

Chapter 15

Long-term asset funds

15.7 Powers and responsibilities of the authorised fund manager and the depositary

Application

15.7.1 **R** This section applies to:

- (1) an *authorised fund manager* of an *AUT*, *ACS* or an *ICVC*;
- (2) any other director of an *ICVC*;
- (3) the depositary of an *AUT*, *ACS* or an *ICVC*; and
- (4) an *ICVC*,
which is a *long-term asset fund*.

Functions of the authorised fund manager

- 15.7.2 **R**
- (1) The *authorised fund manager* must manage the *scheme* in accordance with:
 - (a) the *instrument constituting the fund*;
 - (b) the applicable *rules*;
 - (c) the most recently published *prospectus*; and
 - (d) for an *ICVC*, the *OEIC Regulations*.
 - (2) The *authorised fund manager* must carry out such functions as are necessary to ensure compliance with the *rules* that impose obligations on the *authorised fund manager* or *ICVC*, as appropriate.
 - (3) The *authorised fund manager* must:
 - (a) make decisions as to the constituents of the *scheme property* in accordance with the investment objectives and policy of the *scheme*;
 - (b) instruct the *depositary* how rights attaching to the ownership of *scheme property* are to be exercised;
 - (c) take action immediately to rectify any breach of the pricing methodology set out in the *prospectus*, which must (unless the *authorised fund manager* determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:

- (i) by the *authorised fund manager* to *unitholders* and former *unitholders*;
 - (ii) by the *ACD* to the *ICVC*;
 - (iii) by the *ICVC* to the *ACD*;
 - (iv) by the *authorised fund manager* of the *AUT* or *ACS* to the *depository*; or
 - (v) by the *depository* (for the account of the *AUT* or *ACS*) to the *authorised fund manager*;
- (d) ensure where relevant that the *ICVC* complies with the relevant obligations imposed by, and when appropriate exercises the relevant powers provided under, the *OEIC Regulations*;
 - (e) maintain such records as are necessary to enable the *authorised fund manager* or the *ICVC*, as appropriate, to comply with and demonstrate compliance with the rules in this sourcebook and also in the case of an *ICVC*, the *OEIC Regulations*; and
 - (f) maintain for a period of six years a daily record of the *units* held, acquired or disposed of by the *authorised fund manager* including the classes of such *units*, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

15.7.3

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- (1) An *authorised fund manager* may give instructions to deal in the *scheme property*.
- (2) An *authorised fund manager* must avoid the *scheme property* being used or invested contrary to any provision in ■ COLL 15.6 (Investment and borrowing powers).
- (3) An *authorised fund manager* must immediately on becoming aware of any breach of ■ COLL 15.6 take action, at its own expense, to rectify that breach.
- (4) An *authorised fund manager* must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of *unitholders*, in which case the action must be taken as soon as such circumstances cease to apply.
- (5) An *authorised fund manager* must not postpone taking action in accordance with (3) unless the *depository* has given its consent.

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Duties of the ACD or the authorised contractual scheme manager of a co-ownership scheme: umbrella schemes

15.7.4

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Where reasonable grounds exist for an *ACD* of an *ICVC*, or an *authorised contractual scheme manager* of a *co-ownership scheme* which is an *umbrella*, to consider that a foreign law contract entered into by the *ICVC* or *authorised contractual scheme manager* on behalf of the *co-ownership scheme* may have become inconsistent with the principle of limited recourse stated in the *instrument constituting the fund* of the *ICVC* or *co-ownership scheme* (see ■ COLL 15.3.6R(3)(5) and ■ COLL 15.3.6R(3)(6)), the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

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In deciding what steps are appropriate to remedy the inconsistency, the *ACD* or *authorised contractual scheme manager* of the *co-ownership scheme* should have regard to the best interests of the *unitholders*. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or
- (2) causing the *ICVC* or the *authorised contractual scheme manager* on behalf of the *co-ownership scheme* to exit the foreign law contract.

Duties of the depository

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- (1) The *depository* is responsible for the safekeeping of all the *scheme property*.
- (2) The *depository* must:
 - (a) take all steps to ensure that transactions properly entered into for the account of the *scheme* are completed;
 - (b) take all steps to ensure that instructions properly given by the *authorised fund manager* in respect of the exercise of rights related to *scheme property* are carried out;
 - (c) ensure that any resulting benefit of a *derivatives* or forward transaction is received by itself in respect of the *scheme*;
 - (d) hold and deal with any income received in respect of the *scheme property* in accordance with ■ COLL 15.8.18R (Income);
 - (e) take reasonable care to ensure that the *scheme* is managed by the *authorised fund manager* in accordance with:
 - (i) the investment objectives, policy and strategy set out in the *LTAF's* most recent *prospectus*;
 - (ii) ■ COLL 15.6 (Investment and borrowing powers);
 - (iii) ■ COLL 15.8.2R (Valuation, pricing and dealing);
 - (iv) ■ COLL 15.8.18 (Income); and
 - (v) any provision of the *instrument constituting the fund* or the *prospectus* that relates to the provisions in (ii) to (iv);
 - (f) where applicable, comply with its obligations under ■ COLL 15.2.6R (Appointment of external valuer or authorised fund manager with knowledge, skills and experience of valuing long-term assets);
 - (g) keep records so as to comply with the *rules* in this sourcebook and so as to demonstrate such compliance; and
 - (h) be responsible for any other duties as set out in the *instrument constituting the fund*.

(3) If a relevant *ICVC* ceases to have any *directors*, the *depositary* may act in accordance with ■ COLL 6.5.6R (*ICVC* without a director).

(4) This *rule* applies to the *depositary* of a *long-term asset fund* to the extent the provisions are consistent with the requirements of the *AIFMD level 2 regulation*.

[**Note:** Articles 88 to 90 of the *AIFMD level 2 regulation* make provision relating to custody and safekeeping of *scheme property*. The *AIFMD level 2 regulation* applies to the *depositary* of a *long-term asset fund* because an *LTAf* must be managed by a *full-scope UK AIFM*.]

15.7.7 **R** The *depositary* must also:

- (1) ensure that any *scheme property* in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate; and
- (2) take into its custody or control all documents of title of the *scheme property* other than in respect of *derivatives* or forward transactions.

Delegation

15.7.8 **G** (1) The delegation of *AIFM management functions* by a *full-scope UK AIFM* is subject to the *rules* in ■ FUND 3.10 (Delegation) and articles 75 to 82 of the *AIFMD level 2 regulation*. See also regulation 26 of the *AIFMD UK regulation*.

(2) The *authorised fund manager* of a *long-term asset fund* is required to possess the knowledge, skills and experience necessary to understand the activities of the *LTAf* and, in particular, the risks involved in those activities and the assets which the *LTAf* holds (or is to hold) in the *scheme property*. The *authorised fund manager* cannot rely on a delegation arrangement to satisfy this requirement (see ■ COLL 15.2.4R (Competence and resources of the authorised fund manager)).

15.7.9 **G** (1) This paragraph applies where the *authorised fund manager* delegates portfolio management of particular assets to a third party under ■ FUND 3.10 (Delegation).

(2) Where (1) applies, the *authorised fund manager* will need to retain adequate risk management systems to identify, measure and monitor the risks relevant to the *long-term asset fund's* investment strategy in accordance with the requirements in ■ FUND 3.7 (Risk management) and the applicable requirements of the *AIFMD level 2 regulation*.

[**Note:** See ■ FUND 3.7 (Risk management) and articles 38 to 47 of the *AIFMD level 2 regulation*.]

Delegation and responsibility for regulatory obligations

15.7.10 **G** (1) The *authorised fund manager* of an *LTAf* should note (and will need to comply with) article 75 of the *AIFMD level 2 regulation*. This provides that when delegating the task of carrying out one or more functions on its behalf, an *AIFM* must comply with various general

principles, including the principle that the delegation structure does not allow for the circumvention of the *AIFM's* responsibilities or liability, and that the obligations of the *AIFM* towards the *AIF* and its investors are not altered as a result of the delegation.

- (2) *Directors* of an *ICVC* and *depositories* should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6R states that a *firm* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

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- (1) The *authorised fund manager* and the *depository* must ensure that any transaction in respect of the *scheme property* undertaken with an *affected person* is on terms at least as favourable to the *scheme* as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.
- (2) Paragraph (1) is subject to any provision in the *instrument constituting the fund* and the *prospectus* imposing a prohibition in relation to any type of transaction.

[Note: See articles 30 to 36 of the *AIFMD level 2 regulation*.]

Application of the rules on the register of unitholders: AUTs or ACSs

15.7.-12 R

- (1) ■ COLL 15.7.-12BR applies in respect of any *scheme* which is *sold*, *promoted* or otherwise made available to *retail clients* who are not *limited protection LTAF investors*.
- (2) ■ COLL 15.7.12R may be applied to a *scheme* which is intended only for *limited protection LTAF investors*.

15.7.-12A G

Where ■ COLL 15.7.-12BR is not applied to a *scheme* which is intended only for *limited protection LTAF investors*, the *authorised fund manager* is required to take reasonable care to ensure that ownership of *units* in that *scheme* is recorded in the *register* only for a *person* who is a *limited protection LTAF investor* (see ■ COLL 15.1.3R (Long-term asset funds: eligible investors)).

The register of unitholders: AUTs or ACSs (schemes made available to retail clients who are not limited protection LTAF investors)

15.7.-12B R

- (1) (a) Either:
- (i) the *manager* or the *trustee* (as nominated in the *trust deed*); or
 - (ii) the *authorised contractual scheme manager* or the *depository* of the *ACS* (as nominated in the *contractual scheme deed*),
- must establish and maintain a *register of unitholders* as a *document* in accordance with this *rule*.

- (b) The *manager* or *trustee* or the *authorised contractual scheme manager* or *depository*, in accordance with their duties under (1)(a), must exercise all due diligence and take all reasonable steps to ensure the information contained on the *register* is at all times complete and up to date.
 - (c) The *register* must contain:
 - (i) the name and address of each *unitholder* (for joint *unitholders*, no more than four need to be registered);
 - (ii) the number of *units* of each *class* held by each *unitholder*;
 - (iii) the date on which the *unitholder* was registered for *units* standing in their name; and
 - (iv) the number of *units* of each *class* currently in *issue*.
 - (d) No notice of any trust (express, implied or constructive) which may be entered in the *register* is binding on the *manager* or *trustee*, or the *authorised contractual scheme manager* or *depository*.
 - (e) The *register* is conclusive evidence of the *persons* entitled to the *units* entered in it.
 - (f) The *person* responsible for the *register* in (1)(a) must:
 - (i) take reasonable steps to alter the *register* on receiving written notice of a change of name or address of any *unitholder*;
 - (ii) make the *register* available for inspection free of charge in the *United Kingdom* by or on behalf of any *unitholder* (including the *manager* or *authorised contractual scheme manager*), during office hours;
 - (iii) supply free of charge to any *unitholder*, or their authorised representative, a copy of the entries on the *register* relating to that *unitholder* on request;
 - (iv) where a *unitholder* defaults on paying for the *issue* or sale of *units*, make an alteration or deletion in the *register* to compensate for the default after which the *manager* or *authorised contractual scheme manager* becomes entitled to those *units* (until those units are either cancelled or re-sold and paid for); and
 - (v) carry out any conversion of *units* allowed for by (4) below after consultation with the *manager* or *trustee* or the *authorised contractual scheme manager* or *depository*, as appropriate.
- (2) (a) Subject to (2)(c), if no *person* is entered in the *register* as the *unitholder* of a *unit*, the *authorised fund manager* of the *AUT* or *ACS* must be treated as the *unitholder* of each such *unit* which is in *issue*.
- (b) Where *units* are transferred to the *authorised fund manager*, the *units* need not be cancelled and the *authorised fund manager* need not be entered on the *register* as the new *unitholder*.
 - (c) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager*, as the agent for the *scheme*, provided the *authorised contractual*

scheme manager is not entered in the *register* as the *new unitholder*.

- (3) (a) Every *unitholder* of an *AUT* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *trust deed* or *prospectus*.
- (b) Provided:
- (i) the requirements in ■ COLL 15.8.7R (Transfer of units in an ACS) are satisfied; and
 - (ii) transfers of *units* are allowed by the *contractual scheme deed* and *prospectus* in accordance with the conditions specified by *rules*,
- every *unitholder* of an *ACS* is entitled to transfer *units* held on the *register* by an instrument of transfer in any form that the *person* responsible for the *register* may approve, but that *person* is under no duty to accept a transfer unless it is permitted by the *contractual scheme deed* and *prospectus*.
- (c) Every instrument of transfer of *units* of an *AUT* or *ACS* must be signed by, or on behalf of, the *unitholder* transferring the *units* (or, for a body corporate, sealed by that *body corporate* or signed by one of its *officers* (or in Scotland, two of its *officers*)) authorised to sign it and, unless the transferee is the *authorised fund manager*, the transferor must be treated as the *unitholder* until the name of the transferee has been entered in the *register*.
- (d) In the case of an *AUT* or *ACS*, every instrument of transfer (stamped as necessary) must be left for registration, with the *person* responsible for the *register*, accompanied by:
- (i) any necessary documents that may be required by legislation; and
 - (ii) any other evidence reasonably required by the *person* responsible for the *register*.
- (e) In the case of an *AUT* or *ACS*, the details of an instrument of transfer must be kept for a period of 6 years from the date of its registration.
- (f) In the case of an *AUT* or *ACS*, on registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the *register*.
- (4) Where there is more than one *class* of *units* offered for *issue* or *sale*, the *unitholder* has a right to convert from one to the other, provided that doing so would not contravene any provision in the *prospectus*.

[Note: See also ■ COLL 15.8.7R (Transfer of units in an ACS) and the related guidance in ■ COLL 15.8.8G in relation to transfers of *units* in an ACS.]

The register of unitholders: AUTs or ACSs (schemes intended only for limited protection LTAF investors)

15.7.12

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- (1) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (in accordance with their responsibilities as set out in the *instrument*

constituting the fund) must maintain a *register of unitholders* as a document in accordance with this *rule*.

- (2) The *register* must contain:
 - (a) the name and address of each *unitholder* (for joint *unitholders* no more than four need to be registered);
 - (b) the number of *units* (including fractions of a *unit*) of each *class* held by each *unitholder*; and
 - (c) the date on which the *unitholder* was registered in the *register* for those *units*.
- (3) The *authorised fund manager* or the *depository* of an *AUT* or *ACS* (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the *register* is kept complete and up to date.
- (4) Where relevant, the *authorised fund manager* must immediately notify the *depository* of an *AUT* or *ACS* of any information it receives which may affect the accuracy of any entry in the *register*.
- (5) In the case of a *limited partnership scheme*, unregistered *units* may be held by the *authorised contractual scheme manager* as the agent for the *scheme* provided the *authorised contractual scheme manager* is not entered in the *register* as the new *unitholder*.

Valuation of investments – good market practice

- 15.7.13 **R** Subject to any legal requirements which apply to the valuation of *investments* held or to be held in the *scheme property* of a *long-term asset fund*, the *authorised fund manager* of a *long-term asset fund* which carries on the valuation function itself must follow good market practice to value the *investments* held or to be held in the *scheme property*.

[Note: See **FUND 3.9** (Valuation) and articles 67 to 71 of the *AIFMD level 2 regulation*.]

Due diligence – good market practice

- 15.7.14 **R** Subject to any applicable legal requirements, the *authorised fund manager* of a *long-term asset fund* must use good market practice to:

- (1) establish, implement and apply written policies and procedures on due diligence; and
- (2) implement effective arrangements for ensuring that investment decisions on behalf of the *long-term asset fund* are carried out in compliance with the objectives, investment strategy and, where applicable, the risk limits of the *scheme*.

[Note: See articles 18 to 20 of the *AIFMD level 2 regulation*.]

- 15.7.15 **G** The *authorised fund manager* may use an appropriate code of good market practice for the purposes of conducting due diligence on *investments* held or to be held in the *scheme property*.

Application of assessment of value, assessment of investment valuations, due diligence, conflicts of interest and liquidity management and independent director rules

15.7.16 **R** ■ COLL 15.7.17R to ■ COLL 15.7.24R apply to an *authorised fund manager* of an *AUT, ACS* or *ICVC*.

Assessment of value

15.7.17 **R** (1) An *authorised fund manager* must conduct an assessment at least annually for each *scheme* it manages of whether the payments out of *scheme property* set out in the *prospectus* are justified in the context of the overall value delivered to *unitholders*.

(2) In carrying out the assessment required by (1), the *AFM* must, separately for each *class* of *units* in a *scheme*, consider at least the matters set out in ■ COLL 6.6.21R (Table: minimum considerations – assessment of value).

15.7.18 **G** The *guidance* in ■ COLL 6.6.22G applies to interpreting the requirements of ■ COLL 6.6.21R as applied by ■ COLL 15.7.17R.

15.7.19 **R** Failure by an *AFM* to take sufficient steps to address any instance where a *scheme's* charges are not justified in the context of the overall value delivered to *unitholders* may be relied on as tending to establish contravention of ■ COBS 2.1.1R or ■ COBS 2.1.4R as applicable.

Assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.20 **R** (1) An *authorised fund manager* of a *long-term asset fund* must conduct an assessment at least annually of how it has managed the *LTAf* in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market (see ■ COBS 2.1.4R (AIFMs' best interests rules)).

(2) In carrying out the assessment required by (1), the *authorised fund manager* must consider at least the matters set out in ■ COLL 15.7.21R (Table: minimum considerations – valuation of investments, due diligence, conflicts of interest and liquidity management assessment).

Table: minimum considerations – assessment of investment valuations, due diligence, conflicts of interest and liquidity management

15.7.21 **R** This table belongs to ■ COLL 15.7.20R.

1 Valuation of investments

- (1) Where the *authorised fund manager* performs the valuation function itself:
 - (a) how the methodologies maintained by the *authorised fund manager* to value the *LTAf's investments* represent good market practice;

- (b) where a methodology maintained by the *authorised fund manager* was changed or modified in relation to the valuation of a particular *investment*, the rationale for that change;
 - (c) the rationale for any material change to the valuation of an *investment* held in the *scheme property* during the relevant period; and
 - (d) the consistency of valuation of the *LTAf's investments* with those of the other *AIFs* managed by the *authorised fund manager*
- (2) Where an *external valuer* has been appointed, the *authorised fund manager's* assessment during the relevant period of how:
- (a) the *external valuer* satisfied FUND 3.9.7R(3) (Performance of the valuation function);
 - (b) the *authorised fund manager* was satisfied that it could demonstrate the matters specified in FUND 3.9.9R (Appointment of an *external valuer*); and
 - (c) the *authorised fund manager* was satisfied that it could demonstrate the matters specified in FUND 3.10.2R(2)(f) (General delegation requirements).

2 Due diligence

In relation to due diligence carried out on *investments*, how that due diligence was carried out in accordance with good market practice (see COLL 15.7.14R (Due diligence – good market practice)).

3 Conflicts of interest

In relation to conflicts of interest:

- (1) how any conflicts of interest identified by the *authorised fund manager* under SYSC 10.1.23R (Additional requirements for an *AIFM*) and article 30 of the *AIFMD level 2 regulation* have been avoided, managed, monitored and (where applicable) disclosed under SYSC 10.1.24R (Additional requirements for an *AIFM*) and articles 31 to 36 of the *AIFMD level 2 regulation*; and
- (2) how, in relation to each conflict of interest identified, those actions were in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market.

4 Liquidity management

In relation to the management of liquidity of the *long-term asset fund*:

- (1) how the liquidity profile of the *LTAf*, taking into account borrowing (if any), has been consistent with its redemption policy;
- (2) where monitoring of the liquidity risk of the *LTAf*, including the results of any stress tests, has identified any liquidity management issues, how these were addressed in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market;
- (3) where the *authorised fund manager* has sold an *investment* held in the *scheme property* of the *LTAf* at a price adjusted to reflect the *authorised fund manager's* need to meet *redemption* requests, how that price was determined to be in the best interests of the *LTAf*, the *LTAf's* investors and the integrity of the market; and
- (4) how decisions to apply or refrain from applying any *dilution levy* or adjustment to *sales* and *redemptions* of *units* ensured that all investors in the *LTAf* were treated fairly, including those investors who were dealing in *units* of the *LTAf*, and those investors who (as applicable) were already invested or remained invested in the *LTAf*.

[Note: See FUND 3.6.3R (Liquidity systems and procedures) and articles 46 to 49 of the AIFMD level 2 regulation.]

Independent directors

15.7.22

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- (1) An *authorised fund manager* must ensure that at least one quarter of the members of its *governing body* are independent natural persons. If the *AFM's governing body* comprises fewer than eight members, the *AFM* must instead ensure that at least two of its members are independent natural persons.
- (2) The *authorised fund manager*, in appointing an independent member of its *governing body*, must determine whether such a member is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, that member's judgement.
- (3) The *authorised fund manager* must take reasonable steps to ensure that independent members appointed to its *governing body* have sufficient expertise and experience to be able to make judgements on whether the *AFM* is managing each *scheme* in the best interests of *unitholders*.
- (4) (a) Independent members of an *AFM's governing body* must be appointed for terms of no longer than five years, with a cumulative maximum duration of ten years.
 (b) If an independent member is appointed to more than one *governing body* within an *AFM's group*, the cumulative maximum duration of ten years referred to in (a) is calculated by adding the durations of each separate appointment and discounting periods during which appointments overlapped to avoid double counting.
 (c) In relation to a *person* who served as an independent director of an *AFM's governing body* before 1 October 2019, the five-year term(s) and cumulative maximum duration of ten years run from that date.
- (5) Independent members are not eligible for reappointment to an *AFM's governing body* until five years have elapsed from the end of the ten-year period referred to in (4).
- (6) The terms of *employment* on which independent members are appointed must be such as to secure their independence.

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The *guidance* in ■ COLL 6.6.26G applies to interpreting the requirement for independence in ■ COLL 15.7.22R.

Allocation of responsibility for compliance to an approved person

15.7.24

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- (1) An *AFM* must allocate responsibility for ensuring its compliance with ■ COLL 15.7.17R, ■ COLL 15.7.20R, ■ COLL 15.7.22R and ■ COBS 2.1.4R (*AFMs' best interests rules*) to an *approved person*.

- (2) Where the chair of the *AFM's governing body* is an *approved person*, the *AFM* must allocate the responsibility set out in (1) to that *person*.

[**Note:** See ■ SYSC 24 (Senior managers and certification regime: Allocation of prescribed responsibilities).]