



Guernsey Financial
Services Commission

**THE AIFMD RULES, 2013
FEEDBACK STATEMENT ON CONSULTATION RESPONSES**

During September 2013 the Commission released a consultation paper relating to the second part of the Bailiwick's AIFMD focussed regime being an AIFMD opt in regime for Guernsey Alternative Investment Fund Managers ("AIFMs") and Guernsey depositaries whose activities are caught by Directive 2011/61/EU on Alternative Investment Fund Managers ("AIFMD" or the "Directive").

The purpose of this document is to outline the specific issues raised from the consultation regarding The AIFMD Rules, 2013 ("the Rules"). I would like to thank everyone who took the opportunity to respond to this consultation. The Rules, which have been approved by the Commissioners, together with the Forms GAIFM and DAIFM have, today, been placed on the Commission's website with an effective date of 2 January 2014.

RESPONSES TO CONSULTATION QUESTIONS

2.2.1 The Commission would like to ascertain the number of depositaries and fund managers which are likely to opt in to comply with The AIFMD Rules, 2013. If it is likely that you will opt in to comply with The AIFMD Rules, 2013, please advise the Commission.

Respondents considered that the dual regime was the best approach as it provides Guernsey fund practitioners' with flexibility and recognises commercial considerations. However, the majority of respondents were uncertain at this time as to whether or not they would opt in to comply with The AIFMD Rules, 2013. The Commission agrees that whilst uncertainty remains regarding the implementation of national private placement and subsequently passporting across the European Economic Area ("EEA"), Guernsey AIFMs and Depositaries should undertake detailed analysis of their business requirements before opting in to comply with The AIFMD Rules, 2013.

2.2.2 The current draft of The AIFMD Rules, 2013 requires a Guernsey licensed depositary be appointed to a Guernsey authorised or registered collective investment scheme. Should non-Guernsey depositaries be allowed to be appointed to Guernsey authorised or registered collective investment schemes?

The Commission received a variety of responses to this question. The Commission considers at this stage that the status quo should remain i.e. that open-ended authorised or registered collective investment schemes should appoint a designated custodian established in the Bailiwick of Guernsey. However, the Commission will continue to entertain non-Guernsey designated custodians under its flexible hedge fund policy and in limited cases may permit a non-Guernsey designated custodian,

subject to criteria relating to the fund, including issues such as asset type and investor target base. The Commission will liaise further with the investment fund industry before issuing any guidance in this respect.

- 2.2.3 It is likely that the implementation of AIFMD will vary across the various EEA territories, and in particular, transitional arrangements. The Commission would welcome any feedback which licensees have received regarding the implementation of AIFMD across the various EEA territories.

The Commission is grateful for the feedback received to date and would encourage Guernsey licensed firms to contact the Commission should they wish to discuss specific issues regarding the implementation of AIFMD across the EEA.

The Commission will continue to share any new information received regarding AIFMD on its FAQs page on the Commission's website.

- 2.2.4 The creation of an AIFMD opt in regime is likely to lead to an increase in costs for both the fund industry and the Commission. Do you think depositaries and fund managers, which opt in to comply with The AIFMD Rules, 2013, should pay a higher regulatory fee than those which do not opt in or do you think the regulatory burden should be shared?

The majority of respondents considered that depositaries and fund managers which opt in to comply with the Rules should pay a higher regulatory fee. The Commission has recently confirmed that there will be no increase in regulatory fees for the investment sector during 2014. Should the Commission consider that, in future years, depositaries and fund managers that opt in to comply with the Rules, should pay a higher regulatory fee, to meet any increased Commission costs in regulating those firms, then this will be subject to detailed consultation with the investment fund industry at the relevant time.

- 2.2.5 At present, there are no plans to amend the Class A, B and Q Rules, The Authorised Closed-Ended Investment Schemes Rules and The Registered Collective Investment Scheme Rules 2008. Do you think it would be beneficial to have a new set of Guernsey fund rules for AIFs which have an EEA AIFM?

There was no consensus of opinion regarding the benefit of a set of fund rules for AIFs which have an EEA AIFM. At this stage the Commission considers that it would be prudent to assess the impact of AIFMD on the Guernsey fund offering. Should the industry consider that a new set of fund rules for Guernsey AIFs be considered beneficial to the Bailiwick of Guernsey's fund sector, then the Commission would welcome developing rules at the appropriate time in conjunction with the government and the investment fund industry.

- 2.2.6 The Commission has not signed co-operation agreements with Spain, Italy, Croatia and Slovenia. Should the Commission allocate additional resource in endeavouring to sign co-operation agreements with these jurisdictions?

The majority of respondents considered that the Commission should devote further resource in negotiating co-operation agreements with Italy and Spain. Therefore, the Commission will continue its negotiations in this respect.

- 2.2.7 To date the Commission has not drafted detailed guidance to accompany The AIFMD Rules, 2013. Any guidance issued by the Commission will largely be dictated by guidance issued by ESMA and other EEA Member States. Are there any key concepts in The AIFMD Rules, 2013 which require specific Commission guidance?

Many respondents were happy to rely on guidance issued by ESMA and EEA Member States, however several depositaries have requested that the Commission issue guidance on key topics such as outsourcing, cash monitoring and reconciliations. The Commission will continue to work with depositaries as a group and on a bi-lateral basis.

Several respondents also requested guidance on how The AIFMD Rules, 2013 will be applied to Guernsey Fund Managers which have both EEA and non-EEA business. The Commission expects that the dual regime will provide sufficient flexibility to the investment fund industry and will issue a separate policy statement clarifying the practical application of the Rules.

- 2.2.8 For those licensees that opt into The AIFMD Rules, 2013 there will be additional reporting to the Commission. Should the Commission use the template reports in the Level 2 Regulations or create bespoke reports? Any thoughts on the level and timing of reporting to the Commission pursuant to The AIFMD Rules, 2013 would be appreciated.

All respondents agreed that the template in the Level 2 Regulations should be used. On 1 October 2013 ESMA clarified the reporting requirements for AIFMs. Please see www.esma.europa.eu for further information.

- 2.2.9 Do you have any general comments on The AIFMD Rules, 2013?

Respondents were generally supportive of the Bailiwick of Guernsey's opt-in AIFMD equivalent regime for Guernsey AIFMs and depositaries. However, some respondents considered that we had inadvertently "gold-plated" the AIFMD requirements, by including provisions beyond those set out in Directive. Examples included the reporting requirements set out in Rules 19.1 and 19.2 of the Rules. The Commission has no intention of "gold-plating" AIFMD and has amended the provisions brought to our attention, such that they are consistent with, but go no further than, the Directive.

Carl Rosumek
Director of Investment Supervision and Policy Division
2 December 2013