



STATUTORY INSTRUMENTS.

**S.I. No. 379 of 2014**



EUROPEAN UNION (ALTERNATIVE INVESTMENT FUND  
MANAGERS) (AMENDMENT) REGULATIONS 2014

## EUROPEAN UNION (ALTERNATIVE INVESTMENT FUND MANAGERS) (AMENDMENT) REGULATIONS 2014

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011<sup>1</sup> and giving effect to Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013<sup>2</sup>, hereby make the following regulations:

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2014.

(2) Regulations 3(c) and 5 come into operation on 21 December 2014.

*Definition*

2. In these Regulations—

“principal regulations” means European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013).

*Amendments to principal regulations*

3. The principal regulations are amended—

(a) in Regulation 7, by inserting after paragraph (6) the following:

“(6A) An AIFM which provides individual portfolio management services, referred to in paragraph (4), shall comply with the client asset requirements issued under the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(6B) As part of the collective management of an AIF, an AIFM authorised pursuant to these Regulations may maintain client asset accounts for processing subscription and salesperson moneys.

(6C) Where an AIFM maintains a client asset account pursuant to paragraph (6B), it shall comply with the client asset requirements issued under the European Communities (Markets in Financial Instruments) Regulations 2007, as applicable, and subject to any conditions imposed by the Bank pursuant to Regulation 9.”,

<sup>1</sup>OJ No. L 174, 01.07.2011, p. 1

<sup>2</sup>OJ No. L 145, 31.05.2013, p. 1

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 12th August, 2014.*

(b) in Regulation 13(1)(d), by inserting “avoided, to identify, manage, monitor and, where applicable, disclose those conflicts” after “when they cannot be”,

(c) in Regulation 16—

(i) by substituting for paragraph (4) the following:

“(4) An AIFM shall implement adequate risk-management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed.

(4A) An AIFM shall not solely or mechanistically rely on credit ratings issued by a credit rating agency (as defined in Article 3(1)(b) of Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009<sup>3</sup>) for assessing the creditworthiness of the assets of an AIF.”, and

(ii) by inserting after paragraph (6) the following:

“(7) Taking into account the nature, scale and complexity of the AIF’s activities, the Bank shall monitor the adequacy of the credit assessment processes of an AIFM, assess the use of references to credit ratings, as referred to in Regulation 16(4), in the AIF’s investment policies and, where appropriate, encourage mitigation of the impact of such references with a view to reducing sole and mechanistic reliance on such credit ratings.”,

(d) in Regulation 22(3)(a)(ii) by substituting “Directive 2004/39/EC” for “Directive 2006/39/EC”,

(e) in Regulation 25(2)(e), by substituting “Regulations 16(6)(b) and 18(2)” for “Regulations 16(6)(b) and 17(2)”,

(f) in Regulation 26(2), by substituting “Regulation 54” for “Regulation 49”,

(g) in Regulation 40(5), by substituting for subparagraph (a) the following:

“(a) Where an AIFM, whose Member State of reference is the State, intends to market units or shares of the EU AIF in a Member State other than the State, the AIFM shall submit a notification to the Bank in respect of each EU AIF that it intends to market.”

(h) in Regulation 44, by inserting after paragraph (3) the following:

“(4) An AIFM—

<sup>3</sup>OJ No. L 302, 17.11.2009, p. 1

(a) shall apply to the Bank for approval before marketing, in the State, to retail investors units or shares of an AIF managed by it in accordance with these Regulations, and

(b) shall not commence marketing to retail investors in the State until it has received the prior approval from the Bank.

(5) An application, referred to in paragraph (4), shall be in such form as may be published by the Bank, including on its website, from time to time.”,

(i) in Regulation 60—

(ii) in paragraph (4), by substituting “one or more than one AIF” for “one or more than AIF”, and

(iii) by inserting after paragraph (4) the following:

“(5) A non-EU AIFM which marketed in the State, prior to 22 July 2013, to professional investors, units or shares of alternative investment funds it manages shall—

(a) take all necessary measures to comply with these Regulations for the period up to 21 July 2014, and

(b) not later than 22 July 2014, submit a notification which meets the requirements of Regulation 43.

(6) A non-EU AIFM in so far as it managed one or more than one Irish AIF of the closed-ended type prior to 22 July 2013 which does not make any additional investments after that date may continue to manage any such AIF without authorisation under these Regulations.

(7) A non-EU AIFM in so far as it manages one or more than one Irish AIF of the closed-ended type whose subscription period for investors has closed prior to the date of entry into force of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011<sup>4</sup> and are constituted for a period of time which expires, at the latest, 3 years after 22 July 2013, may continue to manage any such AIF without having to—

(a) comply with these Regulations other than—

(i) Regulation 23, and

(ii) where relevant, Regulations 27 to 31,

or

<sup>4</sup>OJ No. L 174, 01.07.2011, p. 1

(b) receive authorisation under these Regulations.”,

and

(j) in paragraph (f) of Schedule 4, by substituting “Regulation 24(1)” for “Article 23(1)”.

*Amendment of Investor Compensation Act 1998*

4. Section 2 of the Investor Compensation Act 1998 (No. 37 of 1998) is amended—

(a) in the definition of ‘authorised investment firm’ by substituting for paragraph (e) the following:

“(e) a management company authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003) to undertake the services referred to in Regulation 16(3) of those Regulations; or

(f) an alternative investment fund manager authorised under the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) to provide the services referred to in Regulation 7(4) of those Regulations.”, and

(b) in the definition of ‘investment firm’ by substituting for (d) and (e) the following:

“(d) an insurance intermediary or a person who was formerly an insurance intermediary,

(e) a management company that is authorised, or that was formerly authorised, under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 (S.I. No. 211 of 2003), as amended, to undertake the services referred to in Regulation 16(3) of those Regulations, or

(f) an alternative investment fund manager authorised, or that was formerly authorised, under the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013) to provide the services referred to in Regulation 7(4) of those Regulations.”.

*Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011*

5. Regulation 69 of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) is amended—

(a) by substituting for paragraph (1)(a) the following:

“(a) A management or investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS.

(aa) A management or investment company, when monitoring and measuring risk in accordance with subparagraph (a), shall not solely or mechanistically rely on a credit rating issued by a credit rating agency(as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009<sup>5</sup>) for assessing the creditworthiness of the assets of the UCITS concerned.”, and

(b) by inserting after paragraph (3) the following:

“(3A) Taking into account the nature, scale and complexity of the activities of a UCITS, the Bank shall monitor the adequacy of the credit assessment processes of the management or investment companies, assess the use of references to credit ratings, as referred to in paragraph (1)(aa), in the investment policies of the UCITS and, where appropriate, encourage mitigation of the impact of such references with a view to reducing sole and mechanistic reliance on such credit ratings.”.



GIVEN under my Official Seal,  
27 May 2014.

MICHAEL NOONAN,  
Minister for Finance.

<sup>5</sup>OJ No. L 302, 17.11.2009, p. 1

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The primary purpose of these amending regulations is to clarify that the Investor Compensation Company Limited (ICCL) may levy Alternative Investment Fund Managers (AIFMs) who are covered by the Investor Compensation fund.

In addition, Regulations 3 (c) and 5 make changes to the principal regulations and the UCITS regulations to transpose requirements of the Credit Ratings Agencies Directive (CRAD) restricting the reliance of alternative investment fund and UCIT investment managers on ratings provided by credit rating agencies. These requirements must be transposed into Irish law by 15 December 2014. The effective date of these amendments coincides with the transposition deadline.

Finally, the regulations also clarify that non-EU AIFMs must apply to the Bank for approval before marketing in the State, and correct a number of errors in the principal regulations.

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