

Brussels, 9 September 2022

## **EFAMA HIGH-LEVEL RESPONSE TO THE ESMA CONSULTATION PAPER ON THE DRAFT TECHNICAL STANDARDS ON THE NOTIFICATIONS FOR CROSS-BORDER MARKETING AND CROSS-BORDER MANAGEMENT OF AIFs AND UCITS**

EFAMA welcomes the opportunity to provide high-level feedback on ESMA's draft technical standards for cross-border marketing and management of AIFs and UCITS, intended to further harmonise the related notification documentation. Common notification practices would facilitate cross-border product distribution and ensure the uniformity of applicable terms. Nonetheless, we suggest that any action should aim to further simplify and streamline the notification processes, while avoiding unnecessary reporting efforts and duplication.

Further to this brief preamble, we make the following few considerations:

- I. With regards to the draft regulatory technical standards (RTS) on the information to be notified by managers to carry out their activities in a host Member State, EFAMA welcomes ESMA's efforts to clarify the notification information for both management companies and AIFMs under the UCITS and AIFMD. While we agree with the fact that management companies should provide competent authorities of the UCITS home Member States with a list of meaningful information, we find that certain requirements under Article 3 of the draft RTS "Information to be provided under Article 20(1) of Directive 2009/65/EC" – such as the requirement to provide copies of delegation agreements, as well as the name, address and contact details of the delegate – seem to go beyond the requirements of Article 20(1) of UCITS Directive<sup>1</sup>.
- II. Concerning the implementing technical standards (ITS) on form and content of notification letters, we appreciate the approach adopted by ESMA as it aims at ensuring that notifications for the cross-border marketing and the cross-border management of UCITS and AIFs are made in a consistent manner. However, we note that the template notification letters suggested by ESMA might be cumbersome and difficult to comply with as they require detailed information that might be confidential, or not be readily available, especially in the case of third-party management companies. More precisely, we have identified the following issues:
  - Maintaining a list of third-party distributors, as well as a list of websites through which funds are marketed, in a host jurisdiction would be cumbersome and would require frequent updates of the notification documentation every time a fund is marketed through a new distributor (including

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<sup>1</sup> Accordingly, "A management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation: (a) the written agreement with the depositary referred to in Articles 23 and 33; and (b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II."

when the fund is distributed by an independent intermediary without a prior distribution agreement with the concerned management company);

- Providing a short description of the marketing strategy would also require frequent updates of the notification documentation. Marketing strategies evolve and are regularly updated by management companies depending on a number of parameters such as market conditions, strategy of the distributor, etc.;
- Since UCITS, and AIFs to a lesser extent, are open-ended funds, the requirement to indicate an expected duration or the minimum and maximum capital raising target upon notification appears quite odd.

III. ESMA should in addition strive to harmonise the means of submission of these passporting notifications. While some national competent authorities may have an electronic portal to enter and upload passporting notifications, other authorities require management companies to provide the notification letters under a specific format with attachments in zip files. An EU-wide platform that would allow management companies to direct their passporting notifications to the relevant national competent authorities would be helpful in this regard and may simplify the notification process, especially for funds that are marketed in several jurisdictions.

Finally, the technical standards being considered should not apply retroactively to existing passporting notifications. Once these technical standards enter into force, management companies should not be required to re-submit their existing passporting notifications under the new format. This should nevertheless occur when there are material changes to the underlying distribution arrangements, where the concerned management companies should use the new templates to update their existing notification documentation. This approach would ensure a proportional and incremental implementation of the technical standards currently under consideration.



## ABOUT EFAMA

EFAMA, the voice of the European investment management industry, represents 27 member associations, 58 corporate members and 26 associate members. At end Q4 2021, total net assets of European investment funds reached EUR 21.9 trillion. These assets were managed by more than 35,000 UCITS (Undertakings for Collective Investments in Transferable Securities) and more than 30,000 AIFs (Alternative Investment Funds). At the end of Q3 2021, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 31.3 trillion.

More information is available at [www.efama.org](http://www.efama.org)

### Contact

**Elona Morina**

Regulatory Policy Advisor

[Elona.morina@efama.org](mailto:Elona.morina@efama.org) | +32 2 548 26 53