

**MEMO# 30155**

August 22, 2016

# **European Commission Consultation on the Cross-Border Distribution of Funds Across the EU - Member Comments Requested by 9 September 2016**

[30155]

August 22, 2016

TO: EQUITY MARKETS ADVISORY COMMITTEE No. 29-16  
FIXED-INCOME ADVISORY COMMITTEE No. 24-16  
ICI GLOBAL CAPITAL MARKETS UNION TASK FORCE  
ICI GLOBAL EXCHANGE TRADED FUNDS COMMITTEE No. 4-16  
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 51-16  
ICI GLOBAL STEERING COMMITTEE No. 17-16  
ICI GLOBAL TAX COMMITTEE No. 12-16  
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 36-16  
INTERNATIONAL COMMITTEE No. 40-16  
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 20-16  
INTERNATIONAL OPERATIONS WORKING GROUP RE: EUROPEAN COMMISSION  
CONSULTATION ON THE CROSS-BORDER DISTRIBUTION OF FUNDS ACROSS THE EU -  
MEMBER COMMENTS REQUESTED BY 9 SEPTEMBER 2016

As previously advised, [\[1\]](#) on 2 June 2016 the European Commission (“the Commission”) published a consultation paper (CP) [\[2\]](#) to gather details and evidence on how barriers to the cross-border distribution of funds in the European Union (EU) could be lifted. [\[3\]](#)

ICI Global’s draft response to the CP is attached for your review. Please provide comments on the draft response, particularly in the areas identified below, to Giles Swan (+44 207 961 0832 or [giles.swan@iciglobal.org](mailto:giles.swan@iciglobal.org)) by close of business on Friday 9 September 2016.

## **Draft Response**

Responses to the CP must be uploaded onto a questionnaire template [\[4\]](#) by 2 October 2016. ICI Global’s response is split into two parts. Part I outlines key aspects of cross-border UCITS distribution that ICI Global believes should be harmonised and coordinated (this part of the response will be uploaded as a supplementary document). Part II contains responses to specific questions that will be uploaded in the online questionnaire.

## **Areas where we are particularly seeking member input**

In our response to many of the questions posed by the Commission, we have provided examples of the barriers and frictions to cross-border distribution that we have identified through discussions with members. We are particularly interested in obtaining additional examples from members, and hearing about other issues or frictions that we have not identified, in the following sections of our response:

- Marketing Requirements (Questions 3.1aa, 3.1cc, 3.2a, 3.4ab, 3.5b and 3.15a);
- Administrative Arrangements (Questions 6.1 and 6.8);
- Direct and Online Distribution of Funds (Questions 7.2, 7.3c and 7.5);
- Notification Process (Question 8.6);
- Taxation (Questions 9.1, 9.2a and 9.3a)

The Commission has also asked respondents to identify and rank issues and barriers to cross-border distribution in order of importance. We would welcome member input in on these responses (Questions 2.2, 7.1 and 9.1).

## **Key Recommendations**

In the response, ICI Global recommends that the Commission pursues the following initiatives to enhance the cross-border distribution of regulated funds:

- Develop a harmonised marketing regime for UCITS funds, including: (i) a harmonised definition of the activities that constitute marketing; and (ii) a single definition and set of requirements governing “marketing communications” and supplementary information to “obligatory investor disclosures”;
- Simplify and converge authorisation and notification requirements for UCITS funds and remove other impediments and barriers (e.g. tax and administrative arrangements), that influence the offering of funds and the attractiveness of cross-border investment;
- Develop a single pan-EU private placement regime for the distribution of securities, including third country funds, to professional investors in the EU; and
- Develop regulatory approaches to actively accommodate and encourage the adoption of financial technology for: (i) the distribution of regulated funds; (ii) the provision of advice and guidance services; and (iii) the electronic delivery of information to investors.

## **Other issues covered in the draft response**

The response also contains more detailed recommendations for harmonising and coordinating the following aspects of the cross-border sale of a UCITS fund:

- Authorisation – question 8.6;
- Cross-border marketing notification and filing
  - Process – section 8;
  - Threshold “marketing” activities requiring notification – question 3.1cc, 3.2a and 3.4ab;
  - Supplementary Information to Obligatory Investor Disclosures – question 3.15a;
- Host Member State Marketing Communications – question 3.15a;
- Host Member State Administrative Arrangements – section 6.

We also list barriers and frictions that hinder the direct and online distribution of funds (Section 7) and tax issues that impair cross-border distribution, including difficulties in

obtaining treaty relief (Section 9).

Giles Swan  
Director of Global Funds Policy - ICI Global

## [Attachment](#)

### **endnotes**

[1] Memo 29975, RE: European Commission Consultation on the Cross-Border Distribution of Funds across the EU, dated 10 June 2016, available from <https://www.iciglobal.org/portal/site/ICI/menuitem.9ad35c6866c5fcca09ce3110b52001ca/?vgnextoid=2dc1f9805c135510VgnVCM100000650210acRCRD&vgnextchannel=4d1b1e9fd9c3b410VgnVCM1000001c0210acRCRD&vgnextfmt=global>

[2] Consultation Document: CMU Action on Cross-Border Distribution of Funds (UCITS, AIF, ELTIF, EUVECA and EUSEF) across the EU, 2 June 2016, available from [http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document_en.pdf)

[3] A summary of the consultation paper is available here: <https://www.iciglobal.org/pdf/29975.pdf>

[4] <https://ec.europa.eu/eusurvey/runner/cross-borders-investment-funds-2016?surveylanguage=en>

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