



Guernsey Financial  
Services Commission

## **THE AIFMD (MARKETING) RULES, 2013 EXPLANATORY NOTE AND FEEDBACK ON CONSULTATION**

The Commission, in conjunction with a Working Group established in August 2012, consisting of Commission staff and locally based senior investment fund industry representatives, has been seeking to identify the most efficient means of accommodating Directive 2001/61/EU on Alternative Investment Fund Managers (“the Directive”) into the Bailiwick’s regulatory framework with a view to minimising the impact on fund products, which are not in scope.

Whilst recognising that some entities will fall outside the scope of the Directive, from July 2013, local entities will be permitted to market non-EU funds to investors in Member States through the Member States’ national private placement regimes, as long as they fulfil certain transparency requirements and disclosures and regulatory co-operation arrangements are concluded between the Commission and the EU competent authorities in accordance with Article 42 of the Directive. The European Securities and Markets Authority (“ESMA”) has approved the co-operation arrangements between the Commission and the EU securities regulators for the supervision of AIFs. ESMA has negotiated the agreement with the Commission on behalf of all 27 EU Member State securities regulators as well as authorities from Croatia, Iceland, Liechtenstein and Norway. The Commission’s news release of 30 May 2013 provides further details. The Commission is currently awaiting the signatures to these co-operation agreements.

Earlier this year the Investment Business Division posted on the Commission’s website The AIFMD (Marketing) Rules, 2013 (“the Rules”) for consultation. The Rules are proposed to ensure that collective investment schemes and fund managers established in the Bailiwick of Guernsey who wish to market into the EEA meet the requirements of Articles 42 and 43 of the Directive and assist the Commission to enable it to effectively cooperate with EU competent authorities.

The purpose of this document is to outline the specific issues raised from the consultation regarding both the Rules and the associated notification form (“Form AIFM”). I would like to thank everyone who took the opportunity to respond to this consultation. The Rules, which have been approved by the Commissioners, and the Form AIFM have, today, been placed on the Commission’s website with an effective date of 22 July 2013.

### **Responses concerning the Rules**

#### **1. Rule 5.1 – Prior notification of marketing within the EEA**

Respondents were concerned that prior notification to the Commission of proposed marketing into the EEA was administratively burdensome if the marketing never

actually occurs. The Commission agrees with this view and therefore has amended Rule 5.1 to state that notifications should be made to the Commission within 14 calendar days of the commencement of any marketing in a country or territory within the EEA.

## **2. Rule 5.3 – Copies of documentation submitted to the Commission**

The Commission has removed the requirement for Guernsey AIFMs and Guernsey AIFs to submit to the Commission copies of all documentation filed with the competent authorities in the EEA and documentation submitted to investors. The Commission agrees with respondents that the rule as originally drafted was overly burdensome and alternatively this information can be requested from the Guernsey AIFM or Guernsey AIF via the existing regulatory regime on a case by case basis.

## **3. Rule 5.5 (now Rule 5.4) - The Role of the Designated Manager in respect of The AIFMD (Marketing) Rules, 2013**

Respondents were unsure as to the rationale of Rule 5.5 which stated, “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,” as the Designated Manager is not involved in the marketing activities of third party Guernsey AIFs.

The Commission agrees that the previous wording was not specifically clear as it was not the Commission’s intention for Designated Managers to be responsible for ensuring that the Guernsey AIF was complying with the Rules, but rather Designated Managers were taking reasonable steps to ensure that Guernsey AIFs were making the required notifications to the Commission. The Commission considers that this function could form part of a Designated Manager’s compliance monitoring programme. Accordingly, the Commission has revised the wording in Rule 5.4.

## **4. Definition of Guernsey AIFM and Rule 2.1**

Different wording was suggested for the definition of a Guernsey AIFM. Whilst the meaning is ultimately the same, the Commission agrees that the wording provided is clearer and therefore has amended the definition of Guernsey AIFM and consequently Rule 2.1.

## **5. Definition of AIF**

Concerns were raised that the definition of AIF captured all types of collective investment schemes rather than what could be considered “alternative” in the general sense. The definition of AIF in the Rules is taken from the definition in the Directive and is designed to capture all non-UCITs schemes. Accordingly, from an EU perspective all Guernsey authorised and registered collective investment schemes are considered alternative investment funds as they cannot be established as a UCITs scheme.

## **Responses concerning the Form AIFM**

### **1. Reporting requirements**

A respondent stated that the Form AIFM does not require reporting in line with the provisions of Article 24 of the Directive. The Commission would like to highlight two pertinent articles of the Directive. Firstly, Article 42(1)(a), which states “Competent authorities and AIF investors referred to in those Articles shall be deemed those of the Member States where the AIFs are marketed” and Article 42(2), which states, “Member States may impose stricter rules on the non-EU AIFM in respect of the marketing of units or shares of AIFs to investors in their territory for the purposes of this Article.” Accordingly, the Rules have been drafted in such a way to take into account that the reporting requirements may differ across the various EU Member States.

### **2. Clarifications**

As a result of consultation responses, the Commission has amended the Form AIFM; in particular, an additional question has been inserted as to whether or not the AIF is self-managed.

Carl Rosumek  
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