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STATUTORY INSTRUMENTS

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**2019 No. 328**

The Alternative Investment Fund Managers  
(Amendment etc.) (EU Exit) Regulations 2019

PART 2

Amendment of secondary legislation

CHAPTER 1

Amendment of the Alternative Investment Fund Managers Regulations 2013

**Amendment of the Alternative Investment Fund Managers Regulations 2013**

2. The Alternative Investment Fund Managers Regulations 2013(1) are amended in accordance with this Chapter.

**Introductory provisions**

3.—(1) In regulation 2(1)—

- (a) omit the definition of “Article 36 custodian”;
- (b) omit the definition of “competent authority”;
- (c) in the definition of “depository” for “at Article 21.1 of the directive” substitute “in rule 3.11.4 of the Investment Funds sourcebook”;
- (d) for the definition of “EEA AIF” substitute—
  - ““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 exit day under these Regulations;”;
- (e) omit the definition of “EEA AIFM”;
- (f) for the definition of “EEA ELTIF(2)”, substitute—
  - ““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;”;
- (g) omit the definition of “ELTIF(3)”;
- (h) omit the definition of “ESRB”;
- (i) before the definition of “EuSEF Manager”, insert—

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(1) [S.I. 2013/1773](#).

(2) The definition of EEA ELTIF was inserted by [S.I. 2015/1882](#).

(3) The definition of ELTIF was inserted by [S.I. 2015/1882](#).

- ““EuSEF” means a European social entrepreneurship fund registered under Article 15a of the EuSEF Regulation as that Regulation applies in the European Union;”;
- (j) after the definition of “EuSEF Regulation”, insert—
- ““EuVECA” means a European venture capital fund registered under Article 14a of the EuVECA Regulation as that Regulation applies in the European Union;”;
- (k) in the definition of “external valuer”(4), for “Article 19 of the directive” substitute “section 3.9 of the Investment Funds sourcebook”;
- (l) after the definition of “external valuer” insert—
- ““FCA” means the Financial Conduct Authority;”;
- (m) omit the definition of “full-scope EEA AIFM”;
- (n) before the definition of “implementing provision” insert—
- ““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(5) 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(6) of Gibraltar which is exercising an entitlement under the Financial Services and Markets Act 2000 (Gibraltar) Order 2001(7) to establish a branch or provide services in the United Kingdom;”;
- (o) in the definition of “implementing provision”—
- (i) for paragraph (c), substitute—
- “(c) by any other EU Regulation which was made under the directive before exit day, and forms part of retained EU law;”;
- (ii) in paragraph (d), for “if the provision implements the directive” substitute “if the provision was relied on before exit day to implement the directive, or replaces such a provision”;
- (p) after the definition of “internal AIFM” insert—
- ““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;”;
- (q) after the definition of “managing an AIF”, insert—
- ““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;”;

(4) The definition of external valuer is amended by [S.I. 2013/1797](#).

(5) L.N. 2013/103.

(6) L.N. 2013/103.

(7) [S.I. 2001/3084](#).

- (r) for the definition of “professional investor”, substitute—
  - ““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;”;
- (s) after the definition of “qualifying venture capital fund”, insert—
  - ““RVECA Manager” means the manager of a venture capital fund that is registered in accordance with Article 14 of the EuVECA Regulation;”;
- (t) omit the definition of “regulator’s notice”;
- (u) after the definition of “retail investor”, insert—
  - ““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;”;
- (v) in the definition of “small authorised UK AIFM”, in paragraph (c)—
  - (i) omit “mentioned in Article 3.4 of the directive;”;
  - (ii) for “of the directive” the second time it is mentioned, substitute “applying to a full-scope UK AIFM”;
- (w) omit the definition of “small registered EEA AIFM”;
- (x) in the definition of “third country” for “an EEA state” substitute “the United Kingdom”;
- (y) in the definition of “third country AIF”, for “neither an EEA AIF” substitute “neither a Gibraltar AIF”;
- (z) after the definition of “third country feeder AIF”, insert—
  - ““third country AIF custodian” has the meaning given in regulation 57(5)(a)(8)
- (aa) in the definition of “UK AIF”, for “an EEA State” substitute “the United Kingdom”;
- (bb) for the definition of “UK ELTIF(9)”, substitute—
  - ““UK LTIF” means an AIF which is authorised by the FCA as a long-term investment fund under Article 6 of the ELTIF Regulation;”;
- (cc) after the definition of “UK ELTIF”, insert—
  - ““UK UCITS” has the meaning given in section 237(3) of the Act;”.
- (2) In regulation 2(2)—
  - (a) omit paragraph (a);
  - (b) in paragraph (b)—
    - (i) omit “directly applicable”;
    - (ii) after “directive” insert “which forms part of retained EU law”.
- (3) Omit regulation 2(3A)(10).
- (4) At the end of regulation 2, insert—
  - “(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

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(8) As amended by these Regulations.

(9) The definition of UK ELTIF was inserted by [S.I. 2015/1882](#),

(10) Paragraph (3A) was inserted by [S.I. 2014/1292](#).

guidance issued by the FCA under the Financial Services and Markets Act 2000 as it has effect on exit 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<sup>(11)</sup>) 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.”.

(5) In regulation 3—

(a) in paragraph (1), for sub-paragraph (b), substitute—

“(b) is not a UK UCITS;”;

(b) in paragraph (3), after sub-paragraph (a), insert—

“(aa) an occupational pension scheme, within the meaning of section 1(1) (categories of pension schemes) of the Pension Schemes Act 1993<sup>(12)</sup>;”;

(6) In regulation 4(4), after sub-paragraph (a) insert—

“(aa) an occupational pension scheme, within the meaning of section 1(1) of the Pension Schemes Act 1993, including its trustees and managers;”.

#### **Authorisation of full-scope UK AIFMS**

4.—(1) In regulation 5—

(a) in paragraph (3)(c), for “implementing provisions relating to Article 9 of the directive”, substitute “rule 11.2.1 and section 11.3 of the Interim Prudential sourcebook for Investment Businesses”;

(b) in paragraph (8)<sup>(13)</sup>—

(i) for sub-paragraph (c), substitute—

“(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<sup>(14)</sup>;

(ii) these Regulations;

(iii) rules made by the FCA;

(iv) Commission Delegated Regulation;”;

(ii) in sub-paragraph (e), omit “EEA States or”;

(2) In regulation 6—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit “and”;

(ii) omit sub-paragraph (b);

(b) in paragraph (3)—

(i) at the end of sub-paragraph (a), insert “; and”;

<sup>(11)</sup> 2018 c. 16.

<sup>(12)</sup> 1993 c. 48. Section 1(1) was amended by s.239 of the Pensions Act 2004 (c. 35).

<sup>(13)</sup> Regulation 5(8) is amended by S.I. 2013/1797.

<sup>(14)</sup> 2000 c. 8.

- (ii) at the end of sub-paragraph (b), omit “and”;
- (iii) omit sub-paragraph (c).

(3) In regulation 7(1), for “implementing provisions relating to Article 10.1 of the directive” substitute “rule 15.3.26 of the Supervision sourcebook”.

(4) Omit regulation 8.

### **SEFs, RVECAs and small AIFMs**

**5.**—(1) In regulations 9(4), 10(4), 11(5), 12(1A) and 13(3)**(15)**—

- (a) for “EuSEF Manager” substitute “SEF Manager”;
- (b) for “EuVECA Manager” substitute “RVECA Manager”.

(2) In regulation 13—

- (a) in paragraph (1)—
  - (i) after “Article 15” insert “or 15a”;
  - (ii) after “Article 14” insert “or 14a”;
- (b) for paragraph (3), substitute—

“(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.”.

(3) Omit regulation 14.

(4) In regulation 16(2)(c), omit “, in accordance with Article 3.4 of the directive”.

(5) In regulation 22—

- (a) in the heading, for “EuSEF and EuVECA Managers” substitute “SEF and RVECA Managers”;
- (b) omit paragraph (2);
- (c) in paragraph (3), omit “or (2)”.

(6) In regulation 48 and in the heading to regulation 48, for “EuSEF” or “EuVECA” substitute “SEF” or “RVECA”.

### **ELTIFs**

**6.**—(1) In the heading to Part 3A**(16)**, for “ELTIFs” substitute “LTIFs”.

(2) In regulation 23A(1), 23B(1), 23C(1) and 23C(2), for “UK ELTIF”, substitute “UK LTIF”.

(3) In the headings to each of regulations 23A, 23B and 23C and in regulation 23C(1), for “ELTIF” substitute “UK LTIF”.

(4) In regulations 30(7) and 32(3)**(17)**—

- (a) omit “an EEA ELTIF or”;
- (b) for “UK ELTIF” substitute “UK LTIF”.

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**(15)** Regulations 11(5), 12(1A) and 13(3) were inserted by [S.I. 2018/134](#).

**(16)** Regulations 23A to 23C and the heading to Part 3A were inserted by [S.I. 2015/1882](#).

**(17)** Regulations 30(7) and 32(3) were inserted by [S.I. 2015/1882](#).

**Operating conditions**

7.—(1) In regulation 24(1), for “Article 19 of the directive”, substitute “section 3.9 of the Investment Funds sourcebook”.

(2) In the heading to regulation 28, omit “under Article 20 of the directive”.

**Depositaries**

8.—(1) In regulation 29—

- (a) in paragraph (1)(18), for “an EEA AIFM” substitute “a Gibraltar AIFM”;
- (b) in paragraph (3), for the words “[Directive 98/26/EC](#)” to “of that Directive” substitute “the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(19) by a designated system (within the meaning of regulation 2(1) of those Regulations)”.

(2) In regulation 30—

- (a) in paragraph (1), for “Article 21.8(a) of the directive” substitute “rule 3.11.21 of the Investment Funds sourcebook”;
- (b) in paragraph (4)(b), for “implementing provisions relating to the second paragraph of Article 21.11 of the directive”, substitute “rule 3.11.28 of the Investment Funds sourcebook”;
- (c) in paragraph (5)(b), for “implementing provisions relating to the second paragraph of Article 21.11 of the directive”, substitute “rule 3.11.28 of the Investment Funds sourcebook”;
- (d) in paragraph (6), for “Article 21.8 of the directive” substitute “rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook”;
- (e) in paragraph (7)—
  - (i) omit “an EEA ELTIF or”;
  - (ii) for “UK ELTIF” substitute “UK LTIF”.

(3) In regulation 31—

- (a) in paragraph (1), for “Article 21.8(a) of the directive” substitute “rule 3.11.21 of the Investment Funds sourcebook”;
- (b) in paragraph (2), for “Article 21.8 of the directive” substitute “rules 3.11.21 and 3.11.23 of the Investment Funds sourcebook”.

(4) In regulation 32—

- (a) in paragraph (1)(b), for “implementing provisions relating to Article 21.11(d)(ii) of the directive”, substitute “rule 3.11.28(4)(b) of the Investment Funds sourcebook”;
- (b) in paragraph (3)—
  - (i) omit “an EEA ELTIF or”;
  - (ii) for “UK ELTIF” substitute “UK LTIF”.

(5) In regulation 33(20)—

- (a) for “an EEA State” substitute “the United Kingdom or Gibraltar”;
- (b) for “the directive” substitute “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”.

(18) Regulation 29(1) is amended by [S.I. 2013/1797](#), but those amendments are not yet in force.

(19) [S.I. 1999/2979](#), to which there are amendments which are not relevant to this instrument.

(20) Regulation 33 is amended by [S.I. 2013/1797](#), but those amendments are not yet in force.

## **AIFs and control**

- 9.**—(1) In regulation 36(1), for paragraph (b), substitute—
- “(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) In regulation 37(1), in the closing words, omit “other than the United Kingdom”.
- (3) In regulation 42—
- (a) in paragraph (1), for “implementing provisions relating to Article 22 of the directive” substitute “rules 3.3.2 to 3.3.8 of the Investment Funds sourcebook”;
  - (b) for paragraph (2) substitute—
    - “(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.”;
  - (c) in paragraph (4), omit the words from “in accordance with” to the end of the paragraph.
- (4) In regulation 43—
- (a) in paragraph (4)(b), for “Article 20.1(b) to 20.1(h)” substitute “section 659(2)(b) or (c) of the Companies Act 2006<sup>(21)</sup>, or an acquisition permitted by Chapter 4 of Part 18 of that Act”;
  - (b) in paragraph (5)—
    - (i) for the definition of “law” substitute—
      - ““law” means the law of the United Kingdom, or of any part of the United Kingdom”;
    - (ii) omit the definition of “second company law directive”.

## **Marketing of AIFs**

- 10.**—(1) In regulation 45, for “an EEA State” both times it occurs, substitute “the United Kingdom or Gibraltar”.
- (2) In the heading to regulation 48, for “‘EuSEF’ or ‘EuVECA’” substitute “‘SEF’ or ‘RVECA’”.
- (3) In regulation 48—
- (a) for “EuSEF” substitute “SEF”;
  - (b) for “EuVECA” substitute “RVECA”.
- (4) In regulation 49<sup>(22)</sup>—
- (a) in the heading, for “EEA” substitute “Gibraltar”;

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(21) 2006 c. 46.

(22) Regulation 49 is amended by [S.I. 2013/1797](#).

- (b) renumber the existing provision as paragraph (1);
- (c) in paragraph (1), as renumbered—
  - (i) in the opening words, for “EEA” substitute “Gibraltar”;
  - (ii) in sub-paragraph (a), omit “(EEA passport rights)”;
- (d) after paragraph (1), insert—
 

“(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.”.
- (5) In regulation 50(**23**), in the table, in the entry relating to full-scope EEA AIFMs, for “EEA” substitute “Gibraltar”.
- (6) In regulation 54(**24**)—
  - (a) in paragraph (1), in sub-paragraph (b)—
    - (i) for “EEA”, the first time it occurs, substitute “Gibraltar”;
    - (ii) in paragraph (ii), for the words “in relation to” to the end, substitute “referred to in paragraph 14(1)(b) of Schedule 3 to the Act as that paragraph applies in relation to Gibraltar”;
    - (iii) omit “(EEA passport rights)”;
  - (b) in paragraph (4), in the opening words, for “EEA”, substitute “Gibraltar”;
  - (c) in paragraph (5), for sub-paragraph (b), substitute—
 

“(b) where the AIF concerned is a Gibraltar AIF, the Financial Services Commission of Gibraltar.”.
- (7) In regulation 56(**25**), in the heading and in the opening words, for “EEA AIFM” substitute “Gibraltar AIFM”.
- (8) In regulation 57(**26**)—
  - (a) for the heading, substitute “Marketing of third country AIFs managed by full-scope UK AIFMs”;
  - (b) in paragraph (1)(b)—
    - (i) for “an EEA AIF”, substitute “a Gibraltar AIF”;
    - (ii) omit “that is a feeder AIF, the master AIF of which is either managed by a third country AIFM or is a third country AIF”;
  - (c) in paragraph (2)(b), for “EEA AIFM” substitute “Gibraltar AIFM”;
  - (d) in paragraph (4)—
    - (i) in sub-paragraph (a), for “the directive” substitute “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”;
    - (ii) in sub-paragraph (b)—
      - (aa) for “the competent authority of the full-scope EEA AIFM (in the case of such an AIFM)” substitute “the Financial Services Commission of Gibraltar (in the case of a Gibraltar AIFM)”;
      - (bb) for “or other competent authority” substitute “or the Financial Services Commission of Gibraltar”;

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(23) Regulation 50 is amended by [S.I. 2013/1797](#).

(24) Regulation 54 is amended by [S.I. 2013/1797](#).

(25) Regulation 56 is amended by [S.I. 2013/1797](#).

(26) Regulations 57 to 64 are revoked by [S.I. 2013/1797](#), but that revocation is not yet in force.



- (cc) for “the directive” substitute “these Regulations or the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar<sup>(27)</sup>”;
- (e) in paragraph (5)—
  - (i) in the opening words, for “Article 21 of the directive” substitute “section 3.11 of the Investment Funds sourcebook, and regulations 29 to 32 of these Regulations”;
  - (ii) in sub-paragraph (a) for “Article 21.7 to 21.9 of the directive (each an “Article 36 custodian”)” substitute “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”)”.
- (9) In regulation 59<sup>(28)</sup>—
  - (a) in the heading for “under Article 42 of the directive” substitute “of AIFs managed by other third country AIFMs”;
  - (b) in paragraph (2)—
    - (i) insert at the beginning “Subject to paragraph (4A),”;
    - (ii) in sub-paragraph (b) for “Articles 22 to 24 of the directive” substitute “sections 3.2, 3.3 and 3.4 of the Investment Funds sourcebook”;
    - (iii) in sub-paragraph (d)—
      - (aa) in paragraph (i), for “the competent authority of the other EEA State where the AIF is established” substitute “the Financial Services Commission of Gibraltar”;
      - (bb) in the words after paragraph (ii), for the words “and, if applicable” to the end, substitute “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”;
  - (c) in paragraph (3), insert at the beginning “Subject to paragraph (4A),”;
  - (d) in paragraph (4), insert at the beginning “Subject to paragraph (4A),”;
  - (e) after paragraph (4), insert—
    - “(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.”.

### **Duties and powers of the FCA**

- 11.—**(1) In regulations 62, 63 and 64<sup>(29)</sup>, for “Article 36 custodian” wherever it appears, substitute “third country AIF custodian”.
- (2) In regulation 65—
  - (a) omit “directly applicable”, and
  - (b) after “under the directive” insert “which forms part of retained EU law”.
- (3) Omit regulation 66.
- (4) In regulation 67—
  - (a) in the heading, omit “and supervisory cooperation”;

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<sup>(27)</sup> L.N. 2013/103.

<sup>(28)</sup> [S.I. 2013/1773](#). Regulations 50 is amended and regulation 59 is revoked by [S.I. 2013/1797](#), but those amendments have not yet come into force.

<sup>(29)</sup> Regulations 62 to 64 are revoked by [S.I. 2013/1797](#), but the revocation is not yet in effect.

- (b) in paragraph (1), for “implementing provisions relating to Article 24 of the directive” substitute “rules 3.4.2 to 3.4.6C of the Investment Funds sourcebook and Articles 110 and 111 of the Commission Delegated Regulation”;
- (c) omit paragraphs (2) to (4).
- (5) In regulation 68, omit paragraphs (3) to (6).
- (6) Omit regulation 69.

### **Transfer of Directive Functions**

12. After regulation 69, insert—

## “PART 7A

### Transfer of functions

#### **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.”.

### **Application of provisions of the Act**

13. In regulation 71(5)(30), in sub-paragraphs (b), (c) and (f), for “EEA AIFM” substitute “Gibraltar AIFM”.

### **Transitional provisions**

14. After regulation 78, insert—

## “PART 9A

### Temporary Marketing Provisions

#### **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

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(30) Regulation 71(5) is amended by [2013/1797](#).

- fund was, or could have been, marketed in the United Kingdom before exit 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 exit 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 exit day under regulation 49;
  - (b) the entitlement to market that AIF has not been suspended or revoked before exit day;
  - (c) the AIFM of the AIF has, before exit day, notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit 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<sup>(31)</sup> (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 exit 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 exit 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<sup>(32)</sup> (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 exit 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

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<sup>(31)</sup> OJ L115, 25.4.2013, p.1.

<sup>(32)</sup> OJ L 115, 25.4.2013, p.18.

- (ii) has notified the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit 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 exit 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 exit 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.

### **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 exit 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 exit day, it is permitted to market that EEA AIF under regulation 78A.

### **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 exit 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(33) (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 exit day occurs (“the two year period”), as the FCA may direct, or

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(33) Regulations 57 to 64 are revoked by [S.I. 2013/1797](#), with effect from a date to be specified by the delegated act adopted by the Commission pursuant to Article 68.6 of directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 on Alternative Investment Fund Managers.

(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 exit 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.

### **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.”.

### **Final provisions**

**15.—(1)** In regulation 81—

- (a) in paragraph (2)(b), for the words from “specified by the delegated act” to the end of the sub-paragraph, substitute “on which regulation 3 of and Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013<sup>(34)</sup> come into force”;
  - (b) in paragraph (3), for “Article 3 of the alternative investment fund managers directive” substitute “Part 3 of these Regulations”.
- (2) Before Schedule 1, insert—

## “SCHEDULE A1

Regulation 69A

## Transfer of Functions to the Treasury and the FCA

## 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<sup>(35)</sup>.
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<sup>(36)</sup>.
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<sup>(37)</sup>.
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 exit day relied on to implement Article 12 of the directive<sup>(38)</sup>.
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;

<sup>(34)</sup> S.I. 2013/1797.<sup>(35)</sup> The powers in this paragraph are transferred from Article 3(6) of the Alternative Investment Fund Managers Directive (2011/61/EU) (“[Directive 2011/61/EU](#)”).<sup>(36)</sup> The powers in this paragraph are transferred from Article 4(3) of [Directive 2011/61/EU](#).<sup>(37)</sup> The powers in this paragraph are transferred from Article 9(9) of [Directive 2011/61/EU](#).<sup>(38)</sup> The powers in this paragraph are transferred from Article 12(3) of [Directive 2011/61/EU](#).

- (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<sup>(39)</sup>.
7. To specify—
- (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<sup>(40)</sup>.
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<sup>(41)</sup>.
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<sup>(42)</sup>.
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<sup>(43)</sup>.
11. To specify—
- (a) the conditions for fulfilling the following requirements—

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<sup>(39)</sup> The powers in this paragraph are transferred from Article 14(4) of [Directive 2011/61/EU](#).

<sup>(40)</sup> The powers in this paragraph are transferred from Article 15(5) of [Directive 2011/61/EU](#).

<sup>(41)</sup> The powers in this paragraph are transferred from Article 16(3) of [Directive 2011/61/EU](#).

<sup>(42)</sup> The powers in this paragraph are transferred from Article 18(2) of [Directive 2011/61/EU](#).

<sup>(43)</sup> The powers in this paragraph are transferred from Article 19(11) of [Directive 2011/61/EU](#).

- (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;
- (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<sup>(44)</sup>;

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(44) The powers in this sub-paragraph are transferred from Article 20(7)(a) of [Directive 2011/61/EU](#).



- (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<sup>(45)</sup>.

**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—
  - (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)<sup>(46)</sup>.

**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<sup>(47)</sup>.

**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<sup>(48)</sup>.

**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;

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<sup>(45)</sup> The powers in this sub-paragraph are transferred from Article 20(7)(b) of [Directive 2011/61/EU](#).

<sup>(46)</sup> The powers in this paragraph are transferred from Article 21(17) of [Directive 2011/61/EU](#).

<sup>(47)</sup> The powers in this paragraph are transferred from the final sub-paragraph of Article 21(6) of [Directive 2011/61/EU](#).

<sup>(48)</sup> The powers in this paragraph are transferred from Article 22(4) of [Directive 2011/61/EU](#).

- (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**(49)**.

**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;
- (b) the obligations to report and provide information set out in section 3.4 of the Investment Funds sourcebook**(50)**.

**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**(51)**.

**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**(52)**.

**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**(53)**;
- (b) referred to in regulation 54(9) (as inserted by paragraph 2 of Schedule 1 to the Alternative Investment Fund Managers (Amendment) Regulations 2013**(54)**) between the FCA and the supervisory authorities of the third country where the AIF is established**(55)**.

**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**(56)**.

**(49)** The powers in this paragraph are transferred from Article 23(6) of [Directive 2011/61/EU](#).

**(50)** The powers in this paragraph are transferred from Article 24(6) of [Directive 2011/61/EU](#).

**(51)** The powers in this paragraph are transferred from Article 25(9) of [Directive 2011/61/EU](#).

**(52)** The powers in this paragraph are transferred from Articles 32(8); 35(16); 39(10) and 40(16) of [Directive 2011/61/EU](#).

**(53)** The powers in this sub-paragraph are transferred from Article 34(2) of [Directive 2011/61/EU](#).

**(54)** [S.I. 2013/1797](#).

**(55)** The powers in this sub-paragraph are transferred from Article 35(11) of [Directive 2011/61/EU](#).

**(56)** The powers in this paragraph are transferred from Article 35(13) of [Directive 2011/61/EU](#).

**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)(**57**).

**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(**58**).

- 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)(**59**).

**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(**60**).

**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(**61**).

## 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;

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(57) The powers in this paragraph are transferred from Article 37(1) and 40(14) of [Directive 2011/61/EU](#).

(58) The powers in this paragraph are transferred from Article 35(14), 37(18) and 40(14) of [Directive 2011/61/EU](#).

(59) The powers in this paragraph are transferred from Article 36(3), 37(15), 40(11) and 42(3) of [Directive 2011/61/EU](#).

(60) The powers in this paragraph are transferred from Article 50(6) of [Directive 2011/61/EU](#).

(61) The powers in this paragraph are transferred from Article 54(4) of [Directive 2011/61/EU](#).

- (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<sup>(62)</sup>.

## 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<sup>(63)</sup>.

**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<sup>(64)</sup>.

**30.** To specify the—

- (a) requirements applicable to the AIFMs under paragraph 2C(1)(f) of Schedule 6 to the Act<sup>(65)</sup>;
- (b) requirements applicable to shareholders and members with qualifying holdings referred to in regulation 5(3)(d);
- (c) obstacles which may prevent effective exercise of the supervisory functions of the FCA<sup>(66)</sup>.

**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<sup>(67)</sup>.

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<sup>(62)</sup> The powers in this paragraph are transferred from Article 33(7) and (8) of [Directive 2011/61/EU](#).

<sup>(63)</sup> The powers in this paragraph are transferred from Article 7(6) and (7) of [Directive 2011/61/EU](#).

<sup>(64)</sup> The powers in this paragraph are transferred from Article 4(4) of [Directive 2011/61/EU](#).

<sup>(65)</sup> Paragraph 2C was substituted, with paragraphs 1A to 7A, for the original Parts I, II by [S.I. 2013/555](#).

<sup>(66)</sup> The powers in this paragraph are transferred from Article 8(6) of [Directive 2011/61/EU](#).

<sup>(67)</sup> The powers in this paragraph are transferred from Article 37(23) of [Directive 2011/61/EU](#).

## CHAPTER 2

### Amendment of the Alternative Investment Fund Managers (Amendment) Regulations 2013

#### **Alternative Investment Fund Managers (Amendment) Regulations 2013**

16. The Alternative Investment Fund Managers (Amendment) Regulations 2013(68) are amended in accordance with this Chapter.

#### **Commencement**

17. In regulation 1—

(a) for paragraphs (3) and (4), substitute—

“(3) Regulations 3 and 4 and Schedules 1 and 2 come into force on such day as the Treasury may by regulations appoint.”;

(b) after paragraph (5), insert—

“(6) Regulations made by the Treasury under paragraph (3) may make different provision for different purposes.

(7) The power to make regulations under paragraph (3) is exercisable by statutory instrument.”.

#### **Amendments**

18.—(1) In the heading to regulation 3, for “implement” substitute “implemented”.

(2) In the heading to regulation 4, for “on termination of Articles 36 and 42 of the directive” substitute “on appointment by the Treasury”.

#### **Consultation on rules for the purposes of Article 35 or 37 to 41 of the directive**

19.—(1) In regulation 6, for paragraph (1) substitute—

“(1) Before the date on which the Treasury makes regulations under regulation 1(3) appointing the day when the amendments in Schedule 1 to these Regulations come into force, the FCA or the PRA may make rules for the purpose of the provisions amended by Schedule 1 without complying with sections 138I to 138L of the Act (consultation)(69).”.

(2) In the heading to regulation 6, for “Article 35 or 37 to 41 of the directive” substitute “the provisions amended by Schedule 1”.

#### **Schedule 1**

20.—(1) Schedule 1 is amended as follows.

(2) In paragraph 1—

(a) omit sub-paragraph (3);

(b) omit sub-paragraph (4)(a);

(c) in sub-paragraph (4)(b)(70), in new subsection (5B)—

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(68) S.I. 2013/1797.

(69) Sections 138I to 138L was substituted, with the rest of Part 9A for the original Part X by section 24(1) of Financial Services Act 2012 (c. 21).

(70) Sub-paragraph (4) was amended by S.I. 2014/1292.

- (i) in paragraph (b), for “an EEA state”, in both places, substitute “the United Kingdom”;
  - (ii) in paragraph (c)—
    - (aa) for “an EEA state” substitute “the United Kingdom”;
    - (bb) for “provisions made under Article 42 of the alternative investment fund managers directive,” substitute “regulation 59 of the Alternative Investment Fund Managers Regulations 2013(71), and”;
  - (iii) in paragraph (d)—
    - (aa) for “an EEA state” substitute “the United Kingdom”;
    - (bb) at the end, omit “and”;
  - (iv) omit paragraph (e);
  - (d) in sub-paragraph (5)(b), in the opening words of the substituted paragraph (aa), for “is subject to the conditions of” substitute “derives from”;
  - (e) in sub-paragraph (6), in paragraph (b) of the new text, for “country that is not an EEA State” substitute “third country”.
- (3) In paragraph 2—
- (a) in sub-paragraph (2)—
    - (i) in paragraph (a), in the inserted text, for “provisions implementing Article 42 of the directive” substitute “regulation 59 of these Regulations”;
    - (ii) omit paragraphs (b) and (c);
    - (iii) in paragraph (d), in the inserted text—
      - (aa) omit “mentioned in Article 3.4 of the directive”;
      - (bb) for “of the directive” the second time it is mentioned, substitute “applying to a full-scope AIFM”;
    - (iv) in sub-paragraph (e), in the new definition of “third country feeder AIF”—
      - (aa) after “UK AIF” insert “, Gibraltar AIF”;
      - (bb) for “an EEA State” substitute “the United Kingdom or Gibraltar”;
    - (v) in sub-paragraph (f)—
      - (aa) for paragraph (b) of the new definition of “UK AIFM” substitute—
        - “(b) has its registered office in a third country, and the United Kingdom is—
          - (i) the only country in which the AIFM intends to market AIFs;
          - (ii) the country in which—
            - (aa) most of the AIFs managed by that AIFM are established; or
            - (bb) the largest amount of assets is being managed; or
          - (iii) the country in which an AIFM intends to develop effective marketing for most of the AIFs it is managing.”;
        - (bb) omit paragraph (c);
    - (b) in sub-paragraph (5), in new regulation 5A—

(71) *S.I. 2013/1773*. Regulations 50 is amended and regulation 59 is revoked by *S.I. 2013/1797*, but those amendments have not yet come into force.

- (i) omit paragraphs (1) and (2);
- (ii) in paragraph (3)—
  - (aa) omit sub-paragraph (a);
  - (bb) in sub-paragraph (b)(i), omit “, other competent authorities, ESMA”;
  - (cc) in sub-paragraph (b)(ii) for “pursuant to the directive” substitute “pursuant to the Financial Services and Markets Act 2000(72), these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law”;
  - (dd) for sub-paragraph (c), substitute—
    - “(c) appropriate co-operation arrangements are in place between the FCA, the competent authority in relation to any EEA AIF managed by the applicant and the supervisory authorities of the third country in which the applicant has its registered office, in order to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law.”;
  - (ee) in sub-paragraph (f), for “or the competent authority in relation to any EEA AIF managed by the applicant of its supervisory functions under the directive” substitute “of its supervisory functions under the Financial Services and Markets Act 2000, these Regulations and any EU tertiary legislation made under the directive which forms part of EU retained law”;
- (iii) in sub-paragraph (4)(a) for “an EEA State” substitute “the United Kingdom or in Gibraltar”;
- (iv) omit sub-paragraph (5);
- (v) in sub-paragraph (6)—
  - (aa) omit paragraph (a);
  - (bb) in paragraph (b), for “an EEA State” substitute “the United Kingdom or in Gibraltar”;
  - (cc) in paragraph (c), in the closing words, for “ESMA” substitute “the FCA”;
- (c) omit sub-paragraph (6);
- (d) in sub-paragraph (8), in the words inserted into regulation 29(1)—
  - (i) in paragraph (a), for “an EEA AIFM” substitute “a Gibraltar AIFM”;
  - (ii) in paragraph (b)(ii), for “provisions implementing Article 36 or Article 42 of the directive” substitute “regulations 57 or 59 of these Regulations”;
- (e) omit sub-paragraph (10);
- (f) in sub-paragraph (11), in the table—
  - (i) in the fourth entry, in the first column, for “EEA AIFM with its registered office in an EEA State other than the United Kingdom” substitute “Gibraltar AIFM with its registered office in Gibraltar”;
  - (ii) in the fifth entry, in the first column, for “EEA AIFM” substitute “Gibraltar AIFM”;
  - (iii) in the sixth entry, in the first column, for “or a full-scope EEA AIFM” substitute “or a Gibraltar AIFM”;

- (iv) in the seventh entry, in the first column, for “a full-scope EEA AIFM” substitute “a full-scope Gibraltar AIFM”;
- (g) in sub-paragraph (12)(a), in new paragraph (1)(b), for “EEA AIFM” substitute “Gibraltar AIFM”;
- (h) in sub-paragraph (12)(b), in the new paragraph (9)—
  - (i) in paragraph (a)—
    - (aa) for “in an EEA State other than the UK, the competent authority in that EEA State”, substitute “in Gibraltar, the Financial Services Commission”; and
    - (bb) for “the FCA or competent authority to carry out its duties in accordance with the directive” substitute—
      - “—
      - (i) the FCA to carry out its duties in accordance with the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law, and
      - (ii) the Financial Services Commission to carry out its duties in accordance with the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar;”;
  - (ii) in paragraph (c)—
    - (aa) for “in an EEA State other than the UK, with that EEA State” substitute “in Gibraltar, with Gibraltar”; and
    - (bb) for “each other EEA State” substitute “each EEA State”;
- (i) in sub-paragraph (15)(b)—
  - (i) in the opening words, for “paragraph (4)” substitute “paragraph (4A)(73)”;
  - (ii) in the new paragraph (5)—
    - (aa) at the end of paragraph (a), omit “, or”;
    - (bb) omit paragraph (b).

## Schedule 2

- 21.**—(1) Schedule 2 is amended as follows.
- (2) In paragraph 3—
- (a) in sub-paragraph (2), in paragraph (a), for “provisions implementing Article 42 of the directive”, substitute “regulation 59 of these Regulations”;
  - (b) in sub-paragraph (7)—
    - (i) in the heading to new regulation 56, for “EEA” substitute “Gibraltar”;
    - (ii) in new regulation 56, for “EEA AIFM” substitute “Gibraltar AIFM”.
- (3) In paragraph 4(1)(c)—
- (a) for sub-paragraph (i) substitute—
    - “(i) an authorised person with permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of managing an AIF, or registered under Part 3 of the principal regulations in respect of the AIF otherwise than by virtue of that notification.”;

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(73) Paragraph 4A is inserted by regulation 10(9)(e) of these Regulations.



(b) omit sub-paragraph (ii).