

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (NO 2)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) the following sections of the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B (FCA general rules: clients’ money, right to rescind etc.);
 - (c) section 137H (General rules about remuneration);
 - (d) section 137R (Financial promotion rules);
 - (e) section 137T (General supplementary powers);
 - (f) section 138D (Actions for damages);
 - (g) section 139A (Power of the FCA to give guidance);
 - (h) section 238 (Restrictions on promotion);
 - (i) section 247 (Trust scheme rules);
 - (j) section 261I (Contractual scheme rules);
 - (k) section 261J (Contractual scheme particulars rules); and
 - (l) paragraph 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of schedule 3 (EEA Passport Rights);
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook; and
 - (3) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (2) (Rule-making instruments) of the Act.
- C. The Financial Conduct Authority also makes this instrument in the exercise of the powers of direction in regulation 54 (FCA approval for marketing) of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1797).
- D. Regulation 6 (Consultation on rules made for the purposes of Article 35 or 37 to 41 of the directive) of the Alternative Investment Fund Managers (Amendment) Regulations 2013 (SI 2013/1797), modifies sections 138I to 138L (Consultation) of the Act in relation to the rules set out in this instrument.

Commencement

- E. This instrument comes into force on the date specified by the delegated act adopted by the European Commission pursuant to article 67(6) of the Alternative Investment Fund Managers Directive 2011/61/EU.

Amendments to the Handbook

- F. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- G. The Investment Funds sourcebook (FUND) is amended in accordance with Annex B to this instrument

Notes

- H. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- I. This instrument may be cited as the Alternative Investment Fund Managers Directive (No 2) Instrument 2013.

By order of the Board of the Financial Conduct Authority
25 July 2013

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined

<i>full-scope non-EEA AIFM</i>	<p>an <i>AIFM</i> that has its registered office in a country other than:</p> <ul style="list-style-type: none"> (a) the <i>United Kingdom</i>; or (b) an <i>EEA State</i> that is not the <i>United Kingdom</i>; <p>that has been authorised by the <i>FCA</i> as the <i>competent authority</i> of its <i>Member State of reference</i> (the <i>United Kingdom</i>) in accordance with the <i>AIFMD UK regulation</i>.</p>
<i>incoming non-EEA AIFM</i>	<p>an <i>AIFM</i> that has its registered office in a country other than:</p> <ul style="list-style-type: none"> (a) the <i>United Kingdom</i>; or (b) an <i>EEA State</i> that is not the <i>United Kingdom</i>; <p>that has been authorised by a <i>competent authority</i> of an <i>EEA State</i> other than the <i>United Kingdom</i> as its <i>Member State of reference</i> in accordance with the <i>AIFMD</i> and which is carrying on <i>cross border services</i> in the <i>United Kingdom</i> under Schedule 3 to the <i>Act</i>.</p>
<i>legal representative</i>	<p>(in accordance with article 4(1)(u) of <i>AIFMD</i>) a natural person domiciled in the <i>EEA</i> or a legal person with its registered office in the <i>EEA</i>, and which, expressly designated by a <i>non-EEA AIFM</i>, acts on behalf of such <i>non-EEA AIFM</i>, vis-à-vis the authorities, clients, bodies and counterparties to the <i>non-EEA AIFM</i>'s obligations under <i>AIFMD</i>.</p>
<i>Member State of reference</i>	<p>(in relation to a <i>non-EEA AIFM</i>) the <i>EEA State</i> determined in accordance with the criteria set out in article 37(4) of the <i>AIFMD</i>, as listed in <i>FUND 12.3.5G</i> (Determination of Member State of reference).</p>
<i>non-EEA feeder AIF</i>	<p>a <i>UK AIF</i> or an <i>EEA AIF</i> that is a <i>feeder AIF</i>, the <i>master AIF</i> of which is a <i>non-EEA AIF</i> or which is managed by a <i>non-EEA AIFM</i>.</p>

Amend the following definitions as shown.

branch

...

- (j) (in relation to an *AIFM*):
- (i) a place of business which is a part of an *AIFM*, which has no separate legal personality and provides the services for which the *AIFM* has been authorised;
 - (ii) for the purpose of (i) all places of business established in the same *EEA State* by an *AIFM* with its registered office in another *EEA State* or in a third country (not being an *EEA State*) shall be regarded as a single branch.

[**Note:** article 4(1)(c) of *AIFMD*]

cross border services

(1) ...

(1A) (in relation to a *full-scope non-EEA AIFM* or an *incoming non-EEA AIFM*) services provided within an *EEA State* other than its *Member State of reference* under the freedom to provide services.

...

established

(in accordance with article 4(1)(j) *AIFMD*):

...

- (c) for *depositories*, ‘having its registered office or branch in’; or
- (d) for *legal representatives* that are legal persons, ‘having its registered office or branch in’; or
- (e) for *legal representatives* that are natural persons, ‘domiciled in’.

Home State

...

(15) (in relation to a *full-scope non-EEA AIFM* or an *incoming non-EEA AIFM*) the *Member State of reference* of the *full-scope non-EEA AIFM* or *incoming non-EEA AIFM* as the case may be, as determined in accordance with the criteria set out in article 37(4) of the *AIFMD*, as listed in *FUND* 12.3.5G (Determination of Member State of reference).

[**Note:** article 4(1)(q) of *AIFMD*]

Host State

...

(5) (for an *AIFM*) means:

...

(b) an *EEA state*, other than the *Home State*, in which an *EEA AIFM* or *UK AIFM* markets units or shares of an *EEA AIF* or *UK AIF* or non-EEA AIF;

(6) (in relation to a full-scope non-EEA AIFM) means any of the following:

(a) an EEA State, other than the Member State of reference, in which a full-scope non-EEA AIFM manages an EEA AIF;

(b) an EEA State, other than the Member State of reference, in which a full-scope non-EEA AIFM markets units or shares of a UK AIF or an EEA AIF;

(c) an EEA State, other than the Member State of reference, in which a full-scope non-EEA AIFM markets units or shares of a non-EEA AIF.

Annex B

Amendments to the Investment Funds sourcebook (FUND)

After FUND 11 insert the following new chapter 12. The text is not underlined.

[Editor's Note:

The FCA's intentions regarding this Instrument:

The FCA is conscious that there are some parts of these third country provisions that may require further clarification by the Commission and understands that the Commission plans to make further implementing measures, in advance of the provisions coming into force to enable the proposed regimes to operate properly from that date. The form or the detail of these further measures is not yet known as at 22 July 2013.

Should these further measures be forthcoming, as anticipated, the FCA for its part intends to make further appropriate Handbook rules and guidance to implement them, before these third country regimes become operative which as at 22 July 2013 is not expected to be before 22 July 2015 at the earliest. The FCA will consult on all such FCA Handbook rules and guidance in the usual way before they come into force pursuant to the consultation requirements imposed on it under section 138I (Consultation by the FCA) of the Act. Consequently the FCA intends to fulfil its responsibilities in relation to implementing these third country provisions for now by adopting a copy-out approach in this Instrument of the relevant Directive text, wherever possible. However, in due course the FCA expects to have to review this Instrument critically, revoking or amending these Handbook rules, or inserting new provisions in their place, to the extent needed in the light of the further Commission measures.

This Note is not part of this Instrument.]

12 Third country provisions

12.1 Application and introduction

Application

- 12.1.1 R (1) This chapter applies to the following types of *firm* in relation to the activities in (2):
- (a) a *full-scope UK AIFM*;
 - (b) a *full-scope non-EEA AIFM*; and

(c) an *incoming non-EEA AIFM* (but only *FUND 12.3.11R* (Obligation of non-EEA AIFMs to comply with FCA Handbook rules) and *FUND 12.3.12G* apply).

(2) The activities to which this chapter relates are:

- (a) the *marketing* by *full-scope UK AIFMs* of *non-EEA AIFs* or *non-EEA feeder AIFs* (which in either case they manage), in the *United Kingdom* or elsewhere in the *EEA* with a passport;
- (b) the managing and *marketing* of *UK AIFs* and *EEA AIFs* by *full-scope non-EEA AIFMs* (which in either case they manage), in the *United Kingdom* or, when carrying out *cross-border services*, elsewhere in the *EEA*;
- (c) the *marketing* of *non-EEA AIFs* by *full-scope non-EEA AIFMs* (which they manage), in the *United Kingdom* or, when carrying out *cross-border services*, elsewhere in the *EEA*; and
- (d) the managing and *marketing* of *UK AIFs*, *EEA AIFs* or *non-EEA AIFs* (which in any case they manage), by *non-EEA AIFMs (incoming non-EEA AIFMs)* from a *branch* in the *United Kingdom* when carrying out *cross-border services*.

12.1.2 R *FUND 12.6* (Depositary requirements for non-EEA AIFs and non-EEA AIFMs) applies to a *UK depositary* of:

- (1) a *non-EEA AIF* managed by a *full-scope UK AIFM*; and
- (2) a *UK AIF* or a *non-EEA AIF* managed by a *full scope non-EEA AIFM*.

Introduction

- 12.1.3 G (1) This chapter, which needs to be read in conjunction with the *AIFMD UK regulations*, gives effect to articles 35 and 37 to 41 of Chapter VII of the *AIFMD*, which are collectively known as the third country provisions. These provisions contain specific requirements relating to establishing several regimes in relation to both third country alternative investment fund managers (in the *Handbook* referred to as “*full-scope non-EEA AIFMs*” where the *AIFM’s Member State of reference* is the *United Kingdom*) and third country alternative investment funds (in the *Handbook* referred to as “*non-EEA AIFs*”).
- (2) The chapter also includes at *FUND 12.6* provisions implementing article 21(5)(b) and (6) of the *AIFMD*, which impose depositary requirements in relation to *non-EEA AIFs*, *UK AIFs* and *non-EEA AIFMs*.

Third country regimes

- 12.1.4 G (1) The third country provisions establish several third country regimes, provided the requirements of the *AIFMD* are met, as follows:
- (a) *full scope UK AIFMs* may market *non-EEA AIFs* or *non-EEA feeder AIFs* (which in either case they manage), in the *United Kingdom* or elsewhere in the *EEA*;
 - (b) *full-scope non-EEA AIFMs* may manage *UK AIFs* and/or *EEA AIFs* and market their *units* or *shares* in the *United Kingdom* or, when carrying out *cross-border services*, elsewhere in the *EEA*; and;
 - (c) *full-scope non-EEA AIFMs* may market *units* or *shares* of *non-EEA AIFs* managed by them in the *United Kingdom* or, when carrying out *cross-border services*, elsewhere in the *EEA*.
- (2) *Incoming non-EEA AIFMs* that manage *UK AIFs* from a *branch* in the *United Kingdom* should be aware that they constitute an *incoming EEA AIFM* for *Handbook* purposes and must comply with all *Handbook rules* that apply to such *firms*.

Transposition deadlines

- 12.1.5 G While *EEA States* are required to have made their laws and regulations to give effect to these third country *AIFMD* obligations by 22 July 2013, the implementing measures are not expected to come into effect until 22 July 2015 at the earliest, unlike those relating to the main *AIFMD* regimes which come into force on 22 July 2013.

12.2 Full-scope UK AIFMs intending to market non-EEA AIFs or non-EEA feeder AIFs

Introduction (article 35)

- 12.2.1 G (1) *Full-scope UK AIFMs* that intend to *market non-EEA AIFs* or *non-EEA feeder AIFs* (in either case which they manage) in the *United Kingdom* or elsewhere in the *EEA* with a passport, may do so only in accordance with the *AIFMD UK regulation* and not otherwise. The *AIFMD UK regulation* provides for more than one avenue for *UK AIFMs* to carry on such *marketing* activities in the *United Kingdom* from the date that these third country provisions are expected to come into force (22 July 2015 at the earliest).
- (2) Under regulation 54 (FCA approval for marketing) of the *AIFMD UK regulation*, a *full-scope UK AIFM* intending to carry on any such *marketing* as is referred to in (1) must first obtain the approval of the *FCA* to do so. This section is only concerned with the third country *marketing* provisions in article 35 of the *AIFMD* in this respect, to which regulation 54 give effect. The regulation 54 regime is likely to be of particular interest to *UK AIFMs* that want to avail themselves of the passporting opportunities that approval from the *FCA* in accordance with regulation 54 presents.
- (3) *Full-scope UK AIFMs* and their professional advisers should be aware that under regulation 54(9), the *FCA* must refuse any such application for approval for the *marketing* of a *non-EEA AIF* or *non-EEA feeder AIF* unless:
- (a) appropriate cooperation arrangements are in place between the *FCA* and the supervisory authorities of the third country where the *non-EEA AIF* is *established* so as to ensure an efficient exchange of information between them;
 - (b) the third country where the *non-EEA AIF* is *established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force; and
 - (c) the third country where the *non-EEA AIF* is *established* has signed an agreement with the *United Kingdom* and with each other *EEA State* in which the *units* or *shares* of the *non-EEA AIF* are to be marketed, which fully complies with the standards laid down in article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.
- (4) Alternatively, *full-scope UK AIFMs* that intend to *market non-EEA AIFs* or *non-EEA feeder AIFs* (in either case which they manage) in

the *United Kingdom* only, must comply with the national private placement requirements set out in Chapter 3 (National private placement) of Part 6 of the *AIFMD UK regulation*. *Guidance* on the national private placement regime which covers *marketing to retail clients* as well as *professional clients*, is set out at *FUND 10.5* (National private placement).

Full-scope UK AIFMs intending to market non-EEA AIFs or non-EEA feeder AIFs

- 12.2.2 G A *full-scope UK AIFM* that has obtained approval from the *FCA* in accordance with regulation 54 (*FCA* approval for marketing) to *market* the *units* or *shares* of *non-EEA AIFs* or *non-EEA feeder AIFs* (in either case which it manages) in the *United Kingdom* or elsewhere in the *EEA* and intends to do so, must first make the notifications to the *FCA* that are required by *FUND 12.2.3D* (Notifications to the *FCA*) or, as the case may be, by *FUND 12.2.4R*.

Notifications to the *FCA*

- 12.2.3 D (1) If a *full-scope UK AIFM* intends to *market units* or *shares* of a:
- (a) *non-EEA AIF*; or
 - (b) *non-EEA feeder AIF*;
- it manages to *professional clients* or *retail clients* in the *United Kingdom*, it must first submit a notification to the *FCA* in respect of each *non-EEA AIF* or *non-EEA feeder AIF* it intends to *market*.
- (2) Any notification made by a *full-scope UK AIFM* in accordance with (1) must comprise the documentation and information set out in *FUND 12 Annex 1D*.

[**Note:** article 35(3) of the *AIFMD*]

- 12.2.4 R (1) If a *full-scope UK AIFM* intends to *market units* or *shares* of a:
- (a) *non-EEA AIF*; or
 - (b) *non-EEA feeder EEA AIF*;
- it manages to *professional clients* or, where permitted, *retail clients* in an *EEA State* other than the *United Kingdom*, it must first submit a notification to the *FCA* in respect of each *non-EEA AIF* or *non-EEA feeder AIF* it intends to *market*.
- (2) Any notification made by a *full-scope UK AIFM* in accordance with (1) must comprise the documentation and information set out in *FUND 12 Annex 2R*.

[**Note:** article 35(5) of the *AIFMD*]

Obligation to comply with FCA Handbook rules

- 12.2.5 R A *full-scope UK AIFM* that is *marketing* the *units* or *shares* of *non-EEA AIFs* or *non-EEA feeder AIFs* (in either case which it manages) in the *United Kingdom* or elsewhere in the *EEA* under a passport, must comply *mutatis mutandis* with every *rule* in the *Handbook* implementing an obligation under the *AIFMD* that applies to a *full-scope UK AIFM* carrying on the *marketing* of the *units* or *shares* of a *UK AIF* it manages.

[**Note:** article 35(2) of the *AIFMD* first sentence]

Depositary requirements for non-EEA AIFs

- 12.2.6 G *Full-scope UK AIFMs* are reminded that under *FUND* 3.11.4R (Appointment of a single depositary), implementing article 21(1) of the *AIFMD*, it is their responsibility to ensure that for each *AIF* they manage, a single *depositary* is appointed for the *AIF* that meets the requirements of article 21. These article 21 obligations, that are implemented at *FUND* 3.11, impose a series of specific requirements that each such *depositary* must meet and include, for a *non-EEA AIF*, the obligations set out at article 21(5)(b) and (6), which are implemented at *FUND* 12.6 (Depositary requirements for non-EEA AIFs and non-EEA AIFMs).

Application of the financial promotion and scheme promotion restrictions

- 12.2.7 G Where the *full-scope UK AIFM* is proposing to *market* the *shares* or *units* of a *non-EEA AIF* or *non-EEA feeder AIF* (in either case which it manages) to *retail clients* in the *United Kingdom*, it needs to bear in mind the application of the *financial promotion* and scheme promotion restrictions in section 21(1) (Restrictions on financial promotion) and section 238(1) (Restrictions on promotion) respectively of the *Act*. *AIFMs* also need to appreciate that in practice there is likely to be a considerable overlap between *marketing* and *financial promotion*. *Guidance* on such matters is set out at *PERG* 8.37.14G (Application of the financial promotion and scheme promotion restrictions).

12.3 Authorisation of full-scope non-EEA AIFMs intending to manage and market UK and EEA AIFs and determination of their Member State of reference

Introduction

- 12.3.1 G (1) Third country *AIFMs* (*non-EEA AIFMs*) that want to take advantage of the *AIFMD*'s third country provisions must first apply for authorisation from the *EEA State* that represents their *Member State of reference*. *FUND* 12.3.5G (Determination of Member State of reference) lists the criteria by which this is determined, which are specified in article 37(4) of the *AIFMD*. The *Member State of reference* is essentially the *EEA State* with which the *AIFM* has the closest connection.
- (2) Article 37(2) makes authorisation dependent on the *non-EEA AIFM* complying in full with all relevant Directive obligations that apply to *EEA AIFMs* authorised in accordance with Chapter II of the *AIFMD* in that *Member State of reference* to conduct the relevant activity. In addition, the *AIFM* is required to meet certain other procedural and prudential requirements.
- (3) Having obtained authorisation from its *Member State of reference* entitling the *AIFM* to conduct the relevant activity in that *EEA State*, the *non-EEA AIFM* is then able to passport into other *EEA States* to conduct the activity, whether by establishing a *branch* in that *EEA State* or on a services basis, provided certain procedural requirements are met.

Activities which an authorised full-scope non-EEA AIFM may conduct

- 12.3.2 G A *full-scope non-EEA AIFM* that has been authorised by the *FCA* as the *competent authority* of its *Member State of reference* (the *United Kingdom*), is permitted to the extent provided for by its *Part 4A permission* to:
- (1) manage *UK AIFs*, *EEA AIFs* or any combination of them in the *United Kingdom* or elsewhere in the *EEA* when carrying on *cross-border services*;
- (2) *market units* or *shares* of *UK AIFs*, *EEA AIFs* or any combination of them, which are managed by the *AIFM*, in:
- (a) the *United Kingdom*; or
- (b) elsewhere in the *EEA* when carrying on *cross-border services*; and
- (3) *market units* or *shares* of *non-EEA AIFs*, which are managed by the *AIFM*:

- (a) in the *United Kingdom*; or
- (b) elsewhere in the *EEA* when carrying on *cross-border services*.

Cross-border services

- 12.3.3 G A *full-scope non-EEA AIFM* that has been authorised by the *FCA* as the *competent authority* of its *Member State of reference* (the *United Kingdom*), is treated in the same way as a *UK AIFM* for passporting purposes under the *Act* and consequently can carry on the activities for which it has been authorised by the *FCA* by way of *cross-border services* in an *EEA State* other than the *United Kingdom*, whether on a *branch* or a *services basis*.

Satisfaction of Member State of reference criteria: authorisation condition

- 12.3.4 G Regulation 5A(3)(a) of the *AIFMD UK regulation* provides that, in addition to the other authorisation conditions having to be met (see below at *FUND 12.4.5R* (Legal representative), *FUND 12.4.6R* (Other general conditions relating to granting of *FCA* authorisation) and *FUND 12.4.7G* (Additional conditions of authorisation)), the *FCA* must not grant a *Part 4A permission* to a *person* that is applying to the *FCA* for authorisation as a *full-scope non-EEA AIFM* unless it satisfies the criteria laid down in article 37(4) of the *AIFMD*.

Determination of Member State of reference

- 12.3.5 G Article 37(4) of the *AIFMD* provides that the *Member State of reference* of a *non-EEA AIFM* is to be determined in accordance with the following criteria:
- (1) if the *non-EEA AIFM* intends to manage only one *EEA AIF* or *UK AIF*, or several such *AIFs established* in the same *EEA State*, and does not intend to *market* any such *AIF* in the *EEA*, the *Home State* of that or those *AIFs* is deemed to be the *Member State of reference* and the *competent authorities* of that *EEA State* are to be competent for the authorisation procedure and for the supervision of the *AIFM*;
 - (2) if the *non-EEA AIFM* intends to manage several *EEA AIFs* or *UK AIFs established* in different *EEA States* and does not intend to *market* any such *AIF* in the *EEA*, the *Member State of reference* is either:
 - (a) the *EEA State* where most of the *AIFs* are *established*; or
 - (b) the *EEA State* where the largest amount of assets is being managed;
 - (3) if the *non-EEA AIFM* intends to *market* only one *EEA AIF* or *UK AIF* in only one *EEA State*, the *Member State of reference* is determined as follows:

- (a) if the *AIF* is authorised or registered in an *EEA State*, the *Member State of reference* is the *Home State* of the *AIF* or the *EEA State* where the *AIFM* intends to market the *AIF*;
 - (b) if the *AIF* is not authorised or registered in an *EEA State*, the *Member State of reference* is the *EEA State* where the *AIFM* intends to market the *AIF*;
- (4) if the *non-EEA AIFM* intends to market only one *non-EEA AIF* in only one *EEA State*, the *Member State of reference* is that *EEA State*;
- (5) if the *non-EEA AIFM* intends to market only one *EEA AIF* or *UK AIF*, but in different *EEA States*, the *Member State of reference* is determined as follows:
- (a) if the *AIF* is authorised or registered in an *EEA State*, the *Member State of reference* is the *Home State* of the *AIF* or one of the *EEA States* where the *AIFM* intends to develop effective marketing; or
 - (b) if the *AIF* is not authorised or registered in an *EEA State*, the *Member State of reference* is one of the *EEA States* where the *AIFM* intends to develop effective marketing;
- (6) if the *non-EEA AIFM* intends to market only one *non-EEA AIF*, but in different *EEA States*, the *Member State of reference* is one of those *EEA States*;
- (7) if the *non-EEA AIFM* intends to market several *EEA AIFs* or *UK AIFs* in the *EEA*, the *Member State of reference* is determined as follows:
- (a) in so far as those *AIFs* are all registered or authorised in the same *EEA State*, the *Member State of reference* is the *Home State* of those *AIFs* or the *EEA State* where the *AIFM* intends to develop effective marketing for most of those *AIFs*; or
 - (b) in so far as those *AIFs* are not all registered or authorised in the same *EEA State*, the *Member State of reference* is the *EEA State* where the *AIFM* intends to develop effective marketing for most of those *AIFs*; and
- (8) if the *non-EEA AIFM* intends to market several *EEA AIFs*, *UK AIFs* and *non-EEA AIFs*, or several *non-EEA AIFs* in the *EEA*, the *Member State of reference* is the *EEA State* where it intends to develop effective marketing for most of those *AIFs*.

[Note: article 37(4) first paragraph of the *AIFMD*]

Proof of intention to develop effective marketing in a particular *EEA State*

- 12.3.6 G A *non-EEA AIFM* is able to prove its intention to develop effective *marketing* in a particular *EEA State* by disclosure of its *marketing strategy* to the *FCA* as the *competent authority* of its proposed *Member State of reference*, as provided for by Commission implementing Regulation (EU) No 448/2013.

[Note: article 37(4) final paragraph of the *AIFMD*]

Commission implementing Regulation (EU) No 448/2013

- 12.3.7 G (1) In the situations referred to in *FUND* 12.3.5G(2), (3)(a), (5), (6) and (7)(a), more than one *EEA State* could be considered as a possible *Member State of reference* of a *non-EEA AIFM* intending to manage *EEA AIFs* and, as the case may be, or *market AIFs* managed by it in the *EEA*. The European Commission has by Commission implementing Regulation (EU) No 448/2013 established a directly applicable procedure for determining the appropriate *Member State of reference* in such cases. The Regulation may be accessed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:132:0003:0005:EN:PDF>
- (2) The procedure established by the provisions of Commission implementing Regulation (EU) No 448/2013 is commenced by an applicant that is seeking authorisation from the *FCA* as a *full-scope non-EEA AIFM* making a request to the *FCA* and to each other *competent authority* of each other possible *Member State of reference*, as provided for by regulation 5A of the *AIFMD UK regulation* with which this Commission Regulation needs to be read.

Determination of the United Kingdom as the Member State of reference: further requirements

- 12.3.8 R (1) Subject to (2), the determination of the *United Kingdom* as the *Member State of reference* of a *full-scope non-EEA AIFM* is not affected by its further business development in the *United Kingdom* or elsewhere in the *EEA*.
- (2) Where the *full-scope non-EEA AIFM* changes its *marketing strategy* within two years of its initial authorisation by the *FCA*, and that change would have affected the determination of the *United Kingdom* as the *Member State of reference* if the modified *marketing strategy* had been the initial *marketing strategy*, the *AIFM* must notify the *FCA* of the change before implementing it and indicate its *Member State of reference* in accordance with the criteria set out in *FUND* 12.3.5G and based on the new strategy.
- (3) Where (2) applies:
- (a) the *full-scope non-EEA AIFM* must justify its assessment by disclosing its new *marketing strategy* to the *FCA*, as its

original *Member State of reference*;

- (b) at the same time as making the notification the *full-scope non-EEA AIFM* must provide information on its new *legal representative*, including its name and the place where it is *established*; and
- (c) the *legal representative* must be *established* in the new *Member State of reference*.

[**Note:** article 37(11) first paragraph of the *AIFMD*]

Change in a full-scope non-EEA AIFM's marketing strategy

- 12.3.9 R Where a *full-scope non-EEA AIFM* changes its *marketing* strategy after the period of two years of its initial authorisation and intends to change its *Member State of reference* on the basis of its new *marketing* strategy, it must submit a request to change its *Member State of reference* to the *FCA*, as the *competent authority* of the original *Member State of reference*.
- 12.3.10 G Where a *full-scope non-EEA AIFM* submits a request to the *FCA* to change its *Member State of reference* in accordance with (1), the procedure set out in regulation 8 of the *AIFMD UK regulation* (implementing article 37(11) of the *AIFMD*) applies *mutatis mutandis*.

[**Note:** article 37(12) second paragraph of the *AIFMD*]

Obligation of non-EEA AIFMs to comply with FCA Handbook rules

- 12.3.11 R A *non-EEA AIFM* that is authorised by a *competent authority* of an *EEA State* other than the *United Kingdom* as its *Member State of reference*, when it is carrying on any *cross-border services* permitted by the *AIFMD* from a *branch* in the *United Kingdom*, must comply *mutatis mutandis* with *AIFMD host state requirements* in respect of all such activity, in the same way as an *incoming EEA AIFM branch* has to comply with these *FCA Handbook rules*.
- 12.3.12 G A *non-EEA AIFM* that is authorised by a *competent authority* of another *EEA State* as its *Member State of reference* when it is managing or *marketing* an *AIF* from a *branch* in the *United Kingdom*, is advised that it constitutes an *incoming EEA AIFM* for *Handbook* purposes. Consequently when it is carrying on such activity in this way, it is required to comply with the requirements of *FUND* 3.8, *SYSC* 4.1.2CR, *SYSC* 10.1.22R to *SYSC* 10.1.26R and *COBS* 2.1.4R in respect of that activity.

Law and jurisdiction of contractual disputes

- 12.3.13 R A *full-scope non-EEA AIFM* or a *non-EEA AIFM* operating from a *branch* in the *United Kingdom* must, in devising appropriate contractual arrangements for the relevant *AIF*, ensure that any disputes between:

- (1) the *AIFM* or the relevant *AIF*; and
- (2) the relevant *unitholders*;

are to be settled in accordance with the law of and subject to the jurisdiction of the *United Kingdom* or another *EEA State*.

[**Note:** article 37(13) second paragraph of the *AIFMD*]

12.4 Authorisation of full-scope non-EEA AIFMs by the FCA: general conditions of authorisation that apply both at the point of authorisation and on a continuing basis

Obligation to comply with FCA Handbook rules

- 12.4.1 R (1) An applicant intending to obtain prior authorisation as a *full-scope non-EEA AIFM* from the *FCA* as the *competent authority* of its *Member State of reference* to:
- (a) manage *UK AIFs*, *EEA AIFs* or any combination of them in the *United Kingdom* or elsewhere in the *EEA*; or
 - (b) *market units* or *shares* of *UK AIFs*, *EEA AIFs* or any combination of them, which are managed by the *AIFM*, in the *United Kingdom* or elsewhere in the *EEA* when carrying on *cross-border services*; or
 - (c) *market units* or *shares* of *non-EEA AIFs* or *non-EEA feeder AIFs* managed by the *AIFM* in the *United Kingdom* or elsewhere in the *EEA* when carrying on *cross-border services*;
- must comply *mutatis mutandis* with every *rule* in the *FCA Handbook* implementing an obligation under the *AIFMD* that applies to a *full-scope UK AIFM* carrying on that activity in relation to a *UK AIF* or, as the case may be, *EEA AIF*.
- (2) A *full-scope non-EEA AIFM* that has obtained authorisation from the *FCA* in accordance with the *AIFMD UK regulation* to carry on any or all of the activities listed at (1)(a) to (c) must continue to comply with every applicable *rule* in the *FCA Handbook* referred to in (1) for as long as it carries on that activity.

[**Note:** article 37(2) first sentence of the *AIFMD*]

Exception for incompatible local legislation

- 12.4.2 R If and to the extent that compliance with a *rule* in the *FCA Handbook* that applies to a *full-scope non-EEA AIFM* under *FUND 12.4.1R* is incompatible with compliance with the law to which the *full-scope non-EEA AIFM* and/or the *non-EEA AIF* is subject, there is no obligation on the *AIFM* to comply with that *rule* if it can demonstrate that:
- (1) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the *full-scope non-EEA AIFM* and/or the *non-EEA AIF marketed* in the *EEA* is subject;
 - (2) the law to which the *full-scope non-EEA AIFM* and/or the *non-EEA AIF* is subject provides for an equivalent rule having the same

regulatory purpose and offering the same level of protection to the investors of the relevant *AIF*; and

- (3) the *full-scope non-EEA AIFM* and/or the *non-EEA AIF* complies with the equivalent rule referred to in (2).

[**Note:** article 37(2) second sentence of the *AIFMD*]

Table of application

- 12.4.3 G In addition to *FCA Handbook rules* that apply to *full-scope non-EEA AIFMs* as they apply to all other *firms*, article 37(2) expressly requires any such *AIFM* intending to obtain prior authorisation to comply with the *AIFMD*. For the assistance of applicants for authorisation as *full-scope non-EEA AIFMs* and their professional advisers, the *FCA* has prepared a Table of *FCA Handbook rules* that represent the implementation of all relevant *AIFMD* obligations in the *Handbook* (in addition to those in *FUND 12*) and that such *AIFMs* must consequently comply with for the requirements of *FUND 12.4.1R* to be met. The Table is set out at *FUND 12 Annex 3R*.

Depositary requirements for non-EEA AIFs

- 12.4.4 R In addition to the general obligation to comply with *FCA rules* under *FUND 12.4.1R*, every *full-scope non-EEA AIFM* must ensure that for each *non-EEA AIF* it manages, a single *depositary* is appointed for the *AIF* that meets the requirements contained in *FUND 12.6* (Depositary requirements for non-EEA AIFs and non-EEA AIFMs).

[**Note:** article 21(1), (5)(b) and (6) of the *AIFMD*]

Legal representative

- 12.4.5 R (1) A *full-scope non-EEA AIFM* must, both at the time of its authorisation and on a continuing basis thereafter, have a *legal representative established* in the *United Kingdom*.
- (2) The *legal representative* must be the contact point of the *full-scope non-EEA AIFM* in the *EEA* and any official correspondence between the *FCA*, all other *competent authorities* and the *AIFM* and between the *EEA* investors of the relevant *AIF* and the *AIFM* as set out in the *AIFMD* must take place through that *legal representative*.
- (3) The *legal representative* must, together with the *full-scope non-EEA AIFM*, perform the compliance function relating to the management and *marketing* activities performed by the *AIFM* under the *AIFMD*.

[**Note:** article 37(3) of the *AIFMD*]

Other general conditions relating to granting of *FCA* authorisation

- 12.4.6 R Any *person* applying for authorisation from the *FCA* as a *full-scope non-EEA AIFM* must in accordance with the requirements imposed on the *FCA*

by regulation 5 of the *AIFMD UK regulation* ensure that its application meets with the following criteria:

- (1) the information in the authorisation application must be supplemented by:
 - (a) a justification by the *non-EEA AIFM* of its assessment regarding its *Member State of reference* in accordance with the criteria set out in *FUND 12.3.5G* (Determination of Member State of reference) with information on its *marketing* strategy;
 - (b) a list of the provisions of the *AIFMD* for which compliance by the *non-EEA AIFM* is impossible, as compliance by the *AIFM* with those provisions is, in accordance with *FUND 12.4.2R*, incompatible with compliance with a mandatory provision in the law to which the *non-EEA AIFM* or the *non-EEA AIF marketed* in the *EEA* is subject;
 - (c) written evidence based on the regulatory technical standards developed by *ESMA* that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant *AIFs* and that the *non-EEA AIFM* complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the regulatory protection pursued by it; and
 - (d) the name of the *legal representative* of the *non-EEA AIFM* and the place where it is *established*; and
- (2) the information referred to in the authorisation application (as required by section 55U(4) of the *Act* (implementing article 7(3) of the *AIFMD*)) may be limited to the *EEA AIFs* and *UK AIFs* which the *non-EEA AIFM* intends to manage and to those *AIFs* managed by the *non-EEA AIFM* that it intends to *market* in the *EEA* with a passport.

[**Note:** article 37(8) first paragraph sub-paragraphs (a) and (b) of the *AIFMD*]

Additional conditions of authorisation

- 12.4.7 G Any *person* applying for authorisation from the *FCA* as a *full-scope non-EEA AIFM* and their professional advisers should be aware that, as well as the conditions that must be met under *FUND 12.4.6R*(1) and (2), there are additional conditions specified by regulation 5A of the *AIFMD UK regulation* implementing article 37(7) of the *AIFMD*, as follows:

- (1) the *FCA* has to be satisfied that the applicant's determination that the *United Kingdom* is its *Member State of reference* meets the criteria set out in article 37(4) of the *AIFMD* (as listed in *FUND* 12.3.5G (Determination of Member State of reference)), as supported by the disclosure of its *marketing* strategy;
- (2) the applicant has appointed a *legal representative established* in the *United Kingdom*;
- (3) the *legal representative* that has been appointed will, together with the applicant, be the contact person in the *United Kingdom* for the *FCA*, other *competent authorities*, *ESMA* and for the investors of the relevant *AIFs*, as regards the activities for which the *non-EEA AIFM* is authorised in the *EEA* and is sufficiently equipped to perform the compliance function pursuant to the *AIFMD* for the relevant *AIFs*;
- (4) appropriate cooperation arrangements are in place between the *FCA* as the *competent authority* of the *Member State of reference* (the *United Kingdom*), the *competent authorities* of the *Home State* of the *EEA AIFs* concerned and the supervisory authorities of the third country where the applicant is *established*, in order to ensure at least an efficient exchange of information that allows the *competent authorities* to carry out their duties in accordance with the *AIFMD*;
- (5) the third country where the applicant is *established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force;
- (6) the third country where the applicant is *established* has signed an agreement with the *Member State of reference* (the *United Kingdom*) which fully complies with the standards laid down in article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements; and
- (7) the effective exercise by the *competent authorities* of their supervisory functions under the *AIFMD* is neither prevented by the laws, regulations or administrative provisions of a third country governing the applicant, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

12.5 Specific notification requirements for full-scope non-EEA AIFMs

Introduction

- 12.5.1 G Having obtained authorisation from the *FCA*, a *full-scope non-EEA AIFM* and its professional advisers should be aware that the *AIFM* is not permitted to commence any of the activities referred to in *FUND* 12.4.1R(1)(a)-(c) (Obligation to comply with *FCA Handbook* rules) for which it has been granted a *Part 4A permission* until the appropriate notifications have been made to the *FCA* in accordance with the requirements in this section.

Specific notification requirements for full-scope non-EEA AIFMs marketing UK and/or EEA AIFs

- 12.5.2 D A *full-scope non-EEA AIFM* that intends to *market units* or *shares* of a *UK AIF* or *EEA AIF*, which is managed by the *AIFM*, in the *United Kingdom* (its *Member State of reference*), when it is making the notification to the *FCA* in respect of each *EEA AIF* or *UK AIF* that it intends to *market* in accordance with regulation 54(1) and (2) of the *AIFMD UK regulation*, must ensure that each notification comprises the documentation and information set out in *FUND* 12 Annex 1D.
- 12.5.3 R A *full-scope non-EEA AIFM* that intends to *market units* or *shares* of a *UK AIF* or *EEA AIF*, which are managed by the *AIFM*, in one or more *EEA States* other than the *United Kingdom* (its *Member State of reference*) in the exercise of *cross-border services*, when it is making the notification to the *FCA* in respect of each such *UK AIF* or *EEA AIF* that is required by paragraph 20(C)(2) of Schedule 3 to the *Act* (as inserted by paragraph 34(14) of Schedule 1 to the *AIFMD UK regulation*), must ensure that each notification comprises the documentation and information set out in *FUND* 12 Annex 2R.

[**Note:** article 39(2) second paragraph and (4) second paragraph of the *AIFMD*]

Specific notification requirements for full-scope non-EEA AIFMs marketing with a passport non-EEA AIFs they manage

- 12.5.4 D A *full-scope non-EEA AIFM* that intends to *market units* or *shares* of a *non-EEA AIF*, which are managed by the *AIFM*, in the *United Kingdom* (its *Member State of reference*), when it is making the notification to the *FCA* in respect of each such *non-EEA AIF* that it intends to *market* in accordance with regulation 54(1) and (2) of the *AIFMD UK regulation*, must ensure that each notification comprises the documentation and information set out in *FUND* 12 Annex 1D.

[**Note:** article 40(3) second paragraph of the *AIFMD*]

- 12.5.5 R A *full-scope non-EEA AIFM* that intends to *market units* or *shares* of a *non-*

EEA AIF in one or more *EEA States* other than the *United Kingdom* (its *Member State of reference*), when it is making the notification to the *FCA* in respect of each such *non-EEA AIF* in accordance with paragraph 20(C)(2) of Schedule 3 to the *Act*, must ensure that each notification comprises the documentation and information set out in *FUND 12 Annex 2R*.

[**Note:** article 40(5) second paragraph of the *AIFMD*]

Specific notification requirements for full-scope non-EEA AIFMs for managing AIFs established in EEA States other than the UK

12.5.6 R Any *full-scope non-EEA AIFM* intending to manage *EEA AIFs* or *UK AIFs* established in an *EEA State* other than its *Member State of reference* (the *United Kingdom*) for the first time, when making the notification to the *FCA* (as the *competent authority* of its *Member State of reference*) required by paragraphs 19(1), (2) and (15) and 20(1) and (6) of Schedule 3 to the *Act*, must communicate the following information to the *FCA*:

- (1) the *EEA State* in which it intends to manage *EEA AIFs* or *UK AIFs* directly or *establish a branch*; and
- (2) a programme of operations stating in particular the services which it intends to perform and identifying the *EEA AIFs* or *UK AIFs* it intends to manage.

[**Note:** article 41(2) of the *AIFMD*]

Additional information to be provided to the *FCA* in respect of branch operations

12.5.7 R If the *full-scope non-EEA AIFM* intends to establish a *branch*, in making the notification to the *FCA* (as the *competent authority* of its *Member State of reference*) required by paragraphs 19(1), (2) and (15) and 20(1) and (6) of Schedule 3 to the *Act*, it must provide to the *FCA*, in addition to the information referred to in *FUND 12.5.6R*, the following information:

- (1) the organisational structure of the *branch*;
- (2) the address in the *Home State* of the *EEA AIF* or *UK AIF* from which documents may be obtained; and
- (3) the names and contact details of *persons* responsible for the management of the *branch*.

[**Note:** article 41(3) of the *AIFMD*]

Commencement of full-scope non-EEA AIFM's services in Host Member States

12.5.8 G A *full-scope non-EEA AIFM* may only start to manage the relevant *EEA AIFs* or *UK AIFs* established in an *EEA State* other than its *Member State of reference* (the *United Kingdom*) when it receives the transmission notification from the *FCA* that the *FCA* is required to provide under

paragraphs 19(1) and (7BB) and 20(1) and (3D) of Schedule 3 to the *Act*.

[**Note:** article 41(4) third paragraph second sentence of the *AIFMD*]

Change in information already provided to the FCA

- 12.5.9 G In the event of a change to any of the information communicated in accordance with *FUND* 12.5.6R and, if relevant, *FUND* 12.5.7R, a *full-scope non-EEA AIFM* is required to give written notice of that change to the *FCA* (the *competent authority* of its *Member State of reference*) at least one month before implementing a planned change, or immediately after an unplanned change has occurred, under regulation 17A(1), (2), (4) and (5) of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).

[**Note:** article 41(6) first paragraph of the *AIFMD*]

12.6 Depositary requirements for non-EEA AIFs and non-EEA AIFMs

Location establishment requirements for the depositary of a non-EEA AIF

- 12.6.1 R (1) A *full-scope UK AIFM* and a *full-scope non-EEA AIFM* must, for each *non-EEA AIF* it manages, ensure that the *AIF* has a *depositary* that is *established* in one of the following locations:
- (a) subject to (2), in the country in which the *non-EEA AIF* is *established*; or
 - (b) in the *United Kingdom* (being the *Home State* of the *UK AIFM* or the *Member State of reference* of the *non-EEA AIFM*, that in either case is managing the *non-EEA AIF*).
- (2) If a *full-scope UK AIFM* or a *full-scope non-EEA AIFM* is appointing a *person* as the *depositary* for the *non-EEA AIF* in the country in which the *non-EEA AIF* is *established* for the purposes of (1)(a), the *AIFM* must ensure that the *person* being appointed is a credit institution or any other entity of the same nature as the entities referred to in *FUND* 3.11.10R(1) or (2) (Eligible depositaries for UK AIFs) provided that the requirements of *FUND* 12.6.2R (2) are met.

[**Note:** article 21(3) second paragraph and (5)(b) of the *AIFMD*]

Conditions for the appointment of a depositary of a non-EEA AIF in a third country

- 12.6.2 R Without prejudice to the requirements set out in *FUND* 3.11 (Depositaries), the *full-scope UK AIFM* or, as the case may be, the *full-scope non-EEA AIFM* of a *non-EEA AIF* must ensure that the appointment of a *depositary established* in the country in which the *non-EEA AIF* is *established* is, at all times, subject to the following conditions:
- (1) the *FCA* (as the *competent authority* of the *AIFM's Home State*) and, where appropriate, the *competent authority* of each *EEA State* in which the *units* or *shares* of the *non-EEA AIF* are intended to be *marketed*, have signed cooperation and exchange of information arrangements with the *competent authorities* or regulators of the *depositary*;
 - (2) the *depositary* is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as EU law and are effectively enforced;
 - (3) the third country where the *depositary* is *established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force;

- (4) the *EEA States* in which the *units* or *shares* of the *non-EEA AIF* are intended to be *marketed* and, in so far as different, the *United Kingdom*, have signed an agreement with the third country where the *depository* is *established* which fully complies with the standards laid down in article 26 of the OECD Model Tax Convention on Income and on capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements; and
- (5) the *depository* is by contract liable to the *non-EEA AIF* or to the investors of the *AIF*, consistently with regulation 30 (Depository liability for loss of financial instruments held in custody) and regulation 31 (Depository liability for other losses) of the *AIFMD UK regulation*, and has expressly agreed to comply with the requirements of *FUND 3.11* (Depositaries).

[**Note:** article 21(6) first paragraph of the *AIFMD*]

Commission implementing Regulation (EU) No 231/2013 of 19 December 2012

- 12.6.3 G The European Commission has by Commission implementing Regulation (EU) No 231/2012 established directly applicable criteria for establishing prudential regulation and supervision applicable to a *depository* in a *non-EEA State*, of which *AIFMs*, *depositaries* and their professional advisers should be aware. The Regulation may be accessed below and attention should in particular be had to article 84.
- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:083:0001:0095:en:PDF>

Application of depository requirements to UK depositaries of non-EEA AIFs managed by full-scope UK AIFMs and of UK AIFs or non-EEA AIFs managed by full-scope non-EEA AIFMs

- 12.6.4 R A *UK depository* of a *non-EEA AIF* managed by a *full-scope UK AIFM* and of a *UK AIF* or a *non-EEA AIF* managed by a *full-scope non-EEA AIFM* must comply, *mutatis mutandis*, with the provisions of *FUND 3.11* (Depositaries) that apply to a *UK depository* of a *UK AIF* managed by a *full-scope UK AIFM*.

12 Annex 1D**Documentation and information to be provided in case of intended marketing in the United Kingdom (as the Home State of the AIFM)**

(This annex is referred to in *FUND* 12.2.3D, 12.5.2D and 12.5.4D)

The following must be provided:

- (1) a notification letter, including a programme of operations identifying the *AIFs* which the *UK AIFM* or *full-scope non-EEA AIFM* intends to *market* and information on where the *AIFs* are *established*;
- (2) the *AIF* rules or instruments of incorporation;
- (3) identification of the *depository* of the *AIF*;
- (4) a description of, or any information on, the *AIF* available to investors;
- (5) information on where the *master AIF* is *established* if the *AIF* is a *feeder AIF*;
- (6) any additional information referred to in *FUND* 3.2.2R (Prior disclosure of information to investors) (implementing article 23(1) of the *AIFMD*) for each *AIF* the *AIFM* intends to *market*; and
- (7) where relevant, information on the arrangements established to prevent *units* or *shares* of the *AIF* from being *marketed* to retail investors, including in the case where the *AIFM* relies on activities of independent entities to provide investment services in respect of the *AIF*.

12 Annex 2R**Documentation and information to be provided in case of intended marketing in an EEA State other than the United Kingdom (as the Host State of the AIFM)**

(This annex is referred to in *FUND* 12.2.4R, 12.5.3R and 12.5.5R)

The following must be provided:

- (1) a notification letter, including a programme of operations identifying the *AIFs* which the *UK AIFM* or *full-scope non-EEA AIFM* intends to *market* and information on where the *AIFs* are *established*;
- (2) the *AIF* rules or instruments of incorporation;
- (3) identification of the *depository* of the *AIF*;
- (4) a description of, or any information on, the *AIF* available to investors;
- (5) information on where the *master AIF* is *established* if the *AIF* is a *feeder AIF*;
- (6) any additional information referred to in *FUND* 3.2.2R (Prior disclosure of information to investors) (implementing article 23(1) of the *AIFMD*) for each *AIF* the *AIFM* intends to *market*;
- (7) the indication of the *EEA State* in which it intends to *market* the *units* or *shares* of the *AIF* to *professional clients*; and
- (8) information about arrangements made for the *marketing* of *AIFs* and, where relevant, information on the arrangements established to prevent *units* or *shares* of the *AIF* from being *marketed* to *retail clients*, including in the case where the *AIFM* relies on activities of independent entities to provide investment services in respect of the *AIF*.

12 Annex 3R

Application of the FCA Handbook rules implementing obligations under the AIFMD with which full-scope non-EEA AIFMs must comply

(This annex is referred to in *FUND* 12.4.3G and by cross reference is relevant to 12.4.1R)

(1)	(2)
Module of Handbook	Potential application to a <i>full-scope non-EEA AIFM</i> with respect to rules in the <i>FCA Handbook</i> implementing an obligation under the <i>AIFMD</i> that applies to a <i>full-scope UK AIFM</i> carrying on a specified activity in relation to a <i>UK AIF</i> or, as the case may be, a <i>EEA AIF</i>
COBS	<i>COBS</i> 2.1.4R <i>COBS</i> 18.5.3R
FUND	<i>FUND</i> 1.4.2R, <i>FUND</i> 1.4.3R, <i>FUND</i> 1.4.4R <i>FUND</i> 3.2.2R, <i>FUND</i> 3.2.3R, <i>FUND</i> 3.2.4R, <i>FUND</i> 3.2.5R, <i>FUND</i> 3.2.6R <i>FUND</i> 3.3.2R, <i>FUND</i> 3.3.3R, <i>FUND</i> 3.3.4R, <i>FUND</i> 3.3.5R, <i>FUND</i> 3.3.6R, <i>FUND</i> 3.3.7R <i>FUND</i> 3.4.2R, <i>FUND</i> 3.4.3R, <i>FUND</i> 3.4.4R, <i>FUND</i> 3.4.5R <i>FUND</i> 3.6.2R, <i>FUND</i> 3.6.3R <i>FUND</i> 3.7.2R, <i>FUND</i> 3.7.5R, <i>FUND</i> 3.7.6R, <i>FUND</i> 3.7.7R, <i>FUND</i> 3.7.8R <i>FUND</i> 3.8.2R, <i>FUND</i> 3.8.3R <i>FUND</i> 3.9.2R, <i>FUND</i> 3.9.3R, <i>FUND</i> 3.9.4R, <i>FUND</i> 3.9.5R, <i>FUND</i> 3.9.6R, <i>FUND</i> 3.9.7R, <i>FUND</i> 3.9.8R, <i>FUND</i> 3.9.9R, <i>FUND</i> 3.9.11R <i>FUND</i> 3.10.2R, <i>FUND</i> 3.10.4R, <i>FUND</i> 3.10.5R, <i>FUND</i> 3.10.6R, <i>FUND</i> 3.10.8R, <i>FUND</i> 3.10.11R <i>FUND</i> 3.11.4R, <i>FUND</i> 3.11.5R, <i>FUND</i> 3.11.7R, <i>FUND</i> 3.11.10R, <i>FUND</i> 3.11.14R, <i>FUND</i> 3.11.18R, <i>FUND</i> 3.11.19R.
IPRU(INV)	<i>IPRU(INV)</i> 1.2.1R, <i>IPRU(INV)</i> 1.2.2R, <i>IPRU(INV)</i> 1.2.5R <i>IPRU(INV)</i> 2.1.4R <i>IPRU(INV)</i> 11.1.1R, <i>IPRU(INV)</i> 11.1.3R <i>IPRU(INV)</i> 11.2.1R <i>IPRU(INV)</i> 11.3.1R, <i>IPRU(INV)</i> 11.3.2R, <i>IPRU(INV)</i> 11.3.3R, <i>IPRU(INV)</i> 11.3.4R, <i>IPRU(INV)</i> 11.3.6R, <i>IPRU(INV)</i> 11.3.7R, <i>IPRU(INV)</i> 11.3.9R, <i>IPRU(INV)</i> 11.3.16R, <i>IPRU(INV)</i> 11.3.17R

	<i>IPRU(INV)</i> Table 11.4R <i>IPRU(INV)</i> 11.5.1R, <i>IPRU(INV)</i> 11.5.2R, <i>IPRU(INV)</i> 11.5.3R, <i>IPRU(INV)</i> 11.5.4R
<i>PRIN</i>	<i>PRIN</i> 2.1.1R
<i>SUP</i>	<i>SUP</i> 13.5.1R, <i>SUP</i> 13.5.2R <i>SUP</i> 15.3.1R, <i>SUP</i> 15.3.26R
<i>SYSC</i>	<i>SYSC</i> 4.1.1R , <i>SYSC</i> 4.1.1AR, <i>SYSC</i> 4.1.2BR, <i>SYSC</i> 4.1.2CR, <i>SYSC</i> 4.1.2DR, <i>SYSC</i> 4.2.1R, <i>SYSC</i> 4.2.2R, <i>SYSC</i> 4.2.7R, <i>SYSC</i> 10.1.23R, <i>SYSC</i> 10.1.24R, <i>SYSC</i> 10.1.25R, <i>SYSC</i> 10.1.26R, <i>SYSC</i> 19B.1.1R, <i>SYSC</i> 19B.1.2R, <i>SYSC</i> 19B.1.3R, <i>SYSC</i> 19B.1.4R, <i>SYSC</i> 19B.1.5R, <i>SYSC</i> 19B.1.6R, <i>SYSC</i> 19B.1.7R, <i>SYSC</i> 19B.1.8R, <i>SYSC</i> 19B.1.9R, <i>SYSC</i> 19B.1.10R, <i>SYSC</i> 19B.1.11R, <i>SYSC</i> 19B.1.12R, <i>SYSC</i> 19B.1.13R, <i>SYSC</i> 19B.1.14R, <i>SYSC</i> 19B.1.15R, <i>SYSC</i> 19B.1.16R, <i>SYSC</i> 19B.1.17R, <i>SYSC</i> 19B.1.18R, <i>SYSC</i> 19B.1.19R, <i>SYSC</i> 19B.1.21R, <i>SYSC</i> 19B.1.22R, <i>SYSC</i> 19B.1.23R, <i>SYSC</i> 19B.1.24R.