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STATUTORY INSTRUMENTS

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**2013 No. 1773**

**The Alternative Investment Fund Managers Regulations 2013**

**PART 6**

**Marketing of AIFs**

**CHAPTER 2**

**Marketing of AIFs by full-scope AIFMs**

**FCA approval for marketing**

**54.**—(1) This regulation applies to—

- (a) a full-scope UKAIFM seeking to market an AIF managed by the AIFM that does not fall within regulation 57(1);
- (b) a full-scope EEA AIFM, seeking to market to retail investors an AIF managed by the AIFM—
  - (i) that does not fall within regulation 57(1); and
  - (ii) where the FCA has not received a regulator's notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act (EEA passport rights).

(2) The AIFM must—

- (a) apply to the FCA for approval in such manner as the FCA may direct; and
- (b) provide such information as the FCA may reasonably require for the purpose of determining the application.

(3) The FCA must determine an application by a full-scope UK AIFM, in so far as that application is for approval to market to professional investors, within 20 working days of receipt of a completed application.

(4) The FCA must determine an application by a full-scope EEA AIFM, or an application by a full scope UK AIFM in so far as that application is for approval to market to retail investors—

- (a) if the application relates to an AIF in respect of which the AIFM has made an application for authorisation under section 242 or 261C of the Act or under regulation 12 of the Open-Ended Investment Companies Regulations 2001<sup>(1)</sup>, or for recognition under section 272 of the Act—
  - (i) before the end of the period for determining that application for authorisation or recognition; or
  - (ii) if later, within 20 working days of receipt of the completed application under this regulation;
- (b) otherwise, within 20 working days of receipt of the completed application under this regulation.

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<sup>(1)</sup> S.I. 2001/1228.

- (5) If the FCA approves the application, it must inform—
- (a) the AIFM concerned; and
  - (b) where the AIF concerned is an EEA AIF, the competent authority of the AIF.
- (6) If the FCA proposes to refuse the application, it must give written notice to the AIFM concerned, stating the reasons for the proposed refusal.
- (7) If the FCA decides to refuse the application—
- (a) it must give written notice to the AIFM concerned, informing the AIFM of its right to refer the matter to the Tribunal; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (8) The FCA may refuse an application if it appears to the FCA that the AIFM does not or is unlikely to comply with an implementing provision that applies to it, or would apply to it if the application were approved.

### **Change to information provided with application**

**55.**—(1) If there is a material change to the information mentioned in regulation 54(2)(b), the AIFM must give written notice of the change to the FCA—

- (a) in the case of a change planned by the AIFM (“planned change”), at least one month before implementing the change; or
- (b) in other cases, as soon as reasonably practicable and, at the latest, immediately after an unplanned change has occurred.

(2) If a planned change would mean the AIFM no longer complied with an implementing provision applicable to it, the FCA must inform the AIFM without undue delay that it must not implement the change.

(3) If—

- (a) a planned change is implemented, or
- (b) an unplanned change takes place,

as a result of which the AIFM no longer complies with an implementing provision that applies to it, the FCA must take steps to ensure that the AIFM complies with that implementing provision or ceases to market the AIF.

(4) The FCA may use its powers under section 55J and 55L of the Act (variation or cancellation on initiative of regulator and imposition of requirement by the FCA) or the power applied by regulation 56 in taking the steps mentioned in paragraph (3), but this paragraph does not limit the powers of the FCA.

### **Suspension or revocation of approval granted to a full-scope EEA AIFM**

**56.** If the FCA has approved marketing by a full-scope EEA AIFM under regulation 54, regulations 62 to 64 apply in relation to that approval as they apply in relation to an entitlement to market an AIF following a notification under regulation 57, 58 or 59, but with the following modifications—

- (a) references to a notification under regulation 57, 58 or 59 are to be read as references to an application under regulation 54;
- (b) references to an entitlement to market are to be read as references to an approval to market;
- (c) references to an Article 36 custodian are to be omitted; and
- (d) regulations 62(1)(c) and 63(2)(c) are to be omitted.

