

**MEMO# 30285**

September 30, 2016

# **ICI Global Response to the European Commission's Consultation on the Cross-Border Distribution of Funds Across the EU**

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TO: EQUITY MARKETS ADVISORY COMMITTEE No. 36-16  
FIXED-INCOME ADVISORY COMMITTEE No. 32-16  
ICI GLOBAL CAPITAL MARKETS UNION TASK FORCE  
ICI GLOBAL EXCHANGE TRADED FUNDS COMMITTEE No. 7-16  
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 67-16  
ICI GLOBAL RETIREMENT SAVINGS COMMITTEE  
ICI GLOBAL STEERING COMMITTEE No. 19-16  
ICI GLOBAL TAX COMMITTEE No. 13-16  
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 44-16  
INTERNATIONAL COMMITTEE No. 51-16  
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 26-16  
INTERNATIONAL OPERATIONS WORKING GROUP RE: ICI GLOBAL RESPONSE TO THE  
EUROPEAN COMMISSION'S CONSULTATION ON THE CROSS-BORDER DISTRIBUTION OF  
FUNDS ACROSS THE EU

On 30 September 2016, ICI Global submitted a response to the European Commission's Consultation[\[1\]](#) on the Cross-Border Distribution of Funds across the EU ("the Consultation").[\[2\]](#) A consolidated copy of the submission, including supplementary documents, is attached. The submission takes account of member feedback and comments on the draft submission.[\[3\]](#)

ICI Global's submission to the Consultation is in the following three parts. Part I outlines key aspects of cross-border UCITS distribution that ICI Global believes should be harmonised and coordinated (this part of the submission has been uploaded as a supplementary document). Part II contains responses to specific questions raised by the Commission. Part III outlines approaches to fund registration and marketing in the US and in Canada, as examples of international approaches that inform the harmonisation of UCITS marketing communications (this part of the submission has been uploaded as a supplementary

document).

## **Part I - Key aspects of cross-border UCITS distribution that should be harmonised and coordinated**

We have made recommendations for harmonising and coordinating the cross-border sale of a UCITS fund in the following areas (references are to individual responses in Part II of ICI Global's submission).

- Authorisation – question 8.6;
- Cross-border marketing notification and filing;
  - Process – section 8;
  - Threshold “marketing” activities requiring notification – question 3.1cc, 3.2a and 3.4ab;
  - Supplementary Information to Obligatory Investor Disclosures – question 3.15a;
- Host Member State Marketing Communications – question 3.15a; and
- Host Member State Administrative Arrangements – section 6.

## **Part II - Response to selected questions in online questionnaire**

We have recommended that the Commission pursue the following initiatives to enhance the cross-border distribution of regulated funds:

- Develop a harmonised pre-marketing and marketing regime for UCITS funds, including: (i) a harmonised definition of the activities that constitute “pre-marketing” and “marketing”; and (ii) a single definition and set of requirements governing “marketing communications” and supplementary information to “obligatory investor disclosures”;
- Simplify and converge authorisation and notification requirements for UCITS funds and remove other impediments and barriers (e.g., tax and administrative arrangements), that influence the offering of funds and the attractiveness of cross-border investment;
- Develop a single pan-EU private placement regime for the distribution of securities, including third country funds, to professional investors in the EU; and
- Develop regulatory approaches to actively accommodate and encourage the adoption of financial technology for: (i) the cross-border distribution of regulated funds; (ii) the provision of advice and guidance services; and (iii) the cross-border electronic delivery of information to investors, including through online and social media channels.

## **Part III - Selected international approaches to fund registration and marketing to inform the harmonisation of UCITS Marketing Communications**

As a supplement to our response to question 3.15a, we have described the approaches to fund registration and marketing in the US and Canada, as examples of international approaches that provide valuable insights and lessons for improving the cross-border distribution and marketing of UCITS. We believe that more closely aligning UCITS rules on marketing communications and obligatory investor disclosures to eliminate duplication, divergence and conflict among various Member State requirements, would strengthen the single market, reduce complexity and cost, and provide greater consistency for UCITS and their investors.

## **Next Steps**

The Commission will consider the responses it receives to the Consultation. A group of experts, with Member States' representatives, has been established by the Commission to

report on national barriers to the free movement of capital.<sup>[4]</sup> In a recent Communication, the Commission confirmed that it will take action to remove remaining barriers in the asset management sector, through legislative changes if necessary.<sup>[5]</sup>

Giles Swan  
Director of Global Funds Policy - ICI Global

## [Attachment](#)

### **endnotes**

[1] Consultation Document: CMU Action on Cross-Border Distribution of Funds (UCITS, AIF, ELTIF, EUVECA and EUSEF) across the EU, 2 June 2016, *available from* [http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/docs/consultation-document_en.pdf)

[2] Memo 29975, RE: European Commission Consultation on the Cross-Border Distribution of Funds across the EU, dated 10 June 2016, *available from* <https://www.iciglobal.org/portal/site/ICI/menuitem.9ad35c6866c5fcca09ce3110b52001ca/?vgnextoid=2dc1f9805c135510VgnVCM100000650210acRCRD&vgnextchannel=4d1b1e9fd9c3b410VgnVCM1000001c0210acRCRD&vgnextfmt=global>

[3] Memo 30155, RE: European Commission Consultation on the Cross-Border Distribution of Funds across the EU, dated 22 August 2016, *available from* <https://www.iciglobal.org/portal/site/ICI/menuitem.9ad35c6866c5fcca09ce3110b52001ca/?vgnextoid=e029fde7d62b6510VgnVCM100000650210acRCRD&vgnextchannel=4d1b1e9fd9c3b410VgnVCM1000001c0210acRCRD&vgnextfmt=global>

[4] Para 2.11, Commission Staff Working Document, Capital Markets Union: First Status Report, 25 April 2016, *available from* [http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/cmu-first-status-report_en.pdf)

[5] p6, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions, Capital Markets Union – Accelerating Reform, 14 September 2016, *available from* [http://ec.europa.eu/finance/capital-markets-union/docs/20160914-com-2016-601\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/20160914-com-2016-601_en.pdf)