

MEMO# 31052

January 24, 2018

ICI Global Response to European Commission's ESA Reform Proposal - Delegation to Third-Country Entities

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January 24, 2018 TO: ICI Members

ICI Global Members

ICI Global Brexit Task Force

ICI Global Regulated Funds Committee SUBJECTS: International/Global RE: ICI Global Response to European Commission's ESA Reform Proposal - Delegation to Third-Country Entities

On 23 January we filed the attached response to the European Commission's (Commission) proposed package of measures to revise the European System of Financial Supervision, including the role, competency, governance, funding and operation of the European Securities and Markets Authority (ESMA).[\[1\]](#) Of particular relevance and concern to members is the Commission's proposal regarding a strengthened role for the ESAs, including ESMA, to promote convergence in national competent authorities' (NCAs) oversight of the delegation and outsourcing of activities by financial institutions, particularly to third-country entities

Specifically, the Commission's proposal would enable ESMA to review and potentially override Member States' authorisation of a UCITS fund manager that delegates a material part of its activities to delegates in non-EU countries while maintaining the status quo for authorisation of delegation to other EU Member States. This bifurcated approach—which calls into question delegation outside the European Union—risks raising costs to UCITS investors by imposing unnecessary requirements and possibly severely limiting the efficient delegation of asset management functions outside the European Union.

In our response to the proposal, we express our deep concern that Article 31a on third-country delegation will detrimentally affect the prominence of UCITS as global investment vehicles and explain that EU policymakers should not adopt Article 31a for the following reasons:

- Delegation enables asset managers to bring efficiency and expertise to the operation of UCITS for the benefit of fund investors by enabling these funds to access investment expertise around the globe in a cost-effective manner. The UCITS Directive recognizes the benefits of delegation and provides strong oversight over this

practice to protect investors.

- The proposed new provision on delegation does not add any benefits to the existing UCITS framework because ESMA already has all the authority it needs to harmonize standards for delegation. The Commission also fails to articulate a rationale for disparate treatment of third-country delegation and takes ESMA on a needless detour rather than encouraging ESMA to focus its existing powers and resources to tackle challenges that have already been identified, such as cross-border distribution of UCITS.
- A change to the current process for approving delegation and potentially limiting a management company's ability to delegate portfolio management outside of the European Union could increase investor costs, lessen the quality of the investment expertise, and/or limit UCITS offerings. These negative consequences could lead investors to forego UCITS and instead look to other types of collective investment vehicles or products to meet their investment needs.

The response illustrates the benefits that UCITS have provided and are providing not only to EU and globally-based investors but also to EU companies and the EU economy. It also describes how the current regulation of delegation provides an appropriate balance of flexibility and proper oversight, and argues that the proposed delegation provision would not provide additional benefits to the UCITS regulatory framework. Lastly, the response explains how imposing unnecessary burdens on delegation would result in increased costs to investors and may prompt asset managers to find an alternative vehicle to serve the needs of EU and global investors.

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[Attachment](#)

endnotes

[1] Proposed ESA Regulation, *available from* https://ec.europa.eu/info/law/better-regulation/initiative/113085/attachment/090166e5b5347354_en.