

*Status: Point in time view as at 18/03/2015.*

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## STATUTORY INSTRUMENTS

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# 2001 No. 544

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

### PART II

#### SPECIFIED ACTIVITIES

##### CHAPTER X

##### <sup>F1</sup>COLLECTIVE INVESTMENT ...

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#### Textual Amendments

- F1** Word in Pt. 2 Ch. 10 heading omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(11)**

#### *The activities*

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

<sup>F2</sup>51. ....

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#### Textual Amendments

- F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

#### <sup>F2</sup>**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).

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#### Textual Amendments

- F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

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## 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).

### Textual Amendments

**F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

## 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.

### Textual Amendments

**F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

## 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—

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- (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) “depository” means—
- (a) a person appointed in compliance with the requirement for the AIFM to appoint a depository 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 “depository” 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 depository of the AIF in accordance with Article 61.5 of the alternative investment fund managers directive.

**Textual Amendments**

**F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

**Establishing etc. a collective investment scheme**

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

**Textual Amendments**

**F2** Arts. 51ZA-51ZG substituted for arts. 51 and cross-heading (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 1(12)**

*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

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- (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.]

F2 ...

### [<sup>F3</sup>[<sup>F4</sup>Other exclusions]

**51A.** [<sup>F5</sup>Articles 51ZA, 51ZB, 51ZC, 51ZD, and 51ZE are also] subject to the [<sup>F6</sup>exclusions] in article 72A (information society services)[<sup>F7</sup>, 72AA (managers of UCITS and AIFs) and 72H (insolvency practitioners)].]

#### Textual Amendments

- F3** Art. 51A and cross-heading inserted (21.8.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2002 \(S.I. 2002/1776\)](#), arts. 1, **3(10)**
- F4** Art. 51A heading substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(19)**
- F5** Words in art. 51A substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, Sch. 2 para. 1(13)
- F6** Word in art. 51A substituted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, Sch. 2 para. 1(4)(b)
- F7** Words in art. 51A substituted (14.2.2014 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2014 \(S.I. 2014/366\)](#), art. 1(3)(4), **2(20)**

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