

MEMO# 31204

May 10, 2018

EU Cross-Border Distribution Proposals - ICI Global Feedback

[31204]

May 10, 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 - ICI Global Feedback

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.[\[5\]](#)

On 10 May, ICI Global filed the attached submission, in response to the Commission’s request for feedback on the proposed legislation. The submission takes account of comments we have received on the draft version.[\[6\]](#)

ICI Global Submission

In our submission we laud the European Commission’s (“Commission”) effort to remove barriers to cross-border fund distribution. We encourage the co-legislators to agree ambitious changes to ease distribution, lower investor costs, and increase investor fund choices and recommend the following amendments to the Commission’s proposals:

- Amend the Commission’s proposal to reflect clearly its intent 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;
- 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 the provision of information on investment strategies or investment ideas to third-party distributors does not constitute pre-marketing;
- Clarify that after a fund’s establishment, own-initiative subscriptions from investors to whom a fund did not pre-market shall not trigger a marketing notification;
- Introduce provisions to enable a UCITS fund to access the single market passport through a single notification, akin to the registration of EuVECA and EuSEF and the MiFID services passport;

- Extend the scope of ESMA's mandate to standardise the content and transmission of marketing notifications to include the standardisation of updates to notifications that have been previously submitted;
- Expand the proposed ESMA central database of funds and management companies 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.

Next Steps

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] Memo 31183, RE: EU Cross-Border Distribution Proposals - Draft ICI Global Feedback, dated April 25, 2018, *available from*
<https://www.iciglobal.org/iciglobal/pubs/memos/memo31183>