
STATUTORY INSTRUMENTS

2013 No. 1773

The Alternative Investment Fund Managers Regulations 2013

PART 6

Marketing of AIFs

CHAPTER 1

General Provisions

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

45. For the purposes of this Part—

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

Application of the financial promotion and scheme promotion restrictions

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

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

Marketing at the initiative of the investor

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

Marketing under the designation ‘EuSEF’ or ‘EuVECA’

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

Status: Point in time view as at 22/07/2013.

Changes to legislation: The Alternative Investment Fund Managers Regulations 2013, CHAPTER 1 is up to date with all changes known to be in force on or before 15 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)

Marketing by full-scope EEA AIFMs of certain AIFs

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

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

Marketing by AIFMs of other AIFs

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

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

Marketing of AIFs by investment firms

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

Contravention by unauthorised person

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

- (a) by an AIFM or an investment firm that is not an authorised person in contravention of regulation 49, 50 or 51; or

(b) by an AIFM that is not an authorised person in contravention of a provision of the EuSEF Regulation or the EuVECA Regulation.

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

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

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

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

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

Contravention by authorised person

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

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

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

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

Status:

Point in time view as at 22/07/2013.

Changes to legislation:

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