

COMMENT LETTER

September 30, 2016

ICI Global Response to the European Commission's Consultation on the Cross-Border Distribution of Funds Across the EU (pdf)

ICI Global Response to the EU Commission's Consultation¹ on Barriers to the Cross-Border Distribution of Funds in the EU2 Part I - Key aspects of cross-border UCITS distribution that should be harmonised and coordinated³ ICI Global believes the European Commission should harmonise and coordinate the following four aspects of the cross-border sale of a UCITS fund: (i) Authorisation (see also our response to question 8.6) Each home Member State regulator has its own procedures for a UCITS fund's authorisation, with terms that reflect local supervisory experience and cultural preferences (e.g., minimum investment limits). Host Member State regulators may also impose other investment terms upon receipt of a cross-border marketing notification (e.g., defining a particular fund type as automatically complex). Consequently: (i) a UCITS fund is likely to be subject to multiple layers of regulation; and (ii) an investor in a cross-border UCITS fund will be impacted by restrictions arising as a consequence of their Member State's rules, as well as the Member State's rules in the domicile of the fund. Differences in the investment terms and restrictions applied to UCITS funds by home and host Member State regulators, create complexity, confusion and barriers for funds and investors. Harmonising the UCITS authorisation process and promoting supervisory convergence among Member State regulators offers the potential to: (i) identify and adopt good or best practice and experience; (ii) ensure consistency; (iii) reduce complexity; and (iv) improve efficiency to strengthen the single market for UCITS funds. (ii) Cross-border Marketing Notification and Filing (a) Process (see also our response to Section 8) Host Member State regulators often impose additional procedures for cross-border marketing notification and filings (e.g., the payment of a notification fee, the requirement to upload the KIID onto a regulator's proprietary system etc.) These procedures add layers of complexity and can cause delays to the cross-border marketing of a UCITS fund. Harmonising the electronic transmission and filing of notifications, including for updates to documentation, will greatly reduce complexity and improve efficiency for cross-border UCITS funds. A single central "hub" for notifications and documentation (e.g., KIID) should be developed to enable UCITS funds to access the single market passport through a single filing, akin to the MiFID services passport and 1 European Commission, 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 2 This document is a consolidated

version of the filing made, on 30 September 2016, by ICI Global in response to the EU Commission's Consultation on Barriers to the Cross-Border Distribution of Funds in the EU ("the Consultation"). 3 Filed as a supplement to ICI Global's response to the Consultation. References to responses are to questions raised by the EU Commission in that consultation. ICI Global | Page 2 of 21 consistent with the proposed approach for EuVECA and EuSEF. Building on ESMA's existing UCITS management company register,⁴ a single central hub would provide the public with a single site to access UCITS information. (b) Threshold "marketing" activities requiring notification (see also our response to question 3.1cc, 3.2a and 3.4ab) Each Member State has its own interpretation of the activities that constitute "marketing" of a UCITS (e.g., communication with potential investors prior to a fund's launch) and trigger the requirement for the submission of a notification. Some Member States also define activities that constitute "pre-marketing" (which do not trigger notification requirements) to enable a fund to gauge investor or distributor interest prior to its launch, or if the fund is already marketing in other Member States, prior to the submission of an additional marketing notification. A harmonised definition of UCITS pre-marketing – defining activities that can be undertaken prior to notification – and UCITS marketing – meaning when notification must occur – would provide certainty for funds, investors and supervisors while reducing costs and complexity. (c) Supplementary Information to Obligatory Investor Disclosures (see also our response to question 3.15a) Host Member State regulators often require supplements to the UCITS obligatory investor disclosures which are required to be provided, or made available, at the point of investment (e.g., prospectus supplements or supplementary information documents). A harmonised approach to the provision and content of supplementary information that must accompany the existing obligatory investor disclosures (e.g., KIID), is needed to improve the consistency of information provided to fund investors. Furthermore, a harmonised approach would reduce the time and complexity of marketing cross-border funds, particularly those distributing into multiple host Member States. Requiring multiple versions of fund documents to meet varying rules across the EU is very costly and creates unneeded confusion and complexity. (iii) Host Member State Marketing Communications (see also our response to question 3.15a) Divergent host Member State approaches to the definition of marketing communications (e.g., financial promotions, advertisements, investor letters) and the "pre-approval" of such communications, creates uncertainty and burdens to the efficient provision of information to investors and distributors, including through the use of technology. Different Member State approaches present an additional layer of regulation on cross-border distribution. A harmonised definition of "marketing communications" and a single set of requirements for the content of these communications, including where delivered through digital means, would offer better access to information and other advantages for fund investors, such as more consistent information. (iv) Host Member State Administrative Arrangements (see also our response to Section 6) Divergent host Member State approaches to the administrative arrangements for UCITS marketing (e.g., Know Your Customer requirements, the role and operation of paying agents, and the provision of information facilities) present additional unnecessary and costly frictions and impediments for cross-border funds. The accumulated impact and cost of the divergent approaches and interpretations described above is prohibitive for funds distributed cross-border across multiple host Member States. For EU investors, the possibility of receiving different information about the same fund is confusing. Harmonising the various layers of rules around cross-border distribution of UCITS would bring substantial benefits to investors and truly promote and strengthen the single market for UCITS. 4

<https://registers.esma.europa.eu/publication/searchUcits> ICI Global | Page 3 of 21 Part II – Response to selected questions in online questionnaire⁵ Section 2 - General Overview Question 2.1a – Please expand upon and provide more detail on your response to questions

2.1 and 2.1a - please explain what the issues are and how they limit the cross-border distribution of funds? Please cite the relevant provisions of the legislation concerned if possible: We have generally identified Member State factors that limit the cross-border distribution of regulated funds. We believe that EU level action can more efficiently address many of the identified factors, and recommend the following initiatives: ☐ 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 [1] 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. _____ [1] See response to questions in

Section 9 concerning treaty eligibility, tax reporting and transparency and double taxation. Question 2.2 – In your experience, which of the following issues are the major regulatory and tax barriers to the cross-border distribution of funds in the EU? For the issues you consider to be major barriers, please rank them in order of importance 1 2 3 4 5 6 Not an issue Different definitions across the EU of what marketing is ☐ Marketing requirements imposed by host Member States ☐ Regulatory fees imposed by host Member States ☐ Administrative arrangements imposed by host Member States ☐ Lack of efficiency of notification process ☐ Difficult/cumbersome refund procedures for claiming relief from withholding taxes on distributions by the UCITS, AIFs, ELTIF, EuVECA or EuSEF ☐ Higher taxation of investment funds located elsewhere in the EU/EEA than of domestic funds ☐ 5 A PDF version of ICI Global filing is available at

<https://ec.europa.eu/eusurvey/pdf/answer/3bd78995-2f44-4302-9309-87af36163ff5/> ICI Global | Page 4 of 21 Differences between the tax treatment of domestic and foreign fund managers as regards withholding tax/income reporting responsibilities and opportunities on income distributed by UCITS, AIF, ELTIF, EuVECA or EuSEF ☐ Differences between Member States in tax reporting ☐ Other: Please specify Section 3 - Marketing Requirements Question 3.1a – Are you aware of member state interpretations of marketing that you consider to go unreasonably beyond of what should be considered as marketing under the UCITS Directive? Yes Question 3.1aa – Please explain your answer to question 3.1a Marketing is not explicitly defined in the UCITS Directive and is thereby subject to interpretation by Member States. In our response to question 3.1cc, we have identified the divergence in Member State rules and interpretations related to the marketing of UCITS which adversely impact the single market. Question 3.1c – Are you aware of any of the practices described above having had a material impact upon the cross-border distribution of investment funds? Yes. Question 3.1cc – Please explain your answer to question 3.1c Divergent Member State rules and interpretations of UCITS marketing adversely impact the single market. Our members experience divergent Member State interpretations of activities that constitute “pre-marketing” and “marketing,” as well as differing requirements and administrative procedures for these activities when distributing UCITS cross-border. We recommend developing harmonised UCITS marketing rules that eliminate duplication, divergence and conflict among Member States. A harmonised, clear and well-defined definition of “pre-marketing” and “marketing”, and activities that constitute “pre-marketing” and “marketing”, along with harmonised requirements and administrative

procedures for these activities, would reduce complexity, confusion and cost, while providing consistency for UCITS and their investors. Activities that could constitute pre-marketing prior to a fund's launch, or if the fund is already marketing in other Member States, prior to the submission of a marketing notification, may include communicating the general features of a proposed fund and strategy to distributors and identified investors, for example in conferences or meetings. Following the submission of a marketing notification, akin to the proposed approach for EuVECA and EuSEF, Member States would be prohibited from imposing any requirements or administrative procedures in relation to UCITS marketing, or requiring any approval of marketing prior to its commencement. [1] Such an approach would complete the UCITS single market passport, reduce frictions while encouraging harmonised marketing to the benefit of EU citizens. EU investors also will benefit from cost efficiencies derived from more efficient distribution of UCITS. [2] ICI Global | Page 5 of 21 As an illustration, the challenges posed by selling UCITS ETFs cross-border can be especially complex. Since ETFs are listed and purchased on an exchange, an investor resident in any Member State with a brokerage account can purchase shares of an ETF. The investor will, however, face complications if the UCITS ETF has not been authorised for sale in their jurisdiction. This places pressure on the UCITS ETF to be authorised, and maintain such status, in all 28 Member States, which is complicated and very expensive. Simplifying the process for selling and marketing UCITS cross border would eliminate substantial costs and burdens to the benefit of investors. Substantively regulated, publicly offered third country funds face significant challenges in distributing across the internal market under the AIFMD given divergence in Member State private placement regimes. A single pan-EU private placement regime should be developed for the distribution of securities, including third country funds, to professional investors in the EU.

[1] In reforms to EuVECA and EuSEF, the Commission has sought to clarify the prohibition for host Member States to impose requirements or administrative procedures in relation to marketing, see proposed Article 16(2), EuVECA and proposed Article 17(2), EuSEF,

http://ec.europa.eu/finance/investment/docs/venture_capital/160714-proposal_en.pdf [2] A strong regulated funds industry will also support the EU Commission's goal of deepening and integrating EU financial markets. Question 3.2 – Which of the following, if any, is a particular burden which impedes the use of the marketing passport? Yes No Different interpretations across Member States of what constitutes marketing ☐ Different methods across Member States for complying with marketing requirements (e.g., different procedures) ☐ Different interpretations across Member States of what constitutes a retail or professional investor ☐ Additional requirements on marketing communications imposed by host Member States ☐ Translation requirements imposed by host Member States ☐ Other domestic requirements ☐ Question 3.2a – Please explain your answer to question 3.2 For a more general description of the layers of different rules that impede the marketing passport and the burdens specified in question 3.2, see the additional information document submitted with our response. (i) Different interpretations across Member States of what constitutes marketing – divergence in Member State interpretation of the activities that constitute pre-marketing (e.g., requiring cross-border marketing notification when contacting investors prior to the launch of a UCITS) and marketing, adversely impact the development of cross-border UCITS, by increasing the cost and complexity of distributing across multiple Member States; (ii) Different methods across Member States for complying with marketing requirements (e.g., different procedures) – divergence in Member State implementation of administrative arrangements for marketing (e.g., paying agents and local information facilities) and operation of the filing process (e.g., the method for submitting updates to KIIDs and other obligatory investor disclosures) reduces the efficiency of UCITS as a ICI Global | Page 6 of 21 cross-border fund vehicle. Furthermore,

this divergence increases cost, raises barriers to entry, and limits the benefit of UCITS marketing passport for funds and asset managers seeking to access the internal market from a single “hub”; (iii) Different interpretations across Member States of what constitutes a retail or professional investor – divergence in Member State rules for retail investor marketing concerning investor disclosure (e.g., supplements to prospectus and KIID), minimum subscription limits and the definition of complexity (e.g., applied to certain fund types or based on investment characteristics), results in differential access to cross-border funds for similar investors based in different Member States; (iv) Additional requirements on marketing communications imposed by host Member States – divergence Member State approaches to defining and pre-approving the content of marketing communications and supplements to obligatory investor disclosures, for example concerning the calculation of performance and cost disclosures, disclosure of risk warnings, and the use of past performance benchmarks, increases costs, complexity and time to market for cross-border funds; (v) Other domestic requirements – Member State approaches which contractually require UCITS to appoint a local management company, limit the efficiency and economies of scale that fund managers can achieve on a cross-border basis (e.g., the management company passport).

Question 3.4 – Are domestic rules in each Member State on marketing requirements (including marketing communications) easily available and understandable? No Question 3.4ab – If your answer to question 3.4 is no, please provide details and explain why the rules are not easily available and understandable in this/these Member State(s): Regulated funds face challenges to easily and comprehensively access and interpret Member State requirements on UCITS marketing because of: (i) divergence in the implementation of marketing rules (e.g., statute, regulations, codes and guidance); and (ii) the communication of supervisory standards and expectations (e.g., through formal guidance or informal means). UCITS funds are often required to employ local expertise, particularly to seek assurance of compliance with “unwritten” rules, thereby increasing cost, raising barriers to entry, and limiting the benefit of the UCITS marketing passport and asset managers seeking to access the internal market from a single “hub”. A harmonised marketing regime for UCITS, supported by supervisory convergence measures implemented by ESMA, would address these challenges and enhance the value of the UCITS marketing passport. In the interim, the Commission, ESMA and Member States should consider steps to allow UCITS funds to more easily access and understand marketing requirements. This could include standardising the location and form of requirements and creating a comprehensive central repository with links to requirements in each Member State.

Question 3.5b – To what extent are marketing communications important in marketing your funds to retail investors, high net worth individuals and professional investors? Please explain your answer: Marketing communications and obligatory investor disclosures, including key investor information documents, are important tools through which the features, characteristics, benefits and risk of funds are communicated to investors and to intermediaries and distributors.

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Question 3.15 – Do you consider that rules on marketing communications should be more closely aligned in the EU? Yes

Question 3.15a – Please explain your answer to question 3.15 – and if appropriate, to what extent do you think they should be harmonised? More closely aligning rules on marketing communications and obligatory investor disclosures [1] 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. Our members’ experience indicates significant divergence in Member State approaches to defining and pre-approving the content of marketing communications (e.g., websites, investor communications etc.) and supplements to obligatory investor disclosures (e.g., a supplementary information document or prospectus supplement). Examples of divergence include: □ the calculation of performance and costs disclosures – divergence in

the components (e.g., initial sales charges, depository charges), the basis (e.g., gross or net) and the time period (e.g., quarterly, monthly etc.) of measurement; □ the benchmarking of past performance – divergence in the specification of benchmarks and disclosure of benchmarks in key investor information and the prospectus; □ risk warnings – divergence in the definition, content and thresholds for risk disclosures (e.g., investment risk disclosure required when a strategy may involve the use of leverage); and □ the treatment and disclosure of intra-group service arrangements; The Commission should develop harmonised rules on UCITS marketing communications including establishing: □ a single definition for “marketing communications” and “obligatory investor disclosures”; □ a single set of requirements for the content of marketing communications; □ a prescribed time period for host Member State review of UCITS marketing communications required under local rules; Given the similar concept of a passport under the AIFMD, a similar marketing regime is logical. More generally on marketing and cross-border distribution, we recommend that the Commission examine the approach in the US and Canada with respect to fund registration and marketing (set out in more detail in a supplementary position paper we have uploaded⁶). We believe these examples of international approaches provide the Commission with valuable insights and lessons for improving the cross border distribution and marketing of UCITS. _____ [1] Defined in Recital 58, UCITS Directive as including key investor information, the prospectus and annual and half-yearly reports. 6 See Part III of this consolidated summary ICI Global | Page 8 of 21

Question 3.17 – What role do you consider that ESMA – vis-a-vis national competent authorities – should play in relation to the supervision and the monitoring of marketing communications and in the harmonisation of marketing requirements? If you consider both should have responsibilities, please set out what these should be. As stated in our response to question 3.15a, the Commission should harmonise rules on UCITS marketing communications. Recognising that harmonisation could take considerable time, ESMA should adopt guidelines on marketing communications that would be in effect until the Commission adopts rules.

Section 6 – Administrative Arrangements

Question 6.1 – What are the main barriers to cross-border marketing in relation to administrative arrangements and obligations in Member States? Please provide tangible examples of where you consider these to be excessive. The following are some of the more significant unnecessary and costly barriers: (i) Member State paying agents – there is considerable divergence in the role, registration cost and operation of the UCITS host Member State paying agent requirement [1] which has become redundant, costly and disruptive. Some of our members have experienced limited or no usage of paying agents for subscriptions and redemptions, and have experienced significant delays in the marketing notification process, as a result of often having to conclude bespoke local contracts for paying agent services. There are cross-border electronic payment systems [2] that are well suited to improving the subscription and redemption process. New FinTech solutions are likely to continue to develop and should be accommodated; (ii) Host Member State information facilities – technological advances, particularly the electronic delivery of documents and the internet, negate the need for physical facilities to be made available to provide for information to UCITS investors. In addition, investors are able to request a paper copy of documents, such as the prospectus, to be delivered to them free of charge; (iii) Different Know Your Customer (KYC) requirements – different Member State rules and policies are a significant burden. Supporting the use of electronic identity verification, and facilitating cross-border data sharing between distributors and funds, would reduce costs and operational complexities and better accommodate cross-border distribution, while ensuring a strong anti-money laundering (AML) framework for the EU; [3] (iv) Lack of a depository passport – A depository passport would increase competition among depositaries and enable a depository to act for UCITS funds across the single market, regardless of the Member State in which the fund is

established. Such a passport would provide funds with a broader range of depositaries and likely reduce operational costs. _____ [1] Article 92, Directive 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“UCITS Directive”) [2] Also see Issue 8, Example 1, ICI Global Response to the Call for Evidence on the EU Regulatory Framework for Financial Services, available from <https://www.iciglobal.org/pdf/29677.pdf> [3] Also see Issue 12, Example 2, ICI Global Response to the Call for Evidence on the EU Regulatory Framework for Financial Services, available from <https://www.iciglobal.org/pdf/29677.pdf> ICI Global | Page 9 of 21

Question 6.4 – In the absence of the administrative arrangements described in your response to Question 6.1, what arrangements would be necessary to support and protect retail investors? We do not think the changes to administrative arrangements described in our response to question 6.1, require additional arrangements to support and protect retail investors. Convergence in Member State approaches will provide greater consistency for retail investors subscribing to funds cross-border. Furthermore, we believe that the EU should focus on the adoption of regulatory approaches that accommodate and encourage the adoption of digital technology which can foster innovation, offer advantages to investors and mitigate risks including: ☐ more efficient means of fund subscription and redemption; ☐ easier investor access to information; and ☐ reduced fraud and money laundering. Regulatory approaches for the adoption of digital technology, should also provide a principle- based standard for firms to manage cybersecurity threats, as described in our response to question 6.7.

Question 6.7 – Which alternative/additional administrative arrangements would you suggest in order to ensure greater efficiency in cross-border marketing and appropriate levels of investor protection? Regulatory approaches should accommodate and encourage the further adoption of digital technology to provide administrative solutions for funds and the electronic delivery of information to investors and regulators. Digital technology can foster innovation and offer advantages to retail financial services, including for the administration of funds. All consumers, including fund investors, face varying and evolving cybersecurity threats when using digital technology. Regulatory approaches should provide a principle-based standard for firms to manage cybersecurity threats, rather than mandating a prescriptive one-size-fits-all approach that is likely to be outdated by the time it is put in place or too inflexible. Such an approach risks creating standardised security that will be easier to defeat on a large-scale basis.

Question 6.8 – Are there any measures you would suggest to improve the efficiency and effectiveness of administrative arrangements within and across Member States? As outlined in our response to question 6.1, we have recommended changes to existing administrative arrangements, including the removal of some arrangements (e.g. paying agents and host Member State information facilities) and the convergence of other arrangements (e.g. know your customer requirements). As outlined in our responses to questions 6.4 and 6.7, we believe regulatory approaches should accommodate and encourage the further adoption of digital technology to provide administrative solutions for funds and the electronic delivery of information to investors and regulators.

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Section 7 – Direct and Online Distribution of Funds

Question 7.1 – What are the main issues that specifically hinder the direct distribution of funds by asset managers? Yes No

Marketing requirements; ☐ Administrative arrangements; ☐ Regulatory fees; ☐ Tax rules; ☐ Income reporting requirements; ☐ Lack of resources; ☐ Others: Please specify ☐

Question 7.1a – Please expand on your answers to question 7.1

In our other responses, we have generally identified factors that limit the cross-border distribution of funds (see our responses to question 2.1a and 3.2a). Many of these factors hinder the direct distribution of funds by asset managers, for example through online means (see our response to question 7.2).

Question 7.2 – What are the main barriers that hinder the online distribution of funds or the

setting up new distribution platforms or other digital distribution ways? Differences in Member States' regulatory approaches to: (i) the treatment of web-based decision-making tools (e.g., decision trees); (ii) 'distant' client relationships (e.g., requiring paper documents to perform Know Your Customer checks); (iii) website and social media communications (e.g., accessing information on a cross-border basis); and (iv) requiring physical facilities (e.g., paying agents and information facilities), creates uncertainty and hinders the online distribution of UCITS funds. Question 7.3 – Are there aspects of the current European rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross-border digital distribution of funds beyond those described in earlier sections? Yes Question 7.3a – What are these aspects of European rules? Building on the existing work under the electronic identification and trust services for electronic transactions (eIDAS) Regulation, we recommend that the Commission address Member State barriers to the creation of a pan-EU framework under which regulated funds and distributors can use e-ID and e-signatures to satisfy KYC obligations. [i] See also our response to question 3.15a describing approaches in Canada and the United States that support a single market.

_____ [1] See response to question 7.3c ICI Global | Page 11 of 21
Question 7.3b – Are there aspects of the current national rules on marketing, administrative arrangements, notifications, regulatory fees and other aspects (such as know your customer requirements) that hinder the development of cross-border digital distribution of funds beyond those described in earlier sections? Yes Question 7.3c – What are these aspects of national rules? Marketing Communications – divergence in Member States' treatment of websites, social media and other channels of electronic communication, limits fund's use of these tools for cross-border communication with investors. Administrative arrangements – divergence in KYC requirements limit the use of electronic identity verification, presenting significant challenges for funds to distribute on a cross-border basis, particularly through digital means. Examples of divergence in Member State obligations on funds to perform KYC checks [1] include: □ the acceptance of certified copies of the client ID/passport documentation – some Member States require a photo and client signature from a verifiable source (i.e. certified) to be included, whereas, others do not permit ID/passport copies to be made; and □ the use of online services, such as credit checks, to verify identity in instances where a resident of a Member State does not hold a passport or national ID. KYC requirements in some Member States for 'distant' client relationships are impractical owing to the need to obtain certification by a local authorised body, and the risk of sending paper documents by post – sometimes intercepted by criminals (e.g., acting as postal employees) and used to commit fraud. Verification controls of the authenticity of the certification and KYC documentation itself are limited. Costs are incurred by investors to gather, certify and post the paper documents. Regulated funds incur costs to request, acknowledge receipt and verify received documentation. _____ [1]

Divergence in AML requirements presents challenges for funds at the point of initial investment and also for cross-border fund mergers. Question 7.4 – What do you consider to be the main reasons why EU citizens are unable to invest in platforms domiciled in another Member State? As discussed in our response to question 7.2, we believe there are several factors that limit the online distribution of funds, including on a cross-border basis. Question 7.5 – What would you consider to be appropriate components of a framework to support cross-border platform distribution of funds? What should be the specifications for the technical infrastructure of the facilities? Please clarify among others how you would address the differences in languages. We recommend that the Commission examine Member State initiatives that support the creation and provision of innovative products and services, [1] and identify commonalities of approach for use across the internal market. The European Supervisory Authorities' examination of the ICI Global | Page 12 of 21 increasing use of

FinTech, [2] is important to foster a single approach to the adoption of digital technology across the internal market. Surveying and studying firms that operate and interact with investors in multiple Member States also would be helpful. These efforts would allow the European Commission to gain insight into what investors value, need or seek out when buying financial services across the internal market. Such work also would help to identify trends, strengths and weaknesses in the take-up of digital technologies and investment products and services. _____ [1] The UK Financial Conduct Authority has launched “Project Innovate” to support the development of innovative financial products and services to the market (see <https://innovate.fca.org.uk/>). [2] For example, ESMA’s call for evidence on investment using virtual currency or distributed ledger technology, available from https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-532_call_for_evidence_on_virtual_currency_investment.pdf, and the Joint Committee’s discussion paper on automation in financial advice, available from <https://www.eba.europa.eu/documents/10180/1299866/JC+2015+080+Discussion+Paper+on+automation+in+financial+advice.pdf>

Section 8 – Notification Process

Question 8.1 – Do you have difficulties with the UCITS notification process? Yes

Question 8.2 – If yes, please describe those difficulties. Examples of divergence include the mechanism through which KII documents are emailed or uploaded onto a regulator’s IT system, the significant cost of registration fees charged by regulators for notification, and additional operational requirements concerning reporting that are imposed at the time of notification.

Question 8.3 – Have you experienced unjustified delay in the notification process before being able to market your UCITS in another Member State? Yes

Question 8.3a – Please describe your experiences? Manual transmission of UCITS notification documents is dependent on the resources and the capacity of competent authorities to send and receive documentation within the 10 business day period specified in the UCITS Directive. Our members indicate that differences in capacity among competent authorities to make such notifications results in considerable variances in the speed and efficiency of distribution and marketing activities. Furthermore, the requirement to engage directly with the host Member State competent authority during the notification process (e.g., for payment of a notification fee), adds an additional layer of complexity and can cause delays.

Question 8.4 – Do you have difficulties with the AIFMD notification process? Yes

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Question 8.5 – If you have difficulties with the AIFMD notification process, please describe them. AIF should be able to submit amendments to existing marketing notifications that have been made to host Member States’ competent authorities by email, as is generally the case for UCITS funds. [1] _____ [1] e.g., As required under Article 93(8), UCITS Directive

Question 8.6 – What should be improved in order to boost the development of cross- border distribution of funds across the EU? The Commission should develop a uniform single stage UCITS authorisation and notification process – to complete the single market in UCITS, reduce complexity and cost and enhance the attractiveness of cross-border investment (see also the additional information document submitted with our response). Akin to the MIFID services passport and the proposed EuSEF and EuVECA registration procedure, [1] this should enable the single market passport for a UCITS to be obtained through a single filing. As a first step towards the development of a uniform single stage UCITS authorisation and notification process, the Commission should take the following immediate actions: (i) Authorisation

- Promote and foster supervisory convergence – identify good or best practices that can be shared across regulators to encourage more consistency and build on the experience of regulators authorising UCITS funds, including sub-funds and share classes;
- Simplify the authorisation process – identify opportunities to reduce complexity and improve efficiency e.g., limited review times, and expedited procedures for minor changes or UCITS that are “clones” of existing authorised UCITS;
- Abbreviated filing process for UCITS sub-funds – simplify the current process for UCITS sub-funds, under which

several elements of the authorisation and notification process are repeated and duplicated for each new UCITS sub-fund within an umbrella, for instance re-examining information provided at the point of the umbrella's initial authorisation. (ii) Notification ☐ Harmonise electronic transmission and filing – develop a uniform approach for updates or amendments to registration documents; ☐ Develop a single central UCITS notification hub and repository maintained by ESMA – build on the existing UCITS register, [2] to develop a single hub through which notifications can automatically be submitted and updates to key investor information can be filed and made available on a single site for investors. As discussed in our response to question 3.15a, such systems exist in Canada and the United States.

_____ ICI Global | Page 14 of 21 [1] The Commission is proposing to clarify that the registration of qualifying EuVECA and EuSEF shall allow marketing of those funds throughout the Union, see proposed Article 14a(5) and Article 15a(5)

http://ec.europa.eu/finance/investment/docs/venture_capital/160714-proposal_en.pdf [2]

<http://registers.esma.europa.eu/publication/search> Ucits Section 9 – Taxation Question 9.1 – Have you experienced any difficulties whereby tax rules across Member States impair the cross-border distribution and take-up of your UCITS or AIF or ELTIF or EuVECA or EuSEF? Yes No UCITS ☐ AIF ELTIF EuVECA EuSEF Question 9.1a – Please describe the difficulties, including whether they relate to discrimination against UCITS or AIF (including ELTIF, EuVECA or EuSEF) sold on a cross-border, and provide examples. Please cite the relevant provisions of the legislation concerned. Cross-border distribution of UCITS has been impaired by uncertainty regarding treaty eligibility, the imposition by certain Member States of withholding tax on non-resident UCITS (although this latter practice is becoming less prevalent within Europe), country-specific tax reporting requirements, and the taxation by investor jurisdictions of mergers that are tax-free in a UCITS' home jurisdiction. Many tax difficulties, as discussed below, arise because of the differences in how UCITS are treated (e.g., as tax opaque or tax transparent) by different Member States. Some countries effectively view all UCITS as tax transparent (regardless of how they are organised, etc.) because that is how their domestic UCITS are treated. Difficulties arise, for example and as explained in our responses to other questions in Section 9, if the UCITS is opaque in its country of organisation but treated as transparent by a country in which it would like to distribute its units or invest. Question 9.2 – Have you experienced any specific difficulties due either to the absence of double taxation treaties or to the non-application of treaties or to terms within those treaties which impede your ability to market across borders? For example: difficulties in determining the nationality of your investors or difficulties in claiming, or inability to claim, double tax relief on behalf of your investors. Yes Question 9.2a – Please, describe those difficulties, and if applicable, how these can best be resolved – for example through amendments to double taxation treaties. Please share any examples of best practice that could help to address these issues. The extent to which UCITS qualify for tax treaty relief often is uncertain. The treaties typically do not refer expressly to UCITS or other collective investment vehicles (CIVs) when discussing the treaty requirements of being persons, residents, and beneficial owners. The accompanying technical explanations likewise typically are silent regarding the treaty eligibility of UCITS and other CIVs.

Administrative guidance from the countries in which UCITS invest (the “source ICI Global | Page 15 of 21 countries”) often is difficult to obtain as source country tax authorities may not be familiar with the specific features of other countries' UCITS or other CIVs. Taxes (particularly withholding taxes) can have a substantial impact, relative to other fund-level expenses, on investor returns. Withholding taxes imposed on cross-border investments (both within and without the EU) can impact quite negatively on a UCITS' cross-border competitiveness. This impact is particularly problematic when the UCITS should be treated as treaty-entitled in its own right and/or is held by treaty-eligible investors. Among the factors that can make it more or less likely that a UCITS will receive treaty relief are: ☐

whether the UCITS is structured (and treated) in its country of organisation as opaque or transparent; □ whether the UCITS generally is sold only domestically or whether it is sold more globally; □ whether it is marketed to both individuals and institutions or only to institutions (such as pension funds); □ the extent to which UCITS are held through nominee (street name) accounts; and □ whether the source country applies appropriately the OECD's Report on Collective Investment Vehicles (CIV Report). [1] Appropriate application of the CIV Report would include clear rules addressing CIV treaty eligibility. Broad adoption of the Treaty Relief and Compliance Enhancement (TRACE) implantation package, developed by the OECD to improve treaty relief more generally, [2] also would make it more likely (as discussed below) that UCITS would receive the treaty relief to which they and their investors are entitled. The CIV Report provides specific and tailored examples of the types of provisions that jurisdictions can add to their treaties to clarify how UCITS receive the treaty relief to which their investors are entitled. The Final Report prepared by the OECD on the Base Erosion and Profit Shifting (BEPS) Action 6 on "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" [3] reiterated the CIV Report's conclusions. As a member of the OECD's informal consultative group that developed the CIV Report, and a frequent contributor to the OECD on BEPS Action 6, ICI Global supports strongly all efforts to incorporate the CIV Report's recommendations into tax treaties. Full adoption of these recommendations would ensure that all CIVs, regardless of how they are structured and distributed, provide their investors the treaty relief to which the investors are entitled. UCITS distributed across borders generally are at a particular tax disadvantage when investing outside of Europe today because treaties, negotiated on a bilateral basis, typically are intended to benefit only residents of the two treaty countries; this approach effectively limits treaty relief to a UCITS distributed primarily within its residence country. Moreover, application to UCITS and other CIVs of the BEPS Action 6 "principal purpose" and "limitation on benefits" (LOB) tests is uncertain. Unless countries specify clearly that a globally-distributed UCITS will not be treated as violating a principal purpose test if marketed widely in countries that do not have treaties with a source country, withholding agents may decline to provide treaty relief at source; to avoid potential tax liability, withholding agents might require globally-distributed UCITS instead to file treaty reclaims (which are costlier and less certain of recovery than receiving at-source relief). Two additional steps would improve the ability of UCITS distributed cross-border to recover treaty benefits. First, Member States should include "equivalent beneficiary" provisions in any treaties they sign – including any multilateral instrument developed to implement BEPS Action 15. In today's global marketplace, it makes little sense to limit treaty benefits to the residents of ICI Global | Page 16 of 21 the two treaty partners if a source country provides the same benefits to residents of other countries – and those residents invest in a globally-distributed UCITS. As these persons would receive treaty relief if they invested directly or in a domestic CIV, they should be treated as "good" investors for treaty purposes when they invest instead in a globally-distributed UCITS. Second, administrable rules must be crafted if UCITS are required to establish the residence of their investors. These concerns are discussed in detail in our response below to question 9.3.a. _____ [1]

<http://www.oecd.org/tax/treaties/45359261.pdf> [2]

http://www.oecd.org/ctp/exchange-of-tax-information/TRACE_Implementation_Package_Web site.pdf [3]

<http://www.oecd.org/tax/preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstances-action-6-2015-final-report-9789264241695-en.htm> Question 9.3 – Feedback to earlier consultations has suggested that the levying of withholding taxes by Member States has impeded the cross-border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF). Withholding taxes are usually reduced or even eliminated under double taxation treaties. But in practice it has been claimed that it is difficult for non-resident investors to

collect any such withholding tax reductions or exemptions due under double taxation treaties. Have you experienced such difficulties? Establishing treaty eligibility for a UCITS, either in its own right or on behalf of its treaty-eligible investors, has been a significant problem both within Europe and elsewhere. The problems, as noted above, are somewhat more problematic for UCITS that are distributed across borders. Even when treaty relief is provided, the process of receiving relief can be exceedingly difficult. Receiving treaty relief “at source” (when the payment, e.g., a dividend, is received by the UCITS) is preferable to being required to file a request with the relevant taxing authority to “reclaim” the benefit. One benefit of at-source relief is that the accompanying certainty makes it easier to value the UCITS’ shares. Moreover, the requirements for filing tax reclaims can impose substantial costs on the UCITS and its investors. Withholding tax difficulties for UCITS making investments within the EU have become less significant recently as Member States have responded to the Court of Justice of the European Union (CJEU) decision regarding Article 63 of the Treaty on the Functioning of the European Union (TFEU). Specifically, some Member States have eliminated withholding on dividends paid to non-resident UCITS. Others have imposed withholding on their own (resident) UCITS as well as on non-resident UCITS at a rate equal to that provided by treaty – thus eliminating any need for non-resident UCITS to establish treaty eligibility. Nevertheless, UCITS still face significant difficulties in receiving treaty relief when they invest in many countries outside of Europe. UCITS that are marketed cross-border, whether only within Europe or more globally, face difficulties more pronounced than those faced by UCITS that are marketed only within a single country. Moreover, comparable funds organised outside of Europe continue to experience considerable resistance from tax authorities when seeking to recover tax withheld in violation of Article 63.

Question 9.3a – Please provide examples of the difficulties with claiming withholding tax relief suggest possible improvements and provide information on any best practices existing in any Member States. Please cite the relevant provisions of the legislation concerned. Treaty eligibility is limited to claimants, including UCITS, that are persons, residents of the treaty partner, and the beneficial owners of their income. As detailed in the OECD’s CIV Report (cited above), CIVs are organised in different ways (e.g., as companies, trusts, or in joint ownership form) that lead to different results under a strict application of the treaty ICI Global | Page 17 of 21 requirements. The OECD’s CIV Report advances model treaty language and commentary that would provide all CIVs with avenues to claim treaty relief either in their own right or on behalf of their eligible investors. CIVs that clearly satisfy the person and residence tests, and that are not acting as agents for unrelated parties, nevertheless, sometimes confront treaty-eligibility challenges because tax authorities applying local law insist that the CIVs’ investors are the beneficial owners of the CIVs’ income. Treating opaque CIVs as transparent requires CIVs that are treaty-eligible in their own right to prove the treaty eligibility of each investor – rather than just establish that any anti-abuse test (e.g., a principal purpose or limitation on benefits test) is satisfied. Establishing the tax residence of each UCITS investor – to the satisfaction of a tax authority – can be an exercise in futility. Many UCITS, for example, have several thousands of investors (or more). The identities of these investors, as noted in the OECD’s CIV Report, constitute proprietary information of the intermediaries through which UCITS interests are purchased. The UCITS typically do not have information regarding the identities of individual investors who acquire units through financial intermediaries. Although there may be workarounds to help identify the residence of individual investors, these methods can be costly and may not be acceptable to tax authorities. For example, acquiring consolidated information based upon investors’ postal codes is expensive and sometimes is not treated by tax authorities as “sufficient proof” of residence. Another difficulty with obtaining treaty relief is the cost of filing, and subsequent uncertainty regarding, post-payment claims. Investors benefit greatly when tax relief is provided at the

time they receive a payment subject to withholding and treaty relief (“at source” relief). The OECD’s TRACE project (discussed above) announced strong support for at-source tax relief. ICI Global advocates broad adoption of TRACE. We concede that TRACE may be less important for UCITS investing within the EU – as the CJEU decisions, and the subsequent Member State responses, have largely eliminated the need for UCITS to file treaty-based claims. Nevertheless, strong Member State support for TRACE would encourage non-European jurisdictions also to adopt this pro-economic growth initiative. TRACE would enhance the ability of UCITS to recover treaty-provided benefits being denied (or delayed substantially) today by these non-European jurisdictions and encourage cross-border investment. Question 9.4 – What are the compliance costs per Member State (in terms of a percentage of assets under management) of managing its withholding tax regimes (fees for legal and tax advisers, internal costs, etc.)? Do they have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy? The costs of managing the withholding tax regime, and imposing withholding tax on a UCITS’ non-resident investors, generally are not overwhelming impediments to cross-border distribution. Other costs, such as complying with domestic laws implementing the OECD’s Common Reporting Standard (CRS) [1] and any agreement with the United States regarding the Foreign Account Tax Compliance Act (FATCA), are likely to be more significant. One benefit of the CRS is that Member States should be more comfortable that UCITS and the financial intermediaries through which the units are held identify correctly all non-resident investors for whom withholding is required; the CRS thus could reduce withholding tax regime compliance costs. Thus, withholding tax regimes should have little if any impact on UCITS distribution strategies going forward. _____ [1]

<http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/> ICI Global | Page 18 of 21 Question 9.5 – What if any income reporting or tax withholding obligations do you have in the Member States where the UCITS or AIF (including ELTIF, EuVECA and EuSEF) is located and what if any difficulties to you have with reporting formats? What kind of solutions and best practices, if any, would you suggest to overcome these difficulties? If a single income reporting format were to be introduced across the EU, what would be the level of costs saved? Would this have a material impact on your UCITS or AIF (including ELTIF, EuVECA and EuSEF) distribution strategy? We support fully the goal of effective tax compliance. All financial institutions must comply with applicable information reporting and tax withholding obligations. Member State income reporting and tax withholding obligations vary considerably. These differences arise in part because of differences in Member States’ tax regimes. Other differences arise because of differences in how UCITS are structured (e.g., as either opaque or transparent) and operated (e.g., whether they retain or distribute their income). Because of these differences, we do not have any specific reporting format suggestions. A single income reporting format should not be introduced across the EU for investors’ taxable accounts. Detailed investor per-share information that might be required by a Member State that treats its UCITS as tax transparent would not be appropriate for a UCITS that distributes its income and/or is treated in its home country as opaque. Standardised reporting would be useful, however, to the extent that Europe develops a pan-European pension product (PEPP) – an initiative that we support strongly. Specifically, standardised investor reporting by PEPPs could advance the goal of a pan-European savings vehicle without requiring any form of tax harmonisation. Our proposal, as discussed in a submission we made to EIOPA and in one we will make to the Commission, is for annual reporting to retirement savers’ residence tax authorities, and to the retirement savers themselves, of contributions to, investment return on, and withdrawals from PEPPs. To the extent that a Member State provided tax incentives for personal pension plans, and the PEPP satisfied the applicable requirements, standardised reporting would ensure tax compliance and a level playing field. An annual statement showing contribution amounts,

for example, would allow tax authorities to confirm that a retirement saver did not claim an excess contribution deduction without requiring that all Member States provide the same limit (or even permit tax-deductible PEPP contributions). Question 9.7 – Have you encountered double taxation resulting from the qualification of the UCITS or AIF (including ELTIF, EuVECA and EuSEF) as tax transparent in one Member State and as non-tax transparent in another Member State? In general, neither UCITS nor any other type of CIV incurs any material fund-level tax that, in itself, would result in double taxation. Tax transparency, in and of itself, generally is not a particularly relevant factor in double taxation discussions at the UCITS level. Double taxation can occur at the investor level – particularly when cross-border investments are made by a UCITS that also distributes across borders. Specifically, an investor resident in Member State A, who invests in a UCITS resident in Member State B, that invests in Member State C, typically will be taxed twice – unless Member States A and B both treat the UCITS as tax transparent. This double-tax result occurs unless the UCITS investor can claim a credit against his or her residence-country tax liability for the tax withheld by the source country. To illustrate, assume an investor from Member State A acquires units in a UCITS organised in Member State B (which is treated as opaque) that invests in Member State C; Member State C imposes a 30% withholding tax on dividends paid by its companies to non-resident investors ICI Global | Page 19 of 21 (such as the Member State B UCITS). Further, assume that the Member State A investor's allocable share of the dividend received by the Member State B UCITS is 10 Euros. Because Member State C has imposed 30% withholding on the 10 Euro dividend attributable to Member State A investor, the investor already has incurred a 30% tax on the 10 Euros. Unless a 3 Euro credit can be applied against the investor's Member State A tax liability when the investor receives the remaining 7 Euros (either as a dividend from the UCITS or upon the sale of the UCITS interest), the investor will be taxed twice – once on 10 Euros and the second time on 7 Euros – even though the economic return was only 10 Euros. The foreign tax credit might be available if both Member States A and B treat the UCITS as tax transparent (as the UCITS investor effectively would be treated as having incurred directly the 30% withholding tax imposed by Member State C). Absent full transparency, however, double taxation generally will result. Section 10 – Other questions and additional information Question 10.1 – Are there any other comments or other evidence you wish to provide which you consider would be helpful in informing work to eliminate barriers to the cross-border distribution of UCITS or AIFs (including ELTIF, EuVECA and EuSEF)? We recommend that the Commission initiate work to better understand the ways in which retail investors engage with investment funds, including the way local markets conditions or practices influence investor preferences. For example, investors in some Member States may prefer particular assets. Insights from such work could be useful to other Member States and for relevance across the whole single market. For example, if there were investors in one market that seem to prefer infrastructure investments while investors in another market do not seem to make such investments, it could be valuable to look more closely at such markets to understand how to foster more investment in infrastructure. In addition, it may be that investors in other Member States could benefit from access to new investments identified in other markets. In such circumstances, the Commission could take steps to evaluate the benefits of such investments, including considering changes to UCITS eligible assets, e.g., broader range of debt instruments. One tax recommendation would be for Member States to respect the tax treatment provided by another Member State to the merger of two UCITS organised in the UCITS' Member State. Specifically, if a merger of two UCITS is treated as tax-free in the Member State in which the UCITS are organised, this tax-free treatment should be respected by the other Member States. Mergers can be an effective way to increase economies of scale that improve investor returns by combining UCITS of sub-optimal size or sufficiently overlapping

investment objectives. These benefits are lost, however, if other Member States' tax regimes effectively impose a "veto" on the otherwise tax-free nature of the merger by treating the merger as taxable to the investors in their own Member States. ICI Global | Page 20 of 21 Part III – Selected international approaches to fund registration and marketing to inform the harmonisation of UCITS Marketing Communications⁷ ICI Global believes 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 (see also our response to question 3.15a). Approaches to fund registration and marketing in the US and Canada, described below, provide valuable insights and lessons for improving the cross-border distribution and marketing of UCITS.

Canada In Canada, 13 provincial and territorial securities regulators are responsible for the regulation of securities, including mutual funds ("funds"), within their respective jurisdiction. To facilitate the distribution of funds throughout Canada, all of the provinces and territories have adopted – essentially uniformly – the various Canadian national instruments that govern the regulation and distribution of funds in Canada. In Canada, a fund files its prospectus through the centralised System for Electronic Data Analysis and Retrieval (SEDAR) to become qualified for sale to the public – regardless of the province or territory in which it is domiciled. Through this centralised system the fund indicates the provinces and territories in which it wishes to sell shares of the fund, and the fund's principal regulator issues a receipt on behalf of all of the covered jurisdictions (referred to as the "passport system"). The registration fee – as determined by each province and territory – is paid through this centralised system rather than directly to each province or territory. A fund is subsequently authorised to sell its shares to the public in the provinces and territories it indicated without further action or approval from each province or territory. The regulation of marketing/sales communications is similarly regulated in an efficient and effective manner. In particular, each province and territory has adopted National Instrument 81-102, which governs the information that can be included in sales communications. However, although the regulations governing sales communications are virtually the same, the provinces and territories retain the jurisdiction to enforce for breach of law within their jurisdiction. In practice, the securities regulators administer the requirements on sales communications consistently, with a certain amount of deference given to the Ontario Securities Commission, in which approximately 70% of funds are domiciled. Further, under the laws adopted by the Canadian securities regulators, marketing/sales communications are not required to be reviewed by the regulator or any self-regulatory organisation. Instead, as mentioned above, action may be taken by the relevant securities regulator for breach of law. We believe that Canada illustrates an approach for efficient and effective "passporting" that should be examined by the Commission with respect to UCITS marketing communications, whereby, all MS would adopt the same rules and requirements regarding marketing communications, but would retain authority with respect to the enforcement of those rules within their respective jurisdiction.

⁷ Filed on 30 September 2016 as a supplement to question 3.15a in ICI Global's response to the EU Commission Consultation on Barriers to the Cross-Border Distribution of Funds in the EU. ICI Global | Page 21 of 21

US In 1996, to address perceived inefficiencies inherent in dual state and federal securities registration schemes, the US Congress passed the National Securities Markets Improvement Act (NSMIA) to pre-empt state "blue sky" laws that required issuers, including mutual funds, to register many securities with state authorities prior to distributing a fund in the states. Under one of NSMIA's key provisions, a "covered security," which includes securities of companies registered under the Investment Company Act (ICA) of 1940, is exempt from state registration and review. However, NSMIA provides that states retain

jurisdiction to investigate fraud. The review of fund marketing communications in the United States is also performed at a federal, and not state level. The ICA requires that all fund sales literature be filed with the SEC, or if the material is to be used by a member of FINRA – the securities industry’s self-regulatory organisation – with FINRA. Because most mutual funds are distributed by FINRA member firms, most mutual fund sales literature is filed with and reviewed by FINRA rather than with the SEC. FINRA reviews member communications to the public to ensure that they are fair, balanced, and compliant with FINRA rules and federal regulations.

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