

# Global Registration Services – Market Update Q1 2020

## BREAKING NEWS

### Italy

In April, and as a consequence of the COVID-19 crisis, [CONSOB](#) announced that the deadline for payment of the annual fees has been deferred from 15 April 2020 until 15 May 2020.

### Europe

#### Final Report on Product Intervention

On 3 February 2020, ESMA published its Final Report with Technical Advice to the European Commission (the "Commission") on the effects of product intervention measures. The final report proposes to extend restrictions and prohibitions under MiFID to include AIFMs and UCITS management companies. This will result in ESMA being able to suspend the marketing, sale and distribution of funds it views as inappropriate for retail investors. ESMA currently has the power to restrict MiFID firms but not UCITS managers or AIFMs.

The final report will be submitted to the Commission following which they will present a report to the European Parliament and the Council for consideration.

#### Key Priorities for 2020-22

On 9 January 2020, ESMA published its Strategic Orientation and issued a press release on [key priorities for 2020-22](#). Some of the new priorities include co-ordinating mystery shopping on retail investment products, and monitoring new developments in equivalent third countries. ESMA is seeking to strengthen its role as a

direct supervisor, prioritising the areas posing the greatest risks to its objective as they, along with the national competent authorities and EU institutions, continue to drive a better EU Single Rulebook for financial services.

#### Guidance on Financial Reporting Deadlines

On 27 March 2020 ESMA published guidance on the deadlines for publishing financial reports. As a result of COVID-19, ESMA expects NCAs not to prioritise supervisory actions against companies that fail to meet the upcoming deadlines in national laws transposing the Transparency Directive concerning financial reports for the period set out below.

- (a) Annual financial statements with a year end on or after 31 December 2019 (before 1 April 2020) for a period of two months after the deadline; and
- (b) Semi-annual financial statements with a year end on or after 31 December 2019 (before 1 April 2020) for a period of one month after the deadline.

Firms are required to notify the NCAs and the market of the delay including reasons and the expected publication date.

As a consequence of this, a number of NCAs, including the Central Bank in Ireland (the "CBI"), published extensions to local filing dates. Full list of reporting obligations and applicable extension periods applicable in Ireland can be accessed [here](#).

## France

### Policy on Investor Information

On 11 March 2020, AMF published a [policy recommendation](#) on investor information with regard to funds marketed in France to retail investors and which use sustainability and ESG criteria as key aspects of their marketing strategy.

The recommendation aims to ensure that communications and marketing materials with regard to funds which use sustainability and ESG criteria, in particular, are clear, accurate and not misleading in order to ensure, for example, greenwashing. It emphasises that the use of any non-financial criteria must be measurable and have a significant impact on the objectives of the fund, to the extent such criteria are to be used as “key aspects” of any communication with retail investors. “Key aspect” is defined by the AMF as instances where non-financial characteristics form part of the name of the product, is referenced in the KIID or predominately featured in marketing materials. The AMF specifies examples in the recommendation which they do not deem as sufficient.

The recommendation further informs management companies and funds that certain documents, including the name of the fund/sub-fund(s), constitutive document, prospectus, KIIDs, financial reports, marketing materials must either be updated to comply with the recommendation or non-financial references must be removed. Foreign funds impacted by the recommendation are required to include a disclaimer in marketing documents where investors are informed that the UCITS “presents disproportionate communication on the consideration of non-financial criteria in its investment policy.” These changes take immediate effect for any UCITS seeking to make a cross border notification for marketing its foreign UCITS in France. For any existing UCITS currently marketed in France, management companies/the fund are required to update all relevant details by 30 November 2020.

In the recommendation, the AMF do note that it may have to be redefined depending on the

outcome of the regulatory changes at a European level. The consultation on the proposed ESMA standards closes on 1 September 2020, with publication of the final rules expected on 9 December 2020 before the majority of obligations come into force on 10 March 2021.

The AMF policy recommendation is available [here](#).

## Ireland

### AIFMD Notification Forms Update

In March, the CBI updated the following template notification forms:

- (a) AIFMD notifications form for registration of an AIF by a non-EU AIFM in Ireland under Article 42 of AIFMD; and
- (b) AIFMD notification form for registration of an EU AIF by an Irish AIFM in Ireland under Article 31 of AIFMD.

## Liechtenstein

### Local AIFM Law and Ordinance Changes

On 1 February 2020, a change was implemented regarding the local implementing provisions of AIFMD in Liechtenstein.

As a consequence of these changes, a local exemption has been introduced to provide an exemption in the passport notification process for small / sub-threshold EEA AIFMs as defined under Article 3 (2) of AIFMD intending to market EEA AIFs in Liechtenstein where AIFMs with permission to market in their home state are now permitted to market to professional investors in Liechtenstein, subject to completing a simplified notification process. Under the revisions introduced, AIFMs (EU and non-EU) may also make application to seek permission to market AIFs to retail investors, subject to meeting certain criteria.

There have been no changes to the existing notification procedure for EEA AIFMs distributing EEA AIFs to professional Liechtenstein investors.

Separately, it is worth noting a recent change in practice whereby the FMA now require upfront payment of the regulatory levy for processing notifications concerning approval to market UCITS under Article 93 of Directive 2009/65/EC in Liechtenstein. Proof of payment must now form part of notification application.

## Norway

### Regulatory Fees

At the end of 2019, the Financial Supervisory Authority of Norway ("FSAN") issued a consultation proposing to introduce registration and annual fees for marketing foreign UCITS and AIFs in Norway.

Subject to conclusion of this process, it is expected to take effect in the second half of 2020.

## United Kingdom

### Consultation Paper on the Overseas Funds Regime

On 11 March 2020, HM Treasury ("HMRC") published a consultation paper on the Overseas Funds Regime ("OFR") with a closing date of 11 May 2020. The regime sets out a proposed new regime for foreign funds.

The OFR will introduce two separate equivalence regimes which will allow streamlined access to the UK. The equivalence regimes are applicable to the following types of funds:

- (a) Foreign retail investment funds; and
- (b) Money market funds ("MMFS").

For further details, please refer to our March 2020 [update](#).

## Switzerland

### Federal Act on Financial Services and the Federal Act on Financial Institutions

On January 1 2020, the Federal act on Financial Services (the "FinSA") and the Federal Act on Financial Institutions (the "FinIA") came into

force in Switzerland with a transition period of up to two years for a number of key provisions. This legislation applies to foreign investment firms selling their funds to Swiss investors.

The aim of these changes is to align Swiss regulation more closely with MiFID II.

With effect from 1 January 2020, English language is now defined as one of the official Swiss languages. Therefore, for firms approved prior to 1 January 2020 electing to change to use English as its official language, a simple notification is required to be made to FINMA in order for official publications and communications in Switzerland to be submitted in English.

All advertising and communication relating to financial instruments directed at investors in Switzerland must be clearly identified as advertising. It must also be aligned with the KIID and Prospectus.

Our client note covering full scope of changes can be accessed [here](#).

## Hong Kong

### SFC Clarifies Misperceptions on Licensing Requirements

The SFC are seeking to rectify some misconceptions that exist and have issued two circulars in January 2020:

- (a) Circular to Private Equity Firms seeking to be licensed; and
- (b) Circular on Licensing Obligations of Family Offices.

The purpose of these is to identify and clarify local licencing requirements applicable to private equity firms and family offices and dispel perceptions that no such requirements apply.

## Canada

On 20 February 2020, the Canadian Securities administrators except Ontario Securities Commission ("OSC") published a notice on prohibition of deferred sales charges ("DSCs")

on mutual funds which is due to take effect on 1 June 2022. The OSC proposed OSC Rule 81-502 that would restrict instead of prohibit the use of DSCs. The closing date for comments is 21 May 2020 and it is expected this rule will take effect when the DSCs prohibition comes into effect.

## Cayman Islands

On 7 February 2020, the Private Funds (Savings and Transitional Provisions) Regulations 2020 and the Private Funds Law, 2020 came into effect.

It imposes an obligation for funds that are considered private funds under the Private Funds Law to register with the Cayman Islands Monetary Authority ("CIMA"). Previously, private funds were not required to register with CIMA.

For further details on the registration process and deadlines, please refer to our client updates available [here](#) and [here](#).

## Australia

On 1 April 2020, a new foreign AFS licensing regime and foreign funds management licensing relief took effect.

Please feel free to get in touch for further information.

## How the Maples Group can help

Maples Group Global Registration Services ("Maples Group GRS") supports UCITS<sup>1</sup> and AIFMs<sup>1</sup> in their multi-market distribution strategies by providing an integrated global network of experts coordinated by a dedicated central team supporting all legal and regulatory aspects governing the cross border marketing of investment funds on both a private placement and public offer basis.

## Further Information

Should you require any further information or assistance in this regard, please do not hesitate to contact the following or any member of the Maples Group GRS team.

**Emma Conaty**  
+353 1 619 2708  
emma.conaty@maples.com

**Gita Karpaviciute**  
+353 1 619 2040  
gita.karpaviciute@maples.com

**Yvonne McDonough**  
+353 1 619 2750  
yvonne.mcdonough@maples.com

**The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised and total number of new Irish sub-funds established (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2019).**

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<sup>1</sup> Domiciled in Ireland and Luxembourg.