

MEMO# 33096

February 8, 2021

ESMA Consultation on Marketing Communication Guidelines: ICI Global Response

[33096]

February 8, 2021 TO: ICI Members

ICI Global Members

EU ESG Disclosure Regulation Working Group

EU Sustainable Finance Strategy Working Group

Global Operations Advisory Committee

ICI Global EU Capital Markets Union Task Force

ICI Global Regulated Funds Committee

International Compliance Advisory Committee

ESG Task Force SUBJECTS: International/Global RE: ESMA Consultation on Marketing Communication Guidelines: ICI Global Response

On 8 February 2020, ICI Global submitted its response to the European Securities and Markets Authority's (ESMA) consultation paper ("CP") on guidelines for marketing communications under the Cross-Border Distribution of Funds Regulation ("CBDF Regulation").^[1] The response is attached and takes account of member input on the draft response.^[2]

Submitted Response

In our submitted response, we generally support ESMA's efforts to develop a harmonised regime for marketing communications through the provision of guidance. We recommend various changes to ESMA's proposed guidance, including clarifying the UCITS' scope of responsibilities for ensuring the compliance of marketing communications. We recommend the following other changes to ESMA's proposed guidance:

- **Clarifying the definition of a marketing communication** – we propose changes to more clearly define those public, product specific communications that are within the scope of the guidelines and recommend that personalised communications, non-product specific communications and corporate and regulatory communications are out of scope;
- **Tailoring the application of the guidelines by the type and medium of communication** – we propose changes to enable UCITS to continue to use different communication media, including digital technology, to present information to

investors;

- **Alignment with existing requirements** – we propose the alignment of various aspects of the guidelines with existing requirements, including the presentation of risks and rewards with MiFID requirements and the presentation of investment performance with UCITS KIID requirements; and
- **Marketing of sustainability-related information** – we agree with ESMA’s high-level principles that:
 - Marketing communications should be based on the content of a UCITS prospectus and should not contradict the SFDR disclosure, and that
 - The sustainability-related information of a marketing communication should be commensurate with the extent to which the investment strategy of the fund promotes environmental or social characteristics, or sustainable investment objectives.
 - However, we strongly object to ESMA adding an example to these two principles that appears to create a new test that looks to whether a fund primarily pursues financial performance as its objective to determine how/where it can disclose sustainability-related information. This concept is not in the SFDR and should not be introduced in the marketing guidelines.

Next Steps

ESMA will consider the feedback it receives in response to the CP, with a view to issuing final guidelines by 2 August 2021.

Giles Swan
Director of Global Funds Policy
ICI Global

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 33058, RE: ESMA Consultation on Marketing Communication Guidelines: Member Call on 25 January at 10:00 am ET/3:00 pm GMT/4:00 pm CET, dated 20 January 2021, *available* from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo33058.global>

[2] See ICI Memorandum No. 33068, RE: ESMA Consultation on Marketing Communication Guidelines: ICI Global Draft Response for Member Comment by Tuesday 2 February 2021, dated 27 January 2021, *available* from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo33068.global>