

MEMO# 30765

July 5, 2017

EU Commission Inception Impact Assessment - Reducing Barriers to the Cross-Border Distribution of Investment Funds

[30765]

July 4, 2017 TO: ICI Global EU Capital Markets Union Task Force
ICI Global Regulated Funds Committee RE: EU Commission Inception Impact Assessment - Reducing Barriers to the Cross-Border Distribution of Investment Funds

In the context of its initiative to reduce barriers to the cross-border distribution of investment funds,^[1] the European Commission ("Commission") published on 21 June an inception impact assessment,^[2] on which it is seeking comment. ICI Global has strongly supported the Commission's initiative in this area through consultation responses^[3] and media comment.^[4] ICI Global intends to respond to the inception impact assessment by the deadline of Wednesday 19 July.^[5] We will circulate a draft of ICI Global's response for member comment in due course. Members seeking to provide input to ICI Global's response should contact Giles Swan on +44 (0) 207 961 0832 or at giles.swan@iciglobal.org

Inception Impact Assessment

The publication of the inception impact assessment follows the Commission's announcement, in the mid-term review of the Capital Markets Union (CMU),^[6] that it is considering a legislative proposal to facilitate the cross-border distribution and supervision of UCITS and AIFs in Q1 2018.^[7] ICI Global's response to the mid-term review, supported action to address barriers to cross-border fund distribution.^[8]

Responses to the inception impact assessment will provide context to the Commission's initiative to reduce barriers to the cross-border distribution of investment funds. The Commission identifies the following five policy areas for addressing regulatory barriers:

- **Marketing** – the Commission has presented options to: harmonise national marketing requirements and practices; harmonise of what constitutes marketing and pre-marketing; and share best practices among Member States;
- **Administrative requirements** – the Commission has presented options to: prohibit requirements in national legislation to appoint local agents in the host Member State, or prescribe conditions under which local agent may be required. Additionally, the

Commission may seek to harmonise national disclosure requirements;

- **Regulatory fees** – the Commission has presented options to: create a central repository for information on regulatory fees; and introduce a principle of proportionality between the fee and supervisory work undertaken;
- **Notification requirements** – the Commission has presented options to: simplify the process for updating notifications under the marketing passport; establish a central hub for notifications; amend criteria for when updating notification is required. Additionally, the Commission may harmonise procedures and/or conditions for de-registration;
- **Online distribution** – the Commission has presented options to: providing clarity over application of marketing rules for online distribution; and take steps to address other barriers.

The Commission also notes that some policy options potentially develop the role of ESMA, the operation of which is subject to another consultation,^[9] to which ICI Global has responded.^[10]

Next Steps

Responses to the inception impact assessment are due by Wednesday 19 July 2017. The Commission has indicated that it will use the results of the inception impact assessment to determine whether to put forward a legislative proposal to facilitate the cross-border distribution and supervision of UCITS and AIFs in Q1 2018.

Giles Swan
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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/iciglobal/pubs/memos/memo29975>

[2] https://ec.europa.eu/info/law/better-regulation/initiative/31787/attachment/090166e5b32f9653_en

[3] Memo 30285, Re: ICI Global Response to the European Commission's Consultation on the Cross-Border Distribution of Funds across the EU, dated 30 September 2016, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30285>

[4] ICI Global Press Release "ICI Global Praises European Progress on Capital Markets", dated 8 June 2017, *available from* https://www.iciglobal.org/iciglobal/news/news/ci.17_news_cmu_midterm_review.global

[5] Responses are to be submitted via an online portal (https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3132069/feedback/add_en)

[6] Communication from the Commission on the Mid-Term Review of the Capital Markets Union Action Plan, 8 June 2017, ("CMU Mid-Term Review"), *available from*

https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf

[7] Priority Action 7, CMU Mid-Term Review

[8] Memo 30643, Re: ICI Global response to the European Commission's consultation on the CMU Mid-Term Review, dated 17 March 2017, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30643>

[9] Memo 30697, Re: EU Commission Consultation on the Operation of the European Supervisory Authorities – Draft ICI Global Response, dated 10 May 2017, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30697>

[10] Memo 30759, Re: EU Commission Consultation on the Operation of the European Supervisory Authorities - ICI Global Response, dated 29 June 2017, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo30759>

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