

## SCHEDULE 2

Regulation 4

Amendments to legislation that come into force on termination of Articles 36 and 42 of the directive

### PART 1

#### Amendments to legislation

##### Amendment to the Act

1. In section 418(5B) of the Act (carrying on regulated activities in the United Kingdom) <sup>M1</sup>, omit paragraph (c).

##### Marginal Citations

**M1** Inserted by paragraph 1 of Schedule 1 to these Regulations

##### Amendment to the Regulated Activities Order

2. In Schedule 8 to the Regulated Activities Order (persons excluded from regulated activity of managing an AIF), omit paragraph 11 <sup>M2</sup>.

##### Marginal Citations

**M2** Inserted by paragraph 1(17) of Schedule 2 to the principal regulations and amended by regulation 81 of the principal regulations

##### Amendments to the principal regulations

3.—(1) The principal regulations <sup>M3</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “external valuer” omit “other than an AIF that is marketed only pursuant to [F1regulation 59 of these Regulations] ”.

(3) For regulation 29(1)(b) (depository liability: general provisions) substitute—

“(b) the depository of a third country AIF managed by a full-scope UK AIFM, if the depository has its registered office or a branch in the United Kingdom.”.

(4) For regulation 34 (introductory provision) substitute—

##### “Introductory provision

**34.** In this Part, a reference to an AIFM is to a full-scope UK AIFM.”.

(5) In regulation 49 (marketing by full-scope EEA AIFMs)—

(a) after paragraph (a) insert “ or ”,

(b) after paragraph (b) omit “or”, and

(c) omit paragraph (c).

(6) For regulation 50 (marketing by AIFMs of other AIFs), substitute—

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#### **“Marketing by full-scope UK AIFMs**

**50.** A full-scope UK AIFM may not market an AIF in the United Kingdom unless the FCA has approved the marketing in accordance with regulation 54.”.

(7) For regulation 56 (suspension or revocation of approval granted to a full-scope EEA AIFM) substitute—

#### **“Suspension or revocation of approval granted to a full-scope [<sup>F2</sup>Gibraltar] AIFM**

**56.** Regulations 56A to 56C apply where the FCA has approved marketing by a full-scope [<sup>F3</sup>Gibraltar AIFM] under regulation 54.

#### **Revocation of approval to market**

**56A.—**(1) The FCA may revoke the AIFM's approval to market an AIF if it appears to the FCA that—

- (a) the AIFM has contravened an implementing provision;
- (b) the AIFM has, in purported compliance with an implementing provision, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
- (c) the AIF has been wound up; or
- (d) none of sub-paragraphs (a) to (c) applies, but it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed.

(2) If the FCA proposes to revoke an AIFM's approval to market an AIF it must give a warning notice to the AIFM.

(3) If the FCA decides to revoke an AIFM's approval to market an AIF under paragraph (1)

—

- (a) it must give a decision notice to the AIFM; and
- (b) the AIFM may refer the matter to the Tribunal.

#### **Suspension of approval to market**

**56B.—**(1) If one of the grounds in paragraph (2) is met, the FCA may suspend an AIFM's approval to market an AIF for a specified period, until the occurrence of a specified event or until specified conditions are complied with.

(2) The grounds are that it appears to the FCA that—

- (a) the AIFM has, in purported compliance with an implementing provision, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
- (b) sub-paragraph (a) does not apply, but it is undesirable in the interests of investors or potential investors that the AIF should continue to be marketed.

(3) In this regulation “specified” means specified by the FCA in a notice given under regulation 56C.

#### **Procedure on suspension**

**56C.—**(1) A suspension under regulation 56B takes effect—

- (a) immediately, if the notice given under paragraph (3) states that that is the case;
- (b) on such date as may be specified in the notice; or

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- (c) if no date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (2) A suspension may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is suspending the AIFM's approval to market, considers that it is necessary for the suspension to take effect immediately (or on that date).
- (3) If the FCA proposes to suspend an AIFM's approval to market an AIF, or suspends such approval with immediate effect—
  - (a) it must give written notice to the AIFM; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (4) A notice under paragraph (3)(a) must—
  - (a) give details of the suspension;
  - (b) inform the person to whom it is given of when the suspension takes effect;
  - (c) state the FCA's reasons for the suspension and for its determination as to when the suspension takes effect;
  - (d) inform the person to whom it is given that it may make representations to the FCA within such period as may be specified in it (whether or not it has referred the matter to the Tribunal); and
  - (e) inform the person to whom it is given of their right to refer the matter to the Tribunal.
- (5) The FCA may extend the period allowed under the notice for making representations.
- (6) Paragraph (7) applies if, having considered any representations made by a person to whom the notice was given, the FCA decides—
  - (a) to make the suspension in the way proposed,
  - (b) to make the suspension in a way other than that proposed, or
  - (c) if it has been made, not to revoke the suspension.
- (7) If this paragraph applies—
  - (a) the FCA must give written notice to the AIFM; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (8) If, having considered any representations made by a person to whom the notice was given, the FCA decides—
  - (a) not to suspend the approval to market in the way proposed, or
  - (b) to revoke a suspension,it must give written notice to the AIFM.
- (9) For the purposes of paragraph (1)(c), section 391(8) of the Act (publication) applies as if a notice under paragraph (3)(a), (7)(a) or (8) were a supervisory notice.”
- (8) Omit regulations 57 to 64 and the heading preceding regulation 57.
- (9) In regulation 71(5) (application of provisions of the Act to unauthorised AIFMs), omit sub-paragraphs (c) to (e).

**F1** Words in [Sch. 2 para. 3\(2\)\(a\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **21(2)(a)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

**F2** Word in [Sch. 2 para. 3\(7\)](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **21(2)(b)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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- F3** Words in Sch. 2 para. 3(7) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **21(2)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M3** Amended by paragraph 2 of Schedule 1 to these Regulations

## PART 2

### Transitional provisions relating to marketing by third country AIFMs

#### 4.—(1) Sub-paragraphs (2) and (3) apply where—

- (a) an AIFM has given a notification under regulation 58(1) of the principal regulations (marketing of AIFs managed by small third country AIFMs) in respect of an AIF,
- (b) an investor has acquired units or shares of the AIF as a result of marketing that is permitted because of that notification, and
- (c) the AIFM is not—

[<sup>F4</sup>(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.]

<sup>F5</sup>(ii) . . . . .

(2) The revocation of regulations 58(3) and (4)(a) and 71(5)(d) of the principal regulations by paragraph 3 does not have effect in relation to that AIFM.

(3) In regulation 71(5)(d) of the principal regulations (in so far as it continues to apply by virtue of paragraph (2)) for “that is entitled to market an AIF following notification under regulation 58” substitute “to which the requirement at regulation 58(3) applies”;

- F4** Sch. 2 para. 4(1)(c)(i) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **21(3)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

- F5** Sch. 2 para. 4(1)(c)(ii) omitted (31.12.2020) by virtue of [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **21(3)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### 5.—(1) Sub-paragraph (2) applies where—

- (a) an AIFM has given a notification under regulation 59(1) of the principal regulations (marketing under Article 42 of the directive) in respect of an AIF,
- (b) an investor has acquired units or shares of the AIF as a result of marketing that is permitted because of that notification, and
- (c) the AIFM is not authorised in accordance with Article 37 of the directive in respect of the AIF.

(2) The substitution of regulation 34 of the principal regulations and the revocation of regulations 59(3) and (4)(a) and 71(5)(e) of the principal regulations by paragraph 3 do not have effect in relation to that AIFM.

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6. Any expression used in this Part that is used in the principal regulations has the same meaning as in the principal regulations.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)