Draft Regulations laid before Parliament under paragraphs 2 and 2A(3)(a) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FINANCIAL SERVICES AND MARKETS

The Alternative Investment Fund Managers Regulations 2013

Made - - - -	***
Coming into force - -	*22nd July 2013*

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.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraphs 2 and 2A(3)(a) of Schedule 2 to the European Communities Act 1972(**3**), section 429(2) of the Financial Services and Markets Act 2000(**4**) and sections 784(3) and 1290 of the Companies Act 2006(**5**).

The Treasury make these Regulations in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972(**6**), and (in relation to Part 2 of Schedule 2 to these Regulations) sections 183, 188, 213(10), 214(5), 224(4), 262, 349 and 428(3) of, and paragraphs 13(1)(b), 14(1)(b), 17(b) and 22 of Schedule 3 to, the Financial Services and Markets Act 2000(**7**) and sections 784 and 785 of the Companies Act 2006(**8**).

(**1**) S.I. 2012/1759.

(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. 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 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 at Brussels on 17th March 1993 (Cm 2183).

(**3**) Paragraph 2 was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and paragraph 2A was inserted by section 29 of that Act.

(**4**) 2000 c. 8. Section 429(2) was amended by paragraph 12 of Schedule 15 to the Companies Act 2006 (c. 46), section 178 of the Banking Act 2009 (c. 1) and paragraph 33 of Schedule 2 to the Financial Services Act 2010 (c. 28).

(**5**) 2006 c. 46.

(**6**) Section 14A of the Interpretation Act 1978 (c. 30) (inserted by section 59 of the Enterprise and Regulatory Reform Act 2013 (c. 24)) provides that, where an Act provides a power to make subordinate legislation, that subordinate legislation may include a requirement to review the effectiveness of the legislation.

(**7**) Section 417(1) provides that "prescribed" means prescribed in regulations made by the Treasury. Sections 183 and 188 were substituted by S.I. 2009/534 and section 188 was amended by section 26(2) of the Financial Services Act 2012. Section 213(10) was substituted by S.I. 2011/1613. Section 262 was amended by paragraph 9 of Schedule 18 to the 2012 Act and by S.I. 2001/1265. Section 349 was amended by paragraph 19 of Schedule 12 to the 2012 Act and by other provisions not relevant here. Paragraph 13(1)(b) of Schedule 3 was amended by S.I. 2007/126. Paragraph 14(1)(b) of Schedule 3 was amended by S.I. 2003/1473 and 2003/2066. Paragraph 22 of Schedule 3 was amended by paragraph 14 of Schedule 4 to the 2012 Act.

(**8**) Section 785 was amended by section 112 of the Financial Services Act 2012 (c. 21).

PART 1

Introductory provisions

Citation and commencement

1. These Regulations may be cited as the Alternative Investment Fund Managers Regulations 2013 and come into force on 22nd July 2013.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"AIF" has the meaning given in regulation 3;

"AIFM" has the meaning given in regulation 4;

"Article 36 custodian" has the meaning given in regulation 57(5)(a);

"authorised AIF" means an AIF that is—

(a) an authorised unit trust scheme,

(b) an authorised contractual scheme, or

(c) an authorised open-ended investment company,

as defined in section 237(3) of the Act (other definitions)(**9**);

"Commission Delegated Regulation" means the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012, supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision(**10**);

"competent authority", other than in regulation 65, means the national authority of an EEA State other than the United Kingdom responsible for supervising AIFMs, and when used in relation to an EEA AIF or a full-scope EEA AIFM means—

(a) in relation to an EEA AIF, the competent authority in the EEA State in which the EEA AIF is registered or authorised, or (if the EEA AIF is not authorised or registered in an EEA State) in which the EEA AIF has its registered office or head office;

(b) in relation to a full-scope EEA AIFM, the competent authority that has authorised that AIFM;

"depositary" means a person appointed in compliance with the requirement for an AIFM to appoint a depositary at Article 21.1 of the directive;

"the directive" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers(**11**);

"EEA AIF" means an AIF which—

(a) is authorised or registered under the applicable national law in an EEA State other than the United Kingdom; or

(b) is not authorised or registered in an EEA State, but has its registered office or head office in an EEA State other than the United Kingdom;

(**9**) In section 237(3) the definition of "authorised contractual scheme" was inserted by S.I. 2013/1388.
(**10**) OJ L 83, 22.3.2013, p.1.
(**11**) OJ L 174, 1.7.2011, p.1.

"EEA AIFM" means an EEA firm falling within paragraph 5(h) of Schedule 3 to the Act, which is exercising in the United Kingdom an EEA right deriving from the directive;

"ESRB" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board(**12**);

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

"EuSEF Regulation" means Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds(**13**);

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

"EuVECA Regulation" means Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds(**14**);

"external AIFM" has the meaning given in regulation 4(3);

"external valuer" means a person who performs the valuation function described in Article 19 of the directive in respect of an AIF managed by a full-scope UK AIFM, and is not the AIFM of that AIF;

"full-scope UK AIFM" means a UK AIFM which has a Part 4A permission to carry on the regulated activity of managing an AIF and is not a small authorised UK AIFM;

"full-scope EEA AIFM" means an AIFM authorised in accordance with Article 6.1 of the directive in an EEA State other than the United Kingdom;

"implementing provision" means a requirement that is imposed—

(a) by these Regulations;

(b) by the Commission Delegated Regulation;

(c) by any other directly applicable EU regulation made under the directive; or

(d) by or under the Act, if the provision implements the directive;

"internal AIFM" has the meaning given in regulation 4(3);

"managing an AIF" is to be interpreted in accordance with regulation 4(2), and cognate expressions are to be interpreted accordingly;

"professional investor" means an investor who is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to the markets in financial instruments directive;

"qualifying social entrepreneurship fund" has the meaning given in Article 3(b) of the EuSEF Regulation;

"qualifying venture capital fund" has the meaning given in Article 3(b) of the EuVECA Regulation;

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**15**);

"regulator's notice" means a notice of intention referred to in paragraph 14(1)(b) of Schedule 3 to the Act;

(**12**) OJ L 331, 15.12.2010, p.1.
(**13**) OJ L 115, 25.4.2013, p.18.
(**14**) OJ L 115, 25.4.2013, p.1.
(**15**) S.I. 2001/544.

"retail investor" means an investor who is not a professional investor;

"small AIFM" has the meaning given in regulation 9;

"small authorised UK AIFM" means a UK AIFM which—

(a) is a small AIFM;

(b) has a Part 4A permission to carry on the regulated activity of managing an AIF; and

(c) has not exercised the option mentioned in Article 3.4 of the directive to meet the full requirements of the directive;

"small registered EEA AIFM" means an AIFM which—

(a) is a small AIFM;

(b) has its registered office in an EEA State other than the United Kingdom;

(c) is registered in accordance with Article 3.3(a) of the directive; and

(d) has not exercised the option mentioned in Article 3.4 of the directive to meet the full requirements of the directive;

"small registered UK AIFM" means an AIFM entered in the register maintained in accordance with regulation 10(1);

"small third country AIFM" means a third country AIFM which is a small AIFM;

"third country" means a state which is not an EEA State;

"third country AIF" means an AIF which is neither an EEA AIF nor a UK AIF;

"third country AIFM" means an AIFM which has its registered office in a third country;

"UK AIF" means an AIF which—

(a) is an authorised AIF; or

(b) is not authorised or registered in an EEA State, but has its registered office or head office in the United Kingdom;

"UK AIFM" means an AIFM which has its registered office in the United Kingdom;

"working day" has the meaning given in section 191G(2) of the Act (interpretation of Part 12)(**16**).

(2) Unless otherwise defined—

(a) any expression used in these Regulations which is used in the directive has the same meaning as in the directive;

(b) any expression used in these Regulations which is used in a directly applicable EU regulation made under the directive has the same meaning as in that regulation; and

(c) any other expression used in these Regulations which is defined for the purposes of the Act has the meaning given by the Act.

(3) Any reference in these Regulations to an application for a Part 4A permission to carry on a regulated activity, the giving of such a permission or a refusal to give such a permission, includes reference to an application to vary a Part 4A permission by adding that regulated activity to the activities to which the permission relates, such a variation of a Part 4A permission or a refusal so to vary a Part 4A permission.

Meaning of "AIF"

3.—(1) "AIF" means a collective investment undertaking, including investment compartments of such an undertaking, which—

(**16**) Section 191G was substituted by S.I. 2009/534 and amended by section 26 of the Financial Services Act 2012.

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of these investors; and

(b) does not require authorisation pursuant to Article 5 of the UCITS directive.

(2) An AIF may be open-ended or closed-ended, and constituted in any legal form, including under a contract, by means of a trust or under statute.

(3) None of the following entities is an AIF—

(a) 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(**17**);

(b) a holding company;

(c) an employee participation scheme or employee savings scheme;

(d) a securitisation special purpose entity.

Meaning of "AIFM", "managing an AIF", "external AIFM" and "internal AIFM"

4.—(1) "AIFM" means a legal person, the regular business of which is managing one or more AIFs.

(2) Managing an AIF means performing at least risk management or portfolio management for the AIF.

(3) The AIFM of an AIF may be either—

(a) another person appointed by or on behalf of the AIF and which through that appointment is responsible for managing the AIF ("external AIFM"); or

(b) where the legal form of the AIF permits internal management and where the AIF's governing body chooses not to appoint an external AIFM, the AIF itself ("internal AIFM").

(4) None of the following entities is an AIFM—

(a) 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(**18**), 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;

(b) 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;

(c) a national central bank;

(d) a national, regional or local government or body or other institution which manages funds supporting social security and pension systems;

(e) a holding company;

(f) an employee participation scheme or employee savings scheme;

(g) a securitisation special purpose entity.

(**17**) OJ L 235, 23.9.2003, p.10.
(**18**) OJ L 235, 23.9.2003, p.10.