

instruments as a result of fraud, poor administration, inadequate registering or negligence;

(g) the AIF’s ownership right or the ownership right of the AIFM acting on behalf of the AIF over the assets is verified.

(2) Where a depositary has delegated its custody functions to a delegate in accordance with paragraph 32(1) and (2) of the Rules, it shall remain subject to the requirements of subparagraph (1)(b) to (e). It shall also ensure that the delegate complies with the requirements of subparagraph (1)(b) to (g) and the segregation obligations laid down in this Schedule under the heading ‘Segregation Obligations’.

(3) A depositary’s safe-keeping duties as referred to in subparagraphs (1) and (2) shall apply on a look-through basis to underlying assets held in accordance with or by financial arrangements and any legal structures controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF. The requirement referred to in subparagraph (1) shall not apply to fund of funds structures or master-feeder structures where the underlying funds have a depositary which keeps in custody the assets of these funds.

Safekeeping duties regarding ownership verification and record-keeping

6. (1) In order to comply with the obligations referred to in paragraphs 30(1), (2), (3) and (4) of the Rules, a depositary shall at least—

(a) have access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping duties, including relevant information to be provided to the depositary by third parties;

(b) possess sufficient and reliable information for it to be satisfied of the AIF’s ownership right, or of the ownership right of the AIFM acting on behalf of the AIF, over the assets;

(c) maintain a record of those assets for which it is satisfied that the AIF, or the AIFM acting on behalf of the AIF, holds the ownership. In order to comply with this obligation, the depositary shall—

(i) register in its record, in the name of the AIF, assets, including their respective notional amounts, for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership;

(ii) be able to provide at any time a comprehensive and up-to-date inventory of the AIF’s assets, including their respective notional amounts.

(2) For the purpose of subparagraph (1), the depositary shall ensure that there are procedures in place so that registered assets cannot be assigned, transferred, exchanged or delivered without the depositary or its delegate having been informed of such transactions and the depositary shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party. The AIFM shall ensure that the relevant third party provides the depositary, without undue delay, with certificates or other documentary evidence every time there is a sale or acquisition of assets or a corporate action resulting in the issue of financial instruments and at least once a year.

(3) In any event, a depositary shall ensure that the AIFM has and implements appropriate procedures to verify that the assets acquired by the AIF it manages are appropriately registered in the name of the AIF, or in the name of the AIFM acting on behalf of the AIF, and to check the consistency between the positions in the AIFMs records and the assets for which the depositary is satisfied that the AIF, or the AIFM acting on behalf of the AIF, holds the ownership. The AIFM shall ensure that all instructions and relevant information related to the AIF’s assets are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

(4) A depositary shall set up and implement an escalation procedure for situations where an anomaly is detected, including notification of the AIFM and of the competent authorities if the situation cannot be clarified and, as the case may be, or corrected.

(5) A depositary’s safe-keeping duties referred to in subparagraphs (1) to (4) shall apply on a look-through basis to underlying assets held in accordance with or by financial arrangements and any legal structures established by the AIF, or by the AIFM acting on behalf of the AIF, for the purposes of investing in the underlying assets and which are controlled directly or indirectly by the AIF, or by the AIFM acting on behalf of the AIF. The requirement referred to in subparagraph (1) shall not apply to fund of funds structures and master-feeder structures where the underlying funds have a depositary which provides ownership verification and record-keeping functions for this fund’s assets.

Oversight duties — general requirements

7. (1) At the time of its appointment, the depositary shall assess the risks associated with the nature, scale and complexity of the AIF’s strategy and the AIFM’s

organisation in order to devise oversight procedures which are appropriate to the AIF and the assets in which it invests and which are then implemented and applied. Such procedures shall be regularly updated.

(2) In performing its oversight duties under paragraph 31 of the Rules, a depositary shall perform ex-post controls and verifications of processes and procedures that are under the responsibility of the AIFM, the AIF or an appointed third party. The depositary shall in all circumstances ensure that an appropriate verification and reconciliation procedure exists which is implemented and applied and frequently reviewed. The AIFM shall ensure that all instructions related to the AIF’s assets and operations are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

(3) A depositary shall establish a clear and comprehensive escalation procedure to deal with situations where potential irregularities are detected in the course of its oversight duties, the details of which shall be made available to the competent authorities of the AIFM upon request.

Duties regarding subscription and redemptions

8. (1) In order to comply with paragraph 31 of the Rules, the depositary shall meet the following requirements—

(a) the depositary shall ensure that the AIF, the AIFM or the designated entity has established, implements and applies an appropriate and consistent procedure to—

(i) reconcile the subscription orders with the subscription proceeds, and the number of units or shares issued with the subscription proceeds received by the AIF;

(ii) reconcile the redemption orders with the redemptions paid, and the number of units or shares cancelled with the redemptions paid by the AIF;

(iii) verify on a regular basis that the reconciliation procedure is appropriate;

(b) for the purposes of clause (a)(i), (ii) and (iii), the depositary shall, in particular, regularly check the consistency between the total number of units or shares in the AIF’s accounts and the total number of outstanding shares or units that appear in the AIF’s register.

(2) A depositary shall ensure and regularly check that the procedures regarding the sale, issue, re-purchase, redemption and cancellation of shares or units of the AIF comply with the applicable national law, and with the AIF rules or instruments of incorporation, and verify that these procedures are effectively implemented.

(3) The frequency of the depositary’s checks shall be consistent with the frequency of subscriptions and redemptions.

Duties regarding the valuation of shares/units

9. (1) In order to comply with paragraph 31 of the Rules, the depositary shall—

(a) verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of the assets of the AIF in compliance with paragraph 17(1) of the Rules and its implementing measures and with the AIF rules and instruments of incorporation; and

(b) ensure that the valuation policies and procedures are effectively implemented and periodically reviewed.

(2) A depositary’s procedures shall be conducted at a frequency consistent with the frequency of the AIF’s valuation policy as defined in paragraph 17(1) of the Rules and its implementing measures.

(3) Where a depositary considers that the calculation of the value of the shares or units of the AIF has not been performed in compliance with applicable law or the AIF rules or paragraph 17(1) of the Rules, it shall notify the AIFM and, as the case may be, or the AIF and ensure that timely remedial action is taken in the best interest of the investors in the AIF.

(4) Where an external valuer has been appointed, a depositary shall check that the external valuer’s appointment is in accordance with paragraph 18 of the Rules and its implementing measures.

Duties regarding the carrying out of the AIFM’s instructions

10. In order to comply with paragraph 31 of the Rules, the depositary shall at least—

(a) set up and implement appropriate procedures to verify that the AIF and AIFM comply with applicable laws and regulations and with the AIF’s rules and instruments of incorporation. In particular, the depositary shall monitor the AIF’s compliance with investment restrictions and leverage limits

set in the AIF’s offering documents. Those procedures shall be proportionate to the nature, scale and complexity of the AIF;

(b) set up and implement an escalation procedure where the AIF has breached one of the limits or restrictions referred to in clause (a).

Duties regarding the timely settlement of transactions

11. (1) In order to comply with paragraph 31 of the Rules, the depositary shall set up a procedure to detect any situation where a consideration related to the operations involving the assets of the AIF, or of the AIFM acting on behalf of the AIF, is not remitted to the AIF within the usual time limits, notify the AIFM and, where the situation has not been remedied, request the restitution of the financial instruments from the counterparty where possible.

(2) Where transactions do not take place on a regulated market, the usual time limits shall be assessed with regard to the conditions attached to the transactions (OTC derivative contracts or investments in real estate assets or in privately held companies).

Duties related to the AIF’s income distribution

12. (1) In order to comply with paragraph 31 of the Rules, the depositary shall—

(a) ensure that the net income calculation, once declared by the AIFM, is applied in accordance with the AIF rules, instruments of incorporation and applicable national law;

(b) ensure that appropriate measures are taken where the AIF’s auditors have expressed reserves on the annual financial statements. The AIF, or the AIFM acting on behalf of the AIF, shall provide the depositary with all information on reserves expressed on the financial statements; and

(c) check the completeness and accuracy of dividend payments, once they are declared by the AIFM, and, where relevant, of the carried interest.

(2) Where a depositary considers that the income calculation has not been performed in compliance with applicable law or with the AIF rules or instruments of incorporation, it shall notify the AIFM and, as the case may be, or the AIF and ensure that timely remedial action has been taken in the best interest of the AIF’s investors.

Due diligence

13. (1) In order to fulfil the obligations laid down in paragraph 32(2)(c) of the Rules, the depositary shall implement and apply an appropriate documented due diligence procedure for the selection and ongoing monitoring of the delegate. That procedure shall be reviewed regularly, at least once a year, and made available upon request to competent authorities.

(2) When selecting and appointing a delegate to whom safe-keeping functions are delegated in accordance with paragraph 32 of the Rules, the depositary shall exercise all due skill, care and diligence to ensure that entrusting financial instruments to this delegate provides an adequate standard of protection. It shall at least—

(a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the delegate’s contracts. That assessment shall, in particular, enable the depositary to determine the potential implication of an insolvency of the third party for the assets and rights of the AIF. If a depositary becomes aware that the segregation of assets is not sufficient to ensure protection from insolvency because of the law of the country where the delegate is located, it shall immediately inform the AIFM;

(b) assess whether the delegate’s practice, procedures and internal controls are adequate to ensure that the financial instruments of the AIF, or of the AIFM acting on behalf of the AIF, are subject to a high standard of care and protection;

(c) assess whether the delegate’s financial strength and reputation are consistent with the tasks delegated. That assessment shall be based on information provided by the potential third party as well as other data and information, where available;

(d) ensure that the delegate has the operational and technological capabilities to perform the delegated custody tasks with a satisfactory degree of protection and security.

(3) A depositary shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring to ensure that the delegate continues to comply with the criteria and the conditions set out in paragraph 32 of the Rules. To this end, the depositary shall at least—

(a) monitor the delegate’s performance and its compliance with the depositary’s standards;