

Global Registration Services – Market Update Q4 2021

Cross-Border Distribution of Funds

As discussed in our client update *EU Cross-Border Fund Distribution Rules - Are You Ready?*¹, from 2 August 2021, EU Member States ("Member States") are required to implement EU Directive 2019/1160² and Regulation 2019/1156³ on the cross-border distribution of collective investment funds (the "CBFD Directive" and "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 through maples.com/tracker for more information.

¹ <https://maples.com/en/knowledge-centre/2021/6/eu-cross-border-fund-distribution-rules-are-you-ready>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1160&from=EN>

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

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-its-publi>

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

Europe

High Levels of Reverse Solicitation Prompts ESMA to Request Introduction of New Reporting Requirements

Following its warning last year regarding questionable practices on reverse solicitation⁷ the European Securities and Markets Authority ("ESMA") has issued a letter⁸ to the European Commission in response to a call for evidence from Brussels on the levels of reverse solicitation in the EU.

Under reverse solicitation, an investment is made by an investor at the exclusive initiative of the investor.

ESMA is concerned that non-EU firms are using reverse solicitation to circumvent single market rules. Further detail is available at the link below⁹.

Austria

Revised FMA Guidelines

Following the implementation of the CBFD Directive in Austria on 11 December 2021, the Austrian regulator ("FMA") has updated its Information Concerning the Public Offering of UCITS in Austria pursuant to Art. 140 of the Investment Funds Act ("InvFG 2011"). The revised

⁷ <https://thoughts.maples.com/post/102gokd/esma-warns-firms-around-reverse-solicitation>

⁸ https://www.esma.europa.eu/sites/default/files/library/esma35-43-2509_statement_on_reverse_solicitation.pdf

⁹ <https://thoughts.maples.com/post/102hfka/high-levels-of-reverse-solicitation-prompts-esma-to-request-introduction-of-new-r>

UPDATE

guidelines remind UCITS that the contact point for facilities must be indicated in the prospectus or in the annex to the prospectus. Furthermore, the FMA recommends listing the sub-funds admitted to public distribution in the prospectus.

Denmark

Revised Index for Regulatory Fees 2021

On 29 November 2021, the Finanstilsynet ('Danish FSA') published a revised index for 2021 regulatory fees. Danish regulatory fees are set at the 2016 level and adjusted with an index which is revised annually. Foreign UCITS notified in Denmark must pay a basic annual fee of DKK 17,500 under 2016 prices. For each additional notification or application on cross-border marketing, a basic fee of DKK 5,500 in 2016 prices is due.

Foreign alternative investment fund managers ("AIFM") which have notified AIFs for distribution in Denmark must pay a fee of DKK 4,400 per fund and an additional fee of DKK 4,400 per sub-fund in 2016 prices. Invoices issued on 1 December 2021 by the Danish FSA will be payable at the end of the year. Further information is available at the link below¹⁰.

Finland

CBFD Directive Enters into Force

On 19 November 2021, the CBFD Directive entered into force in Finland with gold plating that goes further than the requirements of the CBFD Directive.

For UCITS, the implementing Finnish law gives powers to the FIN-FSA to request prior notification of marketing communications used by fund management companies. This is also the case for EEA AIFMs targeting retail investors.

For AIFs, pre-marketing by EEA AIFMs is possible towards both retail and professional investors.

Non-EEA AIFMs may conduct pre-marketing towards professional investors in Finland and are subject to the same notification requirements as EEA AIFMs.

Reverse solicitation in non-EEA AIFs remains permissible in that professional investors may continue, by written consent, to waive their right to information as per Chapter 12 Article 4(6) of the Alternative Fund Managers Act.

Non-EEA AIFMs are also subject to the same de-notification procedure as EEA AIFMs.

The Financial Supervisory Authority of Finland ("FIN-FSA") Issues a New Schedule of Processing Fees

A new schedule of processing which is available in English¹¹ will be effective 1 January 2022.

For foreign UCITS funds, specified as "marketing in Finland of shares in a UCITS or collective investment undertaking managed by an EEA management company", the processing fees for are increased by EUR 50 to EUR 1,750, + EUR 200 per each additional (sub-)fund. The total maximum amount is increased by EUR 100 to EUR 3,500.

The fee for the "marketing of an AIF managed by an entity authorized or registered in the EEA in Finland or another EEA country" is also increased by EUR 50 to EUR 1,250.

Italy

ESMA Marketing Communication Guidelines

On 29 September 2021, the Italian regulator CONSOB confirmed its compliance with the

¹⁰ <https://www.dfsa.dk/About-us/Tasks-of-the-Danish-FSA/Payment-of-fees>

¹¹ <https://www.finanssivalvonta.fi/en/publications-and-press-releases/supervision-releases/2021/new-schedule-of-processing-fees-to-take-effect-on-1-january-2022/>

ESMA guidelines on marketing communications under the CBFDD Regulation¹² ("Guidelines"), incorporating the Guidelines into its own supervisory practices. With effect from 2 February 2022, managers involved in the distribution of marketing communications in Italy will be required to comply with the Guidelines.

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:

Registration Fees

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

Annual Maintenance Fees

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

More information is available at the link below¹³ (only available in French).

Malta

CBFDD Directive Enters into Force

On 10 September 2021, the CBFDD Directive entered into force without additional gold-plating in Malta. Accordingly a physical presence for the fulfilment of facilities services in terms of

payments and information to investors will no longer be required for UCITS in Malta.

The updated UCITS¹⁴ and AIF¹⁵ marketing Investment Services Act Regulations are available in English.

Netherlands

CBFDD Directive Enters into Force

On 29 October 2021, the Dutch government gazette published an announcement (in Dutch only) confirming the transposition of the CBFDD Directive to Dutch law.

Spain

CBFDD Directive Enters into Force

On 2 November 2021, the CBFDD Directive entered into force in Spain with the Royal Decree-law 24/2021, amending the Spanish law 35/2003 on collective investment schemes and the law 22/2014 regulating venture capital firms, other closed-ended collective investment schemes and closed-ended collective investment scheme management companies.

It entered into force without additional gold-plating in Spain meaning that a physical presence for the fulfilment of facilities services, including acting as a contact point for communicating with the Spanish regulator CNMV will no longer be required for UCITS. The language for the fulfilment of such facilities services is to be in Spanish or any other language accepted by the CNMV.

The Royal Decree-law 24/2021 is currently only available in Spanish¹⁶.

¹²

https://www.esma.europa.eu/sites/default/files/library/esma34-45-1272_guidelines_on_marketing_communications.pdf

¹³ https://data.legilux.public.lu/file/eli-etat-leg-rgd-2021-12-17-a919-jo-fr-pdf.pdf?utm_campaign=email-211222-9f0bf

¹⁴ <https://legislation.mt/eli/sl/370.18/eng>

¹⁵ <https://legislation.mt/eli/sl/370.21/eng/pdf>

¹⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-2021-17910&tn=1&p=20211103>

Switzerland

Asset Management Association Switzerland ('AMAS') Publishes Revised Self-Regulation

Further to our client update on Proposed Changes to Swiss Distribution Rules¹⁷ and related updates issued in Q3 2020¹⁸, Q4 2020¹⁹ and Q3 2021²⁰, the AMAS recently 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 enter into force on 1 January 2022 replacing the existing minimum standard.

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. ASMA 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 ("FCA") Consultation on Regulatory Fees and Levies Proposals

The FCA has published its annual consultation²¹ on regulatory fees and levies detailing proposed policy changes to the calculation of its fees from 2022/23. It includes proposed increases to the fees financial services firms pay to cover the cost of regulation. Responses are invited by 31 January 2022. All feedback will be considered and the FCA expects to implement changes in time for the 2022/23 fee cycle.

¹⁷ <https://maples.com/en/knowledge-centre/2019/4/proposed-changes-to-swiss-distribution-rules>

¹⁸ <https://maples.com/en/knowledge-centre/2020/10/grs-market-update-q3-2020>

¹⁹ <https://maples.com/en/knowledge-centre/2021/1/global-registration-services---market-update-q4-2020>

²⁰ <https://maples.com/en/knowledge-centre/2021/10/grs-market-update-q3>

²¹ <https://www.fca.org.uk/publications/consultation-papers/cp21-33-fees-levies-proposals-2022-23>

Asia Pacific

Hong Kong

The Securities and Futures Commission ("SFC") Announces Refinements to Enhanced Fund Data Reporting

On 11 November 2021, the SFC published a circular²² to notify management companies of SFC-authorized unit trusts and mutual funds of refinements of enhanced fund data reporting requirements. The refinements are in line with international regulatory developments on fund data reporting, and seek to increase the SFC's ability to perform its supervisory and regulatory responsibilities.

The circular supplements the 2018 requirements. It sets out the reporting frequency for liquidity profile, subscription and redemption, asset allocation and leverage exposure, and securities financing transactions and securities borrowing transactions reports. Sample reporting forms which set out the data required to be submitted are included in the circular to facilitate preparation for the launch of the enhanced reporting. The initial report date for the refined requirements is 31 December 2021.

Within seven business days of each report date, the SFC will send a notification email to the management company of each fund, which includes reporting forms, instructions for completion and a link to the WINGS²³ platform for submitting the forms. The relevant management company should complete and file the reporting forms via WINGS within five weeks from the report date. Management companies (or their authorised entities) that do not have a WINGS account should open an account as soon as possible.

²²

<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC55>

²³ <https://wings.sfc.hk/main/#/en/login>

How the Maples Group Can Help

Maples Group GRS supports UCITS²⁴ and AIFMS²⁴ in their multi-market distribution strategies by providing an integrated global network of experts co-ordinated 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.

Dublin

Emma Conaty

+353 1 619 2708

emma.conaty@maples.com

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 and total number of new Irish sub-funds established (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2020).

January 2022

© 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 LLP.

²⁴ Domiciled in Ireland and Luxembourg.