

Guidance Note

Applications/Notifications in respect of Manager-Led Product



Guernsey Financial
Services Commission

Contents

Glossary of Terms.....	3
Purpose.....	5
1: Introduction.....	6
2: Applications	7

Glossary of Terms

AIFMD	means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
AIF	means a <i>collective investment</i> 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; and(ii) does not require authorisation pursuant to Article 5 of the <i>UCITS Directive</i>, whatsoever its legal form including under a contract, by means of a trust or under statute and whether it be open- or closed-ended unless it meets one or more of the exemption provisions set out in <i>AIFMD</i> . <p>This Guidance Note only applies to <i>AIFs</i> that are <i>Collective Investment Schemes</i>, as defined below</p>
AIFM	means legal persons whose regular business is managing one or more <i>AIFs</i>
AIFMD Rules	means the AIFMD Rules, 2013
Collective Investment Scheme	for the purposes of this Guidance Note, the definition of a <i>collective investment scheme</i> concurs with paragraph 1 of Schedule 1 of the <i>POI Law</i> . It will be registered in accordance with section 8(1) of the same Law and may be open- or closed-ended
Commission	the Guernsey Financial Services Commission
POI Law	the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended
Designated Administrator	for the purposes of this guidance note, the person designated as designated manager by the <i>Commission</i> in the registration of the <i>collective investment scheme</i> under section 8 of the <i>POI Law</i>

Trustee

for the purposes of this Guidance Note the person designated as such by the *Commission* for the purposes of the *POI Law* (as designated in the *Commission*'s registration of the scheme under Section 8 of the same Law), and may be:

- (i) the designated trustee in the case of a unit trust scheme
- (ii) the designated custodian in the case of a registered scheme other than a unit trust scheme

UCITS Directive

means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009

Purpose

This Guidance Note is to assist applicants to understand the principles underpinning the Manager-Led Product and the methodology for application and notification. In so doing, applicants will gain a sense of the standards required by the *Commission* in order to maintain the position and the reputation of Guernsey as a highly regarded jurisdiction of choice.

1 Introduction

1.1 Scope

The Manager-Led Product may be used by managers that are considered *AIFMs* under the *AIFMD Rules* and are seeking to market an *AIF* into a host country under the National Private Placement Regime. The Manager-Led Product may apply to open-ended or closed-ended funds for whom the *AIFM* is seeking registration under section 8 of the *POI Law* and associated prospective licensees that are not the *AIFM* – for example General Partners to Limited Partnerships.

1.2 Applicable Rules

The *AIFM* will be subject to the *AIFMD Rules*. Designated administrators and trustees will continue to be required to follow those provisions of the Licensees (Conduct of Business) Rules 2014 in respect of funds, registered under section 8 of the *POI Law*, which fall within the Manager-Led Product regime. Where there is conflict between the two Rules, Rule 26 of the *AIFMD Rules* empowers a mechanism whereby the *AIFMD Rules* take precedence.

1.3 Derogations

The *AIFM* will be entitled to consider the appropriateness of requesting derogations from the *Commission*, providing such derogations are acceptable to the host country and that the reporting requirements are maintained to the required standard.

2. Applications

2.1 To become AIFMs utilising the Manager-Led Product Regime

Existing licensees wishing to become *AIFMs* and utilise the Manager-Led Product regime should send in to the *Commission* a completed Form GAIFMLP. Due to the Manager-Led Product regime placing reliance on the *AIFM*, the applicant should submit the detailed documentation requested and expect rigorous scrutiny from the *Commission* team. Applicants that require a licence will also be required to submit a Form RA/1.

The application form should also enclose derogation requests, which will also be considered critically. Applicants are encouraged to discuss proposed derogations with the *Commission* at an early stage. In any event, such *AIFM* should not hold itself out as meeting the full provisions of the *AIFMD Rules*, if derogations have been granted.

2.2 Existing AIFMs

Existing *AIFMs*, which have already opted-in to complying with the *AIFMD Rules* and which are considering using the Manager-Led Product regime, should identify how its business model, controls and procedures may change. *AIFMs* should notify the *Commission* of such changes well in advance of any notification of proposed licensee and fund using the Manager-Led Product regime.

In this instance there is no need to complete a Form GAIFMLP. The *Commission* will instead evaluate the changes.

2.3 Licences within an AIF management structure

The *Commission* anticipates that the Manager-Led Product will be particularly suitable to *AIFMs* that structure their *AIFs* using legal forms requiring a management company – for example a limited partnership and requisite general partner. Such companies will still require a licence under section 4 of the *POI Law*. The *AIFM* should notify the *Commission* using a Form MLP, which also covers the proposed collective investment scheme, and the *Commission* will issue a licence to the management company under section 4 of the *POI Law* within one business day of receipt. The *Commission* attaches great value to the warranties made by the *AIFM* and will treat any evidence of misrepresentation extremely seriously.

No rules will be applied to such licensees. However, with each additional Form MLP submitted for a new licensee, *AIFMs* should consider the ongoing applicability of their existing business model, procedures and controls, and notify the *Commission* of any changes thereon for our evaluation. In addition, the *AIFMs* should consider the ongoing applicability and appropriateness of existing derogations.

2.4 Proposed Collective Investment Schemes/AIFs

As stated at 2.3, the *Commission* will require submission of a Form MLP and will attach great value to the warranties made by the *AIFM*. The *Commission* will register the *collective investment scheme* under section 8 of the *POI Law* within one business day of receipt.

No rules will be applied to the *collective investment scheme*. However, as well as ensuring that reporting requirements are met, the *AIFM* will also need to consider very carefully the ongoing appropriateness of the disclosures made within a Form GAIFMLP concerning the investment strategy, objectives, leverage and risk profiles of the *AIFs*.

In this context, the *Commission* encourages any *AIFM* considering the registration of an open-ended *collective investment scheme* to discuss this with the *Commission* at an early stage. The *Commission* is cognisant of the liquidity challenges faced by the open-ended sector and would be unlikely to welcome any *AIF* that has an investment and/or leveraging strategy that challenges the liquidity profile required by the dealing days.

Similarly, any highly leveraged funds that present high solvency risks are unlikely to be welcomed, whether open-ended or closed-ended.