



Guernsey Financial  
Services Commission

# **The AIFMD (Marketing) Rules, 2013**

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# **The AIFMD (Marketing) Rules, 2013**

The Guernsey Financial Services Commission (the “**Commission**”) in exercise of the powers conferred on it by sections 12, 14, 15, 16, 18 and 20 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (the “**Law**”) hereby makes the following rules:-

## **1. INTRODUCTION**

### **1.1 Citation, commencement and application**

These Rules, which may be cited as The AIFMD (Marketing) Rules, 2013, are made on XX 2013 and, with the exception of Rule 7 (“Transitional provisions”) shall come into operation on [22 July 2013].

The Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the "AIFMD") allows non-EU Alternative Investment Fund Managers (“AIFMs”) to manage and market AIFs in the EU insofar as they comply with the specific rules in chapter VII of AIFMD. Among other conditions, and as a consequence of the cross-border dimension of the activity of the AIFMs, European competent authorities are required to have in place co-operation arrangements with the authorities of the non-EU country where: a) an AIFM is established and/or the AIF is located, b) a delegate is established, when the delegation concerns portfolio or risk management, and c) where the depositary is established. The aim of these co-operation arrangements is to ensure that European authorities can carry out their supervisory duties properly in accordance with AIFMD. These Rules, in part, assist the Commission in co-operating with Member States regarding Guernsey AIFMs and Guernsey AIFs.

Whilst AIFMD is a maximum harmonisation directive, EEA competent authorities may impose stricter requirements; therefore Guernsey AIFMs and Guernsey AIFs must ensure that they comply with the laws and regulations in force in the country or territory into which they are marketing. Furthermore, Guernsey AIFMs and Guernsey AIFs must ensure that there are co-operation agreements in place between the Commission and the relevant Member State prior to marketing into that state.

## 1.2 Interpretation

Unless the context otherwise requires, in these Rules, expressions defined in the Law and in the AIFMD have the same meaning as they have in the Law and the AIFMD respectively, and the following have the meanings assigned to them:

"AIF"	a collective investment undertaking, including investment compartments thereof, which:  (i) 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;  (ii) does not require authorisation pursuant to Article 5 of the UCITS Directive;
"Commission"	the Guernsey Financial Services Commission;
"competent authorities"	means the national authorities of Member States which are empowered by law or regulation to supervise AIFMs;
"designated manager"	has the meaning set out in the Law;
"EEA"	European Economic Area;
"EU"	European Union;
"Guernsey AIF"	a collective investment scheme declared in a registration or authorisation issued by the Commission under section 8 of the Law to be an authorised or registered collective investment scheme for the purposes of the Law;
"Guernsey AIFM"	means a Licensee or a Guernsey AIF (in the case of a self-managed AIF) and in each case, whose regular business is managing one or more Guernsey AIFs or AIFs and which is notified to the Commission as the AIFM under Rule 5 below for the purposes of complying with these Rules;
"investors" or "AIF investors"	means those investors or potential investors in the Member States where the AIFs are marketed;
the "Law"	means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended.
"Licensee"	means the holder of a licence to carry on controlled

investment business issued under the Law.

<b>"managing AIFs"</b>	means performing at least investment management functions of (i) portfolio management, or (ii) risk management for one or more AIFs;
<b>"marketing"</b>	means a direct or indirect offering or placement at the initiative of the Guernsey AIFM or on behalf of the Guernsey AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in any Member State;
<b>"these Rules"</b>	means The AIFMD (Marketing) Rules, 2013;
<b>"relevant Member State"</b>	means any Member State where the Guernsey AIFM proposes to market an AIF;
<b>"retail investor"</b>	means an investor who is not a professional investor;
<b>"professional investor"</b>	means an investor which is considered to be a professional client or may, on request be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC on Markets in Financial Instruments;
<b>"Member States"</b>	includes the member states of the European Union and any EEA State in which the AIFMD is implemented;
<b>"UCITS Directive"</b>	means Directive 2009/65/EC.

## **2. SCOPE**

- 2.1** These Rules shall apply to any person, including Guernsey AIFs and Guernsey AIFMs, who manage and propose to market AIFs and/or Guernsey AIFs to professional and/or retail investors in one or more Member States pursuant to Article 42 and/or Article 43 respectively of AIFMD.

## **3. COMPLIANCE WITH ARTICLES 42 AND 43 AIFMD**

- 3.1** Subject to Rule 4 below, Guernsey AIFMs may market to professional and/or retail investors in one or more Member States, units or shares of AIFs and Guernsey AIFs they manage subject to compliance with such provisions of the AIFMD as apply.

## **4. MARKETING**

- 4.1** Any Guernsey AIFM and Guernsey AIF to whom these Rules apply, shall take all reasonable steps with a view to ensuring that any form of marketing in a country or territory within the

EEA is effected in accordance with the laws and regulations in force in the relevant Member State.

## **5. NOTIFICATION AND FILINGS TO BE SUBMITTED TO THE COMMISSION**

**5.1** Without prejudice to Rule 5.2, prior to undertaking any marketing in a country or territory within the EEA, the relevant Guernsey AIF or Guernsey AIFM shall notify the Commission of the same in such form as the Commission may require and shall include the information set out in Rule 5.2 below.

**5.2** The notification in Rule 5.1 above shall:

**5.2.1** identify the Member State where marketing is to be conducted;

**5.2.2** identify the competent authorities in those Member States to whom the Guernsey AIF or AIF and Guernsey AIFM shall report;

**5.2.3** state the name and address of the Guernsey AIFM in respect of each Guernsey AIF or AIF;

**5.2.4** state the name and address of each Guernsey AIF or AIF which the applicant intends to market from within the Bailiwick of Guernsey and the manner in which he intends to market the Guernsey AIF or AIF;

**5.2.5** certify that he is permitted to market each such Guernsey AIF or AIF in that manner in the Member State concerned.

**5.3** Copies of:

**5.3.1** all documentation filed with the competent authority in any Member State pursuant to any marketing in respect of a Guernsey AIF or AIF by a Guernsey AIFM; and

**5.3.2** all documentation to be disclosed to investors,

in each case pursuant to the AIFMD and the laws and regulations of relevant Member States, shall be filed with the Commission simultaneously with any filing effected with the relevant competent authority or any disclosure to investors, as the case may be.

**5.4** The relevant Guernsey AIF or Guernsey AIFM shall notify the Commission when marketing has ceased in a country or territory pursuant to Rule 4.1 or is unable to comply with the notification requirements under Rule 5.2.

**5.5** It is the duty of the designated manager of a Guernsey AIF that is within the scope of these Rules to administer the relevant Guernsey AIF in accordance with these Rules.

**6. THESE RULES PREVAIL**

**6.1** If there shall be any inconsistency or conflict between the requirements of any other Guernsey rules to which the Guernsey AIFM or Guernsey AIF as applicable is subject, and the requirements of these Rules, the requirements of these Rules shall prevail.

**7. TRANSITIONAL PROVISIONS**

**7.1** Persons within the scope of these Rules that prior to 22 July 2013 manage and propose to market AIFs and/or Guernsey AIFs on or after 22 July 2013 to professional and/or retail investors in one or more Member States, shall comply

**7.1.1** with Rules 3 and 4, with effect from 22 July 2013; and

**7.1.2** with the notification to and filings requirements with the Commission pursuant to Rule 5, by no later than 21 July 2014.

**7.2** Persons within the scope of these Rules that with effect from or after 22 July 2013 commence management of and propose to market AIFs and/or Guernsey AIFs to professional and/or retail investors in one or more Member States, shall comply with these Rules in their entirety with effect from the commencement of the above activities of management and/or marketing.