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## STATUTORY INSTRUMENTS

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# 2013 No. 1773

## The Alternative Investment Fund Managers Regulations 2013

### PART 3

#### Small AIFMs

##### Meaning of “small AIFM”

**9.—**(1) “Small AIFM” means an AIFM which is the AIFM of portfolios of AIFs, the value of whose assets under management, calculated in accordance with Article 2 of the Commission Delegated Regulation—

- (a) does not exceed 500 million euros in total in cases where the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF; or
- (b) does not exceed 100 million euros in total in other cases, including any assets acquired through the use of leverage.

(2) For the purposes of paragraph (1), an AIFM may be the AIFM of an AIF whether it manages the AIF directly, or indirectly through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding.

(3) The assets under management by an AIFM are not to be considered to have exceeded the relevant threshold in paragraph (1) in a situation falling within Article 4.3 of the Commission Delegated Regulation (exceeding the threshold: temporary situation).

(4) A EuSEF Manager or a EuVECA Manager may be both a small registered UK AIFM and a small authorised UK AIFM.

##### Small registered UK AIFMs

**10.—**(1) The FCA must keep a register of small registered UK AIFMs, and must enter an AIFM on the register if the conditions in paragraph (2), (3) or (4) are met.

(2) The conditions in this paragraph are that—

- (a) the AIFM is—
  - (i) a UK AIFM;
  - (ii) a small AIFM;
  - (iii) the internal AIFM of an AIF that is a body corporate and is not a collective investment scheme; and
  - (iv) not an external AIFM;
- (b) none of the individuals responsible for the management or operation of the AIFM—
  - (i) has been convicted of any offence involving fraud or dishonesty, or any indictable offence, and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in the United Kingdom; or

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- (ii) is subject to a prohibition order; and
  - (c) grounds do not exist which would permit or require a court to make a disqualification order within the meaning of section 1(1) of the Company Directors Disqualification Act 1986 <sup>M1</sup> against an individual responsible for the management or operation of the AIFM.
- (3) The conditions in this paragraph are that—
- (a) the AIFM is—
    - (i) a UK AIFM; and
    - (ii) a small AIFM;
  - (b) each AIF managed by the AIFM—
    - (i) is a collective investment scheme;
    - (ii) is not an authorised unit trust scheme, an authorised open-ended investment company or an authorised contractual scheme (as each is defined in section 237(3) of the Act);
    - (iii) holds the majority of its assets as land as described in paragraph (7), but this condition does not apply during the first 180 days and the last 180 days of the period during which the undertaking is an AIF; and
    - (iv) subject to paragraph (8), does not hold any investment of a kind specified for the purposes of section 22 of the Act (regulated activities) <sup>M2</sup>;
  - (c) each AIF managed by the AIFM is operated, or will be established and operated, by a person with a Part 4A permission to carry on the regulated activity of establishing, operating or winding up a collective investment scheme; and
  - (d) none of the individuals responsible for the management or operation of the AIFM—
    - (i) has been convicted of any offence involving fraud or dishonesty, or any indictable offence, and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in the United Kingdom; or
    - (ii) is subject to a prohibition order.
- (4) The conditions in this paragraph are that the AIFM—
- (a) is a UK AIFM;
  - (b) is a small AIFM; and
  - (c) has applied for registration as a EuSEF Manager or a EuVECA Manager, and meets the conditions for such registration.
- (5) The FCA may—
- (a) keep the register of small registered UK AIFMs in any form it thinks fit;
  - (b) include on the register such information as the FCA considers appropriate; and
  - (c) exploit commercially the information contained in the register, or any part of that information.
- (6) The FCA must—
- (a) publish the register on a regular basis; and
  - (b) provide a certified copy of the register, or any part of it, to any person who asks for it—
    - (i) on payment of the fee (if any) fixed by the FCA; and
    - (ii) in a form in which it is legible to the person asking for it.
- (7) For the purposes of paragraphs (3)(b)(iii) and (8), an AIF holds land if it holds such land either directly, or indirectly through an entity that meets the conditions in paragraph (3)(b)(ii) to (iv).

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(8) For the purposes of paragraph (3)(b)(iv), an investment held by an AIF is not to be considered an investment of a kind specified for the purposes of section 22 of the Act if it is—

- (a) an investment of the type specified by article 75 of the Regulated Activities Order (contracts of insurance) which relates to land held by the AIF;
- (b) an investment of the type specified by article 76 <sup>M3</sup> of the Regulated Activities Order (shares etc.) through which the AIF holds land.

#### Marginal Citations

- M1** 1986 c. 46. Section 1(1) was amended by section 204(1) and (3) of the [Enterprise Act 2002 \(c. 40\)](#) and section 5(1) of the [Insolvency Act 2000 \(c. 39\)](#).
- M2** [Section 22](#) was amended by section 7 of the Financial Services Act 2012.
- M3** [Article 76](#) was amended by [S.I. 2011/2687](#).

### Applications for entry on register of small registered UK AIFMs

**11.**—(1) An application for entry on the register of small registered UK AIFMs must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.

(4) The FCA may require an applicant to provide information which it is required to give under this regulation in such form, or to verify it in such manner, as the FCA may specify.

### Determination of applications

**12.**—(1) The FCA must determine an application for entry on the register of small registered UK AIFMs before the end of the period of three months beginning with the date on which it receives the completed application.

(2) The FCA may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within six months beginning with the date on which it first receives the application.

(3) If the FCA decides to enter an AIFM on the register, it must give written notice of its determination to the applicant.

### Procedure when refusing an application

**13.**—(1) If the FCA proposes to refuse an application made under regulation 11(1) it must give the applicant a warning notice.

- (2) If the FCA decides to refuse an application—
  - (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

**Notification of new funds under the EuSEF Regulation or the EuVECA Regulation**

14.—(1) This regulation applies when the FCA receives a notification of an intention to market a new fund under Article 16 of the EuSEF Regulation or Article 15 of the EuVECA Regulation.

(2) The FCA must determine within 20 working days of receiving the notification whether the fund is a qualifying social entrepreneurship fund or, as the case may be, a qualifying venture capital fund.

(3) If the FCA determines that the fund is not a qualifying social entrepreneurship fund or, as the case may be, a qualifying venture capital fund—

- (a) the FCA must inform the AIFM concerned; and
- (b) the AIFM may refer the matter to the Tribunal.

**Small registered AIFMs ceasing to meet the requirements for registration**

15.—(1) If a small registered UK AIFM ceases to meet any of the conditions in regulation 10(2) (a)(i), (iii) or (iv) or (b)(i) or (c), (3)(a)(i), (b), (c) or (d)(i), or (4)(a) or (c), it must inform the FCA immediately.

(2) If proceedings begin against an individual responsible for the operation or management of a small registered UK AIFM registered pursuant to the conditions in regulation 10(2) for a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, the AIFM must inform the FCA immediately.

(3) Paragraph (4) applies if a small registered UK AIFM registered pursuant to the conditions in regulation 10(2) or (3)—

- (a) does not comply with the requirement at Article 4.2 of the Commission Delegated Regulation (exceeding the threshold: situation not temporary) to apply for a Part 4A permission to carry on the regulated activity of managing an AIF; and
- (b) does not appoint a person with such permission to act as AIFM of the AIF within the period mentioned in Article 4.2 of that Regulation.

(4) The AIFM's registration, to the extent that it was granted pursuant to the conditions in regulation 10(2) or (3), is treated as revoked upon the expiry of the period mentioned in Article 4.2 of the Commission Delegated Regulation.

**Applications for revocation of registration**

16.—(1) A small registered UK AIFM may apply to the FCA for its registration to be revoked, and for a Part 4A permission to carry on the regulated activity of managing an AIF.

(2) In its application, a small registered UK AIFM may apply to become—

- (a) a small authorised UK AIFM; or
- (b) a full-scope UK AIFM, in accordance with Article 3.4 of the directive.

**Grounds for revocation of registration**

17.—(1) Subject to paragraph (2), the FCA may revoke the registration of a small registered UK AIFM, including its registration under Article 14 of the EuSEF Regulation or Article 13 of the EuVECA Regulation, if—

- (a) the AIFM does not meet a condition in regulation 10(2), (3) or, as the case may be, (4);
- (b) the AIFM has contravened an implementing provision, or a requirement imposed by the EuSEF Regulation or the EuVECA Regulation, that applies to it;
- (c) the AIFM applies for or consents to the revocation of its registration;

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- (d) the AIFM is wound up; or
- (e) a fee due in respect of the registration has not been paid.

(2) If an AIFM applies to the FCA for permission in accordance with regulation 16(2)(b), the FCA may not revoke the registration of the AIFM on the ground that the AIFM is not a small AIFM until the FCA has determined the AIFM's application.

### **Procedure on revocation**

**18.**—(1) If the FCA proposes to revoke the registration of a small registered UK AIFM on the grounds mentioned in regulation 17(1)(a) or (b), the FCA must give the AIFM a warning notice.

(2) If the FCA decides to revoke the registration of a small registered UK AIFM on the grounds mentioned in regulation 17(1)(a) or (b)—

- (a) the FCA must give the AIFM a decision notice, and
- (b) the AIFM may refer the matter to the Tribunal.

### **Grounds for suspension of registration**

**19.**—(1) If one of the grounds in paragraph (2) is met, the FCA may suspend the registration of a small registered UK AIFM for a specified period, until the occurrence of a specified event, or until specified conditions are complied with.

(2) The grounds are that it appears to the FCA that—

- (a) the AIFM does not meet a condition in regulation 10(2), (3) or, as the case may be, (4);
- (b) the AIFM has contravened, or is likely to contravene, an implementing provision, or a requirement imposed by the EuSEF Regulation or the EuVECA Regulation, that applies to it.

(3) In this regulation “specified” means specified by the FCA in a notice given under regulation 20.

### **Procedure on suspension**

**20.**—(1) The suspension of the registration of a small registered UK AIFM takes effect—

- (a) immediately, if the notice given under paragraph (3) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A suspension may be expressed to take effect immediately or on a specified date only if the FCA, having regard to the ground on which it is exercising its power under regulation 19, considers that it is necessary for the suspension to take effect immediately or on that date.

(3) If the FCA proposes to suspend a registration, or suspends a registration with immediate effect—

- (a) it must give written notice to the AIFM; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (4) A notice given under paragraph (3)(a) must state—
- (a) the details of the suspension;
  - (b) when the suspension takes effect;
  - (c) the FCA's reasons for imposing the suspension and for its determination as to when the suspension takes effect;

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- (d) that the AIFM to whom it is given may make representations to the FCA within such period as may be specified in it (whether or not it has referred the matter to the Tribunal); and
  - (e) that the AIFM has the right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) Having considered any representations made by the AIFM to whom the notice was given—
- (a) the FCA must give written notice to the AIFM as to whether it decides—
    - (i) to make the suspension in the way proposed (or, if the suspension has already been imposed, not to revoke the suspension),
    - (ii) to make the suspension in a way other than that proposed (or, if the suspension has already been imposed, to amend the suspension), or
    - (iii) not to make the suspension (or, if the suspension has already been imposed, to revoke the suspension); and
  - (b) unless the FCA decides not to make, or to revoke, the suspension, the AIFM may refer the matter to the Tribunal.
- (7) For the purposes of paragraph (1)(c), section 391(8) of the Act (publication) applies as if a notice under paragraph (3)(a) or (6)(a) were a supervisory notice.

#### **Disclosure obligations of small registered UK AIFMs**

**21.**—(1) A small registered UK AIFM must provide the FCA with such information as the FCA may direct under paragraph (2) or (3).

- (2) The FCA may direct that a small registered UK AIFM must provide information on—
- (a) the main instruments in which the AIFM trades, and
  - (b) the principal exposures and most important concentrations of the AIFs that it manages,
- in order to enable the FCA to monitor systemic risk effectively.

(3) The FCA may direct that a small registered UK AIFM must provide information in relation to its compliance with—

- (a) the implementing provisions,
- (b) the EuSEF Regulation, or
- (c) the EuVECA Regulation,

in order to enable the FCA to discharge its supervisory obligations.

(4) Information provided under paragraph (1) must be given at such times and in such manner, and verified in such manner, as the FCA may direct.

#### **Power to direct small registered UK AIFMs and EuSEF and EuVECA Managers to take appropriate measures**

**22.**—(1) The FCA may direct a small registered UK AIFM to take such specified steps as are necessary for the purpose of securing its compliance with—

- (a) an implementing provision,
- (b) the EuSEF Regulation, or
- (c) the EuVECA Regulation.

(2) Where Article 19.3 of the EuSEF Regulation or Article 18.3 of the EuVECA Regulation applies, the FCA may direct an AIFM that has its registered office in an EEA State other than the

United Kingdom to take specified steps for the purposes of, and subject to the conditions in, that Article.

(3) An AIFM must comply with any direction given to it by the FCA under paragraph (1) or (2).

(4) Section 55Y of the Act (exercise of own-initiative power: procedure) applies to a direction to an AIFM under paragraph (1) or (2) as it applies to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA).

### **Application of FCA rules to small authorised UK AIFMs**

**23.**—(1) Notwithstanding the powers of the FCA under the Act, the FCA may not make a rule of a kind specified for the purposes of this regulation to the extent that such rule applies to a small authorised UK AIFM.

(2) A rule of a kind specified for the purposes of this regulation that was made by the FCA before 22nd July 2013 does not apply to a small authorised UK AIFM.

(3) Subject to paragraph (4), a rule is of a kind specified for the purposes of this regulation if it—

- (a) is made by the FCA for the purposes of implementing the directive; or
- (b) has the same effect as a provision in the Commission Delegated Regulation.

(4) A rule is not of a kind specified for the purposes of this regulation to the extent that—

- (a) it is an implementing provision relating to Article 3 of the directive;
- (b) it applied to the AIFM in respect of the management of an AIF immediately before 22nd July 2013, or would so have applied if the AIFM had managed the AIF at that time; or
- (c) it has the same effect as a rule which falls within sub-paragraph (b).

(5) This regulation ceases to have effect on 22nd July 2015.

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