

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 IV

RULES OF CONDUCT

(Article 14(1)(a), (b) and (2)(a), (b) of Directive 2009/65/EC)

SECTION 1

General principles

Article 22

Duty to act in the best interests of UCITS and their unit-holders

1 Member States shall require management companies to ensure that unit-holders of managed UCITS are treated fairly.

Management companies shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.

2 Member States shall require management companies to apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.

3 Without prejudice to requirements under national law, Member States shall require management companies to ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Management companies must be able to demonstrate that the UCITS portfolios have been accurately valued.

4 Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

Article 23

Due diligence requirements

1 Member States shall require management companies to ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.

2 Member States shall require management companies to ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.

3 Member States shall require management companies to establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

4 Member States shall require management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party.

SECTION 2

Handling of subscription and redemption orders

Article 24

Reporting obligations in respect of execution of subscription and redemption orders

1 Member States shall ensure that where management companies have carried out a subscription or redemption order from a unit-holder, they must notify the unit-holder, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution or, where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party.

However, the first subparagraph shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

2 The notice referred to in paragraph 1 shall, where applicable, include the following information:

- a the management company identification;
- b the name or other designation of the unit-holder;
- c the date and time of receipt of the order and method of payment;
- d the date of execution;
- e the UCITS identification;
- f the nature of the order (subscription or redemption);
- g the number of units involved;
- h the unit value at which the units were subscribed or redeemed;
- i the reference value date;

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- j the gross value of the order including charges for subscription or net amount after charges for redemptions;
- k a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

3 Where orders for a unit-holder which are executed periodically, management companies shall either take the action specified in paragraph 1 or provide the unit-holder, at least once every 6 months, with the information listed in paragraph 2 in respect of those transactions.

4 Management companies shall supply the unit-holder, upon request, with information about the status of his order.

SECTION 3

Best execution

Article 25

Execution of decisions to deal on behalf of the managed UCITS

1 Member States shall require management companies to act in the best interests of the UCITS they manage when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

2 For the purposes of paragraph 1, Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

- a the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or articles of association of the UCITS;
- b the characteristics of the order;
- c the characteristics of the financial instruments that are the subject of that order;
- d the characteristics of the execution venues to which that order can be directed.

3 Member States shall require management companies to establish and implement effective arrangements for complying with the obligation referred to in paragraph 2. In particular, management companies shall establish and implement a policy to allow them to obtain, for UCITS orders, the best possible result in accordance with paragraph 2.

Management companies shall obtain the prior consent of the investment company on the execution policy. The management company shall make available appropriate information to unit-holders on the policy established in accordance with this Article and on any material changes to their policy.

4 Management companies shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.

In addition, management companies shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

5 Management companies shall be able to demonstrate that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Article 26

Placing orders to deal on behalf of UCITS with other entities for execution

1 Member States shall require management companies to act in the best interests of the UCITS they manage when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

2 Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to Article 25(2).

For those purposes, management companies shall establish and implement a policy to enable them to comply with the obligation referred to in the first subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The management company shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Article. Management companies shall make available to unit-holders appropriate information on the policy established in accordance with this paragraph and on any material changes to this policy.

3 Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, management companies shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

4 Management companies shall be able to demonstrate that they have placed orders on behalf of the UCITS in accordance with the policy established in accordance with paragraph 2.

SECTION 4

Handling of orders

Article 27

General principles

1 Member States shall require management companies to establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS.

The procedures and arrangements implemented by management companies shall satisfy the following conditions:

- a ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;

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- b execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise.

Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the appropriate UCITS.

- 2 A management company shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 28

Aggregation and allocation of trading orders

- 1 Member States shall not permit management companies to carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on their own account, unless the following conditions are met:

- a it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;
- b an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

- 2 Member States shall ensure that where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

- 3 Member States shall ensure that management companies which have aggregated transactions for own account with one or more UCITS or other clients' orders do not allocate the related trades in a way that is detrimental to the UCITS or another client.

- 4 Member States shall require that, where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the UCITS or other client in priority over those for own account.

However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in paragraph 1(b).

SECTION 5

Inducements

Article 29

Safeguarding the best interests of UCITS

1 Member States shall ensure that management companies are not regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration to the UCITS, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

- a a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;
- b a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;
- c proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

2 Member States shall permit a management company, for the purposes of paragraph 1(b)(i), to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that the management company undertakes to disclose further details at the request of the unit-holder and provided that it honours that undertaking.