

## Investment Funds sourcebook

### FUND TP 1 Transitional Provisions

(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	FUND 3.11.2 R	R	<i>A credit institution established in the UK and appointed as a depositary of an EEA AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM in accordance with article 61(5) of AIFMD must comply with the provisions of FUND 3.11 that apply to a UK depositary of a UK AIF managed by a full-scope UK AIFM or an EEA AIFM.</i>	From 22 July 2013 until 22 July 2017.	22 July 2013
1A	FUND 3.11.4R (2)	R	<i>An AIFM that appoints a depositary in accordance with article 61(5) of AIFMD must ensure the assets of the AIF are entrusted to the depositary for safekeeping in accordance with the national laws and regulations of the EEA State of the competent authority of the depositary (as defined in article 4(1)(g) of AIFMD).</i>	From 1 July 2014 until 22 July 2017.	1 July 2014
2	FUND 3.11.10 R	R	<i>An AIFM may ensure the appointment of a credit institution that is established in an EEA State other than the UK for each UK AIF it manages that is an unauthorised AIF, unless the AIF is an ELTIF.</i>	From 22 July 2013 until 22 July 2017.	22 July 2013
3	FUND 3.11.14R (1)	R	Expired		
4	FUND 3.11.18 R	R	<i>An AIFM may ensure the appointment of a depositary that is a credit institution established in an EEA State other than the Home State of the AIF for each EEA AIF it manages if this is permitted</i>	From 22 July 2013 until 22 July 2017.	22 July 2013

			by the laws and regulations of the <i>Home State</i> of the AIF.		
5	FUND 3.11.33R (1)(a)	R	Expired		
6	FUND 3.11.24R	R	FUND 3.11.24R does not apply to a <i>credit institution</i> established in the <i>UK</i> in relation to an <i>EEA ELTIF</i> for which it is appointed as a <i>depository</i> that is:  (a) managed by a <i>full-scope UK AIFM</i> or a <i>full-scope EEA AIFM</i> in accordance with	From 9 December 2015 until 22 July 2017	9 December 2015

7	FUND 3.2.4AG	G	<p>article 61(5) of <i>AIFMD</i>; and (b) <i>marketed to a retail client</i>.</p> <p>A <i>full-scope UK AIFM</i> does not need to comply with the provisions of the <i>Securities Financing Transactions Regulation</i> referred to in FUND 3.2.4AG for:</p> <p>(1) any <i>sub-fund</i> that was constituted before 12 January 2016, if the <i>AIF</i> has one or more <i>sub-funds</i>; and</p> <p>(2) an <i>AIF</i> that was constituted before 12 January 2016 and has no <i>sub-funds</i>.</p> <p>[<b>Note:</b> article 33(2)(c) of the <i>Securities Financing Transactions Regulation</i>]</p>	From 23 September 2016 until 12 July 2017	23 September 2016
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Schedule 1  
Record keeping requirements

## Sch 1.1 G

Handbook reference (1)	Subject of record (2)	Contents of record (3)	When record must be made (4)	Retention period (5)
FUND 3.11.21R(2)	<i>AIF custodial assets</i>	Details	Upon the holding of <i>AIF custodial assets</i> in custody	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>
FUND 3.11.23R(2)	Assets of an <i>AIF</i> that are not <i>AIF custodial assets</i>	Details	Upon a <i>depository</i> satisfying itself that the <i>AIF</i> , or the <i>AIFM</i> acting on behalf of the <i>AIF</i> , is the owner of the assets	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>
FUND 3.11.33R(1)	<i>AIF custodial assets</i> and assets of an <i>AIF</i> that are not <i>AIF custodial assets</i>	Details	When an entity assumes responsibility for carrying out the duties referred to in FUND 3.11.21R(2) or 3.11.23R(2)	5 years after the date on which the asset ceases to be an asset of the <i>AIF</i>



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### Schedule 2 Notification requirements

#### Sch 2.1 G

Handbook reference (1)	Matter to be notified (2)	Contents of notification (3)	Trigger event (4)	Time allowed (5)
FUND 3.9.11R	Appointment of an <i>external valuer</i>	Details	Appointment of the <i>external valuer</i>	One <i>month</i> before the appointment takes effect
FUND 3.10.2R(1) and FUND 3.10.2AR	The carrying out of any function of an <i>AIFM</i> by a delegate	Details	Upon agreement of delegation arrangement	Before delegation arrangements become effective
FUND 3.10.4R(2) and FUND 3.10.4AR	The sub-delegation of any function of an <i>AIFM</i> by a delegate	Details	When an <i>AIFM's</i> delegate carries out a sub-delegation	Before the sub-delegation arrangements become effective





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### Schedule 3 Rights of action for damages

#### Sch 3.1 G

The table below sets out the rules in FUND where contravention by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed 'For private person', the rule may be actionable by a private person under section 138D, unless a Yes appears in the column headed 'Removed'. A Yes in the column headed 'Removed' indicates that the FCA has removed the right of action under section 138F(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

- (1) any individual, except when acting in the course of carrying on a regulated activity; and
- (2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

#### Sch 3.2 G

##### 1. Actions for damages: Investment Funds sourcebook

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action section 138D		
			For private person?	Removed	For other person
All rules in FUND			Yes	No	No



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### Schedule 4 Rules that can be waived

#### Sch 4 G

The *FCA* has the formal power to waive *rules* under sections 138A or section 250 of the Act (Modification or waiver of rules). However, the large majority of the *rules* in FUND are derived from AIFMD and it is not possible for the *FCA* to grant a *waiver* that would be incompatible with the *UK's* responsibilities under that directive. In practice, the ability of the *FCA* to *waive rules* in FUND is, therefore, severely constrained.

