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## STATUTORY INSTRUMENTS

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# 2013 No. 1773

## The Alternative Investment Fund Managers Regulations 2013

### 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;

<sup>F1</sup> ...

“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) <sup>M1</sup>;

“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 <sup>M2</sup>;

<sup>F2</sup> ...

“depository” means a person appointed in compliance with the requirement for an AIFM to appoint a depository [<sup>F3</sup>in rule 3.11.4 of the Investment Funds sourcebook];

“the directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers <sup>M3</sup>;

[<sup>F4</sup>“EEA AIF” means an AIF which—

- (a) is authorised or registered under the applicable law in an EEA state, or has its registered office or head office in an EEA State; and
- (b) was marketed in the United Kingdom before IP completion day under these Regulations;]

<sup>F5</sup> ...

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[<sup>F6</sup>“EEA ELTIF” means an EEA AIF that is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation by the competent authority of an EU member State;]

<sup>F7</sup>  
...

[<sup>F8</sup>“ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;]

<sup>F9</sup>  
...

[<sup>F10</sup>“EuSEF” means a European social entrepreneurship fund registered under Article 15a of the EuSEF Regulation as that Regulation applies in the European Union;]

“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>M4</sup>[<sup>F11</sup>as amended by Regulation (EU) No 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds];

[<sup>F12</sup>“EuVECA” means a European venture capital fund registered under Article 14a of the EuVECA Regulation as that Regulation applies in the European Union;]

“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>M5</sup>[<sup>F13</sup>as amended by Regulation (EU) No 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds];

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

“external valuer” means a person who performs the valuation function described in [<sup>F14</sup>section 3.9 of the Investment Funds sourcebook] in respect of an AIF managed by a full-scope UK AIFM, and is not the AIFM of that AIF;

[<sup>F15</sup>“FCA” means the Financial Conduct Authority;]

“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;

<sup>F16</sup>  
...

[<sup>F17</sup>“full-scope Gibraltar AIFM” means an AIFM which is authorised to manage AIFs under Part 4 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar which is not a small AIFM within the meaning of regulation 8 of those Regulations;

“Gibraltar AIF” means an AIF which is authorised or registered under the national law in Gibraltar, or has its registered office or head office in Gibraltar;

“Gibraltar AIFM” means a Gibraltar AIFM which is authorised to manage AIFs under Part 4 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar which is exercising an entitlement under the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 to establish a branch or provide services in the United Kingdom;]

“implementing provision” means a requirement that is imposed—

(a) by these Regulations;

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- (b) by the Commission Delegated Regulation;
- (c) [<sup>F18</sup>by any other EU Regulation which was made under the directive before IP completion day, and forms part of retained EU law;]
- (d) by or under the Act, [<sup>F19</sup>if the provision was relied on before IP completion day to implement the directive, or replaces such a provision];

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

[<sup>F20</sup>“issuer” means a company which has its registered office in the United Kingdom and the shares of which are admitted to trading on a UK regulated market, within the meaning of Article 2(1)(13A) of Regulation (EU) 600/2014 on markets in financial instruments;

“leverage” means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;]

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

[<sup>F21</sup>“non-listed company” means a company which has its registered office in the United Kingdom and the shares of which are not admitted to trading on a UK regulated market within the meaning of Article 2(1)(13A) of Regulation (EU) 600/2014 on markets in financial instruments;]

[<sup>F22</sup>“MMF” for the purposes of these Regulations means an AIF that is authorised as a money market fund under Article 5 of the MMF Regulation;]

[<sup>F22</sup>“MMF Regulation” means Regulation 2017/1131 of the European Parliament and of the Council of 14th June 2017 on Money Market Funds;]

[<sup>F23</sup>“professional investor” means an investor who is considered to be a professional client within the meaning of Article 2(1)(8) of Regulation (EU) 600/2014 on markets in financial instruments;]

“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;

[<sup>F24</sup>“RVECA Manager” means the manager of a venture capital fund that is registered in accordance with Article 14 of the EuVECA Regulation;]

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 <sup>M6</sup>;

<sup>F25</sup>  
...

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

[<sup>F26</sup>“RVECA” means a venture capital fund which is registered by the FCA in accordance with Article 14a of the EuVECA Regulation;

“SEF” means a social entrepreneurship fund which is registered by the FCA in accordance with Article 15a of the EuSEF Regulation;

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

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

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

- (a) is a small AIFM;

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- (b) has a Part 4A permission to carry on the regulated activity of managing an AIF; and
- (c) has not exercised the option <sup>F27</sup>... to meet the full requirements [<sup>F28</sup>applying to a full-scope UK AIFM];

<sup>F29</sup> ...

“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 [<sup>F30</sup>the United Kingdom];

“third country AIF” means an AIF which is [<sup>F31</sup>neither a Gibraltar AIF] nor a UK AIF;

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

[<sup>F32</sup>“third country AIF custodian” has the meaning given in regulation 57(5)(a)]

“UK AIF” means an AIF which—

- (a) is an authorised AIF; or
- (b) is not authorised or registered in [<sup>F33</sup>the United Kingdom], 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;

[<sup>F34</sup>“UK LTIF” means an AIF which is authorised by the FCA as a long-term investment fund under Article 6 of the ELTIF Regulation;]

[<sup>F35</sup>“UK UCITS” has the meaning given in section 237(3) of the Act;]

“working day” has the meaning given in section 191G(2) of the Act (interpretation of Part 12) <sup>M7</sup>.

(2) Unless otherwise defined—

<sup>F36</sup>(a) .....

- (b) any expression used in these Regulations which is used in a <sup>F37</sup>... EU regulation made under the directive [<sup>F38</sup>which forms part of retained EU law] 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.

<sup>F39</sup>(3A) .....

[<sup>F40</sup>(5) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made and guidance issued by the FCA under the Financial Services and Markets Act 2000 as it has effect on IP completion day.

(6) Any reference in these Regulations to any EU Regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it has effect on the day on which the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 are made.]

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## Textual Amendments

- F1** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(c)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(d)** (as amended by S.I. 2019/325, reg. 58, S.I. 2020/1301, regs. 1, 3, **Sch. para. 19(a)(i)(aa)**); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(e)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(f)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(g)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in reg. 2(1) inserted (3.12.2015) by The European Long-term Investment Funds Regulations 2015 (S.I. 2015/1882), regs. 1, **4(2)**
- F9** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(h)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in reg. 2 inserted (1.3.2018) by The Alternative Investment Fund Managers (Amendment) Regulations 2018 (S.I. 2018/134), regs. 1(2), **2(2)(a)**
- F12** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(j)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in reg. 2 inserted (1.3.2018) by The Alternative Investment Fund Managers (Amendment) Regulations 2018 (S.I. 2018/134), regs. 1(2), **2(2)(b)**
- F14** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(k)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(l)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(m)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(n)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F18** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(o)(i)** (as amended by S.I. 2019/325, reg. 58, S.I. 2020/1301, regs. 1, 3, **Sch. para. 19(a)(i)(bb)**); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(o)(ii)** (as amended by S.I. 2019/325, reg. 58, S.I. 2020/1301, regs. 1, 3, **Sch. para. 19(a)(i)(cc)**); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(p)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(q)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F22** Words in reg. 2(1) inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by The Money Market Funds Regulations 2018 (S.I. 2018/698), regs. 1(2), **4(2)**
- F23** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(r)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F24** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(s)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F25** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(t)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(u)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(v)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(v)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F29** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(w)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(x)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(y)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(z)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(aa)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in reg. 2(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(bb)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F35** Words in reg. 2(1) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(1)(cc)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F36** Reg. 2(2)(a) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(2)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in reg. 2(2)(b) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(2)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in reg. 2(2)(b) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(2)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Reg. 2(3A) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F40** Reg. 2(5)(6) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(4)** (as amended by S.I. 2019/325, reg. 58, S.I. 2020/1301, regs. 1, 3, **Sch. para. 19(a)(ii)**); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M1** In section 237(3) the definition of “authorised contractual scheme” was inserted by S.I. 2013/1388.
- M2** OJ L 83, 22.3.2013, p.1.
- M3** OJ L 174, 1.7.2011, p.1.
- M4** OJ L 115, 25.4.2013, p.18.
- M5** OJ L 115, 25.4.2013, p.1.
- M6** S.I. 2001/544.
- M7** Section 191G was substituted by S.I. 2009/534 and amended by section 26 of the Financial Services Act 2012.

#### Meaning of “AIF”

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

- (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

[<sup>F41</sup>(b) is not a UK UCITS;]

(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>M8</sup>;

[<sup>F42</sup>(aa) an occupational pension scheme, within the meaning of section 1(1) (categories of pension schemes) of the Pension Schemes Act 1993;]

- (b) a holding company;
- (c) an employee participation scheme or employee savings scheme;
- (d) a securitisation special purpose entity.

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#### Textual Amendments

- F41** Reg. 3(1)(b) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(5)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F42** Reg. 3(3)(aa) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **3(5)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M8** OJ L 235, 23.9.2003, p.10.

### 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>M9</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;

[<sup>F43</sup>(aa) an occupational pension scheme, within the meaning of section 1(1) of the Pension Schemes Act 1993, including its trustees and managers;]

- (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.



#### **Textual Amendments**

**F43** Reg. 4(4)(aa) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **3(6)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### **Marginal Citations**

**M9** 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 [<sup>F44</sup>rule 11.2.1 and section 11.3 of the Interim Prudential sourcebook for Investment Businesses]; 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;

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- [<sup>F45</sup>(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 the following provisions, so far as they apply to an AIFM—
    - (i) the Financial Services and Markets Act 2000;
    - (ii) these Regulations;
    - (iii) rules made by the FCA;
    - (iv) Commission Delegated Regulation;]
  - (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 <sup>F46</sup>... 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(c) 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.

**Textual Amendments**

**F44** Words in reg. 5(3)(c) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F45** Reg. 5(8)(c) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(1)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F46** Words in reg. 5(8)(e) omitted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(1)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**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, <sup>F47</sup>...
- <sup>F48</sup>(b) .....

about the non-compliance.

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

**Changes to legislation:** *The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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 <sup>F49</sup>; and]

(b) require the AIFM to stop marketing the AIF; <sup>F50</sup> ...

<sup>F51</sup>(c) .....

(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) <sup>M10</sup> to impose the requirements mentioned in paragraphs (2) and (3), but this paragraph does not limit the powers of the FCA.

#### Textual Amendments

**F47** Word in reg. 6(1)(a) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **4(2)(a)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F48** Reg. 6(1)(b) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **4(2)(a)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F49** Word in reg. 6(3)(a) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **4(2)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F50** Word in reg. 6(3)(b) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **4(2)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F51** Reg. 6(3)(c) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **4(2)(b)(iii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

**M10** Sections 55A to 55Z4 were substituted by section 11(2) of the Financial Services Act 2012.

### 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 [<sup>F52</sup>rule 15.3.26 of the Supervision sourcebook].

(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.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Textual Amendments

- F52** Words in [reg. 7\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **4(3)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Notification to ESMA

<sup>F53</sup>8. ....

#### Textual Amendments

- F53** [Reg. 8](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **4(4)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## PART 3

### Small AIFMs

#### Modifications etc. (not altering text)

- C1** [Pt. 3](#) modified (31.12.2020) by [The Social Entrepreneurship Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/343\)](#), regs. 1(1), **11(2)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### 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 [<sup>F54</sup>SEF Manager] or a [<sup>F55</sup>RVECA Manager] may be both a small registered UK AIFM and a small authorised UK AIFM.

### Textual Amendments

- F54** Words in reg. 9(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **5(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in reg. 9(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **5(1)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### 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>M11</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>M12</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

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 [<sup>F56</sup>SEF Manager] or a [<sup>F57</sup>RVECA 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
  - (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 <sup>M13</sup> of the Regulated Activities Order (shares etc.) through which the AIF holds land.

#### Textual Amendments

- F56** Words in [reg. 10\(4\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\)](#), **5(1)(a)** (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)
- F57** Words in [reg. 10\(4\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\)](#), **5(1)(b)** (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

#### Modifications etc. (not altering text)

- C2** [Reg. 10\(4\)](#) modified (31.12.2020) by [The Social Entrepreneurship Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/343\)](#), [regs. 1\(1\)](#), **11(2)(a)** (with savings in [S.I. 2019/680](#), [reg. 11](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

#### Marginal Citations

- M11** [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 \(c. 39\)](#).

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**M12** Section 22 was amended by section 7 of the Financial Services Act 2012.

**M13** Article 76 was amended by [S.I. 2011/2687](#).

## 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.

[<sup>F58</sup>(5) This regulation does not apply in relation to an application for registration as a [<sup>F59</sup>SEF Manager] or a [<sup>F60</sup>RVECA Manager]].

### Textual Amendments

**F58** Reg. 11(5) inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(3)**

**F59** Words in reg. 11(5) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(1)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F60** Words in reg. 11(5) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(1)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## 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.

[<sup>F61</sup>(1A) Paragraph (1) does not apply in relation to an application for registration as a [<sup>F62</sup>SEF Manager] or a [<sup>F63</sup>RVECA Manager] (in respect of which see Article 15(4) of the EuSEF Regulation or Article 14(4) of the EuVECA Regulation).]

(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.

### Textual Amendments

**F61** Reg. 12(1A) inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(4)**

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F62** Words in reg. 12(1A) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F63** Words in reg. 12(1A) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(1)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Procedure when refusing an application**

13.—(1) If the FCA proposes to refuse an application made under regulation 11(1) [<sup>F64</sup>, Article 15 [<sup>F65</sup> or 15a] of the EuSEF Regulation or Article 14 [<sup>F66</sup> or 14a] of the EuVECA Regulation] 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.

[<sup>F67</sup>(3) If the FCA has not determined an application made under Article 15 or 15a of the EuSEF Regulation or Article 14 or 14a of the EuVECA Regulation before the end of the period of two months starting with the date on which the applicant has provided all the information required by the FCA in connection with the application—

- (a) the FCA is to be treated as having refused the application, and
- (b) the applicant may refer the matter to the Tribunal.]

**Textual Amendments**

- F64** Words in reg. 13(1) inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(5)(a)**
- F65** Words in reg. 13(1) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(2)(a)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F66** Words in reg. 13(1) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(2)(a)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F67** Reg. 13(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(2)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Notification of new funds under the EuSEF Regulation or the EuVECA Regulation**

<sup>F68</sup>14. ....

**Textual Amendments**

- F68** Reg. 14 omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)



**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### 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)<sup>F69</sup>..., 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.

#### Textual Amendments

**F69** Words in reg. 15(1) omitted (1.3.2018) by virtue of [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(6)**

### 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<sup>F70</sup>....

#### Textual Amendments

**F70** Words in reg. 16(2)(b) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(4)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### 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 [<sup>F71</sup>Article 15] of the EuSEF Regulation or [<sup>F72</sup>Article 14] 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)[<sup>F73</sup>(a) or (b)];
- (b) the AIFM has contravened an implementing provision<sup>F74</sup>... that applies to it;
- (c) the AIFM applies for or consents to the revocation of its registration;

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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.

#### Textual Amendments

- F71** Words in reg. 17(1) substituted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(7)(a)**
- F72** Words in reg. 17(1) substituted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(7)(b)**
- F73** Words in reg. 17(1)(a) inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(7)(c)**
- F74** Words in reg. 17(1)(b) omitted (1.3.2018) by virtue of [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(7)(d)**

#### 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) [<sup>F75</sup>, or under Article 22 of the EuSEF Regulation or Article 21 of the EuVECA Regulation], 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 [<sup>F76</sup>such grounds or under such an Article]—

- (a) the FCA must give the AIFM a decision notice, and
- (b) the AIFM may refer the matter to the Tribunal.

#### Textual Amendments

- F75** Words in reg. 18(1) inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(8)(a)**
- F76** Words in reg. 18(2) substituted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(8)(b)**

#### 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.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(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 [<sup>F77</sup>SEF and RVECA 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.

<sup>F78</sup>(2) .....

(3) An AIFM must comply with any direction given to it by the FCA under paragraph (1) <sup>F79</sup>....

[<sup>F80</sup>(4) Sections 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to an AIFM under paragraph (1) or (2) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA).]

#### **Textual Amendments**

**F77** Words in [reg. 22](#) heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(5)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F78** [Reg. 22\(2\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(5)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F79** Words in [reg. 22\(3\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **5(5)(c)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F80** [Reg. 22\(4\)](#) substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), **arts. 1(2), 4(3)** (as amended by S.I. 2014/1313, **arts. 1, 2(a)**)

### **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.

## [<sup>F81</sup>PART 3A

### [<sup>F82</sup>LTIFs]

#### Textual Amendments

- F81** Pt. 3A inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **4(3)**
- F82** Word in Pt. 3A heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(1)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Manner of application for [<sup>F83</sup>UK LTIF] authorisation

**23A.—**(1) An application for authorisation as a [<sup>F84</sup>UK LTIF] under Article 5 of the ELTIF Regulation 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 paragraph (1)(b) or paragraph (2) of this regulation in such form, or to verify it in such manner, as the FCA may specify.

#### Textual Amendments

- F83** Words in reg. 23A heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F84** Words in reg. 23A(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Procedure in relation to the refusal of an application for [F85UK LTIF] authorisation

**23B.**—(1) If the FCA proposes to refuse an application made by a UK AIF for authorisation as a [F86UK LTIF] under Article 5 of the ELTIF Regulation 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.

#### Textual Amendments

- F85** Words in [reg. 23B](#) heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F86** Words in [reg. 23B\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### Procedure in relation to the revocation of [F87UK LTIF] authorisation otherwise than by consent

**23C.**—(1) If the FCA proposes to revoke the authorisation of a [F88UK LTIF], the FCA must give separate warning notices to the AIFM and the depositary of the [F89UK LTIF] .

- (2) If the FCA decides to revoke the authorisation of a [F90UK LTIF],—
- (a) the FCA must give each of the AIFM and the depositary a decision notice; and
  - (b) either of them may refer the matter to the Tribunal.]

#### Textual Amendments

- F87** Words in [reg. 23C](#) heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F88** Words in [reg. 23C\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F89** Words in [reg. 23C\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F90** Words in [reg. 23C\(2\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## [<sup>F91</sup>PART 3B

### Qualifying social entrepreneurship funds and qualifying venture capital funds

#### Textual Amendments

**F91** Pt. 3B inserted (1.3.2018) by [The Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(S.I. 2018/134\)](#), regs. 1(2), **2(9)**

#### Modifications etc. (not altering text)

**C3** Pt. 3B modified (31.12.2020) by [The Social Entrepreneurship Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/343\)](#), regs. 1(1), **11(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

#### Manner of application for registration of a qualifying social entrepreneurship fund or qualifying venture capital fund

**23D.**—(1) An application for registration of a qualifying social entrepreneurship fund under Article 15a of the EuSEF Regulation, or of a qualifying venture capital fund under Article 14a of the EuVECA Regulation, must—

- (a) be made in such a 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 paragraph (1)(b) or paragraph (2) of this regulation in such form, or to verify it in such manner, as the FCA may specify.

#### Procedure in relation to the refusal of an application for registration of a qualifying social entrepreneurship fund or qualifying venture capital fund

**23E.**—(1) If the FCA proposes to refuse an application made by a UK AIFM for registration of a qualifying social entrepreneurship fund under Article 15a of the EuSEF Regulation, or of a qualifying venture capital fund under Article 14a of the EuVECA Regulation, 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.

#### Procedure in relation to the revocation of registration of a qualifying social entrepreneurship fund or qualifying venture capital fund otherwise than by consent

**23F.**—(1) If the FCA proposes to revoke the registration of a qualifying social entrepreneurship fund or a qualifying venture capital fund otherwise than by consent, the FCA must give separate

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warning notices to the AIFM and the depositary of the qualifying social entrepreneurship fund or qualifying venture capital fund.

(2) If the FCA decides to revoke the registration of a qualifying social entrepreneurship fund or a qualifying venture capital fund otherwise than by consent—

- (a) the FCA must give each of the AIFM and the depositary a decision notice; and
- (b) either of them may refer the matter to the Tribunal.]

## [<sup>F92</sup>PART 3C

### MMFs

#### Textual Amendments

**F92** Pt. 3C inserted (28.6.2018 for specified purposes, 21.7.2018 in so far as not already in force) by [The Money Market Funds Regulations 2018 \(S.I. 2018/698\)](#), regs. 1(2), 4(3)

#### Manner of application for MMF authorisation

**23G.**—(1) An application for an AIF to be authorised as an MMF under Article 5 of the MMF Regulation must—

- (a) be made in such a 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 application.

(4) The FCA may require an applicant to provide information which it is required to give under paragraph (1)(b) or paragraph (2) in such form, or to verify it in such manner, as the FCA may specify.

#### Procedure in relation to the refusal of an application for MMF authorisation

**23H.**—(1) If the FCA proposes to refuse an application made in respect of an AIF for authorisation as an MMF under Article 5 of the MMF Regulation, 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.

#### Procedure in relation to the revocation of MMF authorisation otherwise than by consent

**23I.**—(1) If the FCA proposes to revoke the authorisation of an MMF otherwise than by consent, the FCA must give separate warning notices to the AIFM and the depositary of the MMF.

- (2) If the FCA decides to revoke the authorisation of an MMF otherwise than by consent—
  - (a) the FCA must give each of the AIFM and the depositary a decision notice; and
  - (b) either of them may refer the matter to the Tribunal.]



## 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 [F93 section 3.9 of the Investment Funds sourcebook] 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.

#### Textual Amendments

**F93** Words in [reg. 24\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 7\(1\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

#### 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—

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- (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 <sup>F94</sup> ...

- 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.

#### Textual Amendments

**F94** Words in [reg. 28](#) heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 7\(2\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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### 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 [<sup>F95</sup>a Gibraltar 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 [<sup>F96</sup>the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 by a designated system (within the meaning of regulation 2(1) of those Regulations)], or the provision of similar services by a third-country securities settlement system, is not to be considered a delegation of custody functions.

#### Textual Amendments

**F95** Words in reg. 29(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **8(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F96** Words in reg. 29(3) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **8(1)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### 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 [<sup>F97</sup>rule 3.11.21 of the Investment Funds sourcebook] 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 [<sup>F98</sup>rule 3.11.28 of the Investment Funds sourcebook];
- (c) a written contract between the depository and the third party—
  - (i) expressly transfers the obligation in paragraph (2) to the third party; and
  - (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 depository to make such a claim on their behalf; and
- (d) a written contract between the depository and the AIF, or the AIFM acting on behalf of the AIF, expressly allows a transfer of the depository'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

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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 [F99 rule 3.11.28 of the Investment Funds sourcebook];
- (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 [F100 rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook].

[F101(7) Paragraphs (4) and (5) do not apply to a depositary of F102... a [F103UK LTIF] that is marketed to retail investors under Chapter V of the ELTIF Regulation.]

#### Textual Amendments

- F97** Words in [reg. 30\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(2\)\(a\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F98** Words in [reg. 30\(4\)\(b\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(2\)\(b\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F99** Words in [reg. 30\(5\)\(b\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(2\)\(c\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F100** Words in [reg. 30\(6\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 8\(2\)\(d\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F101** [Reg. 30\(7\)](#) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), [regs. 1, 4\(4\)](#)
- F102** Words in [reg. 30\(7\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 6\(4\)\(a\)](#), [8\(2\)\(e\)\(i\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)
- F103** Words in [reg. 30\(7\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 6\(4\)\(b\)](#), [8\(2\)\(e\)\(ii\)](#) (as amended by [S.I. 2019/325, reg. 58](#)); 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C4** [Reg. 30](#) excluded (31.12.2020) by [Regulation \(EU\) 760/2015, Art. 29\(2\)](#) (as amended by [The Long-term Investment Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/336\)](#), [regs. 1\(3\), 34\(3\)](#) (with savings in [S.I. 2019/680, reg. 11](#)); 2020 c. 1, Sch. 5 para. 1(1))

## Depository liability for other losses

**31.**—(1) If an AIF, or investors of an AIF, have suffered losses other than the loss by the depository or a third party to which custody has been delegated or sub-delegated of financial instruments held in custody in accordance with [<sup>F104</sup>rule 3.11.21 of the Investment Funds sourcebook], the depository is liable to the AIF, or investors of the AIF, if the losses are a result of the depository'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 depository to the AIF, or to investors of the AIF, under paragraph (1) is not affected by any delegation by the depository of the functions referred to in [<sup>F105</sup>rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook].

### Textual Amendments

**F104** Words in reg. 31(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(3)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F105** Words in reg. 31(2) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(3)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## Depository 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 [<sup>F106</sup>rule 3.11.28(4)(b) of the Investment Funds sourcebook].

(2) The depository 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 depository to delegate the custody of the financial instruments to a local entity;
- (d) a written contract between the depository 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 depository and the local entity expressly transfers the obligation of the depository 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 depository to make such a claim on their behalf.

[<sup>F107</sup>(3) This regulation does not apply to a depository of <sup>F108</sup>... a [<sup>F109</sup>UK LTIF] that is marketed to retail investors under Chapter V of the ELTIF Regulation.]

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#### Textual Amendments

- F106** Words in [reg. 32\(1\)\(b\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(4)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F107** [Reg. 32\(3\)](#) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **4(5)**
- F108** Words in [reg. 32\(3\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(4)(a)**, 8(4)(b)(i) (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F109** Words in [reg. 32\(3\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **6(4)(b)**, 8(4)(b)(ii) (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C5** [Reg. 32](#) excluded (31.12.2020) by [Regulation \(EU\) 760/2015](#), Art. 29(2) (as amended by [The Long-term Investment Funds \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/336\)](#), regs. 1(3), **34(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1))

### Management of third country AIFs

**33.** A full-scope UK AIFM may manage a third country AIF that is not marketed in <sup>F110</sup>the United Kingdom or Gibraltar] 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 <sup>F111</sup>the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of retained EU law].

#### Textual Amendments

- F110** Words in [reg. 33](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(5)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F111** Words in [reg. 33](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **8(5)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## 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>M14</sup>; or
- (b) a special purpose vehicle with the purpose of purchasing, holding or administering real estate.

### Marginal Citations

**M14** OJ L 124, 20.5.2003, p. 36.

## 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
- <sup>F112</sup>(b) for an issuer, holding the percentage of voting rights that confers control in the United Kingdom, calculated in accordance with rules made by the Panel on Takeovers and Mergers under the Companies Act 2006.]

(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.

### Textual Amendments

**F112** Reg. 36(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **9(1)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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## 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<sup>F113</sup>... 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>M15</sup> (breach of statutory duty), or
- (b) regulation 25 of the Information and Consultation of Employees Regulations (Northern Ireland) 2005<sup>M16</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.

### Textual Amendments

**F113** Words in [reg. 37\(1\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 9\(2\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

### Marginal Citations

**M15** [S.I. 2004/3426](#).

**M16** [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



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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—

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- (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 [<sup>F114</sup>rules 3.3.2 to 3.3.8 of the Investment Funds sourcebook], the information in paragraph (3) relating to the non-listed company.

[<sup>F115</sup>(2) The duty in paragraph (1) does not arise if—

- (a) the non-listed company has its registered office in the United Kingdom and is required to draw up an annual report under the law applicable in the United Kingdom; and
  - (b) the AIFM ensures that—
    - (i) the annual report of the non-listed company contains the information in paragraph (3); and
    - (ii) 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

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(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 <sup>F116</sup> ... <sup>M17</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.

#### Textual Amendments

**F114** Words in [reg. 42\(1\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 9\(3\)\(a\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

**F115** [Reg. 42\(2\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 9\(3\)\(b\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

**F116** Words in [reg. 42\(4\)](#) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 9\(3\)\(c\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)

#### Marginal Citations

**M17** For companies registered under the [Companies Act 2006 \(c. 46\)](#), provisions about annual reports are contained in Part 15 of that Act.

### 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 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

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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 [F117]section 659(2)(b) or (c) of the Companies Act 2006, or an acquisition permitted by Chapter 4 of Part 18 of that Act].

(5) In this regulation—

[F118:“law” means the law of the United Kingdom, or of any part of the United Kingdom]

[F119 ...

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

#### Textual Amendments

**F117** Words in reg. 43(4)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **9(4)(a)** (as amended by S.I. 2019/325, reg. 58 and S.I. 2019/1212, regs. 1(3), 16); 2020 c. 1, Sch. 5 para. 1(1)

**F118** Word in reg. 43(5) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **9(4)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F119** Words in reg. 43(5) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **9(4)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### 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
  - (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 <sup>F120</sup>the United Kingdom or Gibraltar], 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 <sup>F120</sup>the United Kingdom or Gibraltar] at the initiative of, or on behalf of, the AIFM of that AIF.

#### Textual Amendments

**F120** Words in reg. 45 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(1)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### 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.

**Status:** Point in time view as at 31/12/2020.

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## 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 [<sup>F121</sup>'SEF' or 'RVECA']

48. Regulations 49 to 51 do not apply to the marketing of an AIF under the designation [<sup>F122</sup>'SEF'] or [<sup>F123</sup>'RVECA'].

### Textual Amendments

- F121** Words in reg. 48 heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F122** Word in reg. 48 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(3)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F123** Word in reg. 48 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(3)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## Marketing by full-scope [<sup>F124</sup>Gibraltar] AIFMs of certain AIFs

49.—[<sup>F125</sup>(1)] A full-scope [<sup>F126</sup>Gibraltar] 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 <sup>F127</sup>...; 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.

[<sup>F128</sup>(2) References in this regulation to Schedule 3 to the Act are to that Schedule as it applies in relation to Gibraltar AIFMs and Gibraltar AIFs.]

### Textual Amendments

- F124** Word in reg. 49 heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F125** Reg. 49 renumbered as reg. 49(1) (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F126** Word in reg. 49(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(c)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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- F127** Words in reg. 49(1)(a) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(c)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F128** Reg. 49(2) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(d)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### 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 [F129]Gibraltar] 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.

#### Textual Amendments

- F129** Word in reg. 50 Table substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(5)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### 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—

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- (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.
  - [<sup>F130</sup>(c) by an AIFM that is not an authorised person in contravention of a provision of the ELTIF 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.

#### Textual Amendments

**F130** Reg. 52(1)(c) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **4(6)**

#### 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.
  - [<sup>F131</sup>(c) by an authorised person that is a full-scope UK AIFM in contravention of a provision of the ELTIF 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.



### Textual Amendments

**F131** Reg. 53(1)(c) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **4(7)**

## 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 [<sup>F132</sup>Gibraltar] 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 [<sup>F133</sup>referred to in paragraph 14(1)(b) of Schedule 3 to the Act as that paragraph applies in relation to Gibraltar]<sup>F134</sup> ...
- (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 [<sup>F135</sup>Gibraltar] 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 <sup>M18</sup>, 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
  - <sup>F136</sup>(b) where the AIF concerned is a Gibraltar AIF, the Financial Services Commission of Gibraltar.]
- (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.

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- (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.

#### Textual Amendments

- F132** Word in reg. 54(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(a)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F133** Words in reg. 54(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(a)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F134** Words in reg. 54(1)(b) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(a)(iii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F135** Word in reg. 54(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F136** Reg. 54(5)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(c)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M18** [S.I. 2001/1228](#).

### 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

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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 <sup>F137</sup>Gibraltar AIFM]**

**56.** If the FCA has approved marketing by a full-scope <sup>F137</sup>Gibraltar 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.

#### **Textual Amendments**

**F137** Words in reg. 56 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(7)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## CHAPTER 3

### National Private Placement

#### **<sup>F138</sup>Marketing of third country AIFs managed by full-scope UK AIFMs]**

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

- (a) a third country AIF, or
- (b) a UK AIF or <sup>F139</sup>a Gibraltar 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 <sup>F140</sup>Gibraltar 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 <sup>F141</sup>the Financial Services and Markets Act 2000, these Regulations, any EU tertiary legislation made under the directive which forms part of retained EU law and rules made by the FCA];
- (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 <sup>F142</sup>the Financial Services Commission of Gibraltar (in the case of a Gibraltar AIFM)], and the supervisory authorities of the relevant third country, in order to ensure an efficient exchange of information that enables the FCA <sup>F143</sup>or the Financial Services Commission of Gibraltar] to carry out its duties in accordance with <sup>F144</sup>these Regulations

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or the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar];

(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 [<sup>F145</sup>section 3.11 of the Investment Funds sourcebook, and regulations 29 to 32 of these Regulations], provided that the AIFM—

(a) ensures that one or more entities, other than the AIFM, are appointed to carry out the duties mentioned in [<sup>F146</sup>rules 3.11.4(2), 3.11.20, 3.11.21, 3.11.23 and 3.11.25 of the Investment Funds sourcebook (a “third country AIF 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.

#### Textual Amendments

**F138** Reg. 57 heading substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F139** Words in reg. 57(1)(b) substituted (31.12.2020) by virtue of The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F140** Words in reg. 57(2)(b) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(c)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F141** Words in reg. 57(4)(a) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(d)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F142** Words in reg. 57(4)(b) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(d)(ii)(aa)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F143** Words in reg. 57(4)(b) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(d)(ii)(bb)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F144** Words in reg. 57(4)(b) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(d)(ii)(cc)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F145** Words in reg. 57(5) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(e)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F146** Words in reg. 57(5)(a) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **10(8)(e)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### 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—

*Changes to legislation: The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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 <sup>[F147]</sup> of AIFs managed by other third country AIFMs]**

**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) <sup>[F148]</sup>Subject to paragraph (4A),] 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 <sup>[F149]</sup>sections 3.2, 3.3 and 3.4 of the Investment Funds sourcebook] 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, <sup>[F150]</sup>the Financial Services Commission of Gibraltar], 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 <sup>[F151]</sup>to carry out its duties in accordance with the Financial Services and Markets Act 2000, these Regulations, any EU tertiary legislation made under the directive which forms part of retained EU law and rules made by the FCA];

- (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) <sup>[F152]</sup>Subject to paragraph (4A),] 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).

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(4) <sup>F153</sup>Subject to paragraph (4A),] 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.

<sup>F154</sup>(4A) Paragraphs (2)(a) to (c), (3) and (4) do not apply to any collective investment scheme which has been declared to be a recognised scheme under section 272 of the Act.]

#### Textual Amendments

- F147** Words in reg. 59 heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F148** Words in reg. 59(2) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(b)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F149** Words in reg. 59(2)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(b)(ii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F150** Words in reg. 59(2)(d)(i) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(b)(iii)(aa)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F151** Words in reg. 59(2)(d) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(b)(iii)(bb)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F152** Words in reg. 59(3) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(c)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F153** Words in reg. 59(4) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(d)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F154** Reg. 59(4A) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(9)(e)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### 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 [<sup>F155</sup>third country AIF custodian] of that AIF, has contravened an implementing provision which applies to it;
- (b) the AIFM, or the [<sup>F155</sup>third country AIF 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 [<sup>F155</sup>third country AIF 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 [<sup>F155</sup>third country AIF custodian] of that AIF; and
- (b) the AIFM or the [<sup>F155</sup>third country AIF custodian] may refer the matter to the Tribunal.

### Textual Amendments

**F155** Words in reg. 62 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(1)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## 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 [<sup>F156</sup>third country AIF custodian] of that AIF, has contravened, or is likely to contravene, an implementing provision that applies to it;
- (b) the AIFM, or the [<sup>F156</sup>third country AIF 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.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F156** Words in [reg. 63](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), [regs. 1\(3\), 11\(1\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

### 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 <sup>F157</sup>third country AIF custodian] of that AIF; and
- (b) the AIFM or the <sup>F157</sup>third country AIF 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 <sup>F157</sup>third country AIF custodian]; and
- (b) the AIFM or the <sup>F157</sup>third country AIF 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,



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(b) to revoke a suspension,

it must give separate written notice to the AIFM and (if applicable) the [F157third country AIF 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.

**Textual Amendments**

**F157** Words in reg. 64 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(1)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## 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 <sup>F158</sup>... EU regulation made under the directive [<sup>F159</sup>which forms part of retained EU law], in the EuSEF Regulation and in the EuVECA Regulation in the United Kingdom.

**Textual Amendments**

**F158** Words in reg. 65 omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(2)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F159** Words in reg. 65 inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(2)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F160</sup>**66.** .....

**Textual Amendments**

**F160** Reg. 66 omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(3)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Use of information by FCA <sup>F161</sup>...

**67.—(1)** The FCA must use the information it gathers under [<sup>F162</sup>rules 3.4.2 to 3.4.6C of the Investment Funds sourcebook and Articles 110 and 111 of the Commission Delegated Regulation] 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;

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- (b) the risks of disorderly markets; or
- (c) the risks to the long-term growth of the economy.

- F163(2) .....
- F163(3) .....
- F163(4) .....

**Textual Amendments**

**F161** Words in reg. 67 heading omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(4)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F162** Words in reg. 67(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(4)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F163** Reg. 67(2)-(4) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(4)(c)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**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.

- F164(3) .....
- F164(4) .....
- F164(5) .....
- F164(6) .....

(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.

**Textual Amendments**

**F164** Reg. 68(3)-(6) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(5)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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

<sup>F165</sup>69. ....

### Textual Amendments

**F165** Reg. 69 omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **11(6)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## [<sup>F166</sup>PART 7A

### Transfer of functions

### Textual Amendments

**F166** Pt. 7A inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **12** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### Transfer of the directive functions

**69A.**—(1) The Treasury may make regulations by statutory instrument for the purposes specified in Part 1 of Schedule A1 to these Regulations.

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

(3) The FCA may make rules for purposes specified in Part 2 of Schedule A1 to these Regulations.

(4) Rules made under paragraph (3) are to be treated for the purposes of the Act as if they were made under section 137A of the Act.

(5) The FCA may make technical standards for the purposes specified in Part 3 of Schedule A1 to these Regulations.]

## 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—

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) section 165 <sup>M19</sup> (regulators' power to require information: authorised persons etc.);
- (b) section 166 <sup>M20</sup> (reports by skilled persons);
- (c) section 167 <sup>M21</sup> (appointment of persons to carry out general investigations);
- (d) section 176(3) (entry of premises under warrant);
- (e) section 205 <sup>M22</sup> (public censure);
- (f) section 206 <sup>M23</sup> (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 <sup>M24</sup> (investigations etc. in support of overseas regulator);
- (b) section 170 <sup>M25</sup> (investigations: general);
- (c) section 171 <sup>M26</sup> (powers of persons appointed under section 167);
- (d) section 174 <sup>M27</sup> (admissibility of statements made to investigators);
- (e) section 175 <sup>M28</sup> (information and documents: supplemental provisions);
- (f) section 176 <sup>M29</sup> (entry of premises under warrant);
- (g) section 176A <sup>M30</sup> (retention of documents taken under section 176);
- (h) section 177 <sup>M31</sup> (offences).

(3) Sections 207 to 211 of, and paragraph 20 of Schedule 1ZA to, the Act <sup>M32</sup> 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 [<sup>F167</sup>Gibraltar AIFM];
- (c) a full-scope [<sup>F168</sup>Gibraltar 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; <sup>F169</sup>...
- (f) a full-scope [<sup>F170</sup>Gibraltar AIFM] that is exercising a right to market an AIF arising out of the EuSEF Regulation or the EuVECA Regulation [<sup>F171</sup>; or
- (g) an AIFM to which regulation 75 (closed-ended AIFs whose subscription period has closed) applies]

#### Textual Amendments

**F167** Words in reg. 71(5)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), regs. 1(3), **13** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F168** Words in reg. 71(5)(c) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **13** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F169** Word in reg. 71(5)(e) omitted (16.6.2014) by virtue of [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. **1(2)**, 4(4)(a) (as amended by S.I. 2014/1313, arts. **1**, 2(a))
- F170** Words in reg. 71(5)(f) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **13** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F171** Reg. 71(5)(g) and preceding word added (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), arts. **1(2)**, 4(4)(b) (as amended by S.I. 2014/1313, arts. **1**, 2(a))

### Marginal Citations

- M19** 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.
- M20** Section 66 was substituted by paragraph 5 of Schedule 12 to the Financial Services Act 2012.
- M21** Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 and by [S.I. 2007/126](#).
- M22** Section 205 was amended by paragraphs 1 and 11 of Schedule 9 to the Financial Services Act 2012.
- M23** 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.
- M24** Section 169 was amended by paragraph 9 of Schedule 12 to the Financial Services Act 2012.
- M25** Section 170 was amended by paragraph 10 of Schedule 12 to the Financial Services Act 2012.
- M26** Section 171 was amended by [S.I. 2007/126](#).
- M27** Section 174 was amended by paragraph 12 of Schedule 12 to the Financial Services Act 2012.
- M28** Section 175 was amended by paragraph 13 of Schedule 12 to the Financial Services Act 2012.
- M29** 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](#).
- M30** Section 176A was inserted by paragraph 15 of Schedule 12 to the Financial Services Act 2012.
- M31** Section 177 was amended by paragraph 8 of Schedule 8 to the Financial Services Act 2012 and [S.I. 2001/1090](#).
- M32** 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.

## 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,

*Status: Point in time view as at 31/12/2020.*

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before 22nd July 2014.

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

(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 [<sup>F172</sup>or the Alternative Investment Fund Managers Order 2014] 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.

[<sup>F173</sup>(6A) Paragraphs (6B) and (6C) apply where a UK AIFM falling within paragraph (1) submits an application in accordance with paragraph (3)(a) or (b), but on 22nd July 2014—

- (a) where the application was submitted in accordance with paragraph (3)(a), the AIFM does not have a Part 4A permission to carry on the regulated activity of managing an AIF;
- (b) where the application was submitted in accordance with paragraph (3)(b), the AIFM is not a small registered UK AIFM;
- (c) the AIFM has not received a decision notice from the FCA or the PRA refusing the application; and
- (d) the AIFM has not withdrawn the application in accordance with section 55V(4) of the Act (determination of applications).

(6B) During the additional transitional period—

- (a) sections 19(1) (the general prohibition) and 20(1) and (1A) of the Act (authorised persons acting without permission) do not apply to the AIFM in respect of the activities to which the application relates, in so far as those activities are specified in article 51ZC of the Regulated Activities Order;
- (b) notwithstanding paragraph (5), Part 6 of these Regulations does not apply to the AIFM in respect of the AIFs to which the application relates;
- (c) all other implementing provisions apply in respect of the AIFM—
  - (i) where the application was submitted in accordance with paragraph (3)(a), as if the appropriate regulator (within the meaning of section 55V(1) of the Act (determination of applications)) had given the AIFM written notice on 22nd July 2014 granting its application with immediate effect;
  - (ii) where the application was submitted in accordance with paragraph (3)(b), as if the AIFM had been entered on the register of small registered UK AIFMs on 22nd July 2014; and
- (d) if the AIFM is not an authorised person and is not an unauthorised AIFM (as defined in regulation 71(5)), the AIFM is to be treated as an unauthorised AIFM for the purposes of paragraphs (1) to (4) of regulation 71 (application of provisions of the Act to unauthorised AIFMs).

(6C) In paragraph (6B) “the additional transitional period” means the period starting on 22nd July 2014 and ending—

- (a) where the application was submitted in accordance with paragraph (3)(a), on the date on which a Part 4A permission for the AIFM to carry on the regulated activity of managing an AIF has effect;
- (b) where the application was submitted in accordance with paragraph (3)(b), on the date on which the AIFM becomes a small registered UK AIFM;

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- (c) on the date on which the FCA or the PRA gives the AIFM a decision notice refusing the application; or
  - (d) on the date on which the AIFM withdraws the application.]
- (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.

#### Textual Amendments

**F172** Words in reg. 72(6) inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\), 4\(5\)\(a\)](#) (as amended by [S.I. 2014/1313](#), [arts. 1, 2\(a\)](#))

**F173** Reg. 72(6A)-(6C) inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\), 4\(5\)\(b\)](#) (as amended by [S.I. 2014/1313](#), [arts. 1, 2\(a\)](#))

#### 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>M33</sup>.

#### Marginal Citations

**M33** OJ L 345, 31.12.2003, p.64.

#### 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) [<sup>F174</sup>Notwithstanding regulation 72(3), 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.

**Status:** Point in time view as at 31/12/2020.

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<sup>F175</sup>(4) If the AIFM is given a Part 4A permission to carry on the regulated activity of managing an AIF, article 72AA of the Regulated Activities Order (managers of UCITS and AIFs) does not apply in respect of the AIFM's management of the AIF referred to in paragraph (1).

(5) If, at the same time that the AIFM is given a Part 4A permission to manage an AIF, the AIFM's Part 4A permission is also varied by the removal from the regulated activities to which that permission relates of regulated activities that the AIFM carries on in connection with or for the purposes of managing the AIF referred to in paragraph (1), the AIFM is to be treated as if the AIFM's Part 4A permission had not been varied by such removal at such time.

(6) If, immediately before 22nd July 2013, the AIFM had a Part 4A permission to carry on an activity of the kind specified by article 51 of the Regulated Activities Order (establishing, operating or winding up a collective investment scheme) as that article applied at that date, from the relevant date (as defined in regulation 72(7)) that permission is to be treated as if it were a Part 4A permission to carry on an activity of the kind specified by article 51ZE of the Regulated Activities Order.]

#### Textual Amendments

**F174** Words in reg. 74(2) substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(6)(a) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

**F175** Reg. 74(4)-(6) substituted for reg. 74(4) (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(6)(b) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

#### 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—

- (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) <sup>F176</sup>Notwithstanding regulation 72(3), 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.

<sup>F177</sup>(2A) If the AIFM is given a variation of its Part 4A permission to add the regulated activity of managing an AIF, article 72AA of the Regulated Activities Order (managers of UCITS and AIFs) does not apply in respect of the AIFM's management of the AIF referred to in paragraph (1).

(2B) If at the same time that the AIFM is given a Part 4A permission to manage an AIF, the AIFM's Part 4A permission is also varied by the removal from the regulated activities to which that permission relates of regulated activities that the AIFM carries on in connection with or for the purposes of managing the AIF referred to in paragraph (1), the AIFM is to be treated as if the AIFM's Part 4A permission had not been varied by such removal at such time.

(2C) If, immediately before 22nd July 2013, the AIFM had a Part 4A permission to carry on an activity of the kind specified by article 51 of the Regulated Activities Order (establishing, operating or winding up a collective investment scheme) as that article applied at that date, from the relevant date (as defined in regulation 72(7)) that permission is to be treated as if it were a Part 4A permission to carry on an activity of the kind specified by article 51ZE of the Regulated Activities Order.]

<sup>F178</sup>(3) Subject to paragraph (4), the AIFM need not comply with the implementing provisions in respect of that AIF.]

- (4) From 22nd July 2014, the AIFM must comply with—



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- (a) provisions in Part 5 of these Regulations, and
- (b) implementing provisions relating to Article 22 of the directive (annual report)

[<sup>F179</sup>with which it would be required to comply] in respect of that AIF but for the preceding paragraphs of this regulation.

[<sup>F180</sup>(5) The AIFM must give the FCA such information in respect of its compliance with paragraph (4) as the FCA may direct.

(6) The AIFM must give information required under paragraph (5) at such times and in such manner, and verify that information in such manner, as the FCA may direct.

(7) The AIFM must take such steps as are necessary to ensure compliance with paragraph (4) as the FCA may direct.

(8) Sections 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to an AIFM under paragraph (7) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA).]

#### Textual Amendments

**F176** Words in reg. 75(2) substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(7)(a) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

**F177** Reg. 75(2A)-(2C) inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(7)(b) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

**F178** Reg. 75(3) substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(7)(c) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

**F179** Words in reg. 75(4) substituted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(7)(d) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

**F180** Reg. 75(5)-(8) added (16.6.2014) by [The Alternative Investment Fund Managers Order 2014 \(S.I. 2014/1292\)](#), [arts. 1\(2\)](#), 4(7)(e) (as amended by [S.I. 2014/1313](#), [arts. 1](#), 2(a))

#### 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) <sup>M34</sup>;

“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 <sup>M35</sup>;

“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) <sup>M36</sup> 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

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(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 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>M37</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.

#### Marginal Citations

**M34** Article 51ZD is substituted by paragraph 1(12) of Schedule 2 to these Regulations.

**M35** 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.

**M36** Section 20(1) was amended, and subsection (1A) was inserted, by paragraph 2 of Schedule 9 to the Financial Services Act 2012.

**M37** Article 42A is inserted by paragraph 1(10) of Schedule 2 to these Regulations.

#### 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 [<sup>F181</sup>capital requirements 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.

#### Textual Amendments

**F181** Words in reg. 77(1)(a) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), [Sch. 2 para. 80](#)

## 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;
- (g) the regulated activity of acting as a depositary 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 depositary 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 [<sup>F182</sup>or the Alternative Investment Fund Managers Order 2014] 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.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(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.

#### Textual Amendments

**F182** Words in reg. 78(3) inserted (16.6.2014) by [The Alternative Investment Fund Managers Order 2014](#) (S.I. 2014/1292), **arts. 1(2), 4(8)** (as amended by S.I. 2014/1313, **arts. 1, 2(a)**)

## [<sup>F183</sup>PART 9A

### Temporary Marketing Provisions

#### Textual Amendments

**F183** Pt. 9A inserted (20.2.2019) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), **regs. 1(2), 14** (as amended by S.I. 2019/325, **reg. 58**)

#### 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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion day] under regulation 49;
- (b) the entitlement to market that AIF has not been suspended or revoked before [<sup>F184</sup>IP completion day];
- (c) the AIFM of the AIF has, before [<sup>F184</sup>IP completion day], notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after [<sup>F184</sup>IP completion 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 (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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion 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 (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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion 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 [<sup>F184</sup>IP completion 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;
  - (b) to vary or revoke a previous direction.

#### Textual Amendments

**F184** Words in [reg. 78A](#) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), [regs. 1, 3\(a\)](#)

**Status:** Point in time view as at 31/12/2020.

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## 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 [<sup>F185</sup>IP completion 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 [<sup>F185</sup>IP completion day], it is permitted to market that EEA AIF under regulation 78A.

### Textual Amendments

**F185** Words in [reg. 78B](#) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **3(b)**

## 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 [<sup>F186</sup>IP completion 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 (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 [<sup>F186</sup>IP completion 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 [<sup>F186</sup>IP completion 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.

### Textual Amendments

**F186** Words in [reg. 78C](#) substituted (31.1.2020 immediately before exit day) by [The Financial Services \(Consequential Amendments\) Regulations 2020 \(S.I. 2020/56\)](#), regs. 1, **3(c)**

## **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—

- (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.]

# **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.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(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 [<sup>F187</sup>on which regulation 3 of and Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013 come into force].

(3) In paragraph 11 of Schedule 8 to the Regulated Activities Order (persons excluded from regulated activity of managing an AIF) <sup>M38</sup>, at the end insert “, that is registered in the United Kingdom in accordance with [<sup>F188</sup>Part 3 of these Regulations] ”.

#### Textual Amendments

**F187** Words in [reg. 81\(2\)\(b\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), [regs. 1\(3\)](#), [15\(1\)\(a\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

**F188** Words in [reg. 81\(3\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), [regs. 1\(3\)](#), [15\(1\)\(b\)](#) (as amended by [S.I. 2019/325](#), [reg. 58](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Marginal Citations

**M38** Paragraph 11 is inserted by paragraph 1(17) of Schedule 2 to these Regulations.

*Robert Goodwill*  
*Desmond Swayne*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

The Alternative Investment Fund Managers Regulations 2013 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.