

ESMA Consultation on Notifications for Cross-Border Marketing and Management of Funds

On 17 May 2022, ESMA issued a [consultation](#)¹ on the information to be provided and templates to be used by firms when informing regulators of their cross-border marketing and management activities under the [UCITS Directive](#)² and the [AIFMD](#)³ ("CP").

Purpose of the Consultation

The CP is the first stage in the development of draft implementing technical standards ("ITS") and regulatory technical standards ("RTS").

The ITS and RTS will specify 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 national competent authorities ("NCAs") when seeking to undertake: (i) cross-border marketing; and / or (ii) cross-border management activities in host Member States.

The ITS and RTS will also clarify the procedure for the communication of the relevant notification file by the relevant home NCA to the host NCAs of the Member States where these activities are envisaged.

Consultation Process

The CP sets out: (a) the text of the draft ITS and RTS which are submitted to public consultation; (b) detailed explanations on the content and background of the proposals; and (c) a list of 15 questions to stakeholders.

The CP will be of interest to AIFMs, internally managed AIFs, UCITS management companies, internally managed UCITS, and their trade associations, as well as professional and retail investors investing into UCITS and AIFs, and their associations.

In particular, the draft ITS contain template notification letters ("NLs") on both cross-border marketing and cross-border management of UCITS and AIFs, which are intended to ensure that notifications are consistent and to avoid discrepancies between national approaches.

The draft template NLs for marketing UCITS and AIFs would necessitate the provision of very detailed information including, for example, on the entities that will carry out marketing in the host / home Member State and the name, address and contact details of each third party distributor in the host / home Member State.

Furthermore, to give NCAs a more precise idea of the anticipated level of marketing, ESMA

¹ <https://www.esma.europa.eu/press-news/consultations/consultation-notifications-cross-border-marketing-and-management-aifs-and>

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>

asks if respondents would be able to provide information regarding minimum and maximum capital-raising targets and the expected duration of the marketing. If not, respondents are asked to explain why this information would not be available when notifying the intention to market the UCITS / AIF.

The draft template NLS for cross-border management of UCITS and AIFs are supplemented by the draft RTS, which set out specific information to be provided by UCITS management companies and AIFMs to NCAs on their structure and activities when notifying their intention to carry out their activities in other Member States.

Next Steps

The closing date for responses to the CP is 9 September 2022. ESMA expects to publish a final report by the beginning of 2023. Following the consultation period, the draft RTS and ITS will be finalised and submitted to the European Commission.

Further Information

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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).

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