

# **The Alternative Investment Fund Managers Regulations 2013, as amended, in particular by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019: notification before exit day: as amended**

## **Direction under regulation 78A(6) and (7) of the Alternative Investment Fund Managers Regulations 2013 (as amended, in particular by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019)**

### **1. Purpose**

This direction is given by the FCA under regulation 78A(6) and (7) of the Alternative Investment Fund Managers Regulations 2013 (as amended by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019) (the Regulations). It applies to notifications to the FCA in accordance with regulations 78A(2), 78A(3), 78A(4) and 78A(5) of the Regulations and varies the date by which notifications must be received by the FCA under the following directions:

- a. the [direction](#) previously given by the FCA for these purposes on 24 May 2019 (the 24 May 2019 AIFM direction); and
- b. the direction given by the FCA dated 18 October 2019 (the 18 October 2019 AIFM direction) to those AIFMs that:
  - i. previously notified the FCA in accordance with one or more of regulations 78A(2), 78A(3), 78A(4), and 78A(5) of the AIFM Regulations of the funds they wished to benefit from the temporary marketing provisions under Part 9A of the AIFM Regulations;
  - ii. submitted a request to the FCA that they be permitted to update that notification; and
  - iii. were informed by the FCA that they would be able to do so.

### **2. Manner in which notifications are to be made**

- 2.1 For a firm which is an AIFM and which is applying for temporary permission to market an AIF, EuSEF or EuVECA in the United Kingdom in accordance with regulations 78A(2), 78A(3), 78A(4) and 78A(5), the FCA directs that a notification must be received before the end of 30 January 2020.
- 2.2 Apart from the variation in 2.1 above, a notification made to the FCA under the 24 May 2019 AIFM direction or the 18 October 2019 AIFM direction must be made in such manner and in accordance with such instructions as specified in the applicable direction.

## Note

The Regulations create a temporary marketing permissions regime which enable:

- an AIF, EuVECA or a EuSEF to be marketed in the United Kingdom on the same terms and subject to the same conditions as it was able to be before exit day for a limited period;
- an EEA AIFM which is authorised by its home state regulator under Article 6(1) of the AIFM Directive to continue to market a UK AIF in the United Kingdom on the same terms and subject to the same conditions as it was able to before exit day for a limited period.

To benefit from the temporary marketing permissions regime under the Regulations, the manager of the AIF, EuVECA or EuSEF must satisfy certain conditions, including notifying the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom. By way of summary:

- Under regulation 78A(2), of the Regulations, where:
  - an **EEA AIFM** satisfies the conditions entitling it to market an **EEA AIF** in the United Kingdom before exit day under regulation 49 of the Regulations;
  - the entitlement to market that AIF has not been suspended or revoked before exit day; and
  - the AIFM of the AIF is an authorised person, or is authorised or registered as an AIFM in a Member State,

the AIFM must, before exit day, notify the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day.

- Under regulation 78A(3), of the Regulations, where:
  - an **EuVECA** is registered under Article 14a of the EuVECA Regulation (as it applies in the European Union) in a Member State, or is managed by a small registered UK AIFM or a EuVECA Manager;
  - the FCA has, before exit day, received a notification under Article 16 of the EuVECA Regulation that the United Kingdom has been added to the list of Member States in which the manager intends to market the EuVECA; and
  - the AIFM or EuVECA Manager of the EuVECA has not been subject to any sanctions under Article 18 of the EuVECA Regulation,

the manager must notify the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day.

- Under regulation 78A(4) of the Regulations, where:
  - an **EuSEF** is registered under Article 15a of the EuSEF Regulation (as it applies in the European Union), or is managed by a small registered UK AIFM or a EuSEF Manager;
  - the FCA has, before exit day, received a notification under Article 17 of the EuSEF Regulation that the United Kingdom has been added to the list of Member States in which the manager intends to market the EuSEF; and
  - the AIFM or EuSEF Manager of the EuSEF has not been subject to any sanctions under Article 19 of the EuSEF Regulation,

the manager marketing the relevant fund must notify the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after exit day.

- Under regulation 78A(5), where:
  - an **EEA AIFM** is marketing a **UK AIF** in the United Kingdom and the EEA AIFM satisfied the conditions entitling it to market the UK AIF in the United Kingdom before exit day under regulation 49 of the Regulations; and
  - the EEA AIFM is authorised or registered as an AIFM in a Member State,

the EEA AIFM must notify the FCA that it wishes to have temporary permission to market the UK AIF in the United Kingdom after exit day.

A notification made for these purposes must be made in accordance with this direction.

This direction extends the date by which a notification made by an AIFM must be received by the FCA for the purposes of regulations 78A(2), 78A(3), 78A(4) and 78A(5) of the Regulations before the end of 30 January 2020. Aside from the change in the date by which the notification must be received, the manner in which such a notification must be made and any instructions which apply to such a notification are unchanged.