

Regulatory Aspects Impacting Investment Funds: A Non-European Perspective

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What we'll cover

- Impact of AIFMD on Guernsey AIFMs/AIFs
- AIFMD timeline
- Preparedness in Guernsey
- Guernsey AIFM case studies
- Private placement marketing in operation
 - reporting requirements
 - regional variances
 - CI statistics
- The new Guernsey AIF regulations and codes
- Thoughts on the third country passport...

AIFMD – to which third country AIFMs does it apply?

- AIFMs located outside the EEA (i.e. in “third countries” like Guernsey) either:
 - marketing any AIF to professional investors in the EEA after July 2014; or
 - managing EEA AIFs
- **Doesn't regulate** a non-EEA AIFM/AIF simply investing in the EEA



AIFMD – EEA marketing impact for third country AIFMs and AIFs (1)

- **Art 42 AIFMD** – since July 2014 non-EEA AIFM can only actively market AIFs to EEA professional investors using **national private placement regimes** of EEA states, subject to certain AIFMD **conditions**:
 - **regulatory co-operation agreements**
 - **FATF/AML compliance (not a "non-co-operative" jurisdiction)**
 - **comply with AIFMD's disclosure, reporting and transparency provisions**
 - **Arts 22 to 24** (i.e. prospectus disclosure; investor updates; regular reporting; material change reporting); and **Art 26 to 30** asset stripping provisions if AIF invests in non-listed EEA companies excluding real estate holding SPVs
- "Reverse solicitation" permitted but **CAUTION NEEDED**: interpretations vary across EEA States. Not a marketing strategy!

AIFMD – EEA marketing impact for third country AIFMs and AIFs (2)

From July 2015, fully compliant non-EEA AIFMs may get benefit of EEA marketing **passport** where:

- (i) non-EEA country also has relevant tax information exchange agreements (**TIEAs**) in place and
- (ii) application for authorisation is made through regulator in EEA Member State of Reference

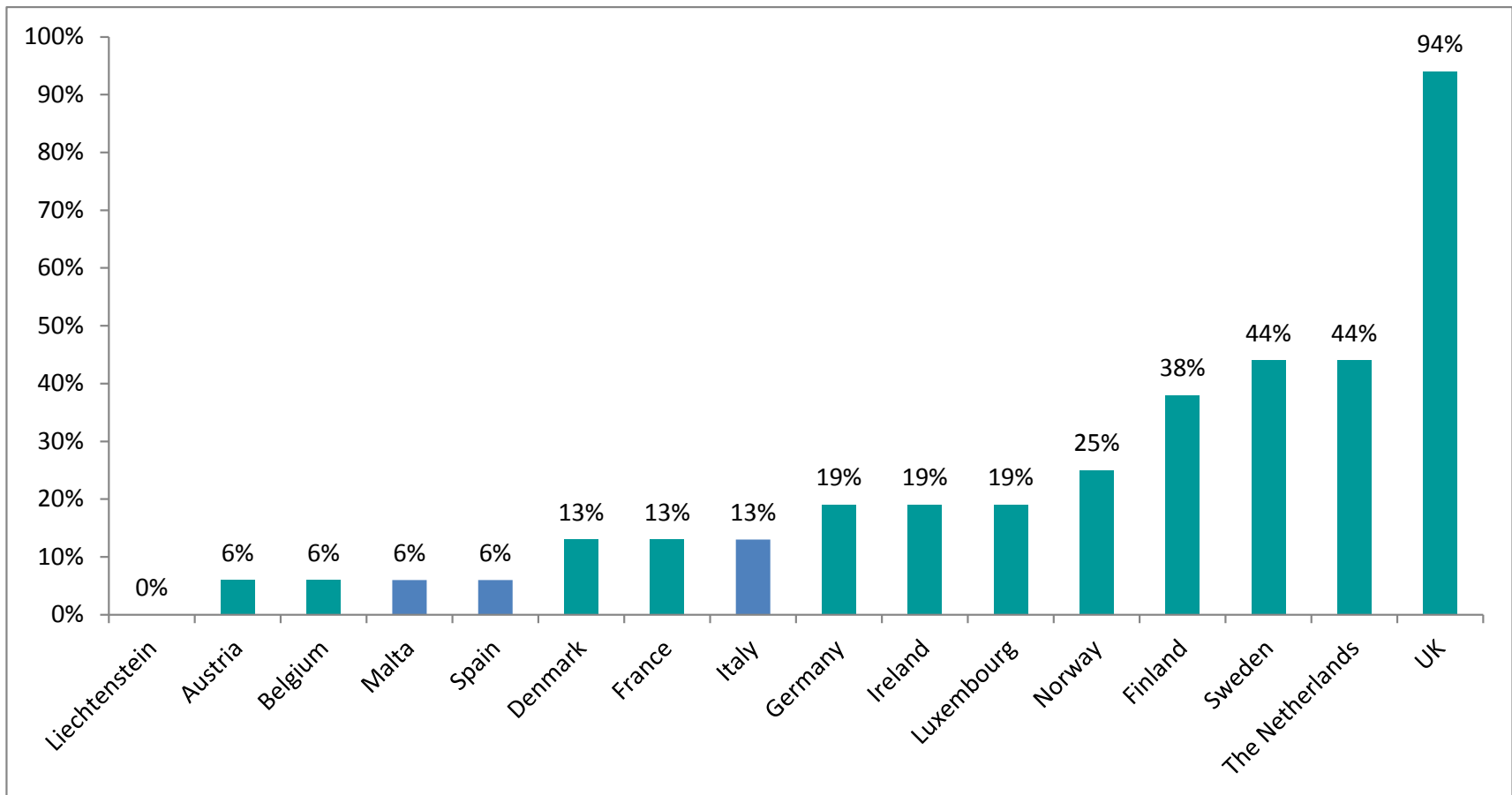
From 2018, subject to ESMA review in 2017, EEA private placement regimes may end and only fully AIFMD-compliant non-EEA AIFMs may be able to market into the EEA, by way of passport



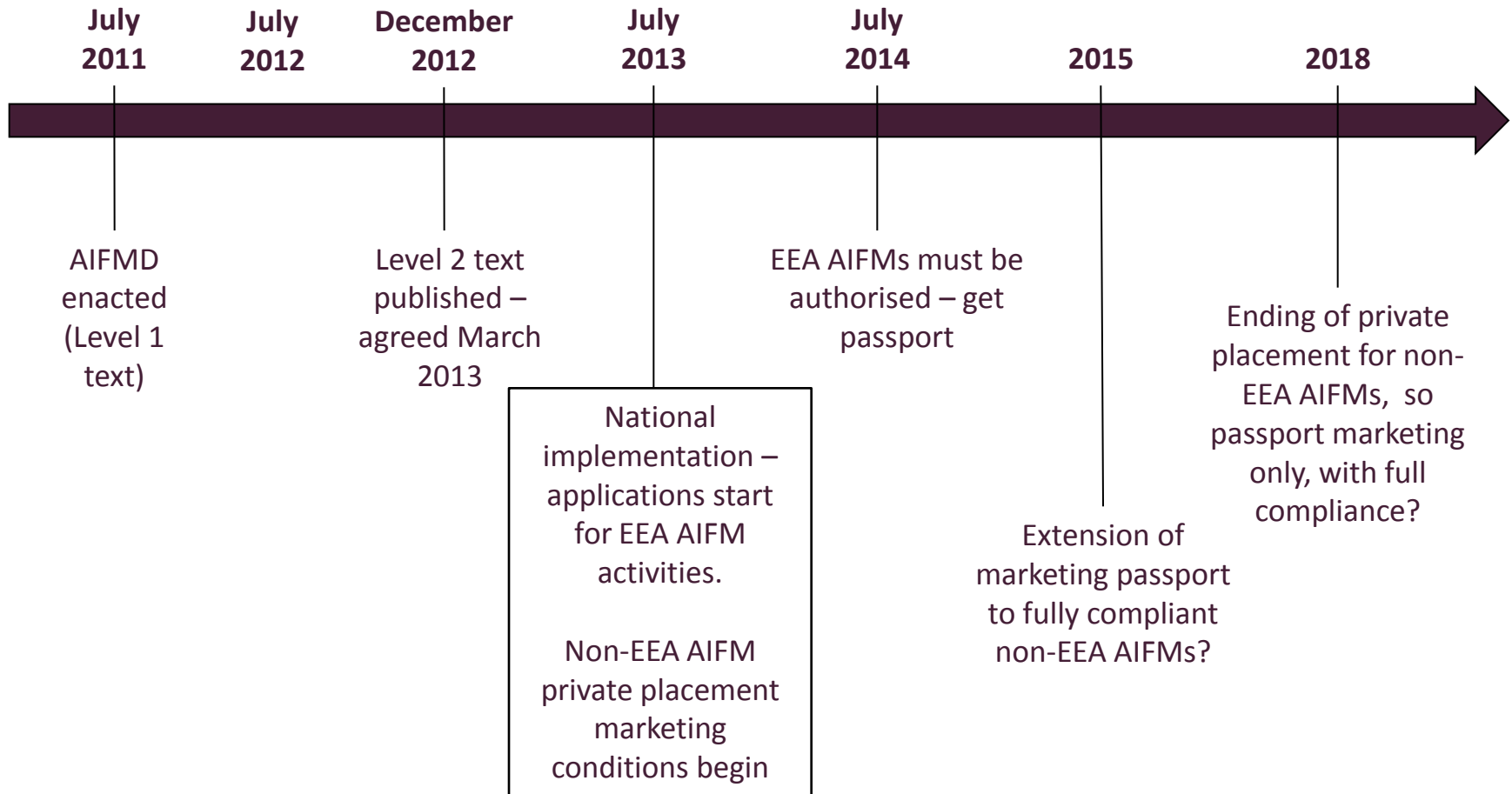
Guernsey has signed co-operation agreements with the securities regulators of the following EU/EEA jurisdictions

Austria	Finland	Latvia	Poland
Belgium	France	Liechtenstein	Portugal
Bulgaria	Germany	Lithuania	Romania
Cyprus	Greece	Luxembourg	Slovak Republic
Czech Republic	Hungary	Malta	Sweden
Denmark	Iceland	The Netherlands	United Kingdom
Estonia	Ireland	Norway	

Co-operation Agreements – Percentage of Managers intending to Market into each Jurisdiction (figures from HFMCompliance January 2015)

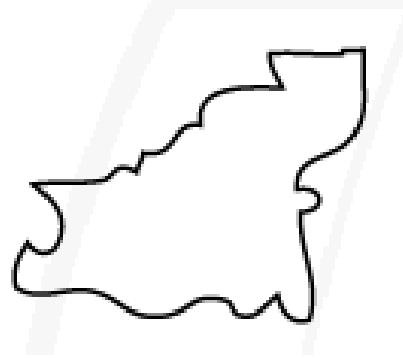


AIFMD Timeline



AIFMD – Preparedness in Guernsey

Guernsey:



- Co-operation agreements in place with 27 EEA regulators (Italy, Spain Croatia, and Slovenia awaited); comprehensive EEA TIEA network
- GFSC has also introduced an optional fully compliant AIFMD regime ahead of 2015 deadline
- No changes to structures targeting "rest of world" investors

Offshore AIFM/AIF Depository Requirements

- Definitely required where AIFM is operating in full compliance with AIFMD (ie for future third country passporting in the case of Guernsey AIFM). Strict liability for depository, so costly
- EEA (eg UK) AIFM of non-EEA (eg Guernsey) AIF can privately place (not passport) into EEA with “depository-lite” (same functions but no strict liability)
- Where a non-EEA (eg Guernsey) AIFM privately places, depository may also be required under private placement regimes of certain EEA Member States (eg Germany). Check local requirements carefully
- Depository role covers safe custody role PLUS a more extensive cash/asset monitoring function alongside, but independent from AIFM

Private Placement in Operation (1) Reporting

- Art 22 AIFMD - **Annual Report**
 - for each AIF marketed into EEA and for each financial year
 - send to relevant EEA regulators and (for now) GFSC
 - send no later than 6 months following end of each FY
- Art 23 AIFMD – **Disclosure**
 - in each AIF offer document sent to EEA investors before they invest (content requirements – can be in main body or wrapper/annexe)
 - sporadic investor disclosure in relation to illiquid assets; new liquidity arrangements; risk profile/risk management systems; changes to max. leverage limit (or to collateral re-use and guarantee arrangements linked to leverage)

Private Placement in Operation (2) Reporting

- Art 24 AIFMD - **Reporting to Regulators**
 - Non-EU AIFM must send regular reports to relevant EEA regulators (where fund is marketed) and (for now) GFSC
 - Form = Annex IV - covers principal markets/main instruments and assets traded; illiquid assets; new liquidity arrangements; risk profile/risk management systems
 - Non-EU AIFM need only report on AIFs marketed into the EEA
 - GFSC expects compliance with ESMA Guidance on reporting periods
- Art 26-30 AIFMD – **Asset-stripping rules**
 - Only if AIF invests in non-listed EEA companies – NB aimed at private equity/ venture capital funds so excludes AIFs investing in real estate holding SPVs

Private Placement in Operation (3) Non-EEA AIFMS vs EEA AIFMS

Benefits of having a non-EEA AIFM: no strict requirement to comply with the following additional AIFMD provisions which will apply to all EEA AIFMs irrespective of where their AIFs are domiciled or marketed:

- **Risk management:** *requirement to maintain systems to identify and manage risks; set minimum leverage limit; separate portfolio and risk management functions.*
- **Liquidity management:** *requirements to monitor liquidity profile of open-ended/leveraged AIFs and ensure consistency with redemption policy.*
- **Investment in securitisation positions:** *eligibility criteria for investment in securitisation positions.*
- **Organisational requirements:** *requirements for proper administrative, accounting, data processing arrangements, personal dealing rules, etc.*
- **Valuation:** *requirement for independent valuation of fund assets and disclosure of NAV.*

Private Placement in Operation (3) Non-EEA AIFMS vs EEA AIFMS continued...

- **Delegation:** *conditions for delegation AIFM functions to a third party; AIFM can't over-delegate and be a letterbox entity.*
- **Depository:** *requirement to appoint; custody and cash monitoring; supervision of subscriptions/redemptions; criteria relating to identity of depository and appointment of delegates; strict liability of depository. Depository of non-EEA AIF may be located in jurisdiction of the AIF if regulation is "equivalent".*
- **Leveraged AIF:** *requirement for AIFM to demonstrate reasonableness of and compliance with leverage limits. Ability for regulators to impose leverage limits.*
- **Remuneration policy and disclosure:** *must implement a remuneration policy which ensures that its interests are aligned with those of the AIFs it manages.*
- **Increased capital maintenance:** *capital maintenance requirements to be the higher of (i) a quarter of overheads or (ii) €125k plus 0.02% of the amount by which the value of the portfolios of the AIFM exceeds €250m.*

Private Placement in Operation (4) Non-Letterbox Treatment

Guernsey AIFMS should:

- Retain necessary expertise and resources to supervise a delegated task
- Retain the power to take decisions in key areas
- Do not delegate the performance of more investment management functions than it retains
- Undertake to oversee and control any delegate and obtain an acknowledgement from the delegate as to the limits of its role
- Ensure robustness of operational policies and procedures e.g frequent oversight meetings and more regular board meetings to consider portfolio review and risk
- Permanent establishment in Guernsey?

Private Placement in Operation (5) Regional Variance

Additional PPR requirements differ between Member States – some tightened:

- UK and Netherlands (just notification; GFSC attestation for NL)
- France (AMF authorisation required)
- Germany (appointment of depo; Capital Investment Code)
- Some variety in accepted reporting formats
- GFSC will be flexible on format it receives (copy of FCA electronic “gabriel” submission is fine)

Private Placement in Operation (6) Guernsey Management Structure

Guernsey ManCo as AIFM

- Can be AIFM and should functionally and hierarchically separate portfolio management and risk management
- Delegation of investment Management with oversight
- Investment advice of IA is not “management”
- Board composition, i.e. expertise to be able to meaningfully evaluate investment advice and risk management
- SuperManco for multiple fund structures

Private Placement In Operation (7) CI Stats:

176 AIFs

83 AIFMs

14 Depositories

As at October 2014



Third Country Passport – thoughts...

- ESMA preparing for July 2015 third country passport
- ESMA opinion in July 2015 – passport unlikely before Feb 2016?
- Call for evidence from ESMA (information gathering on functioning of passport and private placement in practice). GFSC responded by 8 Jan 2015 response deadline.
- Differentiation between third countries with equivalent regimes (more likely to get passport?) and those without (perpetuation of private placement?)
- ESMA Chairman’s speech of 5 November 2014:

“...our advice will not treat all non-EU countries as a single block. In other words, we will not simply say “yes, there should be a passport for everyone”. Rather, we will distinguish between the various non-EU jurisdictions taking into account the criteria set out in the AIFMD itself. One of the aspects that we will look at is whether EU entities experience difficulties in getting access to non-EU markets. This is just one of the criteria to be assessed, but it is an important one.”

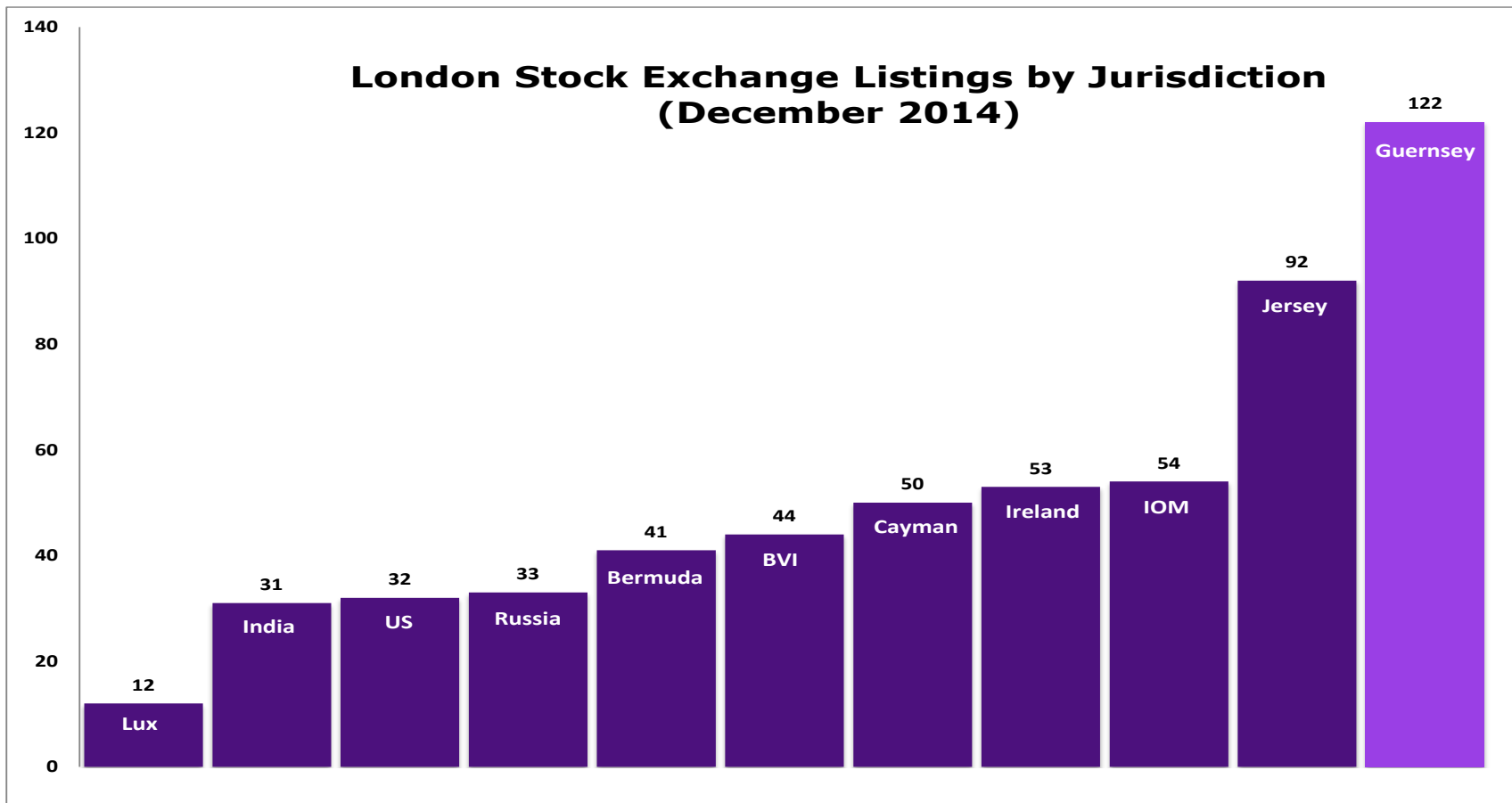
Continuing advantages and opportunities for Guernsey AIFMs and AIFs

- Possibility of full AIFMD optionality (freedom outside EEA; private placement in EEA; possible EEA passport?)
- Guernsey AIFMs of AIFs seeking non-EEA investors or that are fully-invested can side-step AIFMD completely (unlike EEA AIFMs)
- Not necessarily be subject to other EEA Directives/regulation, unlike EEA AIFMs
- Offshore tax advantages remain: neutralising double taxation risk for investors, with tax neutral fund vehicles managed by entities providing substantive management and control (and hence a permanent establishment) offshore; no VAT or BEPs issues!
- Flexible, transparent fund structures (unit trusts, companies, SPCs, limited partnerships) which facilitate innovative investment strategies, common and efficient extraction of income and capital to investors
- Political and fiscal stability

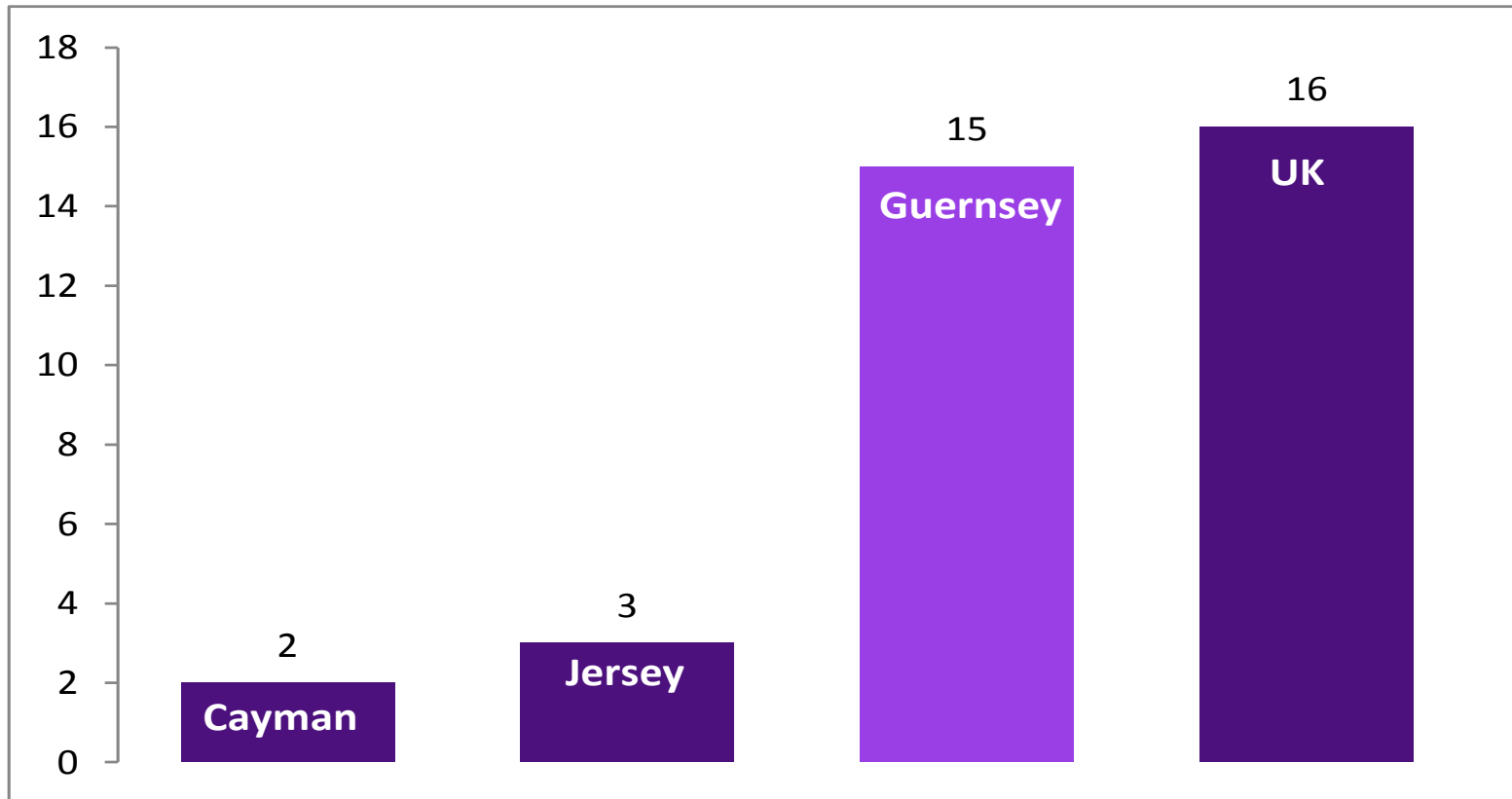
Continuing advantages and opportunities for Guernsey AIFMs

- Seasoned alternative fund service providers; mature industry
- Higher levels of certainty in terms of initial establishment and on-going running costs
- Leaders in global regulation and co-operation (as assessed by international bodies including ESMA, the FATF, the IMF, IOSCO and the OECD)
- No VAT charged
- Depth of infrastructure; administrators, lawyers, accountants and CISE
- Deep pool of professional NEDs
- A good understanding of 'Substance' for Managers opting into, or out of Guernsey's AIFMD regime

Listings Capability LSE Leader - there are more entities from Guernsey listings on the LSE markets than from any other non-UK jurisdiction

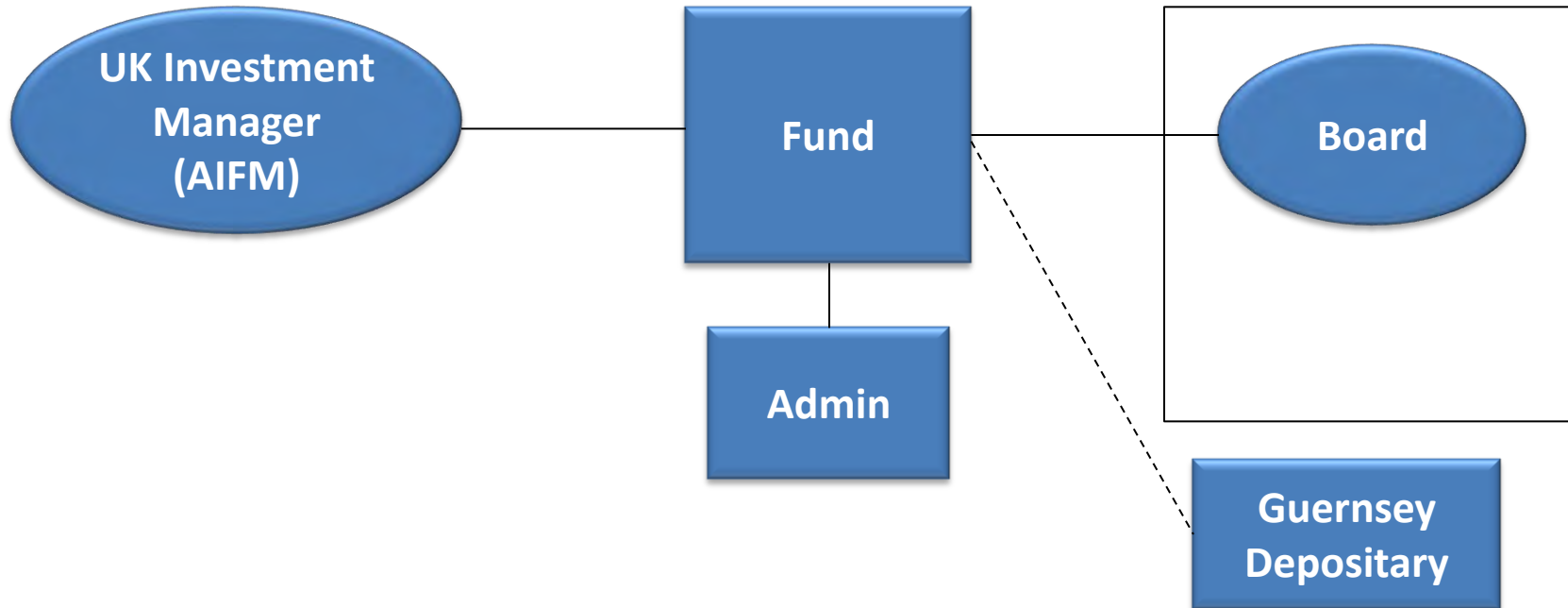


LSE Fund Listings by Jurisdiction post introduction of AIFMD (to February 2015)



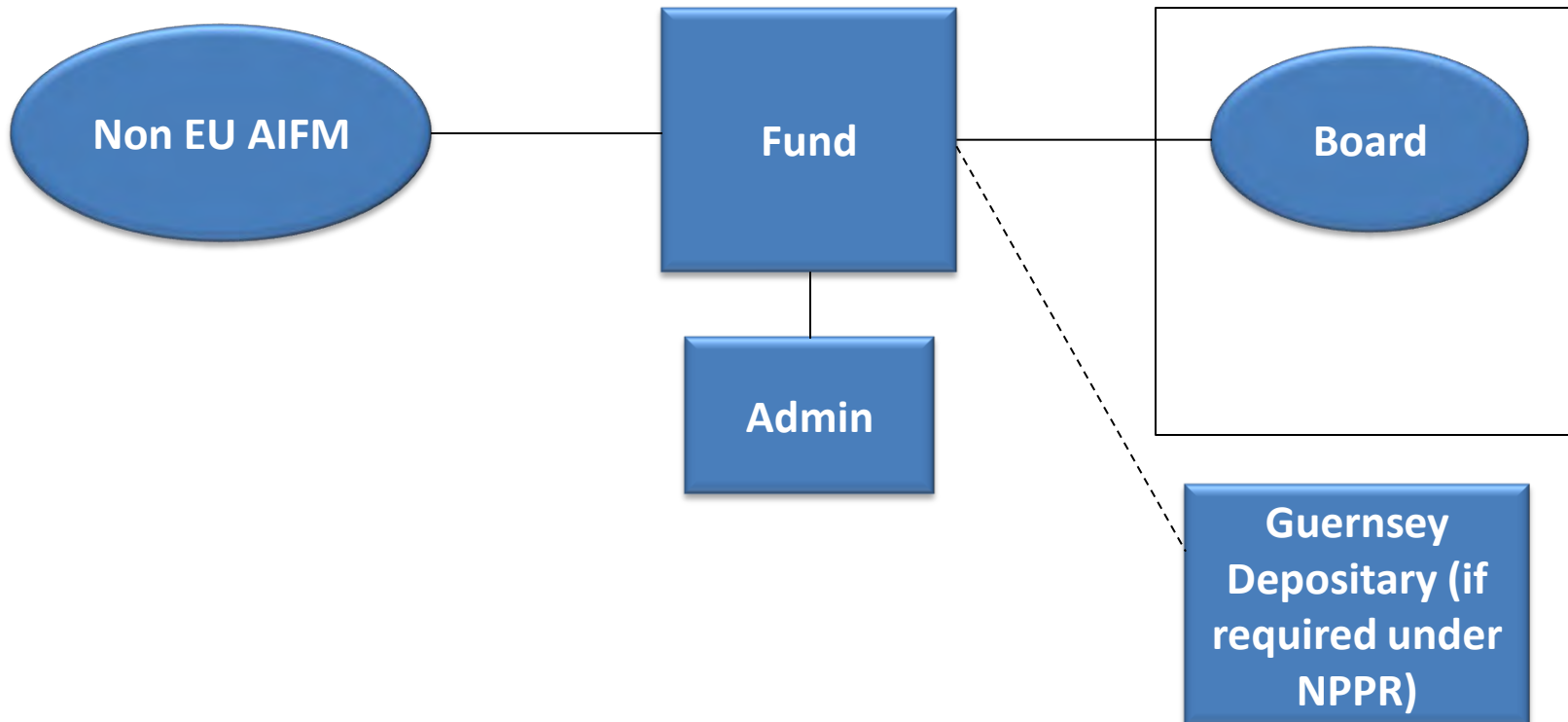
AIFMD: Listed Guernsey Structures

LSE listed Guernsey investment company: EU AIFM



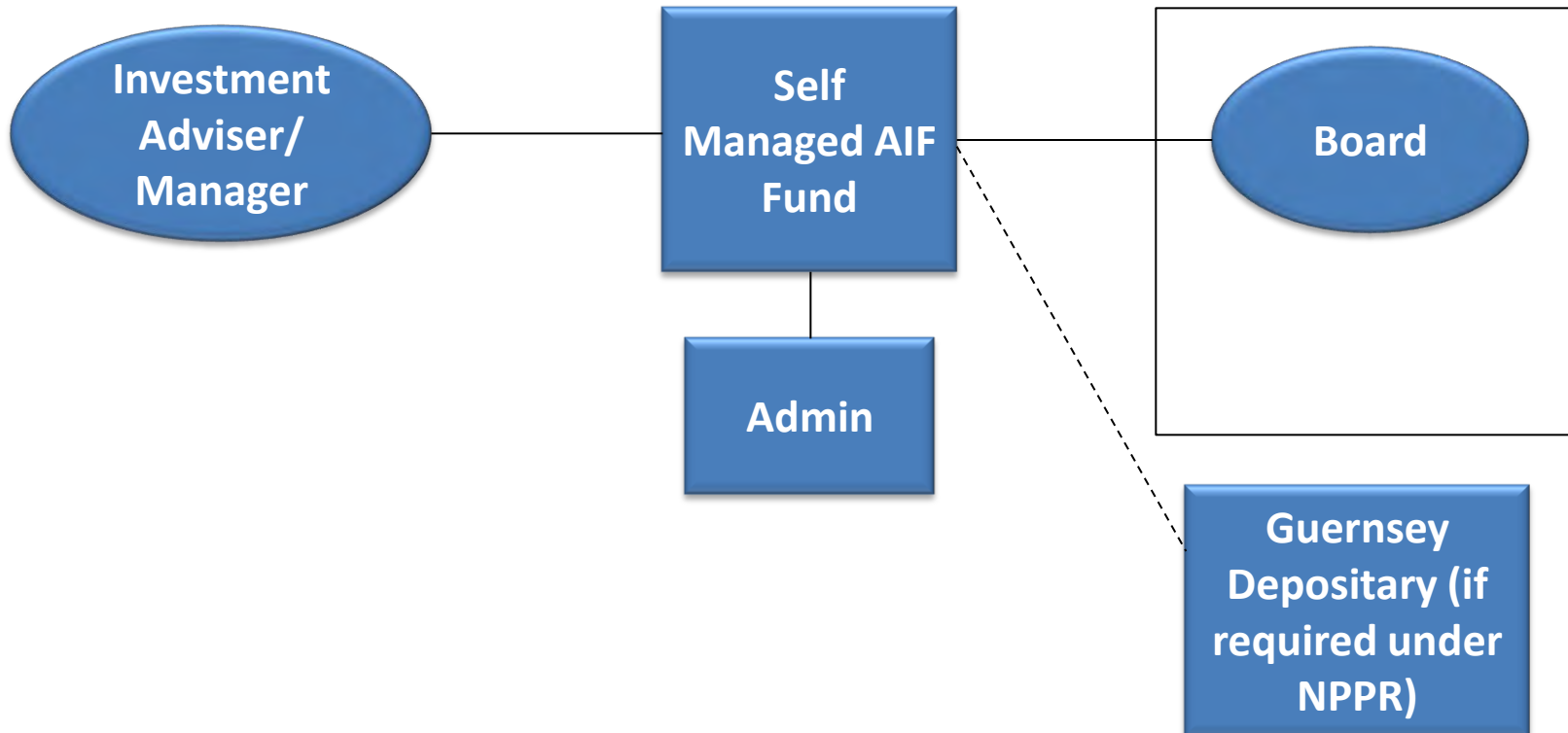
AIFMD: Listed Guernsey Structures

LSE listed Guernsey investment company: Non EU AIFM



AIFMD: Listed Guernsey Structures

LSE listed Guernsey investment company: Self Managed AIF



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