

## STATUTORY INSTRUMENTS

# 2013 No. 1773

## The Alternative Investment Fund Managers Regulations 2013

### [<sup>F1</sup>PART 6 U.K.]

#### Marketing of AIFs

##### Textual Amendments

- F1** Regulations revoked (14.12.2023 for the revocation of reg. 79) by [Financial Services and Markets Act 2023 \(c. 29\)](#), s. 86(3), [Sch. 1 Pt. 2](#) (with s. 1(4)); S.I. 2023/1382, reg. 2(c)(vi)

### CHAPTER 1 U.K.

#### General Provisions

#### References in this Part to an AIFM or an investment firm marketing an AIF U.K.

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>F2</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>F2</sup>the United Kingdom or Gibraltar] at the initiative of, or on behalf of, the AIFM of that AIF.

##### Textual Amendments

- F2** 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 U.K.

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;

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- (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 **U.K.**

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>F3</sup>'SEF' or 'RVECA'] **U.K.**

48. Regulations 49 to 51 do not apply to the marketing of an AIF under the designation [<sup>F4</sup>'SEF'] or [<sup>F5</sup>'RVECA'].

##### Textual Amendments

- F3** 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)
- F4** 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)
- F5** 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>F6</sup>Gibraltar] AIFMs of certain AIFs **U.K.**

49.—[<sup>F7</sup>(1)] A full-scope [<sup>F8</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>F9</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>F10</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

- F6** 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)
- F7** 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)

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- F8** 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)
- F9** 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)
- F10** 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 **U.K.**

**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 [FII 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

- F11** 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 **U.K.**

**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.

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**Contravention by unauthorised person** **U.K.**

**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.

<sup>F12</sup>(c) .....

(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**

**F12** Reg. 52(1)(c) omitted (1.1.2024) by virtue of [The Financial Services and Markets Act 2023 \(Consequential Amendments\) Regulations 2023 \(S.I. 2023/1410\)](#), regs. 1(2), **9(6)**

**Contravention by authorised person** **U.K.**

**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>F13</sup>(c) .....

(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

- F13** Reg. 53(1)(c) omitted (1.1.2024) by virtue of The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 (S.I. 2023/1410), regs. 1(2), 9(7)

## CHAPTER 2 **U.K.**

### Marketing of AIFs by full-scope AIFMs

#### FCA approval for marketing **U.K.**

- 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>F14</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>F15</sup>referred to in paragraph 14(1)(b) of Schedule 3 to the Act as that paragraph applies in relation to Gibraltar]<sup>F16</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>F17</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>M1</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>F18</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.
- (7) If the FCA decides to refuse the application—

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- (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

- F14** 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)
- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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

- M1** S.I. 2001/1228.

### Change to information provided with application **U.K.**

**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 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>F19</sup>Gibraltar AIFM] U.K.**

**56.** If the FCA has approved marketing by a full-scope [<sup>F19</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**

**F19** 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 U.K.**

### **National Private Placement**

## **[<sup>F20</sup>Marketing of third country AIFs managed by full-scope UK AIFMs] U.K.**

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

- (a) a third country AIF, or
- (b) a UK AIF or [<sup>F21</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).

[<sup>F22</sup>(1A) An AIF does not fall within paragraph (1) if it is recognised under section 271A of the Act.]

(2) An AIFM falls within this paragraph if it is—

- (a) a full-scope UK AIFM; or
- (b) a full-scope [<sup>F23</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>F24</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>F25</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>F26</sup>or the Financial Services Commission of Gibraltar] to carry out its duties in accordance with [<sup>F27</sup>these Regulations or the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar];

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- (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>F28</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>F29</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

- F20** 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)
- F21** 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)
- F22** Reg. 57(1A) inserted (23.2.2022) by [Financial Services Act 2021 \(c. 22\)](#), s. 49(5), **Sch. 9 para. 10**; [S.I. 2022/163](#), reg. 2(a)
- F23** 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)
- F24** 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)
- F25** 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)
- F26** 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)
- F27** 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)
- F28** 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)
- F29** 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 **U.K.**

**58.**—(1) A small third country AIFM must give written notification to the FCA before marketing an AIF managed by it [<sup>F30</sup>, except where the AIF is recognised under section 271A of the Act].

(2) The notification must include a statement confirming that the following conditions are met—



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- (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.

#### Textual Amendments

**F30** Words in [reg. 58\(1\)](#) inserted (23.2.2022) by [Financial Services Act 2021 \(c. 22\), s. 49\(5\), Sch. 9 para. 11](#); [S.I. 2022/163, reg. 2\(a\)](#)

#### Marketing [<sup>F31</sup>of AIFs managed by other third country AIFMs] **U.K.**

**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 [<sup>F32</sup>, except where the AIF is recognised under section 271A of the Act ].

(2) [<sup>F33</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>F34</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>F35</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>F36</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.

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(3) [<sup>F37</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).

(4) [<sup>F38</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>F39</sup>(4A) Paragraphs (2)(a) to (c), (3) and (4) do not apply to any [<sup>F40</sup>AIF ] which has been declared to be a recognised scheme under section 272 of the Act.]

#### Textual Amendments

- F31** 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\(1\)](#)
- F32** Words in [reg. 59\(1\)](#) inserted (23.2.2022) by [Financial Services Act 2021 \(c. 22\)](#), [s. 49\(5\)](#), [Sch. 9 para. 12\(a\)](#); [S.I. 2022/163](#), [reg. 2\(a\)](#)
- F33** 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\(1\)](#)
- F34** 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\(1\)](#)
- F35** 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\(1\)](#)
- F36** 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\(1\)](#)
- F37** 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\(1\)](#)
- F38** 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\(1\)](#)
- F39** [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\(1\)](#)
- F40** Word in [reg. 59\(4A\)](#) substituted (23.2.2022) by [Financial Services Act 2021 \(c. 22\)](#), [s. 49\(5\)](#), [Sch. 9 para. 12\(b\)](#); [S.I. 2022/163](#), [reg. 2\(a\)](#)

#### Manner and content of notifications **U.K.**

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 **U.K.**

**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 **U.K.**

**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>[F41]</sup>third country AIF custodian] of that AIF, has contravened an implementing provision which applies to it;
- (b) the AIFM, or the <sup>[F41]</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>[F41]</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>[F41]</sup>third country AIF custodian] of that AIF; and
- (b) the AIFM or the <sup>[F41]</sup>third country AIF custodian] may refer the matter to the Tribunal.

#### Textual Amendments

**F41** 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 **U.K.**

**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—

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- (a) the AIFM, or the [<sup>F42</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>F42</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.

#### Textual Amendments

**F42** 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 **U.K.**

- 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>F43</sup>third country AIF custodian] of that AIF; and
  - (b) the AIFM or the [<sup>F43</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—

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- (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>F43</sup>third country AIF custodian]; and
  - (b) the AIFM or the [<sup>F43</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,
  - (b) to revoke a suspension,
- it must give separate written notice to the AIFM and (if applicable) the [<sup>F43</sup>third 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.]

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**Textual Amendments**

**F43** 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)

### **Changes to legislation:**

The Alternative Investment Fund Managers Regulations 2013, PART 6 is up to date with all changes known to be in force on or before 26 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.

[View outstanding changes](#)

### **Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(1)(c) words inserted by [S.I. 2013/1797 Sch. 1 para. 2\(2\)\(c\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(a\)\(ii\)](#) without ever being in force)
- reg. 2(4) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(3\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 5A amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(5\)](#) by [S.I. 2019/328 reg. 20\(3\)\(b\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 5A inserted by [S.I. 2013/1797 Sch. 1 para. 2\(5\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 88A amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(6\)](#) by [S.I. 2019/328 reg. 20\(3\)\(c\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 88A substituted for reg. 8 by [S.I. 2013/1797 Sch. 1 para. 2\(6\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(c\)](#) without ever being in force)
- reg. 29(1)(b) substituted by [S.I. 2013/1797 Sch. 2 para. 3\(3\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 49(c) and word inserted by [S.I. 2013/1797 Sch. 1 para. 2\(10\)\(d\)](#) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of [S.I. 2019/328, reg. 20\(3\)\(e\)](#) without ever being in force)
- reg. 49(c) omitted by [S.I. 2013/1797 Sch. 2 para. 3\(5\)\(c\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 54(9) amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(12\)\(b\)](#) by [S.I. 2019/328 reg. 20\(3\)\(h\)](#) (This S.I. is amended by [S.I. 2019/325, reg. 58](#); This amendment not applied to legislation.gov.uk. The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 54(9)(10) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(12\)\(b\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)

- reg. 56-56C substituted for reg. 56 by [S.I. 2013/1797 Sch. 2 para. 3\(7\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 59(5) amendment to earlier affecting provision [S.I. 2013/1797 Sch. 1 para. 2\(15\)\(b\)](#) by [S.I. 2019/328 reg. 20\(3\)\(i\)\(ii\)](#) (This S.I. is amended by [S.I. 2019/325](#), reg. 58; This amendment not applied to [legislation.gov.uk](#). The original amendments by [S.I. 2013/1797](#) are prospective)
- reg. 59(5)(6) inserted by [S.I. 2013/1797 Sch. 1 para. 2\(15\)\(b\)](#) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)