

Chapter 15

Closed-Ended Investment Funds: Premium listing



15.1 Application

15.1.1

R

This chapter applies to a *closed-ended investment fund* applying for, or with, a *premium listing*.



15.2 Requirements for listing

- 15.2.1** **R** To be *listed*, an *applicant* must comply with:
- (1) ■ LR 2 (Requirements for listing);
 - (2) the following provisions of ■ LR 6 (Additional requirements for premium listing (commercial company)):
 - (a) ■ LR 6.2.4R (1) and ■ LR 6.2.4R(2), if the *applicant* is a *new applicant* for the *admission* of *equity shares* and it has published or filed audited accounts;
 - (b) ■ LR 6.2.6R;
 - (c) ■ LR 6.7.1R, ■ LR 6.9.1R(1), ■ LR 6.9.2R, ■ LR 6.14.1R to ■ LR 6.14.5G, and ■ LR 6.15.1R; and
 - (3) ■ LR 15.2.2 R to ■ LR 15.2.13A R.

Shares of a third country company

- 15.2.1A** **R** The *FCA* will not admit *shares* of a *company* incorporated in a *third country* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[Note: Article 51 CARD]

Investment activity

- 15.2.2** **R** An *applicant* must invest and manage its assets in a way which is consistent with its object of spreading investment risk.

- 15.2.3** **G** [deleted]

- 15.2.3A** **R**
- (1) An *applicant* and its *subsidiary undertakings* must not conduct any trading activity which is significant in the context of its *group* as a whole.
 - (2) This rule does not prevent the businesses forming part of the investment portfolio of the *applicant* from conducting trading activities themselves.

- 15.2.4** **R** [deleted]

- 15.2.4A **G** Although there is no restriction on an *applicant* taking a controlling stake in an investee company, to ensure a spread of investment risk an *applicant* should avoid:
- (1) cross-financing between the businesses forming part of its investment portfolio including, for example, through the provision of undertakings or security for borrowings by such businesses for the benefit of another; and
 - (2) the operation of common treasury functions as between the *applicant* and investee companies.

Cross-holdings

- 15.2.5 **R**
- (1) No more than 10%, in aggregate, of the value of the total assets of an *applicant* at admission may be invested in other *listed closed-ended investment funds*.
 - (2) The restriction in (1) does not apply to investments in *closed-ended investment funds* which themselves have published investment policies to invest no more than 15% of their total assets in other *listed closed-ended investment funds*.

Feeder funds

- 15.2.6 **R**
- (1) If an *applicant* principally invests its funds in another *company* or fund that invests in a portfolio of *investments* (a "master fund"), the *applicant* must ensure that:
 - (a) the master fund's investment policies are consistent with the *applicant's* published investment policy and provide for spreading investment risk; and
 - (b) the master fund in fact invests and manages its investments in a way that is consistent with the *applicant's* published investment policy and spreads investment risk.
 - (2) Paragraph (1) applies whether the *applicant* invests its funds in the master fund directly or indirectly through other intermediaries.
 - (3) Where the *applicant* invests in the master fund through a chain of intermediaries between the applicant and the master fund, the *applicant* must ensure that each intermediary in the chain complies with paragraphs (1)(a) and (b).

Investment policy

- 15.2.7 **R** An *applicant* must have a published investment policy that contains information about the policies which the *closed-ended investment fund* will follow relating to asset allocation, risk diversification, and gearing, and that includes maximum exposures.

- 15.2.8 **G** The information in the investment policy, including quantitative information concerning the exposures mentioned in ■ LR 15.2.7 R, should be sufficiently precise and clear as to enable an investor to:
- (1) assess the investment opportunity;
 - (2) identify how the objective of risk spreading is to be achieved; and
 - (3) assess the significance of any proposed change of investment policy.

15.2.9 **R** [deleted]

15.2.10 **G** [deleted]

Independence

- 15.2.11 **R** The board of *directors* or equivalent body of the *applicant* must be able to act independently:
- (1) of any *investment manager* appointed to manage *investments* of the *applicant*; and
 - (2) if the *applicant* (either directly or through other intermediaries) has an investment policy of principally investing its funds in another *company* or fund that invests in a portfolio of investments ("a master fund"), of the master fund and of any *investment manager* of the master fund.

15.2.11A **R** ■ LR 15.2.11R (2) does not apply if the *company* or fund which invests its funds in another *company* or fund is a *subsidiary undertaking* of the *applicant*.

15.2.12 **G** [deleted]

- 15.2.12-A **R** For the purposes of ■ LR 15.2.11 R:
- (1) the chair of the board or equivalent body of the *applicant* must be independent; and
 - (2) a majority of the board or equivalent body of the *applicant* must be independent (the chairman may be included within that majority).

- 15.2.12A **R** For the purposes of ■ LR 15.2.11 R and ■ LR 15.2.12-A R, the following are not independent:
- (1) *directors, employees, partners, officers* or professional advisers of or to:
 - (a) an *investment manager* of the *applicant*; or
 - (b) a master fund or *investment manager* referred to in ■ LR 15.2.11R (2); or

- (c) any other *company* in the same *group* as the *investment manager* of the *applicant*; or
 - (2) *directors, employees* or professional advisers of or to other *investment companies* or funds that are:
 - (a) managed by the same *investment manager* as the *investment manager* to the *applicant*; or
 - (b) managed by any other *company* in the same *group* as the *investment manager* to the *applicant*.
- 15.2.13 G [deleted]
- 15.2.13A R A *person* referred to in ■ LR 15.2.12AR (1) or ■ (2) who is a *director* of the *applicant* must be subject to annual re-election by the *applicant's* shareholders.
- 15.2.14 R [deleted]
- 15.2.15 G [deleted]
- 15.2.16 R [deleted]
- 15.2.17 R [deleted]
- 15.2.18 G [deleted]
- 15.2.19 R The board of *directors* or equivalent body of the *applicant* must be in a position to effectively monitor and manage the performance of its key service providers, including any *investment manager* of the *applicant*.



15.3 Listing applications and procedures

15.3.1 **G** An *applicant* is required to comply with **LR 3** (Listing applications).

Sponsors

15.3.2 **G** An *applicant* that is seeking admission of its *equity shares* is required to retain a *sponsor* in accordance with **LR 8** (Sponsors).

15.3.3 **R** An *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity shares* which requires the production of *listing particulars*.

Multi-class fund or umbrella fund

15.3.4 **R** An application for the *listing* of *securities* of a multi-class fund or umbrella fund must provide details of the various classes or designations of *securities* intended to be issued by the *applicant*.

15.4 Continuing obligations

Compliance with LR 9

15.4.1 **R** A closed-ended investment fund must comply with all of the requirements of ■ LR 9 (Continuing obligations) subject to the modifications and additional requirements set out in this section.

Investment policy

15.4.1A **R** A closed-ended investment fund must, at all times, have a published investment policy which complies with ■ LR 15.2.7 R.

15.4.1B **G** A closed-ended investment fund should have regard to the guidance in ■ LR 15.2.8 G at all times.

15.4.1C **R** ■ LR 9.2.22AR to ■ LR 9.2.22FG do not apply to a close-ended investment fund.

Investment activity and compliance with investment policy

15.4.2 **R** A closed-ended investment fund must, at all times, invest and manage its assets:

- (1) in a way which is consistent with its object of spreading investment risk; and
- (2) in accordance with its published investment policy.

15.4.3 **G** [deleted]

15.4.3A **R** A closed-ended investment fund must comply with ■ LR 15.2.3A R at all times.

15.4.4 **R** [deleted]

15.4.4A **G** A closed-ended investment fund should have regard to the guidance in ■ LR 15.2.4A G at all times.

Cross-holdings

15.4.5 **R** A *closed-ended investment fund* must, when making an acquisition of a constituent investment, observe the principles relating to cross-holdings in ■ LR 15.2.5 R.

Feeder funds

15.4.6 **R** If a *closed-ended investment fund* principally invests its funds in the manner set out in ■ LR 15.2.6 R, the *closed-ended investment fund* must ensure that ■ LR 15.2.6 R is complied with at all times.

15.4.6A **G** ■ LR 15.2.6 R and ■ LR 15.4.6 R are not intended to require the *closed-ended investment fund* to be able to control or direct the master fund or intermediary (as the case may be). But if the *closed-ended investment fund* becomes aware that the master fund or intermediary (as the case may be) is not investing or managing its investments in accordance with that rule it will need to immediately consider withdrawal of its funds from the master fund or intermediary (as the case may be) or other appropriate action so that it is no longer in breach of the *rules*.

Independence and effective management

15.4.7 **R** ■ LR 15.2.11 R to ■ LR 15.2.13A R apply at all times to a *closed-ended investment fund*.

15.4.7A **R** The board of *directors* or equivalent body of the *issuer* must effectively monitor and manage the performance of its key service providers, including any *investment manager* appointed by the *issuer*, on an on-going basis.

Material changes to investment policy

15.4.8 **R** Unless ■ LR 15.4.8A R applies, a *closed-ended investment fund* must :

- (1) submit any proposed material change to its published investment policy to the *FCA* for approval; and
- (2) having obtained the *FCA*'s approval, obtain the prior approval of its shareholders to any material change to its published investment policy.

15.4.8A **R** A *closed-ended investment fund* is not required to seek the *FCA*'s approval for a material change to its published investment policy if:

- (1) the change is proposed to enable the winding up of the *closed-ended investment fund*; and
- (2) the winding up:
 - (a) is in accordance with the constitution of the *closed-ended investment fund*; and
 - (b) will be submitted for approval by the shareholders of the *closed-ended investment fund* at the same time as the proposed material change to the investment policy.

15.4.9 **G** In considering what is a material change to the published investment policy, the *closed-ended investment fund* should have regard to the cumulative effect of all the changes since its shareholders last had the opportunity to vote on the investment policy or, if they have never voted, since the *admission to listing*.

Conversion of an existing listed class of equity shares

15.4.10 **R** An existing *listed class of equity shares* may not be converted into a new *class* or an *unlisted class* unless prior approval has been given by the shareholders of that existing *class*.

Further issues

15.4.11 **R** (1) Unless authorised by its shareholders, a *closed-ended investment fund* may not issue further *shares* of the same class as existing *shares* (including issues of *treasury shares*) for cash at a price below the net asset value per *share* of those *shares* unless they are first offered pro rata to existing holders of *shares* of that class.

(2) When calculating the net asset value per *share*, *treasury shares* held by the *closed-ended investment fund* should not be taken into account.

Cancellation of premium listing

15.4.11A **G** A *closed-ended investment fund* must comply with ■ LR 5.2.7A R

15.4.12 **R** [deleted]

15.4.13 **R** [deleted]

15.4.14 **R** [deleted]

15.4.15 **R** [deleted]

15.4.16 **R** [deleted]

15.4.17 **R** [deleted]

15.4.18 **R** [deleted]

15.4.19 **R** [deleted]

15.4.20 **R** [deleted]

15.4.21 **R** [deleted]

15.4.22 **G** [deleted]

15.4.23 **R** [deleted]

15.4.24 **R** [deleted]

15.4.25 **R** [deleted]

Externally managed companies

15.4.26 **R** A closed-ended investment fund is not required to comply with **LR 9.2.20 R**.

Independent business

15.4.27 **R** A closed-ended investment fund is not required to comply with **LR 9.2.2A R** to **LR 9.2.2G R**.

Notifications to the FCA

15.4.28 **R** (1) A closed-ended investment fund is not required to comply with **LR 9.2.23 R** in so far as it relates to **LR 9.2.2A R**, **LR 9.2.2E R** and **LR 9.2.2F R**.

(2) A closed-ended investment fund is not required to comply with **LR 9.2.24 R** to **LR 9.2.25 R**.

Annual financial statement

15.4.29 **R** A closed-ended investment fund is not required to comply with **LR 9.8.4R(14)** and **LR 9.8.6R(8)**.

15.4.29A **R** When making a statement required by **LR 9.8.6R(9)** in its annual financial report, a closed-ended investment fund need not set out the following matters if they are inapplicable to the closed-ended investment fund and its statement sets out the reasons why those matters are inapplicable:

(1) whether the closed-ended investment fund has met the board diversity target in **LR 9.8.6R(9)(a)(ii)**; and

(2) matters set out in **LR 9.8.6R(9)(b)** to the extent that they relate to the board diversity target in **LR 9.8.6R(9)(a)(ii)**.

15.4.29B **R** When including numerical data required by ■ LR 9.8.6R(10) in its annual financial report, a *closed-ended investment fund* need not include the fields in the first row of each of the tables in ■ LR 9 Annex 2, and the corresponding data for those fields, that are inapplicable to the *closed-ended investment fund*, if it sets out in a statement accompanying the numerical data the reasons why those fields are inapplicable.

Election of independent directors.....

15.4.30 **R** A *closed-ended investment fund* is not required to comply with ■ LR 13.8.17 R.



15.5 Transactions

15.5.1 **R** [deleted]

Significant transactions

15.5.2 **R** A *closed-ended investment fund* must comply with **LR 10** (Significant transactions) and **LR 5.6**, except in relation to transactions that are executed in accordance with the scope of its published investment policy.

Transactions with related parties

15.5.3 **G** **LR 11** (Related party transactions) applies to a *closed-ended investment fund*.

15.5.4 **R** In addition to the definition in **LR 11.1.4 R** a *related party* includes any *investment manager* of the *closed-ended investment fund* and any member of such *investment manager's* group.

Additional exemption from related party requirements

15.5.5 **R**

- (1) **LR 11.1.7 R** to **LR 11.1.11 R** do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* or any member of that *investment manager's* group where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:
 - (a) made at the same time and on substantially the same economic and financial terms; or
 - (b) referred to in the *closed-ended investment fund's* published investment policy; or
 - (c) made in accordance with a pre-existing agreement between the *closed-ended investment fund* and its *investment manager*.
- (2) For the purposes of paragraph (1)(c), a pre-existing agreement is an agreement which was entered into at the time the *investment manager* was appointed.



15.6 Notifications and periodic financial information

Changes to tax status

15.6.1 **R** A *closed-ended investment fund* must notify any change in its taxation status to a *RIS* as soon as possible.

Annual financial report

15.6.2 **R** In addition to the requirements in **LR 9.8** (Annual financial report), a *closed-ended investment fund* must include in its annual financial report:

- (1) a statement (including a quantitative analysis) explaining how it has invested its assets with a view to spreading investment risk in accordance with its published investment policy;
- (2) a statement, set out in a prominent position, as to whether in the opinion of the *directors*, the continuing appointment of the *investment manager* on the terms agreed is in the interests of its shareholders as a whole, together with a statement of the reasons for this view;
- (3) the names of the fund's *investment managers* and a summary of the principal contents of any agreements between the *closed-ended investment fund* and each of the *investment managers*, including but not limited to:
 - (a) an indication of the terms and duration of their appointment;
 - (b) the basis for their remuneration; and
 - (c) any arrangements relating to the termination of their appointment, including compensation payable in the event of termination;
- (4) [deleted]
- (5) the full text of its current published investment policy; and
- (6) a comprehensive and meaningful analysis of its portfolio.

Annual financial report additional requirements for property investment entities

15.6.3 **R** A *closed-ended investment fund* that, as at the end of its financial year, has invested more than 20% of its assets in *property* must include in its annual

financial report a summary of the valuation of its portfolio, carried out in accordance with ■ LR 15.6.4 R.

15.6.4 **R** A valuation required by ■ LR 15.6.3 R must:

- (1) either:
 - (a) be made in accordance with the Appraisal and Valuation Standards (6th edition) issued by the Royal Institution of Chartered Surveyors; or
 - (b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards (6th edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-compliance; and
- (2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (6th edition) issued by the Royal Institution of Chartered Surveyors.

15.6.5 **R** The summary described in ■ LR 15.6.3 R must include:

- (1) the total value of *properties* held at the year end;
- (2) totals of the cost of *properties* acquired;
- (3) the net book value of *properties* disposed of during the year; and
- (4) an indication of the geographical location and type of *properties* held at the year end.

Statement regarding compliance with UK Corporate Governance Code

- 15.6.6** **R**
- (1) This *rule* applies to a *closed-ended investment fund* that has no executive *directors*.
 - (2) A *closed-ended investment fund's* statement required by ■ LR 9.8.6R (6) need not include details about Principles P, Q and R and Provisions 32 to 41 *UK Corporate Governance Code* except to the extent that those Principles or Provisions relate specifically to non-executive *directors*.

Annual financial and half yearly report

- 15.6.7** **R**
- In addition to the requirements in ■ LR 9 (Continuing obligations), half-yearly reports and, if applicable, preliminary statements of annual results must include information showing the split between:
- (1) dividend and interest received; and
 - (2) other forms of income (including income of associated companies).

Notification of cross-holdings

15.6.8

R

A closed-ended investment fund must notify to a RIS within five business days of the end of each quarter a list of all investments in other listed closed-ended investment funds, as at the last business day of that quarter, which themselves do not have stated investment policies to invest no more than 15% of their total assets in other listed closed-ended investment funds.