

CP13/9***

Financial Services Authority

Implementation of the Alternative Investment Fund Managers Directive

Part 2



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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 10 May 2013.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2013/cp13-09-response.shtml.

Alternatively, please send comments in writing to:

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

Email: cp13_09@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

Acronym	Description
AIFM	alternative investment fund manager
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
APP	authorised professional firm
AUM	assets under management
AUT	authorised unit trust
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms of the FSA Handbook
CASS	Client Assets sourcebook of the FSA Handbook
CBA	cost benefit analysis
CDF	Common deposit fund
CIF	Common investment fund
CIS	Collective investment scheme
COBS	Conduct of Business sourcebook of the FSA Handbook
COLL	Collective Investment Schemes sourcebook of the FSA Handbook
Commission	European Commission

CP	consultation paper
CP1	the FSA's first AIFMD consultation
CP2	the FSA's second AIFMD consultation
CP3	the FSA's third AIFMD consultation
CPM firm	collective portfolio management firm
CPMI firm	collective portfolio management investment firm
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union, which includes the European Economic Area (EEA) unless otherwise stated
FCA	Financial Conduct Authority
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000, as amended
FUND	draft Investment Funds sourcebook of the FSA Handbook
GENPRU	General Prudential sourcebook of the FSA Handbook
IPRU (INV)	Interim Prudential sourcebook for Investment Business of the FSA Handbook
Level 1 Directive	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
Level 2 Regulation	Commission regulation on AIFMD implementing measures
LLP	UK limited liability partnership
Member State	a Member State of the European Union
MiFID	Directive 2004/39/EC on Markets in Financial Instruments
MoU	Multilateral Memorandum of Understanding
NURS	non-UCITS retail scheme
OEIC	open-ended investment company established under the OEIC Regulations

OJ	Official Journal of the European Union
Part IV permission	a firm's permission to carry on a regulated activity granted under FSMA (from 1 April 2013, this will be referred to as a Part 4A permission)
PERG	Perimeter Guidance Manual
Prospectus Directive	Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (as amended)
QIS	qualified investor scheme
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) (as amended)
REIT	real estate investment trust
RTS	regulatory technical standards
SUP	Supervision manual of the FSA Handbook
SYSC	Senior Management Arrangements, Systems and Controls sourcebook of the FSA Handbook
The Treasury	Her Majesty's Treasury
UCIS	unregulated collective investment scheme
UCITS	undertaking for collective investment in transferable securities
UCITS Directive	Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to certain aspects of the marketing of UCITS funds (recast)
UK Authorities	The Treasury and the FSA
UPRU	Prudential sourcebook for UCITS Firms of the FSA Handbook
VoP	variation of a Part IV permission

1

Overview

Part II of our consultation

- 1.1 This Consultation Paper (CP2) is our second consultation on rules and guidance to transpose the Alternative Investment Fund Managers Directive (AIFMD) in the UK. We originally intended this paper to cover all the issues set out in Annex 6 of our first Consultation Paper (CP1) published on 14 November 2012.¹ However, continuing European transposition work on the AIFMD, and FSA operational change resulting from UK regulatory reform, have meant that we cannot cover them all in this paper. Nonetheless, we and the Treasury (the UK Authorities) continue to work together to ensure full transposition of AIFMD by 22 July 2013.
- 1.2 This paper should be read with CP1 and the Treasury's two consultation documents, published on 11 January 2013 and 13 March 2013 respectively.²

Structure of this CP

- 1.3 Chapter 2 explains what progress has been made on EU measures to implement the Directive since we published CP1. It also sets out how we propose to give guidance about the scope of the AIFMD and explains the current state of our thinking about delegation by alternative investment fund managers (AIFMs).
- 1.4 Chapter 3 proposes modifications to some existing organisational and conduct of business rules that will affect full-scope UK AIFMs. It also explains how we propose to amend our rules and guidance to implement the Treasury's proposals for specialised regimes for smaller AIFMs.
- 1.5 Chapter 4 supplements the proposals for prudential rules and guidance set out in CP1 with some further consequential rules, including the proposed prudential regime for small authorised UK AIFMs.

¹ CP12/32, 'Implementation of the Alternative Investment Fund Managers Directive Part 1', November 2012, www.fsa.gov.uk/static/pubs/cp/cp12-32.pdf.

² These consultation papers can be found at www.hm-treasury.gov.uk/consult_fullindex.htm.

- 1.6 Chapter 5 makes proposals for an appropriate degree of consumer redress by explaining which types of AIFM and depositary will be within the scope of the Financial Ombudsman Service (FOS), the Financial Services Compensation Scheme (FSCS), or both.
- 1.7 Chapter 6 supplements the proposals in CP1 concerning depositaries. We explain how our existing rules and guidance for the protection of client assets will apply to some types of depositary.
- 1.8 Chapter 7 explains our approach to marketing under the Directive and how AIFMs may exercise single market passporting rights. It also describes our approach to registering funds being marketed through national private placement, and to approving non-UK AIFs as recognised schemes that can be marketed to the general public.
- 1.9 Chapter 8 sets out our proposals for charging fees to entities that will be regulated under the AIFMD to cover FCA costs in regulating them.
- 1.10 We have assumed that readers of this paper are familiar with the content of CP1, so for consistency purposes we have used the same terminology. Where new terms are used, these are defined and have been added to the list of abbreviations at the beginning of this paper.

Revised approach to consultation

Non-EEA AIFM and AIF passport provisions

- 1.11 A further consultation paper (CP3) will be issued by the FCA after 1 April 2013 when it assumes its legal powers as one of the successor bodies to the FSA. This paper will cover:
- consequential changes to bring the rest of what will be the FCA Handbook into line with the rules consulted on in CP1 and CP2; and
 - amendments to the FCA Handbook necessary to transpose articles 35 and 37 to 41 of the Directive, to provide for the marketing and management passports for non-EEA AIFMs and non-EEA AIFs.
- 1.12 These passport provisions will not become operative in Member States until the European Commission (Commission) adopts a delegated act to trigger their operation.³ We intend to transpose these requirements through a formal copy-out of the Level 1 Directive provisions, so that the UK Authorities can fully meet their implementation obligations.⁴

³ Article 67 AIFMD. The delegated act will switch on these non-EEA passports only if the ESMA opinion under Article 67(1) AIFMD is positive and supports their introduction.

⁴ In 2015/2016, the non-EEA passport provisions in the Level 1 Directive will be complemented by Commission implementing measures and ESMA binding technical standards.

- 1.13 Non-EEA AIFMs, provided they have notified themselves to the FCA and they comply with the transparency requirements in the Directive and the Level 2 Regulation⁵, will be permitted to manage and/or market EEA and non-EEA AIFs in the UK from 22 July 2013. They will not, however, have a passport to market freely across the EEA.
- 1.14 Where non-EEA AIFMs manage and/or market private equity AIFs in the UK, they will also need to comply with the bespoke reporting provisions in Article 26(1) of the AIFMD.

Authorised fund provisions

- 1.15 As explained in CP1, we intend to replace the COLL sourcebook with equivalent chapters in FUND, so that FUND will become the main sourcebook for AIFMs and UCITS management companies. However, the work involved in achieving this aim has proved greater than expected, so we are not able to consult on draft Handbook text for all of FUND in this paper. We think it is important to focus our efforts at this stage on putting in place the rules that will affect all AIFMs.
- 1.16 Instead, we propose to retain all of COLL in the short term after 22 July 2013, alongside the chapters of FUND that are necessary to implement AIFMD. We aim to consult separately, no later than Q3 2013, on the text of the chapters to replace COLL. This will enable us to consider more thoroughly what changes to the authorised funds regime may be necessary or desirable to adapt it to the new Directive.
- 1.17 We appreciate that managers of non-UCITS retail schemes (NURS) and qualified investor schemes (QIS) that become authorised as AIFMs after July 2013 will need to consider the contents of both sourcebooks to determine their regulatory obligations. We believe there is little in COLL that conflicts directly with AIFMD, although there are areas of overlap or ambiguity. We propose to address this by a rule which specifies that, in the event of any conflict between a rule implementing AIFMD and another rule in the Handbook that applies to AIFMs, the Directive requirement prevails because of the primacy of European law.
- 1.18 This arrangement may cause some inconvenience in the short term to managers of authorised funds, and we will work with stakeholders to resolve any difficulties caused by inconsistencies or ambiguities.

Private equity provisions

- 1.19 One of the issues in CP1 Annex 6 not covered in this paper concerns questions of interpretation and guidance relating to the Directive's provisions applicable to AIFMs of private equity funds. The Level 1 provisions are being transposed by Treasury regulations – principally by the 'copy-out' mechanism – and these regulations have recently been

⁵ Commission delegated regulation (EU) No .../... of 19.12.2012. 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 http://ec.europa.eu/internal_market/investment/docs/20121219-directive/delegated-act_en.pdf.

consulted on in the Treasury's first consultation document. There are neither Level 2 measures nor ESMA guidelines that address these provisions.

- 1.20 We are aware of the questions raised by some stakeholders on some of the private equity provisions. The FCA will consider issuing guidance at a later stage if required; for example, in relation to the scope and interpretation of some of the asset-stripping provisions in Article 30 of the Directive.

Next steps

- 1.21 Please send us your responses by Friday 10 May 2013. Once again, this is a shorter consultation period than usual, given the need for us to finalise these additional rules and guidance ahead of the impending transposition deadline of 22 July 2013.
- 1.22 We propose to issue a full AIFMD policy statement in June, but we intend to confirm some of our final policy positions before that date to give affected firms as much time as possible to continue their AIFMD preparation. We expect these earlier statements to cover whether we will receive potential AIFM authorisation applications and variations of permission before 22 July 2013. They may also include our final decisions in relation to the prudential rules for AIFMs and the requirements for AIF depositaries.

Who should read this CP?

- 1.23 As with our first consultation paper, this paper will interest:
- investors (retail and professional);
 - fund managers, including managers of UCITS schemes;
 - depositaries;
 - MiFID firms;
 - non-UK AIFMs wishing to market and/or manage EEA or non-EEA funds in the UK, or elsewhere in the EEA;
 - listed and unlisted investment companies not currently subject to FSMA authorisation;
 - service providers to the fund management industry, such as valuers, administrators and outsourcing specialists;
 - representative trade bodies; and
 - business advisers and consultants, and other advisers involved, serving in or linked to the fund management industry in the UK.

- 1.24 Although UCITS firms and UCITS investment firms that do not manage AIFs are not within the scope of the AIFMD, chapter 4 of this paper will be of interest to them as we propose changes to the Handbook that will affect those firms.

Key messages

Consultation process

Consultation timeline

Our AIFMD consultation approach continues to be carried out in stages given European and other dependencies. This paper covers many of the issues that we were unable to address in CP1. Firms affected by AIFMD should continue to prepare to be 'AIFMD ready', especially those firms that intend to carry on the regulated activity of managing AIFs for the first time after 22 July 2013.

Transitional provisions

We propose to permit UK firms managing and/or marketing AIFs in the UK to make full use of the 12-month transitional period whether these AIFMs become authorised or registered. This is in line with the Treasury's position on the interpretation of the Directive's transitional provisions in Article 61(1), as set out in its first consultation document, and applies irrespective of whether the AIF concerned is an EEA or non-EEA AIF. Firms carrying on management of AIFs from an establishment in the UK will have until 21 July 2014 to submit an application to become a UK-registered or UK-authorised AIFM, or to vary their Part 4A permission.

Supervisory assessment of delegation arrangements

As stated in CP1, we intend to assess any delegation arrangements on a case-by-case basis in a robust and flexible way, while taking account of the Level 1 and final Level 2 requirements. The Level 2 Regulation issued by the Commission on 19 December 2012 is nearing the end of the 3-month period during which the European Council and European Parliament could object to it. We think any such objection is unlikely.

During the transitional period from 22 July 2013 to 21 July 2014 we do not propose to make supervisory assessments of a firm's delegation arrangements, until the firm applies for authorisation or a variation of permission (VoP) to become an AIFM.

*Submission of AIFM applications and variations of permission before
22 July 2013*

We appreciate that firms now operating on a cross-border basis are seeking certainty that they will be able to continue to do so from 22 July 2013. We are working on being in a position to receive applications or VoPs before that date, from firms that need to be able to exercise single market rights in order to continue existing business without interruption. We would like to draw the attention of potentially affected firms to our website page <http://www.fsa.gov.uk/fsa/about/what/international/aifmd>. We will confirm our intentions after 1 April 2013 once we have become the FCA.

CP closing date

You have eight weeks to send us your responses, by **10 May 2013**.

CONSUMERS

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 proposals may be of wider interest to consumers.

2

Implementation

- 2.1 This chapter explains what progress has been made on EU measures to implement the Directive since we published CP1. It also sets out how we propose to give guidance about the scope of the AIFMD and explains the current state of our thinking about delegation by AIFMs.

EU developments since November 2012

AIFMD Level 2 Regulation

- 2.2 When we published CP1 in November 2012, the Commission had not issued its delegated regulation on the implementing measures that supplement the Level 1 Directive (the Level 2 Regulation). The text of the Level 2 Regulation was issued by the Commission on 19 December 2012.
- 2.3 The Level 2 Regulation will enter into force provided that neither the European Parliament nor the Council of the EU has objected to it during the three-month objection period ending on 18 March 2013. At the time of publication of this paper we do not expect any such objections to be made.⁶ The Level 2 Regulation should be published in the EU's *Official Journal* (OJ) shortly after 19 March 2013 and should come into force 20 days later. It will be directly applicable in EU Member States' legal systems from 22 July 2013, subject to the transitional provisions of the Level 1 Directive.

ESMA

Remuneration guidelines

- 2.4 During 2012, ESMA developed guidelines on remuneration policies for AIFMs, as required under the Level 1 Directive. Competent authorities are required to comply with these guidelines or explain why they will not do so. On 11 February 2013, ESMA published the

⁶ Given that the Council or European Parliament may only object to the Level 2 Regulation as a package of measures, we consider this unlikely at this stage.

text of its final report on the remuneration guidelines.⁷ The guidelines will formally come into effect once a version has been published by ESMA in each official language of the EU.

- 2.5 Following our agreement with the Treasury, smaller AIFMs managing AIFs below the thresholds for assets under management (AUM)⁸ will not need to comply with the requirements and guidelines on remuneration policies for AIFMs.

Draft regulatory technical standard on types of AIFM

- 2.6 Since we published CP1, ESMA has issued two consultations on implementing measures concerning types of AIFM.⁹ This work will help prospective AIFMs to determine whether the entities they manage fulfil all the criteria for the definition of an AIF.¹⁰ ESMA has proposed draft regulatory technical standards (RTS) for AIFMs that manage open-ended and closed-ended AIFs. The consultation period closed in late January 2013 and ESMA is currently considering what amendments should be made to the proposal in the light of feedback received.
- 2.7 Once ESMA issues its final version of this draft RTS to the Commission, it will be adopted and published in the OJ and will be directly applicable in Member States' jurisdictions. We expect the Commission to do this in Q2 2013.

Guidelines on key concepts of AIFMD

- 2.8 The second of the ESMA consultations on types of AIFM (guidelines on key concepts of the AIFMD) relates to a number of other matters that may determine types of AIFM.
- 2.9 As with the RTS, ESMA is considering what amendments should be made to the proposed guidelines in the light of feedback received to the consultation. We expect the final version of the guidelines to be approved and published before 22 July 2013.

Supervisory cooperation arrangements

- 2.10 As noted in CP1, the FCA must have supervisory cooperation arrangements in place with the regulatory authorities of non-EEA jurisdictions.¹¹ These arrangements, taking the form of a bilateral Memorandum of Understanding (MoU), must be compliant with the Level 1 Directive, the Level 2 Regulation and ESMA guidelines.¹² They will cover (for example) delegation of investment management to non-EEA entities and marketing of non-EEA AIFs in the UK.

7 ESMA Final Report, Guidelines on sound remuneration policies under AIFMD, February 2013
<http://www.esma.europa.eu/system/files/2013-201.pdf>.

8 See Article 3(2) AIFMD.

9 ESMA Consultation Paper, Draft regulatory technical standards on types of AIFMs, December 2012, <http://www.esma.europa.eu/system/files/2012-844.pdf>; ESMA Consultation Paper, Guidelines on key concepts of the AIFMD, December 2012, <http://www.esma.europa.eu/system/files/2012-845.pdf>.

10 ESMA is required to do this under Article 4(4) of AIFMD.

11 These are required under Articles 20, 21, 34, 35, 36, 37-41 and 42 AIFMD.

12 Each MoU agreed between ESMA and a non-EEA competent authority will constitute ESMA guidelines.

- 2.11 Negotiating these MoUs, for signature by EEA competent authorities, has been a key part of ESMA's 2012 and 2013 work programmes. ESMA's plans are for these MoUs to be available for EEA competent authorities to sign with non-EEA jurisdictions important to the UK and other Member States, ahead of the 22 July 2013 implementation date.

AIFM reporting guidelines

- 2.12 ESMA is developing guidelines on AIFMD reporting obligations. These guidelines are aimed at both EEA competent authorities – to promote supervisory convergence on AIFMD reporting requirements – and EEA AIFMs, to help them meet their reporting obligations.¹³ Reporting will commence in January 2014 for AIFMs that have been authorised by that point.
- 2.13 ESMA expects to publish a consultation paper on these proposed guidelines in the near future. The paper is likely to cover:
- guidance on the specific data to be reported in accordance with the templates in Annex IV of the Level 2 Regulation;
 - reporting periods and how these might align with the calendar year;
 - reporting for specific types of AIF, such as feeder AIFs and umbrella AIFs;
 - IT and operational aspects, such as how types of AIFM and AIF should be identified in ESMA's IT structure, which is being built to interact with the individual IT systems of each EEA competent authority.
- 2.14 We encourage firms and other stakeholders to respond to ESMA's consultation paper once it is published.
- 2.15 The FCA will consider how to incorporate these texts into the Handbook once they have been issued in final form.

Further statements on scope and the AIFMD regulatory perimeter

- 2.16 We recognise the need to explain what we believe is and is not within the scope of the Directive. As we have explained, the work being carried out by ESMA on types of AIF and AIFM will determine what we can say about some aspects of the scope. However, there are a number of areas on which we can provide guidance.
- 2.17 In this paper we propose additions and changes to our perimeter guidance manual (PERG) in the Handbook, building on the preliminary statements about scope that we made in Chapter 3 of CP1. This guidance covers key elements of the definition of an AIF such 'as capital-raising', 'defined investment policy' and what is a collective investment undertaking.

13 See CP1 paragraphs 6.25 to 6.39 for details.

2.18 Our proposed PERG guidance will also cover:

- examples of schemes that we think are AIFs, such as hedge funds, commodity funds and real estate funds;
- arrangements that are not likely to be considered AIFs, including but not limited to timeshare schemes, pension schemes, pension CIFs and employee participation schemes and carried interest vehicles;
- entities for which we make no general presumption either way and which we will consider according to the facts of each case, such as UK REITs;
- joint ventures, family investment vehicles, co-investment vehicles, the Directive's holding company exclusion¹⁴, and what we think constitute investment compartments of AIFs; and
- more general points, such as whether our interpretation of a collective investment undertaking applies to MiFID and what is meant by 'managing an AIF'.

2.19 AIFMD is maximum harmonising, so we have developed this proposed PERG guidance with reference to ESMA's proposed RTS and guidelines on key concepts of AIFMD described above. We aim to finalise this guidance once the text of those RTS and guidelines is settled.

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

Additional statements on delegation by AIFMs and 'letterbox entity'

2.20 In CP1 we said that we would give firms a further indication as to how we propose to exercise our supervisory judgment on AIFM delegation arrangements, particularly concerning the core investment management activities of portfolio management and risk management. This section should therefore be read as supplementing our initial position in paragraphs 7.52 to 7.63 of CP1 where we explained what is meant by 'letterbox entity'.

2.21 The Level 2 Regulation contains detailed, indicative but non-exhaustive criteria that EEA competent authorities should take into account when assessing whether authorised AIFMs in their jurisdictions comply with all applicable delegation requirements for core and non-core AIFM activities.

2.22 The outcome that the Level 1 and Level 2 delegation requirements seek to ensure is that, where the core AIFM functions of portfolio management and risk management are proposed to be delegated, a UK-authorised AIFM does not do so to the extent that it could be considered by the FCA to have become a 'letterbox entity'.

¹⁴ Article 4(o) AIFMD.

- 2.23** The ‘letterbox entity’ test has been the subject of considerable political and technical debate and, as expected, the text of Article 82 of the Level 2 Regulation goes further than the factors specified by ESMA in its technical advice to the Commission in 2011.
- 2.24** The FCA will take account of the criteria in Article 82 of the Level 2 Regulation when assessing arrangements proposed by a full-scope UK AIFM for the delegation of risk and portfolio management. We expect to undertake a proportionate supervisory assessment on whether a proposed delegation arrangement would lead to a ‘letterbox entity’. This assessment will be more qualitative than quantitative. This means we will not automatically presume that a UK-authorised AIFM is a ‘letterbox entity’ merely because a percentage threshold has been reached on the investment management tasks proposed to be delegated, *versus* those that are retained by the AIFM. The following paragraphs describe some of the elements of a qualitative assessment.
- 2.25** We would note that senior management and the governing body, or other supervisory function of the AIFM¹⁵, must exercise effective oversight and control over risk and portfolio management. This is the case whether the investment management activities are retained in-house, delegated to another firm in the same corporate group, or delegated to an independent third-party service provider, irrespective of the service provider’s geographic location.
- 2.26** Our assessment of delegate risk will form part of our wider assessment to ensure that those responsible for the activities of an AIFM monitor and manage overall risk appropriately. This involves the AIFM carrying out suitable due diligence for a prospective delegate, and supervising them in an active rather than passive way on a continuing basis. We will look for evidence that there is no improper delegation resulting from an abdication of responsibility by senior management and the governing body.
- 2.27** Concerning intra-group delegations, regardless of the location of the proposed delegate, we will assess whether the correct entity holds the required authorisation. Where such entities are located in third countries, we will cooperate with the authority that has jurisdiction over that entity under the terms of the MoU.¹⁶
- 2.28** Recognising that the delegation requirements affect a broad range of AIFMs, we will take account of the objective reasons and commercial imperatives for delegation, with reference also to specific, real-world operating models. We will consider the nature of the AIFM; for example, whether it is an external or internal manager of AIFs. We will also review delegation structures, with reference to our statutory duty to carry out our regulatory functions in a way that promotes competition, so far as this is compatible with our other statutory objectives.

¹⁵ Article 60 of the Level 2 Regulation.

¹⁶ These are the model MoUs negotiated by ESMA for signature by EU competent authorities.

Delegation arrangements during the transitional period

- 2.29 We will not review or supervise existing delegation arrangements – whether in relation to the ‘letterbox entity’ test or the delegation requirements of the Directive more generally – where firms are managing AIFs before 22 July 2013 *and* these firms are taking advantage of the 12-month transitional period.
- 2.30 We will need to review existing and proposed delegation arrangements of those firms wishing to be authorised, or to vary their permission, from 22 July 2013.
- 2.31 From 22 July 2014 we will review and supervise both existing and proposed delegation arrangements, since all UK firms managing AIFs from that date must be UK-authorised or UK-registered AIFMs so as not to breach the general prohibition.¹⁷ From that date, a UK-authorised AIFM must satisfy, or continue to satisfy, the threshold conditions for managing the AIFs for which it holds a Part 4A permission.¹⁸
- 2.32 For firms that do not benefit from the transitional period, we will review their delegation arrangements as part of their application for authorisation as an AIFM.

Future European measures on ‘letterbox entity’

- 2.33 The Commission will monitor how EEA competent authorities supervise AIFM delegation requirements and how the ‘letterbox entity’ test is being applied in the AIFM sector.¹⁹ In 2015, the Commission will consider whether to adopt any additional measures that specify the conditions under which a ‘letterbox entity’ should be assessed.²⁰
- 2.34 ESMA guidelines are a means of promoting supervisory convergence among EEA competent authorities. In the Level 2 Regulation, the Commission has expressly recognised ESMA’s power to issue guidelines to ensure that EEA competent authorities assess AIFM delegation structures consistently.²¹ ESMA’s 2013 work programme does not currently include plans to develop guidelines in this area.

FCA guidance on ‘letterbox entity’

- 2.35 We do not currently plan to issue any guidance on how we will assess compliance with the AIFMD’s delegation requirements, including the ‘letterbox entity’ test.²² As noted above, we will review delegation structures on a case-by-case basis, examining an AIFM’s compliance with the Directive’s risk management requirements and the efficacy of its governance by the firm’s governing body, and control by the firm’s senior management and supervisory

17 Article 19 FSMA.

18 See COND 1 of FSA Handbook.

19 Recital 93 and Article 82(2) of the Level 2 Regulation.

20 Recital 92 and Article 82(2) of the Level 2 Regulation.

21 Article 82(3) Level 2 Regulation and see Recital 26 and Articles 8(1)(a),(e), 8(2)(c) and article 16 of the ESMA Regulation.

22 See however Q3.8 of PERG 16.3 on a related point.

function, where relevant.²³ Firms may make individual requests for guidance under SUP 9.2 of the Handbook.²⁴

- 2.36 In time, after the implementation of the AIFMD, the FCA may consider developing formal guidance. Any such guidance will need to take account of any further developments at European level, including whether the Commission has adopted additional implementing measures, and whether ESMA has developed any relevant guidelines.

General approach to transitional provisions

- 2.37 In line with the Treasury's position on the interpretation of the Directive's transitional provisions in article 61(1), we confirm the statement we made in CP1 that we propose to permit UK AIFMs managing and/or marketing AIFs in the UK to make full use of the 12-month transitional period to 21 July 2014. All firms within the scope of the Directive must comply fully with its requirements by that date, whether or not their application to the FCA for the relevant Part IV permission has been determined by then. We propose to include transitional provisions in all relevant sourcebooks of the FCA Handbook to allow for these arrangements.

Revised direct costs of implementation to be incurred by FSA/FCA

- 2.38 In the CBA to CP1 our initial estimate of the core costs of implementing AIFMD, over and above those which are business-as-usual, was £5m. This estimate was intended as a marker until the FSA programme and business analyst teams had more fully scoped one-off AIFMD implementation costs. This figure now stands at around £13.4m but takes fuller account of:
- scope changes given the extent of AIFMD regulation and categories of firms affected;
 - costs of bespoke IT changes to FSA systems (taking account also of the transition to the FCA);
 - necessary operational changes to core regulatory processes such as AIFM authorisation, registration, supervision and reporting. The latter includes costs of mandatory reporting of AIFMD data by the FCA to ESMA; and
 - increased use of specialist project resources for other operational aspects of AIFMD implementation.

²³ See for example Article 60 of the Level 2 Regulation.

²⁴ See SUP 9.2.1G more generally.

Miscellaneous matters

- 2.39 The Level 2 Regulation sets out certain reporting requirements which apply directly to AIFMs. The Regulation does not specify the end dates of the relevant reporting periods, or the reporting periods for sub-threshold AIFMs – these are for competent authorities to specify. We propose that sub-threshold AIFMs, whether they are authorised or registered, should report annually. We propose that the reporting period end dates for all AIFMs should be those set out in the table below. These rules will be set out in SUP 16.18.

Reporting period end dates for all AIFMs	
Reporting frequency	Reporting period end date
Annually	31 December
Biannually	30 June, 31 December
Quarterly	31 March, 30 June, 30 September, 31 December

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

3

Operating requirements for full-scope and sub-threshold AIFMs

- 3.1 This chapter proposes modifications to some existing organisational and conduct of business rules that will affect full-scope UK AIFMs. It also explains how we propose to amend our rules and guidance to implement the Treasury's proposals for specialised regimes for smaller AIFMs.

Applying SYSC and COBS to full-scope UK AIFMs

- 3.2 The AIFMD imposes specific requirements on the organisation and conduct of AIFMs, which will replace any equivalent rules currently applicable to authorised firms that become AIFMs. We must modify the SYSC and COBS sourcebooks to take account of these specific AIFMD requirements. In CP1 we began this process by proposing some additional rules and guidance to implement new elements of the Directive.
- 3.3 Since then, we have reviewed existing requirements in SYSC and COBS against the final draft text of the Level 2 Regulation to determine whether they are compatible. Where existing requirements are not compatible, and where they relate to activities (within the scope of the Directive) that full-scope UK AIFMs are performing for professional investors, we must modify or entirely disapply them.
- 3.4 For currently authorised firms that will become AIFMs, the effect of these changes will depend on which activities they currently perform. Some of these firms are already subject to the organisational requirements of other EU Directives such as MiFID (we refer to these as 'common platform firms'). Other firms, such as operators of unregulated collective investment schemes (UCIS), are currently outside the scope of European legislation and

comply with different standards. But all of them will move to a uniform set of requirements under AIFMD when dealing with professional investors.

Systems and controls requirements

- 3.5 Most of the organisational requirements set out in Chapters 4 to 10 of the SYSC sourcebook will not apply to full-scope UK AIFMs. We propose to make a few exceptions, by applying certain parts of these chapters where they are outside the scope of the AIFMD and we think adequate investor protection measures need to be in place. An example of this is SYSC 6.3, concerning the prevention of financial crime.²⁵ We also propose to apply to AIFMs some helpful pieces of guidance which either describe in more detail how we would expect firms to fulfil an obligation, or are purely explanatory (so they do not direct firms to do, or refrain from doing, something).
- 3.6 For full-scope UK AIFMs of authorised AIFs (which can be marketed to retail investors, within the meaning of the AIFMD), we propose to retain some additional requirements which do not conflict with AIFMD. For example, the record-keeping requirements in SYSC 9.1.1R and 9.1.2R will still apply to most types of records that the firm keeps. We will introduce in the table in SYSC 1 Annex 1 an additional column (Column A++) specifying how chapters 4 to 10 apply to a full-scope UK AIFM of authorised AIFs.
- 3.7 Where an AIFM is also performing any of the activities permitted in addition to the management of AIFs,²⁶ it will be subject to specific requirements set out in column A+ of SYSC 1 Annex 1. These requirements are the same as those applying to a UCITS management company when it carries out ‘MiFID-type’ activities.
- 3.8 For a firm that is currently authorised under MiFID (and so is a common platform firm), becoming a full-scope UK AIFM means that most of the provisions in chapters 4 to 10 that applied to it as rules will either cease to apply, or will apply only as guidance. For a firm that is currently authorised but is not a common platform firm, such as a collective investment scheme (CIS) operator, most of the provisions in these chapters already apply only as guidance.

Conduct of business requirements

- 3.9 To align COBS with AIFMD requirements, we propose to modify the specialist regime for operators of collective investment schemes set out in COBS 18.5 (Operators of CIS, UCITS management companies and AIFMs). This chapter currently contains a table (COBS 18.5.2R) specifying which COBS rules apply to operators of CIS when carrying on scheme management activity. This is to ensure the operator’s duties to the fund as its client are maintained where they give protection to the underlying investors (e.g. the rules in COBS

²⁵ The other exceptions are listed in draft SYSC 1 Annex 1, 2.6B.

²⁶ As permitted under Article 6(4) and transposed in draft rule FUND 1.4.3R (individual portfolio management, investment advice, safeguarding of assets, or receipt and transmission of orders).

11.6 on using dealing commission when buying and selling financial assets in the fund's portfolio).

- 3.10** We propose to modify this table to take account of its application to both full-scope UK AIFMs and sub-threshold AIFMs. For full-scope AIFMs, certain rules such as COBS 2.3 concerning inducements will be disapplied, because the Directive imposes specific requirements in the same area. A new rule (COBS 18.5.4A R) will disapply the best execution rules in COBS 11.2 where they duplicate specific AIFMD requirements in the Level 2 Regulation, while retaining some existing requirements that we believe are permitted under AIFMD.
- 3.11** Rules about transparency in COBS 18.5 will no longer apply to full-scope UK AIFMs when dealing with professional investors. They will instead be subject to FUND 3.2 and 3.3. However, we propose to apply additional transparency requirements to full-scope UK AIFMs when they market an unauthorised AIF to a retail client. A new rule (COBS 18.5.10A R) requires the disclosure to a retail client of certain items of information not specified in the AIFMD provisions. These are items of information which should currently be disclosed when units in an UCIS are marketed. There is no obligation on the AIFM to make these additional disclosures when marketing to professional investors.

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?

Sub-threshold regimes

- 3.12** The Treasury's first consultation document explained how the UK authorities intend to implement a modified regime for AIFMs that have AUM below certain thresholds specified in Article 3 of the Directive. The proposal is for three categories of 'sub-threshold' manager:
- 1) Managers of authorised funds, which will be subject to both existing regulatory requirements and the majority of the new Directive requirements.
 - 2) Managers of UCIS and external managers appointed by AIFs that are not CIS, which will be subject to existing regulatory requirements but will have only very limited additional obligations under the Directive, mainly relating to reporting.
 - 3) Internally-managed closed-ended investment companies (i.e. where the company is its own AIFM), which will be subject to a *de minimis* registration-only regime under FSMA, in addition to obligations arising if they have (or seek) a UK listing.
- 3.13** The first two categories will be authorised persons under FSMA, the third will not. Authorised persons will need to obtain a Part 4A permission to carry on the regulated activity of managing an AIF. But all three categories of firm will be regarded as 'registered'

for the purpose of the Directive, so they are not subject to its full requirements or to the Level 2 Regulation.²⁷ They cannot benefit from the passporting rights the Directive confers, unless they opt to become a full-scope UK AIFM.

- 3.14** The draft Treasury AIFM Regulations refer to categories 1 and 2 as ‘small authorised UK AIFMs’ and to category 3 as ‘small registered UK AIFMs’. We propose to use the same terminology in the Handbook Glossary.

Sub-threshold managers of authorised AIFs

- 3.15** The first Treasury consultation explains that the proposal is to treat sub-threshold AIFMs of UK-authorised funds as being subject generally to the same requirements as full-scope UK AIFMs, but to disapply the specific requirements of the Level 1 Directive and the Level 2 Regulation on:

- the assessment of what constitutes a ‘letterbox entity’ when an AIFM delegates its functions;
- remuneration of individuals; and
- transparency (pre-sale information, periodic reporting to investors, and reporting to the FCA and other competent authorities).

- 3.16** We intend to apply all other relevant AIFMD requirements to sub-threshold managers of authorised AIFs. We also intend to apply the same modified SYSC and COBS rules that will apply to full-scope UK AIFMs, as described in the preceding section.

- 3.17** To do this, we will modify the application provision of each rule in FUND 3 that transposes a Level 1 Directive requirement. So in this paper we show modifications to some of the rules we consulted on in CP1. To apply the relevant parts of the Level 2 Regulation to these sub-threshold firms, we need to reproduce them as Handbook rules (because they do not apply directly in law to sub-threshold firms). We will do this by including an appendix to FUND that lists each measure applying as a rule.

- 3.18** We also propose that a small authorised UK AIFM of an authorised AIF should be subject to the same prudential requirements as a full-scope UK AIFM, including the initial capital and own funds requirements.

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?

²⁷ Except for those parts relating to Article 3 of the Level 1 Directive.

Sub-threshold managers of unauthorised AIFs

- 3.19 The second category of sub-threshold AIFMs groups together firms managing UCIS and firms managing other types of AIF that are not CIS (such as a firm appointed by a closed-ended investment company to manage its assets). We refer to these as AIFMs of ‘unauthorised AIFs’. Managers of non-CIS AIFs will typically be authorised under MiFID where the AIF invests in financial instruments.
- 3.20 Our proposal is to bring both groups under the rules for operators of UCIS, which will result in changes to some of the requirements for firms that are currently operating under MiFID. The result is that many of the organisational requirements set out in SYSC that now apply to MiFID firms as rules will instead apply to them as guidance.
- 3.21 There are a few SYSC rules applying to MiFID firms that we think should be retained, notably those requiring oversight by two suitably experienced persons (SYSC 4.2.2R to 4.2.5G) and the record-keeping requirements (SYSC 9.1.2R and 9.1.3R). We intend to consider whether in future these rules should apply to all small authorised UK AIFMs of unauthorised AIFs, which will require us to undertake further work and cost benefit analysis. In the meantime, we propose to introduce a transitional provision that would keep these specific rules in place for firms that convert from being common platform firms to small authorised AIFMs of unauthorised AIFs, for a period of up to two years until the end of July 2015. Before then we expect to bring further proposals forward.
- 3.22 The same COBS rules will apply to all small authorised UK AIFMs of unauthorised AIFs.
- 3.23 The table in COBS 18.5 will be amended to contain a column showing the application of COBS rules to such firms when they carry on scheme management activity. In practice, for operators of UCIS that come into this category, COBS rules will continue to apply as they do now. Common platform firms carrying on individual portfolio management for a client will, if they come into this category of AIFM, be brought within the scope of COBS 18.5 because they will instead be carrying on collective portfolio management. This will mean that much of the rest of COBS will be disappplied in relation to the AIFM’s management of the AIF itself.
- 3.24 COBS 18.5 also sets out transparency requirements for UCIS, both in terms of pre-sale information to be made available to clients and information to be reported to them periodically. These rules will remain in place for small authorised UK AIFMs of UCIS;²⁸ any firms in this category that are currently subject to the client reporting provisions in COBS 16.3 continue to follow those rules.

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?

²⁸ Small authorised UK AIFMs of AIF that are not CIS are excluded from the scope of COBS 18.5.5R to 18.5.18E.

Application of SYSC and COBS to depositaries of AIFs

- 3.25 As we explained in Chapter 9 of CP1, any UK firm authorised as a credit institution or a ‘BIPRU 730K firm’ under MiFID can seek authorisation to act as the depositary of an AIF. These firms will be classified in SYSC as common platform firms and the rules set out in Column A of SYSC 1 Annex 1 will apply to their activities as a depositary. Firms that currently act as a trustee or depositary of an authorised fund will be subject to the same provisions in SYSC as now.
- 3.26 We also set out in Chapter 9 of CP1 our proposals to allow other authorised persons to act as a ‘private equity AIF depositary’. If a common platform firm (for example, a firm that is authorised under MiFID but is not a BIPRU 730K firm) carries on this type of depositary activity, it will still be subject to the rules set out in Column A of SYSC 1 Annex 1 when doing so. All other types of firm, when acting as a depositary of this category of AIF, will be subject to the requirements under Column B of SYSC 1 Annex 1.
- 3.27 COBS 18.7 (Depositaries) sets out which parts of COBS apply to a depositary when acting as such. It will apply in full to all types of firm authorised to act as depositaries, including private equity AIF depositaries.

4

Prudential requirements

- 4.1** This chapter supplements the proposals for prudential rules and guidance set out in CP1 with some further consequential rules, including the proposed prudential regime for small authorised UK AIFMs.
- 4.2** In Chapter 5 of CP1 we proposed the prudential regime that will apply to full-scope UK AIFMs, including capital requirements, professional negligence risks, the liquid assets requirement, and reporting matters. We also covered certain changes to our prudential rules affecting UCITS firms and UCITS investment firms.
- 4.3** In this consultation, we set out:
- the proposed prudential regime for small authorised UK AIFMs; and
 - the consequential amendments that will be necessary to IPRU (INV) as a result of the implementation of AIFMD and the associated changes to regulated activities (including creating the regulated activities of managing an AIF, managing a UCITS, acting as a depositary of an AIF and acting as a depositary of a UCITS and the amendments to the activity of operating a CIS).
- 4.4** The major change we proposed in CP1 was the creation of a new Chapter 7 of IPRU (INV), to include the requirements for collective portfolio management (CPM) firms and internally managed AIFs. However, on further consideration we think it would be better to move these requirements to a new Chapter 11 of IPRU (INV) and we will renumber them accordingly in the final version to be published in the Policy Statement.²⁹
- 4.5** As explained in Chapter 3 of this paper, we propose to apply the prudential regime for full scope UK AIFMs to small authorised UK AIFMs of authorised AIFs. We have done this by changing the definitions of ‘CPM firm’ and ‘CPMI firm’, which has the effect of extending the application of IPRU (INV) and GENPRU / BIPRU respectively to these small authorised UK AIFMs. It also means that such firms must submit the relevant financial reporting forms that we described in paragraphs 5.36 to 5.41 of CP1.

²⁹ Chapter 7 was used before (until 31 December 2006) for UCITS firms and UCITS investment firms. Using it again for a different purpose might limit the effectiveness of the ‘time travel’ functionality of the online Handbook.

- 4.6** We do not intend to make any changes to the prudential regime for small authorised UK AIFMs of unauthorised AIFs, or to the operators of CIS which are not carrying out the activities of managing an AIF or managing a UCITS.
- 4.7** As a UCITS firm is included in the definition of a CPM firm, the requirements applicable to such a firm will all be set out in IPRU (INV) Chapter 11. UPRU will no longer be required so we propose to delete it. For a UCITS firm that is authorised before 22 July 2013, this change will be effective from 22 July 2014 or from the date it becomes a UK AIFM, if earlier. A firm that becomes authorised on or after 22 July 2013 will be subject to IPRU (INV) Chapter 11 from the date of its authorisation. This will result in some consequential changes to the Handbook, including in relation to the Glossary terms that we consulted on in CP1.
- 4.8** We have reconsidered the proposed changes to the Glossary definition of ‘funds under management’ that we consulted on in CP1, in the light of the issued text of the Level 2 Regulation. We now propose further technical changes to the definition which is shown in the instrument in this paper.
- 4.9** The table in Annex 4 summarises how the prudential rules will apply to managers within the scope of the AIFMD or the UCITS Directive. It includes the impact of the rules we have proposed in both this paper and CP1. It does not form part of the Handbook and is included here for information only. The table is a matrix and matches the type of fund manager (i.e. whether it is above or below the AIFMD Article 3 AUM thresholds, or also undertakes additional MiFID activities) with the type of fund that it manages. The shading in the table indicates the categorisation of the firm in the proposed prudential regime and the relevant section of the rules that will apply.
- 4.10** The consequential amendments that we propose to make to IPRU (INV) include the following:
- Additional guidance in 2.1.7G which clarifies that an authorised professional firm cannot be a CPM firm or a CPMI firm, because of limitations in the AIFMD, UCITS Directive and FUND. And an APF that is a small authorised UK AIFM of an unauthorised AIF, the operator of a CIS or a depositary that is subject to IPRU (INV) will be subject to IPRU (INV) Chapter 5.
 - To delete certain rules in Tables 5.2.3(5)(a), (b) and (e) because they refer only to a firm that will be classified as a CPM firm or a CPMI firm, and such a firm will be subject to IPRU (INV) Chapter 11 or GENPRU / BIPRU respectively.
 - To add a line to Table 1.5G in Annex A to include LLP members’ capital as Tier 1 capital under the provisions of Table 11.4.

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

5

Consumer redress: the FSCS and FOS

5.1 This chapter makes proposals for an appropriate degree of consumer redress by explaining which types of AIFM and depositary will be within the scope of the Financial Ombudsman Service (FOS), the Financial Services Compensation Scheme (FSCS), or both.

Background

5.2 The FOS and the FSCS aim to protect consumers against failures by regulated firms. The FOS's role is to resolve disputes between consumers and regulated firms quickly and informally, while the FSCS's role is to compensate claimants where a regulated firm in default is unable to satisfy a claim.

5.3 FOS awards are paid by the firm that has caused the consumer harm, while FSCS payments are funded by a levy on authorised firms in the UK. To not impose an undue funding burden on firms, the FSCS generally covers a narrower range of circumstances than the FOS.³⁰

5.4 The FOS and the FSCS already cover the activities of FSA-authorised fund managers managing AIFs that are CIS, and will continue to do so. AIFMD affects the scope of regulation in three areas where we need to consider the appropriate scope of FSCS and FOS protection. These relate to:

- investment companies;
- fund depositaries; and
- cross-border activities.

5.5 The FSA and the FOS have joint responsibility for the rules setting out who is eligible to complain to the FOS. We are therefore consulting jointly with the FOS on the proposals

³⁰ The FOS covers a wider range of firms than the FSCS. In addition, the FOS makes decisions on the basis of what is 'fair and reasonable' while the FSCS can only pay out if there is a civil liability in law.

below relating to the eligibility of investors to complain to the FOS about an investment company or depositary.

Investment companies

- 5.6 The AIFMD regulates managers of investment companies (as the latter become AIFs under UK implementation), whether the manager is internal or external to the company.³¹ Investment companies include listed investment companies, such as investment trusts and venture capital trusts, as well as unlisted investment companies. Historically, investment companies and CIS have had different regulatory treatments.
- 5.7 Investment companies are not currently subject to FSA authorisation or registration, although they are subject to company law and, where listed, also to the UK Listing Authority's Listing Rules. However, where they appoint an external asset manager, that manager is generally authorised by the FSA under MiFID. Under AIFMD implementation, either the investment company itself or an external manager will need to become the fund's AIFM, and will need to be authorised or, in some cases, registered by the FCA.
- 5.8 Investors cannot currently complain to the FOS or claim from the FSCS about an investment company itself. Where an investment company appoints a MiFID firm to manage the assets of the company, the MiFID firm would be within scope of both the FOS and FSCS; but, under the eligibility rules, it is unlikely that investors in the company would be able to complain to the FOS or claim to the FSCS about the MiFID manager.³² Nevertheless, investors could complain to the FOS or claim from the FSCS about an adviser that had given unsuitable advice.
- 5.9 In view of the extension in the scope of regulation under AIFMD, we have considered whether FOS and/or FSCS protection should be extended to allow investors in investment companies to complain to the FOS or claim to the FSCS about the AIFM.
- 5.10 Having given due consideration, we do not propose to extend FOS or FSCS protection in this case. Investors in UK investment companies have the same rights as shareholders in other trading or holding companies set up under the Companies Act 2006. A shareholder would not usually expect to be compensated by the FOS or the FSCS for the mismanagement or failure of a company in which he or she had an equity holding.

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

³¹ The proposed approach is to apply a consistent regime to all AIFs that are bodies corporate but are not collective investment schemes. The most common example we are aware of in this category are closed-ended investment companies. We have referred to this category in this chapter as 'investment companies'.

³² To be eligible to complain to the FOS, a complainant must have one of a number of specified relevant relationships with the firm concerned. Investors in investment companies do not appear to fall under any of the specified categories. To be eligible to claim to the FSCS, a claimant must be owed a civil liability by the firm in default. Under the current way that the industry is generally structured, it is unlikely that a MiFID manager of an investment company would owe a civil liability directly to an investor in the company.

Fund depositaries

- 5.11 The AIFMD requires a full-scope UK AIFM that manages UCIS and investment companies to ensure a depositary is appointed. UK implementation will require that depositary to be authorised by the FCA. Currently, only FSA-authorised funds must appoint an authorised depositary. That depositary is covered by the FOS and the FSCS and we do not intend to change the scope of coverage where the fund itself is FCA-authorised, as we believe that investors in authorised funds expect a high degree of protection.
- 5.12 In view of the extension in the scope of regulation for depositaries, we have considered whether investors in UCIS or investment companies should be able to complain to the FOS or claim to the FSCS about the depositary of the fund. We do not propose to extend FOS or FSCS protection for these depositaries³³ because the new Directive requirement on an AIFM to appoint an authorised depositary already increases protection for investors in these funds. We do not think it is necessary in this case to increase consumer protection further by adding FOS or FSCS protection.
- 5.13 Also, UCIS are generally only allowed to be marketed to institutional, sophisticated and high net worth investors, many of whom are not eligible to complain to the FOS or claim to the FSCS. Although retail investors may buy shares in investment companies, the proposal not to allow them to complain to the FOS or claim to the FSCS about the fund's depositary is consistent with our proposal that they should not be able to complain or claim about the management of the company.
- 5.14 Under the Treasury's proposed regimes for sub-threshold AIFMs, the requirement to appoint an FCA-authorised depositary will not apply where a UCIS or investment company is managed by a sub-threshold AIFM.³⁴ Nevertheless, the fund may appoint a third party to carry out custody functions, and this third party must be authorised by the FCA if it is carrying out a regulated activity.³⁵ We propose that investors in these funds should not be able to complain to the FOS or claim from the FSCS about these third parties, to maintain consistency with the proposed approach for depositaries of AIFs managed by full-scope UK AIFMs.

Depositaries of charity funds

- 5.15 As set out in the Treasury's second consultation document³⁶, there are two types of charity fund that will become AIFs under UK implementation. These are common investment funds (CIFs) and common deposit funds (CDFs). These funds are established under current charities legislation and allow charities to invest in a pooled investment fund while benefitting from charitable tax relief and exemptions.
- 5.16 We regulate the managers and depositaries of CDFs and CIFs, but the funds themselves are regulated by the Charity Commission. The Charity Commission imposes rules on charity

³³ Except in the circumstances set out in paragraphs 5.15 to 5.17.

³⁴ See Chapter 2 of the Treasury's first consultation paper.

³⁵ Some such firms carry out the regulated activity of 'safeguarding and administering investments'.

³⁶ This second consultation paper can be found at www.hm-treasury.gov.uk/consult_fullindex.htm.

funds, which are in some cases similar to FSA rules for authorised funds. Because these charity funds are not FSA-authorised they fall within the category of UCIS. Nevertheless, there is a specific exemption from the UCIS marketing restrictions that allow CIFs to be marketed to retail investors that are charities, and we propose to extend this to CDFs (as set out in paragraph 7.19).

- 5.17** As the investors eligible to hold units in CIFs and CDFs include charities that are classed as retail investors, and because these funds themselves are subject to regulation by the Charity Commission, we propose that investors in these funds should be afforded redress mechanisms similar to those available to investors in FCA-authorised funds. We therefore propose that investors in CIFs and CDFs should be permitted to complain to the FOS or claim to the FSCS about the fund's depositary, subject to the usual conditions for making a complaint or claim.

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

Consumer redress and cross-border AIFM activities

Background

- 5.18** AIFMD introduces a management passport that will permit AIFMs established in one Member State to manage AIFs in other Member States. This is similar to the passport for UCITS management companies.
- 5.19** The compulsory jurisdiction of the FOS normally covers regulated activities carried on from an establishment in the UK, while the FSCS may pay compensation for activities carried on by FSA-authorised firms (with a Part IV permission) and certain passported activities of some incoming EEA firms.
- 5.20** In the context of cross-border fund management activities, the appropriate territorial scope of the FSCS and the FOS may be different to that in other financial services sectors, because

there are two entities in different EEA jurisdictions: the manager and the fund. For example, we think that investors in an FCA-authorised fund will expect protections such as FOS and FSCS, regardless of where and by whom the fund is managed.

- 5.21 When we implemented the UCITS management company passport in 2011, we decided to amend the scope of the FOS and the FSCS to take account of the location of the fund. We propose to follow this approach for AIFMD.
- 5.22 In our current proposals, we have assumed that AIFMs will be able to passport within the internal market any individual portfolio management activities they undertake under Article 6(4) AIFMD. The availability of this passport to be used in this way is still under consideration at EU level. If it is decided that AIFMs cannot passport these activities, our final rules will need to reflect this.

Proposed scope of the FOS under the AIFMD

- 5.23 The FOS usually covers activities carried on from an establishment in the UK. This includes UK branches of EEA firms, as well as UK firms carrying out cross-border activities from the UK on a services passport.
- 5.24 We intend to maintain this approach for most cross-border fund management activities under AIFMD, as we believe that a consistent approach will make it easier for the FOS to explain its territorial jurisdiction to consumers. But we intend to make an exception by extending FOS coverage to EEA AIFMs managing FCA-authorised funds from an establishment outside the UK.
- 5.25 It is possible that an EEA AIFM, managing an FCA-authorised AIF on a cross-border services passport, may be subject to an independent complaints resolution scheme in its home Member State. In this context it is relevant that the FOS has a general right to dismiss a complaint without considering its merits if it has been or is being dealt with by a comparable independent complaints scheme or dispute resolution process.³⁷ With the consent of the complainant, the FOS can also refer complaints to another complaints scheme if it considers that the matter would be more suitably dealt with by that scheme.³⁸
- 5.26 Apart from this exception, we propose that the FOS's compulsory jurisdiction should cover regulated activities which the AIFM carries on from an establishment in the UK. This includes managing a UK-domiciled UCIS, managing a non-UK domiciled CIS and carrying on individual portfolio management activities.³⁹
- 5.27 We do not propose to extend the FOS's compulsory jurisdiction to non-EEA managers of AIFs marketed in the UK. The FSA generally prohibits the marketing of non-UK AIFs to

³⁷ DISP 3.3.4R(7) in the Handbook.

³⁸ DISP 3.4.1R in the Handbook.

³⁹ This refers to the activities under Article 6(4) AIFMD.

retail investors in the UK.⁴⁰ It should not be assumed that non-EEA AIFMs marketing these AIFs are subject to similar levels of regulation to EEA AIFMs.

Complaints-handling rules

5.28 We require firms that are covered by the FOS to comply with our complaints-handling rules. This is because we expect firms to investigate complaints diligently and fairly to reduce the need for consumers to go to the FOS. We therefore propose to extend our complaints-handling rules to EEA AIFMs managing:

- UK-authorised AIFs, whether via a UK branch or cross-border services; and
- UK-domiciled UCIS from a UK branch.

5.29 For these EEA firms, we propose to extend our complaints-handling, complaints-recording and complaints-reporting rules, but not our complaints data publication rules. This is consistent with our usual approach for incoming EEA firms.

Q11: Do you agree that the FOS'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 FOS's compulsory jurisdiction and our complaints handling rules should cover its activities where they are carried on from an establishment in the UK?

Proposed scope of the FSCS under the AIFMD

5.30 We intend that the FSCS should cover only cross-border fund management activities where the fund is an FCA-authorised fund. This means that the FSCS will:

- cover an EEA AIFM managing a UK-authorised fund;
- not cover either a UK AIFM managing a non-UK fund; and
- not cover an EEA AIFM managing a UK-domiciled UCIS.

5.31 We believe that this provides an appropriate level of protection for investors, without creating an undue funding burden for UK firms.

5.32 If an EEA AIFM managing an FCA-authorised fund were to be covered by a compensation scheme in its home State, the FSCS would be allowed under its operating rules to postpone

⁴⁰ There is an exception for CIS that are recognised schemes, as explained in Chapter 7 of this paper. Non-UK closed-ended investment companies can also be sold to retail investors in the UK.

paying compensation, if it considered that the claimant should first make and pursue an application for compensation to that scheme (or any third party).⁴¹ The FSCS has indicated that, in deciding how to proceed, it would act reasonably in the light of all the circumstances.

- 5.33** Where an EEA AIFM manages a UK-domiciled UCIS or carries out individual portfolio management activities⁴² from a UK branch, we intend to allow that AIFM to apply to obtain top-up cover for these activities (which would bring them within scope of the FSCS). In this case the FSCS will assess the firm's application to determine whether it is eligible to top up.
- 5.34** We do not propose to extend FSCS coverage to non-EEA managers of AIFs marketed in the UK, for the same reasons as we cited for not extending FOS coverage in paragraph 5.27.

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?

FOS and FSCS levies

- 5.35** Firms covered by the FOS and the FSCS must pay annual levies to contribute to the running costs of those organisations. Under our proposals, EEA AIFMs managing FCA-authorised AIFs will be subject to FOS and FSCS levies. EEA AIFMs managing UK-domiciled UCIS from a branch in the UK will also be required to pay FOS levies. Currently, the FOS levy for fund managers is £250 per year and the FSCS levy for fund managers is based on their annual eligible income.
- 5.36** Please refer to Annex 5 for a summary of cross-border activities covered by the FOS and the FSCS. It does not form part of the Handbook and is included here for information only.

⁴¹ See COMP 9.2.2R in the FSA Handbook.

⁴² These are the activities set out in Article 6(4) AIFMD.

6

Depositaries and client assets requirements

6.1 This chapter sets out our proposals to adapt the rules and guidance in the Client Assets sourcebook (CASS) for depositaries of AIFs, and explains our thinking on other matters relevant to CASS and to the duties of depositaries of AIFs.

Proposed changes to CASS

6.2 The rules in Chapter 6 of CASS are designed primarily to ensure that a firm must:

- when holding safe custody assets belonging to clients, make adequate arrangements to safeguard clients' ownership rights, especially in the event of the firm's insolvency; and
- introduce adequate organisational arrangements to minimise the risk of the loss or diminution of clients' safe custody assets.

6.3 CASS 6 applies a specialist regime to trustee firms and depositaries.⁴³ It is likely that some firms becoming AIF depositaries will already be subject to this specialist regime, whereas others will already be subject to the whole of CASS 6. We have reviewed our CASS 6 rules and are proposing a number of changes to them, to ensure they are consistent with the AIFMD and differentiate between categories of AIF depositaries in a logical way.

6.4 We propose to maintain the existing separation of requirements for depositaries in the Handbook: that is, for FUND to include the transposed AIFMD Level 1 requirements and the signposting to the Level 2 Regulation, and for CASS 6 to include any other domestic

⁴³ The specialist regime is contained in CASS 6.1.16F R. It generally applies when a trustee firm or depositary acts as a custodian for a trust or collective investment scheme and:

(1) the trust or scheme is established by written instrument; and

(2) the trustee firm or depositary has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or scheme constitution will provide protections at least equivalent to the custody rules for the trust property or scheme property.

The specialist regime applies a limited number of CASS 6 provisions to trustee firms or depositaries that satisfy the conditions under CASS 6.1.16F R.

requirements for safe-keeping and its delegation. We have considered other options, but we believe this offers the greatest clarity and convenience for the majority of Handbook users.

- 6.5 In the draft instrument, we have proposed amendments to some of the CASS 6 provisions and relevant Glossary definitions to make them consistent with AIFMD.
- 6.6 Each of the following types of depositaries will have a new, separate specialist regime that sets out which CASS 6 rules would apply to them:
 - depositaries of unauthorised AIFs – that is, for those funds intended for professional investors; and
 - depositaries of authorised AIFs – that is, for those funds where we can apply additional rules and guidance to protect retail investors.
- 6.7 Where the AIFM is a sub-threshold manager, or is above threshold but is managing a non-EEA AIF not marketed in the EEA, the AIFMD does not apply responsibilities to depositaries. We propose no changes to how CASS 6 applies either to firms acting as depositaries or custodians for such AIFs, or to firms that act as delegates of AIFMD depositaries except in one case: where a sub-threshold manager manages a UK-authorised AIF, the same provisions will apply as for a full-scope UK AIFM managing a UK-authorised AIF.
- 6.8 For depositaries of unauthorised AIFs, we propose to retain only the CASS 6 provisions that are either outside the scope of, or are consistent with, the AIFMD (for example, because they transpose the principles of Article 16(2) of the MiFID Implementing Directive,⁴⁴ as referred to in AIFMD, or are otherwise envisaged by AIFMD under Chapter IX (competent authorities)). The key CASS 6 provisions in this regard include provisions relating to:
 - the general purposes of the CASS 6 custody rules;
 - registration of legal title;
 - a depositary accepting responsibility for its nominee company over custody rules;
 - restrictions on a depositary recording legal title to its own applicable assets in the same name as that for safe custody assets;
 - arranging registration of a safe custody investment;
 - keeping records of segregation;
 - record-keeping for client agreements; and
 - notification requirements.
- 6.9 The requirements in CASS 6.2.4R (relating to a depositary's nominee company) and 6.2.5R (recording of legal title to the depositary's own assets) are in addition to the requirements

⁴⁴ Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

to which a depositary may currently be subject. We also propose to amend the definition of safe custody asset and the general scope of CASS 6 to cater for the regulated activity of acting as the depositary of an AIF.⁴⁵

- 6.10** For depositaries of authorised AIFs, the AIFMD is minimum harmonising. So where a firm acts as a depositary of an authorised AIF, as well as those CASS 6 provisions which we propose to apply to depositaries of unauthorised AIFs, we also propose to apply other existing CASS 6 provisions that are consistent with the AIFMD, and could provide appropriate client protection. The additional provisions of CASS 6 that we intend to apply to depositaries of authorised AIFs include those relating to:
- internal reconciliations and auditor opinions of alternative reconciliation methods;
 - statements from delegated third parties;
 - the frequency of external reconciliations; and
 - the independence of persons conducting reconciliations.

Other CASS and CASS-related provisions

- 6.11** We are proposing that, apart from CASS 6, provisions in the remainder of CASS (and provisions elsewhere that relate to CASS) continue to apply as they currently do to depositaries, to the extent that they are outside the scope of or consistent with AIFMD. This means that the provisions in the following Handbook chapters will broadly continue to apply:
- CASS 1A and SUP 10.7 (CASS firm classification and operational oversight);
 - CASS 3 (collateral);
 - CASS 8 (mandates);
 - CASS 9 (prime brokerage);
 - CASS 10 (CASS resolution pack);
 - SUP 16.14 (client money and asset return (CMAR)); and
 - SUP 3.10 and SUP 3.11 (annual CASS audit).

Changes to the Regulated Activities Order

- 6.12** We are also proposing a number of consequential changes within CASS to reflect the proposed changes to the Regulated Activities Order (taking account of transitional provisions), including the new proposed regulated activity of acting as a depositary of a UCITS.

⁴⁵ This is also to cater for the depositary of a UCITS.

Q15: 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.

Wider CASS policy review

6.13 Apart from the proposed changes to CASS set out in this paper, which stem from AIFMD depositary requirements, 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 year.

Depository responsibilities for cash monitoring

6.14 We proposed in CP1 to transpose the cash monitoring responsibilities of depositaries under AIFMD Article 21(7) in the way drafted in FUND 3.11.17R. We have given further consideration to the drafting of Article 21(7), in the light of the Level 2 Regulation requirements in Articles 85 to 87, and we believe that there is potentially more than one way to interpret and transpose Article 21(7), particularly in relation to the principles in Article 16 of the MiFID Implementing Directive. For example, we think there is a possibility that, under a wide interpretation of Article 21(7), all or some depositaries of AIFs may be subject to requirements for safeguarding cash in accordance with these principles.

6.15 We are therefore intending to discuss Article 21(7) with relevant stakeholders to try to clarify its interpretation. If those discussions lead us to conclude that Article 21(7) should be transposed in a different way, we will make the necessary Handbook amendments. If any amendments would change the costs and benefits for stakeholders significantly, compared to what we have proposed in the current draft FUND 3.11.17R, we will re-consult on this matter.

7

Marketing

- 7.1 Chapter 7 explains our approach to marketing for the purposes of AIFMD, and how AIFMs may exercise single market passporting rights.
- 7.2 We also describe our approach to registering funds being marketed through private placement in the UK, to approving non-UK funds as recognised schemes that can be marketed to the general public, and to revising the UCIS marketing rules for common deposit funds.

New section of PERG

- 7.3 AIFMD does not specifically cover what is meant by ‘marketing’ other than the marketing definition in article 4(1)(x): the ‘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 Union’. The Directive also stipulates new notifications to competent authorities enabling marketing of AIFs to professional investors in the EEA. In this paper, we provide additional information about how marketing of EEA and non-EEA AIFMs will be regulated in the UK.
- 7.4 The Treasury has recently consulted on its proposed regulations transposing these AIFMD marketing requirements (‘the Treasury AIFMD Regulations’).
- 7.5 We propose adding a new section to Chapter 8 ‘Financial promotion and related activities’ of PERG in Annex N of Draft Handbook Text (Appendix 1). This includes guidance on:
- the meaning of offering and placement: we describe situations in which each activity takes place⁴⁶;
 - the use of draft documentation in relation to communications: we describe how such communications fit within the meaning of marketing for the purposes of AIFMD implementation;⁴⁷

⁴⁶ PERG 8.37.4G.

⁴⁷ PERG 8.37.5G.

- the meaning of an indirect offering or placement: we provide an example⁴⁸;
- the meaning of a unit or share of an AIF: we explain their meaning for funds not structured as corporate or unitised funds⁴⁹;
- territorial scope of marketing: we explain the scope of the marketing rules may extend outside the UK⁵⁰;
- passive marketing: we give our approach to a course of conduct which might constitute passive marketing⁵¹;
- the interaction between marketing under AIFMD and the requirements of the Prospectus Directive⁵²; and
- the interaction between marketing under AIFMD and financial promotions: we explain how the Directive and our current financial promotion rules overlap.⁵³

7.6 We believe this guidance on AIFMD marketing is consistent with our existing approach on financial promotions, to the extent it is comparable. We note that certain aspects of AIFMD marketing, such as the required marketing notifications to the FCA and classifications by firm size and domicile, will be new for firms. The final versions of our guidance will take account of any changes to the Treasury's regulations following their consultation.

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?

Marketing requirements for retail AIFs

7.7 In CP1 we said we might consult at a later stage on any proposed revision of retail marketing requirements. Because the Treasury has now indicated in its consultations that it does not intend to make any changes to retail marketing requirements in the UK, no further consultation on revised retail marketing requirements is necessary.

⁴⁸ PERG 8.37.6G.

⁴⁹ PERG 8.37.7G.

⁵⁰ PERG 8.37.8G.

⁵¹ PERG 8.37.10G.

⁵² PERG 8.37.14G.

⁵³ PERG 8.37.15G.

Domestic marketing of a UK or EEA AIF managed by a full-scope UK AIFM

- 7.8 Article 31 of the Directive governs the notification of domestic marketing of UK and EEA AIFs managed by full-scope UK AIFMs. We have added a new section 3.12 to FUND to include the required form for marketing of such AIFs in the UK. We will provide further details on this form and instructions on how to submit it before 22 July 2013.

Operating on a cross-border basis

- 7.9 We have added a new chapter 10 to FUND, containing guidance for AIFMs who operate on a cross-border basis into or from the UK. This new chapter contains guidance on the marketing and management passports, AIFM third-country management and national private placement, which is based on the Directive and the Treasury AIFMD Regulations.

AIFM marketing passport

- 7.10 Article 32 of the Directive governs the notification of cross-border marketing of UK and EEA AIFs managed by full-scope UK AIFMs. FUND 10.3 provides guidance on the AIFM marketing passport. We have drafted the notification forms⁵⁴ which provide the required details. They incorporate the information requirements needed to notify the relevant competent authority where the AIFM intends to use the cross-border marketing passport.
- 7.11 With respect to the cross-border marketing form, the Treasury AIFMD Regulations take the view that marketing is a ‘service’ and include it in Schedule 3 of FSMA and in the passporting regulations. So the relevant guidance will sit in SUP 13 and the form, SUP 13 Annex 8BR, will be included as an annex to SUP alongside other passporting forms.

AIFM management passport

- 7.12 Article 33 of the Directive allows an AIFM to passport, on a branch or services basis, to manage an AIF established in another Member State, subject to certain requirements such as notification to its competent authority. We have provided more information in FUND 10.2, SUP 13, 13A and 14 on the AIFM management passport. SUP 13.3 provides guidance for establishing a branch in another EEA State. Similarly, SUP 13.4 provides guidance for providing cross-border services into another EEA State. Firms will be required by SUP 13.5.2R to notify the FCA of their intentions on the form.⁵⁵

⁵⁴ SUP 13 Annex 1 R and 13 Annex 8B R.

⁵⁵ SUP 13 Annex 8A R.

UK private placement registers

- 7.13 The Directive permits Member States to retain or put in place national marketing regimes for offerings to professional investors, subject to certain conditions.⁵⁶ The Treasury has affirmed that these private placement regimes will be maintained in the UK, provided that the Directive requirements, for example on transparency, are complied with.⁵⁷ One of the significant changes to the existing regime will be a notification to the FCA which will also be required for retail offerings of AIFs within the categories listed below. We have added FUND 10.5, which describes such notifications and other conditions of the UK's private placement regime under AIFMD. The FCA will maintain and make public the following three private placement registers:
- 1) Article 36 Register⁵⁸ – for full-scope UK or EEA AIFMs managing non-EEA AIFs.
 - 2) Article 42 Register⁵⁹ – for non-EEA AIFMs that are not small AIFMs managing AIFs.
 - 3) Small third country AIFM Register⁶⁰ – for non-EEA AIFMs that are small AIFMs managing AIFs.
- 7.14 We will provide further details on the forms and instructions on how to submit them before 22 July 2013. We are also consulting on the proposed fees for recording and maintaining AIFs on the private placement registers. Please refer to paragraphs 8.23 to 8.28 of this paper for more on our fee proposals.

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?

Recognised schemes under sections 270 and 272 FSMA

- 7.15 The Treasury is consulting on modifications to the recognised scheme regimes contained in s.270 and s.272 (and related sections) of FSMA. Once the Treasury has finalised its position, we will make any further consequential changes to our rules.
- 7.16 The s.272 regime currently allows a non-UK fund to become a recognised scheme that can be marketed to the general public, if it can demonstrate that it affords adequate protection to UK investors. Currently we request an individual fund application, along with a gap

⁵⁶ See Article 36 and 42 AIFMD.

⁵⁷ See the Treasury's first consultation paper CP1, Chapter 3 Marketing.

⁵⁸ FUND 10.5.3G – 10.5.5G.

⁵⁹ FUND 10.5.6G – 10.5.8G.

⁶⁰ FUND 10.5.9G – 10.5.11G.

analysis⁶¹, in order to determine whether the scheme is equivalent to a UK-authorised fund⁶² or provides adequate protection to UK retail investors. The s.272 regime enables both EEA and non-EEA funds to apply to become a recognised scheme.

- 7.17** We must also take into account Article 43 of the Directive concerning the marketing of AIFs by AIFMs to retail investors. The UK must not impose stricter or additional requirements on EEA AIFs established in another Member State and marketed on a cross-border basis than on UK AIFs marketed domestically. Because the UK will continue to allow AIFMs to market UK AIFs (eg. NURS) to retail investors, we may not impose stricter or additional requirements on such EEA AIFs. So at this stage we are consulting on changes to the fees for EEA Recognised Overseas Schemes. Please refer to paragraphs 8.29 to 8.33 of this paper for more on our fee changes.

Revising UCIS marketing rules for CDFs

- 7.18** As part of our implementation of AIFMD, we have reviewed the position of charity funds. We intend to extend certain protections to investors in charity funds, as mentioned in Chapter 5 concerning the depositaries of charity funds. Additionally, with respect to marketing, we intend to make a revision to our UCIS framework pertaining to charity funds.
- 7.19** Currently, there are exemptions from the UCIS marketing restrictions, which allow CIFs and other charity funds to be marketed to charities (including those that are retail investors).⁶³ However, this exemption does not extend to common deposit funds established under the Charities Act 2011 (CDFs). To align our rules with the statement in the second Treasury consultation that CDFs should be considered as a type of UCIS, we propose to extend the marketing exemption to them. So we have included reference to CDFs in COBS 4.12.1R(4) permitting the marketing of CDFs to eligible charities.

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

61 A regulatory analysis is required under s.272(5)(a), and the FSA has interpreted it to require the applicant to carry out a gap analysis of (a) the home state primary legislation against UK primary legislation and (b) the rules applicable to the fund against the COLL rules.

62 Current recognised schemes are equivalent to a UK NURS or UCITS fund, but it would also be possible for a QIS-equivalent fund to be recognised allowing such fund to market to those retail investor categories eligible to purchase QIS funds (COLL 8 Annex 1).

63 COBS 4.12.1R(4). See Category 3 Person.

8

Fees

- 8.1 This chapter sets out our proposal for charging fees to entities that will be regulated under the AIFMD to cover FCA costs in regulating them. Our proposals affect the following sections of the Handbook: FEES 3, 4, 5 and 6.

How the FCA will be funded

- 8.2 Like the FSA, the FCA will be funded by the firms that it regulates. We recover the money we need to operate through:
- fees we charge firms that apply to be authorised or registered to carry on regulated activities; and
 - annual (periodic) fees that we charge firms to cover the costs of supervising them.
- 8.3 The application fee depends on the complexity of the relevant application, whether the application is for authorisation, registration or a VoP. Our fees are designed to reflect our work in processing the application, but also take into account the fact that we do not want to introduce a barrier to entry into the market. We aim to cover our costs in a way that is as fair and efficient as possible.
- 8.4 The annual fee charged for a particular firm does not precisely reflect the amount of work we put into supervising it, because tailoring fees across all regulated firms would not be practicable. Instead, we allocate firms to ‘fee-blocks’, which we define on the basis of the regulated activities they carry on. We then estimate the supervisory resource we will require to supervise the firms in each fee-block and charge the firms in each block a rate designed to recover our costs. This means that firms carrying on similar activities are charged in the same way. It also means that they do not have to cover the costs for firms carrying on activities that are not related to them.
- 8.5 In this chapter we are consulting on how we will charge fees to AIFMs and AIF depositaries. Since at this stage we do not know precisely how many firms or AIFs will fall within our regulatory remit for the first time under the AIFMD, or exactly how much supervisory

resource will be required, where we have proposed specific fee rates these represent our best estimates of the costs we will need to recover. We will keep them under review and, if circumstances change, consult in future on any changes that may become necessary.

- 8.6 We will feed back on the proposals in this Chapter in our Fees Policy Statement in June 2013. The final rules will take account of the fact that the new regulatory structure resulting from the Financial Services Act 2012 will be created on 1 April 2013. In October 2012 we consulted on some changes to the fees rules to support the new regulatory structure.⁶⁴ We intend to publish the final version of these rules at the end of March 2013. It is the final version of these rules, rather than the current rules, which will apply to the FCA's AIFMD regime.
- 8.7 The rules to be published in the June Fees Policy Statement will come into effect in July 2013. Each year, firms are charged based on the fee-blocks into which they fall on 1 April that year. Existing firms will therefore not be affected by these proposals until 2014/15. However, any firms applying for authorisation or registration during 2013/14 will be charged fees pro rata based on the new fee-block structure.
- 8.8 At the end of March 2013 we will publish our annual fee rates consultation, which will set out the proposed fee rates for all firms, including AIFMs and depositaries, for 2013/14. We will feed back on these proposals in the June Fees Policy Statement.
- 8.9 Our proposals are set out below under the following headings:
 - authorised AIFMs and AIF depositaries;
 - registered AIFMs;
 - discounts for UK branches of EEA AIFMs;
 - AIFMs managing AIFs marketed in the UK under national private placement;
 - recognised schemes under sections 270 and 272 FSMA;
 - FSCS levies;
 - FOS levies; and
 - Money Advice Service levies.

Authorised AIFMs and AIF depositaries

- 8.10 Some firms that will need to become authorised as AIFMs or AIF depositaries are already authorised by us with a Part IV permission, while others will need to apply to be authorised or registered for the first time.⁶⁵ We intend to accommodate authorised AIFMs and

⁶⁴ CP12/28, Regulatory fees and levies: policy proposals for 2013/2014, October 2012 www.fsa.gov.uk/static/pubs/cp/cp12-28.pdf

⁶⁵ More detail on the scope of AIFMD is set out in Chapter 3 of CP1.

depositaries within the existing fee-blocks A.7 and A.9, with minor changes to reflect the Treasury's proposed changes to regulated activities, set out in its first AIFMD consultation, and to accommodate newly-authorised internally managed AIFs.

Application fees (FEES 3.2.7R(a); FEES 3, Annex 1R)

- 8.11 Our standard authorisation fees are divided into three tiers, depending on whether the application is classed as 'straightforward', 'moderately complex' or 'complex'. The activities in fee-blocks A.7 and A.9 are currently classed as 'moderately complex', and we do not believe any change is needed to accommodate AIFMD requirements. This will result in an authorisation fee of £5,000 and a VoP fee of £2,500 if the firm needs to change fee-blocks, or £250 if it does not.
- 8.12 Firms seeking authorisation for the first time should note that our fees are payable on application and are generally not refundable, irrespective of whether authorisation is granted or not. This is because we have to carry out a full assessment of the firm, whatever the eventual FCA decision.

Periodic (annual) fees (FEES 4.2.11R; FEES 4, Annex 1R, Annex 2R)

- 8.13 We need to change the way that fee-blocks A.7 and A.9 are defined in light of the Treasury's proposed changes to regulated activities. These are summarised in Table 8.1.
- 8.14 Since firms holding the new permissions of 'managing an AIF' or 'managing a UCITS' will not need to hold either of the existing permissions 'establishing, operating or winding up a CIS' (currently in fee-block A.9) or 'managing investments' (currently in fee-block A.7), we have put these new permissions into both fee-blocks A.7 and A.9. AIFMs and UCITS management companies will pay fees in A.7 for their portfolio management activities and fees in A.9 for their risk management and administrative activities. We anticipate that under our proposals most currently-authorised firms will remain in their existing fee-block(s) unless they are changing the scope of their activities.

Table 8.1: Summary of proposal for restructuring A.7 and A.9 fee-blocks

Current coverage	Coverage after AIFMD implementation
A.7 – Fund managers (tariff measure = funds under management)	A.7 – Portfolio managers (tariff measure = funds under management)
+ Class 1 – Managing investments + Class 2 – Safeguarding and administering assets + Class 3 – Managing investments, advising and arranging in relation to venture capital investments	+ Class 1 – Managing investments + Class 2 – Safeguarding and administering assets + Class 3 – Managing investments, advising and arranging in relation to venture capital firms + Class 4 – Managing an AIF + Class 5 – Managing a UCITS

Current coverage	Coverage after AIFMD implementation
<p>A.9 – Operators, trustees and depositaries of CIS, and operators of personal pensions schemes and stakeholder pension schemes (tariff measure = gross income)</p> <ul style="list-style-type: none"> + Establishing, operating or winding up a CIS + Acting as a sole director or depositary of an OEIC + Acting as a trustee of an AUT + Establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme Provided the firm is not a corporate advisory firm, carrying out corporate finance business only or a venture capital firm. + Trustee only 	<p>A.9 – Managers and depositaries of investment funds and operators of CIS or pension schemes (tariff measure = gross income)</p> <ul style="list-style-type: none"> + Managing an AIF + Managing a UCITS + Acting as a trustee or depositary of an AIF + Acting as a trustee or depositary of a UCITS + Establishing, operating or winding up a CIS which is not an AIF or UCITS + Establishing, operating or winding up a personal pension scheme or a stakeholder pension scheme Provided the firm is not a corporate advisory firm, carrying out corporate finance business only or a venture capital firm + Trustee only

- 8.15 Two permissions in fee-block A.9 will eventually be removed as they will become obsolete, but will remain in place during the transitional period, so that firms that currently hold those permissions can remain in the fee-block until they have updated their permissions. These are:
- acting as a trustee of an authorised unit trust scheme; and
 - acting as the depositary or sole director of an open-ended investment company.
- 8.16 Currently, firms in fee-block A.7 (for example, CIS operators with the ‘managing investments’ permission), which formally delegate portfolio management to MiFID firms, do not need to report the assets of the relevant funds in A.7, since these assets would be reported separately by the MiFID manager. We intend to maintain this rule for firms in fee-block A.7, which will now include AIFMs and UCITS management companies. Regardless of any such delegation arrangements, these firms would still need to report income in A.9 to cover their risk management and administrative activities.
- Authorised internally-managed investment companies**
- 8.17 Firms authorised as internally-managed AIFs will have AUM to report in fee-block A.7, but no income in fee-block A.9 because the investors are shareholders and do not pay the fund manager an annual management charge or any front-end or exit charges. In our view it would be unfair if these firms paid no fees in this fee-block because they will be subject to supervision of their risk management and administrative activities. Were we not to levy a fee, this would mean that the costs of their supervision would be cross-subsidised by other firms in fee-block A.9, including external managers of AIFs.
- 8.18 We need to establish a proxy figure for the income they would have received if they were an external manager of the fund. Fees vary but our review of the sector suggests that 1% of

AUM would be a reasonable average figure. We accordingly propose that internally managed investment companies should multiply the AUM they declared in A.7 by 0.01 to derive the income figure that they report for A.9.⁶⁶

Depositaries of UCIS and depositaries of investment companies

- 8.19 Newly authorised depositaries of UCIS or investment companies will fall into block A.9, along with existing depositaries. Firms in block A.9 are charged on the basis of their gross income. Where a depositary has a narrower role than a depositary of an authorised fund (e.g. depositaries of private equity funds) we expect this to be reflected in their fees since the fees are based on gross income.

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

Registered AIFMs (FEES 4.2.11R; FEES 4 Annex 4R)

- 8.20 Sub-threshold registered AIFMs⁶⁷ will require significantly less supervision than authorised AIFMs, and their applications will be simpler to process, so they should pay lower fees. We are proposing an application fee of £1,000 and a flat annual (periodic) fee of £1,000.
- 8.21 Assessing an application for full authorisation will be significantly more complex than assessing an application for registration. If a registered AIFM wishes to seek authorisation as a full-scope AIFM, it will therefore be treated as a new application, incurring the full £5,000 application fee as set out in paragraph 8.11. Once approved, it would fall into fee-blocks A.7 and A.9 like other authorised AIFMs.

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

Discounts for UK branches of EEA firms (FEES 4, Annex 2R, Part 3)

- 8.22 Because we are accommodating AIFMs within the existing fee-block structure, the passported UK branches of EEA firms will be given the discounts applicable to branches of EEA firms in the appropriate fee-blocks. In our October 2012 fees consultation, we consulted on removing the discounts for branches of EEA firms in several fee-blocks, including fee-blocks A.7 and A.9.⁶⁸ In light of the responses received, we will set out our proposals for discounts for these fee-blocks in the consultation on fee-rates that we are publishing at the end of March 2013.

⁶⁶ This would mean, for example, that an authorised internally managed investment company with £1bn AUM would pay a total fee of £22,163 based on the fee rates for 2012/13.

⁶⁷ See Chapter 3 in this paper for more detail on the UK's sub-threshold regimes under AIFMD.

⁶⁸ CP12/28: *Regulatory Fees and Levies: policy proposals for 2012/2013*, October 2012, Paragraphs 2.24-2.27.

AIFMs managing AIFs marketed in the UK under national private placement (FEES 3, Annex 2)

- 8.23** Under AIFMD, we will be required to maintain three registers of AIFs, which can be marketed in the UK under national private placement. The details of these registers are set out in Chapter 7. These registers are:
- the Article 36 register of non-EEA AIFs managed by EEA AIFMs (including UK AIFMs) and marketed in the UK;
 - the Article 42 register of AIFs managed by full-scope non-EEA AIFMs and marketed in the UK; and
 - the small third-country AIFM register of AIFs managed by sub-threshold non-EEA AIFMs and marketed in the UK.
- 8.24** We will be required to carry out a basic approval process to ensure that these AIFs are eligible for inclusion on the relevant private placement register. Once an AIF is on the relevant private placement register, its AIFM will need to report data to us in line with AIFMD requirements and we will monitor this data for systemic risk purposes.
- 8.25** In the case of the Article 36 register, we will already regulate the AIFM and charge it regulatory fees, if it is a UK AIFM or an AIFM operating from a UK branch. In this instance, we do not intend to charge the AIFM fees for putting an AIF on the private placement register, because the regulatory fees we charge the AIFM are intended to cover the costs associated with the relevant funds.⁶⁹ In the case of a non-EEA AIFM with an AIF on the Article 42 register, or an EEA AIFM that is not operating from a UK branch with an AIF on the Article 36 register, we do not already charge the AIFM regulatory fees, so we intend to charge fees to recover our costs in assessing the application to put an AIF on the relevant private placement register.
- 8.26** We intend to charge AIFs on the private placement registers the application fees set out in Table 8.2. The application fees will form a new Part 4 in FEES 3 Annex 2.

Table 8.2

Funds on the private placement registers: application fees	
Type of fund	Fee per fund
Article 36 register, where the AIFM is not otherwise paying FCA fees as an AIFM	£300
Article 42 register	£300
Small third-country AIFM register	£150

- 8.27** The periodic fee rates will be set out in FEES 4 Annex 4. Our proposed rates are set out in Table 8.3.

⁶⁹ Currently, we only charge separate fees for funds if those funds are authorised or recognised by the FSA under sections 242, 262, 264, 270 or 272 FSMA.

Table 8.3

Funds on the private placement registers: periodic fees	
Type of fund	Fee per fund
Article 36 register, where the AIFM is not otherwise paying FCA fees as an AIFM	£500
Article 42 register	£500
Small third-country AIFM register	£350

8.28 These fees represent our best estimate of the supervisory resource required to fulfil our obligations for AIFs for the private placement registers. We intend to review these fees once we have more supervisory experience for the funds.

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

Recognised schemes under sections 270 and 272 FSMA

8.29 As explained in paragraphs 7.15 to 7.17 of Chapter 7, the Treasury is currently consulting on changes to the recognised schemes regime. The proposed new regime for individually recognised schemes will remove the current s.270 regime and modify s.272 FSMA. Our fee proposals in this paper therefore assume that the new regime will be implemented as set out in the Treasury's consultation. We will need to adjust these if the Treasury subsequently modifies its proposals.

Application fees

8.30 At present, all applicants under s.272 are charged an application fee of £14,000 (FEES 3 Annex 2 Part 2). This no longer reflects our costs. Our proposals for replacing them are:

- EEA schemes: will be charged the same fees as the equivalent UK schemes. Applying the rates in force in 2012/13, these are £1,500 for the equivalent of a NURS and £2,400 for the equivalent of a QIS.
- Non-EEA schemes: will be charged £8,000.

8.31 The current regime for schemes recognised under s.270 will be removed and these funds will transition to the modified s.272 regime. We do not propose to charge these funds an application fee as they will be automatically transferred to the new regime without reassessing their eligibility. Any scheme currently capable of being recognised under s.270 that applies to be recognised for the first time after 22 July 2013 will be charged the same application fees as other non-EEA schemes.

Periodic fees (FEES 3, Annex 2R; FEES 4, Annex 4R)

- 8.32 We propose that recognised schemes established in another EEA jurisdiction should be charged the same periodic fee as UK authorised funds, as they will need to be charged the same fees. We propose to charge non-EEA recognised schemes a different periodic fee. The former s.270 schemes will be charged the same periodic fees as other non-EEA schemes.
- 8.33 Since we charge fees based on the fee-blocks into which entities fall on 1 April of each year, the fees paid by *existing* recognised schemes will not be affected by these changes until 2014/15. We will consult on the fee rates in these schemes for 2014/15 in our fees consultation in March 2014.

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

FSCS levies (FEES 6, Annex 3)

- 8.34 In January 2013, we published *CP13/1: FSCS Funding Model Review – feedback on CP12/16 and further consultation*⁷⁰, which confirmed some changes to the current funding arrangements for the FSCS which will take effect from 1 April 2013. It is these rules, rather than the current rules, which will apply to the FCA's AIFMD regime.
- 8.35 Firms whose activities are within the scope of the FSCS are subject to FSCS levies.⁷¹ For the purposes of compensation and specific cost levies, we allocate firms to funding ‘classes’, on the basis of the regulated activities for which they have permission that are within the scope of FSCS protection.⁷²
- 8.36 AIFMs and AIF depositaries will be allocated to class D1 (Investment Provision⁷³). The tariff base for this class is annual eligible income.⁷⁴ For most AIFMs and depositaries, there will be no change to the current arrangements.
- 8.37 As set out in Chapter 5, we propose to extend the scope of FSCS protection to eligible customers of EEA AIFMs managing FSA-authorised AIFs, whether via a UK branch or using a cross-border services passport. These firms will be allocated to class D1 and will therefore be required to pay levies in the same way as UK AIFMs subject to the FSCS levies.

⁷⁰ www.fsa.gov.uk/static/pubs/cp/cp13-01.pdf.

⁷¹ The FSCS is funded by two types of industry levy: a compensation costs levy and a management expenses levy. The compensation costs levy raises money to pay consumer claims. The management expenses levy is made up of a base costs element (which relates to the general costs of the FSCS) and a specific costs element (which, from 1 April 2013, will comprise costs attributable to a class).

⁷² These classes and the grouping of activities within them are distinct from regulatory ‘fee-blocks’.

⁷³ This class is currently known as the Investment Fund Management class.

⁷⁴ This means income attributable to business with or for the benefit of eligible claimants, but firms also have the option to report their total net income.

- 8.38** We intend to restrict the scope of FSCS to exclude the activities of a UK AIFM managing a non-UK AIF. FSCS levies for these firms will be determined by reference to income only from the parts of their business that could give rise to a valid FSCS claim.⁷⁵

FOS levies (FEES 5, Annex 1)

- 8.39** Firms covered by the FOS are subject to the annual FOS levy and FOS case fees.
- 8.40** For the purposes of the annual levy, firms are allocated to industry blocks based on the activities they carry out. AIFMs and AIF depositaries will be in industry blocks 5 and 6, which mirror FSA fee-blocks A.7 and A.9. Firms in these blocks pay a flat fee. Under the fee rates for 2012/2013, an AIFM would pay £250 and a depositary would pay £50. For most AIFMs and depositaries, there will be no change to these arrangements.
- 8.41** We intend to extend the scope of the FOS levy to include EEA AIFMs managing FSA-authorised AIFs, whether via a UK branch or cross-border services. We intend to charge these firms the same flat fees as we charge UK AIFMs subject to the FOS. It may be that, on average, incoming EEA AIFMs conduct less business with eligible FOS complainants than UK AIFMs. However, the nature of a flat fee is that it does not take into account the size of a firm's business. We do not think this is disproportionate, because the fee is relatively small.
- 8.42** In addition to the annual levy, firms subject to the FOS must pay a case fee for each complaint referred to the FOS. However, they benefit from a certain number of free cases per year. The FOS has proposed that in 2013/14 the case fee will be £550 and the number of free cases will be 25. Our proposed rules do not affect this.

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

Money Advice Service levies (FEES 7, Annex 1R)

- 8.43** Most authorised firms pay an additional levy to support the work of the Money Advice Service, the body to enhance the understanding and knowledge of members of the public in financial matters, their ability to manage their own financial affairs, and to coordinate the debt advice service. The costs of the Money Advice Service are recovered through the same system of fee-blocks used by the FSA. In January 2013, we consulted on a new method of allocating the costs of the Money Advice Service to fee-blocks⁷⁶, and we will be providing feedback in our March 2013 fees consultation. This consultation will propose the

⁷⁵ Unless these firms choose to report total net income as annual tariff data.

⁷⁶ CP13/02, *Regulatory Fees and Levies The Money Advice Service cost allocation method for 2013/2014*, January 2013.

distribution of the Money Advice Service levy between the various fee-blocks, including those involving AIFMs and AIF depositaries.

Annex 1

Cost benefit analysis

1. This is a cost benefit analysis (CBA) of the Handbook changes outlined in this Consultation Paper (CP). We expect the changes proposed in this paper will be made by the board of the FCA, rather than by the FSA. As a result, the relevant CBA requirements are those set out in section 138I of the Financial Services Act 2012 rather than those in section 155 of the original version of FSMA.¹
2. The CBA includes only the impacts of those proposals for which we have a CBA obligation (i.e. where the proposed changes require changes to the Handbook). Where the changes fall outside our CBA obligations (because they do not require Handbook rule changes, they relate to fees,² or to the publication of ESMA guidelines), we do not consider in this Annex the costs and benefits to which they give rise, but have included a discussion of the minor issues to which they give rise in the relevant chapters of the CP. We do not consider that they have any material effect on our baseline.
3. We summarise below the policy issues considered in this CBA.

Issue	CP chapter
1. Regime for sub-threshold AIFMs	3
2. Prudential rules	4
3. Consumer redress: FSCS and the FOS	5
4. Depositaries	6
5. Marketing	7

1 The FCA will be required to carry out and publish a CBA when proposing draft rules and when making rules which are significantly different from the draft consulted on. In particular, they will be required to publish 'an analysis of the costs together with an analysis of the benefits...and an estimate of those costs and of those benefits'. However, if, in a regulator's opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, an estimate need not be provided; but in this case, the regulator must explain why it is of that opinion. Finally, no CBA is required if a regulator considers that there will be no increase in costs or there will be a cost increase of minimal significance.

2 Section 138I of the Financial Services Act 2012 states that the FCA is not required to carry out and publish a CBA when proposing draft rules in relation to fees.

The relevant baseline

4. This CBA compares the overall position if the proposed regulatory changes are applied and the overall position if they are not (i.e. the baseline). In CP1 we considered that the appropriate baseline was the *status quo*, defined as the current regulations to which the different firms are subject and current business practice.
5. For the proposals in this CP, we are considering a different baseline. In addition to the rules that are currently in existence and the business practices currently followed by firms, we need to include the changes proposed by the Treasury in its consultation on the transposition of the AIFMD as well as, for full scope UK AIFMs, the proposed changes in CP1 and the Level 2 Regulation. This is because these changes will take place whether or not we make our rules, so the incremental effects of our rules will be limited to effects that would not have arisen under these changes.

Summary of the impacts

6. To help readers, here we summarise the impacts on firms and on the market as a whole that we have identified.

Compliance cost	Affected firms	One-off cost per firm	Ongoing cost per firm	Other impacts
Regime for sub-threshold firms (of authorised AIFs)	Managers of sub-threshold NURS/QIS	Staff cost: £290 to £3,250 Other costs: negligible to £15,000	Negligible to £1,700, mainly staff costs	Improves investor protections Improves investor confidence in participating in the market and choosing between alternative offerings Allows for better FCA oversight and application of necessary sanctions in the event of misconduct by AIFMs.
Prudential rules	Managers of sub-threshold NURS/QIS	N/A	N/A	None identified

Implementation of the Alternative Investment Fund Managers Directive

Compliance cost	Affected firms	One-off cost per firm	Ongoing cost per firm	Other impacts
FOS	EEA AIFMs managing FSA-authorised AIFs, whether from a UK branch or via cross-border services EEA AIFMs managing unregulated UK collective investment schemes or carrying out additional non-core activities such as individual portfolio management, from a UK branch	N/A	Case fee: in 2013/14 the first 25 cases are free, subsequent cases are £550 per case Administration cost to firms: around £300 per case referred to the FOS Annual FOS levy: £250 for AIFMs during 2012/13 Redress costs: unable to quantify (a transfer from firms to claimants)	Through the FOS, investors can get redress from fund managers in the event of losses incurred as a result of negligence or malpractice. Through the FSCS, investors may benefit from up to £50,000 per claimant in the event of losses caused by a firm failure (a transfer from firms to the claimants via FSCS levies). Improves investor confidence in these markets and could marginally increase the quantity of appropriate transactions as consumers invest in AIFs.
FSCS	EEA AIFMs managing FSA-authorised AIFs, whether from a UK branch or via cross-border services	N/A	FSCS levy (includes base costs, specific costs and compensation costs as set out below) Compensation cost – limit of £50,000 per claim is a transfer from firms to claimants	Consumers having access to redress through FOS can incentivise AIFMs to work in the best interest of their investors. May facilitate competition by ensuring that transactions that are economically equivalent (and most likely in the same economic market) face similar FOS/FSCS requirements.
Depositary issues	Depositaries of AIFs	N/A	N/A	None identified

Implementation of the Alternative Investment Fund Managers Directive

Compliance cost	Affected firms	One-off cost per firm	Ongoing cost per firm	Other impacts
Marketing and passporting	Passporting firms	N/A	£18,000 to £200,000, includes staff costs and external fees (legal advice)	Could increase competition and lower costs to UK investors in the UK Facilitate growth of smaller funds

Direct costs

7. In the CBA to CP1, our initial estimate of the core costs of implementing AIFMD, over and above those which are business-as-usual, was £5m. This estimate was intended as a marker until the FSA programme and business analyst teams had more fully scoped one-off AIFMD implementation costs. The figure for one-off costs now stands at around £13.4m. This more fully takes account of:

- scope changes given the extent of AIFMD regulation and categories of firms affected;
- costs of bespoke IT changes to FSA systems (taking account also of the transition to the FCA);
- necessary operational changes to core regulatory processes such as AIFM authorisation, registration, supervision and reporting. The latter includes costs of mandatory reporting of AIFMD data by the FCA to ESMA; and
- increased use of specialist resources for other operational aspects of AIFMD implementation.

Compliance costs

Affected firm populations

8. The table below is from the Treasury's impact assessment on the 'Transposition of the Alternative Investment Fund Managers Directive'.³ It shows a summary of the number of, and assets under management (AUMs) held by, UK AIFMs and the AIFs. These firm populations are referenced below where relevant.

³ Note that the Treasury impact assessment is still subject to change.

	Above-threshold AIFM			Sub-threshold AIFM			Total		
	AIFMs	AIFs	AUM (£m)	AIFMs	AIFs	AUM (£m)	AIFMs	AIFs	AUM (£m)
NURS	47	623	90,255	10	252	2,585	57	875	92,840
QIS	3	50	4,240	1	1	49	4	51	4,289
UCIS	246	292	335,797	370	423	40,404	616	715	376,201
...of which Private Equity	88	116	87,527	111	84	9,676	199	200	97,204
Investment Cos	40	151	61,407	89	211	9,717	129	362	71,124
....of which internally managed	8	8	13,178	20	20	1,270	28	28	14,447

1. Regimes for sub-threshold AIFMs

9. There are two main policy changes that are relevant for sub-threshold AIFMs. First, whether or not they should be subject to the approved persons regime; and second, whether to apply Level 1 and 2 requirements to NURS and QIS in this category.
- i) Approved persons regime
10. The Treasury has decided that the FSA approved persons regime should not apply to sub-threshold AIFMs and full scope UK AIFMs that are internally-managed closed-ended investment companies. The minimum required by the Directive should be applied instead. So there are no incremental costs for the approval of individuals for these firms, compared to the baseline minimum Directive requirements.
11. For other entities within the scope of the Directive, there are no changes to the approved persons regime, if compared with the status quo.
- ii) Level 1 and 2 requirements for sub-threshold NURS and QIS
12. We are consulting on the basis that the detailed Level 1 and Level 2 AIFMD requirements will, in part, apply to sub-threshold AIFMs of NURS and QIS. The areas where we do not propose to apply the Level 1 and Level 2 requirements reflect the limitations on the FCA rule-making powers which the Treasury has consulted on. A summary of these requirements can be found in section 3. We estimate this will affect 11 AIFMs (10 NURS managers, 1 QIS manager).
13. To estimate the costs that such firms will incur, we approached a number of firms in this category. Our discussions indicated that firms that manage NURS or QIS also tend to be

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managers of UCITS schemes and apply similar standards to them. They indicated that the cost of extending these requirements to include NURS and QIS funds would be of minimal significance.

14. However, some firms that we contacted indicated there could be some incremental costs from the leverage requirements, reporting requirements and the need to apply for a variation of permission. On the whole, they felt that these costs would not be significant, as set out in the table below.

Requirement	One-off costs per firm	On-going costs per firm
Leverage requirement	£0 to £1,500 , mainly staff costs.	£0 to £500 annually, mainly staff costs.
Reporting requirements (costs depend on reporting frequency)	Negligible costs: up to 4 staff days (£1,200 ⁴) and other compliance costs of up to £10,000.	Negligible costs: up to around 4 staff days annually (£1,200).
Variation in permissions	1 to 2 days (an estimated cost of between £290 and £580) and other non-staff costs from £0 to £5,000.	N/A

15. In addition to asking firms directly, we have assessed the costs of changing prudential requirements on such firms by looking at regulatory returns. We understand that these firms are already calculating capital for all of their funds under the strict MiFID rules, which are similar to the AIFMD rules. The additional requirement under AIFMD is professional indemnity insurance, which these firms indicated they already hold. So we do not expect a shortfall in capital and no additional costs are expected to arise.

COBS and SYSC changes

16. The amendments to SYSC and COBS requirements are set out in Chapter 3. These changes are mainly aimed at maintaining the status quo and as such do not impose significant incremental costs on affected firms.

2. Prudential rules

17. We could not identify any shortfall in capital resources for affected small authorised UK AIFMs of authorised AIFs, so no costs are expected to materialise as a result of changes in prudential rules.

⁴ We based this and the other estimates of staff costs on an annual salary of a compliance officer of £52,000 plus overheads at 30 per cent, giving a daily rate of about £290.

18. Additional changes to the Handbook (e.g. deleting UPRU) and additional guidance aim to provide clarity to firms and reduce duplication in the Handbook. As such, these changes do not impose additional incremental costs on firms.

3. Consumer redress: FOS and FSCS

19. The FOS and FSCS regimes are additional to the requirements of the AIFMD. In this area, we propose to extend FOS and FSCS cover to EEA AIFMs managing FSA-authorised AIFs, whether from a UK branch or via cross-border services. In the case of the FOS, we also propose to extend coverage to EEA AIFMs managing UK unregulated collective investment schemes or carrying out additional non-core activities⁵, such as individual portfolio management, from a UK branch. We are unable to estimate how many firms will fall under these categories.
20. As outlined in the CP text, we will not be extending FOS and FSCS cover to AIFMs which manage closed ended investment companies. Also we do not plan to extend FSCS cover to AIFMs managing non-UK AIFs, or to extend FOS and FSCS cover to include depositaries acting for unauthorised AIFs (except in relation to charity funds).

Direct costs to FSA, FOS and FSCS

21. Direct costs to the FSA relate to (i) the cost of collecting the annual levy for the FSCS and FOS and (ii) the cost of supervising the compliance of firms subject to the FOS with the FSA's complaints-handling rules. These costs are not likely to be significant.
22. The FOS and the FSCS may incur additional costs if our proposals result in an increase in the number of complaints or claims referred to them. Additionally, it may cost the FOS and the FSCS more to deal with an EEA AIFM without a physical presence in the UK than a firm which has an establishment in the UK. However, we do not expect these proposals to have a significant impact on volumes of complaints or claims, and note that historically the numbers of complaints to the FOS and claims from the FSCS about fund management have been low. Any increase in such costs will be recovered from the industry through the relevant fees and levies.

Compliance costs from extending FOS

23. The total cost to a firm of being within the jurisdiction of the FOS depends on the volume of complaints it receives. The FOS has proposed that in 2013/14 each firm will benefit from 25 free cases, after which it will have to pay a fee of £550 for each case. In addition to this, we estimate that the administrative costs to the firm of dealing with complaints at the FOS will be £300 per case (see CP11/10, footnote 32). We expect the number of new complaints to be very small. FOS complaints generally relate to advice in respect of investment in funds

⁵ This refers to the activities in Article 6(4) AIFMD.

rather than their management. Indeed, only 2% of complaints in 2011/12 (around 5,000) related to fund managers and stockbrokers, and we would expect EEA AIFMs covered by the FOS to be a small proportion of all fund managers covered.

- 24. Firms subject to the FOS must pay an annual levy. Under the fee rates for 2012/13, an AIFM would have paid £250.
- 25. The costs to firms of applying the requirements on complaints handling are likely to be minimal (e.g. minimal costs in terms of IT system changes, complaints reporting and handling).
- 26. Where the FOS decides the firm must provide redress to consumers, this is a transfer from the firm to the consumer. The size of this transfer depends on the volume and size of successful firm complaints.

Compliance costs from extending FSCS

- 27. Firms subject to FSCS must pay levies to fund it. The FSCS levy can be made up of three components: base costs, specific costs and compensation costs. The precise method by which FSCS levies are calculated can be found in the FEES module of the FSA's Handbook, but a firm's share of the levy is broadly based on the amount of business it does.
- 28. The base costs levy covers the basic costs of running the FSCS, irrespective of its level of activity. The specific costs levy covers the administrative costs of paying claims in the relevant subclass (in this case, the Investment Provision subclass⁶). The levy payable will depend on the likelihood of a firm (or firms) defaulting in the Investment Provision subclass, the subsequent volume of claims, and the amount of compensation paid under each claim. Historically, there have not been many compensation claims in relation to the default of a fund manager, so we do not expect a material increase to this element of the levy.
- 29. The compensation cost is, in effect, a transfer between different sets of consumers (via firms paying the resulting levies) rather than a net economic cost or benefit. Each claimant can get up to a maximum of £50,000. The total compensation costs cannot be reliably estimated, as it depends on the number of claimants and size of their claims.
- 30. Additionally, firms will have to report information to the FSCS on their annual eligible income. We expect the cost of this to be minimal.

4. Depositary issues

- 31. We discuss two main issues in relation to depositaries in this CP. The first relates to the regime for depositaries of sub-threshold AIFMs, the second concerns the application of CASS 6 to depositaries of AIFs.

⁶ This subclass is currently known as the Fund Management subclass but will be renamed from 1 April 2013 under our policy set out in CP13/1, *FSCS Funding Model Review – feedback on CP12/16 and further consultation*.

32. Overall costs for depositaries (and the impact they may have on costs for AIFMs) have been discussed in CP1. The fact that sub-threshold managers of NURS or QIS will be subject to depositary requirements does not change our original assessment.
33. Overall, the proposed changes to CASS 6 reduce the regulatory burden on depositaries, compared to what we consulted on in CP1. There are two provisions which are additional to what they are currently subject to. These provisions relate to:
 - a depositary's responsibility for a nominee company with respect to custody rules (CASS 6.2.4R); and
 - restrictions on a depositary recording legal title to its own applicable assets in the same name as that for safe custody asset (CASS 6.2.5R).
34. However, our understanding is that CASS 6.2.4R should result in only very small costs, such that the overall costs to depositaries due to the application of CASS 6 will be lower than those considered in CP1. CASS 6.2.5R provides more flexibility to firms.
35. The approach to requirements that apply to depositaries outside the scope of AIFMD (in particular, the conduct of business and systems and controls requirements) has been to replicate broadly the status quo. So we do not impose significant additional costs on such firms.

5. Marketing and passporting

36. Before an authorised UK AIFM can market a UK (or other EEA) AIF to professional investors in the UK or in another EEA Member State, it will have to notify us of its intention to do so.⁷ The Directive sets out information that the UK AIFM will have to give us if it intends to market in the UK and in other Member States.
37. Around 60% of firms that responded to the survey we sent out before publishing CP1 did not expect costs of more than minimal significance. Other firms are likely to incur significant internal staff costs, and costs from seeking legal and regulatory advice. Some firms estimated that, including staff time and external fees, annual ongoing costs could range between £18,000 and £200,000. One private equity firm noted that the requirement to notify us of material changes to the information an AIFM discloses could become administratively challenging and could substantially increase costs, for example if AIFMs are required to disclose iterative drafts of fund documents.
38. Overall, we would expect firms to pass on the compliance costs to consumers in the long run, in the form of higher prices. However, the increase in costs is unlikely to result in significant changes in demand, given that they represent a small proportion of overall revenues. As such, we would not expect any significant impact on consumers being able to access AIFs.

⁷ Articles 31 and 32 AIFMD

Market impacts

39. The AIFMD and the Level 2 Regulation will affect firms' business models and competition in the market for investment funds and depositary services, as well as prime brokers and valuation agents (as they provide services to AIFMs). A number of studies and reports have been produced to analyse the overall effects and the CBA contained in CP1 discussed them at a high level. For a description of such effects we refer the reader to CP1 and the sources it cites.
40. In the following paragraphs we focus on the market impacts that are likely to result from the proposals discussed in this CP. So we focus our attention on three main areas:
- the treatment of sub-threshold firms (and how this may impact the competitive environment);
 - the effects of the marketing passport on competition and on investors in the UK; and
 - the effects of the proposed extension of FSCS and FOS coverage.
41. The proposals for the application of AIFMD requirements to sub-threshold firms aim to impose requirements that are not unduly burdensome for firms but that, at the same time, guarantee an appropriate level of investor protection.
42. By applying the Level 1 and Level 2 requirements to sub-threshold NURS/QIS managers on a proportionate basis, we will give consumers confidence that they can rely on similar protections irrespective of the size of the fund in which they invest, which in effect increases the choice available to them. At the same time, small firms should not be over-burdened with requirements that may put them at a disadvantage.
43. In the CBA of CP1, we highlighted that the increase in compliance costs might result in some firms withdrawing from the market. Our analysis shows that this is unlikely to be the case for sub-threshold NURS/QIS managers as, in most cases, the cost increases are likely to be minimal. Firms that manage sub-threshold authorised AIFs tend to manage UCITS funds as well and to apply similar standards to them.
44. The marketing passport has the potential to increase competition and lower costs for UK investors, as outlined by the Treasury's impact assessment published in its first consultation. The effect of passporting AIFs can work in the interest of UK consumers by exerting competitive pressure on UK domiciled funds.
45. For UK AIFMs, the marketing passport also represents an opportunity to enter other EEA markets and attract business from other Member States. This may facilitate the growth of smaller funds and help them reach efficient economies of scale.
46. The proposed extension of FSCS and FOS coverage may improve confidence in these markets, and could marginally improve the quantity of transactions as consumers invest in AIFs.

47. Also, extending FOS and FSCS cover to include EEA AIFMs managing FSA-authorised AIFs, could facilitate competition by ensuring that transactions that are economically equivalent (and most likely in the same economic market) face similar requirements. This is because investors in such AIFs will enjoy the same protections regardless of where the AIFM is established within the EEA.

Benefits

48. The overall benefits relating to the AIFMD have been outlined in the CBA in CP1. We said that the benefits could not be assessed quantitatively, due to the scale of the changes and the uncertainties over the impacts of the Directive. We face a different set of issues in the quantification of the benefits of the proposals discussed in this CP, i.e. that it is very difficult to disentangle their impacts from those that would result from the overall changes due to the AIFMD. However, we briefly discuss below what benefits are likely to result from the proposals in this CP.
49. The application of Level 2 requirements to sub-threshold NURS and QIS managers should enhance investor protection. Investors should benefit from the disclosure and operational requirements (a full summary of the Level 2 requirements can be found in chapter 3). According to the Treasury's estimates of affected firms, this will result in over £2.6bn of assets benefitting from increased protection.
50. The authorisation and registration requirements should allow the FCA to achieve a better oversight of newly authorised firms and to receive more useful information from firms that are already authorised. The FCA will be able to apply necessary sanctions in the event of misconduct by AIFMs. Additionally, the FCA will be able to prevent new AIFMs that do not meet our threshold conditions from becoming authorised.
51. As mentioned above, the marketing passport should benefit investors by enhancing competition in the market.
52. The extension of FOS and FSCS coverage to include EEA AIFMs managing FSA-authorised AIFs, should benefit consumers if they seek redress from the AIFM in the event of losses incurred as a result of negligence or malpractice. It is not possible to estimate the value of the redress that consumers might receive, because these firms are not currently covered by the regime. However, the overall number of complaints in this area is likely to be small. In any case, this should incentivise AIFMs to work in the best interests of investors in the AIFs they manage.
53. Under the terms of the FSCS, investors who are eligible claimants may benefit in the event of a firm's default by up to £50,000 per claimant. The potential total compensation cannot be reliably estimated, as it would depend on the number of claimants and the size of valid claims. The extension of FOS and FSCS coverage should provide the same protection for investors in an authorised fund regardless of where the AIFM is established, and should therefore minimise distortions in the market given that consumers will enjoy similar protections irrespective of the location of the AIFM and the type of authorised fund in which they invest.

Annex 2

List of consultation questions

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

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

- 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?

- 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?

- 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?

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

- Q7:** Do you agree that investors in investment companies should not be able to complain to the FOS or claim from the FSCS about the management of the company?
- Q8:** Do you agree that investors in UCIS (except for CIFs and CDFs) should not be able to complain to the FOS 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 FOS 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 FOS or claim from the FSCS about the depositary of the fund (subject to the usual criteria)?
- Q11:** Do you agree that the FOS'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 FOS'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?
- 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.

- 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?
- 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?
- Q18:** Do you agree with the proposal to permit CDFs to be marketed to eligible charities?
- Q19:** Do you agree with our proposed structure of application and periodic fees for authorised AIFMs and depositaries?
- Q20:** Do you agree with our proposed structure of application and periodic fees for registered AIFMs?
- Q21:** Do you agree with the proposed fees structure for recording and maintaining AIFs on the national private placement registers?
- Q22:** Do you agree with the proposed new fee structure for recognised schemes?
- Q23:** Do you agree with our proposed changes to the regimes for funding the FOS and FSCS?

Annex 3

Compatibility statement

1. Since it is proposed that the draft rules included in this CP would be made by the FCA rather than the FSA, this Annex follows the requirements set out in section 138I of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012.
2. When consulting on new rules, the FCA is required by section 138I FSMA to include an explanation of why it believes making the proposed rules is compatible with its strategic objective, advances one or more of its operational objectives, and has regard to the regulatory principles in s.3B FSMA. The FCA is also required by s.138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles

4. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of consumer protection. With respect to sub-threshold firms, it is envisaged that consumers will obtain a greater or similar level of protection depending on the category of the sub-threshold firm. For example, managers of authorised funds will be subject to both existing regulatory requirements and the majority of the new AIFMD requirements which intend to enhance investor protection.
5. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well due to the appropriate level of protection which we believe they provide. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s.1F FSMA.
6. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.3B FSMA.

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

7. This is the second CP transposing AIFMD in the UK. The CP approach allows us to consult in a timely manner, providing as much clarity as possible in preparation for implementation of AIFMD. Our approach to implementation is designed to ensure that we use our resources efficiently. These include using ‘intelligent copy-out’ wherever appropriate, i.e. adhering to the wording of the directive as closely as possible.

The principle that a burden or restriction should be proportionate to the benefits

8. Please refer to our CBA.

The general principle that consumers should take responsibility for their decisions

9. Although we are applying the FOS and FSCS, there are conditions associated with compensation (for example there is a limit for FSCS compensation) and compensation only covers factors outside of the consumer’s control (for example, default or mis-selling by the firm that the consumer cannot assess or predict when choosing a provider). Hence we do not expect that this extension will remove consumers’ responsibility for their financial decisions.

The responsibilities of senior management

10. Those categories of sub-threshold managers which are authorised by the FCA will be subject to rules and guidance on systems and controls, conflicts of interest and conduct of business, including specifically with respect to senior management.

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

11. We have engaged with firms throughout this process and kept them informed on the timelines we are working to.

The desirability of publishing information relating to persons

12. This principle is not relevant to this CP.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

13. Where we have discretion over proposed rules for sub-threshold managers, we believe the proposed rules are proportionate. Managers of UCIS and external managers appointed by AIFs that are not CIS, for example, will be subject to limited additional obligations under

the Directive. Overall, we believe our proposed rules for sub-threshold managers are in keeping with this principle.

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

14. Our proposed rules for sub-threshold managers differ depending on the type of manager in question, and recognise differences in the nature and objectives of their businesses.

Expected effect on mutual societies

15. We are not aware of any mutual societies within the scope of the proposed rules, and therefore do not expect the proposals to have a different impact in respect of mutual societies which are authorised persons compared to other authorised persons.

Compatibility with the duty to promote effective competition in the interests of consumers

16. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers and have sought to promote effective competition in so far as this is compatible with our consumer protection and integrity objectives.
17. A number of the proposals potentially improve competition between firms. For example, the extension of FOS and FSICS to include EEA managers of FCA-authorised funds is likely to facilitate competition by ensuring that transactions are economically equivalent (and most likely in the same economic market) face similar requirements. Also, requirements for sub-threshold authorised funds means such funds will be treated in a manner that is similar to UCITS.

Equality and diversity

18. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
19. Aside from the issue identified below our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief,

sexual orientation and transgender, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We would nevertheless welcome any comments respondents may have on any equality issues they believe may arise.

20. We are aware that our proposals to apply the FSCS only to AIFMs managing funds domiciled in the UK will mean it is less likely that non-UK investors would benefit from the compensation scheme. However, we have had to balance this against the need to apply the FSCS in a proportionate manner.

Legislative and Regulatory Reform Act 2006 (LRRA)

21. We are required under the LRRA to have regard to the principles in the LRRA and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions).
22. We have had regard to the principles in the LRRA and the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance. We have engaged with firms throughout this process, and consider that the proposals are proportionate and result in an appropriate level of investor protection.

Annex 4

Prudential classification for investment fund managers

Implementation of the Alternative Investment Fund Managers Directive

Type of fund manager	Type of fund	CIS				Non-CIS AIF ¹ (e.g. a company)
		Residual CIS ²	UCITS ³	Authorised AIF (NURS and QIS) ⁴	AIF	Non-CIS AIF ⁵
	Above the threshold ⁶	Investment management firm IPRU(INV) 5	UCITS firm	CPM firm IPRU(INV) 11	Unauthorised AIF Externally managed non-CIS AIF	Internally managed non-CIS AIF ⁵
	Below the threshold ⁷			Small authorised UK AIFM IPRU(INV) 5	Full scope UK AIFM	
					Small registered UK AIFM IPRU(INV) 11	Internally managed AIF IPRU(INV) 11
						Small registered UK AIFM IPRU(INV) 11
						Small registered UK AIFM IPRU(INV) 11
Additional MiFID activities ⁹	Above the threshold	BIPRU limited licence firm GENPRU/BIPRU	UCITS investment firm	AIFM investment firm CPMI firm GENPRU/BIPRU	Investment management firm IPRU(INV) 5	No prudential requirements apply ⁸
	Below the threshold		UCITS investment firm	AIFM investment firm CPMI firm GENPRU/BIPRU	Small authorised UK AIFM BIPRU limited licence firm GENPRU/BIPRU	N/A - internally managed AIFs are not allowed to carry out additional MiFID activities (see Article 6(3) AIFMD).

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 a UCITS and an AIF, in which case it will be either a CPM firm or a CPMI firm depending on whether it undertakes additional MiFID activities.⁴ A firm can manage both an authorised AIF and an unauthorised AIF in which case it will be a CPM firm or CPMI firm depending on whether it undertakes additional MiFID activities.⁵ To simplify matters, it has been 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.⁷ The thresholds are only relevant for AIFs.⁸ Registered small UK AIFMs are not authorised persons.⁹ These are the MiFID activities allowed by Article 6(4) AIFMD.

Annex 5

Summary of FOS and FSCS coverage of cross-border activities

Table 1: FOS and FSCS coverage of cross-border activities of incoming EEA managers

Activity	EEA AIFM operating from branch in UK	EEA AIFM operating from home state
Managing a UK authorised fund (UCITS/NURS/QIS)	FOS coverage: YES FSCS coverage: YES	FOS coverage: YES FSCS coverage: YES
Managing an unregulated UK CIS	FOS coverage: YES FSCS coverage: Only if firm tops up	FOS coverage: NO FSCS coverage: NO
Individual portfolio management activities under Article 6(4) AIFMD	FOS coverage: YES FSCS coverage: Only if firm tops up	FOS coverage: NO FSCS coverage: NO

Table 2: FOS and FSCS coverage of UK managers of non-UK funds

Activity	UK AIFM operating from branch in EEA	UK AIFM operating from UK
Managing an EEA fund (UCITS or non-UCITS fund)	FOS coverage: NO FSCS coverage: NO	FOS coverage: YES FSCS coverage: NO
Managing a non-EEA fund	FOS coverage: NO FSCS coverage: NO	FOS coverage: YES FSCS coverage: NO
Individual portfolio management activities under Article 6(4) AIFMD	FOS coverage: NO FSCS coverage: YES	FOS coverage: YES FSCS coverage: YES

Appendix 1

Draft Handbook text

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE
INSTRUMENT 2013**

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) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority);
 - (p) paragraph 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of schedule 3 (EEA Passport Rights); and
 - (q) 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 FSA’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.
- C. The Financial Conduct Authority also makes this instrument in the exercise of the following powers of directions in the Alternative Investment Fund Managers Regulations 2013:
- (1) regulation 20 (Disclosure obligations of small registered UK AIFMs);
 - (2) regulation 59 (AIFs managed by small third country AIFMs); and

- (3) regulation 61 (Applications for approval).

Commencement

- D. This instrument shall come into force on 22 July 2013, except for Part II of Annex G and Part II of Annex J which shall come into force on 22 July 2014.

Making the Investment Funds sourcebook (FUND)

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

Amendments to the Handbook

- F. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex B
Principles for Businesses (PRIN)	Annex C
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex D
Fees manual (FEES)	Annex E
General Prudential sourcebook (GENPRU)	Annex F
Prudential sourcebook for UCITS Firms (UPRU)	Annex G
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex H
Conduct of Business sourcebook (COBS)	Annex I
Client Assets sourcebook (CASS)	Annex J
Supervision manual (SUP)	Annex K
Dispute Resolution: Complaints sourcebook (DISP)	Annex L
Compensation sourcebook (COMP)	Annex M

Amendments to the Perimeter Guidance manual (PERG)

- G. PERG is amended in accordance with Annex N. The general guidance in PERG does not form part of the Handbook.

Notes

- H. 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

- I. 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

- J. This instrument may be cited as the Alternative Investment Fund Managers Directive Instrument 2013.
- K. 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
[date]

Annex A**Making the Investment Funds sourcebook (FUND)**

Note to reader: The amendments proposed in this Annex are based on the version of FUND proposed in CP 12/32 (Implementation of the Alternative Investment Fund Managers Directive)

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

In FUND 1 insert the following new sections. The text is not underlined.

1 Introduction [To follow]**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.

Type of firm	Applicable chapters
<i>full scope UK AIFM of an unauthorised AIF</i>	Chapters 1, 3 and 10
<i>full scope UK AIFM of an authorised AIF</i>	Chapters 1, 3 and 10
<i>full scope UK AIFM of an EEA AIF</i>	Chapters 1, 3 and 10
<i>full scope UK AIFM of a non-EEA AIF</i>	Chapters 1, 3 and 10
<i>small authorised UK AIFM of an authorised AIF</i>	Chapter 1, 3 and Appendix 1
<i>small authorised UK AIFM of an unauthorised AIF</i>	Chapter 1
<i>incoming EEA AIFM branch of a UK AIF</i>	Chapters 1, 3 and 10
<i>depositary of an AIF managed by a full scope UK AIFM or a small authorised UK AIFM</i>	Chapter 1, 3 and Appendix 1

- (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 A *rule* in the *Handbook* which conflicts with either a *rule* which transposes *AIFMD* or a provision in the *AIFMD level 2 regulation* is modified to the extent necessary to be compatible with European law.

Interaction between the investment funds sourcebook (*FUND*) and the collective investment scheme sourcebook (*COLL*)

- 1.1.3 G A *full scope UK AIFM* of an *authorised AIF* and a *small authorised UK AIFM* of an *authorised AIF* will be subject to the requirements in both *FUND* and *COLL*. The effect of *FUND* 1.1.2R is that if a *rule* in *COLL* which is applicable to a *UK AIFM*, an *ICVC* that is an *AIF*, or a *UK depositary* of an *AIF* conflicts with either a *rule* in *FUND* which transposes *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 G *FUND* is structured as follows:

- (1) *FUND* 1 sets out the broad application of *FUND* and describes the types of *fund manager* to which *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 G The *UK* regulatory regime provides that an *undertaking* which manages an

AIF or UCITS in the United Kingdom 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 G An *authorised person* that *operates a collective investment scheme* in the *United Kingdom* and falls entirely outside the scope of AIFMD or the UCITS Directive will be a *residual CIS operator*.

AIFMs

- 1.3.3 G (1) 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:
- (a) a *full scope UK AIFM*;
 - (b) a *small authorised UK AIFM* of an *authorised AIF*; and
 - (c) a *small authorised UK AIFM* of an *unauthorised AIF*.
- (2) An *AIFM* is permitted under FUND 1.4.3R(3) to (6) to provide certain additional services. Where an *AIFM* falling within (1) carries on those services it is also an *AIFM investment firm* and subject to additional requirements in respect of those services.

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*.

Small authorised UK AIFM and registered 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 *United Kingdom* the regulatory regime provides that a *small*

AIFM with a registered office in the *United Kingdom* may be either:

- (a) a *small registered UK AIFM*; or
 - (b) a *small authorised UK AIFM*.
- (3) A *small registered UK AIFM* will not be carrying on a *regulated activity* in respect of its activities as an *AIFM*. Under [regulation 12] of the *AIFMD UK Regulation* in order for a *small AIFM* to be included on the *small AIFM* register it must:
- (a) have a registered office in the *United Kingdom*;
 - (b) not be the *AIFM* of any other *AIF*;
 - (c) be internally managed; and
 - (d) be a *body corporate* that is not a *collective investment scheme*.
- (4) 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 key difference is that a *small authorised UK AIFM* which manages an *authorised AIF* will be subject to the requirements in *FUND 3* and *COLL*, whereas a *small authorised UK AIFM* of an *unauthorised AIF* will not be subject to either *FUND 3* or *COLL*.
- (5) A *small registered UK AIFM* or a *small authorised UK AIFM* may also opt in to the full requirements in *AIFMD*. In the event that either a *small registered UK AIFM* or a *small authorised UK AIFM* opts in to *AIFMD* it will become a *full scope UK AIFM*.

1.4 AIFM business restrictions

Single AIFM

- 1.4.1 R A *UK AIFM* must ensure that for each *AIF* it is appointed to manage, it is the only *AIFM* of that *AIF*.

[**Note:** article 5 of *AIFMD*]

Internally managed AIFs

- 1.4.2 R An *internally managed AIF* 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* or a *small authorised UK AIFM* of an *authorised AIF* must not engage in any activities other than:
- (1) *AIFM management functions* in respect of the *AIFs* it manages;
 - (2) the additional management of *UCITS* 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 the management of 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 6(4) of *AIFMD*]
- 1.4.4 R An external *AIFM* that is a *full scope UK AIFM* or a *small authorised UK AIFM* of an *authorised AIF* must not provide:
- (1) only the services referred to in *FUND 1.4.3R(3)* to (6); or
 - (2) only the services referred to 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* referred to in *FUND 1.4.6G(2)*; or
 - (4) the *AIFM investment management function* referred to in point 1(a) (portfolio management) of Annex I of *AIFMD* without also providing the *AIFM investment management function* referred to 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* or *small authorised UK AIFM* of an *authorised AIF* 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 their authorisation as an *AIFM*. However, in order 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) they must

have a *Part 4A* permission to *manage investments*.

AIFM management functions

1.4.6 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 services necessary to meet the fiduciary duties of the *AIFM*, facilities management, real estate administration activities, advice to *undertakings* on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of *undertakings* and 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]

Amend the following as shown.

3. Requirements for managers of alternative investment funds

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.

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

3.2 Investor information

Application

3.2.1 R This section applies to:

(1) a *full scope UK AIFM* of:

(1) a *UK AIF*;

(a)

(2) an *EEA AIF*; and

(b)

(3) a *non-EEA AIF*; and

(c)

(2) a small authorised UK AIFM of an authorised 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, in accordance with the *instrument constituting the fund*, the following information before they invest in the *AIF*, as well as any material changes to it:

...

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

...

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

...

3.3 Annual report of an AIF

Application

3.3.1 R (1) This section applies to a *full scope UK AIFM* of:

(1) a *UK AIF*;

(a)

(2) an *EEA AIF*; and

(b)

(3) a *non-EEA AIF marketed in the United Kingdom*.

(c)

- (2) With the exception of FUND 3.3.5R(5) and (6), this section also applies to a small authorised UK AIFM of an authorised AIF.

...

3.4 Reporting obligations to the FCA

Application

- 3.4.1 R This section applies to:

- (1) a full scope UK AIFM of:
- (1) a UK AIF;
 - (a)
 - (2) an EEA AIF; and
 - (b)
 - (3) a non-EEA AIF; and
 - (c)
- (2) a small authorised UK AIFM of an authorised AIF.

...

- 3.4.4 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:

...

3.6 Liquidity

Application

- 3.6.1 R This section applies to:

- (1) a full scope UK AIFM of:
- (1) a UK AIF;
 - (a)
 - (2) an EEA AIF; and
 - (b)
 - (3) a non-EEA AIF; and
 - (c)
- (2) a small authorised UK AIFM of an authorised AIF.

...

3.7 Risk management

Application

3.7.1 R This section applies to:

- (1) a *full scope UK AIFM* of:
 - (1) a *UK AIF*;
 - (a)
 - (2) an *EEA AIF*; and
 - (b)
 - (3) a *non-EEA AIF*; and
 - (c)
- (2) a small authorised UK AIFM of an authorised AIF.

...

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 *United Kingdom*; and
 - (c) a *non-EEA AIF*; and
- (2) an *incoming EEA AIFM branch* which manages or *markets* a *UK AIF*; and
- (3) a small authorised UK AIFM of an authorised AIF.

...

3.9 Valuation

Application

3.9.1 R This section applies to:

- (1) a full scope UK AIFM of:
 - (1) a UK AIF;
 - (a)
 - (2) an EEA AIF; and
 - (b)
 - (3) a non-EEA AIF; and
 - (c)
- (2) a small authorised UK AIFM of an authorised AIF.

...

3.10 Delegation

Application

3.10.1 R This section applies to:

- (1) a full scope UK AIFM of:
 - (1) a UK AIF;
 - (a)
 - (2) an EEA AIF; and
 - (b)
 - (3) a non-EEA AIF; and
 - (c)
- (2) a small authorised UK AIFM of an authorised 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*]

...

3.11 Depositaries

Application

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

3.11.2 R This table belongs to *FUND 3.11.1R*.

<i>Rule</i>	<i>Full scope UK AIFM of a UK AIF or an EEA AIF</i>	<i>Small authorised AIFM of an authorised AIF</i>	<i>Full scope UK AIFM of a non-EEA AIF which is marketed in the UK</i>	<i>UK depositary of a UK AIF managed by a full scope UK AIFM or an EEA AIFM</i>	<i>UK depositary of an authorised AIF managed by a small authorised UK AIFM</i>	<i>UK depositary of a non-EEA AIF</i>
3.11.3R	x	<u>x</u>				
3.11.4R	x	<u>x</u>		x	<u>x</u>	
3.11.6R	x	<u>x</u>				
3.11.8R				x	<u>x</u>	
3.11.9R	x	<u>x</u>				
3.11.10R	x	<u>x</u>				
3.11.11R	x	<u>x</u>				
3.11.13R				x	<u>x</u>	
3.11.15R	x	<u>x</u>				
3.11.16R	x	<u>x</u>		x	<u>x</u>	
3.11.17R				x	<u>x</u>	x
3.11.18R				x	<u>x</u>	x
3.11.20R				x	<u>x</u>	x
3.11.21R				x	<u>x</u>	
3.11.22R				x	<u>x</u>	x
3.11.23R				x	<u>x</u>	
3.11.25R				x	<u>x</u>	

3.11.26R				x	<u>x</u>	
3.11.29R				x	<u>x</u>	
3.11.30R			x			
Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.						

...

3.11.17 R A *depositary* must ensure that the *AIF*'s cash flows are properly monitored and that:

...

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

...

(b) at:

- (i) ~~an entity referred to CASS 7.4.1R(1) to (3) (Depositing client money)~~ 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 that such 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

...

3.12 Marketing in the home Member State of the AIFM

Application

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

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

Marketing application

3.12.2 D In accordance with regulation 56 (Marketing by authorised AIFMs) of the

AIFMD UK regulation, a full scope UK AIFM may apply to market in the United Kingdom a UK AIF or EEA AIF it manages by submitting a notice to the FCA in the form set out in FUND 3 Annex 1D.

...

After FUND 9 insert the following new chapter. The text is not underlined.

10 Operating on a cross-border basis [To follow]

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 *non-EEA AIFM* that is not a *small AIFM*; and
 - (d) a *non-EEA AIFM* that is a *small AIFM*.
- (2) The activities to which this chapter relates are the management and *marketing* on a cross border basis, into or from the *United Kingdom* 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 *United Kingdom*.

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 in relation to third country *AIFs* and *AIFMs* (i.e. in relation to *non-EEA AIFs* and *non-EEA AIFMs*).
- (2) In accordance 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*.
- (3) 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 a *non-EEA AIF*;
 - (b) a *full scope EEA AIFM* of 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 *United Kingdom* (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 in relation to the use of the management passport by a *full scope UK AIFM* can be found 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* (*SUP 13.3.2G*);
 - (2) *guidance* on the conditions for providing *cross-border services* to manage an *AIF* (*SUP 13.4.2G*);
 - (3) the *notice of intention* that a *full scope UK AIFM* must submit to establish a *branch* (*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* (*SUP 13 Annex 8AR*);
 - (5) *guidance* in relation to changes to *branches* (*SUP 13.6.9CG*); and
 - (6) *guidance* in relation to changes to *cross-border services* to manage an *AIF* (*SUP 13.7.13G*).
- Management passport for full scope EEA AIFMs
- 10.2.3 G Information in relation to the use of the management passport by a *full scope EEA AIF* can be found 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* (*SUP 13A.4.1G*);
 - (2) *guidance* on the conditions for providing *cross-border services* to

- manage an *AIF* (*SUP 13A.5.3G*);
- (3) *guidance* on the provisions of the *Handbook* 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* in relation to changes to *branches* (*SUP 14.2.15G* and *14.2.16G*); and
 - (6) *guidance* in relation to changes to *cross-border services* to manage an *AIF* (*SUP 14.3.8G* and *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 *United Kingdom*; 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 *United Kingdom*.

Marketing passport for full scope UK AIFMs

- 10.3.2 G Information in relation to the use of the *marketing passport* by a *full scope UK AIFM* can be found 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* (*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* in relation to changes to *cross-border services to market an AIF* (*SUP 13.7.14G*).

Marketing passport for full scope EEA AIFMs

- 10.3.3 G Information in relation to the use of the *marketing* passport by a *full scope EEA AIFM* can be found 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* (*SUP 13A.5.3G*); and
 - (2) *guidance* in relation to changes to *cross-border services to market an AIF* (*SUP 14.3.9G* and *SUP 14.3.10G*).

- 10.3.4 G In accordance with article 32(5) of *AIFMD* arrangements referred to in point (h) of Annex IV of *AIFMD* for the *marketing of AIFs* 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 *United Kingdom* 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).

Further guidance on marketing an AIF

- 10.3.5 G Further guidance on marketing an *AIF* can be found in *PERG 8.37* (*AIFMD Marketing*), which includes *guidance* on:
- (1) the circumstances in which a *person* markets an *AIF* in accordance with the *AIFMD UK regulation*; and
 - (2) the circumstances in which a *person* is allowed by the *AIFMD UK regulation* to market an *AIF*.

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*.

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 articles 21 (Depositaries) and 22 (Annual

- reporting); and
- (2) 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 at least 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 other sourcebooks 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 *United Kingdom* a *non-EEA AIF* that it manages, the *AIFM* must comply with the requirements set out in *FUND 10.5.3G* to *10.5.5G* (Article 36 register).

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 *United Kingdom*:
- (1) a *full scope UK AIFM* of a *non-EEA AIF*;
- (2) a *full scope EEA AIFM* of a *non-EEA AIF*;
- (3) a *non-EEA AIFM* that is not a *small AIFM* of:
- (a) a *UK AIF*;
- (b) an *EEA AIF*; and
- (c) a *non-EEA AIF*; and
- (4) a *non-EEA AIFM* that is a *small AIFM* of:
- (a) a *UK AIF*;
- (b) an *EEA AIF*; and
- (c) a *non-EEA AIF*.

National private placement registers

- 10.5.2 G *AIFMD permits EEA States to allow the marketing in their territory only of non-EEA AIFs managed from an EEA State and AIFs managed from a non-EEA State, subject to certain conditions being met. This has been given effect in the United Kingdom by [Part 8 (Marketing)] of the AIFMD UK regulation. In accordance with these provisions, the FCA is required to maintain three registers, known as national private placement registers, which contain details of the AIFs that may be marketed in the United Kingdom. The table below summarises the types of AIF managed by the type of AIFM that can be marketed in the United Kingdom in accordance with these provisions and the relevant national private placement register for those AIFs.*

Type of AIF	Type of AIFM	Register
<i>non-EEA AIF</i>	<i>full scope UK AIFM</i>	Article 36 register
<i>non-EEA AIF</i>	<i>full scope EEA AIFM</i>	Article 36 register
<i>UK AIF</i> <i>EEA AIF</i> <i>Non-EEA AIF</i>	<i>non-EEA AIFM that is not a small AIFM</i>	Article 42 register
<i>UK AIF</i> <i>EEA AIF</i> <i>Non-EEA AIF</i>	<i>non-EEA AIFM that is a small AIFM</i>	Small third country AIFM register

Article 36 register

- 10.5.3 G In accordance with regulation 58 (Article 36 register) of the AIFMD UK regulation, a full scope UK AIFM and a full scope EEA AIFM may apply to market in the United Kingdom a non-EEA AIF it manages by submitting a notice to the FCA in the form set out in FUND 10 Annex 1D.
- 10.5.4 G The FCA must approve the marketing of an AIF referred to in FUND 10.5.3G and include the AIF on the Article 36 register if it appears to it that the following conditions are met:
- (1) subject to (2), the AIFM complies with the full requirements of AIFMD in respect of that AIF;
 - (2) the AIFM is not required to comply with relevant provisions relating to article 21 (Depositaries) of AIFMD provided the AIFM:
 - (a) ensures that an entity, other than the AIFM, is appointed to carry out the duties in article 21(7) to (9) of AIFMD; and
 - (b) informs the FCA about the identity of 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 in order 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 FATF.
- 10.5.5 G (1) As a result, if approval has been given by the *FCA* for a *non-EEA AIF* managed by a *full scope UK AIFM* to be included on the Article 36 register, the *AIFM* is required to comply with:
- (a) all of *FUND 3* except certain sections of *FUND 3.11 (Depositaries)* (as set out in *FUND 3.11.30R (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 other sourcebooks of the *FCA Handbook* as are applicable to a *full scope UK AIFM* of a *UK AIF*.
- (2) A *full scope UK AIFM* managing a *non-EEA AIF* 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*. In particular, such 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 3.11.30R (AIFM of a non-EEA AIF)*).

Article 42 register

- 10.5.6 G In accordance with regulation 60 (Article 42 register) of the *AIFMD UK regulation*, a *non-EEA AIFM* that is not a *small AIFM* may apply to market in the *United Kingdom* an *AIF* it manages by submitting a notice to the *FCA* in the form set out in *FUND 10 Annex 2D*.
- 10.5.7 G The *FCA* must approve the marketing of an *AIF* referred to in *FUND 10.5.6G* and include the *AIF* on the Article 42 register if it appears to it that the following conditions are met:
- (1) the *AIF* has a single *AIFM*;
- (2) the *AIFM* is a legal person;
- (3) the *AIFM* complies with the transparency provisions in articles 22 (Annual report), 23 (Disclosures to investors) and 24 (Reporting obligations to competent authorities) of *AIFMD*;
- (4) if applicable, the *AIFM* complies with Part 7 (Private equity) of the

- AIFMD UK regulation;*
- (5) 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 country where:
 - (a) the *non-EEA AIFM* is *established*; and
 - (b) if applicable, the *non-EEA AIF* is *established*; and
 - (6) the third country where the *non-EEA AIFM* or the *non-EEA AIF* is *established* is not listed as a Non-Cooperative Country and Territory by FATF.
- 10.5.8 G As a result, if approval has been given by the *FCA* for an *AIF* to be included on the Article 42 register the *AIFM* is required:
- (1) to comply with *FUND 3.2* (Investor information), *FUND 3.3* (Annual report of an *AIF*) and *FUND 3.4* (Reporting obligations to the *FCA*);
 - (2) to report information to the *FCA* as provided for in *SUP 16.18* (AIFMD reporting); and
 - (3) (where applicable) to comply with [Part 7 (Private Equity)] of the *AIFMD UK regulation*.
- Small third country register
- 10.5.9 G In accordance with regulation 59 (AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a *non-EEA AIFM* that is a *small AIFM* may apply to market in the *United Kingdom* an *AIF* it manages by submitting a notice to the *FCA* in the form set out in *FUND 10 Annex 3D*.
- 10.5.10 G The *FCA* must approve the marketing of an *AIF* referred to in *FUND 10.5.9G* and include the *AIF* on the small third country register if it appears to it that the following conditions are met:
- (1) the *AIF* has a single *AIFM*;
 - (2) the *AIFM* is a legal person; and
 - (3) the *AIFM* is a *non-EEA AIFM* that is a *small AIFM*.
- 10.5.11 G As a result, if approval has been given by the *FCA* for an *AIF* to be included on the small third country AIFM register the *AIFM* is required to report information to the *FCA* as provided for in *SUP 16.18* (AIFMD reporting).
- 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), which includes *guidance* on:

- (1) the circumstances in which a *person* markets an *AIF* in accordance with the *AIFMD UK regulation*; and
- (2) the circumstances in which a *person* is allowed by the *AIFMD UK regulation* to market an *AIF*.

10 Annex 1 National private placement register application – Article 36 register

- D 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:

AIFMD – National private placement register application – Article 36 register - FUND Annex 1D

10 Annex 2 National private placement register application – Article 42 register

- D 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:

AIFMD – National private placement register application – Article 42 register - FUND Annex 2D

10 Annex 3 National private placement register application – small third country AIFM register

- D 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:

AIFMD – National private placement register application – Small third country AIFM register - FUND Annex 3D

Insert the following new appendix in FUND. The text is not underlined.

Appendix 1 AIFMD level 2 regulation applicable to a small authorised UK AIFM and a depositary of an authorised AIF

1.1 Application

- 1.1.1 R This appendix applies to:
- (1) a *small authorised UK AIFM* of an *authorised AIF*; and
 - (2) a *depositary* of a *small authorised UK AIFM* of an *authorised AIF*.

1.2 Purpose

- 1.2.1 G The purpose of this appendix is to apply those articles of the *AIFMD level 2 regulation* set out in FUND App 1 1.4 to a *small authorised UK AIFM* of an *authorised AIF* and a *depositary* of an *authorised AIF* managed by a *small authorised UK AIFM*.
- 1.2.2 G The following articles of the *AIFMD level 2 regulation* apply directly to a *small authorised UK AIFM* under European Union law:
- (1) articles [1 (Definitions)] to [5 (Information to be provided as part of registration)];
 - (2) article [110(1) and (6) (Reporting to competent authorities)]; and
 - (3) article [117 (Entry into force)].

The other provisions in the *AIFMD level 2 regulation* do not apply directly to a *small authorised UK AIFM* under European Union law; however, the *FCA* applies those provisions set out in FUND App 1 1.4 as *rules*.

- 1.2.3 G None of the *AIFMD level 2 regulation* applies directly to a *depositary* of an *authorised AIF* managed by a *small authorised UK AIFM* under European Union law; however, the *FCA* applies those provisions set out in FUND App 1 1.4 as *rules*.

1.3 Limitations on FCA rule making powers

- 1.3.1 G (1) Regulation [21 (Application of FCA rules to small authorised UK AIFMs managing an authorised AIF)] of the *AIFMD UK regulation* specifies that a *rule* which has the same effect as a provision in the *AIFMD level 2 regulation* in relation to the following does not apply to a *small authorised UK AIFM* in respect of its management of an *authorised AIF*:
- (a) specifying the conditions under which the *AIFM* shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of an *AIF* as set out in article 20.3 of *AIFMD*; or
 - (b) supplementing articles 22 to 24 (transparency provisions).

- (2) Therefore the *FCA* has not applied the following articles of the *AIFMD level 2 regulation* to a *small authorised UK AIFM* of an *authorised AIF*:
- (a) article [82 (Letter-box entity and AIFM no longer considered to be managing an AIF)];
 - (b) articles [103 (General principles for the annual report) to [109 (Regular disclosures to investors)]; and
 - (c) article [110(2) to (5) and (7) (Reporting to competent authorities)]; and
 - (d) article [111 (Use of leverage on a ‘substantial basis’)].

1.4 Applicable provisions of AIFMD level 2 regulation

- 1.4.1 R The articles of the *AIFMD level 2 regulation* specified to apply as *rules* in the table below apply as *rules* in the form set out in the *AIFMD level 2 regulation* as of 22 July 2013 to:
- (1) a *small authorised UK AIFM* of an *authorised AIF* in the same way in which they are applicable to a *full scope UK AIFM*; and
 - (2) a *depositary* of an *authorised AIF* managed by a *small authorised UK AIFM* in the same way in which they are applicable to a *depositary* of a *UK AIF* managed by *full scope UK AIFM*.

Article	Title	Application to a small authorised UK AIFM	Application to a depositary
1	Definitions	Directly applicable	Not applicable
2	Calculation of the total value of assets under management	Directly applicable	Not applicable
3	On-going monitoring of assets under management	Directly applicable	Not applicable
4	Occasional breach of the threshold	Directly applicable	Not applicable
5	Information to be provided as part of registration	Directly applicable	Not applicable
6	General provisions on the calculation of leverage	Applies as a rule	Not applicable

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7	Gross method for calculating the exposure of the AIF	Applies as a <i>rule</i>	Not applicable
8	Commitment method for calculating the exposure of an AIF	Applies as a <i>rule</i>	Not applicable
9	Methods of increasing the exposure of an AIF	Applies as a <i>rule</i>	Not applicable
10	Conversion methodologies for derivative instruments	Applies as a <i>rule</i>	Not applicable
11	Duration netting rules	Applies as a <i>rule</i>	Not applicable
12	Professional liability risks	Applies as a <i>rule</i>	Not applicable
13	Qualitative requirements addressing professional liability risks	Applies as a <i>rule</i>	Not applicable
14	Additional own funds	Applies as a <i>rule</i>	Not applicable
15	Professional indemnity insurance	Applies as a <i>rule</i>	Not applicable
16	General obligations for competent authorities	Not applicable	Not applicable
17	Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market	Applies as a <i>rule</i>	Not applicable
18	Due diligence	Applies as a <i>rule</i>	Not applicable
19	Due diligence when investing in assets of limited liquidity	Applies as a <i>rule</i>	Not applicable
20	Due diligence in the selection and appointment of counterparties and prime brokers	Applies as a <i>rule</i>	Not applicable
21	Acting honestly, fairly and with due skills	Applies as a <i>rule</i>	Not applicable
22	Resources	Applies as a <i>rule</i>	Not applicable
23	Fair treatment of investors in the AIF	Applies as a <i>rule</i>	Not applicable

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24	Inducements	Applies as a <i>rule</i>	Not applicable
25	Effective employment of resources and procedures – handling of orders	Applies as a <i>rule</i>	Not applicable
26	Reporting obligations in respect of execution of subscription and redemption orders	Applies as a <i>rule</i>	Not applicable
27	Execution of decisions to deal on behalf of the managed AIF	Applies as a <i>rule</i>	Not applicable
28	Placing orders to deal on behalf of AIFs with other entities for execution	Applies as a <i>rule</i>	Not applicable
29	Aggregation and allocation of trading orders	Applies as a <i>rule</i>	Not applicable
30	Types of conflicts of interest	Applies as a <i>rule</i>	Not applicable
31	Conflicts of interest policy	Applies as a <i>rule</i>	Not applicable
32	Conflicts of interest related to the redemption of investments	Applies as a <i>rule</i>	Not applicable
33	Procedures and measures preventing or managing conflicts of interest	Applies as a <i>rule</i>	Not applicable
34	Managing conflicts of interest	Applies as a <i>rule</i>	Not applicable
35	Monitoring conflicts of interest	Applies as a <i>rule</i>	Not applicable
36	Disclosure of conflicts of interest	Applies as a <i>rule</i>	Not applicable
37	Strategies for the exercise of voting rights	Applies as a <i>rule</i>	Not applicable
38	Risk management systems	Applies as a <i>rule</i>	Not applicable
39	Permanent risk management function	Applies as a <i>rule</i>	Not applicable
40	Risk management policy	Applies as a <i>rule</i>	Not applicable

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41	Assessment, monitoring and review of the risk management systems	Applies as a <i>rule</i>	Not applicable
42	Functional and hierarchical separation of the risk management function	Applies as a <i>rule</i>	Not applicable
43	Safeguards against conflicts of interest	Applies as a <i>rule</i>	Not applicable
44	Risk limits	Applies as a <i>rule</i>	Not applicable
45	Risk measurement and management	Applies as a <i>rule</i>	Not applicable
46	Liquidity management system and procedures	Applies as a <i>rule</i>	Not applicable
47	Monitoring and managing liquidity risk	Applies as a <i>rule</i>	Not applicable
48	Liquidity management limits and stress tests	Applies as a <i>rule</i>	Not applicable
49	Alignment of investment strategy, liquidity profile and redemption policy	Applies as a <i>rule</i>	Not applicable
50	Definitions	Applies as a <i>rule</i>	Not applicable
51	Requirements for retained interest	Applies as a <i>rule</i>	Not applicable
52	Qualitative requirements concerning sponsors and originators	Applies as a <i>rule</i>	Not applicable
53	Qualitative requirements concerning AIFMs exposed to securitisations	Applies as a <i>rule</i>	Not applicable
54	Corrective action	Applies as a <i>rule</i>	Not applicable
55	Grandfathering clause	Applies as a <i>rule</i>	Not applicable
56	Interpretation	Applies as a <i>rule</i>	Not applicable
57	General requirements	Applies as a <i>rule</i>	Not applicable

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58	Electronic data processing	Applies as a <i>rule</i>	Not applicable
59	Accounting procedures	Applies as a <i>rule</i>	Not applicable
60	Control by the governing body, senior management and supervisory function	Applies as a <i>rule</i>	Not applicable
61	Permanent compliance function	Applies as a <i>rule</i>	Not applicable
62	Permanent internal audit function	Applies as a <i>rule</i>	Not applicable
63	Personal transactions	Applies as a <i>rule</i>	Not applicable
64	Recording of portfolio transactions	Applies as a <i>rule</i>	Not applicable
65	Recording of subscription and redemption orders	Applies as a <i>rule</i>	Not applicable
66	Recordkeeping requirements	Applies as a <i>rule</i>	Not applicable
67	Policies and procedures for the valuation of the assets of the AIF	Applies as a <i>rule</i>	Not applicable
68	Use of models to value assets	Applies as a <i>rule</i>	Not applicable
69	Consistent application of valuation policies and procedures	Applies as a <i>rule</i>	Not applicable
70	Periodic review of valuation policies and procedures	Applies as a <i>rule</i>	Not applicable
71	Review of individual values of assets	Applies as a <i>rule</i>	Not applicable
72	Calculation of the net asset value per unit or share	Applies as a <i>rule</i>	Not applicable
73	Professional guarantees	Applies as a <i>rule</i>	Not applicable
74	Frequency of valuation of assets held by open-ended AIFs	Applies as a <i>rule</i>	Not applicable

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75	General principles	Applies as a <i>rule</i>	Not applicable
76	Objective reasons for delegation	Applies as a <i>rule</i>	Not applicable
77	Features of the delegate	Applies as a <i>rule</i>	Not applicable
78	Delegation of portfolio or risk management	Applies as a <i>rule</i>	Not applicable
79	Effective supervision	Applies as a <i>rule</i>	Not applicable
80	Conflicts of interest	Applies as a <i>rule</i>	Not applicable
81	Consent and notification of sub-delegation	Applies as a <i>rule</i>	Not applicable
82	Letter-box entity and AIFM no longer considered to be managing an AIF	Not applicable	Not applicable
83	Contractual particulars	Applies as a <i>rule</i>	Applies as a <i>rule</i>
84	Criteria for assessing prudential regulation and supervision applicable to a depositary in a third country	Not applicable	Not applicable
85	Cash monitoring – general requirements	Applies as a <i>rule</i>	Not applicable
86	Monitoring of the AIF's cash flows	Not applicable	Applies as a <i>rule</i>
87	Duties regarding subscriptions	Applies as a <i>rule</i>	Not applicable
88	Financial instruments to be held in custody	Not applicable	Applies as a <i>rule</i>
89	Safekeeping duties with regard to assets held in custody	Not applicable	Applies as a <i>rule</i>
90	Safekeeping duties regarding ownership verification and record keeping	90(1) to (3) applies as a <i>rule</i> 90(4) and (5) are not	90(2) to (5) applies as a <i>rule</i> 90(1) is not

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		applicable	applicable
91	Reporting obligations for prime brokers	Applies as a <i>rule</i>	Not applicable
92	Oversight duties – general requirements	92(2) and (4) applies as a <i>rule</i> 92(1) and (3) are not applicable	92(1) to (3) applies as a <i>rule</i> 92(4) is not applicable
93	Duties regarding subscription and redemptions	Not applicable	Applies as a <i>rule</i>
94	Duties regarding the valuation of shares/units	Not applicable	Applies as a <i>rule</i>
95	Duties regarding the carrying out of the AIFM's instructions	Not applicable	Applies as a <i>rule</i>
96	Duties regarding the timely settlement of transactions	Not applicable	Applies as a <i>rule</i>
97	Duties related to the AIF's income distribution	97(1)(b) applies as a <i>rule</i> 97(1)(a), (1)(c) and (2) are not applicable	Applies as a <i>rule</i>
98	Due diligence	Not applicable	Applies as a <i>rule</i>
99	Segregation obligation	Not applicable	Applies as a <i>rule</i>
100	Loss of a financial instrument held in custody	Applies as a <i>rule</i>	100(1) and (3) to (5) applies as a <i>rule</i> 100(2) is not applicable
101	Liability discharge under article 21(12) of Directive 2011/61/EU	Not applicable	Applies as a <i>rule</i>
102	Objective reasons for the depositary to contract a discharge of liability	Not applicable	Applies as a <i>rule</i>

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103	General principles for the annual report	Not applicable	Not applicable
104	Content and format of the balance sheet or statement of assets and liabilities and of the income and expenditure account	Not applicable	Not applicable
105	Report on the activities of the financial year	Not applicable	Not applicable
106	Material changes	Not applicable	Not applicable
107	Remuneration disclosure	Not applicable	Not applicable
108	Periodic disclosure to investors	Not applicable	Not applicable
109	Regular disclosure to investors	Not applicable	Not applicable
110	Reporting to competent authorities	110(1) and (6) are directly applicable 110(2) to (5) and (7) are not applicable	Not applicable
111	Use of leverage on a ‘substantial basis’	Not applicable	Not applicable
112	Restrictions on the management of AIFs	Not applicable	Not applicable
113	General requirements	Not applicable	Not applicable
114	Mechanisms, instruments and procedures	Not applicable	Not applicable
115	Data protection	Not applicable	Not applicable
116	Exchange of information on the potential systemic consequences of AIFM activity	Not applicable	Not applicable
117	Entry into force	Directly applicable	Not applicable
[Note: Articles of the <i>AIFMD level 2 regulation</i> marked as “Directly applicable” are shown for information only.]			

Insert the following schedules. The text is all new and is not underlined

TP1 Transitional Provisions

TP 1.1

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 4 Powers exercised

[*to follow*]

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the rules in *FUND* contravention of which 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 5.2 G

1. Actions for damages: Investment Funds sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action section 138D		
			For private person?	Remov ed	For other person
All rules in <i>FUND</i>			Yes	No	No

Schedule 6 Rules that can be waived

[to follow]

Annex B**Amendments to the Glossary of definitions**

Note to reader: The amendments proposed in this Annex are based on the version of the glossary proposed in CP 12/32 (Implementation of the Alternative Investment Fund Managers Directive)

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.

AIFM qualifier an *EEA AIFM* which is *marketing*, or has *marketed*, an *AIF* in the *United Kingdom* by virtue of:

- (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*.

AIFMD host state requirements the *rules* in the *handbook* which transpose 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*, which are:

- (a) *FUND 3.8*;
- (b) *SYSC 4.1.2CR*;
- (c) *SYSC 10.1.22R* to *SYSC 10.1.26R*;
- (d) *COBS 2.1.1R*; and
- (e) *COBS 2.1.4R*.

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 is not a *collective investment scheme*.

<i>ESMA AIFMD Key Concepts Guidelines</i>	<i>ESMA's guidelines on key concepts of the AIFMD</i> (Document/...)
<i>full scope EEA AIFM</i>	an <i>EEA AIFM</i> which is authorised by its <i>Home State</i> in accordance with article 6(1) of <i>AIFMD</i> .
<i>incoming EEA AIFM</i>	an <i>incoming EEA firm</i> which is an <i>AIFM</i> and exercising its rights under <i>AIFMD</i> .
<i>internally managed corporate AIF</i>	a <i>closed-ended corporate AIF</i> which is:
	(a) an <i>internally managed AIF</i> ; or
	(b) a <i>small authorised UK AIFM</i> where the legal form of the <i>UK AIF</i> permits internal management and where the <i>AIF</i> 's governing body chooses not to appoint an external <i>AIFM</i> .
<i>residual CIS operator</i>	a <i>firm</i> with a <i>Part 4A permission</i> to carry on the activity specified in article 51ZE of the <i>Regulated Activities Order</i> .
<i>small AIFM</i>	an <i>AIFM</i> which meets the conditions in regulation [11] (meaning of small AIFM) of the <i>AIFMD UK regulation</i> .
<i>small authorised UK AIFM</i>	a <i>UK AIFM</i> which:
	(a) is a <i>small AIFM</i> ; and
	(b) has not opted in to <i>AIFMD</i> in accordance with article 3(4) of <i>AIFMD</i> to become a <i>full scope UK AIFM</i> .
<i>small registered UK AIFM</i>	a <i>small AIFM</i> that is registered by the <i>FCA</i> in accordance with regulation [12] of the <i>AIFMD UK regulation</i> .
<i>supervisory authority</i>	(1) (in relation to a <i>non-EEA AIF</i>) the national authority or authorities of the <i>non-EEA State</i> empowered by law or regulation to supervise <i>AIFs</i> in that <i>non-EEA State</i> . [Note: article 4(1)(al) of <i>AIFMD</i>]
	(2) (in relation to a <i>non-EEA AIFM</i>) the national authority or authorities of the <i>non-EEA State</i> empowered by law or regulation to supervise <i>AIFMs</i> in that <i>non-EEA State</i> . [Note: article 4(1)(am) of <i>AIFMD</i>]
<i>unauthorised fund</i>	a <i>fund</i> which is not an <i>authorised fund</i> .
<i>UK depositary</i>	a <i>depositary</i> that is <i>established</i> in the <i>United Kingdom</i> .

Amend the following definitions as shown.

* Indicates a definition which has been amended from the version consulted on in CP12/32 (*Implementation of the Alternative Investment Fund Managers Directive*).

advising on investments

- (1) (except in SUP 10 (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:
- (a) given to the *person* in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and
 - (b) advice on the merits of his doing any of the following (whether as principal or agent):
 - (i) *buying, selling, subscribing for or underwriting a particular investment which is a security or relevant investment (that is, any designated investment, funeral plan contract, pure protection contract, general insurance contract or right to or interests in a funeral plan contract); or*
 - (ii) exercising any right conferred by such an investment to buy, sell, subscribe for or underwrite such an investment.

- (2) (in SUP 10 (Approved Persons) and APER) the regulated activity, specified in article 53 of the Regulated Activities Order (Advising on investments). For these purposes *advising on investments* includes any activities that would be included but for the exclusion in Article 72G (Managers of UCITS and AIFs) of the Regulated Activities Order.

applicable asset

...

- (b) in relation to *safeguarding and administering investments* that is not MiFID business, *acting as a depositary of a UCITS, and/or acting as a depositary of an AIF, a designated investment.*

**AIF custodial assets*

financial instruments of an AIF that ~~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 investment firm

a firm which:

- (a) is:

- (i) a *full scope UK AIFM*; or
- (ii) a small authorised UK AIFM of an *authorised AIF*; or
- (iii) an *incoming EEA AIFM branch*; and

- (b) has a Part IV permission 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* as well as those permitted by article 6(2).

*collective portfolio management firm

a firm which:

- (a) (i) is a *full scope UK AIFM* (other than an *internally managed AIF*) or a small authorised UK AIFM of an *authorised AIF*; and
 - (ii) does not have Part IV permission Part 4A permission to carry on any *regulated activities* other than those which are in connection with, or for the purpose of, the *AIF AIFs or UCITS* it manages; or
- (b) is a *UCITS firm* that has a Part IV permission Part 4A permission for *managing a UCITS*.

...

*competent authority

...

- (9) (in relation to an AIFM) means a national authority in an EEA State which is empowered by law or regulation to supervise AIFMs.
- control*
- ...
- (2A) (in relation to a *management company* carrying on *collective portfolio management* or an *AIFM*) control as defined in articles 1 and 2 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive).
- custody asset*
- (1) Other than in relation to *acting as a 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 a depositary of an AIF*, in CASS 6:
- (a) an AIF custodial asset held by a depositary in accordance with FUND [3.11.18R (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 accordance with FUND [3.11.20R (Depositary functions: safekeeping of other assets)].
- **depositary*
- (1) (except in *LR*):
- ...
- (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) (in relation to an <i>AIF managed by a full scope UK AIFM</i> (other than <i>an AIF which is an ICVC or an AUT</i>) the <i>person</i> fulfilling the function of a depositary in accordance with article 21(1) of <i>AIFMD</i> or, in respect of a <i>non-EEA AIF</i> , in accordance with <i>FUND 3.11.30R(1)(a)</i> (AIFM of a non-EEA AIF).
	...
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:
	...
	(n) <i>agreeing to carry on a regulated activity</i> in (a) to (h) and (m) (article 64);
	(o) [deleted]
	(p) <i>managing a UCITS</i> ;
	(q) <i>acting as a depositary of a UCITS</i> ;
	(r) <i>managing an AIF</i> ;
	(s) <i>acting as a depositary of an AIF</i> ;
	(t) <i>establishing, operating or winding up a collective investment scheme</i> .
* <i>EEA AIF</i>	an <i>AIF</i> , other than a <i>UK AIF</i> , which:
	(a) is authorised or registered in an <i>EEA State</i> under the applicable national law; or
	(b) an <i>AIF</i> which is not authorised or registered in an <i>EEA State</i> but has its registered office or head office in an <i>EEA state</i> ;
	<u>provided that if the <i>AIF</i> is a <i>feeder AIF</i>, the <i>master AIF</i> meets the conditions in (a) or (b).</u>
<i>establishing, operating or winding up a collective investment scheme</i>	the regulated activity, specified in article 51(1)(a) or 51ZE of the <i>Regulated Activities Order</i> (Establishing etc. a collective investment scheme), of establishing, operating or winding up a <i>collective investment scheme</i> .
* <i>full scope UK AIFM</i>	a <i>UK AIFM</i> which:

(a) ~~does not meet the conditions in regulation [x] of the AIFMD UK Regulation is not a small AIFM; or~~

(b) ~~meets the conditions in regulation 12 of the AIFMD UK Regulation is a small AIFM but has opted in to AIFMD in accordance with article 3(4) of AIFMD.~~

**funds under management*

(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, whereby derivative instruments shall be valued at their market value. including This includes funds where it the firm has delegated the management function but excluding excludes funds that it is managing as a delegate.

Host State

...

(5) (in relation to an AIFM) means either of the following:

(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]

**instrument constituting the fund*

...

(bb) (in relation to an AIF other than an ICVC or an AUT) the fund rules, instrument of incorporation or other constituting documents of such an AIF;

(c) (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, internally managed AIF, 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:

...

(Da) acting as the depositary of an AIF;

(Db) acting as the depositary of a UCITS;

...

*marketing

~~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.~~¹

marketing

(1) (in *COLL*) (in relation to marketing *units* in a *regulated collective investment scheme* in a particular country or territory):

(a) *communicating to a person* in that country or territory an invitation or inducement to become, or offer to become, a *holder* in that *regulated collective investment scheme*;

(b) giving *advice on investments* to, or arranging (bringing about) a deal in an investment for a *person* in that country or territory to become a *holder* in that *regulated collective investment scheme*.

(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.

¹ The definition of marketing was included as a new definition in CP 12/32; the amendment is now incorporated into the existing definition of marketing.

[Note: article 4(1)(x) of AIFMD]

participant firm

- (1) ... a *firm* or a *member* other than:
- (a) ... an *incoming EEA firm* which is:
- ...
- (vi) an AIFM managing an unauthorised AIF or carrying on the activities of managing investments, advising on investments, safeguarding and administering investments or arranging (bringing about) deals in investments;
- ...
- (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~~ *building society*, *collective portfolio management firm*, ~~credit union~~ *credit union*, ~~energy market participant~~ *energy market participant*, ~~friendly society~~ *friendly society*, ~~ICVC~~ *ICVC*, ~~insurer~~ *insurer*, ~~internally managed AIF~~ *media firm* *media firm*, ~~oil market participant~~ *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):

...

proprietary trading

(in SUP 10 (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 72G (Managers of UCITS and AIFs) of the

Regulated Activities Order.

<i>regulated activities</i>	(in accordance with section 22 of the <i>Act</i> (The classes of activity and categories of investment)) any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities):
	...
	(n) <i>acting as the depositary or sole director of an open-ended investment company</i> (article 51(1)(c))
	(na) <u><i>managing a UCITS</i></u> (article 51ZA);
	(nb) <u><i>acting as a depositary of a UCITS</i></u> (article 51ZB);
	(nc) <u><i>managing an AIF</i></u> (article 51ZC);
	(nd) <u><i>acting as a depositary of an AIF</i></u> (article 51ZD);
	(ne) <u><i>establishing, operating or winding up a collective investment scheme</i></u> (51ZE).
<i>safe custody asset</i>	(a) <i>in relation to MiFID business, a financial instrument; or</i>
	(b) <i>in relation to safeguarding and administering investments that is not MiFID business <u>and/or acting as a depositary of a UCITS</u>, a safe custody investment; or</i>
	(c) <u><i>in relation to acting as a depositary of an AIF, an AIF custodial asset.</i></u>
<i>securities and futures firm</i>	(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a <i>firm</i> whose <i>permitted activities</i> include <i>designated investment business</i> or <i>bidding in emissions auctions</i> , which is not an <i>authorised professional firm, bank, BIPRU investment firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>), <i>building society, collective portfolio management firm, credit union, friendly society, ICVC, insurer, internally managed AIF, media firm, service company, incoming EEA firm</i> (without a <i>top-up permission</i>), <i>incoming Treaty firm</i> (without a <i>top-up permission</i>), UCITS management company or <i>UCITS qualifier</i> (without a <i>top-up permission</i>), whose <i>permission</i> does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g) or (h):

	...
<i>sub-fund</i>	...
	(b) (in relation to a <i>collective investment scheme fund</i> that is not an <i>authorised fund</i> or an <i>EEA UCITS scheme</i>) any part of that scheme that is equivalent to (a).
<i>top-up cover</i>	cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> (which is a <i>credit institution</i> , an <i>IMD insurance intermediary</i> , an <i>IMD reinsurance intermediary</i> or , a <i>MiFID investment firm</i> , or a <i>UCITS management company</i> or an AIFM) in relation to the <i>firm's passported activities</i> and in addition to, or due to the absence of, the cover provided by the <i>firm's Home State compensation scheme</i> (see <i>COMP 14 (Participation by EEA firms)</i>)
<i>UCITS firm</i>	an <i>firm</i> which:
	(a) is a <i>management company</i> , including where in addition the firm is also the <i>operator of a collective investment scheme</i> which is not a <i>UCITS scheme</i> an AIFM ; and
	(b) does not have a <i>Part IV permission Part 4A permission</i> (or an equivalent permission from its <i>Home State regulator</i>) to carry on any <i>regulated activities</i> other than those which are in connection with, or for the purpose of, such schemes <i>managing AIFs or UCITS</i> .
* <i>UK AIF</i>	an <i>AIF</i> that is:
	(a) an <i>authorised fund</i> ; or
	(b) is not an <i>authorised fund</i> but has its registered office or head office in the <i>United Kingdom</i> ;
	<u>provided that if the AIF is a <i>feeder AIF</i>, the master AIF has its registered office or head office in an <i>EEA State</i>.</u>

Annex C**Amendments to the Principles for Businesses (PRIN)**

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

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.

...

- 3.1.1 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 unless otherwise stated.

1 Annex 1 Detailed application of SYSC

...				
Part 2	Application of the common platform requirements (SYSC 4 to 10)			
	Who?			
...				
2.6A	...			
<u>2.6B</u>	R	<u>Subject to SYSC 1 Annex 1 2.6CR, the <i>common platform requirements</i> do not apply to a <i>full scope UK AIFM</i> of an <i>unauthorised AIF</i> except for:</u>		
	(1)	<u><i>SYSC 4.1.1R to SYSC 4.1.2R;</i></u>		
	(2)	<u><i>SYSC 4.1.2BR to SYSC 4.1.2DR;</i></u>		
	(3)	<u><i>SYSC 4.2 (to the extent specified as applying in that section);</i></u>		
	(4)	<u><i>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 <i>firm</i> (including its managers and <i>employees</i>) might be used to further <i>financial crime</i>;</i></u>		
	(5)	<u><i>SYSC 6.1.4-AG;</i></u>		
	(6)	<u><i>SYSC 6.3;</i></u>		
	(7)	<u><i>SYSC 7.1.7BG;</i></u>		
	(8)	<u><i>SYSC 10.1 (to the extent specified as applying in that section); and</i></u>		
	(9)	<u><i>SYSC 10.2.</i></u>		
<u>2.6C</u>	R	<u>The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> (other than an <i>incoming EEA AIFM branch</i>) in respect of its <i>MiFID business</i> as they apply to a <i>UCITS investment firm</i> in accordance with Column A+ of Part 3.</u>		
<u>2.6D</u>	R	<u>The <i>common platform requirements</i> apply to a <i>full scope UK AIFM</i> of an <i>authorised AIF</i> and a <i>small authorised UK AIFM</i> of an <i>authorised AIF</i> in</u>		

		<u>accordance with column A++ of Part 3.</u>		
<u>2.6E</u>	G	<u>The common platform requirements apply in respect of a small authorised UK AIFM of an unauthorised AIF in accordance 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).</u>		
<u>2.6F</u>	R	<u>The common platform requirements do not apply to an incoming EEA AIFM branch in respect of its management of a UK AIF, except for:</u>		
	(1)	<u>those common platform requirements which are AIFMD host state requirements;</u>		
	(2)	<u>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</u>		
	(3)	<u>SYSC 6.3.</u>		
...				
	Where?			
	...			
<u>2.16C</u>	R	<u>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 United Kingdom.</u>		
<u>2.16D</u>	R	<u>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.</u>		
<u>2.16E</u>	R	<u>The common platform requirements apply to an AIFM investment firm in respect of its MiFID business where carried on from an establishment in the United Kingdom.</u>		
<u>2.16F</u>	R	<u>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.</u>		
...				

Part 3	Tables summarising the application of the common platform requirements to different types of firm			
	...			

<u>3.2B</u>	R	For a <u>full scope UK AIFM</u> of an <u>authorised AIF</u> and a <u>small authorised UK AIFM</u> of an <u>authorised AIF</u> , they apply in accordance with Column A++ in the table below.
...		

...				
Provision SYSC 4	COLUMN A <u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	COLUMN A+ <u>Application to a UCITS management company</u>	COLUMN A++ <u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	COLUMN B <u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 4.1.1R	Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i>	Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i>	<u>Rule but SYSC 4.1.1R(2) applies only to a BIPRU firm</u>	Rule but SYSC 4.1.1R(2) applies only to a <i>third country BIPRU firm</i>
<u>SYSC 4.1.1AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	Rule	<u>Not applicable</u>
SYSC 4.1.2R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Guidance for a <i>UCITS firm</i> ; not applicable to a <i>UCITS investment firm</i>	<u>Not applicable</u>	Guidance
SYSC 4.1.2BR	Not applicable	Rule	Rule	Not applicable
SYSC 4.1.2CR	Not applicable	Rule	Rule	Not applicable
<u>SYSC 4.1.2DR</u>	<u>Not applicable</u>	<u>Not applicable</u>	Rule	<u>Not applicable</u>
SYSC 4.1.3R	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not	<u>Not applicable</u>	Not applicable

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		applicable		
SYSC 4.1.4R	Rule	Rule	<u>Not applicable</u>	(1) and (3) Guidance (2) Rule
SYSC 4.1.4AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.5R	Rule applies only to a <i>MiFID</i> <i>investment firm</i>	Rule	<u>Not applicable</u>	Not applicable
SYSC 4.1.6R	Rule	Rule for a <i>UCITS</i> <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 4.1.7R	Rule	Rule	<u>Not applicable</u>	Guidance
SYSC 4.1.7AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.8G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 4.1.9R	Rule	Rule	<u>Not applicable</u>	Not applicable
SYSC 4.1.10R	Rule	Rule	<u>Not applicable</u>	Guidance - except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.11G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 4.1.13G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 4.1.14G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 4.2.1R	Rule	Rule	<u>Rule</u>	- UK branch of <i>non-EEA bank</i> - rule applies. - Other <i>firms</i> - Guidance
SYSC 4.2.1AG	Not applicable	Not applicable	<u>Not applicable</u>	- Guidance

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SYS C 4.2.2R	Rule	Rule	<u>Rule</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies - Other <i>firms</i> - this provision does not apply
SYS C 4.2.3G - SYS C 4.2.5G	Guidance	Guidance	<u>Guidance</u>	- UK branch of a <i>non-EEA bank</i> - Guidance - Other <i>firms</i> - these provisions do not apply
SYS C 4.2.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Not applicable</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies - Other <i>firms</i> - this provision does not apply
<u>SYS C 4.2.7R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYS C 4.2.8R</u>	<u>Not Applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYS C 4.2.9G</u>	<u>Not Applicable</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
SYS C 4.3.1R	Rule	Rule	<u>Not applicable</u>	Rule (but not applicable to <i>incoming EEA firms</i> , <i>incoming Treaty firms</i> or <i>UCITS qualifiers</i>)
SYS C 4.3.2R	Rule	Rule	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms</i> , <i>incoming Treaty firms</i> or <i>UCITS qualifiers</i>)

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SYS C 4.3.2AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYS C 4.3.3G	Guidance	Guidance	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYS C 4.4.1R	Not applicable	Not applicable	<u>Not applicable</u>	Rule applies this section only to: (1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i> ; (2) activities

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				carried on by a firm whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is: (a) an <i>oil market participant</i> ; (b) a <i>service company</i> ; (c) an <i>energy market participant</i> ; (d) a wholly-owned subsidiary of: (i) a local authority; (ii) a registered social landlord; (e) a firm with permission to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i> ; (3) an <i>incoming Treaty firm</i> , an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i> , (but only <i>SYSC 4.4.5R(2)</i> applies for these <i>firms</i>);
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				and (4) a <i>sole trader</i> , but only if he employs any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements).
SYSC 4.4.2G	Not applicable	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.3R	Not applicable	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.4G	Not applicable	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.5R	Not applicable	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.6G	Not applicable	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 5	<u>Application to a common platform firm other than to a UCITS investment firm collective portfolio</u>	<u>Application to a UCITS management company</u>	<u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	<u>Application to all other firms apart from insurers, managing agents and the Society</u>

	<u>management investment firm</u>			
SYSC 5.1.1R	Rule	Rule	<u>Not applicable</u>	Rule
SYSC 5.1.2G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.3G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 5.1.4G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.4AG	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.5G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.5AG	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.6R	Rule	Rule	<u>Guidance</u>	Guidance
SYSC 5.1.7R	Rule	Rule for a UCITS investment firm; otherwise guidance	<u>Guidance</u>	Guidance
SYSC 5.1.7AG	Not applicable	Not applicable to a UCITS investment firm; otherwise guidance	<u>Guidance</u>	Guidance
SYSC 5.1.8G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.9G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.10G	Guidance	Guidance	<u>Guidance, but not applicable in respect of the segregation of risk management functions</u>	Guidance
SYSC 5.1.11G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 5.1.12R	Rule	Rule	<u>Not applicable</u>	Guidance
SYSC 5.1.12AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 5.1.13R	Rule	Rule	<u>Not applicable</u>	Rule

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SYSC 5.1.14R	Rule	Rule	<u>Not applicable</u>	Guidance
SYSC 5.1.15G	Not applicable	Not applicable	<u>Not applicable</u>	Guidance

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	<u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	<u>Application to a UCITS management company</u>	<u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	<u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 6.1.1R	Rule	Rule	<u>Rule but only to the extent 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</u>	Rule
<u>SYSC 6.1.1AG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
SYSC 6.1.2R	Rule	Rule	<u>Not applicable</u>	Guidance
SYSC 6.1.2AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.3R	Rule	Rule	<u>Not applicable</u>	- Guidance - This provision shall be read with the following additional

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				sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account 6.1.3R and 6.1.4R as guidance."
SYSC 6.1.3AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.4R	Rule	Rule	<u>Not applicable</u>	(1) (3) and (4) Guidance (2) - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> <i>retail clients</i> or <i>professional clients</i> <i>professional clients</i> . - Guidance for all other <i>firms</i> .
SYSC 6.1.4–AG	Not applicable	Not applicable	<u>Applies to a full scope UK AIFM, not applicable for a small authorised</u>	Guidance

Appendix

			<u>UK AIFM</u>	
SYSC 6.1.4AR	Not applicable	Not applicable	<u>Not applicable</u>	Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i> .
SYSC 6.1.5R	Rule	Rule	<u>Not applicable</u>	- Guidance - " <i>investment services and activities</i> " shall be read as "financial services and activities"
SYSC 6.1.6G	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.7R	Rule	Not applicable	<u>Not applicable</u>	Not applicable
SYSC 6.2.1R	Rule	Rule	<u>Not applicable</u>	Guidance
SYSC 6.2.1AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.2.2G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 6.3.1R	Rule	Rule	<u>Rule</u>	Rule
SYSC 6.3.2G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.3R	Rule	Rule	<u>Rule</u>	Rule
SYSC 6.3.4G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.5G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.6G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.7G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 6.3.8R	Rule	Rule	<u>Rule</u>	Rule
SYSC 6.3.9R	Rule	Rule	<u>Rule</u>	Rule

SYSC 6.3.10G	Guidance	Guidance	<u>Guidance</u>	Guidance
<u>SYSC 6.3.11G</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>

Provision SYSC 7	COLUMN A <u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	COLUMN A+ <u>Application to a UCITS management company</u>	COLUMN A++ <u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	COLUMN B <u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 7.1.1G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 7.1.2R	Rule	Rule for a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 7.1.2AG	Not applicable	Not applicable to a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 7.1.2BG	Not applicable	Guidance	<u>Not applicable</u>	Not applicable
SYSC 7.1.3R	Rule	Rule for a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 7.1.4R	Rule	Rule for a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 7.1.4AG	Not applicable	Not applicable to a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance

Appendix

<i>SYS</i> C 7.1.4BG	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
<i>SYS</i> C 7.1.5R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
<i>SYS</i> C 7.1.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
<i>SYS</i> C 7.1.7R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
<i>SYS</i> C 7.1.7AG	Not applicable	Not applicable to a <i>UCITS investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
<i>SYS</i> C 7.1.7BG	Guidance applies only to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Guidance for a full scope UK AIFM of an authorised AIF, otherwise not applicable.</u>	Guidance
<i>SYS</i> C 7.1.7CG	Guidance	Guidance	<u>Guidance</u>	Guidance
<i>SYS</i> C 7.1.8G(1), (2)	(1) Guidance applies only to a <i>BIPRU firm</i> (2) Guidance	(1) Guidance for a <i>UCITS investment firm</i> ; otherwise not applicable (2) Guidance	<u>Not applicable</u>	(1) Not applicable (2) Guidance
<i>SYS</i> C 7.1.9R	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Not applicable</u>	Not applicable
<i>SYS</i> C 7.1.10R	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not	<u>Not applicable</u>	Not applicable

Appendix

		applicable		
SYSC 7.1.11R	Rule applies only to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Not applicable</u>	Not applicable
SYSC 7.1.12G	Guidance applies to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Not applicable</u>	Not applicable
SYSC 7.1.13R - 7.1.16R	Rule applies to a <i>BIPRU firm</i>	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	<u>Not applicable</u>	Not applicable
SYSC 7.1.16AG	Guidance applies to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> otherwise not applicable	<u>Not applicable</u>	Not applicable
SYSC 7.1.16BG	Guidance applies to a <i>BIPRU firm</i>	Guidance for a <i>UCITS investment firm</i> otherwise not applicable	<u>Not applicable</u>	Not applicable

Provision SYSC 8	COLUMN A <u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	COLUMN A+ <u>Application to a UCITS management company</u>	COLUMN A++ <u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	COLUMN B <u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 8.1.1R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise	<u>Not applicable</u>	Guidance

Appendix

		guidance		
SYSC 8.1.1AG	Not applicable	Not applicable to a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.2G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.3G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.4R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.5R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.5AG	Not applicable	Not applicable to a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.6R	Rule	Rule	<u>Not applicable</u>	Rule
SYSC 8.1.7R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.8R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.9R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.10R	Rule	Rule for a UCITS <i>investment firm</i> ; otherwise guidance	<u>Not applicable</u>	Guidance

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SYSC 8.1.11R	Rule	Rule for a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.11AG	Not applicable	Not applicable to a UCITS investment firm; otherwise guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.12G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 8.1.13R	Not applicable	Rule	<u>Not applicable</u>	Not applicable
SYSC 8.1.14G	Not applicable	Guidance	<u>Not applicable</u>	Not applicable
SYSC 8.2	<i>MiFID investment firms only</i>	<i>UCITS investment firms only</i>	<u>Not applicable</u>	Not applicable
SYSC 8.3	<i>MiFID investment firms only</i>	<i>UCITS investment firms only</i>	<u>Not applicable</u>	Not applicable

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 9	<u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	<u>Application to a UCITS management company</u>	<u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	<u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 9.1.1R	Rule	Rule	<u>Rule but only in respect of the requirement to arrange for orderly records to be kept of its business and internal organisation which do not relate to portfolio</u>	Rule

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			<u>transactions and subscription and redemptions orders</u>	
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i>	<u>Rule but only in respect of the records specified by the modified application of SYSC 9.1.1R</u>	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i>	<u>Not applicable</u>	Not applicable
SYSC 9.1.4G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.5G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 9.1.6G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i>	Guidance applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i>	<u>Not applicable</u>	Not applicable

Provision	Column A <u>Application to a common platform firm other than to a UCITS investment firm collective portfolio management investment firm</u>	COLUMN A+ <u>Application to a UCITS management company</u>	<u>COLUMN A++</u> <u>Application to a full scope UK AIFM of an authorised AIF and a small authorised UK AIFM of an authorised AIF</u>	Column B <u>Application to all other firms apart from insurers, managing agents and the Society</u>
SYSC 10				
SYSC 10.1.1R	Rule	Rule	<u>Rule</u>	Rule
SYSC 10.1.2G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 10.1.3R	Rule	Rule	<u>Not applicable</u>	Rule

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SYS C 10.1.4R	Rule	Rule	<u>Not applicable</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYS C 10.1.4AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYS C 10.1.5G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYS C 10.1.6R	Rule	Rule	<u>Not applicable</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS</i> 12.2 , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYS C 10.1.6AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance

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SYSC 10.1.7R	Rule	Rule	<u>Not applicable</u>	Rule
SYSC 10.1.8R	Rule	Rule	<u>Not applicable</u>	Rule
SYSC 10.1.8AR	Rule	Rule	<u>Not applicable</u>	Rule
SYSC 10.1.9G	Guidance	Guidance	<u>Not applicable</u>	Guidance
SYSC 10.1.10R	Rule	Rule	<u>Not applicable</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of <i>production of investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.11R	Rule	Rule	<u>Not applicable</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of <i>production of investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>

SYSC 10.1.11AG	Not applicable	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.12G - SYSC 10.1.15G	Guidance	Guidance for <i>SYSC 10.1.12G;</i> not applicable for <i>SYSC 10.1.13G –</i> <i>SYSC 10.1.15G</i>	<u>Guidance for <i>SYSC 10.1.12G;</i> not applicable for <i>SYSC 10.1.13G –</i> <i>SYSC 10.1.15G</i></u>	Guidance
SYSC 10.1.16R	Not applicable	Not applicable	<u>Not applicable</u>	Rule
SYSC 10.1.17R	Not applicable	Rule	<u>Not applicable</u>	Not applicable
SYSC 10.1.18G	Not applicable	Guidance	<u>Not applicable</u>	Not applicable
SYSC 10.1.19R	Not applicable	Rule	<u>Not applicable</u>	Not applicable
SYSC 10.1.20R	Not applicable	Rule	<u>Not applicable</u>	Not applicable
SYSC 10.1.21R	Not applicable	Rule	<u>Not applicable</u>	Not applicable
<u>SYSC 10.1.22R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.23R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.24R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.25R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 10.1.26R</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
SYSC 10.2.1R	Rule	Rule	<u>Rule</u>	Rule
SYSC 10.2.2R	Rule	Rule	<u>Rule</u>	Rule
SYSC 10.2.3G	Guidance	Guidance	<u>Guidance</u>	Guidance
SYSC 10.2.4R	Rule	Rule	<u>Rule</u>	Rule
SYSC 10.2.5G	Guidance	Guidance	<u>Guidance</u>	Guidance

...

7.1.2 G C A full scope UK AIFM and small authorised UK AIFM of an authorised AIF should be aware that FUND 3.7 and the AIFMD level 2 regulation (as applied by FUND App 1 1.4.1R(1) for a small authorised UK AIFM of an authorised AIF) contain further requirements in relation to risk management.

...

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), FUND 3.7 (for a full scope UK AIFM of an authorised AIF and small authorised UK AIFM of an authorised AIF) and SYSC 4.1.1R (for every other firm).
- (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 and small authorised 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

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: Coming into force
...					
2.2	<u>The changes to SYSC set out in Annex [amending SYSC] of the Alternative Investment Fund Managers Directive Instrument 2013</u>	R	<p>(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 SYSC amended by that Annex will continue to apply as they were in force as at 21 July 2013.</p> <p>(2) the conditions are: (a) the firm falls within regulation 68(1) of the AIFMD UK regulation; and (b) the firm does not have a</p>	<u>From 22 July 2013 until 21 July 2014</u>	<u>22 July 2013</u>

Appendix

			<i>Part 4A permission to manage an AIF.</i>		
<u>2.3</u>	<u>SYSC 4.2.2R to SYSC 4.2.5G, SYSC 9.1.2R and SYSC 9.1.3R</u>	R	<u>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 the provisions in column (2) in respect of its activities as an AIFM.</u>	<u>From 22 July 2013 until 31 July 2015</u>	<u>22 July 2013</u>

Annex E**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 (2) *FEES 1, FEES 2 and FEES 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

...

3.2.5 R (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part IV permission, or authorisation, registration or variation under the Payment Services Regulations or the Electronic Money Regulations, authorisation, recognition, notification or registration of an AIF or registration of a small registered UK AIFM*. Any application received by the FSA without the accompanying appropriate fee, in full and without deduction (see *FEES 3.2.1 R*), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a), or section 44, of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations or regulations 13(1) and 61(1)(a) of the AIFMD UK Regulations*. Where this is the case, the FSA will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.

...

3.2.7	R	Table of application, notification and vetting fees payable to the <i>FCA</i>		
(1) Fee payer	(2) Fee payable	Due date		
...		
(d) Applicants for an <i>authorisation order</i> for, or recognition of, a collective investment scheme	<i>FEES 3 Annex 2R, part 1 part 2</i>	On or before the application is made		
(e) The manager <i>management company</i> of a <i>scheme</i> making a notification under section 264 or section 270 of the <i>Act</i>	<i>FEES 3 Annex 2R, part 2 part 3</i>	On or before the application is made		
(ea) Applicants for approval of an <i>AIF</i> for <i>marketing in the United Kingdom other than a UK AIFM or an EEA AIFM with a branch in the United Kingdom</i>	<i>FEES 3 Annex 2R part 4</i>	<u>On or before the application is made</u>		
(eb) An applicant for registration on the register of <i>small registered UK AIFMs</i> which the <i>FCA</i> is required to maintain under regulation 12 of the <i>AIFMD UK regulation</i>	£1000	<u>On or before the application is made</u>		
...		

3 Annex Authorisation fees payable
1R

...	
Moderately complex cases	
Activity grouping	Description
...	
A.7	<u>Fund managers</u> <u>Portfolio managers</u>
A.9	Operators, trustees and depositaries of collective investment schemes, operators of personal pensions schemes and operators of stakeholder pension schemes <u>Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes</u>
...	

**3 Annex
2R**
[FCA]

Application and notification fees payable in relation to collective investment schemes				
Legislative provision	Nature and purpose of fee	Payable by	Amount of fee (£)	Umbrella factor
...
Part 2 Application fees payable for firms to be subject to <i>COLL</i>				
Regulation 12 of the <i>OEIC Regulations</i>	On application for an order declaring a <i>scheme</i> to be an <i>ICVC</i> , where the <i>scheme</i> is:	...	...	...

Section 242 of the <i>Act</i>	On application for an order declaring a <i>scheme</i> to be	...	...	...

	an <i>AUT</i> , where the <i>scheme</i> is:			

Section 272 of the <i>Act</i>	<p><u>On application for an order declaring a scheme to be an individually recognised overseas scheme</u></p> <p><u>On application for an order declaring a scheme to be recognised where the scheme is:</u></p>	An applicant	<u>14,000</u>	<u>2</u>
	<u>- an EEA AIF equivalent to a Non-UCITS retail scheme</u>		<u>1,500</u>	<u>2</u>
	<u>- an EEA AIF equivalent to a Qualified Investor Scheme</u>		<u>2,400</u>	<u>2</u>
	<u>- a non-EEA AIF equivalent to a Non-UCITS retail scheme or a Qualified Investor Scheme</u>		<u>8,000</u>	<u>2</u>
Part 3 – (notifications)				
...				
Section 270 of	On giving	The operator	600	2

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the Act	notice under section 270 of the Act			
<u>Part 4 – (Alternative Investment Funds: application fees for recording on a public register)</u>				
<u>Regulation 58 of the AIFM UK regulations</u>	<u>On application for approval for marketing in the United Kingdom of an AIF managed by an EEA AIFM which does not have a branch in the United Kingdom where that AIF is (i) a non-EEA AIF or (ii) a feeder AIF, the master AIF of which is either managed by a non-EEA AIFM or is a non-EEA AIF</u>	<u>the AIFM</u>	<u>300 per AIF</u>	<u>N/A</u>
<u>Regulation 59 of the AIFM UK regulations</u>	<u>On application for approval for marketing in the United Kingdom of an AIF managed by a non-EEA AIFM which is also a small AIFM</u>	<u>the AIFM</u>	<u>150 per AIF</u>	<u>N/A</u>
<u>Regulation 60 of the AIFM UK regulations</u>	<u>On application for approval for marketing in</u>	<u>the AIFM</u>	<u>300 per AIF</u>	<u>N/A</u>

	<u>the United Kingdom of an AIF managed by a non-EEA AIFM which is not a small AIFM</u>			
Note:	For an <i>umbrella</i> the fee is multiplied by the factor shown in the final column of the table			

...

FEES 4 Periodic fees

...

Modifications for persons becoming subject to periodic fees during the course of a financial 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:

...

4.2.11	R	1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
		Any firm (except an <u>AIFM qualifier, ICVC, or a UCITS qualifier</u>)	...	...	...

Any manager of an authorised unit trust	In relation to each unit trust the amount specified in part 1 of FEES 4 Annex 4 R	...	...
Any ACD of an ICVC	In relation to each ICVC the amount specified in part 1 of FEES 4 Annex 4R	...	...
<i>Persons who, under the constitution or founding arrangements of a <u>recognised scheme fund</u> <u>recognised under section 264 of the Act or section 270 of the Act</u>, is responsible for the management of the property held for or within the scheme</i>	In relation to each <i>recognised scheme</i> the amount specified in part 1 of FEES 4 Annex 4R		The relevant <i>scheme</i> becomes a <u>recognised collective investment scheme</u> <u>recognised scheme</u>
(i) An <u>EEA AIFM</u> which does not have a <u>branch in the United Kingdom</u> and (ii) a <u>non-EEA AIFM</u> which is not a <u>small AIFM</u>	In relation to each AIF the AIFM manages of the kind specified in part 2 of FEES 4 Annex 4R the amount specified in part 2 of FEES 4 Annex 4R	(1) Unless (2) applies, on or before 1 August, or, if later, within 30 days of the date of the invoice (2) If an event in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event	An AIF is approved for marketing in the <u>United Kingdom</u>
<u>A non-EEA AIFM</u> which is not a <u>small AIFM</u>	In relation to each AIF the AIFM manages of the kind specified in part 2 of FEES 4 Annex 4R the amount specified		An AIF is approved for marketing in the <u>United Kingdom</u>

	<u>in part 2 of FEES 4 Annex 4R</u>		
<u>A small registered UK AIFM</u>	<u>The basic fee contained in part 3 of FEES 4 Annex 4R</u>		<u>The AIFM is registered by the FCA in accordance with regulation 12 of the AIFMD UK regulation.</u>
...	

...

4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

4.3.1 R The periodic fee payable by a *firm* (except an AIFM qualifier, ICVC or a UCITS qualifier) is:

...

...

4 Annex Activity groups, tariff bases and valuation dates applicable 1R

Part 1 This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> .	
Activity group	Fee payer falls in the activity group if
...	...
A.7 Fund managers	(1) its <i>permission</i> includes <i>managing investments</i> (a <i>firm</i> falling within this category is a <i>class (1) firm</i>); ...
Portfolio managers	OR (4) its <i>permission</i> includes <i>managing an AIF</i> or <i>managing a UCITS</i> <u>Note:</u> 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	<p>(1) its <i>permission</i>:</p> <p>(a) includes one or more of the following:</p> <p><u>managing an AIFM</u>;</p> <p><u>managing a UCITS</u>;</p> <p>...</p> <p><u>acting as a depositary of an AIF</u>;</p> <p><u>acting as a depositary of a UCITS</u>;</p> <p>...</p>
...	

Part 2	
This table indicates the tariff base for each fee-block set out in Part 1.	
Activity group	Tariff base
...	
A.7	<p>FUNDS UNDER MANAGEMENT (FuM)</p> <p>...</p>
	<p>Notes on FuM</p> <p>(a) <u>Except for funds under management where the fund is an AIF, for</u> For the purposes of calculating the value of funds under management, assets means all assets that consist of or include any <i>investment</i> which is a <i>designated investment</i> or those assets in respect of which the arrangements for their management are such that the assets may consist of or include such <i>investments</i>, and either the assets have at any</p>

	<p>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.</p> <p><u>(aa) in relation to funds under management where the fund is an AIF, assets means all assets or property of any description of the fund.</u></p>
...	
A.9	<p>GROSS INCOME</p> <p><u>(1) For AIFMs (excluding internally managed AIFs), management companies, operators (including ACDs and managers of unit trusts but excluding operators of a personal pension scheme or a stakeholder pension scheme) and residual CIS operators,</u> gross income from the activity relating to fee-block A.9 is defined as:</p> <p>the amount of the annual charge on funds invested investments in the fund regulated or unregulated collective investment scheme received or receivable in the latest accounting period (this is calculated as a % of funds invested, typically 1% p.a.);</p> <p>PLUS</p> <p>the front-end or exit charge levied on sales or redemptions of <i>collective investment schemes</i> (typically 4-5% of sales/redemptions) in that same accounting period;</p>
	<p>PLUS</p> <p>any additional initial or management charges levied through a product wrapper such as an <i>ISA</i>;</p> <p>BUT EXCLUDING box management profits.</p> <p><u>(2) For depositaries (including trustees of collective investment schemes and ICVC depositaries):</u></p> <p>The amount of the annual charge levied on funds in regulated collective investment schemes on investments in funds for which they act as <i>depositary</i> (typically a % of the total funds for which they act as <i>depositary</i>).</p> <p><u>(3) 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:</u></p> <p>The amount of the charges levied on the <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> for which they act as <i>operator</i>:</p> <p>including up-front charges, fund related charges, transaction related charges and periodic charges; but excluding charges made to an investor in respect of third</p>

	<p>party suppliers; for example, charges for stock broking, borrowing, banking services and charges for arranging third party legal services, surveys or environmental screening in connection with property.</p> <p>Note: Only the gross income corresponding to <i>United Kingdom</i> business is relevant.</p> <p><u>(4) Internally managed AIFs must use a proxy for gross income relating to 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.</u></p>
...	

**4 Annex
4R Periodic fees in relation to collective investment schemes, registered AIFs and small registered UK AIFMs payable for the period 1 April 2013 to 31 March 2014**

Part 1 – Periodic fees payable				
Scheme type	Basic fee	Total funds/ sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC, AUT, Section 264 of the Act, Section 270 of the Act <u>schemes other than non-EEA AIFs</u> <u>recognised under section 272 of the Act</u></i>	580	...	...	...
<u>Section 272 of</u>	<u>2,360 [tbc]</u>	1 – 2	1	<u>2,360 [tbc]</u>

<u>the <i>Act</i></u>		3 – 6	2.5	£5,900 [tbc]
<u>Non-EEA AIFs recognised under section 272 of the <i>Act</i>, schemes formerly recognised under section 270 of the <i>Act</i> as it was in force immediately before 22 July 2013</u>		7 – 15	5	£11,800 [tbc]
		16 – 50	11	£25,960 [tbc]
		> 50	22	£51,920 [tbc]

<u>Part 2 – Periodic fees in respect of AIFs of an AIF kept on a register maintained by the FCA under the AIFMD UK regulations</u>	
<u>Kind of registered AIF</u>	<u>Fee per AIF (£)</u>
<u>Non-EEA AIF, or a feeder AIF, the master AIF of which is either managed by a non-EEA AIFM or is a non-EEA AIF where the AIF is managed by an EEA AIFM which does not have a branch in the United Kingdom and the AIF is registered under regulation 58 of the AIFM UK regulations</u>	<u>500</u>
<u>AIF managed by a non-EEA AIFM which is also a small AIFM and the AIF is registered under regulation 59 of the AIFM UK regulations</u>	<u>350</u>
<u>AIF managed by a non-EEA AIFM which is not a small AIFM and the AIF is registered under regulation 60 of the AIFM UK regulations</u>	<u>500</u>

<u>Part 3 – Periodic fees paid by small registered UK AIFMs</u>
<u>The annual fee for small registered UK AIFMs is £1000</u>

5 Annex 1R Annual General Levy Payable in relation to the Compulsory Jurisdiction for 2013/2014

Compulsory jurisdiction – general levy		
Industry block	Tariff base	General levy payable by firm
...
<u>5. Fund Managers Portfolio managers</u> (including those holding <i>client money</i> / assets and not holding <i>client money</i> / assets)
<u>6. Operators, trustees and depositaries of collective investment schemes and operators of personal pensions schemes or stakeholder pension schemes</u> <u>6. Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes</u>

...

**6 Annex Financial Services Compensation Scheme – classes
3R**

This table belongs to FEES 6.5.7R			
...			
			Investment
			Investment provision
Firms with <i>permission</i> for:			Any of the following:
			<i>Managing investments;</i>
			<i><u>managing an AIF;</u></i>
			<i><u>managing a UCITS;</u></i>
			...
			<i><u>acting as the depositary of an AIF;</u></i>
			<i><u>acting as the depositary of a UCITS;</u></i>
...			...

...

Annex F

Amendments to the General Prudential sourcebook (GENPRU)

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

After TP15 in the Transitional provisions insert the following:

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 applies from 22 July 2013 until 21 July 2014

Transitional provision

- 16.3 R (1) Where a *firm* meets the conditions in paragraph (2), the changes effected by Annex [amending *GENPRU*] 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 68(1) of the *AIFMD UK regulation*; and
- (b) the *firm* does not have a *Part 4A permission to manage an AIF*.

Annex G**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 1.1.4G, 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 and Internally Managed AIFs) applies.
- 1.1.5 G TP5 to IPRU(INV) 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 H**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

In this Annex new text is underlined and struck through text is deleted unless otherwise indicated.

The Interim Prudential Sourcebook for Investment Business**Contents**

Chapter

...

10 [deleted]

11 Collective Portfolio Management Firms and Internally Managed AIFs

...

Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
5	<u>IPRU(INV)</u> <u>11</u>	R	<u>A UCITS firm</u> <u>authorised on or</u> <u>before 21 July</u> <u>2013 need not</u> <u>comply with the</u> <u>provisions in</u> <u>IPRU(INV) 11</u> <u>until 22 July 2014</u> <u>or the date it</u> <u>becomes a UK</u> <u>AIFM (if earlier)</u> <u>and it continues to</u> <u>comply instead</u> <u>with the</u> <u>provisions in</u>	<u>22 July 2013 to 21</u> <u>July 2014</u>	<u>22 July 2013</u>

			<u>UPRU</u>		
6	<u>The changes to IPRU(INV) set out in Annex [amending IPRU(INV)] of the Alternative Investment Fund Managers Directive Instrument 2013</u>	R	<p>(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 IPRU(INV) amended by that Annex will continue to apply as they were in force as at 21 July 2013.</p> <p>(2) The conditions are: (a) the firm falls within regulation 68(1) of the AIFMD UK regulation; and (b) the firm does not have a Part 4A permission to manage an AIF.</p>	From 22 July 2013 until 21 July 2014	<u>22 July 2013</u>
...					

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:

- ...
- (i) a *credit union* which is a *CFT provider*; and
- (j) an exempt CAD firm;
- (k) a *collective portfolio management firm*; and
- (l) an *internally managed AIF*.

1.2.3 G For the avoidance of doubt, IPRU(INV) does not apply to any of the following:

- ...
- (g) A UCITS qualifier; or
- (h) A UCITS management company.

1.2.5 R Table

This table belongs to IPRU(INV) 1.2.4R

...

<i>Service company</i>	Chapters 1 and 6
<i>Collective portfolio management firm</i>	<u>Chapters 1 and 11</u>
<i>Internally managed AIF</i>	<u>Chapters 1 and 11</u>
<i>Personal investment firm</i>	Chapters 1 and 13

...

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;~~ [deleted]
- (da) which acts as an 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*

TYPE OF BUSINESS ACTIVITY	CHAPTER OF SOURCEBOOK
...	...

(iv) ~~acting as the ACD or depositary of an ICVC; or [deleted]~~

(iva) *acting as a depositary of a UCITS; or*

(ivb) *managing an AIF; or*

(ivc) *acting as a 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). These restrictions are also applied to a *small authorised UK AIFM* of an *authorised AIF* by *FUND 1.4.3R* (External AIFMs). As such, an *authorised professional firm* cannot be an *internally managed AIF*, a *collective portfolio management firm* or a *collective portfolio management investment firm*.

Chapter 3: Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms

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 a depositary of a UCITS (article 51ZB);
- (ic) managing an AIF (article 51ZC);
- (id) acting as a 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)); [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);~~

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 of an unauthorised AIF~~ and that *scheme or AIF* only invests in *venture capital investments for non-retail clients*; or
- (ii) ...
- (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~~

unauthorised AIF (as applicable) is to invest in permitted immovables whether in the UK or abroad.

Table 5.2.3(5)(a) EXPENDITURE BASED REQUIREMENT

...

PART II

FRACTIONS

1: The fraction is 6/52 where:

- (a) ~~the firm is an authorised unit trust manager; or [deleted]~~
- (b) ~~the firm acts only as an authorised corporate directors of an ICVC; or [deleted]~~
- (c) the firm is an investment manager (including the operator of an unregulated collective investment scheme ~~the a residual CIS operator or a small authorised UK AIFM~~ of an unauthorised AIF in relation to which the firm carries on the activity of an investment manager), unless paragraph 2 applies.

2: The fraction is 13/52 where the firm is an investment manager as in paragraph 1(c) above, or is a custodian and the firm either:

- (a) itself holds customers' monies or assets; or
- (b) procures the appointment as custodian of its customers' monies or assets of an associate of the firm which is not an approved bank.

Note: Paragraph 1(a) above includes a firm which acts as both an authorised unit trust manager and as an authorised corporate director of an ICVC.

...

Table 5.2.3(5)(b) POSITION RISK REQUIREMENT

...

F Determination of disallowed value of units ~~[units]~~ ~~[deleted]~~

~~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.~~

	£	£
Balance sheet value	104	
Value of cancellation price	100	
Less £100 x 10%	10	90
	<hr/>	<hr/>
Disallowed	14	

~~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.~~

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	<u>NIL</u>
Amount due from trustees of authorised unit trusts	<u>NIL</u>
Note	
This only applies to firms who are <i>authorised unit trust managers</i> in relation to authorised unit trusts they manage.	
Amount due from depositaries of ICVCs	<u>NIL</u>
Note	
This only applies to firms who are <i>authorised corporate directors</i> in relation to ICVCs they operate	
...	

...

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

(2) *OEICs for which the firm is the designated management company.*

...

specified trustee business 1. means any *investment business* carried on in the UK by a *trustee firm*, but excluding each of the following activities:

...

(b) Managing investments

...

(v) where the trust is a *unit trust scheme* and all day-to-day investment decisions in the carrying on of that activity are or are to be taken by the *operator or manager* of the *scheme*.

...

- (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*.
- ...
- ...

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:

Chapter	IPRU(INV) rule	How <i>eligible LLP members'</i> capital should be treated for the purposes of the <i>IPRU(INV)</i> rule
...		
10	Table 10-61(1)A Table 10-61(1)B	Eligible LLP members' capital may be counted as initial capital within the relevant table.

Appendix

	Table 10-62(2)A Table 10-62(2)B Table 10-62(2)C	
<u>11</u>	<u>Table 11.4</u>	<u>Eligible LLP members' capital may be counted as Item (5)</u> <u>Tier 1 capital within Category A of Table 11.4.</u>
...		

Annex I**Amendments to the Conduct of Business sourcebook (COBS)**

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

1 Annex 1 Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application rule according to activities

...

7 Modified meaning of designated investment business for UK AIFMs and UCITS management companies

7.1 R For the purposes of this sourcebook *designated investment business* includes any activities which would be included but for the exclusion in article 72G (Managers of UCITS and AIFs) of the *Regulated Activities Order*.

...

Part 3: Guidance

...

10. AIFMD: effect on territorial scope

10.1 G PERG [xx] contains general *guidance* on the businesses to which *AIFMD* applies. FUND 1 contains *guidance* on the types of *AIFM*.

10.2 G The only *rules* in this sourcebook which implement *AIFMD* are *COBS* 2.1.1R(4) and *COBS* 2.1.4R. *COBS* 2.1.1R(4) applies to a *full scope UK AIFM* managing or *marketing* an *AIF* from an establishment in the *United Kingdom* and an *incoming EEA AIFM branch*. *COBS* 2.1.4R applies to an *incoming EEA AIFM branch* or a *full scope UK AIFM* operating from an establishment in the *United Kingdom* or a *branch* in another *EEA State*.

10.3 G The other *rules* in this sourcebook 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.

...

4.12 Unregulated collective investment schemes

4.12.1 R ...

(4)

Promotion to:	Promotion of an unregulated collective investment scheme which is:
...	
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 <u>(4) section 100 of the Charities Act 2011.</u>	Any such <i>collective investment scheme</i>
...	

18.5 Operators of collective investment schemes, Residual CIS operators, UCITS management companies and AIFMs

Application

18.5.1 R 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 of a UCITS scheme;
- (2) a full scope UK AIFM;
- (3) a small authorised UK AIFM;
- (4) a residual CIS operator; and
- (5) an incoming EEA AIFM branch.

18.5.1A R 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- G For activities carried on by firms which do not amount to *scheme management activity*, or for an *AIFM, AIFM investment management functions*, the *COBS rules* apply in accordance with the *general application rule* as modified in *COBS 1 Annex 1*.

Table: Application of conduct of business rules

This table belongs to *COBS 18.5.2R*

Application of conduct of business rules

Chapter, section or rule	Description	Modifications
1	<u>Application</u>	
2.1.1	<u>Acting honestly, fairly and professionally</u>	
2.3	<u>Inducements</u>	
2.4	<u>Agent as client and reliance on others</u>	
4.2.1 4.2.3	<u>Fair, clear and not misleading communications</u>	
5.1	<u>Distance communications</u>	
5.2	<u>E-Commerce</u>	
6.1G.2	<u>Re-registration requests: firms acting as registrars</u>	
11.2	<u>Best execution</u>	<i>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</i>

		<i>COBS 18.5.4R.</i>
11.3	<u>Client order handling</u>	
11.5	<u>Record keeping: client orders and decisions to deal</u>	
11.6	<u>Use of dealing commission</u>	
11.8	<u>Recording telephone conversations and electronic communications</u>	
18.5	<u>Operators of collective investment schemes</u>	

<u>Chapter, section, rule</u>	<u>Full scope UK AIFM</u>	<u>Small authorised UK AIFM of an authorised AIF</u>	<u>Small authorised UK AIFM of an unauthorised AIF and a residual CIS operator</u>	<u>Incoming EEA AIFM branch</u>	<u>UCITS management company</u>
1	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
2.1.1	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
2.1.4	<u>Applies</u>	<u>Applies</u>	<u>Does not apply</u>	<u>Applies</u>	<u>Does not apply</u>
2.3	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies</u>	<u>Does not apply</u>	<u>Applies</u>
2.4	<u>Does not apply</u>	<u>Applies</u>	<u>Applies</u>	<u>Does not apply</u>	<u>Applies</u>
4.2.1 – 4.2.3	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
5.1	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
5.2	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>

<u>6.1G.2</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
<u>11.2</u>	<u>Applies as modified by COBS 18.5.4AR</u>	<u>Applies as modified COBS 18.5.4AR</u>	<u>Applies as modified by COBS 18.5.4R</u>	<u>Applies as modified by COBS 18.5.4AR</u>	<u>Applies</u>
<u>11.3</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies</u>	<u>Does not apply</u>	<u>Applies</u>
<u>11.5</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies as rules</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>11.6</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
<u>11.8</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>
<u>16.3</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies to a small authorised UK AIFM of an unauthorised AIF which is not a collective investment scheme as modified by COBS 18.5.5BR. Otherwise does not apply.</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>18.5</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>	<u>Applies</u>

...

General modifications

- 18.5.3 R The Where the COBS rules specified in the table in COBS 18.5.2R apply to an operator a firm when it is carrying on scheme management activity, 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;

- (1A) references to *client* in the *client's best interests rule* must also be construed as referring to the investors in the *fund*.
- (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; and
- (3) references to the service of *portfolio management* in *COBS* 11.2 (*Best execution*) and 11.3 (*Client order handling*) are to be construed 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*.

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 The following provisions in *COBS* 11.2 apply to a *full scope UK AIFM* and a *small authorised UK AIFM* of an *authorised fund*:
 - (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* read as references to *investors*. This obligation also only applies in respect of 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) (as applied by *FUND App 1 1.4.1R(1)* for a *small authorised UK AIFM* of an *authorised 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 in respect of 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

- 18.5.5B 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.*

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 they those 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 for 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 18.5.54R) 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 requirement to 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

Content of ~~scheme fund~~ documents

The scheme fund documents should include provision about:	
(1)	Regulator The <i>firm</i> statutory status in accordance with GEN 4 Annex 1R (Statutory status disclosure);

(2)	Services the nature of the services that the <i>operator firm</i> will provide in relation to the <i>scheme</i> ;
(3)	Payments for services details of any payment for services payable by the <i>scheme fund</i> or from the property of the <i>scheme fund</i> or <i>participants investors</i> in the <i>scheme fund</i> to the <i>operator firm</i> , including where appropriate:
	(a) the basis of calculation;
	(b) how it is to be paid and collected;
	(c) how frequently it is to be paid; and
	(d) whether or not any other payment is receivable by the <i>operator firm</i> (or to its knowledge by any of its associates) in connection with any transactions effected by the <i>operator firm</i> with or for the <i>scheme fund</i> , in addition to or in lieu of any fees;
(4)	Commencement when and how the <i>operator firm</i> is appointed;
(5)	Accounting the arrangements for accounting to the <i>scheme fund</i> or <i>participants investors</i> in the <i>scheme fund</i> for any transaction effected;
(6)	Termination method how the appointment of the <i>operator firm</i> may be terminated;
(7)	Complaints procedure how to complain to the <i>operator firm</i> and a statement that the <i>participants investors</i> in the <i>scheme fund</i> may subsequently complain direct to the <i>Financial Ombudsman Service</i> ;
(8)	Compensation whether or not compensation may be available from the <i>compensation scheme</i> should the <i>operator firm</i> be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable <i>compensation scheme</i> , the extent and level of cover and how further information can be obtained;
(9)	Investment objectives

	the investment objectives for the portfolio of the <i>scheme fund</i> ;		
(10)	Restrictions		
	(a)	any restrictions on:	
		(i)	the types of <i>investments</i> or property which may be included in the portfolio of the <i>scheme fund</i> ;
		(ii)	the markets on which <i>investments</i> or property may be acquired for the portfolio of the <i>scheme fund</i> ;
		(iii)	the amount or value of any one <i>investment</i> or asset, or on the proportion of the portfolio of the <i>scheme fund</i> which any one <i>investment</i> or asset or any particular kind of <i>investment</i> or asset may constitute; or
	(b)	that there are no such restrictions;	
(11)	Holding <i>scheme fund</i> assets		
	(a)	if it is the case, that the <i>operator firm</i> will:	
		(i)	hold <i>money</i> on behalf of the <i>scheme fund</i> or be the <i>custodian</i> of <i>investments</i> or other property of the <i>scheme fund</i> ; or
		(ii)	arrange for some other <i>person</i> to act in either capacity and, if so, whether that <i>person</i> is an associate of the <i>operator firm</i> identifying that <i>person</i> and describing the nature of any association; and
	(b)	in either case:	
		(i)	...
		(ii)	the arrangements for recording and separately identifying registrable <i>investments</i> of the <i>scheme fund</i> and, where the registered holder is the <i>operator's firm's</i> own nominee, that the <i>operator firm</i> will be responsible for the acts and omissions of that <i>person</i> ;
		(iii)	the extent to which the <i>operator firm</i> accepts liability for any loss of the <i>investment</i> of the

			<i>scheme fund;</i>
		(iv)	the extent to which the <i>operator firm</i> or any other <i>person</i> mentioned in (11)(a)(ii), may hold a lien or security interest over <i>investments</i> of the <i>scheme fund</i> ;
		(v)	where <i>investments</i> of the <i>scheme fund</i> will be registered collectively in the same name, a statement that the entitlements of the <i>scheme fund</i> may not be identifiable by separate certificates or other physical documents of title, and that, should the <i>operator firm</i> default, any shortfall in <i>investments</i> of the <i>scheme fund</i> registered in that name may be shared proportionately among all <i>schemes funds</i> and any other <i>customers</i> of the <i>operator firm</i> whose <i>investments</i> are so registered;
		(vi)	whether or not <i>investments</i> or other property of the <i>scheme fund</i> can be lent to, or deposited by way of collateral with, a third party and whether or not <i>money</i> can be borrowed on behalf of the <i>scheme fund</i> against the security of those <i>investments</i> or property and, if so, the terms upon which they may be lent or deposited;
		(vii)	the arrangements for accounting to the <i>scheme fund</i> for <i>investments</i> of the <i>scheme fund</i> , for income received (including any interest on <i>money</i> and any income earned by lending <i>investments</i> or other property) of the <i>scheme fund</i> , and for rights conferred in respect of <i>investments</i> or other property of the <i>scheme fund</i> ;
		(viii)	the arrangements for determining the exercise of any voting rights conferred by <i>investments</i> of the <i>scheme fund</i> ; and
		(ix)	where <i>investments</i> of the <i>scheme fund</i> may be held by an eligible <i>custodian</i> outside the <i>United Kingdom</i> , a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those <i>investments</i> , may apply;

(12)	Clients' money outside the United Kingdom if it is the case, that the <i>operator firm</i> may hold the <i>money</i> of the <i>scheme fund</i> in a <i>client bank account</i> outside the <i>United Kingdom</i> ;
(13)	Exchange rates if a liability of the <i>scheme fund</i> in one currency is to be matched by an asset in a different currency, or if the services to be provided to the <i>operator firm</i> for the <i>scheme fund</i> may relate to an <i>investment</i> denominated in a currency other than the currency in which the <i>investments</i> of the <i>scheme fund</i> 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 <i>investments</i> of the <i>scheme fund</i> ;
(14)	Stabilised investments if it is the case, that the <i>operator firm</i> is to have the right under the <i>scheme fund documents</i> to effect transactions in <i>investments</i> the prices of which may be the subject of stabilisation;
(15)	Conflict of interest and material interest if it is the case, that the <i>operator firm</i> is to have the right under the agreement or <i>instrument constituting the scheme instrument constituting the fund</i> to effect transactions on behalf of the <i>scheme fund</i> in which the <i>operator firm</i> has directly or indirectly a material interest (except for an interest arising solely from the <i>participation investment</i> of the <i>operator firm</i> as agent for the <i>scheme fund</i>), or a relationship of any description with another party which may involve a conflict with the <i>operator's firm</i> duty to the <i>scheme fund</i> , together with a disclosure of the nature of the interest or relationship;
(16)	Use of dealing commission if the <i>operator firm</i> receives goods or services in addition to the <i>execution</i> of its <i>customer orders</i> in accordance with the section on the use of dealing commission, the prior disclosure required by the <i>rule</i> on prior disclosure (see COBS 11.6.2R);
(17)	Acting as principal if it is the case, that the <i>operator firm</i> may act as <i>principal</i> in a transaction with the <i>scheme fund</i> ;
(18)	Stock lending if it is the case, that the <i>operator firm</i> may undertake <i>stock lending activity</i> with or for the <i>scheme fund</i> specifying the

		type of assets of the <i>scheme fund</i> to be lent, the type and value of <i>relevant collateral</i> from the borrower and the method and amount of payment due to the <i>scheme fund</i> in respect of the lending;
(19)		Transactions involving contingent liability investments
	(a)	if it is the case, that the agreement or <i>instrument constituting the scheme instrument constituting the fund</i> allows the <i>operator firm</i> to effect transactions involving <i>contingent liability investments</i> for the account of the portfolio of the <i>scheme fund</i> ;
	(b)	...
	(c)	if applicable, that the <i>operator firm</i> has the authority to effect transactions involving <i>contingent liability investments</i> otherwise than under the rules of a <i>recognised investment exchange</i> or <i>designated investment exchange</i> and in a contract traded thereon;
		...
(21)	Valuation	the bases on which assets comprised in the portfolio of the <i>scheme fund</i> are to be valued;
(22)	Borrowings	if it is the case, that the <i>operator firm</i> may supplement the funds in the portfolio of the <i>scheme fund</i> and, if it may do so:
	(a)	the circumstances in which the <i>operator firm</i> may do so;
	(b)	whether there are any limits on the extent to which the <i>operator firm</i> may do so and, if so, what those limits are; and
		...
(23)	Underwriting commitments	if it is the case, that the <i>operator firm</i> may for the account of the portfolio of the <i>scheme fund</i> underwrite or sub-underwrite any issue or offer for sale of <i>securities</i> , and:
		...
(24)	Investments in other <i>collective investment schemes funds</i>	

	whether or not the portfolio may contain <i>units in a collective investment scheme invest in funds</i> either operated managed or advised by the <i>operator firm</i> or by an associate of the <i>operator firm</i> or in a <i>collective investment scheme fund</i> which is not a <i>regulated collective investment scheme</i> ;
(25)	Investments in securities underwritten by the <i>operator firm</i> whether or not the portfolio may contain <i>securities</i> of which any issue or offer for sale was underwritten, managed or arranged by the <i>operator firm</i> or by an associate of the <i>operator firm</i> during the preceding 12 months.

Application of COBS 18.5.10E to a full scope UK AIFM

- 18.5.10A R 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

- 18.5.11 R 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

- 18.5.12 E (1) *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.
- (2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue *periodic statements*.
- (3) 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 fund 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
- ...
- (b) ...
- (2) 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 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.

Periodic statements							
Suitable intervals	(1)	A <i>periodic statement</i> should be provided at least:					
	(a)	... 					
	(b)	once in any other period, not exceeding 12 months, which has been mutually agreed between the <i>operator firm</i> and the <i>participant investor</i> in the <i>scheme fund</i> .					
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:				
		(i)	(A)	... 			
			(B)	where the portfolio of the <i>scheme fund</i> includes uncovered open positions in <i>contingent liability investments</i> , the additional information in the table listing the contents of a <i>periodic statement</i> (see COBS 18.5.15 18.5.18E) in respect of contingent liability investments; or			
		(ii)	such information as a <i>participant an investor</i> who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>operator firm</i> as adequate.				
...							

...

- 18.5.17 E Table: General contents of a periodic statement
 This table belongs to COBS 18.5.15E.

General contents of periodic statements			
1	Contents and value		
	(a)	As at the beginning of the account period, the total value of the portfolio of the <i>scheme fund</i> , being either:	
		(i)	...
		(ii)	in the case of the first <i>periodic statement</i> , the value of the assets comprised in the portfolio on the date on which the <i>operator firm</i> assumed responsibility for the management of the portfolio.
	(b)	As at the end of the account period:	
		(i)	the number, description and value of each <i>investment</i> held on behalf of the <i>scheme fund</i> ;
		(ii)	the amount of cash held on behalf of the <i>scheme fund</i> ; and
		(iii)	the total value of the portfolio of the <i>scheme fund</i> .
2	Basis of valuation A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous <i>periodic statement</i> . Where any <i>investments</i> are shown in a currency other than the usual one used for valuation of the portfolio of the <i>scheme fund</i> , the relevant currency exchange rates must be shown.		
3	Details of any assets loaned or charged		
	(a)	A summary of those <i>investments</i> (if any) which were, at the closing date, loaned to any third party and those <i>investments</i> (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the <i>scheme fund</i> ; 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 <i>scheme fund</i> during the period; and
	(b)	the aggregate of <i>money</i> and a summary of all investments transferred into and out of the portfolio of the <i>scheme fund</i> during the period; and
	(c)	the aggregate of any interest payments, dividends and other benefits received by the <i>operator firm</i> for the portfolio of the <i>scheme fund</i> 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 <i>operator firm</i> and its <i>associates</i> ; and
	(b)	of any <i>remuneration</i> received by the <i>operator firm</i> or its <i>associates</i> or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the <i>scheme fund</i> .
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 <i>participants investors</i> of the <i>scheme fund</i> and added to the portfolio of the <i>scheme fund</i> ;
	(b)	the aggregate of the value of assets transferred, or of amounts paid, to the <i>scheme fund</i> ;
	(c)	the aggregate income received on behalf of the <i>scheme fund</i> 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 <i>scheme fund</i> .
Notes: For the purposes of Item 1, where the <i>scheme fund</i> is a <i>property</i>		

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*, 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*. ~~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.

Contents of a periodic statement in respect of contingent liability investments		
(1)	Changes in value The aggregate of <i>money</i> transferred into and out of the portfolio of the <i>scheme fund</i> during the account period.	
(2)	Open positions In relation to each open position in the portfolio of the <i>scheme fund</i> at the end of the account period, the unrealised profit or loss to the portfolio of the <i>scheme fund</i> (before deducting or adding any <i>commission</i> which would be payable on closing out).	
(3)	Closed positions In relation to each transaction effected during the account period to close out a position of the <i>scheme fund</i> , the resulting profit or loss to the portfolio of the <i>scheme fund</i> after deducting or adding any <i>commission</i> . (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 <i>scheme fund</i> in each contract)	
(4)	Aggregate of contents The aggregate of each of the following in, or relating to, the portfolio of the <i>scheme fund</i> at the close of business on the valuation date:	
	...	
(d)	<i>commissions</i> 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 <i>participant investor</i> .
(5)	Option account valuations In respect of each open <i>option</i> comprising the portfolio of the <i>scheme fund</i> on the valuation date:	
(a)	...	
	...	<i>Options</i> account valuations may show an average trade price and market price in respect of an <i>option</i> series where a number of contracts within the same series have been purchased on behalf of the <i>scheme fund</i> .

...

18.10 UCITS qualifiers, AIFM qualifiers and service companies

...

R COBS 4 and COBS 12.4 apply to an AIFM qualifier.

...

TP1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies		Transitional provision		Transition al provision: date in force	Handbook provisions: coming into force

...

<u>2.23</u>	<u>The changes to COBS set out in Annex [amending COBS] of the Alternative Investment Fund Managers Directive Instrument 2013</u>	<u>R</u>	<u>(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</u>	<u>From 22 July 2013 until 21 July 2014</u>	<u>22 July 2013</u>
-------------	---	----------	--	---	---------------------

they were in force as
at 21 July 2013.

(2) the conditions
are: (a) the firm falls
within regulation
68(1) of the AIFMD
UK regulation; and
(b) the firm does not
have a Part 4A
permission to
manage an AIF.

Annex J

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

...

Depositories

...

1.4.6A G Firms acting as a depositary of an AIF are reminded of the obligations in FUND 3.11 (Depositaries) as well as those in [chapter IV (Depositary)] of the AIFMD level 2 regulation, which apply in addition to those in CASS.

1.4.7 R Subject to CASS 1.4.6R, The remainder of 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 a depositary of an AIF; and/or
 (1D) when it is acting as a depositary of a UCITS.
- ...

6.1.1B R *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

6.1.16 G 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)

...

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

...

...

Depositaries of AIFs

6.1.16I R (1) Subject to (2), when a firm is acting as a depositary of an AIF the firm need comply only with the custody rules in the table below:

Reference	Rule
<u>CASS 6.1.1R, CASS 6.1.9G, CASS 6.1.9AG and CASS 6.1.16IBG</u>	<u>Application</u>
<u>CASS 6.1.22G to CASS 6.1.24G</u>	<u>General purpose</u>
<u>CASS 6.2.3R and CASS 6.2.4R to CASS 6.2.6G</u>	<u>Registration and recording</u>
<u>CASS 6.2.7R</u>	<u>Holding</u>
<u>CASS 6.3.1R(1A) and CASS 6.3.1R(4)</u>	<u>Arranging registration</u>

<u>CASS 6.5.1R, CASS 6.5.2A R, CASS 6.5.3R, CASS 6.5.13R(1), CASS 6.5.13R(1A) and CASS 6.5.14G</u>	<u>Records, accounts and reconciliations</u>
--	--

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

Reference	Rule
<u>CASS 6.1.1B R</u>	<u>Application</u>
<u>CASS 6.5.4G, CASS 6.5.5R, CASS 6.5.7G to CASS 6.5.9G and CASS 6.5.15G</u>	<u>Records, accounts and reconciliations</u>

6.1.16I G B *Firms acting as a depositary of an AIF* are reminded of the obligations in *FUND 3.11 (Depositaries)* as well as those in [chapter IV (Depositary)] of the *AIFMD level 2 regulation*, which apply in addition to those in *CASS 6*.

6.1.16I G C *A firm (Firm A) to which another firm acting as a depositary of an AIF (Firm B) has delegated safekeeping functions in accordance with FUND 3.11.25R (Delegation: safekeeping) will not itself be acting as a depositary of an AIF in respect of 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

...

6.5.4 G (1) 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 *CASS 6.5.2R* (Records and accounts) or in the case of a *firm acting as a depositary of an AIF* that is an *authorised AIF* under article [89(1)(b) (Safekeeping duties with regard to assets held in custody)] of the *AIFMD level 2 regulation* (or under that article as applied by *FUND App 1 1.4.1R* in respect of an *authorised AIF* managed by a *small authorised UK AIFM*) and, where relevant (in either case), *SYSC 4.1.1R* (General requirements) and *SYSC 6.1.1R* (Compliance).

...

6.5.7 G Where a *firm* deposits *safe custody assets* belonging to a *client* with a third party, in complying with the requirements of *CASS 6.5.6R* or in the case of a *firm acting as a depositary of an AIF* that is an *authorised AIF* with the requirements of article [89(1)(c) (Safekeeping duties with regard to assets held

in custody]) of the AIFMD level 2 regulation (or under that article as applied by FUND App 1 1.4.1R in respect of an authorised AIF managed by a small authorised UK AIFM), 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 in CASS 6.5.6R or in the case of a firm acting as a depositary of an AIF that is an authorised AIF the reconciliations required in article [89(1)(c) (Safekeeping duties with regard to assets held in custody)] of the AIFMD level 2 regulation (or under that article as applied by FUND App 1 1.4.1R in respect of an authorised AIF managed by a small authorised UK AIFM).

...

- 6.5.8 G A firm should perform the reconciliation required by CASS 6.5.6R or in the case of a firm acting as a depositary of an AIF that is an authorised AIF the reconciliation required by article [89(1)(c) (Safekeeping duties with regard to assets held in custody)] of the AIFMD level 2 regulation (or under that article as applied by FUND App 1 1.4.1R in respect of an authorised AIF managed by a small authorised UK AIFM):

...

...

- 6.5.13 R A firm must inform the FSA in writing without delay:

- (1) if it has not complied with, or is unable, in any material respect, to comply with the requirements in CASS 6.5.1R, CASS 6.5.2R or CASS 6.5.6R; or
- (1A) in the case of a firm acting as a depositary of an AIF, if it has not complied with, or is unable, in any material respect, 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 those articles as applied by FUND App 1 1.4.1R in respect of an authorised AIF managed by a small authorised UK AIFM); 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 a depositary of an AIF or acting as a 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 a depositary of an AIF or acting as a 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* pursuant to article [91 (Reporting obligations for prime brokers)] of the *AIFMD level 2 regulation* (or under that article as applied by *FUND App 1 1.4.1R* in respect of an *authorised AIF* managed by a *small authorised UK AIFM*), and to the extent that the *firm* makes available to the *client* statements as specified by that article, 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 (1) ...

(2) A Subject to paragraph (3), a prime brokerage firm should not enter into "right to use arrangements" for a *client's safe custody assets* unless:

(a) ...

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 a depositary of an AIF which is an unauthorised AIF and exercises a right of reuse in respect a safe custody asset of that unauthorised AIF in accordance with FUND [3.11.21R (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 a depositary of an AIF or is acting as a depositary of a UCITS, in accordance with *CASS 6*; and/or

...

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 K

Amendments to the Supervision manual (SUP)

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

...

3 Auditors

...

3.10 Duties of auditors: notification and report on client assets

3.10.5

R Client assets report

- ...
- (3) in the case of an *investment management firm, personal investment firm, a UCITS firm, securities and futures firm, firm acting as a depositary of an AIF, firm acting as a 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:

...

3 Annex 1R Auditor's client assets report

Instructions for Part 1:

** 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 BIPRU investment firm*.

...

10 Approved persons

...

Internally managed corporate AIFs

- 10.1.28 G In accordance with regulation [x] of the AIFMD UK Regulation this chapter does not apply to an *internally managed corporate AIF*.

...

10.6 Governing functions

...

- 10.6.2 R Each of the *governing functions* (other than the *non-executive function* and the function described in SUP 10.6.4R(2)) includes where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R (or, for a full scope UK AIFM and small authorised UK AIFM of an authorised AIF, where apportioned under [article 60(1)]) of the *AIFMD level 2 regulation* (as applied by FUND App 1 1.4.1R for a *small authorised UK AIFM of an authorised AIF*):

- (1) ...

...

10.7 Required functions

...

Compliance oversight function (CF10)

- 10.7.8 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 or a small authorised UK AIFM of an authorised AIF, a person allocated the function set out in article [61(3)(b)] of the AIFMD EU regulation (as applied by FUND App 1 1.4.1R for a small authorised UK AIFM of an authorised AIF).

...

10.8 Systems and control function

AIFMs

- 10.8.9 G For a full scope UK AIFM and a small authorised UK AIFM of an authorised AIF the requirement to have an employee which is responsible for reporting to the governing body of the firm, or the audit committee in relation to the matters referred to in SYSC 10.8.1R(2) and (3) are derived from the AIFMD level 2 regulation (as applied by FUND App 1 1.4.1R for a small authorised UK AIFM of an authorised AIF), which imposes obligations on such firms to have a permanent risk management function and, where appropriate and proportionate in respect of their business, an internal audit function.
- ...

13 Exercise of passport rights by UK firms

13.2 Introduction

- 13.2.4 G A UK firm that is an AIFM will only be entitled to carry on an activity under AIFMD 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 G 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:
- ...

- (2A) 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:
- ...

- (3) ...

- (b) in any other cases (except in the case of a firm passporting under AIFMD):
- ...

- 13.3.4B G If the *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) If 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 unless the *FCA* is not satisfied that the *UK firm* complies or will continue to comply with *AIFMD*.

...

- 13.3.6 G ...

- (4) Where a *consent notice* is given under the *AIFMD* it must include a confirmation that the *UK firm* has been *authorised* by the *FCA* in accordance with *AIFMD*.

- 13.3.7 G ...

- (2) If the *FSA* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *FSA* 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*.

UCITS management companies: other information to be provided to the Host State

- 13.3.8 G A *UK firm* seeking to provide *collective portfolio management* services under the *UCITS Directive* from a branch in another *EEA State*, is advised that...

...

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:

- ...
- (2) if the *UK firm* is passporting under the *Insurance Directives*, *AIFMD*, *MiFID* or the *UCITS Directive*, the *firm* has received written notice from the *FSA* (including, if the *firm* is passporting under the *Insurance Directives*, details of any *applicable provisions* as described in SUP 13.4.6G); or
- ...
- ...
- 13.4.2F G 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 in the way specified 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
- 13.4.4 G ...
- (3) If the *UK firm's EEA right* derives from *AIFMD* (other than the *EEA right to market an AIF* (referred to in (4)) paragraph 20(3D) of Part III of Schedule 3 to the *Act* requires the *FCA*:
- (a) *to send a copy of the notice of intention to the Host State regulator within one month of receipt;*
- (b) *include a confirmation that the UK firm has been authorised by the FCA in accordance with AIFMD; and*
- (c) *immediately inform the UK firm that the notice of intention and confirmation has been sent to the Host State regulator pursuant to SUP 13.4.5G;*
- unless the FCA is not satisfied that the UK firm complies or will continue to comply with AIFMD.*
- (4) If the *UK firm's EEA right* derives from *AIFMD* and relates to the *EEA right to market an AIF*, paragraph 20C of Part III of Schedule 3 to the *Act* requires the *FCA*:
- (a) *to send a copy of the notice of intention to the Host State regulator within 20 working days of receipt;*
- (b) *include a 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*;
- unless the *FCA* considers that either of the conditions in paragraph 20C(4) of Part III of Schedule 3 to the *Act* are satisfied.
- (5) The conditions in paragraph 20C(4) of Part III of Schedule 3 to the *Act* are that:
- (a) the *UK firm* complies and will continue to comply with *AIFMD*; and
- (b) where the *AIF* is a *feeder AIF*, that 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*.
- 13.4.5 G When the *FSA* 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)(c) and (4) and 20C(3) 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:
- ...
- (6) *SUP 13 Annex 8AR, if the UK firm is providing cross-border services under AIFMD to manage an AIF in another EEA State.*
- (7) *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 the *AIFMD*, and established a *branch* in another *EEA State*, regulation 17A(1) states that 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 satisfied the requirements of regulation 17A(4) for a planned change; or
 - (b) it has satisfied the requirements of regulation 17A(5) for a 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 FSA 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) and the 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; and
- (b) the AIFM must not implement the change.

- (2) If a planned change is implemented or an unplanned change takes place and as a result the AIFM no longer complies with AIFMD, the FCA must take all due measures, including, if necessary, the express prohibition of the marketing of the AIF.

13.7 Changes to cross-border services

- 13.7.1 G 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

- 13.7.13 G If a UK firm has exercised an EEA right deriving from 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 set out in regulation 17A(4) for a planned change (as set out in SUP 13.6.9CG(2)) or regulation 17A(5) for an unplanned change (as set out in SUP 13.6.9CG(2)).
- 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 matters:
- (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 any 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 established to prevent the AIF from being marketed to an investors 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;*
unless the UK firm complies with the relevant requirements set out in regulation 17A(4) for a planned change (as set out in SUP 13.6.9C G(2)) or regulation 17A(5) for an unplanned change (as set out in SUP 13.6.9C G(2)).

13.8 Changes of details: provision of notices to the FSA

- 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 and SUP 13.7.13G 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

[For amended form see end of instrument]

After SUP 13 Annex 7 insert the following new annex. The text is not underlined.

SUP 13 *Passporting: AIFMD*
Annex 8

- R 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 8A

Passporting: AIFMD- cross border services (marketing) - SUP 13 Annex 8B

[For forms see end of instrument]

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 *FSA* is not required to notify the *applicable provisions* to an *EEA firm* passporting under the *Insurance Mediation Directive* 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

13A.5.4 G ...

- (2) Although the *FSA* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under the *Insurance Mediation Directive*, or *AIFMD* these provisions are set out in *SUP 13A Annex 1G* (Application of the Handbook to Incoming EEA Firms).
- ...

**13A
Annex
1G**

Module of
Handbook

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

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 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 in respect of financial crime.

SYSC 19A and 19B does not apply.

DISP

Generally Applies applies (*DISP 1.1.1G*) and applies in a limited way in relation to *MiFID business*.

For an incoming EEA AIFM branch *DISP* applies (subject to some

Generally does Does not apply (*DISP 1.1.1G*).

However, for an incoming EEA firm which is a *UCITS management*

	<p><u>limitations, see <i>DISP 1.1.3R</i>,</u> <u>except for an <i>incoming EEA AIFM</i></u> <u>branch of a <i>closed-ended corporate</i></u> <u><i>AIF</i>, in which case <i>DISP</i> does not</u> <u>apply.</u></p>	<p><u>company managing a <i>UCITS scheme</i></u> <u>or an <i>AIFM</i> managing an <i>authorised</i></u> <u><i>AIF</i>, <i>DISP</i> applies (subject to some</u> <u>limitations, see <i>DISP 1.1.3R</i>).</u></p>
<i>COMP</i>	<p>Applies, except in relation to the passported activities of an <i>MIFID investment firm</i>, or a <i>BCD credit institution</i> other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i> (see the definition of <i>participant firm</i>), a <u><i>UCITS management company</i></u> carrying on non-core services under Article 6.3 of the <i>UCITS Directive</i> and an <u><i>incoming AIFM branch</i></u> carrying on either <u><i>AIFM management functions</i></u> for an <u><i>unauthorised AIF</i></u> or non-core services under Article 6.4 of <i>AIFMD</i> (see the definition of “<i>participant firm</i>”). However, an <i>MIFID investment firm</i> or <i>BCD credit institution</i> a firm specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see <i>COMP 14</i> (Participation by EEA firms)).</p>	<p>Does not apply in relation to the passported activities of an <i>MiFID investment firm</i>, or a <i>BCD credit institution</i>, a <u><i>UCITS management company</i></u> carrying on non-core services under Article 6.3 of the <i>UCITS Directive</i> or an <u><i>incoming EEA AIFM</i></u> in respect of <i>AIFM management functions</i> carried on for an <u><i>unauthorised AIF</i></u> or non-core services under Article 6.4. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP 5</i>).</p>
...		
<i>FUND</i>	<p><u><i>FUND 3.8 (Prime brokerage firms)</i></u> applies to an <u><i>incoming EEA AIFM branch</i></u>.</p> <p><u><i>FUND 10 (Operating on a cross border basis)</i></u>, provides guidance for an <u><i>incoming EEA AIFM branch</i></u>.</p>	<p>Does not apply, except <i>FUND 10 (Operating on a cross border basis)</i>, which provides guidance for an <i>EEA AIFM</i> managing an <i>AIF</i> on a services basis or marketing an <i>AIF</i> using the <i>marketing passport</i> under <i>AIFMD</i>.</p>
...		
13A Annex 2G	Matters reserved to a Home State regulator	

G	<p>...Requirements in the interest of the general good</p>	
2.	<p>...</p>	
	<p>(1) the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i>, <i>BCD credit institution</i>, <i>UCITS management company</i>, <i>AIFM</i> or passporting <i>insurance undertaking</i> to the <i>Firm's Home State regulator</i>...</p>	
	<p>(2) there is no <u>explicit</u> "general good" provision in <i>MiFID</i> or <i>AIFMD</i>. Rather, <i>MiFID</i> states exactly what the <i>Host State regulator</i> regulates (see paragraphs 8 – 10) the responsibilities for a <i>host state regulator</i> under <i>MiFID</i> are set out in paragraphs 8 – 10 and under <i>AIFMD</i> are set out in paragraphs 11G – 11J;</p>	
	<p>...</p>	
	<p><u>Requirements under AIFMD</u></p>	
11G	<p><u>Article 33(5) of AIFMD prohibits Host States from imposing additional requirements on an AIFM in relation to matters covered by AIFMD if the firm is managing an AIF on a cross border basis by establishing a branch in that EEA State or providing cross border services to manage an AIF in that EEA State, except in the cases expressly permitted (see 11H below).</u></p>	
11H	<p><u>In accordance with 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.</u></p>	
11I	<p><u>As a result an incoming EEA AIFM branch is required to comply with the AIFMD Host State requirements (as set out below):</u></p> <ul style="list-style-type: none"> <u>(a) FUND 3.8;</u> <u>(b) SYSC 4.1.2CR;</u> <u>(c) SYSC 10.1.22R to SYSC 10.1.26R;</u> <u>(d) COBS 2.1.1R; and</u> 	

	(e) <i>COBS 2.1.4R.</i>
11J	<u>In accordance with article 32(5) of AIFMD arrangements referred to in point (h) of Annex IV of AIFMD for the marketing of AIFs shall be subject to the laws and supervision of the Host State of the AIFM.</u>
11K	<u>This means that a full scope EEA AIFM that is marketing an AIF in the United Kingdom 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).</u>
...	

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, regulation 7A states that 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...

...

Firms passporting under AIFMD

- 14.3.8 G Where an EEA AIFM is providing cross-border services to manage an AIF in the UK, regulation 7A states 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 being carried on; 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 G Where an EEA AIFM is providing cross-border services to market an AIF in the UK, regulation 7A states that it must not make a material change to:
- (1) the documents and information set out in Annex IV to AIFMD; or
- (2) the statement to the effect 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 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.

...

15 Notifications to the FSA

...

- 15.3 General notification requirements

...

UK AIFMs

- 15.3.26 R A 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 if there are material changes to the information it provided in its application for that permission.
- [Note: article 10(1) of AIFMD]

15.3.27 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*]

...

16.1 Application

...

16.1.1C D The directions and *guidance* in SUP 16.18 apply in respect of the following types of *AIFM*:

- (1) a *small registered UK AIFM*;
- (2) a *non-EEA AIFM* that is not a *small AIFM* that is *marketing* in the *United Kingdom*; and
- (3) a *non-EEA AIFM* that is a *small AIFM* that is *marketing* in the *United Kingdom*.

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13 and SUP 16.15)

(1) Sections(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.14	A <i>CASS large firm</i> and a <i>CASS medium firm</i>	Entire section
<u>SUP 16.18</u>	<u>A <i>full scope UK AIFM</i> and a <i>small authorised UK AIFM</i></u>	<u>SUP 16.18.3R</u>
Note 1 [deleted]		
Note 2 = The application of SUP 16.13 is set out under SUP 16.13.1G and the application of SUP 16.15 is set out under SUP 16.15.1G.		
Note 3 = The application of SUP 16.18 for the types of <i>AIFMs</i> specified in SUP 16.1.1C D is set out under 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
(12) reporting under the *Electronic Money Regulations*; and
(13) AIFMD reporting (SUP 16.18).
- ...

16 Reporting requirements

...

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 a depositary of an AIF and acting as a depositary of a UCITS.

After SUP 16.17 insert the following new chapter. The text is not underlined.

16.18 AIFMD reporting

Application

16.18.1 G This section applies to the following types of *AIFM* in accordance with SUP 16.18.2G:

- (1) a *full scope UK AIFM*;
- (2) a *small authorised UK AIFM*;
- (3) a *small registered UK AIFM*;
- (4) a *non-EEA AIFM* that is not a *small AIFM* that is *marketing* in the *United Kingdom*; and
- (5) a *non-EEA AIFM* that is a *small AIFM* that is *marketing* in the *United Kingdom*.

16.18.2	G	Type of AIFM	Rules	Directions	AIFMD level 2 regulation
		<i>full scope UK AIFM</i>	<i>FUND 3.4</i> (Reporting obligation to the FCA) and <i>SUP 16.18.5R</i>		Article [110] (Reporting to competent authorities) (as replicated in <i>SUP 16.18.4EU</i>)
		<i>small authorised UK AIFM</i>	<i>SUP 16.18.6R</i>		Article [110] (Reporting to competent authorities) (as replicated in <i>SUP 16.18.4EU</i>)
		<i>small registered UK AIFM</i>		<i>SUP 16.18.7D</i>	Article [110] (Reporting to competent authorities) (as replicated in <i>SUP 16.18.4EU</i>)
		<i>non-EEA AIFM</i> that is not a <i>small AIFM</i> that is <i>marketing</i> in the <i>United Kingdom</i>		<i>SUP 16.18.8D</i>	Article [110] (Reporting to competent authorities) (as replicated in <i>SUP 16.18.4EU</i>)
		<i>non-EEA AIFM</i> that is a <i>small AIFM</i> that is <i>marketing</i> in the <i>United Kingdom</i>		<i>SUP 16.18.9D</i>	Article [110] (Reporting to competent authorities) (as replicated in <i>SUP 16.18.4EU</i>)

Purpose

- 16.18.3 G The purpose of this section is to specify the end dates for reporting periods for all *AIFMs* to whom this section applies and to specify the reporting period for *small AIFMs* to whom this section applies. The reason for this is that 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 all *AIFMs* to whom this section applies, 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 [x] of the AIFMD level 2 regulation

- 16.18.4 EU [Article [110] of the *AIFMD level 2 regulation* (Reporting to competent authorities) to be inserted]

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 A *small registered UK AIFM* must report annually and its reporting period must end on 31 December in each calendar year.

- 16.18.8 D The reporting of a *non-EEA AIFM* that is not a *small AIFM* that is *marketing* in the *United Kingdom* 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.

- 16.18.9 D A *non-EEA AIFM* that is a *small AIFM* that is *marketing* in the *United Kingdom* must report annually and its reporting period must end on 31

December in each calendar year.

- 16.18.10 G All periods in this section should be calculated by reference to London time.

After TP 1.7 in the Transitional provisions insert the following new text. The text is not underlined.

TP 1.8 AIFMD

(1)	(2)	(3)	(4)	(5)	(6)
Material to which the transitional provision applies		Transitional provision		Transitional provision: date in force	Handbook provisions: coming into force
1 The changes to <i>SUP</i> 16.12 set out in Annex [amending <i>SUP</i>] of the Alternative Investment Fund Managers Directive Instrument 2013, other than those relating to FSA041 and FSA042.	R	(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 <i>SUP</i> 16.12 amended by that Annex will continue to apply as they were in force as at 21 July 2013. (2) the conditions are: (a) the firm falls within regulation 68(1) of the <i>AIFMD UK regulation</i> ; and (b) the firm does not have a <i>Part 4A permission to manage an AIF</i> .	From 22 July 2013 until 21 July 2014	22 July 2013	22 July 2013

Annex L

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

...

Application to firms

1.1.3 R ...

...

- (4) This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* in respect of *complaints from eligible complainants concerning AIFM management functions carried on for an authorised AIF under the freedom to provide cross-border services*.

...

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 in respect of complaints concerning AIFM management functions carried on for a closed-ended corporate AIF*; and

- (6) *a depositary* in respect of *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 where the *firm* is an *internally managed corporate AIF*.

...

1 Annex 2G Application of DISP 1 to type of respondent / complaint

...

Type of respondent / complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.19 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
<u>a full scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM in respect of complaints concerning AIFM management functions carried on for a closed-ended corporate AIF</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>a depositary in respect of complaints concerning activities carried on for an unauthorised AIF (where the AIF is not a charity AIF) or any closed-ended corporate AIF.</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>an incoming EEA AIFM in respect of complaints concerning AIFM management functions carried on for an authorised AIF under the freedom to provide cross-border services</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>

...

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:
- (1) ...
- (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*).
- ...
- 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).

Annex M**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 *United Kingdom* under a *UCITS Directive or AIFMD* passport in order 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 *United Kingdom* under an *AIFMD* passport in order to manage an *unauthorised AIF* or to carry on the activities of *managing investments, advising on investments, safeguarding and administering investments or arranging (bringing about) deals in investments* are not required to participate in the *compensation scheme* in relation to those activities, but may choose to ‘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*.
- ...

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

(1)	...
-----	-----

	...
(18)	<u>Alternative investment funds, and anyone who is the AIFM or depositary of an alternative investment fund.</u>

...

5.5 Protected investment business

...

5.5.2 R COMP 5.5.1R only applies if conditions (1) to (4) are satisfied:

- (1) Condition (1) is that the protected investment business was carried on from:
 - (1) an establishment of the *relevant person* in the *United Kingdom*; or
 - (2) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm* established in another *EEA State*; or
 - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*);
- and the claim is an *ICD claim*; or
- (3) both (1)(a) and (2)(b); or
- (c)
- (4)
 - (a) a *UK branch* of an *EEA UCITS management company*; or
 - (b) an establishment of such an *EEA UCITS management company* in its *Home State* from which *cross-border services* are being carried on;

and in either case (d)(i) or (ii) the *management company* is providing *collective portfolio management* services for a

UCITS scheme but only if the *claim* relates to that activity.

- (2) Condition (2) is that, for the activities of *managing an AIF or establishing, operating or winding up a collective investment scheme*:
 - (a) the *claim* is in respect of an investment in a *fund* which is either:
 - (i) *an authorised fund*; or
 - (ii) *is not an authorised fund but has its registered office or head office in the United Kingdom or is otherwise domiciled in the United Kingdom; and*
 - (b) the *claim* is not in respect of an investment in a *closed-ended corporate AIF*.
 - (3) Condition (3) is that, for the activity of *acting as a depositary of an AIF*, the *claim* is in respect of a *depositary's* activities where appointed to act for the following *AIFs*:
 - (a) *an authorised AIF*; or
 - (b) *a charity AIF* which is not a *closed-ended corporate AIF*.
 - (4) Condition (4) is that, for the activity of *safeguarding and administering assets* the *claim* is not in respect of a *firm's* activities where appointed to act as a *depositary* for an *unauthorised AIF managed by a small authorised UK AIFM or for a small registered UK AIFM*.
- ...

6.2 Who is a relevant person?

6.2.2 G ...

- (3) ...
- (4) *An incoming EEA AIFM managing an authorised AIF from a branch in the United Kingdom 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 carrying on the activities of managing investments, advising on investments, safeguarding and administering investments or arranging (bringing about) deals in*

investments 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*, or 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*, or *UCITS management company or 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*.

- 14.1.4 R ...

(2) ...

- (3) *Whether an incoming EEA firm which is an AIFM is a participant firm in relation to its passported activities depends on the type of AIF which it manages. In so far as it manages an authorised AIF from a branch in the United Kingdom or under the freedom to provide cross-border services, it is a participant firm in respect of that activity. In so far as it manages an unauthorised AIF, or carries on the activities of managing investments, advising on investments, safeguarding and administering investments or arranging (bringing about) deals in investments either from a branch in the United Kingdom or on a cross-border services basis, it is not a participant firm in respect of that activity however it may choose to obtain top-up cover in respect of these activities if carried on from a branch in the United Kingdom.*

- 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*, *Investor 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 or EEA AIFM this is only for certain *passported activities*, namely *managing investments* (other than *collective portfolio management* or *AIFM investment management functions*), *advising on investments* or *safeguarding and administering investments* and, for an EEA AIFM, arranging (bringing about) deals in 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:

...

- (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 carries on the activities of managing investments (other than AIFM management functions), advising on investments, safeguarding and administering investments and arranging (bringing about) deals in investments.

Annex N**Amendments to the Perimeter Guidance manual (PERG)**

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

8.37 AIFMD Marketing

Introduction

- 8.37.1 G (1) The *AIFMD UK regulation* contains a prohibition on the marketing of an *AIF*. Regulation [48] (Prohibition on marketing) provides that a *person* “must not market an *AIF* to an investor domiciled or with a registered office in the United Kingdom” unless this is allowed by the *AIFMD UK regulation*.
- (2) Marketing of an *AIF* is allowed by the *AIFMD UK regulation*:
- (a) of *AIFs* managed by certain categories of *small AIFMs* (see PERG 8.37.9G); or
 - (b) if the marketing is passive marketing (see PERG 8.37.10G); or
 - (c) if the *FCA* has approved the marketing or received a consent notice from another *competent authority* (see PERG 8.37.11G to PERG 8.37.13G).
- (3) As explained in PERG 8.37.15G(4), the contravention of regulation [48] of *AIFMD UK regulation* results in the same penalties as a breach of the *financial promotions* regime and therefore:
- (a) when done by an *unauthorised person* is an offence under the *AIFMD UK regulation* and will result in the unenforceability of investor agreements; and
 - (b) when done by an *authorised person* may result in an action for damages.
- (4) References to regulations in this *guidance* are to regulations of the *AIFMD UK regulation* unless provided otherwise.

Purpose of guidance

- 8.37.2 G (1) The purpose of this *guidance* is:
- (a) to outline the circumstances in which a *person* markets an *AIF* in accordance with the *AIFMD UK regulation* (see PERG 8.37.3G to PERG 8.37.8G);
 - (b) to outline the circumstances in which a *person* is allowed by the *AIFMD UK regulation* to market an *AIF* (see PERG

8.37.9G to PERG 8.37.13G);

- (c) to explain the interaction between marketing an *AIF* and the *prospectus directive* (see PERG 8.37.14G); and
 - (d) to explain the interaction between marketing an *AIF* and *financial promotion* (see PERG 8.37.15G).
- (2) No guidance has been provided by the European Commission or *ESMA* on the meaning of *marketing* in *AIFMD* and therefore the *guidance* set out in this section is subject to any future clarification from these European bodies.

8.37.3 The meaning of markets an AIF

- G (1) In accordance with regulation [47] (Meaning of “markets an AIF” and “able to promote an AIF”), a *person* markets an *AIF* when the *person* makes “a direct or indirect offering or placement of units or shares of an AIF”.
- (2) Marketing has a specific meaning in the context of the *AIFMD UK regulation* and is, in some respects, different to the ordinary meaning of the term.

The meaning of an offering or placement

- 8.37.4 G (1) The terms offering or placement are not defined in the *AIFMD UK regulation*, but in our view a *person* offers or places for the purposes of the *AIFMD UK regulation* when the *person* makes a *unit* of *share* of an *AIF* available for purchase by a potential investor.
- (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 certain investors by the *AIFM* or a financial intermediary.

Communications with investors in relation to draft documentation

- 8.37.5 G (1) Under article 32 *AIFMD*, *AIFMs* are required to submit the documentation and information set out in Annex IV to *AIFMD* with their application for permission to market an *AIF* and to notify their *competent authority* of any material changes to this documentation and information. Therefore, the prescribed documentation and information must, in all material respects, be in final form before the *AIFM* may apply for permission to market an *AIF*. Furthermore, an investment by an investor must not be accepted on the basis of draft documentation because at this point the *AIFM* will not have received permission to market the *AIF*. Any communications in relation to this draft documentation do not, in our view, fall within the meaning of an offer or placement for the purposes of *AIFMD*, on the basis that

at this point the *AIFM* cannot apply for permission to market the *AIF* and therefore the *AIF* cannot be made available for purchase by an investor.

- (2) However, regard should be had to national law in relation to any communications which do not amount to an offering or a placement. In the *United Kingdom* consideration needs to be given to whether such communications are *financial promotions* (see 8.37.15G). 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

- 8.37.6 G (1) Marketing may take place by either a direct or indirect offering or placement of *units* or *shares* of an *AIF*. The reference to indirect offering or placement should be interpreted broadly to 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 purchased by a third party, such as 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.

The meaning of a unit or share of an AIF

- 8.37.7 G The terms ‘unit’ and ‘share’ as used in the *AIFMD UK regulation* are generic and can be interpreted as encompassing all forms of equity of 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.

Territorial scope of the marketing provisions

- 8.37.8 G In accordance with regulation [48] (Prohibition on marketing), a *person* must not market an *AIF* to investors who are domiciled or have a registered office in the *United Kingdom*. This means that an offering or placement to investors who are located outside of the *United Kingdom* may constitute marketing if it is made to investors who are domiciled or have a registered office in the *United Kingdom*.

Marketing of AIFs managed by certain categories of small AIFMs

- 8.37.9 G (1) In accordance with regulation [49] (Marketing by certain categories of small AIFMs), a *person* (including the *AIFM* of the *AIF* or a *person* acting on its behalf) is allowed to market:

- (a) an *AIF* managed by a *small registered UK AIFM*; or
 - (b) an *unauthorised AIF* managed by a *small authorised UK AIFM*; or
 - (c) an *AIF* managed by an *EEA AIFM* that is a *small AIFM*;
- to an investor if that *person* is able to make a *financial promotion* to that investor.

- (2) As such that *person* has an automatic right to market an *AIF* falling within regulation [49] and there is no need for the *AIFM* of the *AIF* to have obtained permission from the *FCA* (or its home *competent authority*) before the *AIF* can be marketed in the *United Kingdom*.

Passive marketing

- 8.37.10 G (1) In accordance with regulation [50] (Passive marketing), a *person* (including the *AIFM* of the *AIF* or a *person* acting on its behalf) is allowed to market an *AIF* to an investor if:
- (a) the marketing is not at the initiative of the *person*; and
 - (b) that *person* is able to make a *financial promotion* of the *AIF* to that investor.
- (2) As such that *person* has an automatic right to market an *AIF* in the circumstances set out in regulation [50] and there is no need for the *AIFM* of the *AIF* to have obtained permission from the *FCA* (or its home *competent authority*) before the *AIF* can be marketed in the *United Kingdom*.
- (3) In determining whether the marketing is at the initiative of the investor, consideration needs to be given to the course of communication or relationship between the investor and those involved with, or connected to, the *AIFM* or the *AIF*. Only communications which are solicited by the investor should be considered to have occurred at the initiative of the investor.
- (4) For example, communications which are sent to investors as part of an organised marketing campaign or documentation which is available on a publically accessible website should not be considered to be sent at the initiative of the investor. However, communications in response to an approach from a potential investor with prior knowledge of the *AIF* and no previous involvement with the *AIFM* could be at the initiative of the investor.

Marketing with consent from the FCA

- 8.37.11 G (1) In accordance with regulation [51] (Marketing with consent from FCA or other competent authority), an *AIFM*, or a *person* acting on

its behalf, is allowed to market an *AIF*:

- (a) to a professional investor if the *AIF* is managed by the *AIFM* and the conditions set out in the table in regulation [51] are met; and
 - (b) to a retail investor if the *AIFM* may market to a professional investor in accordance with (a) and the *AIFM*, or a *person* acting on its behalf, is able to make a *financial promotion* of the *AIF* to that investor.
- (2) The effect of regulation [51] is that the following types of *AIFM* must obtain approval from the *FCA* for the *AIFM*, or a *person* acting on its behalf, to be allowed to market the following types of *AIF* managed by that *AIFM*:
- (a) a *full scope UK AIFM* of:
 - (i) a *UK AIF*; or
 - (ii) an *EEA AIF*; or
 - (iii) a *non-EEA AIF*;
 - (b) a *small authorised UK AIFM* of an *authorised AIF*;
 - (c) an *EEA AIFM* that is not a *small AIFM* of a *non-EEA AIF*; and
 - (d) a *non-EEA AIFM* of:
 - (i) a *UK AIF*; or
 - (ii) an *EEA AIF*; or
 - (iii) a *non-EEA AIF*.

Marketing of a *UK AIF* or *EEA AIF* managed by an *EEA AIFM* that is not a *small AIFM*

- 8.37.12 G (1) In accordance with regulation [51] (Marketing with consent from *FCA* or other competent authority), an *EEA AIFM* that is not a *small AIFM*, or a *person* acting on its behalf, is allowed to market a *UK AIF* or an *EEA AIF*:
- (a) to a professional investor using the marketing passport under *AIFMD* if the *FCA* has received the appropriate notification from the home *competent authority* of the *AIFM*; and
 - (b) to a retail investor if the *AIFM* may market to a professional investor in accordance with (a) and the *AIFM*, or a *person* acting on its behalf, is able to make a *financial promotion* of the *AIF* to that investor.

- (2) The *AIFMD* marketing passport is not available for marketing (solely) to retail investors. However, in accordance with regulation [52] (Marketing to retail investors of an AIF managed by an AIFM authorised in another EEA State), a *person* (including an *EEA AIFM* that is not a *small AIFM*, or a *person* acting on its behalf) is allowed to market an *UK AIF* or an *EEA AIF* to a retail investor if:
- (a) the *AIFM* has obtained approval from the *FCA* to market the *AIF*; and
 - (b) the *person* is able to make a *financial promotion* to that investor.

Marketing by a person other than an AIFM or a person acting on its behalf

- 8.37.13 G (1) Where consent is needed from the *FCA* (or the *AIFM*'s home *competent authority*) for an *AIFM* (or a *person* acting on its behalf) to market an *AIF* in accordance with regulation [51] (Marketing with consent from FCA or other competent authority), a *person* other than the *AIFM* (or a *person* acting on its behalf), such as a distributor, is allowed to market the *AIF* in accordance with regulation [53] (Marketing by a person other than an AIFM etc.):
- (a) if the *AIFM* which manages the *AIF* is allowed to market the *AIF* to a professional investor in accordance with regulation [51]; and
 - (b) the *person* is able to make a *financial promotion* to that investor.
- (2) In other circumstances a *person* other than the *AIFM*, or a *person* acting on its behalf, may be allowed to market an *AIF* in accordance with:
- (a) regulation [49] (Marketing by certain categories of small AIFMs) (see *PERG 8.37.9G*); or
 - (b) regulation [50] (Passive marketing) (see *PERG 8.37.10G*); or
 - (c) regulation [52] (Marketing to retail investors of an AIF managed by an AIFM authorised in another EEA State) (see *PERG 8.37.12G(2)*).

The interaction between marketing and the prospectus directive

- 8.37.14 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, in accordance with article 23(3) *AIFMD*, where an *AIF* is

required to publish a *prospectus* under the *prospectus directive* only *AIFMD* required information which is additional to that required under the *prospectus directive* needs to be disclosed, and this may be disclosed separately or as additional information in the *prospectus*.

The interaction between marketing and financial promotion

- 8.37.15 G (1) There is likely to be a considerable overlap between marketing and *financial promotion*, and in the case of marketing to retail investors this can only be done if a *financial promotion* can be made to that investor, but the two concepts are not the same.
- (2) (a) 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 8.37.5G).
- (b) Also, it may be possible, although unusual, for a *person* to market an *AIF* without making a *financial promotion*.
- (3) No changes were made to the *financial promotions* regime as a result of the transposition of *AIFMD*, and therefore any *person* that is marketing an *AIF* needs to consider whether it is also making a *financial promotion*. However, if consent is given by the *FCA* to an *AIFM* to market an *AIF* to professional investors in accordance with regulation [51] (Marketing with consent from FCA or other competent authority) this communication by the *AIFM* will fall within the exemption in:
- (a) article 29 (Communications required or authorised by enactments) of the *Financial Promotion Order*; and
- (b) if the *AIF* is a *collective investment scheme*, 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);

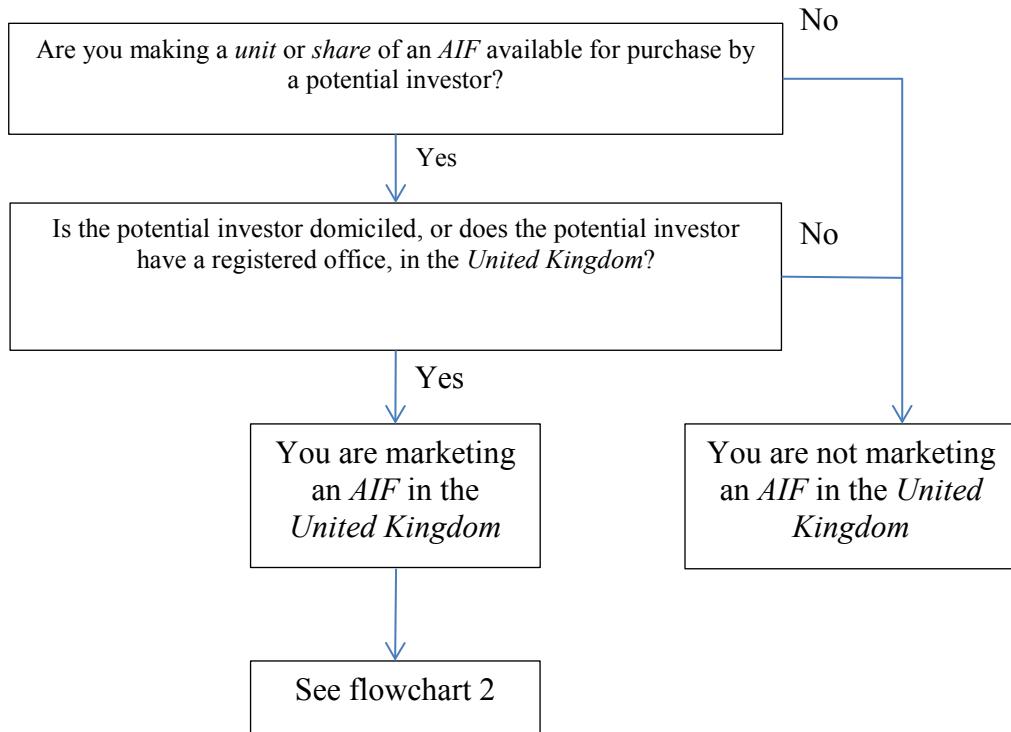
because it is authorised by the *FCA* under the *AIFMD UK regulation*. These exemptions are not available in relation to a *person* that is marketing an *AIF* to a retail investor in accordance with regulation [51] (Marketing with consent from FCA or other competent authority) because this marketing is not authorised by the *FCA* under the *AIFMD UK regulation* and is instead conditional on the *person* being able to make a *financial promotion* to that investor.

- (4) The penalties for a breach of the marketing prohibition in the *AIFMD UK regulation* are the same as the penalties for the breach of the *financial promotions* regime. The reason for this is that:
- (a) if the communication is made:
- (i) by an *unauthorised person* and contravenes section 21 of the *Act*; or
 - (ii) by an *authorised person* and contravenes section 238 of the *Act*;
- the communication will have been made in breach of the *financial promotion* regime and will therefore be subject to the penalties for breach of this regime under the *Act*; or
- (b) if the communication is made:
- (i) by an *unauthorised person* and does not contravene section 21 of the *Act*; or
 - (ii) by an *authorised person* and does not contravene section 238 of the *Act*;
- for example because it is made in reliance on an exemption to the *financial promotions* regime, it will be subject to the same penalties as if it had been made in breach of the *financial promotions* regime as a result of regulations [54] (Offences by unauthorised person) and [55] (Contravention by authorised person).

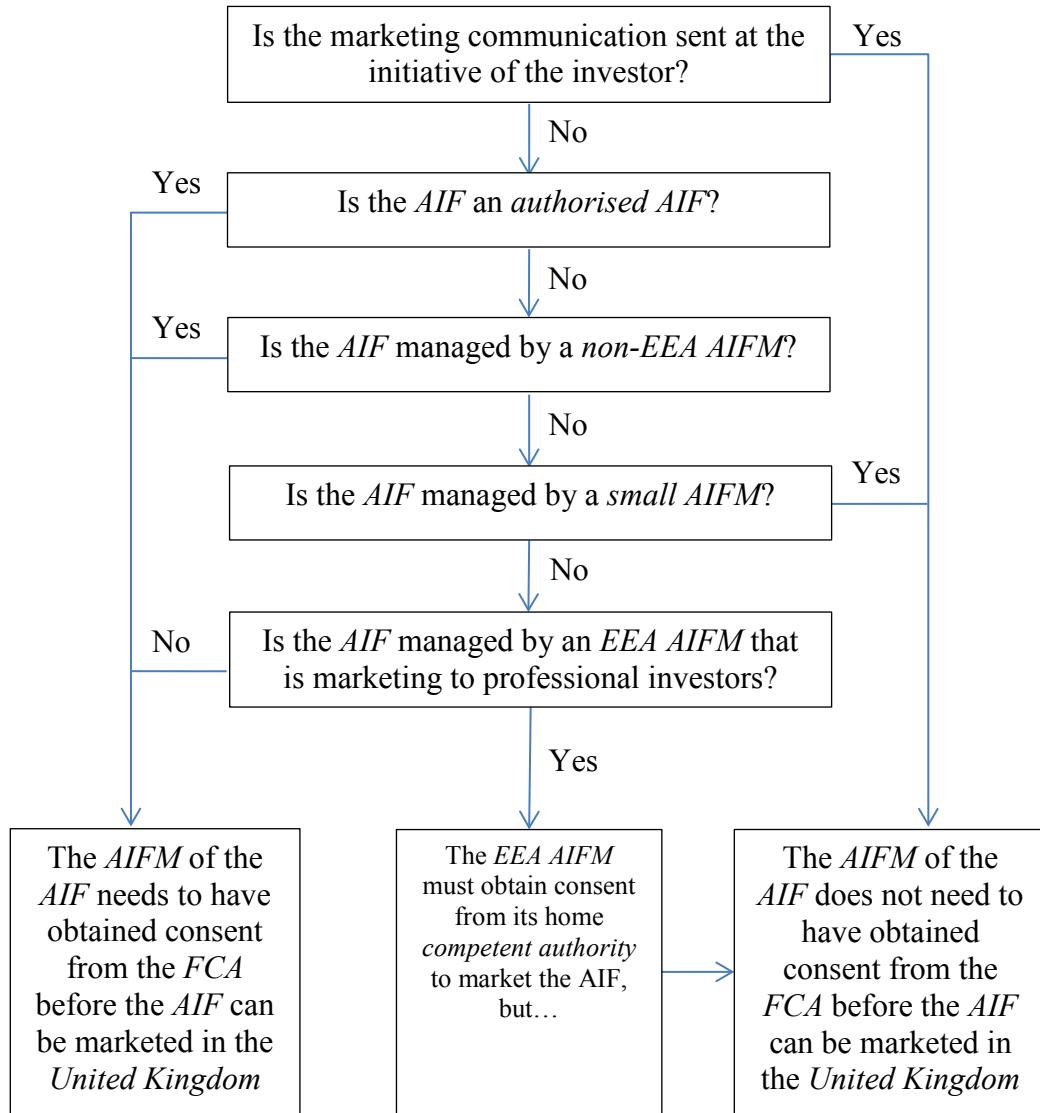
Flowcharts

- 8.37.16 G The following flowcharts summarise the following matters:
- (1) Flowchart 1 – Are you marketing an *AIF* in the *United Kingdom*?
 - (2) Flowchart 2 - Does the *AIFM* of the *AIF* need to have obtained consent from the *FCA* before the *AIF* can be marketed in the *United Kingdom*?

Flowchart 1 - Are you marketing an AIF in the United Kingdom?



Flowchart 2 – Does the AIFM of the AIF need to have obtained consent from the FCA before the AIF can be marketed in the United Kingdom?



After PERG 15 insert the following new chapter.

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 of this chapter 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* for more details); and
- (2) *acting as a depositary of an AIF* (see *PERG 16.4* for more details).

Question 1.3: What are the main European measures dealing with the scope?

As well as the *AIFMD* itself, they are:

- (1) Commission delegated regulation (EU) No [to follow] supplementing Directive 2011/16/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 general approach to deciding whether something is covered by the AIFMD?

When defining what an *AIF* is the drafters of the *AIFMD* faced a dilemma. If it is defined in a precise and detailed way there is a risk that some funds would fall outside regulation, given the wide variety of legal forms they can take. However, by defining the term in a broad way there is a risk that the *AIFMD* is given a much wider scope than intended. The definition of *AIF* that was chosen is drafted at a high level of generality and uses words which have a wide meaning. So the *FCA* has approached *PERG 16* by looking at what sorts of entities are clearly meant to be caught and then has used that as a guide to identify cases which are not fairly within the definition so as to avoid an interpretation that would give it an exorbitantly wide scope. *PERG 16* should be read in the same way and so descriptions of what is excluded should not be read in a narrow way that would take cases out of scope that are fairly within it.

16.2 What types of funds and businesses are caught?

Question 2.1: What is the basic definition of an AIF?

An *AIF* means a collective investment undertaking, including investment compartments of such an undertaking, which 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.

The key elements of the definition are:

- (1) It is a collective investment undertaking (*CIU*).
- (2) It raises capital from a number of investors.
- (3) It invests that capital in accordance with a defined investment policy.
- (4) It invests that capital for the benefit of those investors.
- (5) An *AIF* does not include an undertaking that requires authorisation pursuant to article 5 of the *UCITS Directive* (see Question 2.26).

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. Material on the meaning of an open-ended *AIF* can be found in Commission Delegated Regulation No .../.. with regard to regulatory technical standards determining types of alternative investment fund managers.

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 and an ICVC 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. It will include an *undertaking* as defined in the *Glossary*. That means it will include a *body corporate* or *partnership*. The *Glossary* definition also includes an unincorporated association carrying on a trade or business. Whether or not it would be caught by the *Glossary* definition, an *undertaking* includes 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. See the answer to Question 5.1.

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*. For example, many investment trusts are internally managed.

Question 2.6: Is the definition restricted to funds that invest in certain kinds of asset?

No. Assets can include, for example, 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 of any kind of assets.

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 on the basis that it is exclusively or largely funded by debt or other types of leverage rather than equity capital?

No. See further the answers to Questions 2.37 and 2.44.

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?**

According to the *ESMA AIFMD Key Concepts Guidelines*, an activity with the following characteristics when carried out by an undertaking by way of business should amount to the activity of raising capital:

- (1) taking direct or indirect steps to procure the transfer or commitment of capital by one or more investors to an undertaking for the purpose of investment with a view to generating a pooled return for the investors; and/or
- (2) commercial communication between the undertaking seeking capital or a *person* or entity acting on its behalf (typically, the *AIFM*), and the prospective investors, which aims at procuring the transfer of investors' capital.

The idea of a pooled return is referred to in the answer to Question 2.16.

It is immaterial whether these activities take place only once (as in the case of the initial subscription to a closed-ended fund), on several occasions or on an ongoing basis (as with certain open-ended funds).

When capital is invested in an undertaking by a *person* or body of *persons* who is one of the following ("internal investors"):

- (1) a member of the *governing body* of that undertaking or the legal *person* managing that undertaking;
- (2) an employee of the undertaking or of the legal *person* managing the undertaking whose professional activities have a material impact on the risk profiles of the undertakings they manage and into which he or she invests;
- (3) 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 raising capital for the purpose of the *AIF* definition.

Capital provided by the *AIFM* is treated in the same way as other external capital, although if the *AIFM* and its group are the sole investors the group exclusion described in *PERG 16.6 (Exclusions)* may be available.

However, if internal investors invest alongside other types of investors the presence of the internal investors does not mean that there is no capital raising.

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*).

Question 2.11: What is a pre-existing group for the purposes of the answer to Question 2.10?

According to the *ESMA AIFMD Key Concepts Guidelines*, a pre-existing group means, in connection with investment in a *CIU*, a group of *persons* connected by a close familial relationship that pre-dates the establishment of the *CIU*.

Question 2.12: Is a fund that only allows a single investor caught?

According to the *ESMA AIFMD Key Concepts Guidelines*, it follows from the reference to ‘a number of investors’ in the definition of *AIF* that the *AIF*’s rules or instruments of incorporation cannot contain provisions which restrict the sale of units/shares to a single investor. However, a *CIU* 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 a *CIU* which raises capital from a number of investors. This will be the case even if:

- (1) it has in fact only one investor; or
- (2) a sole investor invests funds which it has raised from more than one *person* for the benefit of those *persons* as in the case of nominee arrangements, feeder structures or fund of fund structures that have more than one investor for the purposes of the *AIFMD*.

Defined investment policy**Question 2.13: What indicative criteria could be taken into account in determining whether or not an entity has a defined investment policy?**

According to the *ESMA AIFMD Key Concepts Guidelines*, the factors that could, singly or cumulatively, tend to indicate the existence of such a policy are the following ones.

- (1) Whether the final form of the investment policy is determined and fixed, at the latest by the time that investors’ commitments to the undertaking become binding on them.
- (2) Whether the investment policy is set out in a document which becomes part of or is referenced in the rules or instruments of incorporation of the undertaking.
- (3) Whether the undertaking or the entity managing it has an obligation (however arising) to investors, which is legally enforceable by them, to follow the investment policy, including all changes to it.
- (4) Whether the investment policy specifies investment guidelines, with reference to criteria including the following:
 - (a) to invest in certain categories of asset, or conform to restrictions on asset allocation; or

- (b) to pursue certain investment 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 given for the management of an undertaking which determine investment criteria for purposes other than those set out in the business strategy followed by an ordinary company with general commercial purpose should be regarded as investment guidelines.

The absence of all or any one of these factors does not conclusively demonstrate that no such policy exists.

Collective investment undertaking

Question 2.14: What is a collective investment undertaking?

Questions 2.15 to 2.23 answer this.

It is important to remember that if a business is a *CIU* that does not necessarily mean that it is an *AIF*. To be an *AIF* it must meet all the criteria set out in the answer to Question 2.1.

Question 2.15: What is the basic definition of a collective investment undertaking?

According to the *ESMA AIFMD Key Concepts Guidelines*, the following characteristics, if all of them are exhibited by an undertaking or an investment compartment of it, should show that the undertaking is a *CIU*:

- (1) it is not an ordinary company with general commercial purpose;
- (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 (whether or not different investors receive returns on different bases); and
- (3) its unitholders or shareholders have no day-to-day discretion or control over the management of the undertakings' assets.

The absence of all or any one of these factors does not conclusively demonstrate that the undertaking is not a *CIU*.

Question 2.16: What is a pooled return for these purposes?

According to the *ESMA AIFMD Key Concepts Guidelines*, it is the return generated by the pooled risk arising from acquiring, holding or selling investment assets as opposed to the activity of an entity acting for its own account and whose purpose is to manage the underlying assets as part of a commercial or entrepreneurial activity, irrespective of whether different returns to investors, such as under a tailored dividend policy, are generated.

Question 2.17: The answer to Question 2.15 refers to day-to-day control. Is it always necessary to show that there is no day-to-day control?

No. This is explained further in the answer to Question 2.48.

Question 2.18: Is an ordinary commercial business a collective investment undertaking?

No. An ordinary company with general commercial purposes is not a *CIU*. The primary purpose of a *CIU* is investment. This is in contrast to an ordinary commercial business of manufacturing, production, trading or the supply of services. Hence a supermarket or manufacturer is not generally a *CIU* or an *AIF*. However, distinctions between "investment" and "trading" for tax purposes are not determinative here.

In deciding whether a scheme is for investment or commercial purposes you must look at all the relevant factors. Examples include:

- (1) Whether the undertaking merely holds the property with a view to taking advantage of changing market prices or to take the income stream or whether on the other hand the undertaking has to undertake construction, industrial or manufacturing works.
- (2) Thus for example 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 that points away from it being a *CIU*.
- (3) Whether the undertaking itself creates the property underlying the scheme.
- (4) Whether the business requires substantial numbers of personnel to run it. One would look at whether the business is carrying out commercial activities which generally require the employment of employees, such as for the development of properties. However, it is consistent with being a *CIU* for a property business to have a skeleton staff to ensure that the value of its investment is maintained, e.g., to ensure adequate maintenance work on the buildings is carried out.
- (5) The extent to which the undertaking outsources its core operations to a third party.

- (6) 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.
- (7) Whether it has an external manager.
- (8) Whether the directors of the undertaking are non-executive and whether their compensation packages reflect this.
- (9) The frequency of board meetings.
- (10) Whether the undertaking has any employees.
- (11) If an undertaking's business is to invest in businesses carried on by others without having control, that points towards the undertaking being a *CIU*.
- (12) How much revenue is derived from activities that are characteristic of a *CIU*.

None of these factors are conclusive.

Question 2.19: Does the answer to Question 2.18 apply where the property underlying the scheme is financial assets?

In the *FCA*'s view, No, whether the business involves short term buying and selling or holding for the medium term or until maturity.

However, the ordinary cash management activities and treasury functions of a general commercial venture do not point towards that venture being a *CIU*.

It is still the case that a financial business must meet the definition of an *AIF*. Hence it is still the case that if it is not a *CIU* it is not an *AIF*. Therefore for example:

- (1) 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*.
- (2) The pooled return point referred to in Question 2.16 is relevant.
- (3) The day-to-day discretion or control point referred to in Questions 2.15 and 2.17 is relevant. That point is in any case also part of other aspects of the *AIF* definition (see paragraphs (3) and (4) of the answer to Question 2.1), which apply to financial businesses as well as non-financial ones.

Question 2.20: What are financial assets for the purpose of Question 2.19?

Financial assets for these purposes include investments under *MiFID* and investment life insurance contracts. Real estate is not considered a financial asset for these purposes.

If a business holds an asset through a shell company or bare nominee the categorisation of the business should look through the shell to the underlying assets. The same applies to assets held through subsidiaries.

An asset held for hedging purposes is not generally considered to be a financial instrument for these purposes.

Question 2.21: Are there any other factors to take into account?

In the *FCA*'s view one must also look at whether the undertaking is structured like a typical fund. If it is, that points to its 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 be the case 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*.

The mere fact that the undertaking is admitted to trading on an exchange or *multilateral trading facility* is unlikely to be significant on its own but may be relevant to the holding company exclusion (see *PERG 16.6 (Exclusions)*).

Another factor is whether an offer to invest in an undertaking is marketed as an investment in a fund.

Where the potential *AIFM* controls a portfolio of several different groups, it is helpful to ask whether those investee companies/groups:

- (1) are segregated from one another and whether each of them is held and structured for their most effective future disposal (which points towards an *AIF*); or
- (2) support one another and the group as a whole (which points away from an *AIF*).

A key factor is how strongly the factors listed in the answer to Question 2.13 point towards a defined investment policy. In particular the following key factors should be taken into account (in each case an affirmative answer points towards the entity being an *AIF*):

- (3) Whether the investment policy is fixed by the time that investors' commitments to the business become binding on them.
- (4) How detailed the investment policy is.

- (5) Whether the investors may take legal action against the manager of the *AIF* or the investment vehicle for a breach of the policy.
- (6) 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 2.22: Does the answer to Question 2.21 apply where the property underlying the scheme is financial assets?

In the *FCA*'s view, Yes.

Question 2.23: What is the justification for the approach to the definition of a CIU and AIF in the answers to Questions 2.15 to 2.22?

If one interpreted the definition of *CIU* very 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 shareholder funds 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. 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 generic 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 granular or detailed statement of commercial objects turns an undertaking into a *CIU*. It would be contrary to the early recitals of the *AIFMD* describing the purpose of the Directive. Therefore it is necessary to consider the policy objectives of the *AIFMD*.

The *AIFMD* is aimed at funds. This is shown by the title of the Directive itself. The list of the main types of undertaking covered by the *AIFMD* in the answer to Question 2.25 is taken from the Commission Staff Working Document (Impact Assessment) accompanying the Proposal for the Directive (COM(2009) 207), which assists in analysing the *AIFMD*'s objectives.

The *FCA* considers that the term investment is being used in contrast to “commercial”. The factors set out in the answer to Question 2.18 are designed to draw out that distinction.

However, it is clear from the *AIFMD* and the working document that private equity, hedge funds and venture capital funds are intended to be within the scope of the *AIFMD*. The *AIFMD* expressly refers to these types of funds in a number of places.

Also, a fund controlling a business is more than an investor in the sense brought out in the answer to Question 2.18 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 the *AIFMD* has detailed requirements for *AIFs* that do that.

Thus the distinction in the answer to Question 2.18 does not work for all the types of undertakings to which the *AIFMD* is meant to apply. The way to reconcile this is to say that the *AIFMD* treats a fund as investing if its ultimately underlying assets are investments in the sense of financial instruments such as shares and debt securities.

This approach is supported by the *ESMA AIFMD Key Concepts Guidelines*, through its view that an ordinary company with general commercial purpose is not an *AIF*. The relevant part of the *ESMA AIFMD Key Concepts Guidelines* is incorporated in the answer to Question 2.15.

One reason for taking the approach in the answer to Question 2.21 is the part of the *ESMA AIFMD Key Concepts Guidelines* that says that one of the characteristics of a *CIU* is that it does not act for its own account (see the answer to Question 2.16). In legal 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 the *FCA*'s view this distinction is pointing towards the factors that distinguish a typical fund from a commercial company.

The references in the *AIFMD* to funds, as described earlier in this answer, are another reason for taking this approach. The requirements about a defined investment policy mentioned in the answer to Question 2.21 are an express part of the definition of an *AIF*.

Overview of the AIF definition

Question: 2.24: Could you give a brief overview of how I should go about applying the guidance in PERG 2.2 in deciding whether an undertaking is an AIF?

- (1) First, apply the Directive definition to see if it gives a clear answer. of an *AIF*. 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 capital is invested on behalf of the investors, as opposed to the parties investing the capital for themselves and whether there is pooling. In particular, see whether the undertaking is excluded as a joint venture or family office vehicle (Questions 2.47 to 2.51).
 - (d) Whether it is structured as a typical fund.
 - (e) Whether it carries on an ordinary commercial business as opposed to investment. This factor is not relevant to a financial business.

Examples of schemes that are AIFs and of ones that are likely not to be AIFs

Question 2.25: What are the commonest types of AIFs?

The commonest types are:

- (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.

Question 2.26: Does an AIF include a UCITS scheme?

No. An *AIF* does not include an undertaking that requires authorisation pursuant to article 5 of the *UCITS Directive*.

Question 2.27: Is an investment trust an AIF?

In principle, Yes.

Question 2.28: Is a fund 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.

An example might be where a group of householders purchases a piece of neighbouring land in order to preserve or develop it as an amenity and prevent it from being used for housing or commercial exploitation. Such a case 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 2.29: Is a scheme relating to use or enjoyment of property caught?

No. An undertaking does not amount to 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.

Question 2.30: Is a real estate investment trust (REIT) caught?

The meaning, substance and structure of REIT 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 whether it is or is not 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.

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 the *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 the *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 be 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.

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 it also covers other schemes.

In the *FCA*'s view the term employee is not limited to an employee under the technical definition in *UK* law. It would include personnel who work in the business of the undertaking concerned contributing their skills and time. It can include partners, directors and consultants. Employee participation schemes generally allow some participation by former employees and by spouses/close relatives and this exclusion allows schemes that include such participants.

The exclusion can apply however the scheme is structured and whether or not a trustee is involved in the scheme.

Question 2.35: Is a carried interest vehicle caught?

The carried interest participation of the employees of a private equity fund manager in private equity funds managed by the manager will typically be structured through one or more carried interest vehicles which will receive the carried interest and in which employees of the manager will have a participation.

In the *FCA*'s view such vehicles will generally not be an *AIF*. This is 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.

Question 2.36: Is this is 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, 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. One cannot say that an employee is investing his salary (by being remunerated by way of an interest in the vehicle rather than by cash) 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.

For this purpose 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.

In principle 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 the *AIFMD*. This arrangement falls outside the definition of an *AIF* as there is no *CIU*. The pooled return concept in the *ESMA AIFMD Key Concepts Guidelines* (see the answer to Question 2.16) is particularly relevant here.

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 are being run 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.

If the investors' investments and returns are pooled collectively that may also result in it being considered a *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, in fact, arranges a fair amount of bulk dealing for clients with similar investment objectives that is compatible with individual portfolio management.

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 *CIU*.

Therefore 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 of itself mean that there are collective arrangements of the type that would suggest an arrangement is a *CIU*.

On the other hand if each separate investment management agreement provides that investments and sales are to be carried out in lock step 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 *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 *CIU* if it is part of the scheme's investment policy for investors' holdings to be managed as a whole. 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 *CIU*. The same may apply for other large stakes. If for some other reason a scheme's investment policy involves the manager exercising the voting or other rights of investors in the underlying companies as a single bloc the scheme may also be a *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.

Some ISAs are simply run on a self-determined basis where investors decide what might be held in their ISA. In that case there will be no collective element and hence no *AIF*.

In some cases the parts of the property held in a particular ISA scheme are bought and sold in lock step with other ISAs run by the same manager except when a particular *person* becomes or ceases to be an investor in the plan. Where that is the case there is a collective element in the arrangements. However, in the light of the answer to Question 2.40 this will not be enough on its own to mean that the ISA is an *AIF*.

Question 2.42: Is an enterprise investment scheme (EIS) fund caught?

When an investor subscribes to a fund it will appoint a manager to invest his subscriptions, on a discretionary basis, in qualifying companies. The investor in the 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. It is likely that the property held in a particular fund to which the different fund investors are entitled are not bought and sold separately except where a *person* becomes or ceases to be an investor in the fund. The operator is likely to hold the investments as nominee for the investor. These arrangements are likely to be formally documented. The fund may be approved by HM Revenue and Customs but need not be.

On the face of it this involves *MiFID* individual portfolio management. However, a fund may be an *AIF* for the reasons mentioned in the answer to Question 2.40.

Question 2.43: Is a child trust fund caught?

No.

The answer to Q53A in *PERG* 13 explains why.

Question 2.44: Can an issue of debt securities be an AIF?

In general, No. An issue of debt securities will not generally itself be an *AIF* although of course an *AIF* may well invest in debt securities. If an undertaking borrows money through an issue of debt securities that does not mean it is a *CIU*. 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 in accordance with a defined investment policy. If the return on the debt securities was simply set at a certain rate of interest and a certain 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. In general, an issuer of a loan instrument does not invest the capital it raises for the benefit of the subscribers for the loan instrument.

However, the fact that an investor holds his interests in an undertaking through debt securities does not mean that the undertaking can never be an *AIF*. 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 financial assets are channelled back to the holders of the debt securities through interest on the debt securities and a premium 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 it should make no difference that the investors hold their interest through debt securities rather than through shares.

Debt securities in a securitisation special purpose vehicle are likely to be excluded as explained in the answer to Question 2.37.

Question 2.45: Is an issuer of an alternative debenture an AIF?

An issuer of an *alternative debenture* is not necessarily an *AIF*. 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* is a form of secured loan instrument. It is therefore excluded for the reasons described in the answer to Question 2.44.

Question 2.46: 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, as will often be the case, it is a *UCITS*.

Question 2.47: Is a joint venture caught?

Not normally.

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. Furthermore, the exclusion for joint ventures is not part of an operative provision of the Directive but is instead to be found in recital (8). Therefore, in order to decide what undertakings are excluded as joint ventures one must identify the principles on which the recital appears to be based.

For these purposes 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”. There are two aspects of this that 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 recital (7)) is not an *AIF*. The clearest example of this is the family investment vehicle but it is relevant to joint ventures too.

Question 2.48: 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 over its activities. However, it is still possible to have a joint venture in which not all the parties have day-to-day control.

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 here 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 in general the number of parties has to 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.

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 members. 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), taking into account skills and bargaining power. It is unlikely that retail investors will have such ability as against professional investors or managers.

However, a private equity acquisition company may still be excluded as a joint venture even if it has management team shareholders who are retail investors. This is because the management team may well have the practical ability to participate in joint decision making.

Question 2.49: 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.

Question 2.50: 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 relation to 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. Such an undertaking may therefore fall outside the *AIF* definition on the grounds that to be an *AIF* there must be a defined investment policy.

An undertaking that is not excluded as a joint venture may of course fall outside the definition of *AIF* for another reason, such as its not being a *CIU* in the first place.

Question 2.51: 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 the *AIFMD* says that a family office vehicle that invests the private wealth of investors without raising external capital is not an *AIF*. Therefore in order to decide what undertakings are excluded as family investment vehicles one must identify the principles on which the recital appears to be based. In this case the recital is based on the part of the *AIF* definition that requires capital to be raised. Based on this, features of a family investment vehicle are likely to include:

- (1) There is a family relationship between the investors.
- (2) There is 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. As explained in the remainder of this answer 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 as well as 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.

Question 2.52: Is a co-investment vehicle caught?

This 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. In order to align their interests with those of the family, the employees and managers invest in the co-investment vehicle alongside the family vehicle.

In the *FCA*'s view, the co-investment vehicle should not be seen as an *AIF*. The co-investment vehicle is not an *AIF* because it only raises capital from a single external investor. For these purposes the vehicle through which employees invest and the manager should be treated as a single external investor. The vehicle through which employees invest is not itself an *AIF* because of the exclusion for employee participation schemes (see Questions 2.34 and 2.35).

If the only capital invested in the co-investment vehicle comes from the institutional manager or the family vehicle, it may be excluded for the reason described in the answer to Question 2.36.

Question 2.53: 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 there is a single *AIF* or whether each fund is still a separate *AIF*.

As explained in the answer to Question 2.40 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 that article 26 of the *AIFMD* (Obligations for AIFMs managing *AIFs* which acquire control of non-listed companies and issuers: Scope) 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 the *AIFMD* because the investors will still have the protections given by national laws implementing the *AIFMD*.

The factors relating to whether an undertaking is excluded as a joint venture are likely to be relevant (see the answer to Questions 2.47 to 2.51). 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 2.54: Is an acquisition vehicle for an AIF itself a separate AIF?

Sometimes an *AIFM* establishes an SPV or acquisition vehicle as an administrative convenience in order to facilitate a specific transaction or transactions to be carried out by the *AIFM*.

Generally the SPV should not be treated as a separate *AIF* for the purposes of the *AIFMD*. The vehicle does not raise capital from investors. Rather, it would merely be a means of investing capital already raised by the *AIF*. Essentially 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 2.55: Does it make a difference if there are co-investors?

Sometimes some of the co-investors participating in an investment may not themselves be *AIFs*. There may be set up an acquisition vehicle for the *AIF* and the other co-investors. Such an arrangement may well not itself be a separate *AIF*. The factors relating to whether an undertaking is excluded as a joint venture are likely to be relevant (see the answer to Questions 2.47 to 2.51).

Question 2.56: Is a central counterparty in a clearing system an AIF?

No.

The answer to Question 2.19 says that a business that buys and sells financial instruments is in principle likely to be a *CIU*. However, this does not mean that a central counterparty in a clearing system is a *CIU* because it is a party to each trade as principal. That firm is providing a service to members of the system and not investing in the securities bought and sold in its role as central counterparty.

Question 2.57: Is a firm that deals in financial instruments on its own account caught?

The answer to Question 2.19 says that a business that buys and sells financial instruments is in principle likely to be a *CIU*. 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.

The question is therefore about when a company that buys and sells financial instruments for its own account is covered by the *AIFMD* rather than *MiFID*.

In the *FCA*'s view the answer is likely to depend on the following factors in particular:

- (1) the need for a defined investment policy (see Question 2.13);
- (2) whether it raises external capital (see Question 2.10); and
- (3) whether it is set up like a fund or an ordinary commercial financial services company (see Question 2.21).

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*.

Other general points

Question 2.59: Does this interpretation of a CIU apply to MiFID?

Broadly speaking, Yes.

As explained in the answer to Question 43 in *PERG 13*, article 2(1)(h) of *MiFID* says that *MiFID* does not apply to *CIUs* and their managers and depositaries. In general terms that exclusion and the scope the *AIFMD* should be interpreted consistently. However, in the *FCA*'s view the requirements of the *AIF* definition for capital raising and a defined investment policy and certain of the exclusions from *AIFMD* (such as the exclusion for holding companies) can also be seen as aspects of the general definition of what a *CIU* is for the purposes of *MiFID*.

Therefore the exclusion in article 2(1)(h) of *MiFID* covers an *AIF* and a *UCITS* and their managers and depositaries but does not go further.

The question of what a unit in a *CIU* is for the purposes of *MiFID* should be looked at in a similar way.

Question 2.60: What is an investment compartment of an AIF?

An investment compartment is similar to and corresponds with the *Glossary* term *sub-fund*. It therefore refers to an undertaking whose property is divided into separate pools, each of those pools being a compartment. See Question 2.16 for pooling. See the answer to Question 2.62 about when a sub-fund should be treated as a separate *AIF* and not a compartment of one.

Question 2.61: Is each investment compartment a separate AIF?

In the *FCA*'s view an investment compartment of an *AIF* should not be treated as a separate *AIF* for the purpose of the *general prohibition*. In the *FCA*'s view the phrase "including investment compartments of such an undertaking" in the definition of an *AIF* (see the answer to Question 2.1) 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. The *FCA* does 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.

Another argument against this alternative approach is the requirement in article 5(1) of the *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 the *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*. The *FCA* does not agree with that interpretation for similar reasons.

However, in the *FCA*'s view the definition of *AIF* also means that if an undertaking is divided into several compartments and the undertaking overall does not meet the *AIF* definition, an individual compartment can be an *AIF*.

Question 2.62: How do you tell whether something is a separate AIF or an investment compartment of an AIF?

The first thing is to see whether it meets the definition of an investment compartment in the answer to Question 2.60.

If it does, the next thing is to decide whether it should be treated as an *AIF* in its own right. A key factor in deciding whether something is a separate *AIF* or an investment compartment of one is whether it is documented and operated as a single fund. This will take into account whether it is documented as a separate fund, whether it is managed as a whole and whether an investor in one fund is entitled to exchange his investment in that fund for an investment in the other.

The fact that one fund invests all its assets in another does not make them into a single fund as the *AIFMD* recognises that feeder and master funds can remain separate funds.

Question 2.63: What if part of an undertaking meets the AIF definition and part does not?

If an undertaking taken as a whole meets the requirements of an *AIF* it should be of no relevance that one or more investment compartments of it do not have such characteristics.

According to the *ESMA AIFMD Key Concepts Guidelines* (summarised in the answer to Question 2.15), if specified characteristics are exhibited by an undertaking or an investment compartment of it, that shows that the undertaking is a *CIU*. That might appear to mean that if an undertaking taken as a whole is not an *AIF* but an investment compartment of it meets the requirements of an *AIF*, the whole undertaking becomes an *AIF*. However, the *FCA* believes this statement should be interpreted in the way explained in the answer to Question 2.61. The result is that the undertaking as a whole will not be an *AIF* but an individual compartment may be.

It is however unlikely that an ordinary commercial company would ever be organised with separate investment compartments and so this issue may be of no more than theoretical interest.

Question 2.64: How would you summarise what the answers to Questions 2.61 to Question 2.63 say about the treatment of a sub-fund?

The first thing is to decide if the sub-fund should be treated as an *AIF* in its own right (see Question 2.62).

If it should be treated as a separate *AIF* on this basis it is not an investment compartment of the overall fund.

If it should not be treated as a separate *AIF* on this basis, the sub-fund should not be treated as a separate *AIF*. It is part of the overall fund and an investment compartment of an *AIF*. The manager of the sub-fund is not *managing an AIF* whereas the manager of the overall fund is.

16.3 Managing an AIFM

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, a *firm* is not permitted to be authorised to manage an *AIF* on that basis (see *FUND 1.4.4R(4)*). A *firm* 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 paragraph 2 of Annex I to the *AIFMD* for that *AIF* (see 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 or shareholder register;
 - (f) distribution of income;
 - (g) units/shares issues and redemptions;
 - (h) contract settlements, including certificate dispatch;
 - (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* in relation to a particular *AIF* if the *person* doing them is carrying on the part of the *regulated activity of managing an AIF* in relation to that *AIF* described in the answer to Question 3.1. So 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* in relation to 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 either:

- (1) an external *AIFM* appointed by or on behalf of the *AIF* to manage the *AIF* (an external *AIFM*); or
- (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: If the manager delegates some functions to a third party does that mean that the third party is managing an AIF?

Not necessarily.

If the delegation relates to the additional services described in the answer to Question 3.4 the delegate will not be *managing an AIF* for the reason in the answer to Question 3.5.

Even if the *AIFM* delegates part of the core functions described in the answer to Question 3.1 that does not mean that delegate is *managing an AIF*. A *person* manages an *AIF* as an external manager if that *person* is appointed by or on behalf of the *AIF* to manage it. In the *FCA*'s view that does not include a *person* carrying out the tasks only by way of delegation. The *person* carrying out the delegated tasks is not providing collective portfolio management to the end-investors, but individual portfolio management to the *AIFM*. The *AIFMD* recognises that tasks can be delegated without the delegate itself becoming an *AIFM* (see for example article 20(1)).

The same result applies if the delegate is appointed by an *AIFM* that is also the *AIF* itself and has *permission* to act as such as by definition only the *AIF* itself can be an *AIFM* of this type.

The same applies if an *EEA AIFM* of an *EEA AIF* delegates functions to a *UK firm*.

Question 3.8: I have heard talk about letter box entities. Is this relevant to the regulated activity of 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* in a number of specified situations.

However, in the *FCA*'s view, while the definition of *AIFM* should be read in accordance with article 82, this does not affect the definition of the *regulated activity*. In other words there is not a full overlap between the *AIFM* definition and the *regulated activity* although the two definitions are closely related. So therefore while article 82 will often be important in deciding who the *AIFM* is, in the *FCA*'s view it does not apply for the purposes of determining whether a *person* is carrying on the *regulated activity* of *managing an AIF*.

The *FCA*'s reasons for saying this include:

- (1) The *RAO* does not cross refer to article 82 of the *AIFMD level 2 regulation*.
- (2) The *RAO* does not include the requirement in the *AIFM* definition that the *AIFM* be a legal *person*, which shows that the two provisions are not fully aligned.
- (3) In particular, the point in (2) is shown by regulation 5(2)(a) of the *AIFMD UK regulation*, which says that the *FCA* must not give permission to an applicant to *manage an AIF* if the applicant is not a legal *person*. This would not be necessary if every element of the *AIFM* definition were incorporated in the *regulated activity*.
- (4) Article 82 of the *AIFMD level 2 regulation* is about whether or not a *person* is the *AIFM* and so taking the *FCA*'s approach does not mean that the *UK* is denying the direct effect of the *AIFMD level 2 regulation* in relation to the definition of *AIFM* itself.
- (5) There is a good reason for not aligning the two definitions. 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.

However, if the manager of an *AIF* (A) delegates so many functions to B that A becomes a letter box under article 82, B is likely to be *managing an AIF*. The answer to Question 3.7 does not apply because B has taken on the role of *AIFM* and A is not permitted to delegate to B in a way that turns A into a letter box. A is not delegating its functions but giving them up.

Question 3.9: If a person is not eligible to be appointed as an AIFM because it is not a legal person but it is nevertheless 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*.

Question 3.10: Can an AIF in the form of a limited partnership under the Limited Partnerships Act 1907 appoint its general partner as the AIFM?

Yes. It will be an external *AIFM* (please see the answer to Question 3.6 about the difference between an external and internal *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. Hence on this approach a limited partnership would be internally managed. In the case of an English limited partnership that would be contrary to the *AIFMD* as an *AIFM* must be a legal *person* and an English limited partnership is not a legal *person*.

However, in the *FCA*'s 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 fact that the roles of general and limited partner are provided for by the legislation under which limited partnerships are formed and that 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.

16.4 Acting as a depositary

Question 4.1: What does acting as a depositary of an AIF involve?

Acting as:

- (1) the trustee of a *unit trust scheme*; or
- (2) the depositary of an *open-ended investment company*; or
- (3) the depositary of another undertaking;

where the scheme, company or other undertaking is an *AIF* of one of the following kinds:

- (3) an *AIF* managed by a *full scope UK AIFM*; or
- (4) a *UK AIF* managed by an *EEA AIFM*; or
- (5) an *authorised AIF* managed by a *small authorised UK AIFM*.

Question 4.2: What does depositary mean for these purposes?

It means:

- (1) a *person* appointed in accordance with article 21.1 of the *AIFMD* (whether or not the appointment is required by that article); or
- (2) an article 36 custodian as defined in regulation 3(1) of the *AIFMD UK Regulation*.

Question 4.3: What does trustee mean for these purposes?

It means a *person* holding the property of the scheme on trust for the participants and appointed in accordance with article 21.1 of the *AIFMD* (whether or not the appointment is required by that article). Although article 21 refers to a written contract and in the *UK* a trust is not necessarily a contract, a trust deed is treated as a contract for these purposes.

Question 4.4: 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. The *AIFMD* envisages that a depositary under article 21 of the *AIFMD* remains the sole depositary even if, in accordance with that article, it delegates certain of its functions.

16.5 How the 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*. Hence the two definitions sit alongside each other and overlap extensively. Many *AIFs* will also be *collective investment schemes*. It is therefore possible that an *unauthorised person* who operates a fund will both 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*, such as an investment trust. Therefore the existing case law on the definition of a *collective investment scheme* does not decide whether an undertaking is a *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. 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*.

In addition, 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:

- (1) at the time A carries on the activity, the *AIF* is managed by a *person* with a *Part 4A permission* to *manage an AIF* (who may be a third party or A itself); or
- (2) no more than 30 days have passed since the *AIF* was managed by a *person* with that *permission*.

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, depending on the legal form of the *AIF* concerned, 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*.

Part 1: Examples of how the <i>regulated activities</i> specific to <i>AIFMs</i> interact with other <i>regulated activities</i>	
Example	Explanation of interaction with other <i>regulated activities</i>
(1) A <i>firm</i> (A) with <i>permission to manage an AIF</i> manages an <i>AIF</i> that is also a <i>collective investment scheme</i>	A does not need <i>permission to establish, operate or wind up a collective investment scheme</i> .
(2) A <i>firm</i> (A) with <i>permission to establish, operate or wind up a collective investment scheme</i> wants to <i>manage an AIF</i>	A needs to vary its <i>permission to cover managing an AIF</i>

<p>(3) An <i>unauthorised person</i> (A) <i>manages an AIF</i> that is also a <i>collective investment scheme</i> and also operates it. No <i>authorised AIFM</i> is in place.</p>	<p>A will both be <i>establishing, operating or winding up a collective investment scheme</i> and <i>managing an AIF</i>. The effect of the overlap between the definition of an <i>AIF</i> and of a <i>collective investment scheme</i> is different for <i>unauthorised persons</i>.</p>
<p>(4) A <i>firm</i> (A) with <i>permission to manage a UCITS</i> wishes to act as an <i>AIFM</i></p>	<p>A will need <i>permission to manage an AIF</i>.</p>
<p>(5) A <i>firm</i> (A) with <i>permission to manage an AIF</i> delegates the management of some of the <i>AIF's securities portfolios</i> to B.</p>	<p>B does not <i>manage an AIF</i> for the reasons described in the part of the answer to Question 3.7 dealing with the delegation of core functions. Even if this activity could otherwise be <i>establishing, operating or winding up a collective investment scheme</i>, it will not be in this case for the reasons described in the answer to Question 5.2. However, B <i>manages investments</i>. See article 78 of the <i>AIFMD level 2 regulation</i> (Delegation of portfolio or risk management) on the ability of an <i>AIFM</i> to delegate portfolio management or risk management to a <i>person</i> authorised or registered for the purpose of asset management.</p>
<p>(6) Same as example (5). B's <i>Part 4A permission</i> covers <i>managing an AIF</i> or <i>managing a UCITS</i>.</p>	<p>Same answer. B's <i>Part 4A permission</i> should be amended to cover <i>managing investments</i>.</p>
<p>(7) A has <i>permission to manage an AIF</i>. The <i>AIF</i> has several investment compartments. A appoints B to manage the <i>securities portfolio</i> which makes up one of these compartments.</p>	<p>The answer for example (5) applies here too. The investment compartment is not treated as a separate <i>AIF</i> for the purpose of applying the <i>guidance</i> on delegation. This arrangement is not contrary to the requirement in article 5(1) of the <i>AIFMD</i> that each <i>AIF</i> have only one <i>AIFM</i> as that requirement operates at the level of the <i>AIF</i> and not each separate investment compartment. See the answer to Question 2.61.</p>

<p>(8) A <i>firm</i> (A) with <i>permission</i> to <i>manage an AIF</i> delegates risk management to a <i>UK firm</i>, B.</p>	<p>B does not <i>manage an AIF</i>. If the fund is also a <i>collective investment scheme</i> B does not need <i>permission</i> to <i>establish, operate or wind up a collective investment scheme</i>. See example (5). However, A will not be able to delegate to B unless B has <i>permission to manage investments, manage an AIF or manage a UCITS</i> because of article 78 of the <i>AIFMD level 2 regulation</i> (Delegation of portfolio or risk management).</p>
<p>(9) A carries out portfolio management of an <i>AIF</i> as well as risk management. B runs the rest of the scheme.</p>	<p>A is <i>managing an AIF</i>. The difference to example (5) is that B has not delegated portfolio management to A. See example (11) for the treatment of B.</p>
<p>(10) A is <i>managing an AIF</i> (and has <i>permission</i> to do so) and is responsible for issuing and selling <i>units</i> or <i>shares</i> in the <i>AIF</i>.</p>	<p>Selling <i>shares</i> or <i>units</i> often involves <i>dealing in investments as principal</i> or <i>dealing in investments as agent</i>. However, A does not need these <i>permissions</i> as the activities are covered by the extended definition of <i>managing an AIF</i> described in the answer to Question 3.4 and hence A does not need <i>permission to deal in investments as principal</i> or <i>deal in investments as agent</i> in relation to the sale of the <i>units</i> or <i>shares</i> in the <i>AIF</i>.</p>
<p>(11) A is <i>managing an AIF</i> (and has <i>permission</i> to do so). B is in charge of administering the scheme.</p>	<p>B is not <i>establishing, operating or winding up a collective investment scheme</i> for the reasons described in the answer to Question 5.2. B is not <i>managing an AIF</i> for the reasons described in the answer to Question 3.5.</p>
<p>(12) Same as example (11). Then A resigns as manager.</p>	<p>Same answer as example (11). B may carry on its activities for 30 days while a new <i>AIFM</i> is put in place.</p>

(13) A firm 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 <i>collective investment scheme</i> does not mean A needs <i>permission to establish, operate or wind up a collective investment scheme</i> . In the FCA's view taking preliminary steps towards the carrying on of a <i>regulated activity</i> is itself carrying on that activity. A manager who is setting up a scheme is taking preliminary steps of that kind to <i>manage an AIF</i> . Hence the exclusion described in the answer to Question 5.2 applies.
(14) A 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 example (13) taking preparatory steps towards carrying on a <i>regulated activity</i> is itself a <i>regulated activity</i> . On this approach as B has started <i>managing an AIF</i> , the exclusion described in Question 5.2 comes into play and A does not need <i>permission</i> for establishing a <i>collective investment scheme</i> .
(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 <i>permission to establish, operate or wind up a collective investment scheme</i> as B has not begun to <i>manage an AIF</i> .
(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 <i>permission</i> for <i>advising on investments</i> . Instead the advisory activity is included within <i>managing an AIF</i> . Marketing and issuing units in the AIF is part of the extended managing activity (see Question 3.4). As explained in the answer to Question 5.2, if a person has a <i>Part 4A permission to manage an AIF</i> , activities carried on by that person in connection with or for the purposes of <i>managing an AIF</i> are excluded from all other <i>regulated activities</i> . The advice is included in <i>managing an AIF</i> as explained in paragraph (2) of the answer to Question 3.3.

(17) Same as example (16). However, (leaving aside the <i>RAO</i> provisions explained in <i>PERG</i> 16.3 and <i>PERG</i> 16.5) the advisory activity would not have involved <i>advising on investments</i> .	Same as answer as for example (17). The advisory activity is still a <i>regulated activity</i> , as part of <i>managing an AIF</i> .
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Part 2: Examples of how the <i>regulated activities</i> specific to depositaries interact with other <i>regulated activities</i>	
Example	Explanation of interaction with other <i>regulated activities</i>
(1) A is the depositary of an <i>AIF</i> and its <i>permission</i> covers this activity	A <i>acts as a depositary of an AIF</i> . A does not <i>safeguard and administer investments</i> .
(2) A is the depositary of an <i>AIF</i> and its <i>permission</i> covers this activity. A delegates some of the custody activities to B.	For A, the result is the same as under example (2). B does not <i>act as a depositary of an AIF</i> but instead <i>safeguards and administers investments</i> .
(3) A is depositary of an <i>AIF</i> . A carry vehicle or co-investment scheme invests alongside the <i>AIF</i> . That vehicle is a <i>collective investment scheme</i> and A is its custodian. The schemes invest in financial assets.	A's role in relation to the <i>AIF</i> means that its <i>permission</i> should cover <i>acting as a depositary of an AIF</i> . A's role in relation to the carry or co-investment vehicle means that its <i>permission</i> should cover <i>safeguarding and administering investments</i> . The exclusion described in the answer to Question 5.3 does not apply in relation to the carry or co-investment vehicle.

16.6 Exclusions

Question 6.1: What exclusions 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: Exclusions

Appendix

Entities that are not <i>AIFs</i>	<i>Persons excluded from the definition of managing an AIF</i>	Where further <i>Handbook</i> material can be found
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	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, insofar as they do not manage <i>AIFs</i>	Question 2.32
	National, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems	
An employee participation scheme or employee savings scheme	An employee participation scheme or employee savings scheme	Questions 2.34 and 2.35
A securitisation special purpose entity	A securitisation special purpose entity	Question 2.37
A holding company	A holding company	Questions 6.2 to 6.5
	<i>A small registered UK AIFM</i>	FUND 1
	An <i>AIFM</i> that manages a group <i>AIF</i>	Question 6.6

	The European Investment Fund, the European Development Finance institutions and bilateral development banks, the World Bank, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage <i>AIFs</i> and in so far as those <i>AIFs</i> act in the public interest	None
Note: All references are to this chapter of <i>PERG</i> unless otherwise stated		

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 or strategies 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 the *FCA*'s 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.

On the other hand, 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 the *AIFMD* if its shares are listed.

The question then is how the recital and the exclusion are to be reconciled.

The *FCA* understands that the generally accepted view amongst other European supervisors is 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. Whether a company is "operating on its own account" should be assessed, according to this view, on a case-by-case basis, taking into account for instance whether the economic interest/return/benefits are for the investors not for the company.

The distinction between a company whose returns are for itself and one whose returns are for its investors is discussed in the answer to Question 2.23 as this factor is also relevant to whether there is an *AIF* in the first place.

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). In the *FCA*'s 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; and
- (5) the *AIF*'s shares are admitted to trading on a regulated market in the European Union.

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 or strategies through its subsidiaries. In other words, the company should act in the same way as 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.

In general 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. A holding company may also provide services to other members of the group such as raising capital through the capital markets.

Question 6.5: What does company mean in the holding company exclusion?

As explained in the answer to Question 2.23, the *FCA* thinks that the basic distinction in the *AIFMD* is between investment activities and commercial/industrial activities. The holding company exclusion is an illustration of this basic approach. For that reason the *FCA* believes that the term company should be interpreted broadly to cover any undertaking such as, for example, a *limited liability partnership*.

Question 6.6: What does the group AIF exclusion involve?

An *AIFM* which 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*.

16.7 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 2.3.2(2)G.

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. *PERG 2.4.3G* describes these.

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 3.4 relevant?

Yes. When deciding whether a company is *managing an AIF* in the *UK* and 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 3.4 if the manager is performing risk management or portfolio management, even if all the risk management or portfolio management is carried on outside the *UK*.

Passporting

Notification of intention to establish a branch in another EEA state



(SUP 13 Annex 1R – Notification under SUP 13.5.1R)

Full name of firm [†]

Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to establish your first *branch* in a particular *EEA State*. You should also use this form if you are a *UK firm* that wishes to notify us – the *FSA* – of changes to the details of your current *branch*.

Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to establish a *branch* in another *EEA State* subject to the conditions of a relevant *single market directive* (see Schedule 3 of 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 their own legal advice both in the *UK* 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 (unless the *UK firm* is a *subsidiary* of a *firm* which is a *credit institution* that meets the criteria set out in the *Banking Consolidation Directive*).

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 10 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.

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS

UK

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: www.fsa.gov.uk

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...

10 Alternative Investment Fund Managers Directive

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.

<u>Management of AIFs</u>	<input type="checkbox"/>
<u>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.</u>	<input type="checkbox"/>
<u>Investment advice</u>	<input type="checkbox"/>
<u>Safekeeping and administration in relation to shares or units of collective investment undertakings.</u>	<input type="checkbox"/>
<u>Reception and transmission of orders in relation to financial instruments.</u>	<input type="checkbox"/>

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.

For a suggested template firms may adhere to question 4.2 when preparing a programme of operations

Please also identify the AIFs that the AIFM intends to manage.

1011 Declaration

...

I enclose the following sections (mark the appropriate section) *

Section 1 – Contact Details (mandatory)	<input type="checkbox"/>
...	
<u>Section 10 - Alternative Investment Fund Managers Directive</u>	<input type="checkbox"/>
Section <u>1011</u> – Declaration (mandatory)	<input type="checkbox"/>

...

Passporting

Notification of intention to provide cross border services in another EEA state (with respect to managing an AIF)



AIFMD management passport (services) (*SUP* 13 Annex 8AR – Notification under *SUP* 13.5.2R)

Full name of firm

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 *UK* 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

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 4.
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 4.
3. 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.

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS

UK

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above.

1 Contact details

1.1 Details of the person we will contact about this application

FSA reference number	
Contact name	
Telephone number	
Fax number	
Email address	

2 Details of the services to be provided

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

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).

States required	
Austria	<input type="checkbox"/>
Belgium	<input type="checkbox"/>
Bulgaria	<input type="checkbox"/>
Cyprus	<input type="checkbox"/>
Czech Republic	<input type="checkbox"/>
Denmark	<input type="checkbox"/>
Estonia	<input type="checkbox"/>
Finland	<input type="checkbox"/>
France	<input type="checkbox"/>
Germany	<input type="checkbox"/>
Gibraltar	<input type="checkbox"/>
Greece	<input type="checkbox"/>
Hungary	<input type="checkbox"/>
Iceland	<input type="checkbox"/>
Ireland	<input type="checkbox"/>
Italy	<input type="checkbox"/>
Latvia	<input type="checkbox"/>
Liechtenstein	<input type="checkbox"/>
Lithuania	<input type="checkbox"/>
Luxembourg	<input type="checkbox"/>
Malta	<input type="checkbox"/>
Netherlands	<input type="checkbox"/>
Norway	<input type="checkbox"/>
Poland	<input type="checkbox"/>
Portugal	<input type="checkbox"/>
Romania	<input type="checkbox"/>
Slovak Republic	<input type="checkbox"/>
Slovenia	<input type="checkbox"/>
Spain	<input type="checkbox"/>
Sweden	<input type="checkbox"/>
All States	<input type="checkbox"/>

2.2 If the firm intends to provide services into more than one EEA State, will these services vary for each State?

- Yes ►
No ►

2.3 Tell us the proposed date for the business to start.

Date	dd/mm/yy
------	----------

3 Alternative Investment Fund Managers

- 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*.

Please give details of the *firm's* programme of operations

Management of AIFs	<input type="checkbox"/>
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.	<input type="checkbox"/>
Investment advice	<input type="checkbox"/>
Safekeeping and administration in relation to <i>units</i> of collective investment undertakings.	<input type="checkbox"/>
Reception and transmission of orders in relation to <i>financial instruments</i> .	<input type="checkbox"/>

- 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.

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*.

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*.

Name	
Position	
Signature	
Date	dd/mm/yy

I enclose the following sections

- Section 1 – Contact details
Section 2 – Details of the services
Section 3 – Alternative Investment Fund Managers
Section 4 – Declaration

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Where to send this form

1) Please address the form to:

- (a) a member of or for the attention of our Passport Notification Unit, or if submitted with an application for *Part 4A permission*, our Authorisation Department; and
- (b) send it to us by one of the methods described in (2) below.

(2) Please send the form by:

- (a) emailing it to [*fca passporting email address to follow*], if not submitted with an application for Part 4A Permission; or
- (b) leaving the application at our Canary Wharf office (see (a) above) and obtaining a time-stamped receipt; or
- (c) posting it to The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
- (d) hand delivering it to a member of the Passport Notification Unit or, if submitted with an application for Part 4A permission, to the Authorisation Department; or
- (e) faxing it to the Passport Notification Unit on 020 7066 9798 (if not submitted with an application for Part 4A Permission).

If you have any questions or need additional information, please contact the Passport Notification Unit on 020 7066 1000 or email [*fca passporting email address to follow*].

Passporting

Notification of intention to provide cross border services in another EEA state (with respect to marketing an AIF)



AIFMD Marketing passport (SUP 13 Annex 8BR – Notification under SUP 13.5.2R)

Full name of firm

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*.

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 *UK* 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

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 4.
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 4.
3. 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.

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS

UK

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No 1920623 Registered Office as above

1 Contact details

1.1 Details of the person we will contact about this application

FSA reference number	
Contact name	
Telephone number	
Fax number	
Email address	

2 Details of the services to be provided

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

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).

States required	
Austria	<input type="checkbox"/>
Belgium	<input type="checkbox"/>
Bulgaria	<input type="checkbox"/>
Cyprus	<input type="checkbox"/>
Czech Republic	<input type="checkbox"/>
Denmark	<input type="checkbox"/>
Estonia	<input type="checkbox"/>
Finland	<input type="checkbox"/>
France	<input type="checkbox"/>
Germany	<input type="checkbox"/>
Gibraltar	<input type="checkbox"/>
Greece	<input type="checkbox"/>
Hungary	<input type="checkbox"/>
Iceland	<input type="checkbox"/>
Ireland	<input type="checkbox"/>
Italy	<input type="checkbox"/>
Latvia	<input type="checkbox"/>
Liechtenstein	<input type="checkbox"/>
Lithuania	<input type="checkbox"/>
Luxembourg	<input type="checkbox"/>
Malta	<input type="checkbox"/>
Netherlands	<input type="checkbox"/>
Norway	<input type="checkbox"/>
Poland	<input type="checkbox"/>
Portugal	<input type="checkbox"/>
Romania	<input type="checkbox"/>
Slovak Republic	<input type="checkbox"/>
Slovenia	<input type="checkbox"/>
Spain	<input type="checkbox"/>
Sweden	<input type="checkbox"/>
All States	<input type="checkbox"/>

2.2 If the *firm* intends to provide services into more than one *EEA State*, will these services vary for each State?

- Yes ►
No ►

2.3 Tell us the proposed date for the business to start.

Date	dd/mm/yy
------	----------

3 Alternative Investment Fund Managers

Please provide the following documentation and information.

3.1 Details of the *firm's* programme of operations

**Note to Question
3.2**

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.



3.2 A copy of the *AIF* rules or instruments of incorporation

3.3 The identity of the *depositary* of the *AIF*.



3.4 A description of, or any information on, the *AIF* available to investors



3.5 If the *AIF* is a *feeder AIF*, the jurisdiction in which the *master AIF* is established.



3.6 Any additional information referred to in *FUND* [3.2.2R (Prior disclosure of information to investors)], for each *AIF* the *AIFM* intends to market.



3.7 Information about arrangements made for the *marketing* of the *AIF*.



3.8 Where relevant, arrangements established to prevent the *AIF* from being marketed to an investors 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*.



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*.

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*.

Name	
Position	
Signature	
Date	dd/mm/yy

I enclose the following sections

Section 1 – Contact details

Section 2 – Details of the services

Section 3 – Alternative Investment Fund Managers

Section 4 – Declaration

Where to send this form

- 1) Please address the form to:
 - (a) a member of or for the attention of our Passport Notification Unit, or if submitted with an application for *Part 4A permission*, our Authorisation Department; and
 - (b) send it to us by one of the methods described in (2) below.
- (2) Please send the form by:
 - (a) emailing it to [*fca passporting email address to follow*], if not submitted with an application for Part 4A Permission; or
 - (b) leaving the application at our Canary Wharf office (see (a) above) and obtaining a time-stamped receipt; or
 - (c) posting it to The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
 - (d) hand delivering it to a member of the Passport Notification Unit or, if submitted with an application for Part 4A permission, to the Authorisation Department; or
 - (e) faxing it to the Passport Notification Unit on 020 7066 9798 (if not submitted with an application for Part 4A Permission).

If you have any questions or need additional information, please contact the Passport Notification Unit on 020 7066 1000 or email [*fca passporting email address to follow*].

PUB REF: 004681

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