

Subsidiary Legislation made under s.52.

**FINANCIAL SERVICES (EXPERIENCED INVESTOR
FUNDS) REGULATIONS 2018**

(LN.2018/226)

Commencement **23.10.2018**

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In exercise of the powers conferred on him by section 52 of the Financial Services (Collective Investment Schemes) Act 2011, the Minister has made the following Regulations-

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Experienced Investor Funds) Regulations 2018.

(2) These Regulations come into operation on 23 October 2018.

Interpretation.

2. In these Regulations—

“administrator”, in relation to an experienced investor fund, has the meaning given in regulation 9(3);

“the CIS Act” means the Financial Services (Collective Investment Schemes) Act 2011;

“controller”, in relation to an experienced investor fund, means the person or persons who are responsible for the management and control of the experienced investor fund under and in accordance with regulation 10;

“the date of establishment”, in relation to an experienced investor fund, has the meaning given in regulation 4(3);

“days” does not include Saturdays, Sundays and days appointed as public holidays under the Interpretation and General Clauses Act;

“experienced investor” has the meaning given in regulation 3;

“the Minister” means the Minister with responsibility for financial services;

“offer document”, in relation to an experienced investor fund, has the meaning given in regulation 16(1);

“potential participant”, in relation to an experienced investor fund, has the meaning given in regulation 4(4);

“professional adviser” means a person who, in respect of collective investment schemes, is authorised or entitled to provide investment advice by way of business—

- (a) in the European Economic Area; or
- (b) in another jurisdiction which the Authority considers to be regulated under and in accordance with a legislative and regulatory regime with respect to the provision of investment advice which provides protection at least equivalent to that in Gibraltar;

“protected cell company” has the same meaning as in the Protected Cell Companies Act 2001.

PART 2 EXPERIENCED INVESTOR FUNDS

Meaning of “experienced investor”.

3.(1) An “experienced investor” is a person or body who, at the time of the investment, falls into one of the following categories—

- (a) a person or partnership whose ordinary business or professional activity includes (or it is reasonable to expect that it includes) acquiring, underwriting, managing, holding or disposing of investments, whether as principal or agent, or the giving of advice concerning investments;
- (b) a body corporate which has net assets of more than €1 million or which is part of a group which has net assets of more than €1 million;
- (c) an unincorporated association which has net assets of more than €1 million;
- (d) the trustee of a trust where the aggregate value of the cash and investments which form part of the trust’s assets is more than €1 million;
- (e) an individual whose net worth, or joint net worth with the individual’s spouse, is more than €1 million, excluding the individual’s principal place of residence;
- (f) a participant who has an aggregate of at least €100,000 invested in one or more experienced investor funds;

- (g) a participant who invests at least €100,000 in one or more experienced investor funds;
- (h) a participant who invests at least €50,000 in an experienced investor fund where—
 - (i) the participant was advised by a professional adviser to invest in an experienced investor fund; and
 - (ii) the experienced investor fund in which the investment is made receives confirmation of such advice;
- (i) a participant who is a professional client, as defined in the Financial Services (Markets in Financial Instruments) Act 2018; or
- (j) a participant in a fund that has re-domiciled to Gibraltar where the Authority has permitted the inclusion of such participant either in respect of a specific experienced investor fund or generally in respect of experienced investor funds or a category of such funds from a certain jurisdiction.

(2) The Authority may, with the approval of the Minister, in respect of a particular experienced investor fund to which these Regulations apply, approve other categories or descriptions of experienced investor where the Authority considers that it is reasonable to expect that persons within that category or description at the time of the investment are sufficiently experienced to understand the risks associated with an investment in that experienced investor fund.

Establishment of an experienced investor fund.

4.(1) An entity qualifies to become an experienced investor fund (“a qualifying entity”) if—

- (a) it is a collective investment scheme; and
- (b) it is—
 - (i) a company formed or re-domiciled under the Companies Act 2014; or
 - (ii) a protected cell company; or

- (iii) a unit trust established under and governed by Gibraltar law with a trust deed which stipulates that the trust is subject to the jurisdiction of the Supreme Court of Gibraltar; or
- (iv) a limited partnership under the Limited Partnership Act; or
- (v) established in any other form recognised under the law of Gibraltar that may be approved by the Authority, either in respect of a specific experienced investor fund or generally; or
- (vi) a legal entity established in a European Economic Area in a form which is recognised under the law of Gibraltar and is approved by the Authority; and

(c) the requirements of regulations 9 to 17 are met in relation to it.

(2) Condition A or condition B must also be met in relation to a qualifying entity—

- (a) condition A is that no previous authorisation in respect of the entity has been revoked under section 44(1)(a) of the CIS Act or under broadly similar provision in another jurisdiction;
- (b) condition B is that regulation 5(4)(a) is complied with and the Authority is satisfied that the circumstances in which a previous authorisation was revoked should not prevent the entity from becoming authorised in accordance with regulation 6.

(3) A qualifying entity which meets either condition A or B becomes an experienced investor fund on the date on which a resolution that the entity is to be an experienced investor fund takes effect (and that date is referred to in these Regulations as the “date of establishment” of the experienced investor fund).

(4) For the purposes of these Regulations, any person who is a participant in a qualifying entity immediately before it becomes an experienced investor fund is to be treated as a potential participant in relation to the experienced investor fund.

(5) A qualifying entity must, on or before the date of its establishment as an experienced investor fund, obtain an opinion which—

- (a) is written by a lawyer who—
 - (i) has at least 5 years professional standing;
 - (ii) is also a Barrister or Solicitor of the Supreme Court of Gibraltar; and
 - (iii) is independent of the administrator; and
- (b) states that on the date of establishment of the experienced investor fund, it will comply with sub-regulation (1) and all provisions of the CIS Act that apply to experienced investor funds.

Procedure for obtaining authorisation.

5.(1) This regulation and regulation 6 apply to an entity (“E”) which meets the requirements of regulation 4(1) and which has become, or proposes to become, established as an experienced investor fund in accordance with regulation 4(3).

(2) The administrator of E must send to the Authority—

- (a) a notice of E’s establishment, or proposed establishment, as an experienced investor fund;
- (b) a copy of E’s offer document;
- (c) a copy of the opinion referred to in regulation 4(5); and
- (d) such other documents as the Authority may require.

(3) The notice required by sub-regulation (2)(a) must be in writing, in the approved form and accompanied by the prescribed fee.

(4) All of the documents required by sub-regulation (2) must be sent to the Authority either—

- (a) not later than 10 days before the date of establishment of E as an experienced investor fund; or
- (b) within 10 days of the date of establishment of E as an experienced investor fund.

(5) Sending the documents before the date of E’s establishment as an experienced investor fund, but after the deadline in sub-regulation (4)(a),

does not preclude their being sent again in accordance with sub-regulation (4)(b).

(6) Sub-regulation (4)(b) is subject to regulation 21.

Authorisation.

6.(1) Failure to comply with either regulation 5(4)(a) or (b) in respect of E has the effect that E may not become authorised as an experienced investor fund under this regulation and, accordingly, may not accept participants.

(2) Where regulation 5(4)(b) is complied with and E meets condition A in regulation 4(2)(a), E is to be deemed as authorised under these Regulations with effect from the date of E's establishment as an experienced investor fund.

(3) Where regulation 5(4)(a) is complied with, the Authority may no later than 10 days after receiving the required documents do one or more of the following—

- (a) issue a written notice to E requiring such further information, documents and explanations as the Authority may require;
- (b) issue a written notice to E requiring such changes in connection with E as the Authority considers necessary to comply with the relevant provisions of the CIS Act and these Regulations;
- (c) issue a written notice to E authorising it as an experienced investor fund.

(4) If no notice is issued under sub-regulation (3) within the 10 day period mentioned in that sub-regulation, E is to be deemed as authorised under these Regulations with effect from the date on which that period expires or, if later, the date of E's establishment as an experienced investor fund.

(5) If the Authority issues a notice under sub-regulation (3)(a) or (b), E is not authorised under these Regulations until such time as the Authority—

- (a) is satisfied by the further information, documents and explanations supplied to it in response to a notice issued under sub-regulation (3)(a);
- (b) is satisfied that any changes required by a notice issued under sub-regulation (3)(b) have been made; and

- (c) issues a written notice to E authorising it as an experienced investor fund.

(6) A notice under sub-regulation (3)(c) or (5)(c) takes effect on the date the notice is issued or, if later, the date of E's establishment as an experienced investor fund.

(7) An experienced investor fund which is authorised under this regulation ceases to be authorised if the Authority revokes its authorisation under section 44 of the CIS Act.

(8) In the application of the CIS Act in relation to experienced investor funds, any reference to an authorisation granted under Part 3 of that Act is to be read as if it were a reference to the authorisation which an experienced investor fund has by virtue of these Regulations.

Acceptance of participants.

7.(1) No person may be accepted as a participant in an experienced investor fund unless—

- (a) the experienced investor fund is authorised under regulation 6; and
- (b) the person in question has signed a written statement as to the matters specified in sub-regulation (2).

(2) The statement must confirm that the person—

- (a) is an experienced investor within the meaning of these Regulations; and
- (b) has received and accepted the investment warning which, by virtue of regulation 17(3), must be included in the experienced investment fund's offer document.

(3) It is not necessary for the factual accuracy of any statement under sub-regulation (1)(b) which is provided by a potential participant in an experienced investor fund to be verified by anyone acting for the experienced investor fund.

PART 3 GIBRALTAR QUALIFIED AIFS

Gibraltar Qualified AIFs.

8.(1) Each experienced investor fund which is managed by an in-scope AIFM must notify the Authority of that fact as soon as possible.

(2) Once a notification has been given under sub-regulation (1), the experienced investor fund may be known as a “Gibraltar Qualified AIF” if—

- (a) in the case of an experienced investor fund managed by an in-scope AIFM within point (a) of Article 5(1) of the Alternative Investment Fund Managers Directive, the experienced investor fund informs the Authority that it is to be known as such;
- (b) in the case of an experienced investor fund managed by an in-scope AIFM within point (b) of Article 5(1) of the Alternative Investment Fund Managers Directive, the Authority consents in writing to it being known as such.

(3) Any enactment which applies to an experienced investor fund continues to apply to the fund irrespective of whether it is known as an experienced investor fund or a Gibraltar Qualified AIF.

(4) In this regulation—

“AIF” means a collective investment undertaking (including any investment compartments) which—

- (a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (b) does not require authorisation pursuant to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014;

“AIFM” means a legal person the regular business of which is managing one or more AIFs (irrespective of whether the person is within point (a) or (b) of Article 5(1) of the Alternative Investment Fund Managers Directive);

“the Alternative Investment Fund Managers Directive” means Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;

“in-scope AIFM”—

- (a) means an AIFM which is authorised in accordance with the Alternative Investment Fund Managers Directive; and
- (b) includes any AIFM which has exercised the option mentioned in Article 3(4) of that Directive to meet the full requirements of the Directive.

PART 4 OPERATION

General arrangements

Arrangements for administration.

9.(1) An experienced investor fund must have an administrator.

(2) The person acting as administrator of an experienced investor fund must be a different person from the bank and/or broker acting for that fund under regulation 12.

(3) “Administrator”, in relation to an experienced investor fund, means—

- (a) a Gibraltar administrator authorised by the Authority under the CIS Act to hold a Class V(c) Collective Investment Scheme Administrator licence;
- (b) if not so authorised, an administrator who—
 - (i) is established and authorised in the European Economic Area or in another jurisdiction which the Authority considers to be regulated under and in accordance with a legislative and regulatory regime with respect to the administration of funds which provides protection at least equivalent to that in Gibraltar; and
 - (ii) holds a consent to act as administrator of an experienced investor fund which is given by the Authority with the approval of the Minister and which may be given generally or in respect of a specific experienced investor fund.

(4) An administrator within sub-regulation (3)(b) must—

- (a) have an agent for service in Gibraltar; and

- (b) if an agent for service ceases to act for the administrator, ensure that another is appointed as soon as reasonably practicable.

Management and control.

10.(1) For the purposes of sub-regulations (2) to (6), the Authority may give its consent to a person only if it is satisfied that the person in question—

- (a) is a fit and proper person to direct the management and control of an experienced investor fund;
- (b) is sufficiently experienced to direct the management and control of the experienced investor fund, or the categories of experienced investor fund, which the person manages or proposes to manage;
- (c) is capable of being effectively supervised by the Authority, having regard to all the circumstances; and
- (d) if not ordinarily resident in Gibraltar is willing to meet with the Authority in Gibraltar on such occasions and in such circumstances as the Authority may reasonably require.

(2) If an experienced investor fund is a company described in regulation 4(1)(b)(i) or (ii), the board of directors of the company must include at least 2 persons who each hold a consent given by the Authority under sub-regulation (1).

(3) If an experienced investor fund is a limited partnership—

- (a) the general partner must be a corporate entity or be ultimately controlled by a corporate entity; and
- (b) the board of directors of that entity must include at least 2 persons who each hold a consent given by the Authority under sub-regulation (1).

(4) If an experienced investor fund is a unit trust, it must—

- (a) have at least 2 trustees who each hold a consent given by the Authority under sub-regulation (1); or

- (b) have at least one trustee which is a corporate entity whose board of directors includes at least 2 persons who each hold such a consent.

(5) If an experienced investor fund takes a form other than those specified in any of sub-regulations (2) to (4), the persons or entities which have ultimate responsibility for the management and control of the experienced investor fund must include at least 2 persons who each hold a consent given by the Authority under sub-regulation (1).

(6) Consent under sub-regulation (1) may be given generally or in respect of a specific experienced investor fund or category of experienced investor funds.

(7) In relation to each experienced investor fund, at least one of the persons required to hold a consent given by the Authority under sub-regulation (1) must be ordinarily resident in Gibraltar.

(8) Sub-regulation (7) does not apply in relation to any experienced investor fund where—

- (a) an application for waiver of sub-regulation (7) is made to the Authority in such form as the Authority may direct; and
- (b) having regard to the need to minimise any risk to investors in the experienced investor fund or to the reputation of Gibraltar, the Authority is satisfied that—
 - (i) each person required to hold a consent given by the Authority under sub-regulation (1) is particularly qualified by experience or otherwise to direct the management and control of an experienced investor fund; and
 - (ii) there are special circumstances which make it appropriate to grant the waiver; and
- (c) the Authority gives to the experienced investor fund, and each person required to hold a consent, a written notice stating that sub-regulation (7) does not apply in relation to the fund.

(9) A person within sub-regulation (1)(d) who holds a consent given by the Authority must—

- (a) have an agent for service in Gibraltar; and

- (b) if an agent for service ceases to act for that person, ensure that another is appointed as soon as reasonably practicable.

Delegation of functions.

11.(1) Except as stated in sub-regulation (3), a controller of an experienced investor fund may not delegate the management and control of the fund to any other person without first obtaining the permission of the Authority.

(2) The Authority may give its permission under sub-regulation (1) either generally by guidance or specifically on an application made to the Authority.

(3) The controller of an experienced investor fund may delegate functions to any of the following (whether authorised in Gibraltar or in another jurisdiction)—

- (a) an administrator;
- (b) an investment manager;
- (c) an investment adviser; or
- (d) a bank and/or broker acting under regulation 12.

(4) Where a person to whom a function in respect of an experienced investor fund is delegated under sub-regulation (3) intends to exercise the function in another jurisdiction—

- (a) that person must be authorised or otherwise legally entitled to carry out the function in the state or territory in question; and
- (b) the intention to delegate must be disclosed in the experienced investor fund's offer document.

Arrangements for safe custody of assets.

12.(1) In this regulation, "bank and/or broker" means—

- (a) a credit institution (as defined in article 4(1)(1) of the capital requirements regulation) which—
 - (i) has its registered office in the European Union; and
 - (ii) is authorised in accordance with the Capital Requirements Directive; or

- (b) an investment firm (as defined in article 4(1)(1) of the Markets in Financial Instruments Directive) which—
 - (i) has its registered office in the European Union; and
 - (ii) is authorised in accordance with the Markets in Financial Instruments Directive to provide the ancillary service referred to in point (1) of Section B of Annex 1 to that Directive (safekeeping and administration of financial instruments for the account of clients); or
 - (c) a body corporate which is established and authorised in another jurisdiction which the Authority considers to be regulated under and in accordance with a legislative and regulatory regime with respect to the safekeeping of assets belonging to another which provides protection broadly equivalent to that in Gibraltar.
- (2) An experienced investor fund must enter into and maintain arrangements with a bank and/or broker.
- (3) An experienced investor fund does not have to comply with sub-regulation (2) if—
- (a) the experienced investor fund is a closed-ended fund; or
 - (b) on an application made by the fund to the Authority in such form as it may direct, the Authority determines that the arrangements required by that sub-regulation would not be appropriate in all the circumstances.
- (4) The Authority may if it considers it appropriate direct an experienced investor fund to replace the bank and/or broker with which it has the arrangements referred to in sub-regulation (2).
- (5) The principal duty of the bank and/or broker is to keep the experienced investor fund's assets that are under its control safe and accounted for and to undertake such other duties as may be required of it in accordance with the arrangements referred to in sub-regulation (2).
- (6) In this regulation—

“the Capital Requirements Directive” means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision

of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

“the Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

“the Markets in Financial Instruments Directive” means Directive 2014/65/EC of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).

Arrangements for audit.

13. An experienced investor fund must have an annual audit of its financial statements which is—

- (a) performed by an auditor who is approved under the Financial Services (Auditors) Act 2009; and
- (b) conducted in accordance with internationally recognised audit and accounting standards.

Name of experienced investor fund.

14.(1) The name of an experienced investor fund—

- (a) must not be misleading or otherwise objectionable whether as to the objectives of the experienced investor fund or otherwise; and
- (b) must not use the word “Gibraltar” or any word the use of which is restricted under section 27 of the Companies Act 2014.

(2) Where the Authority considers, on reasonable grounds, that the requirements of sub-regulation (1) are not met in relation to an experienced investor fund, it may by written notice direct the fund to change its name on or before a date specified in the notice (which may not be less than 15 days after the date of the notice).

(3) If the name of an experienced investor fund has not been changed on or before the date specified in the notice under sub-regulation (2), the Authority may take such enforcement action under the CIS Act as it considers appropriate against—

- (a) the experienced investor fund;
- (b) any controller or administrator of the fund who caused or acquiesced in the failure to comply with the notice.

Jurisdiction of Gibraltar courts.

15. Nothing in any of the constituting documents of an experienced investor fund may exclude the jurisdiction of the courts of Gibraltar with respect to any action concerning the experienced investor fund.

Requirement to issue an offer document.

16.(1) Each experienced investor fund must issue to each potential participant in the fund a document which contains the information, statements and other matters that are required by these Regulations (and that document is referred to in these Regulations as the “offer document” of the experienced investor fund).

(2) The offer document of an experienced investor fund must be approved by the controller of the fund.

(3) If, since the issue of an offer document to any person who subsequently becomes a participant in an experienced investor fund, there has been any significant change to the document’s contents, the experienced investor fund must give that participant a copy of the updated offer document.

Contents of an offer document.

17.(1) The offer document of an experienced investor fund must contain such information as would reasonably be required or expected by participants, potential participants and their professional advisers, for the purposes of making an informed evaluation of the merits of participating in the experienced investor fund and the extent of the risks in doing so.

(2) Without limiting sub-regulation (1), the information and statements which are specified in the Schedule to these Regulations must be contained in the offer document of an experienced investor fund.

(3) The offer document of an experienced investor fund must also contain the following investment warning in a prominent position—

“This [*fund*] has been established in Gibraltar as an experienced investor fund. It is suitable only for those who fall within the

definition of “experienced investor” contained in the Financial Services (Experienced Investor Funds) Regulations 2018.

Requirements which may be deemed necessary for the protection of retail or non-experienced investors, do not apply in relation to experienced investor funds. By acknowledging this statement you are expressly agreeing that you fall within the definition of an “experienced investor” and accept the reduced requirements accordingly.

You are wholly responsible for ensuring that all aspects of [*this fund*] are acceptable to you. Investment in experienced investor funds may involve special risks that could lead to a loss of all or a substantial portion of such investment. Unless you fully understand and accept the nature of [*this fund*] and the potential risks inherent in [*this fund*] you should not invest in [*this fund*].

- (4) Where an offer document is issued in a language other than English—
- (a) a copy of the English language version of the offer document must be filed with the Authority;
 - (b) any updates of the offer document must be translated into English and filed with the Authority; and
 - (c) the English language version is determinative of any matter arising in connection with the offer document.

Reporting

Duties to notify the Authority.

18.(1) The controller of an experienced investor fund must notify the Authority immediately upon knowing that the fund has ceased to comply with any requirement that applies to experienced investor funds under the CIS Act or any requirement of these Regulations.

(2) The controller of an experienced investor fund must ensure that any material change to information provided to the Authority in connection with the experienced investor fund is notified to the Authority within 20 days of the change taking place.

Financial reporting requirements.

19.(1) An experienced investor fund must meet the following financial reporting requirements—

- (a) the period to which the financial statements referred to in regulation 13 relate must not exceed 12 months;
- (b) the audited financial statements must be filed with the Authority; and
- (c) a copy of those statements must be kept at the Gibraltar office of the administrator of the experienced investor fund or, if the administrator is a person within regulation 9(3)(b), at the office of the Gibraltar agent for service referred to in regulation 9(4).

(2) An experienced investor fund's financial reporting period may extend beyond the limit specified in sub-regulation (1)(a), up to a maximum of 18 months, but only if the relevant financial statements are—

- (a) the first financial statements produced for the experienced investor fund; or
- (b) the first financial statements to be produced following a change in the date on which the experienced investor fund's financial reporting period ends.

(3) The audited financial statements referred to in sub-regulation (1)(b)—

- (a) must be in such form and contain such information as the Authority may specify; and
- (b) must be filed with the Authority, in such manner as it may specify—
 - (i) within 6 months of the end of the experienced investor fund's financial statement period; or
 - (ii) in the case of a closed-ended experienced investor fund, within 9 months of the end of that period; or
 - (iii) by such other time as may the Authority may determine.

Annual returns to the Authority.

20.(1) The controller of an experienced investor fund must, with respect to each experienced investor fund for which the controller acts as such, file an annual return with the Authority.

(2) An annual return must—

- (a) be in such form, contain such information and be filed in such manner as the Authority may specify; and
- (b) be delivered to the Authority at the same time as the experienced investor fund's financial statements are filed under regulation 19(3)(b).

Supervisory powers

Power to extend deadlines.

21. Where an experienced investor fund does not comply with any provision of these Regulations, the Authority may allow the fund such additional period as it may specify in which to comply beyond the time specified in these Regulations.

Penalties for late filing of documents.

22.(1) An experienced investor fund is liable to a penalty fee for—

- (a) any late filing of the financial statements required by regulation 19; or
- (b) any late filing of the annual return required by regulation 20.

(2) The amount of a penalty fee due under sub-regulation (1) is equivalent to level 2 on the standard scale for each complete week and part of a week during which the failure to file the relevant information continues.

(3) The Authority may, in its absolute discretion, waive the whole or part of the amount of a penalty fee.

(4) Any penalty fee which is due must be paid to the Authority and is recoverable by it as a civil debt.

Persons with consent given under regulation 10(1).

23.(1) This regulation applies to any person ("P") who holds consent given by the Authority under regulation 10(1).

(2) Provisions of, or made under, the Financial Services (Investment and Fiduciary Services) Act ("the 1989 Act") apply to P as they apply to a licensee in possession of a Class VIII – Company Manager licence.

(3) In the application of the 1989 Act for the purposes of sub-regulation (2)—

- (a) references to a licensee include P;
- (b) references to a contravention of any provision of, or made under, the 1989 Act include a contravention of any requirement to which P is subject by virtue of these Regulations; and
- (c) the Authority may take such action under the 1989 Act as it considers appropriate against P in connection with the discharge of P's functions.

(4) The Authority may revoke any consent given to P under regulation 10(1) either—

- (a) at P's request; or
- (b) if the Authority ceases to be satisfied in relation to P as to any of the matters specified in regulation 10(1)(a) to (d) or (9).

(5) If the Authority proposes to revoke P's consent under sub-regulation (4)(b), it must give P a warning notice which—

- (a) is in writing;
- (b) states that the Authority proposes to revoke P's consent and the reasons for it;
- (c) specifies a reasonable period (which may not be less than 14 days) within which P may decide whether to make representations; and
- (d) specifies a period within which P may decide whether to make oral representations.

(6) The Authority may extend the period for making representations.

(7) After considering any representations, the Authority must issue—

- (a) a decision notice stating that the Authority will revoke P's consent; or
- (b) a discontinuance notice stating that the Authority does not propose to revoke P's consent.

- (8) A decision notice takes effect, and P's consent may be revoked—
- (a) at the end of the period for bringing an appeal if no appeal is brought under regulation 25; or
 - (b) when any such appeal is finally determined or withdrawn.

Ceasing to be an authorised experienced investor fund.

24.(1) An experienced investor fund which is authorised under regulation 6 may at any time apply to the Authority for the Authority to consent to the fund ceasing to be authorised.

(2) An application under sub-regulation (1) must be accompanied by such undertakings and documents as the Authority may require.

(3) Where the Authority is satisfied that the experienced investor fund will no longer be promoted and will not accept any further subscriptions under its offer document, the Authority must issue a notice to the applicant granting its consent and, in any such case—

- (a) the experienced investor fund is no longer to be deemed as authorised; and
- (b) the fund ceases to be an “experienced investor fund”.

Appeals.

25.(1) A person who is aggrieved by a decision made by the Authority under these Regulations may appeal against that decision to the Supreme Court.

(2) An appeal under this regulation must be made within 28 days beginning with the date on which the person is given notice of the decision.

**PART 5
MISCELLANEOUS***Offences***Offence relating to the promotion of experienced investor funds.**

26.(1) Any person who promotes an experienced investor fund in breach of regulations 3 to 7 commits an offence and is liable on summary conviction to a fine at level 5 on the standard scale.

(2) Without limiting sub-regulation (1), a person (“P”) promotes an experienced investor fund if P communicates, or causes to be communicated, an invitation or inducement to any other person, or advises or procures any other person, to participate in, or to offer to participate in, an experienced investor fund.

(3) Information which is provided to potential participants to negotiate the terms of investment is not considered to be a promotion, provided that—

- (a) the status at that time of the experienced investor fund or qualifying entity is made clear to each potential participant; and
- (b) if any change is made to the information provided, the potential participants are informed of each change that has been made.

Other offences.

27.(1) “Relevant person”, in relation to an experienced investor fund, means—

- (a) a controller or administrator of the fund;
- (b) a director, partner or trustee of the fund who is not also a controller; or
- (c) a bank and/or broker acting for the fund under regulation 12.

(2) It is an offence for a relevant person not to inform the Authority immediately upon knowing or having reasonable grounds for believing that an experienced investor fund has ceased to qualify as an experienced investor fund within the meaning of regulation 4(1).

(3) It is an offence for a person acting for an experienced investor fund to permit anyone (“A”) to become, or to acquiesce in A becoming, a participant in the fund where that person—

- (a) knows that A is not an experienced investor within the meaning of these Regulations; or
- (b) knows or has reasonable grounds for believing that A has not provided written confirmation of any of the matters specified in regulation 7(2).

(4) It is an offence for a person who does not meet the requirements of regulation 9(3) to assume the functions of an administrator of an experienced investor fund.

(5) It is an offence for a relevant person not to inform the Authority immediately upon knowing or having reasonable grounds for believing that any requirement of regulations 12, 14 to 17, 18(2) and 20 is not complied with.

(6) A person found guilty of an offence under this regulation is liable on summary conviction to a fine at level 5 on the standard scale.

(7) A person found guilty of a second or subsequent offence under this regulation is liable on summary conviction to a fine at twice level 5 on the standard scale.

Supplemental

Revocation and transitional provisions.

28.(1) In this regulation—

“the 2012 Regulations” means the Financial Services (Experienced Investor Funds) Regulations 2012;

“commencement” means the beginning of the day specified in regulation 1(2);

“pre-existing fund” means an experienced investor fund which immediately before commencement was deemed to be authorised in accordance with regulation 4 of the 2012 Regulations.

(2) The 2012 Regulations are revoked.

(3) Any pre-existing fund is to be deemed, on and after commencement, as being authorised under regulation 6 of these Regulations.

(4) Any person who immediately before commencement was a person approved or authorised by the Authority under regulation 7 of the 2012 Regulations is to be deemed, on and after commencement, as holding a consent given by the Authority under regulation 10(1) of these Regulations.

(5) Where a period of time specified in the 2012 Regulations is current immediately before commencement, and a period of time is also specified in a corresponding provision of these Regulations, these Regulations have

effect as if the corresponding provision of these Regulations had been in force when that period began to run.

(6) Anything done, if effective immediately before commencement, has effect on and after commencement as if done under or for the purposes of the corresponding provision of these Regulations.

(7) Sub-regulations (5) and (6) do not apply to any period specified in, or anything done under, regulation 4(1) to (7) of the 2012 Regulations by or in relation to an experienced investor fund which is not a pre-existing fund; and, accordingly—

- (a) any notification or other document filed with the Authority under regulation 4(3) of the 2012 Regulations, and any notice issued by the Authority under regulation 4(4) of those Regulations, is to be disregarded; and
- (b) the fund may only be established and authorised as an experienced investor fund in accordance with these Regulations.

(8) During the period of 6 months starting with commencement, a pre-existing fund need not make any changes to the fund's offer document solely for the purpose of complying with these Regulations if and to the extent that the pre-existing fund instead continues to comply with requirements applicable to the offer document which were contained in the 2012 Regulations.

**SCHEDULE
CONTENTS OF OFFER DOCUMENT**

1. For the purposes of regulation 17(2), the information and statements which are to be contained in the offer document of an experienced investor fund are those specified in paragraphs 2 to 27.

2. A statement to the following effect—

“The person or persons responsible for the management and control of the experienced investor fund has/have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. The person or persons responsible for the management and control of the experienced investor fund in accordance accept responsibility accordingly.”

3. An explanation of the structure of the experienced investor fund, including brief particulars of the constituting documents of the experienced investor fund and details of how to obtain complete copies of the constituting documents.

4. The full name and address of—

- (a) the name of the person or persons who are responsible for the management and control of the experienced investor fund (including their relationship to the experienced investor fund);
- (b) the administrator of the experienced investor fund;
- (c) the bank and/or broker who acts for the experienced investor fund under regulation 12;
- (d) the investment manager (if any) of the experienced investor fund;
- (e) any other person or persons who perform a material function in relation to the experienced investor fund, including—
 - (i) any director, partner, or trustee who is not a controller of the fund;
 - (ii) any investment adviser;
 - (iii) any secretary;

- (f) the auditor of the experienced investor fund; and
- (g) the legal adviser to the experienced investor fund.

5. Details of the relevant authorisations to act of each of the persons listed in paragraph 4.

6. Details of the experience and qualifications of the person or persons responsible for the management and control of the experienced investor fund.

7. Disclosure of who manages the investment activity of the experienced investor fund.

8. Details of the manner in which each of the persons specified in paragraph 4 may be appointed and replaced.

9. In the case of an entity established as a company, details of its registered office, the place and date of its incorporation and details of its share capital.

10. If the administrator of the experienced investor fund is a person within regulation 9(3)(b), the name and address of the Gibraltar agent for service referred to in regulation 9(4).

11. If the controller of the experienced investor fund is a person within regulation 10(1)(d), the name and address of the Gibraltar agent for service referred to in regulation 10(9).

12. Details of any intention to delegate functions in accordance with regulation 11.

13. Any conflicts of interest that may exist in relation to the experienced investor fund.

14. The investment objective and investment strategies to be employed by the experienced investor fund, including the experienced investor fund's approach to borrowing and leverage, and any investment or leverage restrictions applicable to the experienced investor fund.

15. The process for notification and remedy of breach of any investment or leverage restrictions applicable to the experienced investor fund.

16. The manner in which changes likely to have a material effect on participants may be made to the experienced investor fund and notified to the participants.

17. The basis upon which the value of the experienced investor fund is to be calculated and the basis upon which the value of units in the experienced investor fund is to be determined.
18. The manner in which errors in valuation likely to have a material effect on participants will be dealt with and notified to the participants.
19. The manner in which units in the experienced investor fund are to be created, issued and paid for, cancelled and redeemed.
20. The manner in which meetings of participants are to be convened and managed generally and the manner in which voting by participants is to be conducted.
21. The fees, charges and expenses payable from the property of the experienced investor fund.
22. The address at which the most recent audited financial statements of the experienced investor fund may be inspected.
23. The address where the register of participants can be inspected.
24. The manner in which any voting rights in underlying assets held by the experienced investor fund will be exercised.
25. The arrangements for the safe custody of the assets of the experienced investor fund, including disclosure, if applicable, of prime broker arrangements.
26. In the case of an experienced investor fund with sub-funds (including a protected cell company)—
 - (a) details of the “ring-fencing” of assets within sub-funds; or
 - (b) if there is no such arrangement, a statement to the effect that “in the event of the experienced investor fund being unable to meet liabilities attributable to any particular sub-fund out of the assets attributable to that sub-fund, the excess liabilities may be met out of the assets attributable to the other sub-funds”, together with an explanation of the manner in which such liabilities may be apportioned.
27. A statement to the effect that “further information in relation to the regulatory treatment of experienced investor funds in Gibraltar may be obtained from the Gibraltar Financial Services Commission”.