

Subsidiary Legislation made under ss.24(3)(v) and 339(1).

Financial Services (Experienced Investor Funds) Regulations 2020

LN.2020/039

	<i>Commencement</i>	15.1.2020
Amending enactments	Relevant current provisions	Commencement date
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In exercise of the powers conferred on the Minister by section 24(3)(v) and 339(1) of the Financial Services Act 2019, the Minister has made these Regulations.

**PART 1
PRELIMINARY**

Title and commencement.

1.(1) These Regulations may be cited as the Financial Services (Experienced Investor Funds) Regulations 2020.

(2) These Regulations come into operation on the day of publication.

Interpretation.

2. In these Regulations—

“the Act” means the Financial Services Act 2019;

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

“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);

“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);

“Part 7 permission” means permission under Part 7 of the Act;

“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 Gibraltar; or
- (b) in another jurisdiction which the GFSC 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 meaning given in the Protected Cell Companies Act 2001; and

“third country” means a country or territory outside Gibraltar; and

“working day” means any day other than a Saturday, Sunday or which is a bank holiday or public holiday.

**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 pension fund assets and principal place of residence;

- (f) *Omitted*
- (g) a participant who invests, or in aggregate has investments of, at least €100,000 in one or more experienced investor funds and–
- (i) is a certified high net worth investor, certified sophisticated investor or self-certified sophisticated investor; or
 - (ii) does so on the basis of solicited advice;
- (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 (Investment Services) Regulations 2020; or
- (j) a participant in a fund that has re-domiciled to Gibraltar where the GFSC 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.
- (1A) Despite falling within one of the categories in sub-regulation (1), a pension fund (or its trustees) only qualifies as an experienced investor if, at the time of the investment–
- (a) each beneficiary of the pension fund qualifies as an experienced investor under regulation 3(1)(a) or (e); or
 - (b) the investment, when aggregated with the pension fund’s other investments in experienced investor funds (if any), does not exceed 10% of the total assets of the pension fund.
- (1B) For the purposes of sub-regulation (1A), “trustee” includes a director of a company which is a trustee of a pension fund or the manager of a pension fund which is not established under trust.

(2) The GFSC 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 GFSC 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.

High net worth and sophisticated investors.

3A.(1) For the purposes of regulation 3(1)(g)(i)–

- (a) a “certified high net worth investor” is an individual who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 1 of Schedule 2;
- (b) a “certified sophisticated investor” is an individual–
 - (i) who has a written certificate signed within the last 36 months by a professional adviser confirming the individual has been assessed by that professional adviser as sufficiently knowledgeable to understand the risks associated with engaging in investment activity in experienced investor funds; and
 - (ii) who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 2 of Schedule 2; and
- (c) a “self-certified sophisticated investor” is an individual who has signed, within the period of twelve months ending with the day on which the investment is made, a statement in the form specified in Part 3 of Schedule 2.

(2) An experienced investor fund which seeks to rely on a statement provided by an investor in accordance with sub-regulation (1)(a), (b) or (c) must take reasonable steps to ascertain that the investor meets the criteria set out in the statement.

Solicited advice.

3B.(1) For the purposes of regulation 3(1)(g)(ii), an investment in an experienced investor fund is made by a person (“P”) on the basis of solicited advice if–

- (a) P made a specific request to a professional adviser for advice on the merits of investing in the experienced investor fund;

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- (b) the professional adviser, in response to that request; made a personal recommendation to P in respect of the experienced investor fund; and
- (c) P has not previously received a financial promotion or any other communication from the professional adviser (or any person connected to the professional adviser) which is intended to influence P in respect to that experienced investor fund.

(2) In sub-regulation (1), “personal recommendation” has the meaning given in paragraph 52(3) and (4) of Schedule 2 to the Act.

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;
 - (ii) a protected cell company;
 - (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;
 - (iv) a limited partnership under the Limited Partnerships Act 2021;
 - (iva) a protected cell limited partnership under the Protected Cell Limited Partnerships Act 2021;
 - (v) established in any other form recognised under the law of Gibraltar that may be approved by the GFSC, either in respect of a specific experienced investor fund or generally; or
 - (vi) a legal entity established in the United Kingdom in a form which is recognised under the law of Gibraltar and is approved by the GFSC; 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 327(2) of the Act, any provision which that section has replaced or a broadly similar provision in another jurisdiction;
- (b) condition B is that regulation 5(4)(a) is complied with and the GFSC 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 five years professional standing;
- (ii) is 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 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 GFSC—
- (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 GFSC may require.
- (3) The notice required by sub-regulation (2)(a) must be in writing, in the form required by the GFSC and accompanied by the prescribed fee.
- (4) All of the documents required by sub-regulation (2) must be sent to the GFSC either–
- (a) not later than 10 working days before the date of establishment of E as an experienced investor fund; or
 - (b) within 10 working 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 GFSC may no later than 10 working 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 GFSC may require;

- (b) issue a written notice to E requiring such changes in connection with E as the GFSC considers necessary to comply with the relevant provisions of the 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 working 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 GFSC issues a notice under sub-regulation (3)(a) or (b), E is not authorised under these Regulations until such time as the GFSC—
- (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 GFSC revokes its authorisation under section 327(2) of the Act.
- (8) In the application of the Act in relation to experienced investor funds, any reference to an authorisation granted under Chapter 3 of Part 18 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).

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- (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 GFSC 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 regulation 10(2)(a) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020, the experienced investor fund informs the GFSC that it is to be known as such;
 - (b) in the case of an experienced investor fund managed by an in-scope AIFM within regulation 10(2)(b) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020, the GFSC 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 as a UCITS scheme under Part 18 of the Act;

“AIFM” means a legal person whose regular business is managing one or more AIFs (irrespective of whether the person is within regulation 10(2)(a) or (b) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020);

“in scope AIFM” means an AIFM that has Part 7 permission for the regulated activity of managing an AIF (in-scope AIFM) in paragraph 95 of Schedule 2 to the Act.

PART 4 OPERATION

Conduct of business

General principles.

8A.(1) The controller and administrator of an experienced investor fund and any other person concerned in its promotion, management or control must at all times—

- (a) act honestly, with due skill, care and diligence and fairly in conducting their activities;
- (b) act in the best interests of the experienced investor fund, its investors and the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;
- (d) take all reasonable steps to avoid conflicts of interest or, when they cannot be avoided, to identify, manage, monitor and (where applicable) disclose them, in order to prevent them from adversely affecting the interests of the experienced investor fund and its investors and to ensure that investors are fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the experienced investor fund, its investors and the integrity of the market; and
- (f) treat all investors fairly; in particular, no investor in the experienced investor fund may obtain preferential treatment, unless it is disclosed appropriately.

(2) For the purposes of assessing compliance with sub-regulation (1), the GFSC may apply the criteria in Articles 17 to 29 of Commission Delegated Regulation (EU) No 231/2013–

- (a) as if references in those criteria–
 - (i) to AIFs were references to experienced investor funds; and
 - (ii) to AIFMs were references to controllers, administrators and other persons concerned in the promotion, management or control of experienced investor funds; and
- (b) with any other necessary modifications.

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 who has a Part 7 permission to undertake the activity in paragraph 102 of Schedule 2 to the Act (acting as administrator of a collective investment scheme); or
- (b) an administrator who does not have a permission of that kind but–
 - (i) is established and authorised in a third country which the GFSC 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 GFSC 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 GFSC 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; and
- (c) is capable of being effectively supervised by the GFSC, having regard to all the circumstances.
- (d) *Omitted*

(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 two persons who each hold a consent given by the GFSC 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 two persons who each hold a consent given by the GFSC under sub-regulation (1).

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

- (a) have at least two trustees who each hold a consent given by the GFSC under sub-regulation (1); or
- (b) have at least one trustee which is a corporate entity whose board of directors includes at least two 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 two persons who each hold a consent given by the GFSC 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) The GFSC may require a person who holds a consent under sub-regulation (1) and is not ordinarily resident in Gibraltar to have an agent for service in Gibraltar.

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 GFSC.

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

(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 with Part 7 permission to carry on the regulated activity of accepting deposits;
- (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;
- (d) any credit institution that–
 - (i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;
 - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
 - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
 - (iv) has a surplus of revenue over expenditure for the last two financial years; and
 - (v) has an annual report which is not materially qualified;
- (e) an authorised person with Part 7 permission for the regulated activity of providing one or more investment services and activities in paragraphs 48 to 56 of Schedule 2 to the Act and authorised to provide the ancillary service of safekeeping and administration of financial instruments for the account of clients as provided for in sub-paragraph 1 of paragraph 45(2) of Schedule 2 to the Act;
- (f) a UK investment firm; or
- (g) a body corporate which is established and authorised in another jurisdiction which the GFSC 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.

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(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 GFSC in such form as it may direct, the GFSC determines that the arrangements required by that sub-regulation would not be appropriate in all the circumstances.

(4) The GFSC 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–

“UK investment firm” means a firm which is established in the United Kingdom and authorised under the law of the United Kingdom as an investment firm to carry out the equivalent of the regulated activity and ancillary service specified in regulation 12(1)(e).

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 Part 24 of the Act; 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 GFSC 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 working 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 GFSC may take such enforcement action under the 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) An 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

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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 Schedule 1 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 2020.

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 GFSC;
- (b) any updates of the offer document must be translated into English and filed with the GFSC; and
- (c) the English language version is determinative of any matter arising in connection with the offer document.

Reporting

Obligation to provide information.

17A.(1) The controller of an experienced investor fund must provide the GFSC with information on—

- (a) the experienced investor fund's investment strategies;
- (b) the main instruments in which the experienced investor fund is trading; and
- (c) the experienced investor fund's principal exposures and most important concentrations.

(2) The information in sub-regulation (1) must be provided from time to time, in accordance with guidance issued by the GFSC, and must be sufficient to enable the GFSC to monitor systemic risk effectively.

(3) The controller of an experienced investor fund must notify the GFSC of any material change to any information provided in accordance with sub-regulation (1)–

- (a) in the case of a change planned by the experienced investor fund, at least one month before implementing the change; and
- (b) in any other case, immediately after the change occurs.

(4) Schedule 3 makes further provision in respect of the reporting obligations under this regulation.

Duties to notify the GFSC.

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

(2) The controller of an experienced investor fund must ensure that any material change to information provided to the GFSC in connection with the experienced investor fund is notified to the GFSC within 20 working 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 GFSC; and

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- (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 GFSC may specify; and
 - (b) must be filed with the GFSC, in such manner as it may specify–
 - (i) within six 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 nine months of the end of that period; or
 - (iii) by such other time as may the GFSC may determine.

Annual returns to the GFSC.

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 GFSC.

- (2) An annual return must–
- (a) be in such form, contain such information and be filed in such manner as the GFSC may specify; and
 - (b) be delivered to the GFSC 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 GFSC may allow the fund such additional period as it may specify in which to comply beyond the time specified in these Regulations.

Persons with consent given under regulation 10(1).

22.(1) This regulation applies to any person (“P”) who holds consent given by the GFSC under regulation 10(1).

(2) The provisions of the Financial Services (Fiduciary Services) Regulations 2020 apply to P as they apply to a person who has a Part 7 permission to undertake the activity in paragraph 126 of Schedule 2 to the Act (acting as a company manager).

(3) In the application of those Regulations for the purposes of sub-regulation (2)–

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

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

- (a) at P’s request; or
- (b) if the GFSC 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 GFSC–

- (a) proposes to revoke P’s consent under sub-regulation (4)(b), it must give P a warning notice; or
- (b) decides to revoke P’s consent under sub-regulation (4)(b), it must give P a decision notice,

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and sections 612 to 614 of the Act apply to a notice under this sub-regulation.

(6) The issue of a decision notice under sub-regulation (5)(b) is a specified regulatory decision to which section 24(3) of the Act applies.

(6A) A GFSC decision to issue a decision notice does not fall within sub-regulation (6) if the recipient has received a warning notice and—

- (a) has agreed in writing to the steps proposed in the warning notice being taken; or
- (b) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).

(7) A person aggrieved by a decision notice under subsection (5)(b) may appeal under section 615 of the Act.

Ceasing to be an authorised experienced investor fund.

23.(1) An experienced investor fund which is authorised under regulation 6 may at any time apply to the GFSC for the GFSC 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 GFSC may require.

(3) Where the GFSC is satisfied that the experienced investor fund will no longer be promoted and will not accept any further subscriptions under its offer document, the GFSC 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.

Regulatory powers

Powers of GFSC.

23A.(1) Without limiting any of its other powers, for the purpose of supervising or investigating compliance with the Act and these Regulations, the GFSC may—

- (a) require information from any person related to the activities of an experienced investor fund and, if necessary, summon and question a person with a view to obtaining information;
- (b) carry out on-site inspections with or without prior announcements;
- (c) require existing telephone and existing data traffic records;
- (d) require the cessation of any practice that is contrary to the Act or these Regulations;
- (e) request the freezing or the sequestration of assets;
- (f) request the temporary prohibition of professional activity;
- (g) adopt any type of measure to ensure that an experienced investor fund continues to comply with the Act and these Regulations;
- (h) require the suspension of the issue, repurchase or redemption of units in the fund in the interest of investors or the public;
- (i) appoint a liquidator or make other provision for the winding down of an experienced investor fund;
- (j) refer matters for criminal prosecution;
- (k) request that auditors or experts carry out verifications or investigations.

(2) The GFSC may take any action it considers necessary in order to ensure the orderly functioning of a market in any cases where the activity of one or more experienced investor funds could jeopardise the orderly functioning of that market.

Appeals.

24.(1) A person who is aggrieved by a decision made by the GFSC 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**

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Offences

Offence relating to the promotion of experienced investor funds.

25.(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.

26.(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 GFSC 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 GFSC 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.

27.(1) In this regulation—

“the 2018 Regulations” means the Financial Services (Experienced Investor Funds) Regulations 2018;

“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 6 of the 2018 Regulations.

- (2) The 2018 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) A person who immediately before commencement held or was treated as holding a consent given by the GFSC under regulation 10(1) of the 2018 Regulations is to be deemed, on and after commencement, as holding a consent given by the GFSC under regulation 10(1) of these Regulations.

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(5) Where a period of time specified in the 2018 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, regulations 4 to 6 of the 2018 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 GFSC under regulation 5(2) of the 2018 Regulations, and any notice issued by the GFSC under regulation 6(3) 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 12 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 2018 Regulations.

SCHEDULE 1
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 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 who performs 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;

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- (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 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”.

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SCHEDULE 2

Regulation 3A.

PART 1

STATEMENT BY CERTIFIED HIGH NET WORTH INVESTOR

“HIGH NET WORTH INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.
2. I declare that I am a certified high net worth investor and qualify as such because at least one of the following applies to me:
 - (a) I had, throughout the financial year immediately preceding the date below, an annual income to the value of £100,000 or more, excluding money withdrawn from my pension savings (other than withdrawals used directly for income in retirement);
 - (b) I held, throughout the financial year immediately preceding the date below, net assets to the value of £250,000 or more, excluding all of the following–
 - (i) the property which is my primary residence or any money raised through a loan secured on that property;
 - (ii) any rights of mine under a contract of life insurance falling within a class listed in paragraph 23 of Schedule 2 to the Financial Services Act 2019;
 - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be, entitled; and
 - (iv) any withdrawals from my pension savings (other than withdrawals used directly for income in retirement).
3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.
4. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on experienced investor funds.

Signature:

Date:

**PART 2
STATEMENT BY CERTIFIED SOPHISTICATED INVESTOR**

SOPHISTICATED INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.
2. I declare that I am a certified sophisticated investor.
3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.
4. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on experienced investor funds.

Signature:

Date:

**PART 3
STATEMENT BY SELF-CERTIFIED SOPHISTICATED INVESTOR**

SELF-CERTIFIED SOPHISTICATED INVESTOR STATEMENT

1. I make this statement so that, in accordance with regulation 3(1)(g)(i) of the Financial Services (Experienced Investor Funds) Regulations 2020, I can invest in an experienced investor fund.
2. I declare that I am a self-certified sophisticated investor and qualify as such because at least one of the following applies to me:
 - (a) I am a member of a network or syndicate of business angels and have been so for at least the last six months prior to the date below;
 - (b) I have made more than one investment in an unlisted company in the two years prior to the date below;

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- (c) I am working, or have worked in the two years prior to the date below, in a professional capacity in the private equity sector, or in the provision of finance for small and medium enterprises;
 - (d) I am currently, or have been in the two years prior to the date below, a director of a company with an annual turnover of at least £1 million.
3. I accept that investing in an experienced investor fund may expose me to a significant risk of losing all of the money or other property invested.
4. I am aware that it is open to me to seek advice from someone who specialises in advising on experienced investor funds.

Signature:

Date:

SCHEDULE 3

Regulation 17A.

REPORTING TO GFSC

1. In order to comply with regulation 17A, the controller of an experienced investor fund must provide the following information when reporting to the GFSC—

- (a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the fund's investment strategies and their geographical and sectoral investment focus;
- (b) the markets of which it is a member or where it actively trades;
- (c) the diversification of the fund's portfolio, including, but not limited to, its principal exposures and most important concentrations.

The information must be provided as soon as possible and not later than one month after the end of the period specified in paragraph 2.

2. The information in paragraph 1 must be reported –

- (a) on a half-yearly basis by experienced investor funds whose assets under management in total exceed the relevant threshold but do not exceed €1 billion;
- (b) on a quarterly basis by experienced investor funds whose assets under management in total exceed €1 billion;
- (c) on a quarterly basis by experienced investor funds which are subject to the requirements in sub-paragraph (a), for each fund whose assets under management, including any assets acquired through use of leverage, in total exceed €500 million, in respect of that fund;
- (d) on an annual basis by experienced investor funds in respect of each unleveraged fund under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.

3. For the purposes of paragraph 2—

- (a) an experienced investor fund's assets under management are to be calculated in accordance with Article 2 of Commission Delegated Regulation (EU) No 231/2013, which is to apply with any necessary modifications; and

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- (b) the “relevant threshold” means an experienced investor fund which either directly or indirectly, through a company with which the fund is linked by common management or control, or by a substantive direct or indirect holding, manages portfolios of funds whose assets under management—
- (i) including any assets acquired through use of leverage, in total do not exceed a threshold of €100 million; or
 - (ii) in total do not exceed a threshold of €500 million when the portfolios consist of funds that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each fund.
4. Despite paragraph 2, the GFSC may require an experienced investor fund to report the information specified under paragraph 1 on a more frequent basis, where the GFSC considers it is appropriate and necessary for the exercise of its functions.
5. The controller of an experienced investor fund must provide the information specified under paragraph 1 in the form and manner that the GFSC may require.”.

Saving for existing investors.

4. Nothing in regulation 3 affects the right of a person who qualified as an experienced investor before the date on which that regulation came into operation to continue to be treated as an experienced investor in respect of investments in experienced investor funds made by that person before that date.