

## Chapter 6

# Operating duties and responsibilities



## 6.6A Duties of AFMs in relation to UCITS schemes

### Application

6.6A.1

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- (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS scheme*.
  - (b) [deleted]
- (2) [deleted]
- (3) [deleted]

### Duties of AFMs of UCITS schemes to act in the best interests of the scheme and its unitholder

6.6A.2

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An *authorised fund manager* of a *UCITS scheme* must:

- (1) ensure that the *unitholders* of any such *scheme* it manages are treated fairly;
- (2) refrain from placing the interests of any group of *unitholders* above the interests of any other group of *unitholders*;
- (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- (4)
  - (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each *scheme* it manages, in order to comply with the duty to act in the best interests of the *unitholders*; and
  - (b) be able to demonstrate that the investment portfolio of each such *scheme* it manages is accurately valued;
- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*; and
- (6) in carrying out its functions act:
  - (a) honestly, fairly, professionally and independently; and
  - (b) solely in the interests of the *UCITS scheme* and its *unitholders*.

[Note: article 22 of the *UCITS Implementing Directive* and article 25(2) first paragraph of the *UCITS Directive*]

6.6A.3

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- (1) Examples of malpractices for the purposes of ■ COLL 6.6A.2R (3) would include market timing and late trading, which may have detrimental effects on *unitholders* and may undermine the functioning of the market.
- (2) Examples of undue costs for the purposes of ■ COLL 6.6A.2R (5) would include unreasonable charges and excessive trading, taking into account the *scheme's* investment objectives and policy.

[Note: recital (18) of the *UCITS implementing Directive*]

### Due diligence requirements of AFMs of UCITS schemes

6.6A.4

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An authorised fund manager of a UCITS scheme must:

- (1) ensure a high level of diligence in the selection and ongoing monitoring of *scheme property*, in the best interests of the *scheme* and the integrity of the market;
- (2) ensure it has adequate knowledge and understanding of the assets in which any *scheme* it manages is invested;
- (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;
- (4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:
  - (a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the *scheme* before carrying out the investment; and
  - (b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;
- (5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
- (6) before entering into any arrangements of the type referred to in (5):
  - (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
  - (b) establish methods for the on-going assessment of the standard of performance of the third party.

[Note: article 23 of the *UCITS implementing Directive*]

**Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company**

**6.6A.5** **R** The *authorised fund manager* of a *UCITS scheme* must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14(1)(e) of the *UCITS Directive*]

**Strategies for the exercise of voting rights**

**6.6A.6** **R** (1) An *authorised fund manager* of a *UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, are to be exercised, to the exclusive benefit of the *scheme* concerned.

- (2) The strategy referred to in (1) must determine measures and procedures for:
- (a) monitoring relevant corporate events;
  - (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant *scheme*; and
  - (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

- (3) An *authorised fund manager* of a *UCITS scheme* must make available to *unitholders*:
- (a) a summary description of the strategies referred to in (1); and
  - (b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[Note: article 21 of the *UCITS implementing Directive*]

**Appointment of a single depositary**

**6.6A.7** **R** An *authorised fund manager* of a *UCITS scheme* must (for each *scheme* it manages) ensure that:

- (1) a single *depositary* is appointed; and
- (2) the assets of the *UCITS scheme* are entrusted to the *depositary* for safekeeping in accordance with ■ COLL 6.6B.18R and ■ COLL 6.6B.19R.

[Note: article 22(1) and (5) of the *UCITS Directive*]

**Eligible depositaries for UCITS schemes**

**6.6A.8** **R** An *authorised fund manager* must ensure that the *depositary* it appoints under ■ COLL 6.6A.7R is a *firm established* in the *United Kingdom* that has the *Part 4A permission* of acting as trustee or depositary of a *UK UCITS* and is one of the following:

- (1) a national central bank; or

- (2) a *credit institution*; or
- (3) a *firm* which:
  - (a) [deleted]
  - (b) either:
    - (i) is a *MiFID investment firm*; or
    - (ii) is an *investment management firm* to which IPRU(INV) 5 applies; and
  - (c) satisfies the non-bank depositary organisational requirements in ■ COLL 6.6B.11R.

[Note: article 23(2)(a), (b) and (c) (first sentence) of the *UCITS Directive*]

**6.6A.9** G For a *depositary* to be *established* in the *United Kingdom*, it must have its registered office in the *United Kingdom*.

**6.6A.10** R [deleted]

**Written contract**

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**6.6A.11** R

- (1) An *authorised fund manager* of a *UCITS scheme* must ensure that the appointment of the *depositary* is evidenced by a written contract.
- (2) The contract must regulate the flow of information deemed necessary to allow the *depositary* to perform its functions for the *scheme*.

[Note: article 22(2) of the *UCITS Directive*]

**6.6A.12** G The written contract referred to in ■ COLL 6.6A.11R may cover more than one *scheme*.

**6.6A.13** G Article 2 of the *UCITS level 2 regulation* sets out the minimum information that must be included in the written contract between:

- (1) (a) the *authorised fund manager* of a *UCITS scheme*; and
- (b) [deleted]
- (2) the *depositary*.