

UCITS V LEVEL 2 REGULATION INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137H (General rules about remuneration);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 261I (Contractual scheme rules); and
 - (2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 13 October 2016.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Client Assets sourcebook (CASS)	Annex C
Supervision (SUP)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E

Notes

- E. In Annex A to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as UCITS V Level 2 Regulation Instrument 2016.

By order of the Board
22 September 2016

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

In this Annex, underlining indicates new text. Amend the following definition as shown.

UCITS custodial assets *financial instruments* of a *UCITS* that can be:

- (a) registered in a *financial instruments* account opened in the *depository's* books; or
- (b) physically delivered to the *depository*.

[Note: article 22(5) of the *UCITS Directive* and article 12 of the *UCITS level 2 regulation*]

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

19E UCITS Remuneration Code

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19E.2 Remuneration policies and practices

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UCITS Remuneration Principle 3: Governance

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19E.2.9 R (1) *A management company* must establish a *remuneration* committee if it is significant in terms of:

- (a) its size, or the size of the UCITS that it manages; ~~or~~
- (b) ~~the size of the UCITS that it manages; or [deleted]~~
- (c) the complexity of its internal organisation; ~~or~~ and
- (d) the nature, the scope and the complexity of its activities.

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Annex C

Amendments to the Client Assets sourcebook (CASS)

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

1 Application and general provisions

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1.4 Application: particular activities

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Depositories

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- 1.4.6B G *Firms acting as trustee or depositary of a UCITS* are reminded of the obligations in *COLL 6.6B (UCITS depositories)* and in the *UCITS level 2 regulation*, which apply in addition to those in *CASS*.

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6 Custody rules

6.1 Application

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Depositories of UCITS

- 6.1.16ID R When a *firm* is acting as trustee or depositary of a UCITS, the *firm* need comply only with the *custody rules* in the table below:

Reference	Rule
CASS 6.1.1R, CASS 6.1.1BR(3), CASS 6.1.9G, CASS 6.1.16IEG	Application
CASS 6.1.22G to CASS 6.1.24G	General purpose
CASS 6.2.3R, CASS 6.2.3AR, CASS 6.2.3BG, CASS 6.2.7R	Holding of client assets
CASS 6.6.1G to CASS 6.6.5G, CASS 6.6.7R to CASS 6.6.40G, CASS 6.6.42G, CASS 6.6.44R to CASS 6.6.57R(1), CASS 6.6.57R(4) to CASS 6.6.58G	Records, accounts and reconciliations
<u>CASS 6.6.2R, CASS 6.6.4R, CASS 6.6.7R, CASS</u>	

6.6.41AG, CASS 6.6.57R(2A), CASS 6.6.58G	
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6.6 Records, accounts and reconciliations

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External custody reconciliations

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6.6.41A G If a firm acting as trustee or depositary of a UCITS deposits safe custody assets belonging to a client with a third party, under article 13(1)(c) (Safekeeping duties with regard to assets held in custody) of the UCITS level 2 regulation, the firm should seek to ensure that:

(1) the third party provides the firm with adequate information (for example in the form of a statement):

(a) as at a date or dates specified by the firm; and

(b) which details the description and amounts of all the safe custody assets credited to the account(s); and

(2) such information is provided in adequate time to allow the firm to carry out the periodic reconciliations required under article 13(1)(c) of the UCITS level 2 regulation.

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Notification requirements

6.6.57 R A firm must inform the FCA in writing without delay if:

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(2) if it is a firm acting as trustee or depositary of an AIF and has not complied with, or is materially unable to comply with, the requirements in CASS 6.6.2R or in article 89(1)(b) or 89(1)(c) (Safekeeping duties with regard to assets held in custody) of the AIFMD level 2 regulation; or

(2A) it is a firm acting as trustee or depositary of a UCITS and has not complied with, or is materially unable to comply with, the requirements in:

(a) CASS 6.6.2R; or

(b) article 13(1)(b) or 13(1)(c) (Safekeeping duties with regard to assets held in custody) of the UCITS level 2 regulation; or

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...

Insert the following new row in the appropriate numerical position in Schedule 2 (Notification requirements). The new text is underlined.

Sch 2 Notification requirements

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Sch
2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
CASS 6.6.57R(2)
<u>CASS 6.6.57R(2A)</u>	<u>Non-compliance or material inability to comply with the requirements in CASS 6.6.2R (Records, accounts and reconciliations) or article 13(1)(b) or 13(1)(c) (Safekeeping duties with regard to assets held in custody) of the UCITS level 2 regulation</u>	<u>The fact that the <i>firm</i> has not complied or is materially unable to comply with the requirements and the reasons for that</u>	<u>Non-compliance or material inability to comply with the requirement</u>	<u>Without delay</u>
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Annex D

Amendments to the Supervision sourcebook (SUP)

In this Annex, underlining indicates new text.

16 Reporting requirements

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16.14 Client money and asset return

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Report

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16.14.4 R For the purposes of the *CMAR*:

- (1) *client money* is that to which the *client money rules* in CASS 7 apply; and
- (2) *safe custody assets* are those to which the *custody rules* in CASS 6 apply but only in relation to:
 - ...
 - (d) *acting as trustee or depositary of a UCITS and in this case also include any safe custody investments to which the firm is required by CASS 6.1.16IDR to apply the custody rules under CASS 6.1.1BR(3); and*
 - ...

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Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

6 Operating duties and responsibilities

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6.9 Independence, names and UCITS business restrictions

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Independence of depositaries and scheme operators

6.9.1A G Articles 20 to 24 of the UCITS level 2 regulation set out detailed provisions that must be read by the authorised fund manager and the depositary of a UCITS scheme alongside COLL 6.9.2G to COLL 6.9.5G.

6.9.2 G ...