

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (Text with EEA relevance)

## CHAPTER II

### ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

(Article 12(1)(a) and Article 14(1)(c) of Directive 2009/65/EC)

#### SECTION 3

##### **Internal control mechanisms**

###### *Article 12*

##### **Permanent risk management function**

1 Member States shall require management companies to establish and maintain a permanent risk management function.

2 The permanent risk management function referred to in paragraph 1 shall be hierarchically and functionally independent from operating units.

However, Member States may allow management companies to derogate from that obligation where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of Article 51 of Directive 2009/65/EC.

- 3 The permanent risk management function shall:
- a implement the risk management policy and procedures;
  - b ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 41, 42 and 43;
  - c provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS;
  - d provide regular reports to the board of directors and, where it exists, the supervisory function, on:
    - (i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;

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- (ii) the compliance of each managed UCITS with relevant risk limit systems;
  - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
- e provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;
  - f review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Article 44.
- 4 The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph 3.