

## SCHEDULE 1

### AMENDMENTS TO PRIMARY LEGISLATION

#### PART 1

##### Amendments to the Financial Services and Markets Act 2000

**34.**—(1) Schedule 3 (EEA passport rights) is amended as follows.

(2) In paragraph 1 (the single market directives)(1) omit “and” at the end of paragraph (e), and after paragraph (f) insert—

“; and

(g) the alternative investment fund managers directive.”

(3) After paragraph 4D (the emission allowance auctioning directive)(2), insert—

##### *“The alternative investment fund managers directive*

**4E.** “The alternative investment fund managers directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.”

(4) In paragraph 5 (EEA firm)(3), omit “or” at the end of paragraph (f), and after paragraph (g) insert—

“; or

(h) an AIFM (as defined in Article 4.1(b) of the alternative investment fund managers directive) which is authorised (in accordance with Article 6.1 of that directive) by its home state regulator.”

(5) In paragraph 5A (definition of “relevant office” for EEA firm)(4), after paragraph (a) insert—

“(aa) in relation to a firm falling within sub-paragraph (h) of that paragraph, its registered office;”

(6) In paragraph 7A (definition of “relevant office” for EEA right), after paragraph (a) insert—

“(aa) in relation to a person whose entitlement is subject to the conditions of the alternative investment fund managers directive, its registered office;”

(7) In paragraph 10A (definition of “relevant office” for UK firm), after paragraph (a) insert—

“(aa) in relation to a firm whose EEA right derives from the alternative investment fund managers directive, its registered office;”

(8) After paragraph 11C (UCITS)(5), insert—

##### *“EEA AIFM*

**11D.** “EEA AIFM” means an EEA firm falling within paragraph 5(h) which is exercising in the United Kingdom a right deriving from the alternative investment fund managers directive.”

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(1) Paragraph 1 was amended by [S.I. 2000/2952](#), [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/126](#) and [S.I. 2007/3253](#).

(2) Paragraph 4D was inserted by [S.I. 2012/1906](#).

(3) Paragraph 5 was amended by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2004/3379](#), [S.I. 2006/3221](#), [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#) and [S.I. 2012/1906](#).

(4) Paragraphs 5A, 7A and 10A were inserted by [S.I. 2003/1473](#).

(5) Paragraph 11C was inserted by [S.I. 2011/1613](#).

*Status: This is the original version (as it was originally made).*

- (9) In paragraph 13 (establishment)(**6**)—
- (a) in sub-paragraph (1), for “or (f)”, in the first place, substitute “, (f) or (h)”;
  - (b) at the end of sub-paragraph (1)(ba), omit “and”;
  - (c) after sub-paragraph (1)(c), insert—  
“; and
  - (d) in the case of a firm falling within paragraph 5(h), its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator.”;
  - (d) in sub-paragraph (2)(b), after “5(a)”, insert “or (h)”.
- (10) In paragraph 14 (services)(**7**)—
- (a) in sub-paragraph (1)(b), for “or (f)” substitute “, (f) or (h)”;
  - (b) in sub-paragraph (1)(c), for “or (e)”, substitute “, (e) or (h)”;
  - (c) in sub-paragraph (2), for “or (e)”, substitute “, (e) or (h)”;
  - (d) after sub-paragraph (3), insert—  
“(3A) In cases where the firm is an EEA AIFM that seeks to market an AIF in exercise of its rights under Article 32 of the alternative investment fund managers directive, the appropriate UK regulator must ensure that the regulator’s notice may be transmitted to it electronically.”.
- (11) In paragraph 19 (establishment)(**8**)—
- (a) in sub-paragraph (1) for “and (5A)” substitute “, (5A) and (7BC)”;
  - (b) after sub-paragraph (7B), insert—  
“(7BA) Sub-paragraph (7BB) applies where—
    - (a) the firm’s EEA right derives from the alternative investment fund managers directive,
    - (b) the first condition is satisfied, and
    - (c) the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
      - (i) the provisions implementing the alternative investment fund managers directive, and
      - (ii) any directly applicable EU regulation made under that directive.
  - (7BB) The appropriate UK regulator must—
    - (a) within two months of receiving the firm’s notice of intention, give a consent notice to the host state regulator,
    - (b) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of the alternative investment fund managers directive, and
    - (c) immediately notify the firm that it has given the consent notice to the host state regulator.

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(6) Paragraph 13 was amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/126](#) and [S.I. 2012/1906](#).

(7) Paragraph 14 was amended by paragraph 3 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/126](#) and [S.I. 2012/1906](#).

(8) Paragraph 19 was amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2003/1473](#), [S.I. 2003/2066](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#), [S.I. 2012/916](#) and [S.I. 2012/1906](#).

- (7BC) If the firm’s EEA right derives from the alternative investment fund managers directive, the third condition does not apply.”;
- (c) in sub-paragraph (12A)(a), after “UCITS directive”, insert “or the alternative investment fund managers directive”.
- (12) In paragraph 20 (services)(9)—
- (a) in sub-paragraph (1), for “sub-paragraphs (4D) and (4E)”, substitute “sub-paragraphs (4D) to (4F)”;
- (b) after sub-paragraph (3C), insert—
- “(3D) If the firm’s EEA right derives from the alternative investment fund managers directive, the appropriate UK regulator must—
- (a) if the condition in sub-paragraph (3E) is satisfied—
- (i) within one month of receiving the firm’s notice of intention, send a copy of the firm’s notice of intention to the host state regulator;
- (ii) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of that directive, with such other information as may be specified; and
- (iii) immediately notify the firm that it has given the notice and confirmation to the host state regulator; or
- (b) give the firm written notice of its refusal to send a copy of the notice of intention to the host state regulator and its reasons for that refusal.
- (3E) The condition is that the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
- (a) the provisions implementing the alternative investment fund managers directive, and
- (b) any directly applicable EU regulation made under that directive.”;
- (c) in sub-paragraph (4A) after “sub-paragraph (3A)(b)” insert “or (3D)(b)”;
- (d) in sub-paragraph (4B), after “any of the insurance directives or from”, insert “the alternative investment fund managers directive,”; and
- (e) after sub-paragraph (4E), insert—
- “(4F) This paragraph does not apply to—
- (a) the operator of a UCITS established in the United Kingdom seeking to exercise an EEA right to market the units of that UCITS in the territory of another EEA State; or
- (b) a UK firm seeking to exercise an EEA right under the alternative investment fund managers directive to market an AIF.”.
- (13) In the heading before paragraph 20B (notice of intention to market)(10), after “market” insert “a UCITS”.
- (14) After paragraph 20B, insert—

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(9) Paragraph 20 was amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2001/1376, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613 and S.I. 2012/1906.

(10) Paragraph 20B was inserted by S.I. 201/1613 and amended by paragraph 13 of Schedule 4 to the Financial Services Act 2012.

*Status: This is the original version (as it was originally made).*

*“Notice of intention to market an AIF*

**20C.**—(1) A full-scope UK AIFM may not exercise in the territory of another EEA State an EEA right under the alternative investment fund managers directive to market a UK AIF or EEA AIF managed by it unless two conditions are satisfied.

(2) The first condition is that the full-scope UK AIFM has given the appropriate UK regulator, in the specified way, notice of its intention to market the AIF (“notice of intention”) which contains, and is accompanied by, such information as may be specified.

(3) The appropriate UK regulator must ensure that the notice of intention and any accompanying information may be transmitted to it electronically.

(4) The second condition is that the appropriate UK regulator has sent a copy of the notice of intention to the host state regulator, and has given written notice to the full-scope UK AIFM that it has done so.

(5) Sub-paragraph (6) applies where—

(a) the appropriate UK regulator is satisfied that the full-scope UK AIFM complies, and will continue to comply, with—

(i) the provisions implementing the alternative investment fund managers directive, and

(ii) any directly applicable EU regulation made under that directive, and

(b) if the UK AIF or EEA AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by—

(i) a full-scope UK AIFM, or

(ii) an AIFM authorised in another EEA State in accordance with Article 6.1 of the alternative investment fund managers directive.

(6) The appropriate UK regulator must send a copy of the notice of intention to the host state regulator within 20 working days of receiving it.

(7) When sending a copy of the notice of intention to the host state regulator, the appropriate UK regulator must send with the notice confirmation that the full-scope UK AIFM concerned is authorised to manage AIFs with a particular investment strategy, and a statement of that strategy.

(8) If the notice of intention relates to an EEA AIF, the appropriate UK regulator must, when it sends a copy of the notice to the host state regulator, also inform the competent authority of the EEA AIF that the full-scope UK AIFM may start marketing the AIF in the EEA States covered by the notice.

(9) The appropriate UK regulator must notify the full-scope UK AIFM immediately that the copy of the notice of intention has been sent to the host state regulator.

(10) The full-scope UK AIFM may market the AIF in the territory of the host state regulator from the date it receives the notification referred to in sub-paragraph (9).

(11) If the appropriate UK regulator refuses to send a copy of the notice of intention to the host state regulator—

(a) the appropriate UK regulator must give the AIFM written notice of its refusal and its reasons for that refusal; and

(b) the AIFM may refer the matter to the Tribunal.

(12) In this paragraph—

“competent authority” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;

“EEA AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;

“feeder AIF” has the meaning given in Article 4.1(m) of the alternative investment fund managers directive;

“master AIF” has the meaning given in Article 4.1(y) of that directive;

“specified” means specified in rules;

“UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”.

(15) After paragraph 28 (management companies: request for information)(**11**) insert—

*“Full-scope UK AIFMs: notification of breach by host state regulator*

**29.** If a host state regulator informs the FCA in accordance with paragraph 5 of Article 45 of the alternative investment fund managers directive that a full-scope UK AIFM has refused to provide the information or to take the steps referred to in that paragraph, the appropriate UK regulator must—

- (a) take steps to ensure that the AIFM provides the information or complies with the rules of which it is in breach;
- (b) request any necessary information from a supervisory authority in a country that is not an EEA State; and
- (c) notify the host state regulator of the steps taken under paragraph (a).”.

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(11) Paragraph 28 was amended by paragraph 21 of Schedule 4 to the Financial Services Act 2000.