

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 (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR AIFMs

SECTION I

General requirements

Article 15

Risk management

1 AIFMs shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.

The functional and hierarchical separation of the functions of risk management in accordance with the first subparagraph shall be reviewed by the competent authorities of the home Member State of the AIFM in accordance with the principle of proportionality, on the understanding that the AIFM shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this Article and is consistently effective.

[^{F12} AIFMs shall implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. In particular, AIFMs shall not solely or mechanically rely on credit ratings issued by credit rating agencies as defined in Article 3(1) (b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽¹⁾, for assessing the creditworthiness of the AIFs' assets.]

AIFMs shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary.

3 AIFMs shall at least:

- a implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
- b ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

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- c ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

[^{F2}3a Taking into account the nature, scale and complexity of the AIFs' activities, the competent authorities shall monitor the adequacy of the credit assessment processes of AIFMs, assess the use of references to credit ratings, as referred to in the first subparagraph of paragraph 2, in the AIFs' investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.]

4 AIFMs shall set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

- a the type of the AIF;
- b the investment strategy of the AIF;
- c the sources of leverage of the AIF;
- d any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;
- e the need to limit the exposure to any single counterparty;
- f the extent to which the leverage is collateralised;
- g the asset-liability ratio;
- h the scale, nature and extent of the activity of the AIFM on the markets concerned.

5 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying:

- a the risk management systems to be employed by AIFMs in relation to the risks which they incur on behalf of the AIFs that they manage;
- b the appropriate frequency of review of the risk management system;
- c how the risk management function is to be functionally and hierarchically separated from the operating units, including the portfolio management function;
- d specific safeguards against conflicts of interest referred to in the second subparagraph of paragraph 1;
- e the requirements referred to in paragraph 3.

[^{F2}The measures specifying the risk-management systems referred to in point (a) of the first subparagraph shall ensure that the AIFMs are prevented from relying solely or mechanistically on credit ratings, as referred to in the first subparagraph of paragraph 2, for assessing the creditworthiness of the AIFs' assets.]

Textual Amendments

- F1** Substituted by Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings (Text with EEA relevance).
- F2** Inserted by Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and

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Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings (Text with EEA relevance).

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(1) [^{F1}OJ L 302, 17.11.2009, p. 1.]

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