

THE AIFMD (MARKETING) RULES, 2021

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 12, 13, 14, 15, 17 and 19 of The Protection of Investors (Bailiwick of Guernsey) Law 2020¹ (“the Law”) makes the following Rules.

¹ Order in Council No. XVIII of 2020.

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PART 1 INTRODUCTION

1.1 Application

- (1) The AIFMD (Marketing) Rules 2021 replace The AIFMD (Marketing) Rules, 2013².
- (2) These Rules continue to apply in respect to any relevant funds marketed to the UK, following its exit from the European Union.
- (3) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (4) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

² G.S.I. No.31 of 2013.

PART 2 MARKETING

2.1 Scope

- (1) These Rules apply to any Alternative Investment Fund Managers (“AIFMs”) who propose to market AIFs to either professional or retail investors in one or more Member States, pursuant to Article 42 or Article 43 of AIFMD, or in the UK.

2.2 Compliance with Article 42 and Article 43 of AIFMD

- (1) Guernsey AIFMs may market, to professional or retail investors, in one or more Member States, units or shares of AIFs, and Guernsey AIFs, that they manage subject to compliance with such provisions of the AIFMD.

2.3 Marketing

- (1) Any Guernsey AIFM and Guernsey AIF to whom these Rules apply must take all reasonable steps to ensure that any form of marketing, either in the UK or in a Member State, is effected in accordance with the legislation in force in the relevant country or territory.

2.4 Notification and filings to be submitted to the Commission

- (1) Within fourteen calendar days of the commencement of any marketing, either in the UK or in a Member State, the relevant Guernsey AIF or Guernsey AIFM must –
 - (a) notify the Commission of –
 - (i) the country or territory where marketing is to be conducted;

- (ii) the competent authorities in those countries or territories to whom the Guernsey AIF or AIF and Guernsey AIFM must report;
 - (iii) the name and address of the Guernsey AIFM in respect of each Guernsey AIF or AIF;
 - (iv) the name and address of each Guernsey AIF or AIF which the applicant intends to market from within the Bailiwick and the manner in which it intends to market the Guernsey AIF or AIF; and
 - (b) certify that it is permitted to market each such Guernsey AIF or AIF in that manner in the country or territory concerned.
- (2) The relevant Guernsey AIF or Guernsey AIFM must notify the Commission when marketing has ceased in a country or territory, in accordance with these Rules, or it is unable to comply with the notification requirements in accordance with these Rules.
- (3) It is the duty of the designated administrator of a Guernsey AIF to take reasonable steps to ensure that the relevant Guernsey AIF makes the notifications to the Commission as set out in these Rules.

PART 3 GENERAL PROVISION

3.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) In these Rules the following definitions should be followed -

“**AIF**” means a collective investment undertaking, including its investment components, 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;
- (b) does not require authorisation pursuant to Article 5 of the UCITS Directive (Directive 2009/65/EC);

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

“**competent authorities**” means the national authorities either in the UK or in Member States which are empowered by legislation to supervise Alternative Investment Fund Managers;

“**Guernsey AIF**” means 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) a licensee whose regular business is managing one or more AIFs, including Guernsey AIFs; or
- (b) a Guernsey AIF in the case of a self-managed AIF;

“**managing AIFs**” means performing at least one of the management functions of –

- (a) portfolio management; or
- (b) risk management,
for one or more AIFs;

“marketing” means a direct or indirect offering, or placement, at the initiative of the Guernsey AIFM, or on their behalf, of units or shares of an AIF, that it manages, to or with investors domiciled or with a registered office in either the UK or a Member State;

“Member States” includes the member states of the European Union and any EEA State in which the AIFMD is implemented;

“retail investor” means an investor who is not a professional investor;

“professional investor” means an investor which is considered to be a professional client or may, on request, be treated as a professional client in accordance with Annex II to the Markets in Financial Instruments Directive 2014/65/EU.

PART 4 REVOCATIONS CITATION AND COMMENCEMENT

4.1 Revocations

4.1.1 Revocation of the AIFMD (Marketing) Rules, 2013

- (1) The AIFMD (Marketing) Rules, 2013 are revoked.

4.2 Citation and commencement

- (1) These rules may be cited as the AIFMD Marketing Rules 2021.
- (2) These rules come into force on 1st November 2021.

EXPLANATORY NOTE

These Rules have been re-drafted in line with the Commission's Revision of Laws Implementation Project.

In 2020 the Protection of Investor (Bailiwick of Guernsey), 1987, Law was replaced with the 2020 Law and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020³. All Rules made, under the earlier enactment, have been checked for validity and legality.

The Rules have been re-drafted to bring them into line with the Commission's current legal drafting practice and to ensure that all out-of-date references have been replaced.

Although these Rules have been re-drafted and re-formatted the content and legal meaning remains the same as that under the previous Rules.

³ Order In Council No. XVII of 2020.