

**MEMO# 33068**

January 27, 2021

# **ESMA Consultation on Marketing Communication Guidelines: ICI Global Draft Response for Member Comment by Tuesday 2 February 2021**

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TO: Global Operations Advisory Committee  
ICI Global EU Capital Markets Union Task Force  
ICI Global Regulated Funds Committee  
International Compliance Advisory Committee RE: ESMA Consultation on Marketing Communication Guidelines: ICI Global Draft Response for Member Comment by Tuesday 2 February 2021

As previously advised,[\[1\]](#) on 9 November the European Securities and Markets Authority (ESMA) published a consultation paper ("CP") on guidelines for marketing communications under the Cross-Border Distribution of Funds Regulation ("CBDF Regulation"). ESMA is inviting feedback on the CP by 8 February 2021. Attached is ICI Global's draft response which takes account of input received from a member call and other member engagement. We are seeking member feedback on our draft response by close of business on Tuesday 2 February 2021.

## **Draft Response**

In our draft 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 have proposed changes to the scope of the guidelines to ensure that public, product specific communications are within scope, but personalised, non-product specific, corporate and other communications are out of scope;
- **Tailoring the application of the guidelines by the type and media of communication** – we have proposed changes to enable UCITS to better take account

of the medium of communication when determining the most effective means of presenting information, including through digital technology;

- **Alignment with existing requirements** – we have proposed the alignment of various aspects of the guidelines with existing requirements, including aligning the presentation of risks and rewards with MiFID requirements and the presentation of investment performance with UCITS KIID requirements; and
- **Consistency with the Sustainable Finance Disclosure Regulation (SFDR)** – we strongly object to ESMA’s proposals for the presentation of information on sustainability-aspects of investment for funds with investment strategies primarily pursuing financial performance – we have recommended changes to ESMA’s proposed guidance to ensure consistency with the SFDR and compatibility with the UCITS framework.

Overall, the changes we have proposed are intended to contribute to the development of the marketing communications regime for cross-border UCITS, providing investors with clearer information, reducing barriers, complexity and cost and increasing choice for retail investors.

Please provide feedback on our draft response by close of business on Tuesday 2 February 2021 to the following:

- Giles Swan ([giles.swan@ici.org](mailto:giles.swan@ici.org)) for all consultation questions, except Q15 regarding information on sustainability-related aspects of investment; and
- Linda French ([linda.french@ici.org](mailto:linda.french@ici.org)) and Anna Driggs ([anna.driggs@ici.org](mailto:anna.driggs@ici.org)) for Q15 regarding information on sustainability-related aspects of investment.

## Next Steps

ESMA is inviting feedback on the CP by 8 February 2021. ESMA will consider the feedback it receives in response to the consultation, 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 GT/4:00 pm CET, dated 20 January 2021, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo33058.global>

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