

EUROPEAN LONG-TERM INVESTMENT FUNDS REGULATION (NO 2)
INSTRUMENT 2016

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes the rules and fixes and varies the standard terms for Voluntary Jurisdiction participants relating to the Voluntary Jurisdiction as set out in Annexes A and C to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (3) paragraph 22 (Consultation) of Schedule 17.
- B. The making of the voluntary jurisdiction rules and the fixing and variation of the standard terms by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority (the “FCA”) makes this instrument in the exercise of:
- (1) the following powers and related provisions of the Act:
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General); and
 - (f) section 226 (Compulsory jurisdiction); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook.
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The FCA approves voluntary jurisdiction rules made and the standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

Commencement

- F. This instrument comes into force on 28 April 2016.

Amendments to the Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C
Compensation sourcebook (COMP)	Annex D
Investment Funds sourcebook (FUND)	Annex E

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.

European Union Legislation

- I. Although European Union legislation is reproduced in this instrument, only European Union legislation in the on-line edition of the Official Journal of the European Union is deemed authentic.

Citation

- J. This instrument may be cited as the European Long-Term Investment Funds (No 2) Regulation Instrument 2016.

By order of the Board of the Financial Conduct Authority
21 April 2016

By order of the Board of the Financial Ombudsman Service Limited
27 April 2016

Annex A

Amendments to the Glossary of definitions

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

Amend the following definitions as shown.

- authorised fund* (a) (other than in FEES 6 and COMP) an ICVC, ACS or an AUT.
- (b) (in FEES 6 and COMP) an ICVC, an ACS, an AUT, or a UK ELTIF other than a body corporate that is not a collective investment scheme.
- holder* (a) (in relation to a unit in an authorised fund):
- (i) the *shareholder*; or
- (ii) the *unitholder*; or
- (iii) (in FEES 6 and COMP, where the authorised fund is a UK ELTIF), the person whose name is entered in the record of the holders of units in the ELTIF as the holder of that unit.
- (b) ...

Delete the following definitions.

~~*closed-ended corporate AIF* an AIF which is a body corporate and not a collective investment scheme.~~

~~*internally managed corporate AIF* a closed-ended corporate AIF which is an internally managed AIF.~~

Annex B

Amendments to the Supervision manual (SUP)

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

10A FCA Approved Persons

10A.1 Application

...

Internally managed corporate AIFs

10A.1.24 G In accordance with section 59(7C) of the *Act* this chapter does not apply to an ~~internally managed corporate AIF~~ internally managed AIF which is a body corporate and not a collective investment scheme.

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA firms

Annex

1G

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>DISP</i>	... For an <i>incoming EEA AIFM branch DISP</i> applies (subject to some limitations, see <i>DISP</i> 1.1.3R), except for an <i>incoming EEA AIFM branch of a closed-ended corporate AIF</i> <u>an AIF that is a body corporate (and not a collective investment scheme), including where the body</u>	Generally does not apply (<i>DISP</i> 1.1.1G). However, for <u><i>DISP</i> applies</u> (subject to some limitations, see <u><i>DISP</i> 1.1.3R and <i>DISP</i> 1.1.5R</u>) to: <u>(a) an incoming EEA firm which is a UCITS management company</u>

	<p><i>corporate</i> is an <i>ELTIF</i> when <i>DISP</i> does not apply.</p>	<p>managing a <i>UCITS scheme</i>; or (b) an <i>AIFM</i> managing an <i>authorised AIF</i>; <i>DISP</i> applies (subject to some limitations, see <i>DISP 1.1.3R</i>) or a <i>UK ELTIF</i> other than a <i>body corporate</i> that is <u>not a <i>collective investment scheme</i></u>.</p>
<p>...</p>		

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

1.1 Purpose and application

...

Application to firms

1.1.3 R ...

- (4) This chapter, except the *complaints data publication rules*, also applies to an *incoming EEA AIFM* for *complaints* from *eligible complainants* concerning *AIFM management functions* carried on for an *authorised AIF* or a UK ELTIF other than a body corporate that is not a collective investment scheme under the freedom to provide *cross-border services*.

...

1.1.5 R This chapter does not apply to:

...

- (5) a *full-scope UK AIFM*, *small authorised UK AIFM* or an *incoming EEA AIFM*, for *complaints* concerning *AIFM management functions* carried on for a ~~*closed-ended corporate AIF*~~ an AIF that is a body corporate unless it is a collective investment scheme; and
- (6) a *depository*, for *complaints* concerning activities carried on for an AIF that is:
- (a) ~~an unauthorised AIF which is not a charity AIF~~ a body corporate unless it is a collective investment scheme; or
 - (b) ~~any closed-ended corporate AIF~~ another type of AIF unless it is:
 - (i) an authorised AIF; or
 - (ii) an ELTIF; or
 - (iii) a charity AIF.

1.1.5-A G References in *DISP* 1.1.5R to a *full-scope UK AIFM* and *small authorised UK AIFM* carrying on *AIFM management functions* for a ~~closed-ended corporate AIF~~ an AIF that is a body corporate that is not a collective investment scheme include firms that are ~~internally managed corporate AIFs~~ internally managed AIFs.

...

**1 Annex Application of DISP 1 to type of respondent / complaint
2G**

...

Type of respondent / complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm (other than a UCITS management company when providing collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme) in relation to complaints concerning non-MiFID business (except as specifically provided for below)</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (<i>DISP</i> 1.3.4G does not apply)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>
...						
<i>a full-scope UK AIFM, small authorised UK AIFM or an incoming EEA AIFM, for complaints concerning AIFM management functions</i>	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply

carried on for a <u>closed-ended corporate AIF</u> an <u>AIF</u> that is a <u>body corporate</u> (unless it is a <u>collective investment scheme</u>)						
<u>a depositary, for complaints concerning activities carried on for an authorised AIF</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<u>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is a charity AIF (other than a body corporate that is not a collective investment scheme)</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<u>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is a UK ELTIF (other than a body corporate that is not a collective investment scheme)</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants (DISP 1.3.4G does not apply)</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<u>a depositary, for complaints concerning activities carried on for an unauthorised AIF that is not a charity AIF</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

or a <u>UK ELTIF</u>						
a <i>depository</i> , for <i>complaints</i> concerning activities carried on for an <i>unauthorised AIF</i> (where the <i>AIF</i> is not a <i>charity AIF</i>) or a <i>closed-ended corporate AIF</i> that is a <i>body corporate</i> (other than a <i>collective investment scheme</i>).	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply	Does not apply
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>authorised AIF</i> or a <u>UK ELTIF</u> (other than a <i>body corporate</i> that is not a <i>collective investment scheme</i>) under the freedom to provide <i>cross-border services</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i> (<u>DISP 1.3.4G does not apply</u>)	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Applies for <i>eligible complainants</i>	Does not apply
...						

2 Jurisdiction of the Financial Ombudsman Service

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R (1) ...

(2) The *Compulsory Jurisdiction* also covers *complaints* about:

- (a) ...
- (b) *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a UK ELTIF other than a body corporate that is not a collective investment scheme;

from an establishment in another *EEA State* under the freedom to provide *cross-border services*.

2.6.2 G This:

...

- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* (other than:

- (a) *complaints* about *collective portfolio management* services provided by an *EEA UCITS management company* in managing a *UCITS scheme*; and

- (b) *complaints* about *AIFM management functions* provided by an *incoming EEA AIFM* managing an *authorised AIF* or a UK ELTIF other than a body corporate that is not a collective investment scheme).

...

2.7 Is the complainant eligible?

...

Eligible complainants

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2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

- (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is:
 - (a) the *operator* of a *scheme*; or
 - (b) the *depository* of an *authorised fund*; or
 - (c) the *depository* of a *charity AIF*; or

- (d) the depositary of an ELTIF;
- (3A) the complainant is the holder, or the beneficial owner, of *units* or *shares* in an AIF that is not a collective investment scheme where the respondent is:
- (a) the AIFM of an *unauthorised AIF* (~~apart from a closed-ended corporate AIF~~ other than a body corporate); or
 - (b) the AIFM or depositary of ~~an authorised AIF~~ a UK ELTIF (other than a *body corporate*); or
 - (c) the AIFM or depositary of a *charity AIF* (~~apart from a charity AIF which is a closed-ended corporate AIF~~) (other than a *body corporate*);

...

Annex D

Amendments to the Compensation sourcebook (COMP)

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

5 Protected claims

...

5.5 Protected investment business

5.5.1 R *Protected investment business is:*

...

(5) the activities of the manager or depositary of an ELTIF, provided that the claim is made by a holder;

provided that the territorial scope condition in COMP 5.5.2R is satisfied and, for a firm acting as the manager or depositary of a fund, one of the conditions in COMP 5.5.3R is satisfied.

...

Managers and depositaries of funds

5.5.3 R The conditions referred to in COMP 5.5.1R for a manager or depositary of a fund are:

(1) for the activities of *managing an AIF or establishing, operating or winding up a collective investment scheme*, the claim is in respect of an investment in:

(a) an *authorised fund*; or

(b) any other *fund* which has its registered office or head office in the UK or is otherwise domiciled in the UK ~~and is not a closed-ended corporate AIF~~ unless it is an AIF that is a body corporate and not a collective investment scheme;

(2) where a firm is *acting as depositary of an AIF* and in so doing is carrying on the activity of *acting as trustee or depositary of an AIF or safeguarding and administering assets*, the claim is in respect of their activities for:

(a) an *authorised AIF*; or

(b) a *charity AIF* ~~which is not a closed-ended corporate AIF~~

unless it is a *body corporate* that is not a *collective investment scheme*.

Annex E

Amendments to the Investment Funds sourcebook (FUND)

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

4 European AIF regimes

...

4.2 ELTIFs

...

Interaction between ELTIFs and authorised funds

4.2.10 G ...

(3) (a) The Glossary term of an authorised fund only applies to a UK ELTIF (other than a body corporate that is not a collective investment scheme) in FEES 6 and COMP.

(b) This is to allow the rules and guidance in FEES 6 and COMP to apply to a UK ELTIF (other than a body corporate that is not a collective investment scheme) in the same way as other types of fund that are authorised by the FCA.

...