

GUERNSEY'S NEW MANAGER LED PRODUCT

30 JUNE 2016

Bryon Rees of Ogier examines a new Guernsey fund product that removes regulatory duplication by focusing regulation on an investment manager, while creating an efficient platform for funds and related vehicles.

The concept

Guernsey has recently introduced the manager led product (MLP), a new fund classification which follows the approach of the European Union AIFMD of regulating the investment manager instead of the underlying investment funds and related vehicles.

Historically, Guernsey has regulated both funds and service providers and the MLP seeks to remove this regulatory duplication.

Under the MLP regime:

- A single Guernsey regulated investment manager is required
- By virtue of regulation of that investment manager, none of the related funds, general partners or managers formed solely for the purposes of those funds will have rules imposed on them by the Guernsey Financial Services Commission (the Commission)
- A one business day fast track notification process is available for underlying funds and related vehicles.

The new classification has been made possible by the Commission's risk-based approach to regulation. Regulatory oversight remains through an appropriately regulated investment manager within the structure, while at the same time investors and promoters will benefit from:

1. The removal of regulatory duplication
2. A more efficient path to market
3. Reduced administration fees in respect of those vehicles no longer subject to various rules.

The MLP allows one investment manager to absorb all the incidence of conduct of business and capital adequacy rules, while permitting multiple fund structures to exist under its regulatory obligations.

Scope

The MLP may be used by investment managers considered to be 'AIFMs' under Guernsey's AIFMD Rules, 2013 (the Rules). These are legal persons whose regular business is managing one or more collective investment undertakings. The Rules enable 'Guernsey AIFMs' to opt into an AIFMD equivalent regime, whereby on election the Rules are imposed on that investment manager.

The Rules were introduced to assist Guernsey AIFMs demonstrate to European Union competent authorities their intention to be compliant with AIFMD. The idea being that this could be beneficial at the time a third country passport is granted, as to receive the benefit of a passport non-European Union alternative investment fund managers will need to comply with the same obligations as European Union alternative investment fund managers, abiding by the rules of AIFMD.

While, to make use of the MLP the investment manager needs to be subject to the Rules, the Commission has indicated in a guidance note that the investment manager may apply for derogations from the Rules and it is anticipated that these may be significant if required. This would be subject to ensuring reporting requirements are maintained to a sufficient standard and, practically, regulation remains sufficient to market into relevant jurisdictions.

This ability to obtain derogations from the Rules is important and relevant at the present time because the third country passport has not yet been made available under the AIFMD. Accordingly, if marketing is taking place into the European Union through national private placement regimes, then equivalence is not, at present, required and the manager should not need to subject itself to the full scope of the Rules.

That said, while third country passports have not yet been made available, the European Securities and Markets Authority has recommended to the EU Commission that Guernsey be granted a third country passport. Upon that taking place, an investment manager wishing to make use of a passport would have to be compliant with AIFMD and any derogation referred to above would need to be considered.

Lastly, the MLP may apply to open-ended or closed-ended funds for whom the investment manager is seeking a registration under the Protection of Investors (Bailiwick of Guernsey Law), 1987 (the POI Law) and associated prospective licensees that are not the alternative investment fund manager, for example general partners to limited partnerships.

Applications and regulatory oversight

To utilise the MLP, an investment manager will need to be licensed under the POI Law, as well as opt into the Rules (subject to derogations). New investment managers will need to apply for both a licence under the POI Law and for the Rules to apply to them (subject to derogations), while existing investment managers already licensed under the POI Law will need to opt into the Rules (subject to derogations).

Accordingly, the Guernsey licensed investment manager will be subject to the POI Law (and the Licensees (Conduct of Business) Rules, 2014 (the COB Rules) and the Licensees (Capital Adequacy) Rules, 2010 (the CAP Rules) made thereunder), as well as the Rules (subject to derogations).

The underlying fund or funds, which are ordinarily subject to regulation, will still be registered by the Commission but no rules will apply to them. The licensed investment manager will notify the Commission using a prescribed form (Form MLP) and the Commission will register the fund within one business day of receipt of the notification.

Neither the Registered Collective Investment Scheme Rules 2015 nor the Prospectus Rules 2008 will apply to funds registered under the MLP regime.

A Guernsey MLP fund is not required to produce a specific form of offering document. While an offering document is still expected for a fund offering through national private placement into Europe, this may offer flexibility in respect of offerings outside of Europe.

The MLP will also benefit funds using legal forms requiring a management company or multiple management companies, such as a limited partnership with a general partner. The general partner or related management company would still require a licence under the POI Law but under the MLP no rules will be applied to them. These management vehicles can be included in the notification referred to above for the fund and, again, the Commission will issue a licence under the POI Law to those vehicles within one business day. Neither the COB Rules nor the CAP Rules, which currently apply to licensees under the POI Law, will apply to those vehicles licensed pursuant to the MLP regime. In each case, the manager filing the Form MLP will give certain warranties to the Commission, which the Commission will rely on granting the relevant registration or licence.

It should be noted that a single investment manager is able to notify and obtain registration of multiple funds and licences for multiple related vehicles. There is no numeric restriction on the number of funds or vehicles which may sit under the licensed investment manager. It is anticipated this might facilitate or encourage promoters to create more substance in Guernsey in respect of the regulated investment manager and to use that vehicle for its entire structure. One would also envisage that the MLP will lead to the creation of platforms providing a third-party investment management company to enable promoters to avail themselves of the MLP regime.

There is no requirement that the investment manager be a member of a group or own any general partners licensed under it. In addition to the investment manager being regulated, again as is currently the case, the Guernsey administrator and, if any, custodian or trustee of the relevant MLP fund or funds will continue to be regulated in Guernsey, which enhances investor protection and oversight.

What's next?

Through the introduction of the MLP, Guernsey continues to show its adaptability and place as a leading investment funds jurisdiction, committed not only to being an efficient place to do business but also to ensuring it continues to maintain its highly regarded regulatory standards. While the MLP in its current form can be used to market outside of Europe, it is a product currently tied to the Rules (albeit with derogations). The Commission has indicated that the next phase will be the development of a product using the same principles but with a discrete set of rules for investment managers marketing to jurisdictions.

An original version of this article was first published in [HFMWeek's](#) 2016 Guernsey report, June 2016.

WE ARE GUERNSEY is the brand under which Guernsey Finance promotes the island's financial services sector internationally. Guernsey Finance - the promotional agency for the island's finance industry internationally - is a joint industry and Government initiative responsible for the promotion of Guernsey. Under the leadership of Chief Executive Dominic Wheatley, the agency ensures that the core values and competencies of the island's finance sector are accepted and respected by the global community and that financial business development flows are enhanced.

PO Box 655, St Peter Port,
Guernsey, GY1 3PN

+44 (0)1481 720071

INFO@WEAREGUERNSEY.COM

