

[^{F1}SCHEDULE A1

Regulation 69A

Transfer of Functions to the Treasury and the FCA

Textual Amendments

- F1** Sch. A1 inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **15(2)** (as amended by S.I. 2019/325, reg. 58 and The Financial Services and Economic and Monetary Policy (Consequential Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1301), regs. 1, 3, **Sch. para. 19(b)**); 2020 c. 1, Sch. 5 para. 1(1)

PART 1

Directive functions transferred to the Treasury

1. The purposes set out in paragraphs 2 to 25 are specified for the purposes of Regulation 69A(1).
- 2.—(1) To specify how the thresholds referred to in regulation 9(1) are to be calculated and the treatment of AIFMs which manage AIFs whose assets under management, including any assets acquired through the use of leverage, occasionally exceed or fall below the relevant threshold in the same calendar year.
 - (2) To specify further the obligations of small AIFMs to register (including by amending regulations 10 and 11) and to provide information in order to allow effective monitoring of systemic risk.
3. To specify—
 - (a) the methods of leverage, including any financial or legal structures involving third parties controlled by the relevant AIF; and
 - (b) how leverage is to be calculated.
4. To specify—
 - (a) the risks the additional own funds or the professional indemnity insurance held by internally managed AIFs and external AIFMs must cover;
 - (b) the conditions for determining the appropriateness of additional own funds or the coverage of the professional indemnity insurance; and
 - (c) the manner of determining ongoing adjustments of the additional own funds or of the coverage of the professional indemnity insurance.
5. To specify the criteria to be used by the FCA in assessing whether AIFMs comply with their obligations under rules made by the FCA which were before IP completion day relied on to implement Article 12 of the directive.
6. To specify—
 - (a) the types of conflicts of interest referred to in rule 10.1.23 of the Senior Management, Systems and Controls sourcebook;
 - (b) the reasonable steps AIFMs are expected to take in terms of structures and organisational and administrative procedures in order to identify, prevent, manage, monitor and disclose conflicts of interest.
7. To specify—

Status: Point in time view as at 31/12/2020.

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- (a) the risk management systems to be employed by AIFMs in relation to the risks which they incur on behalf of the AIFs that they manage;
 - (b) the appropriate frequency of review of the risk management systems;
 - (c) how the risk management function is to be functionally and hierarchically separated from the operating units, including the portfolio management function;
 - (d) specific safeguards against conflicts of interest that allow for independent performance of risk management activities;
 - (e) the following requirements—
 - (i) to implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;
 - (ii) to ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;
 - (iii) to ensure that the risk profile of the AIF corresponds to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.
- 8.** To specify—
- (a) the liquidity management systems to be employed and the procedures to be adopted by AIFMs for each AIF that they manage which is not an unleveraged close-ended AIF;
 - (b) the alignment required for the investment strategy, liquidity profile and redemption policy for each AIF managed by an AIFM.
- 9.** To specify the administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms which AIFMs are required to have.
- 10.** To specify—
- (a) the criteria concerning the procedures for the proper valuation of the assets of an AIF and the calculation of the net asset value per unit or share;
 - (b) the professional guarantees the external valuer must be able to provide to perform the valuation function effectively;
 - (c) the frequency of valuation to be carried out by an open-ended AIF which is both appropriate to the assets held by the AIF and its issuance and redemption policy.
- 11.** To specify—
- (a) the conditions for fulfilling the following requirements—
 - (i) that the AIFM must be able to justify its entire delegation structure on objective reasons;
 - (ii) that the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
 - (iii) where the delegation concerns portfolio management or risk management, that it is conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision in the countries in which they are established;

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- (iv) where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, that cooperation between the FCA and the supervisory authority of the undertaking is ensured;
- (v) that the delegation does not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;
- (vi) that the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors;
- (vii) that no delegation of portfolio management or risk management is conferred on—
 - (aa) the depositary or a delegate of the depositary; or
 - (bb) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF;
- (viii) that the third party does not sub-delegate any of the functions delegated to it unless the following conditions are met—
 - (aa) the AIFM consented prior to the sub-delegation;
 - (bb) the AIFM notified the FCA before the sub-delegation arrangements become effective;
 - (cc) the sub-delegation and the sub-delegate satisfy the conditions imposed in paragraphs (i) to (vi) imposed on delegations and delegates;
- (ix) that no sub-delegation of portfolio management or risk management is conferred on—
 - (aa) the depositary or a delegate of the depositary; or
 - (bb) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF;
- (b) the conditions under which the AIFM is deemed to have delegated its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the AIF.

12. To specify—

- (a) the particulars that need to be included in the written contract referred to in rule 3.11.19 of the Investment Funds sourcebook;
- (b) general criteria for assessing whether the prudential regulation and supervision of third countries have the same effect as the law of the United Kingdom and are effectively enforced;
- (c) the conditions for performing the depositary functions pursuant to rules 3.11.20, 3.11.21, 3.11.23 and 3.11.25 of the Investment Funds sourcebook, including—

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- (i) the type of financial instruments to be included in the scope of the depositary's custody duties in accordance with rule 3.11.21 of the Investment Funds sourcebook;
 - (ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central depositary;
 - (iii) the conditions subject to which the depositary is to safe-keep the financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with rule 3.11.23 of the Investment Funds sourcebook;
- (d) the duties of a depositary to exercise all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and to keep exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;
 - (e) the obligation for the third party to segregate the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
 - (f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered as lost;
 - (g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary pursuant to regulation 30(3);
 - (h) the conditions subject to which and circumstances in which there is an objective reason to contract a discharge of the depositary's liabilities pursuant to regulation 30(4).

13. To state, on the basis of the criteria specified under paragraph 12(b), that the prudential regulation and supervision of a third country have the same effect as the law of the United Kingdom and are effectively enforced.

14. To specify the content and format of the AIFM's annual report, taking account of the types of AIF which the report will cover.

15.—(1) To specify the obligations of AIFMs periodically to disclose to investors, for each of the AIFs they manage, and for each of the AIFs they market in the United Kingdom—

- (a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the AIF;
- (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(2) To specify the obligations of AIFMs managing AIFs employing leverage, or marketing in the United Kingdom AIFs employing leverage, to disclose on a regular basis (and the frequency with which that disclosure must be made)—

- (a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
- (b) the total amount of leverage employed by that AIF.

16. To specify—

- (a) when leverage is to be considered to be substantial, for the purposes of rule 3.4.5 of the Investment Funds sourcebook;

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- (b) the obligations to report and provide information set out in section 3.4 of the Investment Funds sourcebook.

17. To set out principles specifying the circumstances in which the FCA applies the measures provided for in regulation 68, taking into account different strategies of AIFs, different market conditions in which AIFs operate and possible pro-cyclical effects of applying those provisions.

18.—(1) To specify—

- (a) the form and content of a model for the statement to be given by the FCA to the supervisory authorities of any country referred to in sub-paragraph (2) confirming that the AIFM is authorised to manage AIFs with a particular investment strategy;
- (b) the form of the transmission of the notification letter and accompanying information the FCA will send to the supervisory authorities referred to in paragraph (a).

(2) The countries referred to are—

- (a) any country where a UK AIFM intends to market a UK or third country AIF to professional investors;
- (b) any country where a third country AIFM intends to market a UK or third country AIF to professional investors.

19. To make further provision in relation to the co-operation arrangements—

- (a) referred to in regulation 33 between the FCA and the supervisory authorities of the third country where the AIF is established;
- (b) referred to in regulation 54(9) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013) between the FCA and the supervisory authorities of the third country where the AIF is established.

20. To determine the minimum content of the co-operation arrangements referred to in paragraph 19(b) to ensure that both the FCA and the supervisory authorities receive sufficient information to be able to exercise their supervisory and investigatory powers in relation to AIFMs.

21.—(1) To determine the minimum content of the co-operation arrangements specified in paragraph (2) to ensure that the FCA and the supervisory authorities of the host country receive sufficient information to be able to exercise their supervisory and investigatory powers.

(2) The specified co-operation arrangements are the co-operation arrangements—

- (a) referred to in regulation 5A(3)(c) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013);
- (b) referred to in regulation 54(9)(a) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013).

22. To specify the procedures for coordination and exchange of information between the FCA and the supervisory authorities of the other countries in which the AIFM is operating.

23. To make provision regarding the co-operation arrangements referred to—

- (a) in regulation 57(4)(b) (as inserted by paragraph 3 of Schedule 2 to the Alternative Investment Fund Managers (Amendment) Regulations 2013);
- (b) in regulation 5A(3)(c) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013);
- (c) in regulation 54(9)(a) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013);
- (d) in regulation 59(2)(d).

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24. To make provision for the procedures for the exchange of information between the FCA, the Prudential Regulation Authority and supervisory authorities in third countries in connection with the supervision of AIFMs.

25. To establish common procedures for the FCA and the Prudential Regulation Authority to co-operate with supervisory authorities in third countries (or in third countries specified in the regulations) in relation to on-the-spot verifications and investigations in relation to the supervision of AIFMs.

PART 2

Directive functions transferred to the FCA

26.—(1) The purpose set out in sub-paragraph (2) is specified for the purposes of Regulation 69A(3).

(2) To specify—

- (a) the information to be notified to the FCA under rule 13.5.1 of the Supervision sourcebook by an AIFM to whom sub-paragraph (3) applies, and
- (b) standard forms, templates and procedures for the transmission of information in accordance with paragraph (a).

(3) This sub-paragraph applies to AIFMs intending to—

- (a) manage portfolios of investments in accordance with discretionary mandates given by investors;
- (b) provide services comprising—
 - (i) investment advice;
 - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;
 - (iii) reception and transmission of orders in relation to financial instruments.

PART 3

Powers to make technical standards transferred to the FCA

27. The purposes set out in paragraphs 28 to 31 are specified for the purposes of Regulation 69A(5).

28. To specify—

- (a) the information to be provided to the FCA in an application for the authorisation of the AIFM, including the programme of activity;
- (b) standard forms, templates and procedures for the provision of that information.

29. To determine types of AIFMs, where relevant in the application of these Regulations, and to rules made by the FCA in relation to AIFMs.

30. To specify the—

- (a) requirements applicable to the AIFMs under paragraph 2C(1)(f) of Schedule 6 to the Act;
- (b) requirements applicable to shareholders and members with qualifying holdings referred to in regulation 5(3)(d);

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(c) obstacles which may prevent effective exercise of the supervisory functions of the FCA.

31. To make provision for—

- (a) the manner in which a third country AIFM must comply with the requirements laid down in these Regulations, and in the Investment Funds sourcebook and other rules made by the FCA which apply to the AIFM, taking into account that the AIFM is established in a third country and in particular the presentation of the information required in sections 3.2, 3.3 and 3.4 of the Investment Funds sourcebook;
- (b) the conditions under which the law to which a third country AIFM or a third country AIF is subject is considered to provide for an equivalent rule having the same regulatory purpose and offering the same level of protection to the relevant investors.]

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