

Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) No 447/2013
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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁽¹⁾, and in particular Article 3(5) thereof,

Whereas:

- (1) Pursuant to Article 3(4) of Directive 2011/61/EU, alternative investment fund managers (AIFMs) that meet the conditions provided for in Article 3(2) of that Directive may choose to opt in under it in order to benefit from the rights granted. By opting in, an AIFM becomes subject to the application of Directive 2011/61/EU in its entirety.
- (2) Directive 2011/61/EU provides for a procedure for authorisation of AIFMs. The documents and information to be provided under that procedure offer necessary details as to the requesting AIFM and therefore the same documents and procedure should be used in the case of opting in. There are no specific reasons peculiar to opting in that would justify the use of a different procedure than the one applicable to AIFMs with assets under management above the thresholds provided for in Article 3(2) of Directive 2011/61/EU. Consequently, AIFMs choosing to opt in under Directive 2011/61/EU should follow the same procedure as that established for AIFMs that are obliged to seek authorisation under Directive 2011/61/EU.
- (3) AIFMs having the right to opt in are AIFMs which had been previously either registered in accordance with Article 3(3) of Directive 2011/61/EU or authorised as management companies of undertakings for collective investment in transferable securities in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽²⁾. It is appropriate to avoid double reporting and to account for the documents and information already submitted by AIFMs to the competent authorities under the registration and authorisation procedures, provided that those documents and information are up to date.

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- (4) Competent authorities should examine the request to opt in and grant authorisation to that effect under the same conditions and following the same procedure as in the case of AIFMs with assets under management above the relevant thresholds provided in Article 3(2) of Directive 2011/61/EU.
- (5) It is important to clarify the relationship between the procedure for those AIFMs which choose to opt in and the revocation of an authorisation granted to AIFMs under Directive 2011/61/EU. An AIFM granted authorisation under Directive 2011/61/EU whose assets under management subsequently fall below the thresholds set out in Article 3(2) of Directive 2011/61/EU remains authorised and subject to the application of that Directive in its entirety as long as the authorisation is not revoked. The revocation of the authorisation should not be automatically triggered by a fall of the assets under management of an authorised AIFM below the relevant threshold, but only at the request of the AIFM. Consequently it should not be possible for an AIFM to request to opt in as long as it holds an authorisation under Directive 2011/61/EU, whereas an AIFM whose authorisation has been revoked upon its request should still be able to seek to opt in again under Directive 2011/61/EU.
- (6) Directive 2011/61/EU obliges Member States to apply the laws, regulations and administrative provisions which transpose that Directive from 22 July 2013. The application of this Regulation is therefore also deferred to the same date.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Modifications etc. (not altering text)

C1 Regulation: power to modify conferred (11.7.2023) by [Financial Services and Markets Act 2023](#) (c. 29), ss. 3, 86(3), **Sch. 1 Pt. 3**; S.I. 2023/779, **reg. 2(d)**

Article 1

Procedure and conditions for opt in

1 An alternative investment fund manager (AIFM) that meets the conditions provided for in ^[F1]regulation 9 of the Alternative Investment Fund Managers Regulations 2013 (the “AIFM Regulations 2013”) and chooses to opt in ^[F2]to regulation as a full-scope AIFM] shall submit an application for authorisation to the ^[F3]Financial Conduct Authority].

The application shall follow the same procedure provided for in ^[F4]section 55U of the Financial Services and Markets Act 2000 (“FSMA”) and regulation 5 of the AIFM Regulations 2013].

2 The ^[F5]Financial Conduct Authority] may exempt an AIFM referred to in paragraph 1 from submitting all information and documents required under ^[F6]section 55U of FSMA and by regulation 5 of the AIFM Regulations 2013], provided that the exempted information or documents have been already submitted to ^[F7]the Financial Conduct Authority] for registration purposes in accordance with ^[F8]regulations 11, 15 and 21 of the AIFM Regulations 2013] or

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as part of the authorisation procedure pursuant to [F⁹sections 242 and 261C of FSMA and regulation 12 of the Open-Ended Investment Companies Regulations 2001] and provided that such information and documents are still up to date, which is confirmed in writing by the AIFM.

3 The [F¹⁰Financial Conduct Authority] shall grant an authorisation following the same procedure as provided for in [F¹¹regulation 5 of the AIFM Regulations 2013].

Textual Amendments

- F1** Words in Art. 1(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(a)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 1(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(a)(ii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 1(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(a)(iii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 1(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 1(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(c)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 1(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(c)(ii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 1(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(c)(iv)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 1(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(c)(iii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 1(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(c)(v)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Art. 1(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(d)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 1(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(2)(d)(ii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 22 July 2013.

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F12
...

Done at Brussels, 15 May 2013.

For the Commission

The President

José Manuel BARROSO

Textual Amendments

F12 Words in Signature omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **41(3)** (as amended by S.I. 2019/325, **reg. 58**); 2020 c. 1, **Sch. 5 para. 1(1)**

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- (1) [OJ L 174, 1.7.2011, p. 1.](#)
- (2) [OJ L 302, 17.11.2009, p. 32.](#)

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Changes and effects yet to be applied to :

- [Regulation revoked by 2023 c. 29 Sch. 1 Pt. 3](#)