. (For an EEA UCITS management company, this is only for certain passported activities, namely managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments. Insurance mediation activity relating to non-investment insurance contracts is not within the scope of the Deposit Guarantee Directive and the Investor Compensation Directive.)

14.2 Obtaining top-up cover

14.2.3 G A notice under COMP 14.2.1R should include details confirming that the incoming EEA firm falls within a prescribed category. In summary:

(1) the firm must be:

(2) ...

(d) a UCITS management company that carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments; and or

(e) an AIFM that carries on AIFM management functions for an unauthorised AIF; or

(f) an AIFM that provides the services in article 6(4) of AIFMD;

...
8.37 AIFMD Marketing

Introduction and purpose

8.37.1 G (1) Part 6 (Marketing) of the AIFMD UK regulation contains restrictions on an AIFM or investment firm marketing an AIF. Such a person may not market an AIF in the UK unless the relevant conditions set out in the AIFMD UK regulation are met.

(2) The purpose of this section is to give guidance on:

(a) the restrictions on an AIFM or investment firm marketing an AIF (PERG 8.37.2G and PERG 8.37.3G);

(b) the circumstances in which an AIFM or an investment firm markets an AIF (PERG 8.37.4G to PERG 8.37.10G);

(c) the exemptions from the marketing restrictions (PERG 8.37.11G and PERG 8.37.12G);

(d) the penalties for breach of the marketing restrictions (PERG 8.37.13G);

(e) the application of the financial promotion and scheme promotion restrictions (PERG 8.37.14G); and

(f) the interaction between the marketing of an AIF and the prospectus directive (see PERG 8.37.15G).

This section is not intended to have a more general application and, therefore, where guidance is given this should be interpreted as being limited to the marketing of AIF under the AIFMD UK regulation.

(3) No guidance has been provided by the European Commission or ESMA on the meaning of marketing in AIFMD and, therefore, this guidance is subject to any future clarification from these (or other) European bodies. This means that other EEA States may take a different view on the meaning of marketing in AIFMD.

(4) References to regulations in this section are to regulations of the AIFMD UK regulation.

Restrictions on an AIFM marketing an AIF
Regulations 49 and 50 place restrictions on an AIFM marketing an AIF. These regulations provide that the following types of AIFM may not market the following types of an AIF in the UK unless the conditions summarised below are met.

1. The conditions that need to be met vary depending on whether the AIF falls within regulation 57(1) or not. An AIF falls within this regulation if it is:

   a) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; or

   b) a non-EEA AIF.

Such AIFs are not entitled to benefit from the marketing passport under AIFMD and are subject to the national private placement provisions in respect of their marketing.

2. Regulation 49 (Marketing by full-scope EEA AIFMs of certain AIFs) provides that a full-scope EEA AIFM may not market an AIF that does not fall within regulation 57(1) in the UK unless:

   a) when marketing to a professional client, the FCA has received a regulator’s notice regarding the marketing of the AIF, in accordance with Schedule 3 to the Act (EEA passport rights); or

   b) when marketing to a retail client:

      i) the FCA has received a regulator’s notice regarding the marketing of the AIF, in accordance with Schedule 3 to the Act; or

      ii) the FCA has approved the marketing in accordance with regulation 54 (FCA approval for marketing) (see FUND 3.12 (Marketing in the home Member State of the AIFM)) and has not suspended or revoked that approval.

3. Regulation 50 (Marketing by AIFMs of other AIFs) provides that:

   a) a full-scope UK AIFM may not market an AIF that does not fall within regulation 57(1) in the UK unless the FCA has approved the marketing in accordance with regulation 54; and

   b) the following types of AIFM may not market the following types of AIF unless the AIFM has complied with the national private placement provisions set out in chapter 3 (National private placement) of Part 6 of the AIFMD UK regulation (see FUND 10.5 (National private placement)).
(i) a full-scope UK AIFM of an AIF falling within regulation 57(1);
(ii) a full-scope EEA AIFM of an AIF falling within regulation 57(1); and
(iii) a non-EEA AIFM (ie a small non-EEA AIFM or an above-threshold non-EEA AIFM) of a UK AIF, an EEA AIF or a non-EEA AIF.

Restrictions on an investment firm marketing an AIF

8.37.3 G Regulation 51 (Marketing of AIFs by investment firms) places a restriction on an investment firm marketing an AIF. This provides that where regulation 49 or 50 requires a condition to be met before an AIFM may market an AIF, an investment firm may not market that AIF unless that condition is met.

However, as explained in PERG 8.37.4G(1)(b), an investment firm only markets an AIF if it does so at the initiative of, or on behalf or, the AIFM of that AIF.

The circumstances in which an AIFM or an investment firm markets an AIF

8.37.4 G (1) Regulation 45 (References in this part to an AIFM or an investment firm marketing an AIF) provides that:

(a) an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to an investor domiciled or with a registered office in an EEA State, or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM; and

(b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to an investor domiciled or with a registered office in an EEA State at the initiative of, or on behalf of, the AIFM of that AIF.

(2) Marketing, therefore, has a specific meaning in the context of the AIFMD UK regulation which is, in some respects, different from the ordinary meaning of the term.

The meaning of an offering or placement

8.37.5 G (1) The terms ‘offering’ or ‘placement’ are not defined in the AIFMD UK regulation but, in our view, an offering or placement takes place for the purposes of the AIFMD UK regulation when a person seeks to raise capital by making a unit of share of an AIF available for purchase by a potential investor. This includes situations which constitute a contractual offer that can be accepted by a potential investor in order to make the investment and form a binding contract, and situations which constitute an invitation to the investor to make an offer to subscribe for the investment.
(2) An ‘offering’ includes situations where the units or shares of an AIF are made available to the general public and a ‘placement’ includes situations where the units or shares of an AIF are only made available to a more limited group of potential investors.

(3) However, an ‘offering’ or ‘placement’ does not include secondary trading in the units or shares of an AIF, because this does not relate to the capital raising in that AIF, except in situations where there is an indirect offering or placement (see PERG 8.37.7G). Similarly, the listing of the units or shares of an AIF on the official list maintained by the FCA in accordance with section 74(1) of the Act will not in and of itself constitute an offering or placement, although it may be accompanied by such an offering or placement.

Communications with investors in relation to draft documentation

8.37.6 G (1) Under article 31 AIFMD, an AIFM is required to submit the documentation and information in Annex III to AIFMD with its application for permission to market an AIF managed by it and to notify their competent authority of any material changes to this documentation and information. Therefore, the prescribed documentation and information should be in materially final form before the AIFM may apply for permission to market an AIF. Any communications relating to this draft documentation do not, in our view, fall within the meaning of an ‘offer’ or ‘placement’ for the purposes of AIFMD, as the AIFM cannot apply for permission to market the AIF at this point. For example, a promotional presentation or a pathfinder version of the private placement memorandum would not constitute an offer or placement, provided such documents cannot be used by a potential investor to make an investment in the AIF. However, a unit or share of the AIF should not be made available for purchase as part of the capital raising of the AIF on the basis of draft documentation in order to circumvent the marketing restriction.

(2) In our view, the position for draft documentation set out in (1) should apply to marketing under article 32 of AIFMD and the national private placement provisions. However, as there is no European guidance on the meaning of marketing, other EEA States may take a different view.

(3) Regard should be had to national law in relation to a communication which does not amount to an offering or a placement. In the UK, consideration needs to be given to whether such a communication is a financial promotion (see PERG 8.37.14G). If a UK AIFM is marketing in another EEA State using the marketing passport in article 32 AIFMD, regard should be had to the national law of that EEA State, as the arrangements for marketing are a matter for the Host State in accordance with article 32(5) of AIFMD (unless the communication is an information society service in which case regard should be had to the law of the country of origin).
The meaning of indirect offering or placement

8.37.7 G (1) Marketing may take place by a direct or indirect offering or placement of units or shares of an AIF. The reference to indirect offering or placement would include situations where an AIFM distributes units or shares of an AIF through a chain of intermediaries.

(2) For example, if the units or shares of an AIF are temporarily purchased by a third party (eg, an underwriter or placement agent) with the objective of distributing them to a wider investor base, this could be an indirect offering or placement when those units or shares are made available for purchase by investors, if the third party is acting at the initiative of, or on behalf of, the AIFM.

The meaning of a unit or share of an AIF

8.37.8 G The terms ‘unit’ and ‘share’ in the AIFMD UK regulation are generic and can be interpreted as encompassing all forms of equity of, or other rights in, an AIF. As such, the terms are not limited to AIFs which are structured as companies or unitised funds and may include other forms of collective investment undertakings, such as partnerships or non-unitised trusts.

The meaning of investor

8.37.9 G (1) The reference to ‘investor’ in the AIFMD UK regulation should be regarded as a reference to the person who will make the decision to invest in the AIF. Where that person acts on its own behalf and subscribes directly to an AIF, the investor should be considered to be the person who subscribes to the unit or share of the AIF.

(2) However, where that person engages another person to subscribe to the AIF on its behalf, including, for example, where:

(a) a nominee company will subscribe as bare trustee for an underlying beneficiary; or

(b) a custodian will subscribe on behalf of an underlying investor, the AIFM or investment firm that is marketing the AIF should ‘look through’ the subscriber to find the underlying investor who will make the decision to invest in the AIF and that person should be regarded as the investor.

(3) Where a discretionary manager subscribes, or arranges for another person to subscribe, on behalf of an underlying investor to the AIF and the discretionary manager makes the decision to invest in the AIF on that investor’s behalf without reference to the investor, it is not necessary to ‘look through’ the structure and the discretionary manager should be considered to be the investor for the purposes of the AIFMD UK regulation.
Territorial scope of the marketing restrictions

8.37.10 G (1) The restrictions on the marketing of an AIF in regulations 49 to 51 only apply to marketing that takes place in the UK. In addition, under regulation 45, an AIFM or an investment firm only markets an AIF if the investor is domiciled in an EEA State or has its registered office in an EEA State.

(2) Under regulation 2(2)(a) (Interpretation), the reference to ‘domicile’ should be construed in line with its meaning in AIFMD, ie its meaning under EU law. This may be different to the domicile of an investor for tax purposes.

Marketing at the initiative of the investor

8.37.11 G (1) Regulation 47 (Marketing at the initiative of the investor) states that regulations 49 to 51 do not apply to an offering or placement of units or shares of an AIF to an investor made at the initiative of that investor.

(2) A confirmation from the investor that the offering or placement of units of shares of the AIF was made at its initiative, should normally be sufficient to demonstrate that this is the case, provided this is obtained before the offer or placement takes place. However, AIFMs and investment firms should not be able to rely upon such confirmation if this has been obtained to circumvent the requirements of AIFMD.

Marketing under the designation “EuSEF” and “EuVECA”

8.37.12 G Regulation 48 (Marketing under the designation “EuSEF” and “EuVECA”) provides that regulations 49 to 51 do not apply to the marketing of an AIF under the designation “EuSEF” and “EuVECA”. To be designated as such the AIFM of the AIF is required to apply for registration of the AIF with its Home State under the EuSEF regulation or the EuVECA regulation (and in the UK make a notification under regulation 14 (Notification of new funds under the EuSEF Regulation or the EuVECA Regulation)). Where the AIFM is established in the UK, it must also register as a small registered UK AIFM under regulation 10. The AIFM of an AIF is then entitled to market the AIF to professional clients and certain categories of retail clients (see article 6 of the EuSEF regulation and article 6 the EuVECA regulation) under those regulations.

Contravention of the marketing restrictions

8.37.13 G An AIFM or an investment firm that acts in contravention of the marketing restrictions in regulations 49 to 51, or an AIFM that acts in contravention of a provision of the EuSEF regulation or the EuVECA regulation, is deemed to have been carrying out “unlawful marketing” under regulations 52 and 53. The consequences of carrying out unlawful marketing vary, depending on whether the AIFM or investment firm concerned is an authorised person or an
unauthorised person.

(1) If the AIFM or investment firm is an unauthorised person, regulation 52 (Contravention by an unauthorised person) provides that:

(a) section 25 of the Act (contravention of section 21) applies to the unlawful marketing as it applies to the contravention of section 21(1) of the Act (although under regulation 52(3) the reference in section 25(1)(a) to imprisonment for a term not exceeding six months is to be read as a reference to imprisonment for a term not exceeding three months);

(b) section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at section 168(2)(c) to a contravention of section 21 of the Act included reference to unlawful marketing; and

(c) section 30 of the Act (enforceability of agreements resulting from unlawful communications) applies in relation to:

(i) controlled agreements entered into in consequence of unlawful marketing, as it applies in relation to controlled agreements entered into in consequence of an unlawful communication; and

(ii) the exercise of rights conferred by a controlled investment in consequence of unlawful marketing, as it applies in relation to the exercise of such rights in consequence of an unlawful communication.

(2) If the AIFM or investment firm is an authorised person, regulation 53 (Contravention by an authorised person) provides that:

(a) unlawful marketing is actionable at the suit of a private person who suffers loss as a result of such marketing, subject to the defences and other incidents applying to actions for breach of statutory duty; and

(b) section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at section 168(2)(c) to a contravention of section 238 of the Act included reference to unlawful marketing.

Application of the financial promotion and scheme promotion restrictions

8.37.14 G (1) Regulation 46 (Application of the financial promotion and scheme promotion restrictions) provides that where a person may market an AIF under regulation 49, 50 or 51:

(a) to the extent that such marketing falls within section 21(1) (restrictions on financial promotion) or 238(1) (restrictions on promotion) of the Act, the person may market the AIF to a retail client only if the person does so without breaching the
restriction in that section; and

(b) to the extent that any activity falling within section 21(1) or 238(1) of the Act does not amount to marketing by an AIFM or an investment firm for the purposes of Part 6 of the AIFMD UK regulations, the restriction in that section applies to the person.

(2) The effect of the provision referred to at (1)(a) is to require an AIFM or an investment firm that markets an AIF to a retail client to comply with the financial promotion and scheme promotion restrictions in relation to that marketing. The provision referred to at (b) is designed to clarify that the financial promotion and scheme promotion restrictions continue to apply to communications by an AIFM or an investment firm that do not constitute marketing.

(3) In addition, the AIFMD UK regulation has made amendments to article 29 (Communications required or authorised by enactments) of the Financial Promotion Order and article 16 (Communications required or authorised by enactments) of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/2157). The effect of which is to exempt communications to professional clients which are approved by the FCA under regulation 49 or 50 of the AIFMD UK regulation from the financial promotion and scheme promotion restrictions.

(4) There is likely to be a considerable overlap between marketing and financial promotion, and in the case of marketing to retail clients, this can only be done if a financial promotion can be made to that investor, but the two concepts are not the same. In particular, it is possible for a person to make a financial promotion without marketing an AIF. For example, an AIFM that makes a communication in relation to an AIF would be making a financial promotion if that communication was a significant step in the chain of events leading to an agreement to engage in investment activity (see PERG 8.4.7G (Inducements)), but would not be marketing an AIF if this communication was in relation to draft documentation (see PERG 8.37.6G).

The interaction between marketing and the prospectus directive

8.37.15 G (1) The prospectus directive has not been amended by AIFMD and closed-ended AIFs that are making an offer of securities to the public as defined in the prospectus directive need to comply with the requirements under both Directives.

(2) However, where the AIF is required to publish a prospectus under section 85 of the Act or the equivalent provision implementing article 3 of the Prospectus Directive in the AIF’s Home State, only information referred to in FUND 3.2.2R and 3.2.3R that is additional to that contained in the prospectus needs to be disclosed, either separately or as additional information in the prospectus.
16 Scope of the Alternative Investment Fund Managers Directive

16.1 Introduction

Question 1.1: What is the purpose of the questions and answers in this chapter?

The purpose is to consider the scope of regulated activities specifically relating to the Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD") as implemented in the UK through the RAO.

Question 1.2: What are the regulated activities specifically relating to AIFMD?

The regulated activities that specifically relate to AIFMD are:

(1) managing an AIF (see PERG 16.3); and

(2) acting as a depositary of an AIF (see PERG 16.4).

Question 1.3: What are the main European measures dealing with the scope?

As well as AIFMD itself, they are:

(1) Commission delegated regulation (EU) No 231/2013, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (the AIFMD level 2 regulation); and

(2) the ESMA document “Guidelines on key concepts of the AIFMD” (the ESMA AIFMD key concepts guidelines).

Question 1.4: What is the approach to deciding whether something is covered by the AIFMD?

When defining what an AIF is, the drafters of AIFMD faced a dilemma. If there is a precise and detailed definition there is a risk that some funds that should be regulated would fall outside regulation, given the wide variety of legal forms they can take. However, a broad definition entails a risk that AIFMD is given a much wider scope than intended. The agreed definition of AIF is drafted at a high level of generality and uses words which have a wide meaning. So we have approached PERG 16 by looking at what sorts of entities are clearly meant to be caught and then using that as a guide to identify cases which are not fairly within the definition, to avoid an interpretation that would give an exorbitantly wide scope. In the same way, descriptions of what is excluded should not be read in a way that
would take cases out of scope that are fairly within it.

A number of answers in PERG 16 take a broad purposive interpretation and look at economic substance. The definition of AIF is drafted at a high level without much detail and uses broad concepts rather than precise technical or legal ones, meaning that PERG 16 takes a similar approach to interpreting it.

**Question 1.5: Are there transitional arrangements?**

Yes. Some of the transitional arrangements for implementing the AIFMD may affect the date by which a person who would otherwise be managing an AIF or acting as a depositary of an AIF needs permission to do so. PERG 16 does not deal with these arrangements. Details are in Part 9 of the AIFMD UK Regulation.

16.2 What types of funds and businesses are caught?

**Question 2.1: What is the basic definition of an AIF?**

An AIF is a collective investment undertaking, including investment compartments of such an undertaking, which:

1. raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

2. does not require authorisation pursuant to article 5 of the UCITS Directive.

The key elements of the definition are:

3. it is a collective investment undertaking (CIU);

4. it has a defined investment policy;

5. it raises capital with a view to investing that capital for the benefit of those investors in accordance with that policy;

6. an AIF does not include an undertaking that requires authorisation under article 5 of the UCITS Directive.

It is necessary to satisfy all the elements of the definition in order to be an AIF.

**Question 2.2: Does an AIF have to take any particular legal form?**

No.

- An AIF may be open-ended or close-ended.
- It may or may not be listed.
• It does not matter whether it is set up under contract, trust or statute or if it takes another type of legal form. It does not matter what kind of legal structure it has.

• A limited partnership, a limited liability partnership, a limited liability company, an ordinary partnership, a unit trust, an ICVC and a contractual scheme could all be covered.

• It does not matter where the AIF is formed. It may be formed under the laws of any EEA State (including any part of the UK) or any non-EEA state.

Question 2.3: What is an undertaking for these purposes?

It covers a wide range of entities and goes beyond the Glossary definition of undertaking. It will include a body corporate, a partnership, an unincorporated association and a fund set up as a trust.

Question 2.4: Is an AIF the same as a collective investment scheme?

No, although the two concepts overlap considerably.

Question 2.5: Is an undertaking excluded because it has no external manager?

No. An undertaking that has no external manager and is managed by its own governing body may be an AIF.

Question 2.6: Is the definition restricted to funds that invest in certain kinds of asset?

No. Assets can include traditional financial assets (equity, equity related and debt), private equity, real estate and also non-traditional asset classes such as ships, forests, wine, and any combination of these assets. These are just examples; assets can include assets of any kind or combinations.

Question 2.7: Does the definition depend on how the underlying property is held?

No. The investors may receive a beneficial interest in the underlying property, as might be the case in a trust structure. They may also receive no interest in the underlying property but, instead, their interest may be represented by shares or units in the AIF, as would be the case where the AIF takes the form of a company limited by shares. It might even be possible for the investors to own the assets jointly.

Question 2.8: Must the scheme be time-limited or designed to allow investors to exit from time to time or at a particular time?
A scheme may be an AIF even if there are no arrangements for units or shares to be repurchased, redeemed or cancelled. Likewise a scheme may be an AIF even if it does not have a finite life.

Question 2.9: Is a business excluded because it is exclusively or largely funded by debt or other types of leverage rather than equity capital?

No. See the answers to Questions 2.37 (Is a securitisation vehicle covered?) and 2.44 (Can an issue of debt securities be an AIF?).

Key elements of the definition

Capital-raising

Question 2.10: You say that an undertaking needs to raise capital to be an AIF. What does capital raising involve?

Under the ESMA AIFMD key concepts guidelines, the commercial activity by an undertaking or a person (or entity acting on its behalf – typically, the AIFM) of taking direct or indirect steps to procure the transfer or commitment of capital by one or more investors to the undertaking for the purpose of investing it in accordance with a defined investment policy, should amount to the activity of raising capital.

It is immaterial whether:

(1) the activity takes place once, on several occasions or on an ongoing basis;

(2) the transfer or commitment of capital is in the form of subscriptions in cash or in kind.

If the capital raising is complete before the regulated activities of managing an AIF and acting as a depositary of an AIF come into force, the undertaking may still be an AIF, although transitional arrangements may apply (see Part 9 of the AIFMD UK Regulation).

An undertaking which makes investments will not be an AIF if those investments are funded by the undertaking other than by raising capital in accordance with the definition of an AIF. The fact that the undertaking’s shares can be bought and sold on a stock exchange is not, of itself, the raising of capital by the undertaking.

Question 2.11: Is a fund that only allows a single investor caught?

Under the ESMA AIFMD key concepts guidelines, an undertaking which is not prevented by its national law, the rules or instruments of incorporation, or any other provision or arrangement of binding legal effect, from raising capital from more than one investor should be regarded as an undertaking which raises capital from a number of investors. This is the case even if it has only one investor.
A limited partnership in which there is a single limited partner making a substantive contribution and a general partner making a nominal £1 contribution will not be an AIF (subject to the answer to Question 2.12 (Is a fund that only allows a single investor always outside the definition of an AIF?)) as the undertaking will only have raised capital from one investor. The £1 contribution should be ignored for this purpose as it is wholly nominal.

**Question 2.12: Is a fund that only allows a single investor always outside the definition of an AIF?**

No. Under the *ESMA AIFMD key concepts guidelines*, an undertaking which is prevented by its national law, the rules or instruments of incorporation, or any other provision or arrangement of binding legal effect, from raising capital from more than one investor should be regarded as an undertaking which raises capital from a number of investors if the sole investor:

(1) invests capital which it has raised from more than one legal or natural person with a view to investing it for the benefit of those persons; and

(2) consists of an arrangement or structure which in total has more than one investor for the purposes of the AIFMD.

Examples of arrangements or structures of this type include:

(3) master / feeder structures where a single feeder fund invests in a master undertaking;

(4) fund of funds structures where the fund of funds is the sole investor in the underlying undertaking; and

(5) arrangements where the sole investor is a nominee acting as agent for more than one investor and aggregating their interests for administrative purposes.

**Defined investment policy**

**Question 2.13: What indicative criteria could be taken into account in determining whether or not an undertaking has a defined investment policy?**

Under the *ESMA AIFMD key concepts guidelines*, an undertaking which has a policy about how the pooled capital in the undertaking is to be managed to generate a pooled return (see the answer to Question 2.16 for what pooled return means) for the investors from whom it has been raised should be considered to have a defined investment policy. The following factors would, singly or cumulatively, tend to indicate the existence of such a policy.

(1) Whether the investment policy is determined and fixed, at the latest by the time that investors’ commitments to the undertaking become binding.
Whether the investment policy is in a document which becomes part of, or is referenced in, the rules or instruments of incorporation of the undertaking.

Whether the undertaking, or the legal person managing the undertaking, has an obligation (however arising) to investors, which is legally enforceable by them, to follow the investment policy, including all changes to it.

Whether the investment policy specifies investment guidelines, with reference to criteria including any or all of the following:

(a) to invest in certain categories of asset, or conform to restrictions on asset allocation; or

(b) to pursue certain strategies; or

(c) to invest in particular geographical regions; or

(d) to conform to restrictions on leverage; or

(e) to conform to minimum holding periods; or

(f) to conform to other restrictions designed to provide risk diversification.

For the purposes of (4), any guidelines for the management of an undertaking that determine investment criteria, other than those in the business strategy followed by an undertaking having a general commercial or industrial purpose, should be regarded as investment guidelines. See the answer to Question 2.18 (Is an ordinary commercial business a collective investment undertaking?) for what an undertaking having a general commercial or industrial purpose means.

Under the *ESMA AIFMD key concepts guidelines*, leaving full discretion to make investment decisions to the legal person managing an undertaking should not be used to circumvent the provisions of *AIFMD*. Part of the definition of an *AIF* is that there should be a defined investment policy. It is our view that this guidance is aimed at arrangements that whilst in form do not meet the definition, may in practice do so. For example, say that the manager has a legal discretion that is too wide to meet the definition of a defined investment policy but publishes a detailed investment policy (which is not legally binding) and leads the investors to expect that it will follow it. Under the approach in *ESMA AIFMD key concepts guidelines* that fund may still be an *AIF*.

**Collective investment undertaking**

**Question 2.14: What is a collective investment undertaking?**

See Questions 2.15 to 2.25.
It is important to remember that even if a business is a CIU that does not necessarily mean it is an AIF. To be an AIF it must meet all the criteria set out in the answer to Question 2.1 (What is the basic definition of an AIF?).

**Question 2.15: What is the basic definition of a collective investment undertaking?**

Under the *ESMA AIFMD key concepts guidelines*, the following characteristics, if all of them are exhibited by an undertaking, should show that the undertaking is a CIU:

1. the undertaking does not have a general commercial or industrial purpose (please see the answer to Question 2.18 (Is an ordinary commercial business a collective investment undertaking?) to see what this means);

2. it pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors from investments; and

3. the unitholders or shareholders of the undertaking – as a collective group – have no day-to-day discretion or control.

For (3), the fact that one or more, but not all, of the unitholders or shareholders are granted day-to-day discretion or control should not be taken to show that the undertaking is not a CIU.

**Question 2.16: What is a pooled return for these purposes?**

Under the *ESMA AIFMD key concepts guidelines*, it is the return generated by the pooled risk arising from acquiring, holding or selling investment assets – including activities to optimise or increase the value of these assets – irrespective of whether different returns to investors, such as a tailored dividend policy, are generated.

**Question 2.17: The answer to Question 2.15 refers to day-to-day control. Is it necessary to show day-to-day control to show that there is no AIF?**

No. This is explained further in the answer to Question 2.47 (What factors are relevant to whether a joint venture is excluded on the basis that it is managed by its members?).

**Question 2.18: Is an ordinary commercial business a collective investment undertaking?**

No. An undertaking with a general commercial or industrial purpose is not a CIU. The primary purpose of a CIU is investment to generate a pooled return. This is in contrast to an ordinary commercial business of manufacturing, production, trading or the supply of services. Hence a supermarket, professional services firm or manufacturer is not generally a CIU or an AIF. However, distinctions between "investment" and "trading" for tax purposes are not determinative here.
A general commercial or industrial purpose is defined in the ESMA AIFMD key concepts guidelines as the purpose of pursuing a business strategy which includes characteristics such as running predominantly:

1. a commercial activity, involving the purchase, sale, and/or exchange of goods or commodities and/or the supply of non-financial services; or
2. an industrial activity, involving the production of goods or construction of properties; or
3. a combination thereof.

**Question 2.19: Does that mean that if my undertaking deals in non-financial assets it can’t be a CIU?**

Not necessarily. As explained in the answer to Question 2.6 (Is the definition restricted to funds that invest in certain kinds of asset?), an AIF may invest in non-financial assets. In deciding whether an undertaking is for general commercial or industrial purposes you must look at all relevant factors. Other examples include:

1. whether the undertaking merely holds the property to take advantage of changing market prices or the income stream (which points towards it being a CIU), or whether the undertaking carries on construction, professional service, industrial or manufacturing works (which points away from it being a CIU);
2. if the undertaking is designed to further the existing commercial businesses of the investors, rather than to achieve gain by realisation of the underlying assets, this points away from it being a CIU;
3. whether the undertaking itself creates the property underlying the scheme (which points away from it being a CIU).

**Question 2.20: Are there any other factors to take into account?**

If the application of the factors in the answer to Question 2.1 (What is the basic definition of an AIF?) gives a clear answer then the matter is resolved. However, sometimes there will not be a clear answer. In that case, our view is that you must also look at whether the undertaking is structured like a typical fund. If it is, that points towards it being an AIF.

One important factor is whether there is a defined mechanism for winding up or distribution of investment returns at a particular time or over a designated period. This may apply if the undertaking is open ended, allowing an investor to redeem his interest within a reasonable time.

Hence if the undertaking is set up to carry out a particular project and then to wind itself up and distribute the profits to investors, that points towards it being an AIF.

Another factor is whether an offer to invest in an undertaking is marketed as an investment in a fund.
A key factor is how strongly the factors listed in the answer to Question 2.13 (What indicative criteria could be taken into account in determining whether or not an entity undertaking has a defined investment policy?) point towards a defined investment policy. If it is clear that there is no defined investment policy then there is no AIF, because a defined investment policy forms part of the definition of an AIF. However, if the application of the factors in the answer to Question 2.1 does not give a clear answer, the fact it is very clear that the undertaking has a defined investment policy points towards its being an AIF. In particular, the following key factors should be taken into account (in each case an affirmative answer points towards the entity being an AIF):

1. Whether the investment policy is fixed by the time that investors’ commitments to the business become binding on them.

2. How detailed the investment policy is.

3. Whether the investors may take legal action against the manager of the AIF or the investment vehicle for a breach of the policy.

4. Whether the investors’ consent is needed for a change to the investment policy or whether the investors have the right to redeem their holdings if the policy changes.

**Question 2.21: Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund.**

1. Whether the undertaking requires substantial numbers of personnel to run it (which points away from it being an AIF). One would look at whether the business is carrying out commercial activities which require the employment of employees, such as for the development of properties. However, an undertaking having its own employees does not definitively mean that it is not an AIF – for example, it may be consistent with being a fund for it to have skeleton staff to ensure that the value of its investment is maintained, eg, to ensure adequate maintenance work on the physical investments of the fund is carried out.

2. The extent to which the undertaking outsources its core operations to a third party (and the large-scale outsourcing of core operations points towards its being an AIF).

3. Whether the undertaking has the skill to monitor and control the work outsourced to a delegate and whether the undertaking has expertise in the area of the work being outsourced (each of which points towards its being an AIF).

4. Whether the undertaking has an external manager (which points towards its being an AIF).

5. Whether all the directors of the undertaking are non-executive and whether their compensation packages reflect this (each of which points towards its being an AIF).
The frequency of board meetings (the more frequent the meetings, the more this points away from its being an AIF).

Whether the undertaking’s business is to invest in businesses carried on by others without having control over the management of those businesses (which points towards its being an AIF).

Where the potential AIFM controls a portfolio of several different groups, it is helpful to ask whether those investee companies/groups:

(a) are segregated from one another and if each of them is held and structured for their most effective future disposal (which points towards its being an AIF); or

(b) support one another and the group as a whole (which points away from its being an AIF).

How much of the undertaking’s revenue is derived from activities that are characteristic of a CIU.

None of these factors are conclusive.

Question 2.22: Do the answers to Question 2.18 (Is an ordinary commercial business a collective investment undertaking?) to Question 2.21 (Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund) apply where the relevant business is a financial business?

If the underlying business of the undertaking relates to financial assets, it will not be an undertaking set up for a general commercial or industrial purpose. In that case it does not matter whether the business involves short-term buying and selling or holding for the medium term or until maturity.

However, a conventional non-financial business will often carry out its business through shares in its subsidiaries. A share in a subsidiary is a financial asset. Thus it is necessary to distinguish between a conventional holding company of this sort and an AIF. Similarly, if a business holds an asset through a shell company or bare nominee, the categorisation of the business should generally look through the shell to the underlying assets. The answer to Question 2.21 (Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund) is relevant to identify such a case. An undertaking holding assets through subsidiaries in this way is not a financial business for the purposes of PERG 16.

The ordinary cash management activities and treasury functions of a general commercial venture do not indicate that the venture is a CIU.

Question 2.23: What are financial assets for the purpose of Question 2.22?

Financial assets include investments under MiFID and investment life insurance contracts; real estate is not considered a financial asset.
An asset held for hedging purposes is not generally considered to be a financial asset for these purposes.

**Question 2.24: What factors are relevant in the case of a financial business?**

A financial business must meet the definition of an *AIF*. In our view the answer is likely to depend on the following factors.

1. The need for a defined investment policy (see Question 2.13).
2. Whether it raises external capital (see Question 2.10).
3. The main activity of a *CIU* is the investment of capital, not the provision of services. Hence a professional partnership, even with outside investors, is unlikely to be a *CIU*.
4. The pooled return point in Question 2.15 (What is the basic definition of a collective investment undertaking?) and Question 2.16 (What is a pooled return for these purposes?).
5. The day-to-day discretion or control point in Question 2.15.

**Question 2.25: What is the justification for the approach in the answers to Questions 2.15 (What is the basic definition of a collective investment undertaking?) to 2.23 (What are financial assets for the purpose of Question 2.22)?**

If the definition of *CIU* were interpreted broadly it would cover many ordinary commercial undertakings with external passive investors. The only things preventing such undertakings from being an *AIF* would then be the requirements for a defined investment policy and to raise capital.

In one sense the shareholders in a supermarket invest on a collective basis in the underlying business of the company. It invests its assets to buy goods and sell them at a profit. The supermarket may set out its policy for investing shareholder funds in a formal policy document and it may raise external capital to fund its business. On a broad reading of the *AIF* definition, that would mean that the supermarket would be an *AIF*.

Not all commercial ventures have the general commercial objects of a standard private company; many will have very specific and detailed objects. For example, say that a new business is set up to sell consumer electronics. It raises capital and to reassure its investors its constitutional documents restrict it to this business. However, in every other way it is a conventional consumer retailer. On a broad reading of the *AIF* definition, this too would be an *AIF*.

Such a wide interpretation would be unreasonable. It would be unreasonable to say that a detailed statement of commercial objects turns an undertaking into a *CIU*. It would be contrary to the early recitals of *AIFMD*. The exclusion for holding companies (see Questions 6.2 to 6.5) may not apply because the business may not be acting through subsidiaries. Therefore, it is necessary to consider the
policy objectives of AIFMD.

AIFMD is aimed at funds. This is shown by the title of the Directive itself. The lists of the main types of undertaking covered by AIFMD in the answer to Question 2.28 (What are the commonest types of AIFs?) are taken from formal EU documents, which assist in analysing AIFMD’s intended scope.

The FCA considers that the term investment is being used in contrast to “commercial”. PERG 16.2 is designed to draw out that distinction.

The reason for looking at whether an undertaking is set up as a fund is that it helps to make the distinction required by the AIFMD between a fund that invests in non-financial assets and an undertaking with a general commercial or industrial purpose and to reflect the fact that the AIFMD is aimed at funds.

However, it is clear from AIFMD and the EU documents referred to in the answer to Question 2.28 that private equity, hedge funds and venture capital funds are intended to be within the scope of AIFMD. AIFMD expressly refers to these types of funds in a number of places.

Also, a fund controlling a business is more than an investor, as it is in a position to control and run that business. Indeed, one of the benefits of a private equity fund is that it can restructure and improve businesses of target companies for the long term. These funds may need an extensive staff to carry on the business of the fund. It is clear though that a fund that takes over a business can still be an AIF, as AIFMD has detailed requirements for AIFs that do that.

Another point is that, as far as financial businesses are concerned, it is not a question of identifying businesses that should not be subject to financial services legislation, as many financial services businesses that do not fall within the scope of AIFMD are regulated under MiFID instead.

Therefore, the distinctions in the answers to Question 2.19 (Does that mean that if my undertaking deals in non-financial assets it can’t be a CIU?) to 2.21 (Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund) do not work for all the types of undertakings to which AIFMD is meant to apply. The distinction between an undertaking with a general commercial or industrial purpose and a financial purpose made by the ESMA AIFMD key concepts guidelines (see the answer to Question 2.18) is the key to reconciling the aim of excluding ordinary businesses and regulating funds.

Looking at whether an undertaking is set up as a fund is less useful for a financial business as that factor is based on the distinction between an ordinary commercial business and an investment one. For the reasons discussed in this answer a financial business is not an ordinary commercial business for these purposes. However, this factor has some relevance to a financial business for the reasons explained in the answer to Question 2.22 (Do the answers to Question 2.18 to Question 2.21 apply where the relevant business is a financial business?).

Overview of the AIF definition
Question: 2.26: Could you give a brief overview of how I should go about applying the guidance in PERG 2.2 in deciding whether AIFMD applies?

(1) Apply the Directive definition to see if it gives a clear answer. If it does, there is no need to go further.

(2) See whether one of the exclusions summarised in PERG 16.6 (Exclusions) could apply.

(3) Look at all the factors and come to an overall judgment. In particular, look at the following issues.

(a) Whether it has a defined investment policy.

(b) Whether it raises external capital from a number of investors.

(c) Whether there is pooling.

(d) Whether capital is invested on behalf of the investors, as opposed to the parties investing the capital for themselves. In particular, see whether the undertaking is excluded as a joint venture (Questions 2.46 to 2.49).

(e) Whether it is structured as a typical fund. The answer to Question 2.22 (Do the answers to Question 2.18 to Question 2.21 apply where the relevant business is a financial business?) explains how this is relevant to a financial business.

(f) Whether it carries on an ordinary commercial business as opposed to investment and whether it is a financial business. If an undertaking carries on a commercial business, and not a financial or investment one, that points towards it not being an AIF.

A financial business is described in the answer to Question 2.23 (What are financial assets for the purpose of Question 2.22?).

In some cases, the factors in (3)(e) and (f) will point to different answers. One may have an otherwise conventional business that is deliberately structured as a fund. In general, it is likely that the tests of whether it is an undertaking set up for a general commercial or industrial purpose (see (3)(f)) will give the answer, as this is the most important factor in the ESMA AIFMD key concepts guidelines and these factors are closest to the distinction between investment and commercial activities. However, it is our view that the AIF definition should be interpreted in a way that allows a fund to be set up to come within the AIF definition, even though the underlying business of the fund is a conventional commercial one, if it is very clear that the undertaking is being set up as a fund.

Question: 2.27: Should all the factors be considered together?

Yes. As the ESMA AIFMD key concepts guidelines point out, appropriate consideration should be given to the interaction between the individual concepts
of the definition of an *AIF*. An undertaking should not be considered an *AIF* unless all the elements in the definition (summarised in the answer to Question 2.1 (What is the basic definition of an AIF?)) are present. For example, undertakings which raise capital from a number of investors, but not with a view to investing it in accordance with a defined investment policy, should not be considered *AIFs* for the purposes of *AIFMD*.

Another example is a company formed for the purpose of operating a family-owned business. Later, the business is sold and the proceeds of sale invested by the company. The company may have become an investment vehicle but, without any capital being raised in accordance with an investment policy, it will not be an *AIF*. See the answer to Question 2.50 (family vehicles) for another reason why the company is unlikely to be an *AIF*.

**Examples of schemes that are AIFs and of ones that are likely not to be AIFs**

**Question 2.28: What are the commonest types of AIFs?**

The Commission Staff Working Document (Impact Assessment) accompanying the Proposal for the Directive (COM(2009) 207) lists the commonest types:

1. hedge funds;
2. commodity funds;
3. private equity funds (including large buy-out funds, mid-cap investment funds and venture capital funds);
4. infrastructure funds;
5. real estate funds;
6. conventional non-UCITS investment funds. These invest primarily in traditional asset classes (such as equities, bonds and derivatives) and pursue traditional investment strategies.

The list of fund types in the reporting templates in the *AIFMD level 2 regulation* is also useful. The main types it lists are:

7. hedge funds;
8. private equity funds;
9. real estate funds;
10. fund of funds;
11. commodity funds;
12. equity funds;
13. fixed income funds;
Question 2.29: Is an arrangement whose activities are for non-business purposes covered?

No. Arrangements do not amount to an AIF if the predominant purpose of the arrangements is not to invest its capital for the benefit of its investors. So an undertaking is not an AIF if the predominant purpose of the undertaking is to enable the participants to share in the use or enjoyment of physical property or to make its use or enjoyment available gratuitously to others. The reason for this is that the purpose of the undertaking is not investment.

For example, a group of householders purchases a piece of neighbouring land to preserve or develop it as an amenity and prevent it from being used for housing or commercial exploitation. This should not be considered to be an AIF, since the capital raising and the investment are primarily undertaken for non-business purposes and are not intended to deliver an investment return or profit. Also, there will probably not be a commercial communication of the kind referred to in Question 2.10 (Meaning of capital raising).

However, the fact that a fund’s investors are charities or not-for-profit organisations does not necessarily mean that the fund is not an AIF.

Question 2.30: Is a real estate investment trust (REIT) caught?

The meaning, substance and structure of REITs vary across European jurisdictions. So this answer looks at UK REITs.

A REIT is a concept used for tax purposes. So if a business is a REIT, there is no presumption either way as to whether or not it is a CIU or AIF.

Question 2.31: Is a timeshare scheme covered?

No. Arrangements do not amount to an AIF if the rights of the investors are rights under a timeshare contract or a long-term holiday product contract as defined in the Holiday Products, Resale and Exchange Contracts Regulations 2010, because these are already regulated under other European legislation.

Question 2.32: Is a pension scheme covered?

No. Neither an occupational pension scheme nor a personal pension scheme is covered. PERG 16.6 (Exclusions) sets out the relevant exclusions. The breadth of the wording in recital (8) of AIFMD shows that these exclusions should be interpreted broadly so as to cover both sorts of scheme. In addition, a pension scheme is sufficiently well established as a category of investment to mean that if AIFMD intended to catch pension schemes it would have made that clear.

However, a scheme is not excluded from being an AIF just because all its investors are themselves pension schemes benefitting from an exclusion.

Question 2.33: Is a pension Common Investment Fund (CIF) covered?
This answer deals with a scheme under which separate occupational pension schemes run by companies within one group co-mingle their assets or part of their assets in another trust. Typically, the operators of the pension schemes will be corporate trustees established by the employing companies, as will the trustee of the CIF. In such an arrangement, the persons participating in the CIF are the trustees of the occupational pension schemes and not the beneficiaries under the occupational pension schemes. Hence, the group exclusion described in PERG 16.6 (Exclusions) should apply.

**Question 2.34: Is an employee participation scheme covered?**

No. Employee participation schemes and employee savings schemes are not covered. PERG 16.6 (Exclusions) sets out the exclusion.

This exclusion covers schemes in which an employee invests in securities of the employer or in a company in the employee’s group (or derivatives in relation to them such as options). As explained in the answer to Question 2.35 (Is an employee carried interest or co-investment vehicle caught?) it also covers other schemes.

In our view, the term employee is not limited to the technical definition in UK law. It would include personnel who work in the business of the undertaking concerned, contributing their skills and time, including partners, directors and consultants. Employee participation schemes generally allow participation by former employees and spouses/close relatives and this exclusion allows schemes that include such participants. Trustees of an employee’s family trust may also participate.

The exclusion can apply however the scheme is structured and whether or not a trustee is involved in the scheme.

**Question 2.35: Is an employee-carried interest or co-investment vehicle caught?**

The carried interest participation of the employees of a private equity fund manager that manages private equity funds will typically be structured through one or more carried interest vehicles to receive the carried interest and in which employees of the manager will have a participation.

In our view, such vehicles will generally not be an AIF because the employee participation scheme exclusion will often apply. The exclusion applies because a scheme for carried interest participation allows the employees to benefit from the success of the AIF management undertaken by the employer.

Family members of an employee, or trustees of an employee’s family trust, may also participate in the carried interest vehicle on this basis without that vehicle becoming an AIF.

Sometimes the manager may invest in the vehicle alongside the employees. This should not mean that the employee participation scheme exclusion is not available (see the answer to Question 2.52 (Is a co-investment vehicle caught?)).
**Question 2.36: Is this the only basis on which a carried interest vehicle can be excluded?**

A carried interest vehicle may be excluded for another reason. As explained in the answer to Question 2.1 (What is the basic definition of an AIF?), part of the definition of an *AIF* is that it raises capital from a number of investors. If employees only invest a nominal amount of capital, the undertaking does not meet this criterion because the employees are not investors. An employee is not investing his salary (by being remunerated in part by way of an interest in the vehicle) if it is a term of his employment that he would be remunerated with an interest in the vehicle.

**Question 2.37: Is a securitisation vehicle covered?**

No, as long as its sole purpose is to carry on:

1. a securitisation or securitisations; and
2. other activities which are appropriate to accomplish that purpose.

Securitisation has the meaning in Regulation (EC) No 24/2009 of the European Central Bank concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions. This says that securitisation means a transaction or scheme whereby:

3. an asset or pool of assets is transferred to an entity that is separate from the originator and is created for or serves the purpose of the securitisation; and/or
4. the credit risk of an asset or pool of assets, or part thereof, is transferred to the investors in the securities, securitisation fund units, other debt instruments and/or financial derivatives issued by an entity that is separate from the originator and is created for or serves the purpose of the securitisation.

In the case of transfer of credit risk, the transfer is achieved by either:

5. the economic transfer of the assets being securitised to an entity separate from the originator created for or serving the purpose of the securitisation (which is accomplished by the transfer of ownership of the securitised assets from the originator or through sub-participation); or
6. the use of credit derivatives, guarantees or any similar mechanism.

Where such securities, securitisation fund units, debt instruments and/or financial derivatives are issued, they should not represent the originator's payment obligations.

**Question 2.38: Can a contract of insurance itself be an AIF?**

No, as confirmed by recital (8) of the *AIFMD*. 
**Question 2.39: Are funeral plans caught?**

No. A *funeral plan contract* is not caught. Neither is a contract which would be a *funeral plan contract* but for the proviso to article 59(2) of the *RAO* or the exclusion in article 60 of the *RAO*.

**Question 2.40: Are individual investment management agreements caught?**

In principle, No.

An *AIF* is an investment undertaking which pools together capital raised from investors to invest it on a collective basis. The management of a portfolio of investments or other property on an individual client-by-client basis is covered by *MiFID* rather than *AIFMD*.

The pooled return concept in the *ESMA AIFMD key concepts guidelines* (see the answer to Question 2.16 (What is a pooled return for these purposes?)) is particularly relevant here. One of the characteristics of an *AIF* is that there is pooling. An individual investment management arrangement falls outside the definition of an *AIF* as there is no pooling and thus no *CIU*. So, in principle, individual investment management arrangements do not give rise to an *AIF*.

However, an *AIF* can take any form. It may be that a scheme is set up with a separate individual investment management agreement for each investor but that the scheme is, in reality, a collective scheme. If the individual investment management agreements are being run on a common basis and as a single economic undertaking, then the arrangements may be considered as a single *CIU*. That means that the arrangements will be an *AIF* as long as the other elements of the definition are also met.

This is consistent with the pooled return concept in the *ESMA AIFMD key concepts guidelines*. Pooling for these purposes does not require that the underlying property is pooled. There must be pooling of capital, risk and return. If the capital is invested on a collective basis (in a way that creates pooled risk, for example by investment in a single project) there may be a single *CIU*.

A *firm* that manages the portfolios of a number of separate clients using the same investment strategy and taking advantage of economies of scale does not, for that reason, stop being an individual portfolio manager.

If the manager holds out his ability to provide bespoke investment management services but arranges a fair amount of bulk dealing for clients with similar investment objectives, that is compatible with individual portfolio management.

If an investment manager aggregates orders on behalf of multiple clients or accounts, which are then allocated back to the clients following execution, this does not mean that there are collective arrangements of the type that would suggest that an arrangement is a *CIU*.

The fact that the manager is obliged to protect the interests of the investors on an individual client-by-client basis points towards the arrangement being individual
portfolio management, rather than a \textit{CIU}.

However, if each separate investment management agreement provides that the manager will carry out investments and sales in a synchronised way so that the securities to which different investors are entitled are bought and sold at the same time, this may result in the scheme being a \textit{CIU}. The same may apply if the scheme is marketed or held out as being operated in this way, for instance as a single fund.

Therefore, a scheme may be a \textit{CIU} if it is part of the scheme’s investment policy for investors’ holdings to be managed as a single holding. For example, if the policy of the scheme is to take control of a company but each individual investor’s stake is too small to achieve control, the scheme as a whole may be a \textit{CIU}. The same may apply for other large stakes. If, for some reason, a scheme’s investment policy relies on the manager exercising the voting or other rights of investors in the underlying companies as a single bloc, the scheme may also be a \textit{CIU}.

**Question 2.41: Is a stocks and shares ISA caught?**

In principle, No.

A stocks and shares ISA takes the form of a scheme of investment managed by an account manager and under which the account investments are held in the beneficial ownership of the account holder. There is no pooling of the type described in section 235 of the \textit{Act} (Collective investment schemes)

Some ISAs are run on a self-determined basis where investors decide what might be held in the ISA. In that case, there will be no collective element and no \textit{AIF}.

In some cases, the parts of the property held in a particular ISA scheme are bought and sold at the same time as they are for other ISAs run by the same manager, except when a particular person becomes or ceases to be an investor in the plan. In that case, there is a collective element in the arrangements. However, in the light of the answer to Question 2.40 (Are individual investment management agreements caught?) this will not be enough on its own to mean that the ISA is an \textit{AIF}.

**Question 2.42: Is a child trust fund caught?**

No.

As explained in the answer to Q53A in \textit{PERG} 13, the link between the underlying investment and the rights and interests acquired by the CTF account holder is too remote for the account holder to be considered as having acquired the underlying investment itself. Similarly, a child trust fund should not be seen as raising capital from the beneficiaries to invest it for their benefit.

In any case, it is also likely to be excluded for the reason described in the answer to Question 2.41 (Is a stocks and shares ISA caught?).
Question 2.43: Is an enterprise investment scheme (EIS) fund caught?

This answer deals with a fund set up in this way. When an investor subscribes to an EIS fund, it will appoint a manager to invest his subscriptions, on a discretionary basis, in qualifying companies. The investor in the EIS fund is the beneficial owner of the shares in which the fund invests for him. The investor is entitled to a whole number of shares in each company and not just a proportionate interest in all the shares in which the fund capital is invested. There is no pooling of the type in section 235 of the Act (Collective investment schemes).

It is likely that the property held in a particular EIS fund, to which the different fund investors are entitled, is not bought and sold separately, except where a person becomes or ceases to be an investor in the fund. It is likely that the manager will exercise the voting and other rights in the EIS fund shares as a bloc and hold the investments as nominee for the investor. These arrangements are likely to be formally documented. The EIS fund may be approved by HM Revenue and Customs but need not be.

The answer to Question 2.40 (Are individual investment management agreements caught?) is relevant here. In particular, it is useful to take into account the difference between conventional individual portfolio management arrangements (where an investor entrusts a manager with a sum of money, to be invested on a discretionary basis, based on the individual circumstances of the particular investor) and EIS funds, where the manager would not be making investments on the basis of their suitability for any individual investor. Hence, it is likely that an EIS fund should be considered to be a CIU and an AIF (if all the other conditions of the AIF definition are met).

Question 2.44: Can an issue of debt securities be an AIF?

In general, No. The arrangements for an issue of debt securities by an ordinary commercial or financial company will not generally be an AIF or turn the issuer into one, although an AIF may invest in debt securities. In general, an issuer of debt securities does not invest the capital it raises for the benefit of the subscribers for the debt securities. In any case, for there to be an AIF there is still a need for the investors to expect to get the return from investment by the undertaking under a defined investment policy. If the return on the debt securities was simply set at a certain rate of interest and fixed premium, and the undertaking was liable to make those payments whether or not they were generated by management of the assets in line with the investment policy, this condition would not be met.

However, other cases may not be so straightforward. For example, say that an SPV is set up to invest in financial assets. It finances the purchase of those assets by an issue of debt securities. Profits and income from the assets are channelled back to the holders of the debt securities through interest on the debt securities and a payment on redemption. In principle, such a scheme could be a CIU if the investors invested through shares in the SPV. If the SPV has no equity shareholders (or no significant equity shareholders) and if all the profits and
losses flow through to the investors via the return on their debt securities there is an argument that it should make no difference that the investors hold their interest through debt securities rather than through shares.

Further guidance from ESMA or the European Commission may be given in due course. However, given that the list of the main types of undertaking covered by AIFMD taken from the Commission impact assessment referred to in the answer to Question 2.28 (What are the commonest types of AIFs?) does not mention debt instruments of this kind, it seems likely that they were not meant to be caught. Pending any future clarification at the EU level, we shall assume that an SPV issuing debt securities in the way described in the answer to this question will not be an AIF if the arrangements meet the exclusion in paragraph 5 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (Debt securities).

We shall also assume that an issue of an alternative debenture is not an AIF on the same basis, although it may be clear for other reasons that it is not. For instance, in some cases the bond assets will include a promise from a substantial commercial entity to buy the other bond assets. In such a case the alternative debenture is essentially a credit obligation of that commercial entity. In addition, part of the definition of an alternative debenture is that the amount of any payments in addition to the principal amount does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital. The effect is that an alternative debenture of this type is, in substance, a form of unsecured debt obligation of an ordinary commercial company. Therefore, it is not an AIF any more than the arrangements for a conventional debt issue by an ordinary company are an AIF.

Debt securities in a securitisation special purpose vehicle are likely to be excluded, as explained in the answer to Question 2.37 (Is a securitisation vehicle covered?).

**Question 2.45: Is an exchange traded fund (ETF) caught?**

An ETF can take various forms. This answer focuses on a fund in the form of an undertaking that seeks to replicate or track movements in a chosen securities index by holding some or all of the underlying constituents of the index or entering into derivatives contracts that replicate their performance synthetically.

In practice, an ETF of this sort is likely to be an AIF unless it is a UCITS.

**Question 2.46: Is a joint venture caught?**

Not normally.

There is no exclusion for joint ventures in AIFMD. However, recital (8) confirms that they are not covered. Therefore, to decide what undertakings are excluded as joint ventures, one must identify the principles on which the recital appears to be based. Another reason for looking at the underlying principles is that the term ‘joint venture’ does not have a precise legal meaning in EU law or a commonly accepted meaning across the legal systems of all Member States.
The key part of the definition of AIF reads “collective investment undertakings … which … raise capital from a number of investors, with a view to investing it … for the benefit of those investors”. Two aspects of this are particularly relevant to joint ventures.

(1) Capital is invested on behalf of the investors, as opposed to the parties investing the capital for themselves. An AIF does not include an undertaking that is managed by its members jointly and that is not managed by a third party or by only some of the investors.

(2) A venture that does not raise external capital (see the answer to Question 2.50 (Are family investment vehicles AIFs?) for a discussion of external capital) is not an AIF. The clearest example of this is the family investment vehicle but it is relevant to joint ventures too.

This approach to joint ventures means that if an undertaking meets the definition of an AIF it will be an AIF even if it is referred to as, or intended to be, a joint venture. Similarly, just because something is set up as a joint venture but is not excluded on the grounds in this answer does not mean that it must be an AIF. In all cases it is necessary to apply the AIF definition to the specific undertaking.

**Question 2.47: What factors are relevant to whether a joint venture is excluded on the basis that it is managed by its members?**

The clearest example of a joint venture is when all the parties have day-to-day control (in the ordinary sense) over its activities. However, it is still possible to have a joint venture in which not all the parties have day-to-day control.

This point is made by the definition of day-to-day discretion or control in the *ESMA AIFMD key concepts guidelines*. They define it as a form of direct and ongoing power of decision – whether exercised or not – over operational matters relating to the daily management of the undertakings’ assets and which extends substantially further than the ordinary exercise of decision or control through voting at shareholder meetings on matters such as mergers or liquidation, the election of shareholder representatives, the appointment of directors or auditors or the approval of annual accounts.

Joint ventures are often a marriage of equity and expertise, with one partner having the necessary experience to carry out the day-to-day management and the equity partner being involved in making more key, strategic decisions. The parties may also hire an outside person to manage the venture. These factors do not necessarily mean that the undertaking is an AIF. Such an undertaking may still be excluded as a joint venture if the strategic financial and operating decisions are under the control of all the parties. Each of the parties should have a continuous involvement in the overall strategic management of the undertaking.

For these purposes, a party does not manage the undertaking just because he is consulted or has the right to give directions.
No single party should be in a position to control the activity unilaterally. One factor to take into account is whether strategic decisions require the unanimous consent of the parties sharing control.

The requirement that all take part in strategic management also means that the number of parties should be sufficiently low for joint management to be practical.

If the parties carry on the venture through a corporate vehicle, an investor may exercise this control through a nominee it appoints to the board of the undertaking.

This approach to the exclusion of a joint venture is not based on a formal legal definition of a joint venture but on the application of the broad concepts included in the AIF definition. Therefore, in looking at control, it is necessary to take account of commercial substance as well as legal relationships.

For example, it is quite common for a joint venture in England and Wales to be structured as a limited partnership under the Limited Partnerships Act 1907 for reasons of commercial flexibility and tax transparency. To maintain the limited liability conferred by limited partner status, investors investing in the joint venture through limited partners must not take part in the management of the partnership business. Therefore, the business of the partnership is managed by a general partner, which is controlled (through the exercise of voting rights or the appointment of nominees to the board of directors) by the investors. In such a structure, each investor in the joint venture structure has economic participation (through its limited partner) and strategic management control (through the general partner) but those two roles are separated and carried on through different entities.

Notwithstanding that separation of roles, as a matter of commercial substance, that arrangement can still be an excluded joint venture. The investing organisations will exercise control through the general partner, as well as investing economically through their respective limited partners.

If an undertaking switches from one in which all parties have control to one in which some do not, that does not necessarily mean that it ceases to be a joint venture. In particular, if at the time that it was set up and the capital was put in all parties had joint control, but later one retires but remains a party to the investment, it should not be transformed into an AIF merely by virtue of the retirement of that party.

If any of the investors are retail investors, it is unlikely that an undertaking will be excluded from the definition of an AIF on the ground that the venture is managed by its investors. This is because the requirement for joint control takes into account the practical ability to participate in joint decision-making (as well as the right to do so), including skills and bargaining power. It is unlikely that retail investors will have such ability as against professional investors or managers.

An example of where a retail investor might be able to take part in joint decision making would be if the investor is a member of the management team. A member
of the management team may have the practical ability to participate in joint
decision-making with the professional investors.

**Question 2.48: What factors are relevant to whether a joint venture is
excluded on the basis that it does not raise external capital?**

The definition of *AIF* envisages a distinction between the undertaking that raises
capital and the parties who invest capital. In some cases, there may be no such
distinction. For instance, commercial parties may come together on their own
joint initiative. There is no external capital because the *persons* raising and
providing capital are the same. This is explained further in the answer to
Question 2.50 (Are family investment vehicles AIFs?).

**Question 2.49: Can you give me some practical factors to take into account
when deciding whether a commercial venture is excluded as a joint venture?**

1. Whether the parties come together in the proposed project before the
structure of the venture is determined and capital is raised.

2. Whether the venture relates to a business the parties are already carrying
on at the time it is set up. For example, the joint venture vehicle may
merely be a legally convenient means by which joint venture parties
combine their resources and skills to carry out a business activity. When
looking at whether a party is already carrying on an activity, one looks at
whether it has been doing so on its own account, rather than through
investing in funds.

3. Whether the parties have an existing relationship.

4. Joint ventures are more likely to have a policy focussed on the
achievement of the parties’ commercial goals, as opposed to a defined
investment policy.

The factors in (1) to (3) are based on the answer to Question 2.48 (What factors
are relevant to whether a joint venture is excluded on the basis that it does not
raise external capital?). The factor in (3) is also based on the answer to Question
2.47 (What factors are relevant to whether a joint venture is excluded on the basis
that it is managed by its members?). An undertaking in (4) may fall outside the
*AIF* definition on the grounds that to be an *AIF* there must be a defined
investment policy.

In some cases, a joint venture may be set up between a single investor providing
capital and an active participant providing the expertise to manage the business.
The investor providing the capital may choose not to be involved in the running
of the venture. One reason why such a venture might not be an *AIF* is explained
in the answer to Question 2.52 (Is a co-investment vehicle caught?).

**Question 2.50: Are family investment vehicles AIFs?**

No. There is no specific exclusion for family investment vehicles in the operative
parts of the *AIFMD*. Recital (7) of *AIFMD* says that a family office vehicle that
invests the private wealth of investors without raising external capital is not an
AIF. To decide what undertakings are excluded as family investment vehicles, one must identify the principles on which the recital appears to be based. The recital is making a distinction between external and internal capital. In our view this recital is based on the part of the AIF definition that requires capital to be raised. The recital explains that the AIF definition does not cover an arrangement in which the persons raising and providing capital are the same. Based on this, features of a family investment vehicle are likely to include:

1. a family relationship between the investors;
2. no raising of capital from investors outside the relationship.
3. the money or assets to be invested and the relationship between the investors pre-date the relationship between the investors and the vehicle. Even though the family should pre-date the relationship between the investors and the vehicle, that does not mean that a vehicle becomes an AIF if an individual joins the family later.

Family investment vehicles can be used by large extended families spanning a number of generations and those born, or joining the family, before and after investment arrangements are made. Civil partnership and marriage may be included. A family can include step and cohabitation relationships, as well as blood and other immediate family relationships, such as adoption. Persons or vehicles representing eligible family members (such as the trustees of a family trust holding money or assets beneficially for a family member) may also be included.

This is confirmed by the ESMA AIFMD key concepts guidelines. They say that when capital is invested in an undertaking by a member of a pre-existing group, for the investment of whose private wealth the undertaking has been exclusively established, this is not likely to be within the scope of raising capital.

The ESMA AIFMD key concepts guidelines define a pre-existing group as a group of family members, irrespective of the legal structure put in place to invest in an undertaking and provided that the sole ultimate beneficiaries are family members, where the existence of the group pre-dates the establishment of the undertaking. The guidelines say that this does not prevent family members joining the group after the undertaking has been established. The guidelines say that ‘family members’ means the spouse of an individual, the person who is living with an individual in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings, uncles, aunts, first cousins and the dependants of an individual.

**Question 2.51: What happens if a family group invests alongside others investors?**

The ESMA AIFMD key concepts guidelines say that the fact that a member of a pre-existing group invests alongside investors not being members of a pre-existing group, should not have the consequence that the part of the AIF definition requiring the raising of capital is not fulfilled. Whenever such a situation does arise, all the investors should enjoy full rights under AIFMD. If a
family group invests in an undertaking alongside other investors and the undertaking meets the other parts of the AIF definition, that undertaking is an AIF and the family members are treated as investors with the same protections under AIFMD as other investors. However, please also see the answer to Question 2.52 (Is a co-investment vehicle caught?).

A manager may establish a vehicle to invest the wealth of several families. Such a vehicle will not be excluded on the grounds in Question 2.50 (Are family investment vehicles AIFs?).

**Question 2.52: Is a co-investment vehicle caught?**

Co-investment vehicles come in many forms. This question refers to a case in which an institutional investor confers a substantial mandate on an investment manager and structures the mandate through an investment vehicle (the co-investment vehicle). The other investors are the manager itself and its employees, or a vehicle taking a carried interest for the benefit of employees of the manager. The manager and carried interest vehicle may make a nominal contribution for tax or other structuring reasons.

A similar issue can arise with family investment vehicles. The family vehicle may employ third-party professional investment managers, who have no family relationship, to manage the assets of the family. To align their interests with those of the family, the employees and managers invest in the co-investment vehicle alongside the family vehicle.

In our view, a co-investment vehicle of the type covered by this question should not be seen as an AIF. If the manager or employees only make a nominal investment, there is no AIF as nominal investments should be disregarded (see the answer to Question 2.11 (Is a fund that only allows a single investor caught?)). Even if the investment is more than nominal, the undertaking only raises capital from a single external investor, which is the institutional investor. Please see the answer to Question 2.50 (Are family investment vehicles AIFs?) as to why the FCA believes that the concept of an external investor is part of AIFMD.

In addition, in our view, an investment by the manager should not normally change an undertaking into an AIF. The purpose of the AIFMD is to protect the investors from whom capital is raised as referred to in the answer to Question 2.1 (What is the basic definition of an AIF?) and Question 2.10 (You say that an undertaking needs to raise capital to be an AIF. What does capital raising involve?) by regulating, among others, the manager. In our view, this means that co-investment by the manager should not generally affect the status of an undertaking as an AIF.

The vehicle through which employees invest is not itself an AIF because of the exclusion for employee participation schemes (see Question 2.34).

Another type of co-investment vehicle is where the employees of a private equity fund manager invest alongside the manager in private equity funds managed by the manager. This is dealt with by Question 2.35 (Is an employee carried interest
or co-investment vehicle caught?) and Question 2.36 (Is this the only basis on which a carried interest vehicle can be excluded?).

**Question 2.53: Is an acquisition vehicle for an AIF itself a separate AIF?**

Sometimes, an *AIFM* establishes an SPV or acquisition vehicle as an administrative convenience, to facilitate a specific transaction(s) to be carried out by the *AIFM*.

Generally, the SPV should not be treated as a separate *AIF* for the purposes of *AIFMD*. The vehicle does not raise capital from investors. Rather, it would merely be a means of investing capital already raised by the *AIF*. It is merely part of the mechanical and administrative mechanisms for putting into operation a scheme of investment that has already been set up.

**Question 2.54: Is an arrangement for multiple participation by a number of funds in a single investment, a single AIF?**

Sometimes a manager may set up an arrangement under which a number of *AIFs* participate in a particular investment.

The question is then whether this creates a new *AIF* alongside the *AIFs* that invest in it or creates a single *AIF* made up of the participating *AIFs*.

As explained in the answer to Question 2.40 (Are individual investment management agreements caught?) the starting position is that a series of investments in parallel do not amount to a single *AIF*. The fact that each fund has different investors and its own arrangements between its investors is an additional factor that points towards there being separate funds.

It is also necessary to take into account article 26 of *AIFMD* (Obligations for *AIFMs* managing *AIFs* which acquire control of non-listed companies and issuers: Scope), which contemplates that several *AIFs* may agree jointly to acquire control of a non-listed company without that resulting in all the *AIFs* being considered as a single *AIF*.

This is consistent with the policy of *AIFMD*, because the investors will still have the protections given by national laws implementing *AIFMD*.

The factors relating to whether an undertaking is excluded as a joint venture are likely to be relevant (see the answer to Questions 2.46 to 2.49). For these purposes, it will normally only be necessary to consider the involvement of the *AIFs* themselves and not the individual investors in each *AIF*.

**Question 2.55: Does it make a difference if there are co-investors?**

Sometimes not all of the co-investors participating in an investment will themselves be *AIFs*. An acquisition vehicle may be set up for the *AIF* and the other co-investors. Such an arrangement might not be a separate *AIF*. Many of the points in the answer to Question 2.54 (Is an arrangement for multiple participation by a number of funds in a single investment, a single *AIF*?) apply here too. The factors relating to whether an undertaking is excluded as a joint
venture are likely to be relevant (see the answers to Questions 2.46 to 2.49).

**Question 2.56: Is a central counterparty in a clearing system an AIF?**

No.

The undertaking is providing a service to members of the system in its role as central counterparty and not investing in the securities bought and sold for their benefit.

**Question 2.57: Is a firm that deals in financial instruments on its own account caught?**

As explained in the answer to Question 43 in *PERG 13.5 (Exemptions from MiFID)*, CIUs are specifically exempt from MiFID, as are their depositaries and managers. An AIF is a CIU and an AIFM is a manager.

However, that does not mean that a company that buys and sells financial instruments for its own account is covered by AIFMD rather than covered by MiFID, or rather than excluded from both AIFMD and MiFID.

The answer to Question 2.24 (What factors are relevant in the case of a financial business?) sets out the key factors in deciding whether a financial services company is an AIF.

**Question 2.58: Is a bank or insurer caught?**

An undertaking authorised under the Insurance Directives or the Banking Consolidation Directive will not be an AIF.

**Question 2.59: Is a depositary receipt caught?**

In our view, certificates representing certain securities are unlikely to be units in an AIF. This is because they simply involve a method of investing in the underlying security without a collective investment element. However, the fact that units of an AIF are issued in the form of certificates representing certain securities does not mean that it stops being an AIF.

**Question 2.60: Is a client account caught?**

A solicitor’s client account or a client money account which is ancillary to the true AIF are not themselves AIFs.

**Investment compartments**

**Question 2.61: What is an investment compartment of an AIF?**

An investment compartment is similar to, and corresponds with, the *Glossary* term *sub-fund*. It refers to an undertaking whose property is divided into separate pools, each of those pools being a compartment.
**Question 2.62: How do I tell the difference between investment compartments of a wider fund and separate funds?**

Sometimes it is necessary to decide whether investment pools that are linked in some way should be treated as being investment compartments of the same fund or as separate funds. A key factor is whether the investment pools are documented and operated as a single fund. This takes into account whether the investment pools are documented as separate funds and managed as a whole, and whether an investor in one pool is entitled to exchange his investment in that pool for an investment in another one. If a creditor has recourse to the assets of all the pools, that is likely to mean that there is a single fund, but if a creditor does not have such recourse this is neutral as to whether the pools are separate funds or investment compartments of the same fund.

The fact that one fund invests all its assets in another does not make them into a single fund, as *AIFMD* recognises that feeder and master funds can remain separate funds.

**Question 2.63: Is each investment compartment a separate AIF?**

In our view, an investment compartment of an *AIF* should not be treated as a separate *AIF* for the purpose of the *general prohibition*. The phrase “including investment compartments of such an undertaking” in the definition of an *AIF* means that an investment compartment of an *AIF* is treated as being part of that *AIF*.

An alternative approach is that each compartment should be treated as a separate *AIF* but the overall fund should not. We do not agree with this interpretation because a compartment in its ordinary meaning is something that is part of something bigger. Also, potentially the role of manager of the overall fund is significant and it is unlikely that it would fall outside regulation altogether. This alternative approach would be inconsistent with the part of the *ESMA AIFMD key concepts guidelines* discussed in the answer to Question 2.65 (What if part of an undertaking meets the AIF definition and part does not?).

Another argument against this alternative approach is the requirement in article 5(1) of *AIFMD* that each *AIF* have a single *AIFM*. It would be difficult to meet that requirement if each compartment is subject to the management of the manager of the overall fund. It would also seem unlikely that *AIFMD* would get round that problem by implicitly prohibiting funds from having an overall manager.

Another interpretation is that the undertaking as a whole and each compartment are separate *AIFs*. We do not agree with that interpretation for similar reasons.

Hence, an investment compartment of an *AIF* should not be treated as a separate *AIF*. It is part of the overall *AIF*. The manager of the sub-fund is not managing an *AIF* whereas the manager of the overall fund is.

**Question 2.64: How do Questions 2.62 and 2.63 apply to umbrellas?**
This answer only relates to an umbrella as defined in the Glossary. Broadly, this defines an umbrella as a single scheme that provides for pooling of the type mentioned in section 235(3)(a) of the Act (Collective investment schemes) in relation to separate parts of the scheme property and whose unitholders are entitled to exchange rights in one part for rights in another. These two factors are likely to mean that (assuming all the requirements of the AIF definition are met) the umbrella should be treated as a single AIF with each sub-fund being treated as an investment compartment of that AIF. If this is the case, the sub-funds will not be separate AIFs in their own right.

Question 2.65: What if part of an undertaking meets the AIF definition and part does not?

Under the ESMA AIFMD key concepts guidelines, where an investment compartment of an undertaking exhibits all the elements in the definition of an AIF this should be sufficient to determine that the undertaking as a whole is an AIF.

Other general points

Question 2.66: Does the interpretation of a CIU in PERG 16 apply to MiFID?

PERG 16 is not intended to cover the meaning of a collective investment undertaking in other EU Directives. This reflects the fact that the ESMA AIFMD key concepts guidelines do not apply to MiFID.

16.3 Managing an AIF

Question 3.1: What does managing an AIF mean?

A person manages an AIF when the person performs:

(1) risk management; or

(2) portfolio management;

for the AIF.

Question 3.2: If a person performs only one of the activities listed in the answer to Question 3.1 does it manage an AIF?

Yes. However, an AIFM is not permitted to be authorised to manage an AIF on that basis (see FUND 1.4.4R(4)). An undertaking that is seeking permission to manage an AIF will not be given permission to provide portfolio management without also providing risk management or vice versa.

Question 3.3: Are the activities mentioned in the answer to Question 3.1 the only activities included in managing an AIF?
No. If a *person* manages an *AIF* (within the meaning set out in the answer to Question 3.1), and also carries on:

(1) one or more of the additional activities listed in the answer to Question 3.4; or

(2) one or more other activities in connection with or for the purposes of the management of that *AIF*;

those activities are included in the *regulated activity of managing an AIF*.

**Question 3.4: What are the additional activities referred to paragraph (1) of the answer to Question 3.3?**

They are as follows:

(1) **administration:**
   
   (a) legal and fund management accounting services;
   
   (b) *customer* inquiries;
   
   (c) valuation and pricing (including tax returns);
   
   (d) regulatory compliance monitoring;
   
   (e) maintenance of *unit / share* holder register;
   
   (f) distribution of income;
   
   (g) *unit* issues and redemptions;
   
   (h) contract settlements (including certificate dispatch) and;
   
   (i) record keeping;

(2) **marketing**; and

(3) activities related to the assets of *AIFs*, namely:

   (a) services necessary to meet the fiduciary duties of the *AIFM*;
   
   (b) facilities management;
   
   (c) real estate administration activities;
   
   (d) advice to *undertakings* on capital structure, industrial strategy and related matters;
   
   (e) advice and services related to mergers and the purchase of *undertakings*; and
(f) other services connected to the management of the AIF and the companies and other assets in which it has invested.

**Question 3.5: Does anyone carrying on only the activities listed in the answer to Question 3.4 carry on the regulated activity of managing an AIF?**

No. Those activities only involve managing an AIF for a particular AIF if the person doing them is carrying on, for that AIF, the part of the regulated activity of managing an AIF described in the answer to Question 3.1. If an AIFM carries on the activities listed in the answer to Question 3.4 in relation to a fund of which it is the AIFM those activities are included in the regulated activity of managing an AIF. But, if the activities listed in the answer to Question 3.4 are carried on by a third party, that third party will not be carrying on the regulated activity of managing an AIF for that AIF, although that third party may be carrying on other regulated activities, such as arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments.

**Question 3.6: Can an AIF manage itself?**

Yes. An AIFM may be:

1. another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF (an external AIFM);
2. where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself (an internal AIFM).

**Question 3.7: What effect does delegation have?**

An AIFM is permitted to appoint a delegate to provide portfolio management and/or risk management services for the AIFM (see FUND 3.10 and regulation 26 of the AIFMD UK regulation).

If the delegation relates to the additional services described in the answer to Question 3.4 (What are the additional activities referred to paragraph (1) of the answer to Question 3.3?) the delegate will not be managing an AIF, for the reason in the answer to Question 3.5 (Does anyone carrying on only the activities listed in the answer to Question 3.4 carry on the regulated activity of managing an AIF?).

In any case, under article 51ZC(3) of the RAO a person does not manage an AIF if the functions it performs for the AIF have been delegated to it by another person, provided that such other person is not an AIFM that has delegated such functions to the extent that it is a letter-box entity. So a person who has received a delegation of some of the AIFM’s core functions (ie, the functions listed in the answer to Question 3.1 (What does managing an AIF mean?)) generally does not manage an AIF. Letter box entities are described in the answer to Question 3.8 (Does this mean that delegation can never affect who is doing the regulated activity of managing an AIF?).
This answer reflects *AIFMD*, which envisages that generally an *AIFM* may delegate functions without the delegate becoming the *AIFM* in place of the original manager, or the delegate becoming the *AIFM* alongside the original manager, in breach of the requirement that there be only one *AIFM*.

**Question 3.8: Does this mean that delegation can never affect who is doing the regulated activity of managing an AIF?**

Delegation can sometimes affect who is managing an AIF.

Article 82 of the *AIFMD level 2 regulation* says that an *AIFM* shall be deemed a letter-box entity and shall no longer be considered to be the manager of the *AIF* at least in any of the situations set out in that article, which is reproduced in *FUND 3.10.9EU*.

This raises four questions. First, whether an *AIFM* that delegates in such a way as to make itself into a letter-box entity is still carrying on the regulated activity of managing an AIF. This is dealt with in Question 3.9. Secondly, whether the delegate is carrying on the regulated activity of managing an AIF. This is dealt with in Question 3.10. The third question is whether this only applies when article 20 of *AIFMD* (which contains the letter-box entity provisions elaborated by article 82) applies. This is dealt with by Question 3.12. The fourth question is what the test for a letter-box entity is. This is dealt with in Question 3.13.

**Question 3.9: Does delegation by the manager mean that it is no longer carrying on the regulated activity of managing an AIF?**

The fact that article 82 of the *AIFMD level 2 regulation* says that a letter-box entity shall no longer be considered to be the manager of the *AIF* would appear to mean that an *AIFM* that delegates in this way is no longer managing an AIF. However, in our view, an *AIFM* that delegates in such a way as to make itself into a letter-box entity is still carrying on the regulated activity of managing an AIF. The following points support this:

1. Article 82 of the *AIFMD level 2 regulation* describes who is acting as the manager. The regulated activity does not refer to acting as an *AIFM*; it simply refers to managing an AIF. The regulated activity does not expressly incorporate article 82 as part of the definition.

2. The *RAO* does not include the requirement in the *AIFM* definition that the *AIFM* be a legal person, which shows that the definition of *AIFM* is not fully aligned with the definition of managing an AIF.

3. Regulation 4(3) of the *AIFMD UK regulation* envisages that the *AIFM* will be appointed by or on behalf of the *AIF* or by its governing body. This is not reflected in the *RAO* either.

4. Article 20 of *AIFMD* (which contains the letter-box entity provisions elaborated by article 82) deals with regulating how an *AIFM* should manage its *AIF*. 
(5) There is a good reason why an AIFM that has delegated its functions in a way that means it has become a letter-box entity should still be carrying on the regulated activity of managing an AIF. It is necessary to avoid the risk that a manager that delegates to this degree falls out of regulation, because it stops carrying on a regulated activity. One of the purposes of regulation is to stop a manager doing this and effective implementation of AIFMD requires us to be able to do so.

Question 3.10: Does delegation by the manager mean that the delegate is carrying on the regulated activity of managing an AIF?

The factors listed in the answer to Question 3.9 (Does delegation by the manager mean that it is no longer carrying on the regulated activity of managing an AIF?) support the view that a delegate of a letter-box entity does not manage an AIF. However, despite this, we believe that a delegation by the AIFM to a delegate can result in the delegate managing an AIF if the delegation results in the AIFM becoming a letter-box entity.

(1) Recital (9) of AIFMD confirms that the letter-box entity provision is an anti-avoidance provision preventing circumvention of AIFMD by means of turning the AIFM into a letter-box entity. A provision of this kind reflects a more general principle that rights given by European law (such as the right of a manager to delegate or the right of a delegate to carry on its business without being authorised as an AIFM) should not be abused. It is important to know who the real manager of an AIF is, so as to know whether an EEA State is responsible for its supervision or whether the AIF is managed from outside the EEA. If the real manager is not managing an AIF, it may not be carrying on any regulated activity and may not fall under any EEA financial services regulation, even though effective implementation of AIFMD would require the situation to be regularised.

(2) Article 51ZC(3) of the RAO implies that a person that has accepted a delegation from a manager that results in the manager becoming a letter-box entity, can be managing an AIF.

(3) It is not unreasonable to say that, if the delegate is in practice carrying out the management activities described in the answer to Question 3.1 (What does managing an AIF mean?), it should be treated as carrying on the regulated activity.

Question 3.11: Does this mean that delegation that results in the manager being a letter-box entity always means that the delegate will be carrying on the regulated activity of managing an AIF?

No. In each case it is necessary to apply the tests set out in PERG 16.3. If all the functions that have been delegated by the letter-box entity manager have been delegated to the same delegate, it is likely that that delegate is managing an AIF. However, if the delegation is to a number of delegates, it may be that none of those delegates is managing an AIF.
Question 3.12: Do the answers to Questions 3.7 to 3.11 apply just to delegation by a full-scope UK AIFM?

No. For example, they would be relevant to whether a delegate in the UK is managing an AIF if it accepts a delegation from an overseas manager. We take this approach for the following reasons.

(1) The arguments in Question 3.10 (Does delegation by the manager mean that the delegate is carrying on the regulated activity of managing an AIF?) are also in favour of the view that the effect of delegation on a delegate should not be confined to delegation by an authorised AIFM. In any case, it would be anomalous for delegation to affect who is managing an AIF only when article 20 of AIFMD applies, particularly given that article 82 is, in our view, an anti-avoidance provision (see the answer to Question 3.10).

(2) Article 51ZC(3) of the RAO is not specifically limited to circumstances in which article 20 applies. It applies in any situation in which it is necessary to decide whether a person is managing an AIF for the purpose of the general prohibition.

Question 3.13: What is the test for a letter-box entity?

In our view, the test of whether delegation results in the delegate managing an AIF is decided by article 82 of the AIFMD level 2 regulation in circumstances when article 82 and article 20 of AIFMD apply to the delegating AIFM.

When article 20 does not apply we look at whether the delegation is to such a degree that the manager can no longer be considered to be carrying out the activities in the answer to Question 3.1 (What does managing an AIF mean?). We take the various factors elaborated in article 82 into account but they will not necessarily decide the matter because article 82 is, on its face, linked to article 20 and article 51ZC(3) of the RAO does not specifically refer to article 20 or 82.

If a manager to which article 82 does not apply can nevertheless satisfy all the conditions set out in that article to demonstrate that it has not become a letter-box entity, any delegation by it will not result in the delegate managing an AIF.

However, we do not necessarily require that delegate to demonstrate to us that every condition of article 82 is satisfied, to conclude that the manager is not a letter-box entity and that the delegate is not managing an AIF. The importance of the tasks carried out by the manager is a key consideration, taking particular account of the right and ability of the manager to exercise oversight and control and the degree to which these rights are exercised. In our view, these factors reflect the fact that we are applying a broad anti-avoidance approach to a letter-box entity rather than the detailed requirements of article 82.

Question 3.14: Is the material in PERG 16.3 about delegation relevant to delegation between branches of the same firm?

No. Please see Question 8.4 (Is the material in PERG 16.3 about delegation of
management functions from one firm to another relevant to delegation from one branch to another?).

**Question 3.15: If a person is not eligible to be appointed as an AIFM because it is not a legal person but is appointed to manage an AIF, does that mean that it cannot carry on the regulated activity of managing an AIF?**

No. The fact that it is not eligible to be appointed as an AIFM does not mean that it is not managing an AIF. That means that an unauthorised person may breach the general prohibition by carrying on the regulated activity of managing an AIF, even though the person does not qualify for a Part 4A permission because that person is not a legal person.

Article 6(1) of AIFMD provides that no AIFMs should manage AIFs unless they are authorised in accordance with that Directive. An AIFM must be a legal person. So it appears that the regulated activity of managing an AIF cannot apply to someone who is not a legal person. However, in our view, this is not the case. As explained in the answer to Question 3.9 (Does delegation by the manager mean that it is no longer carrying on the regulated activity of managing an AIF?), the definition of an AIFM is not fully aligned with the definition of managing an AIF. In particular, the regulated activity does not refer to acting as an AIFM (the definition of AIFM in the AIFMD UK Regulation includes the legal person requirement), it simply refers to managing an AIF. There is a good policy reason for this. It is not the intention of the legislation to allow someone who is not a legal person to manage an AIF without being authorised, but to stop an AIF being managed by someone who is not a legal person.

**Question 3.16: Can an AIF in the form of a limited partnership under the Limited Partnerships Act 1907 appoint its general partner as the AIFM?**

Yes. If the general partner is the AIFM it will be an external AIFM.

Strictly speaking this question is not relevant to the definition of managing an AIF but this is a convenient place to discuss the point.

On the face of it the answer should be No. The starting position is that if an AIF is managed by the body that has responsibility for governing it under the legislation under which the AIF is formed, the AIF is internally managed, particularly if there is no governing body that appoints and supervises the manager and the manager is a member of that AIF. A general partner is a partner and there will usually be no governing body separate from the general partner. Under this approach, a limited partnership would be internally managed, which would be contrary to AIFMD, as an AIFM must be a legal person and an English and Welsh limited partnership is not a legal person.

However, in our view, the roles of the limited and general partners are sufficiently distinct for one to be able to say that the limited partnership does not manage itself. The distinction between the two roles does not stem from the fact that the general partner manages the partnership, but from the facts that:

1. the roles of general and limited partner are provided for by the legislation
under which limited partnerships are formed; and

(2) the legislation, in practice, prevents the limited partners from managing the partnership (because for as long as a limited partner takes part in the management of the partnership business, it is liable for the partnership’s debts as though it were a general partner).

In principle, the same should apply for jurisdictions outside England and Wales with legislation drafted in the same way. We understand that this is the case with a Scottish limited partnership (which has legal personality) and so if its general partner is appointed as its AIFM it will also be an external AIFM.

16.4 Acting as a depositary of an AIF

**Question 4.1: What does acting as a depositary of an AIF involve?**

Acting as:

(1) the depositary of an AIF managed by a full-scope UK AIFM; or

(2) the depositary of a UK AIF managed by an EEA AIFM; or

(3) the depositary of any other AIF, if the FCA or an authority in another EEA State has permitted a person with its registered office or a branch in the UK to be appointed as a depositary of that AIF under article 61.5 of AIFMD; or

(4) the trustee of an AIF that is an authorised unit trust scheme but is not an AIF to which (1) to (3) apply; or

(5) the depositary of an AIF that is an open-ended investment company or authorised contractual scheme but is not an AIF to which (1) to (3) apply.

(3) only applies until 22 July 2017.

**Question 4.2: What does depositary mean?**

For the purposes of paragraphs (1) to (3) of the answer to Question 4.1, depositary means:

(1) a person appointed in compliance with the requirement for the AIFM to appoint a depositary in article 21.1 of AIFMD; or

(2) an Article 36 custodian as defined in regulation 57(5)(a) of the AIFMD UK regulation.

For the purpose of paragraph (5) of the answer to Question 4.1, depositary has the meaning in section 237 of the Act.

**Question 4.3: The AIFMD allows the depositary to delegate some functions**
to a third party. Is that third party acting as the depositary of an AIF?

No. Article 21 of AIFMD envisages that a depositary remains the sole depositary even if, in accordance with that article, it delegates certain of its functions.

16.5 How AIFMD affects other regulated activities

Overlap with the collective investment scheme definition

Question 5.1: Do the definitions of collective investment scheme and AIF overlap?

Yes. The definition of a collective investment scheme does not exclude an AIF. The two definitions sit alongside each other and overlap extensively. Many AIFs will also be collective investment schemes. Therefore, it is possible that an unauthorised person who operates a fund will be establishing, operating or winding up a collective investment scheme and managing an AIF.

However, not every AIF is a collective investment scheme. The main example of an AIF that is not a collective investment scheme is an AIF in the form of a body corporate other than an open-ended investment company. Therefore, the existing case law on the definition of a collective investment scheme does not decide whether an undertaking is an AIF or CIU and the material in PERG 16 about the definition of an AIF and CIU does not determine whether an undertaking is a collective investment scheme.

Question 5.2: Won’t the overlap between collective investment schemes and AIFs mean that an AIFM will need unnecessarily overlapping permissions?

No. There are two important exclusions.

1. If a person has a Part 4A permission to manage an AIF, activities carried on by that person in connection with or for the purposes of managing an AIF are excluded from all other regulated activities.

2. A person (A) does not carry on the regulated activity of establishing, operating or winding up a collective investment scheme if A carries on that activity in relation to an AIF, and:

   (a) at the time A carries on the activity, the AIF is managed by:

      (i) a person with a Part 4A permission to manage an AIF (who may be a third party or A itself); or

      (ii) a person registered as a small registered UK AIFM because the conditions in regulation 10(4) of the AIFMD UK Regulation are met in respect of that AIF; or

   (b) no more than 30 days have passed since the AIF was managed by
a person with that permission or registration.

The 30-day period in (b) can be extended in certain circumstances, as set out in article 51ZG(2) of the RAO.

Overlap between the depositary and custody activities

Question 5.3: Does the depositary of an AIF also need permission for safeguarding and administering investments?

No. A person does not safeguard and administer investments if the person carries on the activity in relation to an AIF and the person has a Part 4A permission to act as a depositary of an AIF in respect of that AIF.

Interests in an AIF as specified investments

Question 5.4: How do the advising and intermediary activities relate to an AIF?

Although an interest in an AIF is not separately specified by the RAO as a type of security or relevant investment in its own right it will normally fall within one of the other categories of security or relevant investment, such as a share or unit. That means that the regulated activities of:

(1) dealing in investments as agent;
(2) arranging (bringing about) deals in investments;
(3) making arrangements with a view to transactions in investments; and
(4) advising on investments;

will apply in the same way as they do to other investments of the relevant type. Therefore, for example, a firm that advises on investing in an AIF that is a collective investment scheme will be advising on units.

Examples

Question 5.5: Please give me some examples of how the regulated activities specific to AIFs interact with other regulated activities.

Please see the following table. All the examples involve UK persons and activities carried on in the UK. It is assumed that any manager delegating functions is not a letter-box entity.

<table>
<thead>
<tr>
<th>Example</th>
<th>Explanation of interaction with other regulated activities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) A firm (A) with permission to manage an AIF, manages an AIF that is also a collective investment scheme</td>
<td>A does not need permission to establish, operate or wind up a collective investment scheme. The CIS exclusion applies.</td>
</tr>
<tr>
<td>(2) A firm (A) with permission to establish, operate or wind up a collective investment scheme wants to manage an AIF</td>
<td>A needs to vary its permission to cover managing an AIF</td>
</tr>
<tr>
<td>(3) An unauthorised person (A) manages an AIF that is also a collective investment scheme and also operates it. No authorised AIFM is in place.</td>
<td>A will be establishing, operating or winding up a collective investment scheme and managing an AIF. The effect on unauthorised persons of the overlap between the definitions of AIF and collective investment schemes is different to the effect on authorised persons. The CIS exclusion does not apply as A is not an authorised person.</td>
</tr>
<tr>
<td>(4) A firm (A) with permission to manage a UCITS wishes to act as an AIFM</td>
<td>A needs to vary its permission to cover managing an AIF.</td>
</tr>
<tr>
<td>(5) A firm (A) with permission to manage an AIF delegates the management of some of the AIF’s securities portfolios to B.</td>
<td>B does not manage an AIF for the reasons described in the part of the answer to Question 3.7 (What effect does delegation have?) dealing with the delegation of core functions. However, B manages investments. See article 78 of the AIFMD level 2 regulation (Delegation of portfolio or risk management) on the ability of an AIFM to delegate portfolio management or risk management to a person authorised or registered for the purpose of asset management. Even if B’s activity could otherwise be establishing, operating or winding up a collective investment scheme, it will not be in this case because A’s role means that the CIS exclusion is available to B.</td>
</tr>
<tr>
<td>(6) Same as (5). B’s Part 4A permission covers managing an AIF or managing a UCITS.</td>
<td>Same answer. B’s Part 4A permission should be amended to cover managing investments.</td>
</tr>
</tbody>
</table>
| (7) A has permission to manage an AIF. The AIF has several investment compartments. A appoints B to manage | The answer in (5) applies here too. The investment compartment is not treated as a separate AIF (see Question 2.63 (Is...
the *securities* portfolio which makes up one of these compartments.

<table>
<thead>
<tr>
<th></th>
<th>each investment compartment a separate AIF?)]. This arrangement is not contrary to the requirement in article 5(1) of AIFMD that each AIF have only one AIFM, as that requirement operates at the level of the AIF and not each separate investment compartment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(8) A <em>firm</em> (A) with permission to manage an AIF delegates risk management to a <em>UK firm</em>, B.</td>
<td>B does not manage an AIF. If the fund is also a <em>collective investment scheme</em>, B does not need permission to establish, operate or wind up a collective investment scheme. (5) explains the reasons for this. If B’s functions involve managing investments it will need permission for that (see (5)). Even if B’s activities are not regulated activities, A will not be able to delegate to B unless B has permission to manage investments, manage an AIF or manage a UCITS because of article 78 of the AIFMD level 2 regulation (Delegation of portfolio or risk management).</td>
</tr>
<tr>
<td>(9) A carries out portfolio and risk management of an AIF. B runs the rest of the scheme.</td>
<td>A is managing an AIF. The difference from (5) is that B has not delegated portfolio management to A.</td>
</tr>
<tr>
<td>(10) A is managing an AIF (and has permission to do so). B is in charge of administering the scheme.</td>
<td>B is not establishing, operating or winding up a collective investment scheme because of the CIS exclusion. B is not managing an AIF for the reasons described in the answer to Question 3.5 (Does anyone carrying on only the activities listed in the answer to Question 3.4 carry on the regulated activity of managing an AIF?).</td>
</tr>
<tr>
<td>(11) Same as (11). Then A resigns as manager.</td>
<td>Same answer as (10). B may carry on its activities for 30 days while a new AIFM is put in place. That 30-day period may be extended in certain circumstances.</td>
</tr>
<tr>
<td>(12) A is managing an AIF (and has permission to do so) and is responsible for issuing and selling units or shares in</td>
<td>Selling shares or units often involves dealing in investments as principal or dealing in investments as agent. However, A does not need these</td>
</tr>
</tbody>
</table>
the AIF.

<table>
<thead>
<tr>
<th>Permissions as the activities are covered by the extended definition of managing an AIF described in the answer to Question 3.4 (What are the additional activities referred to paragraph (1) of the answer to Question 3.3?) and hence the connected purposes exclusion applies.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(13) A firm (A) with permission to manage an AIF sets up an AIF that is also a collective investment scheme. A intends to manage it. The fact that A is establishing a collective investment scheme does not mean A needs permission to establish, operate or wind up a collective investment scheme. In our view, taking preliminary steps towards the carrying on of a regulated activity is itself carrying on that activity. A manager who is setting up a scheme is taking preliminary steps of that kind to manage an AIF. Hence, the connected purposes and CIS exclusions apply.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(14) A (acting by way of business) sets up an AIF that is also a collective investment scheme. A does not intend to manage it. B has been appointed as AIFM. B has permission to manage an AIF. As explained in (13), taking preparatory steps towards carrying on a regulated activity is itself a regulated activity. On this approach, as B has started managing an AIF, the CIS exclusion comes into play and A does not need permission for establishing a collective investment scheme.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>(15) A (acting by way of business) sets up an AIF that is also a collective investment scheme. A does not intend to manage it. A has lined up a firm (B) with permission to manage an AIF to be the AIFM but B has not been appointed yet. A will require permission to establish, operate or wind up a collective investment scheme as B has not begun to manage an AIF.</th>
</tr>
</thead>
</table>

| (16) A firm (A) with permission to manage an AIF manages an AIF and carries out portfolio and risk management for the AIF. A also is in charge of marketing and issuing units in the AIF. As part of that process A gives investment advice to potential investors. A does not need permission for advising on investments. Instead the advisory activity is included within managing an AIF. The reasons are similar to those in (12). Marketing and issuing units in the AIF is part of the extended managing activity (see Question 3.4). The advising is carried on by A in connection with, or for the purposes of, marketing and issuing. As explained in |
Paragraph (2) of the answer to Question 3.3 (Are the activities mentioned in the answer to Question 3.1 the only activities included in managing an AIF?), this means that the advising is included in managing an AIF. Therefore, the connected purposes exclusion excludes it from advising on investments.

(17) Same as (16). However, (leaving aside the RAO provisions explained in PERG 16.3 and PERG 16.5) the advisory activity would not have involved advising on investments. For the reason in (16) the advisory activity is still a regulated activity, as part of managing an AIF.

References to the “connected purposes exclusion” are to the exclusion described in paragraph (1) of the answer to Question 5.2 (Won’t the overlap between collective investment schemes and AIFs mean that an AIFM will need unnecessarily overlapping permissions?). References to the “CIS exclusion” are to the exclusion described in paragraph (2) of the answer to Question 5.2.

### Part 2: Examples of how the regulated activities specific to depositaries interact with other regulated activities

<table>
<thead>
<tr>
<th>Example</th>
<th>Explanation of interaction with other regulated activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A is the depositary of an AIF and its permission covers this activity</td>
<td>A acts as a depositary of an AIF. A does not safeguard and administer investments.</td>
</tr>
<tr>
<td>(2) A is the depositary of an AIF and its permission covers this activity. A delegates some of the custody activities to B.</td>
<td>For A, the result is the same as under (1). B does not act as a depositary of an AIF but instead safeguards and administers investments.</td>
</tr>
<tr>
<td>(3) A is depositary of an AIF. A carry vehicle or co-investment scheme invests alongside the AIF. That vehicle is a collective investment scheme and A is its custodian. The schemes invest in financial assets.</td>
<td>A’s role in relation to the AIF means that its permission should cover acting as a depositary of an AIF. A’s role in relation to the carry or co-investment vehicle means that its permission should cover safeguarding and administering investments. The exclusion described in the answer to Question 5.3 (Does the depositary of an AIF also need permission for safeguarding and administering investments?) does not apply in relation</td>
</tr>
</tbody>
</table>
16.6 Exclusions

**Question 6.1: What exclusions from the regulated activities specific to AIFs are there?**

The following table lists the exclusions. Some exclusions are relevant to the definition of an *AIF*, some to the definition of an *AIFM* and some to both.

<table>
<thead>
<tr>
<th>Entities that are not <em>AIFs</em></th>
<th><em>Persons</em> excluded from the definition of <em>managing an AIF</em></th>
<th>Where further <em>Handbook</em> material can be found</th>
</tr>
</thead>
<tbody>
<tr>
<td>An institution for occupational retirement provision which falls within the scope of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision</td>
<td>An institution for occupational retirement provision which falls within the scope of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in article 2.1 of that directive, or the investment managers appointed pursuant to article 19.1 of that directive, in so far as they do not manage <em>AIFs</em></td>
<td>Question 2.32</td>
</tr>
<tr>
<td>A national, regional or local government or body or other institution which manages funds supporting social security and pension systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>An employee participation scheme or employee savings scheme</td>
<td>An employee participation scheme or employee savings scheme</td>
<td>Question 2.34</td>
</tr>
<tr>
<td>A securitisation special purpose entity</td>
<td>A securitisation special purpose entity</td>
<td>Question 2.37</td>
</tr>
<tr>
<td>A holding company</td>
<td>A holding company</td>
<td>Questions 6.2 to 6.5</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td><strong>FUND 1</strong></td>
<td>A small registered UK AIFM, in respect of the AIFs managed by it by virtue of which it is entitled to be registered as a small registered UK AIFM (but not in respect of any other AIFs managed by it)</td>
<td></td>
</tr>
<tr>
<td>An AIFM that manages a group AIF</td>
<td></td>
<td>Question 6.6</td>
</tr>
<tr>
<td>A national central bank</td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>The European Central Bank, the European Investment Bank, the European Investment Fund, a bilateral development bank, the World Bank, the International Monetary Fund, any other supranational institution or similar international organisation, or a European Development Finance Institution, in the event that such institution or organisation manages AIFs and in so far as those AIFs act in the public interest</td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>An AIFM, the registered office of which is not in an EEA State</td>
<td></td>
<td>Question 8.3</td>
</tr>
</tbody>
</table>

Note 1: All references are to this chapter of PERG unless otherwise stated.

Note 2: In general the meaning of AIF in the RAO is the one in the AIFMD UK Regulation. The exclusions from the AIF definition noted in this table come from the AIFMD UK Regulation. However, the RAO article dealing with managing an AIF says that any expression used in that article which is not defined in the AIFMD UK Regulation and is used in AIFMD has the same meaning as in that directive. This makes no difference as, in our view, the AIFMD UK Regulation implements AIFMD.

**Question 6.2: Is a holding company subject to AIFMD?**

No. There is a specific exclusion for a holding company.
For these purposes, a holding company means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy(s) through its subsidiaries, associated companies or participations in order to contribute to their long-term value and which is either a company:

(1) operating on its own account and whose shares are admitted to trading on a regulated market in the European Union; or

(2) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents.

In our view, this exclusion is at least in part by way of clarification. In some circumstances, compliance with the conditions of the exclusion will mean that there is no AIF in the first place.

**Question 6.3 How wide does the holding company exclusion go?**

Broadly speaking, therefore, an undertaking will be able to use the holding company exclusion if:

(1) it carries out a commercial business strategy through its participations by contributing to their long-term value; and

(2) it does not generate its returns for its investors by means of divestment of its participations.

The question then is what else the exclusion covers.

Recital (8) of AIFMD says that managers of private equity funds or AIFMs managing AIFs whose shares are admitted to trading on a regulated market should not be excluded from its scope.

However, the exclusion envisages that an undertaking, whose main purpose is generating returns for its investors by means of divestment of its subsidiaries or associated companies, may still be excluded from AIFMD if its shares are listed.

The question then is how the recital and the exclusion are to be reconciled.

There is guidance on this on the AIFMD section of the European Commission’s webpages “Questions on Single Market Legislation”. The answer to Question ID 1146 says that the definition has to be read as a whole and jointly with recital (8). Consequently, private equity as such should not be deemed to be a holding company. The concept of "operating on its own account" should also be interpreted in the context of the requirement that the shares of such holding company are admitted to trading on an EU regulated market. Hence, says the guidance, this means that a holding company is a separate legal entity that carries out the business of owning and holding equity shares of other companies without the intent to dispose of such shares. Such business is done on the own account of the holding company and not on behalf of a third party. The answer says that the
exemption is meant to cover “large corporates such as Siemens or Shell”.

In theory, there is no distinction between a company whose returns are for itself and one whose returns are for its investors, as the returns of any company are generated for its investors as they change over time. However, in our view, this distinction is pointing towards the factors that distinguish a typical fund from a commercial company.

This does not completely explain the part of the exclusion that refers to shares being admitted to trading (see paragraph (1) of the answer to Question 6.2 (Is a holding company subject to AIFMD?)). In our view, this part of the exclusion is limited to internally managed undertakings. Therefore, this part of the exclusion applies to a business if:

(3) it carries out a commercial business strategy through its participations by contributing to their long-term value;

(4) the AIF is self-managed;

(5) it is not clearly acting as a fund taking into account the factors in the answers to Question 2.20 (Are there any other factors to take into account?) and Question 2.21 (Please give some further examples of factors to take into account when deciding whether an undertaking is set up like a fund); and

(6) the AIF’s shares are admitted to trading on a regulated market in the European Union.

Paragraphs (3) to (6) do not apply to an undertaking that meets the criteria in paragraphs (1) and (2).

**Question 6.4: Is the holding company exclusion always available where the fund holds controlling stakes in the businesses in which it invests so that the businesses are its subsidiaries?**

No. It is important to remember that the exclusion is only available if the company carries out a business strategy(s) through its subsidiaries. The company should act in the same way that a conventional holding company of an industrial group would act. This means that the holding company must be responsible (with the subsidiaries) for the overall strategy of the subsidiaries. So, if the manager’s subsidiaries are manufacturers, the manager must be responsible, with the subsidiaries themselves, for the manufacturing strategy of the subsidiaries.

The European Commission’s Q&A about AIFMD say (Question ID 1146) that it is inherent in the concept of a holding company that all operations apart from those related to the ownership of shares and assets are done via its subsidiaries, associated companies or participations. In our view, the exemption is available only to the extent that the undertaking is acting as a holding company. It does not matter if the undertaking carries out other activities but any such activities will not get the benefit of the holding company exclusion. Those activities should be entirely ancillary to its role as a holding company or otherwise outside AIFMD.
Thus, for example, a holding company may also provide services to other members of the group such as raising capital through the capital markets, treasury functions and human resources services.

If a holding company manages an AIF as well as acting as a holding company, its activities in managing that AIF are not excluded. The exclusion applies only in so far as it acts as a holding company. For example, if a holding company manages a conventional unit trust scheme it would not be excluded for that activity.

**Question 6.5: What does company mean in the holding company exclusion?**

As explained in the answer to Question 2.25 (What is the justification for the approach in the answers to Questions 2.15 to 2.23?), the basic distinction in AIFMD is between investment activities and commercial/industrial activities. The holding company exclusion is an illustration of this basic approach. For that reason, we believe that the term ‘company’ should be broadly interpreted to cover any undertaking such as, for example, a limited liability partnership.

**Question 6.6: What does the group AIF exclusion involve?**

An AIFM in so far as it manages one or more AIFs whose only investors are:

1. the AIFM; or
2. the parent undertakings of the AIFM; or
3. the subsidiary undertakings of the AIFM; or
4. other subsidiary undertakings of those parent undertakings;

is excluded from the regulated activity of managing an AIF provided that none of the investors is an AIF.

### By way of business

**Question 7.1: Must the AIFMD regulated activities be carried on by way of business for authorisation to be required?**

Yes. Under section 22 of the Act (Regulated activities), for any activity to be a regulated activity it must be carried on by way of business.

**Question 7.2: What is the test for whether activities are carried on by way of business?**

The test for whether the regulated activities of managing an AIF and acting as a depositary of an AIF are carried on by way of business is the one described in PERG 2.3.2G(2).
16.8 Territorial scope

**Question 8.1: What is the territorial scope of the AIFMD regulated activities?**

*PERG 2.4 (Link between activities and the United Kingdom) describes the general principles.*

Section 418 of the *Act (Carrying on regulated activities in the United Kingdom)* describes the circumstances in which an activity is treated as carried on in the UK in circumstances in which it would not otherwise be, as described by *PERG 2.4.3G.*

Leaving aside section 418, generally speaking the activities of *managing an AIF* and *acting as a depositary of an AIF* are carried on where the place of business of the *AIFM* or depositary from which those activities are carried out is located.

If one of these activities is carried on from a number of locations, some in the *UK* and some not, the activity is treated as being carried on in the *UK* if there is some continuity or regularity of provision within the *UK* of activities which are a significant part of the activity of *managing an AIF* or *acting as a depositary of an AIF.*

**Question 8.2: Are the additional activities described in the answer to Question 3.3 relevant?**

Yes. When deciding whether a company is *managing an AIF* in the *UK* if it splits the work between an office in the *UK* and one outside, one should take into account any of the additional activities described in the answer to Question 3.3 (Are the activities mentioned in the answer to Question 3.1 the only activities included in managing an AIF?) if the manager is performing risk management or portfolio management, even if all the risk management and portfolio management is carried on outside the *UK.*

**Question 8.3: Can the AIF activities be carried on by an overseas firm?**

As explained in the answer to Question 6.1 (What exclusions from the regulated activities specific to AIFs are there?), the *regulated activity of managing an AIF* does not apply to an *AIFM* whose registered office is not in an *EEA State.* Regulation 81 of the *AIFMD UK Regulation* restricts the scope of this exclusion from the date that the *EU* brings in certain further legislation relating to non-EEU AIFs and AIFMs.

The *regulated activity of acting as a depositary of an AIF* can apply to a *person* whose registered or head office is outside the *UK.*

**Question 8.4: Is the material in PERG 16.3 about delegation of management functions from one firm to another relevant to delegation from one branch to another?**

This question is about the branch in one country of an undertaking being appointed as an *AIFM* and then delegating some or all of its tasks to another
branch of the same undertaking. The question is whether any of the material in PERG 16.3 about the effect of delegation on who manages an AIF is relevant to whether that undertaking is carrying on those activities in the UK if one of those branches is in the UK and the other is not.

The answer is that it is not relevant. The two branches are part of the same legal entity. The relevant factors are the ones in the answer to Question 8.1 (What is the territorial scope of the AIFMD regulated activities?).
Powers exercised by the Financial Ombudsman Service

A. The Financial Ombudsman Service Limited makes the rules and guidance and varies the standard terms in the Annex to this instrument for Voluntary Jurisdiction participants in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 227 (Voluntary jurisdiction);
(2) paragraph 8 (Guidance) of Schedule 17;
(3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
(4) paragraph 18 (Terms of reference to the scheme) of Schedule 17;
(5) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17;
(6) paragraph 22 (Consultation) of Schedule 17.

B. The making of these rules and the variation of the standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority (“FCA”).

Powers exercised by the Financial Conduct Authority

C. The FCA approves and consents to the making of the rules and the variation of the standard terms made by the Financial Ombudsman Service Limited under this instrument pursuant to the following powers and related provisions in the Act:

(a) section 227 (Voluntary jurisdiction);
(b) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
(c) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

Commencement

D. This instrument comes into force on 22 July 2013.

Amendments to the FCA Handbook

E. The Dispute Resolution: Complaints sourcebook (DISP) is amended by the Board of the Financial Ombudsman Service Limited in accordance with the Annex to this instrument.

Citation

F. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 6) Instrument 2013.

By order of the Board of the Financial Ombudsman Service Limited
19 June 2013
By order of the Board of the FCA
27 June 2013
Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1R The Ombudsman can consider a complaint under the Voluntary Jurisdiction if:

…

(2) it relates to an act or omission by a VJ participant in carrying on one or more of the following activities:

…

(c) activities which (at 30 April 2011 22 July 2013) were regulated activities or would be regulated activities covered by the Compulsory Jurisdiction, if they were carried on from an establishment in the United Kingdom (these activities are listed in DISP 2 Annex 1G);

…

(l) activities which (at 1 November 2009) were payment services or would be payment services if they were carried on from an establishment in the United Kingdom; [deleted]

(m) issuance of electronic money; [deleted]

…

2 Annex 1G

Regulated activities for the Voluntary Jurisdiction at 30 April 2011 22 July 2013

The activities which were covered by the Compulsory Jurisdiction (at 22 July 2013) were:

(1) for firms:

(a) regulated activities (other than auction regulated bidding);
(b) payment services;
(c) consumer credit activities;
(d) lending money secured by a charge on land;
(e) lending money (excluding restricted credit where that is not a consumer credit activity);
(f) paying money by a plastic card (excluding a store card where that is not a consumer credit activity);

(g) providing ancillary banking services;

or any ancillary activities, including advice, carried on by the firm in connection with them.

2) for payment service providers:

(a) payment services;

(b) consumer credit activities;

or any ancillary activities, including advice, carried on by the payment service provider in connection with them.

3) for electronic money issuers:

(a) issuance of electronic money; or

(b) consumer credit activities;

or any ancillary activities, including advice, carried on by the electronic money issuer in connection with them.

The activities which (at 30 April 2011 – 22 July 2013) were regulated activities for the Voluntary Jurisdiction were, in accordance with section 22 of the Act (The classes of activity and categories of investment), any of the following activities specified in Part II of the Regulated Activities Order.

…

(21A) acting as the depositary of an authorised contractual scheme (article 51(1)(bb));

(22) …

(22A) managing a UCITS (article 51ZA);

(22B) acting as a trustee or depositary of a UCITS (article 51ZB);

(22C) managing an AIF (article 51ZC);

(22D) acting as a trustee or depositary of an AIF (article 51ZD);

(22E) establishing, operating or winding up a collective investment scheme (article 51ZE);

…

(38C) meeting of repayment claims (article 63N(1)(a));

(38D) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));

(38E) providing information in relation to a specified benchmark
(article 63O(1)(a));

(38F) administering a specified benchmark (article 63O(1)(b));

…
Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited:

(a) makes the rules in the Annex to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
(b) varies the standard terms in the Annex to the instrument for Voluntary Jurisdiction participants relating to the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 226A (Consumer credit jurisdiction);
(2) section 227 (Voluntary jurisdiction);
(3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
(4) paragraph 16B (Procedure for complaints etc) of Schedule 17;
(5) paragraph 16E (Procedure for consumer credit rules) of Schedule 17;
(6) paragraph 16G (Consultation) of Schedule 17;
(7) paragraph 18 (Terms of reference to the scheme) of Schedule 17;
(8) paragraph 20 (Voluntary jurisdiction rules: procedure) of Schedule 17; and
(9) paragraph 22 (Consultation) of Schedule 17.

B. The making of these rules and the varying of the standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority (“FCA”).

Powers exercised by the Financial Conduct Authority

C. The FCA makes the Annex to this instrument relating to the Compulsory Jurisdiction in the exercise of the following powers and related provisions in the Act:

(1) section 137A (The FCA’s general rules);
(2) section 137T (General supplementary powers); and
(3) section 226 (Compulsory jurisdiction).

D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

E. The FCA approves and consents to the Financial Ombudsman Service Limited making the rules and varying the standard terms under this instrument pursuant to the following powers and related provisions in the Act:

(a) section 226A (Consumer credit jurisdiction);
(b) section 227 (Voluntary jurisdiction);
(c) paragraph 14 (The scheme operator’s rules) of Schedule 17; and
(d) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
Commencement

F. This instrument comes into force on 22 July 2013.

Amendments to the Handbook

G. The Dispute Resolution: Complaints Sourcebook (DISP) of the FCA’s Handbook of rules and guidance is amended in accordance with the Annex to this instrument.

Citation

H. This instrument may be cited as the Dispute Resolution: Complaints (Alternative Investment Fund Managers Directive) Instrument 2013.

By order of the Board of the Financial Ombudsman Service Limited
19 June 2013

By order of the Board of the FCA
27 June 2013
Annex

Amendments to the Dispute Resolution: Complaints sourcebook

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

2.7 Is the complainant eligible?

...

Eligible complainants

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is the *operator* or *depositary* of the scheme:

(a) the *operator* of a scheme;

(b) the *depositary* of an *authorised fund*; or

(c) the *depositary* of a *charity AIF*;

(3A) the complainant is the holder, or the beneficial owner, of *units* or *shares* in an *AIF* where the *respondent* is:

(a) the *AIFM* of an *unauthorised AIF* (apart from a *closed-ended corporate AIF*);

(b) the AIFM or *depositary* of an *authorised AIF*; or

(c) the AIFM or *depositary* of a *charity AIF* (apart from a charity AIF which is a closed-ended corporate AIF);

...