

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2018 No.**

**EXITING THE EUROPEAN UNION**

**FINANCIAL SERVICES**

**The Long-term Investment Funds (Amendment) (EU Exit)  
Regulations 2018**

*Made* - - - - - **\*\*\***

*Coming into force in accordance with regulation 1(2) and (3)*

The Treasury make these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018**(a)**.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument was laid before, and approved by a resolution of, each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Long-term Investment Funds (Amendment) (EU Exit) Regulations 2018.

(2) This Part and Part 2 come into force on the day after the day on which these Regulations are made.

(3) Part 3 comes into force on exit day.

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(a) 2018 c 16.

## PART 2

### Amendment of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

#### **Amendment of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018**

2.—(1) The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018(a) are amended as follows.

(2) In the Schedule, in Part 1 (EU Regulations for which the FCA is the appropriate regulator), after item 6 insert—

#### **“European Long-Term Investment Funds Regulation**

6A. Commission Delegated Regulation (EU) 2018/480 of 4 December 2017 supplementing Regulation (EU) 2015/760 of the European Parliament and of the Council with regard to regulatory technical standards on financial derivative instruments solely serving hedging purposes, sufficient length of the life of the European long-term investment funds, assessment criteria for the market for potential buyers and valuation of the assets to be divested, and the types and characteristics of the facilities available to retail investors (b).”.

## PART 3

### Amendment of Regulation (EU) 2015/760

#### **Amendment of Regulation (EU) 2015/760**

3. Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds is amended as follows.

#### **Subject matter and objective**

4.—(1) Article 1 (subject matter and objective) is amended as follows.

(2) For paragraph 1 substitute—

“1. This Regulation lays down rules on the authorisation, investment policies and operating conditions of UK alternative investment funds (UK AIFs) or compartments of UK AIFs that are marketed in the United Kingdom as long-term investment funds (LTIFs).”.

(3) In paragraph 2—

(a) after “European” insert “and UK”;

(b) omit “Union”.

(4) Omit paragraph 3.

#### **Definitions**

5.—(1) Article 2 (definitions) is amended as follows.

(2) In point (2), for the words from “considered” to the end substitute “a professional client as defined in point (8) of Article 2(1) of the markets in financial instruments regulation”.

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(a) S.I. 2018/1115.

(b) OJ L 81, 23.3.2018, p. 1.

- (3) In point (6), omit “Union”.
- (4) In point (7)—
- (a) in points (a), (b), (c), (d), (e), (f) and (g), at the end insert “, as it forms part of EU law and as modified by EU law from time to time”;
  - (b) after point (b) insert—  
“‘(ba) an investment firm as defined in Article 2(1A) of the markets in financial instruments regulation;”;
  - (c) after point (c) insert—  
“‘(ca) an insurance undertaking as defined in section 417(1) of FSMA;”;
  - (d) after point (d) insert—  
“‘(da) a financial holding company as defined in point (20) of Article 4(1) of Regulation (EU) No 575/2013, as it forms part of the law of the United Kingdom and as modified by domestic law from time to time;”;
  - (e) after point (e) insert—  
“‘(ea) a mixed activity holding company as defined in point (22) of Article 4(1) of Regulation (EU) No 575/2013, as it forms part of the law of the United Kingdom and as modified by domestic law from time to time;”;
  - (f) after point (f) insert—  
“‘(fa) a management company as defined in section 237(2) of FSMA;”;
  - (g) after point (g) insert—  
“‘(ga) an AIFM as defined in regulation 4(1) of the AIFM Regulations.”.
- (5) After point (7) insert—
- “(7A) ‘UK AIF’ has the meaning given in regulation 2(1) of the AIFM Regulations;
  - “(7B) ‘UK AIFM’ has the meaning given in regulation 2(1) of the AIFM Regulations;
  - “(7C) ‘AIFM Regulations’ means the Alternative Investment Fund Managers Regulations 2013(a), as amended from time to time;
  - “(7D) ‘Long-term Investment Fund (LTIF)’ means a UK AIF that—
    - (a) is authorised as an LTIF under Article 6 of this Regulation; or
    - (b) immediately before exit day was authorised by the FCA as an ELTIF under Article 6 of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds(b), as that Regulation had effect immediately before exit day;
  - “(7E) ‘European Long-term Investment Fund (ELTIF)’ means an EU AIF that—
    - (a) is authorised as an ELTIF under Article 6 of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as that Regulation has effect in EU law; or
    - (b) immediately before exit day was authorised by a competent authority other than the FCA as an ELTIF under Article 6 of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as that Regulation had effect immediately before exit day;”.
- (6) Omit points (9) to (11).
- (7) In point (12), for the definition of ‘manager of the ELTIF’, substitute—  
“‘manager of the LTIF’ means the UK AIFM approved by the FCA under Article 6 to manage the LTIF;”.

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(a) S.I. 2013/1773.

(b) OJ L 123/98.

- (8) Omit point (13).
- (9) For point (16) substitute—  
“(16) ‘financial instrument’ has the meaning given in Article 2(1) of the markets in financial instruments regulation;”.
- (10) For point (18), substitute—  
“(18A) ‘UK regulated market’ has the meaning given in point (13A) of Article 2(1) of the markets in financial instruments regulation;  
(18B) ‘EU regulated market’ has the meaning given in point (13B) of Article 2(1) of that Regulation;”.
- (11) For point (19), substitute—  
“(19A) ‘UK multilateral trading facility’ has the meaning given in point (14A) of Article 2(1) of the markets in financial instruments regulation;  
(19B) ‘EU multilateral trading facility’ has the meaning given in point (14B) of Article 2(1) of the markets in financial instruments regulation;”.
- (12) At the end insert—  
“(20) ‘the FCA’ means the Financial Conduct Authority;  
(21) ‘FSMA’ means the Financial Services and Markets Act 2000(a);  
(22) ‘the markets in financial instruments regulation’ means Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as amended from time to time;  
(23) ‘European Venture Capital Fund (EuVECA)’ means a European venture capital fund registered under Article 14a of Regulation (EU) No 345/2013 of the European Parliament and of the Council(b), as that Regulation has effect in EU law;  
(24) ‘Registered Venture Capital Fund (RVECA)’ means a venture capital fund which is registered by the FCA in accordance with Article 14a of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds, as amended from time to time;  
(25) ‘European Social Entrepreneurship Fund (EuSEF)’ means a European social entrepreneurship fund registered under Article 15a of Regulation (EU) No 346/2013 of the European Parliament and of the Council(c), as that Regulation has effect in EU law;  
(26) ‘Social Entrepreneurship Fund (SEF)’ means a social entrepreneurship fund which is registered by the FCA in accordance with Article 15a of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds, as amended from time to time;  
(27) Any reference in this Regulation to a sourcebook is a reference to a sourcebook made under FSMA by the FCA, as in force on exit day.”.

#### **Authorisation and central public register**

- 6.** For paragraphs 1 to 3 of Article 3 (authorisation and central public register) substitute—

“1. An LTIF may only be marketed in the United Kingdom if it is authorised in accordance with Article 6.

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(a) 2000 c. 8.

(b) OJ No L 115, 25.4.2013, p.1, as amended by Regulation (EU) No. 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (OJ L 293, 10.11.2017).

(c) OJ No L 115, 25.4.2013, p.18, as amended by Regulation (EU) No. 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (OJ L 293, 10.11.2017).

2. Only a UK AIF is eligible to apply for and to be granted authorisation as an LTIF.
3. The FCA may keep a central public register identifying—
  - (a) each LTIF authorised under Article 6 of this Regulation;
  - (b) the manager of each LTIF; and
  - (c) any LTIF whose authorisation is revoked under regulation 23C of the AIFM Regulations.
4. A register kept under this Article must be made available in electronic format.”.

### **Designation and prohibition on transformation**

7.—(1) Article 4 (designation and prohibition on transformation) is amended as follows.

(2) Before paragraph 1 insert—

“A1. The designation ‘LTIF’ or ‘long-term investment fund’ in relation to a collective investment undertaking, or the units or shares it issues, may only be used where the collective investment undertaking—

- (a) immediately before exit day, was authorised by the FCA in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds, as that Regulation had effect immediately before exit day; or
- (b) has been authorised by the FCA in accordance with this Regulation.”.

(3) In paragraph 1, for the words from “where” to the end substitute—

“in the United Kingdom where the collective investment undertaking—

- (a) is an ELTIF as defined in Article 2(7E); or
- (b) immediately before exit day, was authorised by the FCA in accordance with Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds(a), as that Regulation had effect immediately before exit day.”.

(4) In paragraph 2, for “ELTIFs” substitute “LTIFs”.

### **Application for authorisation as an LTIF**

8.—(1) Article 5 (the heading to which becomes “Application for authorisation as an LTIF”) is amended as follows.

(2) In paragraph 1—

- (a) for “competent authority of the ELTIF” substitute “FCA” in both places;
- (b) for the other references to “ELTIF” substitute “LTIF” in both places.

(3) In paragraph 2—

- (a) for “an EU AIFM authorised under Directive 2011/61/EU” substitute “a UK AIFM”;
- (b) for “competent authority of the ELTIF” where it first appears substitute “FCA”;
- (c) for “manage an ELTIF” substitute “manage an LTIF” in both places;
- (d) omit the sentence beginning “In the event that”;
- (e) in point (b) for “ELTIF” substitute “LTIF”;
- (f) in point (c), for “EU AIFM” substitute “UK AIFM”;
- (g) omit the third subparagraph.

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(a) OJ L 123/98.

- (4) In paragraph 3—
  - (a) for “ELTIF” substitute “LTIF” in both places;
  - (b) for “EU AIFM” substitute “UK AIFM”.
- (5) In paragraph 4, for “competent authority of the ELTIF” substitute “FCA”.
- (6) In paragraph 5—
  - (a) for “an EU AIF” substitute “a UK AIF”;
  - (b) for “ELTIF” substitute “LTIF” in each place;
  - (c) for “an AIFM under Directive 2011/61/EU” substitute “a UK AIFM under the AIFM Regulations”;
  - (d) for “Article 7 of Directive 2011/61/EU” substitute “Part 3A of the AIFM Regulations”;
  - (e) for “EU AIF shall” substitute “UK AIF must”.

### **Conditions for granting authorisation as an LTIF**

**9.**—(1) Article 6 (the heading to which becomes “Conditions for granting authorisation as an LTIF”) is amended as follows.

- (2) In paragraph 1—
  - (a) in the words before point (a)—
    - (i) for “An EU AIF” substitute “A UK AIF”;
    - (ii) for “ELTIF” substitute “LTIF”;
    - (iii) for “its competent authority” substitute “the FCA”;
  - (b) in point (a), for “EU AIF” substitute “UK AIF”;
  - (c) in point (b), for “an EU AIFM authorised in accordance with Directive 2011/61/EU to manage the ELTIF” substitute “a UK AIFM to manage the LTIF”.
- (3) In paragraph 2—
  - (a) for “an EU AIF” substitute “a UK AIF”;
  - (b) for “competent authority” substitute “FCA”;
  - (c) for “the EU AIF” substitute “the UK AIF” in both places;
  - (d) for “Directive 2011/61/EU” substitute “the AIFM Regulations”;
  - (e) for “an EU AIFM” substitute “a UK AIFM”.
- (4) In paragraph 3—
  - (a) for “The competent authority of the ELTIF” substitute “The FCA”;
  - (b) for “an EU AIFM” substitute “a UK AIFM”;
  - (c) for “an ELTIF” substitute “an LTIF”;
  - (d) for “where the EU AIFM” substitute “where the UK AIFM”;
  - (e) for “Directive 2011/61/EU” substitute “the AIFM Regulations”.
  - (f) for “its competent authority” substitute “the FCA”;
  - (g) omit the final sentence.
- (5) In paragraph 4—
  - (a) for “The competent authority of the ELTIF” substitute “The FCA”;
  - (b) for “an ELTIF” substitute “an LTIF”;
  - (c) for “EU AIF” substitute “UK AIF”;
  - (d) for “its home Member State” substitute “the United Kingdom”.
- (6) For paragraphs 5 to 7 substitute—

“5. A UK AIF authorised by the FCA as an ELTIF before exit day under Article 6 of Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds<sup>(a)</sup> (as that Regulation had effect immediately before exit day) is taken to be authorised by the FCA as an LTIF under this Article.”.

### **Applicable rules and liability**

- 10.**—(1) Article 7 (applicable rules and liability) is amended as follows.
- (2) In paragraph 1, for “ELTIF” substitute “LTIF”.
- (3) In paragraphs 2 and 3—
- (a) for “ELTIF” substitute “LTIF” in both places;
  - (b) for “Directive 2011/61/EU” substitute “the AIFM Regulations, rules made by the FCA for the purpose of implementing Directive 2011/61/EU and any EU Regulation made under that Directive that forms part of retained EU law”.

### **Obligations concerning the investment policies of LTIFs**

- 11.** In the heading to Chapter 2, for “ELTIFs” substitute “LTIFs”.

### **Investment compartments**

- 12.** In Article 8 (investment compartments), for “ELTIF” substitute “LTIF” in both places.

### **Eligible investments**

- 13.**—(1) Article 9 (eligible investments) is amended as follows.
- (2) In paragraph 1—
- (a) for “ELTIF” substitute “LTIF”;
  - (b) after point (a) insert—
    - “(aa) assets permitted by section 2 of Chapter 5 of the Collective Investment Schemes sourcebook as if the LTIF were a UK UCITS as defined in section 237(3) of FSMA;”.
- (3) In paragraph 2, for “ELTIF” substitute “LTIF” in each place.
- (4) For paragraph 3 substitute—
- “3. The FCA may make technical standards specifying criteria for establishing the circumstances in which the use of financial derivative instruments solely serves the purpose of hedging the risks inherent to the investments referred to in point (d) of paragraph 2.”.

### **Eligible investment assets**

- 14.** Article 10 (eligible investment assets) is amended as follows—
- (a) for “ELTIF” substitute “LTIF” in each place;
  - (b) in point (d)—
    - (i) for “ELTIFs, EuVECAs” in both places substitute “LTIFs, ELTIFs, RVECAs, EuVECAs, SEFs”;
    - (ii) for “ELTIFs” where it last appears substitute “LTIFs and ELTIFs”.

### **Qualifying portfolio undertaking**

- 15.**—(1) In Article 11 (qualifying portfolio undertaking), paragraph 1 is amended as follows.

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(a) OJ L 123/98.

- (2) In point (b)—
  - (a) after “trading on a” in both places insert “UK regulated market or an EU”;
  - (b) after “or on a” in both places insert “UK multilateral trading facility or an EU”.
- (3) In point (c)—
  - (a) after “established in” insert “the United Kingdom or”;
  - (b) for the words from “home” to “marketed” substitute “United Kingdom”.

### **Conflict of interest**

- 16. In Article 12 (conflict of interest)—
  - (a) for “ELTIF” substitute “LTIF” in both places;
  - (b) for “ELTIFs, EuSEFs” substitute “LTIFs, ELTIFs, SEFs, EuSEFs, RVECAs”.

### **Portfolio composition and diversification**

- 17.—(1) Article 13 (portfolio composition and diversification) is amended as follows.
  - (2) In paragraph 1, for “ELTIF” substitute “LTIF”.
  - (3) In paragraph 2—
    - (a) for “An ELTIF” substitute “An LTIF”;
    - (b) for “ELTIF, EuVECA” substitute “LTIF, ELTIF, RVECA, EuVECA, SEF”.
  - (4) In paragraph 3—
    - (a) for “ELTIFs, EuVECAs and EuSEFs in an ELTIF” substitute “LTIFs, ELTIFs, RVECAs, EuVECAs, SEFs and EuSEFs in an LTIF”;
    - (b) for “the ELTIF” substitute “the LTIF”.
  - (5) In paragraphs 4 and 5, for “ELTIF” substitute “LTIF” in each place.
  - (6) In paragraph 6—
    - (a) for “ELTIF” substitute “LTIF”;
    - (b) after “office” insert “in the United Kingdom or”.
  - (7) In paragraph 7, for “Directive 2013/34/EU of the European Parliament and of the Council” substitute “UK law which implemented Directive 2013/34/EU of the European Parliament and of the Council or any EU Regulation made under that Directive which is retained EU law”.

### **Rectification of investment positions**

- 18. In Article 14 (rectification of investment positions), for “ELTIF” substitute “LTIF” in each place.

### **Concentration**

- 19. In Article 15 (concentration), in paragraph 1—
  - (a) for “An ELTIF” substitute “An LTIF”;
  - (b) for “ELTIF, EuVECA” substitute “LTIF, ELTIF, RVECA, EuVECA, SEF”.

### **Borrowing of cash**

- 20. In Article 16 (borrowing of cash), for “ELTIF” substitute “LTIF” in each place.



### **Application of portfolio composition and diversification rules**

21. In Article 17 (application of portfolio composition and diversification rules), for “ELTIF” substitute “LTIF” in each place.

### **Redemption, trading and issue of units or shares of an LTIF and distribution of proceeds and capital**

22. In the heading to Chapter 3, for “ELTIF” substitute “LTIF”.

### **Redemption policy and life of LTIFs**

23.—(1) Article 18 (the heading to which becomes “Redemption policy and life of LTIFs”) is amended as follows.

(2) In paragraph 1, for “ELTIF” substitute “LTIF” in each place.

(3) In paragraph 2—

- (a) for “ELTIF” substitute “LTIF” in each place;
- (b) in point (b), for “competent authorities” substitute “FCA”.

(4) In paragraph 3, for “ELTIF” substitute “LTIF” in each place.

(5) In paragraph 4—

- (a) for “an ELTIF” substitute “an LTIF”;
- (b) for “ELTIF’s” substitute “LTIF’s”.

(6) In paragraph 6—

- (a) for “an ELTIF’s” substitute “an LTIF’s”;
- (b) for “ELTIF” substitute “LTIF” in both places.

(7) For paragraph 7, substitute—

“7. The FCA may make technical standards specifying the circumstances in which the life of an LTIF is considered sufficient in length to cover the life-cycle of each of the individual assets of the LTIF, as referred to in paragraph 3.”.

### **Secondary market**

24.—(1) Article 19 (secondary market) is amended as follows.

(2) In paragraph 1—

- (a) for “ELTIF” substitute “LTIF” in both places;
- (b) after “trading on a” insert “UK regulated market or an EU”;
- (c) after “or on a” insert “UK multilateral trading facility or an EU”.

(3) In paragraphs 2, 3 and 4, for “ELTIF” substitute “LTIF” in each place.

### **Issuance of new units or shares**

25. In Article 20 (issuance of new units or shares), for “ELTIF” substitute “LTIF” in each place.

### **Disposal of LTIF assets**

26.—(1) Article 21 (the heading to which becomes “Disposal of LTIF assets”) is amended as follows.

(2) In paragraph 1, for “ELTIF” substitute “LTIF” in each place.

(3) For paragraph 3 substitute—

“3. The FCA may make technical standards specifying the criteria to be used for—

- (a) the assessments in point (a) of paragraph 2; and
- (b) the valuation in point (c) of that paragraph.”.

### **Distribution of proceeds and capital**

**27.** In Article 22 (distribution of proceeds and capital), for “ELTIF” substitute “LTIF” in each place.

### **Transparency**

**28.**—(1) Article 23 (transparency) is amended as follows.

(2) In paragraph 1—

- (a) for “ELTIF” substitute “LTIF” in both places;
- (b) for “Union” substitute “UK” in both places.

(3) In paragraph 3—

- (a) in point (a), for “ELTIF’s” substitute “LTIF’s”;
- (b) in point (b), for “Directive 2003/71/EC” substitute “prospectus rules within the meaning of Part 6 of FSMA (official listing) contained in rules made by the FCA under section 73A of FSMA (Part 6 rules)”;
- (c) in point (c), for “Article 23 of Directive 2011/61/EU” substitute “section 3.2 of Chapter 3 of the Investment Funds sourcebook”;
- (d) in points (d) and (e), for “ELTIF” substitute “LTIF” in both places;
- (e) in point (f), for “competent authorities” substitute “FCA”.

(4) In paragraph 4—

- (a) for “ELTIF” substitute “LTIF” in each place;
- (b) in point (a), for “ELTIF’s” substitute “LTIF’s”.

(5) In paragraph 5—

- (a) for “Article 22 of Directive 2011/61/EU” substitute “rules 3.3.2 to 3.3.7 of the Investment Funds sourcebook”;
- (b) for “ELTIF” substitute “LTIF” in each place;
- (c) omit point (b).

(6) In paragraph 6, for “ELTIF” substitute “LTIF” in both places.

### **Additional requirements of the prospectus**

**29.**—(1) Article 24 (additional requirements of the prospectus) is amended as follows.

(2) In paragraph 1—

- (a) for “An ELTIF” substitute “An LTIF”;
- (b) for “competent authorities of the ELTIF” substitute “FCA”;
- (c) omit the second sentence;
- (d) for “ELTIF within” substitute “LTIF within”;
- (e) for “these competent authorities” substitute “the FCA”;

(3) In paragraph 2—

- (a) for “ELTIF” substitute “LTIF”;
- (b) omit “, in each Member State in which the units or shares are marketed,”.

### **Cost disclosure**

**30.**—(1) Article 25 (cost disclosure) is amended as follows.

(2) In paragraphs 1 and 2, for “ELTIF” substitute “LTIF”.

(3) For paragraph 3 substitute—

“3. The FCA may make technical standards to specify the common definitions, calculation methodologies and presentation formats of the costs referred to in paragraph 1 and the overall ratio referred to in paragraph 2.

4. In making the technical standards, the FCA must take into account the technical standards referred to in points (a) and (c) of Article 8(5) of Regulation (EU) No 1286/2014, as amended from time to time.”.

### **Facilities available to investors**

**31.**—(1) Article 26 (facilities available to investors) is amended as follows.

(2) In paragraph 1—

(a) for “ELTIF” substitute “LTIF” in each place;

(b) omit “, in each Member State where it intends to market such units or shares,”.

(3) For paragraph 2, substitute—

“2. The FCA may make technical standards to specify the types and characteristics of the facilities referred to in paragraph 1, their technical infrastructure and the content of their tasks in respect of the retail investors.”.

### **Internal assessment process for LTIFs marketed to retail investors**

**32.** In Article 27 (the heading to which becomes “Internal assessment process for LTIFs marketed to retail investors”, for “ELTIF” substitute “LTIF” in each place.

### **Specific requirements concerning the distribution of LTIFs to retail investors**

**33.** In Article 28 (the heading to which becomes “Specific requirements concerning the distribution of LTIFs to retail investors”), for “ELTIF” substitute “LTIF” in each place.

### **Specific provisions concerning the depository of an LTIF marketed to retail investors**

**34.**—(1) Article 29 (the heading to which becomes “Specific provisions concerning the depository of an LTIF marketed to retail investors”) is amended as follows.

(2) For paragraph 1 substitute—

“1. Notwithstanding the provisions in rule 3.11.10 of the Investment Funds sourcebook, the depository of an LTIF marketed to retail investors must be an entity that satisfies the criteria referred to in rule 6.6A.8(1) to (3) of the Collective Investment Schemes sourcebook.

1A. The requirements of section 243(5) and (5A) and 261D(5) of FSMA and regulation 15(8)(a) of the Open-Ended Investment Companies Regulations 2001<sup>(a)</sup>, as amended from time to time, do not apply to a qualifying EEA firm until the end of the period determined in accordance with regulation 17 (period during which regulation 8 or 11 is to apply) of the EEA Passport Rights (Amendment etc, and Transitional Provisions) (EU Exit) Regulations 2018.

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(a) S.I. 2001/1228.

1B. In paragraph 1A ‘qualifying EEA firm’ means a body corporate which—

- (a) is the depositary of an LTIF;
- (b) is, by virtue of regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, treated as having a Part 4A permission relating to one or more regulated activity; and
- (c) had immediately before exit day, and continues to have, a Part 4A permission to carry on the regulated activity specified in Article 51ZD of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”.

(3) In paragraph 2, for the words from the beginning to “ELTIF” substitute “Notwithstanding regulations 30 and 32 of the AIFM Regulations, the depositary of an LTIF”.

(4) In paragraph 3—

- (a) for “Article 21(12) of Directive 2011/61/EU” substitute “regulation 30 of the AIFM Regulations”;
- (b) for “ELTIF” substitute “LTIF”.

(5) In paragraph 5, for “ELTIF” substitute “LTIF” in each place.

#### **Additional requirements for marketing LTIFs to retail investors**

**35.** Article 30 (the heading to which becomes “Additional requirements for marketing LTIFs to retail investors”) is amended as follows—

- (a) in paragraph 1, for “ELTIF” substitute “LTIF” in both places;
- (b) in paragraph 2—
  - (i) for “ELTIF” substitute “LTIF” in both places;
  - (ii) for “points (a) and (b)(i) of Article 6(4) of Directive 2011/61/EU” substitute “rule 1.4.3(3) and (4) of the Investment Funds sourcebook”;
- (c) in paragraph 3—
  - (i) for “ELTIF” substitute “LTIF” in both places;
  - (ii) for “ELTIFs” substitute “LTIFs” in each place;
- (d) in paragraphs 4, 5 and 6, for “ELTIF” substitute “LTIF” in each place;
- (e) in paragraph 7—
  - (i) for “ELTIF” substitute “LTIF”;
  - (ii) omit from “, which” to the end.

#### **Marketing of units or shares of LTIFs**

**36.—**(1) Article 31 (the heading to which becomes “Marketing of units or shares of LTIFs”) is amended as follows.

(2) For paragraph 1 substitute—

“1. The manager of an LTIF may market the units or shares of that LTIF to professional and retail investors in the United Kingdom from the date on which the FCA approves the marketing under regulation 54 of the AIFM Regulations.”.

(3) Omit paragraph 2.

(4) In paragraph 3—

- (a) for “ELTIF” substitute “LTIF” in each place;
- (b) for “competent authorities” substitute “the FCA”.

(5) In paragraph 4—

- (a) for “Articles 31 and 32 of Directive 2011/61/EU” substitute “regulation 54 of the AIFM Regulations”;

- (b) for “ELTIF” substitute “LTIF” in each place;
  - (c) for “competent authorities” substitute “the FCA”.
- (6) In paragraph 5—
- (a) for “competent authorities” substitute “FCA”;
  - (b) for “Articles 31 and 32 of Directive 2011/61/EU” substitute “regulations 54 and 55 of the AIFM Regulations”;
  - (c) for “ELTIFs” substitute “LTIFs”.
- (7) For paragraph 6 substitute—
- “6. In addition to its powers set out in regulation 54(3) and (8) of the AIFM Regulations, the FCA must also prevent the marketing of an LTIF if the manager of the LTIF does not or will not comply with this Regulation.”.
- (8) Omit paragraph 7.

### **Supervision by the FCA**

**37.**—(1) Article 32 (the heading to which becomes “Supervision by the FCA”) is amended as follows.

- (2) In paragraph 1, for “competent authorities” substitute “FCA”.
- (3) In paragraphs 2 and 3, for “competent authority of the ELTIF” substitute “FCA”.
- (4) In paragraph 3, for “ELTIF,” substitute “LTIF,”.
- (5) In paragraph 4—
  - (a) for “competent authority of the manager of the ELTIF” substitute “FCA” in both places;
  - (b) for “ELTIF” in the other places where it appears substitute “LTIF” in each case;
  - (c) for “ELTIFs” substitute “LTIFs”.
- (6) In paragraph 5—
  - (a) for “Competent authorities” substitute “The FCA”;
  - (b) for “their territories” substitute “the United Kingdom”;
  - (c) for “designation ‘ELTIF’” substitute “designation ‘LTIF’”;
  - (d) for “an ELTIF” substitute “an LTIF”.

### **Powers of the FCA**

**38.**—(1) Article 33 (the heading to which becomes “Powers of the FCA”) is amended as follows.

- (2) In paragraph 1—
  - (a) for “Competent authorities” substitute “The FCA”;
  - (b) for “their” substitute “its”.
- (3) In paragraph 2, for “competent authorities in accordance with Directive 2011/61/EU” substitute “the FCA under the AIFM Regulations”.
- (4) In paragraph 3—
  - (a) for “competent authority of the ELTIF” substitute “FCA”;
  - (b) for “designation ‘ELTIF’ or ‘European long-term investment fund’” substitute “designation ‘LTIF’ or ‘long-term investment fund’”;
  - (c) for “ELTIF no” substitute “LTIF no”.

### **Omission of Articles 34 to 37**

**39.** Omit the following Articles—

- (a) Article 34 (powers and competences of ESMA);
- (b) Article 35 (cooperation between competent authorities);
- (c) Article 36 (processing of applications by the Commission);
- (d) Article 37 (review).

**Omission of words after Article 38**

**40.** In the words after Article 38, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies referred to in paragraphs (a), (b), (c) and (g) of section 8(2)).

These Regulations make amendments to legislation in the field of financial services. Part 2 amends the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115) to specify an additional EU Regulation for the purposes of Part 2 of S.I. 2018/1115. Part 3 amends Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds.

These Regulations refer to sourcebooks made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c. 8). Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook>, and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).