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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)

(OJ L 83, 22.3.2013, p. 1)

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CHAPTER I

DEFINITIONS

Article 1

Definitions

In addition to the definitions laid down in Article 2 of Directive 2011/61/EU, the following definitions apply for the purposes of this Regulation:

- (1) ‘capital commitment’ means the contractual commitment of an investor to provide the alternative investment fund (AIF) with an agreed amount of investment on request by the AIFM;
- (2) ‘relevant person’ in relation to an AIFM means any of the following:
 - (a) a director, partner or equivalent, or manager of the AIFM;
 - (b) an employee of the AIFM, or any other natural person whose services are placed at the disposal and under the control of the AIFM and who is involved in the provision of collective portfolio management services by the AIFM;
 - (c) a natural or legal person who is directly involved in the provision of services to the AIFM under a delegation arrangement to third parties for the purpose of the provision of collective portfolio management by the AIFM;
- (3) ‘senior management’ means the person or persons who effectively conduct the business of an AIFM in accordance with Article 8(1)(c) of Directive 2011/61/EU and, as the case may be, the executive member or members of the governing body;
- (4) ‘governing body’ means the body with ultimate decision making authority in an AIFM, comprising the supervisory and the managerial functions, or only the managerial function if the two functions are separated;
- (5) ‘special arrangement’ means an arrangement that arises as a direct consequence of the illiquid nature of the assets of an AIF which impacts the specific redemption rights of investors in a type of units or shares of the AIF and which is a bespoke or separate arrangement from the general redemption rights of investors;

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- (6) ‘sustainability risk’ means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council ⁽¹⁾;
- (7) ‘sustainability factors’ means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088.

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CHAPTER II

GENERAL PROVISIONS

SECTION 1

Calculation of assets under management

(Article 3(2) of Directive 2011/61/EU)

*Article 2***Calculation of the total value of assets under management**

1. In order to qualify for the exemption provided for in Article 3(2) of Directive 2011/61/EU an AIFM shall:

- (a) identify all AIFs for which it is appointed as the external AIFM or the AIF for which it is the AIFM, where the legal form of the AIF permits internal management, in accordance with Article 5 of Directive 2011/61/EU;
- (b) identify for each managed AIF the portfolio of assets and determine in accordance with the valuation rules laid down in the law of the country where the AIF is established and, as the case may be, or in the AIF rules or instruments of incorporation the corresponding value of assets under management, including all assets acquired through use of leverage;
- (c) aggregate the determined values of assets under management for all AIFs managed and compare the resulting total value of assets under management to the relevant threshold laid down in Article 3(2) of Directive 2011/61/EU.

2. For the purposes of paragraph 1, undertakings for collective investment in transferable securities (UCITS) for which the AIFM acts as the designated management company under Directive 2009/65/EC shall not be included in the calculation.

For the purposes of paragraph 1, AIFs managed by the AIFM for which the AIFM has delegated functions in accordance with Article 20 of Directive 2011/61/EU shall be included in the calculation. However, portfolios of AIFs that the AIFM is managing under delegation shall be excluded from the calculation.

3. For the purpose of calculating the total value of assets under management, each derivative instrument position, including any derivative embedded in transferable securities shall be converted into its equivalent position in the underlying assets of that derivative using

⁽¹⁾ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

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the conversion methodologies set out in Article 10. The absolute value of that equivalent position shall then be used for the calculation of the total value of assets under management.

4. Where an AIF invests in other AIFs managed by the same externally appointed AIFM, that investment may be excluded from the calculation of the AIFM's assets under management.

5. Where one compartment within an internally or externally managed AIF invests in another compartment of that AIF, that investment may be excluded from the calculation of the AIFM's assets under management.

6. The total value of assets under management shall be calculated in accordance with paragraphs 1 to 4 at least annually and using the latest available asset values. The latest available asset value for each AIF shall be produced during the 12 months preceding the date of the calculation of the threshold in accordance with the first sentence of this paragraph. The AIFM shall determine a threshold calculation date and apply it in a consistent manner. Any subsequent change to the date chosen must be justified to the competent authority. In selecting the threshold calculation date, the AIFM shall take into account the time and frequency of the valuation of the assets under management.

*Article 3***Ongoing monitoring of assets under management**

AIFMs shall establish, implement and apply procedures to monitor on an ongoing basis the total value of assets under management. Monitoring shall reflect an up-to-date overview of the assets under management and shall include the observation of subscription and redemption activity or, where applicable, capital draw downs, capital distributions and the value of the assets invested in for each AIF.

The proximity of the total value of assets under management to the threshold set in Article 3(2) of Directive 2011/61/EU and the anticipated subscription and redemption activity shall be taken into account in order to assess the need for more frequent calculations of the total value of assets under management.

*Article 4***Occasional breach of the threshold**

1. The AIFM shall assess situations where the total value of assets under management exceeds the relevant threshold in order to determine whether or not they are of a temporary nature.

2. Where the total value of assets under management exceeds the relevant threshold and the AIFM considers that the situation is not of a temporary nature, the AIFM shall notify the competent authority without delay stating that the situation is considered not to be of a temporary nature and shall seek authorisation within 30 calendar days in accordance with Article 7 of Directive 2011/61/EU.

3. Where the total value of assets under management exceeds the relevant threshold and the AIFM considers that the situation is of a temporary nature, the AIFM shall notify the competent authority without delay, stating that the situation is considered to be of a temporary nature. The notification shall include supporting information

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to justify the AIFM's assessment of the temporary nature of the situation, including a description of the situation and an explanation of the reasons for considering it temporary.

4. A situation shall not be considered of a temporary nature if it is likely to continue for a period in excess of three months.

5. Three months after the date on which the total value of assets under management exceeds the relevant threshold the AIFM shall recalculate the total value of assets under management in order to demonstrate that it is below the relevant threshold or demonstrate to the competent authority that the situation which resulted in the assets under management exceeding the threshold has been resolved and an application for authorisation of the AIFM is not required.

*Article 5***Information to be provided as part of registration**

1. As part of the requirement in Article 3(3)(b) of Directive 2011/61/EU, AIFMs shall communicate to the competent authorities the total value of assets under management calculated in accordance with the procedure set out in Article 2.

2. As part of the requirement in Article 3(3)(c) of Directive 2011/61/EU AIFMs shall provide for each AIF the offering document or a relevant extract from the offering document or a general description of the investment strategy. The relevant extract from the offering document and the description of the investment strategy shall include at least the following information:

- (a) the main categories of assets in which the AIF may invest;
- (b) any industrial, geographic or other market sectors or specific classes of assets which are the focus of the investment strategy;
- (c) a description of the AIF's borrowing or leverage policy.

3. Information to be provided by the AIFM under point (d) of Article 3(3) of Directive 2011/61/EU is listed in Article 110(1) of this Regulation. It shall be provided in accordance with the pro-forma reporting template as set out in the Annex IV.

4. Information collected in accordance with Article 3(3)(d) of Directive 2011/61/EU shall be shared between competent authorities in the Union, with the European Securities and Markets Authority (ESMA) and the European Systemic Risk Board (ESRB) where necessary for the fulfilment of their duties.

5. The information required for registration purposes shall be updated and provided on an annual basis. For reasons relating to the exercise of their powers under Article 46 of Directive 2011/61/EU, the competent authorities may require an AIFM to provide the information referred to in Article 3 of Directive 2011/61/EU on a more frequent basis.

*SECTION 2***Calculation of leverage**

(Article 4(3) of Directive 2011/61/EU)

*Article 6***General provisions on the calculation of leverage**

1. Leverage of an AIF shall be expressed as the ratio between the exposure of an AIF and its net asset value.

2. AIFMs shall calculate the exposure of the AIFs managed in accordance with the gross method as set out in Article 7 and the commitment method as set out in Article 8.

The Commission shall review, in the light of market developments and no later than 21 July 2015, the calculation methods referred to in the first subparagraph in order to decide whether these methods are sufficient and appropriate for all types of AIFs, or an additional and optional method for calculating leverage should be developed.

3. Exposure contained in any financial or legal structures involving third parties controlled by the relevant AIF shall be included in the calculation of the exposure where the structures referred to are specifically set up to directly or indirectly increase the exposure at the level of the AIF. For AIFs whose core investment policy is to acquire control of non-listed companies or issuers, the AIFM shall not include in the calculation of the leverage any exposure that exists at the level of those non-listed companies and issuers provided that the AIF or the AIFM acting on behalf of the AIF does not have to bear potential losses beyond its investment in the respective company or issuer.

4. AIFMs shall exclude borrowing arrangements entered into if these are temporary in nature and are fully covered by contractual capital commitments from investors in the AIF.

5. An AIFM shall have appropriately documented procedures to calculate the exposure of each AIF under its management in accordance with the gross method and the commitment method. The calculation shall be applied consistently over time.

*Article 7***Gross method for calculating the exposure of the AIF**

The exposure of an AIF calculated in accordance with the gross method shall be the sum of the absolute values of all positions valued in accordance with Article 19 of Directive 2011/61/EU and all delegated acts adopted pursuant to it.

For the calculation of the exposure of an AIF in accordance with the gross method an AIFM shall:

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- (a) exclude the value of any cash and cash equivalents which are highly liquid investments held in the base currency of the AIF, that are readily convertible to a known amount of cash, are subject to an insignificant risk of change in value and provide a return no greater than the rate of a three-month high quality government bond;
- (b) convert derivative instruments into the equivalent position in their underlying assets using the conversion methodologies set out in Article 10 and the methods set out in paragraphs (4) to (9) and (14) of Annex I;
- (c) exclude cash borrowings that remain in cash or cash equivalent as referred to in point (a) and where the amounts of that payable are known;
- (d) include exposure resulting from the reinvestment of cash borrowings, expressed as the higher of the market value of the investment realised or the total amount of the cash borrowed as referred to in paragraphs (1) and (2) of Annex I;
- (e) include positions within repurchase or reverse repurchase agreements and securities lending or borrowing or other arrangements in accordance with paragraphs (3) and (10) to (13) of Annex I.

*Article 8***Commitment method for calculating the exposure of an AIF**

1. The exposure of an AIF calculated in accordance with the commitment method shall be the sum of the absolute values of all positions valued in accordance with Article 19 of Directive 2011/61/EU and its corresponding delegated acts, subject to the criteria provided for in paragraphs 2 to 9.
2. For the calculation of the exposure of an AIF in accordance with the commitment method an AIFM shall:
 - (a) convert each derivative instrument position into an equivalent position in the underlying asset of that derivative using the conversion methodologies set out in Article 10 and paragraphs (4) to (9) and (14) of Annex II;
 - (b) apply netting and hedging arrangements;
 - (c) calculate the exposure created through the reinvestment of borrowings where such reinvestment increases the exposure of the AIF as defined in paragraphs (1) and (2) of Annex I;

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(d) include other arrangements in the calculation in accordance with paragraphs (3) and (10) to (13) of Annex I.

3. For the purposes of calculating the exposure of an AIF according to the commitment method:

(a) netting arrangements shall include combinations of trades on derivative instruments or security positions which refer to the same underlying asset, irrespective — in the case of derivative instruments — of the maturity date of the derivative instruments and where those trades on derivative instruments or security positions are concluded with the sole aim of eliminating the risks linked to positions taken through the other derivative instruments or security positions;

(b) hedging arrangements shall include combinations of trades on derivative instruments or security positions which do not necessarily refer to the same underlying asset and where those trades on derivative instruments or security positions are concluded with the sole aim of offsetting risks linked to positions taken through the other derivative instruments or security positions.

4. By way of derogation from paragraph 2, a derivative instrument shall not be converted into an equivalent position in the underlying asset if it has all of the following characteristics:

(a) it swaps the performance of financial assets held in the AIF's portfolio for the performance of other reference financial assets;

(b) it totally offsets the risks of the swapped assets held in the AIF's portfolio so that the AIF's performance does not depend on the performance of the swapped assets;

(c) it includes neither additional optional features, nor leverage clauses nor other additional risks as compared to a direct holding of the reference financial assets.

5. By way of derogation from paragraph 2, a derivative instrument shall not be converted into an equivalent position in the underlying asset when calculating the exposure according to the commitment method if it meets both of the following conditions:

(a) the combined holding by the AIF of a derivative instrument relating to a financial asset and cash which is invested in cash equivalent as defined in Article 7(a) is equivalent to holding a long position in the given financial asset;

(b) the derivative instrument shall not generate any incremental exposure and leverage or risk.

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6. Hedging arrangements shall be taken into account when calculating the exposure of an AIF only if they comply with all the following conditions:

- (a) the positions involved within the hedging relationship do not aim to generate a return and general and specific risks are offset;
- (b) there is a verifiable reduction of market risk at the level of the AIF;
- (c) the risks linked to derivative instruments, general and specific, if any, are offset;
- (d) the hedging arrangements relate to the same asset class;
- (e) they are efficient in stressed market conditions.

7. Subject to paragraph 6, derivative instruments used for currency hedging purposes and that do not add any incremental exposure, leverage or other risks shall not be included in the calculation.

8. An AIFM shall net positions in any of the following cases:

- (a) between derivative instruments, provided they refer to the same underlying asset, even if the maturity date of the derivative instruments is different;
- (b) between a derivative instrument whose underlying asset is a transferable security, money market instrument or units in a collective investment undertaking as referred to in points 1 to 3 of Section C of Annex I to Directive 2004/39/EC, and that same corresponding underlying asset.

9. AIFMs managing AIFs that, in accordance with their core investment policy, primarily invest in interest rate derivatives shall make use of specific duration netting rules in order to take into account the correlation between the maturity segments of the interest rate curve as set out in Article 11.

*Article 9***Methods of increasing the exposure of an AIF**

When calculating exposure AIFMs shall use the methods set out in Annex I for the situations referred to therein.

*Article 10***Conversion methodologies for derivative instruments**

AIFMs shall use the conversion methodologies set out in Annex II for the derivative instruments referred to therein.

▼B*Article 11***Duration netting rules**

1. Duration netting rules shall be applied by AIFMs when calculating the exposure of AIFs according to Article 8(9).
2. The duration-netting rules shall not be used where they would lead to a misrepresentation of the risk profile of the AIF. AIFMs availing themselves of those netting rules shall not include other sources of risk such as volatility in their interest rate strategy. Consequently, interest rate arbitrage strategies shall not apply those netting rules.
3. The use of those duration-netting rules shall not generate any unjustified level of leverage through investment in short-term positions. Short-dated interest rate derivatives shall not be the main source of performance for an AIF with medium duration which uses the duration netting rules.
4. Interest rate derivatives shall be converted into their equivalent underlying asset position and netted in accordance with Annex III.
5. An AIF making use of the duration-netting rules may still make use of the hedging framework. Duration netting rules may be applied only to the interest rate derivatives which are not included in hedging arrangements.

*SECTION 3****Additional own funds and professional indemnity insurance***

(Article 9(7) and Article 15 of Directive 2011/61/EU)

*Article 12***Professional liability risks**

1. The professional liability risks to be covered pursuant to Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.
2. Professional liability risks as defined in paragraph 1 shall include, without being limited to, risks of:
 - (a) loss of documents evidencing title of assets of the AIF;
 - (b) misrepresentations or misleading statements made to the AIF or its investors;
 - (c) acts, errors or omissions resulting in a breach of:
 - (i) legal and regulatory obligations;

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- (ii) duty of skill and care towards the AIF and its investors;
 - (iii) fiduciary duties;
 - (iv) obligations of confidentiality;
 - (v) AIF rules or instruments of incorporation;
 - (vi) terms of appointment of the AIFM by the AIF;
- (d) failure to establish, implement and maintain appropriate procedures to prevent dishonest, fraudulent or malicious acts;
- (e) improperly carried out valuation of assets or calculation of unit/share prices;
- (f) losses arising from business disruption, system failures, failure of transaction processing or process management.

3. Professional liability risks shall be covered at all times either through appropriate additional own funds determined in accordance with Article 14 or through appropriate coverage of professional indemnity insurance determined in accordance with Article 15.

*Article 13***Qualitative requirements addressing professional liability risks**

1. An AIFM shall implement effective internal operational risk management policies and procedures in order to identify, measure, manage and monitor appropriately operational risks including professional liability risks to which the AIFM is or could be reasonably exposed. The operational risk management activities shall be performed independently as part of the risk management policy.

2. An AIFM shall set up a historical loss database, in which any operational failures, loss and damage experience shall be recorded. This database shall record, without being limited to, any professional liability risks as referred to in Article 12(2) that have materialised.

3. Within the risk management framework the AIFM shall make use of its internal historical loss data and where appropriate of external data, scenario analysis and factors reflecting the business environment and internal control systems.

4. Operational risk exposures and loss experience shall be monitored on an ongoing basis and shall be subject to regular internal reporting.

5. An AIFM's operational risk management policies and procedures shall be well documented. An AIFM shall have arrangements in place for ensuring compliance with its operational risk management policies and effective measures for the treatment of non-compliance with these policies. An AIFM shall have procedures in place for taking appropriate corrective action.

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6. The operational risk management policies and procedures and measurement systems shall be subject to regular review, at least on an annual basis.

7. An AIFM shall maintain financial resources adequate to its assessed risk profile.

*Article 14***Additional own funds**

1. This Article shall apply to AIFMs that choose to cover professional liability risks through additional own funds.

2. The AIFM shall provide additional own funds for covering liability risks arising from professional negligence at least equal to 0,01 % of the value of the portfolios of AIFs managed.

The value of the portfolios of AIFs managed shall be the sum of the absolute value of all assets of all AIFs managed by the AIFM, including assets acquired through use of leverage, whereby derivative instruments shall be valued at their market value.

3. The additional own funds requirement referred to in paragraph 2 shall be recalculated at the end of each financial year and the amount of additional own funds shall be adjusted accordingly.

The AIFM shall establish, implement and apply procedures to monitor on an ongoing basis the value of the portfolios of AIFs managed, calculated in accordance with the second subparagraph of paragraph 2. Where, before the annual recalculation referred to in the first subparagraph, the value of the portfolios of AIFs managed increases significantly, the AIFM shall without undue delay recalculate the additional own funds requirement and shall adjust the additional own funds accordingly.

4. The competent authority of the home Member State of the AIFM may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied — on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment — that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0,008 % of the value of the portfolios of AIFs managed by the AIFM.

5. The competent authority of the home Member State of the AIFM may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM's additional own funds are insufficient.

*Article 15***Professional indemnity insurance**

1. This Article shall apply to AIFMs that choose to cover professional liability risks through professional indemnity insurance.

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2. The AIFM shall take out and maintain at all times professional indemnity insurance that:

- (a) shall have an initial term of no less than one year;
- (b) shall have a notice period for cancellation of at least 90 days;
- (c) shall cover professional liability risks as defined in Article 12(1) and (2);
- (d) is taken out from an EU or non-EU undertaking authorised to provide professional indemnity insurance, in accordance with Union law or national law;
- (e) is provided by a third party entity.

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with Article 9(1) and (3) of Directive 2011/61/EU.

3. The coverage of the insurance for an individual claim shall be equal to at least 0,7 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2).

4. The coverage of the insurance for claims in aggregate per year shall be equal to at least 0,9 % of the value of the portfolios of AIFs managed by the AIFM calculated as set out in the second subparagraph of Article 14(2).

5. The AIFM shall review the professional indemnity insurance policy and its compliance with the requirements laid down in this Article at least once a year and in the event of any change which affects the policy's compliance with the requirements in this Article.

CHAPTER III

OPERATING CONDITIONS FOR AIFMs

SECTION 1

General principles

(Article 12(1) of Directive 2011/61/EU)

Article 16

General obligations for competent authorities

When assessing the AIFM's compliance with Article 12(1) of Directive 2011/61/EU, the competent authorities shall use at least the criteria laid down in this Section.

Article 17

Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market

1. AIFMs shall apply policies and procedures for preventing malpractices, including those that might reasonably be expected to affect adversely the stability and integrity of the market.

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2. AIFMs shall ensure that the AIFs they manage or the investors in these AIFs are not charged undue costs.

*Article 18***Due diligence**

1. AIFMs shall apply a high standard of diligence in the selection and ongoing monitoring of investments.

2. AIFMs shall ensure that they have adequate knowledge and understanding of the assets in which the AIF is invested.

3. AIFMs shall establish, implement and apply written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the AIFs are carried out in compliance with the objectives, the investment strategy and, where applicable, the risk limits of the AIF.

4. The policies and procedures on due diligence referred to in paragraph 3 shall be regularly reviewed and updated.

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5. AIFMs shall take into account sustainability risks when complying with the requirements set out in paragraphs 1 to 3.

6. Where AIFMs consider principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a) of Regulation (EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, those AIFMs shall take into account such principal adverse impacts when complying with the requirements set out in paragraphs 1 to 3 of this Article.

▼B*Article 19***Due diligence when investing in assets of limited liquidity**

1. Where AIFMs invest in assets of limited liquidity and where such investment is preceded by a negotiation phase, they shall, in relation to the negotiation phase, in addition to the requirements laid down in Article 18:

- (a) set out and regularly update a business plan consistent with the duration of the AIF and market conditions;
- (b) seek and select possible transactions consistent with the business plan referred to in point (a);
- (c) assess the selected transactions in consideration of opportunities, if any, and overall related risks, all relevant legal, tax-related, financial or other value affecting factors, human and material resources, and strategies, including exit strategies;
- (d) perform due diligence activities related to the transactions prior to arranging execution;

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- (e) monitor the performance of the AIF with respect to the business plan referred to in point (a).
2. AIFMs shall retain records of the activities carried out pursuant to paragraph 1 for at least five years.

*Article 20***Due diligence in the selection and appointment of counterparties and prime brokers**

1. When selecting and appointing counterparties and prime brokers, AIFMs shall exercise due skill, care and diligence before entering into an agreement and on an ongoing basis thereafter taking into account the full range and quality of their services.
2. When selecting prime brokers or counterparties of an AIFM or an AIF in an OTC derivatives transaction, in a securities lending or in a repurchase agreement, AIFMs shall ensure that those prime brokers and counterparties fulfil all of the following conditions:
- (a) they are subject to ongoing supervision by a public authority;
 - (b) they are financially sound;
 - (c) they have the necessary organisational structure and resources for performing the services which are to be provided by them to the AIFM or the AIF.
3. When appraising the financial soundness referred to in paragraph 2(b), the AIFM shall take into account whether or not the prime broker or counterparty is subject to prudential regulation, including sufficient capital requirements, and effective supervision.
4. The list of selected prime brokers shall be approved by the AIFM's senior management. In exceptional cases prime brokers not included in the list may be appointed provided that they fulfil the requirements laid down in paragraph 2 and subject to approval by senior management. The AIFM shall be able to demonstrate the reasons for such a choice and the due diligence that it exercised in selecting and monitoring the prime brokers which had not been listed.

*Article 21***Acting honestly, fairly and with due skills**

In order to establish whether an AIFM conducts its activities honestly, fairly and with due skills, competent authorities shall assess, at least, whether the following conditions are met:

- (a) the governing body of the AIFM possesses adequate collective knowledge, skills and experience to be able to understand the AIFM's activities, in particular the main risks involved in those activities and the assets in which the AIF is invested;

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- (b) the members of the governing body commit sufficient time to properly perform their functions in the AIFM;
- (c) each member of the governing body acts with honesty, integrity and independence of mind;
- (d) the AIFM devotes adequate resources to the induction and training of members of the governing body.

*Article 22***Resources**

1. AIFMs shall employ sufficient personnel with the skills, knowledge and expertise necessary for discharging the responsibilities allocated to them.
2. For the purposes of paragraph 1, AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

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3. For the purposes of paragraph 1, AIFMs shall retain the necessary resources and expertise for the effective integration of sustainability risks.

▼ B*Article 23***Fair treatment of investors in the AIF**

1. The AIFM shall ensure that its decision-making procedures and its organisational structure, referred to in Article 57, ensure fair treatment of investors.
2. Any preferential treatment accorded by an AIFM to one or more investors shall not result in an overall material disadvantage to other investors.

*Article 24***Inducements**

1. AIFMs shall not be regarded as acting honestly, fairly and in accordance with the best interests of the AIFs they manage or the investors in these AIFs if, in relation to the activities performed when carrying out the functions referred to in Annex I to Directive 2011/61/EU, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:
 - (a) a fee, commission or non-monetary benefit paid or provided to or by the AIF or a person on behalf of the AIF;
 - (b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the AIFM can demonstrate that the following conditions are satisfied:

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- (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the investors in the AIF in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit are designed to enhance the quality of the relevant service and not impair compliance with the AIFM's duty to act in the best interests of the AIF it manages or the investors in the AIF;
- (c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, do not give rise to conflicts with the AIFM's duties to act honestly, fairly and in accordance with the best interests of the AIF it manages or the investors of the AIF.

2. The disclosure of the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form shall be considered as satisfactory for the purposes of point (i) of paragraph 1(b), provided that the AIFM commits to disclose further details at the request of the investor in the AIF it manages and provided that it fulfils this commitment.

*Article 25***Effective employment of resources and procedures — handling of orders**

1. AIFMs shall establish, implement and apply procedures and arrangements which provide for the prompt, fair and expeditious execution of orders on behalf of the AIF.

2. The procedures and arrangements referred to in paragraph 1 shall satisfy the following requirements:

- (a) they shall ensure that orders executed on behalf of AIFs are promptly and accurately recorded and allocated;
- (b) they shall execute otherwise comparable AIF orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the AIF or of the investors in the AIF require otherwise.

3. The financial instruments, sums of money or other assets received in settlement of the executed orders shall be promptly and correctly delivered to or registered in the account of the relevant AIF.

4. AIFMs shall not misuse information related to pending AIF orders, and shall take all reasonable steps to prevent the misuse of such information by any of their relevant persons.

▼B*Article 26***Reporting obligations in respect of execution of subscription and redemption orders**

1. Where AIFMs have carried out a subscription or, where relevant, a redemption order from an investor, they shall promptly provide the investor, by means of a durable medium, with the essential information concerning the execution of that order or the acceptance of the subscription offer, as the case may be.

2. Paragraph 1 shall not apply where a third person is required to provide the investor with a confirmation concerning the execution of the order and where the confirmation contains the essential information.

AIFMs shall ensure that the third person complies with its obligations.

3. The essential information referred to in paragraphs 1 and 2 shall include the following information:

- (a) the identification of the AIFM;
- (b) the identification of the investor;
- (c) the date and time of receipt of the order;
- (d) the date of execution;
- (e) the identification of the AIF;
- (f) the gross value of the order including charges for subscription or the net amount after charges for redemptions.

4. AIFMs shall supply the investor, upon request, with information about the status of the order or the acceptance of the subscription offer, or both as the case may be.

*Article 27***Execution of decisions to deal on behalf of the managed AIF**

1. AIFMs shall act in the best interests of the AIFs or the investors in the AIFs they manage when executing decisions to deal on behalf of the managed AIF in the context of the management of their portfolio.

2. Whenever AIFMs buy or sell financial instruments or other assets for which best execution is relevant, and for the purposes of paragraph 1, they shall take all reasonable steps to obtain the best possible result for the AIFs they manage or the investors in these AIFs, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

- (a) the objectives, investment policy and risks specific to the AIF, as indicated in the AIF's rules or articles of association, prospectus or offering documents of the AIF;

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- (b) the characteristics of the order;
- (c) the characteristics of the financial instruments or other assets that are the subject of that order;
- (d) the characteristics of the execution venues to which that order can be directed.

3. AIFMs shall establish and implement effective arrangements for complying with the obligations referred to in paragraphs 1 and 2. In particular, the AIFM shall establish in writing and implement an execution policy to allow AIFs and their investors to obtain, for AIF orders, the best possible result in accordance with paragraph 2.

4. AIFMs shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders with a view to identifying and, where appropriate, correcting any deficiencies.

5. AIFMs shall review their execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

6. AIFMs shall be able to demonstrate that they have executed orders on behalf of the AIF in accordance with their execution policy.

7. Whenever there is no choice of different execution venues paragraphs 2 to 5 shall not apply. However, AIFMs shall be able to demonstrate that there is no choice of different execution venues.

*Article 28***Placing orders to deal on behalf of AIFs with other entities for execution**

1. Whenever the AIFM buys or sells financial instruments or other assets for which best execution is relevant, it shall act in the best interest of the AIFs it manages or the investors in the AIFs when placing orders to deal on behalf of the managed AIFs with other entities for execution, in the context of the management of their portfolio.

2. AIFMs shall take all reasonable steps to obtain the best possible result for the AIF or the investors in the AIF taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the criteria laid down in Article 27(2).

AIFMs shall establish, implement and apply a policy to enable them to comply with the obligation referred to in the first subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The AIFM shall only enter into arrangements for execution where such arrangements are consistent with the obligations laid down in this Article. The AIFM shall make available to investors in the AIFs it manages appropriate information on the policy established in accordance with this paragraph and on any material changes to that policy.

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3. AIFMs shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the quality of the execution by the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, AIFMs shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the AIFM's ability to continue to obtain the best possible result for the managed AIFs.

4. AIFMs shall be able to demonstrate that they have placed orders on behalf of the AIF in accordance with the policy established pursuant to paragraph 2.

5. Whenever there is no choice of different execution venues paragraphs 2 to 5 shall not apply. However, AIFMs shall be able to demonstrate that there is no choice of different execution venues.

*Article 29***Aggregation and allocation of trading orders**

1. AIFMs can only carry out an AIF order in aggregate with an order of another AIF, a UCITS or a client or with an order made when investing their own funds where:

- (a) it can be reasonably expected that the aggregation of orders will not work overall to the disadvantage of any AIF, UCITS or clients whose order is to be aggregated;
- (b) an order allocation policy is established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

2. Where an AIFM aggregates an AIF order with one or more orders of other AIFs, UCITS or clients and the aggregated order is partially executed, it shall allocate the related trades in accordance with its order allocation policy.

3. Where an AIFM aggregates transactions for its own account with one or more orders of AIFs, UCITS or clients, it shall not allocate the related trades in a way that is detrimental to the AIF, UCITS or a client.

4. Where an AIFM aggregates an order of an AIF, UCITS or another client with a transaction for its own account and the aggregated order is partially executed, it shall allocate the related trades to the AIF, UCITS or to clients in priority over those for own account.

However, if the AIFM is able to demonstrate to the AIF or to the client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for its own account proportionally, in accordance with the policy referred to in point (b) of paragraph 1.

▼B*SECTION 2****Conflicts of interest***

(Article 14 of Directive 2011/61/EU)

*Article 30***Types of conflicts of interest**

For the purpose of identifying the types of conflicts of interest that arise in the course of managing an AIF, AIFMs shall take into account, in particular, whether the AIFM, a relevant person or a person directly or indirectly linked by way of control to the AIFM:

- (a) is likely to make a financial gain, or avoid a financial loss, at the expense of the AIF or its investors;
- (b) has an interest in the outcome of a service or an activity provided to the AIF or its investors or to a client or of a transaction carried out on behalf of the AIF or a client, which is distinct from the AIF's interest in that outcome;
- (c) has a financial or other incentive to favour:
 - the interest of a UCITS, a client or group of clients or another AIF over the interest of the AIF,
 - the interest of one investor over the interest of another investor or group of investors in the same AIF;
- (d) carries out the same activities for the AIF and for another AIF, a UCITS or client; or
- (e) receives or will receive from a person other than the AIF or its investors an inducement in relation to collective portfolio management activities provided to the AIF, in the form of monies, goods or services other than the standard commission or fee for that service.

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AIFMs shall ensure that when identifying the types of conflicts of interest, the existence of which may damage the interests of an AIF, they shall include those types of conflicts of interest that may arise as a result of the integration of sustainability risks in their processes, systems and internal controls.

▼B*Article 31***Conflicts of interest policy**

1. The AIFM shall establish, implement and apply an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the AIFM and the nature, scale and complexity of its business.

Where the AIFM is a member of a group, the policy shall also take into account any circumstances of which the AIFM is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

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2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following:
- (a) with reference to the activities carried out by or on behalf of the AIFM, including activities carried out by a delegate, sub-delegate, external valuer or counterparty, identification of the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the AIF or its investors;
 - (b) procedures to be followed and measures to be adopted in order to prevent, manage and monitor such conflicts.

*Article 32***Conflicts of interest related to the redemption of investments**

The AIFM that manages an open-ended AIF shall identify, manage and monitor conflicts of interest arising between investors wishing to redeem their investments and investors wishing to maintain their investments in the AIF, and any conflicts between the AIFM's incentive to invest in illiquid assets and the AIF's redemption policy in accordance with its obligations under Article 14(1) of Directive 2011/61/EU.

*Article 33***Procedures and measures preventing or managing conflicts of interest**

1. The procedures and measures established for the prevention or management of conflicts of interest shall be designed to ensure that the relevant persons engaged in different business activities involving a risk of conflict of interest carry out these activities having a degree of independence which is appropriate to the size and activities of the AIFM and of the group to which it belongs, and to the materiality of the risk of damage to the interests of the AIF or its investors.
2. Where necessary and appropriate for the AIFM to ensure the requisite degree of independence, the procedures to be followed and measures to be adopted in accordance with point (b) of Article 31(2) shall include the following:
- (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities or other activities pursuant to Article 6(2) and (4) of Directive 2011/61/EU involving a risk of conflict of interest where the exchange of information may harm the interest of one or more AIFs or their investors;
 - (b) the separate supervision of relevant persons, whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or investors, whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the AIFM;

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- (c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- (d) measures to prevent or restrain any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
- (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities or other activities pursuant to Article 6(2) and (4) of Directive 2011/61/EU where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the application of one or more of those measures and procedures does not ensure the requisite degree of independence, the AIFM shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

*Article 34***Managing conflicts of interest**

Where the organisational or administrative arrangements made by the AIFM are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the AIF or investors in the AIF are prevented, the senior management or other competent internal body of the AIFM shall be promptly informed in order to take any necessary decision or action to ensure that the AIFM acts in the best interests of the AIF or the investors in that AIF.

*Article 35***Monitoring conflicts of interest**

1. The AIFM shall keep and regularly update a record of the types of activities undertaken by or on behalf of the AIFM in which a conflict of interest entailing a material risk of damage to the interests of one or more AIFs or its investors has arisen or, in the case of an ongoing activity, may arise.

2. Senior management shall receive on a frequent basis, and at least annually, written reports on activities referred to in paragraph 1.

*Article 36***Disclosure of conflicts of interest**

1. The information to be disclosed to investors in accordance with Article 14(1) and (2) of Directive 2011/61/EU shall be provided to investors in a durable medium or by means of a website.

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2. Where information referred to in paragraph 1 is provided by means of a website and is not addressed personally to the investor, the following conditions shall be satisfied:

- (a) the investor has been notified of the address of the website, and the place on the website where the information may be accessed, and has consented to the provision of the information by such means;
- (b) the information must be up to date;
- (c) the information must be accessible continuously by means of that website for such period of time as the investor may reasonably need to inspect it.

*Article 37***Strategies for the exercise of voting rights**

1. An AIFM shall develop adequate and effective strategies for determining when and how any voting rights held in the AIF portfolios it manages are to be exercised, to the exclusive benefit of the AIF concerned and its investors.

2. The strategy referred to in paragraph 1 shall determine measures and procedures for:

- (a) monitoring relevant corporate actions;
- (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant AIF;
- (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

3. A summary description of the strategies and details of the actions taken on the basis of those strategies shall be made available to the investors on their request.

*SECTION 3****Risk management***

(Article 15 of Directive 2011/61/EU)

*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 point (c) of Article 23(4) of Directive 2011/61/EU 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:
 - (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 Article 23(4)(c) of Directive 2011/61/EU;
 - (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.

*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.

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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, sustainability 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.

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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 Article 23(4)(c) of Directive 2011/61/EU;
- (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:

- (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.

*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;

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- (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 competent authority of its home Member State of any material changes to the risk management policy and of the arrangements, processes and techniques referred to in Article 45.

*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;

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- (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 competent authorities of the home Member State of the AIFM shall review the way in which the AIFM has applied paragraphs 1 and 2 on the basis of the criteria laid down in the second subparagraph of Article 15(1) of Directive 2011/61/EU.

*Article 43***Safeguards against conflicts of interest**

1. The safeguards against conflicts of interest referred to in Article 15(1) of Directive 2011/61/EU shall ensure, at least, that:
- (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.

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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.

*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 competent authority.

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 investors in accordance with point (c) of Article 23(4) of Directive 2011/61/EU and approved by the governing body.

*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 point (c) of Article 23(4) of Directive 2011/61/EU.

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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.

*SECTION 4**Liquidity management*

(Article 16 of Directive 2011/61/EU)

*Article 46***Liquidity management system and procedures**

AIFMs shall be able to demonstrate to the competent authorities of their home Member State that an appropriate liquidity management system and effective procedures referred to in Article 16(1) of Directive 2011/61/EU are in place taking into account the investment strategy, the liquidity profile and the redemption policy of each AIF.

*Article 47***Monitoring and managing liquidity risk**

1. The liquidity management system and procedures referred to in Article 46 shall at least, ensure that:
- (a) the AIFM maintains a level of liquidity in the AIF appropriate to its underlying obligations, based on an assessment of the relative liquidity of the AIF's assets in the market, taking account of the time required for liquidation and the price or value at which those assets can be liquidated, and their sensitivity to other market risks or factors;

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- (b) the AIFM monitors the liquidity profile of the AIF's portfolio of assets, having regard to the marginal contribution of individual assets which may have a material impact on liquidity, and the material liabilities and commitments, contingent or otherwise, which the AIF may have in relation to its underlying obligations. For these purposes the AIFM shall take into account the profile of the investor base of the AIF, including the type of investors, the relative size of investments and the redemption terms to which these investments are subject;
- (c) the AIFM, where the AIF invests in other collective investment undertakings, monitors the approach adopted by the managers of those other collective investment undertakings to the management of liquidity, including through conducting periodic reviews to monitor changes to the redemption provisions of the underlying collective investment undertakings in which the AIF invests. Subject to Article 16(1) of Directive 2011/61/EU, this obligation shall not apply where the other collective investment undertakings in which the AIF invests are actively traded on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC or an equivalent third country market;
- (d) the AIFM implements and maintains appropriate liquidity measurement arrangements and procedures to assess the quantitative and qualitative risks of positions and of intended investments which have a material impact on the liquidity profile of the portfolio of the AIF's assets to enable their effects on the overall liquidity profile to be appropriately measured. The procedures employed shall ensure that the AIFM has the appropriate knowledge and understanding of the liquidity of the assets in which the AIF has invested or intends to invest including, where applicable, the trading volume and sensitivity of prices and, as the case may be, or spreads of individual assets in normal and exceptional liquidity conditions;
- (e) the AIFM considers and puts into effect the tools and arrangements, including special arrangements, necessary to manage the liquidity risk of each AIF under its management. The AIFM shall identify the types of circumstances where these tools and arrangements may be used in both normal and exceptional circumstances, taking into account the fair treatment of all AIF investors in relation to each AIF under management. The AIFM may use such tools and arrangements only in these circumstances and if appropriate disclosures have been made in accordance with Article 108.
2. AIFMs shall document their liquidity management policies and procedures, as referred to in paragraph 1, review them on at least an annual basis and update them for any changes or new arrangements.
3. AIFMs shall include appropriate escalation measures in their liquidity management system and procedures, as referred to in paragraph 1, to address anticipated or actual liquidity shortages or other distressed situations of the AIF.
4. Where the AIFM manages an AIF which is a leveraged closed-ended AIF, point (e) of paragraph 1 shall not apply.

*Article 48***Liquidity management limits and stress tests**

1. AIFMs shall, where appropriate, considering the nature, scale and complexity of each AIF they manage, implement and maintain adequate limits for the liquidity or illiquidity of the AIF consistent with its underlying obligations and redemption policy and in accordance with the requirements laid down in Article 44 relating to quantitative and qualitative risk limits.

AIFMs shall monitor compliance with those limits and where limits are exceeded or likely to be exceeded, they shall determine the required (or necessary) course of action. In determining appropriate action, AIFMs shall consider the adequacy of the liquidity management policies and procedures, the appropriateness of the liquidity profile of the AIF's assets and the effect of atypical levels of redemption requests.

2. AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of each AIF under their management. The stress tests shall:

- (a) be conducted on the basis of reliable and up-to-date information in quantitative terms or, where this is not appropriate, in qualitative terms;
- (b) where appropriate, simulate a shortage of liquidity of the assets in the AIF and atypical redemption requests;
- (c) cover market risks and any resulting impact, including on margin calls, collateral requirements or credit lines;
- (d) account for valuation sensitivities under stressed conditions;
- (e) be conducted at a frequency which is appropriate to the nature of the AIF, taking in to account the investment strategy, liquidity profile, type of investor and redemption policy of the AIF, and at least once a year.

3. AIFMs shall act in the best interest of investors in relation to the outcome of any stress tests.

*Article 49***Alignment of investment strategy, liquidity profile and redemption policy**

1. For the purposes of Article 16(2) of Directive 2011/61/EU, the investment strategy, liquidity profile and redemption policy of each AIF managed by an AIFM shall be considered to be aligned when investors have the ability to redeem their investments in a manner consistent with the fair treatment of all AIF investors and in accordance with the AIF's redemption policy and its obligations.

2. In assessing the alignment of the investment strategy, liquidity profile and redemption policy the AIFM shall also have regard to the impact that redemptions may have on the underlying prices or spreads of the individual assets of the AIF.

▼B*SECTION 5****Investment in securitisation positions***

(Article 17 of Directive 2011/61/EU)

*Article 50***Definitions**

For the purposes of this Section:

- (a) ‘securitisation’ means a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC;
- (b) ‘securitisation position’ means a securitisation position within the meaning of Article 4(40) of Directive 2006/48/EC;
- (c) ‘sponsor’ means a sponsor within the meaning of Article 4(42) of Directive 2006/48/EC;
- (d) ‘tranche’ means a tranche within the meaning of Article 4(39) of Directive 2006/48/EC.

*Article 51***Requirements for retained interest**

1. AIFMs shall assume exposure to the credit risk of a securitisation on behalf of one or more AIFs it manages only if the originator, sponsor or original lender has explicitly disclosed to the AIFM that it retains, on an ongoing basis, a material net economic interest, which in any event shall not be less than 5 %.

Only any of the following shall qualify as retention of a material net economic interest of not less than 5 %:

- (a) retention of no less than 5 % of the nominal value of each of the tranches sold or transferred to the investors;
- (b) in the case of securitisations of revolving exposures, retention of the originator’s interest of no less than 5 % of the nominal value of the securitised exposures;
- (c) retention of randomly selected exposures, equivalent to not less than 5 % of the nominal value of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is not less than 100 at origination;
- (d) retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total not less than 5 % of the nominal value of the securitised exposures;

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- (e) retention of a first loss exposure of not less than 5 % of every securitised exposure in the securitisation.

Net economic interest shall be measured at the origination and shall be maintained on an ongoing basis. The net economic interest, including retained positions, interest or exposures, shall not be subject to any credit risk mitigation or any short positions or any other hedge and shall not be sold. The net economic interest shall be determined by the notional value for off-balance sheet items.

There shall be no multiple applications of the retention requirements for any given securitisation.

2. Paragraph 1 shall not apply where the securitised exposures are claims or contingent claims on or fully, unconditionally and irrevocably guaranteed by the institutions listed in the first subparagraph of Article 122a(3) of Directive 2006/48/EC, and shall not apply to those transactions listed in the second subparagraph of Article 122a(3) of Directive 2006/48/EC.

*Article 52***Qualitative requirements concerning sponsors and originators**

Prior to an AIFM assuming exposure to the credit risk of a securitisation on behalf of one or more AIFs, it shall ensure that the sponsor and originator:

- (a) grant credit based on sound and well-defined criteria and clearly establish the process for approving, amending, renewing and re-financing loans to exposures to be securitised as they apply to exposures they hold;
- (b) have in place and operate effective systems to manage the ongoing administration and monitoring of their credit risk-bearing portfolios and exposures, including for identifying and managing problem loans and for making adequate value adjustments and provisions;
- (c) adequately diversify each credit portfolio based on the target market and overall credit strategy;
- (d) have a written policy on credit risk that includes their risk tolerance limits and provisioning policy and describes how it measures, monitors and controls that risk;
- (e) grant readily available access to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure and such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures. For that purpose, materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter;

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- (f) grant readily available access to all other relevant data necessary for the AIFM to comply with the requirements laid down in Article 53;
- (g) disclose the level of their retained net economic interest as referred to in Article 51, as well as any matters that could undermine the maintenance of the minimum required net economic interest as referred to in that Article.

*Article 53***Qualitative requirements concerning AIFMs exposed to securitisations**

1. Before becoming exposed to the credit risk of a securitisation on behalf of one or more AIFs, and as appropriate thereafter, AIFMs shall be able to demonstrate to the competent authorities for each of their individual securitisation positions that they have a comprehensive and thorough understanding of those positions and have implemented formal policies and procedures appropriate to the risk profile of the relevant AIF's investments in securitised positions for analysing and recording:

- (a) information disclosed under Article 51, by originators or sponsors to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;
- (b) the risk characteristics of the individual securitisation position;
- (c) the risk characteristics of the exposures underlying the securitisation position;
- (d) the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
- (e) the statements and disclosures made by the originators or sponsors, or their agents or advisors, about their due diligence on the securitised exposures and, where applicable, on the quality of the collateral supporting the securitised exposures;
- (f) where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer;
- (g) all the structural features of the securitisation that can materially impact the performance of the institution's securitisation position, such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definitions of default.

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2. Where an AIFM has assumed exposure to a material value of the credit risk of a securitisation on behalf of one or more AIFs, it shall regularly perform stress tests appropriate to such securitisation positions in accordance with point (b) of Article 15(3) of Directive 2011/61/EU. The stress test shall be commensurate with the nature, scale and complexity of the risk inherent in the securitisation positions.

AIFMs shall establish formal monitoring procedures in line with the principles laid down in Article 15 of Directive 2011/61/EU commensurate with the risk profile of the relevant AIF in relation to the credit risk of a securitisation position in order to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying such securitisation positions. Such information shall include (if relevant to the specific type of securitisation and not limited to such types of information further described herein), the exposure type, the percentage of loans more than 30, 60 and 90 days past due, default rates, prepayment rates, loans in foreclosure, collateral type and occupancy, frequency distribution of credit scores or other measures of credit worthiness across underlying exposures, industry and geographical diversification and frequency distribution of loan to value ratios with bandwidths that facilitate adequate sensitivity analysis. Where the underlying exposures are themselves securitisation positions, AIFMs shall have the information set out in this subparagraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also on the characteristics and performance of the pools underlying those securitisation tranches.

AIFMs shall apply the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties.

3. For the purposes of appropriate risk and liquidity management, AIFMs assuming exposure to the credit risk of a securitisation on behalf of one or more AIFs shall properly identify, measure, monitor, manage, control and report the risks that arise because of mismatches between the assets and liabilities of the relevant AIF, concentration risk or investment risk arising from these instruments. The AIFM shall ensure that the risk profile of such securitisation positions corresponds to the size, overall portfolio structure, investment strategies and objectives of the relevant AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

4. AIFMs shall ensure, in line with the requirements laid down in Article 18 of Directive 2011/61/EU, that there is an adequate degree of internal reporting to the senior management so that senior management is fully aware of any material assumption of exposure to securitisations and that the risks arising from those exposures are adequately managed.

5. AIFMs shall include appropriate information on their exposures to the credit risk of securitisation and their risk management procedures in this area in the reports and disclosures to be submitted in accordance with Articles 22, 23 and 24 of Directive 2011/61/EU.

▼B*Article 54***Corrective action**

1. AIFMs shall take such corrective action as is in the best interest of the investors in the relevant AIF where they discover, after the assumption of an exposure to a securitisation, that the determination and disclosure of the retained interest did not meet the requirements laid down in this Regulation.
2. AIFMs shall take such corrective action as is in the best interest of the investors in the relevant AIF, where the retained interest becomes less than 5 % at a given moment after the assumption of the exposure and this is not due to the natural payment mechanism of the transaction.

*Article 55***Grandfathering clause**

Articles 51 to 54 shall apply in relation to new securitisations issued on or after 1 January 2011. Articles 51 to 54 shall, after 31 December 2014, apply in relation to existing securitisations where new underlying exposures are added or substituted after that date.

*Article 56***Interpretation**

In the absence of specific interpretation given by ESMA or by the Joint Committee of the European Supervisory Authorities, the provisions of this Section shall be interpreted in a consistent manner with the corresponding provisions of Directive 2006/48/EC and with the Guidelines to Article 122a of the Capital Requirements Directive of 31 December 2010⁽¹⁾ issued by the Committee of European Banking Supervisors and their subsequent amendments.

*SECTION 6****Organisational requirements — general principles***

(Articles 12 and 18 of Directive 2011/61/EU)

*Article 57***General requirements**

1. AIFMs shall:
 - (a) establish, implement and maintain decision-making procedures and an organisational structure which specifies reporting lines and allocates functions and responsibilities clearly and in a documented manner;
 - (b) ensure that their relevant persons are aware of the procedures to be followed for the proper discharge of their responsibilities;

⁽¹⁾ Committee of European Banking Supervisors, Guidelines to Article 122a of the Capital Requirements Directive of 31 December 2010, <http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2010/Application%20of%20Art.%20122a%20of%20the%20CRD/Guidelines.pdf>

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- (c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the AIFM;
- (d) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the AIFM and effective information flows with any third party involved;
- (e) maintain adequate and orderly records of their business and internal organisation.

AIFMs shall take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business.

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AIFMs shall take into account sustainability risks when complying with the requirements laid down in the first subparagraph.

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2. AIFMs shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3. AIFMs shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the event of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

4. AIFMs shall establish, implement and maintain accounting policies and procedures and valuation rules that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5. AIFMs shall implement appropriate policies and procedures to ensure that the redemption policies of the AIF are disclosed to investors, in sufficient detail, before they invest in the AIF and in the event of material changes.

6. AIFMs shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 5, and take appropriate measures to address any deficiencies.

*Article 58***Electronic data processing**

1. AIFMs shall make appropriate and sufficient arrangements for suitable electronic systems so as to permit the timely and proper recording of each portfolio transaction or subscription or, where relevant, redemption order.

2. AIFMs shall ensure a high standard of security during the electronic data processing and integrity and confidentiality of the recorded information, as appropriate.

*Article 59***Accounting procedures**

1. AIFMs shall employ accounting policies and procedures as referred to in Article 57(4) so as to ensure the protection of investors. The accounting records shall be kept in such a way that all assets and liabilities of the AIF can be directly identified at all times. If an AIF has different investment compartments, separate accounts shall be maintained for those compartments.
2. AIFMs shall establish, implement and maintain accounting and valuation policies and procedures so as to ensure that the net asset value of each AIF is accurately calculated on the basis of the applicable accounting rules and standards.

*Article 60***Control by the governing body, senior management and supervisory function**

1. When allocating functions internally, AIFMs shall ensure that the governing body, the senior management and, where it exists, the supervisory function are responsible for the AIFM's compliance with its obligations under Directive 2011/61/EU.
2. An AIFM shall ensure that its senior management:
 - (a) is responsible for the implementation of the general investment policy for each managed AIF, as defined, where relevant, in the fund rules, the instruments of incorporation, the prospectus or the offering documents;
 - (b) oversees the approval of the investment strategies for each managed AIF;
 - (c) is responsible for ensuring that valuation policies and procedures in accordance with Article 19 of Directive 2011/61/EU are established and implemented;
 - (d) is responsible for ensuring that the AIFM has a permanent and effective compliance function, even if this function is performed by a third party;
 - (e) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed AIF are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;
 - (f) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed AIF, so as to ensure that such decisions are consistent with the approved investment strategies;
 - (g) approves and reviews on a periodic basis the risk management policy and the arrangements, processes and techniques for implementing that policy, including the risk limit system for each AIF it manages;

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- (h) is responsible for establishing and applying a remuneration policy in line with Annex II to Directive 2011/61/EU;

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- (i) is responsible for the integration of sustainability risks in activities referred to in points (a) to (h).

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3. An AIFM shall also ensure that its senior management and, where appropriate, its governing body or supervisory function:

- (a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations laid down in Directive 2011/61/EU;
- (b) take appropriate measures to address any deficiencies.

4. An AIFM shall ensure that its senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5. An AIFM shall ensure that its senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in points (b) to (e) of paragraph 2.

6. An AIFM shall ensure that the governing body or the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph 4.

*Article 61***Permanent compliance function**

1. AIFMs shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the AIFM to comply with its obligations under Directive 2011/61/EU, and the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

The AIFM shall take into account the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business.

2. An AIFM shall establish and maintain a permanent and effective compliance function which operates independently and has the following responsibilities:

- (a) monitoring and, on a regular basis, evaluating the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1 and the actions taken to address any deficiencies in the AIFM's compliance with its obligations;
- (b) advising the relevant persons responsible for carrying out services and activities and assisting them in complying with the AIFM's obligations under Directive 2011/61/EU.

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3. In order to enable the compliance function referred to in paragraph 2 to perform its responsibilities properly and independently, the AIFM shall ensure that:

- (a) the compliance function has the necessary authority, resources, expertise and access to all relevant information;
- (b) a compliance officer is appointed and is responsible for the compliance function and for reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
- (c) persons in the compliance function are not involved in the performance of services or activities they monitor;
- (d) the method of determining the remuneration of a compliance officer and other persons in the compliance function do not affect their objectivity and are not likely to do so.

However, the AIFM shall not be required to comply with point (c) or (d) of the first subparagraph where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that the requirement is not proportionate and that its compliance function continues to be effective.

*Article 62***Permanent internal audit function**

1. AIFMs shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the AIFM.

2. The internal audit function referred to in paragraph 1 shall:

- (a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the AIFM's systems, internal control mechanisms and arrangements;
- (b) issue recommendations based on the results of work carried out in accordance with point (a);
- (c) verify compliance with the recommendations referred to in point (b);
- (d) report internal audit matters.

*Article 63***Personal transactions**

1. For any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 1(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on

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insider dealing and market manipulation (market abuse) ⁽¹⁾ or to other confidential information relating to an AIF or transactions with or for an AIF, an AIFM shall establish, implement and maintain adequate arrangements aimed at preventing such relevant persons from:

- (a) entering into a personal transaction in financial instruments or other assets which fulfils one of the following criteria:
 - (i) the transaction is subject to Article 2(1) of Directive 2003/6/EC;
 - (ii) the transaction involves the misuse or improper disclosure of confidential information;
 - (iii) the transaction conflicts or is likely to conflict with an obligation of the AIFM under Directive 2011/61/EU;
- (b) advising or inducing, other than in the proper course of his employment or contract for services, any other person to enter into a personal transaction referred to in point (a)(i) and (ii), or that would otherwise constitute a misuse of information relating to pending orders;
- (c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 3(a) of Directive 2003/6/EC, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person would or would be likely to take either of the following steps:
 - (i) entering into a personal transaction referred to in point (a)(i) and (ii) in financial instruments or other assets or that would otherwise constitute a misuse of information relating to pending orders;
 - (ii) advising or inducing another person to enter into such a personal transaction.

2. The arrangements referred to in paragraph 1 shall in particular be designed to ensure that:

- (a) each relevant person is aware of the restrictions on personal transactions referred to in paragraph 1, and of the measures established by the AIFM in connection with personal transactions and disclosure, pursuant to paragraph 1;
- (b) the AIFM is informed promptly of any personal transaction entered into by a relevant person covered by paragraph 1, either by notification of that transaction or by other procedures enabling the AIFM to identify such transactions;
- (c) a record is kept of the personal transaction notified to the AIFM or identified by it, including any authorisation or prohibition in connection with such a transaction.

For the purposes of point (b) of the first subparagraph, where certain activities of the AIFM are performed by third parties, the AIFM shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person covered by paragraph 1 and provides that information to the AIFM promptly on request.

⁽¹⁾ OJ L 96, 12.4.2003, p. 16.

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3. Paragraphs 1 and 2 shall not apply to personal transactions:
 - (a) effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
 - (b) in UCITS or AIFs that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.
4. For the purpose of paragraph 1, a personal transaction shall also include a transaction in a financial instrument or other asset effected on behalf or for the account of:
 - (a) a relevant person;
 - (b) any person with whom the relevant person has a family relationship or with whom the relevant person has close links;
 - (c) a person whose relationship with the relevant person is such that the relevant person has a direct or indirect material interest in the outcome of the trade, other than a fee or commission for the execution of the trade.

*Article 64***Recording of portfolio transactions**

1. AIFMs shall make without delay for each portfolio transaction relating to AIFs it manages a record of information which is sufficient to reconstruct the details of the order and the executed transaction or of the agreement.
2. With regard to portfolio transactions on an execution venue, the record referred to in paragraph 1 shall include the following information:
 - (a) the name or other designation of the AIF and of the person acting for the account of the AIF;
 - (b) the asset;
 - (c) where relevant, the quantity;
 - (d) the type of the order or transaction;
 - (e) the price;
 - (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and the execution of the transaction;

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- (g) where applicable, the name of the person transmitting the order or executing the transaction;
- (h) where applicable, the reasons for the revocation of an order;
- (i) for executed transactions the counterparty and execution venue identification.

3. With regard to portfolio transactions by the AIF outside an execution venue, the record referred to in paragraph 1 shall include the following information:

- (a) the name or other designation of the AIF;
- (b) the legal and other documentation that forms the basis of the portfolio transaction, including in particular the agreement as executed;
- (c) the price.

4. For the purposes of paragraphs 2 and 3, an execution venue shall include a systematic internaliser as referred to in point (7) of Article 4(1) of Directive 2004/39/EC, a regulated market as referred to in point (14) of Article 4(1) of that Directive, a multilateral trading facility as referred to in point (15) of Article 4(1) of that Directive, a market maker as referred to in point (8) of Article 4(1) of that Directive or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

*Article 65***Recording of subscription and redemption orders**

1. AIFMs shall take all reasonable steps to ensure that received AIF subscriptions and, where relevant, redemption orders are recorded without undue delay after receipt of any such order.

2. That record shall include information on the following:

- (a) the relevant AIF;
- (b) the person giving or transmitting the order;
- (c) the person receiving the order;
- (d) the date and time of the order;
- (e) the terms and means of payment;
- (f) the type of the order;

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- (g) the date of execution of the order;
- (h) the number of units or shares or equivalent amounts subscribed or redeemed;
- (i) the subscription or, where relevant, redemption price for each unit or share or, where relevant, the amount of capital committed and paid;
- (j) the total subscription or redemption value of the units or shares;
- (k) the gross value of the order including charges for subscription, or the net amount after charges for redemption.

Information under points (i), (j) and (k) shall be recorded as soon as available.

*Article 66***Recordkeeping requirements**

1. AIFMs shall ensure that all required records referred to in Articles 64 and 65 are retained for a period of at least five years.

However, competent authorities may require AIFMs to ensure that any or all of those records are retained for a longer period, taking into account the nature of the asset or portfolio transaction, where it is necessary to enable the authority to exercise its supervisory functions under Directive 2011/61/EU.

2. Following the termination of the authorisation of an AIFM, the records are to be retained at least for the outstanding term of the five-year period referred to in paragraph 1. Competent authorities may require retention for a longer period.

Where the AIFM transfers its responsibilities in relation to the AIF to another AIFM, it shall ensure that the records referred to in paragraph 1 are accessible to that AIFM.

3. The records shall be retained on a medium that allows the storage of information in a way accessible for future reference by the competent authorities, and in such a form and manner that:

- (a) the competent authorities are able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
- (b) corrections or other amendments, and the contents of the records prior to such corrections or amendments, may be easily ascertained;
- (c) no other manipulation or alteration is possible.

*SECTION 7**Valuation*

(Article 19 of Directive 2011/61/EU)

*Article 67***Policies and procedures for the valuation of the assets of the AIF**

1. AIFMs shall establish, maintain, implement and review, for each AIF they manage, written policies and procedures that ensure a sound, transparent, comprehensive and appropriately documented valuation process. The valuation policy and procedures shall cover all material aspects of the valuation process and valuation procedures and controls in respect of the relevant AIF.

Without prejudice to requirements under national law and the AIF rules and instruments of incorporation, the AIFM shall ensure that fair, appropriate and transparent valuation methodologies are applied for the AIFs it manages. The valuation policies shall identify and the procedures shall implement the valuation methodologies used for each type of asset in which the AIF may invest in accordance with applicable national law, the AIF rules and the instruments of incorporation. The AIFM shall not invest in a particular type of asset for the first time unless an appropriate valuation methodology or methodologies have been identified for that specific type of asset.

The policies and procedures setting out valuation methodologies shall include inputs, models and the selection criteria for pricing and market data sources. They shall provide that prices shall be obtained from independent sources whenever possible and appropriate. The selection process of a particular methodology shall include an assessment of the available relevant methodologies, taking into account their sensitivity to changes in variables and how specific strategies determine the relative value of the assets in the portfolio.

2. The valuation policies shall set out the obligations, roles and responsibilities of all parties involved in the valuation process, including the senior management of the AIFM. The procedures shall reflect the organisational structure as set out in the valuation policies.

The valuation policies and procedures shall address at least the following:

- (a) the competence and independence of personnel who are effectively carrying out the valuation of assets;
- (b) the specific investment strategies of the AIF and the assets the AIF might invest in;
- (c) the controls over the selection of valuation inputs, sources and methodologies;
- (d) the escalation channels for resolving differences in values for assets;
- (e) the valuation of any adjustments related to the size and liquidity of positions, or to changes in the market conditions, as appropriate;

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(f) the appropriate time for closing the books for valuation purposes;

(g) the appropriate frequency for valuing assets.

3. Where an external valuer is appointed, the valuation policies and procedures shall set out a process for the exchange of information between the AIFM and the external valuer to ensure that all necessary information required for the purpose of performing the valuation task is provided.

The valuation policies and procedures shall ensure that the AIFM conducts initial and periodic due diligence on third parties that are appointed to perform valuation services.

4. Where the valuation is performed by the AIFM itself, the policies shall include a description of the safeguards for the functionally independent performance of the valuation task in accordance with point (b) of Article 19(4) of Directive 2011/61/EU. Such safeguards shall include measures to prevent or restrain any person from exercising inappropriate influence over the way in which a person carries out valuation activities.

*Article 68***Use of models to value assets**

1. If a model is used to value the assets of an AIF, the model and its main features shall be explained and justified in the valuation policies and procedures. The reason for the choice of the model, the underlying data, the assumptions used in the model and the rationale for using them, and the limitations of the model-based valuation shall be appropriately documented.

2. The valuation policies and procedures shall ensure that before being used a model is validated by a person with sufficient expertise who has not been involved in the process of building that model. The validation process shall be appropriately documented.

3. The model shall be subject to prior approval by the senior management of the AIFM. Where the model is used by an AIFM that performs the valuation function itself, the approval by the senior management shall be without prejudice to the competent authority's right to require under Article 19(9) of Directive 2011/61/EU that the model be verified by an external valuer or an auditor.

*Article 69***Consistent application of valuation policies and procedures**

1. An AIFM shall ensure that the valuation policies and procedures and the designated valuation methodologies are applied consistently.

2. The valuation policies and procedures and the designated methodologies shall be applied to all assets within an AIF taking into account the investment strategy, the type of asset and, if applicable, the existence of different external valuers.

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3. Where no update is required, the policies and procedures shall be applied consistently over time and valuation sources and rules shall remain consistent over time.

4. The valuation procedures and the designated valuation methodologies shall be applied consistently across all AIFs managed by the same AIFM, taking into account the investment strategies and the types of asset held by the AIFs, and, if applicable, the existence of different external valuers.

*Article 70***Periodic review of valuation policies and procedures**

1. Valuation policies shall provide for a periodic review of the policies and procedures, including of the valuation methodologies. The review shall be carried out at least annually and before the AIF engages with a new investment strategy or a new type of asset that is not covered by the actual valuation policy.

2. The valuation policies and procedures shall outline how a change to the valuation policy, including a methodology, may be effected and in what circumstances this would be appropriate. Recommendations for changes to the policies and procedures shall be made to the senior management, which shall review and approve any changes.

3. The risk management function referred to in Article 38 shall review and, if needed, provide appropriate support concerning the policies and procedures adopted for the valuation of assets.

*Article 71***Review of individual values of assets**

1. An AIFM shall ensure that all assets held by the AIF are fairly and appropriately valued. The AIFM shall document by type of asset the way the appropriateness and fairness of the individual values is assessed. The AIFM shall at all times be able to demonstrate that the portfolios of AIFs it manages are properly valued.

2. The valuation policies and procedures shall set out a review process for the individual values of assets, where a material risk of an inappropriate valuation exists, such as in the following cases:

- (a) the valuation is based on prices only available from a single counterparty or broker source;
- (b) the valuation is based on illiquid exchange prices;
- (c) the valuation is influenced by parties related to the AIFM;
- (d) the valuation is influenced by other entities that may have a financial interest in the AIF's performance;
- (e) the valuation is based on prices supplied by the counterparty who originated an instrument, in particular where the originator is also financing the AIF's position in the instrument;

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(f) the valuation is influenced by one or more individuals within the AIFM.

3. The valuation policies and procedures shall describe the review process including sufficient and appropriate checks and controls on the reasonableness of individual values. Reasonableness shall be assessed in terms of the existence of an appropriate degree of objectivity. Such checks and controls shall include at least:

(a) verifying values by a comparison amongst counterparty-sourced pricings and over time;

(b) validating values by comparison of realised prices with recent carrying values;

(c) considering the reputation, consistency and quality of the valuation source;

(d) a comparison with values generated by a third party;

(e) an examination and documentation of exemptions;

(f) highlighting and researching any differences that appear unusual or vary by valuation benchmark established for the type of asset;

(g) testing for stale prices and implied parameters;

(h) a comparison with the prices of any related assets or their hedges;

(i) a review of the inputs used in model-based pricing, in particular of those to which the model's price exhibits significant sensitivity.

4. The valuation policies and procedures shall include appropriate escalation measures to address differences or other problems in the valuation of assets.

*Article 72***Calculation of the net asset value per unit or share**

1. An AIFM shall ensure that for each AIF it manages the net asset value per unit or share is calculated on the occasion of each issue or subscription or redemption or cancellation of units or shares, but at least once a year.

2. An AIFM shall ensure that the procedures and the methodology for calculating the net asset value per unit or share are fully documented. The calculation procedures and methodologies and their application shall be subject to regular verification by the AIFM, and the documentation shall be amended accordingly.

3. An AIFM shall ensure that remedial procedures are in place in the event of an incorrect calculation of the net asset value.

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4. An AIFM shall ensure that the number of units or shares in issue is subject to regular verification, at least as often as the unit or share price is calculated.

*Article 73***Professional guarantees**

1. External valuers shall provide upon request professional guarantees to demonstrate their ability to perform the valuation function. Professional guarantees to be furnished by external valuers shall be in written form.

2. The professional guarantees shall contain evidence of the external valuer's qualification and capability to perform proper and independent valuation, including, at least, evidence of:

- (a) sufficient personnel and technical resources;
- (b) adequate procedures safeguarding proper and independent valuation;
- (c) adequate knowledge and understanding of the investment strategy of the AIF and of the assets the external valuer is appointed to value;
- (d) a sufficiently good reputation and sufficient experience with valuation.

3. Where the external valuer is subject to mandatory professional registration with the competent authority or another entity of the state where it is established, the professional guarantee shall contain the name of this authority or entity, including the relevant contact information. The professional guarantee shall indicate clearly the legal or regulatory provisions or rules of professional conduct to which the external valuer is subject.

*Article 74***Frequency of valuation of assets held by open-ended AIFs**

1. The valuation of financial instruments held by open-ended AIFs shall take place every time the net asset value per unit or share is calculated pursuant to Article 72(1).

2. The valuation of other assets held by open-ended AIFs shall take place at least once a year, and every time there is evidence that the last determined value is no longer fair or proper.

*SECTION 8****Delegation of AIFM functions***

(Article 20(1), (2), (4) and (5) of Directive 2011/61/EU)

*Article 75***General principles**

When delegating the task of carrying out one or more functions on their behalf, AIFMs shall comply, in particular, with the following general principles:

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- (a) the delegation structure does not allow for the circumvention of the AIFM's responsibilities or liability;
- (b) the obligations of the AIFM towards the AIF and its investors are not altered as a result of the delegation;
- (c) the conditions with which the AIFM must comply in order to be authorised and carry out activities in accordance with Directive 2011/61/EU are not undermined;
- (d) the delegation arrangement takes the form of a written agreement concluded between the AIFM and the delegate;
- (e) the AIFM ensures that the delegate carries out the delegated functions effectively and in compliance with applicable law and regulatory requirements and must establish methods and procedures for reviewing on an ongoing basis the services provided by the delegate. The AIFM shall take appropriate action if it appears that the delegate cannot carry out the functions effectively or in compliance with applicable laws and regulatory requirements;
- (f) the AIFM supervises effectively the delegated functions and manages the risks associated with the delegation. For this purpose the AIFM shall have at all times the necessary expertise and resources to supervise the delegated functions. The AIFM shall set out in the agreement its right of information, inspection, admittance and access, and its instruction and monitoring rights against the delegate. The AIFM shall also ensure that the delegate properly supervises the performance of the delegated functions, and adequately manages the risks associated with the delegation;
- (g) the AIFM ensures that the continuity and quality of the delegated functions or of the delegated task of carrying out functions are maintained also in the event of termination of the delegation either by transferring the delegated functions or the delegated task of carrying out functions to another third party or by performing them itself;
- (h) the respective rights and obligations of the AIFM and the delegate are clearly allocated and set out in the agreement. In particular, the AIFM shall contractually ensure its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall make sure that sub-delegation can take place only with the consent of the AIFM;
- (i) where it concerns portfolio management, the delegation is in accordance with the investment policy of the AIF. The delegate shall be instructed by the AIFM how to implement the investment policy and the AIFM shall monitor whether the delegate complies with it on an ongoing basis;
- (j) the AIFM ensures that the delegate discloses to the AIFM any development that may have a material impact on the delegate's ability to carry out the delegated functions effectively and in compliance with applicable laws and regulatory requirements;
- (k) the AIFM ensures that the delegate protects any confidential information relating to the AIFM, the AIF affected by the delegation and the investors in that AIF;

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- (l) the AIFM ensures that the delegate establishes, implements and maintains a contingency plan for disaster recovery and periodic testing of backup facilities while taking into account the types of delegated functions.

*Article 76***Objective reasons for delegation**

1. The AIFM shall provide the competent authorities with a detailed description, explanation and evidence of the objective reasons for delegation. When assessing whether the entire delegation structure is based on objective reasons within the meaning of Article 20(1)(a) of Directive 2011/61/EU the following criteria shall be considered:

- (a) optimising of business functions and processes;
- (b) cost saving;
- (c) expertise of the delegate in administration or in specific markets or investments;
- (d) access of the delegate to global trading capabilities.

2. Upon request by the competent authorities, an AIFM shall provide further explanations and provide documents proving that the entire delegation structure is based on objective reasons.

*Article 77***Features of the delegate**

1. A delegate shall have sufficient resources and shall employ sufficient personnel with the skills, knowledge and expertise necessary for the proper discharge of the tasks delegated to it and have an appropriate organisational structure supporting the performance of the delegated tasks.

2. Persons who effectively conduct the activities delegated by the AIFM shall have sufficient experience, appropriate theoretical knowledge and appropriate practical experience in the relevant functions. Their professional training and the nature of the functions they have performed in the past shall be appropriate for the conduct of the business.

3. Persons who effectively conduct the business of the delegate shall not be deemed of sufficiently good repute if they have any negative records relevant both for the assessment of good repute and for the proper performance of the delegated tasks or if there is other relevant information which affects their good reputation. Such negative records shall include but shall not be limited to criminal offences, judicial

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proceedings or administrative sanctions relevant for the performance of the delegated tasks. Special attention shall be given to any offences related to financial activities, including but not limited to obligations relating to the prevention of money laundering, dishonesty, fraud or financial crime, bankruptcy or insolvency. Other relevant information shall include information such as that indicating that the person is not trustworthy or honest.

Where the delegate is regulated in respect of its professional services within the Union, factors referred to in the first subparagraph shall be deemed to be satisfied when the relevant supervisory authority has reviewed the criterion of ‘good repute’ within the authorisation procedure unless there is evidence to the contrary.

*Article 78***Delegation of portfolio or risk management**

1. This Article shall apply where the delegation of portfolio management or risk management is concerned.

2. The following entities shall be deemed to be authorised or registered for the purpose of asset management and subject to supervision in accordance with point (c) of Article 20(1) of Directive 2011/61/EU:

- (a) management companies authorised under Directive 2009/65/EC;
- (b) investment firms authorised under Directive 2004/39/EC to perform portfolio management;
- (c) credit institutions authorised under Directive 2006/48/EC having the authorisation to perform portfolio management under Directive 2004/39/EC;
- (d) external AIFMs authorised under Directive 2011/61/EU;
- (e) third country entities authorised or registered for the purpose of asset management and effectively supervised by a competent authority in those countries.

3. Where the delegation is conferred on a third-country undertaking the following conditions shall be fulfilled in accordance with point (d) of Article 20(1) of Directive 2011/61/EU:

- (a) a written arrangement shall exist between the competent authorities of the home Member State of the AIFM and the supervisory authorities of the undertaking to which delegation is conferred;
- (b) with respect to the undertaking to which delegation is conferred, the arrangement referred to in point (a) allows the competent authorities to:
 - (i) obtain on request the relevant information necessary to carry out their supervisory tasks as provided for in Directive 2011/61/EU;

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- (ii) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
- (iii) carry out on-site inspections on the premises of the undertaking to which functions were delegated. The practical procedures for on-site inspections shall be detailed in the written arrangement;
- (iv) receive as soon as possible information from the supervisory authority in the third country for the purpose of investigating apparent breaches of the requirements of Directive 2011/61/EU and its implementing measures;
- (v) cooperate in enforcement in accordance with the national and international law applicable to the supervisory authority of the third country and the EU competent authorities in cases of breach of the requirements of Directive 2011/61/EU and its implementing measures and relevant national law.

*Article 79***Effective supervision**

A delegation shall be deemed to prevent the effective supervision of the AIFM where:

- (a) the AIFM, its auditors and the competent authorities do not have effective access to data related to the delegated functions and to the business premises of the delegate, or the competent authorities are not able to exercise those rights of access;
- (b) the delegate does not cooperate with the competent authorities of the AIFM in connection with the delegated functions;
- (c) the AIFM does not make available on request to the competent authorities all information necessary to enable authorities to supervise the compliance of the performance of the delegated functions with the requirements of Directive 2011/61/EU and its implementing measures.

*Article 80***Conflicts of interest**

1. In accordance with point (b) of Article 20(2) of Directive 2011/61/EU, the criteria to assess whether a delegation conflicts with the interests of the AIFM or the investor in the AIF shall at least include:

- (a) where the AIFM and the delegate are members of the same group or have any other contractual relationship, the extent to which the delegate controls the AIFM or has the ability to influence its actions;
- (b) where the delegate and an investor in the relevant AIF are members of the same group or have any other contractual relationship, the extent to which this investor controls the delegate or has the ability to influence its actions;

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- (c) the likelihood that the delegate makes a financial gain, or avoids a financial loss, at the expense of the AIF or the investors in the AIF;
- (d) the likelihood that the delegate has an interest in the outcome of a service or an activity provided to the AIFM or the AIF;
- (e) the likelihood that the delegate has a financial or other incentive to favour the interest of another client over the interests of the AIF or the investors in the AIF;
- (f) the likelihood that the delegate receives or will receive from a person other than the AIFM an inducement in relation to the collective portfolio management activities provided to the AIFM and the AIFs it manages in the form of monies, goods or services other than the standard commission or fee for that service.

2. The portfolio or risk management function may be considered to be functionally and hierarchically separated from other potentially conflicting tasks only where the following conditions are satisfied:

- (a) persons engaged in portfolio management tasks are not engaged in the performance of potentially conflicting tasks such as controlling tasks;
- (b) persons engaged in risk management tasks are not engaged in the performance of potentially conflicting tasks such as operating tasks;
- (c) persons engaged in risk management functions are not supervised by those responsible for the performance of operating tasks;
- (d) the separation is ensured throughout the whole hierarchical structure of the delegate up to its governing body and is reviewed by the governing body and, where it exists, the supervisory function of the delegate.

3. Potential conflicts of interest shall be deemed properly identified, managed, monitored and disclosed to the investors of the AIF only if:

- (a) the AIFM ensures that the delegate takes all reasonable steps to identify, manage and monitor potential conflicts of interest that may arise between itself and the AIFM, the AIF or the investors in the AIF. The AIFM shall ensure that the delegate has procedures in place corresponding to those required under Articles 31 to 34;
- (b) the AIFM ensures that the delegate discloses potential conflicts of interest as well as the procedures and measures to be adopted by it in order to manage such conflicts of interest to the AIFM which shall disclose them to the AIF and the investors in the AIF in accordance with Article 36.

*Article 81***Consent and notification of sub-delegation**

1. A subdelegation shall become effective where the AIFM demonstrates its consent to it in writing.

A general consent given in advance by the AIFM shall not be deemed consent in accordance with point (a) of Article 20(4) of Directive 2011/61/EU.

2. Pursuant to point (b) of Article 20(4) of Directive 2011/61/EU, the notification shall contain details of the delegate, the name of the competent authority where the sub-delegate is authorised or registered, the delegated functions, the AIFs affected by the sub-delegation, a copy of the written consent by the AIFM and the intended effective date of the sub-delegation.

*Article 82***Letter-box entity and AIFM no longer considered to be managing an AIF**

1. An AIFM shall be deemed a letter-box entity and shall no longer be considered to be the manager of the AIF at least in any of the following situations:

- (a) the AIFM no longer retains the necessary expertise and resources to supervise the delegated tasks effectively and manage the risks associated with the delegation;
- (b) the AIFM no longer has the power to take decisions in key areas which fall under the responsibility of the senior management or no longer has the power to perform senior management functions in particular in relation to the implementation of the general investment policy and investment strategies;
- (c) the AIFM loses its contractual rights to inquire, inspect, have access or give instructions to its delegates or the exercise of such rights becomes impossible in practice;
- (d) the AIFM delegates the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the AIFM itself. When assessing the extent of delegation, competent authorities shall assess the entire delegation structure taking into account not only the assets managed under delegation but also the following qualitative criteria:
 - (i) the types of assets the AIF or the AIFM acting on behalf of the AIF is invested in, and the importance of the assets managed under delegation for the risk and return profile of the AIF;
 - (ii) the importance of the assets under delegation for the achievement of the investment goals of the AIF;

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- (iii) the geographical and sectoral spread of the AIF's investments;
- (iv) the risk profile of the AIF;
- (v) the type of investment strategies pursued by the AIF or the AIFM acting on behalf of the AIF;
- (vi) the types of tasks delegated in relation to those retained; and
- (vii) the configuration of delegates and their sub-delegates, their geographical sphere of operation and their corporate structure, including whether the delegation is conferred on an entity belonging to the same corporate group as the AIFM.

2. The Commission shall monitor, in the light of market developments, the application of this Article. The Commission shall review the situation after two years and shall, if necessary, take appropriate measures to further specify the conditions under which the AIFM shall be deemed to have delegated its functions to the extent that it becomes a letter box entity and can no longer be considered to be manager of the AIF.

3. ESMA may issue guidelines to ensure a consistent assessment of delegation structures across the Union.

CHAPTER IV

DEPOSITARY*SECTION 1****Particulars of the written contract***

(Article 21(2) of Directive 2011/61/EU)

*Article 83***Contractual particulars**

1. A contract by which the depositary is appointed in accordance with Article 21(2) of Directive 2011/61/EU shall be drawn up between the depositary on the one hand and the AIFM and, as the case may be, or the AIF on the other hand and shall include at least the following elements:

- (a) a description of the services to be provided by the depositary and the procedures to be adopted for each type of asset in which the AIF may invest and which shall then be entrusted to the depositary;
- (b) a description of the way in which the safe-keeping and oversight function is to be performed depending on the types of assets and the geographical regions in which the AIF plans to invest. With respect to the custody duties this description shall include country lists and procedures for adding and, as the case may be, or withdrawing countries from that list. This shall be consistent with the information provided in the AIF rules, instruments of incorporation and offering documents regarding the assets in which the AIF may invest;

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- (c) a statement that the depositary's liability shall not be affected by any delegation of its custody functions unless it has discharged itself of its liability in accordance with Article 21(13) or (14) of Directive 2011/61/EU;
- (d) the period of validity and the conditions for amendment and termination of the contract including the situations which could lead to the termination of the contract and details regarding the termination procedure and, if applicable, the procedures by which the depositary should send all relevant information to its successor;
- (e) the confidentiality obligations applicable to the parties in accordance with relevant laws and regulations. These obligations shall not impair the ability of competent authorities to have access to the relevant documents and information;
- (f) the means and procedures by which the depositary transmits to the AIFM or the AIF all relevant information that it needs to perform its duties including the exercise of any rights attached to assets, and in order to allow the AIFM and the AIF to have a timely and accurate overview of the accounts of the AIF;
- (g) the means and procedures by which the AIFM or the AIF transmits all relevant information or ensures the depositary has access to all the information it needs to fulfil its duties, including the procedures ensuring that the depositary will receive information from other parties appointed by the AIF or the AIFM;
- (h) information on whether or not the depositary, or a third party to whom safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU may re-use the assets it has been entrusted with and, if any, the conditions attached to any such re-use;
- (i) the procedures to be followed when an amendment to the AIF rules, instruments of incorporation or offering documents is being considered, detailing the situations in which the depositary is to be informed, or where the prior agreement of the depositary is needed to proceed with the amendment;
- (j) all necessary information that needs to be exchanged between the AIF, the AIFM, a third party acting on behalf of the AIF or the AIFM, on the one hand, and the depositary, on the other hand, related to the sale, subscription, redemption, issue, cancellation and re-purchase of units or shares of the AIF;
- (k) all necessary information that needs to be exchanged between the AIF, the AIFM, a third party acting on behalf of the AIF or the AIFM and the depositary related to the performance of the depositary's oversight and control function;
- (l) where the parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;

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- (m) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;
- (n) information on all cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF and the procedures ensuring that the depositary will be informed when any new account is opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF;
- (o) details regarding the depositary's escalation procedures, including the identification of the persons to be contacted within the AIF and, as the case may be, or the AIFM by the depositary when it launches such a procedure;
- (p) a commitment by the depositary to notify the AIFM when it becomes aware that the segregation of assets is not, or is no longer sufficient to ensure protection from insolvency of a third party, to whom safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU in a specific jurisdiction;
- (q) the procedures ensuring that the depositary, in respect of its duties, has the ability to enquire into the conduct of the AIFM and, as the case may be, or the AIF and to assess the quality of information transmitted including by way of having access to the books of the AIF and, as the case may be, or AIFM or by way of on-site visits;
- (r) the procedures ensuring that the AIFM and, as the case may be, or the AIF can review the performance of the depositary in respect of the depositary's contractual obligations.

2. The details of the means and procedures set out in points (a) to (r) shall be described in the contract appointing the depositary or any subsequent amendment to the contract.

3. The contract appointing the depositary or the subsequent amendment to the contract referred to in paragraph 2 shall be done in writing.

4. The parties may agree to transmit all or part of the information that flows between them electronically provided that proper recording of such information is ensured.

5. Unless otherwise provided by national law, there shall be no obligation to enter into a specific written agreement for each AIF; it shall be possible for the AIFM and the depositary to enter into a framework agreement listing the AIFs managed by that AIFM to which the agreement applies.

6. The national law applicable to the contract appointing the depositary and any subsequent agreement shall be specified.

*SECTION 2****General criteria for assessing the prudential regulation and supervision applicable to depositaries in third countries***

(Article 21(6)(b) of Directive 2011/61/EU)

*Article 84***Criteria for assessing prudential regulation and supervision applicable to a depositary in a third country**

For the purposes of point (b) of Article 21(6) of Directive 2011/61/EU, the effectiveness of prudential regulation and supervision applicable to a depositary in a third country whether it has the same effect as that provided for under Union law and its effective enforcement shall be assessed against the following criteria:

- (a) the depositary is subject to authorisation and ongoing supervision by a public competent authority with adequate resources to fulfil its tasks;
- (b) the law of the third country lay down criteria for authorisation as a depositary that have the same effect as those laid down for access to the business of credit institutions or investment firms within the Union;
- (c) the capital requirements imposed on the depositary in the third country have the same effect as those applicable in the Union depending on whether the depositary is of the same nature as an Union credit institution or investment firm;
- (d) the operating conditions applicable to a depositary in the third country have the same effect as those laid down for credit institutions or investment firms within the Union depending on the nature of the depositary;
- (e) the requirements regarding the performance of the specific duties as AIF depositary established in the law of the third country have the same effect as those provided for in Article 21(7) to (15) of Directive 2011/61/EU and its implementing measures and the relevant national law;
- (f) the law of the third country provides for the application of sufficiently dissuasive enforcement actions in the event of breach by the depositary of the requirements and conditions referred to points (a) to (e).

*SECTION 3****Depositary functions, due diligence duties and segregation obligation***

(Articles 21(7)-(9) and 21(11)(c) and (d)(iii) of Directive 2011/61/EU)

*Article 85***Cash monitoring — general requirements**

1. Where a cash account is maintained or opened at an entity referred to in Article 21(7) of Directive 2011/61/EU in the name of the AIF, in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF, an AIFM shall ensure that the

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depository is provided, upon commencement of its duties and on an ongoing basis, with all relevant information it needs to comply with its obligations.

2. In order to have access to all information regarding the AIF's cash accounts and have a clear overview of all the AIF's cash flows, a depository shall at least:

- (a) be informed, upon its appointment, of all existing cash accounts opened in the name of the AIF, or in the name of the AIFM acting on behalf of the AIF;
- (b) be informed at the opening of any new cash account by the AIF or by the AIFM acting on behalf of the AIF;
- (c) be provided with all information related to the cash accounts opened at a third party entity, directly by those third parties.

*Article 86***Monitoring of the AIF's cash flows**

A depository shall ensure effective and proper monitoring of the AIF's cash flows and in particular it shall at least:

- (a) ensure that all cash of the AIF is booked in accounts opened with entities referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC in the relevant markets where cash accounts are required for the purposes of the AIF's operations and which are subject to prudential regulation and supervision that has the same effect as Union law, is effectively enforced and is in accordance with the principles laid down in Article 16 of Directive 2006/73/EC;
- (b) implement effective and proper procedures to reconcile all cash flow movements and perform such reconciliations on a daily basis or, in case of infrequent cash movements, when such cash flow movements occur;
- (c) implement appropriate procedures to identify at the close of business day significant cash flows and in particular those which could be inconsistent with the AIF's operations;
- (d) review periodically the adequacy of those procedures including through a full review of the reconciliation process at least once a year and ensuring that the cash accounts opened in the name of the AIF, in the name of the AIFM acting on behalf of the AIF or in the name of the depository acting on behalf of the AIF are included in the reconciliation process;

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- (e) monitor on an ongoing basis the outcomes of the reconciliations and actions taken as a result of any discrepancies identified by the reconciliation procedures and notify the AIFM if an irregularity has not been rectified without undue delay and also the competent authorities if the situation cannot be clarified and, as the case may be, or corrected;
- (f) check the consistency of its own records of cash positions with those of the AIFM. The AIFM shall ensure that all instructions and information related to a cash account opened with a third party are sent to the depositary, so that the depositary is able to perform its own reconciliation procedure.

*Article 87***Duties regarding subscriptions**

An AIFM shall ensure that the depositary is provided with information about payments made by or on behalf of investors upon the subscription of units or shares of an AIF at the close of each business day when the AIFM, the AIF or a party acting on behalf of it, such as a transfer agent receives such payments or an order from the investor. The AIFM shall ensure that the depositary receives all other relevant information it needs to make sure that the payments are then booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary in accordance with the provisions of Article 21(7) of Directive 2011/61/EU.

*Article 88***Financial instruments to be held in custody**

1. Financial instruments belonging to the AIF or to the AIFM acting on behalf of the AIF which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:

- (a) they are transferable securities including those which embed derivatives as referred to in the last subparagraph of Article 51(3) of Directive 2009/65/EC and Article 10 of Commission Directive 2007/16/EC ⁽¹⁾, money market instruments or units of collective investment undertakings;
- (b) they are capable of being registered or held in an account directly or indirectly in the name of the depositary.

2. Financial instruments which, in accordance with applicable national law, are only directly registered in the name of the AIF with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody.

3. Financial instruments belonging to the AIF or the AIFM acting on behalf of the AIF which are able to be physically delivered to the depositary shall always be included in the scope of the custody duties of the depositary.

⁽¹⁾ OJ L 79, 20.3.2007, p. 11.

▼ B*Article 89***Safekeeping duties with regard to assets held in custody**

1. In order to comply with the obligations laid down in point (a) of Article 21(8) of Directive 2011/61/EU with respect to financial instruments to be held in custody, a depositary shall ensure at least that:

- (a) the financial instruments are properly registered in accordance with Article 21(8)(a)(ii) of Directive 2011/61/EU;
- (b) records and segregated accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the financial instruments and cash held for AIFs;

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- (c) reconciliations are conducted as often as necessary between the depositary's internal accounts and records and those of any third party to whom custody functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU;

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- (d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high standard of investor protection;
- (e) all relevant custody risks throughout the custody chain are assessed and monitored and the AIFM is informed of any material risk identified;
- (f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence;
- (g) the AIF's ownership right or the ownership right of the AIFM acting on behalf of the AIF over the assets is verified.

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In relation to point (c) of the first subparagraph, the frequency of the reconciliations shall be determined on the basis of the following:

- (a) the normal trading activity of the AIF;
- (b) any trade occurring outside the normal trading activity;
- (c) any trade occurring on behalf of any other client whose assets are held by the third party in the same financial instruments account as the assets of the AIF.

▼ M1

2. Where a depositary has delegated its custody functions to a third party in accordance with Article 21(11) of Directive 2011/61/EU, it shall remain subject to the requirements of points (a) to (e) of paragraph 1 of this Article. It shall also ensure that the third party complies with the requirements of points (b) to (g) of paragraph 1 and segregation obligations laid down in Article 99.

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3. A depositary's safe-keeping duties as referred to in paragraphs 1 and 2 shall apply on a look-through basis to underlying assets held by financial and, as the case may be, or legal structures controlled directly or indirectly by the AIF or the AIFM acting on behalf of the AIF.

The requirement referred to in the first subparagraph shall not apply to fund of funds structures or master-feeder structures where the underlying funds have a depositary which keeps in custody the assets of these funds.

*Article 90***Safekeeping duties regarding ownership verification and record keeping**

1. An AIFM shall provide the depositary, upon commencement of its duties and on an ongoing basis, with all relevant information the depositary needs in order to comply with its obligations pursuant to point (b) of Article 21(8) of Directive 2011/61/EU, and ensure that the depositary is provided with all relevant information by third parties.

2. In order to comply with the obligations referred to in point (b) of Article 21(8) of Directive 2011/61/EU, a depositary shall at least:

- (a) have access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping duties, including relevant information to be provided to the depositary by third parties;
- (b) possess sufficient and reliable information for it to be satisfied of the AIF's ownership right or of the ownership right of the AIFM acting on behalf of the AIF over the assets;
- (c) maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership. In order to comply with this obligation, the depositary shall:
 - (i) register in its record, in the name of the AIF, assets, including their respective notional amounts, for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership;
 - (ii) be able to provide at any time a comprehensive and up-to-date inventory of the AIF's assets, including their respective notional amounts.

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For the purpose of point (c)(ii) of paragraph 2, the depositary shall ensure that there are procedures in place so that registered assets cannot be assigned, transferred, exchanged or delivered without the depositary or its delegate having been informed of such transactions and the depositary shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party. The AIFM shall ensure that the relevant third party provides the depositary without undue delay with certificates or other documentary evidence every time there is a sale or acquisition of assets or a corporate action resulting in the issue of financial instruments and at least once a year.

3. In any event, a depositary shall ensure that the AIFM has and implements appropriate procedures to verify that the assets acquired by the AIF it manages are appropriately registered in the name of the AIF or in the name of the AIFM acting on behalf of the AIF, and to check the consistency between the positions in the AIFM's records and the assets for which the depositary is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership. The AIFM shall ensure that all instructions and relevant information related to the AIF's assets are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

4. A depositary shall set up and implement an escalation procedure for situations where an anomaly is detected including notification of the AIFM and of the competent authorities if the situation cannot be clarified and, as the case may be, or corrected.

5. A depositary's safe-keeping duties referred to in paragraphs 1 to 4 shall apply on a look-through basis to underlying assets held by financial and, as the case may be, or legal structures established by the AIF or by the AIFM acting on behalf of the AIF for the purposes of investing in the underlying assets and which are controlled directly or indirectly by the AIF or by the AIFM acting on behalf of the AIF.

The requirement referred to in the first subparagraph shall not apply to fund of funds structures and master-feeder structures where the underlying funds have a depositary which provides ownership verification and record-keeping functions for this fund's assets.

*Article 91***Reporting obligations for prime brokers**

1. Where a prime broker has been appointed, the AIFM shall ensure that from the date of that appointment an agreement is in place pursuant to which the prime broker is required to make available to the depositary in particular a statement in a durable medium which contains the following information:

- (a) the values of the items listed in paragraph 3 at the close of each business day;

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- (b) details of any other matters necessary to ensure that the depositary of the AIF has up-to-date and accurate information about the value of assets the safekeeping of which has been delegated in accordance with Article 21(11) of Directive 2011/61/EU.
2. The statement referred to in paragraph 1 shall be made available to the depositary of the AIF no later than the close of the next business day to which it relates.
3. The items referred to in point (a) of paragraph 1 shall include:
- (a) the total value of assets held by the prime broker for the AIF, where safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU. The value of each of the following:
 - (i) cash loans made to the AIF and accrued interest;
 - (ii) securities to be redelivered by the AIF under open short positions entered into on behalf of the AIF;
 - (iii) current settlement amounts to be paid by the AIF under any futures contracts;
 - (iv) short sale cash proceeds held by the prime broker in respect of short positions entered into on behalf of the AIF;
 - (v) cash margins held by the prime broker in respect of open futures contracts entered into on behalf of the AIF. This obligation is in addition to the obligations under Articles 87 and 88;
 - (vi) mark-to-market close-out exposures of any OTC transaction entered into on behalf of the AIF;
 - (vii) total secured obligations of the AIF against the prime broker; and
 - (viii) all other assets relating to the AIF;
 - (b) the value of other assets referred to in point (b) of Article 21(8) of Directive 2011/61/EU held as collateral by the prime broker in respect of secured transactions entered into under a prime brokerage agreement;
 - (c) the value of the assets where the prime broker has exercised a right of use in respect of the AIF's assets;
 - (d) a list of all the institutions at which the prime broker holds or may hold cash of the AIF in an account opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF in accordance with Article 21(7) of Directive 2011/61/EU.



Article 92

Oversight duties — general requirements

1. At the time of its appointment, the depositary shall assess the risks associated with the nature, scale and complexity of the AIF's strategy and the AIFM's organisation in order to devise oversight procedures which are appropriate to the AIF and the assets in which it invests and which are then implemented and applied. Such procedures shall be regularly updated.

2. In performing its oversight duties under Article 21(9) of Directive 2011/61/EU, a depositary shall perform *ex-post* controls and verifications of processes and procedures that are under the responsibility of the AIFM, the AIF or an appointed third party. The depositary shall in all circumstances ensure that an appropriate verification and reconciliation procedure exists which is implemented and applied and frequently reviewed. The AIFM shall ensure that all instructions related to the AIF's assets and operations are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

3. A depositary shall establish a clear and comprehensive escalation procedure to deal with situations where potential irregularities are detected in the course of its oversight duties, the details of which shall be made available to the competent authorities of the AIFM upon request.

4. An AIFM shall provide the depositary, upon commencement of its duties and on an ongoing basis, with all relevant information it needs in order to comply with its obligations pursuant to Article 21(9) of Directive 2011/61/EU including information to be provided to the depositary by third parties. The AIFM shall particularly ensure that the depositary is able to have access to the books and perform on-site visits on premises of the AIFM and of those of any service provider appointed by the AIF or the AIFM, such as administrators or external valuers and, as the case may be, or to review reports and statements of recognised external certifications by qualified independent auditors or other experts in order to ensure the adequacy and relevance of the procedures in place.

Article 93

Duties regarding subscription and redemptions

In order to comply with point (a) of Article 21(9) of Directive 2011/61/EU the depositary shall meet the following requirements:

- (1) The depositary shall ensure that the AIF, the AIFM or the designated entity has established, implements and applies an appropriate and consistent procedure to:
 - (i) reconcile the subscription orders with the subscription proceeds, and the number of units or shares issued with the subscription proceeds received by the AIF;

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- (ii) reconcile the redemption orders with the redemptions paid, and the number of units or shares cancelled with the redemptions paid by the AIF;
- (iii) verify on a regular basis that the reconciliation procedure is appropriate.

For the purpose of points (i), (ii) and (iii), the depositary shall in particular regularly check the consistency between the total number of units or shares in the AIF's accounts and the total number of outstanding shares or units that appear in the AIF's register.

- (2) A depositary shall ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of shares or units of the AIF comply with the applicable national law and with the AIF rules or instruments of incorporation and verify that these procedures are effectively implemented.
- (3) The frequency of the depositary's checks shall be consistent with the frequency of subscriptions and redemptions.

*Article 94***Duties regarding the valuation of shares/units**

1. In order to comply with point (b) of Article 21(9) of Directive 2011/61/EU the depositary shall:

- (a) verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of the assets of the AIF in compliance with Article 19 of Directive 2011/61/EU and its implementing measures and with the AIF rules and instruments of incorporation; and
- (b) ensure that the valuation policies and procedures are effectively implemented and periodically reviewed.

2. A depositary's procedures shall be conducted at a frequency consistent with the frequency of the AIF's valuation policy as defined in Article 19 of Directive 2011/61/EU and its implementing measures.

3. Where a depositary considers that the calculation of the value of the shares or units of the AIF has not been performed in compliance with applicable law or the AIF rules or with Article 19 of Directive 2011/61/EU, it shall notify the AIFM and, as the case may be, or the AIF and ensure that timely remedial action is taken in the best interest of the investors in the AIF.

4. Where an external valuer has been appointed, a depositary shall check that the external valuer's appointment is in accordance with Article 19 of Directive 2011/61/EU and its implementing measures.

*Article 95***Duties regarding the carrying out of the AIFM's instructions**

In order to comply with point (c) of Article 21(9) of Directive 2011/61/EU the depositary shall at least:

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- (a) set up and implement appropriate procedures to verify that the AIF and AIFM comply with applicable laws and regulations and with the AIF's rules and instruments of incorporation. In particular, the depositary shall monitor the AIF's compliance with investment restrictions and leverage limits set in the AIF's offering documents. Those procedures shall be proportionate to the nature, scale and complexity of the AIF;
- (b) set up and implement an escalation procedure where the AIF has breached one of the limits or restrictions referred to in point (a).

*Article 96***Duties regarding the timely settlement of transactions**

1. In order to comply with point (d) of Article 21(9)(of Directive 2011/61/EU the depositary shall set up a procedure to detect any situation where a consideration related to the operations involving the assets of the AIF or of the AIFM acting on behalf of the AIF is not remitted to the AIF within the usual time limits, notify the AIFM and, where the situation has not been remedied, request the restitution of the financial instruments from the counterparty where possible.
2. Where transactions do not take place on a regulated market, the usual time limits shall be assessed with regard to the conditions attached to the transactions (OTC derivative contracts or investments in real estate assets or in privately held companies).

*Article 97***Duties related to the AIF's income distribution**

1. In order to comply with point (e) of Article 21(9)(of Directive 2011/61/EU the depositary shall:
 - (a) ensure that the net income calculation, once declared by the AIFM, is applied in accordance with the AIF rules, instruments of incorporation and applicable national law;
 - (b) ensure that appropriate measures are taken where the AIF's auditors have expressed reserves on the annual financial statements. The AIF or the AIFM acting on behalf of the AIF shall provide the depositary with all information on reserves expressed on the financial statements; and
 - (c) check the completeness and accuracy of dividend payments, once they are declared by the AIFM, and, where relevant, of the carried interest.
2. Where a depositary considers that the income calculation has not been performed in compliance with applicable law or with the AIF rules or instruments of incorporation, it shall notify the AIFM and, as the case may be, or the AIF and ensure that timely remedial action has been taken in the best interest of the AIF's investors.

▼B*Article 98***Due diligence**

1. In order to fulfil the obligations laid down in point (c) of Article 21(11) of Directive 2011/61/EU a depositary shall implement and apply an appropriate documented due diligence procedure for the selection and ongoing monitoring of the delegate. That procedure shall be reviewed regularly, at least once a year, and made available upon request to competent authorities.

2. When selecting and appointing a third party, to whom safekeeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU, a depositary shall exercise all due skill, care and diligence to ensure that entrusting financial instruments to this third party provides an adequate standard of protection. It shall at least:

- (a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the third party's contracts. That assessment shall in particular enable the depositary to determine the potential implication of an insolvency of the third party for the assets and rights of the AIF. If a depositary becomes aware that the segregation of assets is not sufficient to ensure protection from insolvency because of the law of the country where the third party is located, it shall immediately inform the AIFM;
- (b) assess whether the third party's practice, procedures and internal controls are adequate to ensure that the financial instruments of the AIF or of the AIFM acting on behalf of the AIF are subject to a high standard of care and protection;
- (c) assess whether the third party's financial strength and reputation are consistent with the tasks delegated. That assessment shall be based on information provided by the potential third party as well as other data and information, where available;
- (d) ensure that the third party has the operational and technological capabilities to perform the delegated custody tasks with a satisfactory degree of protection and security.

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2a. A contract, by which the depositary appoints a third party to hold assets of that depositary's AIF clients in custody, shall contain at least the following provisions:

- (a) a guarantee of the depositary's right to information, inspection, and access to the relevant records and accounts of the third party holding assets in custody to enable the depositary to fulfil its oversight and due diligence obligations and in particular allow the depositary to:
 - (i) identify all entities within the custody chain;
 - (ii) verify that the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depositary's books in the name of the AIF or in the name of the AIFM, acting on behalf of the AIF, matches the quantity of

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the identified financial instruments held in custody by the third party for that AIF as recorded in the financial instruments account opened in the third party's books;

- (iii) verify that the quantity of the identified financial instruments, which are registered and held in a financial instruments account opened at the issuer's Central Securities Depository (CSD) or its agent, in the name of the third party on behalf of its clients, matches the quantity of the identified financial instruments recorded in the financial instruments accounts opened in the depository's books in the name of each of its AIF clients or in the name of the AIFM acting on behalf of the AIF;
- (b) details of equivalent rights and obligations agreed between the third party and another third party, in the event of a further delegation of custody functions.

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3. A depository shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring to ensure that the third party continues to comply with the criteria provided for in paragraph 1 of this Article and the conditions set out in point (d) of Article 21(11) of Directive 2011/61/EU. To this end the depository shall at least:

- (a) monitor the third party's performance and its compliance with the depository's standards;
- (b) ensure that the third party exercises a high standard of care, prudence and diligence in the performance of its custody tasks and in particular that it effectively segregates the financial instruments in line with the requirements of Article 99;
- (c) review the custody risks associated with the decision to entrust the assets to the third party and without undue delay notify the AIF or AIFM of any change in those risks. That assessment shall be based on information provided by the third party and other data and information where available. During market turmoil or when a risk has been identified, the frequency and the scope of the review shall be increased. If the depository becomes aware that the segregation of assets is no longer sufficient to ensure protection from insolvency because of the law of the country where the third party is located, it shall immediately inform the AIFM.

4. Where the third party further delegates any of the functions delegated to it, the conditions and criteria set out in paragraphs 1, 2 and 3 shall apply *mutatis mutandis*.

5. A depository shall monitor compliance with Article 21(4) of Directive 2011/61/EU.

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6. A depositary shall devise contingency plans for each market in which it appoints a third party in accordance with Article 21(11) of Directive 2011/61/EU to perform safekeeping duties. Such a contingency plan shall include the identification of an alternative provider, if any.

7. A depositary shall take measures, including termination of the contract, which are in the best interest of the AIF and its investors where the delegate no longer complies with the requirements.

*Article 99***Segregation obligation****▼M1**

1. Where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party, to whom safe-keeping functions are delegated pursuant to Article 21(11) of Directive 2011/61/EU, acts in accordance with the segregation obligation laid down in point (iii) of Article 21(11)(d) of that Directive by ensuring and verifying that the third party:

- (a) correctly records all identified financial instruments in the financial instruments account, which is opened in the third party's books, in order to hold in custody the financial instruments for the depositary's clients, which excludes proprietary financial instruments of the depositary and of the third party and of the third party's other clients, to enable the depositary to match the quantity of the identified financial instruments recorded in the accounts opened in the depositary's books in the name of each of its AIF clients or in the name of the AIFM acting on behalf of the AIF;
- (b) keeps all necessary records and financial instruments accounts to enable the depositary at any time and without delay to distinguish assets of the depositary's clients from the third party own assets, assets of the third party's other clients and assets held for the depositary for its own account;
- (c) maintains records and financial instruments accounts in a way that ensures their accuracy, and in particular their correspondence to the assets kept safe for the depositary's AIF clients and on the basis of which the depositary can at any time establish the precise nature, location and ownership status of those assets;
- (d) provides the depositary with a statement, on a regular basis and in any case whenever a change in circumstances occurs, detailing the assets of the depositary's AIF clients;
- (e) conducts reconciliations, as often as necessary, between its financial instruments accounts and internal records and those of the third party to whom it has delegated safe-keeping functions in accordance with Article 21(11) of Directive 2011/61/EU.

The frequency of the reconciliation shall be determined in accordance with Article 89(1);

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- (f) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud poor administration, inadequate record-keeping or negligence;

- (g) where the third party is an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC, which is subject to effective prudential regulation and supervision that has the same effect as Union law and is effectively enforced, the depositary shall take the necessary steps to ensure that the AIF's cash is held in an account or accounts in accordance with Article 21(7) of Directive 2011/61/EU.

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2. Where a depositary has delegated its custody functions to a third party in accordance with Article 21(11) of Directive 2011/61/EU, the monitoring of the third party's compliance with its segregation obligations shall ensure that the financial instruments belonging to its clients are protected from any insolvency of that third party. If, according to the applicable law, including in particular the law relating to property or insolvency, the requirements laid down in paragraph 1 are not sufficient to achieve that objective, the depositary shall assess what additional arrangements are to be made in order to minimise the risk of loss and maintain an adequate standard of protection.

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2a. Where a depositary delegates its custody functions to a third party located in a third country in accordance with Article 21(11) of Directive 2011/61/EU, in addition to the requirements of paragraph 1 of this Article, the depositary shall ensure the following:

- (a) the depositary receives legal advice from an independent natural or legal person confirming that the applicable insolvency law recognises the following:
 - (i) the segregation of the assets of the depositary's clients from the third party's own assets, from the assets of the third party's other clients and from the assets held by the third party for the depositary's own account;
 - (ii) the assets of the depositary's AIF clients do not form part of the third party's estate in case of insolvency;
 - (iii) the assets of the depositary's AIF clients are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom custody functions have been delegated in accordance with Article 21(11) of Directive 2011/61/EU;

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- (b) the third party takes the following steps:
- (i) it ensures that the conditions laid down in point (a) are met when concluding the delegation agreement with the depositary and on an ongoing basis for the entire duration of the delegation;
 - (ii) it immediately informs the depositary whenever any of the conditions referred to in point (i) are no longer met;
 - (iii) it informs the depositary about any changes to applicable insolvency law and its effective application.

3. Paragraphs 1, 2 and 2a shall apply *mutatis mutandis* when the third party, to whom safe-keeping functions are delegated in accordance with Article 21(11) of Directive 2011/61/EU, has decided to delegate all or part of its safe-keeping functions to another third party pursuant to the third subparagraph of Article 21(11) of Directive 2011/61/EU.

▼ B*SECTION 4****Loss of financial instruments, liability discharge and objective reasons***

(Article 21(12) and (13) of Directive 2011/61/EU)

*Article 100***Loss of a financial instrument held in custody**

1. A loss of a financial instrument held in custody within the meaning of Article 21(12) of Directive 2011/61/EU shall be deemed to have taken place when, in relation to a financial instrument held in custody by the depositary or by a third party to whom the custody of financial instruments held in custody has been delegated, any of the following conditions is met:

- (a) a stated right of ownership of the AIF is demonstrated not to be valid because it either ceased to exist or never existed;
- (b) the AIF has been definitively deprived of its right of ownership over the financial instrument;
- (c) the AIF is definitively unable to directly or indirectly dispose of the financial instrument.

2. The ascertainment by the AIFM of the loss of a financial instrument shall follow a documented process readily available to the competent authorities. Once a loss is ascertained, it shall be notified immediately to investors in a durable medium.

3. A financial instrument held in custody shall not be deemed to be lost within the meaning of Article 21(12) of Directive 2011/61/EU where an AIF is definitively deprived of its right of ownership in respect of a particular instrument, but this instrument is substituted by or converted into another financial instrument or instruments.

4. In the event of insolvency of the third party to whom the custody of financial instruments held in custody has been delegated, the loss of a financial instrument held in custody shall be ascertained by the AIFM as soon as one of the conditions listed in paragraph 1 is met with certainty.

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There shall be certainty as to whether any of the conditions set out in paragraph 1 is fulfilled at the latest at the end of the insolvency proceedings. The AIFM and the depositary shall monitor closely the insolvency proceedings to determine whether all or some of the financial instruments entrusted to the third party to whom the custody of financial instruments has been delegated are effectively lost.

5. A loss of a financial instrument held in custody shall be ascertained irrespective of whether the conditions listed in paragraph 1 are the result of fraud, negligence or other intentional or non-intentional behaviour.

*Article 101***Liability discharge under Article 21(12) of Directive 2011/61/EU**

1. A depositary's liability under the second subparagraph of Article 21(12) of Directive 2011/61/EU shall not be triggered provided the depositary can prove that all the following conditions are met:

- (a) the event which led to the loss is not the result of any act or omission of the depositary or of a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 21(8) of Directive 2011/61/EU has been delegated;
- (b) the depositary could not have reasonably prevented the occurrence of the event which led to the loss despite adopting all precautions incumbent on a diligent depositary as reflected in common industry practice;
- (c) despite rigorous and comprehensive due diligence, the depositary could not have prevented the loss.

This condition may be deemed to be fulfilled when the depositary has ensured that the depositary and the third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 21(8) of Directive 2011/61/EU has been delegated have taken all of the following actions:

- (i) establishing, implementing, applying and maintaining structures and procedures and insuring expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF in order to identify in a timely manner and monitor on an ongoing basis external events which may result in loss of a financial instrument held in custody;
- (ii) assessing on an ongoing basis whether any of the events identified under point (i) presents a significant risk of loss of a financial instrument held in custody;

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- (iii) informing the AIFM of the significant risks identified and taking appropriate actions, if any, to prevent or mitigate the loss of financial instruments held in custody, where actual or potential external events have been identified which are believed to present a significant risk of loss of a financial instrument held in custody.
2. The requirements referred to in points (a) and (b) of paragraph 1 may be deemed to be fulfilled in the following circumstances:
- (a) natural events beyond human control or influence;
- (b) the adoption of any law, decree, regulation, decision or order by any government or governmental body, including any court or tribunal, which impacts the financial instruments held in custody;
- (c) war, riots or other major upheavals.
3. The requirements referred to in points (a) and (b) of paragraph 1 shall not be deemed to be fulfilled in cases such as an accounting error, operational failure, fraud, failure to apply the segregation requirements at the level of the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 21(8) of Directive 2011/61/EU has been delegated.
4. This Article shall apply *mutatis mutandis* to the delegate when the depositary has contractually transferred its liability in accordance with Article 21(13) and (14) of Directive 2011/61/EU.

*Article 102***Objective reasons for the depositary to contract a discharge of liability**

1. The objective reasons for contracting a discharge pursuant to Article 21(13) of Directive 2011/61/EU shall be:
- (a) limited to precise and concrete circumstances characterising a given activity;
- (b) consistent with the depositary's policies and decisions.
2. The objective reasons shall be established each time the depositary intends to discharge itself of liability.
3. The depositary shall be deemed to have objective reasons for contracting the discharge of its liability in accordance with Article 21(13) of Directive 2011/61/EU when the depositary can demonstrate that it had no other option but to delegate its custody duties to a third party. In particular, this shall be the case where:
- (a) the law of a third country requires that certain financial instruments be held in custody by a local entity and local entities exist that satisfy the delegation criteria laid down in Article 21(11) of Directive 2011/61/EU; or

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- (b) the AIFM insists on maintaining an investment in a particular jurisdiction despite warnings by the depositary as to the increased risk this presents.

CHAPTER V

TRANSPARENCY REQUIREMENTS, LEVERAGE, RULES RELATING TO THIRD COUNTRIES AND EXCHANGE OF INFORMATION ON THE POTENTIAL CONSEQUENCES OF AIFM ACTIVITY*SECTION 1****Annual report, disclosure to investors and reporting to competent authorities***

(Article 22(2)(a) to (e) and Articles 23(4) and 24(1) of Directive 2011/61/EU)

*Article 103***General principles for the annual report**

All information provided in the annual report, including the information specified in this Section, shall be presented in a manner that provides materially relevant, reliable, comparable and clear information. The annual report shall contain the information investors need in relation to particular AIF structures.

*Article 104***Content and format of the balance sheet or statement of assets and liabilities and of the income and expenditure account**

1. The balance sheet or statement of assets and liabilities shall contain at least the following elements and underlying line items in accordance with point (a) of Article 22(2) of Directive 2011/61/EU:

- (a) ‘assets’ comprising the resources controlled by the AIF as a result of past events and from which future economic benefits are expected to flow to the AIF. Assets shall be sub-classified according to the following line items:
- (i) ‘investments’, including, but not limited to, debt and equity securities, real estate and property and derivatives;
 - (ii) ‘cash and cash equivalents’, including, but not limited to, cash-in-hand, demand deposits and qualifying short-term liquid investments;
 - (iii) ‘receivables’, including, but not limited to, amounts receivable in relation to dividends and interest, investments sold, amounts due from brokers and ‘prepayments’, including, but not limited to, amounts paid in advance in relation to expenses of the AIF;

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- (b) ‘liabilities’, comprising present obligations of the AIF arising from past events, the settlement of which is expected to result in an outflow from the AIF of resources embodying economic benefits. Liabilities shall be sub-classified according to the following line items:
- (i) ‘payables’, including, but not limited to, amounts payable in relation to the purchase of investments or redemption of units or shares in the AIF and amounts due to brokers and ‘accrued expenses’, including, but not limited to, liabilities for management fees, advisory fees, performance fees, interest and other expenses incurred in the course of operations of the AIF;
 - (ii) ‘borrowings’, including, but not limited to, amounts payable to banks and other counterparties;
 - (iii) ‘other liabilities’, including, but not limited to, amounts due to counterparties for collateral on return of securities loaned, deferred income and dividends and distributions payable;
- (c) ‘net assets’, representing the residual interest in the assets of the AIF after deducting all its liabilities.

2. The income and expenditure account shall contain at least the following elements and underlying line items:

- (a) ‘income’, representing any increases in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in net assets other than those relating to contributions from investors. Income shall be sub-classified according to the following line items:
- (i) ‘investment income’, which can be further sub-classified as follows:
 - ‘dividend income’, relating to dividends on equity investments to which the AIF is entitled,
 - ‘interest income’, relating to interest on debt investments and on cash to which the AIF is entitled,
 - ‘rental income’, relating to rental income from property investments to which the AIF is entitled;
 - (ii) ‘realised gains on investments’, representing gains on the disposal of investments;
 - (iii) ‘unrealised gains on investments’, representing gains on the revaluation of investments; and
 - (iv) ‘other income’ including, but not limited to, fee income from securities loaned and from miscellaneous sources.

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(b) ‘expenses’, representing decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in net assets, other than those relating to distributions to investors. Expenses shall, be sub-classified according to the following line items:

— ‘investment advisory or management fees’, representing contractual fees due to the advisor or AIFM,

— ‘other expenses’, including, but not limited to, administration fees, professional fees, custodian fees and interest. Individual items, if material in nature, should be disclosed separately,

— ‘realised loss on investments’, representing loss on the disposal of investments,

— ‘unrealised loss on investments’, representing loss on the revaluation of investments;

(c) ‘net income or expenditure’, representing the excess of income over expenditure or expenditure over income, as applicable.

3. The layout, nomenclature and terminology of line items shall be consistent with the accounting standards applicable to or the rules adopted by the AIF, and shall comply with legislation applicable where the AIF is established. Such line items may be amended or extended to ensure compliance with the above.

4. Additional line items, headings and subtotals shall be presented when such presentation is relevant to the understanding of an AIF’s financial position in the balance sheet or statement of assets and liabilities or an AIF’s financial performance in the content and format of the income and expenditure account. Where relevant additional information shall be presented in the notes to the financial statements. The purpose of the notes shall be to provide narrative descriptions or disaggregation of items presented in the primary statements and information about items that do not qualify for recognition in these statements.

5. Each material class of similar items shall be presented separately. Individual items, if material, shall be disclosed. Materiality shall be assessed under the requirements of the accounting framework adopted.

6. The presentation and classification of items in the balance sheet or statement of assets and liabilities shall be retained from one reporting or accounting period to the next unless it is apparent that another presentation or classification would be more appropriate, as when a shift in the investment strategy leads to different trading patterns, or because an accounting standard has required a change in presentation.

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7. With respect to the content and format of the income and expenditure account set out to in Annex IV, all items of income and expense shall be recognised in a given period in the income and expenditure account unless an accounting standard adopted by the AIF requires otherwise.

*Article 105***Report on the activities of the financial year**

1. The report on activities of the financial year shall include at least:

- (a) an overview of investment activities during the year or period, and an overview of the AIF's portfolio at year-end or period end;
- (b) an overview of AIF performance over the year or period;
- (c) material changes as defined below in the information listed in Article 23 of Directive 2011/61/EU not already present in the financial statements.

2. The report shall include a fair and balanced review of the activities and performance of the AIF, containing also a description of the principal risks and investment or economic uncertainties that the AIF might face.

3. To the extent necessary for an understanding of the AIF's investment activities or its performance, the analysis shall include both financial and non-financial key performance indicators relevant to that AIF. The information provided in the report shall be consistent with national rules where the AIF is established.

4. The information in the report on the activities of the financial year shall form part of the directors or investment managers report in so far as this is usually presented alongside the financial statements of the AIF.

*Article 106***Material changes**

1. Any changes in information shall be deemed material within the meaning of point (d) of Article 22(2) of Directive 2011/61/EU if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF.

2. In order to comply with point (d) of Article 22(2) of Directive 2011/61/EU, AIFMs shall assess changes in the information referred to in Article 23 of Directive 2011/61/EU during the financial year in accordance with paragraph 1 of this Article.

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3. Information shall be disclosed in line with the requirements of the accounting standards and accounting rules adopted by the AIF together with a description of any potential or anticipated impact on the AIF and, as the case may be, or investors in the AIF. Additional disclosures shall be made when compliance with specific requirements of the accounting standards and accounting rules may be insufficient to enable investors to understand the impact of the change.

4. Where the information required to be disclosed in accordance with paragraph 1 is not covered by the accounting standards applicable to an AIF, or its accounting rules, a description of the material change shall be provided together with any potential or anticipated impact on the AIF and, as the case may be, or investors in the AIF.

*Article 107***Remuneration disclosure**

1. When information required by point (e) of Article 22(2) of Directive 2011/61/EU is given, it shall be specified whether or not the total remuneration relates to any of the following:

- (a) the total remuneration of the entire staff of the AIFM, indicating the number of beneficiaries;
- (b) the total remuneration of those staff of the AIFM who are fully or partly involved in the activities of the AIF, indicating the number of beneficiaries;
- (c) the proportion of the total remuneration of the staff of the AIFM attributable to the AIF, indicating the number of beneficiaries.

2. Where relevant, the total remuneration for the financial year shall also mention the carried interest paid by the AIF.

3. Where information is disclosed at the level of the AIFM, an allocation or breakdown shall be provided in relation to each AIF, in so far as this information exists or is readily available. As part of this disclosure, a description of how the allocation or breakdown has been provided shall be included.

4. AIFMs shall provide general information relating to the financial and non-financial criteria of the remuneration policies and practices for relevant categories of staff to enable investors to assess the incentives created. In accordance with the principles set out in Annex II to Directive 2011/61/EU, AIFMs shall disclose at least the information necessary to provide an understanding of the risk profile of the AIF and the measures it adopts to avoid or manage conflicts of interest.

▼B*Article 108***Periodic disclosure to investors**

1. The information referred to in Article 23(4) of Directive 2011/61/EU shall be presented in a clear and understandable way.

2. When disclosing the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature in accordance with Article 23(4)(a) of Directive 2011/61/EU the AIFM shall:
 - (a) provide an overview of any special arrangements in place including whether they relate to side pockets, gates or other similar arrangements, the valuation methodology applied to assets which are subject to such arrangements and how management and performance fees apply to these assets;

 - (b) disclose this information as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and — as a minimum — at the same time as the annual report is made available in accordance with Article 22(1) of Directive 2011/61/EU.

The percentage of the AIF's assets which are subject to special arrangements as defined in Article 1(5) shall be calculated as the net value of those assets subject to special arrangements divided by the net asset value of the AIF concerned.

3. For any new arrangements for managing the liquidity of the AIF in accordance with point (b) of Article 23(4) of Directive 2011/61/EU AIFMs shall:
 - (a) for each AIF that they manage which is not an unleveraged closed-ended AIF, notify to investors whenever they make changes to the liquidity management systems and procedures referred to in Article 16(1) of Directive 2011/61/EU which are material in accordance with Article 106(1);

 - (b) immediately notify investors where they activate gates, side pockets or similar special arrangements or where they decide to suspend redemptions;

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- (c) provide an overview of the changes to arrangements concerning liquidity, whether or not these are special arrangements. Where relevant, the terms under which redemption is permitted and circumstances determining when management discretion applies shall be included. Also any voting or other restrictions exercisable, the length of any lock-up or any provision concerning ‘first in line’ or ‘pro-rating’ on gates and suspensions shall be included.

4. The disclosure of the risk profile of the AIF in accordance with point (c) of Article 23(4) of Directive 2011/61/EU shall outline:

- (a) measures to assess the sensitivity of the AIF’s portfolio to the most relevant risks to which the AIF is or could be exposed;
- (b) if risk limits set by the AIFM have been or are likely to be exceeded and where these risk limits have been exceeded a description of the circumstances and, the remedial measures taken.

The information shall be disclosed as part of the AIF’s periodic reporting to investors, as required by the AIF’s rules or instruments of incorporation or at the same time as the prospectus and offering document and — at a minimum — at the same time as the annual report is made available in accordance with Article 22(1) of Directive 2011/61/EU.

5. The risk management systems employed by the AIFM in accordance with point (c) of Article 23(4) of Directive 2011/61/EU shall outline the main features of the risk management systems employed by the AIFM to manage the risks to which each AIF it manages is or may be exposed. In the case of a change the disclosure shall include the information relating to the change and its anticipated impact on the AIF and its investors.

The information shall be disclosed as part of the AIF’s periodic reporting to investors, as required by the AIF’s rules or instruments of incorporation or at the same time as the prospectus and offering document and — as a minimum — at the same time as the annual report is made available or made public in accordance with Article 22(1) of Directive 2011/61/EU.

*Article 109***Regular disclosure to investors**

1. The information referred to in Article 23(5) of Directive 2011/61/EU shall be presented in a clear and understandable way.

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2. Information on changes to the maximum level of leverage calculated in accordance with the gross and commitment methods and any right of re-use of collateral or any guarantee under the leveraging arrangements shall be provided without undue delay and shall include:

- (a) the original and revised maximum level of leverage calculated in accordance with Articles 7 and 8, whereby the level of leverage shall be calculated as the relevant exposure divided by the net asset value of the AIF;
- (b) the nature of the rights granted for the reuse of collateral;
- (c) the nature of guarantees granted; and
- (d) details of changes in any service providers which relating to one of the items above.

3. Information on the total amount of leverage calculated in accordance with the gross and commitment methods employed by the AIF shall be disclosed as part of the AIF's periodic reporting to investors, as required by the AIF's rules or instruments of incorporation, or at the same time as the prospectus and offering document and at least at the same time as the annual report is made available according to Article 22(1) of Directive 2011/61/EU.

*Article 110***Reporting to competent authorities**

1. In order to comply with the requirements of the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU, an AIFM shall provide the following information when reporting to competent authorities:

- (a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the AIF's investment strategies and their geographical and sectoral investment focus;
- (b) the markets of which it is a member or where it actively trades;
- (c) the diversification of the AIF's portfolio, including, but not limited to, its principal exposures and most important concentrations.

The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.

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2. For each of the EU AIFs they manage and for each of the AIFs they market in the Union, AIFMs shall provide to the competent authorities of their home Member State the following information in accordance with Article 24(2) of Directive 2011/61/EU:

- (a) the percentage of the AIF's assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in point (a) of Article 23(4) of Directive 2011/61/EU;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- (d) the current risk profile of the AIF, including:
 - (i) the market risk profile of the investments of the AIF, including the expected return and volatility of the AIF in normal market conditions;
 - (ii) the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF's assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;
- (e) information on the main categories of assets in which the AIF invested including the corresponding short market value and long market value, the turnover and performance during the reporting period; and
- (f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU.

3. The information referred to in paragraphs 1 and 2 shall be reported as follows:

- (a) on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU but do not exceed EUR 1 billion, for each of the EU AIFs they manage and for each of the AIFs they market in the Union;
- (b) on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the EU AIFs they manage, and for each of the AIFs they market in the Union;

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- (c) on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;
- (d) on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.
4. By way of derogation from paragraph 3, the competent authority of the home Member State of the AIFM may deem it appropriate and necessary for the exercise of its function to require all or part of the information to be reported on a more frequent basis.
5. AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under Article 24(4) of Directive 2011/61/EU at the same time as that required under paragraph 2 of this Article.
6. AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.
7. In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent authorities of the home Member State shall mean the competent authority of the Member State of reference.

*Article 111***Use of leverage on a ‘substantial basis’**

1. Leverage shall be considered to be employed on a substantial basis for the purposes of Article 24(4) of Directive 2011/61/EU when the exposure of an AIF as calculated according to the commitment method under Article 8 of this Regulation exceeds three times its net asset value.
2. Where the requirements referred to in paragraph 1 of this Article are fulfilled, AIFMs shall provide information in accordance with Article 24(4) of Directive 2011/61/EU to the competent authorities of their home Member States in accordance with the principles laid down in Article 110(3) of this Regulation.

*SECTION 2**AIFMs managing leveraged AIFs*

(Article 25(3) of Directive 2011/61/EU)

*Article 112***Restrictions on the management of AIFs**

1. The principles laid down in this Article shall apply in order to specify the circumstances in which competent authorities exercise their power to impose leverage limits or other restrictions on AIFMs.

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2. When assessing the information received under Articles 7(3), 15(4), 24(4) or 24(5) of Directive 2011/61/EU, a competent authority shall take into account the extent to which the use of leverage by an AIFM or its interaction with a group of AIFMs or other financial institutions can contribute to the build-up of systemic risk in the financial system or risks creating disorderly markets.
3. Competent authorities shall take into account at least the following aspects in their assessment:
- (a) the circumstances in which the exposure of an AIF or several AIFs including those exposures resulting from financing or investment positions entered into by the AIFM for its own account or on behalf of the AIFs could constitute an important source of market, liquidity or counterparty risk to a financial institution;
 - (b) the circumstances in which the activities of an AIFM or its interaction with, for example, a group of AIFMs or other financial institutions, in particular with respect to the types of assets in which the AIF invests and the techniques employed by the AIFM through the use of leverage, contribute or could contribute to a downward spiral in the prices of financial instruments or other assets in a manner that threatens the viability of such financial instruments or other assets;
 - (c) criteria such as the type of AIF, the investment strategy of the AIFM with respect to the AIFs concerned, the market conditions in which the AIFM and the AIF operate and any likely pro-cyclical effects that could result from the imposition by the competent authorities of limits or other restrictions on the use of leverage by the AIFM concerned;
 - (d) criteria, such as the size of an AIF or several AIFs and any related impact in a particular market sector, concentrations of risks in particular markets in which the AIF or several AIFs are investing, any contagion risk to other markets from a market where risks have been identified, liquidity issues in particular markets at a given time, the scale of asset/liability mismatch in a particular AIFM investment strategy or irregular movements in the prices of assets in which an AIF may invest.

*SECTION 3**Specific rules relating to third countries*

(Articles 34(1), 35(2) 36(1), Articles 37(7)(d), 40(2)(a) and Article 42(1) of Directive 2011/61/EU)

*Article 113***General requirements**

1. Cooperation arrangements shall cover all possible situations and actors envisaged in Chapter VII of Directive 2011/61/EU taking into account the location of the AIFM, the location of the AIF and the activity of the AIFM.

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2. Cooperation arrangements shall take a written form.
3. Cooperation arrangements shall establish the specific framework for consultation, cooperation and exchange of information for supervisory and enforcement purposes between EU competent authorities and third country supervisory authorities.
4. Cooperation arrangements shall include a specific clause providing for the transfer of information received by a Union competent authority from a supervisory authority in a third country to other Union competent authorities, to ESMA or to the ESRB as required under Directive 2011/61/EU.

*Article 114***Mechanisms, instruments and procedures**

1. Cooperation arrangements shall establish the mechanisms, instruments and procedures required for enabling Union competent authorities to have access to all information necessary for the performance of their duties under Directive 2011/61/EU.
2. Cooperation arrangements shall establish the mechanisms, instruments and procedures required for enabling on-site inspections to be carried out where required for the exercise of the Union competent authority's duties under Directive 2011/61/EU. On-site inspections shall be carried out directly by the Union competent authority or by the third country competent authority with the assistance of the Union competent authority.
3. Cooperation arrangements shall establish the mechanisms, instruments and procedures required for the third country competent authority to assist the Union competent authorities where it is necessary to enforce Union legislation and national implementing legislation breached by an entity established in the third country, in accordance with the national and international law applicable to that authority.

*Article 115***Data protection**

Cooperation arrangements shall ensure that the transfer to third countries of data and the analysis of data takes place only in accordance with Article 52 of Directive 2011/61/EU.

*SECTION 4****Exchange of information on the potential systemic consequences of AIFM activity***

(Article 53(1) of Directive 2011/61/EU)

*Article 116***Exchange of information on the potential systemic consequences of AIFM activity**

For the purposes of Article 53 of Directive 2011/61/EU, the competent authorities of the Member States responsible for the authorisation or supervision of AIFMs under that Directive shall exchange with the competent authorities of other Member States, and with ESMA and the ESRB at least:

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- (a) the information received pursuant to Article 110, whenever such information may be relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or several AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which the AIFMs are active;
- (b) the information received from third country authorities whenever this is necessary for the monitoring of systemic risks;
- (c) the analysis of the information referred to in points (a) and (b) and the assessment of any situation in which the activities of one or more supervised AIFMs or of one or more AIFs under their management are considered to contribute to the build-up of systemic risk in the financial system, to the risk of disorderly markets or to risks for the long-term growth of the economy;
- (d) the measures taken, when the activity of one or more supervised AIFMs or of one or more AIFs under their management present systemic risk or jeopardise the orderly functioning of the markets on which they are active.

CHAPTER VI

FINAL PROVISIONS

*Article 117***Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 22 July 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

*ANNEX I***Methods of increasing the exposure of an AIF**

1. Unsecured cash borrowings: When cash borrowings are invested they have the propensity to increase the exposure of the AIF by the total amount of those borrowings. Therefore, the minimum exposure is always the amount of the borrowing. It might be higher if the value of the investment realised with the borrowing is greater than the borrowed amount. To avoid double counting, cash borrowings that are used to finance the exposure shall not be included within the calculation. If the cash borrowings are not invested but remain in cash or cash equivalent as defined in Article 7(a) they will not increase the exposure of the AIF.
2. Secured cash borrowings: Secured cash borrowings are similar to unsecured cash borrowings but the loan may be secured by a pool of assets or a single asset. If the cash borrowings are not invested but remain in cash or cash equivalent as defined in Article 7(a) they will not increase the exposure of the AIF.
3. Convertible borrowings: Convertible borrowings are purchased debt which has the ability, under certain circumstances, to enable the holder or issuer to convert that debt into another asset. The exposure of the AIF is the market value of such borrowings.
4. Interest rate swaps: An interest rate swap is an agreement to exchange interest rate cash flows, calculated on a notional principal amount, at specified intervals (payment dates) during the life of the agreement. Each party's payment obligation is computed using a different interest rate based on the notional exposures.
5. Contracts for differences: A contract for differences (CFD) is an agreement between two parties — the investor and the CFD provider — to pay the other the change in the price of an underlying asset. Depending on which way the price moves, one party pays the other the difference from the time the contract was agreed to the point in time where it ends. Exposure is the market value of the underlying asset. The same treatment must be applied to financial spread bets.
6. Futures contracts: A futures contract is an agreement to buy or sell a stated amount of a security, currency, commodity, index or other asset at a specific future date and at a pre-agreed price. The exposure is the market value of the equivalent underlying asset.
7. Total return swaps: A total return swap is an agreement in which one party (total return payer) transfers the total economic performance of a reference obligation to the other party (total return receiver). Total economic performance includes income from interest and fees, gains or losses from market movements, and credit losses. The exposure of the AIF is the market value of the equivalent reference assets which have a bearing on the economic performance of the swap.
8. Forward agreements: A forward agreement is a customised, bilateral agreement to exchange an asset or cash flows at a specified future settlement date at a forward price agreed on the trade date. One party to the forward is the buyer (long), who agrees to pay the forward price on the settlement date; the other is the seller (short), who agrees to receive the forward price. Entering into a forward contract typically does not require the payment of a fee. The exposure of the AIF is the market value of the equivalent underlying asset. This may be replaced by the notional value of the contract where this is more conservative.

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9. Options: An option is an agreement that gives the buyer, who pays a fee (premium), the right — but not the obligation — to buy or sell a specified amount of an underlying asset at an agreed price (strike or exercise price) on or until the expiration of the contract (expiry). A call option is an option to buy, and a put option an option to sell. The bounds of the exposure of the fund will be on the one side a potential unlimited exposure and on the other side an exposure that is limited to the higher of the premium paid or the market value of that option. The exposure between these two bounds is determined as the delta (an options delta measures the sensitivity of an option's price solely to a change in the price of the underlying asset) adjusted equivalent of the underlying position. The same approach must be adopted for embedded derivatives, e.g. in structured products. The structure should be broken down into its component parts and the effect of layers of derivative exposures must be adequately captured.

10. Repurchase agreements: The repurchase agreement normally occurs where an AIF 'sells' securities to a reverse-repo counterparty and agrees to buy them back at an agreed price in the future. The AIF will incur a financing cost from engaging in this transaction and will therefore need to re-invest the cash proceeds (effectively cash collateral) in order to generate a return greater than the financing cost incurred. This reinvestment of 'cash collateral' means that incremental market risk will be carried by the AIF and consequently must be taken into account in the global exposure calculation. The economic risks and rewards of the 'sold' securities remain with the AIF. Also, a repo transaction will almost always give rise to leverage as the cash collateral will be reinvested. In the event that non-cash collateral is received as part of the transaction and this collateral is further used as part of another repo, or stock-loan agreement, the full market value of the collateral must be included in the global exposure amount. The exposure of the AIF is increased by the reinvested part of the cash collateral.

11. Reverse repurchase agreements: This transaction occurs where an AIF 'purchases' securities from a repo counterparty and agrees to sell them back at an agreed price in the future. AIFs normally engage in these transactions to generate a low-risk money-market type return, and the 'purchased' securities act as collateral. Therefore no global exposure is generated; nor does the AIF take on the risks and rewards of the 'purchased' securities, i.e. there is no incremental market risk. However, it is possible for the 'purchased' securities to be further used as part of a repo or security-loan transaction, as described above, and in that case the full market value of the securities must be included in the global exposure amount. The economic risks and rewards of the purchased securities remain with the counterparty and therefore this does not increase the exposure of the AIF.

12. Securities lending arrangements: An AIF engaging in a securities lending transaction will lend a security to a security-borrowing counterparty (who will normally borrow the security to cover a physical short sale transaction) for an agreed fee. The security borrower will deliver either cash or non-cash collateral to the AIF. Only where cash collateral is reinvested in instruments other than those defined in Article 7 point (a) will global exposure be created. If the non-cash collateral is further used as part of a repo or another security lending transaction, the full market value of the securities must be included in the global exposure amount as described above. Exposure is created to the extent that the cash collateral has been reinvested.

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13. Securities borrowing arrangements: An AIF engaging in the borrowing of securities will borrow a security from a security-lending counterparty for an agreed fee. The AIF will then sell the security in the market. The AIF is now short that security. To the extent that the cash proceeds from the sale are reinvested this will also increase the exposure of the AIF. Exposure is the market value of the shorted securities; additional exposure is created to the extent that the cash received is reinvested.
14. Credit default swaps: A credit default swap (CDS) is a credit derivative agreement that gives the buyer protection, usually the full recovery, in case the reference entity defaults or suffers a credit event. In return the seller of the CDS receives from the buyer a regular fee, called the spread. For the protection seller, the exposure is the higher of the market value of the underlying reference assets or the notional value of the credit default swap. For the protection buyer, the exposure is the market value of the underlying reference asset.

▼B*ANNEX II***Conversion methodologies for derivative instruments**

1. The following conversion methods shall be applied to the non-exhaustive list below of standard derivatives:

(a) Futures

- Bond future: Number of contracts * notional contract size * market price of the cheapest-to-deliver reference bond
- Interest rate future: Number of contracts * notional contract size
- Currency future: Number of contracts * notional contract size
- Equity future: Number of contracts * notional contract size * market price of underlying equity share
- Index futures: Number of contracts * notional contract size * index level

(b) Plain vanilla options (bought/sold puts and calls)

- Plain vanilla bond option: Notional contract value * market value of underlying reference bond * delta
- Plain vanilla equity option: Number of contracts * notional contract size * market value of underlying equity share * delta
- Plain vanilla interest rate option: Notional contract value * delta
- Plain vanilla currency option: Notional contract value of currency leg(s) * delta
- Plain vanilla index options: Number of contracts * notional contract size * index level * delta
- Plain vanilla options on futures: Number of contracts * notional contract size * market value of underlying asset * delta
- Plain vanilla swaptions: Reference swap commitment conversion amount * delta
- Warrants and rights: Number of shares/bonds * market value of underlying referenced instrument * delta

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(c) Swaps

- Plain vanilla fixed/floating rate interest rate and inflation swaps: notional contract value
- Currency swaps: Notional value of currency leg(s)
- Cross currency interest rate swaps: Notional value of currency leg(s)
- Basic total return swap: Underlying market value of reference asset(s)
- Non-basic total return swap: Cumulative underlying market value of both legs of the TRS
- Single name credit default swap:

Protection seller — The higher of the market value of the underlying reference asset or the notional value of the Credit Default Swap.

Protection buyer — Market value of the underlying reference asset

- Contract for differences: Number of shares/bonds * market value of underlying referenced instrument

(d) Forwards

- FX forward: notional value of currency leg(s)
- Forward rate agreement: notional value

(e) Leveraged exposure to indices with embedded leverage

A derivative providing leveraged exposure to an underlying index, or indices that embed leveraged exposure to their portfolio, must apply the standard applicable commitment approach to the assets in question.

2. The following conversion methods shall be applied to the non-exhaustive list below of financial instruments which embed derivatives:

- Convertible bonds: Number of referenced shares * market value of underlying referenced shares * delta
- Credit linked notes: Market value of underlying reference asset(s)
- Partly paid securities: Number of shares/bonds * market value of underlying referenced instruments
- Warrants and rights: Number of shares/bonds * market value of underlying referenced instrument * delta

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3. List of examples of non-standard derivatives with the related commitment methodology being used:

- Variance swaps: Variance swaps are contracts that allow investors to gain exposure to the variance (squared volatility) of an underlying asset and, in particular, to trade future realised (or historical) volatility against current implied volatility. According to market practice, the strike and the variance notional are expressed in terms of volatility. For the variance notional, this gives:

$$\text{variance notional} = \frac{\text{vega notional}}{2 \times \text{strike}}$$

The vega notional provides a theoretical measure of the profit or loss resulting from a 1 % change in volatility.

As realised volatility cannot be less than zero, a long swap position has a known maximum loss. The maximum loss on a short swap is often limited by the inclusion of a cap on volatility. However without a cap, a short swap's potential losses are unlimited.

The conversion methodology to be used for a given contract at time t is:

Variance notional * (current) variance _{t} (without volatility cap)

Variance notional * min [(current) variance _{t} volatility cap²] (with volatility cap)

whereby: (current) variance _{t} is a function of the squared realised and implied volatility, more precisely:

$$\text{(current)variance}_t = \frac{t}{T} \times \text{realized volatility } (0, t)^2 + \frac{T-t}{T} \times \text{implied volatility } (t, T)^2$$

- Volatility swaps

By analogy with the variance swaps, the following conversion formulae should be applied to volatility swaps:

- Vega notional * (current) volatility _{t} (without volatility cap)

- Vega notional * min [(current) volatility _{t} ; volatility cap] (with volatility cap)

whereby the (current) volatility t is a function of the realised and implied volatility.

4. Barrier (knock-in knock-out) options

Number of contracts * notional contract size * market value of underlying equity share * delta

▼ B*ANNEX III***Duration netting rules**

1. An interest rate derivative shall be converted into its equivalent underlying asset position in accordance with the following methodology:

The equivalent underlying asset position of each interest rate derivative instrument shall be calculated as its duration divided by the target duration of the AIF and multiplied by the equivalent underlying asset position:

$$\text{Equivalent underlying asset position} = \frac{\text{duration}_{\text{FDI}}}{\text{duration}_{\text{target}}} \times \text{CV}_{\text{derivative}}$$

where:

- $\text{duration}_{\text{FDI}}$ is the duration (sensitivity of the market value of the financial derivative instrument to interest rate movements) of the interest rate derivative instrument,
 - $\text{duration}_{\text{target}}$ is in line with the investment strategy, the directional positions and the expected level of risk at any time and will be regularised otherwise. It is also in line with the portfolio duration under normal market conditions,
 - $\text{CV}_{\text{derivative}}$ is the converted value of the derivative position as defined by the Annex II.
2. The equivalent underlying asset positions calculated in accordance with to paragraph 1 shall be netted as follows:

- (a) Each interest rate derivative instrument shall be allocated to the appropriate maturity range of the following maturity-based ladder:

Maturities ranges

1. 0-2 years
2. 2-7 years
3. 7-15 years
4. > 15 years

- (b) The long and short equivalent underlying asset positions shall be netted within each maturity range. The amount of the former which is netted with the latter is the netted amount for that maturity range.
- (c) Starting with the shortest maturity range, the netted amounts between two adjoining maturity ranges shall be calculated by netting the amount of the remaining unnetted long (or short) position in the maturity range (i) with the amount of the remaining unnetted short (long) position in the maturity range (i + 1).

▼B

- (d) Starting with the shortest maturity range, the netted amounts between two remote maturity ranges separated by another one shall be calculated by netting the amount of the remaining unnetted long (or short) position in the maturity range (i) with the amount of the remaining unnetted short (long) position in the maturity range (i + 2).
 - (e) The netted amount shall be calculated between the remaining unnetted long and short positions of the two most remote maturity ranges.
3. The AIF shall calculate its exposures as the sum of absolute values:
- 0 % of the netted amount for each maturity range,
 - 40 % of the netted amounts between two adjoining maturity ranges (i) and (i + 1),
 - 75 % of the netted amounts between two remote maturity ranges separated by another one, meaning maturity ranges (i) and (i + 2),
 - 100 % of the netted amounts between the two most remote maturity ranges, and
 - 100 % of the remaining unnetted positions.

ANNEX IV

Reporting Templates: AIFM

(Articles 3(3)(d) and 24 of Directive 2011/61/EU)

AIFM-specific information to be reported

(Articles 3(3)(d) and 24(1) of Directive 2011/61/EU)

		Most important market/ instrument	Second most important market/instrument	Third most important market/ instrument	Fourth most important market/instrument	Fifth most important market/instrument
1	Principal markets in which it trades on behalf of the AIFs it manages					
2	Principal instruments in which it trades on behalf of the AIFs it manages					
3	Values of assets under management for all AIFs managed, calculated as set out in Article 2	In base currency (if the same for all AIFs)			In EUR	
	Please provide official name, location and jurisdiction of markets					

Detailed list of all AIFs which the AIFM manages

to be provided on request for the end of each quarter

(Article 24(3) of Directive 2011/61/EU)

Name of the AIF	Fund identification code						Inception date	AIF type (Hedge Fund, Private Equity, Real Estate, Fund of Funds, Other (*))	NAV	EU AIF: Yes/No

(*) If Other please indicate the strategy that best describes the AIF type.

Monetary values should be reported in the base currency of the AIF.

▼B

Reporting Templates: AIF

(Articles 3(3)(d) and 24 of Directive 2011/61/EU)

AIF-specific information to be provided

(Articles 3(3)(d) and 24(1) of Directive 2011/61/EU)

Data Type		Reported Data	
Identification of the AIF			
1	AIF name	EU AIF: yes/no	
2	Fund manager <i>(Legal name and standard code, where available)</i>	EU AIFM: yes/no	
3	Fund identification codes, as applicable		
4	Inception date of the AIF		
5	Domicile of the AIF		
6	Identification of prime broker(s) of the AIF <i>(Legal name and standard code, where available)</i>		
7	Base currency of the AIF according to ISO 4217 and assets under management calculated as set out in Article 2	Currency	Total AuM
8	Jurisdictions of the three main funding sources (excluding units or shares of the AIF bought by investors)		
9	Predominant AIF type <i>(select one)</i>	Hedge Fund Private Equity Fund Real Estate Fund Fund of Funds Other None	

▼ **B**

	Data Type	Reported Data	
10	<p>Breakdown of investment strategies <i>(Provide a breakdown of the investment strategies of the AIF depending on the predominant AIF type selected in question 1. See guidance notes for further information on how to complete this question.)</i></p>		
		Indicate the strategy that best describe the AIF's strategy	Share in NAV (%)
	<p>a) Hedge Fund Strategies <i>(Complete this question if you selected 'Hedge Fund' as the predominant AIF type in question 1.)</i></p>		
	<p><i>Indicate the hedge fund strategies that best describe the AIFs strategies</i></p> <ul style="list-style-type: none"> Equity: Long Bias Equity: Long/Short Equity: Market Neutral Equity: Short Bias Relative Value: Fixed Income Arbitrage Relative Value: Convertible Bond Arbitrage Relative Value: Volatility Arbitrage Event Driven: Distressed/Restructuring Event Driven: Risk Arbitrage/Merger Arbitrage Event Driven: Equity Special Situations Credit Long/Short Credit Asset Based Lending Macro Managed Futures/CTA: Fundamental Managed Futures/CTA: Quantitative Multi-strategy hedge fund Other hedge fund strategy 		
	<p>b) Private Equity Strategies <i>(Complete this question if you selected 'Private Equity' as the predominant AIF type in question 1.)</i></p>		

▼B

Data Type	Reported Data	
<p><i>Indicate the private equity strategies that best describe the AIFs strategies</i></p> <p>Venture Capital Growth Capital Mezzanine Capital Multi-strategy private equity fund Other private equity fund strategy</p>		
<p>c) Real Estate Strategies <i>(Complete this question if you selected 'Real Estate' as the predominant AIF type in question 1.)</i></p>		
<p><i>Indicate the real estate strategies that best describe the AIFs strategies</i></p> <p>Residential real estate Commercial real estate Industrial real estate Multi-strategy real estate fund Other real estate strategy</p>		
<p>d) Fund of Fund Strategies <i>(Complete this question if you selected 'Fund of Funds' as the predominant AIF type in question 1.)</i></p>		
<p><i>Indicate the 'fund of fund' strategy that best describe the AIFs strategies</i></p> <p>Fund of hedge funds Fund of private equity Other fund of funds</p>		
<p>e) Other Strategies <i>(Complete this question if you selected 'Other' as the predominant AIF type in question 1.)</i></p>		
<p><i>Indicate the 'other' strategy that best describe the AIFs' strategies</i></p> <p>Commodity fund Equity fund Fixed income fund Infrastructure fund Other fund</p>		

▼B

Data Type		Reported Data	
Principal exposures and most important concentration			
11	Main instruments in which the AIF is trading		
	Type of instrument/instrument code	Value (as calculated under Article 3 AIFMD)	Long/short position
	Most important instrument		
	2nd most important instrument		
	3rd most important instrument		
	4th most important instrument		
	5th most important instrument		
12	Geographical focus		
	Provide a geographical breakdown of the investments held by the AIF by percentage of the total net asset value of the AIF	<i>% of NAV</i>	
	Africa		
	Asia and Pacific (other than Middle East)		
	Europe (EEA)		
	Europe (other than EEA)		
	Middle East		
	North America		
	South America		
	Supranational/multiple region		

▼B

Data Type						Reported Data	
13	10 principal exposures of the AIF at the reporting date (most valuable in absolute terms):						
		Type of asset/ liability	Name/description of the asset/liability	Value (as calculated under Article 3)	% of gross market value	Long/short position	Counterparty (where relevant)
	1st						
	2nd						
	3rd						
	4th						
	5th						
	6th						
	7th						
	8th						
	9th						
	10th						
14	5 most important portfolio concentrations:						
		Type of asset/ liability	Name/description of the market	Value of aggregate exposure (as calculated under Article 3)	% of gross market value	Long/short position	Counterparty (where relevant)
	1st						
	2nd						
	3rd						
	4th						
	5th						

▼ B

	Data Type	Reported Data	
15	Typical deal/position size <i>(Complete this question if you selected as your predominant AIF type 'private equity fund' in question 1)</i>	<i>[Select one]</i> Very small Small Lower mid market Upper mid market Large cap Mega cap	
16	Principal markets in which AIF trades <i>Please enter name and identifier (e.g. MIC code) where available, of market with greatest exposure</i> <i>Please enter name and identifier (e.g. MIC code) where available, of market with second greatest exposure</i> <i>Please enter name and identifier (e.g. MIC code) where available, of market with third greatest exposure</i>		
17	Investor Concentration Specify the approximate percentage of the AIF's equity that is beneficially owned by the five beneficial owners that have the largest equity interest in the AIF (as a percentage of outstanding units/shares of the AIF; look-through to the beneficial owners where known or possible) Breakdown of investor concentration by status of investors (estimate if no precise information available): — Professional clients (as defined in Directive 2004/39/EC (MiFID): — Retail investors:	%	

Monetary values should be reported in the base currency of the AIF.

▼B

AIF-specific information to be provided to competent authorities

(Article 24(2) of Directive 2011/61/EU)

	Data Type	Reported Data	
Identification of the AIF			
1	AIF name	EU AIF: yes/no	
2	Fund manager	EU AIFM: yes/no	
1	AIF name		
2	Fund manager		
3	Fund identification codes, as applicable		
4	Inception date of the AIF		
5	Base currency of the AIF according to ISO 4217 and assets under management calculated as set out in Article 2	Currency	Total AuM
6	Identification of prime broker(s) of the AIF		
7	Jurisdictions of the three main funding sources		
Instruments Traded and Individual Exposures			
8	Individual Exposures in which it is trading and the main categories of assets in which the AIF invested as at the reporting date:		
	a) Securities	<i>Long Value</i>	<i>Short Value</i>
	Cash and cash equivalents		
	<i>Of which are:</i>	<i>Certificates of deposit</i>	
		<i>Commercial papers</i>	
		<i>Other deposits</i>	
		<i>Other cash and cash equivalents (excluding government securities)</i>	
	Listed equities		

▼B

Data Type		Reported Data	
<i>Of which are:</i>	<i>Issued by financial institutions</i>		
	<i>Other listed equity</i>		
Unlisted equities			
Corporate bonds not issued by financial institutions			
<i>Of which are:</i>	<i>Investment grade</i>		
	<i>Non-investment grade</i>		
Corporate bonds issued by financial institutions			
<i>Of which are:</i>	<i>Investment grade</i>		
	<i>Non-investment grade</i>		
Sovereign bonds			
<i>Of which are:</i>	<i>EU bonds with a 0-1 year term to maturity</i>		
	<i>EU bonds with a 1 + year term to maturity</i>		
	<i>Non-G10 bonds with a 0-1 year term to maturity</i>		
	<i>Non-G10 bonds with a 1 + year term to maturity</i>		
Convertible bonds not issued by financial institutions			
<i>Of which are:</i>	<i>Investment grade</i>		
	<i>Non-investment grade</i>		
Convertible bonds issued by financial institutions			
<i>Of which are:</i>	<i>Investment grade</i>		
	<i>Non-investment grade</i>		
Loans			
<i>Of which are:</i>	<i>Leveraged loans</i>		
	<i>Other loans</i>		
Structured/securitised products			

▼ B

Data Type		Reported Data	
<i>Of which are:</i>	<i>ABS</i>		
	<i>RMBS</i>		
	<i>CMBS</i>		
	<i>Agency MBS</i>		
	<i>ABCP</i>		
	<i>CDO/CLO</i>		
	<i>Structured certificates</i>		
	<i>ETP</i>		
	<i>Other</i>		
b) Derivatives		<i>Long Value</i>	<i>Short Value</i>
Equity derivatives			
<i>Of which are:</i>	<i>Related to financial institutions</i>		
	<i>Other equity derivatives</i>		
Fixed income derivatives			
CDS			
<i>Of which are:</i>	<i>Single name financial CDS</i>		
	<i>Single name sovereign CDS</i>		
	<i>Single name other CDS</i>		

▼B

Data Type		Reported Data	
	<i>Index CDS</i>		
	<i>Exotic (incl. credit default tranche)</i>		
		<i>Gross Value</i>	
Foreign exchange (for investment purposes)			
Interest rate derivatives			
		<i>Long Value</i>	<i>Short Value</i>
Commodity derivatives			
<i>Of which are:</i>	<i>Energy</i>		
	<i>Of which:</i>		
	— <i>Crude oil</i>		
	— <i>Natural gas</i>		
	— <i>Power</i>		
	<i>Precious metals</i>		
	<i>Of which: Gold</i>		
	<i>Other commodities</i>		
	<i>Of which:</i>		
	— <i>Industrial metals</i>		
	— <i>Livestock</i>		
	— <i>Agricultural products</i>		
Other derivatives			
c) Physical (Real/Tangible) Assets		<i>Long Value</i>	
Physical: Real estate			
<i>Of which are:</i>	<i>Residential real estate</i>		

▼B

	Data Type		Reported Data	
		<i>Commercial real estate</i>		
	Physical: Commodities			
	Physical: Timber			
	Physical: Art and collectables			
	Physical: Transportation assets			
	Physical: Other			
	d) Collective Investment Undertakings		<i>Long Value</i>	
	Investments in CIU operated/managed by the AIFM			
	<i>Of which are:</i>	<i>Money Market Funds and Cash management CIU</i>		
		<i>ETF</i>		
		<i>Other CIU</i>		
	Investments in CIU not operated/managed by the AIFM			
	<i>Of which are:</i>	<i>Money Market Funds and Cash management CIU</i>		
		<i>ETF</i>		
		<i>Other CIU</i>		
	e) Investments in other asset classes		<i>Long Value</i>	<i>Short Value</i>
	Total Other			
9	Value of turnover in each asset class over the reporting months			
	a) Securities		<i>Market Value</i>	
	Cash and cash equivalents			
	Listed equities			
	Unlisted equities			
	Corporate bonds not issued by financial institutions			
	<i>Of which are:</i>	<i>Investment grade</i>		

▼B

	Data Type		Reported Data	
		<i>Non-investment grade</i>		
Corporate bonds issued by financial institutions				
Sovereign bonds				
<i>Of which are:</i>		<i>EU Member State bonds</i>		
		<i>Non-EU Member State bonds</i>		
Convertible bonds				
Loans				
Structured/securitised products				
b) Derivatives			<i>Notional Value</i>	<i>Market Value</i>
Equity derivatives				
Fixed income derivatives				
CDS				
Foreign exchange (for investment purposes)				
Interest rate derivatives				
Commodity derivatives				
Other derivatives				
c) Physical (Real/Tangible) Assets			<i>Market Value</i>	
Physical: Commodities				
Physical: Real estate				
Physical: Timber				
Physical: Art and collectables				
Physical: Transportation assets				
Physical: Other				
d) Collective investment undertakings				
e) Other asset classes				
Currency of Exposures				

▼B

	Data Type	Reported Data	
10	Total long and short value of exposures (before currency hedging) by the following currency groups:	<i>Long Value</i>	<i>Short Value</i>
	AUD		
	CAD		
	CHF		
	EUR		
	GBP		
	HKD		
	JPY		
	USD		
	Other		
11	Typical deal/position size (Complete this question if you selected as your predominant AIF type 'private equity fund' above)	<i>[Select one]</i> Very small (< EUR 5 m) Small (EUR 5 m to < EUR 25 m) Low/mid market (EUR 25 m to < EUR 150 m) Upper mid market (EUR 150 m to EUR 500 m) Large cap (EUR 500 m to EUR 1 bn) Mega cap (EUR 1 bn and greater)	

▼B

	Data Type	Reported Data		
12	Dominant Influence (see Article 1 of Council Directive 83/349/EEC (OJ L 193, 18.7.1983, p. 1)) <i>(Complete this question if you selected as your predominant AIF type 'private equity fund' above; please complete for each company over which the AIF has a dominant influence (leave blank if none) as defined in Article 1 of Directive 83/349/EEC)</i>	Name	% Voting Rights	Transaction Type
Risk Profile of the AIF				
	1. Market Risk Profile			
13	Expected annual investment return/IRR in normal market conditions (in %)			
	Net Equity Delta			
	Net DV01:			
	Net CS01:			
	2. Counterparty Risk Profile			
14	Trading and clearing mechanisms			
	a) Estimated % (in terms of market value) of securities traded: <i>(leave blank if no securities traded)</i>		%	
	On a regulated exchange			
	OTC			
	b) Estimated % (in terms of trade volumes) of derivatives that are traded: <i>(leave blank if no derivatives traded)</i>		%	
	On a regulated exchange			
	OTC			
	c) Estimated % (in terms of trade volumes) of derivatives transactions cleared: <i>(leave blank if no derivatives traded)</i>		%	
	By a CCP			

▼B

	Data Type	Reported Data	
	Bilaterally		
	d) Estimated % (in terms of market value) of repo trades cleared: <i>(leave blank if no repos traded)</i>	%	
	By a CCP		
	Bilaterally		
	Tri-party		
15	Value of collateral and other credit support that the AIF has posted to all counterparties		
	a) Value of collateral posited in the form of cash and cash equivalents		
	b) Value of collateral posited in the form of other securities (excluding cash and cash equivalents)		
	c) Value of other collateral and credit support posted (including face amount of letters of credit and similar third party credit support)		
16	Of the amount of collateral and other credit support that the reporting fund has posted to counterparties: what percentage has been re-hypothecated by counterparties?		
17	Top Five Counterparty Exposures (excluding CCPs)		
	a) Identify the top five counterparties to which the AIF has the greatest mark-to-market net counterparty credit exposure, measured as a % of the NAV of the AIF	<i>Name</i>	<i>Total Exposure</i>
	Counterparty 1		
	Counterparty 2		
	Counterparty 3		
	Counterparty 4		
	Counterparty 5		
	b) Identify the top five counterparties that have the greatest mark-to-market net counterparty credit exposure to the AIF, measured as a percentage of the NAV of the AIF.	<i>Name</i>	<i>Total Exposure</i>
	Counterparty 1		
	Counterparty 2		
	Counterparty 3		

▼B

	Data Type						Reported Data	
	Counterparty 4							
	Counterparty 5							
18	Direct clearing through central clearing counterparties (CCPs)							
	a) During the reporting period, did the AIF clear any transactions directly through a CCP?						Yes No (if no, skip remainder of the question and go to question 21)	
	b) If you answered 'yes' in 18(a), identify the top three central clearing counterparties (CCPs) in terms of net credit exposure						<i>Name</i>	<i>Value held</i>
	CCP 1 (leave blank if not applicable)							
	CCP 2 (leave blank if not applicable)							
	CCP 3 (leave blank if not applicable)							
	3. Liquidity Profile							
	Portfolio Liquidity Profile							
19	Investor Liquidity Profile Percentage of portfolio capable of being liquidated within:							
	1 day or less	2-7 days	8-30 days	31-90 days	91-180 days	181-365 days	more than 365 days	
20	Value of unencumbered cash							
	Investor Liquidity Profile							
21	Investor Liquidity Profile Percentage of investor equity that can be redeemed within (as % of AIF's NAV)							
	1 day or less	2-7 days	8-30 days	31-90 days	91-180 days	181-365 days	more than 365 days	
22	Investor redemptions							
	a) Does the AIF provide investors with withdrawal/redemption rights in the ordinary course?						Yes	No

▼B

	Data Type	Reported Data	
	b) What is the frequency of investor redemptions (if multiple classes of shares or units, report for the largest share class by NAV) <i>(report asset weighted notice period if multiple classes or shares or units)</i>	<i>[Select one]</i> Daily Weekly Fortnightly Monthly Quarterly Half-yearly Annual Other N/A	
	c) What is the notice period required by investors for redemptions in days <i>(report asset weighted notice period if multiple classes or shares or units)</i>		
	d) What is the investor 'lock-up' period in days (report asset weighted notice period if multiple classes or shares or units)		
23	Special arrangements and preferential treatment		
	a) As at the reporting date, what percentage of the AIFs NAV is subject to the following arrangements:	<i>% of NAV</i>	
	Side pockets		
	Gates		
	Suspension of dealing		
	Other arrangements for managing illiquid assets <i>(please specify)</i>	[Type]	[%]
	b) Indicate the percentage of net asset value of AIF's assets that are currently subject to the special arrangements arising from their illiquid nature under Article 23(4)(a) of the AIFMD including those in question 25(a)?		
	Special arrangements as a % of NAV		
	c) Are there any investors who obtain preferential treatment or the right to preferential treatment (e.g. through a side letter) and therefore are subject to disclosure to the investors in the AIF in accordance with Article 23(1)(j) of the AIFMD?	(Yes or no)	

▼B

	Data Type						Reported Data	
	d) If 'yes' to letter c) then please indicate all relevant preferential treatment:							
	Concerning different disclosure/reporting to investors							
	Concerning different investor liquidity terms							
	Concerning different fee terms for investors							
	Preferential treatment other than that specified above							
24	Provide the breakdown of the ownership of units in the AIF by investor group (as % of NAV of AIF assets; look-through to the beneficial owners where known or possible)							
25	Financing liquidity							
	a) Provide the aggregate amount of borrowing by and cash financing available to the AIF (including all drawn and undrawn, committed and uncommitted lines of credit as well as any term financing)							
	b) Divide the amount reported in letter a) among the periods specified below depending on the longest period for which the creditor is contractually committed to provide such financing:							
	1 day or less	2-7 days	8-30 days	31-90 days	91-180 days	181-365 days	longer than 365 days	
	4. Borrowing and Exposure Risk							
26	Value of borrowings of cash or securities represented by:							
	Unsecured cash borrowing:							
	Collateralised/secured cash borrowing — Via Prime Broker:							
	Collateralised/secured cash borrowing — Via (reverse) repo:							
	Collateralised/secured cash borrowing — Via Other:							
27	Value of borrowing embedded in financial instruments							
	Exchange-traded Derivatives: Gross Exposure less margin posted							
	OTC Derivatives: Gross Exposure less margin posted							
28	Value of securities borrowed for short positions							
29	Gross exposure of financial and, as the case may be, or legal structures controlled by the AIF as defined in Recital 78 of the AIFMD							
	<i>Financial and, as the case may be, or legal structure</i>							

▼B

	Data Type	Reported Data	
	<i>Financial and, as the case may be, or legal structure</i>		
	<i>Financial and, as the case may be, or legal structure</i>		
	...		
30	Leverage of the AIF		
	a) as calculated under the Gross Method		
	b) as calculated under the Commitment Method		
	5. Operational and Other Risk Aspects		
31	Total number of open positions		
32	Historical risk profile		
	a) Gross Investment returns or IRR of the AIF over the reporting period (in %, gross of management and performance fees)		
	1st Month of Reporting Period		
	2nd Month of Reporting Period		
	...		
	...		
	Last Month of Reporting Period		
	b) Net Investment returns or IRR of the AIF over the reporting period (in %, net of management and performance fees)		
	1st Month of Reporting Period		
	2nd Month of Reporting Period		
	...		
	...		
	Last Month of Reporting Period		
	c) Change in Net Asset Value of the AIF over the reporting period (in %, including the impact of subscriptions and redemptions)		
	1st Month of Reporting Period		
	2nd Month of Reporting Period		
	...		

▼ **B**

Data Type		Reported Data	
...			
Last Month of Reporting Period			
d) Subscriptions over the reporting period			
1st Month of Reporting Period			
2nd Month of Reporting Period			
...			
...			
Last Month of Reporting Period			
e) Redemptions over the reported period			
1st Month of Reporting Period			
2nd Month of Reporting Period			
...			
...			
Last Month of Reporting Period			

Monetary values should be reported in the base currency of the AIF.

Results of stress tests

Please provide the **results of the stress tests** performed in accordance with point (b) of **Article 15(3) of Directive 2011/61/EU** [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;] (free text)

Monetary values should be reported in the base currency of the AIF.

Please provide the **results of the stress tests** performed in accordance with the **second subparagraph of Article 16(1) of Directive 2011/61/EU**. [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.] (free text)

Monetary values should be reported in the base currency of the AIF.

▼B

AIF-specific information to be made available to the competent authorities

(Article 24(4) of Directive 2011/61/EU)

	Data Type	Reported Data	
1	Of the amount of collateral and other credit support that the reporting AIF has posted to counterparties: what percentage has been re-hypothecated by counterparties?		
	Borrowing and Exposure Risk		
2	Value of borrowings of cash or securities represented by:		
	Unsecured cash borrowing:		
	Collateralised/secured cash borrowing — Via Prime Broker:		
	Collateralised/secured cash borrowing — Via (reverse) repo:		
	Collateralised/secured cash borrowing — Via Other:		
3	Value of borrowing embedded in financial instruments		
	Exchange-traded Derivatives: Gross Exposure less margin posted		
	OTC Derivatives: Gross Exposure less margin posted		
4	Five largest sources of borrowed cash or securities (short positions):		
	Largest:		
	2nd largest:		
	3rd largest:		
	4th largest:		
	5th largest:		
5	Value of securities borrowed for short positions		
6	Gross exposure of financial and, as the case may be, or legal structures controlled by the AIF as defined in Recital 78 of the AIFMD		

▼ B

	Data Type	Reported Data	
	<i>Financial and, as the case may be, or legal structure</i>		
	<i>Financial and, as the case may be, or legal structure</i>		
	<i>Financial and, as the case may be, or legal structure</i>		
	...		
7	Leverage of the AIF:		
	a) Gross Method		
	b) Commitment Method		

Monetary values should be reported in the base currency of the AIF.