



Guernsey Financial
Services Commission

Consultation on the proposed introduction of The AIFMD (Marketing) Rules, 2013

1. Directive 2001/61/EU on Alternative Investment Fund Managers (“the Directive”)

The Directive entered into force on 21 July 2011. European Union (“EU”) Member States have been given two years from this date to transpose the Directive into national law. EU Member States are required to implement the Directive in local laws by 22 July 2013. The Directive aims at establishing common requirements governing the authorisation and supervision of Alternative Investment Fund Managers (“AIFMs”) in order to provide a coherent approach to the related risks and their impact on investors and markets in the EU. Whilst the Directive is aimed at AIFMs, it also impacts Alternative Investment Funds (“AIFs”).

2. Proposed Introduction of a Dual Regulatory Regime

2.1 This consultation paper is the first of two planned Commission consultations to facilitate the requirements of the Directive into the local regulatory regime so as to enable regulated entities flexibility in their product strategy with respect to fund management and marketing business within the EU or any state in the European Economic Area (“EEA”) in which the Directive has been implemented (collectively, “Member States”).

2.2 There is no suggestion that the current local regulatory environment is not suitable for products which are not within the scope of the Directive. Hence, the Rules Working Group established in August 2012, consisting of Commission staff and locally based senior Fund Industry representatives, has been seeking to identify the most efficient means of accommodating the Directive with a view to minimising the impact on fund products, which are not in scope.

2.3 The Rules Working Group has identified several options which are being considered to facilitate the requirements of the Directive on third countries into the local regulatory regime. The general consensus indicates that a dual regime would be the best solution for the Bailiwick of Guernsey, not least because there are AIFMs currently managing Guernsey funds which fall outside the scope of the Directive and in the future it is likely that promoters will continue to use Guernsey as a base for

such products. In practice this will mean operating two regulatory regimes; an AIFMD focussed regime and a non-AIFMD regime.

3. Private Placement Regime

3.1 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' 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 securities regulators in accordance with Article 42 of the Directive.

3.2 The AIFMD (Marketing) Rules, 2013 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.

4. Equivalent opt in AIFMD Regime

4.1 It is further proposed that the Bailiwick of Guernsey will operate an equivalent opt in AIFMD regime for local fund management companies and depositaries.

4.2 The mechanism by which this will be achieved is under discussion by the Rules Working Group. The proposals of the Rules Working Group in this respect will form part of the second consultation by the Commission.

5. Transitional Provisions - The AIFMD (Marketing) Rules, 2013 ("the Rules")

It is currently considered that the following transitional requirements will apply:

5.1 Persons within the scope of the 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

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

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

5.2 Persons within the scope of the Rules that with effect from or after 22 July 2013 commence management 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.

5.3 These transitional provisions are solely in respect of notification and filing requirements with the Commission. Guernsey AIFMs and Guernsey AIFs should check the transitional provisions in each Member State where management and marketing is occurring.

6. Form AIFM

In order to comply with the notification and filing requirements, pursuant to Part 5 of the AIFMD (Marketing) Rules, 2013, Guernsey AIFMs and Guernsey AIFs will be required to submit a Form AIFM, which also forms part of this consultation.

7. Comments Requested

7.1 Please provide any comments on the draft version of The AIFMD (Marketing) Rules, 2013 and draft Form AIFM to AIFMD@gfsc.gg by close of business on 17 April 2013. A feedback statement covering the substantive issues raised by respondents will be issued by the Commission following the close of the consultation period.

7.2 The Commission has received representations that possibly there may be vehicles established in the Bailiwick of Guernsey, which fall under the definition of an AIF under the Directive, which are not authorised or registered as collective investment schemes under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“the Law”). On 19 December 2012, the European Securities and Markets Authority (“ESMA”) released a consultation paper on the key concepts of the Directive on its website <http://www.esma.europa.eu/>; in particular, the paper details draft guidelines on the definition of an AIF. Financial Services Businesses should make an assessment as to whether or not the vehicles they manage/administer fall within the definition of an AIF as set out by ESMA. Should any Financial Services Businesses consider that they manage/administer vehicles established in the Bailiwick of Guernsey which fall under the definition of an AIF, which are not authorised or registered as collective investment schemes under the Law, please provide details of those vehicles to the Commission via AIFMD@gfsc.gg.

I would like to place on record my thanks to the Rules Working Group, and in particular, the drafting sub-committee, who have assisted the Commission with this project.

Carl Rosumek
Director of Investment Business

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