

## Chapter 11

# Master-feeder arrangements for UCITS schemes

## 11.4 Depositaries

### Information-sharing agreement between depositaries

11.4.1

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- (1) An *authorised fund manager* of a *feeder UCITS* is responsible for communicating to the *depositary* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depositary's* regulatory obligations.
- (2) Where a *master UCITS* and its *feeder UCITS* have different *depositaries*, the *depositaries* must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[Note: article 61(1) first and fourth paragraphs of the *UCITS Directive*]

### Contents of the information-sharing agreement between depositaries

11.4.2

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- (1) The information-sharing agreement referred to in ■ COLL 11.4.1R (2) must include:
  - (a) identification of the *documents* and categories of information which are to be routinely shared between both *depositaries*, and whether that information or those *documents* are provided by one *depositary* to the other or made available on request;
  - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depositary* of the *master UCITS* to the *depositary* of the *feeder UCITS*;
  - (c) the co-ordination of the involvement of both *depositaries*, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
    - (i) the procedure for calculating the net asset value of each *scheme*, including any measures appropriate to protect against the activities of market timing in accordance with ■ COLL 11.3.6 R (Avoidance of opportunities for market timing);
    - (ii) the processing of instructions by the *feeder UCITS* to purchase, subscribe or request the repurchase or *redemption* of *units* in the *master UCITS*, and the settlement of those transactions, including any arrangement to transfer assets in kind;
  - (d) the co-ordination of accounting year-end procedures;
  - (e) what details the *depositary* of the *master UCITS* must provide to the *depositary* of the *feeder UCITS* of breaches by the *master*

*UCITS* of the law and the *instrument constituting the fund* and how and when those details will be provided;

- (f) the procedure for handling ad hoc requests for assistance from one *depositary* to the other; and
- (g) identification of particular contingent events which ought to be notified by one *depositary* to the other on an ad hoc basis, and how and when this will be done.

- (2) Where a *master-feeder agreement* exists in accordance with ■ COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK* law applies to that agreement, and both *depositaries* agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.
- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with ■ COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositaries* must provide that *UK* law applies to that agreement, and both *depositaries* agree to the exclusive jurisdiction of the *UK* courts in relation to that agreement.

[Note: articles 24 and 25 of the *UCITS implementing Directive No 2*]

#### 11.4.2A R

- (1) Where paragraph (2) applies, an *information-sharing agreement* between the *depositaries* that is effective prior to *IP completion day* need not comply with ■ COLL 11.4.2R.
- (2) This paragraph applies where the applicable law of the *information sharing agreement* between the *depositaries* was:
  - (a) *UK* law before *IP completion day*, and remains so; or
  - (b) the law of a given *EEA State* before *IP completion day*, and remains so.

#### Notification of irregularities

#### 11.4.3 R

- (1) Where a *depositary* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depositary* must immediately inform:
  - (a) the *FCA*;
  - (b) the *feeder UCITS* or, where applicable, its *management company*; and
  - (c) the *depositary* of the *feeder UCITS*.
- (2) The irregularities referred to in (1) include, but are not limited to:
  - (a) errors in the valuation of the *scheme property* performed in accordance with ■ COLL 6.3.3 R (Valuation);
  - (b) errors in transactions for or settlement of the *sale, issue, repurchase or redemption of units* in the *scheme* undertaken by the *feeder UCITS*;

- (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
- (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the fund*, the *prospectus* or the *key investor information*; and
- (e) breaches of investment and borrowing limits set out in *COLL*, the *instrument constituting the fund*, the *prospectus* or the *key investor information*.

[Note: article 61(2) of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No 2*]

11.4.4

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- (1) When notifying the *FCA* of any irregularities in accordance with ■ *COLL 11.4.3R (1)*, the *depository* of the *master UCITS* should also inform the *depository* of the *feeder UCITS* how the *master UCITS* or its *authorised fund manager* has resolved or proposes to resolve the irregularity.
- (2) Where the *depository* of a *UCITS scheme* that is a *feeder UCITS* is informed by the *depository* of a *master UCITS* of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the *directors*.

[Note: recital (16) to the *UCITS implementing Directive No 2*]

Disclosure by a trustee or depository

11.4.5

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Section 351A (Disclosure under the *UCITS directive*) of the *Act* provides that where a *trustee* of an *AUT* or the *depository* of an *ACS* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositaries* of *ICVCs* that are *feeder UCITS* and *master UCITS*.