STATUTORY INSTRUMENTS

# 2013 No. 1773

# The Alternative Investment Fund Managers Regulations 2013

## [F1PART 2

Authorisation of full-scope UK AIFMs

**Textual Amendments**

**F1** Regulations revoked (14.12.2023 for the revocation of reg. 79) by Financial Services and Markets Act 2023 (c. 29), s. 86(3), **Sch. 1 Pt. 2** (with s. 1(4)); S.I. 2023/1382, reg. 2(c)(vi)

### Applications for Part 4A permission

**5.**—(1) This regulation applies where a person—

(a) applies to a regulator for permission under Part 4A of the Act to carry on the regulated activity of managing an AIF; and

(b) upon being given such permission would not be a small authorised UK AIFM.

(2) Where the applicant has a Part 4A permission pursuant to which it may carry on the regulated activity of managing a UCITS, the regulator may not require the applicant to provide information or documents which the applicant provided when applying for that Part 4A permission if such information or documents remain up to date.

(3) The regulator must not give the Part 4A permission unless—

(a) the applicant would be an AIFM and would be the only AIFM of each AIF it managed;

(b) the regulator is satisfied that the applicant will comply with the implementing provisions applicable to a full-scope UK AIFM;

(c) the applicant has sufficient initial capital and own funds in accordance with **[**F2rule 11.2.1 and section 11.3 of the Interim Prudential sourcebook for Investment Businesses**]**; and

(d) the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM.

(4) The regulator must determine the application before the end of the period of three months beginning with the date on which it received the complete application.

(5) The regulator may extend the period mentioned in paragraph (4) for an additional period of three months where it considers it necessary due to the specific circumstances of the case, and where it has notified the applicant accordingly.

(6) Where the application is made to the PRA and cannot be determined by the PRA without the consent of the FCA, the FCA's decision must also be made within the period required by sub-paragraph (4), as extended under sub-paragraph (5) where applicable.

(7) If the regulator does not determine the application before the end of the period of six months beginning with the date on which it received the complete application, the applicant may refer the matter to the Tribunal.

(8) An application is complete for the purposes of paragraph (4) or (7) if it contains—

(a) information on the persons effectively conducting the business of the applicant;

(b) information on the identities of the applicant's shareholders or members, whether direct or indirect, that have qualifying holdings and on the amount of those holdings;

**[**[F3](c) a programme of activity setting out the organisational structure of the applicant, including information on how the applicant intends to comply with its obligations under the following provisions, so far as they apply to an AIFM—

(i) the Financial Services and Markets Act 2000;

(ii) these Regulations;

(iii) rules made by the FCA;

(iv) Commission Delegated Regulation;**]**

(d) information on the remuneration policies and practices of the applicant that have been or will be adopted pursuant to implementation provisions relating to Article 13 of the directive;

(e) information about the investment strategies, including the types of underlying funds if the AIF is a fund of funds, and the applicant's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs the applicant manages or intends to manage, including information about the [F4]... third countries in which AIFs are established or are expected to be established; and

(f) information on where the master AIF is established if an AIF that the applicant manages or intends to manage is a feeder AIF.

(9) Paragraph (10) applies if—

(a) any of the information required under implementing provisions relating to Articles 7.2(e) and 7.3(c) to 7.3(e) of the directive (information to be provided in application for authorisation) was missing from the application; and

(b) the Part 4A permission is given less than one month after the applicant supplied the missing information.

(10) The Part 4A permission is to be treated as given one month after the applicant submitted the missing information.

**Textual Amendments**

**F2** Words in reg. 5(3)(c) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(1)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F3** Reg. 5(8)(c) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(1)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F4** Words in reg. 5(8)(e) 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), **4(1)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

### Supplementary provisions about AIFMs

**6.**—(1) If a full-scope UK AIFM that is an external AIFM is unable to ensure compliance by an AIF it manages, or by another entity on the AIF's behalf, with an implementing provision for which the AIF is responsible, the AIFM must immediately inform—

(a) the FCA, [F5]...

[F6](b) . . . . . .

about the non-compliance.

(2) The FCA must require the AIFM to take steps to remedy the situation.

(3) If the non-compliance persists despite the steps mentioned in paragraph (2) being taken, the FCA must—

(a) require the AIFM to cease acting as manager of that AIF **[**[F7]; and**]**

(b) require the AIFM to stop marketing the AIF; [F8]...

[F9](c) . . . . . .

(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) [M1] to impose the requirements mentioned in paragraphs (2) and (3), but this paragraph does not limit the powers of the FCA.

**Textual Amendments**

**F5** Word in reg. 6(1)(a) 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), **4(2)(a)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F6** Reg. 6(1)(b) 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), **4(2)(a)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F7** Word in reg. 6(3)(a) inserted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(2)(b)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F8** Word in reg. 6(3)(b) 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), **4(2)(b)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**F9** Reg. 6(3)(c) 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), **4(2)(b)(iii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Marginal Citations**

**M1** Sections 55A to 55Z4 were substituted by section 11(2) of the Financial Services Act 2012.

### Changes in conditions relevant to authorisation

**7.**—(1) This regulation applies where a full-scope UK AIFM has notified the FCA of any material changes to the conditions for initial authorisation in accordance with **[**[F10]rule 15.3.26 of the Supervision sourcebook**]**.

(2) If the FCA decides to exercise any power so as to prevent the implementation of, or impose restrictions in relation to, the proposed changes, it must inform the AIFM within one month of receiving the notification mentioned in paragraph (1).

(3) The FCA may prolong the period of one month referred to in paragraph (2) by up to another month, if it considers this to be necessary because of the specific circumstances of the case, and after having notified the AIFM accordingly.

(4) If the FCA does not inform the AIFM of a decision under paragraph (2) within the period of one month mentioned in paragraph (2) or any extension thereof under paragraph (3), the AIFM may implement the changes.

**Textual Amendments**

**F10** Words in reg. 7(1) substituted (31.12.2020) by The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/328), regs. 1(3), **4(3)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

## Notification to ESMA

**[F11 8.** . . . . . .**]**

**Textual Amendments**

**F11** Reg. 8 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), **4(4)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**
The Alternative Investment Fund Managers Regulations 2013, PART 2 is up to date with all changes known to be in force on or before 04 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**
Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2(1)(c) words inserted by S.I. 2013/1797 Sch. 1 para. 2(2)(c)(ii) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of S.I. 2019/328, reg. 20(3)(a)(ii) without ever being in force)
- reg. 2(4) inserted by S.I. 2013/1797 Sch. 1 para. 2(3) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 5A amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 2(5) by S.I. 2019/328 reg. 20(3)(b) (This S.I. is amended by S.I. 2019/325, reg. 58; This amendment not applied to legislation.gov.uk. The original amendments by S.I. 2013/1797 are prospective)
- reg. 5A inserted by S.I. 2013/1797 Sch. 1 para. 2(5) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)
- reg. 88A amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 2(6) by S.I. 2019/328 reg. 20(3)(c) (This S.I. is amended by S.I. 2019/325, reg. 58; This amendment not applied to legislation.gov.uk. The original amendments by S.I. 2013/1797 are prospective)
- reg. 88A substituted for reg. 8 by S.I. 2013/1797 Sch. 1 para. 2(6) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of S.I. 2019/328, reg. 20(3)(c) without ever being in force)
- reg. 29(1)(b) substituted by S.I. 2013/1797 Sch. 2 para. 3(3) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 49(c) and word inserted by S.I. 2013/1797 Sch. 1 para. 2(10)(d) (This amendment not applied to legislation.gov.uk. This amendment is omitted (20.2.2019) by virtue of S.I. 2019/328, reg. 20(3)(e) without ever being in force)
- reg. 49(c) omitted by S.I. 2013/1797 Sch. 2 para. 3(5)(c) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 54(9) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 2(12)(b) by S.I. 2019/328 reg. 20(3)(h) (This S.I. is amended by S.I. 2019/325, reg. 58; This amendment not applied to legislation.gov.uk. The original amendments by S.I. 2013/1797 are prospective)
- reg. 54(9)(10) inserted by S.I. 2013/1797 Sch. 1 para. 2(12)(b) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)

- reg. 56-56C substituted for reg. 56 by S.I. 2013/1797 Sch. 2 para. 3(7) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 68.6 of the directive as the date when the national regimes set out in Articles 36 and 42 of the directive are to be terminated. No such date has as yet been specified)
- reg. 59(5) amendment to earlier affecting provision S.I. 2013/1797 Sch. 1 para. 2(15)(b) by S.I. 2019/328 reg. 20(3)(i)(ii) (This S.I. is amended by S.I. 2019/325, reg. 58; This amendment not applied to legislation.gov.uk. The original amendments by S.I. 2013/1797 are prospective)
- reg. 59(5)(6) inserted by S.I. 2013/1797 Sch. 1 para. 2(15)(b) (This amendment comes into force on the date specified by the delegated act adopted by the European Commission pursuant to Article 67.6 of the directive as the date when the rules set out in Articles 35 and 37 to 41 of the directive become applicable. No such date has as yet been specified)