Draft Regulations laid before Parliament under paragraph 1(1) of the Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

The Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018.

(2) These Regulations come into force on exit day.

(**1**) 2018 c. 16.

PART 2

Amendment of secondary legislation

CHAPTER 1

Amendment of the Alternative Investment Fund Managers Regulations 2013

Amendment of the Alternative Investment Fund Managers Regulations 2013

2. The Alternative Investment Fund Managers Regulations 2013(**2**) are amended in accordance with this Chapter.

Introductory provisions

3.—(1) In regulation 2(1)—

(a) omit the definition of "Article 36 custodian";

(b) omit the definition of "competent authority";

(c) in the definition of "depositary" for "at Article 21.1 of the directive" substitute "in rule 3.11.4 of the Investment Funds sourcebook";

(d) for the definition of "EEA AIF" substitute—

> ""EEA AIF" means an AIF which—
>
> (a) is authorised or registered under the applicable law in an EEA state, or has its registered office or head office in an EEA State; and
>
> (b) was marketed in the United Kingdom before exit day under these Regulations;";

(e) omit the definition of "EEA AIFM";

(f) for the definition of "EEA ELTIF(**3**)", substitute—

> ""EEA ELTIF" means an EEA AIF that is authorised as a European long-term investment fund under Article 6 of the ELTIF Regulation by the competent authority of an EU member State;";

(g) omit the definition of "ELTIF(**4**)";

(h) omit the definition of "ESRB";

(i) before the definition of "EuSEF Manager", insert—

> ""EuSEF" means a European social entrepreneurship fund registered under Article 15a of the EuSEF Regulation as that Regulation applies in the European Union;";

(j) after the definition of "EuSEF Regulation", insert—

> ""EuVECA" means a European venture capital fund registered under Article 14a of the EuVECA Regulation as that Regulation applies in the European Union;";

(k) in the definition of "external valuer"(**5**), for "Article 19 of the directive" substitute "section 3.9 of the Investment Funds sourcebook";

(l) after the definition of "external valuer" insert—

(**2**) S.I. 2013/1773.
(**3**) The definition of EEA ELTIF was inserted by S.I. 2015/1882.
(**4**) The definition of ELTIF was inserted by S.I. 2015/1882.
(**5**) The definition of external valuer is amended by S.I. 2013/1797.

""FCA" means the Financial Conduct Authority;";

(m) omit the definition of "full-scope EEA AIFM";

(n) before the definition of "implementing provision" insert—

""full-scope Gibraltar AIFM" means an AIFM which is authorised to manage AIFs under Part 4 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013(**6**) of Gibraltar which is not a small AIFM within the meaning of regulation 8 of those Regulations;

"Gibraltar AIF" means an AIF which is authorised or registered under the national law in Gibraltar, or has its registered office or head office in Gibraltar;

"Gibraltar AIFM" means a Gibraltar AIFM which is authorised to manage AIFs under Part 4 of the Financial Services (Alternative Investment Fund Managers) Regulations 2013(**7**) of Gibraltar which is exercising an entitlement under the Financial Services and Markets Act 2000 (Gibraltar) Order 2001(**8**) to establish a branch or provide services in the United Kingdom;";

(o) in the definition of "implementing provision"—

(i) for paragraph (c), substitute—

"(c) by any other EU Regulation which was made under the directive before exit day, and forms part of retained EU law;";

(ii) in paragraph (d), for "if the provision implements the directive" substitute "if the provision was relied on before exit day to implement the directive, or replaces such a provision";

(p) after the definition of "internal AIFM" insert—

""issuer" means a company which has its registered office in the United Kingdom and the shares of which are admitted to trading on a UK regulated market, within the meaning of Article 2(1)(13A) of Regulation (EU) 600/2014 on markets in financial instruments;

"leverage" means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;";

(q) after the definition of "managing an AIF", insert—

""non-listed company" means a company which has its registered office in the United Kingdom and the shares of which are not admitted to trading on a UK regulated market within the meaning of Article 2(1)(13A) of Regulation (EU) 600/2014 on markets in financial instruments;";

(r) for the definition of "professional investor", substitute—

""professional investor" means an investor who is considered to be a professional client within the meaning of Article 2(1)(8) of Regulation (EU) 600/2014 on markets in financial instruments;";

(s) after the definition of "qualifying venture capital fund", insert—

""RVECA Manager" means the manager of a venture capital fund that is registered in accordance with Article 14 of the EuVECA Regulation;";

(t) omit the definition of "regulator's notice";

(**6**) L.N. 2013/103.
(**7**) L.N. 2013/103.
(**8**) S.I. 2001/3084.

(u) after the definition of "retail investor", insert—

""RVECA" means a venture capital fund which is registered by the FCA in accordance with Article 14a of the EuVECA Regulation;

"SEF" means a social entrepreneurship fund which is registered by the FCA in accordance with Article 15a of the EuSEF Regulation;

"SEF Manager" means the manager of a qualifying social entrepreneurship fund that is registered in accordance with Article 15 of the EuSEF Regulation;";

(v) in the definition of "small authorised UK AIFM", in paragraph (c)—

(i) omit "mentioned in Article 3.4 of the directive;";

(ii) for "of the directive" the second time it is mentioned, substitute "applying to a full-scope UK AIFM";

(w) omit the definition of "small registered EEA AIFM";

(x) in the definition of "third country" for "an EEA state" substitute "the United Kingdom";

(y) in the definition of "third country AIF", for "neither an EEA AIF" substitute "neither a Gibraltar AIF";

(z) after the definition of "third country feeder AIF", insert—

""third country AIF custodian" has the meaning given in regulation 57(5)(a)(**9**)

(aa) in the definition of "UK AIF", for "an EEA State" substitute "the United Kingdom";

(bb) for the definition of "UK ELTIF(**10**)", substitute—

""UK LTIF" means an AIF which is authorised by the FCA as a long-term investment fund under Article 6 of the ELTIF Regulation;";

(cc) after the definition of "UK ELTIF", insert—

""UK UCITS" has the meaning given in section 237(3) of the Act;".

(2) In regulation 2(2)—

(a) omit paragraph (a);

(b) in paragraph (b)—

(i) omit "directly applicable",

(ii) after "directive" insert "which forms part of retained EU law".

(3) Omit regulation 2(3A)(**11**).

(4) At the end of regulation 2, insert—

"(5) Any reference in these Regulations to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made and guidance issued by the FCA under the Financial Services and Markets Act 2000 as it has effect on exit day.

(6) Any reference in these Regulations to any EU Regulation, EU decision or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018(**12**)) is, unless the contrary intention appears, to be treated as a reference to that EU regulation, EU decision or EU tertiary legislation as it has effect on the day on which the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2018 are made.".

(**9**) As amended by these Regulations.
(**10**) The definition of UK ELTIF was inserted by S.I. 2015/1882,
(**11**) Paragraph (3A) was inserted by S.I. 2014/1292.
(**12**) 2018 c. 16.

(5) In regulation 3—

(a) in paragraph (1), for sub-paragraph (b), substitute—

"(b) is not a UK UCITS;";

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

"(aa) an occupational pension scheme, within the meaning of section 1(1) (categories of pension schemes) of the Pension Schemes Act 1993(**13**);";

(6) In regulation 4(4), after sub-paragraph (a) insert—

"(aa) an occupational pension scheme, within the meaning of section 1(1) of the Pension Schemes Act 1993, including its trustees and managers;".

Authorisation of full-scope UK AIFMS

4.—(1) In regulation 5—

(a) in paragraph (3)(c), for "implementing provisions relating to Article 9 of the directive", substitute "rule 11.2.1 and section 11.3 of the Interim Prudential sourcebook for Investment Businesses";

(b) in paragraph (8)(**14**)—

(i) for sub-paragraph (c), substitute—

"(c) a programme of activity setting out the organisational structure of the applicant, including information on how the applicant intends to comply with its obligations under the following provisions, so far as they apply to an AIFM—

(i) the Financial Services and Markets Act 2000(**15**);

(ii) these Regulations;

(iii) rules made by the FCA;

(iv) Commission Delegated Regulation;";

(ii) in sub-paragraph (e), omit "EEA States or";

(2) In regulation 6—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a), omit "and";

(ii) omit sub-paragraph (b);

(b) in paragraph (3)—

(i) at the end of sub-paragraph (a), insert "; and";

(ii) at the end of sub-paragraph (b), omit "and";

(iii) omit sub-paragraph (c).

(3) In regulation 7(1), for "implementing provisions relating to Article 10.1 of the directive" substitute "rule 15.3.26 of the Supervision sourcebook".

(4) Omit regulation 8.

(**13**) 1993 c. 48. Section 1(1) was amended by s.239 of the Pensions Act 2004 (c. 35).
(**14**) Regulation 5(8) is amended by S.I. 2013/1797.
(**15**) 2000 c. 8.