

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 IP completion day

Direction under regulation 78A(6) 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.

2. Manner in which notifications are to be made – AIFMs applying for temporary permission to market AIFs

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 (unless paragraph 3 applies):

- a. be made by submitting the Fund Temporary Permission Regime Notification Form using the Connect system (<https://connect.fca.org.uk>);
- b. follow any instructions given by the FCA in relation to the Fund Temporary Permission Regime Notification Form;
- c. contain the information required by that form; and
- d. be made and received during the period beginning at 9am on 30 September 2020 and ending at the end of 30 December 2020.

3. Operators who have previously notified the FCA

3.1 This sub-paragraph applies where:

- i) an AIFM previously notified the FCA in accordance with directions given under regulation 78A(6) and (7) of the Regulations of the AIFs, EuSEFs or EuVECAs that it wished to benefit from the temporary marketing provisions under of Part 9A of the Regulations; and
- ii) the AIFM wishes to update that notification.

3.2 The FCA directs that where sub-paragraph 3.1 applies:

- i) the AIFM must inform the FCA by the end of 10 December 2020 that it wishes to update its previous notification under regulations 78A(2), 78A(3), 78A(4) and 78A(5) of the Regulations by emailing recognisedcis@fca.org.uk; and
- ii) a notification made by such AIFM for the purposes of regulations 78A(2), 78A(3), 78A(4) and 78A(5) must:
 - a. be made by submitting the Fund Temporary Permission Regime Notification Form using the Connect system (<https://connect.fca.org.uk>);

- b. comply with any further instruction published in relation to the Fund Temporary Permission Regime Notification form;
- c. contain the information required by that form; and
- d. be made and received before the end of 30 December 2020.

4. Interpretation

In this direction 'IP completion day' has the meaning given in section 39 of the European Union (Withdrawal Agreement) Act 2020.

Financial Conduct Authority

29 September 2020

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 IP completion 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 be before IP completion 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 IP completion day under regulation 49 of the Regulations;
 - the entitlement to market that AIF has not been suspended or revoked before IP completion 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 IP completion day, notify the FCA that it wishes the relevant fund to have temporary permission to be marketed in the United Kingdom after IP completion 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 IP completion 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 IP completion 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 IP completion 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 IP completion 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 IP completion 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 IP completion day.

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

Where an AIFM previously notified the FCA of funds that it wished to benefit from the temporary marketing permissions regime under the Regulations and the AIFM now needs to update that notification it must,

before submitting a revised notification, inform the FCA before end of 10 December 2020 that it wishes to do so and comply with the relevant directions. Further information is available on the FCA website.