
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Alternative Investment Fund Managers
(Amendment etc.) (EU Exit) Regulations 2018

PART 2

Amendment of secondary legislation

CHAPTER 1

Amendment of the Alternative Investment Fund Managers Regulations 2013

Transitional provisions

14. After regulation 78, insert—

“PART 9A

Temporary Marketing Provisions

Temporary marketing permissions: AIFs etc

78A.—(1) If this regulation applies—

- (a) an AIF, a EuVECA or a EuSEF (a “relevant fund”) may be marketed in the United Kingdom on the same terms and subject to the same conditions as the relevant fund was, or could have been, marketed in the United Kingdom before exit day until the end of the period determined in accordance with regulation 78C;
- (b) an AIFM which is authorised (in accordance with Article 6.1 of the alternative investment fund managers directive) by its home state regulator (“an EEA AIFM”) may continue to market a UK AIF in the United Kingdom on the same terms and subject to the same conditions as it was able to do before exit day until the end of the period determined in accordance with regulation 78C.

(2) This regulation applies in relation to AIFs where—

- (a) an EEA AIFM satisfied the conditions entitling it to market an EEA AIF in the United Kingdom before exit day under regulation 49;
- (b) the entitlement to market that AIF has not been suspended or revoked before exit day;
- (c) the AIFM of the AIF has, before exit day, notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day under paragraph (1); and
- (d) the AIFM is an authorised person, or is authorised or registered as an AIFM in a Member State.

- (3) This regulation applies in relation to EuVECAs where—
- (a) the EuVECA is—
 - (i) registered under Article 14a of the EuVECA Regulation⁽¹⁾ (as it applies in the European Union) in a Member State, or
 - (ii) managed by a small registered UK AIFM or a EuVECA Manager;
 - (b) the FCA has, before exit day, received a notification under Article 16 of the EuVECA Regulation that the United Kingdom has been added to the list of Member States in which the manager intends to market the EuVECA;
 - (c) the AIFM or EuVECA Manager of the EuVECA—
 - (i) has not been subject to any sanctions under Article 18 of the EuVECA Regulation, and
 - (ii) has notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day under paragraph (1).
- (4) This regulation applies in relation to EuSEFs where—
- (a) the EuSEF is—
 - (i) registered under Article 15a of the EuSEF Regulation⁽²⁾ (as it applies in the European Union), or
 - (ii) managed by a small registered UK AIFM or a EuSEF Manager;
 - (b) the FCA has, before exit day, received a notification under Article 17 of the EuSEF Regulation that the United Kingdom has been added to the list of Member States in which the manager intends to market the EuSEF;
 - (c) the AIFM or EuSEF Manager marketing the relevant fund—
 - (i) has not been subject to any sanctions under Article 19 of the EuSEF Regulation, and
 - (ii) has notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day under paragraph (1).
- (5) This regulation applies in relation to EEA AIFMs marketing UK AIFs where the EEA AIFM—
- (a) satisfied the conditions entitling it to market the UK AIF in the United Kingdom before exit day under regulation 49;
 - (b) is authorised or registered as an AIFM in a Member State;
 - (c) has notified the FCA that it wishes to have temporary permission to market the UK AIF in the United Kingdom after exit day under paragraph (1).
- (6) For the purposes of paragraphs (2)(c), (3)(c)(ii), (4)(c)(ii) and (5)(c), the notification must—
- (a) be made in such manner, and during such period, and
 - (b) contain, or be accompanied by, such information,
- as the FCA may direct.
- (7) The power to give a direction under this regulation includes the power—
- (a) to give different directions to different persons or categories of person;

(1) OJ L115, 25.4.2013, p.1.

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

- (b) to vary or revoke a previous direction.

Deemed authorisation

78B.—(1) During the period referred to in regulation 78A(1), an EEA AIFM (as defined by regulation 78A(1)(b)) is to be treated as if it is an authorised person for the purposes of the Act if it satisfies the conditions in paragraph (2).

- (2) An EEA AIFM satisfies the conditions in this paragraph if—
 - (a) immediately before exit day the EEA AIFM—
 - (i) was marketing an EEA AIF or a UK AIF in the United Kingdom in reliance on its rights under Article 32 of the directive; and
 - (ii) was authorised to carry on a regulated activity in the United Kingdom by virtue of section 31(1)(b) or (c) (but not section 31(1)(a)) of the Act; and
 - (b) after exit day, it is permitted to market that EEA AIF under regulation 78A.

Period during which regulation 78A(1) is to apply

78C.—(1) The period referred to in regulation 78A(1) (“the relevant period”) ends—

- (a) after three years beginning with the day on which exit day occurs; or
 - (b) if paragraph (4) applies, the day determined in accordance with paragraph (4).
- (2) Paragraph (4) applies where a person has given written notification under regulation 57(3) (subject to paragraph (3)), 58 or 59—
- (a) during such period, ending no later than the end of the period of two years beginning with the day on which exit day occurs (“the two year period”), as the FCA may direct, or
 - (b) if the FCA does not direct such a period, before the end of the two year period.
- (3) If an AIF was marketed in the United Kingdom by an EEA AIFM before exit day under regulation 57, the AIFM must give notice to the FCA for the purposes of paragraph (2) under regulation 58 or 59.
- (4) Where this paragraph applies, the relevant period ends with the day after the day on which notice is given by the person concerned.
- (5) If the FCA exercises the power to direct a period during which notice may be given, the FCA must direct the same period in relation to all persons to whom the power relates.
- (6) Subject to paragraph (5), the power to give a direction under this regulation includes the power—
- (a) to give different directions to different persons or categories of person;
 - (b) to vary or revoke a previous direction.

FCA powers

78D. The FCA’s powers under regulations 62, 63 and 64 are exercisable in relation to an AIF, EuVECA or EuSEF marketed under regulation 78A as they are in relation to an entitlement to market an AIF following a notification under regulation 57, 58 or 59, but with the modification that references in those regulations—

(3) Regulations 57 to 64 are revoked by [S.I. 2013/1797](#), with effect from a date to be specified by the delegated act adopted by the Commission pursuant to Article 68.6 of directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 on Alternative Investment Fund Managers.

- (a) to a notification under regulation 57, 58 or 59 are to be read as references to notification under regulation 78A;
- (b) to an AIF are to be read as including references to a EuVECA and EuSEF.

Power to extend the period during which a fund may be marketed

78E.—(1) The Treasury may by regulations made by statutory instrument amend regulation 78C(1)(a) to extend the period during which a relevant fund or a UK AIF may be marketed in the United Kingdom under regulation 78A(1) (“the relevant period”), if the Treasury considers it necessary to do so.

(2) The Treasury may only make regulations under paragraph (1) if, no later than six months before the end of the period to be extended, the FCA has submitted to the Treasury an assessment as to the effect of extending, and not extending, the relevant period on—

- (a) persons entitled to market AIFs pursuant to regulation 78A;
- (b) the financial markets; and
- (c) the ability of the FCA to discharge its functions in a way that advances the FCA’s objectives under Part 1A of the Act.

(3) Regulations under paragraph (1) may not extend the relevant period by more than 12 months.

(4) A statutory instrument which contains regulations under paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”.