

## **Guidance Note:**

### **AIFMD<sup>i</sup> Regime:**

## **Transitional Arrangements, Exemptions and JFSC Forms**

Issued: 12 July 2013

### **1 Document Overview**

- 1.1 This Guidance Note is of interest to any person that is:
  - 1.1.1 an Alternative Investment Fund (**AIF**), within the meaning of the Alternative Investment Funds (Jersey) Regulations 2012 (the **AIF Regulations**);
  - 1.1.2 an Alternative Investment Fund Manager (**AIFM**), either within the meaning of AIF services business (Article 2(11) of the Financial Services (Jersey) Law 1998 (the **FS(J)L**) or a sub-threshold AIFM within the meaning of the AIF Regulations; or
  - 1.1.3 a depositary appointed to an AIF which has an EU/EEA AIFM.
- 1.2 This Guidance Note provides:
  - 1.2.1 a detailed description of the provisions made in the [Alternative Investment Funds \(Jersey\) Order 2013](#) (the **AIF Order**) and the [Financial Services \(Amendment of Schedule 2 to Law\) \(No. 4\) \(Jersey\) Order 2013](#) (the **Amendment No. 4 Order**) (together the **Orders**) in relation to:
    - 1.2.1.1 the transitional arrangements currently in the process of being defined by various Member States of the European Union (**EU**) or other European Economic Area (**EEA**) States that have adopted the AIFMD (together the **Transitional Arrangements**); and
    - 1.2.1.2 the exemptions which may apply where there are no applicable Transitional Arrangements; and
  - 1.2.2 a brief description of the new and amended application and notification forms (together the **AIFMD Forms**) which will apply from 22 July 2013, where there are no applicable Transitional Arrangements or exemptions.

### **2 Transitional Arrangements**

- 2.1 The Transitional Arrangements, taken in conjunction with the Orders, will have the effect that Jersey's AIFMD regime will not apply in certain circumstances, as more fully described below. This should ensure that Jersey AIFs and AIFMs will not be put at a disadvantage compared with AIFs and AIFMs from EU or EEA States.

- 2.2 Transitional Arrangements will not apply to all AIFs or AIFMs nor will all EU and EEA States that have implemented the AIFMD necessarily invoke them. It may be the case that a particular AIF or AIFM does not qualify to benefit from the Transitional Arrangements (by virtue, for example, of the fact that it is not an existing AIF or AIFM marketing in an EU or EEA State to which the AIFMD applies before 22 July 2013). Further, the Transitional Arrangements adopted by one EU or EEA State may vary materially from the Transitional Arrangements adopted by another.
- 2.3 The Jersey Transitional Arrangements may apply to:
  - 2.3.1 AIFs as detailed in the AIF Order;
  - 2.3.2 AIFMs, except a sub-threshold AIFM, as detailed in the Amendment No.4 Order; and
  - 2.3.3 a sub-threshold AIFM as detailed in the AIF Order.

### The AIF Order

- 2.4 The AIF Order supplements the AIF Regulations which makes provision for the implementation of the AIFMD.
- 2.5 Article 2(3) of the AIF Order facilitates the use by AIFs of Transitional Arrangements by not requiring them to hold a certificate under Regulation 7 of the AIF Regulations for so long as the national laws of the Member State of the EU or other EEA State in which the AIF is being marketed or managed do not require compliance by the AIF with the AIFMD.
- 2.6 Article 4(5) of the AIF Order provides that a 'sub-threshold' AIFM<sup>ii</sup> within the meaning of Article 3(b) of the AIF Order, will not need to be approved by the JFSC for so long as the national laws of the Member State of the EU or other EEA State in which the AIFM is marketing or managing the particular AIF do not require compliance by the AIFM with the AIFMD.

### Amendment No. 4 Order

- 2.7 The Amendment No. 4 Order amends Schedule 2 to the FS(J)L (the **Schedule**) in relation to certain AIF services business, specifically, Article 4 adds a new Part 5 to the Schedule to deal with persons carrying on AIF services business caught within the scope of Article 2(11) of the FS(J)L.
- 2.8 Paragraph 23(3) of Part 5 of the Schedule has the effect of facilitating the use of Transitional Arrangements by exempting a person, carrying on AIF services business within the meaning of Article 2(11) of the FS(J)L, from the requirement to register as such under Article 7(1) of the FS(J)L, if:
  - 2.8.1 the person is carrying on the marketing or management of an AIF in a Member State of the EU or other EEA State to which the AIFMD applies; and provided that,
  - 2.8.2 the relevant EU/EEA State's national laws do not require compliance by the person carrying on AIF services business with the AIFMD.

## 3 Exemptions

- 3.1 Provided that there are no applicable Transitional Arrangements, certain AIFs and AIFMs may instead qualify to benefit from one of the exemptions under the AIF Order or the Amendment No. 4 Order respectively (together the **Exemptions**).

- 3.2 These exemptions may apply to AIFs which are Certified Funds<sup>iii</sup> or Recognized Funds<sup>iv</sup>, as detailed in the AIF Order.
- 3.3 Article 2(1) of the AIF Order exempts certain AIFs from the application of the AIF Regulations, provided that the JFSC has granted its prior permission, in writing, for that AIF to be marketed in a Member State of the EU or other EEA State to which the AIFMD applies.
- 3.4 These exemptions may also apply to AIFMs which are persons, as detailed in the Amendment No. 4 Order.
- 3.5 Paragraph 23(1)(a) and (b) of Part 5 of the Schedule exempt certain persons carrying on AIF services business from being required to register as an AIF services business under Article 2(11) of the FS(J)L provided that the JFSC has granted its prior permission in writing for the relevant AIF to be marketed in a Member State of the EU or other EEA State to which the AIFMD applies.
- 3.6 These AIFMs are persons:
  - 3.6.1 with an existing registration, under Article 2(10) of the FS(J)L to carry on any one or more classes of fund services business (an **FSB**) in relation to an unclassified fund or an unregulated fund, where that registration includes the same functions as the AIF services business; or
  - 3.6.2 who hold a permit as a functionary of a Recognized Fund under the CIF Law<sup>v</sup>, where the functions of the person as that functionary include the same functions as the AIF services business (**Recognized Fund Functionary**).

## 4 AIFMD Forms

- 4.1 Where there are no applicable Transitional Arrangements or Exemptions from which an AIF or an AIFM may benefit, Jersey's AIFMD regime will apply. In such circumstances, the appropriate AIFMD Form(s) should be completed and submitted to the JFSC and will be processed by the JFSC from 22 July 2013.
- 4.2 The AIFMD Forms are now available on the JFSC's Website, including those relating to the grant of an Exemption.

### Fund Product (AIF)

- 4.3 "New" AIF Application Form
  - 4.3.1 The AIF application form should be completed by all AIFs registered in Jersey (as either a company or type of limited partnership), or which are a Jersey unit trust, and in respect of which the JFSC has given its consent under the Control of Borrowing (Jersey) Order 1958 (**COBO**), which require approval under the AIF Regulations.
  - 4.3.2 For the avoidance of doubt, AIFs which are Certified Funds or Recognized Funds are not required to complete this AIF application form.
- 4.4 "Amended" CIF/UCF Application Form
  - 4.4.1 The CIF/UCF application form has been amended to include a new Part C to take account of the information required to be provided in respect of prospective Certified Funds which also meet the definition of an AIF under the Regulations.
- 4.5 "New" AIF/EXEMPT Notification Form

- 4.5.1 The AIF/EXEMPT notification form should be completed in respect of Certified Funds and Recognized Funds seeking an exemption from the AIF Regulations. This should be completed and submitted to the JFSC prior to marketing in an EU/EEA State.
- 4.5.2 For the avoidance of doubt, this AIF/EXEMPT notification form is not relevant for COBO funds.

4.6 “New” Jersey Eligible Investor Fund Application Form

- 4.6.1 The Jersey Eligible Investor Fund application form should be completed in respect of Certified Funds intending to operate as a Jersey Eligible Investor Fund together with the CIF/UCF application form.

4.7 “Amended” Initial Review Checklist

- 4.7.1 The Initial Review Checklist has been amended to *inter alia* take account of the AIFMD regime.

**Service Provider**

4.8 “New” FSJ/AIFSB Application Form

- 4.8.1 The FSJ/AIFSB application form should be completed by all Jersey AIFMs which require approval under Article 2(11) of the FS(J)L for the carrying on of AIF services business.
- 4.8.2 For the avoidance of doubt, the FSJ/AIFSB application form is not relevant for existing FSBs or Recognized Fund Functionaries who perform the same functions as the AIF services business.

4.9 “Amended” FSJ/FSB Application Form

- 4.9.1 The FSJ/FSB application form has been amended to include a new Part C to take account of the information required to be provided from applicant FSB’s which intend to be AIFMs.

4.10 “New” AIFSB/EXEMPT Notification Form

- 4.10.1 The AIFSB/EXEMPT notification form should be completed by all FSBs and Recognized Fund Functionaries seeking an exemption from registration to carry on AIF services business where such persons perform the same functions as the AIF services business.
- 4.10.2 This notification form should be completed and submitted to the JFSC prior to marketing in an EU/EEA State.
- 4.10.3 For the avoidance of doubt, this AIFSB/EXEMPT notification form is not relevant for service providers only to COBO funds.

4.11 “New” AIF/SUB AIFM Application Form

- 4.11.1 The AIF/SUB AIFM application form should be completed by all AIFMs which require approval under the AIF Regulations if they intend to act as a sub-threshold manager.

For the avoidance of doubt, the AIF/SUB AIFM application form is not relevant for FSBs, Recognized Fund Functionaries or persons carrying on AIF services business.

4.12 New AIF/CLOSED-ENDED DEPOSITORY Application Form

- 4.12.1 The AIF/CLOSED-ENDED DEPOSITARY application form should be completed by all Jersey depositaries of AIFs, which have an EU/EEA AIFM. This is in relation to a COBO closed-ended private equity/real estate AIF for which the depositary requires approval under the AIF Regulations.
- 4.12.2 For the avoidance of doubt, the AIF/CLOSED-ENDED DEPOSITARY application form is not relevant for FSBs or Recognized Fund Functionaries who perform the function of trustee, custodian, or depositary.

#### 4.13 "New" AIF CODES/DEPOSITARY Notification Form

- 4.13.1 The AIF CODES/DEPOSITARY notification form for FSBs and Recognized Fund Functionaries performing the role of trustee, custodian, or depositary should be completed by all Jersey depositaries appointed to an AIF which have an EU/EEA AIFM.
- 4.13.2 This notification form should be completed and submitted to the JFSC within 28 days of being appointed.

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<sup>i</sup> The Alternative Investment Fund Managers Directive (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 (O.J. No. L174 1.7.2011, p.1)).

<sup>ii</sup> A sub-threshold AIFM is an AIFM which provides services in respect of which Article 3(2) of the AIFMD applies.

<sup>iii</sup> A certificate has been granted by the JFSC under Article 8B of the Collective Investment Funds (Jersey) Law 1988.

<sup>iv</sup> A certificate has been granted by the JFSC under the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003.

<sup>v</sup> Means the Collective Investment Funds (Jersey) Law 1988.