
STATUTORY INSTRUMENTS

2013 No. 1773

The Alternative Investment Fund Managers Regulations 2013

PART 2

Authorisation of full-scope UK AIFMs

Applications for Part 4A permission

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

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

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

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

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

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

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

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

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

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

- (a) information on the persons effectively conducting the business of the applicant;
- (b) information on the identities of the applicant's shareholders or members, whether direct or indirect, that have qualifying holdings and on the amount of those holdings;

Status: Point in time view as at 03/12/2015.

Changes to legislation: The Alternative Investment Fund Managers Regulations 2013, PART 2 is up to date with all changes known to be in force on or before 21 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)

- (c) a programme of activity setting out the organisational structure of the applicant, including information on how the applicant intends to comply with its obligations under implementing provisions relating to Chapter 2 (authorisation of AIFMs), Chapter 3 (operating conditions for AIFMs), and Chapter 4 (transparency requirements) of the directive and, where applicable, Chapter 5 (AIFMs managing specific types of AIF), Chapter 6 (rights of EEA AIFM to market and manage EEA AIFs in EEA States), Chapter 7 (specific rules in relation to third countries) and Chapter 8 (marketing to retail investors) of the directive;
 - (d) information on the remuneration policies and practices of the applicant that have been or will be adopted pursuant to implementation provisions relating to Article 13 of the directive;
 - (e) information about the investment strategies, including the types of underlying funds if the AIF is a fund of funds, and the applicant's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs the applicant manages or intends to manage, including information about the EEA States or third countries in which AIFs are established or are expected to be established; and
 - (f) information on where the master AIF is established if an AIF that the applicant manages or intends to manage is a feeder AIF.
- (9) Paragraph (10) applies if—
- (a) any of the information required under implementing provisions relating to Articles 7.2(e) and 7.3(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.

Supplementary provisions about AIFMs

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

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

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

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

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

(4) The FCA may use its powers under section 55J and 55L of the Act (variation or cancellation on initiative of regulator and imposition of requirement by the FCA)^{M1} to impose the requirements mentioned in paragraphs (2) and (3), but this paragraph does not limit the powers of the FCA.

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Marginal Citations

M1 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 implementing provisions relating to Article 10.1 of the directive.

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

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

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

Notification to ESMA

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

Status:

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