

Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR AIFMs

SECTION I

General principles

^{F1} ...

^{F2} Article 16

General obligations of the FCA

When assessing the AIFM's compliance with rules 2.1.4 and 18.5A.3 of the Conduct of Business sourcebook and rules 4.1.2C and 10.1.24 in the Senior Management Arrangements, Systems and Controls sourcebook, the FCA shall use at least the criteria laid down in this Section.]

Textual Amendments

F2 Art. 16 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **24(2)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 17

Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market

1 AIFMs shall apply policies and procedures for preventing malpractices, including those that might reasonably be expected to affect adversely the stability and integrity of the market.

2 AIFMs shall ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 18

Due diligence

- 1 AIFMs shall apply a high standard of diligence in the selection and ongoing monitoring of investments.
- 2 AIFMs shall ensure that they have adequate knowledge and understanding of the assets in which the AIF is invested.
- 3 AIFMs shall establish, implement and apply written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the AIFs are carried out in compliance with the objectives, the investment strategy and, where applicable, the risk limits of the AIF.
- 4 The policies and procedures on due diligence referred to in paragraph 3 shall be regularly reviewed and updated.

Article 19

Due diligence when investing in assets of limited liquidity

- 1 Where AIFMs invest in assets of limited liquidity and where such investment is preceded by a negotiation phase, they shall, in relation to the negotiation phase, in addition to the requirements laid down in Article 18:
 - a set out and regularly update a business plan consistent with the duration of the AIF and market conditions;
 - b seek and select possible transactions consistent with the business plan referred to in point (a);
 - c assess the selected transactions in consideration of opportunities, if any, and overall related risks, all relevant legal, tax-related, financial or other value affecting factors, human and material resources, and strategies, including exit strategies;
 - d perform due diligence activities related to the transactions prior to arranging execution;
 - e monitor the performance of the AIF with respect to the business plan referred to in point (a).
- 2 AIFMs shall retain records of the activities carried out pursuant to paragraph 1 for at least five years.

Article 20

Due diligence in the selection and appointment of counterparties and prime brokers

- 1 When selecting and appointing counterparties and prime brokers, AIFMs shall exercise due skill, care and diligence before entering into an agreement and on an ongoing basis thereafter taking into account the full range and quality of their services.
- 2 When selecting prime brokers or counterparties of an AIFM or an AIF in an OTC derivatives transaction, in a securities lending or in a repurchase agreement, AIFMs shall ensure that those prime brokers and counterparties fulfil all of the following conditions:
 - a they are subject to ongoing supervision by a public authority;

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- b they are financially sound;
- c they have the necessary organisational structure and resources for performing the services which are to be provided by them to the AIFM or the AIF.

3 When appraising the financial soundness referred to in paragraph 2(b), the AIFM shall take into account whether or not the prime broker or counterparty is subject to prudential regulation, including sufficient capital requirements, and effective supervision.

4 The list of selected prime brokers shall be approved by the AIFM's senior management. In exceptional cases prime brokers not included in the list may be appointed provided that they fulfil the requirements laid down in paragraph 2 and subject to approval by senior management. The AIFM shall be able to demonstrate the reasons for such a choice and the due diligence that it exercised in selecting and monitoring the prime brokers which had not been listed.

Article 21

Acting honestly, fairly and with due skills

In order to establish whether an AIFM conducts its activities honestly, fairly and with due skills, [^{F3}the FCA] shall assess, at least, whether the following conditions are met:

- (a) the governing body of the AIFM possesses adequate collective knowledge, skills and experience to be able to understand the AIFM's activities, in particular the main risks involved in those activities and the assets in which the AIF is invested;
- (b) the members of the governing body commit sufficient time to properly perform their functions in the AIFM;
- (c) each member of the governing body acts with honesty, integrity and independence of mind;
- (d) the AIFM devotes adequate resources to the induction and training of members of the governing body.

Textual Amendments

- F3** Words in Art. 21 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **24(3)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 22

Resources

1 AIFMs shall employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.

2 For the purposes of paragraph 1, AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

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Article 23

Fair treatment of investors in the AIF

1 The AIFM shall ensure that its decision-making procedures and its organisational structure, referred to in Article 57, ensure fair treatment of investors.

2 Any preferential treatment accorded by an AIFM to one or more investors shall not result in an overall material disadvantage to other investors.

Article 24

Inducements

1 AIFMs shall not be regarded as acting honestly, fairly and in accordance with the best interests of the AIFs they manage or the investors in these AIFs if, in relation to the activities performed when carrying out the functions referred to in [F⁴rule 1.4.7 of the Investment Funds sourcebook], 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 AIF or a person on behalf of the AIF;
- 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 AIFM can demonstrate that 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, is clearly disclosed to the investors in the AIF 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 are designed to enhance the quality of the relevant service and not impair compliance with the AIFM's duty to act in the best interests of the AIF it manages or the investors in the AIF;
- 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, do not give rise to conflicts with the AIFM's duties to act honestly, fairly and in accordance with the best interests of the AIF it manages or the investors of the AIF.

2 The disclosure of the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form shall be considered as satisfactory for the purposes of point (i) of paragraph 1(b), provided that the AIFM commits to disclose further details at the request of the investor in the AIF it manages and provided that it fulfils this commitment.

Textual Amendments

- F4** Words in Art. 24 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **24(4)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 25

Effective employment of resources and procedures — handling of orders

1 AIFMs shall establish, implement and apply procedures and arrangements which provide for the prompt, fair and expeditious execution of orders on behalf of the AIF.

2 The procedures and arrangements referred to in paragraph 1 shall satisfy the following requirements:

- a they shall ensure that orders executed on behalf of AIFs are promptly and accurately recorded and allocated;
- b they shall execute otherwise comparable AIF orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the AIF or of the investors in the AIF require otherwise.

3 The financial instruments, sums of money or other assets received in settlement of the executed orders shall be promptly and correctly delivered to or registered in the account of the relevant AIF.

4 AIFMs shall not misuse information related to pending AIF orders, and shall take all reasonable steps to prevent the misuse of such information by any of their relevant persons.

Article 26

Reporting obligations in respect of execution of subscription and redemption orders

1 Where AIFMs have carried out a subscription or, where relevant, a redemption order from an investor, they shall promptly provide the investor, by means of a durable medium, with the essential information concerning the execution of that order or the acceptance of the subscription offer, as the case may be.

2 Paragraph 1 shall not apply where a third person is required to provide the investor with a confirmation concerning the execution of the order and where the confirmation contains the essential information.

AIFMs shall ensure that the third person complies with its obligations.

3 The essential information referred to in paragraphs 1 and 2 shall include the following information:

- a the identification of the AIFM;
- b the identification of the investor;
- c the date and time of receipt of the order;
- d the date of execution;
- e the identification of the AIF;
- f the gross value of the order including charges for subscription or the net amount after charges for redemptions.

4 AIFMs shall supply the investor, upon request, with information about the status of the order or the acceptance of the subscription offer, or both as the case may be.

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Article 27

Execution of decisions to deal on behalf of the managed AIF

1 AIFMs shall act in the best interests of the AIFs or the investors in the AIFs they manage when executing decisions to deal on behalf of the managed AIF in the context of the management of their portfolio.

2 Whenever AIFMs buy or sell financial instruments or other assets for which best execution is relevant, and for the purposes of paragraph 1, they shall take all reasonable steps to obtain the best possible result for the AIFs they manage or the investors in these AIFs, 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 the following criteria:

- a the objectives, investment policy and risks specific to the AIF, as indicated in the AIF's rules or articles of association, prospectus or offering documents of the AIF;
- b the characteristics of the order;
- c the characteristics of the financial instruments or other assets that are the subject of that order;
- d the characteristics of the execution venues to which that order can be directed.

3 AIFMs shall establish and implement effective arrangements for complying with the obligations referred to in paragraphs 1 and 2. In particular, the AIFM shall establish in writing and implement an execution policy to allow AIFs and their investors to obtain, for AIF orders, the best possible result in accordance with paragraph 2.

4 AIFMs shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders with a view to identifying and, where appropriate, correcting any deficiencies.

5 AIFMs shall review their execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

6 AIFMs shall be able to demonstrate that they have executed orders on behalf of the AIF in accordance with their execution policy.

7 Whenever there is no choice of different execution venues paragraphs 2 to 5 shall not apply. However, AIFMs shall be able to demonstrate that there is no choice of different execution venues.

Article 28

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

1 Whenever the AIFM buys or sells financial instruments or other assets for which best execution is relevant, it shall act in the best interest of the AIFs it manages or the investors in the AIFs when placing orders to deal on behalf of the managed AIFs with other entities for execution, in the context of the management of their portfolio.

2 AIFMs shall take all reasonable steps to obtain the best possible result for the AIF or the investors in the AIF taking into account price, costs, speed, likelihood of execution and

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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 the criteria laid down in Article 27(2).

AIFMs shall establish, implement and apply 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 AIFM shall only enter into arrangements for execution where such arrangements are consistent with the obligations laid down in this Article. The AIFM shall make available to investors in the AIFs it manages appropriate information on the policy established in accordance with this paragraph and on any material changes to that policy.

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

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

4 AIFMs shall be able to demonstrate that they have placed orders on behalf of the AIF in accordance with the policy established pursuant to paragraph 2.

5 Whenever there is no choice of different execution venues paragraphs 2 to 5 shall not apply. However, AIFMs shall be able to demonstrate that there is no choice of different execution venues.

Article 29

Aggregation and allocation of trading orders

1 AIFMs can only carry out an AIF order in aggregate with an order of another AIF, a [F5UK UCITS] or a client or with an order made when investing their own funds where:

- a it can be reasonably expected that the aggregation of orders will not work overall to the disadvantage of any AIF, [F5UK UCITS] or clients whose order is to be aggregated;
- b an order allocation policy is 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 Where an AIFM aggregates an AIF order with one or more orders of other AIFs, [F5UK UCITS] or clients and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

3 Where an AIFM aggregates transactions for its own account with one or more orders of AIFs, [F5UK UCITS] or clients, it shall not allocate the related trades in a way that is detrimental to the AIF, [F5UK UCITS] or a client.

4 Where an AIFM aggregates an order of an AIF, [F5UK UCITS] or another client with a transaction for its own account and the aggregated order is partially executed, it shall allocate the related trades to the AIF, [F5UK UCITS] or to clients in priority over those for own account.

However, if the AIFM is able to demonstrate to the AIF or to the 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 its own account proportionally, in accordance with the policy referred to in point (b) of paragraph 1.

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Textual Amendments

- F5** Words in Art. 29 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **24(5)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Textual Amendments

- F1** Words in Ch. 3 Section 1 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **24(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 2

Conflicts of interest

F6 ...

Article 30

Types of conflicts of interest

For the purpose of identifying the types of conflicts of interest that arise in the course of managing an AIF, AIFMs shall take into account, in particular, whether the AIFM, a relevant person or a person directly or indirectly linked by way of control to the AIFM:

- (a) is likely to make a financial gain, or avoid a financial loss, at the expense of the AIF or its investors;
- (b) has an interest in the outcome of a service or an activity provided to the AIF or its investors or to a client or of a transaction carried out on behalf of the AIF or a client, which is distinct from the AIF's interest in that outcome;
- (c) has a financial or other incentive to favour:
 - the interest of a [F7UK UCITS], a client or group of clients or another AIF over the interest of the AIF,
 - the interest of one investor over the interest of another investor or group of investors in the same AIF;
- (d) carries out the same activities for the AIF and for another AIF, a [F8UK UCITS] or client; or
- (e) receives or will receive from a person other than the AIF or its investors an inducement in relation to collective portfolio management activities provided to the AIF, in the form of monies, goods or services other than the standard commission or fee for that service.

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Textual Amendments

- F7** Word in Art. 30(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **25(2)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Word in Art. 30(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **25(2)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 31

Conflicts of interest policy

1 The AIFM shall establish, implement and apply an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the AIFM and the nature, scale and complexity of its business.

Where the AIFM is a member of a group, the policy shall also take into account any circumstances of which the AIFM is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2 The conflicts of interest policy established in accordance with paragraph 1 shall include the following:

- a with reference to the activities carried out by or on behalf of the AIFM, including activities carried out by a delegate, sub-delegate, external valuer or counterparty, identification of the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the AIF or its investors;
- b procedures to be followed and measures to be adopted in order to prevent, manage and monitor such conflicts.

Article 32

Conflicts of interest related to the redemption of investments

The AIFM that manages an open-ended AIF shall identify, manage and monitor conflicts of interest arising between investors wishing to redeem their investments and investors wishing to maintain their investments in the AIF, and any conflicts between the AIFM's incentive to invest in illiquid assets and the AIF's redemption policy in accordance with its obligations under [^{F9}rules 10.1.23 and 10.1.25 of the Senior Management Arrangements, Systems and Controls sourcebook].

Textual Amendments

- F9** Words in Art. 32 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **25(3)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 33

Procedures and measures preventing or managing conflicts of interest

1 The procedures and measures established for the prevention or management of conflicts of interest shall be designed to ensure that the relevant persons engaged in different business activities involving a risk of conflict of interest carry out these activities having a degree of independence which is appropriate to the size and activities of the AIFM and of the group to which it belongs, and to the materiality of the risk of damage to the interests of the AIF or its investors.

2 Where necessary and appropriate for the AIFM to ensure the requisite degree of independence, the procedures to be followed and measures to be adopted in accordance with point (b) of Article 31(2) shall include the following:

- a effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities or other activities pursuant to ^{F10}rule 1.4.3 of the Investment Funds sourcebook] involving a risk of conflict of interest where the exchange of information may harm the interest of one or more AIFs or their investors;
- b the separate supervision of relevant persons, whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or investors, whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the AIFM;
- c the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d measures to prevent or restrain any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
- e measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities or other activities pursuant to ^{F11}rule 1.4.3 of the Investment Funds sourcebook] where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the application of one or more of those measures and procedures does not ensure the requisite degree of independence, the AIFM shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Textual Amendments

- F10** Words in Art. 33(2)(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **25(4)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 33(2)(e) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **25(4)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 34

Managing conflicts of interest

Where the organisational or administrative arrangements made by the AIFM are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the AIF or investors in the AIF are prevented, the senior management or other competent internal body of the AIFM shall be promptly informed in order to take any necessary decision or action to ensure that the AIFM acts in the best interests of the AIF or the investors in that AIF.

Article 35

Monitoring conflicts of interest

1 The AIFM shall keep and regularly update a record of the types of activities undertaken by or on behalf of the AIFM in which a conflict of interest entailing a material risk of damage to the interests of one or more AIFs or its investors has arisen or, in the case of an ongoing activity, may arise.

2 Senior management shall receive on a frequent basis, and at least annually, written reports on activities referred to in paragraph 1.

Article 36

Disclosure of conflicts of interest

1 The information to be disclosed to investors in accordance with [F12rules 10.1.23, 10.1.25 and 10.1.26 of the Senior Management Arrangements, Systems and Controls sourcebook] shall be provided to investors in a durable medium or by means of a website.

2 Where information referred to in paragraph 1 is provided by means of a website and is not addressed personally to the investor, the following conditions shall be satisfied:

- a the investor has been notified of the address of the website, and the place on the website where the information may be accessed, and has consented to the provision of the information by such means;
- b the information must be up to date;
- c the information must be accessible continuously by means of that website for such period of time as the investor may reasonably need to inspect it.

Textual Amendments

F12 Words in Art. 36(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **25(5)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 37

Strategies for the exercise of voting rights

- 1 An AIFM shall develop adequate and effective strategies for determining when and how any voting rights held in the AIF portfolios it manages are to be exercised, to the exclusive benefit of the AIF concerned and its investors.
- 2 The strategy referred to in paragraph 1 shall determine measures and procedures for:
 - a monitoring relevant corporate actions;
 - b ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant AIF;
 - c preventing or managing any conflicts of interest arising from the exercise of voting rights.
- 3 A summary description of the strategies and details of the actions taken on the basis of those strategies shall be made available to the investors on their request.

Textual Amendments

- F6** Words in Ch. 3 Section 2 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **25(1)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 3

Risk management

F13 ...

Article 38

Risk management systems

For the purposes of this Section, risk management systems shall be understood as systems comprised of relevant elements of the organisational structure of the AIFM, with a central role for a permanent risk management function, policies and procedures related to the management of risk relevant to each AIF's investment strategy, and arrangements, processes and techniques related to risk measurement and management employed by the AIFM in relation to each AIF it manages.

Article 39

Permanent risk management function

- 1 An AIFM shall establish and maintain a permanent risk management function that shall:

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- a implement effective risk management policies and procedures in order to identify, measure, manage and monitor on an ongoing basis all risks relevant to each AIF's investment strategy to which each AIF is or may be exposed;
 - b ensure that the risk profile of the AIF disclosed to investors in accordance with [F14rule 3.2.5(3) of the Investment Funds sourcebook] is consistent with the risk limits that have been set in accordance with Article 44 of this Regulation;
 - c monitor compliance with the risk limits set in accordance with Article 44 and notify the AIFM's governing body and, where it exists, the AIFM's supervisory function in a timely manner when it considers the AIF's risk profile inconsistent with these limits or sees a material risk that the risk profile will become inconsistent with these limits;
 - d provide the following regular updates to the governing body of the AIFM and where it exists the AIFM's supervisory function at a frequency which is in accordance with the nature, scale and complexity of the AIF or the AIFM's activities:
 - (i) the consistency between and compliance with the risk limits set in accordance with Article 44 and the risk profile of the AIF as disclosed to investors in accordance with [F15rule 3.2.5(3) of the Investment Funds sourcebook];
 - (ii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been or will be taken in the event of any actual or anticipated deficiencies;
 - e provide regular updates to the senior management outlining the current level of risk incurred by each managed AIF and any actual or foreseeable breaches of any risk limits set in accordance with Article 44, so as to ensure that prompt and appropriate action can be taken.
- 2 The risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph 1.

Textual Amendments

- F14** Words in Art. 39(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(2)(a)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in Art. 39(1)(d)(i) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(2)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 40

Risk management policy

- 1 An AIFM shall establish, implement and maintain an adequate and documented risk management policy which identifies all the relevant risks to which the AIFs it manages are or may be exposed.
- 2 The risk management policy shall comprise such procedures as are necessary to enable the AIFM to assess for each AIF it manages the exposure of that AIF to market, liquidity and counterparty risks, and the exposure of the AIF to all other relevant risks, including operational risks, which may be material for each AIF it manages.
- 3 The AIFM shall address at least the following elements in the risk management policy:

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- a the techniques, tools and arrangements that enable it to comply with Article 45;
 - b the techniques, tools and arrangements that enable liquidity risk of the AIF to be assessed and monitored under normal and exceptional liquidity conditions including through the use of regularly conducted stress tests in accordance with Article 48;
 - c the allocation of responsibilities within the AIFM pertaining to risk management;
 - d the limits set in accordance with Article 44 of this Regulation and a justification of how these are aligned with the risk profile of the AIF disclosed to investors in accordance with [F16]rule 3.2.5(3) of the Investment Funds sourcebook];
 - e the terms, contents, frequency and addressees of reporting by the permanent risk management function referred to in Article 39.
- 4 The risk management policy shall include a description of the safeguards referred to in Article 43, in particular:
- a the nature of the potential conflicts of interest;
 - b the remedial measures put in place;
 - c the reasons why these measures should be reasonably expected to result in independent performance of the risk management function;
 - d how the AIFM expects to ensure that the safeguards are consistently effective.
- 5 The risk management policy referred to in paragraph 1 shall be appropriate to the nature, scale and complexity of the business of the AIFM and of the AIF it manages.

Textual Amendments

F16 Words in Art. 40(3)(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(3)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 41

Assessment, monitoring and review of the risk management systems

- 1 AIFMs shall assess, monitor and periodically, at least once a year, review:
- a the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Article 45;
 - b the degree of compliance by the AIFM with the risk management policy and with the arrangements, processes and techniques referred to in Article 45;
 - c the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process;
 - d the performance of the risk management function;
 - e the adequacy and effectiveness of measures aiming to ensure the functional and hierarchical separation of the risk management function in accordance with Article 42.

The frequency of the periodic review referred to in the first subparagraph shall be decided by the senior management in accordance with the principle of proportionality given the nature, scale and complexity of the AIFM's business and the AIF it manages.

- 2 In addition to the periodic review referred to in paragraph 1, the risk management systems shall be reviewed where:

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- a material changes are made to the risk management policies and procedures and to the arrangements, processes and techniques referred to in Article 45;
- b internal or external events indicate that an additional review is required;
- c material changes are made to the investment strategy and objectives of an AIF that the AIFM manages.

3 The AIFM shall update the risk management systems on the basis of the outcome of the review referred to in paragraphs 1 and 2.

4 The AIFM shall notify the [F17FCA] of any material changes to the risk management policy and of the arrangements, processes and techniques referred to in Article 45.

Textual Amendments

F17 Word in Art. 41(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(4)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 42

Functional and hierarchical separation of the risk management function

1 The risk management function shall be considered as functionally and hierarchically separated from the operating units, including the portfolio management function, only where all the following conditions are satisfied:

- a persons engaged in the performance of the risk management function are not supervised by those responsible for the performance of the operating units, including the portfolio management function, of the AIFM;
- b persons engaged in the performance of the risk management function are not engaged in the performance of activities within the operating units, including the portfolio management function;
- c persons engaged in the performance of the risk management function are compensated in accordance with the achievement of the objectives linked to that function, independently of the performance of the operating units, including the portfolio management function;
- d the remuneration of senior officers in the risk management function is directly overseen by the remuneration committee, where such a committee has been established.

2 The functional and hierarchical separation of the risk management function in accordance with paragraph 1 shall be ensured throughout the whole hierarchical structure of the AIFM, up to its governing body. It shall be reviewed by the governing body and, where it exists, the supervisory function of the AIFM.

3 The [F18FCA] shall review the way in which the AIFM has applied paragraphs 1 and 2 on the basis of the criteria laid down in [F19 rule 3.7.2(2) of the Investment Funds sourcebook].

Textual Amendments

F18 Word in Art. 42(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(5)(a)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F19 Words in Art. 42(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(5)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 43

Safeguards against conflicts of interest

1 The safeguards against conflicts of interest referred to in [^{F20}rule 3.7.2 of the Investment Funds sourcebook] shall ensure, at least, that:

- a decisions taken by the risk management function are based on reliable data, which are subject to an appropriate degree of control by the risk management function;
- b the remuneration of those engaged in the performance of the risk management function reflects the achievement of the objectives linked to the risk management function, independently of the performance of the business areas in which they are engaged;
- c the risk management function is subject to an appropriate independent review to ensure that decisions are being arrived at independently;
- d the risk management function is represented in the governing body or the supervisory function, where it has been established, at least with the same authority as the portfolio management function;
- e any conflicting duties are properly segregated.

2 Where proportionate, taking into account the nature, scale and complexity of the AIFM, the safeguards referred to in paragraph 1 shall also ensure that:

- a the performance of the risk management function is reviewed regularly by the internal audit function, or, if the latter has not been established, by an external party appointed by the governing body;
- b where a risk committee has been established, it is appropriately resourced and its non-independent members do not have undue influence over the performance of the risk management function.

3 The governing body of the AIFM and, where it exists, the supervisory function shall establish the safeguards against conflicts of interest laid down in paragraphs 1 and 2, regularly review their effectiveness and take timely remedial action to address any deficiencies.

Textual Amendments

F20 Words in Art. 43(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(6)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 44

Risk limits

1 An AIFM shall establish and implement quantitative or qualitative risk limits, or both, for each AIF it manages, taking into account all relevant risks. Where only qualitative limits are set, the AIFM shall be able to justify this approach to the [^{F21}FCA].

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

2 The qualitative and quantitative risk limits for each AIF shall, at least, cover the following risks:

- a market risks;
- b credit risks;
- c liquidity risks;
- d counterparty risks;
- e operational risks.

3 When setting risk limits, the AIFM shall take into account the strategies and assets employed in respect of each AIF it manages as well as the national rules applicable to each of those AIFs. Those risk limits shall be aligned with the risk profile of the AIF as disclosed to investors in accordance with [^{F22}rule 3.2.5(3) of the Investment Funds sourcebook] and approved by the governing body.

Textual Amendments

- F21** Word in Art. 44(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **26(7)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in Art. 44(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **26(7)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 45

Risk measurement and management

1 AIFMs shall adopt adequate and effective arrangements, processes and techniques in order to:

- a identify, measure, manage and monitor at any time the risks to which the AIFs under their management are or might be exposed;
- b ensure compliance with the limits set in accordance with Article 44.

2 The arrangements, processes and techniques referred to in paragraph 1 shall be proportionate to the nature, scale and complexity of the business of the AIFM and of each AIF it manages and shall be consistent with the AIF's risk profile as disclosed to investors in accordance with [^{F23}rule 3.2.5(3) of the Investment Funds sourcebook].

3 For the purposes of paragraph 1, the AIFM shall take the following actions for each AIF it manages:

- a put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
- b conduct periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
- c conduct, periodic appropriate stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the AIF;
- d ensure that the current level of risk complies with the risk limits set in accordance with Article 44;

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- e establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches of the risk limits of the AIF, result in timely remedial actions in the best interest of investors;
- f ensure that there are appropriate liquidity management systems and procedures for each AIF in line with the requirements laid down in Article 46.

Textual Amendments

F23 Words in Art. 45(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(8)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Textual Amendments

F13 Words in Ch. 3 Section 3 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **26(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 4

Liquidity management

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Article 46

Liquidity management system and procedures

AIFMs shall be able to demonstrate to the [F25FCA] that an appropriate liquidity management system and effective procedures referred to in [F26rule 3.6.3 of the Investment Funds sourcebook] are in place taking into account the investment strategy, the liquidity profile and the redemption policy of each AIF.

Textual Amendments

F25 Word in Art. 46 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **27(2)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

F26 Words in Art. 46 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **27(2)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 47

Monitoring and managing liquidity risk

1 The liquidity management system and procedures referred to in Article 46 shall at least, ensure that:

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- a the AIFM maintains a level of liquidity in the AIF appropriate to its underlying obligations, based on an assessment of the relative liquidity of the AIF's assets in the market, taking account of the time required for liquidation and the price or value at which those assets can be liquidated, and their sensitivity to other market risks or factors;
 - b the AIFM monitors the liquidity profile of the AIF's portfolio of assets, having regard to the marginal contribution of individual assets which may have a material impact on liquidity, and the material liabilities and commitments, contingent or otherwise, which the AIF may have in relation to its underlying obligations. For these purposes the AIFM shall take into account the profile of the investor base of the AIF, including the type of investors, the relative size of investments and the redemption terms to which these investments are subject;
 - c the AIFM, where the AIF invests in other collective investment undertakings, monitors the approach adopted by the managers of those other collective investment undertakings to the management of liquidity, including through conducting periodic reviews to monitor changes to the redemption provisions of the underlying collective investment undertakings in which the AIF invests. Subject to [F²⁷rule 3.6.3 of the Investment Funds sourcebook], this obligation shall not apply where the other collective investment undertakings in which the AIF invests are actively traded on a [F²⁸UK regulated market within the meaning of point (13A) of Article 2(1) of Regulation (EU) No 600/2014] or an equivalent third country market;
 - d the AIFM implements and maintains appropriate liquidity measurement arrangements and procedures to assess the quantitative and qualitative risks of positions and of intended investments which have a material impact on the liquidity profile of the portfolio of the AIF's assets to enable their effects on the overall liquidity profile to be appropriately measured. The procedures employed shall ensure that the AIFM has the appropriate knowledge and understanding of the liquidity of the assets in which the AIF has invested or intends to invest including, where applicable, the trading volume and sensitivity of prices and, as the case may be, or spreads of individual assets in normal and exceptional liquidity conditions;
 - e the AIFM considers and puts into effect the tools and arrangements, including special arrangements, necessary to manage the liquidity risk of each AIF under its management. The AIFM shall identify the types of circumstances where these tools and arrangements may be used in both normal and exceptional circumstances, taking into account the fair treatment of all AIF investors in relation to each AIF under management. The AIFM may use such tools and arrangements only in these circumstances and if appropriate disclosures have been made in accordance with Article 108.
- 2 AIFMs shall document their liquidity management policies and procedures, as referred to in paragraph 1, review them on at least an annual basis and update them for any changes or new arrangements.
- 3 AIFMs shall include appropriate escalation measures in their liquidity management system and procedures, as referred to in paragraph 1, to address anticipated or actual liquidity shortages or other distressed situations of the AIF.
- 4 Where the AIFM manages an AIF which is a leveraged closed-ended AIF, point (e) of paragraph 1 shall not apply.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F27** Words in Art. 47(1)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **27(3)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in Art. 47(1)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **27(3)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 48

Liquidity management limits and stress tests

1 AIFMs shall, where appropriate, considering the nature, scale and complexity of each AIF they manage, implement and maintain adequate limits for the liquidity or illiquidity of the AIF consistent with its underlying obligations and redemption policy and in accordance with the requirements laid down in Article 44 relating to quantitative and qualitative risk limits.

AIFMs shall monitor compliance with those limits and where limits are exceeded or likely to be exceeded, they shall determine the required (or necessary) course of action. In determining appropriate action, AIFMs shall consider the adequacy of the liquidity management policies and procedures, the appropriateness of the liquidity profile of the AIF's assets and the effect of atypical levels of redemption requests.

2 AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of each AIF under their management. The stress tests shall:

- a be conducted on the basis of reliable and up-to-date information in quantitative terms or, where this is not appropriate, in qualitative terms;
- b where appropriate, simulate a shortage of liquidity of the assets in the AIF and atypical redemption requests;
- c cover market risks and any resulting impact, including on margin calls, collateral requirements or credit lines;
- d account for valuation sensitivities under stressed conditions;
- e be conducted at a frequency which is appropriate to the nature of the AIF, taking in to account the investment strategy, liquidity profile, type of investor and redemption policy of the AIF, and at least once a year.

3 AIFMs shall act in the best interest of investors in relation to the outcome of any stress tests.

Article 49

Alignment of investment strategy, liquidity profile and redemption policy

1 For the purposes of [F²⁹rule 3.6.2 of the Investment Funds sourcebook], the investment strategy, liquidity profile and redemption policy of each AIF managed by an AIFM shall be considered to be aligned when investors have the ability to redeem their investments in a manner consistent with the fair treatment of all AIF investors and in accordance with the AIF's redemption policy and its obligations.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

2 In assessing the alignment of the investment strategy, liquidity profile and redemption policy the AIFM shall also have regard to the impact that redemptions may have on the underlying prices or spreads of the individual assets of the AIF.

Textual Amendments

F29 Words in Art. 49(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **27(4)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Textual Amendments

F24 Words in Ch. 3 Section 4 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **27(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 5

Investment in securitisation positions

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Article 50

Definitions

For the purposes of this Section:

- (a) ‘securitisation’ means a securitisation within the meaning of [^{F31}Article 2(1) of Regulation 2017/2402];
- (b) ‘securitisation position’ means a securitisation position within the meaning of [^{F32}Article 2(19) of Regulation 2017/2402];
- (c) ‘sponsor’ means a sponsor within the meaning of [^{F33}Article 2(5) of Regulation 2017/2402];
- (d) ‘tranche’ means a tranche within the meaning of [^{F34}Article 2(6) of Regulation 2017/2402];
- (e) [^{F35}‘Regulation 2017/2402’ means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.]

Textual Amendments

F31 Words in Art. 50(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(2)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F32** Words in Art. 50(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(2)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in Art. 50(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(2)(c)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in Art. 50(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(2)(d)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F35** Art. 50(e) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(2)(e)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 51

Requirements for retained interest

1 AIFMs shall assume exposure to the credit risk of a securitisation on behalf of one or more AIFs it manages only if the originator, sponsor or original lender has explicitly disclosed to the AIFM that it retains, on an ongoing basis, a material net economic interest, which in any event shall not be less than 5 %.

Only any of the following shall qualify as retention of a material net economic interest of not less than 5 %:

- a retention of no less than 5 % of the nominal value of each of the tranches sold or transferred to the investors;
- b in the case of securitisations of revolving exposures, retention of the originator's interest of no less than 5 % of the nominal value of the securitised exposures;
- c retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;
- d retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures;
- e retention of a first loss exposure of not less than 5 % of every securitised exposure in the securitisation.

Net economic interest shall be measured at the origination and shall be maintained on an ongoing basis. The net economic interest, including retained positions, interest or exposures, shall not be subject to any credit risk mitigation or any short positions or any other hedge and shall not be sold. The net economic interest shall be determined by the notional value for off-balance sheet items.

There shall be no multiple applications of the retention requirements for any given securitisation.

2 Paragraph 1 shall not apply where the securitised exposures are claims or contingent claims on or fully, unconditionally and irrevocably guaranteed by the institutions listed in ^{F36}Article 6(5) of Regulation 2017/2402], and shall not apply to those transactions listed in ^{F37}Article 6(6) of Regulation 2017/2402].

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Textual Amendments

- F36** Words in Art. 51(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(3)(a)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in Art. 51(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **28(3)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 52

Qualitative requirements concerning sponsors and originators

Prior to an AIFM assuming exposure to the credit risk of a securitisation on behalf of one or more AIFs, it shall ensure that the sponsor and originator:

- (a) grant credit based on sound and well-defined criteria and clearly establish the process for approving, amending, renewing and re-financing loans to exposures to be securitised as they apply to exposures they hold;
- (b) have in place and operate effective systems to manage the ongoing administration and monitoring of their credit risk-bearing portfolios and exposures, including for identifying and managing problem loans and for making adequate value adjustments and provisions;
- (c) adequately diversify each credit portfolio based on the target market and overall credit strategy;
- (d) have a written policy on credit risk that includes their risk tolerance limits and provisioning policy and describes how it measures, monitors and controls that risk;
- (e) grant readily available access to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure and such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter;
- (f) grant readily available access to all other relevant data necessary for the AIFM to comply with the requirements laid down in Article 53;
- (g) disclose the level of their retained net economic interest as referred to in Article 51, as well as any matters that could undermine the maintenance of the minimum required net economic interest as referred to in that Article.

Article 53

Qualitative requirements concerning AIFMs exposed to securitisations

1 Before becoming exposed to the credit risk of a securitisation on behalf of one or more AIFs, and as appropriate thereafter, AIFMs shall be able to demonstrate to the competent authorities for each of their individual securitisation positions that they have a comprehensive

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and thorough understanding of those positions and have implemented formal policies and procedures appropriate to the risk profile of the relevant AIF's investments in securitised positions for analysing and recording:

- a information disclosed under Article 51, by originators or sponsors to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;
- b the risk characteristics of the individual securitisation position;
- c the risk characteristics of the exposures underlying the securitisation position;
- d the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
- e the statements and disclosures made by the originators or sponsors, or their agents or advisors, about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;
- f where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer;
- g all the structural features of the securitisation that can materially impact the performance of the institution's securitisation position, such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definitions of default.

2 Where an AIFM has assumed exposure to a material value of the credit risk of a securitisation on behalf of one or more AIFs, it shall regularly perform stress tests appropriate to such securitisation positions in accordance with [^{F38}rule 3.7.5(2)(b) of the Investment Funds sourcebook]. The stress test shall be commensurate with the nature, scale and complexity of the risk inherent in the securitisation positions.

AIFMs shall establish formal monitoring procedures in line with the principles laid down in [^{F39}rules 3.7.2 to 3.7.7 of the Investment Funds sourcebook] commensurate with the risk profile of the relevant AIF in relation to the credit risk of a securitisation position in order to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying such securitisation positions. Such information shall include (if relevant to the specific type of securitisation and not limited to such types of information further described herein), the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification and frequency distribution of loan to value ratios with bandwidths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, AIFMs shall have the information set out in this subparagraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also on the characteristics and performance of the pools underlying those securitisation tranches.

AIFMs shall apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties.

3 For the purposes of appropriate risk and liquidity management, AIFMs assuming exposure to the credit risk of a securitisation on behalf of one or more AIFs shall properly identify, measure, monitor, manage, control and report the risks that arise because of mismatches between the assets and liabilities of the relevant AIF, concentration risk or investment risk arising from these instruments. The AIFM shall ensure that the risk profile of such securitisation positions corresponds to the size, overall portfolio structure, investment strategies and objectives

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of the relevant AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

4 AIFMs shall ensure, in line with the requirements laid down in [^{F40}rules 4.1.1, 4.1.1B and 4.1.2D of the Senior Management Arrangements, Systems and Controls sourcebook], that there is an adequate degree of internal reporting to the senior management so that senior management is fully aware of any material assumption of exposure to securitisations and that the risks arising from those exposures are adequately managed.

5 AIFMs shall include appropriate information on their exposures to the credit risk of securitisation and their risk management procedures in this area in the reports and disclosures to be submitted in accordance with [^{F41}sections 3.2, 3.3 and 3.4 of the Investment Funds sourcebook].

Textual Amendments

- F38** Words in Art. 53(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(4)(a)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in Art. 53(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(4)(a)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Words in Art. 53(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(4)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F41** Words in Art. 53(5) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(4)(c)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 54

Corrective action

1 AIFMs shall take such corrective action as is in the best interest of the investors in the relevant AIF where they discover, after the assumption of an exposure to a securitisation, that the determination and disclosure of the retained interest did not meet the requirements laid down in this Regulation.

2 AIFMs shall take such corrective action as is in the best interest of the investors in the relevant AIF, where the retained interest becomes less than 5 % at a given moment after the assumption of the exposure and this is not due to the natural payment mechanism of the transaction.

Article 55

Grandfathering clause

Articles 51 to 54 shall apply in relation to new securitisations issued on or after 1 January 2011. Articles 51 to 54 shall, after 31 December 2014, apply in relation to existing securitisations where new underlying exposures are added or substituted after that date.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F42} Article 56

Interpretation

In the absence of guidance issued by the FCA, the provisions of this Section shall be interpreted in a consistent manner with the corresponding provisions of Regulation 2017/2402.]

Textual Amendments

F42 Art. 56 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(5)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Textual Amendments

F30 Words in Ch. 3 Section 5 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **28(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 6

Organisational requirements — general principles

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...

Article 57

General requirements

- 1 AIFMs shall:
 - a establish, implement and maintain decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities clearly and in a documented manner;
 - b ensure that their relevant persons are aware of the procedures to be followed for the proper discharge of their responsibilities;
 - c establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIFM;
 - d establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the AIFM and effective information flows with any third party involved;
 - e maintain adequate and orderly records of their business and internal organisation.

AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

2 AIFMs shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3 AIFMs shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the event of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

4 AIFMs shall establish, implement and maintain accounting policies and procedures and valuation rules that enable them, at the request of the ^{F44}FCA], to deliver in a timely manner to the ^{F44}FCA] financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5 AIFMs shall implement appropriate policies and procedures to ensure that the redemption policies of the AIF are disclosed to investors, in sufficient detail, before they invest in the AIF and in the event of material changes.

6 AIFMs shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 5, and take appropriate measures to address any deficiencies.

Textual Amendments

F44 Word in Art. 57(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(2)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 58

Electronic data processing

1 AIFMs shall make appropriate and sufficient arrangements for suitable electronic systems so as to permit the timely and proper recording of each portfolio transaction or subscription or, where relevant, redemption order.

2 AIFMs shall ensure a high standard of security during the electronic data processing and integrity and confidentiality of the recorded information, as appropriate.

Article 59

Accounting procedures

1 AIFMs shall employ accounting policies and procedures as referred to in Article 57(4) so as to ensure the protection of investors. The accounting records shall be kept in such a way that all assets and liabilities of the AIF can be directly identified at all times. If an AIF has different investment compartments, separate accounts shall be maintained for those compartments.

2 AIFMs shall establish, implement and maintain accounting and valuation policies and procedures so as to ensure that the net asset value of each AIF is accurately calculated on the basis of the applicable accounting rules and standards.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Article 60

Control by the governing body, senior management and supervisory function

1 When allocating functions internally, AIFMs shall ensure that the governing body, the senior management and, where it exists, the supervisory function are responsible for the AIFM's compliance with its obligations under [F45the UK provisions which implemented] Directive 2011/61/EU.

2 An AIFM shall ensure that its senior management:

- a is responsible for the implementation of the general investment policy for each managed AIF, as defined, where relevant, in the fund rules, the instruments of incorporation, the prospectus or the offering documents;
- b oversees the approval of the investment strategies for each managed AIF;
- c is responsible for ensuring that valuation policies and procedures in accordance with [F46section 3.9 of the Investment Funds sourcebook] are established and implemented;
- d is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party;
- e ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed AIF are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;
- f approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed AIF, so as to ensure that such decisions are consistent with the approved investment strategies;
- g approves and reviews on a periodic basis the risk management policy and the arrangements, processes and techniques for implementing that policy, including the risk limit system for each AIF it manages;
- h is responsible for establishing and applying a remuneration policy in line with [F47rules 19B.1.4 to 19B.1.24 of the Senior Management Arrangements, Systems and Controls sourcebook].

3 An AIFM shall also ensure that its senior management and, where appropriate, its governing body or supervisory function:

- a assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations laid down in [F48the UK provisions which implemented] Directive 2011/61/EU;
- b take appropriate measures to address any deficiencies.

4 An AIFM shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5 An AIFM shall ensure that its senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in points (b) to (e) of paragraph 2.

6 An AIFM shall ensure that the governing body or the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph 4.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F45** Words in Art. 60(1) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(3)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in Art. 60(2)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(3)(b)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Words in Art. 60(2)(h) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(3)(b)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F48** Words in Art. 60(3)(a) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(3)(c)** (as amended by S.I. 2019/325, regs. 1(3), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 61

Permanent compliance function

1 AIFMs shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the AIFM to comply with its obligations under [^{F49}the UK provisions which implemented] Directive 2011/61/EU, and the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the [^{F50}FCA to exercise its] powers effectively [^{F51}under FSMA].

The AIFM shall take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.

2 An AIFM shall establish and maintain a permanent and effective compliance function which operates independently and has the following responsibilities:

- a monitoring and, on a regular basis, evaluating the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1 and the actions taken to address any deficiencies in the AIFM's compliance with its obligations;
- b advising the relevant persons responsible for carrying out services and activities and assisting them in complying with the AIFM's obligations under [^{F52}the UK provisions which implemented] Directive 2011/61/EU.

3 In order to enable the compliance function referred to in paragraph 2 to perform its responsibilities properly and independently, the AIFM shall ensure that:

- a the compliance function has the necessary authority, resources, expertise and access to all relevant information;
- b a compliance officer is appointed and is responsible for the compliance function and for reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
- c persons in the compliance function are not involved in the performance of services or activities they monitor;
- d the method of determining the remuneration of a compliance officer and other persons in the compliance function do not affect their objectivity and are not likely to do so.

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However, the AIFM shall not be required to comply with point (c) or (d) of the first subparagraph where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that the requirement is not proportionate and that its compliance function continues to be effective.

Textual Amendments

- F49** Words in Art. 61(1) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(4)(a)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F50** Words in Art. 61(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(4)(a)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in Art. 61(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(4)(a)(iii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F52** Words in Art. 61(2)(b) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(4)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 62

Permanent internal audit function

1 AIFMs shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the AIFM.

- 2 The internal audit function referred to in paragraph 1 shall:
- a establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the AIFM's systems, internal control mechanisms and arrangements;
 - b issue recommendations based on the results of work carried out in accordance with point (a);
 - c verify compliance with the recommendations referred to in point (b);
 - d report internal audit matters.

Article 63

Personal transactions

1 For any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of [F53 Article 7(1) of Regulation (EU) 596/2014/EU of the European Parliament and of the Council on market abuse] or to other confidential information relating to an AIF or transactions with or for an AIF, an AIFM shall establish, implement and maintain adequate arrangements aimed at preventing such relevant persons from:

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- a entering into a personal transaction in financial instruments or other assets which fulfils one of the following criteria:
 - (i) the transaction is subject to [^{F54}Article 8(1) and (4)(a) to (d) of Regulation (EU) 596/2014];
 - (ii) the transaction involves the misuse or improper disclosure of confidential information;
 - (iii) the transaction conflicts or is likely to conflict with an obligation of the AIFM under [^{F55}the UK provisions which implemented] Directive 2011/61/EU;
- b advising or inducing, other than in the proper course of his employment or contract for services, any other person to enter into a personal transaction referred to in point (a)(i) and (ii), or that would otherwise constitute a misuse of information relating to pending orders;
- c disclosing, other than in the normal course of his employment or contract for services and without prejudice to [^{F56}Article 14(c) of Regulation (EU) 596/2014], any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person would or would be likely to take either of the following steps:
 - (i) entering into a personal transaction referred to in point (a)(i) and (ii) in financial instruments or other assets or that would otherwise constitute a misuse of information relating to pending orders;
 - (ii) advising or inducing another person to enter into such a personal transaction.

2 The arrangements referred to in paragraph 1 shall in particular be designed to ensure that:

- a each relevant person is aware of the restrictions on personal transactions referred to in paragraph 1, and of the measures established by the AIFM in connection with personal transactions and disclosure, pursuant to paragraph 1;
- b the AIFM is informed promptly of any personal transaction entered into by a relevant person covered by paragraph 1, either by notification of that transaction or by other procedures enabling the AIFM to identify such transactions;
- c a record is kept of the personal transaction notified to the AIFM or identified by it, including any authorisation or prohibition in connection with such a transaction.

For the purposes of point (b) of the first subparagraph, where certain activities of the AIFM are performed by third parties, the AIFM shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person covered by paragraph 1 and provides that information to the AIFM promptly on request.

3 Paragraphs 1 and 2 shall not apply to personal transactions:

- a effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
- b in UCITS or AIFs that are [^{F57}required to have] an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

4 For the purpose of paragraph 1, a personal transaction shall also include a transaction in a financial instrument or other asset effected on behalf or for the account of:

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- a a relevant person;
- b any person with whom the relevant person has a family relationship or with whom the relevant person has close links;
- c a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

Textual Amendments

- F53** Words in Art. 63(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(5)(a)(i)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F54** Words in Art. 63(1)(a)(i) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(5)(a)(ii)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in Art. 63(1)(a)(iii) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(5)(a)(iii)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Words in Art. 63(1)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(5)(a)(iv)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F57** Words in Art. 63(3)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(5)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 64

Recording of portfolio transactions

1 AIFMs shall make without delay for each portfolio transaction relating to AIFs it manages a record of information which is sufficient to reconstruct the details of the order and the executed transaction or of the agreement.

2 With regard to portfolio transactions on an execution venue, the record referred to in paragraph 1 shall include the following information:

- a the name or other designation of the AIF and of the person acting for the account of the AIF;
- b the asset;
- c where relevant, the quantity;
- d the type of the order or transaction;
- e the price;
- f for orders, the date and exact time of the transmission of the order and the name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and the execution of the transaction;
- g where applicable, the name of the person transmitting the order or executing the transaction;
- h where applicable, the reasons for the revocation of an order;
- i for executed transactions the counterparty and execution venue identification.

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

3 With regard to portfolio transactions by the AIF outside an execution venue, the record referred to in paragraph 1 shall include the following information:

- a the name or other designation of the AIF;
- b the legal and other documentation that forms the basis of the portfolio transaction, including in particular the agreement as executed;
- c the price.

4 For the purposes of paragraphs 2 and 3, an execution venue shall include a systematic internaliser as referred to in [F58]point (12) of Article 2.1 of Regulation (EU) No 600/2014], [F59]a UK regulated market as referred to in point (13A) of Article 2.1 of Regulation (EU) No 600/2014], [F60]a UK multi-lateral trading facility as referred to in point (14A) of Article 2.1 of Regulation (EU) No 600/2014], a market maker as referred to in [F61]point (6) of Article 2.1 of that Regulation] or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Textual Amendments

- F58** Words in Art. 64(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(6)(a)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Words in Art. 64(4) substituted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(6)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F60** Words in Art. 64(4) substituted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(6)(c)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F61** Words in Art. 64(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(6)(d)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 65

Recording of subscription and redemption orders

1 AIFMs shall take all reasonable steps to ensure that received AIF subscriptions and, where relevant, redemption orders are recorded without undue delay after receipt of any such order.

2 That record shall include information on the following:

- a the relevant AIF;
- b the person giving or transmitting the order;
- c the person receiving the order;
- d the date and time of the order;
- e the terms and means of payment;
- f the type of the order;
- g the date of execution of the order;
- h the number of units or shares or equivalent amounts subscribed or redeemed;
- i the subscription or, where relevant, redemption price for each unit or share or, where relevant, the amount of capital committed and paid;
- j the total subscription or redemption value of the units or shares;

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- k the gross value of the order including charges for subscription, or the net amount after charges for redemption.

Information under points (i), (j) and (k) shall be recorded as soon as available.

Article 66

Recordkeeping requirements

1 AIFMs shall ensure that all required records referred to in Articles 64 and 65 are retained for a period of at least five years.

However, ^{F62}[the FCA] may require AIFMs to ensure that any or all of those records are retained for a longer period, taking into account the nature of the asset or portfolio transaction, where it is necessary to enable the authority to exercise its supervisory functions under ^{F63}[the UK provisions which implemented] Directive 2011/61/EU.

2 Following the termination of the authorisation of an AIFM, the records are to be retained at least for the outstanding term of the five-year period referred to in paragraph 1. ^{F64}[The FCA] may require retention for a longer period.

Where the AIFM transfers its responsibilities in relation to the AIF to another AIFM, it shall ensure that the records referred to in paragraph 1 are accessible to that AIFM.

3 The records shall be retained on a medium that allows the storage of information in a way accessible for future reference by the ^{F65}[FCA], and in such a form and manner that:

- a the ^{F66}[FCA is] able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
- b corrections or other amendments, and the contents of the records prior to such corrections or amendments, may be easily ascertained;
- c no other manipulation or alteration is possible.

Textual Amendments

- F62** Words in Art. 66(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(7)(a)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F63** Words in Art. 66(1) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(7)(a)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F64** Words in Art. 66(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(7)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F65** Word in Art. 66(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(7)(c)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in Art. 66(3)(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **29(7)(c)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: Commission Delegated Regulation (EU) No 231/2013, CHAPTER III is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F43 Words in Ch. 3 Section 6 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **29(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

SECTION 7

Valuation

F67 ...

Article 67

Policies and procedures for the valuation of the assets of the AIF

1 AIFMs shall establish, maintain, implement and review, for each AIF they manage, written policies and procedures that ensure a sound, transparent, comprehensive and appropriately documented valuation process. The valuation policy and procedures shall cover all material aspects of the valuation process and valuation procedures and controls in respect of the relevant AIF.

Without prejudice to requirements under national law and the AIF rules and instruments of incorporation, the AIFM shall ensure that fair, appropriate and transparent valuation methodologies are applied for the AIFs it manages. The valuation policies shall identify and the procedures shall implement the valuation methodologies used for each type of asset in which the AIF may invest in accordance with applicable national law, the AIF rules and the instruments of incorporation. The AIFM shall not invest in a particular type of asset for the first time unless an appropriate valuation methodology or methodologies have been identified for that specific type of asset.

The policies and procedures setting out valuation methodologies shall include inputs, models and the selection criteria for pricing and market data sources. They shall provide that prices shall be obtained from independent sources whenever possible and appropriate. The selection process of a particular methodology shall include an assessment of the available relevant methodologies, taking into account their sensitivity to changes in variables and how specific strategies determine the relative value of the assets in the portfolio.

2 The valuation policies shall set out the obligations, roles and responsibilities of all parties involved in the valuation process, including the senior management of the AIFM. The procedures shall reflect the organisational structure as set out in the valuation policies.

The valuation policies and procedures shall address at least the following:

- a the competence and independence of personnel who are effectively carrying out the valuation of assets;
- b the specific investment strategies of the AIF and the assets the AIF might invest in;
- c the controls over the selection of valuation inputs, sources and methodologies;
- d the escalation channels for resolving differences in values for assets;
- e the valuation of any adjustments related to the size and liquidity of positions, or to changes in the market conditions, as appropriate;

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- f the appropriate time for closing the books for valuation purposes;
- g the appropriate frequency for valuing assets.

3 Where an external valuer is appointed, the valuation policies and procedures shall set out a process for the exchange of information between the AIFM and the external valuer to ensure that all necessary information required for the purpose of performing the valuation task is provided.

The valuation policies and procedures shall ensure that the AIFM conducts initial and periodic due diligence on third parties that are appointed to perform valuation services.

4 Where the valuation is performed by the AIFM itself, the policies shall include a description of the safeguards for the functionally independent performance of the valuation task in accordance with [F68 rule 3.9.7 of the Investment Funds sourcebook]. Such safeguards shall include measures to prevent or restrain any person from exercising inappropriate influence over the way in which a person carries out valuation activities.

Textual Amendments

F68 Words in Art. 67(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **30(2)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 68

Use of models to value assets

1 If a model is used to value the assets of an AIF, the model and its main features shall be explained and justified in the valuation policies and procedures. The reason for the choice of the model, the underlying data, the assumptions used in the model and the rationale for using them, and the limitations of the model-based valuation shall be appropriately documented.

2 The valuation policies and procedures shall ensure that before being used a model is validated by a person with sufficient expertise who has not been involved in the process of building that model. The validation process shall be appropriately documented.

3 The model shall be subject to prior approval by the senior management of the AIFM. Where the model is used by an AIFM that performs the valuation function itself, the approval by the senior management shall be without prejudice to the competent authority's right to require under [F69 section 55L or 166 of the Financial Services and Markets Act 2000] that the model be verified by an external valuer or an auditor.

Textual Amendments

F69 Words in Art. 68(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **30(3)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 69

Consistent application of valuation policies and procedures

- 1 An AIFM shall ensure that the valuation policies and procedures and the designated valuation methodologies are applied consistently.
- 2 The valuation policies and procedures and the designated methodologies shall be applied to all assets within an AIF taking into account the investment strategy, the type of asset and, if applicable, the existence of different external valuers.
- 3 Where no update is required, the policies and procedures shall be applied consistently over time and valuation sources and rules shall remain consistent over time.
- 4 The valuation procedures and the designated valuation methodologies shall be applied consistently across all AIFs managed by the same AIFM, taking into account the investment strategies and the types of asset held by the AIFs, and, if applicable, the existence of different external valuers.

Article 70

Periodic review of valuation policies and procedures

- 1 Valuation policies shall provide for a periodic review of the policies and procedures, including of the valuation methodologies. The review shall be carried out at least annually and before the AIF engages with a new investment strategy or a new type of asset that is not covered by the actual valuation policy.
- 2 The valuation policies and procedures shall outline how a change to the valuation policy, including a methodology, may be effected and in what circumstances this would be appropriate. Recommendations for changes to the policies and procedures shall be made to the senior management, which shall review and approve any changes.
- 3 The risk management function referred to in Article 38 shall review and, if needed, provide appropriate support concerning the policies and procedures adopted for the valuation of assets.

Article 71

Review of individual values of assets

- 1 An AIFM shall ensure that all assets held by the AIF are fairly and appropriately valued. The AIFM shall document by type of asset the way the appropriateness and fairness of the individual values is assessed. The AIFM shall at all times be able to demonstrate that the portfolios of AIFs it manages are properly valued.
- 2 The valuation policies and procedures shall set out a review process for the individual values of assets, where a material risk of an inappropriate valuation exists, such as in the following cases:
 - a the valuation is based on prices only available from a single counterparty or broker source;
 - b the valuation is based on illiquid exchange prices;

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- c the valuation is influenced by parties related to the AIFM;
 - d the valuation is influenced by other entities that may have a financial interest in the AIF's performance;
 - e the valuation is based on prices supplied by the counterparty who originated an instrument, in particular where the originator is also financing the AIF's position in the instrument;
 - f the valuation is influenced by one or more individuals within the AIFM.
- 3 The valuation policies and procedures shall describe the review process including sufficient and appropriate checks and controls on the reasonableness of individual values. Reasonableness shall be assessed in terms of the existence of an appropriate degree of objectivity. Such checks and controls shall include at least:
- a verifying values by a comparison amongst counterparty-sourced pricings and over time;
 - b validating values by comparison of realised prices with recent carrying values;
 - c considering the reputation, consistency and quality of the valuation source;
 - d a comparison with values generated by a third party;
 - e an examination and documentation of exemptions;
 - f highlighting and researching any differences that appear unusual or vary by valuation benchmark established for the type of asset;
 - g testing for stale prices and implied parameters;
 - h a comparison with the prices of any related assets or their hedges;
 - i a review of the inputs used in model-based pricing, in particular of those to which the model's price exhibits significant sensitivity.
- 4 The valuation policies and procedures shall include appropriate escalation measures to address differences or other problems in the valuation of assets.

Article 72

Calculation of the net asset value per unit or share

- 1 An AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year.
- 2 An AIFM shall ensure that the procedures and the methodology for calculating the net asset value per unit or share are fully documented. The calculation procedures and methodologies and their application shall be subject to regular verification by the AIFM, and the documentation shall be amended accordingly.
- 3 An AIFM shall ensure that remedial procedures are in place in the event of an incorrect calculation of the net asset value.
- 4 An AIFM shall ensure that the number of units or shares in issue is subject to regular verification, at least as often as the unit or share price is calculated.

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Article 73

Professional guarantees

1 External valuers shall provide upon request professional guarantees to demonstrate their ability to perform the valuation function. Professional guarantees to be furnished by external valuers shall be in written form.

2 The professional guarantees shall contain evidence of the external valuer's qualification and capability to perform proper and independent valuation, including, at least, evidence of:

- a sufficient personnel and technical resources;
- b adequate procedures safeguarding proper and independent valuation;
- c adequate knowledge and understanding of the investment strategy of the AIF and of the assets the external valuer is appointed to value;
- d a sufficiently good reputation and sufficient experience with valuation.

3 Where the external valuer is subject to mandatory professional registration with the competent authority or another entity of the state where it is established, the professional guarantee shall contain the name of this authority or entity, including the relevant contact information. The professional guarantee shall indicate clearly the legal or regulatory provisions or rules of professional conduct to which the external valuer is subject.

Article 74

Frequency of valuation of assets held by open-ended AIFs

1 The valuation of financial instruments held by open-ended AIFs shall take place every time the net asset value per unit or share is calculated pursuant to Article 72(1).

2 The valuation of other assets held by open-ended AIFs shall take place at least once a year, and every time there is evidence that the last determined value is no longer fair or proper.

Textual Amendments

- F67** Words in Ch. 3 Section 7 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **30(1)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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SECTION 8

Delegation of AIFM functions

F70 ...

Article 75

General principles

When delegating the task of carrying out one or more functions on their behalf, AIFMs shall comply, in particular, with the following general principles:

- (a) the delegation structure does not allow for the circumvention of the AIFM's responsibilities or liability;
- (b) the obligations of the AIFM towards the AIF and its investors are not altered as a result of the delegation;
- (c) the conditions with which the AIFM must comply in order to be authorised and carry out activities in accordance with [F71 the UK provisions which implemented] Directive 2011/61/EU are not undermined;
- (d) the delegation arrangement takes the form of a written agreement concluded between the AIFM and the delegate;
- (e) the AIFM ensures that the delegate carries out the delegated functions effectively and in compliance with applicable law and regulatory requirements and must establish methods and procedures for reviewing on an ongoing basis the services provided by the delegate. The AIFM shall take appropriate action if it appears that the delegate cannot carry out the functions effectively or in compliance with applicable laws and regulatory requirements;
- (f) the AIFM supervises effectively the delegated functions and manages the risks associated with the delegation. For this purpose the AIFM shall have at all times the necessary expertise and resources to supervise the delegated functions. The AIFM shall set out in the agreement its right of information, inspection, admittance and access, and its instruction and monitoring rights against the delegate. The AIFM shall also ensure that the delegate properly supervises the performance of the delegated functions, and adequately manages the risks associated with the delegation;
- (g) the AIFM ensures that the continuity and quality of the delegated functions or of the delegated task of carrying out functions are maintained also in the event of termination of the delegation either by transferring the delegated functions or the delegated task of carrying out functions to another third party or by performing them itself;
- (h) the respective rights and obligations of the AIFM and the delegate are clearly allocated and set out in the agreement. In particular, the AIFM shall contractually ensure its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall make sure that sub-delegation can take place only with the consent of the AIFM;
- (i) where it concerns portfolio management, the delegation is in accordance with the investment policy of the AIF. The delegate shall be instructed by the AIFM how to

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implement the investment policy and the AIFM shall monitor whether the delegate complies with it on an ongoing basis;

- (j) the AIFM ensures that the delegate discloses to the AIFM any development that may have a material impact on the delegate's ability to carry out the delegated functions effectively and in compliance with applicable laws and regulatory requirements;
- (k) the AIFM ensures that the delegate protects any confidential information relating to the AIFM, the AIF affected by the delegation and the investors in that AIF;
- (l) the AIFM ensures that the delegate establishes, implements and maintains a contingency plan for disaster recovery and periodic testing of backup facilities while taking into account the types of delegated functions.

Textual Amendments

F71 Words in Art. 75(c) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(2)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 76

Objective reasons for delegation

1 The AIFM shall provide the [^{F72}FCA] with a detailed description, explanation and evidence of the objective reasons for delegation. When assessing whether the entire delegation structure is based on objective reasons within the meaning of [^{F73}rule 3.10.2(2)(a) of the Investment Funds sourcebook] the following criteria shall be considered:

- a optimising of business functions and processes;
- b cost saving;
- c expertise of the delegate in administration or in specific markets or investments;
- d access of the delegate to global trading capabilities.

2 Upon request by the [^{F74}FCA], an AIFM shall provide further explanations and provide documents proving that the entire delegation structure is based on objective reasons.

Textual Amendments

F72 Word in Art. 76(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(3)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

F73 Words in Art. 76(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(3)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

F74 Word in Art. 76(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(3)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Article 77

Features of the delegate

1 A delegate shall have sufficient resources and shall employ sufficient personnel with the skills, knowledge and expertise necessary for the proper discharge of the tasks delegated to it and have an appropriate organisational structure supporting the performance of the delegated tasks.

2 Persons who effectively conduct the activities delegated by the AIFM shall have sufficient experience, appropriate theoretical knowledge and appropriate practical experience in the relevant functions. Their professional training and the nature of the functions they have performed in the past shall be appropriate for the conduct of the business.

3 Persons who effectively conduct the business of the delegate shall not be deemed of sufficiently good repute if they have any negative records relevant both for the assessment of good repute and for the proper performance of the delegated tasks or if there is other relevant information which affects their good reputation. Such negative records shall include but shall not be limited to criminal offences, judicial proceedings or administrative sanctions relevant for the performance of the delegated tasks. Special attention shall be given to any offences related to financial activities, including but not limited to obligations relating to the prevention of money laundering, dishonesty, fraud or financial crime, bankruptcy or insolvency. Other relevant information shall include information such as that indicating that the person is not trustworthy or honest.

Where the delegate is regulated in respect of its professional services within the [F75United Kingdom], factors referred to in the first subparagraph shall be deemed to be satisfied when the relevant supervisory authority has reviewed the criterion of ‘good repute’ within the authorisation procedure unless there is evidence to the contrary.

Textual Amendments

F75 Words in Art. 77(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **31(4)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 78

Delegation of portfolio or risk management

1 This Article shall apply where the delegation of portfolio management or risk management is concerned.

2 The following entities shall be deemed to be authorised or registered for the purpose of asset management and subject to supervision in accordance with [F76regulation 26(1)(a) and (2) of the AIFM Regulations 2013, and rules 3.10.2(2)(c) and 3.10.7G of the Investment Funds sourcebook]:

- a management companies authorised under [F77FSMA];
- b investment firms authorised under [F78FSMA with permission under Part 4A of that Act to carry out the regulated activity of managing investments under article 37 of the Regulated Activities Order 2001];

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- c credit institutions authorised under [F79FSMA with permission under Part 4A of that Act to carry out the regulated activity of managing investments under article 37 of the Regulated Activities Order 2001];
- d external AIFMs authorised under [F80the Financial Services and Markets Act 2000];
- e third country entities authorised or registered for the purpose of asset management and effectively supervised by a competent authority in those countries.

3 Where the delegation is conferred on a third-country undertaking the following conditions shall be fulfilled in accordance with [F81rules 3.10.2(2)(d) of the Investment Funds sourcebook]:

- a a written arrangement shall exist between the [F82FCA] and the supervisory authorities of the undertaking to which delegation is conferred;
- b with respect to the undertaking to which delegation is conferred, the arrangement referred to in point (a) allows the [F83FCA] to:
 - (i) obtain on request the relevant information necessary to carry out their supervisory tasks as provided for in [F84the UK provisions which implemented] Directive 2011/61/EU;
 - (ii) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
 - (iii) carry out on-site inspections on the premises of the undertaking to which functions were delegated. The practical procedures for on-site inspections shall be detailed in the written arrangement;
 - (iv) receive as soon as possible information from the supervisory authority in the third country for the purpose of investigating apparent breaches of the requirements of [F85the UK provisions which implemented] Directive 2011/61/EU and its implementing measures;
 - (v) cooperate in enforcement in accordance with the national and international law applicable to the supervisory authority of the third country and the EU competent authorities in cases of breach of the requirements of [F86the UK provisions which implemented] Directive 2011/61/EU and its implementing measures ^{F87}....

Textual Amendments

- F76** Words in Art. 78(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(a)(i)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F77** Word in Art. 78(2)(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(a)(ii)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F78** Words in Art. 78(2)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(a)(iii)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F79** Words in Art. 78(2)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(a)(iv)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F80** Words in Art. 78(2)(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(a)(v)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F81** Words in Art. 78(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F82** Word in Art. 78(3)(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(ii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F83** Word in Art. 78(3)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(iii)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F84** Words in Art. 78(3)(b)(i) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(iv)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F85** Words in Art. 78(3)(b)(iv) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(v)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F86** Words in Art. 78(3)(b)(v) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(vi)(aa)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F87** Words in Art. 78(3)(b)(v) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(5)(b)(vi)(bb)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 79

Effective supervision

A delegation shall be deemed to prevent the effective supervision of the AIFM where:

- (a) the AIFM, its auditors and the [^{F88}FCA] do not have effective access to data related to the delegated functions and to the business premises of the delegate, or the [^{F88}FCA] are not able to exercise those rights of access;
- (b) the delegate does not cooperate with the [^{F89}FCA] in connection with the delegated functions;
- (c) the AIFM does not make available on request to the [^{F90}FCA] all information necessary to enable authorities to supervise the compliance of the performance of the delegated functions with the requirements of [^{F91}the UK provisions which implemented] Directive 2011/61/EU and its implementing measures.

Textual Amendments

- F88** Word in Art. 79(a) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(6)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F89** Word in Art. 79(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(6)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F90** Word in Art. 79(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(6)(c)(i)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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F91 Words in Art. 79(c) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(6)(c)(ii)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 80

Conflicts of interest

1 In accordance with [^{F92}rule 3.10.6(2) of the Investment Funds sourcebook], the criteria to assess whether a delegation conflicts with the interests of the AIFM or the investor in the AIF shall at least include:

- a where the AIFM and the delegate are members of the same group or have any other contractual relationship, the extent to which the delegate controls the AIFM or has the ability to influence its actions;
- b where the delegate and an investor in the relevant AIF are members of the same group or have any other contractual relationship, the extent to which this investor controls the delegate or has the ability to influence its actions;
- c the likelihood that the delegate makes a financial gain, or avoids a financial loss, at the expense of the AIF or the investors in the AIF;
- d the likelihood that the delegate has an interest in the outcome of a service or an activity provided to the AIFM or the AIF;
- e the likelihood that the delegate has a financial or other incentive to favour the interest of another client over the interests of the AIF or the investors in the AIF;
- f the likelihood that the delegate receives or will receive from a person other than the AIFM an inducement in relation to the collective portfolio management activities provided to the AIFM and the AIFs it manages in the form of monies, goods or services other than the standard commission or fee for that service.

2 The portfolio or risk management function may be considered to be functionally and hierarchically separated from other potentially conflicting tasks only where the following conditions are satisfied:

- a persons engaged in portfolio management tasks are not engaged in the performance of potentially conflicting tasks such as controlling tasks;
- b persons engaged in risk management tasks are not engaged in the performance of potentially conflicting tasks such as operating tasks;
- c persons engaged in risk management functions are not supervised by those responsible for the performance of operating tasks;
- d the separation is ensured throughout the whole hierarchical structure of the delegate up to its governing body and is reviewed by the governing body and, where it exists, the supervisory function of the delegate.

3 Potential conflicts of interest shall be deemed properly identified, managed, monitored and disclosed to the investors of the AIF only if:

- a the AIFM ensures that the delegate takes all reasonable steps to identify, manage and monitor potential conflicts of interest that may arise between itself and the AIFM, the AIF or the investors in the AIF. The AIFM shall ensure that the delegate has procedures in place corresponding to those required under Articles 31 to 34;
- b the AIFM ensures that the delegate discloses potential conflicts of interest as well as the procedures and measures to be adopted by it in order to manage such conflicts of

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interest to the AIFM which shall disclose them to the AIF and the investors in the AIF in accordance with Article 36.

Textual Amendments

F92 Words in Art. 80(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(7)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 81

Consent and notification of sub-delegation

1 A subdelegation shall become effective where the AIFM demonstrates its consent to it in writing.

A general consent given in advance by the AIFM shall not be deemed consent in accordance with [^{F93}rules 3.10.4(1) of the Investment Funds sourcebook].

2 Pursuant to [^{F94}rule 3.10.4(2) of the Investment Funds sourcebook], the notification shall contain details of the delegate, the name of the competent authority where the sub-delegate is authorised or registered, the delegated functions, the AIFs affected by the sub-delegation, a copy of the written consent by the AIFM and the intended effective date of the sub-delegation.

Textual Amendments

F93 Words in Art. 81(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(8)(a)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

F94 Words in Art. 81(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(8)(b)** (as amended by [S.I. 2019/325](#), regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 82

Letter-box entity and AIFM no longer considered to be managing an AIF

1 An AIFM shall be deemed a letter-box entity and shall no longer be considered to be the manager of the AIF at least in any of the following situations:

- a the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation;
- b the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions in particular in relation to the implementation of the general investment policy and investment strategies;
- c the AIFM loses its contractual rights to inquire, inspect, have access or give instructions to its delegates or the exercise of such rights becomes impossible in practice;
- d the AIFM delegates the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the AIFM itself. When assessing the extent of delegation, [^{F95}the FCA] shall assess

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the entire delegation structure taking into account not only the assets managed under delegation but also the following qualitative criteria:

- (i) the types of assets the AIF or the AIFM acting on behalf of the AIF is invested in, and the importance of the assets managed under delegation for the risk and return profile of the AIF;
- (ii) the importance of the assets under delegation for the achievement of the investment goals of the AIF;
- (iii) the geographical and sectoral spread of the AIF's investments;
- (iv) the risk profile of the AIF;
- (v) the type of investment strategies pursued by the AIF or the AIFM acting on behalf of the AIF;
- (vi) the types of tasks delegated in relation to those retained; and
- (vii) the configuration of delegates and their sub-delegates, their geographical sphere of operation and their corporate structure, including whether the delegation is conferred on an entity belonging to the same corporate group as the AIFM.

F96²
F97³

Textual Amendments

- F95** Words in Art. 82(1)(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(9)(a)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F96** Art. 82(2) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(9)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)
- F97** Art. 82(3) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(9)(b)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

Textual Amendments

- F70** Words in Ch. 3 Section 8 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **31(1)** (as amended by S.I. 2019/325, regs. 1(3), 58); 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to :

- [Regulation revoked by 2023 c. 29 Sch. 1 Pt. 3](#)