

Chapter 19

Non-FSMA powers

19.27 Alternative Investment Fund Managers Regulations 2013

19.27.1 The *AIFMD UK regulation* transposed *AIFMD* and made the necessary changes to *UK* legislation in relation to the implementation of the *EuSEF regulation*, the *EuVECA regulation*, the *ELTIF regulation* and the *Money Market Funds regulation*. It provided new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.

19.27.2 The *AIFMD UK regulation* includes information gathering and sanctioning powers that enable the *FCA* to investigate and take action for breaches of the regulations and *onshored regulations*. Specific standalone powers are in the *AIFMD UK regulation* for *unauthorised AIFMs*, by applying relevant sections of the *Act*. Amendments to the *Act*, including those made under the *Financial Services and Markets Act (Qualifying Provisions) Order 2013* (as amended by the *Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)*), extend certain *FCA* powers (e.g. disciplinary powers, injunctions and restitution) so that they apply to contraventions of requirements of the *AIFMD UK regulation* and to contraventions of *onshored regulations*.

Information gathering and investigation powers

19.27.3 The *FCA* has decided that its approach to enforcing the *AIFMD UK regulation* requirements will mirror its general approach to enforcing the *Act* in ■ EG 2. Therefore, the *FCA* will apply the same procedures and policies under the *Act* for appointing investigators and requiring information for breaches of the *AIFMD UK regulation*.

19.27.4 The powers under the *AIFMD UK regulation* include powers of direction and the power to revoke the registration of *small registered UK AIFMs* (including a *SEF manager* or a *RVECA manager*).

19.27.5 The *FCA* will respect the principle of proportionality when taking action against *SEF managers* or *RVECA managers* for breaches identified in articles 22 and 21 of the *SEF regulation* or *RVECA regulation*, respectively. The *FCA* may take action to ensure compliance with the regulations or prohibit the use of the designation of *SEF manager* or *RVECA manager* and revoke registration of such managers. The prohibition route is more likely to apply to serious breaches of the *onshored regulations* such as in situations where:

- registration has been obtained through false statements or any other irregular means; or

- there are grounds for concern over the behaviour of a *SEF manager* or a *RVECA manager* in the management of a *SEF* or a *RVECA*, respectively.

Decision making under the AIFMD UK regulation

19.27.6 The *RDC* is the *FCA's* decision maker for some decisions under the *AIFMD UK regulation*, as set out in ■ DEPP 2 Annex 1G. The *RDC* will make its decisions following the procedure in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. For decisions made by *executive procedures*, the procedures to be followed are in ■ DEPP 4.

19.27.7 The *AIFMD UK regulation* does not require the *FCA* to publish procedures to commence criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act*.

19.27.8 The *AIFMD UK regulation* applies the procedural provisions of Part and Part 26 of the *Act* for matters that can be referred to the Tribunal and to warning and decision notices under the regulations as it applies to referrals and notices under the *Act*. The *AIFMD UK regulation* also applies sections 205 and 206 of the *Act* to *unauthorised AIFMs* and, accordingly, the *FCA* will give third party rights (section 393 of the *Act*) and access to material (section 394 of the *Act*).

Imposition of penalties under the AIFMD UK regulation

19.27.9 When determining whether to take action to impose a penalty under the *AIFMD UK regulation*, the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of financial penalty, the *FCA's* policy includes having regard to relevant principles and factors in ■ DEPP 6.5 to ■ 6.5A, ■ DEPP 6.5B, ■ DEPP 6.5D and ■ DEPP 6.7.

19.27.10 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *AIFMD UK regulation* to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the *FCA's* settlement process and the settlement discount scheme.

19.27.11 The *FCA* will apply the approach to publicity that is outlined in ■ EG 6.

Statement of Policy in section 169(7) interviews (as applied by the AIFMD UK regulation)

19.27.12 Regulation 71(2) of the *AIFMD UK regulation* applies section 169 of the *Act* in respect of *unauthorised AIFMs*, which requires the *FCA* to have a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. The *FCA* will follow the procedures described in ■ DEPP 7.