**VERSION JUNE 2020**

**NOTIFICATION FORM FOR DEPOSITARY**

**SUPPLEMENT TO “NOTIFICATION FORM FOR COLLECTIVE INVESTMENT COMPANY”**

This form is subject to changes. Notification of a depositary to the AFM must be with use of the most recent version of this form, available on the AFM website.

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14. **Introduction**

This “Notification form for depositary” is used by the Dutch Authority for the Financial Markets (Stichting Autoriteit Financiële Markten, hereinafter: AFM) and De Nederlandsche Bank N.V. (hereinafter: DNB) to request information on entities acting as a depositary and the manner in which these entities comply with the requirements set by or pursuant to legislation and regulations.

A management company[[1]](#footnote-1) must appoint a depositary for each of the collective investment companies it manages (Section 4:62m(1) of the Financial Supervision Act (Wet op het financieel toezicht, hereinafter: Wft). The depositary carries out its duties in a manner appropriate to the specific collective investment company for which it has been appointed. A separate version of this form must in principle therefore be completed for each collective investment company to be notified.

In this form, reference is also made to the articles of the EU Directive 2011/61/EU regarding management companies of alternative investment funds (hereinafter: the AIFM Directive), the Delegated Regulation (EU) No. 231/2013 (hereinafter: the Delegated Regulation), the UCITS[[2]](#footnote-2) Directive (2009/65/EC) (hereinafter: the UCITS Directive), the Dutch Financial Supervision Act (Wet op het financieel toezicht, hereinafter: Wft) and the Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (hereinafter: BGfo) and the Prudential Rules (Financial Supervision Act) Decree (hereinafter: Bpr).

The AFM is subject to a statutory confidentiality obligation. This confidentiality obligation is laid down in the Wft. The Wft stipulates that all confidential information that the AFM receives in connection with its supervision shall be confidential. The Wft defines confidential information, in any case, as commercially sensitive information and information that constitutes a disproportionate infringement of a person's private life. Information that has already been made public is not confidential information that falls under the AFM's confidentiality obligation. Further information on the statutory confidentiality obligation is available on the AFM website.

1. **Instructions for completing this form**

For the notification of a collective investment company, sub-fund or share class, please use the “Notification form for collective investment company”. For the notification of a collective investment company, you should also complete this “Notification form for depositary” as a supplement to the “Notification form for collective investment company”. The AFM will only process a notification of a collective investment company once it has received both the “Notification form for collective investment company” and the “Notification form for depositary” (completed and with appendices). The AFM does not make additional charges for the processing of the “Notification form for depositary”.

**This form, including the notes, is intended as a guideline to simplify the process of notifying a depositary. The form comprises (as such) a simplified representation of the statutory and other legal requirements as well as the case law and possible variations. For the notification of a depositary, the statutory and other legal requirements, and not the contents of this form, shall be leading at all times. The notifier remains fully responsible for compliance with all applicable statutory and other legal requirements, irrespective of the contents of this form. The notifier also remains fully responsible for keeping track of all developments with regard to these requirements.**

If information that should be provided to the supervisory authorities cannot – for whatever reason – be provided or be provided fully by answering the questions in this form, you must then provide this information in one or more appendices.

All questions in this form are to be answered based on the information available. If information is not (or not yet) available and/or a question is not (or not yet) applicable in your opinion, you must state this on the form. If there is not sufficient space on the form for your answer to a question, your full answer must be stated in a separate appendix. Please reference each such appendix with the number corresponding to the question to which it relates.

DNB and the AFM may request (additional) information and/or documentation necessary for the assessment of the notification.

If there are changes to the information provided on the form before the AFM has entered the collective investment company in the register, this must be communicated to the AFM in writing without delay. You will be informed if this information affects the time needed to process the notification.

It may be the case that the same depositary is appointed for several collective investment companies managed by the same management company and that it has established the same processes for several collective investment companies. If this means that the answers to the following questions are identical for several collective investment companies to be notified, reference to the “Notification form for depositary” for another collective investment company being notified will suffice.

**A brief explanation has been included in this form (paragraph 13). Read this explanation before answering the questions.**

1. **Link to “Notification form for collective investment company”**

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| --- | --- | --- |
| 2.1 What is the name of the collective investment company to which this “Notification form for depositary” relates? |  |  |
| 2.2 *If applicable*: What is the ISIN code of the collective investment company for which the depositary is appointed? |  |  |
| 2.3 What is the LEI code of the collective investment company for which the depositary is appointed? |  |  |
| 2.4 List the reasons, primarily in relation to the interests of the investors and the collective investment company, why the management company considers the depositary (as notified on this “Notification form for depositary”) to be suitable to act as the depositary for the collective investment company specified in the answer to question 2.1. Please distinguish between the tasks and activities (and the categories thereof) to be carried out by the depositary in this context, with attention to the type of assets of the collective investment company and the liability of the depositary towards the investors and/or the collective investment company. |  |  |

1. **General information on the depositary**

*Provide the general information on the depositary in your answers to questions 3.1 to 3.10. If the depositary is established with a branch office in the country of origin of the collective investment company, enter the general information on the head office of the depositary in your answers to questions 3.1 to 3.10.**Example: a Dutch management company intends to appoint a depositary with its registered office and head office in Luxembourg and a branch office in the Netherlands for a Dutch collective investment company. In this case, enter the general information for the head office in Luxembourg in your answers to questions 3.1 to 3.10.*

|  |  |  |
| --- | --- | --- |
| * 1. Trade name and name given in the articles of association
 |  |  |
| * 1. Country of statutory seat
 |  |  |
| * 1. If applicable: registration number at the Chamber of Commerce or similar foreign institution

Provide a copy of a recent extract of the depositary’s entry in the commercial register of the Chamber of Commerce or similar foreign institution. |  |  |

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| --- | --- | --- |
| * 1. Date of incorporation
 |  |  |
| * 1. Address
 |  |  |
| * 1. Correspondence address
 |  |  |
| * 1. Names of director(s)
 |  |  |
| * 1. Name of contact person
 |  |  |
| * 1. Telephone number of contact person
 |  |  |
| * 1. E-mail address of contact person
 |  |  |
| * 1. *If applicable*: countries in which the depositary has branch offices
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***Only complete questions 3.12 and 3.13 if you have stated that the depositary has a branch office in the Netherlands in your answer to question 3.11.***

|  |  |  |
| --- | --- | --- |
| ***3.12 General information on branch office in the Netherlands*** |  |  |
| 3.12.1 Name |  |  |
| 3.12.2 Date of opening of branch office |  |  |
| 3.12.3 Correspondence address |  |  |
| 3.12.4 Number of employees (in FTE) |  |  |
| 3.12.5 Name(s) of manager(s)  |  |  |
| 3.12.6 Name of contact person |  |  |
| 3.12.7 Telephone number of contact person |  |  |
| 3.12.8 E-mail address of contact person |  |  |
| 3.13 Describe the relationship between the head office and the branch office in the Netherlands. In any case, state:a. How the branch office is managed by the head office. b. The form of the relationship between the head office and the branch office.c. The division of the activities performed by the branch office and the head office.d. The jurisdiction stated as applicable in agreements (including the agreement with the depositary) concluded by the branch office as a division of the depositary with third parties.e. Whether the agreements concluded by the branch office as a division of the depositary state an (exclusive or otherwise) choice of forum for a particular court or arbiter, and if this is the case, give details.Provide a copy of protocols, policy documents, arrangements or other documents showing the relationship between the head office and the branch office. |  |  |

1. **Characterisation of the depositary**

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| --- | --- | --- |
| 4.1 Check the box corresponding to the type of depositary in question (see the notes):* Licensed bank with registered office in the European Union;
* Licensed investment firm with registered office in the European Union;
* Entity permitted to act as a depositary under the UCITS Directive (hereinafter: UCITS depositary);
* Alternative depositary as referred to in the last paragraph of Article 21(3) of the AIFM Directive, and Section 4:37h(2) Wft in conjunction with Section 115g BGfo (hereinafter: alternative depositary);
* Depositary with a licence as referred to in Section 2:3g(1) Wft;
* Other: give details.

(multiple answers are possible) |  |  |
| 4.2 What is the equity of the depositary?Provide a copy of an auditor’s opinion with a certified underlying balance sheet or statement of assets and liabilities or financial statements of the depositary for the most recently completed financial year with an auditor’s opinion attached, as evidence that the depositary meets the requirements of Section 3:53 Wft in conjunction with Section 48 Bpr. If more than six months have elapsed between the period to which the financial statements for the last completed financial year relate and the date of the licence application, a recent balance sheet or statement of assets and liabilities provided with an auditor’s opinion must be submitted. This is a fixed policy of De Nederlandsche Bank with respect to licence applications from management companies and investment firms. |  |  |
| 4.3 Is the depositary part of a group, and are there pledges and/or guarantees issued by the depositary, either intra-group or to third parties?Provide an explanation of intra-group receivables and obligations of the depositary, including an estimate of the collectability of outstanding receivables and a list of pledges or guarantees, and provide a copy of the deeds of pledge and guarantees, both intra-group and to third parties (if applicable). This information is also needed to establish whether the requirements of Section 3:53 and/or Section 3:57 Wft are met. |  |  |
| 4.4 Provide one or more organisational diagrams to clearly show the structure of the group to which the depositary belongs, and the entities to which it is directly or indirectly connected. Any shareholdings appearing in these overviews should be shown as percentages. ‘Shares’ here includes comparable instruments (under foreign law). If there are actual or potential rights to acquire shares that could change the stated percentages, please give details. If there are different types of shares, this must be stated and an appendix specifying the effects of this should be included. The names of the day-to-day policymakers must be stated for each legal entity appearing in the overview (see the notes). If a day-to-day policymaker is a legal entity, full details of the legal entity concerned must be provided in the overview, stating the day-to-day policymakers of this legal entity and the direct and indirect shareholders, with their shareholdings in the legal entity. Ultimately, it must be possible to trace all shareholdings back to natural persons who are shareholders and/or day-to-day policymakers. Among other things, the overview should show that the depositary complies with Section 4:13 Wft and provide details of the (ultimate) ownership and control relationships. For any foreign entities stated in the organisational diagram, you need to provide a copy of an excerpt from the commercial register of the Chamber of Commerce or similar foreign institution. Also state whether foreign legal entities are subject to any form of financial supervision, with details of the activities and the supervisory authority concerned. (see the notes). |  |  |

***N.B. The questions you need to answer below depend on the type or types checked under question 4.1.***

***Complete question 4.5 only if the depositary is a bank.***

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| 4.5 Which is the licensing supervisory authority?Provide a copy of the licence granted. |  |  |

***Complete question 4.6 only if the depositary is an investment firm.***

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| 4.6 Which is the licensing supervisory authority?Provide a copy of the licence granted. |  |  |

***Complete questions 4.7 to 4.18 only if the depositary is a UCITS depositary that was subject to Dutch or foreign supervision before 22 July 2013 (in this capacity).***

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| 4.7 List the changes made to the AO/IC by the depositary in order to meet the requirements for a depositary under the AIFM Directive.  |  |   |
| 4.8 *If the UCITS depositary is a Dutch UCITS depositary*: Is the depositary also the (intended) legal owner of the fund assets of the collective investment company specified under question 2.1?* Yes
* No
 |  |  |
| 4.9 *If the UCITS depositary was exclusively subject to foreign supervision (in this capacity):* Under which supervisory authority is the depositary subject to (direct or indirect) supervision?Provide documentation to show that the depositary is permitted to act as a depositary by the supervisory authority in question under the UCITS Directive. |  |  |
| 4.10 Provide the given name, initial(s), prefix(es), surname and job title for each day-to-day policymaker of the depositary stated in your answer to question 4.4. |  |  |
| 4.11 State the location where the day-to-day policymakers of the depositary perform the majority of their activities. |  |  |
| 4.12 *If applicable to the depositary*: who are the supervisory directors (or similar persons charged with oversight) as referred to in Sections 4:9(1) and 4:10(1) Wft? (see the notes).State the given name, initial(s), prefix(es), surname and job title for each of these persons. |  |  |
| 4.13 Have the persons identified under 4.10 and 4.12:a. already been assessed for suitability with respect to performance of the intended activities of a depositary in accordance with the AIFM Directive?b. found to be suitable in the assessment referred to under a.?If so, state the supervisory authority that carried out this assessment and state specifically for each person the type or types of collective investment company (fund-of-funds, real estate, private equity, hedge funds, financial instruments, UCITS) for which the depositary for which this person is a day-to-day policymaker or supervisory director is appointed as a depositary.  |  |  |
| 4.14 To enable performance of the suitability assessment, you are obliged to complete and submit the “Prospective Appointment Notification Form” and the appendices relating to this form for the persons identified under questions 4.10 and 4.12 as well.*N.B. Persons for whom it is stated under question 4.13 that they have already been found suitable by a European supervisory authority for the performance of the activities of a depositary in accordance with the AIFM Directive do not in principle have to be assessed for suitability again. You do not need to provide the “Prospective Appointment Notification Form” (with appendices) for these persons.*  |  |  |
| 4.15 a. Under question 4.10, state for each day-to-day policymaker the specific depositary activities in which they have experience (such as cash flow monitoring, custody of assets, verification and registration of ownership, exercise of oversight and escalation, compliance with regulation and contact with supervisory authorities).b. State the extent of this experience for each activity: * + Low: has superficial experience of the activity;
	+ Medium: has experience of the activity (but is not an expert);
	+ High: has extensive experience with the activity (is an expert).

c. Provide substantiation for your answer given to b. above. |  |  |
| 4.16 Substantiate (as specifically as possible) how the group of day-to-day policymakers ensures that the knowledge and competences necessary for the provision of depositary services are available within the depositary’s organisation (for persons other than the day-to-day policymakers). |  |  |
| 4.17 Substantiate (as specifically as possible) how the group of day-to-day policymakers ensures that decision-making is balanced and consistent, in particular concerning the interests of the investors that have to be served by the depositary. |  |  |
| 4.18 Has the intended performance of the (legally new) depositary services led to a reassessment of the composition of the group of day-to-day policymakers of the intended depositary? If so, has this reassessment led to changes in the composition of the group of day-to-day policymakers of the intended depositary? If so, give details. |  |  |

***Complete questions 4.19 to 4.29 only if the depositary is a UCITS depositary that was not yet subject to supervision before 22 July 2013 (in this capacity), or is an alternative depositary.***

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| 4.19 Provide the given name, initial(s), prefix(es), surname and job title for each day-to-day policymaker of the depositary stated in your answer to question 4.4. |  |  |
| 4.20 State the location where the day-to-day policymakers of the depositary perform the majority of their activities. |  |  |
| 4.21 *If applicable to the depositary*: who are the supervisory directors (or similar persons charged with oversight) as referred to in Sections 4:9(1) and 4:10(1) Wft? (See the notes).State the given name, initial(s), prefix(es), surname and job title for each of these persons. |  |  |
| 4.22 State the given name, initial(s), prefix(es), surname and job title for each (co-)policymaker as defined in Section 4:10(1) Wft. (See the notes).Note: if your answer to question 4.4 shows that the depositary has one or more majority shareholders, in any case state all the information requested for the natural persons who are majority shareholders (and/or day-to-day policymakers) in the depositary.Surnames are sufficient for all the persons stated under question 4.19. |  |  |
| 4.23 Have the persons identified under 4.19 and 4.21:a. already been assessed for suitability with respect to performance of the intended activities of a depositary for this collective investment company in accordance with the AIFM Directive?b. found to be suitable in the assessment referred to under a.?If so, state the supervisory authority that carried out this assessment and state specifically for each person the type or types of collective investment company (fund-of-funds, real estate, private equity, hedge funds, financial instruments, UCITS) for which the depositary for which this person is a day-to-day policymaker or supervisory director is appointed as a depositary.  |  |  |
| 4.24 Have the persons identified under 4.19, 4.21 and 4.22 already been assessed for properness, and if so, by which supervisory authority? |  |  |
| 4.25 To enable performance of the suitability and properness assessments, you are obliged to complete and submit the “Prospective Appointment Notification Form” and the appendices relating to this form for the persons identified under questions 4.19, 4.21 and 4.22 as well.*N.B. Persons for whom it is stated under question 4.23 that they have already been found suitable by a European supervisory authority for the performance of the activities of a depositary in accordance with the AIFM Directive do not in principle have to be assessed for suitability again. Persons for whom it is stated under question 4.24 that they have already been assessed for properness by a European supervisory authority do not in principle have to be assessed for properness again. You do not need to provide the “Prospective Appointment Notification Form” (with appendices) for these persons.*  |  |  |
| 4.26 a. Under question 4.19, state for each day-to-day policymaker the specific depositary activities in which they have experience (such as cash flow monitoring, custody of assets, verification and registration of ownership, exercise of oversight and escalation, compliance with regulation and contact with supervisory authorities).b. State the extent of this experience for each activity: * Low: has superficial experience of the activity;
* Medium: has experience of the activity (but is not an expert);
* High: has extensive experience with the activity (is an expert).

c. Provide substantiation for your answer given to b. above. |  |  |
| 4.27 Substantiate (as specifically as possible) how the group of day-to-day policymakers ensures that the knowledge and competences necessary for the provision of depositary services are available within the depositary’s organisation (for persons other than the day-to-day policymakers). |  |  |
| 4.28 Substantiate (as specifically as possible) how the group of day-to-day policymakers ensures that decision-making is balanced and consistent, in particular concerning the interests of the investors that have to be served by the depositary. |  |  |
| 4.29 Has the intended performance of the (legally new) depositary services led to a reassessment of the composition of the group of policymakers of the intended depositary? if so, has this reassessment led to changes in the composition of the group of policymakers of the intended depositary? If so, give details. |  |  |

1. **Independence of the depositary**

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| 5 Is the depositary part of the same group as or otherwise affiliated to the management company, and if so, what safeguards are in place to ensure the independence of the depositary with respect to the management company (Article 21(10) of the AIFM Directive and Section 4:62m(1) Wft)? |  |  |

1. **Duties of the depositary**

In principle, the duties of a depositary are as follows: monitoring cash flows (Article 21(7) AIFM Directive and Section 4:62m(4) Wft in conjunction with Section 147ff BGfo), the holding in custody of the assets for which this is possible (Article 21(8)(a) AIFM Directive and Section 4:62m(4) Wft in conjunction with Section 147ff BGfo) and/or verification of ownership and registration of assets that cannot be held in custody (Article 21(8)(b) AIFM Directive and Section 4:62m(4) Wft in conjunction with Section 147ff BGfo) and certain specific oversight duties (Article 21(9) AIFM Directive and Section 4:62m(4) Wft in conjunction with Section 147ff BGfo). The description of the business operation of the depositary shall describe how the depositary performs these duties. Submit the description of the depositary’s business operation as an appendix to this form. For each stated article, state the page number of the description of the depositary’s business operation that refers to the procedures and measures ensuring compliance with the article in question. All the article numbers stated in this paragraph refer to the Delegated Regulation, unless explicitly stated otherwise. *N.B. The following articles are not an exhaustive list of the requirements to be met by the depositary in connection with the provision of depositary services*.

* **Monitoring of cash flows (Article 21(7) of the AIFM Directive)**

|  |  |  |
| --- | --- | --- |
| **Mandatory procedures and measures** | **Delegated Regulation** | **Page number** |
| 6.1 Overview of cash flows and cash accounts  | Art. 86(d) and (f), and Art. 87 |  |
| 6.2 Reconciliation of cash flows and cash positions | Art. 86(b) and (f) |  |
| 6.3 Identification of cash flows  | Art. 86(c)  |  |
| 6.4 Notification, correction and escalation procedures  | Art. 86(e) |  |
| 6.5 Evaluation of the reconciliation and identification process | Art. 86(d) |  |
| 6.6 Cash booked in secure accounts  | Art. 86(a) and Art. 87 |  |

* **Safekeeping (Article 21(8)(a) of the AIFM Directive)**

***Complete questions 6.7 to 6.11 only if the depositary is (also) engaged in the safekeeping of assets as referred to in Article 88 of the Delegated Regulation.***

|  |  |  |
| --- | --- | --- |
| **Mandatory procedures and measures** | **Delegated Regulation** | **Page number** |
| 6.7 Verification of ownership of assets  | Art. 89(1)(g) |  |
| 6.8 Registration and identification of assets  | Art. 89(1)(a) and (b) |  |
| 6.9. Assets held in custody  | Art. 89(1)(d) and (f) |  |
| 6.10 Identification and management of custody risks  | Art. 89(1)(e) |  |
| 6.11 Process for material custody risks  | Art. 89(1)(e) |  |

***Complete questions 6.12 to 6.14 only if the depositary is (also) engaged in the safekeeping of assets as referred to in Article 88 of the Delegated Regulation and delegates all or part of its custody duty to one or more third parties.***

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| --- | --- | --- |
| **Mandatory procedures and measures** | **Delegated Regulation** | **Page number** |
| 6.12 Overview of and risks in the delegation chain  | Art. 89(1)(e) |  |
| 6.13 Reconciliation of accounts/records between depositary and sub-custodian(s)  | Art. 89(1)(c) |  |
| 6.14 Ensuring compliance with requirements by sub-custodian(s)  | Art. 89(2) |  |

* **Verification of ownership and registration (Article 21(8)(b) AIFM Directive)**

***Complete questions 6.15 to 6.17 only if the depositary is (also) engaged in the registration and verification of assets that cannot be held in custody as referred to in Article 88 of the Delegated Regulation.***

|  |  |  |
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| **Mandatory procedures and measures** | **Delegated Regulation** | **Page number** |
| 6.15 Verification of ownership  | Art. 90(3) |  |
| 6.16 Up-to-date list of assets  | Art. 90(2)(c) |  |
| 6.17 Notification, correction and escalation procedures | Art. 90(4) |  |

* **Oversight duties (Article 21(9) AIFM Directive)**

|  |  |  |
| --- | --- | --- |
| **Mandatory procedures and measures** | **Delegated Regulation** | **Page number** |
| 6.18 Initial analysis of complexity, scale and risk profile  | Art. 92(1) |  |
| 6.19 Oversight of issuance and repurchase procedures  | Art. 93 |  |
| 6.20 Oversight in relation to valuation, including net asset value  | Art. 94 |  |
| 6.21 Oversight of compliance with established investment policy and restrictions  | Art. 95 |  |
| 6.22 Oversight of timely execution/settlement of transactions  | Art. 96 |  |
| 6.23 Oversight of calculation of proceeds and payments of dividend and carried interest  | Art. 97 |  |

1. **Other activities of the depositary**

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| --- | --- | --- |
| 7 Does the depositary or an entity included in the organisational diagram included in the answer to question 4.4 carry out activities other than the activities of a depositary as stated in the AIFM Directive (see Article 21(7) to (9) AIFM Directive)?* Yes: answer questions a to c
* No

a. Specify the ‘other activities’ concerned and the capacity in which these other activities are performed (for example as prime broker, valuer or administrator).b. For each ‘other activity’, state whether the entity performs the activity for the collective investment company for which it also will act as the depositary.c. Provide a statement of how it is ensured that the depositary functionally and hierarchically separates the performance of the ‘other activities’ from its duties as a depositary, and potential conflicts of interests are adequately identified, controlled and notified to the investors in the collective investment company. |  |  |

1. **Delegation of duties by the depositary (see the notes)**

|  |  |  |
| --- | --- | --- |
| 8.1 Has the depositary delegated all or some of its duties (Article 21(8) AIFM Directive)? * Yes: state here whether this involves safekeeping, verification of ownership and/or registration of ownership.
* No
 |  |  |
| ***Complete questions 8.2 to 9.2 only if you have answered ‘yes’ to question 8.1*** 8.2 Provide a full description of the delegation chain. In any case, explain the following for each duty specified under 8.1:a. The assets for which duties have been delegated.b. The identity of the delegated entity, stating: the trade name and name according to the articles of association; its address and place of business;  the country in which it is located; the name and telephone number of your contact person.c. State whether the delegated entity has in turn delegated all or part of the duty concerned, providing full visibility of the delegation chain. |  |  |
| 8.3 How is it ensured that the delegation of the custodial duty to the entity or entities specified under 8.2 complies with the requirements set for delegation (Article 21(11) AIFM Directive and Section 4:16 Wft in conjunction with Section 37a BGfo and Articles 98 and 99 Delegated Regulation)? |  |  |

1. **Discharge from liability of the depositary**

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| --- | --- | --- |
| 9.1 Has the depositary agreed a discharge from liability with the entity or entities to which it has delegated all or part of its custodial duties? * Yes
* No
 |  |  |
| 9.2 *If the depositary has agreed a discharge from liability*: how is it ensured that this discharge does not contravene the requirements set in Article 21(13) or (14) AIFM Directive, Section 4:37g Wft in conjunction with Section 115f BGfo and Article 102 Delegated Regulation? |  |  |

1. **The agreement with the depositary**

*Provide a copy of the agreement with the depositary (hereinafter: AD) (including all agreements and documents governing the relationship between the collective investment company and the depositary). It may be the case that the same depositary acts as a depositary for several collective investment companies. In this case, the use of a framework agreement is permitted (Article 83(5) Delegated Regulation), and only the agreement for one of the collective investment companies falling under the framework agreement has to be submitted as an appendix to this form.*

|  |  |  |
| --- | --- | --- |
| 10.1 Is all or part of the AD concluded by or on behalf of the collective investment company based on a framework agreement?* Yes: provide a copy of the framework agreement or state when a copy has already been provided
* No
 |  |  |

*State below the page and article number of the AD relating to the following required components.*

|  |  |  |
| --- | --- | --- |
| **Components** |  | **Page number/Article number** |
| 10.2 Services to be provided *(Article 83(1)(a) Delegated Regulation)* |  |  |
| 10.3 Organisation of the safekeeping and oversight function*(Article 83(1)(b) Delegated Regulation)* |  |  |
| 10.4 Liability*(Article 83(1)(c) Delegated Regulation)* |  |  |
| 10.5 Validity and amendment of the AD*(Article 83(1)(d) Delegated Regulation)* |  |  |
| 10.6 Confidentiality*(Article 83(1)(e) Delegated Regulation)* |  |  |
| 10.7 Information flow from depositary to management company*(Article 83(1)(f) Delegated Regulation)* |  |  |
| 10.8 Information flow from management company to depositary *(Article 83(1)(g) Delegated Regulation)*  |  |  |
| 10.9 Re-use of assets*(Article 83(1)(h) Delegated Regulation)* |  |  |
| 10.10 Procedures for amendment of rules*(Article 83(1)(i) Delegated Regulation)* |  |  |
| 10.11 Exchange of information on sale/repurchase of units or shares*(Article 83(1)(j) Delegated Regulation)* |  |  |
| 10.12 Information for the depositary’s oversight function *(Article 83(1)(k) Delegated Regulation)* |  |  |
| 10.13 Delegation of duties to third parties*(Article 83(1)(l) Delegated Regulation)* |  |  |
| 10.14 Prevention of money laundering and the financing of terrorism*(Article 83(1)(m) Delegated Regulation)* |  |  |
| 10.15 Cash accounts of the collective investment company and the management company*(Article 83(1)(n) Delegated Regulation)* |  |  |
| 10.16 Escalation procedure *(Article 83(1)(o) Delegated Regulation)* |  |  |
| 10.17 Commitment to notify in case of problems with segregation of assets at third parties *(Article 83(1)(p) Delegated Regulation)* |  |  |
| 10.18 Arrangements in connection with oversight duties*(Article 83(1)(q) Delegated Regulation)* |  |  |
| 10.19 Procedures for reviewing performance of the depositary *(Article 83(1)(r) Delegated Regulation)* |  |  |

1. **Checklist of appendices**

The following is a list of the appendices that must be submitted on the basis of the above questions. A distinction is made between appendices that must be submitted in all cases and appendices that may or may not be applicable.

Please reference each such appendix with the number corresponding to the question to which it relates. Also include a list of all appendices that you have submitted with this form.

*Appendices that must be submitted in all cases:*

1. An auditor’s report including underlying documents with respect to the equity of the depositary (question 4.2)
2. Organisational diagram(s) (question 4.4)
3. The agreement with the depositary (§ 10)

*Appendices to be submitted if applicable:*

* A copy of a recent extract from the commercial register (or similar foreign institution) of the entry of the depositary (question 3.3)
* Documents concerning the relationship between the head office and a branch office (question 3.13)
* Description of intra-group receivables and obligations of the depositary including estimated collectability (question 4.3)
* Deeds of pledge and/or guarantee(s) (question 4.3)
* Copy of licence(s) obtained (question 4.5 and/or 4.6)
* Documentation of permission to act as a UCITS depositary (question 4.9)
* “Prospective Appointment Notification Form(s)” (with all mandatory appendices) (question 4.14 or 4.25)
* Description of the business operation of the depositary (§ 6)
* Copy of delegation agreement(s) (question 8.2)
* Any other appendices containing your answers to questions where there was no sufficient space for your answer (N.B. please reference each appendix with the number of the question to which the appendix relates)

Where in this form you are requested to provide copies of agreements, an 'agreement' is defined as all of the agreements and other documents that govern the relationships between parties. If there are several relevant documents, a copy of all of these documents must be provided.

If you have other information in addition to the information that is explicitly requested in this form which you believe should be taken into account by the supervisors in their assessment of this notification, please also provide this information in an appendix.

**When you have completed the form and have included all of the appendices, then you must sign the form. Only signed and completed forms will be processed.**

1. **Signature(s)**

|  |
| --- |
| **The undersigned declare that they have completed and submitted this application form and the accompanying appendices completely and truthfully, and declare that they are (jointly) authorised to represent the management company in this capacity.** |
| **Town/city** | **Date** |
| **Name of day-to-day policy maker of management company** | **Name and title of** 2nd signatory |
| **Signature of day-to-day policy maker of management company**  | **Signature of** 2nd signatory |
|  |
|  |

1. **Note**

**Paragraph 4**

*Question 4.1*

In principle, only the following are eligible to act as a depositary of a collective investment company: (a) a licensed bank with statutory seat in a European Member State, (b) a licensed investment firm with statutory seat in a European Member State (that meets a number of additional requirements, including the possession of equity as prescribed under Article 20(1) of Directive 2006/49/EC and that at all times may not be less than € 730,000), (c) a licensed depositary as defined in Section 2:39(1) Wft, or (d) a depositary permitted under the UCITS Directive. In addition, the AIFM Directive provides for two special cases. For non-European collective investment companies, subject to meeting the requirements for place of business, another entity of the same nature as a licensed bank or a licensed investment firm may be appointed as a depositary. In addition, for collective investment companies for which no right of repurchase or redemption of units or shares can be exercised by the participants during a period of five years from the time at which the original units or shares were acquired and which in accordance with their core investment policy generally do not invest in assets that can be held in custody within the meaning of Article 88 of the Delegated Regulation (for instance property or ship funds) or which generally invest in issuing institutions and non-listed companies in order to possibly obtain control over these companies (for instance, private equity funds), an alternative depositary may be appointed. This alternative depositary must meet certain additional requirements.

*Question 4.4*

In practice there is a wide variety of structures, and thus depositaries also feature a wide variety of ownership and control relationships. Depending among other things on the information already provided and the type of structure being notified, the supervisors may request additional information in order to obtain the necessary insight. See also the notes to questions 4.10 (et seq.) and 4.18 (et seq.) “Persons” for the term ‘day-to-day policymaker’.

*Questions 4.10 (et seq.) and 4.19 (et seq.)*

Under Sections 4:9 and 4:10 Wft, policymakers and co-policymakers (including day-to-day policymakers) and any supervisory directors (or similar persons charged with oversight) must be proper persons. In addition, the requirement of suitability also applies to any day-to-day policymakers and to supervisory directors (or similar persons charged with oversight) of the depositary. The supervisor will therefore assess these persons for properness and possibly also suitability. You can complete a "Prospective Appointment Notification Form" for each of these persons to be assessed. This form describes the information and appendices required for a suitability assessment and the information and appendices required for a properness assessment. Reference in this form to the " Prospective Appointment Notification Form " includes the appendices relating to that form, including an "Integrity Screening Form" for each person to be assessed, a "Suitability Matrix" for the group of day-to-day policymakers of the depositary, and a "Suitability Matrix" for the group of supervisory directors of the depositary. The "Suitability Matrix" is intended to give the AFM insight into the manner in which the executive board and the supervisory board work. For instance, you can indicate the extent of knowledge and experience in a specific area and the focus areas of each person concerned. The “Prospective Appointment Notification Form” and related forms are available at the same web location as this Notification form.

It may be the case that the suitability and/or properness of certain persons have/has already been assessed. The "Prospective Appointment Notification Form" also states the manner in which the assessment takes place in that case and whether additional information required for the assessment has to be submitted. For more information about the properness assessment and the suitability assessment, please refer to the explanation on the AFM website.

*Persons*

Section 4:9(1) Wft pertains (among other things) to persons who can determine day-to-day policy. Examples of day-to-day policymakers are: the executive directors of the depositary and other persons who actually determine day-to-day policy.

Section 4:10(1) Wft pertains (among other things) to persons who can actually or theoretically determine or co-determine day-to-day policy. In this context, policy is understood to mean both day-to-day policy and the policy and decision-making process at the depositary for the longer term. The fact that a person actually or theoretically can determine or co-determine policy can be apparent from, for instance, the articles of association, regulations, internal agreements or actual circumstances. Examples of persons who can actually or theoretically determine or co-determine policy are: the executive directors of the depositary, all majority shareholders in the depositary and their executive directors, all priority shareholders in the depositary and their executive directors and persons who can determine or co-determine policy via an administrative office.

In addition, Section 4:9(1) and Section 4:10(1) Wft pertain to persons supervising the policy and general course of business of the depositary, such as supervisory directors or, depending on the individual circumstances of the case, the supervisory council.

*Questions 4.15 to 4.18 and 4.26 to 4.29*

A depositary as defined in the AIFM Directive has to perform a new statutory range of duties. In addition to the “Prospective Appointment Notification Form” (and related appendices), these questions are designed to obtain substantiation that the group of day-to-day policymakers of the proposed depositary possesses sufficient knowledge, competence and professional conduct to perform the duties of a depositary. The AFM notes in this connection that the AIFM Directive in principle requires different activities and different accents on the part of the depositary for each collective investment company for which the depositary is appointed as the depositary.

**Paragraph 8**

Regarding the duties of a depositary, a depositary may only delegate its duties with regard to assets that can be held in custody (Article 21(8)(a) AIFM Directive) and/or ownership verification and registration of assets that cannot be held in custody (Article 21(8)(b) and Article 21(11) AIFM Directive). If the depositary delegates these duties, it must meet various additional requirements in relation to this delegation (see Article 21(11) AIFM Directive, among others). Only support activities may be delegated without additional restrictions (see Consideration 42 AIFM Directive).

1. Reference to "the management company" in this form includes reference to “the self-managed investment company” as referred to in Section 2:65(b) Wft. [↑](#footnote-ref-1)
2. Undertakings for Collective Investment in Transferable Securities within the meaning of Article 1(2) of the UCITS Directive (2009/65/EC). Dutch translation: Instellingen voor Collectieve Belegging in Effecten (ICBE’s). The term UCITS is used in this form. [↑](#footnote-ref-2)