

## Chapter 6

# Operating duties and responsibilities

6.6A

Duties of AFMs in relation to UCITS schemes

Application

6.6A.1R

- (1) This section applies to:
- (a) an authorised fund manager of a UCITS scheme, a depositary, 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.2R

- 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.
- COLL 6/2

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■ Release 35 ● Apr 2024

		[Note: article 22 of the <i>UCITS Implementing Directive</i> and article 25(2) first paragraph of the <i>UCITS Directive</i> ]
6.6A.3	G	<p>(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 <i>unitholders</i> and may undermine the functioning of the market.</p> <p>(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 <i>scheme's</i> investment objectives and policy.</p> <p>[Note: recital (18) of the <i>UCITS implementing Directive</i>]</p>
		<b>Due diligence requirements of AFMs of UCITS schemes</b>
6.6A.4	R	<p>An authorised fund manager of a <i>UCITS scheme</i> must:</p> <ol style="list-style-type: none"> <li>(1) ensure a high level of diligence in the selection and ongoing monitoring of <i>scheme property</i>, in the best interests of the <i>scheme</i> and the integrity of the market;</li> <li>(2) ensure it has adequate knowledge and understanding of the assets in which any <i>scheme</i> it manages is invested;</li> <li>(3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any <i>UCITS scheme</i> it manages are carried out in compliance with the objectives and the investment strategy and <i>risk limit system</i> of the <i>scheme</i>;</li> <li>(4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment: <ol style="list-style-type: none"> <li>(a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the <i>scheme</i> before carrying out the investment; and</li> <li>(b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;</li> </ol> </li> <li>(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</li> <li>(6) before entering into any arrangements of the type referred to in (5): <ol style="list-style-type: none"> <li>(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</li> <li>(b) establish methods for the on-going assessment of the standard of performance of the third party.</li> </ol> </li> </ol> <p>[Note: article 23 of the <i>UCITS implementing Directive</i>]</p>

		<b>Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company</b>
6.6A.5	R	<p>The <i>authorised fund manager</i> of a <i>UCITS scheme</i> 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.</p> <p>[<b>Note:</b> article 14(1)(e) of the <i>UCITS Directive</i>]</p>
		<b>Strategies for the exercise of voting rights</b>
6.6A.6	R	<p>(1) An <i>authorised fund manager</i> of a <i>UCITS scheme</i> must develop adequate and effective strategies for determining when and how voting rights attached to ownership of <i>scheme property</i>, are to be exercised, to the exclusive benefit of the <i>scheme</i> concerned.</p> <p>(2) The strategy referred to in (1) must determine measures and procedures for:</p> <ul style="list-style-type: none"><li>(a) monitoring relevant corporate events;</li><li>(b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant <i>scheme</i>; and</li><li>(c) preventing or managing any conflicts of interest arising from the exercise of voting rights.</li></ul> <p>(3) An <i>authorised fund manager</i> of a <i>UCITS scheme</i> must make available to <i>unitholders</i>:</p> <ul style="list-style-type: none"><li>(a) a summary description of the strategies referred to in (1); and</li><li>(b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).</li></ul> <p>[<b>Note:</b> article 21 of the <i>UCITS implementing Directive</i>]</p>
		<b>Appointment of a single depositary</b>
6.6A.7	R	<p>An <i>authorised fund manager</i> of a <i>UCITS scheme</i> must (for each <i>scheme</i> it manages) ensure that:</p> <ul style="list-style-type: none"><li>(1) a single <i>depositary</i> is appointed; and</li><li>(2) the assets of the <i>UCITS scheme</i> are entrusted to the <i>depositary</i> for safekeeping in accordance with ■ COLL 6.6B.18R and ■ COLL 6.6B.19R.</li></ul> <p>[<b>Note:</b> article 22(1) and (5) of the <i>UCITS Directive</i>]</p>
		<b>Eligible depositaries for UCITS schemes</b>
6.6A.8	R	<p>An <i>authorised fund manager</i> must ensure that the <i>depositary</i> it appoints under ■ COLL 6.6A.7R is a <i>firm established</i> in the <i>United Kingdom</i> that has the <i>Part 4A permission</i> of <i>acting as trustee or depositary of a UK UCITS</i> and is one of the following:</p> <ul style="list-style-type: none"><li>(1) a national central bank; or</li></ul>

- (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

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*.