



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 31 May 2013 and, with the exception of Rule 7 (“*Transitional provisions*”) shall come into operation on 22 July 2013.

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (“*AIFMD*”) allows non-EU *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*, *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 *Competent 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, *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 *Member State*.

1.2 Interpretation

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

"AIF"	means a collective investment undertaking, including investment compartments thereof, which: <ul style="list-style-type: none">(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;
"AIFMD"	means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers;
"AIFM"	means an Alternative Investment Fund Manager;
"Commission"	means 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"	means the European Economic Area;
"EU"	means the European Union;
"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: <ul style="list-style-type: none">(i) a Licensee whose regular business is managing one or more AIFs, including Guernsey AIFs,

or

- (ii) a Guernsey AIF in the case of a self-managed AIF

to which these rules apply.

"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;
"managing AIFs"	means performing at least investment management functions of (i) portfolio management, or (ii) 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 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;
these "Rules"	means The AIFMD (Marketing) Rules, 2013;
"relevant Member State"	means any Member State where the Guernsey AIFM proposes to market an AIF;
"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 within the meaning of Annex II to Directive 2004/39/EC on Markets in Financial Instruments;
"Member States"	includes the member states of the European Union and any EEA State in which the AIFMD is implemented;
"UCITS Directive"	means Directive 2009/65/EC.

2. SCOPE

- 2.1** *These Rules shall apply to any Guernsey AIFMs who proposes to market 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 OF 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 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, within 14 calendar days of the commencement of 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*; and

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 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.

5.4 It is the duty of the *designated manager* of a *Guernsey AIF*, which is within the scope of these *Rules*, to take reasonable steps to ensure that the relevant *Guernsey AIF* makes the notifications to the *Commission* as set out in 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* who 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 and filing requirements pursuant to Rule 5, by no later than 21 July 2014.

7.2 Persons within the scope of these *Rules* who 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*.