

Global Registration Services Market Update - Q1 2022

Europe

Cross-Border Distribution of Funds

EU Regulation 2019/1156 on facilitating cross-border distribution of collective investment undertakings¹ ("CBFD Regulation") requires the European Securities and Markets Authority ("ESMA") to publish on its website the hyperlinks to the websites of competent authorities who publish complete and up-to-date information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, as well as the summaries thereof, and the hyperlinks to the websites of competent authorities who publish and maintain a complete and up-to-date list of the fees and charges levied for duties carried out in relation to the cross-border activities of fund managers.

On 4 February 2022, ESMA published all of the above information on its website².

As discussed in our update *EU Cross-Border Fund Distribution Rules - Are You Ready?*³, from 2 August 2021, EU Member States ("Member States") are required to implement EU Directive 2019/11602 ("CBFD Directive") and the CBFD Regulation.

For information on other aspects of the EU regime on the cross-border distribution of investment funds, please see our previous updates on *New ESMA Guidelines for Fund Marketing Communications*⁴, *Cross-Border Distribution of Funds - Implementing Technical Standards*⁵ and *New EU Rules in Force: Pre-Marketing and De-Registration of UCITS and AIFs*⁶.

The Maples Group's Global Registration Services team ("Maples Group GRS") is actively monitoring the CBFD implementation progress and have provided some recent jurisdictional specific updates below. Please contact us on our website⁷ for more information.

Belgium

Increases to FSMA Fees

The Financial Services and Markets Authority ("FSMA") has published its regulatory fees for 2022 for the maintenance of foreign UCITS and AIFs in Belgium with some minor increases as follows:

UCITS

- Initial notification fee (per sub-fund) - EUR 422 (previously EUR 412)

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1156>

² https://www.esma.europa.eu/sites/default/files/library/esma34-45-1576_-_publication_on_cross-border_distribution_of_funds.pdf

³ <https://maples.com/en/knowledge-centre/2021/6/eu-cross-border-fund-distribution-rules-are-you-ready>

⁴ <https://maples.com/en/knowledge-centre/2021/7/new-esma-guidelines-for-fund-marketing-communications>

⁵ <https://thoughts.maples.com/post/102h0j0/cross-border-distribution-of-funds-implementing-technical-standards>

⁶ <https://maples.com/en/knowledge-centre/2021/8/new-eu-rules-in-force-pre-marketing-and-de-registration-of-ucits-and-aifs>

⁷ <https://maples.com/tracker>

- Annual maintenance fee - EUR 2,887 (previously EUR 2,815)

AIFs

- AIFs distributed to retail investors - EUR 422 (previously EUR 412)
- Self-managed licensed third country AIFs distributed to professional investors – EUR 525 (previously EUR 512)
- Basis maintenance fee for all AIFs distributed to retail investors – EUR 18,029 (previously EUR 17,579)
- Self-managed licensed EEA AIFs distributed to retail investors (differs based on assets under management).

Italy

Increases to CONSOB Fees

On 7 February 2022, the Italian regulator CONSOB published resolution n. 22135 setting out CONSOB's supervisory contribution amounts for 2022. There have been slight increases for both UCITS and AIFs annual fees as follows (with fees applying per sub-fund or per standalone fund as relevant):

UCITS

- Foreign UCITS distributed to professional investors – EUR 914
- Foreign UCITS distributed to the public – EUR 1,974
- Foreign UCITS with subscribers residing in Italy and that were closed for subscription before 3 January 2022 – EUR 1,396

AIFs

- Foreign AIF distributed to professional investors – EUR 914
- Foreign AIF distributed to the public – EUR 1,802
- Foreign ELTIF distributed to the public – EUR 1,974
- Foreign ELTIF with subscribers residing in Italy and that were closed for subscription before 3 January 2022 – EUR 1,396

The fees shall be paid upon receipt of CONSOB's payment notice and no later than 15 April 2022. Full information is available here⁸.

Public Consultation on Amendments to the Italian Issuers' Regulation

On 11 February 2022, CONSOB launched a public consultation concerning proposed amendments to Regulation no. 11971 of May 14, 1999 (the "Issuers' Regulation") aimed at aligning the CONSOB secondary legislation with the CBFD Directive and EU Regulation 2019/1156 on the cross-border distribution of funds (the "Consultation"). The Consultation was open until 11 March 2022 and the amended Issuers' Regulation is expected to be adopted in the second quarter of 2022.

Although under the CBFD Directive it is technically no longer necessary to appoint a paying agent in Italy for the marketing of UCITS and AIFs to retail investors (such services may be provided by the UCITS / AIFM itself or by a third party), consideration will need to be given as to whether commercially the same level of service will be provided to Italian investors in such circumstances. As such, it is possible that further clarity on this may be issued by CONSOB before the publication of the final Issuers' Regulation.

Luxembourg

Increases to CSSF Fees

The Luxembourg regulator ("CSSF") updated its Grand-Ducal Regulation on 17 December 2021 with increases to both initial registration and annual maintenance fees with effect from 1 January 2022 as follows:

⁸ <https://www.consob.it/web/consob-and-its-activities/other-regulatory-measures/documenti/english/resolutions/res22135.htm>

Registration Fees

- Single UCITS or AIF – EUR 3,000 (previously EUR 2,650)
- Umbrella UCITS or AIF – EUR 5,500 (previously EUR 5,000)

Annual Maintenance Fees

- Single UCITS or AIF – EUR 3,000 (previously EUR 2,650)
- Umbrella UCITS or AIF – EUR 5,500 (previously EUR 5,000)

More information is available here⁹ (only available in French).

Switzerland

Asset Management Association Switzerland Publishes Revised Self-Regulation

Further to our update on *Proposed Changes to Swiss Distribution Rules*¹⁰ and related updates issued in Q3 2020¹¹, Q4 2020¹², Q3 2021¹³ and Q4 2021¹⁴, the Asset Management Association Switzerland ("AMAS") published a revised version of its self-regulation, which is the result of the revision of the Swiss Collective Investment Schemes Act ("CISA") triggered by the Swiss Financial Services Act ("FinSA") and the Swiss Financial Institutions Act ("FinIA"). This included revisions to the code of conduct, guidelines for real estate funds and technical guidelines which entered into force on 1 January 2022 replacing the previous minimum standard.

⁹ https://data.legilux.public.lu/file/eli-etat-leg-rgd-2021-12-17-a919-jo-fr-pdf.pdf?utm_campaign=email-211222-9f0bf

¹⁰ <https://maples.com/en/knowledge-centre/2019/4/proposed-changes-to-swiss-distribution-rules>

¹¹ <https://maples.com/en/knowledge-centre/2020/10/grs-market-update-q3-2020>

¹² <https://maples.com/en/knowledge-centre/2021/1/global-registration-services---market-update-q4-2020>

¹³ <https://maples.com/en/knowledge-centre/2021/10/grs-market-update-q3>

¹⁴ <https://maples.com/en/knowledge-centre/2022/1/global-registration-service---q4-market-update>

The code of conduct, which forms the core of the AMAS self-regulation setting out the rules of conduct applicable to funds, is now limited to rules of conduct at the product level (rather than the point of sale) and includes rules on transparency, loyalty, conflicts of interests, disclosures of retrocessions and rebates and best execution rules. It applies to fund management companies, Swiss representatives of foreign collective investment schemes and investment managers of collective assets. It is expected that the revised code of conduct will be indirectly imposed on foreign institutions such as to foreign funds by their Swiss representatives, to the extent applicable, and to foreign delegated asset managers of Swiss funds by the relevant fund management company.

This revised AMAS self-regulation is of particular practical importance, due to the recognition by the Swiss Financial Market Supervisory Authority ("FINMA") of several minimum standards to which all market participants have to adhere. These revisions impact both Swiss and foreign market participants in the funds industry.

The model information for investors in Switzerland, i.e. the document typically styled as a Swiss Country Supplement / Addendum, has been updated to simplify the approval process for foreign collective investment schemes for non-qualified investors. Impacted foreign collective investment schemes must include the minimum content required by law and the self-regulation regime into their prospectus. This may necessitate prospectus and financial reports updates. AMAS recommends adopting this new wording as quickly as possible.

For foreign funds and their Swiss representatives, the smooth adaptation of the existing model distribution agreement to the revised new template will be a key priority particularly where it is intended to terminate the Swiss representative and paying agent agreement without any gap in the contractual framework for VAT exemption purposes.

UK

UK Financial Conduct Authority Increases Initial Registration Fees

On 10 January 2022, the UK Financial Conduct Authority ("FCA") updated its Policy Statement 2022: FCA Authorisation Application Fees with increases to certain initial registration fees which took effect on 24 January 2022 as follows:

Initial Registration Fees

- Umbrella UCITS - £2500 (previously £1200)
- Single AIF under Regulation 58 - £250 (previously £125)

For the avoidance of doubt, there have been no changes to the charges imposed under Regulation 57 and Regulation 59 applications with such fees remaining at £250 per AIF.

The FCA have further advised that changes to annual regulatory levies are due to be issued in March / April 2022. More information is available here¹⁶.

FCA Approach to TPR Firms Operating in the UK

As outlined in our prior update, *FCA: Approach to TPR Firms Operating in the UK*¹⁷, on 18 and 21 January 2022, the FCA published its approach to European firms in the temporary permissions regime ("TPR") and on TPR firms that do not meet its expectations.

By way of reminder, the purpose of the TPR was to ensure that European firms operating in the UK via a passport when the Brexit transition period ended, could continue operating temporarily while they seek full authorisation in the UK. The update sets out the FCA's approach to TPR firms and the actions the FCA

may take where firms do not meet the FCA's expectations, including where a TPR firm:

- misses its landing slot;
- fails to respond to mandatory information requests;
- does not intend to apply for full authorisation; or
- whose authorisation application is refused.

The FCA noted that it has already cancelled the temporary permissions of four firms who did not respond to mandatory information despite multiple requests. The FCA reminds firms that any firm whose permissions have been cancelled are not permitted to conduct regulated business in the UK and to do so would be committing a criminal offence.

On 31 January 2022, the FCA updated its website page regarding "Considerations for firms that are intending to seek authorisation in the UK and thereby leave the TPR" that had not yet sent the FCA their notice of intention to leave the TPR should do so as a matter of urgency. Further information is available here¹⁸.

United Kingdom's Overseas Fund Regime in Effect

The UK Government published the Financial Services Act 2021 (Commencement No. 4) Regulations 2022 ("Regulations") bringing the Overseas Fund Regime ("OFR") into effect on 23 February 2022.

The OFR will allow collective investment schemes authorised in approved countries, including EU UCITS to market in the UK based on a comparison of HM Treasury's overall view of the other country's regulatory regime. We expect that both Ireland and Luxembourg will qualify with the equivalence regime and that the OFR will be the immediate route to allow Irish and Luxembourg domiciled UCITS to target retail investors.

¹⁶ <https://www.fca.org.uk/publications/policy-statements/ps22-1-fca-authorisation-application-fees-new-structure>

¹⁷ <https://thoughts.maples.com/post/102hgyl/fca-approach-to-tpf-firms-operating-in-the-uk>

¹⁸ <https://www.fca.org.uk/brexit/temporary-permissions-regime-tpf/considerations-firms-leaving#revisions>

The FCA have not yet published any additional information surrounding the process for applying to the OFR (including allocation of landing slots for UCITS opted into the Temporary Permissions Regime) or indeed a list of approved countries. As such, notwithstanding the publication of the Regulations, the full requirements remain outstanding and the OFR regime is therefore not yet fully operational.

The Regulations have brought into effect the following provisions of the Financial Services Act 2021:

- (a) Section 24 and Schedule 9 (Collective investment schemes authorised in approved countries);
- (b) Section 25 (Individually recognised overseas collective investment schemes)*; and
- (c) Section 26 (Money market funds authorised in approved countries).

*The Regulations have provided that section 25(4)(a) of the Financial Services Act 2021 will come into force on 1st January 2023.

Further information is available here¹⁹.

How the Maples Group Can Help

Maples Group GRS supports UCITS²⁰ and AIFMs²⁰ 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.

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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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¹⁹ <https://www.legislation.gov.uk/uksi/2022/163/contents/made>

²⁰ Domiciled in Ireland and Luxembourg.