

**EUROPEAN LONG-TERM INVESTMENT FUNDS REGULATION
INSTRUMENT 2015**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 9 December 2015.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Investment Funds sourcebook (FUND)	Annex D

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- F. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

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Citation

- G. This instrument may be cited as the European Long-Term Investment Funds Regulation Instrument 2015.

By order of the Board
3 December 2015

Annex A**Amendments to the Glossary of definitions**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>EEA ELTIF</i>	an <i>ELTIF</i> authorised by a <i>competent authority</i> other than the <i>FCA</i> under the <i>ELTIF regulation</i> .
<i>ELTIF</i>	a European long-term investment fund (as defined in the <i>ELTIF regulation</i>) authorised under the <i>ELTIF regulation</i> .
<i>ELTIF regulation</i>	Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&from=EN).
<i>UK ELTIF</i>	an <i>ELTIF</i> authorised by the <i>FCA</i> under the <i>ELTIF regulation</i> .

Annex B

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

...

(2) *FEES* 1, 2 and 4 apply to:

...

(da) every AIFM of a UK ELTIF;

...

...

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable	Due date
...
(d) Applicants for an <i>authorisation order</i> for, or recognition under section 272 of the Act of, a <i>collective investment scheme</i>	<i>FEES</i> 3 Annex 2R, part 2	On or before the application is made

<u>(da) Applicants for the authorisation of an AIF as a UK ELTIF</u>	<u>FEES 3 Annex 2R, part 2A</u>	<u>On or before the date the application is made</u>
...

...

...

3 Annex 2R Application and notification fees payable in relation to collective investment schemes, ELTIFs and AIFs marketed in the UK

Legislative provision	Nature and purpose of fee	Payable by	Amount of fee (£)	Umbrella factor
...
Part 2 Application fees payable for firms to be subject to <i>COLL</i>				
...
Section 272 of the <i>Act</i>
<u>Part 2A Application fees payable for firms applying for a UK AIF to be authorised under the ELTIF regulation</u>				
<u>Article 5 of the ELTIF regulation</u>	<u>On application for an AIF to be authorised under the ELTIF regulation</u>	<u>An applicant</u>	<u>2,400</u>	<u>2</u>
...				

...

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.11 R Table of periodic fees payable to the FCA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period
-------------	---------------	------------	--------------------------------------

			leading to modified periodic fee
...			
<i>Persons who, under the constitution or founding arrangements of a recognised scheme, is are responsible for the management of the property held for or within the scheme</i>	
<u>AIFM of a UK ELTIF</u>	<u>In relation to each ELTIF the amount specified in part 1 of FEES 4 Annex 4</u>	(1) Unless (2) applies, on or before 1 August or, if later, within 30 days of the date of the invoice. (2) If an event in column 4 occurs during the course of a fee year, 30 days after the occurrence of that event.	<u>The ELTIF is authorised by the FCA under the ELTIF regulation</u>
...	

...

...

4 Annex 4R Periodic fees in relation to collective investment schemes, AIFs marketed in the UK and small registered UK AIFMs payable for the period 1 April 2015 to 31 March 2016

Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/ sub-funds aggregate	Fund factor	Fee (£)
...	595	1-2	1	595
ACS,		3-6	2.5	1,488
<u>UK ELTIFs</u> ,		7-15	5	2,975
Section 264 of the Act,		16-50	11	6,545
...		>50	22	13,090

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

18 Specialist Regimes

...

18.5 Residual CIS operators, UCITS management companies and AIFMs

Application

18.5.1 R Subject to *COBS* 18.5.1AR and *COBS* 18.5.1BR, this section applies to a *firm* which is:

...

...

- 18.5.1B R (1) ~~Only~~ The following apply to a *full-scope UK AIFM* in relation to its *AIF management functions*:
- (a) *COBS* 18.5.1R to *COBS* 18.5.2-AG;
 - (b) *COBS* 18.5.3R;
 - (c) *COBS* 18.5.4AR, ~~*COBS* 18.5.4CR to *COBS* 18.5.4DG~~; and
 - (d) *COBS* 18.5.10AR, except as set out in (2) apply to a *full-scope UK AIFM*,
- (2) ~~with the exception that *COBS* 18.5.10AR does not apply to a *full-scope UK AIFM* of:~~
- (a) a *UK ELTIF* or an *EEA ELTIF*; or
 - (b) an *unauthorised AIF* which is not a *collective investment scheme*.
- (3) In addition to (1) and (2), *COBS* 18.5.4CR to *COBS* 18.5.4DG only apply to a *full-scope UK AIFM* that is an *internally managed AIF*.

Annex D

Amendments to the Investment Funds sourcebook (FUND)

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

1 Introduction

...

1.1 Application and purpose

- 1.1.1 R (1) The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

Type of firm	Applicable chapters
...	
<i>full-scope UK AIFM of an authorised AIF</i>	Chapters 1, 3 and 10
<u><i>full-scope UK AIFM of an ELTIF</i></u>	<u>Chapters 1, 3, 4.2 and 10</u>
...	
<i>depository of an AIF managed by a full-scope UK AIFM</i>	Chapters 1 and 3
<u><i>depository of a UK ELTIF managed by a full-scope UK AIFM</i></u>	<u>Chapters 1, 3 and 4.2</u>
<u><i>depository of a UK ELTIF managed by a full-scope EEA AIFM</i></u>	<u>Chapters 1, 3 and 4.2</u>

...

...

1.2 Structure of the ~~investment funds~~ Investment Funds sourcebook

Structure of the ~~investment funds~~ Investment Funds sourcebook

- 1.2.1 G *FUND* is structured as follows:

...

[A description of FUND ~~4~~ 5 to 9 will follow when the relevant sections in

FUND are introduced.]

- (4) *FUND 4 sets out some requirements in relation to European AIF regimes.*

...

...

3 Requirements for alternative investment fund managers

...

3.12 Marketing in the home Member State of the AIFM

...

Marketing an ELTIF

- 3.12.7 G To market an *ELTIF* in the *United Kingdom* a *full-scope UK AIFM* should submit a notice to the *FCA* using the forms in:

- (1) *FUND 3 Annex 1D (Notification of intention to market an AIF in the United Kingdom); and*
- (2) *FUND 4 Annex 1R (Additional documentation and information to market an ELTIF).*

...

4 ~~Common requirements for all retail funds~~ European AIF regimes

4.1 {to follow}

The following text is new and is not underlined.

4.1 Application

- 4.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

Type of firm	Applicable sections
<i>Full-scope UK AIFM of a UK ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>
<i>Full-scope UK AIFM of an EEA ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>
<i>UK depositary of a UK ELTIF.</i>	<i>FUND 4.2 (ELTIFs)</i>

4.2 ELTIFs

Application

- 4.2.1 R This section applies to:
- (1) a *full-scope UK AIFM* of:
 - (a) a *UK ELTIF*; or
 - (b) an *EEA ELTIF*; and
 - (2) a *UK depositary* of a *UK ELTIF*.

The ELTIF regulation

- 4.2.2 G (1) The *ELTIF regulation* lays down uniform rules on the authorisation, investment policies and operating conditions of *UK AIFs* or *EEA AIFs*, or compartments of those *AIFs*, that are *marketed* in the *EEA* as European long-term investment funds (*ELTIFs*).
- (2) The *ELTIF regulation* is a directly applicable *EU* regulation.

Interaction between the ELTIF regulation and AIFMD

- 4.2.3 G (1) To be eligible to manage an *ELTIF*, an *AIFM* needs to be:
- (a) a *full-scope UK AIFM*; or
 - (b) a *full-scope EEA AIFM*.
- (2) This means that the *AIFM* and the *depositary* of an *ELTIF* need to comply with the applicable requirements of:
- (a) *AIFMD*; and
 - (b) the *ELTIF regulation*.

Specific depositary provisions where an ELTIF is marketed to retail investors

- 4.2.4 G (1) Article 29 of the *ELTIF regulation* contains specific provisions concerning the *depositary* of an *ELTIF* that is *marketed to retail clients* which have the effect of amending the corresponding provisions of *AIFMD*.
- (2) Article 29 of the *ELTIF regulation* is replicated in *FUND 4.2.5EU*.
- (3) These specific provisions and the corresponding *AIFMD* provisions and *UK* transposition are summarised in *FUND 4.2.6G*.

- (4) Where these specific provisions conflict with a *rule* or *guidance*, the relevant *rule* or *guidance* has been disapplied in *FUND* 4.2.7R.

4.2.5

EU

Specific provisions concerning the depositary of an ELTIF marketed to retail investors	
1.	By way of derogation from article 21(3) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall be an entity of the type referred to in article 23(2) of Directive 2009/65/EC.
2.	By way of derogation from the second subparagraph of article 21(13) and article 21(14) of Directive 2011/61/EU, the depositary of an ELTIF marketed to retail investors shall not be able to discharge itself of liability in the event of a loss of financial instruments held in custody by a third party.
3.	The liability of the depositary referred to in article 21(12) of Directive 2011/61/EU shall not be excluded or limited by agreement where the ELTIF is marketed to retail investors.
4.	Any agreement that contravenes paragraph 3 shall be void.
5.	The assets held in custody by the depositary of an ELTIF shall not be reused by the depositary, or by any third party to whom the custody function has been delegated, for their own account. Reuse comprises any transaction involving assets held in custody including, but not limited to, transferring, pledging, selling and lending.
	The assets held in custody by the depositary of an ELTIF are only allowed to be reused provided that:
(a)	the reuse of the assets is executed for the account of the ELTIF;
(b)	the depositary is carrying out the instructions of the manager of the ELTIF on behalf of the ELTIF;
(c)	the reuse is for the benefit of the ELTIF and in the interests of the unit- or shareholders; and
(d)	the transaction is covered by high quality and liquid collateral received by the ELTIF under a title transfer arrangement.
	The market value of the collateral referred to in point (d) of the second subparagraph shall at all times amount to at least the market value of the reused assets plus a premium.

[**Note:** article 29 of the *ELTIF regulation*]

Summary of specific provisions concerning the depositary of an ELTIF marketed to retail investors

4.2.6

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	ELTIF regulation	AIFMD reference	UK transposition
(1)	Article 29(1) of the <i>ELTIF regulation</i>	Article 21(3) of <i>AIFMD</i>	<i>FUND</i> 3.11.10R to <i>FUND</i> 3.11.15G and <i>FUND</i> 3.11.18R
(2)	Article 29(2) of the <i>ELTIF regulation</i>	Second paragraph of article 21(13) and 21(14) of <i>AIFMD</i>	Regulations 30(4) and (5) and 32 of the <i>AIFMD UK regulation</i> (Note 1)
(3)	Article 29(3) of the <i>ELTIF regulation</i>	Article 21(12) of <i>AIFMD</i>	Regulations 30(1) to (3) and 31(1) of the <i>AIFMD UK regulation</i> (Note 2)
(4)	Article 29(5) of the <i>ELTIF regulation</i>	Article 21(10) third paragraph of <i>AIFMD</i>	<i>FUND</i> 3.11.24R
<p>Note 1: The <i>AIFMD UK regulation</i> was amended by The European Long-term Investment Funds Regulations 2015 (SI 2015/1882) so that these regulations do not apply to a <i>depositary</i> of an <i>EEA ELTIF</i> or a <i>UK ELTIF</i> that is <i>marketed to retail clients</i> under Chapter V of the <i>ELTIF Regulation</i> (see regulations 30(7) and 32(3) of the <i>AIFMD UK regulation</i>).</p> <p>Note 2: No modifications are needed to these provisions as the liability of the <i>depositary</i> referred to in article 21(12) of <i>AIFMD</i> is unaffected by the <i>ELTIF regulation</i>.</p>			

Disapplication of FUND depositary provisions for an ELTIF marketed to retail investors

4.2.7

R The following provisions do not apply when an *ELTIF* is *marketed to a retail client*:

- (1) *FUND* 3.11.10R to *FUND* 3.11.15G (Eligible depositaries for UK AIFs);
- (2) *FUND* 3.11.18R (Eligible depositaries for EEA AIFs); and
- (3) *FUND* 3.11.24R (Reuse of assets).

Documentation and information required to market an ELTIF

4.2.8

G

- (1) To *market* an *ELTIF* an *AIFM* is required to:
 - (a) notify its *competent authority* in accordance with article 31 of *AIFMD*, if it wishes to *market* the *ELTIF* in the *Home State*

of the *AIFM* (see article 31(1) of the *ELTIF regulation*);

- (b) notify its *competent authority* in accordance with article 32 of *AIFMD*, if it wishes to *market* the *ELTIF* in a *Host State* of the *AIFM* (see article 31(2) of the *ELTIF regulation*); and
- (c) provide the following additional documentation and information to its *competent authority* (see article 31(4) of the *ELTIF regulation*):
 - (i) the prospectus of the *ELTIF*;
 - (ii) the key information document of the *ELTIF* in the event that it is *marketed to retail clients*; and
 - (iii) information on the facilities referred to in article 26 of the *ELTIF regulation*.

- (2) To *market* an *ELTIF*, a *full-scope UK AIFM* should submit a notice to the *FCA* using the forms in:
 - (a) *FUND 3 Annex 1D* (Notification of intention to market an *AIF* in the United Kingdom) to *market* an *ELTIF* in the *United Kingdom*;
 - (b) *SUP 13 Annex 8BR* (Passporting: *AIFMD*) to *market* an *ELTIF* in an *EEA State* other than the *United Kingdom*; and
 - (c) *FUND 4 Annex 1R* (Additional documentation and information to market an *ELTIF*) (as required by *FUND 4.2.9R*).

- 4.2.9 R The *AIFM* of an *ELTIF* must submit a notice to the *FCA* using the form in *FUND 4 Annex 1R* (Additional documentation and information to market an *ELTIF*) to *market* the *ELTIF*.

Interaction between *ELTIFs* and authorised funds

- 4.2.10 G (1) The requirements in relation to an *ELTIF* are set out in the *ELTIF regulation* rather than in *FCA rules*.
- (2) (a) As a result, the *Glossary* term of an *authorised fund* has only limited application to an *ELTIF*.
- (b) This is to avoid all the requirements for an *authorised AIF* applying to an *AIFM* or *depository* of an *ELTIF*.
- 4.2.11 G (1) However, a *full-scope UK AIFM* of a *UK ELTIF* needs to obtain the *permission of managing an AIF* that is an *authorised AIF*.
- (2) Similarly, the *depository* of a *UK ELTIF* needs to obtain the

permission of acting as trustee or a depositary of an AIF that is an authorised AIF.

- (3) (a) Where the requirements for an *AIFM* or a *depositary* of an *ELTIF* are concerned, an *ELTIF* bears more of a resemblance to an *authorised AIF* than an *unauthorised AIF*.
- (b) As a result, *firms* that do not have the *permission to manage an AIF that is an authorised AIF* or *act as a trustee or depositary of an AIF that is an authorised AIF* will need to vary their *permission* to be able to act as the *AIFM* or *depositary* of an *ELTIF*.

4 Annex 1R Additional documentation and information to market an ELTIF

[For text of form see end of instrument]

Amend the following as shown.

10 Operating on a cross-border basis

...

10.3 AIFM marketing passport

...

Marketing an ELTIF

10.3.7 G To market an ELTIF in an EEA State other than the United Kingdom a full-scope UK AIFM should submit a notice to the FCA using the forms in:

- (1) SUP 13 Annex 8BR (Passporting: AIFMD); and
- (2) FUND 4 Annex 1R (Additional documentation and information to market an ELTIF).

...

Transitional Provisions and Schedules

TP 1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: date in force	Handbook provisions: coming into force
...					
2	<i>FUND 3.11.10R</i>	R	An <i>AIFM</i> may ensure the appointment of a <i>credit institution</i> that is <i>established</i> in an <i>EEA State</i> other than the <i>UK</i> for each <i>UK AIF</i> it manages that is an <i>unauthorised AIF</i> , <u>unless the <i>AIF</i> is an <i>ELTIF</i>.</u>	From 22 July 2013 until 22 July 2017.	22 July 2013
...					
<u>6</u>	<u><i>FUND 3.11.24R</i></u>	<u>R</u>	<u><i>FUND 3.11.24R</i> does not apply to a <i>credit institution</i> established in the <i>UK</i> in relation to an <i>EEA ELTIF</i> for which it is appointed as a <i>depository</i> that is:</u> <u>(a) managed by a <i>full-scope UK AIFM</i> or a <i>full-scope EEA AIFM</i> in accordance with article 61(5) of <i>AIFMD</i>; and</u> <u>(b) marketed to a <i>retail client</i>.</u>	From <u>9 December 2015</u> until <u>22 July 2017</u>	<u>9 December 2015</u>



Additional documentation and information to market an ELTIF (FUND 4 Annex 1R)

AIFM name	
FRN	
AIF name	
PRN	

Purpose of this form

You should complete this form if you are a *full-scope UK firm* that wishes to *market* an *ELTIF*. This form sets out the information required by the *ELTIF regulation* that is in addition to the information required by article 31 or 32 of *AIFMD*.

You may also use this form if you are a *full-scope UK firm* that wishes to notify the *FCA* of changes to the additional marketing information that was supplied previously.

Important information

A *full-scope UK AIFM* that wishes to *market* an *ELTIF* also needs to complete the form in *FUND 3 Annex 1D* (Notification of intention to market an AIF in the United Kingdom) to *market* an *ELTIF* in the *United Kingdom* and *SUP 13 Annex 8BR* (Passporting: AIFMD) to *market* an *ELTIF* in an *EEA State* other than the *United Kingdom*.

Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
3. All firms should answer sections 1, 2 and 3.
4. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

This form should be sent to:

*Fund Authorisation and Supervision Team
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS*

An electronic copy must be submitted by email to fundsupervision@fca.org.uk

Website: www.fca.org.uk

1 Contact details

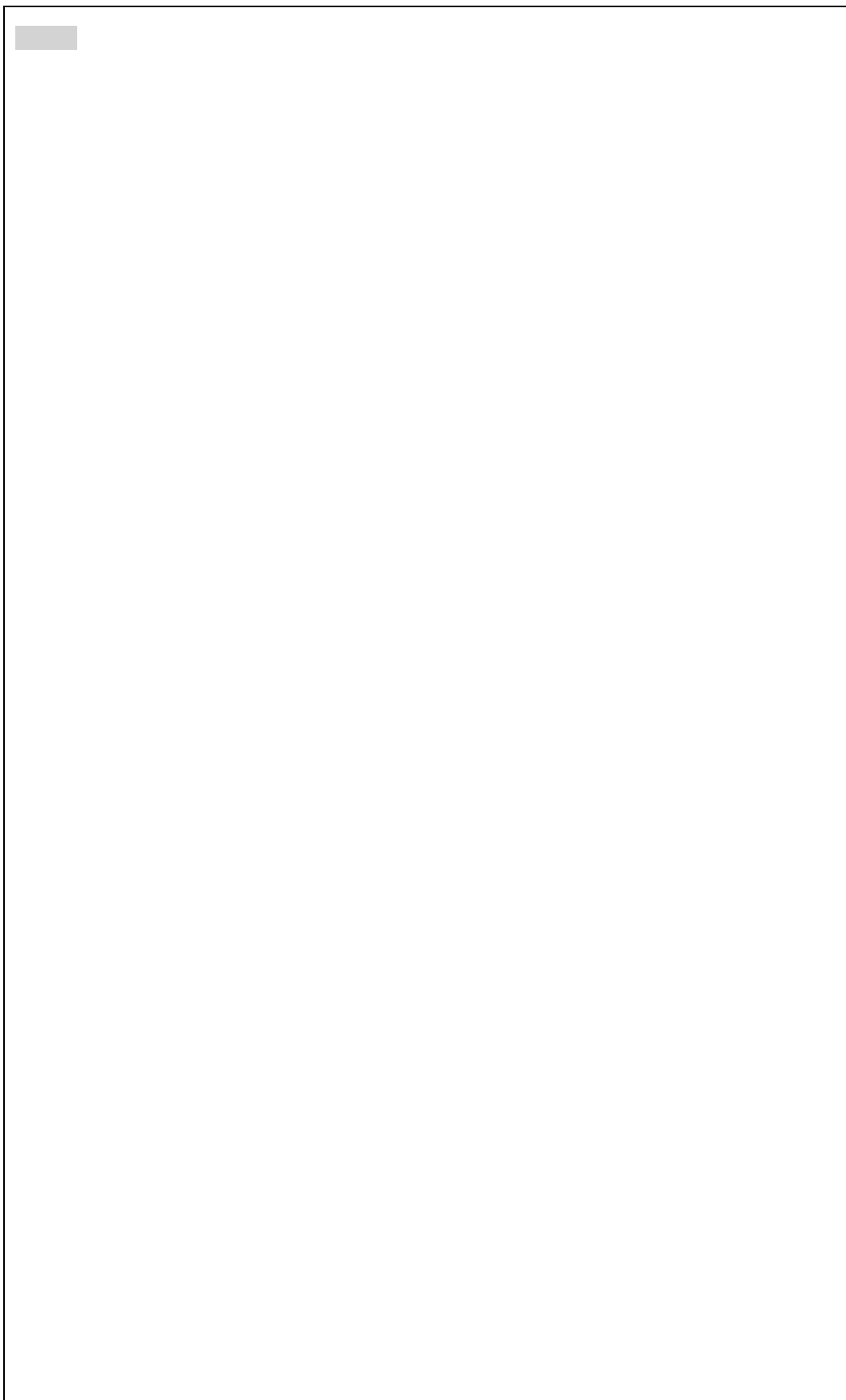
1.1 Details of the contact for this application

Contact name	
Position	
Firm	
Telephone number	
Fax number	
Email address	

2 Additional information to market an ELTIF

Please provide the following documentation and information

- 2.1 A copy of the prospectus of the *ELTIF* Attached
- 2.2 A copy of the key information document of the *ELTIF* in the event that it is *marketed to retail clients* Attached
- 2.3 Information on the facilities referred to in article 26 of the *ELTIF regulation* (continue on an additional sheet if required)



3 Declaration

Warning

Knowingly or recklessly giving us information that is false or misleading in a material particular is a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). We expect you to take reasonable steps to ensure the accuracy and completeness of information given to us and to tell us immediately if materially inaccurate information has been provided. Contravening these requirements may lead to disciplinary sanctions or other enforcement action by us. It should not be assumed that issues are known to us just because they are in the public domain or have previously been disclosed to us or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway. If necessary, please seek appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. And failure to notify us immediately of any significant change to the information provided may result in a serious delay in the application process.

Data protection

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the firm concerned.

Declaration

By submitting this notification form:

- **I confirm that the information in this form is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case**
- **I am aware that it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.**
- **I confirm that I am authorised to sign on behalf of the firm.**

Tick here to confirm you have read and understood the declaration.

Name	<input type="text"/>
Position	<input type="text"/>
Signature	<input type="text"/>
Date (dd/mm/yy)	<input type="text"/>

I enclose the following sections

Section 1 - Contact details	<input type="checkbox"/>
Section 2 - Additional information to market an ELTIF	<input type="checkbox"/>
Section 3 - Declaration	<input type="checkbox"/>

Note to Declaration

If you are submitting this notification electronically you do not need to provide a signature here. However, you still need to have the authority to make this notification on behalf of the *firm*.