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THE GROWING CACHET OF GUERNSEY OPEN-ENDED FUNDS

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With capital so portable in today's world, investment dollars continually seek to find homes where it makes most economic sense acknowledge market experts. With confidence gradually returning to the global investment markets, it is no surprise that jurisdictions are dusting off their offerings, upgrading them and actively competing once more for new business. Guernsey is no exception and the jurisdiction is banking on the appeal of its range of investment structures, which it hopes will help it compete effectively against strong fund brands (such as UCITS), particularly in the open-ended fund
segment.

Guernsey boasts in excess of a trillion US dollars' worth of funds under management and administration, of which a touch above $140bn is held in open-ended fund structures. The bulk of open-ended funds active in the island are in alternative assets and again, most utilise the open-ended Class B Scheme investment fund structure.

Open ended fund structures are now regaining in popularity. For more than 15 years, open ended funds gave way to closed end fund structures as more private equity firms domiciled their funds in Guernsey. The 2007/2008 financial crisis however spurred something of a rethink as investors found that their funds were tied up in vehicles that either had gated or suspended redemptions.

Retail or institutional investors looking for more flexible investment terms are gravitating towards open-ended structures once more, with the caveat that these funds are liquid and invested in assets that can sell quickly.

As Paul Wilkes, group partner at Guernsey based law firm Collas Crill explains, it is not a black and white equation and investors have to understand exactly what it is they are invested in.

"Some investors in either closed end funds and open ended funds found they could not redeem their investments easily because of the type of assets that were held by the fund. Whether it is a closed or open ended fund, if you are invested in weird and wonderful assets in some far off jurisdiction, it is not as easy to get your money out as it would if the fund invests in, say the European equities or bonds or securities that are easily transferred. So since 2008, we've seen the more successful open ended funds being those that are more liquid, more transparent and which offer liquidity if not on a daily basis, then at least a weekly or monthly basis, and where the investor has more chance of getting their money back on a rainy day."

With that in mind, the issue then becomes why invest in an open ended fund that is domiciled in Guernsey and not, say a Dublin or Luxembourg domiciled UCITS fund? That's been a killer question for jurisdictions such as Guernsey and since UCITs fund structures have gained immensely in popularity in recent years, it has become increasingly trenchant.

It has encouraged Guernsey to develop and enhance its own set of investment schemes and rules with which it can compete on a global basis for investment fund dollars. The jurisdiction has a fourpronged investment infrastructure, named rather functionally the Class A scheme, the Class B scheme, the Class Q scheme and the fourth being the island's registered funds regime. Class A scheme funds, which are broadly equivalent to UCITS III structures, are essentially designed for retail investors; the Class B Scheme meantime is designed for the institutional and high net worth markets but can also be used as a retail alternative.

It is marketed as a highly flexible structure, with no pre-prescribed investment rules other than those described in the fund's set up documentation.

"In this regard," explains Christopher Jehan, Chairman of the Technical Committee, Guernsey Investment Fund Association, "the Class B Scheme is better than a UCITS structure as it covers a very broad range of funds, from plain vanilla equity funds through to very sophisticated hedge fund strategies. The key is transparency. The establishing documentation must spell out exactly the investment strategy and set its own investment rules. Of course, it must be approved by the regulator."

Additionally, the island offers a Class Q Scheme, which is essentially similar to the B Scheme but for more sophisticated ('experienced' investors is the term utilised) that can accept more risk involved in more complex investment strategies as well as traditional registered funds.

Guernsey also offers a dual or multi-regulatory regime. The island's existing regime remains for those investors and managers not requiring an AIFMD fund (including says investors using EU national private placement regimes and those marketing to non-EU investors). In other words, managers with elements of EU and non-EU business, who require a single domicile for their products, can place non-EU business in a parallel or feeder structure for which AIFMD compliance and the associated costs would not be required. It also offers an opt-in regime which is fully AIFMD compliant.

"This provides a set of options which can be utilised according to specific circumstances. The choice is solely a commercial decision driven by distribution policies, and full-blown AIFMD compliance should only be sought if there are particular reasons to do so. Figures from the Guernsey regulator demonstrate the continued popularity of the Guernsey NPP route under AIFMD," explains Dominic Wheatley, chief executive of Guernsey Finance, the jurisdiction's business and investment promotions service.

"Funds not solely focused on Europe should consider parallel or feeder investment structures whereby EU and non-EU business can be separated to achieve cost efficiencies."

According to Wilkes the duality of the regime should not be misinterpreted as regulation-lite. "Although firms have more options before them, the focus is rightly on proper disclosure of both the investment strategy and the risk involved, as well as setting it against a rigorous regulatory background and allowing the investor to get his or her money back should market conditions necessitate such a move."

Among recent high profile moves in the open ended segment, Investec Asset Management, helped by law firm Mourant Ozannes, migrated and redomiciled a $1.2bn open ended fund from Ireland to Guernsey in the summer of 2014. The move involved a complex system of approvals (from the Irish Central Bank, existing investors in the fund and the Guernsey Financial Services Commission) and changes to the fund documentation to remove the fund from Ireland and authorise it as a Guernsey Class B open ended Unit Trust.

At the time, Grant Cameron, managing director of Investec Asset Management Guernsey Limited, noted, "the ease with which this re-domiciliation process was managed given the complexities involved; some of the work performed on the re-domiciliation was ground breaking."

The move is also indicative of the growing quality of the asset management segment in Guernsey and its international reach. Wilkes explains that the days are "long gone where an equity trader from a bulge bracket institution set up an asset management operation on the back of some good stories from the trading desk. These days end investors look very intently at track records, experience and market skill. They want asset managers who genuinely understand the asset class and have a clear and professional investment strategy. We are working with established clients in the UK in particular, but also increasingly from Switzerland, Germany and the Nordics; these are groups that bring immense value and expertise to bear on the market."

Jehan meantime is looking at the growing business opportunity outside Europe. He explains that Guernsey has a strong business proposition in regions such as sub-Saharan Africa and the Middle East in addition to its traditional strengths in Asian markets. "In South Africa, for instance," explains Jehan, "Guernsey is the third most utilised jurisdiction for foreign registered funds after Ireland and Luxembourg. We need to start capitalising on that strength in contiguous markets such as Botswana and Namibia. The Middle East too holds promise. The Saudi market is increasingly open, as is the rest of the GCC and we see more of an effort to work with us on a reciprocal basis. The opportunities are plenty and growing."

Wilkes at Collas Crill also sees a greater internationalisation of the market on the cards. "We have a discrete but growing business from South America, which is keeping us busy and which is opening up the opportunity for Brazilian asset managers to raise funds via Guernsey; and our operations in Singapore and Cayman continue to feed new business back here primarily from South East Asia and South America respectively. China and India are, of course, more difficult markets to access, but we are working to make inroads and we are seeing some success."

With so much opportunity in sight, the outlook looks rosy. If there is one teenytiny blip, if you can call it that, it centres on branding. Jehan at the Guernsey Investment Fund Association concedes that perhaps the moniker Class B Investment Scheme doesn't have quite the same cachet or ring to it that say UCITS has, despite it being a more flexible and international structure. "Look, your average UCITS is distributed in three European markets (can actually range between anything from one to twenty-odd). Guernsey's Class B Scheme has seen funds registered in anything up to six European markets under AIFMD placement rules.

The rigour and the reach of the structure is there for investors to leverage. There is, perhaps, a need to find a moniker with some zip or pizazz that reflects the quality and range of the structure more effectively now, particularly as the global market has become more fluid and competitive. We've actually been working on it and have some ideas. We'll keep you posted," he says.

There's an obvious punchline about roses, other names and sweet smelling scents; so we'll avoid it and wait for the roll out of the rebranding of Guernsey's fund structure range. Seems like a good place to wait it out.

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