

## STATUTORY INSTRUMENTS

# 2013 No. 1773

## The Alternative Investment Fund Managers Regulations 2013

### [<sup>F1</sup>PART 6

#### Marketing of AIFs

### [<sup>F1</sup>CHAPTER 2

#### Marketing of AIFs by full-scope 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)

#### FCA approval for marketing

54.—(1) This regulation applies to—

- (a) a full-scope UK AIFM seeking to market an AIF managed by the AIFM that does not fall within regulation 57(1);
- (b) a full-scope [<sup>F2</sup>Gibraltar] AIFM, seeking to market to retail investors an AIF managed by the AIFM—
  - (i) that does not fall within regulation 57(1); and
  - (ii) where the FCA has not received a regulator's notice [<sup>F3</sup>referred to in paragraph 14(1)(b) of Schedule 3 to the Act as that paragraph applies in relation to Gibraltar]<sup>F4</sup>...

(2) The AIFM must—

- (a) apply to the FCA for approval in such manner as the FCA may direct; and
- (b) provide such information as the FCA may reasonably require for the purpose of determining the application.

(3) The FCA must determine an application by a full-scope UK AIFM, in so far as that application is for approval to market to professional investors, within 20 working days of receipt of a completed application.

(4) The FCA must determine an application by a full-scope [<sup>F5</sup>Gibraltar] AIFM, or an application by a full scope UK AIFM in so far as that application is for approval to market to retail investors—

- (a) if the application relates to an AIF in respect of which the AIFM has made an application for authorisation under section 242 or 261C of the Act or under regulation 12 of the Open-Ended Investment Companies Regulations 2001 <sup>M1</sup>, or for recognition under section 272 of the Act—
  - (i) before the end of the period for determining that application for authorisation or recognition; or

**Changes to legislation:** The Alternative Investment Fund Managers Regulations 2013, CHAPTER 2 is up to date with all changes known to be in force on or before 22 April 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. (See end of Document for details) View outstanding changes

- (ii) if later, within 20 working days of receipt of the completed application under this regulation;
- (b) otherwise, within 20 working days of receipt of the completed application under this regulation.
- (5) If the FCA approves the application, it must inform—
  - (a) the AIFM concerned; and
  - [<sup>F6</sup>(b) where the AIF concerned is a Gibraltar AIF, the Financial Services Commission of Gibraltar.]
- (6) If the FCA proposes to refuse the application, it must give written notice to the AIFM concerned, stating the reasons for the proposed refusal.
- (7) If the FCA decides to refuse the application—
  - (a) it must give written notice to the AIFM concerned, informing the AIFM of its right to refer the matter to the Tribunal; and
  - (b) the AIFM may refer the matter to the Tribunal.
- (8) The FCA may refuse an application if it appears to the FCA that the AIFM does not or is unlikely to comply with an implementing provision that applies to it, or would apply to it if the application were approved.

#### Textual Amendments

- F2** Word in reg. 54(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(a)(i)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 54(1)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(a)(ii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in reg. 54(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), **10(6)(a)(iii)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in reg. 54(4) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(b)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 54(5)(b) substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(6)(c)** (as amended by [S.I. 2019/325](#), reg. 58); 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M1** [S.I. 2001/1228](#).

#### Change to information provided with application

- 55.**—(1) If there is a material change to the information mentioned in regulation 54(2)(b), the AIFM must give written notice of the change to the FCA—
- (a) in the case of a change planned by the AIFM (“planned change”), at least one month before implementing the change; or
  - (b) in other cases, as soon as reasonably practicable and, at the latest, immediately after an unplanned change has occurred.

(2) If a planned change would mean the AIFM no longer complied with an implementing provision applicable to it, the FCA must inform the AIFM without undue delay that it must not implement the change.

(3) If—

- (a) a planned change is implemented, or
- (b) an unplanned change takes place,

as a result of which the AIFM no longer complies with an implementing provision that applies to it, the FCA must take steps to ensure that the AIFM complies with that implementing provision or ceases to market the AIF.

(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) or the power applied by regulation 56 in taking the steps mentioned in paragraph (3), but this paragraph does not limit the powers of the FCA.

### **Suspension or revocation of approval granted to a full-scope [F7Gibraltar AIFM]**

**56.** If the FCA has approved marketing by a full-scope [F7Gibraltar AIFM] under regulation 54, regulations 62 to 64 apply in relation to that approval as they apply in relation to an entitlement to market an AIF following a notification under regulation 57, 58 or 59, but with the following modifications—

- (a) references to a notification under regulation 57, 58 or 59 are to be read as references to an application under regulation 54;
- (b) references to an entitlement to market are to be read as references to an approval to market;
- (c) references to an Article 36 custodian are to be omitted; and
- (d) regulations 62(1)(c) and 63(2)(c) are to be omitted.]

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#### **Textual Amendments**

- F7** Words in reg. 56 substituted (31.12.2020) by [The Alternative Investment Fund Managers \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/328\)](#), regs. 1(3), **10(7)** (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, CHAPTER 2 is up to date with all changes known to be in force on or before 22 April 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.

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### **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)