
STATUTORY INSTRUMENTS

2013 No. 1773

The Alternative Investment Fund Managers Regulations 2013

PART 6

Marketing of AIFs

CHAPTER 1

General Provisions

References in this Part to an AIFM or an investment firm marketing an AIF

45. For the purposes of this Part—

- (a) an AIFM markets an AIF when the AIFM makes a direct or indirect offering or placement of units or shares of an AIF managed by it to or with an investor domiciled or with a registered office in [^{F1}the United Kingdom or Gibraltar], or when another person makes such an offering or placement at the initiative of, or on behalf of, the AIFM;
- (b) an investment firm markets an AIF when it makes a direct or indirect offering or placement of units or shares of the AIF to or with an investor domiciled or with a registered office in [^{F1}the United Kingdom or Gibraltar] at the initiative of, or on behalf of, the AIFM of that AIF.

F1 Words in [reg. 45](#) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/328), [regs. 1\(3\), 10\(1\)](#) (as amended by S.I. 2019/325, [reg. 58](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Application of the financial promotion and scheme promotion restrictions

46. Where a person may market an AIF under regulation 49, 50 or 51—

- (a) to the extent that such marketing falls within section 21(1) (restrictions on financial promotion) or 238(1) (restrictions on promotion) of the Act, the person may market the AIF to a retail investor only if the person does so without breaching the restriction in that section;
- (b) to the extent that any activity falling within section 21(1) or 238(1) of the Act does not amount to marketing by an AIFM or an investment firm for the purposes of this Part, the restriction in that section applies to the person.

Marketing at the initiative of the investor

47. Regulations 49 to 51 do not apply to an offering or placement of units or shares of an AIF to an investor made at the initiative of that investor.

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Marketing under the designation [^{F2}'SEF' or 'RVECA']

48. Regulations 49 to 51 do not apply to the marketing of an AIF under the designation [^{F3}'SEF'] or [^{F4}'RVECA'].

- F2** Words in reg. 48 heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(2)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Word in reg. 48 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(3)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Word in reg. 48 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(3)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

Marketing by full-scope [^{F5}Gibraltar] AIFMs of certain AIFs

49.—[^{F6}(1)] A full-scope [^{F7}Gibraltar] AIFM may not market in the United Kingdom an AIF that does not fall within regulation 57(1) unless—

- (a) in the case of marketing to a professional investor, the FCA has received a regulator's notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act ^{F8}...; or
- (b) in the case of marketing to a retail investor—
 - (i) the FCA has received a regulator's notice in relation to the marketing of the AIF in accordance with Schedule 3 to the Act; or
 - (ii) the FCA has approved the marketing in accordance with regulation 54 and has not suspended or revoked that approval.

[^{F9}(2) References in this regulation to Schedule 3 to the Act are to that Schedule as it applies in relation to Gibraltar AIFMs and Gibraltar AIFs.]

- F5** Word in reg. 49 heading substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(a)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 49 renumbered as reg. 49(1) (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(b)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Word in reg. 49(1) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(c)(i)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in reg. 49(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), **10(4)(c)(ii)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Reg. 49(2) inserted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(4)(d)** (as amended by S.I. 2019/325, reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

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Marketing by AIFMs of other AIFs

50. An AIFM described in column A of the table below may not market in the United Kingdom an AIF that is described in the entry in column B of same row of the table unless the condition in column C in the same row of the table is met.

A - AIFM	B - AIF	C - Condition
Full-scope UK AIFM	An AIF that does not fall within regulation 57(1)	The FCA has approved marketing of the AIF in accordance with regulation 54.
Full-scope UK AIFM	An AIF falling within regulation 57(1)	The AIFM has notified the FCA in accordance with regulation 57 and meets the conditions at regulation 57(4) (a) to (c), and the FCA has not suspended or revoked the AIFM's entitlement to market the AIF.
Full-scope [F ¹⁰ Gibraltar] AIFM	An AIF falling within regulation 57(1)	The AIFM has notified the FCA in accordance with regulation 57 and meets the conditions at regulation 57(4) (a) to (c), and the FCA has not suspended or revoked the AIFM's entitlement to market the AIF.
Small third country AIFM	UK AIF, EEA AIF, or third country AIF	The AIFM has notified the FCA in accordance with regulation 58 and meets the conditions at regulation 58(2) (a) and (b), and the FCA has not suspended or revoked the AIFM's entitlement to market the AIF.
Third country AIFM that is not a small AIFM	UK AIF, EEA AIF, or third country AIF	The AIFM has notified the FCA in accordance with regulation 59 and meets the conditions at regulation 59(2) (a) to (e), and the FCA has not suspended or revoked the AIFM's entitlement to market the AIF.

F10 Word in reg. 50 Table substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(5)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

Marketing of AIFs by investment firms

51. Where regulation 49 or 50 requires a condition to be met before an AIFM may market an AIF, an investment firm may not market that AIF unless that condition is met.

Contravention by unauthorised person

52.—(1) In this regulation “unlawful marketing” means the marketing of an AIF—

- (a) by an AIFM or an investment firm that is not an authorised person in contravention of regulation 49, 50 or 51; or
- (b) by an AIFM that is not an authorised person in contravention of a provision of the EuSEF Regulation or the EuVECA Regulation.
- [F¹¹(c) by an AIFM that is not an authorised person in contravention of a provision of the ELTIF Regulation.]

(2) Subject to paragraph (3), section 25 of the Act (contravention of section 21) applies to unlawful marketing as it applies to the contravention of section 21(1) of the Act.

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(3) When applied by paragraph (2), the reference in section 25(1)(a) to imprisonment for a term not exceeding six months is to be read as a reference to imprisonment for a term not exceeding three months.

(4) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at subsection (2)(c) to a contravention of section 21 of the Act included reference to unlawful marketing.

(5) Section 30 of the Act (enforceability of agreements resulting from unlawful communications) applies in relation to—

- (a) controlled agreements entered into in consequence of unlawful marketing, as it applies in relation to controlled agreements entered into in consequence of an unlawful communication; and
- (b) the exercise of rights conferred by a controlled investment in consequence of unlawful marketing, as it applies in relation to the exercise of such rights in consequence of an unlawful communication.

F11 Reg. 52(1)(c) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, [4\(6\)](#)

Contravention by authorised person

53.—(1) In this regulation “unlawful marketing” means the marketing of an AIF—

- (a) by an authorised person that is an AIFM or an investment firm in contravention of regulation 49, 50 or 51; or
 - (b) by an authorised person that is an AIFM in contravention of a provision of the EuSEF Regulation or the EuVECA Regulation.
- [^{F12}(c) by an authorised person that is a full-scope UK AIFM in contravention of a provision of the ELTIF Regulation.]

(2) Unlawful marketing is actionable at the suit of a private person who suffers loss as a result of such marketing, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) Section 168 of the Act (appointment of persons to carry out investigations in particular cases) applies as if the reference at subsection (2)(c) to a contravention of section 238 of the Act included reference to unlawful marketing.

F12 Reg. 53(1)(c) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, [4\(7\)](#)

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Changes and effects yet to be applied to :

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

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)