

2015 No. 1882

FINANCIAL SERVICES AND MARKETS

The European Long-term Investment Funds Regulations 2015

Made - - - - *11th November 2015*

Laid before Parliament *12th November 2015*

Coming into force - - *3rd December 2015*

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 213(10)(c), 214(5), 224(4) and 428(1) and (3) of the Financial Services and Markets Act 2000(d), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the European Long-term Investment Funds Regulations 2015 and come into force on 3rd December 2015.

Interpretation

2. In these Regulations—

“ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds(e);

“European Long-term Investment Fund” or “ELTIF” means an AIF, as defined by regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013(f), which is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation.

Amendments to the Financial Services and Markets Act 2000

3.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) Section 213(10) was substituted by S.I. 2011/1613.

(d) 2000 c.8.

(e) OJ No L 123, 19.5.2015, p.98.

(f) S.I. 2013/1773.

(2) In section 55J (variation or cancellation on initiative of regulator), in subsection (6A)(e)(a)—

- (a) omit the “or” at the end of sub-paragraph (ii);
- (b) at the end of sub-paragraph (iii) insert “; or”;
- (c) after sub-paragraph (iii) insert—

“(iv) a provision of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.”.

(3) In section 194 (general grounds on which power of intervention is exercisable), in subsection (5)(b)—

- (a) omit the “or” at the end of paragraph (a);
- (b) at the end of paragraph (b), insert “; or”;
- (c) after paragraph (b) insert—

“(c) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.”.

(4) In section 398 (misleading FCA or PRA: residual cases), in subsection (1A)(c)—

- (a) omit the “or” at the end of paragraph (d);
- (b) at the end of paragraph (e), insert “; or”;
- (c) after paragraph (e) insert—

“(f) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds.”.

Amendments to the Alternative Investment Fund Managers Regulations 2013

4.—(1) The Alternative Investment Fund Managers Regulations 2013(d) are amended as follows.

(2) In regulation 2(1)(e) (interpretation) insert the following definitions in the appropriate places—

““ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;

“ELTIF” means an AIF that is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation;

“EEA ELTIF” means an ELTIF that has been authorised by a competent authority other than the FCA under the ELTIF Regulation;

“UK ELTIF” means an ELTIF that has been authorised by the FCA under the ELTIF Regulation;”.

(3) After Part 3 (Small AIFMs) insert—

(a) Section 55J(6A) was substituted by S.I. 2013/3115.
(b) Section 194(5) was inserted by S.I. 2013/1773.
(c) Section 398(1A) was inserted by S.I. 2013/1773.
(d) S.I. 2013/1773.
(e) Regulation 2(1) was amended by S.I. 2013/1797 and S.I. 2014/1292.

“PART 3A

ELTIFs

Manner of application for ELTIF authorisation

23A.—(1) An application for authorisation as a UK ELTIF under Article 5 of the ELTIF Regulation must—

- (a) be made in such manner as the FCA may direct; and
- (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.

(4) The FCA may require an applicant to provide information which it is required to give under paragraph (1)(b) or paragraph (2) of this regulation in such form, or to verify it in such manner, as the FCA may specify.

Procedure in relation to the refusal of an application for ELTIF authorisation

23B.—(1) If the FCA proposes to refuse an application made by a UK AIF for authorisation as a UK ELTIF under Article 5 of the ELTIF Regulation it must give the applicant a warning notice.

(2) If the FCA decides to refuse an application—

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

Procedure in relation to the revocation of ELTIF authorisation otherwise than by consent

23C.—(1) If the FCA proposes to revoke the authorisation of a UK ELTIF, the FCA must give separate warning notices to the AIFM and the depositary of the ELTIF.

(2) If the FCA decides to revoke the authorisation of a UK ELTIF,—

- (a) the FCA must give each of the AIFM and the depositary a decision notice; and
- (b) either of them may refer the matter to the Tribunal.”.

(4) After regulation 30(6) (depositary liability for loss of financial instruments held in custody), insert—

“(7) Paragraphs (4) and (5) do not apply to a depositary of an EEA ELTIF or a UK ELTIF that is marketed to retail investors under Chapter V of the ELTIF Regulation.”.

(5) After regulation 32(2) (depositary liability and third country custodians) insert—

“(3) This regulation does not apply to a depositary of an EEA ELTIF or a UK ELTIF that is marketed to retail investors under Chapter V of the ELTIF Regulation.”.

(6) After regulation 52(1)(b) (contravention by unauthorised person) insert—

“(c) by an AIFM that is not an authorised person in contravention of a provision of the ELTIF Regulation.”.

(7) After regulation 53(1)(b) (contravention by authorised person) insert—

“(c) by an authorised person that is a full-scope UK AIFM in contravention of a provision of the ELTIF Regulation.”.

Amendment to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

5. In the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(a), after article 29(4)(b) (communications required or authorised by enactments) insert—

“(5) A communication permitted by Article 30 or 31 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds is to be treated as authorised by an enactment other than the Act for the purposes of paragraph (1).”.

Amendment to the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001

6. In the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(c), after article 16(3)(d) (communications required or authorised by enactments) insert—

“(4) A communication permitted by Article 30 or 31 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds is to be treated as authorised by another enactment for the purposes of paragraph (1).”.

Amendment to the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001

7.—(1) The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001(e) is amended as follows.

(2) In regulation 1(2)(f) (citation, commencement and interpretation) insert the following definition in the appropriate place—

““ELTIF” means a UK AIF that has been authorised by the FCA as a European long-term investment fund under Article 6 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds.”.

(3) For regulation 2(4)(g) (persons not to be regarded as relevant persons) substitute—

“(4) A relevant AIFM is prescribed in relation to all authorised activities other than—

- (a) any services specified by Annex I to the alternative investment fund managers directive provided in respect of an authorised trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or
- (b) any activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation.”.

(4) In regulation 3(1)(d)(h) (persons who may elect to participate)—

- (a) in paragraph (i) remove the “or” at the end;
- (b) after paragraph (i), insert—

“(ai) undertakes activities as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation; or”.

(a) S.I. 2005/1529.

(b) Article 29(4) was inserted by S.I. 2013/1773.

(c) S.I. 2001/1060.

(d) Article 16(3) was inserted by S.I. 2013/1773.

(e) S.I. 2001/1783.

(f) Regulation 1(2) was amended by S.I. 2003/2066, S.I. 2011/1613, S.I. 2013/3115, S.I. 2013/1773 and S.I. 2015/910.

(g) Regulation 2(4) was inserted by S.I. 2013/1773.

(h) Regulation 3(1) was amended by S.I. 2003/2066, S.I. 2003/1476, S.I. 2013/1773 and S.I. 2015/910.

(5) For regulation 4(e)(a) (persons in respect of whom inspection under section 224 does not apply) substitute—

“(e) any relevant AIFM to the extent that it provided services in the United Kingdom other than—

- (i) services specified by Annex I to the alternative investment fund managers directive that were provided in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or
- (ii) activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation; and”.

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

8.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(b) is amended as follows.

(2) In article 1(2)(c) (citation, commencement and interpretation) in the appropriate place, insert—

““ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;”.

(3) In article 2(d) (qualifying EU provisions: general), in paragraph (2), after sub-paragraph (h), insert—

“(i) the ELTIF Regulation and any directly applicable regulation made under that Regulation.”.

(4) In article 3(e) (qualifying EU provisions: disciplinary measures)—

(a) in paragraph (2), after sub-paragraph (i), insert—

“(j) the ELTIF Regulation and any directly applicable regulation made under that Regulation.”;

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

“(h) in relation to a contravention of a requirement imposed by the ELTIF Regulation or any directly applicable regulation made under that Regulation, the FCA.”.

(5) In article 5(f) (qualifying EU provisions: injunctions and restitution)—

(a) in paragraph (2), after sub-paragraph (i), insert—

“(j) the ELTIF Regulation and any directly applicable regulation made under it.”;

(b) in paragraph (5), after sub-paragraph (h), insert—

“(i) in relation to a contravention of a requirement imposed by the ELTIF Regulation or any directly applicable regulation made under that Regulation, the FCA.”.

(6) In article 6(g) (qualifying EU provisions: fees), in paragraph (2), after sub-paragraph (k), insert—

“(l) the ELTIF Regulation and any directly applicable regulation made under that Regulation.”.

(a) Regulation 4(e) was inserted by S.I. 2013/1773.

(b) S.I. 2013/419.

(c) Article 1(2) was amended by S.I. 2013/1773 and S.I. 2014/3348.

(d) Article 2 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.

(e) Article 3 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.

(f) Article 5 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.

(g) Article 6 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.

Modifications to the Limited Partnerships Act 1907

9.—(1) The Limited Partnerships Act 1907(a) has effect with the following modifications in its application to an ELTIF marketed to retail investors under Chapter 5 of the ELTIF Regulation.

(2) Section 4 (definition and constitution of limited partnership) is to be read as if—

(a) in subsection (2), for the words “who shall not be liable for the debts or obligations of the firm beyond the amount so contributed” there were substituted “whose liability for the debts or obligations of the firm is as set out in subsections (2A) and (2B).”;

(b) after subsection (2) there were inserted—

“(2A) The limited partners are not liable for the debts or obligations of the firm beyond the amount of the partnership property which is available to the general partner to meet such debts or obligations.

(2B) A person (“P”) who ceases to be a limited partner ceases to have any liability for the debts or obligations of the firm.

(2C) Subsection (2B) does not prevent the debts and obligations of the firm from being taken into account, after P has ceased to be a limited partner, in determining the value of P’s share in the partnership.”; and

(c) subsection (3) were omitted.

(3) In section 6 (modifications of general law in case of limited partnerships)—

(a) subsection (1) is to be read as if at the end there were inserted the words—

“For the purposes of this subsection, the exercise of rights conferred on limited partners by the rules or instruments of incorporation of a European long-term investment fund, authorised under Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds, does not of itself constitute taking part in the management of the partnership business.”;

(b) in subsection (3), the reference to “general partners” is to be read as a reference to “the general partner and the depositary of the European long-term investment fund”; and

(c) subsection (5) is to be read as if—

(i) the words “Subject to any agreement express or implied between the partners” were omitted; and

(ii) in paragraph (b), at the beginning there were inserted the words “Subject to any express agreement between the partners.”.

(4) Section 7 (law as to private partnerships to apply where not excluded by this Act) is to be read as if after the words “Subject to the provisions of this Act,” there were inserted “as modified by regulation 9 of the European Long-term Investment Funds Regulations 2015,”.

(5) In section 9 (registration of changes in partnerships), subsection (1) is to be read as if –

(a) paragraphs (d) and (f) were omitted; and

(b) the changes giving rise to a duty to send a statement to the registrar included—

(i) the granting and the revocation of a European long-term investment fund authorisation under Article 6 of the ELTIF Regulation in respect of a limited partnership; and

(ii) any change in the general partner or the name of the general partner of a limited partnership.

(6) Section 10 (advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner) does not apply.

(a) 1907 c.24.

Review

10.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 3 to 9;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the ELTIF Regulation (which is implemented in part by means of regulations 3 to 9) is implemented in other EEA States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 3 to 9;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

John Penrose
Charlie Elphicke

11th November 2015

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make necessary changes to primary and secondary legislation to give effect to Regulation (EU) No 760/2015 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds (OJ L123, 19.5.2015, p.98) (“the ELTIF Regulation”).

European Long-term Investment Funds (“ELTIFs”) are a new type of European alternative investment fund (“EU AIF”). In order to apply for authorisation as an ELTIF, a fund must be an authorised EU AIF and must be managed by an authorised alternative investment fund manager (“AIFM”).

Regulation 3 makes amendments to the Financial Services and Markets Act 2000 (c. 8) to clarify that the Financial Conduct Authority’s (FCA’s) powers to vary or cancel the permission of a full-scope UK AIFM (i.e. a full-scope UK AIFM defined in regulation 2 of the Alternative Investment Fund Manager Regulations 2013 (S.I. 2013/1773)) may be exercised where it appears to the FCA that the manager has seriously or systematically infringed the ELTIF Regulation. It also makes amendments to clarify that the FCA may use its powers of intervention in respect of an incoming EEA AIFM (i.e. an AIFM that is exercising an EEA passport right in the United Kingdom) if it appears to the FCA that the AIFM has contravened, or is likely to contravene, a requirement imposed by the ELTIF Regulation. It also makes clear that the criminal offence of misleading the FCA applies to a person who knowingly or recklessly gives the FCA false or misleading information in purported compliance with a requirement imposed by the ELTIF Regulation.

Regulation 4 inserts a new Part 3A into the Alternative Investment Fund Managers Regulations 2013 to enable the FCA to direct the manner in which applications for authorisation as ELTIFs are to be made and to set out the procedures to be followed by the FCA when proposing or deciding to

refuse applications for authorisation as an ELTIF, and when proposing or deciding to revoke an ELTIF's authorisation.

Regulations 5 and 6 amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (S.I. 2005/1529), and the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 to clarify that communications permitted under the ELTIF Regulation are not to amount to unauthorised financial promotions.

Regulation 7 amends the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 (S.I. 2001/1783) to confirm that EEA managers who manage United Kingdom-authorised ELTIFs are not permitted to elect to be covered by the Financial Services Compensation Scheme (FSCS), as they are automatically covered by the FSCS as a result of FCA rules.

Regulation 8 amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) to specify the ELTIF Regulation and directly applicable EU Regulations made under the ELTIF Regulation as qualifying EU provisions for the purposes of various provisions of the Financial Services and Markets Act 2000. The amendments enable the FCA to enforce directly applicable requirements arising from the ELTIF Regulation and directly applicable EU Regulations made under it in relation to persons in the United Kingdom.

Regulation 9 amends the Limited Partnerships Act 1907 (c.24) to ensure the legal structure of an ELTIF cannot lead to any additional liability for limited partners beyond their original capital commitment, as required by Article 30 of the ELTIF Regulation in respect of ELTIFs marketed to retail investors. It makes certain other modifications to that Act as a consequence. In an investment fund structured as a limited partnership, retail investors participate in the fund as limited partners.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

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