

Global Registration Services Market Update – Q4 2022

Europe

ESMA Publishes Technical Standards on Cross-Border Marketing and Management of Funds

On 21 December 2022, the European Securities and Markets Authority ("ESMA") published a final report¹ on the information to be provided and the templates to be used by firms when informing national competent authorities ("NCAs") of their cross-border marketing and management activities under the UCITS Directive² and the AIFMD³. This final report follows the consultation⁴ issued by ESMA on 17 May 2022.

The final report sets out the draft Regulatory Technical Standards ("RTS") and draft Implementing Technical Standards ("ITS") specifying the information to be provided, as well as the content and format of notification letters to be submitted, by UCITS management companies and alternative investment fund managers ("AIFMs") to their NCAs when seeking to undertake: (i) cross-border marketing; and / or (ii) cross-border management activities in host Member States.

Next Steps

¹ https://www.esma.europa.eu/sites/default/files/library/esma-34-45-1648_final_report_on_technical_standards_on_notification_letters.pdf

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0065&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0065&from=EN>

⁴ <https://www.esma.europa.eu/press-news/consultations/consultation-notifications-cross-border-marketing-and-management-aifs-and>

ESMA has submitted the final report to the European Commission for adoption within three months respectively in the form of a Commission Delegated Regulation and a Commission Implementing Regulation. Following their adoption, the Commission Delegated Regulation and the Commission Implementing Regulation will then be subject to the non-objection of the European Parliament and of the Council.

Please see our previous update *ESMA Consultation on Notifications for Cross-Border Marketing and Management of Funds*⁵.

Italy

CONSOB Launched Public Consultation

As outlined in our previous market update⁶, the Italian regulator CONSOB launched a public consultation concerning proposed amendments to Regulation no. 11971 of May 14, 1999 (the "Issuers' Regulation") aimed at aligning CONSOB secondary legislation with Directive 2019/1160 (the "CBDF Directive") and EU Regulation 2019/1156 on the cross-border distribution of funds.

On 6 September 2022, following the consultation procedure, CONSOB adopted Resolution No. 22437 amending the Issuers' Regulation⁷ (only available in Italian).

⁵ <https://maples.com/en/knowledge-centre/2022/6/esma-consultation-on-notifications-for-cross-border-marketing-and-management-of-funds>

⁶ <https://maples.com/-/media/files/pdfs/articles-and-chapters/global-registration-services-market-update-q1-2022.pdf>

⁷ <https://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2022/d22437.htm>

In aligning the Issuers' Regulation with the CBDF Directive, facilities to be provided to retail investors must be provided in Italian. If the information on such facilities is not already available to investors, the Italian application form should be updated to include such information. For AIFs distributed to retail investors in Italy, the obligation is to provide such facilities in Italian. There is no requirement to provide facilities in Italian where distribution of the UCITS is to professional investors only.

Furthermore, there is no longer an obligation for an EEA UCITS to appoint a local entity in charge of investor relations (e.g. an Italian distributor or Italian bank).

The de-notification process for de-registering UCITS and AIFs has also been aligned with the CBDF Directive.

United Kingdom

HM Treasury Publishes Consultation on PRIIPs and UK Retail Disclosure

On 9 December 2022, HM Treasury ("HMT") published a consultation paper⁸, "PRIIPs and UK Retail Disclosure" (the "Consultation"). The Consultation sets out the UK Government's intention to commence the repeal of the Packaged Retail and Insurance-based Investment Products ("PRIIPs") Regulation (via the Financial Services and Markets Bill) as a matter of priority and seeks views on a new framework to replace it.

The Consultation sets out the key issues that the UK Government has identified with the PRIIPs Regulation and outlines a new direction for retail disclosure, designed to address each of the issues raised.

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122846/Consultation_PRIIPs.pdf

The proposed changes are with a view to ensuring that the retail disclosure regime should be targeted at the retail investor understanding the nature of the product so an informed choice around investment can be made.

Under the new regime, the FCA would move away from the key information document, i.e. a prescriptive, standardised document and instead introduce flexible requirements that can be incorporated into firms' existing information documents.

The Consultation proposes that the FCA would be empowered to integrate UCITS and PRIIPs disclosure into a coherent UK retail disclosure framework before the UCITS exemption ends at the end of 2026.

The Consultation seeks views on the delivery and parameters for retail disclosure going forward.

The Consultation closes on 3 March 2023⁹.

Note: UCITS sold to UK retail investors are due to continue producing a UCITS KIID until 2026, (unlike UCITS in the EU, which must switch to providing the PRIIPs KID to retail investors from 1 January 2023).

FCA Publishes Discussion Paper on Future Disclosure Framework

On 13 December 2022, the Financial Conduct Authority ("FCA") published Discussion Paper DP 22/6¹⁰ – "Future Disclosure Framework" (the "DP").

The DP complements the Consultation above and aligns with the HMT's vision for disclosure for retail investors.

The DP will be of particular interest to:

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128533/Consultation_PRIIPs.pdf

¹⁰ <https://www.fca.org.uk/publication/discussion/dp22-6.pdf>

UPDATE

- Investors and consumer organisations; and
- Manufacturers and distributors of non-PRIP packaged products, PRIIPs, UCITS and certain non-UCITS schemes.

The DP invites feedback on how the FCA can design and deliver a good disclosure regime in order to safeguard investor protection while increasing choice and reducing unnecessary or over prescriptive constraints on firms. The DP also seeks input on how the FCA can future-proof retail disclosure regulation in a manner which does not constrain innovation in the market.

Specifically, the DP invites views on:

- The delivery of retail disclosure;
- The presentation of retail disclosure; and
- The content of retail disclosure

The DP suggests that distributors could play a role in creating fund disclosure documents so that both distributors and product manufacturers can meet their obligations under the consumer duty principle. The consumer duty principle was introduced in 2022 in a bid to ensure that firms are delivering good outcomes for retail investors. The FCA is of the opinion that given distributors will have more interaction with the end purchaser, they may have a better understanding of how the intended target market will want to see information presented.

Responses to the DP should be submitted by 7 March 2023.

Switzerland

Changes to FINMA Filing Process for UCITS

The Swiss Financial Market Supervisory Authority ("FINMA") has made changes to their request and notification form used when notifying them of certain updated fund documentation.

Prior to January 2023, when notifying FINMA of changes to core fund documentation of a UCITS (e.g. prospectus, instrument of incorporation / articles of association, etc.), FINMA used to request a cover page of the relevant document was signed by the UCITS / UCITS management company, the Depository of the UCITS and the local Swiss Representative.

FINMA no longer requires these signature pages, rather a confirmation must be provided that the UCITS / UCITS management company, the Depository of the UCITS and the Swiss Representative confirming that they are aware of the new version of the relevant document and have approved it.

Notwithstanding the introduction of these changes, it has yet to be established how this will be received by depositaries who are not responsible for approving a prospectus.

How the Maples Group Can Help

Maples Group GRS supports UCITS¹¹ and AIFMs¹¹ 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 contact the following or any member of the Maples Group GRS team listed below:

Dublin

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

¹¹ Domiciled in Ireland and Luxembourg.

Emma O'Dwyer

+353 1 619 2702

emma.odwyer@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 (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2021).

January 2023

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice for the countries covered herein, other than Ireland. Published by Maples and Calder (Ireland) LLP.