3. A depositary's safe-keeping duties as referred to in paragraphs 1 and 2 shall apply on a look-through basis to underlying assets held by financial and, as the case may be, legal structures controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.

The requirement referred to in the first subparagraph shall not apply to fund of funds structures or master-feeder structures where the underlying funds have a depositary which keeps in custody the assets of these funds.

Article 90

Safekeeping duties regarding ownership verification and record keeping

1. An AIFM shall provide the depositary, upon commencement of its duties and on an ongoing basis, with all relevant information the depositary needs in order to comply with its obligations pursuant to point (b) of Article 21(8) of Directive 2011/61/EU, and ensure that the depositary is provided with all relevant information by third parties.

2. In order to comply with the obligations referred to in point (b) of Article 21(8) of Directive 2011/61/EU, a depositary shall at least:

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

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

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

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

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

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

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

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

5. A depositary's safe-keeping duties referred to in paragraphs 1 to 4 shall apply on a look-through basis to underlying assets held by financial and, as the case may be, or legal structures established by the AIF or by the AIFM acting on behalf of the AIF for the purposes of investing in the underlying assets and which are controlled directly or indirectly by the AIF or by the AIFM acting on behalf of the AIF.

The requirement referred to in the first subparagraph shall not apply to fund of funds structures and master-feeder structures where the underlying funds have a depositary which provides ownership verification and record-keeping functions for this fund's assets.

Article 91

Reporting obligations for prime brokers

1. Where a prime broker has been appointed, the AIFM shall ensure that from the date of that appointment an agreement is in place pursuant 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 values of the items listed in paragraph 3 at the close of each business day;

(b) details of any other matters necessary to ensure that the depositary of the AIF has up-to-date and accurate information about the value of assets the safekeeping of which has been delegated in accordance with Article 21(11) of Directive 2011/61/EU.
2. The statement referred to in paragraph 1 shall be made available to the depositary of the AIF no later than the close of the next business day to which it relates.

3. The items referred to in point (a) of paragraph 1 shall include:

(a) the total value of assets held by the prime broker for the AIF, where safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU. The value of each of the following:

(i) cash loans made to the AIF and accrued interest;
(ii) securities to be redelected by the AIF under open short positions entered into on behalf of the AIF;
(iii) current settlement amounts to be paid by the AIF under any futures contracts;
(iv) short sale cash proceeds held by the prime broker in respect of short positions entered into on behalf of the AIF;
(v) cash margins held by the prime broker in respect of open futures contracts entered into on behalf of the AIF. This obligation is in addition to the obligations under Articles 87 and 88;
(vi) mark-to-market close-out exposures of any OTC transaction entered into on behalf of the AIF;
(vii) total secured obligations of the AIF against the prime broker; and
(viii) all other assets relating to the AIF;

(b) the value of other assets referred to in point (b) of Article 21(8) of Directive 2011/61/EU held as collateral by the prime broker in respect of secured transactions entered into under a prime brokerage agreement;

(c) the value of the assets where the prime broker has exercised a right of use in respect of the AIF’s assets;

(d) a list of all the institutions at which the prime broker holds or may hold cash of the AIF in an account opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF in accordance with Article 21(7) of Directive 2011/61/EU.