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The AIFMD Rules, 2013

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The AIFMD Rules, 2013

The Guernsey Financial Services Commission in exercise of the powers conferred on it by sections 12, 14, 15, 16 and 20 of the Protection of Investors (Bailiwick of Guernsey), Law 1987, as amended hereby makes the following rules:-

1. INTRODUCTION

1.1 Citation, commencement and application

These Rules, which may be cited as The AIFMD Rules, 2013, are made on 29 November 2013 and, shall come into operation on 2 January 2014. *These Rules* enable *Guernsey AIFMs*, *Guernsey Depositaries* and *Non-Financial Asset AIF Depositaries* to opt into an AIFMD equivalent regime.

AIFMD provides for an EU passport for non-EU AIFMs. This passport could potentially be applicable from 2015 or 2016. The principle of the passport is that, in order to enjoy the same rights, non-EU AIFMs should comply with the same obligations as EU AIFMs, which means that non-EU AIFMs will be able to benefit from the European passport so long as they abide by the rules of AIFMD. This does not mean that the non-EU country where an AIFM is established would need to have AIFMD-equivalent rules, but that non-EU AIFMs wishing to use the passport will have to comply with the AIFMD rules of a nominated EU Member State of Reference as if they were EU AIFMs. As a consequence, EU competent authorities will have responsibility for supervising compliance with the AIFMD by AIFMs situated in non-EU countries.

Prior to the introduction of a pan-EU passport for non-EU AIFMs, Guernsey AIFMs will be able to market Guernsey AIFs and EU AIFs to EU professional investors under Member States' national private placement regimes. However, from 22 July 2013, subject to any transitional periods introduced by Member States, Guernsey AIFMs must comply with certain transparency and disclosure requirements and regulatory co-operation agreements have been concluded between the Commission and certain EU competent authorities in accordance with Article 42 of AIFMD.

These Rules have been introduced to assist those Guernsey AIFMs, Guernsey Depositaries and Non-Financial Asset AIF Depositaries who may wish to opt in to comply with the AIFMD in demonstrating to EU competent authorities their intentions to be compliant with AIFMD. This could be beneficial at the time of passporting but also in instances where Member States' national private placement regimes require the AIFM to be compliant with AIFMD.

Those Guernsey AIFMs, Guernsey Depositaries and Non-Financial Asset AIF Depositaries who wish to be subject to *these Rules* will be able to apply to the Commission. Once the Commission has concluded its consideration of the application, *these Rules* will be imposed as

a condition on the *authorisation, registration or licence* of the respective *Guernsey AIFM, Guernsey Depositary or Non-Financial Asset AIF Depositary* or in a manner which the Commission considers expedient to fulfil its supervisory obligations. In the event of any difference or discrepancy between *these Rules*, and any applicable rules and regulations under the Law in respect of the *AIFM* and the relevant *AIF*, the provisions of *these Rules* will prevail. The *Commission* will have regard to the provisions of *AIFMD and AIFMD Level 2* in interpreting *these Rules*. Any guidance issued by *ESMA*, for example, in respect of remuneration practices, or the definition of an *AIF* may be used by the *Commission* to interpret the obligations created by *these Rules*.

1.2 Interpretation

Unless the context otherwise requires, in *these Rules*, expressions defined in the *Law* have the same meaning as they have in the *Law*, and the following have the meanings assigned to them:

“accounting reference date” means the date to which an AIFM’s, AIF’s or depositary’s accounts are prepared;

“additional amount” has the meaning given in Rule 11.3;

“AIF” means a collective investment undertaking, including investment compartments thereof, which:

- (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 UCITS Directive,

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 AIFMD;

“AIF constitutional document” means the trust deed or instrument, the memorandum and articles of incorporation, or the partnership agreement, or other similar constitutional document, as the case may be, together with the relevant prospectus or information memorandum in respect of the foregoing;

“AIFM” means legal persons whose regular business is managing one or more AIFs;

“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;
“AIFMD Level 2”	means Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU;
“annual accounts”	means the accounts which cover the 12 month period immediately preceding the accounting reference date (or in the case of new business, from the date of incorporation);
“authorisation”	means the authorisation of a collective investment scheme pursuant to section 8 of the Law;
“carried interest”	means a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF;
“close links”	means a situation in which two or more natural or legal persons are linked by: <ul style="list-style-type: none"> (i) participation, namely ownership, directly or by way of control, of 20% or more of the voting rights or capital of an undertaking; (ii) control, namely the relationship between a parent undertaking and a subsidiary, as referred to in Article 1 of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, or a similar relationship between a natural or legal person and an undertaking; for the purposes of this point a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking of those subsidiaries. <p>A situation in which two or more natural or legal persons are permanently linked to the same person by a control</p>

relationship shall also be regarded as constituting a 'close link' between such persons;

“Commission”

means the Guernsey Financial Services Commission;

“competent authorities”

1) in relation to EU AIFMs means the national authorities of Member States which are empowered by law or regulation to supervise AIFMs;

2) in relation to a depositary means:

(i) if the depositary is a credit institution authorised under Directive 2006/48/EC, the competent authorities as defined in point (4) of Article 4 thereof;

(ii) if the depositary is an investment firm authorised under Directive 2004/39/EC, the competent authorities as defined in point (22) of Article 4(1) thereof;

(iii) if the depositary falls within a category of institution referred to in point (c) of Rule 17.2.1 below, the national authorities of its home Member State which are empowered by law or regulation to supervise such categories of institution;

(iv) if the depositary is an entity referred to in Rule 17.3 below, the national authorities of the Member State in which that entity has its registered office and which are empowered by law or regulation to supervise such entity or the official body competent to register or supervise such entity pursuant to the rules of professional conduct applicable thereto;

(v) if the depositary is appointed as a depositary for a non-EU AIF in accordance with Rule 17.1.3 below, and does not fall within the scope of sub-paragraphs (i) to (iv) of this definition, the relevant national authorities of the third country where the depositary has its registered office;

3) in relation to EU AIFs means the national

authorities of a Member State which are empowered by law or regulation to supervise AIFs;

“control”	means "control" as defined in Article 1 of Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts;
“credit institution”	means a credit institution as defined in Directive 2006/48/EC on the capital adequacy of investment firms and credit institutions;
“depository”	means a person appointed pursuant to Rule 17.1.1;
“Depository Expenditure Requirement”	has the meaning given in Rule 17.8;
“EEA”	means the European Economic Area;
“employees’ representatives”	means employees' representatives as defined in point (e) of Article 2 of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community;
“established”	means: <ul style="list-style-type: none">(i) for AIFMs, ‘having its registered office in’;(ii) for AIFs, ‘being authorised or registered in’ or, if the AIF is not authorised or registered, ‘having its registered office in’;(iii) for depositaries, ‘having its registered office or branch in’;
“ESMA”	means The European Securities and Markets Authority;
“EU”	means the European Union and any EEA state in which AIFMD is implemented;
“EU AIF”	means: <ul style="list-style-type: none">(i) an AIF which is authorised or registered in a Member State under the applicable national

	law; or
	(ii) an AIF which is not authorised or registered in a Member State, but has its registered office and/or head office in a Member State;
“EU AIFM”	means a legal person whose registered office is in a Member State and whose regular business is managing one or more AIFs;
“Expenditure Based Requirement”	has the meaning given in Rule 11.2;
“external AIFM”	means an AIFM appointed by or on behalf of the AIF to manage the AIF;
“feeder AIF”	means an AIF which: <ul style="list-style-type: none"> (i) invests at least 85% of its assets in units or shares of another AIF (the “master AIF”); (ii) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or (iii) has otherwise an exposure of at least 85% of its assets to such a master AIF;
“financial instrument”	means an instrument as specified in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments;
“Guernsey AIF”	means an AIF established in the Bailiwick of Guernsey, including, but not limited to, collective investment schemes declared in a registration or authorisation issued by the Commission under section 8 of the Law to be an authorised or registered collective investment scheme for the purposes of the Law;
“Guernsey AIFM”	means <ul style="list-style-type: none"> (i) a Licensee whose regular business is managing one or more AIFs, including Guernsey AIFs, or

- (ii) a Guernsey AIF in the case of a self-managed AIF;

which is notified to the Commission as the AIFM under Rule 4 below for the purposes of complying with these Rules;

“Guernsey Depositary” means a depositary of an AIF with a licence to act as a custodian and which is subject to these Rules;

“home Member State of the AIF” means:

- (i) the Member State in which the AIF is authorised or registered under applicable national law, or in the case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time; or
- (ii) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or head office;

“home Member State of the AIFM” means:

- (i) for EU AIFMs, the Member State in which the AIFM has its registered office;
- (ii) for AIFMs established in Guernsey, the Member State of Reference determined in accordance with Article 37(4) of the AIFMD and supplemented by Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013;

“initial capital” means funds as referred to in points (a) and (b) of the first paragraph of Article 57 of Directive 2006/48/EC on the capital adequacy of investment firms and credit institutions;

“Initial Capital Requirement” has the meaning given in Rule 11.2;

“Initial Depositary Capital” has the meaning given in Rule 17.8;

Requirement”

“internal AIFM”	means a structure where the legal form of the AIF permits internal management and where the AIF's governing body has chosen not to appoint an external AIFM;
“investors”	means those retail or professional investors or potential retail or professional investors in the Member States where the AIFs are marketed;
“issuer”	means a legal entity governed by private or public law, including a state whose securities are admitted to trading on a regulated market, the issuer being in the case of depositary receipts representing securities the issuer of the securities represented, where that issuer has its registered office in the EU, and where its shares are admitted to trading on a regulated market;
the “Law”	means the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended;
“leverage”	means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;
“Licence”	means a licence issued to carry on controlled investment business under section 4 of the Law;
“Licensee”	means the holder of a licence to carry on controlled investment business issued under section 4 of the Law;
“managing AIFs”	means performing investment management functions comprising at least risk or portfolio management for one or more AIFs;
“marketing”	means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU;
“master AIF”	means an AIF in which another AIF invests or has an exposure in accordance with the definition of "feeder AIF" above;

“Member State”	includes the member states of the EU and any EEA state in which the AIFMD is implemented;
“Member State of Reference”	means the Member State determined in accordance with Article 37(4) of the AIFMD and supplemented by Commission Implementing Regulation (EU) No 448/2013 of 15 May 2013;
“Minimum Capital Requirement”	has the meanings given in Rules 11.2, 17.7 and 17.8;
“Non-EU AIF”	means an AIF which is not an EU AIF;
“Non-Financial Asset AIFs”	means those AIFs described at Rule 17.3.1;
“Non-Financial Asset AIF Depository”	means a depository holding a licence under the Law to act as a custodian subject to these Rules, or similar authorisation from another competent authority and appointed in respect of a Non-Financial Asset AIF as described at Rule 17.3;
“non-listed company”	means a company which has its registered office in the EU and the shares of which are not admitted to trading on a regulated market;
“own funds”	means own funds as referred to in Articles 56 to 67 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;
“parent undertaking”	means a parent undertaking within the meaning of Articles 1 and 2 of Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts;
“prime broker”	means a credit institution, a regulated investment firm or another entity subject to prudential regulation and on-going supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

“professional investor”	means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II to Directive 2004/39/EC on Markets in Financial Instruments;
“prospectus”	means either a prospectus published in compliance with the Prospectus Directive or a prospectus published in compliance with other national law;
“Prospectus Directive”	means Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading;
“qualified auditor”	has the meaning set down in the Licensees (Conduct of Business) Rules 2009 or any successive rules;
“registration”	means the registration of a collective investment scheme pursuant to section 8 of the Law;
“reporting period”	means the 12 month period immediately preceding the accounting reference date (or in the case of new business, from the date of incorporation);
“retail investor”	means an investor, other than a professional investor;
“subsidiary”	means a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts;
“these Rules”	means the AIFMD Rules, 2013;
“third country”	means a non-EU territory, excluding the Bailiwick of Guernsey;
“total expenditure”	means all expenditure incurred. The following may be deducted from the expenditure figure: <ul style="list-style-type: none"> (a) Depreciation; (b) Profit shares, bonuses etc.; (c) Net losses arising in the translation of foreign currency balances; (d) Shared commissions paid (other than to officers and staff of the Guernsey AIFM)

that have been previously agreed in writing with the Commission; and

- (e) Exceptional and extraordinary non-recurring expense items which have been previously agreed in writing with the Commission;

"UCITS"	means an undertaking for collective investment in transferable securities authorised in accordance with the UCITS Directive;
"UCITS Directive"	means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009; and
"units"	the right or interest (howsoever described) of an investor in an AIF.

2. SCOPE

- 2.1 *These Rules* shall apply to
- 2.1.1 all *Guernsey AIFMs* in respect of those *AIFs* which they manage and propose to market to *professional* or *retail investors* in one or more *Member States* where they wish to opt to comply with the requirements of *these Rules*;
 - 2.1.2 all *Guernsey depositaries* of *AIFs* where they wish to opt to comply with the requirements of *these Rules*; and
 - 2.1.3 all *Non-Financial Asset AIF Depositaries* where they wish to opt to comply with the requirements of *these Rules* as are applicable to such types of *depository*.
- 2.2 Until passporting is extended by the *EU* to the Bailiwick of Guernsey pursuant to Article 67 of the *AIFMD*, *Guernsey AIFMs* which have opted to comply with *these Rules* shall continue to comply with The *AIFMD* (Marketing) Rules, 2013 in addition to the requirements of *these Rules*.
- 2.3 *The Commission* may in its absolute discretion by notice in writing to a *Guernsey AIFM*, *depository* or *Non-Financial Asset AIF Depository* exclude or modify the application of any provision of *these Rules* if *the Commission* is satisfied that any such derogation will not be prejudicial to the interests of investors.

3. CONDITIONS FOR ACTING AS A GUERNSEY AIFM

ARTICLE 6 AIFMD

- 3.1 The *Guernsey AIFM* who has exercised its opt-in right under Rules 2 and 4 of *these Rules* shall comply with *these Rules* only in respect of those *AIFs* it proposes to market into the *EU* and those *EU AIFs* which it manages.
- 3.2 No *Guernsey AIFM* which is an *external AIFM* may engage in activities other than those referred to in Annex I of *these Rules* and the additional management of *UCITS* subject to appropriate authorisation.
- 3.3 No *Guernsey AIFM* which is an *internal AIFM* shall engage in activities other than the internal management of that *AIF* in accordance with Annex I of *these Rules*.
- 3.4 By way of derogation from Rule 3.2 above, a *Guernsey AIFM* which is an *external AIFM* may, if their licence permits, provide the following services:
- 3.4.1 management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance

with Article 19(1) of Directive 2003/41/EC in accordance with mandates given by *investors* on a discretionary, client- by- client basis;

3.4.2 non-core services comprising:

- (a) investment advice;
- (b) safe-keeping and administration in relation to shares or units of collective investment undertakings; and
- (c) reception and transmission of orders in relation to *financial instruments*.

3.5 A *Guernsey AIFM* shall not provide:

- 3.5.1 only the services referred to in Rule 3.4 above;
- 3.5.2 non-core services referred to in Rule 3.4.2 without also being authorised in their licence to provide the services under Rule 3.4.1 above;
- 3.5.3 only the activities referred to in paragraph 2 of Annex I; or
- 3.5.4 the services referred to in paragraph 1(a) of Annex I without also providing the services referred to in paragraph 1(b) of Annex I.

3.6 The *Commission* may request any information from the *Guernsey AIFM* which it shall require to monitor compliance with *these Rules* at all times and the *Guernsey AIFM* shall be obliged to comply with any such request.

4. GUERNSEY AIFM APPLICATION

ARTICLES 7 AND 8 AIFMD

4.1 Without prejudice to Rule 4.2, the relevant *Guernsey AIFM* (or, in the case of an applicant for an *authorisation, registration* or *licence* who wishes to opt in to *these Rules*, at the time of submission of the *licence* application to the *Commission*) shall notify the *Commission* of the same in writing and in such form as the *Commission* may require and shall include the information set out in Rule 4.2 below in respect of its proposed *AIFMD* business.

4.2 The notification in Rule 4.1 above shall:

- 4.2.1 state whether the applicant is an *external* or *internal AIFM*;
- 4.2.2 describe the organisational structure of the applicant including information on how the applicant intends to comply with its obligations under relevant provisions of *these Rules*; include information on the remuneration policies

and practices of the *Guernsey AIFM* adopted pursuant to relevant provisions relating to Rule 8.1 below;

- 4.2.3 include information about the investment strategies, including the types of underlying funds if the *AIF* is a fund of funds, and the proposed *Guernsey AIFM*'s policy as regards the use of *leverage*, and the risk profiles and other characteristics of the *AIFs* the proposed *Guernsey AIFM* manages or intends to manage, including information about the *Member States* or *third countries* in which *AIFs* are *established* or are expected to be *established*;
- 4.2.4 include information on where the *master AIF* is *established* if the *AIF* is a *feeder AIF*;
- 4.2.5 include information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Rule 10 hereof;
- 4.2.6 attach evidence in support of the applicant's *Minimum Capital Requirement*;
- 4.2.7 include information on the risk management systems employed by the applicant; and
- 4.2.8 include certification by the *Guernsey AIFM* that:
 - (a) the proposed *Guernsey AIFM* is a legal person;
 - (b) the proposed *Guernsey AIFM* will be the only *AIFM* of each *AIF* it will manage;
 - (c) the *Guernsey AIFM* will comply with the provisions of *these Rules*;
 - (d) the proposed *Guernsey AIFM* has sufficient *initial capital* and *own funds* in accordance with Rule 11 below and relevant provisions relating thereto;
 - (e) there are at least two persons conducting the business of the proposed *Guernsey AIFM* pursuant to Schedule 4 of the *Law*; and
 - (f) the names of the persons mentioned in 4.2.8(e) above have been communicated to the *Commission*.

5. NOTIFICATION OF MARKETING

- 5.1 Within 14 calendar days of the commencement of any *marketing* in a country or territory within the *EU*, the *Guernsey AIFM* shall notify the *Commission* of the same in such form as the *Commission* may require and shall include the information set out in Rule 5.2 below.

- 5.2 The notification in Rule 5.1 above shall:
- 5.2.1 identify the *Member State* where *marketing* is to be conducted; and
 - 5.2.2 identify the *competent authorities* in those *Member States* to whom the *Guernsey AIFM* shall report; and
 - 5.2.3 state the name and address of the *Guernsey AIFM* in respect of each *Guernsey AIF* or *AIF*; and
 - 5.2.4 state the name and address of each *Guernsey AIF* or *AIF* which the *Guernsey AIFM* intends to market from within the Bailiwick of Guernsey and the manner in which he intends to market the *Guernsey AIF* or *AIF*; and certify that he is permitted to market each such *Guernsey AIF* or *AIF* in that manner in the *Member State* concerned.
- 5.3 Rules 5.1 and 5.2 do not apply if a notification has been made pursuant to The AIFMD (Marketing) Rules, 2013.

6. NOTIFICATION OF ANY CHANGES

ARTICLE 10 AIFMD

- 6.1 In the event of any proposed changes to any of the information set out in Rule 4.2 and Rule 5 above, the *Guernsey AIFM* shall notify the *Commission* in writing in advance of any material changes to such information and prior to engaging in any significant new activities or establishing new branches, offices or subsidiaries;
- 6.2 If applicable, the *Guernsey AIFM* shall notify the *Commission* of its *Member State of Reference* forthwith.

7. GENERAL PRINCIPLES

ARTICLE 12 AIFMD

- 7.1 A *Guernsey AIFM* must at all times:
- 7.1.1 act honestly, with due skill, care and diligence and fairly in conducting its activities;
 - 7.1.2 act in the best interests of the *AIFs* and the *investors* of the *AIFs* it manages and the integrity of the market;
 - 7.1.3 have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;

- 7.1.4 take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the *AIFs* and their *investors* and ensure that the *AIFs* it manages are fairly treated;
- 7.1.5 comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the *AIFs* and the *investors* of the *AIFs* it manages and the integrity of the market;
- 7.1.6 treat all *AIF investors* fairly;
- 7.1.7 ensure that no *investor* in an *AIF* shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant *AIF constitutional document*.

Articles 16 to 29 of *AIFMD Level 2* are applicable in this regard.

8. REMUNERATION

ARTICLE 13 AIFMD

- 8.1 *Guernsey AIFMs* must have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the *AIFMs* or of the *AIFs* they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles or *AIF constitutional documents* of the *AIFs* they manage.

9. ORGANISATIONAL REQUIREMENTS

ARTICLE 18 AIFMD

- 9.1 A *Guernsey AIFM* must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of the *AIFs* which it manages.
- 9.2 A *Guernsey AIFM*, having regard to the nature of the *AIFs* under management, must have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the *AIFs* may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was

effected and that the assets of the *AIFs* managed by the *Guernsey AIFM* are invested in accordance with the *AIF constitutional documents* and the legal provisions in force.

10. DELEGATION OF AIFM FUNCTIONS

ARTICLE 20 AIFMD

- 10.1 *Guernsey AIFMs* which intend to delegate to third parties the task of carrying out functions on their behalf shall notify the *Commission* before the delegation arrangements become effective. The following conditions shall be met:
- 10.1.1 the *Guernsey AIFM* must be able to justify its entire delegation structure on objective reasons;
 - 10.1.2 the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
 - 10.1.3 where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the *Commission*;
 - 10.1.4 the delegation must not prevent the effectiveness of supervision of the *Guernsey AIFM*, and, in particular, must not prevent the *Guernsey AIFM* from acting, or the *AIF* from being managed, in the best interests of its *investors*;
 - 10.1.5 the *Guernsey AIFM* must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the *AIFM* is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of *investors*;
 - 10.1.6 the *Guernsey AIFM* must review the services provided by each delegate on an on-going basis;
 - 10.1.7 the *Guernsey AIFM* must not delegate portfolio management or risk management to the *depository* or a delegate of the *depository* or any other entity whose interests may conflict with those of the *AIFM* or the *investors* of the *AIF*, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are

properly identified, managed, monitored and disclosed to the *investors* of the *AIF*.

- 10.2 A *Guernsey AIFM* must not delegate functions to the extent that in essence it can no longer be considered the manager of the *AIF* and to the extent that it becomes a letterbox entity.
- 10.3 The liability of a *Guernsey AIFM* to the *AIF* and its *investors* shall not be affected by the delegation by the *Guernsey AIFM* of any functions to a third party.
- 10.4 The third party may sub-delegate any of the functions delegated to it provided the following conditions are met:
- 10.4.1 the prior consent of the *Guernsey AIFM* to the sub-delegation;
 - 10.4.2 the *Guernsey AIFM* notifies the *Commission* before the sub-delegation arrangements become effective;
 - 10.4.3 the conditions set out in Rule 10.1 on the understanding that all references to the 'delegate' are read as references to 'sub-delegate';
 - 10.4.4 no sub-delegation of portfolio management or risk management may be conferred on the *depository* or a delegate of the *depository* or any other entity whose interests may conflict with those of the *Guernsey AIFM* or the *investors* of the *AIF*, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the *investors* of the *AIF*; and
 - 10.4.5 the relevant delegate must review the services provided by each sub-delegate on an on-going basis.
- 10.5 Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in Rule 10.4 shall apply *mutatis mutandis*.

11. INITIAL CAPITAL AND OWN FUNDS

ARTICLE 9 AIFMD

- 11.1 A *Guernsey AIFM* which is an *internal AIFM* must have *initial capital* of at least €300,000.
- 11.2 A *Guernsey AIFM* which is an *external AIFM* shall have *initial capital* of:

11.2.1 at least €125,000 ("*Initial Capital Requirement*") plus, where applicable, the *additional amount*, as set out in Rule 11.3; or

11.2.2 one quarter of its *total expenditure* taken from the most recent *annual accounts* ("*Expenditure Based Requirement*"). However the *Commission* reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the *Guernsey AIFM*;

whichever is higher ("*Minimum Capital Requirement*").

11.3 Where the value of the portfolios of *AIFs* managed by the *Guernsey AIFM* exceeds €250,000,000, a *Guernsey AIFM* must provide an *additional amount* of *own funds* equal to 0.02% of the amount by which the value of the portfolios of the *AIFM* exceeds €250,000,000 ("*additional amount*"). A *Guernsey AIFM* need not provide up to 50% of the *additional amount* if it benefits from a guarantee of the same amount given by a *credit institution* or insurance undertaking which has its registered office in Guernsey or in the *EU* or in a third country where it is subject to prudential rules considered by the *Commission* as equivalent to those laid down in *EU* law and the form of guarantee is approved by the *Commission*.

For the purpose of this rule, *AIFs* managed by the *AIFM*, including *AIFs* for which the *AIFM* has delegated functions in accordance with Rule 10 but excluding *AIF* portfolios that the *AIFM* is managing under delegation, shall be deemed to be portfolios of the *AIFM*.

11.4 The total of the *Initial Capital Requirement* and the *additional amount* required to be held by a *Guernsey AIFM* is not required to exceed €10,000,000.

11.5 All *Guernsey AIFMs* (whether *internal* or *external AIFMs*) must have additional *own funds* which are appropriate to cover potential liability risks arising from professional negligence or hold professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

11.6 The *Minimum Capital Requirement*, including any additional amounts under Rules 11.3 and 11.5, must be invested in liquid assets or assets readily convertible to cash in the short term and must not include speculative positions.

11.7 A *Guernsey AIFM* must be in a position to demonstrate its compliance with the *Minimum Capital Requirement* throughout the *reporting period*.

11.8 Any Subordinated Loan Capital incorporated in the calculation of the *Minimum Capital Requirement* (including repayment) is subject to the prior approval of the *Commission*.

11.9 A *Guernsey AIFM* shall notify the *Commission* forthwith where the *Guernsey AIFM* has reason to believe that:

- 11.9.1 it is in breach of its *Minimum Capital Requirement* or anticipates being in breach of its *Minimum Capital Requirement* within a period of one month; such notice shall specify the steps which the *Guernsey AIFM* is taking or has taken to remedy the breach and shall be confirmed in writing;
- 11.9.2 the *Guernsey AIFM's* auditor intends to qualify the accounts;
- 11.9.3 the liabilities of a subsidiary of the *Guernsey AIFM* exceed the subsidiary's assets; or
- 11.9.4 the liabilities of the parent company of the *Guernsey AIFM* exceeds the parent company's assets.

12. RISK MANAGEMENT

ARTICLE 15 AIFMD

- 12.1 A *Guernsey AIFM* shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each *AIF* investment strategy and to which each *AIF* is or may be exposed.
- 12.2 A *Guernsey AIFM* must review the risk management systems with appropriate frequency, but at least annually, and adapt them whenever necessary.
- 12.3 A *Guernsey AIFM* must functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management by satisfying the conditions set out in Article 42 of the AIFMD Level 2.
- 12.4 A *Guernsey AIFM* must at least:
 - 12.4.1 implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the *AIF*, according to the investment strategy, the objectives and risk profile of the *AIF*;
 - 12.4.2 ensure that the risks associated with each investment position of the *AIF* and their overall effect on the *AIF's* portfolio can be properly identified, measured, managed and monitored on an on-going basis, including through the use of appropriate stress testing procedures; and
 - 12.4.3 ensure that the risk profile of the *AIF* shall correspond to the size, portfolio structure and investment strategies and objectives of the *AIF* as laid down in the *AIF constitutional document*.

12.5 A *Guernsey AIFM* must set a maximum level of *leverage* which it may employ on behalf of each *AIF* it manages as well as the extent of the right to re-use collateral or guarantee that could be granted under the leveraging arrangement, taking into account, *inter alia*:

12.5.1 the type of the *AIF*;

12.5.2 the investment strategy of the *AIF*;

12.5.3 the sources of *leverage* of the *AIF*;

12.5.4 any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;

12.5.5 the need to limit the exposure to any single counterparty;

12.5.6 the extent to which the *leverage* is collateralised;

12.5.7 the asset-liability ratio; and

12.5.8 the scale, nature and extent of the activity of the *AIFM* on the markets concerned.

13. LIQUIDITY RISK MANAGEMENT

ARTICLE 16 AIFMD

13.1 A *Guernsey AIFM* must, for each *AIF* that it manages which is not an unleveraged closed-ended *AIF*, employ an appropriate liquidity management system and adopt procedures which enable it to monitor the liquidity risk of the *AIF* and to ensure that the liquidity profile of the investments of the *AIF* complies with its underlying obligations.

13.2 A *Guernsey AIFM* must regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the *AIFs* and monitor the liquidity risk of the *AIFs* accordingly.

13.3 A *Guernsey AIFM* must ensure that, for each *AIF* that it manages, the investment strategy, the liquidity profile and the redemption policy are consistent.

14. CONFLICTS OF INTEREST

ARTICLE 14 AIFMD

- 14.1 A *Guernsey AIFM* must take all reasonable steps to identify conflicts of interest that arise in the course of managing *AIFs* between:
- 14.1.1 the *Guernsey AIFM*, including its managers, employees or any person directly or indirectly linked to the *Guernsey AIFM* by control, and the *AIF* managed by the *Guernsey AIFM* or the *investors* in that *AIF*;
 - 14.1.2 the *AIF* or the *investors* in that *AIF*, and another *AIF* or the *investors* in that *AIF*;
 - 14.1.3 the *AIF* or the *investors* in that *AIF*, and another client of the *AIFM*;
 - 14.1.4 the *AIF* or the *investors* in that *AIF*, and a *UCITS* managed by the *AIFM* or the unit holders in that *UCITS*; or
 - 14.1.5 two clients of the *Guernsey AIFM*.
- 14.2 A *Guernsey AIFM* shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the *AIFs* and their *investors*.
- 14.3 A *Guernsey AIFM* shall segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. A *Guernsey AIFM* shall assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the *investors* of the *AIFs*.
- 14.4 Where organisational arrangements made by a *Guernsey AIFM* to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to *investors'* interests will be prevented, the *Guernsey AIFM* shall clearly disclose the general nature or sources of conflicts of interest to the *investors* before undertaking business on their behalf, and develop appropriate policies and procedures.
- 14.5 Where a *Guernsey AIFM* on behalf of an *AIF* uses the services of a *prime broker*, the terms shall be set out in a written contract. In particular any possibility of transfer and re-use of *AIF* assets shall be provided for in that contract and shall comply with any applicable national legislation or the *AIF constitutional document*. The contract shall provide that the *depository* be informed of the contract.

14.6 A *Guernsey AIFM* shall exercise due skill, care and diligence in the selection and appointment of *prime brokers* with whom a contract is to be concluded.

15. INVESTMENT IN SECURITISATION POSITIONS

ARTICLE 17 AIFMD

15.1 Investment by a *Guernsey AIFM*, on behalf of an *AIF*, in securitisations or other *financial instruments*, is subject to Articles 50 to 56 of *AIFMD Level 2*.

16. VALUATION

ARTICLE 19 AIFMD

16.1 A *Guernsey AIFM* is responsible for the proper valuation of *AIF* assets, the calculation of the net asset value and the publication of the net asset value. The *Guernsey AIFM's* liability towards the *AIF* and its *investors* is not affected by the fact that the *Guernsey AIFM* has appointed an external valuer.

16.2 A *Guernsey AIFM* must ensure that, for each *AIF* that it manages, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the *AIF* can be performed in accordance with *these Rules* and the *AIF's prospectus*.

16.3 The rules applicable to the valuation of assets and the calculation of the net asset value per *unit* of the *AIF* must be set down in the *AIF's prospectus*.

16.4 A *Guernsey AIFM* must ensure that the net asset value per *unit* of *AIFs* is calculated and disclosed to the *investors* in accordance with *these Rules* and the *AIF's prospectus*.

16.5 The valuation procedures used shall ensure that the assets are valued and the net asset value per *unit* is calculated at least once a year.

16.6 If the *AIF* is of the open-ended type, such valuations and calculations must also be carried out at the frequency which is both appropriate to the assets held by the *AIF* and its issuance and redemption frequency.

16.7 If the *AIF* is of the closed-ended type, such valuations and calculations must also be carried out in case of an increase or decrease of the capital by the relevant *AIF*.

16.8 Investors shall be informed of the valuations and calculations as set out in *these Rules* and the *AIF's prospectus*.

16.9 Valuations may be performed by an external valuer or by the *Guernsey AIFM*. The valuation shall be performed impartially and with all due care, skill and diligence.

- 16.10 An external valuer, being a legal or natural person, independent from the *AIF*, the *Guernsey AIFM* and any other persons with *close links* to the *AIF* or the *Guernsey AIFM*.
- 16.11 Where an external valuer performs the valuation function, the *Guernsey AIFM* must demonstrate that:
- 16.11.1 the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;
 - 16.11.2 the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with Rules 16.2 to 16.7 above; and
 - 16.11.3 the appointment of the external valuer complies with the requirements of Rule 10.1 above and of Article 73 *AIFMD Level 2*.
- 16.12 The appointed external valuer must not delegate the valuation function to a third party.
- 16.13 Notwithstanding Rule 16.1 above and irrespective of any contractual arrangements providing otherwise, the external valuer will be liable to the *Guernsey AIFM* for any losses suffered by the *Guernsey AIFM* as a result of the external valuer's negligence or intentional failure to perform its tasks.
- 16.14 Where the valuation is performed by the *Guernsey AIFM*, the task must be functionally independent from the portfolio management. Further, the remuneration policy and other measures must ensure that conflicts of interest are mitigated and that undue influence on employees is prevented.
- 16.15 Where the valuation is performed by an external valuer, the appointment of the external valuer must be notified to the *Commission* which may require that another external valuer be appointed instead, where the conditions laid down in Rule 16.11 above are not met.
- 16.16 Where the valuation function is not performed by an independent external valuer, the *Commission* may require the *Guernsey AIFM* to have valuation procedures and/or valuations verified by an external valuer, or, where appropriate, by an auditor.
- 16.17 The *depository* appointed for the *AIF* shall not be appointed as external valuer of that *AIF*, unless it has functionally and hierarchically separated the performance of its *depository* functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the *AIF*.

17. DEPOSITARY

ARTICLES 19 AND 21 AIFMD

17.1 Depositary

17.1.1 For each *AIF* it manages, the *AIFM* shall ensure that a single *depositary* is appointed in accordance with this Rule 17.

17.1.2 The appointment of the *depositary* shall be evidenced by written contract. The contract shall, *inter alia*, regulate the flow of information deemed necessary to allow the *depositary* to perform its functions for the *AIF* for which it has been appointed *depositary* as set out in *these Rules*.

17.1.3 Subject to Rule 17.3.1 below, the *depositary* shall be *established* in one of the following locations:

either:

- (a) in respect of authorised or registered open-ended *Guernsey AIFs*, in the Bailiwick of Guernsey; or
- (b) in respect of authorised or registered closed-ended *Guernsey AIFs*, in the Bailiwick of Guernsey or in the *home Member State of the AIFM* managing the *AIF* or in the *Member State of Reference* of the *AIFM* managing the *AIF*.

17.2 Eligibility criteria

17.2.1 Entities eligible to act as *depositary* are:

- (a) a *credit institution* having its registered office in the *EU* and authorised in accordance with Directive 2006/48/EC;
- (b) an investment firm having its registered office in the *EU*, subject to capital adequacy requirements in accordance with Article 20(1) of Directive 2006/49/EC including capital requirements for operational risks and authorised in accordance with Directive 2004/39/EC and which also provides the ancillary service of safe-keeping and administration of *financial instruments* for the account of clients in accordance with point (1) of Section B of Annex I to Directive 2004/39/EC; such investment firms shall in any case have *own funds* of not less than the amount of *initial capital* referred to in Article 9 of Directive 2006/49/EC;
- (c) another category of institution that is subject to prudential regulation and ongoing supervision and which on 21 July 2011, fell within the

categories of institution determined by *Member States* to be eligible to be a *depository* under Article 23(3) of Directive 2009/65/EC; or

- (d) an entity which is licensed by the Commission under section 4 of the *Law* to carry out the restricted activity of custody in relation to category 1 and 2 controlled investments;

17.2.2 In respect of *Guernsey AIFs*, and without prejudice to Rule 17.2.1, the appointment of a *depository established* in another *third country* for the purposes of *AIFMD*, may be permissible if the depository is a *credit institution* or any other entity of the same nature as the entities referred to in Rules 17.2.1(a) and 17.2.1(b) above provided that such entities are subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as *EU law* and are effectively enforced;

17.2.3 For certain types of closed-ended *AIFs*, such as private equity or venture capital funds and real estate funds, a wider range of entities than those specified in Rule 17.2, such as administrators should be able to perform the relevant *depository* functions. The *Commission* requires such entities to obtain a licence under section 4 of the *Law* to carry out the restricted activity of custody in relation to category 1 and 2 controlled investments and be subject to *these Rules* in order to demonstrate that they can meet the commitments inherent in those functions, but imposes a lower level of capital requirements in the recognition of the different nature of the duties implied by the characteristics of the *AIF*, especially in relation to the custody risk.

17.3 Non-Financial Asset AIF Depositories

17.3.1 In respect of *AIFs* which:

- (a) have no redemption rights exercisable during the period of 5 years from the date of the initial investments; and
- (b) which
 - (i) in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with 17.9.2(a); or
 - (ii) generally invest in *issuers* of non-listed companies in order to potentially acquire control over such companies in accordance with Rule 21,

the *AIFM* may appoint an entity to act as a *depository* which complies with Rule 17.3.2 below.

17.3.2 An *AIFM* must ensure that a *depository* appointed in accordance with Rule 17.3.1 above:

- (a) is licensed by the *Commission* under section 4 of the *Law* to carry out the restricted activity of custody in relation to category 1 and category 2 controlled investments as applicable; or
- (b) carries out *depository* functions as part of its professional or business activities and which is subject to prudential regulation and on-going supervision within any *Member State* to provide such services.

17.4 **Depository Application**

17.4.1 Where an entity licensed under the *Law* to provide custody services intends to provide such services in respect of *AIFs* and/or *Non-Financial Asset AIFs*, as appropriate, it shall notify the *Commission* of the same in such form as the *Commission* may require and shall include the information set out in Rule 17.4.2 below. In the case of an applicant for a *Licence* to provide custody services who wishes to opt in to *these Rules*, the applicant may notify the *Commission* at the time of such application if it intends to be a *Guernsey Depository*.

17.4.2 The notification in Rule 17.4.1 shall include the following matters:

- (a) a description of the organisational structure of the applicant including information on how the applicant intends to comply with its obligations under relevant provisions of *these Rules*;
- (b) information on arrangements made for the delegation and sub-delegation to third parties of functions;
- (c) evidence in support of the applicant's *Minimum Capital Requirement*;
- (d) a description of how the *AIFs*' cash flows will be monitored;
- (e) information on the safekeeping arrangements to be employed; and
- (f) a description of how the *Depository* will ensure that the sale, issue, repurchase, redemption and cancellation of *units* of the *AIFs*' are carried out, and that the *AIFs*' incomes are applied.

17.5 The appointment of a depositary in respect of a Guernsey AIF to be marketed into one or more Member States

17.5.1 Without prejudice to the requirements set out in Rule 17.2.1 above, the appointment of a *depositary* with its registered office in a *third country* for the purposes of *AIFMD* in respect of a *Guernsey AIF* shall be subject to the following conditions:-

- (a) the *competent authorities* of the *Member States* in which the *units* of the *Guernsey AIF* are intended to be marketed have signed co-operation and exchange of information arrangements with the *Commission*;
- (b) the *depositary* is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as *EU* law and are effectively enforced;
- (c) the relevant *third country* (for the purposes of *AIFMD*) where the *depositary* is *established* is not listed as a Non-Cooperative Country and Territory by FATF;
- (d) the *Member States* in which the *units* of the *Guernsey AIF* are intended to be marketed, and in so far as different, the *home Member State* of the *AIFM*, have signed an agreement with the tax authorities of the Bailiwick of Guernsey which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information on tax matters including any multilateral tax agreements; and
- (e) the *depositary* shall by contract, be liable to the *AIF* or to the *investors* of the *AIF*, consistently with Rules 17.12.1 and 17.12.2 and shall expressly agree to comply with Rule 17.11.

17.6 Conflicts of interest and who may act as depositary

17.6.1 In order to avoid conflicts of interest between the *depositary*, the *AIFM* and/or the *AIF* and/or its *investors*:

- (a) an *AIFM* must not act as *depositary*;
- (b) a *prime broker* acting as counterparty to an *AIF* must not act as *depositary* for that *AIF*, unless it has functionally and hierarchically separated the performance of its *depositary* functions from its tasks as *prime broker* and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the *investors* of the *AIF*. Delegation by the *depositary* to such *prime broker* of its custody

tasks in accordance with Rule 17.11 is allowed if the relevant conditions are met.

17.7 Minimum capital requirement of a Guernsey depositary

17.7.1 A *Guernsey depositary* of an *AIF* must have at all times *own funds* of at least £4,000,000 ("*Minimum Capital Requirement*").

17.8 Conditions applicable to depositaries which fall within Rule 17.2.1(c) and 17.3 (Non-Financial Asset AIF Depositaries)

17.8.1 A *Guernsey depositary* which falls within Rules 17.2.1(c) or 17.3 must comply with the following conditions:

- (a) The firm must have at all times:
 - (i) *initial capital* of at least €125,000 ("*Initial Depositary Capital Requirement*"); or
 - (ii) one quarter of its *total expenditure* taken from the most recent *annual accounts* ("*Depositary Expenditure Requirement*"). However, the *Commission* reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the *depositary*,

whichever is higher ("*Minimum Capital Requirement*").

- (b) The firm must be in a position to demonstrate its compliance with the *Minimum Capital Requirement* throughout the *reporting period*.
- (c) Any Subordinated Loan incorporated in the calculation of the *Minimum Capital Requirement* (including repayment) is subject to the prior approval of the *Commission*.

17.9 Depositary tasks

17.9.1 The *depositary* must in general ensure that the *AIF*'s cash flows are properly monitored, and must in particular ensure that:

- (a) all payments made by or on behalf of *investors* upon the subscription of *units* of an *AIF* have been received; and
- (b) that all cash of the *AIF* has been booked in cash accounts opened:
 - (i) in the name of:

- (aa) the *AIF*; or
- (bb) in the name of the *AIFM* acting on behalf of the *AIF*; or
- (cc) in the name of the *depository* acting on behalf of the *AIF*; and

(ii) at;

- (aa) an entity referred to in points (a), (b) and (c) of Article 18(1) of Directive 2006/73/EC; or
- (bb) another entity of the same nature, in the relevant market where cash accounts are required provided that such entity is subject to effective prudential regulation and supervision which have the same effect as *EU* law and are effectively enforced and in accordance with the principles set out in Article 16 of Directive 2006/73/EC (safeguarding of client financial instruments and funds) of the MiFID Implementing Directive; and

(c) where the cash accounts are opened in the name of the *depository* acting on behalf of the *AIF*, cash of the *AIFM* and the *depository's* own cash must not be booked on such accounts.

17.9.2 The assets of the *AIF* or the *AIFM* acting on behalf of the *AIF* must be entrusted to the *depository* for safe-keeping, as follows:

(a) for *financial instruments* that can be held in custody:

(i) the *depository* must hold in custody all *financial instruments* that can be registered in a *financial instruments* account opened in the *depository's* books and all *financial instruments* that can be physically delivered to the *depository*; and

(ii) for that purpose, the *depository* must ensure that all those *financial instruments* that can be registered in a *financial instruments* account opened in the *depository's* books are registered in the *depository's* books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the *AIF* or the *AIFM* acting on behalf of the *AIF*, so that they can be

clearly identified as belonging to the *AIF* in accordance with the applicable law at all times;

(b) for all other assets:

- (i) the *depository* must verify the ownership of the *AIF* or the *AIFM* acting on behalf of the *AIF* of such assets and must maintain a record of those assets for which it is satisfied that the *AIF* or the *AIFM* acting on behalf of the *AIF* holds the ownership of such assets;
- (ii) the assessment whether the *AIF* or the *AIFM* acting on behalf of the *AIF* holds the ownership must be based on information or documents provided by the *AIF* or the *AIFM* and, where available, on external evidence; and
- (iii) the *depository* must keep its record up-to-date.

17.9.3 In addition to the tasks referred to in Rules 17.9.1 and 17.9.2, the *depository* must:

- (a) ensure that the sale, issue, re-purchase, redemption and cancellation of *units* of the *AIF* are carried out in accordance with the *AIF's prospectus*;
- (b) ensure that the value of the *units* of the *AIF* is calculated in accordance with the procedures laid down in Rule 16 or the *AIF's prospectus*;
- (c) carry out the instructions of the *AIFM*, unless they conflict with *these Rules* and the *AIF's prospectus*;
- (d) ensure that in transactions involving the *AIF's* assets any consideration is remitted to the *AIF* within the usual time limits; and
- (e) ensure that an *AIF's* income is applied in accordance with *these Rules*, and the *AIF's prospectus*.

17.10 Operating conditions

17.10.1 The *depository* shall act honestly, fairly, professionally, independently and in the interest of the *AIF* and the *investors* of the *AIF*.

17.10.2 A *depository* must not carry out activities with regard to the *AIF* or the *AIFM* on behalf of the *AIF* that may create conflicts of interest between the *AIF*, the *investors* in the *AIF*, the *AIFM* and itself, unless the *depository* has

functionally and hierarchically separated the performance of its *depository* tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

17.10.3 The assets referred to in Rule 17.9.2(a) must not be re-used by the *depository* unless it has obtained the prior consent of the *AIF* or the *AIFM* acting on behalf of the *AIF*.

17.10.4 The *depository* appointed for an *AIF* must not be appointed as external valuer of that *AIF*, unless it has functionally and hierarchically separated the performance of its *depository* functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the *investors* of the *AIF*.

17.11 Delegation

17.11.1 The *depository* must not delegate to third parties its functions as described in *these Rules*, except for those referred to in Rule 17.9.2.

17.11.2 The *depository* may not delegate to third parties the functions referred to in Rule 17.9.2 unless the following conditions are satisfied:

- (a) the tasks are not delegated with the intention of avoiding the requirements of *these Rules* or *AIFMD Level 2*;
- (b) the *depository* can demonstrate that there is an objective reason for the delegation;
- (c) the *depository* has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and
- (d) the *depository* ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - (i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the *AIF* or the *AIFM* acting on behalf of the *AIF* which have been entrusted to it;

- (ii) for custody tasks referred to in Rule 17.9.2(a), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the *financial instruments* are in its possession;
- (iii) the third party segregates the assets of the *depository's* clients from its own assets and from the assets of the *depository* in such a way that they can at any time be clearly identified as belonging to clients of a particular *depository*;
- (iv) the third party does not make use of the assets without the prior consent of the *AIF* or the *AIFM* acting on behalf of the *AIF* and prior notification to the *depository*; and
- (v) the third party complies with the general obligations and prohibitions set out in Rules 17.9.2, 17.10.1, 17.10.2 and 17.10.3.

17.11.3 Notwithstanding Rule 17.11.2 above, where the law of a *third country* requires that certain *financial instruments* be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the *depository* may delegate its functions to such a local entity only to the extent required by the law of the *third country* and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

- (a) the *investors* of the relevant *AIF* must be duly informed that such delegation is required due to legal constraints in the law of another *third country* and of the circumstances justifying the delegation, prior to their investment; and
- (b) the *AIF*, or the *AIFM* on behalf of the *AIF*, must instruct the *depository* to delegate the custody of such *financial instruments* to such local entity.
- (c) The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Rule 17.12.2 shall apply *mutatis mutandis* to the relevant parties.
- (d) For the purposes of this Rule 17.11, the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of

similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

- 17.11.4 A *depository* may delegate the safe-keeping of assets to a third party that maintains a common account for multiple *AIFs*, a so-called "omnibus account", provided it is a segregated common account.

17.12 Liability

- 17.12.1 The *depository* will be liable to the *AIF*, or to the *investors* of the *AIF*, for the loss by the *depository* or a third party to whom the custody of *financial instruments* held in custody in accordance with Rule 17.9.2(a) has been delegated.

In the case of such a loss of a *financial instrument* held in custody, the *depository* must return a *financial instrument* of identical type or the corresponding amount to the *AIF* or the *AIFM* acting on behalf of the *AIF* without undue delay. The *depository* will not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

The *depository* will also be liable to the *AIF*, or to the *investors* of the *AIF*, for all other losses suffered by them as a result of the *depository's* negligent or intentional failure to properly fulfil its obligations pursuant to *these Rules and AIFMD Level 2*.

- 17.12.2 The *depository's* liability shall not be affected by any delegation referred to in Rule 17.11.

Notwithstanding the first sub-paragraph of this Rule, in case of a loss of *financial instruments* held in custody by a third party pursuant to Rule 17.11, the *depository* may discharge itself of liability if it can prove that:

- (a) all requirements for the delegation of its custody tasks set out in Rule 17.11.2 are met;
- (b) a written contract between the *depository* and the third party expressly transfers the liability of the *depository* to that third party and makes it possible for the *AIF* or the *AIFM* acting on behalf of the *AIF* to make a claim against the third party in respect of the loss of *financial instruments* or for the *depository* to make such a claim on their behalf; and

- (c) a written contract between the *depository* and the *AIF* or the *AIFM* acting on behalf of the *AIF*, expressly allows a discharge of the *depository's* liability and establishes the objective reason to contract such a discharge.

17.12.3 Where the law of another *third country* requires that certain *financial instruments* are held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in Rule 17.11.2(d)(ii), the *depository* can discharge itself of liability provided that the following conditions are met:

- (a) the *AIF constitutional document* expressly allows for such a discharge under the conditions set out in this paragraph;
- (b) the *investors* of the relevant *AIF* have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the *AIF* or the *AIFM* on behalf of the *AIF* instructed the *depository* to delegate the custody of such *financial instruments* to a local entity;
- (d) there is a written contract between the *depository* and the *AIF* or the *AIFM* acting on behalf of the *AIF*, which expressly allows such a discharge; and
- (e) there is a written contract between the *depository* and the third party that expressly transfers the liability of the *depository* to that local entity and makes it possible for the *AIF* or the *AIFM* acting on behalf of the *AIF* to make a claim against that local entity in respect of the loss of *financial instruments* or for the *depository* to make such a claim on their behalf.

17.12.4 Liability to the *investors* of the *AIF* may be invoked directly or indirectly through the *AIFM*, depending on the legal nature of the relationship between the *depository*, the *AIFM* and the *investors*.

17.13 Guernsey Depository's Relationship with the Commission

17.13.1 *Guernsey Depositories* providing *depository* services to an *AIF* not authorised or registered by the *Commission* must be satisfied that the *prospectus* issued by the *AIF* does not imply, in any way, that the *AIF* is regulated by the *Commission*.

17.13.2 The *Guernsey Depository* is required to submit a quarterly return containing the following aggregate information for all *AIFs* to which services are

provided, within each base currency category:

- (a) name of each *AIF*;
- (b) domicile of each *AIF*;
- (c) number of *investors* in each *AIF*; and
- (d) total net asset value for each *AIF*.

17.13.3 A *Guernsey Depositary* shall notify the *Commission* forthwith where the *Guernsey Depositary* has reason to believe that:

- (a) it is in breach of its *Minimum Capital Requirement* or anticipates being in breach of its *Minimum Capital Requirement* within a period of one month; such notice shall specify the steps which the *Guernsey Depositary* is taking or has taken to remedy the breach and shall be confirmed in writing;
- (b) the *Guernsey Depositary's* auditor intends to qualify the accounts;
- (c) the liabilities of a subsidiary of the *Guernsey Depositary* exceed the subsidiary's assets; or
- (d) the liabilities of the parent company of the *Guernsey Depositary* exceeds the parent company's assets.

18. TRANSPARENCY REQUIREMENTS

ARTICLES 22 AND 23 AIFMD

18.1 Annual report

18.1.1 A *Guernsey AIFM* must, for each of the *EU AIFs* it manages and for each of the *AIFs* it markets in the *EU*, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report must be provided to *investors* on request. The annual report must be submitted to the *Commission*, and, where applicable, the *home Member State of the AIF*.

Where the *AIF* is required to make public an annual financial report in accordance with Directive 2004/109/EC only such additional information referred to in Rule 18.1.2 needs to be provided to *investors* on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report must be made public no later than 4 months following the end of the financial year.

18.1.2 The annual report must at least contain the following:

- (a) a balance-sheet or a statement of assets and liabilities;
- (b) an income and expenditure account for the financial year;
- (c) a report on the activities of the financial year;
- (d) any material changes in the information listed in Rule 18.2 during the financial year covered by the report;
- (e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the *Guernsey AIFM* to its staff, and number of beneficiaries, and, where relevant, *carried interest* paid by the *AIF*; and
- (f) the aggregate amount of remuneration broken down by senior management and members of staff of the *Guernsey AIFM* whose actions have a material impact on the risk profile of the *AIF*.

18.1.3 The accounting information given in the annual report in respect of an *AIF* must be prepared in accordance with the accounting standards and with the accounting rules in force in the country where the *AIF* is established or the *AIF constitutional document*.

The accounting information given in the annual report must be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts. The auditor's report, including any qualifications, must be reproduced in full in the annual report.

By way of derogation, the *Commission* may permit *Guernsey AIFMs marketing non-EU AIFs* to subject the annual reports of those *AIFs* to an audit which meets international auditing standards in force in the country where the *AIF* is established. In the case of a *Guernsey AIFM marketing a Guernsey AIF* it may be assumed that permission is granted for the annual reports of those *Guernsey AIFs* to be audited by a *qualified auditor* who has a place of business in Guernsey.

18.2 Disclosure to investors

18.2.1 *Guernsey AIFMs* must for each of the *EU AIFs* that they manage and for each of the *AIFs* that they market in *Member States* make available to prospective investors, in accordance with national law or the *AIF constitutional*

document, the following information before they invest in the *AIF*, as well as any material changes thereof:

- (a) a description of the investment strategy and objectives of the *AIF*, information on where any *master AIF* is *established* and where the underlying funds are *established* if the *AIF* is a fund of funds, a description of the types of assets in which the *AIF* may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the *AIF* may use *leverage*, the types and sources of *leverage* permitted and the associated risks, any restrictions on the use of *leverage* and any collateral and asset re-use arrangements, and the maximum level of *leverage* which the *Guernsey AIFM* is entitled to employ on behalf of the *AIF*;
- (b) a description of the procedures by which the *AIF* may change its investment strategy or investment policy, or both;
- (c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the *AIF* is *established*;
- (d) the identity of the *Guernsey AIFM*, the *AIF's depositary*, auditor and any other service providers and a description of their duties and the *investors'* rights;
- (e) a description of how the *Guernsey AIFM* is complying with the requirements of Rule 11.5 above;
- (f) a description of any delegated management function as referred to in Annex I of *these Rules* by the *Guernsey AIFM* and of any safe-keeping function delegated by the *depositary*, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- (g) a description of the *AIF's* valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Rule 16;

- (h) a description of the *AIF's* liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with *investors*;
- (i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by *investors*;
- (j) a description of how the *Guernsey AIFM* ensures a fair treatment of *investors* and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of *investors* who obtain such preferential treatment and, where relevant, their legal or economic links with the *AIF* or *AIFM*;
- (k) the latest annual report referred to in Rule 18.1;
- (l) the procedure and conditions for the issue and sale of *units*;
- (m) the latest net asset value of the *AIF* or the latest market price of the *unit* of the *AIF*, in accordance with Rule 16;
- (n) where available, the historical performance of the *AIF*;
- (o) the identity of the *prime broker* and a description of any material arrangements of the *AIF* with its *prime brokers* and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the *depository* on the possibility of transfer and re-use of *AIF* assets, and information about any transfer of liability to the *prime broker* that may exist; and
- (p) a description of how and when the information required in Rule 18.2.4 and 18.2.5 will be disclosed.

18.2.2 The *Guernsey AIFM* must inform the *investors* before they invest in the *AIF* of any arrangement made by the *depository* to contractually discharge itself of liability in accordance with Rule 17.12.2. The *AIFM* must also inform *investors* of any changes with respect to *depository* liability without delay.

18.2.3 Where the *AIF* is required to publish a *prospectus* in accordance with Directive 2003/71/EC or in accordance with national law, only such information referred to in Rules 18.2.1 and 18.2.2 above which is in addition to that contained in the *prospectus* needs to be disclosed separately or as additional information in the *prospectus*.

18.2.4 *Guernsey AIFMs* must, for each of the *EU AIFs* that they manage and for each of the *AIFs* that they market in the *EU*, periodically disclose to *investors*:

- (a) the percentage of the *AIFs* assets which are subject to special arrangements arising from their illiquid nature;
- (b) any new arrangements for managing the liquidity of the *AIF*; and
- (c) the current risk profile of the *AIF* and the risk management systems employed by the *AIFM* to manage those risks.

18.2.5 *AIFMs* managing *EU AIFs* employing *leverage* or *marketing* in the *EU AIFs* employing *leverage* must, for each such *AIF* disclose, on a regular basis:

- (a) any changes to the maximum level of *leverage* which the *AIFM* may employ on behalf of the *AIF* as well as any right of the re-use of collateral or any guarantee granted under the leveraging arrangement; and
- (b) the total amount of *leverage* employed by that *AIF*.

19. REPORTING OBLIGATIONS TO THE COMMISSION

ARTICLES 24 AND 25 AIFMD

19.1 A *Guernsey AIFM* must report to the *Commission* on the principal markets and instruments in which it trades on behalf of the *AIFs* it manages.

It must provide information on the main instruments in which it is trading, on markets of which it is a member or where it actively trades, and on the principal exposures and most important concentrations of each of the *AIFs* it manages. This information shall be reported on a frequency determined by the basis set-out under Article 110(3) of *AIFMD Level 2*.

19.2 A *Guernsey AIFM* must, for each of the *EU AIFs* it manages and for each of the *AIFs* it markets in the *EU*, provide the following to the *Commission*. This information shall be reported on a frequency determined by the basis set-out under Article 110(3) of *AIFMD Level 2*:

19.2.1 the percentage of the *AIFs* assets which are subject to special arrangements arising from their illiquid nature;

19.2.2 any new arrangements for managing the liquidity of the *AIF*;

- 19.2.3 the current risk profile of the *AIF* and the risk management systems employed by the *AIFM* to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;
- 19.2.4 information on the main categories of assets in which the *AIF* invested; and
- 19.2.5 the results of the stress tests performed in accordance with Rules 12.4.2 and 13.
- 19.3 The *Guernsey AIFM* must provide the following documents to the *Commission*:
- 19.3.1 an annual report of each *EU AIF* managed by the *AIFM* and of each *AIF* marketed by it in the *EU*, for each financial year, in accordance with Rule 18.1, no later than 6 months following the end of each financial year;
- 19.3.2 for the end of each quarter a return containing the following aggregate information for all *AIFs* managed by the *Guernsey AIFM*, within each base currency category:
- (a) name of each *AIF*;
 - (b) domicile of each *AIF*;
 - (c) number of *investors* in each *AIF*; and
 - (d) total net asset value for each *AIF*.
- 19.4 A *Guernsey AIFM* managing *AIFs* employing *leverage* on a substantial basis must make available information about the overall level of *leverage* employed by each *AIF* it manages, a breakdown between *leverage* arising from borrowing of cash or securities and *leverage* embedded in financial derivatives and the extent to which the *AIFs* assets have been re-used under leveraging arrangements to the *Commission*.
- That information must include the identity of the five largest sources of borrowed cash or securities for each of the *AIFs* managed by the *Guernsey AIFM*, and the amounts of *leverage* received from each of those sources for each of those *AIFs*.
- For *Guernsey AIFMs*, the reporting obligations referred to in this rule are limited to *EU AIFs* managed by them and non-*EU AIFs* marketed by them in the *EU*.
- 19.5 Where necessary for the effective monitoring of systemic risk, the *Commission* may require information in addition to that described in Rules 19.1 to 19.4 above, on a periodic as well as on an ad-hoc basis.

20. **AIFMS MANAGING LEVERAGED AIFS**

ARTICLE 25 AIFMD

- 20.1 A *Guernsey AIFM* must demonstrate that the *leverage* limit set by it for each *AIF* it manages are reasonable and that it complies with those limits at all times.
- 20.2 The *Commission* may impose limits on the level of *leverage* that an *AIFM* is entitled to employ or other restrictions on the management of the *AIF* with respect to the *AIFs* under its management to limit the extent to which the use of *leverage* constitutes to the build up of a systemic risk in the financial system or risks of disorderly markets.

21. **OBLIGATIONS FOR AIFMS MANAGING AIFS WHICH ACQUIRE CONTROL OF NON-LISTED COMPANIES AND ISSUERS**

ARTICLE 26 AIFMD

21.1 **Scope**

21.1.1 Rules 21 to 25 apply to the following:

- (a) *Guernsey AIFMs* managing one or more *AIFs* which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a *non-listed company* in accordance with Rule 21.1.5;
- (b) *Guernsey AIFMs* co-operating with one or more other *AIFMs* on the basis of an agreement pursuant to which the *AIFs* managed by those *AIFMs* jointly, acquire control of a *non-listed company* in accordance with Rule 21.1.5 of this section.

21.1.2 Rules 21 to 25 do not apply where the non-listed companies concerned are:

- (a) small and medium-sized enterprises within the meaning of Article 2(1) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; or
- (b) special purpose vehicles with the purpose of purchasing, holding or administering real estate.

21.1.3 Without prejudice to Rules 21.1.1 and 21.1.2 above, Rule 22.1 applies also to *AIFMs* managing *AIFs* that acquire a non-controlling participation in a *non-listed company*.

21.1.4 Rules 23.1, 23.2 and 23.3 and Rule 25 apply also to *AIFMs* managing *AIFs* that acquire control over *issuers*. For the purposes of those Rules, Rules 21.1.1 and 21.1.2 apply *mutatis mutandis*.

21.1.5 For the purpose of Rules 21 to 25, for non-listed companies, control means more than 50 % of the voting rights of the companies.

When calculating the percentage of voting rights held by the relevant *AIF*, in addition to the voting rights held directly by the relevant *AIF*, the voting rights of the following must be taken into account, subject to control as referred to in the first sub-paragraph being established:

- (a) an undertaking controlled by the *AIF*; and
- (b) a natural or legal person acting in its own name but on behalf of the *AIF* or on behalf of an undertaking controlled by the *AIF*.

The percentage of voting rights must be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

Notwithstanding the definition of "control" in paragraph 1.2 of *these Rules*, for the purpose of Rules 23.1, 23.2 and 23.3 and Rule 25 in regard to *issuers* control is determined in accordance with Article 5(3) of Directive 2004/25/EC.

21.1.6 Rules 21 to 25 apply subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

22. NOTIFICATION OF THE ACQUISITION OF MAJOR HOLDINGS AND CONTROL OF NON-LISTED COMPANIES

ARTICLE 27 AIFMD

22.1 When an *AIF* acquires, disposes of or holds shares of a *non-listed company*, the *Guernsey AIFM* managing such an *AIF* must notify the *Commission* of the proportion of voting rights of the *non-listed company* held by the *AIF* any time when that proportion reaches, exceeds or falls below the thresholds of 10 %, 20 %, 30 %, 50 % and 75 %.

22.2 When an *AIF* acquires, individually or jointly, control over a *non-listed company* pursuant to Rule 21.1.1 in conjunction with 21.1.5, the *Guernsey AIFM* managing such an *AIF* must notify the following of the acquisition of control by the *AIF*:

22.2.1 the *non-listed company*; and

22.2.2 the shareholders of the non-listed company of which the identities and addresses are available to the *AIFM* or can be made available by the *non-listed company* or through a register to which the *AIFM* has or can obtain access; and

22.2.3 the *Commission*.

22.3 The notification required under Rule 22.2 must contain the following additional information:

- (a) the resulting situation in terms of voting rights;
- (b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held; and
- (c) the date on which control was acquired.

22.4 In its notification to the *non-listed company*, the *AIFM* must request the board of directors of the company to inform the *employees' representatives* or, where there are none, the employees themselves, without undue delay of the acquisition of control by the *AIF* managed by the *AIFM* and of the information referred to in Rule 22.3. The *AIFM* must use its best efforts to ensure that the *employees' representatives* or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Rule.

The notifications referred to in Rules 22.1, 22.2, and 22.3 must be made as soon as possible, but no later than 10 working days after the date on which the *AIF* has reached, exceeded or fallen below the relevant threshold or has acquired control over the *non-listed company*.

23. DISCLOSURE IN CASE OF ACQUISITION OF CONTROL

ARTICLE 28 AIFMD

23.1 When an *AIF* acquires, individually or jointly, control of a *non-listed company* or an *issuer* pursuant to 21.1.1, in conjunction with 21.1.5, the *Guernsey AIFM* managing such *AIF* must make the information referred to in 23.2 available to:

23.1.1 the company concerned;

23.1.2 the shareholders of the company of which the identities and addresses are available to the *AIFM* or can be made available by the company or through a register to which the *AIFM* has or can obtain access; and

23.1.3 the *Commission*.

The *Commission* may require that the information referred to in 23.2 is also made available to the *competent authorities* of the *non-listed company*.

23.2 The *Guernsey AIFM* must make available:

23.2.1 the identity of the *AIFMs* which either individually or in agreement with other *AIFMs* manage the *AIFs* that have acquired control;

23.2.2 the policy for preventing and managing conflicts of interest, in particular between the *Guernsey AIFM*, the *AIF* and the company, including information about the specific safeguards established to ensure that any agreement between the *Guernsey AIFM* and/or the *AIF* and the company is concluded at arm's length; and

23.2.3 the policy for external and internal communication relating to the company in particular as regards employees.

23.3 In its notification to the company pursuant to Rule 23.1.1, the *AIFM* must request the board of directors of the company to inform the *employees' representatives* or, where there are none, the employees themselves, without undue delay of the information referred to in Rule 23.1. The *AIFM* must use its best efforts to ensure that the *employees' representatives* or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with Section 23.

23.3.1 When an *AIF* acquires, individually or jointly, control of a *non-listed company* pursuant to Rule 21.1.1, in conjunction with Rule 21.1.5, the *Guernsey AIFM* managing such *AIF* must ensure that the *AIF*, or the *Guernsey AIFM* acting on behalf of the *AIF*, disclose its intentions with regard to the future business of the *non-listed company* and the likely repercussions on employment, including any material change in the conditions of employment, to:

(a) the *non-listed company*; and

(b) the shareholders of the *non-listed company* of which the identities and addresses are available to the *AIFM* or can be made available by the *non-listed company* or through a register to which the *AIFM* has or can obtain access; and

(c) the *Commission*.

In addition, the *Guernsey AIFM* managing the relevant *AIF* must request and use its best efforts to ensure that the board of directors of the *non-listed*

company makes available the information set out in the first sub-paragraph to the *employees' representatives* or, where there are none, the employees themselves, of the *non-listed company*.

23.3.2 When an *AIF* acquires control of a *non-listed company* pursuant to Rule 21.1.1, in conjunction with Rule 21.1.5, the *Guernsey AIFM* managing such an *AIF* shall provide the *Commission* and the *AIF's investors* with information on the financing of the acquisition.

24. **SPECIFIC PROVISIONS REGARDING THE ANNUAL REPORT OF AIFS EXERCISING CONTROL OF NON-LISTED COMPANIES**

ARTICLE 29 AIFMD

24.1 When an *AIF* acquires, individually or jointly, control of a *non-listed company* pursuant to Rule 21.1.5, in conjunction with 21.1.1, the *Guernsey AIFM* managing such an *AIF* must either:

24.1.1 request and use its best efforts to ensure that the annual report of the *non-listed company* drawn up in accordance with Rule 24.2 is made available by the board of directors of the company to the *employees' representatives* or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with any applicable national legislation; or

24.1.2 for each such *AIF* include in the annual report provided for in Rule 18 the information referred to in Rule 24.2 relating to the relevant *non-listed company*.

24.2 The additional information to be included in the annual report of the company or the *AIF*, in accordance with Rule 24.1, must include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report must also give an indication of:

- (a) any important events that have occurred since the end of the financial year;
- (b) the company's likely future development; and
- (c) the information concerning acquisitions of own shares prescribed by Article 22(2) of Council Directive 77/91/EEC.

24.2.2 The *Guernsey AIFM* managing the relevant *AIF* must either:

- (a) request and use its best efforts to ensure that the board of directors of the *non-listed company* makes available the information referred to in Rule

24.1.2 relating to the company concerned to the *employees' representatives* of the company concerned or, where there are none, to the employees themselves within the period referred to in Rule 18.1.1; or

- (b) make available the information referred to in Rule 24.1.1 to the *investors* of the *AIF*, in so far as already available, within the period referred to in Rule 18.1.1 and, in any event, no later than the date on which the annual report of the *non-listed company* is drawn up in accordance with applicable national legislation.

25. ASSET STRIPPING

ARTICLE 30 AIFMD

25.1 When an *AIF*, individually or jointly, acquires control of a *non-listed company* or an *issuer* pursuant to Rule 21.1.1, in conjunction with Rule 21.1.5, the *Guernsey AIFM* managing such an *AIF* must for a period of 24 months following the acquisition of control of the company by the *AIF*:

25.1.1 not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in Rule 25.2;

25.1.2 in so far as the *Guernsey AIFM* is authorised to vote on behalf of the *AIF* at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in Rule 25.2; and

25.1.3 in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company as described in Rule 25.2.

25.2 The obligations imposed on *Guernsey AIFMs* pursuant to Rule 25.1 relate to the following:

25.2.1 any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's *annual accounts* are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount must be deducted from the amount of subscribed capital;

25.2.2 any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits

brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;

25.2.3 to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in Rule 25.2.1.

25.2.4 For the purposes of Rule 25.2:

- (a) the term 'distribution' referred to in Rule 25.1.1 and Rule 25.2.2 includes, in particular, the payment of dividends and of interest relating to shares;
- (b) the provisions on capital reductions do not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and
- (c) the restriction set out in Rule 25.2.3 is subject to points (b) to (h) of Article 20(1) of Directive 77/91/EEC.

26. **THESE RULES PREVAIL**

26.1 If there shall be any inconsistency or conflict between the requirements of any other rules and regulations under the *Law* to which the *Guernsey AIFM* or *Guernsey AIF* as applicable is subject, and the requirements of *these Rules*, the requirements of *these Rules* shall prevail.

ANNEX I

1. Investment management functions which an *AIFM* shall at least perform when managing an *AIF*:
 - (a) portfolio management;
 - (b) risk management.

2. Other functions that an *AIFM* may additionally perform in the course of the collective management of an *AIF*:
 - (a) Administration:
 - a. Legal and fund management accounting services;
 - b. Customer enquiries;
 - c. Valuation and pricing including tax returns;
 - d. Regulatory compliance monitoring;
 - e. Maintenance of unit/shareholder register;
 - f. Distribution of income;
 - g. Units/shares issues and redemptions;
 - h. Contract settlements, including certificate dispatch;
 - i. Record keeping;

 - (b) Marketing;

 - (c) Activities related to the assets of *AIFs*, namely services necessary to meet the fiduciary duties of the *AIFM*, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the *AIF* and the companies and other assets in which it has invested.

ANNEX II - EU DIRECTIVES REFERRED TO IN THE AIFMD (RULES) 2013

FULL TITLE	SUBJECT
Council Directive 77/91/EEC of 13 December 1976	Public liability limited companies and the maintenance and alteration of their capital
Directive 83/349/EEC of 13 June 1983	Consolidated accounts
Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998	Settlement finality in payment and securities settlement systems
Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002	General framework for informing and consulting employees in the European Union
Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003	On the prospectus to be published when securities are offered to the public or admitted to trading (referred to as the "Prospectus Directive")
Commission Recommendation 2003/361/EC of 6 May 2003	Definition of micro, small and medium-sized enterprises
Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004	Takeover bids
Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004	Markets in Financial Instruments Directive (referred to as "MiFID")
Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004	On harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (referred to as the "Transparency Directive")
Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006	Statutory audits of annual accounts and consolidated accounts
Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006	Taking up and pursuit of the business of credit institutions
Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006	Capital adequacy of investment firms and credit institutions
Directive 2006/73/EC of the European Parliament and of the Council of 10 August 2006	Organisational requirements and operational conditions for investment firms (referred to as "MiFID Implementing Directive")
Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009	Coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (referred to as "UCITS")
Directive 2011/61/EU of the European Parliament and the Council of 8 June 2011 and amending Directives 2003/41/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010	Alternative Investment Fund Managers Directive (referred to as "AIFMD")
Commission Implementing Regulation (EU) No	Establish a procedure for determining the Member

448/2013 of 15 May 2013

State of Reference of a non-EU AIFM pursuant to
Directive 2011/61/EU of the European Parliament
and of the Council

Signed by: 
The Chairman of the Guernsey Financial Services Commission

Date: 29 November 2013