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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

The Alternative Investment Fund Managers  
(Amendment etc.) (EU Exit) Regulations 2018

PART 3

Amendment of EU delegated legislation

**Commission Delegated Regulation (EU) No 231/2013**

**22.** Commission delegated regulation (EU) No 231/2013 of 19 December 2012 supplementing [Directive 2011/61/EU](#) of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision is amended in accordance with regulations 23 to 40.

**Definitions and general**

**23.—**(1) In Article 1—

- (a) in the opening words, for “Article 2 of [Directive 2011/61/EU](#)” substitute “regulation 2 of the AIFM Regulations 2013”;
- (b) in point (3), for “Article 8(1)(c) of [Directive 2011/61/EU](#)”, substitute “section 4.2 of the Senior Management Arrangements, Systems and Controls sourcebook”;
- (c) insert at the end—
  - “(6) “FCA” means the Financial Conduct Authority;
  - (7) “FSMA” means the Financial Services and Markets Act 2000(1);
  - (8) “UCITS” has the meaning given in section 236A of FSMA;
  - (9) “UK UCITS” has the meaning given in section 237(3) of FSMA(2);
  - (10) “UK provisions” means FSMA, secondary legislation made under FSMA or under the European Communities Act 1972 and rules made by the FCA under FSMA;
  - (11) Any reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA under FSMA as in force on exit day(3);
  - (12) “the Regulated Activities Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(4);

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(1) [2000 c. 8](#). Section 236A was inserted by the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018.  
(2) Section 237(3) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 (c. 21), [S.I. 2011/1613](#) and [S.I. 2013/1388](#). There are other amendments to section 237(3) which are not relevant.  
(3) Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where it is also available for inspection.  
(4) [S.I. 2001/544](#).

- (13) “the AIFM Regulations 2013” means the Alternative Investment Fund Managers Regulations 2013<sup>(5)</sup>;
- (14) “Regulation (EU) No 600/2014” means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.”.
- (2) Before Article 2, omit “(Article 3(2) of [Directive 2011/61/EU](#))”.
- (3) In Article 2—
- (a) in paragraph 1—
- (i) in the opening words, for “Article 3(2) of [Directive 2011/61/EU](#)” substitute “Article 51ZF<sup>(6)</sup> of, and paragraph 2 of Schedule 8 to, the Regulated Activities Order 2001”;
- (ii) in point (a), for “Article 5 of [Directive 2011/61/EU](#)” substitute “regulation 4(3) of the AIFM Regulations 2013”;
- (iii) in point (c), for “Article 3(2) of [Directive 2011/61/EU](#)” substitute “regulation 9(1) of the AIFM Regulations 2013”;
- (b) in paragraph 2—
- (i) in the first subparagraph, for “designated management company under [Directive 2009/65/EC](#)” substitute “management company (as defined in section 237(2) of FSMA)”;
- (ii) in the second subparagraph, for “Article 20 of [Directive 2011/61/EU](#)” substitute “section 3.10 of the Investment Funds sourcebook”;
- (c) in paragraph 6, for “competent authority” substitute “FCA”.
- (4) In Article 3, in the second subparagraph, for “Article 3(2) of [Directive 2011/61/EU](#)” substitute “regulation 9(1) of the AIFM Regulations 2013”.
- (5) In Article 4—
- (a) in paragraph 2, for “Article 7 of [Directive 2011/61/EU](#)” substitute “sections 55A and 55U of FSMA<sup>(7)</sup>”;
- (b) in paragraphs 2, 3 and 5, for “competent authority” substitute “FCA”.
- (6) In Article 5—
- (a) in paragraph 1—
- (i) for “Article 3(3)(b) of [Directive 2011/61/EU](#)”, substitute “regulation 11(1) of the AIFM Regulations 2013”;
- (ii) for “competent authorities” substitute “FCA”;
- (b) in paragraph 2, for “Article 3(3)(c) of [Directive 2011/61/EU](#)” substitute “regulation 11(1) of the AIFM Regulations 2013”;
- (c) in paragraph 3, for “point (d) of Article 3(3) of [Directive 2011/61/EU](#)” substitute “regulation 21 of the AIFM Regulations 2013”;
- (d) omit paragraph 4;
- (e) in paragraph 5—
- (i) for “Article 46 of [Directive 2011/61/EU](#)” substitute “FSMA”;
- (ii) for “competent authorities” substitute “FCA”;

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

(6) Article 51ZF was substituted, with articles 51ZA to 51ZG, for article 51 by [S.I. 2013/1773](#).

(7) [2000 c. 8](#). Sections 55A and 55U were substituted, with ss 55B to 55Z4, for the original Part IV by section 11(2) of the Financial Services Act [2012 \(c. 21\)](#).

- (iii) for “Article 3 of [Directive 2011/61/EU](#)” substitute “regulations 11 and 21 of the AIFM Regulations 2013”.
- (7) Before Article 6, omit “(Article 4(3) of [Directive 2011/61/EU](#))”.
- (8) In Article 6(2), omit the second subparagraph.
- (9) In Article 7, in the opening words, for “Article 19 of [Directive 2011/61/EU](#) and all delegated acts adopted pursuant to it” substitute “section 3.9 of the Investment Funds sourcebook, and all delegated acts adopted pursuant to Article 19 of [Directive 2011/61/EU](#) which form part of retained EU law”.
- (10) In Article 8—
- (a) in paragraph 1, for “Article 19 of [Directive 2011/61/EU](#) and its corresponding delegated acts” substitute “section 3.9 of the Investment Funds sourcebook, and all delegated acts adopted pursuant to Article 19 of [Directive 2011/61/EU](#) which form part of retained EU law”;
- (b) in paragraph (8)(b), for “points 1 to 3 of Section C of Annex I to [Directive 2004/39/EC](#)” substitute “paragraphs 1 to 3 of Part 1 of Schedule 2 to the Regulated Activities Order 2001”(8).
- (11) Before Article 12, omit “(Article 9(7) and Article 15 of [Directive 2011/61/EU](#))”.
- (12) In Article 12(1), for “Article 9(7) of [Directive 2011/61/EU](#)” substitute “rule 11.2.1 of the Interim Prudential sourcebook for Investment Businesses”.
- (13) In Article 14—
- (a) in paragraphs 4 and 5 for “competent authority of the home Member State of the AIFM” substitute “FCA”;
- (b) in paragraph 5, for “competent authority” the second time it occurs, substitute “FCA”.
- (14) In Article 15(2)—
- (a) in point (d)—
- (i) for “an EU or non-EU” substitute “a UK or non-UK”;
- (ii) for “Union law or national law” substitute “the law of the United Kingdom or of any part of the United Kingdom or the law of a third country”;
- (b) in the words following point (e), for “Article 9(1) and (3) of [Directive 2011/61/EU](#)” substitute “rules 11.3.1(2) and 11.3.2 of the Interim Prudential sourcebook for Investment Businesses”.

### **Operating conditions for AIFMs: general principles**

- 24.**—(1) Before Article 16, omit “(Article 12(1) of [Directive 2011/61/EU](#))”.
- (2) For Article 16, substitute—

#### *“Article 16*

#### *General obligations of the FCA*

When assessing the AIFM’s compliance with rules 2.1.4 and 18.5A.3 of the Conduct of Business sourcebook and rules 4.1.2C and 10.1.24 in the Senior Management Arrangements, Systems and Controls sourcebook, the FCA shall use at least the criteria laid down in this Section.”.

- (3) In Article 21, in the opening words, for “competent authorities” substitute “the FCA”.

(4) In Article 24, in the opening words, for “Annex I to [Directive 2011/61/EU](#)” substitute “rule 1.4.7 of the Investment Funds sourcebook”.

(5) In Article 29, for “UCITS”, wherever it occurs, substitute “UK UCITS”.

### Conflicts of interest

**25.**—(1) Before Article 30, omit “(Article 14 of [Directive 2011/61/EU](#))”.

(2) In Article 30, in points (c) and (d), for “UCITS” substitute “UK UCITS”.

(3) In Article 32, for “Article 14(1) of [Directive 2011/61/EU](#)” substitute “rules 10.1.23 and 10.1.25 of the Senior Management Arrangements, Systems and Controls sourcebook”.

(4) In Article 33, in paragraph 2, in points (a) and (e), for “Article 6(2) and (4) of [Directive 2011/61/EU](#)” substitute “rule 1.4.3 of the Investment Funds sourcebook”.

(5) In Article 36, in paragraph 1, for “Article 14(1) and (2) of [Directive 2011/61/EU](#)” substitute “rules 10.1.23, 10.1.25 and 10.1.26 of the Senior Management Arrangements, Systems and Controls sourcebook”.

### Risk management

**26.**—(1) Before Article 38, omit “(Article 15 of [Directive 2011/61/EU](#))”.

(2) In Article 39(1)—

(a) in point (b), for “point (c) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”;

(b) in point (d)(i), for “Article 23(4)(c) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”.

(3) In Article 40(3)(d), for “Article 23(4)(c) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”.

(4) In Article 41(4), for “competent authority of its home Member State” substitute “FCA”.

(5) In Article 42(3)—

(a) for “competent authorities of the home Member State of the AIFM” substitute “FCA”;

(b) for “the second subparagraph of Article 15(1) of [Directive 2011/61/EU](#)” substitute “rule 3.7.2(2) of the Investment Funds sourcebook”.

(6) In Article 43(1), for “Article 15(1) of [Directive 2011/61/EU](#)” substitute “rule 3.7.2 of the Investment Funds sourcebook”.

(7) In Article 44—

(a) in paragraph 1, for “competent authority” substitute “FCA”;

(b) in paragraph 3, for “point (c) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”.

(8) In Article 45(2), for “point (c) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”.

### Liquidity management

**27.**—(1) Before Article 46, omit “(Article 16 of [Directive 2011/61/EU](#))”.

(2) In Article 46—

(a) for “competent authorities of their home Member State”, substitute “FCA”;

- (b) for “Article 16(1) of [Directive 2011/61/EU](#)” substitute “rule 3.6.3 of the Investment Funds sourcebook”.
- (3) In Article 47, in paragraph 1(c)—
  - (a) for “Article 16(1) of [Directive 2011/61/EU](#)” substitute “rule 3.6.3 of the Investment Funds sourcebook”;
  - (b) for “regulated market within the meaning of point (14) of Article 4(1) of [Directive 2004/39/EC](#)” substitute “UK regulated market within the meaning of point (13A) of Article 2(1) of Regulation (EU) No 600/2014(9)”.
- (4) In Article 49(1), for “Article 16(2) of [Directive 2011/61/EU](#)” substitute “rule 3.6.2 of the Investment Funds sourcebook”.

### Investment in securitisation positions

- 28.**—(1) Before Article 50, omit “(Article 17 of [Directive 2011/61/EU](#))”.
- (2) In Article 50—
    - (a) in point (a), for “Article 4(36) of [Directive 2006/48/EC](#)” substitute “Article 2(1) of Regulation 2017/2402”;
    - (b) in point (b), for “Article 4(40) of [Directive 2006/48/EC](#)” substitute “Article 2(19) of Regulation 2017/2402”;
    - (c) in point (c), for “Article 4(42) of [Directive 2006/48/EC](#)” substitute “Article 2(5) of Regulation 2017/2402”;
    - (d) in point (d), for “Article 4(39) of [Directive 2006/48/EC](#)” substitute “Article 2(6) of Regulation 2017/2402”;
    - (e) after point (d), insert—
      - “(e) ‘Regulation 2017/2402’ means Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives [2009/65/EC](#), [2009/138/EC](#) and [2011/61/EU](#) and Regulations (EC) No 1060/2009 and (EU) No 648/2012.”.
  - (3) In Article 51(2)—
    - (a) for “the first subparagraph of Article 122a(3) of [Directive 2006/48/EC](#)” substitute “Article 6(5) of Regulation 2017/2402”;
    - (b) for “the second subparagraph of Article 122a(3) of [Directive 2006/48/EC](#)”, substitute “Article 6(6) of Regulation 2017/2402”.
  - (4) In Article 53—
    - (a) in paragraph 2—
      - (i) in the first subparagraph, for “point (b) of Article 15(3) of [Directive 2011/61/EU](#)”, substitute “rule 3.7.5(2)(b) of the Investment Funds sourcebook”;
      - (ii) in the second subparagraph, for “Article 15 of [Directive 2011/61/EU](#)” substitute “rules 3.7.2 to 3.7.7 of the Investment Funds sourcebook”;
    - (b) in paragraph 4, for “Article 18 of [Directive 2011/61/EU](#)” substitute “rules 4.1.1, 4.1.1B and 4.1.2D of the Senior Management Arrangements, Systems and Controls sourcebook”;

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(9) Point (13A) is inserted into Article 2(1) by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

- (c) in paragraph 5, for “Articles 22, 23 and 24 of [Directive 2011/61/EU](#)”, substitute “sections 3.2, 3.3 and 3.4 of the Investment Funds sourcebook”.
- (5) For Article 56, substitute—

*“Article 56*

*Interpretation*

In the absence of guidance issued by the FCA, the provisions of this Section shall be interpreted in a consistent manner with the corresponding provisions of Regulation 2017/2402.”.

**Organisational requirements: general principles**

- 29.**—(1) Before Article 57, omit “(Articles 12 and 18 of [Directive 2011/61/EU](#))”.
- (2) In Article 57(4), for “competent authority” both times it occurs, substitute “FCA”.
- (3) In Article 60—
- (a) in paragraph 1, after “its obligations under”, insert “the UK provisions which implemented”;
- (b) in paragraph 2—
- (i) in point (c), for “Article 19 of [Directive 2011/61/EU](#)” substitute “section 3.9 of the Investment Funds sourcebook”;
- (ii) in point (h), for “Annex II to [Directive 2011/61/EU](#)” substitute “rules 19B.1.4 to 19B.1.24 of the Senior Management Arrangements, Systems and Controls sourcebook”;
- (c) in paragraph 3, in point (a), after “laid down in” insert “the UK provisions which implemented”.
- (4) In Article 61—
- (a) in paragraph 1—
- (i) after “its obligations under” insert “the UK provisions which implemented”;
- (ii) for “competent authorities to exercise their” substitute “FCA to exercise its”;
- (iii) for “under that Directive” substitute “under FSMA”;
- (b) in paragraph 2, in point (b), after “obligations under” insert “the UK provisions which implemented”.
- (5) In Article 63—
- (a) in paragraph 1—
- (i) in the opening words, for “Article 1(1) of [Directive 2003/6/EC](#) of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)” substitute “Article 7(1) of Regulation (EU) 596/2014/ EU of the European Parliament and of the Council on market abuse”;
- (ii) in point (a)(i), for “Article 2(1) of [Directive 2003/6/EC](#)” substitute “Article 8(1) and (4)(a) to (d) of Regulation (EU) 596/2014”;
- (iii) in point (a)(iii), after “AIFM under” insert “the UK provisions which implemented”;
- (iv) in point (c) for “Article 3(a) of [Directive 2003/6/EC](#)” substitute “Article 14(c) of Regulation (EU) 596/2014”;
- (b) in paragraph 3, in point (b), for “subject to supervision under the law of a Member State which requires” substitute “required to have”.

- (6) In Article 64, in paragraph 4—
- (a) for “point (7) of Article 4(1) of [Directive 2004/39/EC](#)” substitute “point (12) of Article 2.1 of Regulation (EU) No 600/2014”;
  - (b) for “a regulated market as referred to in point (14) of Article 4(1) of [Directive 2004/39/EC](#)” substitute “a UK regulated market as referred to in point (13A) of Article 2.1 of Regulation (EU) No 600/2014”(10);
  - (c) for “a multi-lateral trading facility as referred to in point (15) of Article 4(1) of [Directive 2004/39/EC](#)” substitute “a UK multi-lateral trading facility as referred to in point (14A) of Article 2.1 of Regulation (EU) No 600/2014(11);
  - (d) for “point (8) of Article 4(1) of that Directive” substitute “point (6) of Article 2.1 of that Regulation”.
- (7) In Article 66—
- (a) in paragraph 1, in the second subparagraph—
    - (i) for “competent authorities” substitute “the FCA”;
    - (ii) after “functions under” insert “the UK provisions which implemented”;
  - (b) in paragraph 2, in the second sentence, for “Competent authorities” substitute “The FCA”;
  - (c) in paragraph 3—
    - (i) in the opening words, for “competent authorities” substitute “FCA”;
    - (ii) in point (a), for “competent authorities are” substitute “FCA is”.

## Valuation

- 30.**—(1) Before Article 67, omit “(Article 19 of [Directive 2011/61/EU](#))”.
- (2) In Article 67(4), for “point (b) of Article 19(4) of [Directive 2011/61/EU](#)” substitute “rule 3.9.7 of the Investment Funds sourcebook”.
- (3) In Article 68(3), for “Article 19(9) of [Directive 2011/61/EU](#)” substitute “section 55L or 166 of the Financial Services and Markets Act 2000(12)”.

## Delegation of AIFM functions

- 31.**—(1) Before Article 75, omit “(Article 20(1), (2), (4) and (5) of [Directive 2011/61/EU](#))”.
- (2) In Article 75(c), after “in accordance with” insert “the UK provisions which implemented”.
- (3) In Article 76—
- (a) in paragraphs 1 and 2, for “competent authorities” both times it appears, substitute “FCA”;
  - (b) in paragraph 1, for “Article 20(1)(a) of [Directive 2011/61/EU](#)” substitute “rule 3.10.2(2) (a) of the Investment Funds sourcebook”.
- (4) In Article 77(3), in the second subparagraph, for “Union” substitute “United Kingdom”.
- (5) In Article 78—
- (a) in paragraph 2—

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(10) Points (13A) and (13B) were inserted into Article 2(1) by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

(11) Points (14A) and (14B) were inserted into Article 2(1) by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

(12) Section 55L was substituted, with ss 55A to 55Z4, for the original Part 4 by section 11(2) of the Financial Services Act 2012 (c. 21).

- (i) in the opening words, for “point (c) of Article 20(1) of [Directive 2011/61/EU](#)” substitute “regulation 26(1)(a) and (2) of the AIFM Regulations 2013, and rules 3.10.2(2)(c) and 3.10.7G of the Investment Funds sourcebook”;
  - (ii) in point (a) for “[Directive 2009/65/EC](#)” substitute “FSMA”;
  - (iii) in point (b), for “[Directive 2004/39/EC](#) to perform portfolio management” substitute “FSMA with permission under Part 4A of that Act to carry out the regulated activity of managing investments under article 37 of the Regulated Activities Order 2001”;
  - (iv) in point (c), for “[Directive 2006/48/EC](#) having the authorisation to perform portfolio management under [Directive 2004/39/EC](#)” substitute “FSMA with permission under Part 4A of that Act to carry out the regulated activity of managing investments under article 37 of the Regulated Activities Order 2001”;
  - (v) in point (d), for “[Directive 2011/61/EU](#)” substitute “the Financial Services and Markets Act 2000”;
- (b) in paragraph 3—
- (i) in the opening words, for “point (d) of Article 20(1) of [Directive 2011/61/EU](#)” substitute “rules 3.10.2(2)(d) of the Investment Funds sourcebook”;
  - (ii) in point (a), for “competent authorities of the home Member State of the AIFM” substitute “FCA”;
  - (iii) in point (b), in the opening words, for “competent authorities” substitute “FCA”;
  - (iv) in point (b)(i), after “provided for in”, insert “the UK provisions which implemented”;
  - (v) in point (b)(iv), after “requirements of” insert “the UK provisions which implemented”;
  - (vi) in point (b)(v)—
    - (aa) after “requirements of” insert “the UK provisions which implemented”;
    - (bb) omit “and relevant national law”.
- (6) In Article 79—
- (a) in point (a), for “competent authorities”, in both places, substitute “FCA”;
  - (b) in point (b), for “competent authorities of the AIFM” substitute “FCA”;
  - (c) in point (c)—
    - (i) for “competent authorities” substitute “FCA”;
    - (ii) after “requirements of” insert “the UK provisions which implemented”.
- (7) In Article 80(1), in the opening words, for “point (b) of Article 20(2) of [Directive 2011/61/EU](#)” substitute “rule 3.10.6(2) of the Investment Funds sourcebook”.
- (8) In Article 81—
- (a) in paragraph 1 in the second subparagraph, for “point (a) of Article 20(4) of [Directive 2011/61/EU](#)” substitute “rules 3.10.4(1) of the Investment Funds sourcebook”;
  - (b) in paragraph 2, for “point (b) of Article 20(4) of [Directive 2011/61/EU](#)” substitute “rule 3.10.4(2) of the Investment Funds sourcebook”.
- (9) In Article 82—
- (a) in paragraph 1, in point (d), in the second sentence, for “competent authorities” substitute “the FCA”;
  - (b) omit paragraphs 2 and 3.



### **Depository: particulars of written contract**

- 32.**—(1) Before Article 83, omit “(Article 21(2) of [Directive 2011/61/EU](#))”.
- (2) In Article 83(1)—
- (a) in the opening words, for “Article 21(2) of [Directive 2011/61/EU](#)” substitute “rule 3.11.19 of the Investment Funds sourcebook”;
  - (b) in point (c) for “Article 21(13) or (14) of [Directive 2011/61/EU](#)” substitute “regulation 30(4) or 32(2) of the AIFM Regulations 2013(13)”;
  - (c) in point (e), for “competent authorities” substitute “the FCA”;
  - (d) in point (h), for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook, and regulation 29(3) of the AIFM Regulations 2013(14)”;
  - (e) in point (p), for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook, and regulation 29(3) of the AIFM Regulations 2013”.

### **Depositories in third countries**

- 33.**—(1) Before Article 84, omit “(Article 21(6)(b) of [Directive 2011/61/EU](#))”.
- (2) In Article 84—
- (a) in the opening words—
    - (i) omit “For the purposes of point (b) of Article 21(6) of [Directive 2011/61/EU](#)”;
    - (ii) for “Union law” substitute “the law applicable in the United Kingdom, or in any part of the United Kingdom”;
  - (b) in point (b), for “the Union” substitute “the United Kingdom”;
  - (c) in point (c)—
    - (i) for “the Union” substitute “the United Kingdom”;
    - (ii) for “an Union credit institution or investment firm” substitute “a credit institution or investment firm incorporated in, or formed under the law of any part of, the United Kingdom”;
  - (d) in point (d), for “the Union” substitute “the United Kingdom”;
  - (e) in point (e), for “Article 21(7) to (15) of [Directive 2011/61/EU](#) and its implementing measures and the relevant national law” substitute “rules 3.11.4, 3.11.5, 3.11.9, 3.11.20, 3.11.21 and 3.11.23 to 3.11.30 of the Investment Funds sourcebook, regulations 29 to 32 of the AIFM Regulations 2013, and Articles 85 to 102 of this Regulation”.

### **Depository functions, due diligence duties and segregation obligation**

- 34.**—(1) Before Article 85, omit “(Articles 21(7)-(9) and 21(11)(c) and (d)(iii) of [Directive 2011/61/EU](#))”.
- (2) In Article 85(1), for “Article 21(7) of [Directive 2011/61/EU](#)” substitute “rule 3.11.20 of the Investment Funds sourcebook”.
- (3) In Article 86—
- (a) in point (a)—

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

(14) Regulation 29(3) is amended, with regulations 2 to 81 of the AIFM Regulations 2013, by Part 2 of these Regulations.

- (i) for “points (a), (b) and (c) of Article 18(1) of [Directive 2006/73/EC](#)” substitute “paragraphs (1), (2) and (3) of rule 7.13.3 of the Client Assets sourcebook”;
  - (ii) for “Union law” substitute “the law applicable in the United Kingdom, or in any part of the United Kingdom”;
  - (iii) for “Article 16 of [Directive 2006/73/EC](#)” substitute “rules 6.2.2R, 6.3.4A-1R, 6.6.2R, 6.6.3, 6.6.34, 7.13.12, 7.15.3 and 7.15.20 of the Client Assets sourcebook (so far as relevant)”;
- (b) in point (e), for “competent authorities” substitute “FCA”.
- (4) In Article 87, for “Article 21(7) of [Directive 2011/61/EU](#)” substitute “rule 3.11.20 of the Investment Funds sourcebook”.
- (5) In Article 88(1)(a), for “the last subparagraph of Article 51(3) of [Directive 2009/65/EC](#) and Article 10 of Commission [Directive 2007/16/EC](#)” substitute “rule 5.2.19(3) and (3A) of the Collective Investment Schemes sourcebook”.
- (6) In Article 89—
- (a) in paragraph 1—
    - (i) in the opening words, for “point (a) of Article 21(8) of [Directive 2011/61/EU](#)”, substitute “rule 3.11.21 of the Investment Funds sourcebook”;
    - (ii) in point (a), for “Article 21(8)(a)(ii) of [Directive 2011/61/EU](#)” substitute “rule 3.11.21(2) of the Investment Funds sourcebook”;
    - (iii) in point (c), for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;
  - (b) in paragraph 2, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”.
- (7) In Article 90—
- (a) in paragraphs 1 and 2, for “point (b) of Article 21(8) of [Directive 2011/61/EU](#)” substitute “rule 3.11.23 of the Investment Funds sourcebook”;
  - (b) in paragraph 4, for “competent authorities” substitute “FCA”.
- (8) In Article 91—
- (a) in point (b) of paragraph 1, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;
  - (b) in paragraph 3—
    - (i) in point (a), in the opening words, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;
    - (ii) in point (b), for “point (b) of Article 21(8) of [Directive 2011/61/EU](#)” substitute “rule 3.11.23 of the Investment Funds sourcebook”;
    - (iii) in point (d), for “Article 21(7) of [Directive 2011/61/EU](#)” substitute “rule 3.11.20 of the Investment Funds sourcebook”.
- (9) In Article 92—
- (a) in paragraphs 2 and 4, for “Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25 of the Investment Funds sourcebook”;
  - (b) in paragraph 3, for “competent authorities of the AIFM” substitute “FCA”.
- (10) In Article 93, in the opening words, for “point (a) of Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25(1) of the Investment Funds sourcebook”.
- (11) In Article 94—

- (a) in paragraph 1, in the opening words, for “point (b) of Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25(2) of the Investment Funds sourcebook”;
  - (b) in paragraphs 1(a), 2 and 4, for “Article 19 of [Directive 2011/61/EU](#) and its implementing measures” substitute “rules 3.9.1 to 3.9.13 of the Investment Funds sourcebook and regulation 24 of the AIFM Regulations 2013”;
  - (c) in paragraph 3, for “Article 19 of [Directive 2011/61/EU](#)” substitute “rules 3.9.1 to 3.9.13 of the Investment Funds sourcebook and regulation 24 of the AIFM Regulations 2013”.
- (12) In Article 95, in the opening words, for “point (c) of Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25(3) of the Investment Funds sourcebook”.
- (13) In Article 96(1), for “point (d) of Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25(4) of the Investment Funds sourcebook”.
- (14) In Article 97(1), in the opening words, for “point (e) of Article 21(9) of [Directive 2011/61/EU](#)” substitute “rule 3.11.25(5) of the Investment Funds sourcebook”.
- (15) In Article 98—
- (a) in paragraph 1—
    - (i) for “point (c) of Article 21(11) of [Directive 2011/61/EU](#)” substitute “rule 3.11.28(3) of the Investment Funds sourcebook”;
    - (ii) for “competent authorities” substitute “the FCA”;
  - (b) in paragraph 2, in the opening words, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;
  - (c) in paragraph 3, in the opening words, for “point (d) of Article 21(11) of [Directive 2011/61/EU](#)” substitute “rule 3.11.28(4) of the Investment Funds sourcebook”;
  - (d) in paragraph 5, for “Article 21(4) of [Directive 2011/61/EU](#)”, substitute “rule 3.11.7 of the Investment Funds sourcebook”;
  - (e) in paragraph 6, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”.
- (16) In Article 99—
- (a) in paragraph 1—
    - (i) in the opening words—
      - (aa) for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”; and
      - (bb) for “point (iii) of Article 21(11)(d) of [Directive 2011/61/EU](#)” substitute “rule 3.11.28(4)(c) of the Investment Funds sourcebook”;
    - (ii) in point (c), for “the third subparagraph of Article 21(11) of [Directive 2011/61/EU](#)” substitute “rule 3.11.29 of the Investment Funds sourcebook”;
    - (iii) in point (e)—
      - (aa) for “points (a), (b) and (c) of Article 18(1) of [Directive 2006/73/EC](#)” substitute “paragraphs (1), (2) and (3) of rule 7.13.3 of the Client Assets sourcebook”;
      - (bb) for “Union law” substitute “the law applicable in the United Kingdom, or in any part of the United Kingdom”;
      - (cc) for “Article 21(7) of [Directive 2011/61/EU](#)” substitute “rule 3.11.20 of the Investment Funds sourcebook”;
  - (b) in paragraph 2, for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;

- (c) in paragraph 3—
  - (i) for “Article 21(11) of [Directive 2011/61/EU](#)” the first time it occurs, substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”;
  - (ii) for “the third subparagraph of Article 21(11) of [Directive 2011/61/EU](#)” substitute “rule 3.11.29 of the Investment Funds sourcebook”.

### **Loss of financial instruments, liability discharge and objective reasons**

- 35.**—(1) Before Article 100, omit “(Article 21(12) and (13) of [Directive 2011/61/EU](#))”.
- (2) In Article 100—
- (a) in paragraph 1, for “Article 21(12) of [Directive 2011/61/EU](#)” substitute “regulations 30(1) to (3) and 31(1) of the AIFM Regulations 2013”;
  - (b) in paragraph 2, for “competent authorities” substitute “FCA”;
  - (c) in paragraph 3, for “Article 21(12) of [Directive 2011/61/EU](#)” substitute “regulations 30(1) to (3) and 31(1) of the AIFM Regulations 2013”.
- (3) In Article 101—
- (a) in the heading, omit “under Article 21(12) of [Directive 2011/61/EU](#)”;
  - (b) in paragraph 1—
    - (i) in the opening words, for “second subparagraph of Article 21(12) of [Directive 2011/61/EU](#)” substitute “regulation 30(2) of the AIFM Regulations 2013”;
    - (ii) in point (a), for “point (a) of Article 21(8) of [Directive 2011/61/EU](#)” substitute “rule 3.11.21 of the Investment Funds sourcebook”;
    - (iii) in the second subparagraph, for “point (a) of Article 21(8) of [Directive 2011/61/EU](#)” substitute “rule 3.11.21 of the Investment Funds sourcebook”;
  - (c) in paragraph 3, for “point (a) of Article 21(8) of [Directive 2011/61/EU](#)” substitute “rule 3.11.21 of the Investment Funds sourcebook”;
  - (d) in paragraph 4, for “Article 21(13) and (14) of [Directive 2011/61/EU](#)” substitute “regulations 30(4) and 32 of the AIFM Regulations 2013”.
- (4) In Article 102—
- (a) in paragraph 1, in the opening words, for “Article 21(13) of [Directive 2011/61/EU](#)” substitute “regulation 30(4) of the AIFM Regulations 2013”;
  - (b) in paragraph 3—
    - (i) in the opening words, for “Article 21(13) of [Directive 2011/61/EU](#)” substitute “regulation 30(4) of the AIFM Regulations 2013”;
    - (ii) in point (a), for “Article 21(11) of [Directive 2011/61/EU](#)” substitute “rules 3.11.28 to 3.11.30 of the Investment Funds sourcebook”.

### **Transparency requirements etc: annual report, disclosure and reporting**

- 36.**—(1) Before Article 103, omit “(Article 22(2)(a) to (e) and Articles 23(4) and 24(1) of [Directive 2011/61/EU](#))”.
- (2) In Article 104(1), for “point (a) of Article 22(2) of [Directive 2011/61/EU](#)” substitute “rule 3.3.5(1) of the Investment Funds sourcebook”.
- (3) In Article 105(1)(c), for “Article 23 of [Directive 2011/61/EU](#)” substitute “section 3.2 of the Investment Funds sourcebook”.
- (4) In Article 106—

- (a) in paragraphs 1 and 2, for “point (d) of Article 22(2) of [Directive 2011/61/EU](#)” substitute “rule 3.3.5(4) of the Investment Funds sourcebook”;
  - (b) in paragraph 2, for “Article 23 of [Directive 2011/61/EU](#)” substitute “section 3.2 of the Investment Funds sourcebook”.
- (5) In Article 107—
- (a) in paragraph 1, in the opening words, for “point (e) of Article 22(2) of [Directive 2011/61/EU](#)” substitute “rule 3.3.5(5) of the Investment Funds sourcebook”;
  - (b) in paragraph 4, for “Annex II to [Directive 2011/61/EU](#)” substitute “rules 19B.1.4 to 19B.1.24 of the Senior Management Arrangements, Systems and Controls sourcebook”.
- (6) In Article 108—
- (a) in paragraph 1, for “Article 23(4) of [Directive 2011/61/EU](#)”, substitute “rule 3.2.5 of the Investment Funds sourcebook”;
  - (b) in paragraph 2—
    - (i) in the opening words, for “Article 23(4)(a) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(1) of the Investment Funds sourcebook”;
    - (ii) in point (b), for “Article 22(1) of [Directive 2011/61/EU](#)” substitute “rules 3.3.2 to 3.3.4 of the Investment Funds sourcebook”;
  - (c) in paragraph 3—
    - (i) in the opening words, for “point (b) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(2) of the Investment Funds sourcebook”;
    - (ii) in point (a), for “Article 16(1) of [Directive 2011/61/EU](#)” substitute “rule 3.6.3 of the Investment Funds sourcebook”;
  - (d) in paragraph 4—
    - (i) in the opening words, for “point (c) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”;
    - (ii) in the second subparagraph, for “Article 22(1) of [Directive 2011/61/EU](#)” substitute “rules 3.3.2 to 3.3.4 of the Investment Funds sourcebook”;
  - (e) in paragraph 5—
    - (i) in the first subparagraph, for “point (c) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(3) of the Investment Funds sourcebook”;
    - (ii) in the second subparagraph, for “Article 22(1) of [Directive 2011/61/EU](#)” substitute “rules 3.3.2 to 3.3.4 of the Investment Funds sourcebook”.
- (7) In Article 109—
- (a) in paragraph 1, for “Article 23(5) of [Directive 2011/61/EU](#)” substitute “rule 3.2.6 of the Investment Funds sourcebook”;
  - (b) in paragraph 3, for “Article 22(1) of [Directive 2011/61/EU](#)” substitute “rules 3.3.2 to 3.3.4 of the Investment Funds sourcebook”.
- (8) In Article 110—
- (a) in the heading, for “competent authorities” substitute “the FCA”;
  - (b) in paragraph 1, in the opening words—
    - (i) for “the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of [Directive 2011/61/EU](#)”, substitute “rule 3.4.2 of the Investment Funds sourcebook, and directions given by the FCA under regulation 21(2) of the AIFM Regulations 2013”;

- (ii) for “competent authorities” substitute “the FCA”;
- (c) in paragraph 2—
  - (i) in the opening words—
    - (aa) after “market in the” insert “United Kingdom or the”;
    - (bb) for “the competent authorities of their home Member State”, substitute “the FCA”;
    - (cc) for “Article 24(2) of [Directive 2011/61/EU](#)” substitute “rule 3.4.3 of the Investment Funds sourcebook”;
  - (ii) in point (a), for “point (a) of Article 23(4) of [Directive 2011/61/EU](#)” substitute “rule 3.2.5(1) of the Investment Funds sourcebook”;
  - (iii) in point (f) for “point (b) of Article 15(3) and the second subparagraph of Article 16(1) of [Directive 2011/61/EU](#)” substitute “rules 3.6.3(2) and 3.7.5(2)(b) of the Investment Funds sourcebook”;
- (d) in paragraph 3—
  - (i) in point (a)—
    - (aa) for “points (a) and (b) respectively of Article 3(2) of [Directive 2011/61/EU](#)” substitute “subparagraphs (a) and (b) respectively of regulation 9(1) of the AIFM Regulations 2013”;
    - (bb) for “the EU AIFs” substitute “the UK and EU AIFs”;
    - (cc) after “they market”, insert “in the United Kingdom or”;
  - (ii) in point (b)—
    - (aa) for “the EU AIFs” substitute “the UK and EU AIFs”;
    - (bb) for “in the Union” substitute “in the United Kingdom or in the Union”;
- (e) in paragraph 4, for “the competent authority of the home Member State of the AIFM”, substitute “the FCA”;
- (f) in paragraph 5, for “Article 24(4) of [Directive 2011/61/EU](#)” substitute “rule 3.4.5 of the Investment Funds sourcebook”;
- (g) omit paragraph 7.
- (9) In Article 111—
  - (a) in paragraphs 1 and 2, for “Article 24(4) of [Directive 2011/61/EU](#)” substitute “rule 3.4.5 of the Investment Funds sourcebook”;
  - (b) in paragraph 2, for “competent authorities of their home Member States” substitute “FCA”.

### **Transparency requirements etc: AIFMs managing leveraged AIFs**

- 37.**—(1) Before Article 112, omit “(Article 25(3) of [Directive 2011/61/EU](#))”.
- (2) In Article 112—
- (a) in paragraph 1—
    - (i) for “competent authorities” substitute “the FCA”;
    - (ii) for “exercise their” substitute “exercises its”;
  - (b) in paragraph 2—
    - (i) for “a competent authority” substitute “the FCA”;

- (ii) for “Articles 7(3), 15(4), 24(4) or 24(5) of [Directive 2011/61/EU](#)” substitute “rules 3.4.5, 3.4.6A, 3.4.6C and 3.7.7 of the Investment Funds sourcebook, or in response to a requirement imposed under section 55U(4) or 165 of FSMA(15)”;
- (c) in paragraph 3—
  - (i) in the opening words—
    - (aa) for “Competent authorities” substitute “The FCA”;
    - (bb) for “their” substitute “its”;
  - (ii) in point (c) for “competent authorities”, substitute “FCA”.

### Rules relating to third countries

**38.**—(1) Before Article 113, omit “(Articles 34(1), 35(2), 36(1), Articles 37(7)(d), 40(2)(a) and Article 42(1) of [Directive 2011/61/EU](#))”.

(2) In Article 113—

- (a) in paragraph 1, for “Chapter VII of [Directive 2011/61/EU](#)” substitute “regulations 33, 49 and 50 of the AIFM Regulations 2013”;
- (b) in paragraph 3, for “EU competent authorities” substitute “the FCA”;
- (c) in paragraph 4—
  - (i) for “a Union competent authority”, the first time it occurs, substitute “the FCA”;
  - (ii) omit the words from “to other Union” to the end of the paragraph.

(3) In Article 114—

- (a) in paragraph 1—
  - (i) for “Union competent authorities” substitute “the FCA”;
  - (ii) for “[Directive 2011/61/EU](#)” substitute “FSMA and the AIFM Regulations 2013”;
- (b) in paragraph 2—
  - (i) in the first sentence, for “Union competent authority’s duties under [Directive 2011/61/EU](#)” substitute “FCA’s duties”;
  - (ii) in the second sentence, for “the Union competent authority” each time it appears, substitute “the FCA”;
- (c) in paragraph 3—
  - (i) for “the Union competent authorities” substitute “the FCA”;
  - (ii) for “Union legislation and national implementing legislation” substitute “the law applying in the United Kingdom, or in any part of the United Kingdom”.

(4) In Article 115, for “Article 52 of [Directive 2011/61/EU](#)” substitute “regulation 9(2B) of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(16)”.

### Exchange of information

**39.**—(1) Before Article 116 omit “(Article 53(1) of [Directive 2011/61/EU](#))”.

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(15) Section 55U was substituted, with the rest of Part 4A for the original Part 4 by section 11(2) of the Financial Services Act 2012 (c. 21). Section 165 was amended by section 24 of the Financial Services Act 2010 (c. 28), paragraph 1 of Schedule 12 to the Financial Services Act 2012; paragraph 36 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c. 14), S.I. 2013/1773; S.I. 2015/575.

(16) S.I. 2001/2188. Paragraph (2B) was inserted into regulation 9 by S.I. 2013/1773, and amended by paragraph 278 of Schedule 19 to the Data Protection Act 2018 (c. 12).

(2) Omit Article 116.

### Final provisions and annexes

**40.**—(1) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” after Article 117.

(2) In Annex IV, in the table headed “AIF-specific information to be provided to competent authorities”, in the heading, for “competent authorities” substitute “the FCA”.

### Commission Implementing Regulation (EU) No 447/2013

**41.**—(1) Commission Implementing Regulation (EU) No 447/2013 establishing the procedure for AIFMs which choose to opt in under [Directive 2011/61/EU](#) of the European Parliament and of the Council is amended as follows.

(2) In Article 1—

(a) in the first subparagraph of paragraph 1—

- (i) for “Article 3(2) of [Directive 2011/61/EU](#)” substitute “regulation 9 of the Alternative Investment Fund Managers Regulations 2013(17) (the “AIFM Regulations 2013”)”;
- (ii) for “under that Directive” substitute “to regulation as a full-scope AIFM”;
- (iii) for “competent authority of its home Member State” substitute “Financial Conduct Authority”;

(b) in the second subparagraph of paragraph 1, for “paragraphs 1 to 5 of Article 7 of [Directive 2011/61/EU](#) and in the measures adopted in implementation thereof” substitute “section 55U of the Financial Services and Markets Act 2000(18) (“FSMA”) and regulation 5 of the AIFM Regulations 2013”;

(c) in paragraph 2—

- (i) for “competent authority of the home Member State” substitute “Financial Conduct Authority”;
- (ii) for “Article 7 of that Directive” substitute “section 55U of FSMA and by regulation 5 of the AIFM Regulations 2013”;
- (iii) for “Article 3(3) of that Directive” substitute “regulations 11, 15 and 21 of the AIFM Regulations 2013”;
- (iv) for “the competent authority” the second time it occurs, substitute “the Financial Conduct Authority”;
- (v) for “Article 5 of [Directive 2009/65/EC](#)” substitute “sections 242 and 261C of FSMA(19) and regulation 12 of the Open-Ended Investment Companies Regulations 2001(20)”;

(d) in paragraph 3—

- (i) for “competent authority of the home Member State” substitute “Financial Conduct Authority”;
- (ii) for “paragraphs 1 to 5 of Article 8 of [Directive 2011/61/EU](#)” substitute “regulation 5 of the AIFM Regulations 2013”.

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(17) Regulation 5 was amended by [S.I. 2013/1797](#), and is amended by these Regulations.

(18) Section 55U was inserted into the Act, with the rest of Part 4A of that Act, by section 11(2) of the Financial Services Act 2012 (c. 21).

(19) Section 242 was amended by [S.I. 2013/423](#) and [2018/698](#) and section 261C was inserted by [S.I. 2013/1388](#) and amended by [S.I. 2018/698](#).

(20) [S.I. 2001/1228](#). Regulation 12 was amended by [S.I. 2018/698](#).



(3) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” after Article 2.

#### **Commission Implementing Regulation (EU) No 448/2013**

**42.** Commission Implementing Regulation (EU) No 448/2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to [Directive 2011/61/EU](#) of the European Parliament and of the Council(**21**) is revoked.

#### **Commission Delegated Regulation (EU) No 2015/514**

**43.** Commission Delegated Regulation (EU) No 2015/514 of 18 December 2014 on the information to be provided by competent authorities to the European Securities and Markets Authority pursuant to Article 67(3) of [Directive 2011/61/EU](#) of the European Parliament and of the Council(**22**) is revoked.

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(21) OJ L132, 16.5.2013, p.3.

(22) OJ L82, 27.3.2015, p.5.