Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 694/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 694 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) No 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 694/2014

of 17 December 2013

supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to regulatory technical standards determining types of alternative investment fund managers

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010[(1)], and in particular Article 4(4) thereof,

Whereas:

(1) It is important that regulatory technical standards determining types of AIFMs supplement the rules in Directive 2011/61/EU so that certain requirements of the Directive are applied to AIFMs in a uniform manner.

(2) It is desirable to distinguish whether an AIFM is managing AIFs of the open-ended or closed-ended type or both in order to apply correctly the rules on liquidity management and the valuation procedures of Directive 2011/61/EU to AIFMs.

(3) The distinguishing factor in determining whether an AIFM is managing AIFs of the open-ended or closed-ended type should be the fact that an open-ended AIF repurchases or redeems its shares or units with its investors, at the request of any of its shareholders or unitholders, prior to the commencement of its liquidation phase or wind-down and does so according to the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents. A decrease in the capital of the AIF in connection with distributions according to the rules or instruments of incorporation of the AIF, its prospectus or offering documents, including one that has been authorised by a resolution of the shareholders or unitholders passed in accordance with those rules or instruments of incorporation, prospectus or offering documents of the AIF, should not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type.

(4) The repurchases or redemptions which should be relevant for determining whether an AIFM is managing AIFs of the open-ended or closed-ended type should only be the

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 694/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 694 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

ones made out of the assets of the AIF. Therefore, whether an AIF's shares or units can be negotiated on the secondary market and are not repurchased or redeemed by the AIF should not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type.

(5) An AIFM that manages one or more open-ended AIFs and one or more closed-ended AIFs at the same time should apply to each AIF the specific rules relating to the relevant type of AIF.

(6) Any change in the redemption policy of an AIF implying that the AIF may be considered no longer as being an AIF of the open-ended type or an AIF of the closed-ended type, should lead the AIFM to cease to apply the rules relating to the old redemption policy of the AIF it manages and to apply the rules relating to the new redemption policy of such AIF.

(7) For the purposes of Article 61(3) and (4) of Directive 2011/61/EU account should be taken of the legal structures under which closed-ended AIFs were established before 22 July 2013. When the Directive was adopted no harmonised definition existed in the Union regarding the legal structure of closed-ended AIFs, which varied between Member States. This reality is reflected in the text of the Directive, which qualifies as closed-ended AIFs certain existing legal structures that have no redemption rights exercisable during the period of 5 years from the date of the initial investment. Article 61(3) and (4) of Directive 2011/61/EU provides for transitional periods during which existing AIFMs, in so far as they manage closed-ended AIFs that are in an advanced or final stage of their investment cycle, as evidenced by their expiring date or by their impossibility to make any additional investment after 22 July 2013, can continue to manage such AIFs without authorisation or without having to comply with a significant part of the Directive. Consequently, in order to preserve the scope of those provisions as intended in light of this objective and the above mentioned background, it should be also considered to be an AIFM of a closed-ended AIF for the purposes of Article 61(3) and (4) of Directive 2011/61/EU, each AIFM in so far it manages AIFs whose shares or units are repurchased or redeemed after an initial period of at least 5 years during which redemption rights are not exercisable.

(8) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(9) ESMA has conducted open public consultations in relation to the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 694/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 694 may be subject to amendment by EU Exit Instruments made by the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 1. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Article 1

Types of AIFMs

1 An AIFM may be either or both of the following:

— an AIFM of open-ended AIF(s);

— an AIFM of closed-ended AIF(s).

2 An AIFM of an open-ended AIF shall be considered to be an AIFM which manages an AIF the shares or units of which are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents.

A decrease in the capital of the AIF in connection with distributions according to the rules or instruments of incorporation of the AIF, its prospectus or offering documents, including one that has been authorised by a resolution of the shareholders or unitholders passed in accordance with those rules or instruments of incorporation, prospectus or offering documents, shall not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type.

Whether an AIF's shares or units can be negotiated on the secondary market and are not repurchased or redeemed by the AIF shall not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type.

3 An AIFM of a closed-ended AIF shall be an AIFM which manages an AIF other than of the type described in paragraph 2.

4 Where a change in the redemption policy of the AIF has the effect of changing the type of AIF(s) an AIFM manages, the rules relevant to the new type of AIF shall be applied to that AIF by the AIFM.

5 For the purposes of Article 61(3) and (4) of Directive 2011/61/EU, an AIFM in so far as it manages AIFs whose shares or units are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIFs after an initial period of at least 5 years during which redemption rights are not exercisable shall also be considered to be an AIFM of a closed-ended AIF.

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.