MAPLES GROUP

UPDATE

Global Registration Services – Market Update Q4 2020

Belgium

FSMA Consults on Investment Products Advertisements Q&As

On 23 November 2020, FSMA published a consultation with draft Q&As on advertisements for investment products in the event of a public offering, admission to trading on a regulated market or marketing to retail clients. The consultation period closed on 4 January 2021. The draft Q&As focus on how advertisements or marketing communications should be prepared in order to comply with Article 22 of the Regulation (EU) 2017/1129. The aim of the Q&A is to ensure that the content requirements are met.

Denmark

2020 Regulatory Fees

On 8 December 2020, Finanstilsynet (the Danish FSA) published its 2020 regulatory fees. Regulatory fees in Denmark are set at the 2016 level and the index is adjusted annually. The 2020 fees have increased less than 1% compared to 2019.

Consequently, for 2020 all foreign UCITS notified in Denmark must pay a basic annual fee of DKK 23,457 (c. €3,153) plus DKK 7,372.20 (c. €991) for each initial marketing notification.

Similarly, foreign alternative investment fund managers ("AIFMs") which have notified AIFs for distribution in Denmark must pay a fee of DKK 5,897.76 (c. €793) per fund and an additional fee of DKK 5,897.76 (c. €793).

The Danish FSA generally issues their invoices in early December every year.

Germany

Guidance Note and Publication Rule Update

BaFin updated its 2013 guidance notice (2013) on the marketing of cross-border EU UCITS in November 2020 and published on 2 December 2020[1]. The updated note clarifies that notices to investors detailing the following particular events must now be provided in the German language:

(a) Suspension of the redemption of units or shares of an EU UCITS;

(b) Termination of an EU UCITS' management or the winding-up of an EU UCITS;

(c) Amendments to the fund rules which are inconsistent with existing investment principles; affect material investor rights; or relate to remuneration or the reimbursement of expenses that may be taken out of the EU UCITS' assets including: the reasons for the amendments and the rights of investors. This information must be communicated in an easily understandable form and manner, and must indicate where and how further information may be obtained;

(d) The merger of EU UCITS in the form of information on the proposed merger which must be drawn up in accordance

[1] https://thoughts.maples.com/post/102gle2/germany-updated-guidance-note-for-foreign-ucits-marketing-in

with Article 43 of Directive 2009/65/EC; and

(e) The conversion of an EU UCITS into a feeder fund or any change to a master fund in the form of information which must comply with Article 64 of Directive 2009/65/EC.

This changes the rules as up to now such information was permitted in English.

Spain

MiFID II Q&A update (Firms and ManCo)

In October 2020 the CNMV updated its Q&A on the application of MiFID II.

In its Q&A, the CNMV clarifies that the same requirements apply to the marketing activity of those managers as to other intermediaries that provide the service of reception, transmission or execution of customer orders.

With this update, the CNMV modifies its previous criteria where management companies, in their activity of marketing collective investment institutions ("IICs"), only had to meet the requirements for assessing convenience, as it was not the marketing of IIC as an investment service.

This new approach affects both the IIC management companies regulated by UCITS regulations and those regulated by the AIFMD, to now also include closed-ended venture capital management companies.

Management companies must comply with the following MiFID II requirements in the commercialisation of both their own and third-party vehicles: product governance, knowledge and skills of sales staff, remuneration, incentives, pre- and post-contractual information to clients, and keeping records.

This change in approach means that all obligations applicable to banks and investment services companies now also apply to managers when they market their funds or those of third parties.

It should be noted that the sectoral associations are insisting that, if this equalisation between management companies and investment services companies and banks is to occur, it must be carried out through a modification of UCITS and AIFMD regulations or through a national legislative change and not through the Q&A mechanism.

Advertising Investment Products and Services

In October 2020 the CNMV published Circular 2/2020 which details both the scope, content and format for advertising messages for stock market products and services. It also establishes rules on procedures and internal controls to be implemented by entities (including the obligations to register advertising, and the regime applicable) if they decide to self-regulate.

Bad Practices in Cross-Border Marketing

In October 2020 the CNMV issued a public statement highlighting bad, but common practices that were detected in the activity of some firms located in other EU member states which market products in Spain under the EU passport (mainly firms acting under the freedom to provide services; that is, without an establishment or branch in Spain).

The CNMV highlights two practices in particular: (i) marketing of investment services and client acquisition activities through unauthorised third parties; and (ii) promotion of CFD transactions through group entities located in third countries that are not authorised to operate in the EU. The statement contains a series of guidelines for the applicable rules and regulations.

Switzerland

FinSa and FinIa Developments

Further to our client update in Q3 2020[2] on the requirement for Swiss-registered firms that provide financial services directly to Swiss investors to affiliate with an ombudsman's office by 24 December 2020, has been updated. In November 2020 the Swiss Parliament amended this requirement whereby the obligation to affiliate will not apply where financial services are exclusively provided to institutional clients or per se professional clients. The obligation will only apply where financial services are provided to the following investor categories:

(a) Retail clients;

(b) HNWI that have opted to be treated as professional clients; and

(c) Family offices that have opted to be treated as professional clients.

From 1 February 2021 financial service providers that serve solely institutional or professional clients (excluding the above investor types) will therefore not need to be affiliated to an ombudsman. FINMA will not enforce this requirement from 24 December 2020 to 31 January 2021.

Use of Addenda

In November 2020 FINMA issued an update to their practice on the use of addenda made to prospectuses. It outlined that they will allow one addendum be made to a prospectus. However, such addenda may not be longer than two pages and has to be part of the table of contents of the Swiss prospectus. They also stated that there will be a six month deadline by which the addendum will be required to be incorporated into the body of the original prospectus.

United Kingdom

Overseas Funds Regime ("OFR") and Temporary Permissions Regime ("TPR") Updates

Further to our client updates in March 2020[3] and on 9 November 2020[4] HM Treasury published their conclusions to their OFR consultation. These provided that foreign investment funds which seek to be recognised for marketing in the UK would need to ensure appropriate disclosure on access to the UK Financial Ombudsman and the role of alternative dispute resolution; regular ongoing reporting to the FCA on changes to fund governance arrangements; the maintenance facilities in the UK for investors and the use of authorised persons in the UK to make or approve financial promotions. Additionally, the FCA will also be enabled to make rules to set registration and periodic fees which would be imposed on overseas investment funds for maintaining recognition under the OFR. The full summary of the conclusion is detailed in our client note from 9 November 2020 (see link below).

Before transitioning to the OFR, any eligible foreign investment fund which is to be marketed in the UK, was required to be opted into the TPR by 30 December 2020.

The TPR transition period is to be extended from three years to five years. Following

[2] https://maples.com/en/knowledge-centre/2020/10/grs-market-update-q3-2020

[3] https://maples.com/en/knowledge-centre/2020/3/hm-treasury-consultation

[4] https://maples.com/en/knowledge-centre/2020/12/distribution-of-foreign-investment-funds-in-the-uk-post-brexit-tpr-and-ofr

allocation of a "landing slot" by the FCA, those funds opted into the TPR will be required to apply to the FCA for permanent recognition under the OFR; this extension is to facilitate a smooth transition process. An EU UCITS opted into the TPR can request a more immediate "landing slot" within this transition period.

Hong Kong

SFC Consultation on Management and disclosure of climate related risks

In October 2020 the SFC published a consultation to seek views on the following:

- Amendments to the Fund Manager Code of Conduct to require fund managers to take climate related risks into consideration in their investment and risk management processes, and to make appropriate disclosures to meet investors' growing demand for climate risk information, and to combat greenwashing; and

- Baseline requirements which are intended to improve the comparability of information across different fund managers to help investors make more informed decisions.

The SFC's proposed requirements (covering governance, investment management, risk management and disclosure) will apply to fund managers which manage collective investment schemes but at the initial stage they will not be mandatory for fund managers which manage discretionary accounts (in the form of an investment mandate or a pre-defined model portfolio). While the proposed baseline requirements will apply to all fund managers, their implementation would be subject to the principle of proportionality having regard to factors such as the size and complexity of a fund manager's business and the investment strategies adopted by the funds under its management.

Responses to the proposals were required by 15 January 2021.

SFC and HKEX Issue Guidance to Exchange-Traded Funds ("*ETF*") *Industry*

In December 2020 the SFC and the HKEX issued guidance to the ETF industry on the following areas:

- Suspension of primary market dealing;

- Trading halt/suspension of secondary market trading;

- Resumption of primary market dealing/secondary market trading;

- Cessation, disruption or suspension of market making by the last market maker;

- Unanticipated suspension or closure of underlying markets;

- Listing application timeline and NAV publication requirements for new ETF/trading counter(s); and

- Publication procedures for announcements on HKEX news website.

For each topic, the guidance covers the general rules, communication requirements between the ETF and the HKEX and the SFC and for informing investors and/or other relevant matters to consider. The guidance includes an illustrative example explaining how the ETF industry should react to topics covered by the guidance.

Chile

The Chilean Pension Regulator (SP) Introduces Draft which Outlines Mandatory

Guidelines in Relation to Climate Risk and Environmental, Social and Governance ("ESG") factors

On 28 October 2020 the window to file comments to a draft rule which introduces mandatory guidelines on climate risk and ESG factors closed.

The draft rule specifies that as part of the management of financial risks, in particular, credit and market risk, the investment policy of each Chilean pension fund manager (AFPs) must include the criteria that it will adopt to manage the opportunities and risks stemming from climate change and ESG factors. The policy must consider at least (i) identifying the reference analytical framework where relevant; and (ii) the general risk criteria used in the investment analysis and decision making process.

UAE

Launch of Online Portal

In November 2020 the SCA launched a new portal for providing online services to registered/regulated entities which are registered in the UAE. Annual renewal services for foreign funds which are registered for promotion with the SCA should now be completed by legal representatives through this portal.

How the Maples Group Can Help

Maples Group Global Registration Services ("Maples Group GRS") supports UCITS and AIFMS 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 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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