

## SCHEDULE 2

Regulation 81

### AMENDMENTS TO SECONDARY LEGISLATION

## PART 1

### Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

#### Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

- 1.—(1) The Regulated Activities Order is amended as follows.
- (2) In article 3(1) (interpretation) <sup>M1</sup>—
  - (a) in paragraph (a) of the definition of “overseas person” for “51” substitute “ 51ZA, 51ZB, 51ZC, 51ZD, 51ZE ”; and
  - (b) insert the following definitions in the appropriate places—
    - ““AIFM” has the meaning given by regulation 4 of the Alternative Investment Fund Managers Regulations 2013;
    - “EEA AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
    - “full-scope UK AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
    - “small registered UK AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
    - “UCITS” has the meaning given by Article 1.2 of the UCITS directive;
    - “UK AIF” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;”.
- (3) In articles 4(2) (specified activities: general) <sup>M2</sup>, 8(a) (sums received by persons authorised to deal etc.), 15(2)(g) (absence of holding out etc.), 16(1)(b) (dealing in contractually based investments) <sup>M3</sup> and 33(b)(iii) (introducing), for “51” substitute “ 51ZA, 51ZB, 51ZC, 51ZD, 51ZE ”.
- (4) In articles 9AA, 51A, 52A, 58A and 60A (information society services) <sup>M4</sup>—
  - (a) in the heading, at the end insert “ and managers of UCITS and AIFs ”;
  - (b) for “exclusion” substitute “ exclusions ”; and
  - (c) at the end insert “ and article 72AA (managers of UCITS and AIFs). ”.
- (5) In article 12A (information society services) <sup>M5</sup>—
  - (a) in the heading, at the end insert “ and managers of UCITS and AIFs ”;
  - (b) for “exclusion” substitute “ exclusions ”; and
  - (c) at the end insert “ , and article 72AA (managers of UCITS and AIFs). ”.
- (6) In articles 20 <sup>M6</sup>, 36(2) <sup>M7</sup>, 50, 55(2), 63A <sup>M8</sup>, 63E <sup>M9</sup>, 63I and 63M <sup>M10</sup> (other exclusions), for “and 72A (information society services)” substitute “ , 72A (information society services) and 72AA (managers of UCITS and AIFs) ”.
- (7) In articles 24 <sup>M11</sup>, 36(1) <sup>M12</sup>, 39C <sup>M13</sup> and 55(1) (other exclusions), for “and article 72D (large risks contracts where risk situated outside the EEA)” substitute “ , article 72AA (managers of UCITS and AIFs) and article 72D (large risks contracts where risk situated outside the EEA) ”.

**Status:** Point in time view as at 22/07/2013.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013, SCHEDULE 2 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(8) In article 36(3) (other exclusions) <sup>M14</sup>, for “the exclusion in article 72 (overseas persons)” substitute “ the exclusions in articles 72 (overseas persons) and 72AA (managers of UCITS and AIFs) ”.

(9) In articles 39 and 44 (other exclusions) <sup>M15</sup>, for “and 72C (provisions of information about contracts of insurance on an incidental basis)” substitute “ , 72AA (managers of UCITS and AIFs) and 72C (provisions of information about contracts of insurance on an incidental basis) ”.

(10) After article 42 (introductions to qualifying custodians), insert—

#### **“Depositaries of UCITS and AIFs**

**42A.** A person does not carry on an activity of the kind specified by article 40 if the person carries on the activity in relation to—

- (a) a UCITS, and the person has a Part 4A permission to carry on the activity specified in article 51ZB in respect of that UCITS; or
- (b) an AIF, and the person has a Part 4A permission to carry on the activity specified in article 51ZD in respect of that AIF.”.

(11) In the heading of Chapter 10 (collective investment schemes) omit ‘schemes’.

(12) For article 51 (establishing etc. a collective investment scheme) and the cross-heading following it, substitute—

#### **“Managing a UCITS**

**51ZA.**—(1) Managing a UCITS is a specified kind of activity.

(2) A person manages a UCITS when the person carries on collective portfolio management of the UCITS within the meaning of the UCITS directive, which includes the functions referred to in Annex 2 to that directive (the text of which is set out in Schedule 6) in relation to a UCITS.

(3) If a person manages a UCITS and also carries on other activities in connection with or for the purposes of the management of that UCITS, such other activities are also included in the activity specified in paragraph (1).

#### **Acting as trustee or depositary of a UCITS**

**51ZB.**—(1) Acting as—

- (a) the trustee of an authorised unit trust scheme, or
- (b) the depositary of an open-ended investment company or authorised contractual scheme,

where the scheme or company is a UCITS, is a specified kind of activity.

(2) In paragraph (1), “authorised contractual scheme”, “authorised unit trust scheme”, “trustee” and “depositary” have the meanings given by section 237 of the Act (other definitions).

#### **Managing an AIF**

**51ZC.**—(1) Managing an AIF is a specified kind of activity.

(2) A person manages an AIF when the person performs at least risk management or portfolio management for the AIF.

(3) A person does not manage an AIF if the functions they perform for the AIF have been delegated to it by another person, provided that such other person is not an AIFM that has delegated such functions to the extent that it is a letter-box entity.

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- (4) Paragraph (5) applies if a person manages an AIF, and also carries on—
- (a) one or more of the additional activities listed in paragraph 2 of Annex 1 to the alternative investment fund managers directive (the text of which is set out in Schedule 7) for that AIF; or
  - (b) one or more other activities in connection with or for the purposes of the management of that AIF.
- (5) The additional or other activities are included in the activity specified in paragraph (1).
- (6) Any expression used in this article which is not defined in this Order and is used in the alternative investment fund managers directive has the same meaning as in that directive.

### **Acting as trustee or depositary of an AIF**

**51ZD.**—(1) Acting as—

- (a) the depositary of an AIF falling within paragraph (2),
- (b) the trustee of an authorised unit trust scheme which is an AIF that does not fall within paragraph (2), or
- (c) the depositary of an open-ended investment company or authorised contractual scheme which is an AIF that does not fall within paragraph (2),

is a specified kind of activity.

(2) An AIF falls within this paragraph if it is—

- (a) an AIF managed by a full-scope UK AIFM; or
- (b) a UK AIF managed by an EEA AIFM.

(3) In paragraph (1)(a) “depositary” means—

- (a) a person appointed in compliance with the requirement for the AIFM to appoint a depositary at Article 21.1 of the alternative investment fund managers directive; or
- (b) an Article 36 custodian as defined in regulation 57(5)(a) of the Alternative Investment Fund Managers Regulations 2013.

(4) In paragraph (1)(b) “authorised unit trust scheme” and “trustee” have the meanings given by section 237 of the Act.

(5) In paragraph (1)(c) “authorised contractual scheme” and “depositary” have the meanings given by section 237 of the Act.

(6) Until 22nd July 2017, an AIF also falls within paragraph (2) if the FCA or an authority in another EEA State has permitted a person with its registered office or a branch in the United Kingdom to be appointed as a depositary of the AIF in accordance with Article 61.5 of the alternative investment fund managers directive.

### **Establishing etc. a collective investment scheme**

**51ZE.** Establishing, operating or winding up a collective investment scheme is a specified kind of activity.

### *Exclusions*

### **Persons excluded from managing an AIF**

**51ZF.** There is excluded from article 51ZC the activity of managing an AIF if the person carrying on the activity is listed or described in Schedule 8.

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## Operating a collective investment scheme in relation to a UCITS or an AIF

**51ZG.**—(1) A person does not carry on an activity of the kind specified by article 51ZE if the person carries on the activity—

- (a) in relation to a UCITS, and—
  - (i) at the time the person carries on the activity, the UCITS is managed by a person with a Part 4A permission to carry on the activity specified by article 51ZA in respect of that UCITS; or
  - (ii) no more than the permitted period has passed since the UCITS was managed by a person with such a Part 4A permission; or
- (b) in relation to an AIF, and—
  - (i) at the time the person carries on the activity, the AIF is managed by—
    - (aa) a person with a Part 4A permission to carry on the activity specified by article 51ZC in respect of that AIF; or
    - (bb) a person registered as a small registered UK AIFM because the conditions in regulation 10(4) of the Alternative Investment Fund Managers Regulations 2013 are met in respect of that AIF; or
  - (ii) no more than the permitted period has passed since the AIF was managed by a person with such a Part 4A permission or registration.

(2) In this article “the permitted period” means a period calculated as follows—

- (a) subject to sub-paragraphs (b) and (c), the period is 30 days;
- (b) if, before the end of the period, the FCA receives notice of the action being taken to appoint a person with a Part 4A permission or registration to manage the UCITS or AIF, the period is extended by a further 30 days, and may be so extended a second time;
- (c) if, before the end of the period calculated in accordance with sub-paragraphs (a) and (b), the FCA receives notice of a proposal in respect of the UCITS or AIF for a new manager under section 251(3) of the Act, a new operator under section 261Q(5) of the Act or a new director under regulation 21(1)(e) of the Open-Ended Investment Company Regulations 2001, the period is further extended until the earlier of—
  - (i) the date on which the FCA gives written notice of its approval to the proposal;
  - (ii) the date on which the FCA gives a decision notice refusing the proposal; or
  - (iii) one month after the date on which notice of the proposal was given.”

(13) In article 51A (information society services) <sup>M16</sup>, for “Article 51 is” substitute “ Articles 51ZA, 51ZB, 51ZC, 51ZD, and 51ZE are also ”.

(14) In articles 64 (agreeing to carry on specified kinds of activity) <sup>M17</sup>, 68(1) and (3)(b)(ii) (activities carried on in connection with the sale of goods or supply of services) <sup>M18</sup> and 69(2)(b)(ii) (groups and joint enterprises), for “51”, substitute “ 51ZA, 51ZB, 51ZC, 51ZD, 51ZE ”.

(15) In article 72E(5) (Business Angel-led Enterprise Capital Funds) <sup>M19</sup>, for “51(1)(a)” substitute “ 51ZA, 51ZC or 51ZE ”.

(16) After article 72A (information society services) <sup>M20</sup>, insert—

### “Managers of UCITS and AIFs

**72AA.**—(1) This article applies to a person with a Part 4A permission to carry on the activity of the kind specified by article 51ZA or 51ZC.

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(2) Activities carried on by the person in connection with or for the purposes of managing a UCITS or, as the case may be, managing an AIF, are excluded from the activities specified by this Part, other than the activities mentioned in paragraph (1).”

(17) After Schedule 5 (specified benchmarks)<sup>M21</sup> insert—

“SCHEDULE 6

Article 51ZA

FUNCTIONS INCLUDED IN THE ACTIVITY OF MANAGING  
A UCITS: ANNEX II TO THE UCITS DIRECTIVE

1. Investment management.
2. Administration—
  - (a) legal and fund management accounting services;
  - (b) customer inquiries;
  - (c) valuation and pricing (including tax returns);
  - (d) regulatory compliance monitoring;
  - (e) maintenance of unit-holder register;
  - (f) distribution of income;
  - (g) unit issues and redemptions;
  - (h) contract settlements (including certificate dispatch);
  - (i) record keeping.
3. Marketing.

SCHEDULE 7

Article 51ZC

ADDITIONAL ACTIVITIES INCLUDED IN THE ACTIVITY OF  
MANAGING AN AIF LISTED IN PARAGRAPH 2 OF ANNEX I TO  
THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

- (a) Administration—
  - (i) legal and fund management accounting services;
  - (ii) customer inquiries;
  - (iii) valuation and pricing, including tax returns;
  - (iv) regulatory compliance monitoring;
  - (v) maintenance of unit-/shareholder register;
  - (vi) distribution of income;
  - (vii) unit/shares issues and redemptions;
  - (viii) contract settlements, including certificate dispatch;
  - (ix) record keeping;
- (b) Marketing;
- (c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice

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to undertakings on capital structure, industrial strategy and related matters, advice and services related to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

## SCHEDULE 8

Article 51ZF

### PERSONS EXCLUDED FROM REGULATED ACTIVITY OF MANAGING AN AIF

#### Interpretation of this Schedule

1. Any expression used in this Schedule which is used in the alternative investment fund managers directive has the same meaning as in that directive.

#### Persons excluded

2. A small registered UK AIFM, in respect of the AIFs managed by it by virtue of which it is entitled to be registered as a small registered UK AIFM (but not in respect of any other AIFs managed by it).

3. An AIFM in so far as it manages one or more AIFs whose only investors are—

- (a) the AIFM,
- (b) the parent undertakings of the AIFM,
- (c) the subsidiaries of the AIFM, or
- (d) other subsidiaries of those parent undertakings,

provided that none of the investors is an AIF.

4. An institution for occupational retirement provision which falls within the scope of Directive [2003/41/EC](#) of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision<sup>M22</sup>, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2.1 of that directive, or the investment managers appointed pursuant to Article 19.1 of that directive, in so far as they do not manage AIFs.

5. The European Central Bank, the European Investment Bank, the European Investment Fund, a bilateral development bank, the World Bank, the International Monetary Fund, any other supranational institution or similar international organisation, or a European Development Finance Institution, in the event that such institution or organisation manages AIFs and in so far as those AIFs act in the public interest.

6. A national central bank.

7. A national, regional or local government or body or other institution which manages funds supporting social security and pension systems.

8. A holding company.

9. An employee participation scheme or employee savings scheme.

10. A securitisation special purpose entity.

11. An AIFM, the registered office of which is not in an EEA State.”.

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### Marginal Citations

- M1** The definition of “overseas person” was amended by [S.I. 2003/1475](#), [S.I. 2003/1476](#), [S.I. 2006/2383](#), [S.I. 2006/3384](#) and [S.I. 2009/1342](#). Other amendments to article 3 are not relevant here.
- M2** [Article 4\(2\)](#) was amended by [S.I. 2009/1389](#).
- M3** [Article 16](#) was amended by [S.I. 2006/3384](#).
- M4** [Articles 9AA, 51A, 52A, 58A](#) and [60A](#) were inserted by [S.I. 2002/1776](#).
- M5** [Article 12A](#) was inserted by [S.I. 2002/1776](#).
- M6** [Articles 20](#) and [50](#) were amended by [S.I. 2002/1776](#).
- M7** [Articles 36\(2\)](#) and [55\(2\)](#) were added by [S.I. 2003/1475](#) and amended by [S.I. 2006/2383](#) and [S.I. 2009/1342](#).
- M8** [Article 63A](#) was inserted by [S.I. 2002/1776](#) and substituted by [S.I. 2003/1475](#).
- M9** [Articles 63B to 63I](#) were inserted by [S.I. 2006/2383](#).
- M10** [Articles 63J to 63M](#) were inserted by [S.I. 2009/1342](#).
- M11** [Article 24](#) was amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).
- M12** [Articles 36\(1\)](#) and [55\(1\)](#) were amended by [S.I. 2002/1776](#), [S.I. 2003/1475](#) and [S.I. 2003/1476](#).
- M13** [Article 39C](#) was inserted by [S.I. 2003/1476](#).
- M14** [Article 36\(3\)](#) was added by [S.I. 2006/3384](#).
- M15** [Articles 39](#) and [44](#) were amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).
- M16** [Article 51A](#) was inserted by [S.I. 2002/1776](#).
- M17** [Article 64](#) was amended by [S.I. 2002/682](#), [S.I. 2006/3384](#) and [S.I. 2009/1389](#).
- M18** [Article 68](#) was amended by [S.I. 2001/3544](#) and [S.I. 2003/1476](#).
- M19** [Article 72E](#) was inserted by [S.I. 2005/1518](#) and amended by [S.I. 2006/3384](#) and [S.I. 2007/2157](#).
- M20** [Article 72A](#) was inserted by [S.I. 2002/1776](#) and amended by [2004/3379](#).
- M21** [Schedule 5](#) was added by [S.I. 2013/655](#).
- M22** [OJ L 235, 23.9.2003, p10](#).

## PART 2

### Amendments to other secondary legislation

#### Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

2.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 <sup>M23</sup> is amended as follows.

(2) In article 2(1), in the definition of “relevant collective investment scheme” omit “, 270 (schemes authorised in designated countries or territories)”.

(3) In article 4(1)(d)(ix)—

- (a) omit the words from the beginning to “that section or”; and
- (b) for “that Act” substitute “ the 2000 Act ”.

### Marginal Citations

- M23** [S.I. 1975/1023](#). The definition of “relevant collective investment scheme” in article 2(1) was inserted, and article 4(d) was substituted, by [S.I. 2001/3816](#). Article 4 was further amended by [S.I. 2013/472](#), [S.I. 2013/1198](#) and other instruments not relevant here.

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### Companies (No. 2) (Northern Ireland) Order 1990

3. In article 98(8) of the Companies (No. 2) (Northern Ireland) Order 1990 <sup>M24</sup> (power to make provision about certain other charges) after sub-paragraph (e) omit “or” and insert—

- “(ea) managing a UCITS;
- (eb) acting as trustee or depositary of a UCITS;
- (ec) managing an AIF;
- (ed) acting as trustee or depositary of an AIF; or”.

#### Marginal Citations

**M24** [S.I. 1990/1504 \(N.I. 10\)](#). Article 98(8) was inserted by [S.I. 2001/3649](#).

### Individual Savings Account Regulations 1998

4. In regulation 2(1)(b) of the Individual Savings Account Regulations 1998 <sup>M25</sup> (interpretation), in paragraph (b) of the definition of “non-UCITS retail scheme” omit “270 or”.

#### Marginal Citations

**M25** [S.I. 1998/1870](#). The definition of “non-UCITS retail scheme” was inserted by [S.I. 2005/3350](#) and amended by [S.I. 2008/704](#) and [S.I. 2009/1994](#).

### Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001

5.—(1) The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 <sup>M26</sup> is amended as follows.

(2) In article 2(1) (interpretation) in the definition of “relevant scheme activities” for “the activity specified by article 51” substitute “any activity specified by article 51ZA, 51ZB, 51ZD or 51ZE”.

(3) In article 16 (communications required or authorised by enactments)—

- (a) renumber the text of the article as paragraph (1) of the article;
- (b) after that paragraph insert—

“(2) A communication which may be made because a condition imposed by regulation 49 or 50 of the Alternative Investment Fund Managers Regulations 2013 has been met, is to be treated as authorised by those Regulations for the purposes of paragraph (1) in so far as it is made to a professional investor (as defined in regulation 2(1) of those Regulations).

(3) A communication permitted by Article 2.2, 4 or 14.3 of Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds, or by Article 2.2, 4 or 15.3 of Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds, is to be treated as authorised by another enactment for the purposes of paragraph (1).”.



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#### Marginal Citations

**M26** [S.I. 2001/1060](#). Article 2 was amended by [S.I. 2002/1310](#) and [S.I. 2005/2114](#).

### Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001

6. In paragraph 5(2)(a) of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 <sup>M27</sup> (arrangements not amounting to a collective investment scheme) for “51 (establishing etc. a collective investment scheme)” substitute “ 51ZA (managing a UCITS), 51ZB (acting as trustee or depositary of a UCITS), 51ZC (managing an AIF), 51ZD (acting as trustee or depositary of an AIF), 51ZE (establishing etc. collective investment scheme) ”.

#### Marginal Citations

**M27** [S.I. 2001/1062](#). Paragraph 5(2)(a) was amended by [S.I. 2006/3384](#).

### Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

7. For article 3(2)(g) of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 <sup>M28</sup> (investment business), substitute—

- “(ga) article 51ZA (managing a UCITS);
- (gb) article 51ZB (acting as a trustee or depositary of a UCITS);
- (gc) article 51ZC (managing an AIF);
- (gd) article 51ZD (acting as a trustee or depositary of an AIF);
- (ge) article 51ZE (establishing etc. a collective investment scheme);”.

#### Marginal Citations

**M28** [S.I. 2001/1177](#). Article 3 was amended by [S.I. 2003/1476](#), [S.I. 2006/1969](#) and [S.I. 2006/3384](#).

### Financial Services and Markets Act 2000 (Exemption) Order 2001

8.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001 <sup>M29</sup> is amended as follows.

(2) For article 5(1)(g) (persons exempt in respect of particular regulated activities) substitute—

- “(ga) article 51ZA (managing a UCITS);
- (gb) article 51ZB (acting as a trustee or depositary of a UCITS);
- (gc) article 51ZC (managing an AIF);
- (gd) article 51ZD (acting as a trustee or depositary of an AIF);
- (ge) article 51ZE (establishing etc. a collective investment scheme);”.

(3) In paragraphs 44(1) and (2) and 45 of the Schedule (persons exempt in respect of particular regulated activities – charities and schemes established under the Trustee Investments Act 1961) for “article 51 of the Regulated Activities Order (establishing etc. a collective investment scheme)”

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substitute “ articles 51ZA to 51ZE of the Regulated Activities Order (managing or acting as trustee or depositary of a UCITS or an AIF, or establishing etc. a collective investment scheme) ”.

#### Marginal Citations

**M29** [S.I. 2001/1201](#). Article 5 was amended by [S.I. 2003/1675](#), [S.I. 2006/1969](#) and [S.I. 2007/125](#).

### Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001

**9.** For article 4(d) of the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 <sup>M30</sup>, substitute—

- “(da) article 51ZA (managing a UCITS);
- (db) article 51ZB (acting as a trustee or depositary of a UCITS);
- (dc) article 51ZC (managing an AIF);
- (dd) article 51ZD (acting as a trustee or depositary of an AIF);
- (de) article 51ZE (establishing etc. a collective investment scheme);”.

#### Marginal Citations

**M30** [S.I. 2001/1227](#). Article 4 was amended by [S.I. 2001/3650](#), [S.I. 2002/682](#), [S.I. 2004/2737](#), [S.I. 2006/1969](#) and [S.I. 2012/1906](#).

### Open-Ended Investment Companies Regulations 2001

**10.—**(1) The Open-Ended Investment Companies Regulations 2001 <sup>M31</sup> are amended as follows.

(2) In regulation 15 (requirements for authorisation)—

(a) for paragraph (6) substitute—

“(6) If the company has only one director, that director must be a body corporate which is an authorised person and which has a Part 4A permission to carry on the regulated activity of managing a UCITS or, as the case may be, managing an AIF.”;

(b) in paragraph (8)(e) after “the depositary of an open-ended investment company” insert “ that is a UCITS or, as the case may be, of an open-ended investment company that is an AIF ”.

(3) In regulation 62(3) (exemptions from liability to be void), for “This regulation” substitute “ Except in the case of the depositary of an AIF (as to which see regulations 29 to 32 of the Alternative Investment Fund Managers Regulations 2013), this regulation ”.

#### Marginal Citations

**M31** [S.I. 2001/1228](#). Regulation 15 was amended by [S.I. 2003/2066](#), [S.I. 2011/1265](#) and [S.I. 2013/472](#).

### Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001

**11.—**(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 <sup>M32</sup> are amended as follows.

(2) In regulation 1(2) (interpretation) in the appropriate places insert—

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““authorised contractual scheme” has the meaning given at section 237(3) of the Act;”;

““authorised open-ended investment company” has the meaning given at section 237(3) of the Act;”;

““authorised unit trust scheme” has the meaning given at section 237(3) of the Act;”;

““relevant AIFM” means an EEA firm falling within paragraph 5(h) of Schedule 3 to the Act which—

- (a) is authorised by its home state regulator to provide services specified by Annex I to the alternative investment fund managers directive; and
- (b) is providing those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services), in the United Kingdom;”;

““UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”.

(3) In regulation 2 (persons not to be regarded as relevant persons)—

(a) omit “and” after sub-paragraph (1)(c);

(b) after sub-paragraph (1)(d) insert—

“; and

(e) any relevant AIFM.”;

(c) after paragraph (3) insert—

“(4) A relevant AIFM is prescribed in relation to all authorised activities other than any services specified by Annex I to the alternative investment fund managers directive provided in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company.”.

(4) In regulation 3(1) (persons who may elect to participate)—

(a) omit “and” after sub-paragraph (b);

(b) after sub-paragraph (c) insert—

“; and

(d) any relevant AIFM which has established a branch in the United Kingdom in exercise of an EEA right to the extent that it—

(i) provides services specified by Annex I to the alternative fund managers directive in respect of a UK AIF which is not an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company, unless the relevant AIFM is a member of another investor-compensation scheme which affords investors protection which equals or exceeds that provided by the Financial Services Compensation Scheme; or

(ii) provides services specified in Article 6.4 of the alternative investment fund managers directive (discretionary portfolio management and non-core services), and is a member of a home State investor-compensation scheme which meets the condition in paragraph (2);”.

(5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply)—

(a) omit “and” after paragraph (c);

(b) after paragraph (d) insert—

“; and

(e) any relevant AIFM to the extent that it provided services in the United Kingdom other than services specified by Annex I to the alternative investment

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fund managers directive that were provided in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company.”.

#### Marginal Citations

**M32** S.I. 2001/1783. Regulation 1 was amended by S.I. 2003/1476, S.I. 2003/2066, S.I. 2006/3221 and S.I. 2011/1613. Regulation 2 was amended by S.I. 2003/1476, S.I. 2003/2066 and S.I. 2011/1613. Regulations 3 and 4 were amended by S.I. 2003/1476 and S.I. 2003/2066.

### Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

**12.**—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001<sup>M33</sup> are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “single market restrictions”, after paragraph (g) insert—

“(ga) articles 47.2, 47.3, 51, 52 and 53.2 of the alternative investment fund managers directive;”.

(3) In regulation 9 (disclosure by regulators or regulator workers to certain other persons)—

(a) for paragraph (2) for the words from “the disclosure is provided for” to the end substitute “the condition in paragraph (2ZA) is met or the conditions in (2B) are met.”;

(b) after paragraph (2) insert—

“(2ZA) The condition in this paragraph is that the disclosure is provided for by a cooperation agreement of the kind referred to in—

- (a) article 63 of the markets in financial instruments directive;
- (b) article 46 of the banking consolidation directive;
- (c) article 16.3 of the life assurance consolidation directive;
- (d) article 16.3 of the non- life assurance directive;
- (e) article 102.3 of the UCITS directive; or
- (f) article 26 of the reinsurance directive.”;

(c) after paragraph (2A) insert—

“(2B) The conditions in this paragraph are that—

- (a) the conditions in articles 25 or 26 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>M34</sup> are met;
- (b) the regulator or regulator worker is satisfied that the disclosure is necessary for the purpose of complying with a requirement of the alternative investment fund managers directive; and
- (c) in the case of disclosure of information received from an EEA competent authority—
  - (i) that authority has given its express agreement to the disclosure; and
  - (ii) if such agreement was given for a particular purpose, the disclosure is solely for that purpose.”.

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#### Marginal Citations

**M33** [S.I. 2001/2188](#). In regulation 2, the definition of “single market restrictions” was amended by [S.I. 2013/504](#) and the regulation was amended by other instruments that are not relevant here. In regulation 9, paragraph (2) was amended by [S.I. 2004/3379](#), [S.I. 2006/3221](#), [S.I. 2006/3413](#), [S.I. 2007/3255](#) and [S.I. 2011/1613](#), and paragraph (2A) was inserted by [S.I. 2003/693](#) and amended by [S.I. 2004/3379](#).

**M34** OJ L 281 23/11/95, p.31.

### Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001

**13.**—(1) In regulation 5(3) of the Financial Services and Markets Act 2000 (Consultation with Competent Authorities) Regulations 2001 <sup>M35</sup>, for sub-paragraph (b) substitute—

“(b) that UK authorised person has a Part 4A permission to carry on the regulated activity of managing a UCITS”.

#### Marginal Citations

**M35** [S.I. 2001/2509](#). Regulation 5 was amended by [S.I. 2003/2066](#), [S.I. 2004/1862](#) and [S.I. 2007/3255](#).

### Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

**14.**—(1) The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 <sup>M36</sup> are amended as follows.

(2) After regulation 2(5) (establishment of a branch: contents of consent notice) insert—

“(6) In the case of an EEA AIFM, the prescribed information is—

- (a) a statement that the firm is an EEA AIFM;
- (b) the identity of the AIFs that the EEA AIFM intends to manage;
- (c) the organisational structure of the branch;
- (d) the address in the home state of each AIF that the EEA AIFM intends to manage from which documents relating to that AIF may be obtained;
- (e) the names and contact details of the persons responsible for the management of the branch.

(7) In paragraph (6) “home state” in relation to an AIF means—

- (a) the EEA State in which the AIF is authorised or registered, or in the case of multiple authorisations or registrations, the EEA State in which the AIF was first authorised or registered; or
- (b) if the AIF is not authorised or registered in an EEA State, the EEA State in which it has its registered office or head office.”.

(3) After regulation 3(4) (provision of services: contents of regulator's notice) insert—

“(5) In the case of an EEA AIFM, the prescribed information is—

- (a) a statement that the firm is an EEA AIFM;
- (b) if the EEA AIFM wishes to manage an AIF in the United Kingdom—
  - (i) particulars of the programme of operations to be carried on in the United Kingdom, including a description of the particular EEA activities to be carried on; and

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- (ii) the identity of the AIFs that the EEA AIFM intends to manage; and
- (c) if the EEA AIFM wishes to market an AIF in the United Kingdom—
  - (i) the documents and information set out in Annex IV to the alternative investment fund managers directive; and
  - (ii) a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular management strategy.”.
- (4) After regulation 7 (insurance firms: changes to services) insert—

**“EEA AIFM: changes to branch details or services**

**7A.**—(1) An EEA AIFM which is exercising an EEA right in the United Kingdom deriving from the alternative investment fund managers directive must not make a material change to any of the matters referred to in regulation 2(6)(b) to (e) or 3(5)(b) or (c) unless the relevant requirement has been complied with.

(2) Where the relevant requirement has been complied with, the EEA AIFM's permission is to be treated as varied accordingly.

(3) For the purposes of this regulation, the “relevant requirement” is that the home state regulator has informed the appropriate UK regulator that it has approved the proposed change.

(4) In this regulation “the appropriate UK regulator” has the same meaning as in paragraph 14 of Schedule 3.”.

- (5) After regulation 17 (relevant details for purposes of regulation 16) insert—

**“Full-scope UK AIFM: changes to branch details or services**

**17A.**—(1) A full-scope UK AIFM which has exercised an EEA right, deriving from the alternative investment fund managers directive, to establish a branch must not change any of the matters referred to in regulation 2(6)(b) to (e) unless the relevant requirements have been complied with.

(2) A full-scope UK AIFM which is providing services in exercise of an EEA right deriving from the alternative investment fund managers directive, other than the EEA right to market an AIF, must not change—

- (a) the programme of operations, or the EEA activities, to be carried out in exercise of that right,
- (b) the EEA States, other than the United Kingdom, in which it manages AIFs, or
- (c) the identity of the AIFs it manages in those States,

unless the relevant requirements have been complied with.

(3) A full-scope UK AIFM which is marketing an AIF in exercise of an EEA right deriving from the alternative investment fund managers directive, must not make a material change to any of the following matters, unless the relevant requirements have been complied with—

- (a) the programme of operations identifying the AIF the AIFM intends to market and information on where the AIF is established;
- (b) the AIF rules or instruments of incorporation;
- (c) identification of the depositary of the AIF;
- (d) the description of, or any information on, the AIF available to investors;
- (e) where the master AIF is established, if the AIF is a feeder AIF;

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- (f) any additional information referred to in Article 23.1 of the alternative investment fund managers directive, for each AIF the AIFM intends to market;
  - (g) the EEA States, other than the United Kingdom, in which the AIFM intends to market the units or shares of the AIF to professional investors;
  - (h) information about arrangements made for the marketing of the AIF and, where relevant, arrangements established to prevent the AIF from being marketed to retail investors, including in the case where the AIFM relies on the activities of independent entities to provide investment services in respect of the AIF.
- (4) For the purposes of this regulation, the “relevant requirements” in the case of a planned change are that—
- (a) the AIFM has given written notice of the change to the appropriate UK regulator at least one month before implementing the change; and
  - (b) either—
    - (i) the appropriate UK regulator has consented to the change; or
    - (ii) the appropriate UK regulator has not objected to the change in the period of one month beginning on the day on which the firm gave notice.
- (5) For the purposes of this regulation, the “relevant requirements” in the case of an unplanned change are that—
- (a) the AIFM has given written notice of the change to the appropriate UK regulator as soon as reasonably practicable and, at the latest, immediately after an unplanned change has occurred; and
  - (b) the appropriate UK regulator has not objected to the change.
- (6) If a planned change would mean the AIFM no longer complied with an implementing provision, the appropriate UK regulator must inform the AIFM without undue delay that—
- (a) the FCA objects to the change; and
  - (b) the AIFM must not implement the change.
- (7) If—
- (a) a planned change is implemented, or
  - (b) an unplanned change takes place,
- as a result of which the AIFM no longer complies with an implementing provision, the appropriate UK regulator must take steps to ensure that the AIFM complies with that provision or ceases to exercise the EEA right.
- (8) If a change notified under paragraph (4)(a) or (5)(a) does not affect compliance with an implementing provision, the appropriate UK regulator must—
- (a) give a notice to the host state regulator informing it of the change; and
  - (b) inform the firm that it has given the notice, stating the date on which it did so.
- (9) If the appropriate UK regulator objects to a change under paragraph (6), takes steps under paragraph (7) or refuses to give notice to the host state regulator under paragraph (8)—
- (a) the AIFM may refer the matter to the Tribunal; and
  - (b) the appropriate UK regulator must give notice to the AIFM of the reasons for its decision to object, to take such steps or to refuse to give such notice.
- (10) In this regulation—
- “depository” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;

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“feeder AIF” has the meaning given in Article 4.1(m) of the alternative investment fund managers directive;

“implementing provision” means a provision implementing the alternative investment fund managers directive or a provision of any directly applicable EU regulation made under that directive;

“master AIF” has the meaning given in Article 4.1(y) of that directive;

“retail investor” has the meaning given in Article 4.1(aj) of that directive.”.

#### Marginal Citations

**M36** [S.I. 2001/2511](#). Regulation 2(5) was amended by [S.I. 2004/1862](#), **regulation 3(4)** was added by [S.I. 2003/1473](#) and regulation 7 was amended by [S.I. 2013/642](#).

### Uncertificated Securities Regulations 2001

**15.** After regulation 9(10)(f) of the Uncertificated Securities Regulations 2001 <sup>M37</sup> (injunctions and restitution orders) insert—

- “(fa) managing a UCITS;
- (fb) acting as trustee or depositary of a UCITS;
- (fc) managing an AIF;
- (fd) acting as trustee or depositary of an AIF;”.

#### Marginal Citations

**M37** [S.I. 2001/3755](#).

### Financial Services and Markets Act 2000 (Collective Investment Schemes) (Designated Countries and Territories) Order 2003

**16.** The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Designated Countries and Territories) Order 2003 <sup>M38</sup> is revoked.

#### Marginal Citations

**M38** [S.I. 2003/1181](#).

### Financial Conglomerates and Other Financial Groups Regulations 2004

**17.—(1)** The Financial Conglomerates and Other Financial Groups Regulations 2004 <sup>M39</sup> are amended as follows.

(2) In regulation 1(2) (interpretation), in the definition of “regulated entity”—

- (a) at the end of paragraph (c) omit “or”;
- (b) after paragraph (d) insert—
  - “; or
  - (e) an alternative investment fund manager (as referred to in Article 4(1)(b), (l) or (ab) of the alternative investment fund managers directive) or an undertaking which



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is outside the EEA but which would require authorisation in accordance with that Directive if it had its registered office in the EEA; and”.

(3) In regulation 7(1) (supervision of third-country financial conglomerates and third-country groups - interpretation), before the definition of “asset management company” insert—

““alternative investment fund manager” means—

- (a) any EEA firm falling within paragraph 5(h) of Schedule 3 to the Act <sup>M40</sup>; or
- (b) any UK firm whose EEA right derives from the alternative investment fund managers directive”.

(4) In regulation 9 (supervision of third-country banking groups), after paragraph (5) insert—

“(6) Where a regulator has, for the purposes of Article 30a of the conglomerates directive (alternative investment fund managers), included an alternative investment fund manager in the scope of supervision of a credit institution in a third-country group, each reference in this regulation to a “credit institution” is to be treated as including a reference to that alternative investment fund manager.”.

(5) In regulation 10 (supervision of third-country groups subject to the capital adequacy directive), after paragraph (6) insert—

“(7) Where a regulator has, for the purposes of Article 30a of the conglomerates directive, included an alternative investment fund manager in the scope of supervision of—

- (a) credit institutions and investment firms in a third-country group; or
- (b) investment firms in a third-country group,

each reference in this regulation to an “investment firm” is to be treated as including a reference to that alternative investment fund manager.”.

#### Marginal Citations

**M39** [S.I. 2004/1862](#). In regulation 1, the definition of “regulated entity” was amended by [S.I. 2006/3221](#), [S.I. 2007/126](#), [S.I. 2010/2628](#), [S.I. 2011/1613](#) and [S.I. 2013/472](#). Regulations 7, 9 and 10 have been amended by various instruments, none of which is relevant here.

**M40** [Paragraph 5\(h\)](#) is inserted by paragraph 33(4) of Schedule 1 to these Regulations.

#### Child Trust Funds Regulations 2004

**18.** In regulation 2(1)(b) of the Child Trust Funds Regulations 2004 (interpretation) <sup>M41</sup>, in paragraph (b) of the definition of “non-UCITS retail scheme” omit “270 or”.

#### Marginal Citations

**M41** [S.I. 2004/1450](#). The definition of “non-UCITS retail scheme” was amended by [S.I. 2010/582](#).

#### Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

**19.** In the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 <sup>M42</sup>—

- (a) after article 29(2) (communications required or authorised by enactments) insert—

“(3) A communication which may be made because a condition imposed by regulation 49 or 50 of the Alternative Investment Fund Managers Regulations 2013 has been met, is to be treated as authorised by those Regulations for the purposes of

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paragraph (1) in so far as it is made to a professional investor (as defined in regulation 2(1) of those Regulations).

(4) A communication permitted by Article 2.2, 4 or 14.3 of Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds, or by Article 2.2, 4 or 15.3 of Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds, is to be treated as authorised by an enactment other than the Act for the purposes of paragraph (1).”;

(b) in article 40(a) omit “270 or”.

**Marginal Citations**

**M42** [S.I. 2005/1529](#).

**Offshore Funds (Tax) Regulations 2009**

**20.** In regulation 74(2) of the Offshore Funds (Tax) Regulations 2009 <sup>M43</sup> (the equivalence condition) omit “, 270”.

**Marginal Citations**

**M43** [S.I. 2009/3001](#). Regulation 74 was amended by [S.I. 2011/1211](#).

**Financial Services and Markets Act 2000 (Short Selling) Regulations 2012**

**21.** Omit regulation 2(14) of the Financial Services and Markets Act 2000 (Short Selling) Regulations 2012 <sup>M44</sup>.

**Marginal Citations**

**M44** [S.I. 2012/2554](#).

**Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013**

**22.**—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 <sup>M45</sup> is amended as follows.

(2) In article 1(2) (interpretation) at the end insert—

““EuSEF Regulation” means Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds;

“EuVECA Regulation” means Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds;”.

(3) In article 2(2) (qualifying EU provisions: general)—

(a) after sub-paragraph (b) insert—

“(ba) any directly applicable regulation made under the alternative investment fund managers directive;”;

(b) after sub-paragraph (e) insert—

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- “(f) the EuSEF Regulation and any directly applicable regulation made under that Regulation;
        - (g) the EuVECA Regulation and any directly applicable regulation made under that Regulation.”.
- (4) In article 3 (qualifying EU provisions: disciplinary measures)—
  - (a) in paragraph (2)—
    - (i) after sub-paragraph (b) insert—
      - “(ba) any directly applicable regulation made under the alternative investment fund managers directive;”;
    - (ii) after sub-paragraph (e) insert—
      - “(f) the EuSEF Regulation and any directly applicable regulation made under that Regulation;
      - (g) the EuVECA Regulation and any directly applicable regulation made under that Regulation.”;
  - (b) in paragraph (3)—
    - (i) in sub-paragraph (b) after “UCITS directive” insert “ or the alternative investment fund managers directive ”;
    - (ii) after sub-paragraph (d) insert—
      - “(e) in relation to a contravention of a requirement imposed by the EuSEF Regulation, the EuVECA Regulation or any directly applicable regulation made under either the EuSEF Regulation or the EuVECA Regulation, the FCA.”.
- (5) In article 5 (qualifying EU provisions: injunctions and restitution)—
  - (a) in paragraph (2)—
    - (i) after sub-paragraph (b) insert—
      - “(ba) any directly applicable regulation made under the alternative investment fund managers directive;”;
    - (ii) after sub-paragraph (e) insert—
      - “(f) the EuSEF Regulation and any directly applicable regulation made under that Regulation;
      - (g) the EuVECA Regulation and any directly applicable regulation made under that Regulation.”;
  - (b) in paragraph (5)—
    - (i) in sub-paragraph (b) after “UCITS directive” insert “ or the alternative investment fund managers directive ”;
    - (ii) after sub-paragraph (e) insert—
      - “(f) in relation to a contravention of a requirement imposed by the EuSEF Regulation, the EuVECA Regulation or any directly applicable regulation made under either the EuSEF Regulation or the EuVECA Regulation, the FCA.”.
- (6) In article 6(2) (qualifying EU provisions: fees)—
  - (a) after sub-paragraph (b) insert—
    - “(ba) any directly applicable regulation made under the alternative investment fund managers directive;”;

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(b) after sub-paragraph (g) insert—

- “(h) the EuSEF Regulation and any directly applicable regulation made under that Regulation;
- (i) the EuVECA Regulation and any directly applicable regulation made under that Regulation.”.

**Marginal Citations**

M45 [S.I. 2013/419](#).

**Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013**

23. For article 2(b)(ii) of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 <sup>M46</sup> (relevant agreements – specified kinds of activity) substitute—

- “(ia) article 51ZA (managing a UCITS),
- (ib) article 51ZB (acting as a trustee or depositary of a UCITS),
- (ic) article 51ZC (managing an AIF),
- (id) article 51ZD (acting as a trustee or depositary of an AIF),
- (ii) article 51ZE (establishing etc. a collective investment scheme),”.

**Marginal Citations**

M46 [S.I. 2013/637](#).

**CRC Energy Efficiency Scheme Order 2013**

24. In regulation 3 of the CRC Energy Efficiency Scheme Order 2013 <sup>M47</sup> (interpretation), in the definition of “regulated activity” for “51(1)(a)” substitute “ 51ZA, 51ZC or 51ZE ”.

**Marginal Citations**

M47 [S.I. 2013/1119](#).

**Status:**

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**Changes to legislation:**

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