

*Draft Regulations laid before Parliament under paragraphs 2 and 2A(3)(a) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**FINANCIAL SERVICES AND MARKETS**

**The Alternative Investment Fund Managers Regulations 2013**

*Made* - - - - **\*\*\***  
*Coming into force* - - **22nd July 2013**

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to financial services.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraphs 2 and 2A(3)(a) of Schedule 2 to the European Communities Act 1972<sup>(3)</sup>, section 429(2) of the Financial Services and Markets Act 2000<sup>(4)</sup> and sections 784(3) and 1290 of the Companies Act 2006<sup>(5)</sup>.

The Treasury make these Regulations in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972<sup>(6)</sup>, and (in relation to Part 2 of Schedule 2 to these Regulations) sections 183, 188, 213(10), 214(5), 224(4), 262, 349 and 428(3) of, and paragraphs 13(1)(b), 14(1)(b), 17(b) and 22 of Schedule 3 to, the Financial Services and Markets Act 2000<sup>(7)</sup> and sections 784 and 785 of the Companies Act 2006<sup>(8)</sup>.

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- (1) [S.I. 2012/1759](#).
- (2) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and the European Union (Amendment) Act [2008 \(c. 7\)](#), Schedule, Part 1. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act [1993 \(c. 51\)](#) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).
- (3) Paragraph 2 was amended by section 27 of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and paragraph 2A was inserted by section 29 of that Act.
- (4) [2000 c. 8](#). Section 429(2) was amended by paragraph 12 of Schedule 15 to the Companies Act [2006 \(c. 46\)](#), section 178 of the Banking Act [2009 \(c. 1\)](#) and paragraph 33 of Schedule 2 to the Financial Services Act [2010 \(c. 28\)](#).
- (5) [2006 c. 46](#).
- (6) Section 14A of the Interpretation Act [1978 \(c. 30\)](#) (inserted by section 59 of the Enterprise and Regulatory Reform Act [2013 \(c. 24\)](#)) provides that, where an Act provides a power to make subordinate legislation, that subordinate legislation may include a requirement to review the effectiveness of the legislation.
- (7) Section 417(1) provides that “prescribed” means prescribed in regulations made by the Treasury. Sections 183 and 188 were substituted by [S.I. 2009/534](#) and section 188 was amended by section 26(2) of the Financial Services Act 2012. Section 213(10) was substituted by [S.I. 2011/1613](#). Section 262 was amended by paragraph 9 of Schedule 18 to the 2012 Act and by [S.I. 2001/1265](#). Section 349 was amended by paragraph 19 of Schedule 12 to the 2012 Act and by other provisions not relevant here. Paragraph 13(1)(b) of Schedule 3 was amended by [S.I. 2007/126](#). Paragraph 14(1)(b) of Schedule 3 was amended by [S.I. 2003/1473](#) and [2003/2066](#). Paragraph 22 of Schedule 3 was amended by paragraph 14 of Schedule 4 to the 2012 Act.
- (8) Section 785 was amended by section 112 of the Financial Services Act [2012 \(c. 21\)](#).

## PART 1

### Introductory provisions

#### Citation and commencement

1. These Regulations may be cited as the Alternative Investment Fund Managers Regulations 2013 and come into force on 22nd July 2013.

#### Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“AIF” has the meaning given in regulation 3;

“AIFM” has the meaning given in regulation 4;

“Article 36 custodian” has the meaning given in regulation 57(5)(a);

“authorised AIF” means an AIF that is—

- (a) an authorised unit trust scheme,
- (b) an authorised contractual scheme, or
- (c) an authorised open-ended investment company,

as defined in section 237(3) of the Act (other definitions)(9);

“Commission Delegated Regulation” means the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision(10);

“competent authority”, other than in regulation 65, means the national authority of an EEA State other than the United Kingdom responsible for supervising AIFMs, and when used in relation to an EEA AIF or a full-scope EEA AIFM means—

- (a) in relation to an EEA AIF, the competent authority in the EEA State in which the EEA AIF is registered or authorised, or (if the EEA AIF is not authorised or registered in an EEA State) in which the EEA AIF has its registered office or head office;
- (b) in relation to a full-scope EEA AIFM, the competent authority that has authorised that AIFM;

“depository” means a person appointed in compliance with the requirement for an AIFM to appoint a depository at Article 21.1 of the directive;

“the directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers(11);

“EEA AIF” means an AIF which—

- (a) is authorised or registered under the applicable national law in an EEA State other than the United Kingdom; or
- (b) is not authorised or registered in an EEA State, but has its registered office or head office in an EEA State other than the United Kingdom;

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(9) In section 237(3) the definition of “authorised contractual scheme” was inserted by S.I. 2013/1388.

(10) OJ L 83, 22.3.2013, p.1.

(11) OJ L 174, 1.7.2011, p.1.

“EEA AIFM” means an EEA firm falling within paragraph 5(h) of Schedule 3 to the Act, which is exercising in the United Kingdom an EEA right deriving from the directive;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board<sup>(12)</sup>;

“EuSEF Manager” means the manager of a qualifying social entrepreneurship fund that is registered in accordance with Article 15 of the EuSEF Regulation;

“EuSEF Regulation” means Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds<sup>(13)</sup>;

“EuVECA Manager” means the manager of a qualifying venture capital fund that is registered in accordance with Article 14 of the EuVECA Regulation;

“EuVECA Regulation” means Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds<sup>(14)</sup>;

“external AIFM” has the meaning given in regulation 4(3);

“external valuer” means a person who performs the valuation function described in Article 19 of the directive in respect of an AIF managed by a full-scope UK AIFM, and is not the AIFM of that AIF;

“full-scope UK AIFM” means a UK AIFM which has a Part 4A permission to carry on the regulated activity of managing an AIF and is not a small authorised UK AIFM;

“full-scope EEA AIFM” means an AIFM authorised in accordance with Article 6.1 of the directive in an EEA State other than the United Kingdom;

“implementing provision” means a requirement that is imposed—

- (a) by these Regulations;
- (b) by the Commission Delegated Regulation;
- (c) by any other directly applicable EU regulation made under the directive; or
- (d) by or under the Act, if the provision implements the directive;

“internal AIFM” has the meaning given in regulation 4(3);

“managing an AIF” is to be interpreted in accordance with regulation 4(2), and cognate expressions are to be interpreted accordingly;

“professional investor” means an investor who is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to the markets in financial instruments directive;

“qualifying social entrepreneurship fund” has the meaning given in Article 3(b) of the EuSEF Regulation;

“qualifying venture capital fund” has the meaning given in Article 3(b) of the EuVECA Regulation;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(15)</sup>;

“regulator’s notice” means a notice of intention referred to in paragraph 14(1)(b) of Schedule 3 to the Act;

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(12) OJ L 331, 15.12.2010, p.1.

(13) OJ L 115, 25.4.2013, p.18.

(14) OJ L 115, 25.4.2013, p.1.

(15) S.I. 2001/544.

“retail investor” means an investor who is not a professional investor;

“small AIFM” has the meaning given in regulation 9;

“small authorised UK AIFM” means a UK AIFM which—

- (a) is a small AIFM;
- (b) has a Part 4A permission to carry on the regulated activity of managing an AIF; and
- (c) has not exercised the option mentioned in Article 3.4 of the directive to meet the full requirements of the directive;

“small registered EEA AIFM” means an AIFM which—

- (a) is a small AIFM;
- (b) has its registered office in an EEA State other than the United Kingdom;
- (c) is registered in accordance with Article 3.3(a) of the directive; and
- (d) has not exercised the option mentioned in Article 3.4 of the directive to meet the full requirements of the directive;

“small registered UK AIFM” means an AIFM entered in the register maintained in accordance with regulation 10(1);

“small third country AIFM” means a third country AIFM which is a small AIFM;

“third country” means a state which is not an EEA State;

“third country AIF” means an AIF which is neither an EEA AIF nor a UK AIF;

“third country AIFM” means an AIFM which has its registered office in a third country;

“UK AIF” means an AIF which—

- (a) is an authorised AIF; or
- (b) is not authorised or registered in an EEA State, but has its registered office or head office in the United Kingdom;

“UK AIFM” means an AIFM which has its registered office in the United Kingdom;

“working day” has the meaning given in section 191G(2) of the Act (interpretation of Part 12)(16).

(2) Unless otherwise defined—

- (a) any expression used in these Regulations which is used in the directive has the same meaning as in the directive;
- (b) any expression used in these Regulations which is used in a directly applicable EU regulation made under the directive has the same meaning as in that regulation; and
- (c) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

(3) Any reference in these Regulations to an application for a Part 4A permission to carry on a regulated activity, the giving of such a permission or a refusal to give such a permission, includes reference to an application to vary a Part 4A permission by adding that regulated activity to the activities to which the permission relates, such a variation of a Part 4A permission or a refusal so to vary a Part 4A permission.

### Meaning of “AIF”

3.—(1) “AIF” means a collective investment undertaking, including investment compartments of such an undertaking, which—

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(16) Section 191G was substituted by [S.I. 2009/534](#) and amended by section 26 of the Financial Services Act 2012.

- (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of these investors; and
  - (b) does not require authorisation pursuant to Article 5 of the UCITS directive.
- (2) An AIF may be open-ended or closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.
- (3) None of the following entities is an AIF—
- (a) 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>(17)</sup>;
  - (b) a holding company;
  - (c) an employee participation scheme or employee savings scheme;
  - (d) a securitisation special purpose entity.

#### **Meaning of “AIFM”, “managing an AIF”, “external AIFM” and “internal AIFM”**

4.—(1) “AIFM” means a legal person, the regular business of which is managing one or more AIFs.

(2) Managing an AIF means performing at least risk management or portfolio management for the AIF.

(3) The AIFM of an AIF may be either—

- (a) another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF (“external AIFM”); or
- (b) where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself (“internal AIFM”).

(4) None of the following entities is an AIFM—

- (a) 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>(18)</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;
- (b) 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;
- (c) a national central bank;
- (d) a national, regional or local government or body or other institution which manages funds supporting social security and pension systems;
- (e) a holding company;
- (f) an employee participation scheme or employee savings scheme;
- (g) a securitisation special purpose entity.

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<sup>(17)</sup> OJ L 235, 23.9.2003, p.10.

<sup>(18)</sup> OJ L 235, 23.9.2003, p.10.

## PART 2

### Authorisation of full-scope UK AIFMs

#### Applications for Part 4A permission

5.—(1) This regulation applies where a person—

- (a) applies to a regulator for permission under Part 4A of the Act to carry on the regulated activity of managing an AIF; and
- (b) upon being given such permission would not be a small authorised UK AIFM.

(2) Where the applicant has a Part 4A permission pursuant to which it may carry on the regulated activity of managing a UCITS, the regulator may not require the applicant to provide information or documents which the applicant provided when applying for that Part 4A permission if such information or documents remain up to date.

(3) The regulator must not give the Part 4A permission unless—

- (a) the applicant would be an AIFM and would be the only AIFM of each AIF it managed;
- (b) the regulator is satisfied that the applicant will comply with the implementing provisions applicable to a full-scope UK AIFM;
- (c) the applicant has sufficient initial capital and own funds in accordance with implementing provisions relating to Article 9 of the directive; and
- (d) the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM.

(4) The regulator must determine the application before the end of the period of three months beginning with the date on which it received the complete application.

(5) The regulator may extend the period mentioned in paragraph (4) for an additional period of three months where it considers it necessary due to the specific circumstances of the case, and where it has notified the applicant accordingly.

(6) Where the application is made to the PRA and cannot be determined by the PRA without the consent of the FCA, the FCA's decision must also be made within the period required by sub-paragraph (4), as extended under sub-paragraph (5) where applicable.

(7) If the regulator does not determine the application before the end of the period of six months beginning with the date on which it received the complete application, the applicant may refer the matter to the Tribunal.

(8) An application is complete for the purposes of paragraph (4) or (7) if it contains—

- (a) information on the persons effectively conducting the business of the applicant;
- (b) information on the identities of the applicant's shareholders or members, whether direct or indirect, that have qualifying holdings and on the amount of those holdings;
- (c) a programme of activity setting out the organisational structure of the applicant, including information on how the applicant intends to comply with its obligations under implementing provisions relating to Chapter 2 (authorisation of AIFMs), Chapter 3 (operating conditions for AIFMs), and Chapter 4 (transparency requirements) of the directive and, where applicable, Chapter 5 (AIFMs managing specific types of AIF), Chapter 6 (rights of EEA AIFM to market and manage EEA AIFs in EEA States), Chapter 7 (specific rules in relation to third countries) and Chapter 8 (marketing to retail investors) of the directive;

- (d) information on the remuneration policies and practices of the applicant that have been or will be adopted pursuant to implementation provisions relating to Article 13 of the directive;
  - (e) information about the investment strategies, including the types of underlying funds if the AIF is a fund of funds, and the applicant's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs the applicant manages or intends to manage, including information about the EEA States or third countries in which AIFs are established or are expected to be established; and
  - (f) information on where the master AIF is established if an AIF that the applicant manages or intends to manage is a feeder AIF.
- (9) Paragraph (10) applies if—
- (a) any of the information required under implementing provisions relating to Articles 7.2(e) and 7.3(a) to 7.3(e) of the directive (information to be provided in application for authorisation) was missing from the application; and
  - (b) the Part 4A permission is given less than one month after the applicant supplied the missing information.
- (10) The Part 4A permission is to be treated as given one month after the applicant submitted the missing information.

### **Supplementary provisions about AIFMs**

**6.—**(1) If a full-scope UK AIFM that is an external AIFM is unable to ensure compliance by an AIF it manages, or by another entity on the AIF's behalf, with an implementing provision for which the AIF is responsible, the AIFM must immediately inform—

- (a) the FCA, and
  - (b) where the AIF concerned is an EEA AIF, the competent authority of the AIF,
- about the non-compliance.

(2) The FCA must require the AIFM to take steps to remedy the situation.

(3) If the non-compliance persists despite the steps mentioned in paragraph (2) being taken, the FCA must—

- (a) require the AIFM to cease acting as manager of that AIF
- (b) require the AIFM to stop marketing the AIF; and
- (c) immediately inform—
  - (i) the competent authorities of the EEA States in which the AIF is marketed, and
  - (ii) if the AIF is an EEA AIF, the competent authority of the AIF,of its requirement.

(4) The FCA may use its powers under section 55J and 55L of the Act (variation or cancellation on initiative of regulator and imposition of requirement by the FCA)(**19**) to impose the requirements mentioned in paragraphs (2) and (3), but this paragraph does not limit the powers of the FCA.

### **Changes in conditions relevant to authorisation**

**7.—**(1) This regulation applies where a full-scope UK AIFM has notified the FCA of any material changes to the conditions for initial authorisation in accordance with implementing provisions relating to Article 10.1 of the directive.

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(19) Sections 55A to 55Z4 were substituted by section 11(2) of the Financial Services Act 2012.

(2) If the FCA decides to exercise any power so as to prevent the implementation of, or impose restrictions in relation to, the proposed changes, it must inform the AIFM within one month of receiving the notification mentioned in paragraph (1).

(3) The FCA may prolong the period of one month referred to in paragraph (2) by up to another month, if it considers this to be necessary because of the specific circumstances of the case, and after having notified the AIFM accordingly.

(4) If the FCA does not inform the AIFM of a decision under paragraph (2) within the period of one month mentioned in paragraph (2) or any extension thereof under paragraph (3), the AIFM may implement the changes.

### **Notification to ESMA**

8. The FCA must, on a quarterly basis, inform ESMA of—
- (a) the authorisations granted to full-scope UK AIFMs, or withdrawn from such AIFMs, in accordance with Chapter 2 of the directive; and
  - (b) the AIFs managed or marketed in EEA States by such AIFMs.

## **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
    - (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>(20)</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>(21)</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

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<sup>(20)</sup> 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).

<sup>(21)</sup> Section 22 was amended by section 7 of the Financial Services Act 2012.

- (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).
- (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(22) of the Regulated Activities Order (shares etc.) through which the AIF holds land.

#### **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;
- (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;
  - (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.

## **PART 4**

### **Operating conditions for external valuers, full-scope AIFMs and depositaries**

#### **Valuation**

**24.**—(1) An external valuer must carry out the valuation function described in Article 19 of the directive impartially, and with all due skill, care and diligence.

(2) An external valuer may not delegate such valuation function to a third party.

(3) If the FCA considers the appointment of an external valuer does not comply with the implementing provisions, the FCA may require that another external valuer be appointed instead.

(4) Any liability of a full-scope UK AIFM to an AIF managed by it, or to an investor of such an AIF, arising out of the AIFM's responsibility for the proper valuation of AIF assets, the calculation of the net asset value of the AIF and the publication of that net asset value, is not affected by the appointment by the AIFM of an external valuer in respect of that AIF.

(5) Irrespective of any contractual arrangements that provide otherwise, an external valuer is liable to the AIFM of an AIF in respect of which the external valuer is appointed for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

### **Disqualification of external valuer**

**25.**—(1) If it appears to the FCA that an external valuer has failed to comply with an implementing provision applicable to it, it may disqualify the valuer from acting as an external valuer, or from so acting for any particular class of AIFs.

(2) If the FCA proposes to disqualify a valuer under this section, it must give the valuer a warning notice.

(3) If the FCA decides to disqualify a valuer—

- (a) it must give the valuer a decision notice; and
- (b) the valuer may refer the matter to the Tribunal.

(4) The FCA may remove any disqualification imposed under this regulation if satisfied the disqualified person will in future comply with the implementing provisions.

### **Approval for delegation of functions by full-scope UK AIFMs**

**26.**—(1) A full-scope UK AIFM may not delegate its functions of portfolio management or risk management for an AIF to an undertaking, and that undertaking may not sub-delegate such function to another undertaking, unless—

- (a) the undertaking to whom the functions are to be delegated or sub-delegated falls within paragraph (2); or
- (b) the FCA has approved such delegation or sub-delegation.

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

- (a) authorised or registered for the purpose of asset management; and
- (b) subject to supervision in relation to its asset management function.

(3) An application for approval under paragraph (1)(b)—

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

(4) 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.

(5) An application under paragraph (3) must be determined by the FCA within one month of receiving the completed application.

(6) 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 two months of receiving the application.

(7) If the FCA proposes to refuse an application under paragraph (3) it must give the applicant a written notice.

(8) If the FCA decides to refuse an application under paragraph (3)—

- (a) it must give the applicant a written notice explaining its reasons for the decision; and
- (b) the applicant may refer the matter to the Tribunal.

### **Revocation of approval for delegation**

**27.**—(1) The FCA may revoke its approval granted under regulation 26.

(2) If the FCA proposes to revoke its approval it must give the applicant a warning notice.

(3) If the FCA decides to revoke its approval—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

### **Liability following delegation under Article 20 of the directive**

**28.**—(1) Irrespective of any contractual arrangements that provide otherwise, any liability of a full-scope UK AIFM to an AIF it manages, or to an investor of such an AIF, is not affected by—

- (a) the delegation of functions by the AIFM to a third party (“a delegate”);
- (b) any sub-delegation of such functions by the delegate to another person (“a sub-delegate”); or
- (c) any further sub-delegation of such functions by a sub-delegate.

(2) A delegate or sub-delegate which has delegated or sub-delegated such functions must review on an ongoing basis the services provided by the person to whom functions have been delegated or sub-delegated.

### **Depository liability: general provisions**

**29.**—(1) This regulation and regulations 30 to 32 apply in relation to the depository of a UK AIF managed by a full-scope UK AIFM or an EEA AIFM.

(2) Any obligation or liability of a depository under regulation 30 or 31 to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the nature of the legal relationship between the depository, the AIFM and the investors.

(3) For the purposes of regulations 30 to 32, the provision of services as specified by Directive [98/26/EC](#) of the European Parliament and of the Council of 19th May 1998 on settlement finality in payment and securities settlement systems<sup>(23)</sup> by a securities settlement system designated for the purposes of that Directive, or the provision of similar services by a third-country securities settlement system, is not to be considered a delegation of custody functions.

### **Depository liability for loss of financial instruments held in custody**

**30.**—(1) This regulation applies where a financial instrument held in custody in accordance with Article 21.8(a) of the directive by the depository or a third party to whom the custody has been delegated or sub-delegated is deemed to have been lost under Article 100 of the Commission Delegated Regulation.

(2) Subject to paragraphs (3) and (4), the depository must return a financial instrument of the identical type or the corresponding amount to the AIF, or the AIFM acting on behalf of the AIF, without undue delay.

(3) The depository is not required to comply with the obligation in paragraph (2) if it can prove that the loss arose as a result of an external event beyond the depository’s reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(4) The depository is not required to comply with the obligation in paragraph (2) if it can prove that—

- (a) the lost financial instrument was held in custody by a third party;
- (b) the depository had delegated its functions to the third party in accordance with implementing provisions relating to the second paragraph of Article 21.11 of the directive;
- (c) a written contract between the depository and the third party—
  - (i) expressly transfers the obligation in paragraph (2) to the third party; and

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(23) OJ L 166, 11.6.1998, p.45.



- (ii) enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the third party in respect of the loss of the financial instrument, or for the depositary to make such a claim on their behalf; and
  - (d) a written contract between the depositary and the AIF, or the AIFM acting on behalf of the AIF, expressly allows a transfer of the depositary's obligation in paragraph (2) and establishes an objective reason for the transfer.
- (5) A third party ("A") to which custody of a financial instrument has been delegated and to which the obligation in paragraph (2) has been transferred in accordance with paragraph (4) is not required to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF, if it can prove that—
- (a) the lost financial instrument was held in custody by another third party ("B");
  - (b) A had sub-delegated its functions to B in accordance with implementing provisions relating to the second paragraph of Article 21.11 of the directive;
  - (c) a written contract between A and B—
    - (i) expressly transfers from A to B the obligation to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF; and
    - (ii) enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against B in respect of the loss of the financial instrument, or for the depositary to make such a claim on their behalf; and
  - (d) a written contract between A and the depositary expressly allows a transfer of A's obligation to return a financial instrument of the identical type or corresponding amount to the AIF, or the investors of the AIF, and establishes an objective reason for the transfer.
- (6) Irrespective of any contractual arrangements that provide otherwise, but subject to paragraphs (4) and (5) and regulation 32(2), the obligation of the depositary under paragraph (2) or of a third party as referred to in paragraph (4)(c) or (5)(c) is not affected by any delegation by the depositary or sub-delegation by the third party of the functions referred to in Article 21.8 of the directive.

### **Depositary liability for other losses**

**31.—**(1) If an AIF, or investors of an AIF, have suffered losses other than the loss by the depositary or a third party to which custody has been delegated or sub-delegated of financial instruments held in custody in accordance with Article 21.8(a) of the directive, the depositary is liable to the AIF, or investors of the AIF, if the losses are a result of the depositary's negligent or intentional failure to comply with an implementing provision that applies to it.

(2) Irrespective of any contractual arrangements that provide otherwise, any liability of the depositary to the AIF, or to investors of the AIF, under paragraph (1) is not affected by any delegation by the depositary of the functions referred to in Article 21.8 of the directive.

### **Depositary liability and third country custodians**

**32.—**(1) This regulation applies where—

- (a) the law of a third country requires certain financial instruments to be held in custody by a local entity; and
- (b) there is no local entity that satisfies the delegation requirements in implementing provisions relating to Article 21.11(d)(ii) of the directive.

(2) The depositary is not required to comply with the obligation in regulation 30(2) in relation to the financial instruments mentioned in paragraph (1)(a) if—

- (a) the rules or instruments of incorporation of the AIF concerned expressly allow for a discharge of the obligation;
- (b) the investors of the AIF were informed of the discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the AIF, or the AIFM on behalf of the AIF, instructed the depositary to delegate the custody of the financial instruments to a local entity;
- (d) a written contract between the depositary and the AIF, or the AIFM acting on behalf of the AIF, expressly allows for such a discharge; and
- (e) a written contract between the depositary and the local entity expressly transfers the obligation of the depositary to the local entity and enables the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

### Management of third country AIFs

**33.** A full-scope UK AIFM may manage a third country AIF that is not marketed in an EEA State only if appropriate cooperation arrangements are in place between the FCA and the supervisory authorities of the third country where the AIF is established in order to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with the directive.

## PART 5

### AIFs which acquire control of non-listed companies and issuers

#### Introductory provision

**34.** In this Part, a reference to an AIFM is to—

- (a) a full-scope UK AIFM; or
- (b) a third country AIFM to which the requirement at regulation 59(3) applies, with respect to the AIFs by virtue of which that requirement applies.

#### Ways of acquiring control or shares

**35.—(1)** This Part applies where control is acquired of a non-listed company or issuer in one of the following ways—

- (a) one AIF acquires control individually;
- (b) two or more AIFs, managed by the same AIFM, acquire control jointly on the basis of an agreement aimed at acquiring such control; or
- (c) two or more AIFs, managed by two or more AIFMs, acquire control jointly on the basis of an agreement aimed at acquiring such control.

(2) This Part also applies where an AIF acquires, holds or disposes of shares of a non-listed company (but control is not acquired).

(3) This Part does not apply where the non-listed company or issuer is—

- (a) a small or medium-sized enterprise within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>(24)</sup>; or

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(24) OJ L 124, 20.5.2003, p. 36.

- (b) a special purpose vehicle with the purpose of purchasing, holding or administering real estate.

### Meaning of “control” and calculation of voting rights

**36.**—(1) For the purposes of this Part, “control” means—

- (a) for a non-listed company, holding more than 50% of the voting rights of the company; and
- (b) for an issuer, holding the percentage of voting rights which confers control in the EEA State in which the issuer has its registered office, determined by and calculated in accordance with rules or other provisions adopted in that EEA State implementing Article 5.1 and 5.3 of Directive [2004/25/EC](#) of the European Parliament and of the Council of 21 April 2004 on takeover bids<sup>(25)</sup>.

(2) When calculating the percentage of voting rights for the purposes of this Part, if paragraph (1) (b) does not apply, in addition to the voting rights held directly by the AIF, the voting rights of the following are included—

- (a) an undertaking controlled by the AIF; and
- (b) a person acting in their own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

(3) For the purposes of this Part, if paragraph (1)(b) does not apply, voting rights are calculated on the basis of all the shares to which voting rights are attached even if the exercise of those rights is suspended.

### Confidential information

**37.**—(1) This regulation applies to—

- (a) employees of a non-listed company or issuer,
- (b) representatives of the employees, and
- (c) experts who assist the employees or representatives,

who receive information in accordance with this Part, or corresponding provisions adopted in an EEA State other than the United Kingdom implementing Articles 26 to 30 of the directive (obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers).

(2) If the information mentioned in paragraph (1) is provided in confidence—

- (a) regulation 25 of the Information and Consultation of Employees Regulations 2004<sup>(26)</sup> (breach of statutory duty), or
- (b) regulation 25 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005<sup>(27)</sup> (breach of statutory duty),

applies to the information as it applies to information or documents given in confidence by an employer pursuant to the employer’s obligations under those Regulations.

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(25) OJ L 142, 30.4.2004, p. 12. In the United Kingdom, the Panel on Takeovers and Mergers is required under section 943(1) of the Companies Act 2006 (c. 46) to make rules implementing Article 5 of Directive [2004/25/EEC](#).

(26) S.I. 2004/3426.

(27) S.R. (NI) 2005 No. 47.

### **Notification of the acquisition or disposal of major holdings and control of non-listed companies**

**38.**—(1) When an AIF acquires, disposes of, or holds shares of a non-listed company, the AIFM managing the AIF must notify the FCA of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must notify the following persons of such control—

- (a) the non-listed company;
- (b) the company's shareholders of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and
- (c) the FCA.

(3) The notification required under paragraph (2) must contain the following additional information—

- (a) the resulting situation in terms of voting rights in the company;
- (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any person entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held; and
- (c) the date on which control was acquired.

(4) The AIFM must—

- (a) in its notification to the non-listed company, request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF and of the information in paragraph (3); and
- (b) use its best efforts to ensure the board of directors complies with its request.

(5) The notifications required under this regulation by an AIFM must be made as soon as possible, and in any event no later than ten working days after the date on which the AIF reaches, exceeds or falls below the relevant threshold or acquires control over the non-listed company.

### **Disclosure in case of acquisition of control**

**39.**—(1) When an AIF acquires control of a non-listed company or an issuer, the AIFM managing the AIF must make available the information in paragraph (2) to—

- (a) the company or issuer;
- (b) the shareholders of the company or issuer of which the identities and addresses are available to the AIFM or can be made available by the company or issuer or through a register to which the AIFM has or can obtain access; and
- (c) the FCA.

(2) The information is—

- (a) the identity of the AIFM which either individually or in agreement with other AIFMs manages the AIF or AIFs that have acquired control;
- (b) the policy for preventing and managing conflicts of interest, in particular between—
  - (i) the AIFMs or the AIFs, and
  - (ii) the company or issuer;

- (c) the specific safeguards to ensure that any agreement between—
    - (i) the AIFMs or the AIFs, and
    - (ii) the company or issuer,is concluded at arm's length; and
  - (d) the policy for external and internal communication relating to the company or issuer, in particular as regards employees of the company or issuer.
- (3) The AIFM must—
- (a) in its notification to the company or issuer, request the board of directors of the company to give the employees' representatives or, where there are none, the employees themselves, without undue delay the information in paragraph (2); and
  - (b) use its best efforts to ensure that the board of directors complies with its request.

#### **Additional disclosure when control is acquired of non-listed companies**

**40.**—(1) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must ensure that within a period of 20 working days starting on the day on which control is acquired the AIF, or the AIFM acting on behalf of the AIF, discloses its intentions with regard to the matters in paragraph (2) to—

- (a) the non-listed company; and
  - (b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.
- (2) The matters are the future business of the non-listed company and the likely repercussions on employment by the company, including any material change in the conditions of employment.
- (3) The AIFM must—
- (a) request that the board of directors of the non-listed company notifies the employees' representatives or, where there are none, the employees themselves, about the AIF's intentions with regard to the matters in paragraph (2); and
  - (b) use its best efforts to ensure the board of directors complies with its request.
- (4) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must provide the FCA and the AIF's investors with information on the financing of the acquisition.

#### **Sensitive information**

**41.** Where the communication of information as requested pursuant to a duty in regulation 38(4), 39(3) or 40(3) would seriously harm the functioning of the non-listed company, or would be seriously prejudicial to it, the board of directors is not obliged to comply with the request.

#### **Annual report of AIFs exercising control of non-listed companies**

**42.**—(1) When an AIF acquires control of a non-listed company, the AIFM managing the AIF must include in the AIF's annual report, prepared in accordance with implementing provisions relating to Article 22 of the directive, the information in paragraph (3) relating to the non-listed company.

- (2) The duty in paragraph (1) does not arise if the non-listed company is required to draw up an annual report under the law applicable in the EEA State in which the company has its registered office and the AIFM ensures that—
- (a) the annual report of the non-listed company contains the information in paragraph (3); and

- (b) the report is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period in which the annual report must be drawn up.
- (3) The information is—
  - (a) a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report;
  - (b) any important events that have occurred since the end of the financial year of the AIF;
  - (c) the company's likely future development; and
  - (d) in relation to the company's acquisition or disposal of its own shares—
    - (i) the reasons for acquisitions made during the financial year;
    - (ii) the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;
    - (iii) in the case of acquisition or disposal for a value, the consideration for the shares; and
    - (iv) the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.
- (4) If the information in paragraph (3) is included in the company's annual report, the AIFM must make the information available to the investors of the AIF in so far as already available within six months following the end of the financial year of the AIF, and in any event, no later than the date on which the annual report of the company must be drawn up in accordance with the law applicable in the EEA State in which the company has its registered office<sup>(28)</sup>.
- (5) If the information in paragraph (3) is included in the AIF's annual report, the AIFM must request and use its best efforts to ensure that the board of directors of the non-listed company makes that information available to employees' representatives of the company or, where there are none, to the employees themselves, no later than six months following the end of the financial year of the AIF.

### Asset stripping

- 43.**—(1) When an AIF acquires control of a non-listed company or an issuer, for a period of 24 months following the acquisition of control, the AIFM managing the AIF—
- (a) must not facilitate, support or instruct any distribution, capital reduction, share redemption or acquisition by the company or issuer of its own shares;
  - (b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing body of the company or issuer, must not vote in favour of a distribution, capital reduction, share redemption or acquisition by the company or issuer of its own shares; and
  - (c) in any event must use its best efforts to prevent distributions, capital reductions, share redemptions or the acquisition by the company or issuer of its own shares.
- (2) In paragraph (1) "distribution" means a distribution to shareholders, including a payment of dividends and of interest relating to shares—
- (a) made when on the closing date of the last financial year the net assets as set out in the company or issuer's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled

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<sup>(28)</sup> For companies registered under the Companies Act 2006 (c. 46), provisions about annual reports are contained in Part 15 of that Act.

part of the subscribed capital is not included in the assets shown in the balance sheet, this amount must be deducted from the amount of subscribed capital; or

- (b) the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.

(3) In paragraph (1) “capital reduction” does not include a reduction in subscribed capital, the purpose of which is—

- (a) to offset losses incurred; or
- (b) to include sums of money in a non-distributable reserve, provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital.

(4) In paragraph (1) “share redemption” or “acquisition by the company or issuer of its own shares”—

- (a) refers to a redemption or acquisition of shares, including shares previously acquired by the company or issuer and held by it, and shares acquired by a person acting in that person’s own name but on the company or issuer’s behalf, that would have the effect of reducing the net assets below the amount mentioned in paragraph (2)(a); but
- (b) does not include an acquisition of shares in the circumstances described in Article 20.1(b) to 20.1(h) of the second company law directive.

(5) In this regulation—

“law” means the law applicable to the company or issuer in the EEA State in which it is registered;

“second company law directive” means the second Council Directive [77/91/EEC](#) of 13 December 1976 on coordination of safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital<sup>(29)</sup>;

“statutes” means the instruments of incorporation of the company or issuer.

### **FCA powers in relation to this Part**

**44.**—(1) A full-scope UK AIFM that contravenes any provision of this Part is to be treated as having contravened rules made under section 137A of the Act (FCA’s general rule-making power).

(2) Information to be provided to the FCA under regulation 38(1) or (2) or 40(4), or made available to the FCA under regulation 39(1), must be—

- (a) provided or made available in such manner as the FCA may direct;
- (b) accompanied by such further information as the FCA may direct in order to verify compliance with requirements under this Part.

(3) The FCA may give guidance consisting of such information and advice as it considers appropriate with respect to this Part.

(4) Before giving guidance with respect to this Part, the FCA must—

- (a) publish—
  - (i) a draft of the proposed guidance in the way appearing to the FCA to be best calculated to bring it to the attention of the public; and
  - (ii) a notice that representations about the proposals may be made to the FCA within a specified time; and

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(29) OJ L 26, 31.01.1977, p.1.

(b) have regard to any representations made in accordance with that notice.

(5) Paragraph (4) does not apply if the FCA considers that the delay caused by those procedures would be prejudicial to the interests of a non-listed company or issuer, or the shareholders or employees of such a company.

## PART 6

### Marketing of AIFs

#### CHAPTER 1

##### General Provisions

#### **References in this Part to an AIFM or an investment firm marketing an AIF**

**45.** For the purposes of this Part—

- (a) an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor domiciled or with a registered office in an EEA State, or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM;
- (b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor domiciled or with a registered office in an EEA State at the initiative of, or on behalf of, the AIFM of that AIF.

#### **Application of the financial promotion and scheme promotion restrictions**

**46.** Where a person may market an AIF under regulation 49, 50 or 51—

- (a) to the extent that such marketing falls within section 21(1) (restrictions on financial promotion) or 238(1) (restrictions on promotion) of the Act, the person may market the AIF to a retail investor only if the person does so without breaching the restriction in that section;
- (b) to the extent that any activity falling within section 21(1) or 238(1) of the Act does not amount to marketing by an AIFM or an investment firm for the purposes of this Part, the restriction in that section applies to the person.

#### **Marketing at the initiative of the investor**

**47.** Regulations 49 to 51 do not apply to an offering or placement of units or shares of an AIF to an investor made at the initiative of that investor.

#### **Marketing under the designation ‘EuSEF’ or ‘EuVECA’**

**48.** Regulations 49 to 51 do not apply to the marketing of an AIF under the designation ‘EuSEF’ or ‘EuVECA’.

#### **Marketing by full-scope EEA AIFMs of certain AIFs**

**49.** A full-scope EEA AIFM may not market in the United Kingdom an AIF that does not fall within regulation 57(1) unless—



- (a) in the case of marketing to a professional investor, the FCA has received a regulator’s notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act (EEA passport rights); or
- (b) in the case of marketing to a retail investor—
  - (i) the FCA has received a regulator’s notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act; or
  - (ii) the FCA has approved the marketing in accordance with regulation 54 and has not suspended or revoked that approval.

### Marketing by AIFMs of other AIFs

**50.** An AIFM described in column A of the table below may not market in the United Kingdom an AIF that is described in the entry in column B of same row of the table unless the condition in column C in the same row of the table is met.

<i>A - AIFM</i>	<i>B - AIF</i>	<i>C - Condition</i>
Full-scope UK AIFM	An AIF that does not fall within regulation 57(1)	The FCA has approved marketing of the AIF in accordance with regulation 54.
Full-scope UK AIFM	An AIF falling within regulation 57(1)	The AIFM has notified the FCA in accordance with regulation 57 and meets the conditions at regulation 57(4) (a) to (c), and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF.
Full-scope EEA AIFM	An AIF falling within regulation 57(1)	The AIFM has notified the FCA in accordance with regulation 57 and meets the conditions at regulation 57(4) (a) to (c), and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF.
Small third country AIFM	UK AIF, EEA AIF, or third country AIF	The AIFM has notified the FCA in accordance with regulation 58 and meets the conditions at regulation 58(2) (a) and (b), and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF.
Third country AIFM that is not a small AIFM	UK AIF, EEA AIF, or third country AIF	The AIFM has notified the FCA in accordance with regulation 59 and meets the conditions at regulation 59(2) (a) to (e), and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF.

### Marketing of AIFs by investment firms

**51.** Where regulation 49 or 50 requires a condition to be met before an AIFM may market an AIF, an investment firm may not market that AIF unless that condition is met.

### Contravention by unauthorised person

- 52.—**(1) In this regulation “unlawful marketing” means the marketing of an AIF—
- (a) by an AIFM or an investment firm that is not an authorised person in contravention of regulation 49, 50 or 51; or
  - (b) by an AIFM that is not an authorised person in contravention of a provision of the EuSEF Regulation or the EuVECA Regulation.

(2) Subject to paragraph (3), section 25 of the Act (contravention of section 21) applies to unlawful marketing as it applies to the contravention of section 21(1) of the Act.

(3) When applied by paragraph (2), the reference in section 25(1)(a) to imprisonment for a term not exceeding six months is to be read as a reference to imprisonment for a term not exceeding three months.

(4) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at subsection (2)(c) to a contravention of section 21 of the Act included reference to unlawful marketing.

(5) Section 30 of the Act (enforceability of agreements resulting from unlawful communications) applies in relation to—

- (a) controlled agreements entered into in consequence of unlawful marketing, as it applies in relation to controlled agreements entered into in consequence of an unlawful communication; and
- (b) the exercise of rights conferred by a controlled investment in consequence of unlawful marketing, as it applies in relation to the exercise of such rights in consequence of an unlawful communication.

### **Contravention by authorised person**

**53.**—(1) In this regulation “unlawful marketing” means the marketing of an AIF—

- (a) by an authorised person that is an AIFM or an investment firm in contravention of regulation 49, 50 or 51; or
- (b) by an authorised person that is an AIFM in contravention of a provision of the EuSEF Regulation or the EuVECA Regulation.

(2) Unlawful marketing is actionable at the suit of a private person who suffers loss as a result of such marketing, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at subsection (2)(c) to a contravention of section 238 of the Act included reference to unlawful marketing.

## **CHAPTER 2**

### **Marketing of AIFs by full-scope AIFMs**

#### **FCA approval for marketing**

**54.**—(1) This regulation applies to—

- (a) a full-scope UK AIFM seeking to market an AIF managed by the AIFM that does not fall within regulation 57(1);
- (b) a full-scope EEA AIFM, seeking to market to retail investors an AIF managed by the AIFM—
  - (i) that does not fall within regulation 57(1); and
  - (ii) where the FCA has not received a regulator’s notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act (EEA passport rights).

(2) The AIFM must—

- (a) apply to the FCA for approval in such manner as the FCA may direct; and
- (b) provide such information as the FCA may reasonably require for the purpose of determining the application.

(3) The FCA must determine an application by a full-scope UK AIFM, in so far as that application is for approval to market to professional investors, within 20 working days of receipt of a completed application.

(4) The FCA must determine an application by a full-scope EEA AIFM, or an application by a full scope UK AIFM in so far as that application is for approval to market to retail investors—

(a) if the application relates to an AIF in respect of which the AIFM has made an application for authorisation under section 242 or 261C of the Act or under regulation 12 of the Open-Ended Investment Companies Regulations 2001(30), or for recognition under section 272 of the Act—

(i) before the end of the period for determining that application for authorisation or recognition; or

(ii) if later, within 20 working days of receipt of the completed application under this regulation;

(b) otherwise, within 20 working days of receipt of the completed application under this regulation.

(5) If the FCA approves the application, it must inform—

(a) the AIFM concerned; and

(b) where the AIF concerned is an EEA AIF, the competent authority of the AIF.

(6) If the FCA proposes to refuse the application, it must give written notice to the AIFM concerned, stating the reasons for the proposed refusal.

(7) If the FCA decides to refuse the application—

(a) it must give written notice to the AIFM concerned, informing the AIFM of its right to refer the matter to the Tribunal; and

(b) the AIFM may refer the matter to the Tribunal.

(8) The FCA may refuse an application if it appears to the FCA that the AIFM does not or is unlikely to comply with an implementing provision that applies to it, or would apply to it if the application were approved.

### **Change to information provided with application**

**55.**—(1) If there is a material change to the information mentioned in regulation 54(2)(b), the AIFM must give written notice of the change to the FCA—

(a) in the case of a change planned by the AIFM (“planned change”), at least one month before implementing the change; or

(b) in other cases, as soon as reasonably practicable and, at the latest, immediately after an unplanned change has occurred.

(2) If a planned change would mean the AIFM no longer complied with an implementing provision applicable to it, the FCA must inform the AIFM without undue delay that it must not implement the change.

(3) 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 that applies to it, the FCA must take steps to ensure that the AIFM complies with that implementing provision or ceases to market the AIF.

(4) The FCA may use its powers under section 55J and 55L of the Act (variation or cancellation on initiative of regulator and imposition of requirement by the FCA) or the power applied by regulation 56 in taking the steps mentioned in paragraph (3), but this paragraph does not limit the powers of the FCA.

### **Suspension or revocation of approval granted to a full-scope EEA AIFM**

**56.** If the FCA has approved marketing by a full-scope EEA AIFM under regulation 54, regulations 62 to 64 apply in relation to that approval as they apply in relation to an entitlement to market an AIF following a notification under regulation 57, 58 or 59, but with the following modifications—

- (a) references to a notification under regulation 57, 58 or 59 are to be read as references to an application under regulation 54;
- (b) references to an entitlement to market are to be read as references to an approval to market;
- (c) references to an Article 36 custodian are to be omitted; and
- (d) regulations 62(1)(c) and 63(2)(c) are to be omitted.

## **CHAPTER 3**

### **National Private Placement**

#### **Marketing under Article 36 of the directive**

**57.**—(1) An AIF falls within this paragraph if it is—

- (a) a third country AIF, or
- (b) a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is either managed by a third country AIFM or is a third country AIF, and

managed by an AIFM falling within paragraph (2).

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

- (a) a full-scope UK AIFM; or
- (b) a full-scope EEA AIFM.

(3) An AIFM falling within paragraph (2) must give written notification to the FCA before marketing an AIF managed by it that falls within paragraph (1).

(4) The notification must include a statement confirming that the following conditions are met—

- (a) subject to paragraph (5), the AIFM complies with the requirements of the directive;
- (b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the FCA (in the case of a UK AIFM) or the competent authority of the full-scope EEA AIFM (in the case of such an AIFM), and the supervisory authorities of the relevant third country, in order to ensure an efficient exchange of information that enables the FCA or other competent authority to carry out its duties in accordance with the directive;
- (c) the relevant third country is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.

(5) The AIFM need not comply with the requirements of Article 21 of the directive, provided that the AIFM—

- (a) ensures that one or more entities, other than the AIFM, are appointed to carry out the duties mentioned in Article 21.7 to 21.9 of the directive (each an “Article 36 custodian”); and
  - (b) informs the FCA about the identity of such entities.
- (6) In this regulation, “the relevant third country” means—
- (a) in the case of a third country AIF, the country where the AIF is established; and
  - (b) in a case falling within paragraph (1)(b), the country where the master AIF is established.

### **Marketing of AIFs managed by small third country AIFMs**

**58.**—(1) A small third country AIFM must give written notification to the FCA before marketing an AIF managed by it.

- (2) The notification must include a statement confirming that the following conditions are met—
- (a) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF; and
  - (b) the AIFM is a small third country AIFM.
- (3) The AIFM must provide the FCA with such information as the FCA directs 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.

(4) The FCA may not give a direction under paragraph (3) that requires an AIFM to provide information—

- (a) if an investor’s acquisition of units or shares of the AIF results from marketing that is permitted because of the notification, after the date on which the final such investor disposes of such units or shares; or
- (b) if there is no acquisition of units or shares of the AIF resulting from such marketing, after the date on which the AIFM ceases marketing the AIF.

### **Marketing under Article 42 of the directive**

**59.**—(1) A third country AIFM that is not a small AIFM must give written notification to the FCA before marketing an AIF managed by it.

- (2) The notification must include a statement confirming that the following conditions are met—
- (a) the AIFM is the person responsible for complying with the implementing provisions relating to the marketing of the AIF;
  - (b) the AIFM complies with the requirements of Articles 22 to 24 of the directive in so far as such provisions are relevant to the AIFM and the AIF to be marketed;
  - (c) if applicable, the AIFM complies with Part 5 in relation to the AIF to be marketed;
  - (d) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between—
    - (i) the FCA and, if applicable, the competent authority of the other EEA State where the AIF is established, and
    - (ii) the supervisory authorities of the country where the third country AIFM is established and, if applicable, of the third country where the AIF is established,

in order to ensure an efficient exchange of information that enables the FCA and, if applicable, the other competent authority to carry out its duties in accordance with the directive;

- (e) the country where the third country AIFM and, if applicable, the third country AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force.
- (3) During the period specified in paragraph (4), an AIFM that has given a notification under paragraph (1) in respect of an AIF must comply with—
- (a) the implementing provisions applicable to full-scope UK AIFMs which relate to the provisions of Articles 22 to 24 of the directive in so far as such provisions are relevant to the AIFM and the AIF; and
  - (b) Part 5 in respect of that AIF (if applicable).
- (4) The period specified in this paragraph starts on the date on which the AIFM gives the notification under paragraph (1) and ends—
- (a) if an investor's acquisition of units or shares of the AIF results from marketing that is permitted because of the notification, on the date on which the final such investor disposes of such units or shares; or
  - (b) if there is no acquisition of units or shares of the AIF resulting from such marketing, on the date on which the AIFM ceases marketing the AIF.

#### **Manner and content of notifications**

- 60.** A notification under regulation 57, 58 or 59 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 direct.

#### **Material change to information**

- 61.** If there is a material change to the information provided in a notification under regulation 57, 58 or 59, the AIFM must give written notice of the change to the FCA—
- (a) in the case of a change planned by the AIFM (“planned change”), at least one month before implementing the change; or
  - (b) in other cases, immediately after an unplanned change has occurred.

#### **Revocation of entitlement to market**

- 62.—(1)** The FCA may revoke an AIFM's entitlement to market an AIF following a notification under regulation 57, 58 or 59 if it appears to the FCA that—
- (a) the AIFM, or the Article 36 custodian of that AIF, has contravened an implementing provision which applies to it;
  - (b) the AIFM, or the Article 36 custodian of that AIF, has in purported compliance with an implementing provision, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
  - (c) one or more of the conditions confirmed in the notification as being met is no longer satisfied;
  - (d) the AIF is wound up; or
  - (e) none of sub-paragraphs (a) to (d) applies, but it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed.
- (2) If the FCA proposes to revoke an AIFM's entitlement to market an AIF on a ground mentioned in paragraph (1)(a), (b), (c) or (e), it must give a warning notice to the AIFM and, in the case of

an entitlement to market following a notification under regulation 57, to the Article 36 custodian of that AIF.

- (3) If the FCA decides to revoke an AIFM's entitlement to market an AIF under paragraph (1)—
- (a) it must give a decision notice to the AIFM and, in the case of an entitlement to market following a notification under regulation 57, to the Article 36 custodian of that AIF; and
  - (b) the AIFM or the Article 36 custodian may refer the matter to the Tribunal.

### **Suspension of entitlement to market**

**63.**—(1) If one of the grounds in paragraph (2) is met, the FCA may suspend any entitlement of an AIFM to market an AIF arising out of a notification under regulation 57, 58 or 59 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, or the Article 36 custodian of that AIF, has contravened, or is likely to contravene, an implementing provision that applies to it;
  - (b) the AIFM, or the Article 36 custodian of that AIF, has in purported compliance with an implementing provision, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
  - (c) one or more of the conditions confirmed in the notification as being met is no longer satisfied; or
  - (d) none of paragraphs (a) to (c) applies, but it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed.

(3) In this regulation “specified” means specified by the FCA in a notice given under regulation 64.

### **Procedure on suspension**

- 64.**—(1) A suspension under regulation 63 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 suspending the AIFM's entitlement to market, considers that it is necessary for the suspension to take effect immediately (or on that date).

(3) If the FCA proposes to suspend an AIFM's entitlement to market an AIF, or suspends such entitlement with immediate effect—

- (a) it must give separate written notice to the AIFM and (if applicable) the Article 36 custodian of that AIF; and
- (b) the AIFM or the Article 36 custodian may refer the matter to the Tribunal.

(4) A notice under paragraph (3)(a) must—

- (a) give details of the suspension;
- (b) inform the person to whom it is given of when the suspension takes effect;
- (c) state the FCA's reasons for giving the suspension and for its determination as to when the suspension takes effect;

- (d) inform the person to whom it is given that it 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) inform the person to whom it is given of its right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) Paragraph (7) applies if, having considered any representations made by a person to whom the notice was given, the FCA decides—
- (a) to make the suspension in the way proposed,
  - (b) to make the suspension in a way other than that proposed, or
  - (c) if it has been made, not to revoke the suspension.
- (7) If this paragraph applies—
- (a) the FCA must give separate written notice to the AIFM and (if applicable) the Article 36 custodian; and
  - (b) the AIFM or the Article 36 custodian may refer the matter to the Tribunal.
- (8) If, having considered any representations made by a person to whom the notice was given, the FCA decides—
- (a) not to make the suspension in the way proposed,
  - (b) to revoke a suspension,
- it must give separate written notice to the AIFM and (if applicable) the Article 36 custodian.
- (9) For the purposes of paragraph (1)(c), section 391(8) of the Act (publication) applies as if a notice under paragraph (3)(a), (7)(a) or (8) were a supervisory notice.

## PART 7

### Duties and powers of the FCA

#### **Designation as competent authority**

**65.** The FCA is responsible for all functions of the competent authority provided for in any directly applicable EU regulation made under the directive, in the EuSEF Regulation and in the EuVECA Regulation in the United Kingdom.

#### **Requirement to notify ESMA of information required from AIFMs**

**66.** If the FCA requires additional information from a full-scope UK AIFM in accordance with Article 24.5 of the directive, the FCA must inform ESMA about this requirement.

#### **Use of information by FCA and supervisory cooperation**

**67.—(1)** The FCA must use the information it gathers under implementing provisions relating to Article 24 of the directive in respect of AIFMs it supervises for the purposes of identifying the extent to which the use of leverage contributes to—

- (a) the build up of systemic risk in the financial system;
- (b) the risks of disorderly markets; or
- (c) the risks to the long-term growth of the economy.

(2) The FCA must ensure that—



- (a) the information mentioned in paragraph (1), and
- (b) the information it gathers under implementing provisions relating to Article 7 of the directive,

is made available to ESMA, the ESRB, and competent authorities of other relevant EEA States by means of the procedures set out in Article 50 of the directive.

(3) The FCA must, without delay, provide information by means of the procedures set out in Article 50 of the directive, and directly to the competent authority of another EEA State, if an AIFM under the FCA's responsibility, or an AIF managed by such an AIFM, could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institution in that EEA State.

(4) If the FCA obtains information from the depositary of an EEA AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM, or of a UK AIF managed by a full-scope EEA AIFM, which the depositary has obtained while performing its duties as the depositary of that AIF and which may be necessary for the competent authority of the EEA AIF or the full-scope EEA AIFM, the FCA must provide such information to that competent authority without delay.

### **Limits on leverage**

**68.**—(1) The FCA must—

- (a) assess the risks that the use of leverage by full-scope UK AIFMs with respect to the AIFs managed by them could entail;
- (b) use the measures in paragraph (2), if they are necessary in order to ensure the stability and integrity of the financial system, to limit the extent to which the use of leverage by a full-scope UK AIFM with respect to the AIFs managed by it contributes to—
  - (i) the build up of systemic risk in the financial system; or
  - (ii) the risks of disorderly markets.

(2) The measures are—

- (a) imposing limits on the level of leverage that such an AIFM may employ; or
- (b) imposing other restrictions on the management of such an AIF.

(3) Before and after taking a measure mentioned in paragraph (2), the FCA must notify ESMA, the ESRB and, where the measures concern an EEA AIF, the competent authority of the EEA AIF, through the procedures set out in Article 50 of the directive.

(4) The notification to be given under paragraph (3) before the measures are taken must contain details of—

- (a) the proposed measures;
- (b) the reasons for the measures; and
- (c) when the measures are intended to take effect.

(5) Unless there are exceptional circumstances, the FCA must give such notification at least 10 working days before the proposed measures are intended to take effect.

(6) If the FCA proposes to take action contrary to ESMA's advice mentioned in Article 25.6 or 25.7 of the directive, it must inform ESMA, stating its reasons.

(7) The FCA may use its powers under section 55J and 55L of the Act (variation or cancellation on initiative of regulator and imposition of requirements by the FCA) to impose limits on leverage or other restrictions on the management of an AIF, but this paragraph does not limit the powers of the FCA.

## Exchange of information relating to potential systemic consequences of AIFM activity

69. The FCA must communicate information to—

- (a) competent authorities,
- (b) ESMA, and
- (c) the ESRB,

where the information is relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which AIFMs are active.

## PART 8

### Application of provisions of the Act

#### Application of procedural provisions of the Act

70.—(1) Part 9 of the Act applies in the case of a matter referred to the Tribunal under these Regulations as it applies in the case of a matter referred to the Tribunal under the Act.

(2) Part 26 of the Act applies to warning notices and decision notices given under these Regulations as it applies to such notices given under the Act.

#### Application of provisions of the Act to unauthorised AIFMs

71.—(1) The following provisions of the Act apply in respect of an unauthorised AIFM as they apply in respect of an authorised person—

- (a) section 165(31) (regulators' power to require information: authorised persons etc.);
- (b) section 166(32) (reports by skilled persons);
- (c) section 167(33) (appointment of persons to carry out general investigations);
- (d) section 176(3) (entry of premises under warrant);
- (e) section 205(34) (public censure);
- (f) section 206(35) (financial penalties).

(2) The following provisions of the Act apply in relation to the exercise of the powers under the provisions applied by paragraph (1)(a) to (c) as they apply in relation to the exercise of those powers in respect of authorised persons—

- (a) section 169(36) (investigations etc. in support of overseas regulator);
- (b) section 170(37) (investigations: general);
- (c) section 171(38) (powers of persons appointed under section 167);
- (d) section 174(39) (admissibility of statements made to investigators);

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(31) Section 165 was amended by paragraph 15 of Schedule 2 to the Financial Services Act 2010 and paragraph 1 of Schedule 12 to the Financial Services Act 2012.

(32) Section 66 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.

(33) Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and by [S.I. 2007/126](#).

(34) Section 205 was amended by paragraphs 1 and 11 of Schedule 9 to the Financial Services Act 2012.

(35) Section 206 was amended by section 10 of the Financial Services Act 2010 and by paragraphs 1 and 12 of Schedule 9 to the Financial Services Act 2012.

(36) Section 169 was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.

(37) Section 170 was amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012.

(38) Section 171 was amended by [S.I. 2007/126](#).

(39) Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.

- (e) section 175(40) (information and documents: supplemental provisions);
- (f) section 176(41) (entry of premises under warrant);
- (g) section 176A(42) (retention of documents taken under section 176);
- (h) section 177(43) (offences).

(3) Sections 207 to 211 of, and paragraph 20 of Schedule 1ZA to, the Act(44) apply in relation to the exercise of the FCA’s powers under section 205 or 206 of the Act as applied by paragraph (1) (e) and (f) as they apply in relation to their exercise in respect of authorised persons.

(4) Unauthorised AIFMs are to be treated as regulated persons for the purposes of paragraph 21 of Schedule 1ZA to the Act.

(5) In this regulation “unauthorised AIFM” means a person who is not an authorised person but who is—

- (a) a small registered UK AIFM;
- (b) a small registered EEA AIFM;
- (c) a full-scope EEA AIFM that is entitled to market an AIF following a notification under regulation 57;
- (d) an AIFM that is entitled to market an AIF following a notification under regulation 58;
- (e) an AIFM to which the requirement at regulation 59(3) applies; or
- (f) a full-scope EEA AIFM that is exercising a right to market an AIF arising out of the EuSEF Regulation or the EuVECA Regulation.

## PART 9

### Transitional Provisions

#### **AIFMs managing AIFs immediately before 22nd July 2013**

72.—(1) An AIFM falls within this paragraph if—

- (a) it manages an AIF immediately before 22nd July 2013; and
- (b) in the case of a third country AIFM, it markets that AIF in an EEA State before 22nd July 2013.

(2) Until the relevant date, an AIFM falling within paragraph (1) need not comply with implementing provisions other than those imposed by this regulation.

(3) A UK AIFM falling within paragraph (1) must submit an application for—

- (a) a Part 4A permission to carry on the regulated activity of managing an AIF, or
- (b) registration as a small registered UK AIFM,

before 22nd July 2014.

(4) Paragraph (3) does not apply to an AIFM that ceases to manage AIFs before 22nd July 2014.

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(40) Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012.

(41) Section 176 was amended by paragraph 17 of Schedule 2 to the Financial Services Act 2010, paragraph 14 of Schedule 12 to the Financial Services Act 2012 and [S.I. 2005/1433](#).

(42) Section 176A was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.

(43) Section 177 was amended by paragraph 8 of Schedule 8 to the Financial Services Act 2012 and [S.I. 2001/1090](#).

(44) Sections 207 to 211 were amended by paragraphs 18, 19 and 20 of Schedule 2 to the Financial Services Act 2010 and by paragraphs 1, 14, 15, 16, 17 and 18 of Schedule 9 to the Financial Services Act 2012. Schedule 1ZA was substituted by Schedule 3 to the 2012 Act.

(5) Part 6 does not apply in respect of an AIF managed by an AIFM falling within paragraph (1) until the relevant date.

(6) Until the relevant date, amendments and modifications to other enactments made by these Regulations do not have effect in respect of an AIFM falling within paragraph (1) except in so far as they relate to the making or determination of applications for registration as a small registered UK AIFM or for a Part 4A permission to carry on the regulated activity of managing an AIF.

(7) In this regulation, the “relevant date” means the earlier of—

- (a) (i) in respect of a UK AIFM that complies with the requirement in paragraph (3) to submit an application before 22nd July 2014, and AIFs managed by it, the date on which the FCA or PRA notifies the AIFM that its application has been determined;
- (ii) in respect of an AIFM established in an EEA State other than the United Kingdom that applies for authorisation in accordance with Article 6.1 of the directive or registration in accordance with Article 3.3(a) of the directive before 22nd July 2014, and AIFs managed by it, the date on which the relevant competent authority notifies the AIFM that the application has been determined;
- (iii) in respect of an AIF managed by a third country AIFM that notifies the FCA under regulation 58 or 59, the date on which the AIFM gives the notification; or
- (b) 22nd July 2014.

#### **AIFs subject to prospectus directive**

**73.**—(1) This regulation applies to an AIF, the securities of which are subject to an offer to the public under a prospectus that has been drawn up and published in accordance with the prospectus directive before 22nd July 2013, for the duration of the validity of that prospectus.

(2) Part 6 does not apply in respect of an AIF falling within paragraph (1).

(3) In this regulation, “prospectus directive” means Directive [2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading<sup>(45)</sup>.

#### **Closed-ended AIFs that make no additional investments**

**74.**—(1) This regulation applies to an AIFM in so far as immediately before 22nd July 2013 it manages an AIF that—

- (a) is closed-ended; and
- (b) makes no additional investments after 22nd July 2013.
- (2) The AIFM need not apply for—
  - (a) permission under Part 4A of the Act to manage that AIF; or
  - (b) registration as a small registered UK AIFM in respect of that AIF.

(3) The AIFM need not comply with the implementing provisions in respect of that AIF.

(4) Amendments and modifications to other enactments made by these Regulations do not have effect in respect of that AIF or the AIFM’s management of it.

#### **Closed-ended AIFs whose subscription period has closed**

**75.**—(1) This regulation applies to an AIFM in so far as immediately before 22nd July 2013 it manages an AIF—

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(45) OJ L 345, 31.12.2003, p.64.

- (a) that is closed-ended;
  - (b) for which the subscription period for investors closed before 22nd July 2011; and
  - (c) that is constituted for a period that expires before 22nd July 2016.
- (2) The AIFM need not apply for—
- (a) permission under Part 4A of the Act to manage that AIF; or
  - (b) registration as a small registered UK AIFM in respect of that AIF.
- (3) Subject to paragraph (4)—
- (a) the AIFM need not comply with the implementing provisions in respect of that AIF; and
  - (b) amendments and modifications to other enactments made by these Regulations do not have effect in respect of that AIF or the AIFM’s management of it.
- (4) From 22nd July 2014, the AIFM must comply with—
- (a) provisions in Part 5 of these Regulations, and
  - (b) implementing provisions relating to Article 22 of the directive (annual report)
- that would apply to it in respect of that AIF but for the preceding paragraphs of this regulation.

### **Permission to act as trustee or depositary of an AIF**

**76.**—(1) In this regulation—

“the new activity” means the activity specified in article 51ZD of the Regulated Activities Order (acting as trustee or depositary of an AIF)**(46)**;

“the old activity” means the activity of acting as trustee of an authorised unit trust scheme, acting as the depositary of an authorised contractual scheme or acting as the depositary of an open-ended investment company, as specified in article 51(1)(b), (bb) or (c) of the Regulated Activities Order as it was in force immediately before 22nd July 2013**(47)**;

“the relevant date” in respect of a person means the earlier of—

- (a) the date on which the FCA or PRA notifies the person that their application for Part 4A permission to carry on the new activity has been determined; or
- (b) 22nd July 2014.

(2) Section 20(1) and (1A)**(48)** of the Act (authorised persons acting without permission) does not apply to an authorised person who carries on the new activity before the relevant date without a Part 4A permission to carry on that activity if the person meets condition A and condition B.

(3) Condition A is that the person—

- (a) carries on the activity for an AIF that is not an authorised AIF; or
- (b) has a Part 4A permission to carry on the old activity (see paragraph (5)).

(4) Condition B is that the person—

- (a) meets the requirements for appointment as a depositary imposed by implementing provisions relating to Article 21.3 of the directive; and
- (b) has its registered office or has established a branch in the United Kingdom.

(5) If a person has a Part 4A permission to carry on the old activity immediately before 22nd July 2013 and that person continues to carry on that activity on or after 22nd July 2013, the amendments to

**(46)** Article 51ZD is substituted by paragraph 1(12) of Schedule 2 to these Regulations.

**(47)** Article 51(1)(bb) was inserted by [S.I. 2013/1388](#). Articles 51ZA to 51ZG are substituted for article 51 by paragraph 1(12) of Schedule 2 to these Regulations.

**(48)** Section 20(1) was amended, and subsection (1A) was inserted, by paragraph 2 of Schedule 9 to the Financial Services Act 2012.

other enactments made by these Regulations which relate to removal from the Regulated Activities Order of the specification of the old activity do not apply in respect of that person until the relevant date.

(6) Article 42A of the Regulated Activities Order (depositaries of UCITS and AIFs)<sup>(49)</sup> applies to a person who—

- (a) is carrying on the new activity without a Part 4A permission to carry on that activity but who, pursuant to paragraph (2), is not to be taken to have contravened a requirement, and
- (b) does not have a Part 4A permission to carry on the regulated activity specified in article 40 of the Regulated Activities Order (safeguarding and administering investments),

as it does to a person who has a Part 4A permission to carry on the new activity.

(7) A person who carries on the new activity and who, pursuant to paragraph (2), need not have a Part 4A permission to carry on that activity, must comply with all other implementing provisions in respect of that activity that would apply if the person had such a Part 4A permission.

### **Depositaries of EEA AIFs until 22nd July 2017**

77.—(1) This regulation applies if, in accordance with the transitional provision in article 61.5 of the directive, the FCA or an authority in another EEA State permits a credit institution that is—

- (a) authorised under the banking consolidation directive, and
- (b) established in the United Kingdom,

to be appointed as the depositary of an EEA AIF.

(2) Until 22nd July 2017, regulations 29 to 32 (depositary liability) apply in relation to such a depositary as they apply in relation to the depositary of a UK AIF managed by a full-scope UK AIFM.

### **Permission for existing managers, depositaries and trustees of UCITS**

78.—(1) In this regulation—

“new activity” means—

- (a) the regulated activity of managing a UCITS, specified in article 51ZA of the Regulated Activities Order;
- (b) the regulated activity of acting as the trustee of an authorised unit trust scheme where the scheme is a UCITS, specified in article 51ZB(1)(a) of the Regulated Activities Order;
- (c) the regulated activity of acting as the depositary of an authorised contractual scheme where the scheme is a UCITS, specified in article 51ZB(1)(b) of the Regulated Activities Order; or
- (d) the regulated activity of acting as the depositary of an open-ended investment company where the company is a UCITS, specified in article 51ZB(1)(b) of the Regulated Activities Order;

“old activity” means—

- (e) the regulated activity of establishing, operating or winding up a collective investment scheme or acting as sole director of an open-ended investment company, specified in article 51(1)(a) or (c) of the Regulated Activities Order as it was in force immediately before 22nd July 2013, where the scheme or company is a UCITS;
- (f) the regulated activity of acting as a trustee of an authorised unit trust scheme, specified in article 51(1)(b) of the Regulated Activities Order as it was in force immediately before 22nd July 2013, where the scheme is a UCITS;

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<sup>(49)</sup> Article 42A is inserted by paragraph 1(10) of Schedule 2 to these Regulations.

- (g) the regulated activity of acting as a depository of an authorised contractual scheme, specified in article 51(1)(bb) of the Regulated Activities Order as it was in force immediately before 22nd July 2013, where the scheme is a UCITS; or
- (h) the regulated activity of acting as a depository of an open-ended investment company, specified in article 51(1)(c) of the Regulated Activities Order as it was in force immediately before 22nd July 2013, where the company is a UCITS;

“the relevant date” in respect of a person means the earlier of—

- (i) the date on which the FCA or PRA notifies the person that their application for Part 4A permission to carry on the new activity has been determined; or
- (j) 22nd July 2014;

“UCITS” has the meaning given in Article 1.2 of the UCITS directive.

(2) For the purposes of this regulation the activity described in paragraph (a), (b), (c) or (d) of the definition of “new activity” in paragraph (1) is equivalent to the activity described in the paragraph bearing the same letter in the definition of “old activity” in paragraph (1).

(3) If a person has a Part 4A permission to carry on an old activity immediately before 22nd July 2013 and that person continues to carry on that activity in relation to a UCITS on or after 22nd July 2013, the amendments to other enactments made by these Regulations which relate to removal from the Regulated Activities Order of the specification of that old activity do not apply in respect of that person until the relevant date.

(4) Section 20(1) and (1A) of the Act (authorised persons acting without permission) does not apply to a person’s carrying on of a new activity before the relevant date without a Part 4A permission to carry on that activity if the person continues to have a Part 4A permission to carry on the equivalent old activity in relation to a UCITS.

(5) If, immediately before 22nd July 2014, the person continues to carry on the old activity in relation to a UCITS, and has a Part 4A permission to do so, from 22nd July 2014 the person has Part 4A permission to carry on the equivalent new activity.

## PART 10

### Final provisions

#### Review

**79.**—(1) The Treasury must from time to time—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the directive (which is implemented by means of these Regulations) is implemented in other EEA States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

#### **Amendments to primary legislation**

**80.** Schedule 1, which contains amendments to primary legislation and related transitional provisions, has effect.

#### **Amendments to secondary legislation**

**81.**—(1) Schedule 2 (which contains amendments to secondary legislation) has effect.

(2) Paragraph (3) has effect—

(a) for the purpose of the FCA and PRA making rules, giving directions and imposing requirements, and for the purpose of the FCA giving guidance, immediately after Schedule 2 has effect;

(b) for all other purposes, on the date specified by the delegated act to be adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Article 35 and 37 to 41 of the directive become applicable.

(3) In paragraph 11 of Schedule 8 to the Regulated Activities Order (persons excluded from regulated activity of managing an AIF)<sup>(50)</sup>, at the end insert “, that is registered in the United Kingdom in accordance with Article 3 of the alternative investment fund managers directive”.

Date

*Name*  
*Name*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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<sup>(50)</sup> Paragraph 11 is inserted by paragraph 1(17) of Schedule 2 to these Regulations.



## SCHEDULE 1

Regulation 80

### AMENDMENTS TO PRIMARY LEGISLATION

#### PART 1

##### Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.
2. In section 1A(6) (the Financial Conduct Authority)(**51**), after paragraph (c) omit “or” and insert—
  - “(ca) the Alternative Investment Fund Managers Regulations 2013, or”.
3. In section 1L(2) (supervision, monitoring and enforcement), after paragraph (a) omit “or” and insert—
  - “(aa) with requirements imposed on them by the Alternative Investment Fund Managers Regulations 2013, or”.
4. In section 55H (refusal by FCA to vary permission at request of authorised person), after subsection (4) insert—
  - “(4A) The FCA may also refuse an application under this section if it appears to the FCA that the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.”.
5. In section 55J (variation or cancellation on initiative of regulator)—
  - (a) in subsection (1)—
    - (i) at the end of paragraph (b), omit “or”, and
    - (ii) at the end of paragraph (c) insert—
      - “, or
      - (d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.”;
  - (b) after subsection (6) insert—
    - “(6A) Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a full-scope UK AIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—
      - (a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;
      - (b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;
      - (c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies

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(51) Sections 1A and 1L were substituted by section 6 of the Financial Services Act 2012.

- with Directive [2006/49/EC](#) of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions<sup>(52)</sup>;
- (d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;
- (e) the person has seriously or systematically infringed—
- (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
  - (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive; or
  - (iii) any provision made by or under this Act which implements that directive.”.
6. In section 55V (determination of applications) after subsection (7) insert—
- “(8) In the case of an application for permission under this Part which—
- (a) relates to the regulated activity of managing an AIF, and
  - (b) would if granted result in the applicant becoming a full-scope UK AIFM,
- this section has effect subject to regulation 5 of the Alternative Investment Fund Managers Regulations 2013 and, accordingly, subsections (1) to (3) do not apply.”.
7. In section 59 (approval for particular arrangements)<sup>(53)</sup> after subsection (7B) insert—
- “(7C) A regulator may not exercise the power in subsection (3) so as to provide for a function to be a controlled function in relation to the carrying on of the regulated activity of managing an AIF by an AIFM which—
- (a) is also an AIF;
  - (b) does not manage any AIF other than itself;
  - (c) is a body corporate; and
  - (d) is not a collective investment scheme.”.
8. In section 66(2)(b) (disciplinary powers)<sup>(54)</sup> after sub-paragraph (i) omit “or” and insert—
- “(ia) by the Alternative Investment Fund Managers Regulations 2013, or”.
9. In section 165 (regulators’ power to require information: authorised persons etc.), in subsection (7)(b) omit “270 or”.
10. In section 168(4) (appointment of persons to carry out investigations in particular cases)<sup>(55)</sup>, omit “or” at the end of paragraph (j), and after paragraph (j) insert—
- “(ja) a person may have contravened—
- (i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive; or
  - (ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; or”.

<sup>(52)</sup> OJ L 177, 30.6.2006, p.201.

<sup>(53)</sup> Section 59 was amended by section 14 of, and paragraph 3 of Schedule 5 to, the Financial Services Act 2012, and by [S.I. 1012/1906](#).

<sup>(54)</sup> Section 66(2) was substituted by paragraph 14 of Schedule 5 to the Financial Services Act 2012.

<sup>(55)</sup> Section 168(4) was amended by paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008 (c. 28), paragraph 16 of Schedule 2 to the Financial Services Act 2010 and paragraph 8 of Schedule 12 to the Financial Services Act 2012, and by [S.I. 2007/126](#) and [S.I. 2012/2554](#).

**11.** In section 193(1) (interpretation of Part 13)(**56**), in the definition of “incoming firm”, omit “or” at the end of paragraph (aa) and after paragraph (aa) insert—

“(ab) an EEA AIFM which is exercising, or has exercised, its right to market an AIF in the United Kingdom in accordance with Schedule 3; or”.

**12.** In section 194 (general grounds on which power of intervention is exercisable), after subsection (4) insert—

“(5) The FCA may exercise its power of intervention in respect of an EEA AIFM if it appears to the FCA that the EEA AIFM has contravened, or is likely to contravene, a requirement imposed by—

- (a) the Alternative Investment Fund Managers Regulations 2013; or
- (b) any directly applicable EU regulation made under the alternative investment fund managers directive.”.

**13.** In section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance)(**57**)—

(a) in the heading, for “or EEA UCITS”, substitute “, EEA UCITS or EEA AIFM”;

(b) after subsection (1)(b) insert—

“; or

(c) that an EEA AIFM has contravened, or is contravening, a requirement falling within subsection (3A) (in a case to which Article 45.7 or 45.8 of the alternative investment fund managers directive applies).”;

(c) after subsection (3) insert—

“(3A) A requirement falls within this subsection if it is imposed on the EEA AIFM—

- (a) by or under any provision adopted in the AIFM’s home state for the purpose of implementing the alternative investment fund managers directive; or
- (b) by any directly applicable EU regulation made under that directive.”;

(d) for subsection (8) substitute—

“(8) Condition B is—

- (a) in the case of a relevant EEA firm, that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets;
- (b) in the case of an EEA UCITS, that the EEA UCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom; or
- (c) in the case of an EEA AIFM, that the AIFM is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the financial stability or integrity of the markets in the United Kingdom.”;

(e) in subsection (11B), for “or (3)”, substitute “, (3) or (3A)”;

(f) in subsection (12)—

(i) in the definition of “the appropriate regulator” for “where the relevant EEA firm is” substitute “in the case of a relevant EEA firm which is”; and

(ii) in the definition of “home state” after paragraph (b) insert—

**(56)** Section 193(1) was amended by paragraph 31 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2011/1613](#).

**(57)** Section 195A was inserted by [S.I. 2007/126](#), substituted by [S.I. 2011/1613](#), and amended by paragraph 35 of Schedule 4 to the Financial Services Act 2012 and [S.I. 2012/916](#).

- “(c) in relation to an EEA AIFM, the EEA State in which the AIFM has its registered office;”.
- 14.** In section 199 (additional procedure for EEA firms in certain cases)**(58)**—
- (a) in subsection (3A), for “or (f)”, substitute “, (f) or (h)”;
  - (b) in subsection (3B) for “to (8)” substitute “and (5)”;
  - (c) after subsection (5), insert—
 

“(5A) Subsections (6) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) or (h) of Schedule 3.”.
- 15.** In section 204A(2) (meaning of “relevant requirement”)**(59)**—
- (a) omit “or” after paragraph (a);
  - (b) after paragraph (b) insert—
 

“, or
  - (c) by the Alternative Investment Fund Managers Regulations 2013.”.
- 16.** In section 237(3) (other definitions)**(60)** in the definition of “a recognised scheme” omit “, 270”.
- 17.** In section 261D(8) (authorisation orders for contractual schemes)**(61)** for “permission to act as operator” substitute “such permission as may be necessary to act as operator”.
- 18.** Omit sections 270 and 271 and the preceding cross-heading (schemes authorised in designated countries or territories)**(62)**.
- 19.** In section 272 (individually recognised overseas schemes)**(63)**, in subsection (1)—
- (a) after paragraph (b) insert “and”; and
  - (b) omit paragraph (c) (including the “and” following it).
- 20.** In section 277 (alteration of schemes and changes of operator, trustee or depositary), after subsection (3) insert—
- “(4) If a change is made, or is to be made, to the law which applies to such a scheme in the country or territory in which it is managed and the change affects or will affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of the change to the FCA—
- (a) at least one month before the change takes effect; or
  - (b) if that is not reasonably practicable, as soon as it is reasonably practicable to do so.
- (5) A notice under this section—
- (a) must be given in such manner as the FCA may direct; and
  - (b) where the notice is given under subsection (1) or (3), must include such information as the FCA may direct for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme would continue to be satisfied following the alteration or replacement that is the subject of the notice.”.

**(58)** Section 199 was amended by paragraph 39 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#), [S.I. 2012/916](#) and [S.I. 2012/2015](#).

**(59)** Section 204A was inserted by paragraph 10 of Schedule 9 to the Financial Services Act 2012.

**(60)** Section 237 was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 and by [S.I. 2011/1613](#).

**(61)** Section 261D was inserted by [S.I. 2013/1388](#).

**(62)** Sections 270 and 271 were amended by paragraphs 9 and 16 of Schedule 18 to the Financial Services Act 2012.

**(63)** Sections 272 and 277 to 281 were amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

21. After section 277 insert—

**“Regular provision of information relating to compliance with requirements for recognition**

**277A.**—(1) The operator of a scheme recognised by virtue of section 272 must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme continue to be satisfied.

(2) A direction under subsection (1) may not require information to be provided within the period of 12 months beginning with the date on which information was last required to be provided to the FCA in respect of the scheme pursuant to a requirement under section 274(2)(c) or a direction under subsection (1) or section 277(5)(b).

(3) The information must be provided in such manner as the FCA may direct.”.

22. Omit the cross-heading “Schemes recognised under sections 270 and 272” before section 278.

23. In section 278 (rules as to scheme particulars) omit “270 or”.

24. In section 279 (revocation of recognition)—

(a) in the opening words, omit “direct that a scheme is to cease to be recognised by virtue of section 270 or”;

(b) in paragraph (c) omit “in the case of an order under section 272,”.

25. In section 280 (procedure)—

(a) in subsection (1) for “give a direction under section 279 or to make an order under that section” substitute “make an order under section 279”; and

(b) in subsection (2) omit “give a direction or”.

26. In section 281 (directions)—

(a) in subsection (1) omit “270 or”; and

(b) in subsection (2)(c) for “a scheme under section 272” substitute “such a scheme”.

27. In section 380(6)(a) (injunctions)(64)—

(a) omit “or” after sub-paragraph (i);

(b) after sub-paragraph (ii) insert—

“; or

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;”.

28. In section 382(9)(a) (restitution orders)(65)—

(a) omit “or” after sub-paragraph (i);

(b) after sub-paragraph (ii) insert—

“; or

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;”.

29. In section 384(7) (power of FCA or PRA to require restitution)(66)—

(64) Section 380 was amended by paragraph 19 of Schedule 9 to the Financial Services Act 2012.

(65) Section 382 was amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012.

(66) Section 384 was amended by paragraph 23 of Schedule 9 to the Financial Services Act 2012 and [S.I. 2007/126](#).

- (a) omit “and” after paragraph (a);
  - (b) after paragraph (b) insert—
    - “; and
    - (c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013.”.
- 30.** In section 398 (misleading the FCA or PRA: residual cases)(**67**)—
- (a) in subsection (1) for “imposed by or under this Act, or by the short selling regulation,” substitute “falling within subsection (1A)”;
  - (b) after subsection (1) insert—
    - “(1A) A requirement falls within this subsection if it is imposed by or under—
      - (a) this Act;
      - (b) the Alternative Investment Fund Managers Regulations 2013;
      - (c) the short selling regulation;
      - (d) Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds(**68**); or
      - (e) Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds(**69**).”.
- 31.** In section 417(1) (definitions)(**70**) in the appropriate places insert—
- ““AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;”
  - ““full-scope UK AIFM” has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;”.
- 32.** In section 425 (expressions relating to authorisation elsewhere in the single market)(**71**), in subsection (1)(a)—
- (a) at the beginning insert ““alternative investment fund managers directive”,”, and
  - (b) after ““life assurance consolidation directive”,”, insert ““EEA AIFM”,”.
- 33.** In Schedule 1ZA (the Financial Conduct Authority), in paragraph 23(2)(a) (fees)(**72**) for “other Acts mentioned in section 1A(6)” substitute “other enactments mentioned in section 1A(6) (a) to (ca)”.
- 34.**—(1) Schedule 3 (EEA passport rights) is amended as follows.
- (2) In paragraph 1 (the single market directives)(**73**) omit “and” at the end of paragraph (e), and after paragraph (f) insert—
- “; and
  - (g) the alternative investment fund managers directive.”.

(67) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012.

(68) OJ L 115, 25.4.2013, p.1.

(69) OJ L 115, 25.4.2013, p.18.

(70) Section 417(1) was amended by paragraph 16 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), section 964 of the Companies Act 2006 (c. 46), section 174 of the Banking Act 2009 (c. 1), paragraph 31 of Schedule 2 to the Financial Services Act 2010 and section 49 of the Financial Services Act 2012, and by S.I. 2002/1775, S.I. 2007/126, S.I. 2009/1941, S.I. 2010/22, S.I. 2012/916, S.I. 2012/1809, S.I. 2012/1906, S.I. 2012/2554 and S.I. 2013/504.

(71) Section 425 was amended by S.I. 2003/2066, S.I. 2004/3379, S.I. 2006/2975, S.I. 2007/126, S.I. 2007/3253 and S.I. 2012/1906.

(72) Schedule 1ZA was substituted for Schedule 1 by section 6 of, and Schedule 3 to, the Financial Services Act 2012.

(73) Paragraph 1 was amended by S.I. 2000/2952, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126 and S.I. 2007/3253.

- (3) After paragraph 4D (the emission allowance auctioning directive)(74), insert—

*“The alternative investment fund managers directive*

**4E.** “The alternative investment fund managers directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.”.

- (4) In paragraph 5 (EEA firm)(75), omit “or” at the end of paragraph (f), and after paragraph (g) insert—

“; or

(h) an AIFM (as defined in Article 4.1(b) of the alternative investment fund managers directive) which is authorised (in accordance with Article 6.1 of that directive) by its home state regulator.”.

- (5) In paragraph 5A (definition of “relevant office” for EEA firm)(76), after paragraph (a) insert—

“(aa) in relation to a firm falling within sub-paragraph (h) of that paragraph, its registered office;”.

- (6) In paragraph 7A (definition of “relevant office” for EEA right), after paragraph (a) insert—

“(aa) in relation to a person whose entitlement is subject to the conditions of the alternative investment fund managers directive, its registered office;”.

- (7) In paragraph 10A (definition of “relevant office” for UK firm), after paragraph (a) insert—

“(aa) in relation to a firm whose EEA right derives from the alternative investment fund managers directive, its registered office;”.

- (8) After paragraph 11C (UCITS)(77), insert—

*“EEA AIFM*

**11D.** “EEA AIFM” means an EEA firm falling within paragraph 5(h) which is exercising in the United Kingdom a right deriving from the alternative investment fund managers directive.”.

- (9) In paragraph 13 (establishment)(78)—

(a) in sub-paragraph (1), for “or (f)”, in the first place, substitute “, (f) or (h)”;

(b) at the end of sub-paragraph (1)(ba), omit “and”;

(c) after sub-paragraph (1)(c), insert—

“; and

(d) in the case of a firm falling within paragraph 5(h), its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator.”;

(d) in sub-paragraph (2)(b), after “5(a)”, insert “or (h)”.

- (10) In paragraph 14 (services)(79)—

(a) in sub-paragraph (1)(b), for “or (f)” substitute “, (f) or (h)”;

(74) Paragraph 4D was inserted by [S.I. 2012/1906](#).

(75) Paragraph 5 was amended by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2004/3379](#), [S.I. 2006/3221](#), [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#) and [S.I. 2012/1906](#).

(76) Paragraphs 5A, 7A and 10A were inserted by [S.I. 2003/1473](#).

(77) Paragraph 11C was inserted by [S.I. 2011/1613](#).

(78) Paragraph 13 was amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/126](#) and [S.I. 2012/1906](#).

(79) Paragraph 14 was amended by paragraph 3 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/126](#) and [S.I. 2012/1906](#).



- (b) in sub-paragraph (1)(c), for “or (e)”, substitute “, (e) or (h)”;
  - (c) in sub-paragraph (2), for “or (e)”, substitute “, (e) or (h)”;
  - (d) after sub-paragraph (3), insert—
    - “(3A) In cases where the firm is an EEA AIFM that seeks to market an AIF in exercise of its rights under Article 32 of the alternative investment fund managers directive, the appropriate UK regulator must ensure that the regulator’s notice may be transmitted to it electronically.”.
- (11) In paragraph 19 (establishment)(**80**)—
- (a) in sub-paragraph (1) for “and (5A)” substitute “, (5A) and (7BC)”;
  - (b) after sub-paragraph (7B), insert—
    - “(7BA) Sub-paragraph (7BB) applies where—
      - (a) the firm’s EEA right derives from the alternative investment fund managers directive,
      - (b) the first condition is satisfied, and
      - (c) the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
        - (i) the provisions implementing the alternative investment fund managers directive, and
        - (ii) any directly applicable EU regulation made under that directive.
    - (7BB) The appropriate UK regulator must—
      - (a) within two months of receiving the firm’s notice of intention, give a consent notice to the host state regulator,
      - (b) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of the alternative investment fund managers directive, and
      - (c) immediately notify the firm that it has given the consent notice to the host state regulator.
    - (7BC) If the firm’s EEA right derives from the alternative investment fund managers directive, the third condition does not apply.”;
  - (c) in sub-paragraph (12A)(a), after “UCITS directive”, insert “or the alternative investment fund managers directive”.
- (12) In paragraph 20 (services)(**81**)—
- (a) in sub-paragraph (1), for “sub-paragraphs (4D) and (4E)”, substitute “sub-paragraphs (4D) to (4F)”;
  - (b) after sub-paragraph (3C), insert—
    - “(3D) If the firm’s EEA right derives from the alternative investment fund managers directive, the appropriate UK regulator must—
      - (a) if the condition in sub-paragraph (3E) is satisfied—
        - (i) within one month of receiving the firm’s notice of intention, send a copy of the firm’s notice of intention to the host state regulator;

(80) Paragraph 19 was amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/3253, S.I. 2011/1613, S.I. 2012/916 and S.I. 2012/1906.

(81) Paragraph 20 was amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2001/1376, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613 and S.I. 2012/1906.



- (ii) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of that directive, with such other information as may be specified; and
  - (iii) immediately notify the firm that it has given the notice and confirmation to the host state regulator; or
- (b) give the firm written notice of its refusal to send a copy of the notice of intention to the host state regulator and its reasons for that refusal.
- (3E) The condition is that the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
  - (a) the provisions implementing the alternative investment fund managers directive, and
  - (b) any directly applicable EU regulation made under that directive.”;
- (c) in sub-paragraph (4A) after “sub-paragraph (3A)(b)” insert “or (3D)(b)”;
- (d) in sub-paragraph (4B), after “any of the insurance directives or from”, insert “the alternative investment fund managers directive,”; and
- (e) after sub-paragraph (4E), insert—
  - “(4F) This paragraph does not apply to—
    - (a) the operator of a UCITS established in the United Kingdom seeking to exercise an EEA right to market the units of that UCITS in the territory of another EEA State; or
    - (b) a UK firm seeking to exercise an EEA right under the alternative investment fund managers directive to market an AIF.”.
- (13) In the heading before paragraph 20B (notice of intention to market)(82), after “market” insert “a UCITS”.
- (14) After paragraph 20B, insert—

*“Notice of intention to market an AIF*

**20C.**—(1) A full-scope UK AIFM may not exercise in the territory of another EEA State an EEA right under the alternative investment fund managers directive to market a UK AIF or EEA AIF managed by it unless two conditions are satisfied.

(2) The first condition is that the full-scope UK AIFM has given the appropriate UK regulator, in the specified way, notice of its intention to market the AIF (“notice of intention”) which contains, and is accompanied by, such information as may be specified.

(3) The appropriate UK regulator must ensure that the notice of intention and any accompanying information may be transmitted to it electronically.

(4) The second condition is that the appropriate UK regulator has sent a copy of the notice of intention to the host state regulator, and has given written notice to the full-scope UK AIFM that it has done so.

(5) Sub-paragraph (6) applies where—

- (a) the appropriate UK regulator is satisfied that the full-scope UK AIFM complies, and will continue to comply, with—
  - (i) the provisions implementing the alternative investment fund managers directive, and

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(82) Paragraph 20B was inserted by [S.I. 2011/1613](#) and amended by paragraph 13 of Schedule 4 to the Financial Services Act 2012.

- (ii) any directly applicable EU regulation made under that directive, and
- (b) if the UK AIF or EEA AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by—
  - (i) a full-scope UK AIFM, or
  - (ii) an AIFM authorised in another EEA State in accordance with Article 6.1 of the alternative investment fund managers directive.
- (6) The appropriate UK regulator must send a copy of the notice of intention to the host state regulator within 20 working days of receiving it.
- (7) When sending a copy of the notice of intention to the host state regulator, the appropriate UK regulator must send with the notice confirmation that the full-scope UK AIFM concerned is authorised to manage AIFs with a particular investment strategy, and a statement of that strategy.
- (8) If the notice of intention relates to an EEA AIF, the appropriate UK regulator must, when it sends a copy of the notice to the host state regulator, also inform the competent authority of the EEA AIF that the full-scope UK AIFM may start marketing the AIF in the EEA States covered by the notice.
- (9) The appropriate UK regulator must notify the full-scope UK AIFM immediately that the copy of the notice of intention has been sent to the host state regulator.
- (10) The full-scope UK AIFM may market the AIF in the territory of the host state regulator from the date it receives the notification referred to in sub-paragraph (9).
- (11) If the appropriate UK regulator refuses to send a copy of the notice of intention to the host state regulator—
  - (a) the appropriate UK regulator must give the AIFM written notice of its refusal and its reasons for that refusal; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (12) In this paragraph—
  - “competent authority” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;
  - “EEA AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;
  - “feeder AIF” has the meaning given in Article 4.1(m) of the alternative investment fund managers directive;
  - “master AIF” has the meaning given in Article 4.1(y) of that directive;
  - “specified” means specified in rules;
  - “UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”.
- (15) After paragraph 28 (management companies: request for information)(**83**) insert—

*“Full-scope UK AIFMs: notification of breach by host state regulator*

**29.** If a host state regulator informs the FCA in accordance with paragraph 5 of Article 45 of the alternative investment fund managers directive that a full-scope UK AIFM has refused to provide the information or to take the steps referred to in that paragraph, the appropriate UK regulator must—

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(83) Paragraph 28 was amended by paragraph 21 of Schedule 4 to the Financial Services Act 2000.

- (a) take steps to ensure that the AIFM provides the information or complies with the rules of which it is in breach;
- (b) request any necessary information from a supervisory authority in a country that is not an EEA State; and
- (c) notify the host state regulator of the steps taken under paragraph (a).”.

**35.** In paragraph 2(2) of Schedule 5 (permission for open-ended investment companies to operate collective investment schemes)**(84)**, after “regulated activity” insert “other than the activity of managing an AIF”.

**36.** In paragraph 2B of Schedule 6 (threshold conditions)**(85)**—

- (a) in sub-paragraph (1), for “or (4)(a)”, substitute “, (4)(a) or (7)”;
- (b) after sub-paragraph (6), insert—

“(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A’s head office and registered office must be in the United Kingdom.”.

## PART 2

### Amendments to other primary legislation

#### Charities Act (Northern Ireland) 1964

**37.** Until its repeal by the Charities Act (Northern Ireland) 2008 comes into force**(86)**, section 25 of the Charities Act (Northern Ireland) 1964**(87)** (common investment schemes), has effect with the insertion after subsection (3) of the following—

“(3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(3B) In this section “appropriate body” means—

- (a) a Scottish recognised body,
- (b) an England and Wales charity, or
- (c) any body of persons or trust that—
  - (i) is established in an EEA state other than the United Kingdom, and
  - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010**(88)**,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A), “charity” includes an appropriate body.

“The relevant provisions” are subsections (1), (4) to (7), (11) and (in relation only to a charity within paragraph (b)) subsection (12).

(3C) In subsection (3B) “Scottish recognised body” means a body—

- (a) established under the law of Scotland, or

**(84)** Schedule 5 was amended by [S.I. 2003/2066](#).

**(85)** Parts 1A to 1G of Schedule 6 were substituted by [S.I. 2013/555](#).

**(86)** [2008 c. 12 \(N.I.\)](#); see section 185 and paragraph 1 of Schedule 9.

**(87)** [1964 c. 33 \(N.I.\)](#).

**(88)** [2010 c. 13](#).

(b) managed or controlled wholly or mainly in or from Scotland,  
to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under Part 10 of the Income Tax Act 2007, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010, in respect of income of the body which is applicable and applied to charitable purposes only.

(3D) In that subsection "England and Wales charity" means an institution—

- (a) which is a charity under the law of England and Wales, and
- (b) to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under Part 10 of the Income Tax Act 2007, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010, in respect of income of the institution which is applicable and applied to charitable purposes only.

(3E) For purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than—

- (a) section 480 (exemption for profits of small-scale trades), and
- (b) section 481 (exemption from charges under provisions to which section 1173 applies),

is qualifying relief under that Part.”.

### **Fair Trading Act 1973**

**38.** In section 118(6A) of the Fair Trading Act 1973(**89**) (trading schemes to which Part 11 applies) after paragraph (e) 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;”.

### **Companies Act 1989**

**39.** In section 176(8) of the Companies Act 1989(**90**) (power to make provision about certain other charges) after 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”.

### **Value Added Tax Act 1994**

**40.** In Part 2 of Schedule 9 (exemptions) to the Value Added Tax Act 1994(**91**), in Group 5 (finance)—

- (a) omit paragraphs (g) and (h) of item 9; and
- (b) in note (6) omit the definition of “recognised collective investment scheme authorised in a designated country or territory”.

**(89)** 1973 c. 41. Section 118(6A) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3384.

**(90)** 1989 c. 40. Section 176(8) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3384.

**(91)** 1994 c. 23. Item 9 and note (6) of Group 5 were substituted by S.I. 2008/2547.

### **Terrorism Act 2000**

**41.** In paragraph 6(1A) of Schedule 6 to the Terrorism Act 2000<sup>(92)</sup> (financial information) after paragraph (e) 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.”.

### **Companies Act 2006**

**42.** In section 1278(1) of the Companies Act 2006<sup>(93)</sup> omit paragraph (f).

### **Charities Act (Northern Ireland) 2008**

**43.** In sections 43(5) (schemes to establish common investment funds) and 44(5) (schemes to establish common deposit funds) of the Charities Act (Northern Ireland) 2008—

- (a) in paragraph (a), omit “or”;
- (b) after paragraph (b), insert—
  - “; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.”.

### **Charities Act 2011**

**44.** In sections 97(3) (bodies which may participate in common investment schemes) and 101(3) (bodies which may participate in common deposit schemes) of the Charities Act 2011<sup>(94)</sup>—

- (a) in paragraph (a), omit “or”;
- (b) after paragraph (b), insert—
  - “; or
  - (c) any body of persons or trust that—
    - (i) is established in an EEA state other than the United Kingdom, and
    - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.”.

## **PART 3**

### **Transitional provisions in respect of recognised overseas schemes**

**45.—(1)** A collective investment scheme which immediately before 22nd July 2013 was recognised by virtue of section 270 of the Act (schemes authorised in designated countries or territories) is to be treated on and after that date as if it were recognised pursuant to an order

<sup>(92)</sup> 2000 c. 11. Paragraph 6(1A) was inserted by S.I. 2001/3649 and amended by S.I. 2006/3384.

<sup>(93)</sup> 2006 c. 46.

<sup>(94)</sup> 2011 c. 25.

under section 272 of the Act (individually recognised overseas schemes), and may be revoked in accordance with the provisions applying to such an order.

(2) Sub-paragraphs (3) to (5) apply in relation to a collective investment scheme which immediately before 22nd July 2013 was recognised by virtue of section 270 of the Act or pursuant to an order under section 272 of the Act.

(3) The operator of the scheme is to be treated for the purposes of section 277A(2)(95) of the Act (regular provision of information relating to compliance with requirements for recognition) as if it had provided information to the FCA pursuant to a direction under section 277A(1) of the Act on 21st July 2013.

(4) If the FCA gives a direction under section 277(5) (alteration of schemes and changes of operator, trustee or depositary) or 277A(1) of the Act pursuant to which requires the operator is required to provide information to the FCA before 22nd July 2014, and the operator has not provided such information before 5th August 2014, the scheme will cease to be recognised on 5th August 2014.

(5) If the operator of the scheme gives written notice of a proposed alteration to the FCA under section 277(1) of the Act after 21st July 2013 but before 22nd July 2014, section 277(2) of the Act applies to that proposal as if the reference in section 277(2)(b) to a period of one month referred to a period of three months.

(6) In this paragraph “the operator” has the meaning given in section 237(2) of the Act (other definitions).

## 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)(96)—

(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;

(95) Section 277A is inserted by paragraph 21 of this Schedule.

(96) 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.

“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)(**97**), 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)(**98**) 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)(**99**)—

(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)(**100**)—

(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(**101**), 36(2)(**102**), 50, 55(2), 63A(**103**), 63E(**104**), 63I and 63M(**105**) (other exclusions), for “and 72A (information society services)” substitute “, 72A (information society services) and 72AA (managers of UCITS and AIFs)”.

(7) In articles 24(**106**), 36(1)(**107**), 39C(**108**) 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)”.

(8) In article 36(3) (other exclusions)(**109**), 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)(**110**), 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—

#### “**Depositories 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—

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(97) Article 4(2) was amended by [S.I. 2009/1389](#).

(98) Article 16 was amended by [S.I. 2006/3384](#).

(99) Articles 9AA, 51A, 52A, 58A and 60A were inserted by [S.I. 2002/1776](#).

(100) Article 12A was inserted by [S.I. 2002/1776](#).

(101) Articles 20 and 50 were amended by [S.I. 2002/1776](#).

(102) 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](#).

(103) Article 63A was inserted by [S.I. 2002/1776](#) and substituted by [S.I. 2003/1475](#).

(104) Articles 63B to 63I were inserted by [S.I. 2006/2383](#).

(105) Articles 63J to 63M were inserted by [S.I. 2009/1342](#).

(106) Article 24 was amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).

(107) Articles 36(1) and 55(1) were amended by [S.I. 2002/1776](#), [S.I. 2003/1475](#) and [S.I. 2003/1476](#).

(108) Article 39C was inserted by [S.I. 2003/1476](#).

(109) Article 36(3) was added by [S.I. 2006/3384](#).

(110) Articles 39 and 44 were amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).

- (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.

(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.

#### **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)(**111**), 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)(**112**), 68(1) and (3)(b)(ii) (activities carried on in connection with the sale of goods or supply of services)(**113**) 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)(**114**), for “51(1)(a)” substitute “51ZA, 51ZC or 51ZE”.

(16) After article 72A (information society services)(**115**), 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.

(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)(**116**) insert—

(111) Article 51A was inserted by S.I. 2002/1776.

(112) Article 64 was amended by S.I. 2002/682, S.I. 2006/3384 and S.I. 2009/1389.

(113) Article 68 was amended by S.I. 2001/3544 and S.I. 2003/1476.

(114) Article 72E was inserted by S.I. 2005/1518 and amended by S.I. 2006/3384 and S.I. 2007/2157.

(115) Article 72A was inserted by S.I. 2002/1776 and amended by 2004/3379.

(116) Schedule 5 was added by S.I. 2013/655.

“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 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(117), 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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(117) 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(**118**) 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”.

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

3. In article 98(8) of the Companies (No. 2) (Northern Ireland) Order 1990(**119**) (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”.

#### **Individual Savings Account Regulations 1998**

4. In regulation 2(1)(b) of the Individual Savings Account Regulations 1998(**120**) (interpretation), in paragraph (b) of the definition of “non-UCITS retail scheme” omit “270 or”.

#### **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(**121**) 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).

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(**118**) [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.

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

(**120**) [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](#).

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

(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).”.

#### **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(**122**) (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)”.

#### **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(**123**) (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);”.

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

8.—(1) The Financial Services and Markets Act 2000 (Exemption) Order 2001(**124**) 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)” 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)”.

(122) S.I. 2001/1062. Paragraph 5(2)(a) was amended by S.I. 2006/3384.

(123) S.I. 2001/1177. Article 3 was amended by S.I. 2003/1476, S.I. 2006/1969 and S.I. 2006/3384.

(124) 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(**125**), 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);”.

### **Open-Ended Investment Companies Regulations 2001**

**10.**—(1) The Open-Ended Investment Companies Regulations 2001(**126**) 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”.

### **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(**127**) are amended as follows.

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

““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;”;

(125) 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.

(126) S.I. 2001/1228. Regulation 15 was amended by S.I. 2003/2066, S.I. 2011/1265 and S.I. 2013/472.

(127) 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.

““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 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.”.

## **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(**128**) are amended as follows.

(128) *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*,



(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>(129)</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.”.

### **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>(130)</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”.

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<sup>(129)</sup> [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](#).

<sup>(129)</sup> OJ L 281 23/11/95, p.31.

<sup>(130)</sup> [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(131) 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
      - (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.

(131) 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.

(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 and 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;
- (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;

“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.”.

## Uncertificated Securities Regulations 2001

**15.** After regulation 9(10)(f) of the Uncertificated Securities Regulations 2001 **(132)** (injunctions and restitution orders) insert—

- “(fa) managing a UCITS;
- (fb) acting as trustee or depository of a UCITS;
- (fc) managing an AIF;

(fd) acting as trustee or depository of an AIF;”.

### **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(**133**) is revoked.

### **Financial Conglomerates and Other Financial Groups Regulations 2004**

**17.**—(1) The Financial Conglomerates and Other Financial Groups Regulations 2004(**134**) 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 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(**135**); 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.”.

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(133) S.I. 2003/1181.

(134) 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.

(135) 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)(**136**), in paragraph (b) of the definition of “non-UCITS retail scheme” omit “270 or”.

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

19. In the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**137**)—

(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 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”.

#### **Offshore Funds (Tax) Regulations 2009**

20. In regulation 74(2) of the Offshore Funds (Tax) Regulations 2009(**138**) (the equivalence condition) omit “, 270”.

#### **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(**139**).

#### **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(**140**) 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;”;

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(136) S.I. 2004/1450. The definition of “non-UCITS retail scheme” was amended by S.I. 2010/582.

(137) S.I. 2005/1529.

(138) S.I. 2009/3001. Regulation 74 was amended by S.I. 2011/1211.

(139) S.I. 2012/2554.

(140) S.I. 2013/419.

- (b) 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.”.
- (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;”;
- (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.”.

### **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(**141**) (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),”.

### **CRC Energy Efficiency Scheme Order 2013**

**24.** In regulation 3 of the CRC Energy Efficiency Scheme Order 2013(**142**) (interpretation), in the definition of “regulated activity” for “51(1)(a)” substitute “51ZA, 51ZC or 51ZE”.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement in part Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers (“AIFMD”), Regulation (EU) No 231/2013 supplementing AIFMD, Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds, and an element of Directive 2011/89/EU of the European Parliament and of the Council amending Directives [98/78/EC](#), [2002/87/EC](#), [2006/48/EC](#) and [2009/138/EC](#) as regards the supplementary supervision of financial entities in a financial conglomerate(**143**). The Financial Conduct Authority (“FCA”) is responsible for implementing other parts of AIFMD. A transposition note setting out how AIFMD and Directive 2011/89/EU will be transposed into UK law will be available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

Part 1 contains introductory provisions, including definitions of expressions used in the Regulations and provisions applying the meaning of expressions used in AIFMD, directly applicable regulations

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(**141**)S.I. 2013/637.

(**142**)S.I. 2013/1119.

(**143**)OJ L 326, 8.12.2011, p.113.



made under AIFMD and the Financial Services and Markets Act 2000 (“FSMA”) to expressions used in the Regulations.

In Part 2, regulation 5 sets out requirements for authorisation to manage alternative investment funds (“AIFs”) of alternative investment fund managers (“AIFMs”) which have their registered office in the United Kingdom and which are subject to the full AIFMD requirements. The requirements in this regulation are in addition to the requirements in Part 4A of FSMA.

Regulations 6 to 8 set out further requirements which apply in respect of AIFMs that have been authorised.

In Part 3, regulation 9 sets out the threshold of assets managed, below which an AIFM is a “small AIFM” for the purposes of the Regulations, and need not comply with the full requirements for authorisation as an AIFM. An AIFM below that threshold may register as a small AIFM if it meets the conditions in regulation 10 (a “small registered UK AIFM”). As a consequence of the provisions at paragraph 1 of Schedule 2, if a small AIFM does not meet those conditions it must apply to the FCA for permission to manage AIFs but the full requirements of AIFMD will not apply to it (this type of AIFM is referred to as a “small authorised AIFM”). A small AIFM may, however, opt to be treated as if it managed assets above the threshold and become fully authorised, with the result that the full requirements of AIFMD apply to it and it is entitled to manage and market AIFs in other EEA states under a passport.

Regulations 10 to 22 set out the procedures and requirements applicable to a small registered AIFM, including procedures applying to a small registered AIFM that manages an AIF that is designated as a ‘EuVECA’ under Regulation (EU) No 345/2013 or a ‘EuSEF’ under Regulation (EU) No 346/2013.

Regulation 23 restricts for a limited period the power of the FCA to make new rules that apply to small authorised AIFMs.

Part 4 implements aspects of AIFMD that apply to AIFMs subject to full AIFM authorisation. This includes provisions to do with external valuers appointed by AIFMs (regulations 24 and 25), provisions to do with the delegation of functions by an AIFM (regulations 26 to 28) and provisions about the liability of depositaries appointed for AIFs managed by AIFMs subject to full authorisation (regulations 29 to 32). The provisions in all of these areas include provision about the retention of liability after appointment or delegation.

Part 5 applies where an AIF managed by an AIFM subject to full authorisation holds a significant proportion of the shares in, or acquires control of, a private company or an issuer of traded securities, and imposes requirements about the provision of information to the company or issuer, shareholders, employees and employees. Regulation 43 contains restrictions on distributions, capital reductions, share redemptions and acquisitions by companies or issuers of their own shares for 2 years after the AIF acquires control. Regulation 44 gives powers to the FCA in relation to the provisions of Part 5.

Part 6 requires approval by the FCA or the giving of notification to the FCA before AIFMs and investment firms may market AIFs in certain circumstances. It also provides for the procedure by which approval may be obtained or notification given, and the consequences of marketing without meeting the requirements.

Part 7 gives the FCA various duties and powers which arise out of AIFMD, relating mainly to the provision of information to the European Securities and Markets Authority and to regulators in other EEA states.

Part 8 extends the application of various provisions in FSMA for the purposes of these Regulations. Regulation 70 applies provisions relating to the making of references to the Upper Tribunal under FSMA to references made under the Regulations, and applies provisions setting out the procedure for warning notices and decision notices given under FSMA to such notices given under the Regulations. Regulation 71 applies various investigatory and enforcement mechanisms in FSMA to persons who are subject to obligations under these Regulations but to whom those mechanisms would not otherwise apply.

Part 9 makes provision for the transition to the new regime for existing AIFMs and the AIFs managed by them, and for depositaries of AIFs.

In Part 10, regulation 79 requires the Treasury to review the operation and effect of these Regulations within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke or amend the Regulations.

Regulation 80 brings into effect the amendments to primary legislation set out in Schedule 1, the majority of which are amendments to FSMA. These include—

- amendments to provisions in FSMA about cross-border activities within the EEA to allow AIFMs subject to full authorisation to manage and market AIFs in other EEA states;
- amendments to provisions in FSMA about the recognition in the United Kingdom of overseas schemes (which results in similar treatment to schemes authorised in the United Kingdom) such that they must be individually recognised and the FCA may require regular information relating to their continued compliance with the requirements for recognition, and transitional provisions about these amendments; and
- amendments to legislation relating to statutory collective investment schemes for charities so that it is possible for such schemes to be marketed in other EEA states.

Regulation 81 brings into effect the amendments to secondary legislation set out in Schedule 2. These include amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, which (together with section 19 of FSMA) ensures that it is not permissible to manage an AIF without being authorised or registered in accordance with AIFMD (paragraph 1), and amendments implementing an element of Directive 2011/89/EU (paragraph 17).

An Impact Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available on HM Treasury's website ([hm-treasury.gov.uk](https://www.hm-treasury.gov.uk)) and is published with the Explanatory Memorandum alongside these Regulations on the [legislation.gov.uk](https://www.legislation.gov.uk) website.