

## Chapter 11

# Closed-ended investment funds: requirements for listing and continuing obligations



## 11.4 Continuing obligations, further issuances, dealing in own securities and treasury shares

### Compliance with ■ UKLR 6 and ■ UKLR 9

**11.4.1** **R** A *closed-ended investment fund* must comply with all of the requirements of ■ UKLR 6 (Equity shares (commercial companies): continuing obligations) and ■ UKLR 9 (Equity shares (commercial companies): further issuances, dealing in own securities and treasury shares) subject to the modifications and additional requirements set out in this section.

**11.4.2** **R** ■ UKLR 6 and ■ UKLR 9 are modified so that references to the *equity shares (commercial companies)* category are to the *closed-ended investment funds* category.

**11.4.3** **R** ■ UKLR 6.2.31R to ■ UKLR 6.2.33G do not apply to a *close-ended investment fund*.

### Investment policy

**11.4.4** **R** A *closed-ended investment fund* must, at all times, have a published investment policy which complies with ■ UKLR 11.2.8R.

**11.4.5** **G** A *closed-ended investment fund* should have regard to the *guidance* in ■ UKLR 11.2.9G at all times.

### Investment activity and compliance with investment policy

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

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

**11.4.7** **R** A *closed-ended investment fund* must comply with ■ UKLR 11.2.4R at all times.

**11.4.8** **G** A *closed-ended investment fund* should have regard to the *guidance* in ■ UKLR 11.2.5G at all times.

**Cross-holdings**

**11.4.9** **R** A *closed-ended investment fund* must, when making an acquisition of a constituent investment, observe the principles relating to cross-holdings in ■ UKLR 11.2.6R.

**Feeder funds**

**11.4.10** **R** If a *closed-ended investment fund* principally invests its funds in the manner set out in ■ UKLR 11.2.7R, the *closed-ended investment fund* must ensure that ■ UKLR 11.2.7R is complied with at all times.

**11.4.11** **G** ■ UKLR 11.2.7R and ■ UKLR 11.4.10R are not intended to require the *closed-ended investment fund* to be able to control or direct the master fund or intermediary (as the case may be). But if the *closed-ended investment fund* becomes aware that the master fund or intermediary (as the case may be) is not investing or managing its investments in accordance with that *rule*, it will need to immediately consider withdrawal of its funds from the master fund or intermediary (as the case may be) or other appropriate action so that it is no longer in breach of the *rules*.

**Independence and effective management**

**11.4.12** **R** ■ UKLR 11.2.10R to ■ UKLR 11.2.15R apply at all times to a *closed-ended investment fund*.

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

**Material changes to investment policy**

**11.4.14** **R** Unless ■ UKLR 11.4.15R applies, a *closed-ended investment fund* must:

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

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

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

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

### Conversion of an existing listed class of equity shares

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

### Further issues

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

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

### Externally managed companies

11.4.19 **R** A *closed-ended investment fund* is not required to comply with ■ UKLR 6.2.25R.

### Controlling shareholders

11.4.20 **R** A *closed-ended investment fund* is not required to comply with ■ UKLR 6.2.3R to ■ UKLR 6.2.10R.

### Notifications to the FCA

11.4.21 **R** (1) A *closed-ended investment fund* is not required to comply with ■ UKLR 6.2.35R in so far as it relates to ■ UKLR 6.2.8R and ■ UKLR 6.2.9R.

(2) A *closed-ended investment fund* is not required to comply with ■ UKLR 6.2.36R.

### Annual financial statement

11.4.22 **R** A *closed-ended investment fund* is not required to comply with ■ UKLR 6.6.1R(13) or ■ UKLR 6.6.6R(8).

11.4.23 **R** When making a statement required by ■ UKLR 6.6.6R(9) in its annual financial report, a *closed-ended investment fund* need not set out the following matters if they are inapplicable to the *closed-ended investment fund* and its statement sets out the reasons why those matters are inapplicable:

(1) whether the *closed-ended investment fund* has met the board diversity target in ■ UKLR 6.6.6R(9)(a)(ii); and

(2) matters set out in ■ UKLR 6.6.6R(9)(b) to the extent that they relate to the board diversity target in ■ UKLR 6.6.6R(9)(a)(ii).

**11.4.24** **R** When including numerical data required by ■ UKLR 6.6.6R(10) in its annual financial report, a *closed-ended investment fund* need not include the fields in the first row of each of the tables in ■ UKLR 6 Annex 1, and the corresponding data for those fields, that are inapplicable to the *closed-ended investment fund*, if it sets out in a statement accompanying the numerical data the reasons why those fields are inapplicable.

**Voting on matters relevant to listing**

**11.4.25** **R** Where the provisions of this chapter require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *closed-ended investment fund's equity shares* that have been *admitted to the closed-ended investment funds* category.

**Sponsor requirements for waivers and individual guidance**

**11.4.26** **G** As set out in ■ UKLR 4.2.3R and ■ UKLR 4.2.4R, a *closed-ended investment fund* must appoint a *sponsor* where it proposes to make a request to the *FCA* to modify, waive or substitute the operation of ■ UKLR 11, or proposes to make a request to the *FCA* for individual guidance.