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;

(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;