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DRAFT STATUTORY INSTRUMENTS

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**2013 No. 0000**

**FINANCIAL SERVICES AND MARKETS**

**The Alternative Investment Fund Managers Regulations 2013**

*Made* - - - - \*\*\*

*Coming into force* - - \*\*\*

*Note: The provisions set out below are not intended to form a standalone set of regulations. They are proposed to be incorporated into the draft regulations appended to the consultation paper published by HM Treasury in January 2013.*

**Amendments to charities legislation**

**1.** In section 25 of the Charities Act (Northern Ireland) 1964(a) (common investment schemes), after subsection (3) insert—

“(3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(3B) In this section “appropriate body” means—

- (a) a Scottish recognised body,
- (b) an England and Wales charity, or
- (c) any other body that is a charity within the meaning of Part 1 of Schedule 6 to the Finance Act 2010, except one that meets the jurisdiction condition only by reason of paragraph 2(3)(b) of that Schedule,

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A), “charity” includes an appropriate body.

The relevant provisions” are subsections (1), (4) to (7), (11) and (in relation only to a charity within paragraph (b)) subsection (12).”

**2.** In sections 43(5) and 44(5) of the Charities Act (Northern Ireland) 2008(b)—

- (a) in sub-paragraph (a), omit “or”;
- (b) after sub-paragraph (b), insert—  
“ or

- (c) any other body that is a charity within the meaning of Part 1 of Schedule 6 to the Finance Act 2010, except one that meets the jurisdiction condition only by reason of paragraph 2(3)(b) of that Schedule.”.

**3. In sections 97(3) and 101(3) of the Charities Act 2011(a)—**

- (a) in sub-paragraph (a), omit “or”;
- (b) after sub-paragraph (b), insert—
  - “ or
  - (c) any other body that is a charity within the meaning of Part 1 of Schedule 6 to the Finance Act 2010(b), except one that meets the jurisdiction condition only by reason of paragraph 2(3)(b) of that Schedule,”.

**Amendments to the Financial Services and Markets Act 2000 (“the Act”) in respect of recognised overseas schemes**

**4.—(1) The Act is amended as follows.**

(2) In section 165(7)(b) (regulators’ power to require information: authorised persons etc.) omit “270 or”.

(3) In section 237 (other definitions)—

- (a) in subsection (2), in the definition of “the operator”—
  - (i) omit “and” after paragraph (b); and
  - (ii) after paragraph (c) insert—
    - “and
    - (d) in relation to an AIF which does not fall within paragraphs (a) or (b), the manager.”; and
- (b) in subsection (3), in the definition of “a recognised scheme” omit “, 270”.

(4) Omit sections 270 and 271 and the preceding cross-heading (schemes authorised in designated countries or territories).

(5) In section 272 (individually recognised overseas schemes)—

- (a) after subsection (1)(b) insert “and”;
- (b) omit subsection (1)(c).

(6) In section 277 (alteration of schemes and changes of operator, trustee or depositary)—

- (a) in subsection (1) at the end insert “or the operation of the scheme which would affect the scheme’s satisfaction of the requirements set out at section 272(2) to (4)”;
- (b) after subsection (1) insert—
  - “(1A) A notice under subsection (1) must include a written statement—
    - (a) confirming that if the proposed alteration is made the scheme will comply with requirements that are comparable to the rules and matters mentioned at section 272(5)(a) and (b); or
    - (b) identifying the respects in which the scheme would not so comply, and confirming that it would so comply in all other respects.

(1B) The statement must be made in such manner as the FCA may direct.”

(c) after subsection (3) insert—

“(4) If a change is made, or is to be made, to the law or rules which apply to such a scheme in the country or territory in which it is managed and the change affects or will

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(a) 2011 c. 25.  
(b) 2010 c. 13.

affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of such change to the FCA—

- (a) at least one month before the change takes effect; or
- (b) if (a) is not reasonably practicable, as soon as is reasonably practicable.”

(7) After section 277 insert—

**“Regular confirmation of compliance with comparable law and rules**

**277A.**—(1) The operator of a scheme recognised by virtue of section 272 must provide a written statement to the FCA in accordance with subsection (2)—

- (a) confirming that the scheme complies with requirements that are comparable to the rules and matters mentioned at section 272(5)(a) and (b); or
- (b) identifying the respects in which the scheme does not so comply, and confirming that it does so comply in all other respects.

(2) The operator must provide the statement no later than one year after the date on which such a statement was last provided to the FCA in respect of the scheme (whether under this section or otherwise).

(3) The statement must be made in such manner as the FCA may direct.”

(8) Omit the cross-heading “Schemes recognised under sections 270 and 272” before section 278.

(9) In section 278 (rules as to scheme particulars) omit “270 or”.

(10) In section 279 (revocation of recognition)—

- (a) omit “direct that a scheme is to cease to be recognised by virtue of section 270 or”;
- (b) in paragraph (c) omit “in the case of an order under section 272”;

(11) In section 280 (procedure)—

- (a) in subsection (1) for “give a direction under section 279 or to make an order under that section” substitute “make an order under section 279”; and
- (b) in subsection (2) omit “give a direction or”.

(12) In section 281 (directions)—

- (a) in subsection (1) omit “270 or”; and
- (b) in subsection (2)(c) for “a scheme recognised under section 272” substitute “such a scheme”.

(13) In section 417(1) (definitions) in the appropriate place insert—

““AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;”.

**Transitional provisions in respect of recognised overseas schemes**

**5.**—(1) A collective investment scheme which became recognised before 22nd July 2013 by virtue of section 270 is to be treated as a scheme recognised pursuant to an order under section 272 of the Act.

(2) Paragraphs (3) and (4) apply to a collective investment scheme which became recognised before 22nd July 2013 by virtue of section 270 or pursuant to an order under section 272 of the Act.

(3) The scheme is to be treated for the purposes of section 277A(2)(a) of the Act as if it had provided a written statement under section 277A of the Act on 21st July 2013.

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(a) Section 277A is inserted by regulation 4(7) of these regulations.

(4) If the scheme remains recognised immediately before 22nd July 2014, and the operator has not provided a written statement to the FCA under section 277(1A) or 277A of the Act before 22nd July 2014, the scheme will cease to be recognised on 22nd July 2014.

(5) In this regulation—

“collective investment scheme” has the meaning given in section 235(1) of the Act (collective investment schemes); and

“the operator” has the meaning given in section 237(2) of the Act (other definitions).

### **Restriction on the application of the approved persons regime to internally managed investment companies**

6. In section 59 of the Act (approval for particular arrangements) after subsection (7B) insert—

“(7C) A regulator may not specify under subsection (3) a description of a function to the extent that such function is performed by an AIFM which—

- (a) is also an AIF;
- (b) does not manage any AIF other than itself; and
- (c) is a body corporate that is not a collective investment scheme.”

### **Amendments 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(a) are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) before the definition of “branch” insert—

““authorised unit trust scheme” has the meaning given at section 237(3) of the Act;”;

(b) after the definition of “investor-compensation schemes directive” insert—

““relevant AIFM” means an EEA firm falling within paragraph 5(h) of Schedule 3 to the Act which—

- (a) is authorised by its home state regulator to provide services specified by Annex I to the alternative investment fund managers directive; and
- (b) is providing those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services)(b), in the United Kingdom;”;

(c) after the definition of “relevant management company” insert—

““UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”.

(3) In regulation 2 (persons not to be regarded as relevant persons)—

(a) omit “and” after sub-paragraph (1)(c);

(b) after sub-paragraph (1)(d) insert—

“; and

(e) any relevant AIFM.”;

(c) after paragraph (3) insert—

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(a) S.I. 2001/1783.

(b) The Government is consulting on the basis that EEA AIFMs may obtain a passport to provide non-core activities under Article 6.4 of the Directive in the UK. However, we are aware that there is currently disagreement at an EU level as to the availability of such a passport and the FSA is working with its counterparts in Europe in an effort to address this issue.

“(4) A relevant AIFM is prescribed in relation to all authorised activities other than any services specified by Annex I to the alternative investment fund managers directive provided in respect of an authorised unit trust scheme or an authorised open-ended investment company.”.

- (4) In regulation 3(1) (persons who may elect to participate)—
- (a) omit “and” after sub-paragraph (b);
  - (b) after sub-paragraph (c) insert—
    - “(d) any relevant AIFM which has established a branch in the United Kingdom in exercise of an EEA right to the extent that it—
      - (i) provides services specified by Annex I to the alternative fund managers directive in respect of a UK AIF which is not an authorised unit trust scheme or an authorised open-ended investment company, unless the relevant AIFM is a member of another investor-compensation scheme which affords investors protection which equals or exceeds that provided by the Financial Services Compensation Scheme; or
      - (ii) provides services specified in Article 6.4 of the alternative investment fund managers directive (discretionary portfolio management and non-core services), and is a member of a home State investor-compensation scheme which meets the condition in paragraph (2);”.
- (5) In regulation 4 (persons in respect of whom inspection under section 224 does not apply)—
- (a) omit “and” after paragraph (c);
  - (b) after paragraph (d) insert—
    - “; and
    - (e) any relevant AIFM to the extent that it provided services in the United Kingdom other than services specified by Annex I of the alternative investment fund managers directive that were provided in respect of an authorised unit trust scheme or an authorised open-ended investment company.”.

### **Ongoing obligation for Article 42 managers to comply with transparency requirements**

#### **8. [To replace regulation 60(5) of the previous draft regulations and add a new paragraph (9)]**

(5) The AIFM complies, and will comply, with the relevant provisions for full-scope UK AIFMs relating to Articles 22 to 24 of the directive which are relevant to the AIF for which approval is sought.

(9) The AIFM of an AIF that appears on the Article 42 register must comply with the relevant provisions for full-scope UK AIFMs relating to Articles 22 to 24 of the directive which are relevant to the AIF.

### **Open-Ended Investment Companies**

**9.—**(1) The Open-Ended Investment Companies Regulations 2001<sup>(a)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation) in the appropriate place insert—

““UCITS” has the meaning given in Article 1.2 of the UCITS directive;”.

(3) In regulation 15 (requirements for authorisation)—

(a) for paragraph (6) substitute—

“(6) If the company has only one director, that director must be a body corporate which is an authorised person and which has permission under Part 4A of the Act to manage a UCITS or, as the case may be, to manage an AIF.”;

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(a) S.I. 2001/1228.

(b) in paragraph (8)(e) after “the depositary of an open-ended investment company” insert “that is a UCITS or, as the case may be, of an open-ended investment company that is an AIF”.

(4) In regulation 62(3) (exemptions from liability to be void), for “This regulation” substitute “Except in the case of the depositary of an AIF (as to which see regulations 28 to 31 of the Alternative Investment Fund Managers Regulations 2013), this regulation”.

**10.** In paragraph 2(2) of Schedule 5 to the Act (permission for open-ended investment companies to operate collective investment schemes), after “regulated activity” insert “other than the activity of managing an AIF”.