COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 11 July 2014

To all credit institutions acting as depositaries of UCITS subject to Part I of the law of 17 December 2010 relating to undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

Circular CSSF 14/587

as amended by Circular CSSF 15/608

Re: Provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I of the law of 17 December 2010 relating to undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

Ladies and Gentlemen,

This circular is addressed to Luxembourg credit institutions governed by the law of 5 April 1993 on the financial sector and to the Luxembourg branches of credit institutions established in a Member State of the European Union which act, or intend to apply for authorisation to act, as depositary bank ("depositaries" or "depositary") of undertakings for collective investment in transferable securities subject to Part I of the law of 17 December 2010 relating to undertakings for collective investment (hereinafter, the "2010 Law"). It is also addressed to undertakings for collective investment in transferable securities themselves (a or the "UCITS"), as the case may be, represented by their management company, with regard to their interactions with their depositary.

The purpose of this circular is to clarify the depositary regime provided for in the 2010 Law by defining new organisational arrangements which must be put into place at the level of the depositaries of UCITS established in Luxembourg, as well as at the level of the UCITS in relation to the duties, obligations and rights concerning the UCITS depositary function.

The clarifications provided by this circular are, to a certain extent, based on, and aim to replicate, as far as is possible, the EU rules developed in relation to depositaries of alternative investment funds ("AIF"), pursuant to the provisions of Directive 2011/61/EU on alternative investment fund managers and the delegated acts related thereto (hereinafter, the "AIFMD"), whose rules are mostly to be considered as rules of reference for every credit institution acting as depositary of an undertaking for collective investment

in the broad sense of the term established in a Member State of the European Union. Through the approximation of the organisational arrangements applicable to the depositaries of UCITS with those which are applicable to the depositaries of AIFs under the AIFMD as well as under the law of 12 July 2013 on alternative investment fund managers (hereinafter, the "2013 Law"), this circular establishes, as far as is possible, an alignment and anticipates the standardisation of the depositary regimes of both UCITS and AIFs as regards their common elements, as they are due to emerge under what is currently referred to as the draft "UCITS V" Directive. As far as the liability regime applicable to depositaries of UCITS is concerned, reference should be made to the applicable legal provisions under the 2010 Law, as this aspect is not covered by the circular.

Important note:

This circular pays particular attention to certain aspects which are considered to be essential in relation to the depositary function. Among these elements, it is especially important to note the rules:

- relating to the **segregation of assets,** to be maintained throughout the custody chain of an asset (Chapter 2 of Part IV);
- concerning the obligations relating to the **initial selection and ongoing monitoring of each third-party custodian/sub-custodian** ("due diligence", see Chapter 5 of Part IV);
- concerning the identification, management and avoidance of **conflicts of interest** (Chapter 4 of Part II); and
- in relation to **accounting and the proper monitoring of the cash flows** (Part V).

Chapter E of Circular IML 91/75 ("Rules concerning the depositary of a Luxembourg UCI") of 21 January 1991 will no longer be applicable to UCITS as from the date indicated in Part XI. Concerning UCIs and investment companies in risk capital under the law of 15 June 2004, which qualify as AIFs under the 2013 Law and whose AIFM is subject to the requirements of Article 19 of this law (or Article 21 of the AIFMD as transposed into the relevant national law), the provisions of this law as well as those of the AIFMD are to be applied. For all other Luxembourg UCIs (namely those UCIs established under the law of 13 February 2007 on specialised investment funds or under the law of 15 June 2004 relating to the Investment company in risk capital which do not qualify as AIFs as well as AIFs established in Luxembourg whose AIFM is effectively subject to the regime of Article 3(2) of the AIFMD), Chapter E of Circular IML 91/75 will remain applicable.

The recipients of this circular shall ensure compliance with the provisions provided herein by the date indicated in Part XI. In this circular, any reference to a UCITS is, as the case may be and according to the circumstances, to be understood as a reference to a UCITS and/or its management company.

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Definitions:

2010 Law:	The law of 17 December 2010 relating to undertakings for collective investment.
2013 Law:	The law of 12 July 2013 on alternative investment fund managers.
AIF:	Alternative investment funds within the meaning of the provisions of the law of 12 July 2013 on alternative investment fund managers and the delegated acts related thereto.
AIFMD:	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
Assets:	The elements of a UCITS' portfolio, including cash, in which a UCITS is invested at any given moment and/or which are owned by a UCITS at any given moment.
Cash:	Money in cash and bank deposits of a UCITS.
Chapter E of Circular IML 91/75:	Chapter E - *Rules concerning the depositary of a Luxembourg UCI* of Circular IML 91/75 on the revision and remodelling of the rules to which Luxembourg undertakings governed by the law of 30 March 1988 on undertakings for collective investment ("UCI") are subject, as amended by Circular CSSF 05/177.
Collateral agent:	An agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge solely of custody (to the exclusion of management and administration) of the guarantees and sureties that the UCITS is required to give or receive within the context of the performance of its investment policy.
Collateral manager:	An agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge of the management and administration of the guarantees and sureties the UCITS is required to give or receive within the context of the performance of its investment policy. A collateral manager may also in certain cases act as a collateral agent.
Contract appointing	The written contract entered into between a UCITS

the depositary:	(or its management company for a UCITS established in contractual form) and an institution which has been approved to act as depositary of a UCITS, through which this institution has been entrusted with the duty of a depositary within the meaning of the provisions of Article 17 or 33 of the 2010 Law. The term contract appointing the depositary shall be understood to include the depositary contract itself as well as all of the annexes and amendments to the contract, insofar as such annexes or amendments create contractual obligations between the parties.
Directors[1]:	Persons who, by virtue of the law or the constitutive documents, represent the depositary or who effectively determine the orientation or the conduct of its activity within the meaning of Articles 17(5), 34(3) and 129(5) of the 2010 Law.
Escalation procedure:	Procedure to be established as an integral part of the contract appointing the depositary in which the different successive steps to be followed upon the intervention of the depositary or of the UCITS are specified. This procedure must clearly identify the persons to be contacted at the level of the UCITS by the depositary when the latter deems an intervention to be necessary and at the level of the depositary upon the intervention of the UCITS.
Functional and hierarchical separation:	Implementation, at the level of the institution acting as depositary, of a separation which ensures, in order to avoid any potential conflicts of interest, that the performance of any tasks which might potentially give rise to a conflict of interest are carried out by separate departments, especially with separate personnel and organisational links.
Person responsible for the UCITS "depositary bank" business line:	The person(s), whether directors(s)[1] or not, of the institution acting as depositary, who is/are in charge at a senior hierarchical level of responsibility of the operational aspects of the institution's UCITS depositary business in Luxembourg.
Prime broker:	A credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors essentially to finance or carry out transactions regarding financial instruments as counterparty and which may also

[1] *Dirigeants* in the French version.

	offer other services such as the clearing and settlement of trades, custodial services, securities lending, customised technical services and operational support, with whom the UCITS has entered into a prime brokerage agreement.
Safekeeping of assets of a UCITS in liquidation or without a depositary:	The obligation of the last credit institution that acts as a depositary of a UCITS prior to its deregistration or withdrawal from the official list referred to in Article 130(2) of the 2010 Law, to keep open all of the securities and cash accounts for the different assets of such UCITS which are held in custody by such institution at the moment of the deregistration or withdrawal, and until the appointment of a successor or until the closure of the liquidation of such UCITS, in accordance with the provisions of points 12 and 13 of this circular.
Sub-Custodian:	Entity appointed by the depositary to whom the depositary entrusts assets in its safekeeping in its capacity as depositary.
Third-party custodian:	A third party appointed by the UCITS with the approval of the depositary, to whom assets in the safekeeping of the depositary are entrusted.
UCITS:	The term UCITS refers to undertakings for collective investment in transferable securities established in the form of a SICAV/SICAF (self-managed or having appointed a management company) and a *fonds commun de placement* (common fund) governed by Part I of the 2010 Law.
UCITS V:	Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.
Unitholders:	Term that refers, in a generic sense, to the unitholders of UCITS established in contractual form (*fonds communs de placement* managed by a management company) and the shareholders of UCITS established in the statutory form (investment companies).

Part I. Important remarks

1. In line with the approach taken by the AIFMD, this circular moves away from the "principle-based" approach which prevailed up until now, notably under Chapter E of Circular IML 91/75, in order to provide rules applicable to depositaries of UCITS which are more detailed and more prescriptive. The circular also provides clarifications with a new level of detail in relation to those aspects covered until now by Chapter E of Circular IML 91/75[2] (such as, for example, concerning the obligations in the area of initial selection and ongoing monitoring of sub-custodians or the content of the monitoring obligations of depositaries) which may lead depositaries of UCITS to adapt, as the case may be, any existing arrangements in order to ensure their compliance with the new organisational arrangements introduced by this circular. The circular also covers, in an explicit and detailed manner, points that were not specifically addressed by Chapter E of Circular IML 91/75 (such as, for example, the obligations regarding the monitoring of financial flows). The organisational arrangements described below may, as the case may be, be completed or modified and are, as the case may be, to be read together with the guidelines and recommendations to the competent authorities or players in the financial markets, the instruments and practical convergence tools and technical regulatory standards adopted by the European supervisory authorities and in particular the European Securities and Markets Authority (ESMA – http://www.esma.europa.eu/).

2. The circular introduces a distinction between the organisational arrangements to be established in relation to those assets whose material deposit is made with the depositary itself or with a third-party custodian/sub-custodian, namely mainly those financial instruments which are registered in a financial instruments' account, and those assets which are not the object of a material deposit (see Chapter 3 of Part IV), comparable to the regime under the AIFMD, by virtue of which the obligations of a depositary vary depending on the nature of the assets in which an AIF is or may be invested. The circular further sets out the obligations which are specifically applicable to the internal audit function or the internal control department of depositaries, notably concerning the monitoring of the existence, the periodic update and effective application of procedures which are related to the function of a depositary, as well as the obligations specifically applicable in relation to risk management and, as the case may be, to the risk management function of the depositaries.

3. Given that the duties, obligations, rights and also the liability applicable to the depositaries of UCITS continue to evolve within the context of the UCITS V Directive mentioned above, the rules established by this circular will be modified by the future entry into force of the rules established by the UCITS V Directive and the delegated acts in relation thereto.

[2] Revision and remodelling of the rules to which Luxembourg undertakings governed by the law of 30 March 1988 on undertakings for collective investment ("UCI") are subject (as amended by Circular CSSF 05/177)

Part II. Appointment of a credit institution as depositary of a UCITS (eligibility and approval criteria) and the documentation to be implemented between a UCITS and its depositary (contract appointing the depositary and escalation procedure)

Chapter 1. Eligibility criteria in order to act as depositary of a UCITS

4. In accordance with the provisions applicable to UCITS under the 2010 Law, access to the function of depositary of a UCITS is reserved to credit institutions within the meaning of the law of 5 April 1993 on the financial sector, which have their registered office in Luxembourg or to the Luxembourg branches of credit institutions which have their registered office in another Member State of the European Union.

5. These institutions can only accept to be appointed as the depositary of a UCITS if they possess, in addition to their authorisation as credit institution, a specific authorisation to act as depositary of a UCITS established in Luxembourg. This authorisation is granted by the CSSF in accordance with the provisions set out in Chapter 2 hereafter.

Chapter 2. Authorisation procedure in order to act as depositary of a UCITS

6. An institution which is eligible to act as a depositary of a UCITS in accordance with the applicable legal provisions (see Chapter 1 above) must submit a file requesting authorisation as depositary of a UCITS within the framework of the provisions of Article 129(2) of the 2010 Law.

7. Those institutions which have already been authorised as depositary of UCITS as of the date of the entry into force of the circular are not required to apply for a new authorisation on the basis of the provisions below, but shall comply with the obligations described hereafter.

Sub-Chapter 2.1. Conditions of professional experience and good repute of the person(s) responsible for the UCITS "depositary bank" business line of the credit institution

8. In order for an institution to obtain its authorisation as the depositary of a UCITS, the person(s) responsible for the UCITS "depositary bank" business line of a credit institution who will be responsible for the UCITS depositary's activity in Luxembourg shall be of good repute and have the requisite experience, particularly having regard to the type of UCITS for which the credit institution intends to act as depositary. To this end, the identity of the person(s) responsible for the UCITS "depositary bank" business line, as well as that of every person succeeding them in their function, must be notified immediately to the CSSF.

As regards the condition of the requisite professional experience, the person(s) responsible for the UCITS "depositary bank" business line must have the proper professional experience by having already exercised similar activities in the field of a depositary of UCITS, or the depositary of UCIs other than UCITS with an investment policy with similar characteristics to those of UCITS, with a high level of responsibility and autonomy.

Sub-Chapter 2.2. Description of human and technical resources

9. The CSSF must receive a precise and detailed description of the organisation of the human and technical resources that the credit institution has at its disposal to perform all of the tasks related to the function of the depositary of a UCITS. This description must take into account the type of UCITS for which the credit institution intends to act as depositary, taking into particular account the investment policy that the UCITS concerned intend to pursue.

10. The information to be provided to the CSSF in an application for authorisation as depositary of a UCITS is set out in Annexe 2 of the circular. This list of information to be provided to the CSSF is not exhaustive. It may be supplemented by any other item deemed to be appropriate, given the characteristics of the file submitted to the CSSF.

Any authorisation as depositary of a UCITS remains valid for as long as the elements on the basis of which authorisation was granted remain unchanged. Any credit institution which acts as depositary of a UCITS is required to apply for approval from the CSSF for any change of the elements which formed the basis of its initial authorisation as depositary of a UCITS or in the case of a significant change to its infrastructure. The elements which appear in Annexe 2 of this circular must be kept up-to-date and provided to the CSSF in accordance with the frequency rules indicated therein.

Chapter 3. The contract appointing the depositary

11. The contract appointing the depositary, together with any annexe and/or amendment relating thereto shall be a written contract between the depositary and the UCITS.

A single and unique depositary shall be appointed for each UCITS. The aim of this provision is to ensure that the depositary of a UCITS has a complete overview of all of the assets of the UCITS and that the UCITS has a single point of contact in case of any problems concerning the safekeeping of assets as well as in relation to the performance of the monitoring duties incumbent upon the depositary (including, in particular, those obligations relating to accounting and the proper monitoring of the cash (flows)). For UCITS with multiple sub-funds, one and the same depositary shall be appointed for all of the sub-funds of the UCITS with

multiple sub-funds.

It is permitted that a management company and a depositary enter into a contract appointing the depositary in the form of a framework agreement precisely listing the UCITS established in contractual form, as represented by the management company, to whom the contract appointing the depositary in the form of a framework agreement applies.

12. With the entry into force of the contract appointing the depositary, the depositary is vested with the duties of a depositary of the UCITS with whom the contract has been concluded. The elements which are to be included in the written contract are specified in this chapter, in Annexe 1 of this circular, as well as in Chapter V of CSSF Regulation N° 10-4 transposing Directive 2010/43/EU in application of Articles 18(3) and 33(4) of the 2010 Law.

13. Every contract appointing the depositary is subject to the general principle of contractual freedom, subject to compliance with the applicable legal, regulatory and administrative provisions.

14. The contract appointing the depositary regulates, in particular, the flow of information considered to be necessary to permit the depositary to fulfil its functions. These functions are described in the applicable legal, regulatory and administrative provisions.

15. The parties to the contract appointing the depositary may agree to transmit electronically all or part of the information required in the context of the contract appointing the depositary. In addition, information on the necessary means and procedures in accordance with the applicable legal or regulatory provisions, can be included either in the depositary contract itself, or in a separate written agreement.

16. The depositary may, on condition of specific contractual provisions in the contract appointing the depositary, benefit from a general or specific pledge on the assets of the UCITS on deposit. The provisions in the contract appointing the depositary concerning this general or special pledge must, as the case may be, specify the exceptions to this general or special pledge, either in the form of specific provisions in the contract appointing the depositary, or in the form of an amendment agreement to the contract appointing the depositary.

17. Any provisions in the contract appointing the depositary concerning the pledge of the depositary shall specify the extent to which the depositary benefits from a right to use the assets pledged in its favour.

18. The contract appointing the depositary may also include a clause which permits the depositary to invoke a right of set-off between the various credit/debit balances of the accounts opened in its books on behalf of a UCITS or, as the case may be, on behalf of each of the different sub-funds of a UCITS with multiple sub-funds.

19. It is the responsibility of each UCITS to inform the CSSF of all of the cases where measures to safeguard the assets of a UCITS in liquidation or without a depositary have to be implemented (see Definitions).

20. As regards the function of safekeeping the assets of a UCITS in liquidation or without a depositary, the credit institution is obliged to keep open all the securities and cash accounts for the different assets of such UCITS which are held in custody by this institution at the moment of the deregistration or withdrawal of the UCITS, while ensuring the continued compliance with the provisions of Chapter 1 of Part IV and the provisions of points 117 and 118 of Part V of this circular, until a new depositary has been appointed or until the closure of the liquidation of the UCITS.

Chapter 4. Escalation procedure between the depositary and the UCITS and/or its management company

21. The depositary shall set up and implement one or more escalation procedures for situations where an anomaly is detected including notification, without prejudice to the obligations applicable to the UCITS and/or its management company, to the UCITS and/or its management company and to the competent authorities if the situation cannot be clarified or rectified.

22. In a similar manner and without prejudice to the obligations applicable to the depositary, one or more escalation procedures shall also be set up and implemented regarding the procedure to be followed by the UCITS for the notification to the depositary and to the competent authorities of an anomaly detected, if the latter cannot be clarified or rectified.

23. The escalation procedure(s) concerning the intervention of the depositary in relation to the UCITS shall identify the persons working for the UCITS whom the depositary must contact when it launches such a procedure and must provide for an obligation on the part of the UCITS to inform the depositary of the measures it has taken following an intervention by the depositary, as the case may be, to remedy a breach of the rules applicable to the UCITS. This or these procedure(s) must also provide that in the case that the UCITS fails to take appropriate measures within a reasonable period of time, the depositary must inform the CSSF thereof. These elements apply by analogy to the escalation procedure(s) concerning the intervention of the UCITS in relation to the depositary. This or these escalation procedure(s) shall form part of the contract appointing the depositary (the contract or its annexes).

24. As required by points 21 to 23 above, all notifications by or to a UCITS are to be made by or to the management company for those UCITS established in contractual form (*fonds communs de placement*). For UCITS established in

statutory form (investment companies) which have appointed a management company, the notifications to a UCITS shall be made to the management company at the same time as they are made to the investment company. Notifications to self-managed investment companies shall be made by or to the investment company. Notifications to the depositary shall be performed by the UCITS or its management company, as the case may be.

Part III. Rules relating to conflicts of interest, governance and organisation

Chapter 1. Conflicts of interest and rules of governance

25. The general principle applicable to the depositary of a UCITS in all circumstances is that it shall, in carrying out its functions of depositary, act honestly, fairly, professionally and independently and solely in the interest of the unitholders of a given UCITS.

26. This obligation requires that the activity of depositary of a UCITS must be managed and organised in such a way as to minimise any potential conflicts of interest.

27. Therefore, a depositary shall not carry out activities on behalf of a UCITS (or for the management company acting on behalf of a UCITS) that may create conflicts of interest between the UCITS, the unitholders of this UCITS, its management company and the depositary itself, unless the depositary has, functionally and hierarchically, separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are identified, managed, monitored and disclosed to the unitholders of the UCITS in an appropriate manner at the level of the prospectus of the UCITS.

28. In order to avoid any risk of conflicts of interest, no delegation or sub-delegation relating to the principal function of investment management can be accepted by the depositary.

29. The prohibition to delegate or sub-delegate the principal function of investment management also applies to any third-party custodian/sub-custodian and in general to any entity below the third-party custodian/sub-custodian in the custody chain of an asset.

30. The prohibition according to which no mandate relating to the principal function of investment management can be given to a depositary or to any third-party custodian/sub-custodian and in general to any entity below the third-party custodian/sub-custodian in the custody chain of an asset (each a "custodian delegate" for the purpose of this chapter) shall not prohibit the delegation of the principal function of investment management to an entity linked to the depositary by common management or control.

31. Neither the depositary nor one of the custodian delegates to whom all or part of

the assets of a given UCITS has been entrusted, can accept the delegation of the risk management function from the UCITS or from its management company. The depositary or a custodian delegate may however be entrusted with the performance of certain tasks linked to the risk management function.

32. Subject to compliance with the rules set out in points 25 to 31 above, the credit institution acting as depositary of a UCITS may in particular act in the following capacities, on condition that, as the case may be, it benefits from the necessary authorisations:

a) agent for reception and transmission of orders relating to one or more financial instruments;

b) counterparty (without however qualifying as a prime broker) to the transactions carried out by UCITS in accordance with the provisions of Chapter 5 of the 2010 Law;

c) prime broker within the meaning and according to the provisions of Sub-Chapter 7.3. of this circular;

d) administrative agent and/or registrar agent;

e) collateral manager;

f) tax or reporting service provider.

With regard to points c) to f) above, the depositary is required (i) to establish, implement and maintain operational an effective conflicts of interest policy and (ii) to establish a functional, hierarchical and contractual separation between the performance of its UCITS depositary functions and the performance of other tasks and (iii) to proceed with the identification as well as the management and adequate disclosure of potential conflicts of interest.

It should be noted that every institution should, as the case may be, be able to provide proof of the proper management of potential conflicts of interest in the case where all or part of the services other than that of depositary are provided to the UCITS by the legal entity of the depositary or by entities linked to the depositary by a common management or control.

33. In accordance with the principles of Circular CSSF 12/546, a credit institution is permitted to be either a direct or an indirect shareholder of a management company when it is acting as depositary of UCITS managed by that management company or to have a qualifying holding in such a management company. In the case of a qualifying holding, the management company must identify the conflicts of interest which could result from this holding and must strive to eliminate them in accordance with the procedures foreseen by the conflicts of interest policy of the management company. By analogy, the credit institution must in such case also establish a procedure relating to the policy and

the management of conflicts of interest.

34. When the institution acting as the depositary of a UCITS is a shareholder of a management company and this institution assumes the depositary bank function for one or more UCITS managed by this management company, it must also ensure that the person(s) responsible for the UCITS "depositary bank" business line as well as any employees connected to this line of business shall only accept directorships at the level of the board of directors of the management company if they do not represent the majority of the members of the board of directors of such management company. These provisions apply by analogy to the directorships of (the) person(s) responsible for the UCITS "depositary bank" business line as well as any employees connected to this line of business in self-managed investment companies.

35. The principle of the independence of the depositary in relation to a UCITS or to the management company of such UCITS as set out in Circular CSSF 12/546 also precludes the possibility of a director[3] of a UCITS within the meaning of Article 27(1) or Article 129(5) of the 2010 Law or, as the case may be, of the management company, being employed by the depositary.

Chapter 2. Internal procedures and written procedures or contracts with external persons relating to the UCITS depositary function

36. The depositary shall establish internal written procedures relating to the acceptance and the performance of a contract appointing the depositary of a UCITS and establish written procedures or contracts with the external persons with whom the depositary is required to work insofar as the performance of each of its UCITS depositary mandates is concerned. The internal procedures must, alongside the procedure for the acceptance of the appointment as UCITS depositary, document the stages and the operational process relating to the performance of the contracts appointing the depositary, namely the performance of the different tasks linked to the depositary function at the level of the depositary itself. The written procedures or contracts with the external persons shall cover the organisation of any relationships with third parties with whom the depositary is required to work within the context of the provision of services of a UCITS depositary. These internal procedures and written procedures or contracts with external persons shall cover, in an appropriate manner, all of the aspects relating to the function of a UCITS depositary and take into account the specific characteristics of the UCITS for whom the credit institution is acting as depositary.

37. It is the responsibility of the internal audit function or of the internal control department of the depositary to verify the existence and appropriateness of these internal procedures and written procedures or contracts with external persons as well as to ensure their periodic update at least once a year. The internal audit function or the internal control department shall also verify the effective

[3] *Dirigeant* in the French version.

application of the internal procedures and written procedures or contracts with external persons. This requirement applies, in particular, to the internal procedures and written procedures or contracts with external persons in relation to the obligations of asset segregation (see Chapter 2 of Part IV) and due diligence (see Chapter 5 of Part IV).

38. As far as, more specifically, the aspects of the delegation of tasks or functions are concerned, please refer to Part VII of this circular.

Sub-Chapter 2.1. Internal procedures

39. The internal procedures which shall be established by the depositary must in particular:

- describe, in a general manner, the types of UCITS (on the basis of the legal nature and the investment strategy and policy of the UCITS) for which the credit institution can and is disposed to act as depositary of a UCITS;

- ensure the implementation of a preliminary control, either through adequate procedures and/or an approval committee for the appointment as depositary of a UCITS, with the aim of ensuring that for any new appointment as the depositary of a UCITS, the credit institution identifies and examines, in relation to every UCITS, the specific characteristics of the UCITS, particularly in terms of operational and legal risks. Through this preliminary control, it shall be ensured that the credit institution accepts to act as depositary in full knowledge, in particular, by taking into account the risk profile and operational complexities of a given UCITS;

- indicate the person(s) responsible for the UCITS depositary bank business line;

- describe, in a general manner, how the depositary will perform its duty as depositary of a UCITS, taking into account the different types of UCITS, in particular, on the basis of their investment policy (a description of the general operational model) and the specific UCITS where the internal operational model for certain UCITS differs from that of the general operational model (description of the specific operational model for one or more UCITS);

- generally describe the human and technical resources put in place for the performance of the duties as depositary of a UCITS; and

- document in a detailed manner the due diligence criteria applied by the institution.

Sub-Chapter 2.2. Written procedures or contracts with external persons

40. In addition to the internal procedures, the depositary of a UCITS shall also establish written procedures (with the external persons who have not been appointed by the depositary itself such as, for example, the registrar agent of a UCITS) or contracts (with the external persons who have been appointed by the depositary itself, such as, for example, a delegate of the depositary) with all the persons with whom the depositary is required to work in the performance of its duties as depositary of a UCITS. The implementation of these written procedures or contracts shall ensure that the operational stages of the interaction of the depositary with each given third party, which are necessary for the proper performance of the obligations linked to the depositary's mandate, are adequately documented. These written procedures or contracts may be completed by operating memoranda or service level agreements.

These written procedures or contracts with external persons must, in particular, provide for a procedure with the administrative agent of the UCITS and, as the case may be, the registrar agent of the UCITS, the contracts and procedures to be put into place with the sub-custodians as well as the contracts and procedures with any delegates of the depositary. The depositary must determine the external persons with whom it is necessary to establish such a procedure or contractual documentation and the form and the complexity of each of these.

41. The objective of the contracts and written procedures with the external persons to be established by the depositary as required in Chapter 2 is to document the operational procedure(s) between the depositary and the third parties, who, as the case may be, have been formally appointed by the UCITS. In this regard, the requirement that the depositary must put in place contracts and written procedures with external persons is without prejudice to the obligation applicable to the UCITS to put in place a contract with each of the service providers who have been appointed by the UCITS.

Part IV. Organisational arrangements to be established in relation to the assets of a UCITS

42. This part provides clarifications as to the organisational arrangements to be put in place by the depositary of a UCITS in relation to the different types of assets which are or which may potentially be owned by a UCITS.

43. The implementation of the organisational arrangements described hereafter must, in particular, permit the depositary to be able to produce a comprehensive inventory/statement of all the asset positions of a UCITS at the end of each business day. This inventory/statement must reflect all the assets of which the UCITS or a given sub-fund of a UCITS with multiple sub-funds holds the ownership. In order to produce this comprehensive inventory/statement of all the asset positions, it is recognised that the depositary may use the registers and accounts opened in its books for each UCITS or each sub-fund of a UCITS with

multiple sub-funds, the registers and accounts opened in the accounting books of a UCITS with an administrative agent and extracts of accounts (e.g. the extracts of the prime broker's statements) produced by third parties. At the level of the registers and accounts of the UCITS in the accounting books of the administrative agent, this requires that the depositary has access to the accounting data of the accounting agent which permits it to know at any moment the assets reflected in the books of the administrative agent for the account of the UCITS or for each of the sub-funds of the UCITS for UCITS with multiple sub-funds, and that the depositary:

- performs due diligence on the administrative agent and/or all of the third parties which are covered by the accounting system used and from which it can be concluded that a correct and exhaustive accounting of all of the assets has been carried out by the administrative agent and/or other third party or ensures that the review of the accounting system is subject to a control such as SSAE16;

- ensures that the administrative agent and/or other third party, as the case may be, conducts regular reconciliations with the various counterparties of the UCITS.

44. The production of a comprehensive inventory/statement of all the asset positions of a UCITS or, as the case may be, of each of the sub-funds of a UCITS with multiple sub-funds, in which the UCITS is invested, is obligatory in relation to the end of the financial year of a UCITS in view of the audit of the annual accounts to be published by each UCITS.

45. The comprehensive inventory/statement of all the asset positions of a UCITS mentioned in points 43 and 44 must include all guarantees or sureties which belong to a UCITS or to a given sub-fund of a UCITS with multiple sub-funds (see also points 88 to 90).

46. By way of a comment on the articles of the 2010 Law, the notion of safekeeping, as employed to denote the general duty of the depositary, is not to be understood in the sense of "custody", but as "supervision", which implies that the depositary must know, at all times, in which manner the assets of a UCITS are invested and where and how these assets are available. In accordance with the meaning given to the notion of safekeeping, only the supervision of the assets of a UCITS is part of the depositary's legal duties.

47. The organisational arrangements which must be put in place by the depositary of a UCITS must cover the different types of assets of which the UCITS may hold the ownership in accordance with its investment policy. These organisational arrangements must also differentiate between the assets which the depositary or a third-party custodian/sub-custodian holds in custody and those required in relation to assets which cannot be held in custody.

48. The concept of assets which the depositary or a third-party custodian/sub-custodian can hold in custody includes, in principle, those assets which qualify as financial instruments that can be registered in a financial instruments account opened in the depositary's books or in that of a third-party custodian/sub-custodian which notably includes transferable securities, including those embedding a derivative as referred to in the last sub-paragraph of Article 51(3) of Directive 2009/65/EC and in Article 10 of Directive 2007/16/EC, money market instruments and units of UCIs and all other assets that can be registered or held in an account directly or indirectly opened in the name of the depositary or of a third-party custodian/sub-custodian. This category also includes financial instruments which can be physically delivered, either to the depositary to be held in custody by the latter, or to a third-party custodian/sub-custodian, as well as those financial instruments issued in dematerialised or fixed form following their issue.

49. The category of assets which cannot be held in custody includes essentially certain types of derivative financial instruments (such as OTC financial derivative instruments, swap agreements, options, futures and others), as well as the units of UCITS or other UCIs or other UCITS eligible assets which are only directly registered in the name of the UCITS or a given sub-fund of a UCITS with multiple sub-funds with their issuer or their agent (registrar agent or transfer agent).

50. As far as, more specifically, the obligations of the depositary relating to accounting and the monitoring of the cash (flows) of a UCITS are concerned, please refer to Part V of this circular.

51. It should also be noted that it is the UCITS depositary's responsibility to clarify and to know the nature of the assets which are or may be owned by a UCITS, in order to determine and establish appropriate organisational arrangements for the exercise of its obligations in relation to those assets as depositary of the UCITS.

52. The clarifications below as to the organisational arrangements to be implemented are made without prejudice to the legal provisions which apply under the 2010 Law and, in particular, the provisions concerning the liability regime which is applicable to the depositaries of UCITS.

53. The escalation procedure to be implemented in accordance with the provisions of Chapter 4 of Part II of this circular must cover, in particular, the various steps to be followed when an anomaly is detected by the depositary in relation to a given asset. For example, such procedure must cover the situation in which the depositary does not possess the information which would permit it to verify the ownership of an asset in conformity with the provisions of Chapters 1, 2 and 4 of Part IV. This procedure must include a notification made to the UCITS if the situation cannot be clarified and/or corrected within a reasonable period of time.

Chapter 1. Organisational arrangements to be implemented in relation to the assets held in custody by the depositary itself

54. With reference to the assets which the depositary itself holds in custody, the depositary must open in its books, in the name of the UCITS, or as the case may be, in that of each of the sub-funds of a UCITS with multiple sub-funds, one or more accounts which record in the depositary's books all the assets which are owned by the UCITS and which it holds in custody.

55. All assets which the depositary holds in custody must be subject to adequate segregation, in order to ensure that they are distinguished from the depositary's own assets and are, at all times, identifiable as an asset belonging to that UCITS or to a given sub-fund of a UCITS with multiple sub-funds. The depositary must at least, concerning those assets which it holds in custody, ensure that:

a) the financial instruments are properly registered;

b) the records and segregated accounts are maintained in a way that ensures their accuracy, and in particular their correspondence with the financial instruments held for the UCITS (or a given sub-fund of a UCITS with multiple sub-funds);

c) due care is exercised in relation to the assets, in order to ensure a high standard of investor protection;

d) appropriate organisational arrangements are established in order to minimise the risk of loss or diminution of the assets, or of rights in connection with those assets as a result of fraud, poor administration, inadequate registering or negligence;

e) the UCITS' ownership right to assets is verified.

56. The credit institution acting as depositary is, in this case, required to respect the rules provided for by Article 37-1(7) of the law of 5 April 1993 on the financial sector as well as the implementing measures contained in Articles 18 and 19 of the Grand-ducal Regulation of 13 July 2007 relating to organisational requirements and to the rules of conduct in the financial sector. The depositary must account for the securities and other fungible financial instruments held on deposit or registered in an account separately from its own assets and off-balance sheet. With regard to the deposit of the assets of a UCITS with the depositary, the depositary and the UCITS may have recourse to a fiduciary contract between the depositary and the UCITS.

Chapter 2. Organisational arrangements to be implemented in relation to assets held in custody by a third-party custodian/sub-custodian

57. In the context of its safekeeping duty, the depositary must ensure that in relation to assets held in custody by a third-party custodian/sub-custodian:

a) the ownership of each asset in which its client UCITS is invested is verified;

b) an adequate segregation is in place for each of the assets across the different levels of the custody chain of an asset, on the understanding that the obligations relating to segregation vary according to the nature of the assets and the custody chain to the extent that, for example, the possibility of segregation may be subject to limitations for those assets held in a securities settlement system at the end of the custody chain;

c) the obligations relating to due diligence are exercised in an appropriate manner.

58. Concerning segregation, the depositary must ensure that any third-party custodian/sub-custodian segregates the assets of the depositary's clients, which are managed collectively, from its own assets and from the depositary's other assets (in particular the depositary's own assets as well as from the assets of the depositary's other clients which are not managed collectively) in such a way that they can, at any time be clearly identified as belonging to the clients of the depositary whose assets are managed collectively.

In this context, the depositary must ensure that any third-party custodian/sub-custodian:

a) keeps such records and accounts as are necessary to enable it at any time and without delay to distinguish the assets of the depositary's clients which are managed collectively from its own assets, the assets of its other clients and the depositary's other assets (in particular the depositary's own assets as well as the assets of the depositary's clients which are not managed collectively);

b) keeps records and accounts in a way that ensures their accuracy, and in particular their correspondence with the assets of the depositary's clients that are managed collectively;

c) conducts on a regular basis, reconciliations between its internal records and accounts and the records and accounts of any other third party with whom the assets are held in custody;

d) establishes adequate organisational arrangements to minimise the risk of loss or diminution in value of the assets, or of rights in connection with those assets, as a result of misuse, fraud, poor administration, inadequate registration or negligence.

59. In respect of each of these third-party custodians/sub-custodians, the depositary:

a) performs the due diligence measures specified in Chapter 5 of this part;

b) conducts, on a regular basis, reconciliations between its internal records and accounts and those of the third-party custodian/sub-custodian and shall ensure that regular reconciliations are conducted between the accounting data of the administrative agent and the data of the third-party custodian;

c) monitors the third-party custodian's/sub-custodian's compliance with its segregation obligations to ensure, as far as possible, that the assets belonging to its UCITS clients are protected from any insolvency of such third-party custodian/sub-custodian. If, according to applicable law, including in particular the law relating to property or insolvency, the requirements laid down in point 58 are insufficient to achieve that objective, the depositary shall assess what additional arrangements are to be made in order to minimise the risk of loss and maintain an adequate standard of protection.

60. The depositary must receive from each third-party custodian/sub-custodian on an annual basis:

a) a confirmation certifying that the rules relating to segregation in this chapter are respected and are effectively applied by the third-party custodian/sub-custodian and that the third-party custodian/sub-custodian ensures, subject to the provisions of point 63 below, the application of the rules relating to segregation by other third parties involved in the custody chain of an asset. This confirmation must cover, by analogy, the application of the rules relating to due diligence, in accordance with the provisions of Chapter 5 of this part;

b) a comprehensive inventory/statement of all the asset positions, relating to the depositary's clients whose assets are managed collectively and are held in custody by the third-party custodian/sub-custodian.

61. Every account which is opened with a third-party custodian/sub-custodian may take the form of a distinct common account or an omnibus account, it being understood that separate omnibus accounts must be opened or maintained by the third-party custodians/sub-custodians for those assets belonging to the depositary's clients which are managed collectively. In addition, omnibus accounts opened for one or several UCITS with a third-party custodian/sub-custodian cannot be used for the assets of the depositary's other clients which are not managed collectively nor for the depositary's own assets. This provision also applies by analogy to (the) account(s) opened with a prime broker (see Sub-Chapter 7.3.) as well as with a third-party custodian/sub-custodian of most or of all of the assets (see Sub-Chapter 7.4.).

62. In the case that the applicable legal, regulatory or administrative provisions of an investment market dictate other rules and require that the accounts be opened in another manner than according to the rules described above, the accounts may be opened in accordance with the requirements of such investment market. The depositary shall then take all measures required and necessary, insofar as the rules of the investment market in question permit, to ensure an effective control over the assets in question and to ensure, insofar as possible, that the assets belonging to the depositary's UCITS clients are protected from any insolvency of the entity which holds the assets in custody.

Chapter 3. Organisational arrangements to be implemented at the level of the depositary in relation to those entities below the third-party custodian/sub-custodian in the custody chain of an asset

63. Concerning all entities which are below the third-party custodians/sub-custodians in the custody chain of an asset and as concerning segregation, the depositary must ensure that each third-party custodian/sub-custodian ensures at its own level and to the extent possible that the assets belonging to the depositary's UCITS clients are protected from any insolvency of the entity immediately below in the custody chain. The accounts opened or maintained with entities concerned by the present point may take the form of omnibus accounts without these omnibus accounts necessarily being distinct omnibus accounts specific to the depositary's UCITS clients (or the depositary's clients whose assets are managed collectively), without it even being necessary that these omnibus accounts are distinct omnibus accounts specific to the depositary. The depositary must also require that the third-party custodian/sub-custodian imposes a similar obligation to that applicable to it on any entity immediately below it in the custody chain of an asset.

64. As far as the rules relating to due diligence are concerned, the depositary must require that it receives from each third-party custodian/sub-custodian an annual confirmation that such third-party custodian/sub-custodian applies, at its level, the rules relating to due diligence of Chapter 5 in relation to each entity which is immediately below this third-party custodian/sub-custodian in the custody chain of an asset of the UCITS (this organisational arrangement is to be established in a similar manner by the subsequent entities in the custody chain of an asset in relation to each entity which is immediately below).

65. The depositary must, in relation to each third-party custodian/sub-custodian, benefit from the right of instruction and the right to information as referred to in Chapter 6 of Part IV below, in order to ensure that it can exercise its obligations relating to the assets of a UCITS. The UCITS is responsible for ensuring that the depositary benefits from such rights, in particular, in the case that the accounts in question are opened, or the registration is in the name of the UCITS or of a sub-fund of a UCITS. The existence and the means by which the depositary can exercise its rights must be documented in an appropriate manner.

Chapter 4. Organisational arrangements to be implemented in relation to the assets of a UCITS which are not held in custody

66. The depositary should, at all times, have a comprehensive overview of all of the assets of a UCITS, including the assets which are not held in custody. These assets are subject to the obligation to verify the ownership and maintain a record in light of the establishment of the comprehensive inventory/statement of all the asset positions as referred to in points 43 to 45. To achieve a sufficient level of certainty that the UCITS is indeed the owner of such an asset, the depositary must ensure that it receives all the information it deems necessary to be satisfied that the UCITS holds ownership over this asset. If necessary, the depositary should request additional evidence from the UCITS or, as the case may be, from a third party.

67. As far as assets which are not held in custody are concerned, the depositary must also:

a) ensure that it has access, without undue delay, to all relevant information that it requires in order to fulfil its obligations in relation to the verification and registration of these assets, including any relevant information to be provided to it by third parties;

b) ensure that it possesses sufficient and reliable information for it to be satisfied of the UCITS' ownership right over the assets;

c) maintain a record of the assets for which it is satisfied that the UCITS holds the ownership. The depositary must ensure that, in this context, procedures are in place so that the assets of a UCITS which cannot be held in custody cannot be assigned, transferred, exchanged or delivered without the depositary having been informed, and that the depositary shall have access, without undue delay, to documentary evidence of each transaction and position from the relevant third party. The UCITS 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. As specified under point 43 and subject to the conditions laid down therein, the depositary is permitted to make use of the accounting data of the administrative agent or of extracts of the accounts produced by third parties for the maintenance of such a record.

d) ensure, in all cases, that every UCITS has established and implements appropriate procedures to (i) verify that the assets acquired are appropriately registered and (ii) check the consistency between the positions in the accounting books of the UCITS and the assets for which the depositary is satisfied that the UCITS holds the ownership. The UCITS shall ensure that all instructions and relevant information related to the UCITS' assets are provided to the depositary, so that the depositary is able to

perform its own verification procedures.

68. Concerning the access of the depositary to relevant information, this could, for example, be achieved through the access of the depositary to a copy of an official document evidencing that the UCITS is the owner of the assets or any formal and reliable evidence that the depositary considers appropriate. If necessary, the depositary shall request additional evidence from the UCITS or, as the case may be, from a third party.

69. Every UCITS shall provide the depositary, upon commencement of its functions and on an ongoing basis, with all relevant information the depositary needs in order to comply with its obligations and ensure that the depositary receives all relevant information from third parties.

Chapter 5. Due diligence obligations

Sub-Chapter 5.1. Due diligence obligations concerning third-party custodians/sub-custodians and other entities below the third-party custodians/sub-custodians in the custody chain of an asset

70. The organisational arrangements below are to be implemented by the depositary in relation to each third-party custodian/sub-custodian. These organisational arrangements are to be implemented in an analogous manner by every entity below the third-party custodians/sub-custodians in the custody chain as regards all of the entities immediately below the latter. These measures are also to be applied in an analogous manner by the subsequent entities in the custody chain of an asset in relation to any other entity immediately below such subsequent entities, and this should be done all the way down the custody chain of an asset. As far as the entities below the third-party custodian/sub-custodian are concerned, the depositary must ensure that the third-party custodian/sub-custodian applies the due diligence criteria laid down below, and is provided with an annual confirmation of the compliance with these criteria by the third-party custodian/sub-custodian in accordance with the provisions set out in point 60. The depositary must perform its due diligence obligations with all required skill, care and diligence.

71. It is recommended that the depositary ensures that any appointment of a third-party custodian/sub-custodian is justified by an objective reason.

72. The depositary has the obligation to put in place and apply an appropriate and documented procedure in relation to the exercise of the due diligence required for the selection and ongoing monitoring of third-party custodians/sub-custodians, in order to ensure that the latter procure an adequate and sufficient level of protection of the assets. This procedure must be re-examined regularly, at least once a year, and is to be made available to the CSSF upon request. It is the responsibility of the internal audit function or of the internal control department of the institution acting as depositary to monitor the existence, periodic update and

effective application of this procedure.

73. The depositary of a UCITS must ensure that every third-party custodian/sub-custodian provides, in principle, the same guarantees as the depositary itself, i.e. for Luxembourg institutions to be a credit institution within the meaning of the law of 5 April 1993 on the financial sector or for foreign institutions, to be a financial institution subject to the rules of prudential supervision considered as equivalent to those provided by EU legislation. The equivalence criteria is deemed to be fulfilled by any institution falling within the meaning of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions but this must be verified on a case-by-case basis for every institution established in a third country.

74. The due diligence procedure must take into account the elements contained in point 73 above and must at least include the verification and analysis of the following elements:

a) general information on the third-party custodian/sub-custodian (legal status, date of incorporation, nationality, share capital, etc.);

b) the professional reputation of the members of the board of directors and the directors[4] of the third-party custodian/sub-custodian;

c) the fact that the third-party custodian/sub-custodian has structures and an expertise which are adequate and proportionate to the nature and to the complexity of the assets which it holds or will hold in custody;

d) the fact that third-party custodian/sub-custodian is subject to regulation and prudential supervision, including capital requirement, in the jurisdiction concerned and that it is subject to an external periodic audit in order to guarantee that the assets are in its possession;

e) the segregation by the third-party custodian/sub-custodian of the assets of the depositary's UCITS clients from the assets of its other clients and from the depositary's own assets as well as from the assets of the depositary's non-UCITS clients in such a way that they can, at any time, be clearly identified as belonging to the UCITS clients of a particular depositary (subject, as the case may be, to the provisions of point 63);

f) the fact that the third-party custodian/sub-custodian acts, in all circumstances, in an honest, loyal, professional and independent manner in the exercise of its functions;

g) assessment of the regulatory and legal framework, including country risk, custody risk and the enforceability of the third-party custodian's/sub-custodian's contracts. This assessment shall, in particular, enable the depositary to determine the potential implication of an insolvency of the

[4] *Dirigeants* in the French version.

third-party custodian/sub-custodian for the assets and rights of the UCITS. If the depositary becomes aware that the segregation of assets is insufficient to ensure protection from insolvency because of the law of the country where the third-party custodian/sub-custodian is located, it shall immediately inform the UCITS;

h) assessment of the practice, procedures and internal controls established by the third-party custodian/sub-custodian. This assessment must, in particular, enable the depositary to determine whether these procedures and internal controls are adequate to ensure that the UCITS client's assets benefit from a high standard of care and protection;

i) assessment of the third-party custodian's/sub-custodian's financial strength and reputation. This assessment shall be based on information provided by the potential third-party custodian/sub-custodian as well as other data and information, where available;

j) the fact that the third-party custodian/sub-custodian has the operational and technological capabilities to perform the delegated custody tasks with a satisfactory degree of protection and security;

k) the fact that in the case of insolvency of a third-party custodian/sub-custodian, the assets of the UCITS held in custody by the third-party custodian/sub-custodian are unavailable for distribution amongst or realisation for the benefit of creditors of the third-party custodian/sub-custodian.

75. The depositary should proceed with the requisite skill, care and diligence in the periodic assessment and ongoing monitoring of each third-party custodian/sub-custodian to ensure that this third-party custodian/sub-custodian continues to comply with the above criteria. To this end, the depositary shall at least:

a) monitor the third-party custodian's/sub-custodian's performance and its compliance with the depositary's standards;

b) ensure that the third-party custodian/sub-custodian exercises a high standard of care, prudence and diligence in the performance of its tasks and in particular that it ensures the effective segregation of the assets, in line with the provisions in this regard specified in this circular;

c) review the custody risks associated with the decision to entrust the assets to this entity and, without undue delay, notify the UCITS of any change in those risks. This assessment shall be based on information provided by the third-party custodian/sub-custodian and other data and information where available. During market turmoil or when a risk has been identified, the frequency and the scope of the review shall be increased. If the depositary becomes aware that the segregation of assets is no longer sufficient to ensure

protection from insolvency because of the law of the country where the third-party custodian/sub-custodian is located, it shall immediately inform the UCITS.

76. The depositary must, in order to effectively respond to a possible insolvency of the third-party custodian/sub-custodian, put in place contingency plans, and in particular provide for the design of alternative strategies and the possible selection of alternative providers. Such a contingency plan must be established for each market in which a third-party custodian/sub-custodian has been appointed. Such a contingency plan should identify, if possible, a replacement service provider.

77. The depositary must take the measures which are in the best interests of the unitholders of the UCITS whose third-party custodian/sub-custodian no longer complies with its requirements. These measures can, as far as sub-custodians are concerned, include the termination of the contract with a sub-custodian. With regard to third-party custodians, it is incumbent on the UCITS to take the necessary measures, including, as the case may be, the termination of the contract with a third-party custodian and giving notice thereof to the depositary. As the case may be, the UCITS must also and at the same time notify and obtain approval from the depositary of any new third-party custodian appointed to replace the first one.

78. The general principles set out in this Chapter must be applied in an effective manner at all times and shall not be considered as exhaustive, namely that they neither establish in detail the way in which a depositary shall exercise the necessary skill, care and due diligence, nor do they fix all of the measures to be taken by the depositary concerning these principles. It is the duty of the depositary to adapt the criteria on the basis of which it fulfils its due diligence obligations depending on particular situations, as they present themselves, for example on the basis of the specific features applicable to the custody chain of a given asset or the specific features applicable to each of the third-party custodians/sub-custodians or the specific rules which are applicable in the jurisdiction where the third-party custodian/sub-custodian is established, or even possible exceptional circumstances which may present themselves. Concerning the securities settlement systems as part of the provision of services as defined by Directive 98/26/EC on settlement finality in payment and security settlement systems or by securities settlement systems of third countries as part of the provision of similar services, it is admitted that certain due diligence criteria laid down by point 74 may not be fulfilled, given the specific features of the functioning of each of such systems.

Sub-Chapter 5.2. Due diligence obligations with regard to the assets of a UCITS which are not held in custody

79. The obligation to carry out due diligence applies equally in relation to all assets which cannot be held in custody, it being understood that at the level of the depositary the obligation may be limited to the depositary ensuring that a due

diligence has been performed by the UCITS, as for such assets it is the UCITS that has to carry out the due diligence. In this case, the UCITS must provide the depositary, at its request, with all necessary documentation.

80. In relation to the assets which are not held in custody, the depositary can validly discharge itself of its obligations by ensuring that an adequate due diligence procedure has been established by the UCITS or by its management company that the due diligence procedure has been effectively implemented and that this procedure is periodically reviewed subsequently. The UCITS must ensure that the depositary receives all the information necessary to this effect.

81. For questions relating to the appointment of a prime broker, refer to Sub-Chapter 7.3. below.

Sub-Chapter 5.3. Due diligence obligations with regard to the investment in a target UCI(TS) in which a given UCITS can invest

82. In terms of the due diligence obligations relating to an investment in a target UCI(TS) in which a given UCITS can invest, it is necessary to take into account the manner in which the UCITS proceeds to invest in a target UCI(TS), in particular how the registration of the investment is carried out by the issuer or its agent, for example a registrar or a transfer agent (see Sub-Chapter 7.2.).

In applying this principle, the depositary is obliged to carry out the due diligence in accordance with the criteria laid down by Sub-Chapter 5.1. where the investment in the target UCI(TS) is made through a specialised intermediary through which the investments in one or more target UCI(TS) are taken into account on behalf of the UCITS in the case where the account with the specialised intermediary is opened in the name of the depositary. It will therefore be necessary that the depositary carries out due diligence on this specialised intermediary in accordance with the criteria and the procedure laid down by Sub-Chapter 5.1. of this part taking into account the fact that this intermediary will not necessarily be an entity meeting the criteria laid down by point 73.

In the case where the investment in a target UCI(TS) is made directly with the target UCI(TS) or with an agent of the latter, for example, a registrar or transfer agent of this target UCI(TS), the investment of the UCITS in this target UCI(TS) shall not give rise to specific due diligence obligations at the level of the depositary.

Chapter 6. Obligation for a depositary to have a right to information and instruction

83. The depositary must, at any time, have a right to information in relation to the assets owned by the UCITS for which it acts as depositary. The right to information must permit the depositary to have access to information which is available from a third-party custodian/sub-custodian, clearing broker, prime broker or registrar or transfer agent, which is necessary for the depositary as

regards transactions and asset positions. The obligation to have a right to information is notably considered to be fulfilled when the depositary has a right to access the reporting system of a third-party custodian/sub-custodian, clearing broker, prime broker or registrar or transfer agent, by means of access to a website (e.g. concerning positions in target UCITS held with the registrar agent or transfer agent of the target UCITS or with regard to the assets of a UCITS held, for all or part, by the entity acting as prime broker, if the appointment of such prime broker is permitted by the given UCITS or concerning financial derivative instruments agreements).

84. In relation to guarantees and sureties, this right to information must also exist as regards every entity with whom collateral received by or given to a UCITS can be found, such as, in particular, every collateral agent (e.g. upon the transfer of legal ownership as guarantee to the UCITS in the books of a collateral manager acting as collateral agent, as against this collateral manager).

85. The depositary must also have a right to instruct each third-party custodian/sub-custodian, prime broker or collateral agent in relation to the assets owned by the UCITS, which are held in custody by such third-party custodian/sub-custodian, prime broker or collateral agent. The right of instruction implies that the depositary must be able to give instructions to any third-party custodian/sub-custodian, prime broker or collateral agent in relation to the assets owned by the UCITS that are held in custody by such third-party custodian/sub-custodian, prime broker or collateral agent, which implies that this right of instruction must be recognised and accepted by such entities. The depositary must have such a right to instruct the registrar or transfer agents for the investments of a UCITS in a target UCI(TS), when the position of the UCITS is registered in the books of the registrar or transfer agent of the target UCITS in the name of the UCITS.

86. It is not required that the depositary also has a direct right of instruction or right to information in relation to every entity below a third-party custodian/sub-custodian, prime broker or collateral agent in the custody chain in relation to assets owned by the UCITS, which are held in custody with these entities. In relation to these entities below the first mentioned ones in the custody chain, it is sufficient that the depositary has an indirect right of instruction and right to information, that is to say a right of instruction and right to information which is exercised through the third-party custodian/sub-custodian, prime broker or collateral agent.

Chapter 7. Specific organisational arrangements at the level of the depositary in view of the investment policy of the UCITS or the techniques that the UCITS employs

87. This chapter provides clarifications regarding certain specific situations which arise when a UCITS pursues an investment policy which requires the implementation of specific organisational arrangements at the level of the depositary, in order to guarantee, at any time, the protection of the interests of the unitholders of the UCITS.

Sub-Chapter 7.1. Specific organisational arrangements with regard to guarantees or sureties, including in the case of recourse to a collateral agent

88. Insofar as a UCITS has recourse to techniques or invests in instruments which give rise to guarantees or sureties (collateral) in the form of financial instruments or cash by one or the other party to a transaction, the depositary must be able to determine whether or not the collateral provided to or by a third party for the benefit of the UCITS is owned by the UCITS.

89. The assets of a UCITS which are either given by the UCITS as a guarantee to a third party, or which are received as a guarantee by the UCITS from a third party, are safekept by the depositary for as long as such assets are owned by the UCITS. The custody of these assets may, in this case, be structured according to one of the following three plans: (1) the collateral taker is the depositary of the UCITS or is appointed by the latter or the UCITS as custodian of the collateralised assets of the UCITS; (2) the depositary of the UCITS appoints a sub-custodian or the UCITS appoints a third-party custodian with the approval of the depositary, who acts on behalf of the collateral taker; or (3) the collateralised assets remain with the depositary of the UCITS and are indicated as collateralised in favour of the collateral taker.

90. In its assessment of whether or not the collateral given to a third party or by a third party for the benefit of the UCITS is owned by the UCITS, the depositary must take into account the legal nature, and/or the legal, regulatory or contractual provisions which are applicable to the transaction which gave rise to the establishment of this guarantee or surety. The UCITS must ensure that the depositary receives all necessary information to this effect.

91. When a UCITS enters into transactions in OTC financial derivative instruments and has recourse to effective portfolio management techniques, it is necessary to take into account the guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues, as implemented into Luxembourg regulations by Circular CSSF 13/559 (hereinafter, the "Guidelines") concerning the financial guarantees received by a UCITS within the framework of these transactions or effective portfolio management techniques and which serve to reduce counterparty risk.

92. Without prejudice to the responsibility of the UCITS in the matter, when guarantees or sureties are put in place for the benefit of the UCITS (be it in the form of a transfer of the legal ownership or by means of a pledge), the depositary is[5]:

a) in the context of securities lending transactions, required to ensure that the sureties to be received by the UCITS are received prior to or at the same time as the transfer of the securities lent and that at the end of the securities lending transaction, the surety will be remitted at the same time or after the

[5] See: Circular CSSF 08/356: Rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments.

return of the securities lent and that the level of sureties is adequate throughout the duration of the securities lending transaction;

b) obliged to verify that the sureties to be received comply with the legal and regulatory provisions in force, taking into account particularly the rules contained in Circular CSSF 13/559. These obligations are based on provisions of the 2010 Law which apply only in respect of those UCITS established in contractual form (*fonds commun de placement*). It is nevertheless recommended that depositaries of UCITS which have been established in statutory form also carry out this verification in relation to this type of UCITS, so that this verification of the depositary is carried out irrespective of the legal form of the UCITS.

93. In the case where guarantees or sureties are transferred by the UCITS or delivered to the UCITS by a counterparty to a collateral manager (who is also acting as collateral agent) or to a collateral agent and insofar as this is permitted in particular pursuant to Circular CSSF 13/559, a tripartite agreement between the UCITS, this collateral manager or collateral agent, as well as the depositary should be put in place. In this case, the entity in charge of the management and administration of the guarantees and sureties which the UCITS is required to give or receive (in principle, the collateral manager) must ensure that an adequate level of guarantees and sureties exists in the pool of assets which serves as guarantees and sureties. The collateral manager must also ensure that any substitution of assets in this pool of guarantees and sureties is carried out according to the rules defined by the parties within the framework of the agreement put in place. The depositary must, in this context, benefit from the right to information and right of instruction in accordance with Chapter 6 of this part, and benefit from a real time and online access to a reporting tool of this collateral manager (who also acts as collateral agent) or of this collateral agent or to daily reports made available to the depositary by the collateral manager (who also acts as collateral agent) or of this collateral agent, concerning all the information which is necessary to allow the depositary to fulfil its obligations.

Sub-Chapter 7.2. Organisational arrangements in the case that the UCITS invests in financial derivative instruments (financial derivative instruments traded on a regulated market or OTC financial derivative instruments)

94. In the case where a UCITS is invested in financial derivative instruments, the UCITS must ensure that the depositary is able to monitor the following aspects with regard to the transactional aspect of an investment in a financial derivative instrument and in order to permit the depositary to exercise its legal obligations in relation to the safekeeping of the assets and its monitoring duties:

a) it must know all the positions of the UCITS in such financial derivative instruments, in particular in relation to the positions held with clearing brokers or with a central counterparty. In order to fulfil this obligation, it is notably permitted that the depositary may use the registers and accounts

opened in the accounting books of the UCITS with its administrative agent, base itself on reconciliations carried out by the latter or use extracts of the accounts produced by third parties as specified under point 43 (subject to the conditions set out thereunder);

b) it must monitor, on a daily basis, the statements made with regard to initial margin deposits carried out by the UCITS with an intermediary (e.g. a broker) and the variation margin within the context of financial derivative instruments traded on a regulated market or OTC financial derivative instruments. The depositary may notably, in this context, base itself on the broker statements received from the brokers involved in a given transaction or on reconciliations carried out by the administrative agent.

Sub-Chapter 7.3. Organisational arrangements at the level of the depositary and the UCITS in case of the appointment of a prime broker

95. Insofar as it is provided for in the prospectus of a given UCITS, a UCITS may enter into such a relationship with a prime broker, as defined, to use all or part of the range of services provided by such a prime broker. In the case that the UCITS is permitted to enter into a relationship with a prime broker, the depositary must ensure compliance, by the depositary itself or, as the case may be, by the UCITS, with the following provisions. These provisions are only applicable as regards a counterparty of a UCITS which qualifies as a prime broker according to this circular. The choice of prime broker, as well as its official appointment by entering into a written contract having as its object the appointment of a prime broker (the prime brokerage agreement) and the determination of its functions and responsibilities, is decided by and is, according to the legal form of a given UCITS, the responsibility of the competent management body in the case of a UCITS in corporate form or the management company in the case of UCITS organised as a *fonds commun de placement*. The UCITS must act with the required skill, care and diligence when appointing a prime broker. Only the choice and the appointment of a prime broker which is subject to ongoing supervision, financially sound and with the organisational structure appropriate for the services to be provided to the UCITS, is permitted. The depositary is required to carry out a due diligence on the prime broker pursuant to the rules of Chapter 5 of this part if such prime broker is supposed to hold the assets owned by UCITS in custody. The depositary has the right to refuse the choice and appointment of a prime broker made by a UCITS when the prime broker is required to hold the assets which are owned by the UCITS in custody in the exercise of its functions. The depositary must organise its relations with the UCITS and the prime broker in a manner which enables it to fulfil its duties.

96. The UCITS must ensure that the depositary has a right to information and right of instruction as against the entity acting as prime broker concerning the assets which are owned by the UCITS, in accordance with the provisions of Chapter 6 of this part.

97. The prime brokerage contract defines the terms on which the UCITS shall make use of the services of a prime broker. In particular, any possibility to transfer assets, to the extent that this is permitted by the prospectus of the UCITS, is stipulated in the contract and must satisfy the provisions of the management regulations or the articles of incorporation of the UCITS, as well as its prospectus.

98. It is the responsibility of the UCITS which enters into a relationship with a prime broker to ensure that the prime brokerage contract between the prime broker and the UCITS (and/or, as the case may be, its management company), provides for an obligation according to which the prime broker is required to make available to the depositary, in particular, a statement in a durable medium which contains the following information:

a) the value of the different elements listed in Annexe 3 of the circular at the close of each business day;

b) details of any other matters necessary to ensure that the depositary of a given UCITS has up-to-date accurate information about the value of the assets which are owned by the UCITS, which are held in custody by the entity acting as prime broker.

This statement shall be made available to the depositary no later than the close of the next business day to which it relates.

99. Depending on the different models, in particular operational models, of the prime brokers with whom the UCITS may enter into a relationship with, it is possible, insofar as this is authorised by the prospectus of a given UCITS, that the entity acting as prime broker (or one or more agent(s) of this prime broker) holds some or even all of the assets of the UCITS with which it has entered into relationship with in custody. If the prime broker has been entrusted with such a custody duty of some or all the assets of a UCITS, the provisions of Chapters 2, 3, 5 and 6 of this part apply by analogy in respect of the prime broker itself as well as in respect of any entity below the prime broker in the custody chain who ensures the custody of the assets of the UCITS. In conformity with the principles listed in point 60, the depositary must receive from the prime broker:

- an annual confirmation certifying compliance with the rules relating to due diligence and the segregation of assets at the level of and in relation to the prime broker, as well as at the level of and in relation to the entities below the prime broker in the custody chain of an asset;

- a comprehensive inventory/statement of all the asset positions of the UCITS whose custody is ensured directly or indirectly by the prime broker.

100. To avoid any conflicts of interest between the depositary, the UCITS (or as the case may be, its management company) and/or its unitholders, the depositary of a UCITS may not act as a prime broker acting as counterparty of this UCITS

unless it has separated, on a functional and hierarchical level, the performance of its depositary functions from its prime brokerage tasks, and any potential conflicts of interest have been properly identified, managed, monitored and disclosed to the unitholders of the UCITS.

101. The UCITS which has appointed a prime broker must ensure that in the information available to unitholders in accordance with the management regulations or the articles of incorporation and in the prospectus, the following information is made available to unitholders:

- the identity of one or more prime broker(s);
- a description of any material arrangements of the UCITS with the prime broker(s);
- the way the conflicts of interest in relation thereto are managed;
- the provision in the contract with the depositary on the possibility of a transfer of assets of the UCITS.

102. The prime broker may be contractually invested in the material execution of the operations relating to the day-to-day administration of the assets of the UCITS which the prime broker directly or indirectly ensures the custody of (namely the fact that the depositary collects dividends, interest, and securities due and payable, the exercise of option rights and/or, in general, any other operation concerning the day-to-day administration of securities and liquid assets which belong to the UCITS – see Chapter 1 of Part VI of this circular). In this case, an express provision in the prime brokerage contract must provide for the material execution of these operations relating to the day-to-day administration by the prime broker.

Sub-Chapter 7.4. Specific organisational arrangements in the case of concentration of the deposit of a UCITS' assets with a limited number of third parties or with a single third party

103. It is permitted to delegate to a limited number of third parties or to a single third party the custody of the majority or of all of a UCITS' assets, if the conditions listed in Chapter 6 of Part VII are met.

104. In all cases of concentration of the deposit of all of a UCITS' assets with a limited number of third parties or with a single third party, the depositary must establish specific organisational arrangements in order to ensure:

a) compliance with the provisions of Chapters 2, 3, 5 and 6 of this part which apply by analogy to each third party in charge of the custody of the majority or all of a UCITS' assets, as well as in relation to any third party below the latter;

b) that the accounts opened with this/these third party(ies) are necessarily in the name of the depositary with reference to the name(s) of the UCITS;

c) that the accounts opened with the correspondents of the third party(ies) identify the UCITS concerned as the ultimate beneficial owners or that they take the structure of omnibus accounts which specifically identify the accounts as being a client account of the depositary;

d) the control of compliance by this/these third party(ies) and its/their correspondent(s) of the segregation obligations above to ensure, to the extent possible, that in the case of insolvency of a third party(ies) or of any correspondent(s) of the third party(ies), the assets of the UCITS do not fall within the bankruptcy assets of this/these third party(ies) or of its/their correspondent(s);

e) that the depositary can replace the third party(ies) at any time.

It should be noted that in relation to the UCITS whose investment policy according to Chapter 5 of the 2010 Law provides for an investment in a single market, the specific provisions of this Sub-Chapter 7.4. do not apply.

105. In the application of the principle laid down in point 71, it is recommended that depositaries ensure that, in the case of a concentration of deposits, the registration or the entry in an account of all of a UCITS' assets with a limited number of third parties or with a single third party, the establishment of such a delegation structure can be justified by an objective reason.

106. It should be noted that the general duty of safekeeping the assets of a UCITS must be exercised by the depositary. This general duty cannot be delegated to another third party, in order that in the case of a concentration of deposit of all of the assets of a UCITS with a limited number of third parties or with a single third party, the depositary must continue to fully exercise its general duty of safekeeping over all of the assets of a UCITS.

107. Where there is a concentration of deposit, the registration or the entry in an account of all of a UCITS' assets with a limited number of third parties or with a single third party, this/these third party(ies) must comply with the conditions of point 73 above and assurances must be given that in the case of insolvency of this/these third party(ies) or of one or more of its/their correspondents, the assets of the UCITS concerned do not fall within the bankruptcy assets of this/these third party(ies) or of its/their correspondent(s). In the context of the authorisation application of a depositary bank of a UCITS involving a concentration of deposit, the registration or the entry in an account of all of a UCITS' assets with a limited number of third parties or with a single third party, the CSSF requires a confirmation of compliance with each of the rules laid out here above.

Sub-Chapter 7.5. Organisational arrangements applicable in relation to investments made

by UCITS in target UCI(TS)

108. Concerning the due diligence obligations relating to target UCI(TS) in which a UCITS has invested, reference is made to Sub-Chapter 5.3. of this part.

109. As far as more specifically the registration of the investments of a UCITS in target UCI(TS) is concerned, it is possible that the registration of such investment with a target UCI(TS) or with an agent of the latter may be made directly in the name of the investing UCITS, provided that the national law of the target UCI(TS) does not require a different registration. The investment of a UCITS in a target UCI(TS) may also be registered in the name of the depositary with an indication that the assets belong to the clients of the depositary, in the name of the depositary with an indication of the name of the UCITS or the name of the sub-fund concerned in the case of a UCITS with multiple sub-funds or only in the name of the UCITS or of a sub-fund of the latter in the case of a UCITS with multiple compartments, this latter option only being available where the national law of the target UCITS permits or requires this. In the latter case, procedures must be established with the target UCI(TS) or the agent of the latter in order to ensure that the positions opened in the name of the investing UCITS cannot be assigned, transferred, exchanged or delivered unless the depositary has been informed in advance and the depositary has access without undue delay to those documents which evidence each transaction and each position. The provisions under this point also apply to UCITS which qualify as fund of funds or feeder funds within master-feeder structures.

Chapter 8. General obligations relating to reconciliations

110. It is the responsibility of the depositary of a UCITS to establish procedures which cover all of the reconciliations and reconciliation methods (including the reconciliations used by depositaries that have been carried out by third parties) to be put in place by the depositary to comply with its obligations concerning the assets of a UCITS, to effectively apply such procedures and to review such procedures periodically. These procedures must not only cover the details of the reconciliation processes to be established, but must also clarify the measures to be taken by the depositary in order to resolve any differences in the reconciliation within a reasonable period of time.

111. It is the responsibility of the internal audit function or of the internal control department of the depositary to monitor the existence, the regular update and effective application of these reconciliation procedures and to ensure the resolution within a reasonable period of time of any discrepancies in reconciliations identified.

112. Regarding the reconciliation procedures, particular attention must be paid to the following aspects:

a) the procedures to be established must cover all of the assets and

transactions relating to the assets of the UCITS;

b) on the basis of the provisions of points 43. and 44., the depositary is required to produce a comprehensive inventory/statement of all the asset positions of a UCITS (or, as the case may be, of each sub-fund of a UCITS with multiple sub-funds) in which the UCITS is invested at the close of the financial year. This implies that any differences in reconciliation identified by the depositary or a third party are justified at the moment of the production of a comprehensive inventory/statement of all the asset positions of a UCITS.

Part V. Accounting and proper monitoring of cash (flows)

113. The depositary is required to ensure the proper monitoring of the accounting and the cash flows. The UCITS shall therefore ensure that the depositary receives, upon commencement of its functions and on an ongoing basis, all of the relevant information it needs to comply with its obligations in the area of accounting and the proper monitoring of cash flows. The UCITS must also ensure that the depositary receives, without undue delay, accurate information related to all cash flows, including from any third party with which any UCITS has opened a cash account.

114. The provisions on reconciliations according to Chapter 8 of Part IV apply by analogy insofar as cash flows and cash accounts are concerned, including the cash flows and cash accounts relating to the subscriptions, redemptions and conversions of shares or units of the UCITS concerned.

Chapter 1. Accounting of cash

115. The following provisions aim to ensure that the depositary has, at any time, a clear overview of all the assets of the UCITS for which it acts as depositary, and more specifically concerning the cash which the UCITS has at its disposal. It is therefore essential that no cash account relating to the operation of the UCITS is opened without the knowledge of the depositary, the objective being to avoid the possibilities of fraudulent cash transfers.

116. In order for the depositary to have access to all the information concerning the cash accounts of a UCITS and to have a complete and clear overview of all of the cash flows of a UCITS, the following conditions, shall at least be fulfilled:

a) the depositary must be informed, prior to its appointment, of all existing cash accounts opened in the name of the UCITS (or in the name of the management company acting on behalf of the UCITS);

b) the depositary must be informed of the opening of any new cash account by the UCITS;

c) the depositary must be informed of all information relating to the cash accounts opened at third party entities, directly by such entities.

It is admitted that in order to establish the comprehensive inventory/statement of all the assets mentioned in points 43. to 45., the depositary may use the accounting data of the administrative agent, subject to the conditions specified in these points.

117. Where the depositary holds funds belonging to UCITS clients, the depositary must make adequate arrangements in order to ensure the preservation of the rights of its UCITS clients. The credit institution acting as depositary is, in this case, required to respect the rules under Article 37-1(8) of the law of 5 April 1993 on the financial sector as well as the implementing measures contained in Article 18 of the Grand-ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector.

118. The depositary must, concerning more specifically cash of the UCITS held by the depositary itself, at least ensure that the records and segregated accounts are maintained in such a way that ensures their accuracy and in particular record the correspondence with the cash held for a given UCITS (or for a given sub-fund of a UCITS with multiple sub-funds) and ensure that adequate organisational arrangements are introduced to minimise the risk of loss or the diminution of cash as a result of fraud, poor administration, inadequate registering or negligence. Concerning the deposit of cash of a UCITS with the depositary or of the UCITS with a third party, the depositary and the UCITS may have recourse to a fiduciary contract between the depositary and the UCITS.

119. When cash accounts are opened in the name of the depositary with another entity acting on behalf of the UCITS, no cash of the entity with which such a cash account has been opened and none of the depositary's own cash can be accounted for in such accounts.

Chapter 2. Proper monitoring of cash (flows)

120. The depositary shall in general ensure that cash (flows) of each UCITS are properly monitored and shall, in particular, ensure that all of the payments made by the unitholders or on their behalf upon the subscription of units or shares of each UCITS have been received and that all cash of each UCITS has been booked in cash accounts opened in the name of each UCITS or of the management company acting on behalf of each UCITS or in the name of the depositary acting on behalf of each UCITS at an entity referred to in points a), b) and c) of Article 18(1) of Directive 2006/73/EC, or another entity of the same nature, in the relevant market where cash accounts are required, provided that such entity is subject to effective prudential regulation and supervision, that has the same effect as EU law and is effectively enforced and comply with the principles laid down in Article 16 of Directive 2006/73/EC.

121. The depositary must, in all circumstances, have a comprehensive and clear overview of all inflows and outflows of cash of each UCITS.

122. The depositary shall ensure effective and proper monitoring of the cash flows and, in particular, it shall at least:

a) ensure that all cash of each UCITS is booked in accounts opened with entities referred to in points a), b) and c) of Article 18(1) of Directive 2006/73/EC in the relevant markets where cash accounts are required for the purposes of each UCITS' operations and which are subject to prudential regulation and supervision that has the same effect as EU law, is effectively enforced and is in accordance with the principles laid down in Article 16 of Directive 2006/73/EC;

b) implement effective and proper procedures to reconcile all cash movements and perform such reconciliations on a daily basis or, in case of infrequent cash movements, when such cash flow movements occur;

c) implement appropriate procedures to identify at the close of business day significant cash flows and, in particular, those which could be inconsistent with UCITS' operations;

d) review periodically the adequacy of those procedures by fully reviewing the reconciliation process at least once a year and ensuring that the cash accounts opened in the name of the UCITS, or, as the case may be, in the name of its management company or in the name of the depositary acting on behalf of the UCITS are included in the reconciliation process;

e) monitor, on an ongoing basis, the outcomes of the reconciliations and actions taken as a result of any discrepancies identified by the reconciliation procedures and notify the UCITS if an irregularity has not been rectified without undue delay and also the competent authorities if the situation cannot be clarified or rectified;

f) check the consistency of its own records of cash positions with those of the UCITS. The UCITS shall ensure that all instructions and information related to a cash account opened with a third party are sent to the depositary, so that the depositary is able to perform its own reconciliation procedure directly or with the help of a third party.

123. The depositary shall ensure that procedures are in place and effectively implemented to appropriately monitor each UCITS' cash flows and that these procedures are periodically reviewed afterwards. In particular, the depositary shall look into the reconciliation procedure to satisfy itself that the procedure is suitable for each UCITS and performed at appropriate intervals taking into account the nature, scale and complexity of each UCITS. Such a procedure should, for example, compare one by one each cash flow as reported in the bank

account statements with the cash flows recorded in the accounts of each UCITS. Where reconciliations are performed on a daily basis as for most UCITS, the depositary shall also perform its reconciliation on a daily basis. The depositary shall, in particular, monitor the discrepancies highlighted by the reconciliation procedures and the corrective measures taken in order to notify, without undue delay, the UCITS of any anomaly which has not been remedied and to conduct a full review of the reconciliation procedures. Such a review should be performed at least once a year. The depositary shall also identify on a timely basis significant cash flows and in particular those which could be inconsistent with the UCITS' operations, such as changes in positions in UCITS' assets or subscriptions and redemptions, and it should receive periodically cash account statements and check the consistency of its own records of cash positions with those of the UCITS.

124. Concerning payments made by, or on behalf of unitholders upon the subscription of units or shares, the depositary must ensure that all payments made by unitholders or in their name, upon the subscription for units or shares of a UCITS have been received and booked in one or more cash accounts.

Chapter 3. Obligations of all UCITS concerning subscriptions and the holding of collection accounts

125. Each UCITS shall ensure that the depositary is provided with information about payments made by or on behalf of unitholders upon the subscription of units or shares of a UCITS at the close of each business day when the UCITS or a third party acting on behalf of it, such as a transfer agent, receives such payments or an order from the investor. The UCITS shall ensure that the depositary receives all other relevant information it needs to make sure that the payments are then booked in cash accounts opened in the name of the UCITS or in the name of the management company acting on behalf of the UCITS or in the name of the depositary with an entity referred to in point 120 above.

126. In the context of its obligations linked to subscriptions, the depositary has to ensure that all payments made by or on behalf of unitholders upon the subscription of shares or units of each UCITS have been received and booked in one or more cash accounts in accordance with the rules above. The UCITS shall therefore ensure that the depositary is provided with the relevant information it needs to properly monitor the receipt of unitholders' payments. The UCITS has to ensure that the depositary obtains this information without undue delay following the third party's receipt of an order to redeem or issue shares or units of a UCITS. The information shall therefore be transmitted at the close of the business day by the entity responsible for the subscription and redemption of shares or units of a UCITS to the depositary in order to avoid any misuse of unitholders' payments.

127. The accounts opened in relation to the execution of issues (and of redemptions), in which the amounts to be received (or to be paid) are or will be received pending, as the case may be, the payment to the UCITS or to the unitholders (*collection*

accounts) must be opened with entities referred to in point 120.

Part VI. Specific obligations of the depositary

Chapter 1. Obligations relating to the day-to-day administration of assets

128. The depositary shall fulfil all operations concerning the day-to-day administration of the assets of a UCITS in its custody.

129. This means that the depositary must, in particular, collect dividends, interest and securities due, exercise rights over securities and, in general, carry out any other operations concerning the day-to-day administration of securities and liquid assets which belong to the UCITS. It is recommended that depositaries of UCITS in statutory form also carry out the obligations relating to the day-to-day administration of assets in respect of those UCITS so that the depositary's monitoring duties are identical for all types of UCITS.

130. To the extent that the operations referred to above relate to assets which are not held in custody by the depositary itself, the latter may, on a contractual basis confer the performance thereof to third-party custodians/sub-custodians with whom the assets are effectively deposited. In such case, and in order to satisfy its supervisory obligation relating to the assets of the UCITS, the depositary must organise its relations with third-party custodians/sub-custodians in such a manner that it is immediately informed of all operations which such third-party custodians/sub-custodians carry out in the context of the day-to-day administration of the assets that they have on deposit. This obligation applies, in particular, in relation to prime brokers appointed by a UCITS on the basis of the provisions of Sub-Chapter 7.3. of Part IV of this circular.

Chapter 2. Monitoring duties

131. The depositary of UCITS is, in addition, responsible for the following monitoring duties:

a) to ensure that the sale, issue, redemption, and cancellation of units or shares made on behalf of or by each UCITS are carried out in accordance with the law or the management regulations or, as the case may be, the articles of incorporation of each of these UCITS;

b) to ensure that the value of the units of each UCITS is calculated in accordance with the law or with the management regulations of each of these UCITS;

c) to carry out the instructions of the management company of each UCITS, unless they conflict with the law or the management regulations of each of

these UCITS;

d) to ensure that in transactions involving the assets of each UCITS, any consideration is remitted to each UCITS within the usual time limits;

e) to ensure that the proceeds of each UCITS are allocated in accordance with the management regulations or the articles of incorporation of each of these UCITS.

132. The obligations of point 131(b) and (c) above, are not, according to the provisions of the 2010 Law, applicable to UCITS which have been established in statutory form. It is nevertheless recommended that depositaries of this type of UCITS also carry out (as the case may be, by analogy) all the monitoring duties according to points 133 to 154 below for those UCITS which have been established in statutory form, so that the depositary's monitoring duties are identical for all types of UCITS.

Sub-Chapter 2.1. General provisions applying to monitoring duties

133. In order to ensure that the depositary of a UCITS is able to exercise its monitoring duties in an appropriate manner, the depositary must, upon its appointment, assess the risks associated with the nature, scale and complexity of the strategy of each UCITS and the organisation of the management company in order to devise appropriate oversight procedures with regard to a given UCITS and the assets in which it invests and which are then implemented and applied. These procedures shall be regularly updated.

134. In performing its monitoring duties, the depositary shall perform ex post controls and verifications of processes and procedures that are under the responsibility of the UCITS or, as the case may be, its management company or an appointed third party. The depositary shall, in all circumstances, ensure that an appropriate verification and reconciliation procedure is implemented and applied and frequently reviewed. The UCITS (or, as the case may be, its management company) shall ensure that all instructions related to the UCITS' assets and operations are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

135. The depositary shall establish an escalation procedure to be applied if, within the context of its monitoring duties, it detects potential irregularities; the details of this procedure shall be made available to the CSSF upon request. This procedure must guarantee that any material breaches are notified to the CSSF. Reference is made to Chapter 4 of Part II of this circular concerning the details of how this/these escalation procedure(s) are to be put in place.

136. The UCITS or, as the case may be, its management company shall provide the depositary, upon commencement of its functions and on an ongoing basis, with

all relevant information the depositary needs in order to comply with its obligations relating to its monitoring duties, including information to be provided to the depositary by third parties. The UCITS or, as the case may be, its management company, shall particularly ensure that the depositary is able to have access to the accounting data or perform on-site visits at the premises of the UCITS or, as the case may be, of its management company and of any service provider appointed by each UCITS or, as the case may be, its management company, such as administrators and/or to review reports and statements of recognised external certifications by qualified independent auditors or other experts, in order to ensure the adequacy and relevance of the procedures in place.

137. The measures taken by the depositary in the context of the exercise of its monitoring obligations shall be considered as second level controls. Such tasks should not prevent the depositary from conducting ex ante verifications where it deems appropriate, in agreement with the UCITS or, as the case may be, its management company.

138. It is the responsibility of the internal audit function or of the internal control department of the institution acting as depositary to control the existence, periodic update and effective application of the procedures connected with the monitoring duties.

Sub-Chapter 2.2. Specifications concerning the monitoring duties relating to the sale, issue, redemption, repurchase and cancellation of units or shares made on behalf of or by each UCITS

139. The obligation applicable to the depositary to ensure that the sale, issue, redemption, repurchase and cancellation of units or shares made on behalf of or by each UCITS are carried out in accordance with the law or the management regulations or, as the case may be, the articles of incorporation of each of those UCITS, requires that the depositary has to ensure that the UCITS, or, as the case may be, its management company or any other appointed entity, has established, implements and applies an appropriate and consistent procedure to:

a) reconcile the subscription orders with the subscription proceeds, and the number of units or shares issued with the subscription proceeds received by each UCITS;

b) reconcile the redemption orders with the redemptions paid, and the number of units or shares cancelled with the redemptions paid by each UCITS;

c) verify, on a regular basis, that the reconciliation procedure is appropriate.

140. For the purpose of points a) to c) here-above, the depositary shall in particular regularly check the consistency between the total number of units or shares in the accounts of a given UCITS and the total number of outstanding units or shares that appear in the register of unitholders of such UCITS (e.g. with the

registrar agent of the UCITS).

141. The depositary shall ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of shares or units of a UCITS comply with the applicable national law and with the management regulations or, as the case may be, its articles of incorporation and verify that the procedures are effectively implemented. The frequency of the depositary's checks shall be consistent with the frequency of subscriptions and redemptions.

Sub-Chapter 2.3. Specifications concerning the monitoring duties relating to the valuation of units of each UCITS

142. Regarding the monitoring duties of the depositary in relation to the valuation of units of each UCITS, it should be pointed out that the primary responsibility for the valuation process resides with its management company. On this basis, the obligations of the depositary in this area do not require that the depositary systematically re-calculates the net asset value of units calculated by its management company or its administrative agent, but it shall ensure that procedures are in place relating to the calculation of the net asset value of the units, and that these procedures are effectively applied.

143. The specifications provided by this sub-chapter are based on the provisions of the 2010 Law which apply only with regard to UCITS established in contractual form (*fonds commun de placement*). It is nevertheless recommended that depositaries of UCITS which have been established in statutory form also perform (as the case may be, by analogy) these monitoring duties in relation to this type of UCITS, so that this monitoring duty of the depositary is applied independently of the legal form of a UCITS. In relation to UCITS in statutory form, every reference to units of UCITS in this Sub-Chapter 2.3. is, as the case may be, to be understood as a reference to shares of the UCITS.

144. In the context of this monitoring duty, the depositary must verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of assets of each UCITS in compliance with the requirements applicable to a given UCITS in relation to the valuation of the assets as well as with the management regulations or articles of incorporation of each UCITS.

145. The procedures of the depositary shall be conducted at a frequency consistent with the frequency of a given UCITS' valuation policy. For the purpose of establishing its procedures, the depositary must have a clear understanding of the valuation methods used by the UCITS or, as the case may be, its management company for the valuation of the assets of the UCITS.

146. Where the depositary considers that the calculation of the net asset value of the units of a UCITS has not been performed in compliance with the applicable provisions (including the applicable legal provisions in relation to valuation), it

must notify the UCITS or, as the case may be, its management company and ensure that timely remedial action is taken in the best interests of the unitholders.

Sub-Chapter 2.4. Specifications concerning the monitoring duties relating to the execution of the instructions of the UCITS or, as the case may be, of its management company

147. Concerning the obligation of the depositary to carry out the instructions of the management company, or, as the case may be, of the UCITS, unless they are contrary to the law or the management regulations of the UCITS, the depositary must elaborate and implement appropriate procedures to verify that the management company or, as the case may be, the UCITS complies with applicable laws and regulations as well as with the management regulations of the UCITS. In particular, the depositary shall monitor each UCITS' compliance with investment restrictions. The procedures to be implemented shall be proportionate to the nature, scale and complexity of each UCITS. The specifications provided by this sub-chapter are based on the provisions of the 2010 Law which apply only with regard to UCITS established in contractual form (*fonds commun de placement*). It is nevertheless recommended that depositaries of UCITS which have been established in statutory form also perform (by analogy) these monitoring measures in relation to this type of UCITS, in order that this monitoring duty of the depositary is applied independently of the legal form of a UCITS. In relation to UCITS in statutory form, every reference to the management regulations in this Sub-Chapter 2.4. is, as the case may be, to be understood as a reference to the articles of incorporation of a UCITS and every reference to the management company is, as the case may be, to be understood as a reference to the UCITS.

148. The depositary must implement an escalation procedure where a UCITS has breached a limit or a restriction referred to in the previous point.

149. In the context of this monitoring duty, the depositary should set up a procedure to verify, on an ex post basis, a given UCITS' compliance with applicable law and regulations and its management regulations or articles of incorporation. This covers areas such as checking that this UCITS' investments are consistent with its investment policy as described, in particular, in its management regulations or, as the case may be, its articles of incorporation, and ensuring that this UCITS does not breach its investment restrictions, if any. If the limits or restrictions set out in the applicable national law or regulations or the management regulations or, as the case may be, the articles of incorporation of this UCITS are breached, the depositary should for example, obtain an instruction from the UCITS, or, as the case may be, from its management company to neutralise at its own costs the transaction that was in breach. This circular does not prevent the depositary from adopting an ex ante approach where it deems it appropriate and in agreement with the UCITS, or, as the case may be, with its management company. Concerning the monitoring duties of the depositary according to this Sub-Chapter

2.4., the compliance with the laws and regulations regarding investment is, in the first and foremost instance, the obligation of the UCITS or, as the case may be, of the management company.

Sub-Chapter 2.5. Specifications concerning the monitoring duties relating to the timely settlement of transactions

150. In order to ensure that in the operations involving the assets of each UCITS the consideration is remitted to the UCITS within the usual time limits, the depositary shall set up a procedure to detect any situation where a consideration related to the operations involving the assets of a given UCITS is not remitted to this UCITS within the usual time limits, notify the UCITS, or, as the case may be, its management company and, where the situation has not been remedied, request the restitution of the financial instruments from the counterparty, where possible.

151. For those transactions that are not traded on a regulated market, the usual time limits shall be assessed with regard to the conditions attached to the transactions (e.g. as far as OTC financial derivative contracts are concerned).

Sub-Chapter 2.6. Specifications concerning the monitoring duties relating to income distribution

152. Concerning the obligation to ensure that the proceeds of a UCITS are allocated in conformity with the management regulations or the articles of incorporation, the depositary shall ensure that the net income calculation of a given UCITS, once declared by the UCITS or its management company, is applied in accordance with the management regulations or articles of incorporation of this UCITS as well as with the law.

153. In the context of this monitoring duty, the depositary must ensure that the income is calculated accurately in conformity with the rules applicable to a given UCITS. The depositary has to ensure that the income distribution is appropriate and, where it identifies an error, that the UCITS, or, as the case may be, its management company takes appropriate remedial actions. Once the depositary has ensured this, it shall verify the completeness and accuracy of the income distribution and in particular of the dividend payments.

154. The depositary shall ensure that appropriate measures are taken when the *réviseur d'entreprises agréé* (approved statutory auditor) of a given UCITS has expressed reserves on the annual financial statements. The UCITS or, as the case may be, its management company acting on behalf of the UCITS, shall provide the depositary with all information on the reserves expressed in the financial statements and check the completeness and accuracy of dividend payments, once they are declared by the UCITS or, as the case may be, its management company and, where relevant, of the carried interest.

Part VII. Delegation of functions by the depositary

Chapter 1. General rules

155. In the exercise of its functions, the depositary is authorised to delegate certain functions, or certain tasks related to its different functions, in accordance with the rules below, the general principle being that the depositary shall not delegate tasks with the intention of avoiding the applicable legal obligations.

156. It should be noted that according to applicable legal provisions, the depositary's liability is not affected by the fact that it has delegated to a third party all or part of the assets in its safekeeping.

157. Should the delegation, in the right conditions, contribute to a better management by way of the transfer of certain functions to third parties with greater expertise and permitting significant economies of scale, this does not diminish, in any manner, the responsibility of the depositaries of UCITS to take into account the principles of sound management in all of the activities. It is therefore the responsibility of depositaries of UCITS to pursue an appropriate policy in relation to the delegation of activities, in particular, in order to maintain an adequate organisation. The adequate organisation of the depositary of a UCITS, as well as the monitoring of such organisation, constitute in effect the corner stones of prudential supervision.

158. The depositaries of UCITS shall ensure that the risk management policies and procedures and, as the case may be, the risk management function correctly identify the risks associated with every delegation concerning the function of UCITS depositary and that risk management systems, processes and mechanisms linked to their activities are established in relation to every delegation concerning the activity of the depositary of UCITS and that monitoring mechanisms concerning these risks are in place.

159. Every delegation by the depositary shall be recorded in contractual documentation between the depositary and its delegate in accordance with the principles laid down in points 36 to 41 of this circular. In addition, the depositary must also act in compliance with the provisions of the law of 13 July 2007 on markets in financial instruments and the Grand-ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector.

160. The tasks delegated by the depositary are included within the scope of the *réviseur d'entreprises agréé*'s audit of the depositary.

161. Each delegation of an essential or important operational function linked to the depositary function shall be subject to a prior consultation with the CSSF before the decision can be taken and such delegation can be implemented. This

consultation aims to anticipate events and to permit the CSSF to transmit comments or objections that it may have in respect of the proposed delegation before its implementation.

162. It is the responsibility of the internal audit function or the internal control department of the depositary to monitor compliance with the applicable rules relating to the delegation of functions by the depositary.

Chapter 2. General rules concerning delegation within the group of the depositary

163. It is permitted, as the case may be, on the basis of the prior approval of the CSSF, that certain tasks relating to the performance of one or more essential functions linked to the activity of the depositary of UCITS are delegated to an entity with which the depositary is linked by common management or control.

164. It should be noted in this context that the possibility for the depositary not to carry out itself all of the tasks incumbent upon it and to be assisted by or to delegate to third parties, shall not, in principle, lead to the delegation of all of the tasks to one and the same third party. Such a situation is, in effect, contrary to the legal provisions in this area since it would have the object of undermining the depositary function. This would also constitute a structure giving rise to unnecessary additional costs.

Chapter 3. Specific rules concerning IT outsourcing

165. Reference is made to Circular CSSF 12/552, as amended by Circular CSSF 13/563, for any questions relating to the outsourcing of IT services by credit institutions. The rules laid down in this circular shall apply to IT outsourcing in relation to the functions of the depositary of a UCITS.

Chapter 4. Limits applicable to the delegation of functions by the depositary

166. The institutions acting as depositary of UCITS cannot delegate:

a) their general duty of safekeeping the assets;

b) their monitoring duties within the meaning of Chapter 2 of Part VI of this circular.

167. It is nevertheless admitted that tasks linked to the safekeeping as well as the day-to-day administration of the assets may be delegated to entities with which the depositary is linked by common management or control.

168. The depositary is also authorised to delegate the custody of assets of UCITS in its safekeeping in compliance with the provisions of Part IV of this circular.

169. Insofar as the monitoring duties under Chapter 2 of Part VI are concerned, the depositary cannot delegate to third parties the performance of tasks linked to the obligation to "ensure" the correct performance of the acts which are covered by the monitoring duties for which the depositary is responsible.

170. However, the term "ensure", as it is employed in the text of the 2010 Law, implies that the depositary does not have to "perform" the tasks itself, but that it shall verify their correct performance.

171. In this case, the relations between the depositary and its foreign service providers shall be organised in such a manner that the latter have all the means and data necessary to carry out the required preliminary verifications in order to assess the compliance of the decisions taken by the portfolio managers, with the requirements of the law or the management regulations.

172. When in the cases referred to above, the depositary does not have the possibility to carry out itself or through its service providers such preliminary verifications, it must establish, together with the administrative agent, monitoring procedures capable of ensuring that operations initiated by the management companies/portfolio managers comply with the requirements of the law or the management regulations.

173. The prohibition of the concentration of tasks to be performed by third parties with one and the same service provider of the depositary does not apply in situations where a single correspondent has been chosen for technical reasons. This is particularly the case (although not exclusively) in situations where the investments are made in a single market.

174. Likewise, subject to the rules set out in Chapter 6 below, the custody of all of the assets other than cash of a given UCITS with a single third party or a limited number of third parties shall, in principle, be avoided, so as not to create an unnecessary custody and deposit risk.

Chapter 5. Rules applicable to sub-delegation

175. Any party to which functions have been delegated may, in turn, in compliance with the conditions applicable to the delegation, sub-delegate such functions. In such case, the rules relating to the delegation by the depositary apply by analogy to the parties concerned.

Chapter 6. The specific case of the concentration of the deposit of assets of a UCITS with a limited number of third parties or with a single third party

176. By way of derogation from the prohibition of principle mentioned in points 173 and 174 above concerning the use of a single third party or a limited number

of third parties for the custody/material deposit of assets and by way of exception to this principle, a concentration of the deposit of all of the assets of a UCITS with a limited number of third parties, or with a single third party is possible, when the third party(ies) is/are linked to the depositary by way of common management or control, e.g. the foreign parent company of a Luxembourg institution (and its subsidiaries). Such concentration is also permitted when it is documented that the custody and deposit risk is not increased in an unjustified manner by the use of such a third party (particularly in comparison with the case where such third party or limited number of third parties has/have not been appointed).

177. In all of these cases of a concentration of the deposit of all of the assets of a UCITS with a limited number of third parties, or with a single third party, the depositary shall establish the specific organisational arrangements mentioned in Sub-Chapter 7.4. of Part IV and shall ensure that the use of such entity(ies) is disclosed in an adequate manner in the prospectus of the UCITS concerned.

178. In application of the principle laid down in point 71, depositaries are recommended to ensure that in the case of concentration of deposit, the registration or the entry in an account of all of the assets of a UCITS with a limited number of third parties, or with a single third party, the establishment of such a delegation structure can be justified by an objective reason.

Part VIII. Obligations of information of the depositary applicable to the UCITS

179. The UCITS shall ensure that the depositary has access, without undue delay, upon its appointment and on an ongoing basis, to all relevant information which it needs to comply with its obligations in relation to the depositary activity for a given UCITS.

180. Where the home Member State of the management company of a UCITS is not the Grand Duchy of Luxembourg, the depositary shall sign a written agreement with this management company regulating the flow of information deemed necessary to allow it to perform its functions, particularly in relation to the safekeeping of the assets and in relation to monitoring and in general in relation to legislative, regulatory or administrative provisions applicable to the depositary. This written agreement must also fulfil the conditions provided by Chapter V of CSSF Regulation N° 10-4, transposing Directive 2010/43/EU.

181. The parties to the contract appointing the depositary may agree to transmit electronically all or part of the information which is to be communicated.

Part IX. Obligations of information applicable to the depositary vis-à-vis the UCITS

182. In order to ensure that every UCITS is informed of any information affecting the assets of a UCITS which is known to or comes to the attention of the

depositary in the exercise of its functions, the depositary shall ensure that the UCITS, or, as the case may be, its management company, is informed without undue delay of any information relating to the assets of the UCITS, to the extent that the depositary has knowledge of it, and in particular concerning all events affecting the life of the assets.

183. The obligations of information applicable to the depositary vis-à-vis the UCITS are to be read together with the obligations applicable in relation to the escalation procedure in accordance with Chapter 4 of Part II of the circular.

Part X. Obligations of information of the depositary vis-à-vis the authorities

184. The depositary is required to provide the CSSF, upon request, with all the information which the depositary has obtained in the performance of its functions and which may be necessary to permit the CSSF to supervise the compliance with the laws and regulations applicable to the depositary as well as to UCITS for which the credit institution acts as depositary.

185. If the CSSF is not the competent authority for the supervision of the UCITS and/or its management company, it shall communicate the information received to the respective competent authorities.

186. In the context of the escalation procedure to be implemented on the basis of Chapter 4 of Part II of the circular, the depositary may be required to notify the CSSF of any event disclosed/notified by the depositary to the UCITS in the context of this escalation procedure, when the UCITS has failed to take adequate measures within a reasonable period of time.

Part XI. Entry into force

"187. The addressees of this circular shall comply with its provisions for 18 March 2016 at the latest. Chapter E of Circular IML 91/75 is no longer applicable to UCITS as from that date."[6]

Yours faithfully,

COMMISSION FOR THE SUPERVISION OF THE FINANCIAL SECTOR

Claude SIMON	Andrée BILLON	Simone DELCOURT	Jean GUILL
Director	Director	Director	Director general

[6] Amended by Circular CSSF 15/608

Annexe 1. Details to be included in the written contract referred to in Chapter 3 of Part II

The contract appointing the depositary referred to in Chapter 3 of Part II of the circular (or any subsequent amendments thereto) must include at least the following elements (including the methods and procedures mentioned below):

a) a description of the services to be provided by the depositary and the procedures to be adopted for each type of asset in which the UCITS may invest and which shall then be entrusted to the depositary;

b) a description of the way in which the safekeeping and monitoring functions are to be performed depending on the types of assets and the geographical regions in which the UCITS plans to invest. With respect to the custody duties, this description shall include country lists and procedures for adding or, as the case may be, withdrawing countries from that list. This shall be consistent with the information provided in the management regulations or the articles of incorporation of the UCITS and in its prospectus regarding the assets in which the UCITS may invest;

c) a statement that the depositary's liability shall not be affected by the fact that it entrusts to a third party all or some of the assets in its safekeeping;

d) the period of validity, and the conditions for amendment or termination of the contract including the situations which could lead to the termination of the contract and details regarding the termination procedure and, as the case may be, the procedures by which the depositary should send all relevant information to its successor;

e) the confidentiality obligations applicable to the parties, in accordance with relevant laws and regulations. These obligations shall not impair the ability of the CSSF to have access to the relevant documents and information;

f) a description of the means and procedures by which the depositary transmits to the UCITS all relevant information that it needs to perform its duties, including the exercise of any rights attached to assets, and in order to allow the UCITS to have a timely and accurate overview of the accounts of the UCITS;

g) a description of the means and procedures by which the UCITS transmits all relevant information to the depositary or ensures the depositary has access to all the information it needs to fulfil its duties, including the procedures ensuring that the depositary will receive information from other parties appointed by the UCITS;

h) a description of the procedures to be followed when an amendment to the management regulation, articles of incorporation or prospectus of the UCITS is being considered, detailing the situations in which the depositary is to be informed, or where the prior agreement of the depositary is needed to proceed with

the amendment;

i) information exchange obligations between the UCITS and, as the case may be, the management company or a third party acting on behalf of one or the other, on the one hand, and the depositary, on the other hand, related to the sale, subscription, redemption, issue, cancellation and repurchase of units or shares of the UCITS;

j) information exchange obligations between the UCITS, the management company or a third party acting on behalf of one or the other, on the one hand, and the depositary, on the other hand, related to the performance of the depositary's monitoring function;

k) where the parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;

l) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;

m) information on all cash accounts opened in the name of the UCITS or in the name of its management company acting on behalf of the UCITS and the procedures ensuring that the depositary will be informed when any new account is opened in the name of the UCITS or in the name of the management company acting on behalf of the UCITS;

n) details regarding the depositary's escalation procedure(s), including the identification of the services to be contacted within the UCITS by the depositary when it launches such a procedure, as well as the details including the identification of the services to be contacted within the depositary by the UCITS when it launches such a procedure;

o) a commitment by the depositary to notify the UCITS when it becomes aware that the segregation of assets is not, or is no longer sufficient to ensure, if possible, protection of the UCITS' assets from insolvency of a third-party custodian/sub-custodian;

p) the procedures ensuring that the depositary, in respect of its duties, has the ability to enquire into the conduct of the UCITS and to assess the quality of information transmitted including by way of having access to the books of the UCITS and/or, as the case may be, its management company and/or by way of on-site visits;

q) the procedures ensuring that the UCITS can review the performance of the depositary in respect of the depositary's contractual obligations.

r) an express provision that the law applicable to the contract appointing the depositary and any subsequent agreement shall be Luxembourg law;

s) a description of all the fees which the depositary may, where applicable, charge to the UCITS as part of the contract appointing the depositary.

Annexe 2. List of information relating to the functions of the depositary of UCITS which must be kept up-to-date and provided to the CSSF on a regular basis

a) name and title of the person(s) responsible for the UCITS "depositary bank" business line (at the moment of the appointment of the person(s) responsible);

b) organisation chart of the institution, in particular, of the services intervening in the context of the UCITS depositary function for the purpose of monitoring the sufficiency and adequacy of the structures necessary for the accomplishment of the general and specific duties (on an annual basis);

c) the number of employees employed in the UCITS "depositary bank" business line (on an annual basis);

d) CV(s) of the person(s) responsible for the UCITS "depositary bank" business line (at the moment of the appointment of the person(s) responsible);

e) information on the technical resources (of the unit in charge of the depositary function within the credit institution, including a description of the IT system (hardware and software) used) (on an annual basis);

f) a list of sub-custodians appointed by the depositary (on an annual basis);

g) a list of agents (*mandataires*) assisting the depositary in its duties and a description of the links with such agents and, as the case may be, one or more diagrams explaining the method of operations of the depositary and the interaction with the agents (on an annual basis);

h) a description of the links with the administrative agent and, if different, the registrar agent (if the administrative agent/registrar agent is the same legal entity as the depositary, a description of the elements ensuring a functional and hierarchical separation is required) (on an annual basis);

i) the *réviseur*'s (auditor) report on the adequacy of the depositary's organisation (on an annual basis);

j) a description of the compliance section (on an annual basis);

k) a template of the contract appointing the depositary (on an annual basis);

l) a list of procedures with an indication of the date of the last update covering the various aspects of the UCITS depositary function (on an annual basis);

m) a description of the types of UCITS (depending on their legal form as well as their investment policy) for which the depositary considers accepting to act as a depositary (on an annual basis).

Annexe 3. List of information to be received by a depositary of a UCITS which has appointed a prime broker

Where a prime broker has been appointed, the UCITS shall ensure that the prime broker makes available to the depositary, on the basis of the provisions set out in the contract appointing the prime broker, a statement on a durable medium which contains the information listed below, at the close of each business day:

a) the total value of the assets held by the prime broker for this UCITS;

b) the value of each of the following elements:

   i) cash loans made to this UCITS and accrued interests;

   ii) securities to be redelivered by this UCITS under open short positions entered into on its behalf;

   iii) current settlement amounts to be paid by a given UCITS under any futures contracts;

   iv) short sale cash proceeds held by the prime broker in respect of short positions entered into on behalf of this UCITS;

   v) cash margins held by the prime broker in respect of open futures contracts entered into on behalf of a given UCITS;

   vi) mark-to-market close-out exposures of any OTC transaction entered into on behalf of this UCITS;

   vii) total secured obligations of this UCITS against the prime broker; and

   viii) all other assets relating to this UCITS.

c) the value of assets held as collateral by the prime broker in respect of secured transactions entered into in the context of a prime brokerage agreement;

d) an exhaustive list of the institutions at which the prime broker holds or may hold cash of this UCITS in an account opened in the name of the latter or in the name of the management company acting on its behalf.