

Chapter 11

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



11.5 Transactions

Significant transactions

- 11.5.1 **R** A *closed-ended investment fund* must comply with ■ UKLR 7 (Equity shares (commercial companies): significant transactions and reverse takeovers), except in relation to transactions that are executed in accordance with the scope of its published investment policy.

Transactions with related parties

- 11.5.2 **R** ■ UKLR 8 (Equity shares (commercial companies): related party transactions) applies to a *closed-ended investment fund*, subject to the modifications and additional requirements set out in this section.

- 11.5.3 **R** In addition to the definition in ■ UKLR 8.1.11R, a *related party* includes any *investment manager* of the *closed-ended investment fund* and any member of such *investment manager's* group.

Relevant related party transactions

- 11.5.4 **R**
- (1) The requirements in ■ UKLR 8.2.1R(1) to ■ (4) and ■ UKLR 8.2.2R to ■ UKLR 8.2.8R apply where a *closed-ended investment fund* enters into a relevant related party transaction where any *percentage ratio* is greater than 0.25%.
 - (2) The requirements in ■ UKLR 8.2.7R(2)(a) and ■ (b) apply if any *percentage ratio* for aggregated relevant related party transactions is greater than 0.25%.
- 11.5.5 **R** If a *closed-ended investment fund* enters into a *relevant related party transaction* where any *percentage ratio* is 5% or more (or which is uncapped), the *closed-ended investment fund* must:
- (1) comply with the requirements of ■ UKLR 8.2.1R(1) to ■ (4) and ■ UKLR 8.2.2R to ■ UKLR 8.2.3R for the *relevant related party transaction*, except that the notification is not required to include the information required by:
 - (a) ■ UKLR 8.2.2R(4); or
 - (b) ■ UKLR 8.2.2R(5);
 - (2) send a *circular* to its shareholders and obtain their prior approval in a general meeting for the transaction; and

- 11.5.6 **R**
- (3) ensure that any agreement effecting the transaction is conditional on that approval being obtained.
 - (1) The requirement to aggregate transactions or arrangements in **■ UKLR 8.2.7R(1)** applies to *relevant related party transactions* for the purposes of **■ UKLR 11.5.5R**, except that any transactions or arrangements which have been approved by shareholders are not required to be aggregated.
 - (2) If under this *rule* aggregation of *relevant related party transactions* results in a requirement for shareholder approval, that approval is required only for the latest *relevant related party transaction*.

Additional exemption from related party requirements

- 11.5.7 **R**
- (1) **■ UKLR 8.2.1R** to **■ UKLR 8.2.8R** and **■ UKLR 11.5.4R** to **■ UKLR 11.5.6R** do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* or any member of that *investment manager's* group where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:
 - (a) made at the same time and on substantially the same economic and financial terms;
 - (b) referred to in the *closed-ended investment fund's* published investment policy; or
 - (c) made in accordance with a pre-existing agreement between the *closed-ended investment fund* and its *investment manager*.
 - (2) For the purposes of paragraph (1)(c), a pre-existing agreement is an agreement which was entered into at the time the *investment manager* was appointed.

Material change to terms of a relevant related party transaction

- 11.5.8 **R**
- If, after obtaining shareholder approval but before completion, there is a material change to the terms of a transaction subject to **■ UKLR 11.5.5R**, the *closed-ended investment fund* must comply again separately with **■ UKLR 11.5.5R** in relation to the transaction.

- 11.5.9 **G**
- The *FCA* would (among other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.

Supplementary circular for relevant related party transaction

- 11.5.10 **R**
- (1) If a *closed-ended investment fund* becomes aware of a matter described in (2) after the publication of a *circular* that seeks shareholder approval for a transaction expressly requiring a vote by **■ UKLR 11.5.5R**, but before the date of a general meeting, it must, as soon as practicable:
 - advise the *FCA* of the matters of which it has become aware; and

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- (b) send a supplementary *circular* to holders of its *listed equity shares*, providing an explanation of the matters referred to in (2).
- (2) The matters referred to in (1) are:
 - (a) a material change affecting any matter the *closed-ended investment fund* is required to have disclosed in a *circular*; or
 - (b) a material new matter which the *closed-ended investment fund* would have been required to disclose in the *circular* if it had arisen at the time of its publication.
- (3) The *closed-ended investment fund* must have regard to ■ UKLR 10.3.1R(3) when considering the materiality of any change or new matter under (2).

The *circular* requirements in ■ UKLR 11.6 apply to a supplementary *circular* under ■ UKLR 11.5.10R. It may be necessary to adjourn a convened shareholder meeting if a supplementary *circular* cannot be sent to holders of *listed equity shares* at least 7 days prior to the convened shareholder meeting as required by ■ UKLR 10.1.9R as applied by ■ UKLR 11.6.

Sponsor requirements for transactions

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As set out in ■ UKLR 4.2.1R, a *closed-ended investment fund* must appoint a *sponsor* on each occasion it:

- (1) is required to submit to the *FCA* a *reverse takeover circular* or a *relevant related party transaction circular* required by ■ UKLR 11.5.5R; or
- (2) is required by ■ UKLR 8.2.1R(3), including as modified by ■ UKLR 11.5.4R, to provide a *listed issuer* with a confirmation that the terms of a proposed transaction or arrangement with a *related party* are fair and reasonable.