

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 3

#### **Risk management**

<sup>F1</sup> ...

#### *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:
- 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 [<sup>F2</sup>rule 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:

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- (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 [F3]rule 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

- F2** 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)
- F3** 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:
- 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 [F4]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:

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- 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

- F4** 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:

- 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 <sup>[F5]</sup>FCA of any material changes to the risk management policy and of the arrangements, processes and techniques referred to in Article 45.

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#### Textual Amendments

- F5** 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 [<sup>F6</sup>FCA] shall review the way in which the AIFM has applied paragraphs 1 and 2 on the basis of the criteria laid down in [<sup>F7</sup>rule 3.7.2(2) of the Investment Funds sourcebook].

#### Textual Amendments

- F6** 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)
- F7** 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 [<sup>F8</sup>rule 3.7.2 of the Investment Funds sourcebook] shall ensure, at least, that:

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- 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

- F8** 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 [F<sup>9</sup>FCA].

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

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investors in accordance with [F<sup>10</sup>rule 3.2.5(3) of the Investment Funds sourcebook] and approved by the governing body.

#### Textual Amendments

- F9** 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)
- F10** 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 [F<sup>11</sup>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;
- 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

- F11** 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)

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#### Textual Amendments

- F1** 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)

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**Changes and effects yet to be applied to :**

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