

# Global Registration Services Market Update – Q3 2022

## Europe

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

On 17 May 2022, the European Securities and Markets Authority ("ESMA") issued a consultation<sup>1</sup> 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 and AIFMD (the "CP").

The closing date for responses to the CP was 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. For more information, please see our previous [update](#).

## Czech Republic

### *The Czech National Bank Introduces Regulatory Fees for UCITS and AIFs*

The Czech National Bank has introduced both initial regulatory fees and annual maintenance fees (for UCITS and AIFs towards professional and retail investors) as follows:

## UCITS

- Initial notification fee – CZK 10,000 (approximately €410)
- Annual maintenance fee – CZK 10,000 (approximately €410)

## AIFs

- Notification fee for AIFs distributed to professional investors – CZK 10,000 (approximately €410)
- Notification fee for AIFs distributed to retail investors – CZK 20,000 (approximately €820)
- Basic maintenance fee for all AIFs distributed to professional and retail investors – CZK 10,000 (approximately €410)

## Germany

### *BaFIN Updates its FAQ on the Marketing and Acquisition of Investment Funds Pursuant to the KAGB*

On 5 July 2022, BaFIN issued an updated version of its "Frequently asked questions about the marketing and acquisition of investment funds pursuant to the German Investment Code (Kapitalanlagegesetzbuch – KAGB)" (the "FAQ"). In the updated FAQ, BaFIN has clarified that during the period after a pre-marketing notification has been submitted for an AIF (or a particular investment strategy or idea) but before approval to market the particular AIF has been provided, the fund manager may still only carry out pre-marketing in respect of the particular AIF. To assist with this, a combined application by both EEA AIFMs and non-EEA AIFMs covering

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

both pre-marketing and marketing may be provided to BaFIN.

In addition, the FAQ provides clarity on what is considered a 'material change' under Article 31(4) of AIFMD and includes changes to the core fund information such as changes to the investment principles, the AIF's names or the AIF's financial year. In this context, AIFs are EU AIFs managed by a German AIFM and which have been notified for marketing to semi-professionals in Germany.

## Italy

### *Transposition of Directive (EU) 2019/1160*

On 6 September 2022, the Italian regulator CONSOB published Resolution No. 22437, modifying Regulation No. 11971 of 14 May 1999 (the "Issuer's Regulation"), which sets out the transposition of Directive (EU) 2019/1160 in Italy.

Following the transposition, it is no longer obligatory for an EU UCITS to appoint an entity in Italy in charge of investor relations (e.g. an Italian bank or Italian distributor). However, the facilities are to be provided in Italian. Moreover, it is confirmed that in cases where an EU UCITS is not distributed to retail investors in Italy and is only distributed to professional investors, it is not necessary to appoint a facilities agent for Italy.

Where details of the entity providing the facilities is not already available to investors in the manner prescribed by the regulations or by the articles of association of the UCITS, the Italian subscription form to be used for retail distribution by the UCITS should include information regarding the fulfilment of the facilities.

The Resolution was published in the Official Gazette of the Italian Republic on 14 September 2022 and entered into force on 4 October 2022.

## Luxembourg

### *New FAQ on Cross Border Distribution of Funds – Guidance on Marketing Communications*

On 20 September 2022, the Luxembourg regulator, Commission de Surveillance du Secteur Financier ("CSSF") published an FAQ on Cross-Border Distribution of Funds - Guidance on Marketing Communications ("FAQ"). The FAQ provides additional guidance on certain key aspects of Article 4 of the Regulation 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings ("CBDF Regulation") and the ESMA guidelines on marketing communications under the CBDF Regulation.

All investment fund managers ("IFMs") listed in Circular 22/795 are on the scope of Article 4 of the CBDF Regulation and of the ESMA Guidelines in relation to the funds they manage. The [FAQ](#) also confirms that it applies to funds domiciled outside of Luxembourg and marketed to investors in the EEA if such funds are managed by a Luxembourg management company or a Luxembourg AIFM.

## UK

### *FCA Final Approach to PRIIPS Regulation*

The Financial Conduct Authority ("FCA") has issued their [final position](#) on the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

Since 25 March 2022, firms must apply the Handbook rules and the PRIIPs Regulatory Technical Standards. The transition period ends on 31 December 2022.

Based on industry feedback received from the [Consultation Paper](#) that the FCA issued in July 2021, the following changes will be made:

- Rules to clarify the scope of the PRIIPs Regulation for corporate bonds;

- Interpretative guidance to be provided on what it means for a PRIIP to be 'made available' to retail investors; and
- Amendments to the PRIIPs Regulatory Technical Standards to:
  - replace the requirements and methodologies for presentation of performance scenarios in the KID with a requirement for narrative information on performance to be provided;
  - address the potential for some PRIIPs to be assigned an inappropriately low summary risk indicator in the KID; and
  - address concerns about certain applications of the 'slippage' methodology when calculating transaction costs.

## *Updates to Disclosure Requirements for EEA UCITS*

The FCA confirmed in their [update](#) on 14 July 2022 that UCITS funds marketing in the United Kingdom must continue to provide UK investors with the traditional UCITS Key Investor Information Document ("KIID"). This applies to UCITS registered under the UK's Temporary Marketing Permissions Regime ("TMPR") and UCITS approved to market in the UK under section 272 of the Financial Services and Markets Act 2000 (FSMA).

As outlined in our recent [update](#), the [PRIIPs Regulation \(EU\) 1286/2014](#) introduced a mandatory key information document ("PRIIPs KID") for UCITS which are made available to retail investors in the EEA with effect from 1 January 2023. The [European Union \(Undertakings for Collective Investment in Transferable Securities\) \(Amendment\) Regulations 2022](#) provide that the production of a PRIIPs KID by a UCITS will satisfy the obligation to produce a UCITS KIID, thus avoiding duplication.

However, for those UCITS funds which are marketed to retail investors in both the UK and EEA, this duplication will in fact be necessary and those UCITS funds will be required to

produce both a UCITS KIID (for the UK) and a PRIIPs KID (for the EEA) from 1 January 2023.

There are key differences between the UCITS KIID and the PRIIPs KID particularly in the disclosures relating to performance data and costs and charges. For example, while UCITS KIIDs disclose up to 10 years' past performance, with a risk warning as to its limited value as a guide to future performance, a PRIIPs KID must include forward-looking projected returns based on historic performance. Similar to the 'Charges' section in the UCITS KIID, the PRIIPs KID must include information on costs in the 'Composition of Costs' section. However, additional data will be required for the PRIIPs KID including 'portfolio transaction costs' not currently factored into the UCITS KIID charges disclosure.

Producing and maintaining both UCITS KIIDs and PRIIPs KIDs will likely result in additional burdens and costs for UCITS managers, particularly around managing the associated distribution of the appropriate KIID or KID to the relevant investor(s).

While the exemption in the UK from the requirement for EEA UCITS to produce a PRIIPs KID lasts until 31 December 2026, the FCA have not provided any guidance on whether the obligation to produce the UCITS KIID will continue once the TMPR expires on 31 December 2025 (and at which stage the UK's Overseas Fund Regime (OFR) will replace the TMPR).

## *Updated FCA Website Page - Cancelling a Temporary Permission*

The FCA updated its [webpage](#) regarding the process to cancel a temporary permission if your firm is in the temporary permissions regime (TPR) or the supervised run-off regime (SRO).

## Australia

### *ASIC Releases New and Updated Guidance for Corporate Collective Investment Vehicles*

On 23 June 2022, the Australian Securities and Investment Commission ("ASIC") released a range of documents to support the licensing and other requirements for corporate collective investment vehicles ("CCIVs"), which came into effect on 1 July 2022.

ASIC has issued an information sheet, namely, INFO 272 that provides guidance on registering CCIVs and sub-funds.

Under the new regime, a company seeking to be registered as a CCIV and register initial sub-funds will need to meet the following requirements:

- Be limited by shares;
- Have a constitution which complies with sub-division C of part 8B.3 of the Corporations Act 2001;
- Have a sole proposed director of the company that holds an Australian Financial Services Licence ("AFSL") authorising it to operate the business and conduct the affairs of a CCIV;
- Have at least one sub-fund;
- Each sub-fund must have at least one member at the time of registration and if the Company intends to be a retail CCIV, then they must have a compliance plan and a compliance plan auditor; and
- Lodge a CCIV registration application, including the requisite application form; constitution and compliance plan (only if registering towards retail); and pay an application fee.

Further guidance can be found on the [ASIC website](#).

### *ASIC Extends Transitional Relief for Foreign Financial Service Providers*

On 2 August 2022, ASIC announced it would be extending its transitional relief for foreign financial service providers from their requirement to hold an Australian financial services licence when providing financial services to Australian wholesale clients, for a further 12 months.

The current transitional relief was due to expire on 31 March 2023. However, ASIC Corporations (Amendment) Instrument 2022/63 has extended the transitional relief until 31 March 2024.

The new relief instrument also delays the commencement of the ASIC Corporations (Foreign Financial Services Providers - Funds Management Financial Services) Instrument 2020/199 until 1 April 2024. Under this instrument, ASIC will give licensing relief to some foreign financial service providers that are providing full management financial services to certain categories of Australian professional investors.

During this extended transitional relief period, ASIC will consider new applications for temporary licensing relief or a new standard of Australian financial services licence application, from entities that cannot rely on the transitional relief.

Foreign financial service providers that have been granted an Australian financial services licence will be able to continue operating their financial services business in Australia.

## How the Maples Group Can Help

The Maples Group GRS team supports UCITS<sup>2</sup> and AIFMs<sup>2</sup> 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.

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<sup>2</sup> Domiciled in Ireland and Luxembourg.

## 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).**

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.