

MEMO# 32644

July 29, 2020

ESMA Consultation on the Publication of Fund Marketing Requirements and Regulatory Levies: ICI Global Response

[32644]

July 29, 2020 TO: ICI Global Members
Global Operations Advisory Committee
ICI Global EU Capital Markets Union Task Force
ICI Global Regulated Funds Committee SUBJECTS: International/Global RE: ESMA
Consultation on the Publication of Fund Marketing Requirements and Regulatory Levies: ICI
Global Response

On 30 June 2020, ICI Global submitted its response to the European Securities and Markets Authority (ESMA) published a consultation paper (CP) on draft implementing technical standards (ITS) under the Regulation on the cross-border distribution of funds ("CBDF Regulation"). The response is attached and takes account of input on the prior draft.[\[1\]](#)

Summary of ICI Global's Response

We are fully supportive of efforts to remove impediments to the cross-border distribution of funds that will increase choice for retail investors, enhance potential cost efficiencies derived from the management of larger pools of fund assets and fulfil the promised benefits of completing the EU single market, including realising the goals of the Capital Markets Union. We support ESMA's proposals under the cross-border distribution of funds regulation (CBDF Regulation)[\[2\]](#) to: (i) develop a database of cross-border marketed funds; and (ii) enhance the transparency of Member State marketing requirements and the regulatory fees and charges levied by national competent authorities (NCAs).

Website Publication of Marketing Requirements and Regulatory Fees and Charges

We fully support enhancing the transparency of Member States' marketing requirements for funds and the regulatory fees and charges levied by NCAs. ICI Global members report that existing information on marketing requirements and regulatory fees and charges is often difficult to find, located in multiple places, or incomplete. As such, ICI Global members often have to consult external outside counsel or external advisors to support regulatory compliance. This consultative process takes time and incurs additional costs for funds and ultimately their investors.

We recommend that ESMA develop an approach to the publication of marketing requirements and regulatory fees and charges that requires NCAs to publish information in a harmonised manner to support ease of access and comparability across Member States. For instance, ESMA could develop “categories” of marketing requirements (e.g., financial promotions) and fees and charges (e.g., initial and periodic marketing notification fees) under which NCAs will publish their national requirements and levies. Furthermore, we recommend that NCAs ensure the information they publish on marketing requirements and regulatory fees and charges is kept up-to-date and, where possible, NCAs develop mechanisms to notify funds that are registered for marketing in their jurisdiction of any changes to these requirements and levies (e.g., via email).

Harmonised publication of NCA marketing requirements and fees and charges is an important first step in reducing the complexity and cost that funds face when seeking to distribute in a new host Member State. As well as challenges in easily accessing complete information, complexity and cost also arise because of divergent host Member State approaches to marketing including:

- the definition and content of marketing communications (e.g., financial promotions, advertisements, investor letters);
- the process for “pre-approval” of marketing communications;
- the investment terms of products (e.g., defining a particular fund type as automatically complex); and
- the restrictions applied to UCITS funds by home and host Member State regulators.

The CBDF Regulation does not address the challenges that arise from divergent host Member State approaches to marketing, but the publication of marketing requirements by NCAs may serve to highlight them. Furthermore, in addition to allowing funds to obtain information more easily, enhanced transparency of marketing requirements and regulatory fees and charges on ESMA’s website will provide the opportunity to: (i) identify and adopt good or best practices; (ii) promote greater consistency; and (iii) encourage reduction of complexity. Over time, these incremental but important steps can support the development of a harmonised pan-EU marketing regime for the cross-border sale of UCITS to complete the single market in publicly available regulated funds.

Central Database Listing Funds Marketed on a Cross-Border Basis

We fully support the development of a central database of UCITS that are marketed on a cross-border basis. We consider this to be an important first step that has the potential to:

- provide fund investors with comprehensive and easily accessible information on funds to support investment decisions; and
- reduce the administrative costs and complexity for funds when filing mandatory investor disclosures, including for cross-border marketing notifications.

To support investment decisions made by fund investors, the central database should include a range of information necessary for investors to analyse meaningfully and compare investment products. For instance, investors need information on the characteristics of an investment fund (e.g., its risk and return profile) to determine how this may fit with their investment objectives/goals and risk tolerance, including alongside other investments they hold in their portfolio. As discussed in more detail in our response to the

MiFID II Review consultation, we encourage development of understandable pan-EU investor disclosure requirements that are harmonised across products (*i.e.*, UCITS, PRIIPs and non-MiFID comparable products) and consistent across disclosures (*e.g.*, fee information in ex-ante disclosures, KIIDs and KIDs, and ex-post disclosures) to support investors through the investment process. Although the disclosure reforms are still underway, we believe the development of a database should be undertaken in preparation to provide immediate benefits to investors.

Over time, a central database can develop a central “hub” through which cross-border marketing notifications, including updates to documentation, could be submitted by funds electronically. A single hub would reduce the layers of complexity and delays to marketing that often result from the additional procedures for cross-border marketing notification and filings that are imposed by host NCAs (*e.g.*, the payment of a notification fee, the requirement to upload the KIID onto a regulator’s proprietary system, etc). We would support legislative changes that would enable funds to obtain the EU market passport through a single filing to a central hub that is supported by the database. Such a system would be akin to the MiFID services passport and approach for EuVECA and EuSEF and could considerably reduce administrative burdens, costs and delays for cross-border funds.

Next Steps

ESMA intends publish a final report, which will be sent to the European Commission, by 2 February 2021. The CBDF Regulation requires ESMA to publish on its website the database of cross-border marketed funds by 2 February 2022.

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[Attachment](#)

endnotes

[1] See Memorandum 32546, RE: ESMA Consultation on the Publication of Fund Marketing Requirements and Regulatory Levies: Draft ICI Global Response, dated 22 June 2020, available from <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo32546.global>

[2] Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014, available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1156>