



Guernsey Financial  
Services Commission

**CONSULTATION PAPER  
JULY 2014**

**EU'S ALTERNATIVE INVESTMENT  
FUND MANAGERS DIRECTIVE  
("AIFMD")**

**GUIDANCE NOTES – GUERNSEY  
DEPOSITARY REQUIREMENTS  
UNDER ARTICLE 36 OF AIFMD**

The Guernsey Financial Services Commission invites comments on this consultation paper, preferably by e-mail, by no later than 12 September 2014.

Responses should be sent to:

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If you require assistance or clarification in respect of any aspect of the proposals prior to formulating a response, the Commission's contacts are:

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# Contents

Glossary of Terms.....	4
1. Overview.....	5
2. What is proposed?.....	5
3. Who would be affected? .....	6
4. Next steps.....	6

## Glossary of Terms

<b>AIFMD</b>	Directive 2011/61/EU on Alternative Investment Fund Managers
<b>AIFM</b>	Alternative Investment Fund Manager
<b>AIF</b>	Alternative Investment Fund
<b>Directive 2006/73/EC</b>	Directive 2006/73/EC of the European Parliament and of the Council of 10 August 2006 (referred to as “MiFID Implementing Directive”)
<b>EEA</b>	European Economic Area
<b>ESMA</b>	European Securities and Markets Authority
<b>EU</b>	European Union
<b>Guernsey Depository</b>	A person licensed for custody under Categories 1 and/or 2 controlled investment business under the POI Law, and is carrying out one or all of the depository duties referred to in Articles 21(7), (8) and (9) of AIFMD to a non-EEA AIF, with an EEA AIFM.
<b>Guidance Notes</b>	Guidance Notes – Depository Requirements under Article 36 of AIFMD
<b>Level 2 Regulations</b>	Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
<b>the “POI Law”</b>	The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended

## 1. Overview

AIFMD is a European Directive that seeks to regulate the non-UCITs fund sector, including hedge funds, private equity funds and real estate funds. All AIFMs established in the EEA<sup>1</sup>, whether they manage EEA or non-EEA AIFs are subject to AIFMD. AIFMD also governs the managing and marketing in the EEA of AIFs managed by an AIFM established outside the EEA. It is important to note that a non-EEA AIFM marketing a non-EEA AIF outside of the EEA and a non-EEA fund which does not market to EEA investors and which invests in EEA securities do not come within the scope of AIFMD. For the avoidance of doubt, AIFMD covers all funds other than UCITs Funds. Therefore, for the purposes of AIFMD, all Guernsey regulated funds which are marketed into the EEA fall within the definition of an AIF.

AIFMD entered into force on 21 July 2011 and EEA Member States were required to implement AIFMD in local laws by 22 July 2013. However, it is important to note that some EEA Member States, such as the United Kingdom have inserted transitional provisions into their regulatory regimes, which in the case of the United Kingdom have been extended to include third country (non-EEA Member States) AIFMs.

Under Article 36 of AIFMD an EEA AIFM may market to professional investors, units or shares of non-EEA AIF so long as it ensures that one or more entities are appointed to carry out the depositary duties referred to in Article 21(7), (8) and (9) of AIFMD. The EEA AIFM shall not perform those functions. The Commission does not consider that Guernsey Depositaries need to opt in to comply with The AIFMD Rules, 2013 made under the POI Law to provide such a service. It is considered that Guernsey Depositaries can provide these services on a contractual basis with the EEA AIFM. Although Guernsey Depositaries are not required to opt in to comply with The AIFMD Rules, 2013, the Commission has received feedback from the Guernsey investment fund industry that some form of Commission Guidance would be beneficial.

## 2. What is proposed?

The Commission, in conjunction with the GIFA Custodian and Depositary Committee, has been seeking to identify the most efficient means of accommodating Article 36 of AIFMD into the Bailiwick's regulatory framework with a view to minimising the impact on fund products, which are not in scope. The result is the Guidance Notes, which are predominantly based on AIFMD and the Level 2 Regulations. The Commission is grateful for the input provided by the GIFA Custodian and Depositary Committee in respect of this matter.

The Commission will continue to work with the GIFA Custodian and Depositary Committee in developing further depositary guidance and reviewing current Commission guidance such as the Incorrect Pricing of Authorised Collective Investment Schemes – Guidance Notes on Correction and Compensation.

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Although a European Union directive, AIFMD is also to be implemented by Iceland, Liechtenstein and Norway (the three EEA members that are not also members of the EU)

### **3. Who would be affected?**

Guernsey depositaries and Guernsey authorised or registered collective investment schemes, whose controlled investment business falls within the remit of Article 36 of AIFMD.

### **4. Next steps**

Please respond to this consultation paper by no later than 5.00pm on 12 September 2014. The Commission will take all responses into account before publishing the Guidance Notes.