STATUTORY INSTRUMENTS

2015 No. 1882

FINANCIAL SERVICES AND MARKETS

The European Long-term Investment Funds Regulations 2015

Made - - - -	*11th November 2015*
Laid before Parliament	*12th November 2015*
Coming into force - -	*3rd December 2015*

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 213(10)(**3**), 214(5), 224(4) and 428(1) and (3) of the Financial Services and Markets Act 2000(**4**), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the European Long-term Investment Funds Regulations 2015 and come into force on 3rd December 2015.

Interpretation

2. In these Regulations—

"ELTIF Regulation" means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds(**5**);

"European Long-term Investment Fund" or "ELTIF" means an AIF, as defined by regulation 4(1) of the Alternative Investment Fund Managers Regulations 2013(**6**), which is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation.

(**1**) S.I. 2012/1759.
(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).
(**3**) Section 213(10) was substituted by S.I. 2011/1613.
(**4**) 2000 c.8.
(**5**) OJ No L 123, 19.5.2015, p.98.
(**6**) S.I. 2013/1773.

Amendments to the Financial Services and Markets Act 2000

3.—(1) The Financial Services and Markets Act 2000 is amended as follows.

(2) In section 55J (variation or cancellation on initiative of regulator), in subsection (6A)(e)(**7**)—

(a) omit the "or" at the end of sub-paragraph (ii);

(b) at the end of sub-paragraph (iii) insert "; or";

(c) after sub-paragraph (iii) insert—

"(iv) a provision of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.".

(3) In section 194 (general grounds on which power of intervention is exercisable), in subsection (5)(**8**)—

(a) omit the "or" at the end of paragraph (a);

(b) at the end of paragraph (b), insert "; or";

(c) after paragraph (b) insert—

"(c) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds or any directly applicable regulation made under that Regulation.".

(4) In section 398 (misleading FCA or PRA: residual cases), in subsection (1A)(**9**)—

(a) omit the "or" at the end of paragraph (d);

(b) at the end of paragraph (e), insert "; or";

(c) after paragraph (e) insert—

"(f) Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds.".

Amendments to the Alternative Investment Fund Managers Regulations 2013

4.—(1) The Alternative Investment Fund Managers Regulations 2013(**10**) are amended as follows.

(2) In regulation 2(1)(**11**) (interpretation) insert the following definitions in the appropriate places —

""ELTIF Regulation" means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;

"ELTIF" means an AIF that is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation;

"EEA ELTIF" means an ELTIF that has been authorised by a competent authority other than the FCA under the ELTIF Regulation;

"UK ELTIF" means an ELTIF that has been authorised by the FCA under the ELTIF Regulation;".

(3) After Part 3 (Small AIFMs) insert—

(**7**) Section 55J(6A) was substituted by S.I. 2013/3115.
(**8**) Section 194(5) was inserted by S.I. 2013/1773.
(**9**) Section 398(1A) was inserted by S.I. 2013/1773.
(**10**) S.I. 2013/1773.
(**11**) Regulation 2(1) was amended by S.I. 2013/1797 and S.I. 2014/1292.

"PART 3A

ELTIFs

Manner of application for ELTIF authorisation

23A.—(1) An application for authorisation as a UK ELTIF under Article 5 of the ELTIF Regulation must—

(a) be made in such manner as the FCA may direct; and

(b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of applications.

(4) The FCA may require an applicant to provide information which it is required to give under paragraph (1)(b) or paragraph (2) of this regulation in such form, or to verify it in such manner, as the FCA may specify.

Procedure in relation to the refusal of an application for ELTIF authorisation

23B.—(1) If the FCA proposes to refuse an application made by a UK AIF for authorisation as a UK ELTIF under Article 5 of the ELTIF Regulation it must give the applicant a warning notice.

(2) If the FCA decides to refuse an application—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Procedure in relation to the revocation of ELTIF authorisation otherwise than by consent

23C.—(1) If the FCA proposes to revoke the authorisation of a UK ELTIF, the FCA must give separate warning notices to the AIFM and the depositary of the ELTIF.

(2) If the FCA decides to revoke the authorisation of a UK ELTIF,—

(a) the FCA must give each of the AIFM and the depositary a decision notice; and

(b) either of them may refer the matter to the Tribunal.".

(4) After regulation 30(6) (depositary liability for loss of financial instruments held in custody), insert—

"(7) Paragraphs (4) and (5) do not apply to a depositary of an EEA ELTIF or a UK ELTIF that is marketed to retail investors under Chapter V of the ELTIF Regulation.".

(5) After regulation 32(2) (depositary liability and third country custodians) insert—

"(3) This regulation does not apply to a depositary of an EEA ELTIF or a UK ELTIF that is marketed to retail investors under Chapter V of the ELTIF Regulation.".

(6) After regulation 52(1)(b) (contravention by unauthorised person) insert—

"(c) by an AIFM that is not an authorised person in contravention of a provision of the ELTIF Regulation.".

(7) After regulation 53(1)(b) (contravention by authorised person) insert—

"(c) by an authorised person that is a full-scope UK AIFM in contravention of a provision of the ELTIF Regulation.".

Amendment to the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

5. In the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(**12**), after article 29(4)(**13**) (communications required or authorised by enactments) insert—

"(5) A communication permitted by Article 30 or 31 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds is to be treated as authorised by an enactment other than the Act for the purposes of paragraph (1).".

Amendment to the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001

6. In the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001(**14**), after article 16(3)(**15**) (communications required or authorised by enactments) insert—

"(4) A communication permitted by Article 30 or 31 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds is to be treated as authorised by another enactment for the purposes of paragraph (1).".

Amendment 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(**16**) is amended as follows.

(2) In regulation 1(2)(**17**) (citation, commencement and interpretation) insert the following definition in the appropriate place—

""ELTIF" means a UK AIF that has been authorised by the FCA as a European long-term investment fund under Article 6 of Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds.".

(3) For regulation 2(4)(**18**) (persons not to be regarded as relevant persons) substitute—

"(4) A relevant AIFM is prescribed in relation to all authorised activities other than—

(a) any services specified by Annex I to the alternative investment fund managers directive provided in respect of an authorised trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or

(b) any activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation.".

(4) In regulation 3(1)(d)(**19**) (persons who may elect to participate)—

(**12**) S.I. 2005/1529.
(**13**) Article 29(4) was inserted by S.I. 2013/1773.
(**14**) S.I. 2001/1060.
(**15**) Article 16(3) was inserted by S.I. 2013/1773.
(**16**) S.I. 2001/1783.
(**17**) Regulation 1(2) was amended by S.I. 2003/2066, S.I. 2011/1613, S.I. 2013/3115, S.I. 2013/1773 and S.I. 2015/910.
(**18**) Regulation 2(4) was inserted by S.I. 2013/1773.
(**19**) Regulation 3(1) was amended by S.I. 2003/2066, S.I. 2003/1476, S.I. 2013/1773 and S.I. 2015/910.

(a) in paragraph (i) remove the "or" at the end;

(b) after paragraph (i), insert—

"(ai) undertakes activities as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation; or".

(5) For regulation 4(e)(**20**) (persons in respect of whom inspection under section 224 does not apply) substitute—

"(e) any relevant AIFM to the extent that it provided services in the United Kingdom other than—

(i) services specified by Annex I to the alternative investment fund managers directive that were provided in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or

(ii) activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation; and".

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

8.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(**21**) is amended as follows.

(2) In article 1(2)(**22**) (citation, commencement and interpretation) in the appropriate place, insert —

""ELTIF Regulation" means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds;".

(3) In article 2(**23**) (qualifying EU provisions: general), in paragraph (2), after sub-paragraph (h), insert—

"(i) the ELTIF Regulation and any directly applicable regulation made under that Regulation.".

(4) In article 3(**24**) (qualifying EU provisions: disciplinary measures)—

(a) in paragraph (2), after sub-paragraph (i), insert—

"(j) the ELTIF Regulation and any directly applicable regulation made under that Regulation.";

(b) in paragraph (3), after sub-paragraph (g), insert—

"(h) in relation to a contravention of a requirement imposed by the ELTIF Regulation or any directly applicable regulation made under that Regulation, the FCA.".

(5) In article 5(**25**) (qualifying EU provisions: injunctions and restitution)—

(a) in paragraph (2), after sub-paragraph (i), insert—

"(j) the ELTIF Regulation and any directly applicable regulation made under it.";

(b) in paragraph (5), after sub-paragraph (h), insert—

(**20**) Regulation 4(e) was inserted by S.I. 2013/1773.
(**21**) S.I. 2013/419.
(**22**) Article 1(2) was amended by S.I. 2013/1773 and S.I. 2014/3348.
(**23**) Article 2 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.
(**24**) Article 3 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.
(**25**) Article 5 was amended by S.I. 2013/1773, S.I. 2014/2879 and S.I. 2014/3348.