

Directive 2011/61/EU of the European Parliament and of the Council of
8 June 2011 on Alternative Investment Fund Managers and amending
Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No
1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR AIFMs

SECTION 1

General requirements

Article 12

General principles

- 1 Member States shall ensure that, at all times, AIFMs:
- a act honestly, with due skill, care and diligence and fairly in conducting their activities;
 - b act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;
 - c have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;
 - d take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated;
 - e comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;
 - f treat all AIF investors fairly.

No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.

- 2 Each AIFM the authorisation of which also covers the discretionary portfolio management service referred to in point (a) of Article 6(4) shall:
- a not be permitted to invest all or part of the client's portfolio in units or shares of the AIFs it manages, unless it receives prior general approval from the client;
 - b with regard to the services referred to in Article 6(4), be subject to Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁽¹⁾.
- 3 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying the criteria to be used by the relevant competent authorities to assess whether AIFMs comply with their obligations under paragraph 1.

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Article 13

Remuneration

1 Member States shall require AIFMs to have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

The AIFMs shall determine the remuneration policies and practices in accordance with Annex II.

2 ESMA shall ensure the existence of guidelines on sound remuneration policies which comply with Annex II. The guidelines shall take into account the principles on sound remuneration policies set out in Recommendation 2009/384/EC, the size of the AIFMs and the size of AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities. ESMA shall cooperate closely with the European Supervisory Authority (European Banking Authority) (EBA).

Article 14

Conflicts of interest

1 Member States shall require AIFMs to take all reasonable steps to identify conflicts of interest that arise in the course of managing AIFs between:

- a the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;
- b the AIF or the investors in that AIF, and another AIF or the investors in that AIF;
- c the AIF or the investors in that AIF, and another client of the AIFM;
- d the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
- e two clients of the AIFM.

AIFMs shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

AIFMs shall segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

2 Where organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

3 Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms shall be set out in a written contract. In particular any possibility of transfer and reuse of AIF assets shall be provided for in that contract and shall comply with the AIF rules or instruments of incorporation. The contract shall provide that the depositary be informed of the contract.

AIFMs shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

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

- a the types of conflicts of interest as referred to in paragraph 1;
- b the reasonable steps AIFMs are expected to take in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.

Article 15

Risk management

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

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

[^{F12} AIFMs shall implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed. In particular, AIFMs shall not solely or mechanistically rely on credit ratings issued by credit rating agencies as defined in Article 3(1) (b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies⁽²⁾, for assessing the creditworthiness of the AIFs' assets.]

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

3 AIFMs shall at least:

- a implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
- b ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
- c ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

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

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

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

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

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

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

Textual Amendments

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

Article 16

Liquidity management

1 AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

2 AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

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

- a the liquidity management systems and procedures; and
- b the alignment of the investment strategy, liquidity profile and redemption policy set out in paragraph 2.

[^{F3}Article 17

Where AIFMs are exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2017/2402 of the European Parliament and of the Council⁽³⁾, they shall, in the best interest of the investors in the relevant AIFs, act and take corrective action, if appropriate.]

Textual Amendments

- F3** Substituted by [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.](#)

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- (1) [OJ L 84, 26.3.1997, p. 22.](#)
- (2) [^{F1}[OJ L 302, 17.11.2009, p. 1.](#)]
- (3) [^{F3}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 ([OJ L 347, 28.12.2017, p. 35](#)).]

Textual Amendments

- F1** Substituted by [Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings \(Text with EEA relevance\).](#)
- F3** Substituted by [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.](#)