
STATUTORY INSTRUMENTS

2016 No. 225

**The Undertakings for Collective Investment
in Transferable Securities Regulations 2016**

**Amendments to the Undertakings for Collective Investment in Transferable Securities
Regulations 2011**

3.—(1) The Undertakings for Collective Investment in Transferable Securities Regulations 2011(1) are amended as follows.

(2) In regulation 7(1)(2)—

(a) insert in the appropriate places the following definitions—

““EEA management company” means a management company that is established in an EEA State other than the UK;”;

““implementing provision” means a requirement that is imposed—

(a) by these Regulations; or

(b) by or under the Act, if the provision implements the UCITS directive;”;

““UK management company” means a management company that is established in the UK;”;

(b) in the definition of “UCITS directive”, at the end insert “, as amended by [Directive 2014/91/EU](#) of the European Parliament and of the Council of 23rd July 2014;”

(c) replace regulation 7(2) with—

“(2) Expressions used in this Part which are defined in the UCITS directive have the same meaning as in the UCITS directive and, subject to paragraph (1), expressions used in this Part shall have the same meaning as in the Act.”.

(3) After Part 5 (Divisions) insert—

“PART 5A

DEPOSITARIES

Interpretation

15A. The interpretative provisions in regulation 7 shall apply to this Part.

Depository liability: general provisions

15B.—(1) This regulation, and regulations 15C and 15D, apply in relation to the depository of a UCITS.

(1) [S.I. 2011/1613](#), amended by [S.I. 2012/2015](#), [S.I. 2013/472](#) and [S.I. 2013/1388](#).

(2) Regulation 7 was amended by [S.I. 2013/472](#) and [S.I. 2013/1388](#).

(2) Any liability of the depositary to the UCITS, or to unit-holders of the UCITS, under regulation 15C or 15D is not affected by—

- (a) any delegation by the depositary of its functions as referred to in Article 22a of the UCITS directive;
- (b) any contractual provision that purports to exclude or limit the depositary's liability for losses under regulation 15C or 15D; or
- (c) any exclusion or limitation by agreement of the depositary's liability for losses under regulation 15C or 15D.

(3) Any provision or agreement that falls within paragraph (2)(b) or (c) will be void.

(4) Any obligation or liability of a depositary under regulation 15C or 15D to the unit-holders of the UCITS may be invoked either directly or indirectly through the management company provided that this does not lead to a duplication of redress or to unequal treatment of unit-holders.

Depositary liability for loss of financial instruments held in custody

15C.—(1) This regulation applies where a financial instrument held in custody in accordance with Article 22.5(a) of the UCITS directive by—

- (a) the depositary, or
- (b) a third party to whom custody of the financial instrument has been delegated or sub-delegated,

has been lost in the conditions or circumstances described in any directly applicable regulation made under Article 26b(f) of the UCITS directive.

(2) Subject to paragraph (3), the depositary is liable to the UCITS and to the unit-holders of the UCITS for loss of the financial instrument and must return a financial instrument of an identical type or the corresponding amount to the UCITS, or to the management company acting on behalf of the UCITS, without undue delay.

(3) The depositary is not liable under paragraph (2) nor is it required to comply with the obligation in that paragraph if it can prove that the loss has arisen as a result of an external event beyond the depositary's reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

Depositary liability for other losses

15D. If a UCITS, or unit-holders of a UCITS, have suffered losses other than a loss of a financial instrument referred to in regulation 15C, the depositary is liable to the UCITS or to the unit-holders of the UCITS for those losses, if the losses are as a result of the depositary's negligent or intentional failure to comply with any implementing provision that applies to it.

PART 5B

REQUIREMENTS ON THE FINANCIAL CONDUCT AUTHORITY

Interpretation

15E. The interpretative provisions in regulation 7 shall apply to this Part.

FCA requirement to share depositary information

15F. If the FCA receives information—

- (a) from the depositary of—
 - (i) an EEA UCITS managed by a UK management company or an EEA management company, or
 - (ii) a UK UCITS managed by an EEA management company;
- (b) which the depositary has obtained while performing its duties as the depositary of the EEA UCITS or UK UCITS; and
- (c) which may be necessary for the competent authority of the EEA UCITS or the EEA management company;

the FCA must share such information with that competent authority without delay.

FCA's ability to refuse to act on requests for information

15G. The FCA may only refuse to act on a request for information or a request to cooperate with an investigation into possible infringements of the UCITS directive from a competent authority of an EEA UCITS or an EEA management company, where—

- (a) communication of the relevant information may adversely affect the security of the United Kingdom, in particular the fight against terrorism or other serious crimes;
- (b) compliance with the request is likely to affect adversely the FCA's own investigation, enforcement activities, or where applicable, a criminal investigation;
- (c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the courts of the United Kingdom; or
- (d) a final judgment has already been delivered in relation to such persons for the same actions in the United Kingdom.

Reporting of infringements

15H. The FCA must establish specific procedures for the receipt and follow-up of reports on potential or actual infringements of any implementing provision, in accordance with Article 99d of the UCITS directive.

Disclosure of information regarding penalties

15I. The FCA must provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99 of the UCITS directive.”.