

Guidance Note

# Applications/Notifications in respect of Manager-Led Product



Guernsey Financial  
Services Commission

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## Glossary of Terms

<b>AIFMD</b>	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
<b>AIF</b>	means a <i>collective investment</i> undertaking, including investment compartments thereof, which: <ul style="list-style-type: none"><li>(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</li><li>(ii) does not require authorisation pursuant to Article 5 of the <i>UCITS Directive</i>,</li></ul> 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> .  This Guidance Note only applies to <i>AIFs</i> that are <i>Collective Investment Schemes</i> , as defined below
<b>AIFM</b>	means legal persons whose regular business is managing one or more <i>AIFs</i>
<b>AIFMD Rules</b>	means the AIFMD Rules, 2013
<b>Collective Investment Scheme</b>	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
<b>Commission</b>	the Guernsey Financial Services Commission
<b>POI Law</b>	the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended
<b>Designated Administrator</b>	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.