

MEMO# 31183

April 25, 2018

EU Cross-Border Distribution Proposals - Draft ICI Global Feedback: Member Comments Due by 2 May

[31183]

April 25, 2018 TO: ICI Global EU Capital Markets Union Task Force
ICI Global Regulated Funds Committee
International Operations Advisory Committee
International Operations Working Group RE: EU Cross-Border Distribution Proposals - Draft
ICI Global Feedback: Member Comments Due by 2 May

As previously advised,[\[1\]](#) on 12 March 2018 the European Commission (“Commission”) published[\[2\]](#) a proposed Regulation[\[3\]](#) and a proposed Directive[\[4\]](#) (“the proposed legislation”) to facilitate the cross-border distribution of investment funds in the EU.[\[5\]](#) The proposed legislation is currently under consideration by the Council of Ministers and the European Parliament (“the co-legislators”).

The Commission has requested feedback on the proposed legislation. Attached is ICI Global draft response to the feedback request, which takes account of comments we have received so far from members. We are seeking further member comments on the draft response, particularly relating to our recommendations on pre-marketing and the discontinuation of marketing, as outlined in more detail below.

Please provide your comments on the draft response to Giles Swan at giles.swan@iciglobal.org or +44 (0) 207 961 0832 by close of business on Wednesday 2 May 2018. The deadline for feedback to the Commission is Thursday 10 May 2018.

Draft Response

In our draft response, we laud the Commission’s effort to develop the proposed legislation. To ease distribution, lower investor costs, and increase investor fund choices, we recommend that the co-legislators to make the following changes to the proposed legislation:

- Amend the proposed legislation to reflect the Commission’s intension to prohibit host Member States from requiring a physical presence to be established by either the UCITS management company or an appointed third entity to provide facilities to service investors;[\[6\]](#)
- Enable all management companies to pre-market funds (not just AIFMs), including

through the presentation of draft and near-final information documents to investors (e.g. draft offering memorandum);

- Clarify that after a fund's establishment, own-initiative subscriptions from investors not engaged in pre-marketing shall not trigger a marketing notification;
- Introduce provisions to enable a UCITS fund to access the single market passport through a single notification,[\[7\]](#) akin to the registration of EuVECA[\[8\]](#) and EuSEF[\[9\]](#) and the MiFID services passport;[\[10\]](#)
- Extend the scope of ESMA's mandate to standardise the content and transmission of marketing notifications[\[11\]](#) to include the standardisation of updates to notifications that have been previously submitted;
- Expand the proposed ESMA central database of funds and management companies[\[12\]](#) to act as a single central "hub" for notifications and fund documentation (e.g., KIIDs);
- Remove the proposed conditions for management companies to discontinue marketing in a host Member State, because these conditions do not enhance investor protections afforded by existing obligations and may create unfairness between exiting and remaining fund investors.[\[13\]](#)

We also plan to submit a position paper setting out the above recommendations in more detail.

Issues on which we are seeking member feedback

We welcome member feedback on any of our proposed recommendations. We are particularly interested in member feedback in the following areas:

Pre-marketing

We are proposing the following two changes to the pre-marketing regime in the proposed legislation:

- amendments to enable all management companies to pre-market funds, on the basis that limiting this to just AIFMs (as proposed by the Commission) is not justified and may create market distortion;
- clarification that after a fund's establishment, own-initiative subscriptions from investors not engaged in pre-marketing shall not trigger a marketing notification, as Members have expressed concern that the Commission's proposals in this area are unclear.

We welcome member feedback on the two issues above and other aspects of the pre-marketing regime.

Discontinuation of marketing

We are recommending changes to the proposed threshold conditions and requirements that must be met for a management company to discontinue marketing in a host Member State.

If the Commission's proposal refers to circumstances where a management company ceases active marketing activity in a host Member State, we are seeking member feedback on whether we should recommend the removal of the proposed threshold conditions and the requirements for the management companies.

If the Commission's proposals refer to circumstances where a management company ceases all operations in a host Member State, including servicing existing investors (e.g.

withdrawing information and redemption facilities), rather than just ceasing marketing activities, we are seeking member feedback on whether:

- these circumstances likely arise, given other obligations owed to investors (e.g. the provision of obligatory investor disclosures and periodic reports, including any local language considerations); and
- the Commission's proposed threshold conditions and requirements are acceptable.

Next Steps

The deadline for feedback to the Commission on the proposed Legislation is Thursday 10 May 2018. The proposed legislation is being discussed by the Council of the EU and the European Parliament. The Commission is seeking to put in place the CMU by 2019.

Giles Swan
Director of Global Funds Policy, ICI Global

[Attachment](#)

endnotes

[1] Memo 31145, RE: EU Proposals to Facilitate the Cross-Border Distribution of Investment Funds, dated 27 March 2018, *available from*

<https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo31145.global>

[2] See Memo 31129, RE: European Commission Publishes Capital Markets Union Package, dated 14 March 2018, *available*

from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo31129.global>

[3] <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-110-F1-EN-MAIN-PART-1.PDF>

[4] <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-92-F1-EN-MAIN-PART-1.PDF>

[5] https://ec.europa.eu/info/publications/180312-proposal-investment-funds_en

[6] Local facilities to perform the tasks specified in the revised Article 92 to the UCITS Directive (2009/65/EC).

[7] Building on the proposals in Article 11 of proposed Regulation to standardise notifications.

[8] New Article 14a(7) to the EuVECA Regulation

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1991>).

[9] New Article 15a(7) to the EuSEF Regulation

(<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1991>).

[10] Article 34, MIFID II and Article 92, MIFID in respect of the provision of certain investment services by AIFMs.

[\[11\]](#) Article 11, proposed Regulation.

[\[12\]](#) Article 10, proposed Regulation.

[\[13\]](#) Proposed new Article 83a to the UCITS Directive contained in Article 1(7), proposed Directive

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