

SCHEDULE 2

AMENDMENTS TO SECONDARY LEGISLATION

PART 1

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

- 1.—(1) The Regulated Activities Order is amended as follows.
- (2) In article 3(1) (interpretation)(1)—
 - (a) in paragraph (a) of the definition of “overseas person” for “51” substitute “51ZA, 51ZB, 51ZC, 51ZD, 51ZE”; and
 - (b) insert the following definitions in the appropriate places—
 - ““AIFM” has the meaning given by regulation 4 of the Alternative Investment Fund Managers Regulations 2013;
 - “EEA AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
 - “full-scope UK AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
 - “small registered UK AIFM” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;
 - “UCITS” has the meaning given by Article 1.2 of the UCITS directive;
 - “UK AIF” has the meaning given by regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;”.
- (3) In articles 4(2) (specified activities: general)(2), 8(a) (sums received by persons authorised to deal etc.), 15(2)(g) (absence of holding out etc.), 16(1)(b) (dealing in contractually based investments)(3) and 33(b)(iii) (introducing), for “51” substitute “51ZA, 51ZB, 51ZC, 51ZD, 51ZE”.
- (4) In articles 9AA, 51A, 52A, 58A and 60A (information society services)(4)—
 - (a) in the heading, at the end insert “and managers of UCITS and AIFs”;
 - (b) for “exclusion” substitute “exclusions”; and
 - (c) at the end insert “and article 72AA (managers of UCITS and AIFs).”.
- (5) In article 12A (information society services)(5)—
 - (a) in the heading, at the end insert “and managers of UCITS and AIFs”;
 - (b) for “exclusion” substitute “exclusions”; and
 - (c) at the end insert “, and article 72AA (managers of UCITS and AIFs).”.

(1) The definition of “overseas person” was amended by [S.I. 2003/1475](#), [S.I. 2003/1476](#), [S.I. 2006/2383](#), [S.I. 2006/3384](#) and [S.I. 2009/1342](#). Other amendments to article 3 are not relevant here.

(2) Article 4(2) was amended by [S.I. 2009/1389](#).

(3) Article 16 was amended by [S.I. 2006/3384](#).

(4) Articles 9AA, 51A, 52A, 58A and 60A were inserted by [S.I. 2002/1776](#).

(5) Article 12A was inserted by [S.I. 2002/1776](#).

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(6) In articles 20(6), 36(2)(7), 50, 55(2), 63A(8), 63E(9), 63I and 63M(10) (other exclusions), for “and 72A (information society services)” substitute “, 72A (information society services) and 72AA (managers of UCITS and AIFs)”.

(7) In articles 24(11), 36(1)(12), 39C(13) and 55(1) (other exclusions), for “and article 72D (large risks contracts where risk situated outside the EEA)” substitute “, article 72AA (managers of UCITS and AIFs) and article 72D (large risks contracts where risk situated outside the EEA)”.

(8) In article 36(3) (other exclusions)(14), for “the exclusion in article 72 (overseas persons)” substitute “the exclusions in articles 72 (overseas persons) and 72AA (managers of UCITS and AIFs)”.

(9) In articles 39 and 44 (other exclusions)(15), for “and 72C (provisions of information about contracts of insurance on an incidental basis)” substitute “, 72AA (managers of UCITS and AIFs) and 72C (provisions of information about contracts of insurance on an incidental basis)”.

(10) After article 42 (introductions to qualifying custodians), insert—

“Depositaries of UCITS and AIFs

42A. A person does not carry on an activity of the kind specified by article 40 if the person carries on the activity in relation to—

- (a) a UCITS, and the person has a Part 4A permission to carry on the activity specified in article 51ZB in respect of that UCITS; or
- (b) an AIF, and the person has a Part 4A permission to carry on the activity specified in article 51ZD in respect of that AIF.”.

(11) In the heading of Chapter 10 (collective investment schemes) omit ‘schemes’.

(12) For article 51 (establishing etc. a collective investment scheme) and the cross-heading following it, substitute—

“Managing a UCITS

51ZA.—(1) Managing a UCITS is a specified kind of activity.

(2) A person manages a UCITS when the person carries on collective portfolio management of the UCITS within the meaning of the UCITS directive, which includes the functions referred to in Annex 2 to that directive (the text of which is set out in Schedule 6) in relation to a UCITS.

(3) If a person manages a UCITS and also carries on other activities in connection with or for the purposes of the management of that UCITS, such other activities are also included in the activity specified in paragraph (1).

Acting as trustee or depositary of a UCITS

51ZB.—(1) Acting as—

- (a) the trustee of an authorised unit trust scheme, or

(6) Articles 20 and 50 were amended by [S.I. 2002/1776](#).

(7) Articles 36(2) and 55(2) were added by [S.I. 2003/1475](#) and amended by [S.I. 2006/2383](#) and [S.I. 2009/1342](#).

(8) Article 63A was inserted by [S.I. 2002/1776](#) and substituted by [S.I. 2003/1475](#).

(9) Articles 63B to 63I were inserted by [S.I. 2006/2383](#).

(10) Articles 63J to 63M were inserted by [S.I. 2009/1342](#).

(11) Article 24 was amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).

(12) Articles 36(1) and 55(1) were amended by [S.I. 2002/1776](#), [S.I. 2003/1475](#) and [S.I. 2003/1476](#).

(13) Article 39C was inserted by [S.I. 2003/1476](#).

(14) Article 36(3) was added by [S.I. 2006/3384](#).

(15) Articles 39 and 44 were amended by [S.I. 2002/1776](#) and [S.I. 2003/1476](#).

- (b) the depositary of an open-ended investment company or authorised contractual scheme,

where the scheme or company is a UCITS, is a specified kind of activity.

(2) In paragraph (1), “authorised contractual scheme”, “authorised unit trust scheme”, “trustee” and “depositary” have the meanings given by section 237 of the Act (other definitions).

Managing an AIF

51ZC.—(1) Managing an AIF is a specified kind of activity.

(2) A person manages an AIF when the person performs at least risk management or portfolio management for the AIF.

(3) A person does not manage an AIF if the functions they perform for the AIF have been delegated to it by another person, provided that such other person is not an AIFM that has delegated such functions to the extent that it is a letter-box entity.

(4) Paragraph (5) applies if a person manages an AIF, and also carries on—

- (a) one or more of the additional activities listed in paragraph 2 of Annex 1 to the alternative investment fund managers directive (the text of which is set out in Schedule 7) for that AIF; or
- (b) one or more other activities in connection with or for the purposes of the management of that AIF.

(5) The additional or other activities are included in the activity specified in paragraph (1).

(6) Any expression used in this article which is not defined in this Order and is used in the alternative investment fund managers directive has the same meaning as in that directive.

Acting as trustee or depositary of an AIF

51ZD.—(1) Acting as—

- (a) the depositary of an AIF falling within paragraph (2),
- (b) the trustee of an authorised unit trust scheme which is an AIF that does not fall within paragraph (2), or
- (c) the depositary of an open-ended investment company or authorised contractual scheme which is an AIF that does not fall within paragraph (2),

is a specified kind of activity.

(2) An AIF falls within this paragraph if it is—

- (a) an AIF managed by a full-scope UK AIFM; or
- (b) a UK AIF managed by an EEA AIFM.

(3) In paragraph (1)(a) “depositary” means—

- (a) a person appointed in compliance with the requirement for the AIFM to appoint a depositary at Article 21.1 of the alternative investment fund managers directive; or
- (b) an Article 36 custodian as defined in regulation 57(5)(a) of the Alternative Investment Fund Managers Regulations 2013.

(4) In paragraph (1)(b) “authorised unit trust scheme” and “trustee” have the meanings given by section 237 of the Act.

(5) In paragraph (1)(c) “authorised contractual scheme” and “depositary” have the meanings given by section 237 of the Act.

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(6) Until 22nd July 2017, an AIF also falls within paragraph (2) if the FCA or an authority in another EEA State has permitted a person with its registered office or a branch in the United Kingdom to be appointed as a depositary of the AIF in accordance with Article 61.5 of the alternative investment fund managers directive.

Establishing etc. a collective investment scheme

51ZE. Establishing, operating or winding up a collective investment scheme is a specified kind of activity.

Exclusions

Persons excluded from managing an AIF

51ZF. There is excluded from article 51ZC the activity of managing an AIF if the person carrying on the activity is listed or described in Schedule 8.

Operating a collective investment scheme in relation to a UCITS or an AIF

51ZG.—(1) A person does not carry on an activity of the kind specified by article 51ZE if the person carries on the activity—

- (a) in relation to a UCITS, and—
 - (i) at the time the person carries on the activity, the UCITS is managed by a person with a Part 4A permission to carry on the activity specified by article 51ZA in respect of that UCITS; or
 - (ii) no more than the permitted period has passed since the UCITS was managed by a person with such a Part 4A permission; or
- (b) in relation to an AIF, and—
 - (i) at the time the person carries on the activity, the AIF is managed by—
 - (aa) a person with a Part 4A permission to carry on the activity specified by article 51ZC in respect of that AIF; or
 - (bb) a person registered as a small registered UK AIFM because the conditions in regulation 10(4) of the Alternative Investment Fund Managers Regulations 2013 are met in respect of that AIF; or
 - (ii) no more than the permitted period has passed since the AIF was managed by a person with such a Part 4A permission or registration.

(2) In this article “the permitted period” means a period calculated as follows—

- (a) subject to sub-paragraphs (b) and (c), the period is 30 days;
- (b) if, before the end of the period, the FCA receives notice of the action being taken to appoint a person with a Part 4A permission or registration to manage the UCITS or AIF, the period is extended by a further 30 days, and may be so extended a second time;
- (c) if, before the end of the period calculated in accordance with sub-paragraphs (a) and (b), the FCA receives notice of a proposal in respect of the UCITS or AIF for a new manager under section 251(3) of the Act, a new operator under section 261Q(5) of the Act or a new director under regulation 21(1)(e) of the Open-Ended Investment Company Regulations 2001, the period is further extended until the earlier of—
 - (i) the date on which the FCA gives written notice of its approval to the proposal;

- (ii) the date on which the FCA gives a decision notice refusing the proposal; or
- (iii) one month after the date on which notice of the proposal was given.”.

(13) In article 51A (information society services)(16), for “Article 51 is” substitute “Articles 51ZA, 51ZB, 51ZC, 51ZD, and 51ZE are also”.

(14) In articles 64 (agreeing to carry on specified kinds of activity)(17), 68(1) and (3)(b)(ii) (activities carried on in connection with the sale of goods or supply of services)(18) and 69(2)(b)(ii) (groups and joint enterprises), for “51”, substitute “51ZA, 51ZB, 51ZC, 51ZD, 51ZE”.

(15) In article 72E(5) (Business Angel-led Enterprise Capital Funds)(19), for “51(1)(a)” substitute “51ZA, 51ZC or 51ZE”.

(16) After article 72A (information society services)(20), insert—

“Managers of UCITS and AIFs

72AA.—(1) This article applies to a person with a Part 4A permission to carry on the activity of the kind specified by article 51ZA or 51ZC.

(2) Activities carried on by the person in connection with or for the purposes of managing a UCITS or, as the case may be, managing an AIF, are excluded from the activities specified by this Part, other than the activities mentioned in paragraph (1).”.

(17) After Schedule 5 (specified benchmarks)(21) insert—

“SCHEDULE 6

Article 51ZA

FUNCTIONS INCLUDED IN THE ACTIVITY OF MANAGING A UCITS: ANNEX II TO THE UCITS DIRECTIVE

1. Investment management.
2. Administration—
 - (a) legal and fund management accounting services;
 - (b) customer inquiries;
 - (c) valuation and pricing (including tax returns);
 - (d) regulatory compliance monitoring;
 - (e) maintenance of unit-holder register;
 - (f) distribution of income;
 - (g) unit issues and redemptions;
 - (h) contract settlements (including certificate dispatch);
 - (i) record keeping.
3. Marketing.

(16) Article 51A was inserted by S.I. 2002/1776.

(17) Article 64 was amended by S.I. 2002/682, S.I. 2006/3384 and S.I. 2009/1389.

(18) Article 68 was amended by S.I. 2001/3544 and S.I. 2003/1476.

(19) Article 72E was inserted by S.I. 2005/1518 and amended by S.I. 2006/3384 and S.I. 2007/2157.

(20) Article 72A was inserted by S.I. 2002/1776 and amended by 2004/3379.

(21) Schedule 5 was added by S.I. 2013/655.

SCHEDULE 7

Article 51ZC

ADDITIONAL ACTIVITIES INCLUDED IN THE ACTIVITY OF
MANAGING AN AIF LISTED IN PARAGRAPH 2 OF ANNEX I TO
THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

- (a) Administration—
 - (i) legal and fund management accounting services;
 - (ii) customer inquiries;
 - (iii) valuation and pricing, including tax returns;
 - (iv) regulatory compliance monitoring;
 - (v) maintenance of unit-/shareholder register;
 - (vi) distribution of income;
 - (vii) unit/shares issues and redemptions;
 - (viii) contract settlements, including certificate dispatch;
 - (ix) record keeping;
- (b) Marketing;
- (c) Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services related to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

SCHEDULE 8

Article 51ZF

PERSONS EXCLUDED FROM REGULATED ACTIVITY OF MANAGING AN AIF

Interpretation of this Schedule

1. Any expression used in this Schedule which is used in the alternative investment fund managers directive has the same meaning as in that directive.

Persons excluded

2. A small registered UK AIFM, in respect of the AIFs managed by it by virtue of which it is entitled to be registered as a small registered UK AIFM (but not in respect of any other AIFs managed by it).

3. An AIFM in so far as it manages one or more AIFs whose only investors are—

- (a) the AIFM,
- (b) the parent undertakings of the AIFM,
- (c) the subsidiaries of the AIFM, or
- (d) other subsidiaries of those parent undertakings,

provided that none of the investors is an AIF.

4. An institution for occupational retirement provision which falls within the scope of [Directive 2003/41/EC](#) of the European Parliament and of the Council of 3 June 2003 on the activities and

supervision of institutions for occupational retirement provision⁽²²⁾, including, where applicable, the authorised entities responsible for managing such institutions and acting on their behalf referred to in Article 2.1 of that directive, or the investment managers appointed pursuant to Article 19.1 of that directive, in so far as they do not manage AIFs.

5. The European Central Bank, the European Investment Bank, the European Investment Fund, a bilateral development bank, the World Bank, the International Monetary Fund, any other supranational institution or similar international organisation, or a European Development Finance Institution, in the event that such institution or organisation manages AIFs and in so far as those AIFs act in the public interest.

6. A national central bank.

7. A national, regional or local government or body or other institution which manages funds supporting social security and pension systems.

8. A holding company.

9. An employee participation scheme or employee savings scheme.

10. A securitisation special purpose entity.

11. An AIFM, the registered office of which is not in an EEA State.”.

(22) OJ L 235, 23.9.2003, p10.