
STATUTORY INSTRUMENTS

2014 No. 1292

The Alternative Investment Fund Managers Order 2014

PART 2

Amendments coming into force on [^{F1}16th June] 2014

The Alternative Investment Fund Managers Regulations 2013

4.—(1) The Alternative Investment Fund Managers Regulations 2013 ^{M1} are amended as follows.

(2) In regulation 2 (interpretation), after paragraph (3) insert—

“(3A) Any reference in these Regulations to an EEA State other than the United Kingdom is to be read as including reference to Gibraltar.”.

(3) In regulation 22 (power to direct small registered UK AIFMs and EuSEF and EuVECA Managers to take appropriate measures), for paragraph (4) substitute—

“(4) Sections 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to an AIFM under paragraph (1) or (2) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA).”.

(4) In regulation 71 (application of provisions of the Act to unauthorised AIFMs), in paragraph (5)

—
(a) at the end of sub-paragraph (e) omit “or”;

(b) at the end of sub-paragraph (f) add—

“; or

(g) an AIFM to which regulation 75 (closed-ended AIFs whose subscription period has closed) applies”.

(5) In regulation 72 (AIFMs managing AIFs immediately before 22nd July 2013)—

(a) in paragraph (6) after “these Regulations” insert “ or the Alternative Investment Fund Managers Order 2014 ”;

(b) after paragraph (6) insert—

“(6A) Paragraphs (6B) and (6C) apply where a UK AIFM falling within paragraph (1) submits an application in accordance with paragraph (3)(a) or (b), but on 22nd July 2014—

(a) where the application was submitted in accordance with paragraph (3)(a), the AIFM does not have a Part 4A permission to carry on the regulated activity of managing an AIF;

(b) where the application was submitted in accordance with paragraph (3)(b), the AIFM is not a small registered UK AIFM;

(c) the AIFM has not received a decision notice from the FCA or the PRA refusing the application; and

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- (d) the AIFM has not withdrawn the application in accordance with section 55V(4) of the Act (determination of applications).
- (6B) During the additional transitional period—
 - (a) sections 19(1) (the general prohibition) and 20(1) and (1A) of the Act (authorised persons acting without permission) do not apply to the AIFM in respect of the activities to which the application relates, in so far as those activities are specified in article 51ZC of the Regulated Activities Order;
 - (b) notwithstanding paragraph (5), Part 6 of these Regulations does not apply to the AIFM in respect of the AIFs to which the application relates;
 - (c) all other implementing provisions ^{M2} apply in respect of the AIFM—
 - (i) where the application was submitted in accordance with paragraph (3)(a), as if the appropriate regulator (within the meaning of section 55V(1) of the Act (determination of applications)) had given the AIFM written notice on 22nd July 2014 granting its application with immediate effect;
 - (ii) where the application was submitted in accordance with paragraph (3)(b), as if the AIFM had been entered on the register of small registered UK AIFMs on 22nd July 2014; and
 - (d) if the AIFM is not an authorised person and is not an unauthorised AIFM (as defined in regulation 71(5)), the AIFM is to be treated as an unauthorised AIFM for the purposes of paragraphs (1) to (4) of regulation 71 (application of provisions of the Act to unauthorised AIFMs).
- (6C) In paragraph (6B) “the additional transitional period” means the period starting on 22nd July 2014 and ending—
 - (a) where the application was submitted in accordance with paragraph (3)(a), on the date on which a Part 4A permission for the AIFM to carry on the regulated activity of managing an AIF has effect;
 - (b) where the application was submitted in accordance with paragraph (3)(b), on the date on which the AIFM becomes a small registered UK AIFM;
 - (c) on the date on which the FCA or the PRA gives the AIFM a decision notice refusing the application; or
 - (d) on the date on which the AIFM withdraws the application.”
- (6) In regulation 74 (closed-ended AIFs that make no additional investments)—
 - (a) in paragraph (2) for “The AIFM need not” substitute “ Notwithstanding regulation 72(3), the AIFM need not ”; and
 - (b) for paragraph (4) substitute—
 - “(4) If the AIFM is given a Part 4A permission to carry on the regulated activity of managing an AIF, article 72AA of the Regulated Activities Order (managers of UCITS and AIFs) ^{M3} does not apply in respect of the AIFM's management of the AIF referred to in paragraph (1).
 - (5) If, at the same time that the AIFM is given a Part 4A permission to manage an AIF, the AIFM's Part 4A permission is also varied by the removal from the regulated activities to which that permission relates of regulated activities that the AIFM carries on in connection with or for the purposes of managing the AIF referred to in paragraph (1), the AIFM is to be treated as if the AIFM's Part 4A permission had not been varied by such removal at such time.

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(6) If, immediately before 22nd July 2013, the AIFM had a Part 4A permission to carry on an activity of the kind specified by article 51 of the Regulated Activities Order (establishing, operating or winding up a collective investment scheme) as that article applied at that date ^{M4}, from the relevant date (as defined in regulation 72(7)) that permission is to be treated as if it were a Part 4A permission to carry on an activity of the kind specified by article 51ZE of the Regulated Activities Order.”.

(7) In regulation 75 (closed-ended AIFs whose subscription period has closed)—

(a) in paragraph (2) for “The AIFM need not” substitute “ Notwithstanding regulation 72(3), the AIFM need not ”;

(b) after paragraph (2) insert—

“(2A) If the AIFM is given a variation of its Part 4A permission to add the regulated activity of managing an AIF, article 72AA of the Regulated Activities Order (managers of UCITS and AIFs) ^{M5} does not apply in respect of the AIFM's management of the AIF referred to in paragraph (1).

(2B) If at the same time that the AIFM is given a Part 4A permission to manage an AIF, the AIFM's Part 4A permission is also varied by the removal from the regulated activities to which that permission relates of regulated activities that the AIFM carries on in connection with or for the purposes of managing the AIF referred to in paragraph (1), the AIFM is to be treated as if the AIFM's Part 4A permission had not been varied by such removal at such time.

(2C) If, immediately before 22nd July 2013, the AIFM had a Part 4A permission to carry on an activity of the kind specified by article 51 of the Regulated Activities Order (establishing, operating or winding up a collective investment scheme) as that article applied at that date ^{M6}, from the relevant date (as defined in regulation 72(7)) that permission is to be treated as if it were a Part 4A permission to carry on an activity of the kind specified by article 51ZE of the Regulated Activities Order.”.

(c) for paragraph (3) substitute—

“(3) Subject to paragraph (4), the AIFM need not comply with the implementing provisions in respect of that AIF.”

(d) in paragraph (4) for “that would apply to it” substitute “ with which it would be required to comply ”;

(e) after paragraph (4) add—

“(5) The AIFM must give the FCA such information in respect of its compliance with paragraph (4) as the FCA may direct.

(6) The AIFM must give information required under paragraph (5) at such times and in such manner, and verify that information in such manner, as the FCA may direct.

(7) The AIFM must take such steps as are necessary to ensure compliance with paragraph (4) as the FCA may direct.

(8) Sections 55Y (exercise of own-initiative power: procedure) and 55Z3(2) (right to refer matters to the Tribunal) of the Act apply to a direction to an AIFM under paragraph (7) as they apply to a requirement imposed on an authorised person under section 55L(3) of the Act (imposition of requirements by the FCA).”.

(8) In regulation 78(3) (permission for existing managers, depositaries and trustees of UCITS) after “these Regulations” insert “ or the Alternative Investment Fund Managers Order 2014 ”.

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Marginal Citations

- M1** [S.I. 2013/1773](#), amended by [S.I. 2013/1797](#).
- M2** “implementing provision” is defined in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013.
- M3** Article 72AA of the Regulated Activities Order was inserted by [S.I. 2013/1773](#).
- M4** Articles 51ZA to 51ZG of the Regulated Activities Order were substituted for article 51 of that Order by [S.I. 2013/1773](#).
- M5** Article 72AA of the Regulated Activities Order was inserted by [S.I. 2013/1773](#).
- M6** Articles 51ZA to 51ZG of the Regulated Activities Order were substituted for article 51 of that Order by [S.I. 2013/1773](#).

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

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