Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

COMMISSION IMPLEMENTING REGULATION (EU) No 447/2013

of 15 May 2013

establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

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 3(5) thereof,

Whereas:

(1) Pursuant to Article 3(4) of Directive 2011/61/EU, alternative investment fund managers (AIFMs) that meet the conditions provided for in Article 3(2) of that Directive may choose to opt in under it in order to benefit from the rights granted. By opting in, an AIFM becomes subject to the application of Directive 2011/61/EU in its entirety.

(2) Directive 2011/61/EU provides for a procedure for authorisation of AIFMs. The documents and information to be provided under that procedure offer necessary details as to the requesting AIFM and therefore the same documents and procedure should be used in the case of opting in. There are no specific reasons peculiar to opting in that would justify the use of a different procedure than the one applicable to AIFMs with assets under management above the thresholds provided for in Article 3(2) of Directive 2011/61/EU. Consequently, AIFMs choosing to opt in under Directive 2011/61/EU should follow the same procedure as that established for AIFMs that are obliged to seek authorisation under Directive 2011/61/EU.

(3) AIFMs having the right to opt in are AIFMs which had been previously either registered in accordance with Article 3(3) of Directive 2011/61/EU or authorised as management companies of undertakings for collective investment in transferable securities in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[(2)]. It is appropriate to avoid double reporting and to account for the documents and information already submitted by AIFMs to the competent authorities under the registration and authorisation procedures, provided that those documents and information are up to date.

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) No 447/2013. 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) View outstanding changes*

(4) Competent authorities should examine the request to opt in and grant authorisation to that effect under the same conditions and following the same procedure as in the case of AIFMs with assets under management above the relevant thresholds provided in Article 3(2) of Directive 2011/61/EU.

(5) It is important to clarify the relationship between the procedure for those AIFMs which choose to opt in and the revocation of an authorisation granted to AIFMs under Directive 2011/61/EU. An AIFM granted authorisation under Directive 2011/61/EU whose assets under management subsequently fall below the thresholds set out in Article 3(2) of Directive 2011/61/EU remains authorised and subject to the application of that Directive in its entirety as long as the authorisation is not revoked. The revocation of the authorisation should not be automatically triggered by a fall of the assets under management of an authorised AIFM below the relevant threshold, but only at the request of the AIFM. Consequently it should not be possible for an AIFM to request to opt in as long as it holds an authorisation under Directive 2011/61/EU, whereas an AIFM whose authorisation has been revoked upon its request should still be able to seek to opt in again under Directive 2011/61/EU.

(6) Directive 2011/61/EU obliges Member States to apply the laws, regulations and administrative provisions which transpose that Directive from 22 July 2013. The application of this Regulation is therefore also deferred to the same date.

(7) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Procedure and conditions for opt in

1 An alternative investment fund manager (AIFM) that meets the conditions provided for in Article 3(2) of Directive 2011/61/EU and chooses to opt in under that Directive shall submit an application for authorisation to the competent authority of its home Member State.

The application shall follow the same procedure provided for in paragraphs 1 to 5 of Article 7 of Directive 2011/61/EU and in the measures adopted in implementation thereof.

2 The competent authority of the home Member State may exempt an AIFM referred to in paragraph 1 from submitting all information and documents required under Article 7 of that Directive, provided that the exempted information or documents have been already submitted to the competent authority for registration purposes in accordance with Article 3(3) of that Directive or as part of the authorisation procedure pursuant to Article 5 of Directive 2009/65/EC and provided that such information and documents are still up to date, which is confirmed in writing by the AIFM.

3 The competent authority of the home Member State shall grant an authorisation following the same procedure as provided for in paragraphs 1 to 5 of Article 8 of Directive 2011/61/EU.