efama

European Fund and Asset Management Association

EFAMA's submission to the European Commission's Green Paper "Building a Capital Markets Union"

Table of Contents

GENERAL REMARKS..3

Question 1: Beyond the five priority areas identified for short term action, what other areas should be prioritized?..7

Question 2: What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base? 10

Question 3: What support can be given to ELTIFs to increase their take up?...10

Question 5: What further measures could help to increase access to funding and channelling of funds to those who need them?..16

Question 6: Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?...16

Question 7: Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?...19

Question 9: Are there barriers to the development of appropriately regulated crowdfunding or peer-to-peer platforms including on a cross border basis? If so, how should they be addressed?........................21

Question 10: What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high-growth start-ups? 21

Question 11: What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale? 22

Question 12: Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II? 24

Question 13: Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision? 25

Question 14: Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund? 26

Question 16: Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance? 26

Question 17: How can cross border retail participation in UCITS be increased? 27

Question 18: How can the ESAs further contribute to ensuring consumer and investor protection? 29

Question 19: What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets? 30

Question 21: Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest? 34

Question 22: What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries? 37

Question 23: Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity? 38

Question 24: In your view, are there areas where the single rule book remains insufficiently developed? 38

Question 25: Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union? 39

Question 26: Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU? 40

Question 27: What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border? 41

Question 28: What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them? 41

Question 30: What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments? 43

GENERAL REMARKS

EFAMA welcomes the laudable aim of building a Capital Markets Union, and is glad to contribute to the discussion. The asset management industry would also like to express its appreciation for the open and collaborative way in which the Commission is consulting stakeholders.

EFAMA is very supportive of a more integrated capital markets union. Europe needs to encourage the financing of its economy via the capital markets, by increasing their size, putting in place the necessary incentives and making them open to the widest possible range of investors. Market-based financing is indeed one of the key solutions that will enable Europe to get back on track on the road towards growth recovery.

Putting investors interests first

To achieve this ambitious objective, a priority for EU policymakers and industry alike is to rebuild confidence in financial markets by putting investors' interests at the heart of the project for a Capital Market Union. Without investors' confidence, any project aiming to channel savings into investments will not take off. Financial literacy and investor education are also key elements for the EU to promote. Better informed investors that can best assess the investment alternatives are essential for channeling more money in to the capital markets.

EFAMA fully endorses the Commission's stated objective to carry on cumulative impact analysis. We are the first to acknowledge that this is a major task requiring considerable efforts and resources. But without this, the Commission is bound to fall short of its objective of 'better regulation' with a clear risk of proposing regulatory pieces either not fully consistent with each other or which overlap existing requirements, or worst of all, which inadvertently create an unlevel playing field among financial sectors.

A challenge and an opportunity

Europe is facing a big challenge, which is also a unique opportunity certainly for European asset managers. We very much appreciate the fact that EU policymakers are embracing the opportunities that the asset management industry offers in terms of supporting sustainable economic growth and long-term financing. As the EU looks for alternative financing sources and ageing societies look for ways to fund retirement, the asset management industry has an even greater role to play in developing non-bank financing for Europe's businesses. We welcome the potential seen in the asset management industry as part of the solution to the financing gap.

Asset managers are playing a crucial role in the financing of the economy

The EFAMA 2015 report on the Asset Management industry in Europe[1] illustrates how the asset management industry plays a vital role in the general financing of the economy and contributes to an efficient and well-functioning Capital Markets Union. By channeling the savings of millions of firms and

[1] EFAMA Eighth Annual Review of the Asset Management industry in Europe, April 2015

households to companies and governments into concrete retirement plans and projects, the asset management industry finances a sizeable share of economic activity.

Asset managers operate on an agency-based model and have a fiduciary duty to act in the best interest of their investors. They act as a link between savers and the financing needs of the economy. Asset managers channel savings of firms and households towards investment in companies, infrastructure projects and public needs. They bring together supply (capital from investors) and demand for that capital from companies and governments.

Fostering the development of a Single Market for European Personal Pensions

We also wish to underline the important link between promoting long-term savings and the development of a capital markets union. EFAMA is a firm believer that focus on long-term savings need to be actively promoted. We need to encourage European households and savers to save more for retirement.

EFAMA recently presented in its new report[2] recommendations for the creation of a single market for European Personal Pensions. EFAMA is convinced that developing private pensions in Europe is crucial. The creation of a European personal pension product could potentially increase the volume of retirement savings while channelling those savings to long-term investments across the EU. From this perspective, the creation of a single market for personal pensions should be an integral part of the European Commission's goal to build a Capital Markets Union.

Getting the details right

There needs to be clarity as to the legal status of Level 1 and Level 2 texts. We understand the latter being intended to provide technical details to what exists in the Level 1 text, but not introduce substantial new policy-driven elements. Ensuring appropriate calibrations in Level 2, following the letter and spirit of Level 1, must be a priority. Appropriate and well calibrated level 2 measures in both MIFID II and Solvency II can encourage and promote, as they should, long-term investment. This is urgent.

- MiFID II will fundamentally change the system through which individuals access savings products. Appropriate and well calibrated level 2 measures can encourage more savings to be put into constructive use via investment products, and encourage companies seeking to raise more capital via public markets.
- Long-term investors should not be prevented by regulation from investing in long-term projects. EFAMA supports recalibrating the Solvency II requirements as a necessary step to ensure these incentivise long term investments by long term institutional investors.

Turning ELTIFs into a market success

European asset managers supported and welcomed this regulatory initiative. The ELTIFs Regulation is a concrete step forward and has the potential to unlock important capital and to encourage a shift towards

[2] EFAMA report entitled "Towards a Single Market for European Personal Pensions: building blocks for an EU legislation", March 2015

investments in long-term projects. However, if ELTIFs are to become a market success, it will be necessary to ensure that the interests and needs of different types of investors are met and that the right incentives are in place. Moreover, channeling investments towards infrastructure projects and SMEs will also require removing existing EU and national regulatory and fiscal barriers when it comes to investing in more long-term and illiquid assets.

Ensuring a true level playing field

EFAMA believes that a level playing field and consistent regulation across sectors should be prioritised. It is crucial to ensure a regulatory level playing field in the distribution of similar retail investment products. This is certainly a point asset managers have stressed over the years. The PRIIPs regulation defines what those similar products are. When products are similar, as are fund products and insurance-based investment products, they should be subject to the same rules. Put differently, what is good for consumers and users of one financial sector is good for those of other sectors as well. Regardless of who provides the investment-type product, retail investors must receive the same information. We urge EU policymakers to ensure consistent regimes and that the two directives governing similar investment products, i.e. MiFID II and the Insurance Mediation Directive (IMD II) to provide retail investors with the same high level of protection.

Bringing down remaining barriers to the cross-border distribution of investment funds

EFAMA warmly welcomes the recognition in the Green Paper of the pivotal role that investment funds play in channelling investors' money into the economy and supports the Commission's objective to lower the regulatory costs of setting up funds and to facilitate the cross-border distribution of these products.

Alternative Investment Funds (AIFs) are an important investment pillar for European citizens.

Yet, they are being seriously threatened by EU legislation. They suffer from the stigmata that they are hedge funds but in fact the vast majority of AIFs are not. It is key for EU legislation to appropriately acknowledge the different types of funds which qualify as AIFs, some hedge funds, but the vast majority of them AIFs with a conservative risk-return-profile comparable to UCITS.

Avoiding new obstacles to the Capital Markets Union: tax barriers

Financial Transaction Tax**:** EFAMA reminds EU policymakers that one possible hurdle for the Capital Markets Union is the FTT. This proposal risks causing distortions to the creation of an EU single market as it would relocate financial activities outside of the 11 participating Member States or, if applied in the 28 Member States, outside the EU. FTT would increase the costs borne by investment funds and will render EU investment funds more expensive compared to direct investment because the FTT applies additionally on investment funds' units. This would jeopardise long-term savings, growth and investment as it would channel investments to products not subject to FTT.

Withholding taxes – Access to double tax treaties: The withholding tax treatment of pooled investment funds is artificially favouring domestic funds serving a single national investor base over cross-border and inhibiting the free pooling of capital in Europe. In order to achieve the aims of CMU, it is vital that EU Member States arrive at a settlement on the correct treaty entitlement for funds, both UCITS and

alternative in order to ensure that capital can be effectively and efficiently deployed through pooled arrangements that work on a cross border basis in the EU.

A renewed effort is to be made to discourage discriminatory withholding tax within the European Union by Member States. The EU should also try to take a harmonised position in negotiating revisions to double tax treaties with the aim of protecting pooled fund investing, UCITS in particular, on a more standardised basis. The EU should lend support to the longstanding OECD Tax Relief And Compliance Enhancement ("TRACE") initiative.

Tax treatment of private assets: Reduced reliance on bank finance requires a deeper pool of private asset finance as well as public markets. The OECD BEPS initiative inadvertently makes that packaging of private assets in a tax neutral way much more difficult and no OECD level solution exists for private asset funds. Providing a standardised "good fund" safe harbour regime at EU level would be both highly beneficial and complementary to the ELTIF initiative.

Concluding remark

Asset managers have an important role to play in the changing landscape of a more capital market based economy and we stand ready to continue enabling the understanding of the particular business model of its industry and to constructively engage with EU policymakers in the road towards financing growth in Europe.

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Question 1: Beyond the five priority areas identified for short term action, what other areas should be prioritized?

- EFAMA strongly believes that the focus now and in years to come should be on households' long-term savings. EFAMA is a firm believer that long-term savings need to be further encouraged and actively promoted. Developing private pensions in Europe is crucial. As mentioned in the Green Paper, asset managers and pension funds are major investors that can play a key role in providing funding both for SMEs and also for long-term investments, such as infrastructures. At a time when, in several European countries, governments are struggling to maintain the sustainability of their Public Pension Systems, it is important that individuals and employers are given appropriate incentives to contribute to private pension systems that provide additional sources of income to the workers when they retire. EFAMA believes the creation of a European personal pension product could potentially increase the volume of retirement savings while channeling those savings to long-term investments across the EU. From this perspective, the creation of a single market for personal pensions should be seen as an integral part of the European Commission's goal to build a Capital Markets Union.

- Financial literacy and investor education is also a key element for EU and national public authorities to promote. Better informed investors understand the benefits of diversification and risk taking to achieve higher returns and can therefore best assess the investment alternatives. We understand better informed investors are essential to channeling more money in to the capital markets.

- Another key priority is to rebuild confidence in financial markets. Without investors' confidence, any project aiming at channelling savings into investments will not take off. Confidence can be built for instance by maintaining a high level of responsibility in areas such as corporate governance and sustainable investments.

- Ensuring a level playing field and consistent regulation across sectors must also be prioritised. It is crucial as ever to avoid overlaps, and above all, to ensure a regulatory level playing field in the distribution of investment products. Equally, unnecessary regulatory and administrative burdens should be removed, and streamlining of data reporting requirements ensured.

- A pressing area is finalising ongoing level 2 measures, particularly those on MIFID II. EFAMA has supported the MiFID II regime and its intended objectives. Ensuring MiFID II appropriate Level 2 calibrations must be a priority. Appropriate and well calibrated level 2 measures can encourage companies seeking to raise more capital via public markets. Equally, sensitive calibrations in MiFID II can avoid further reduction of liquidity in corporate bond markets.

    - Public markets (both debt and equity) represent the greatest funding opportunity for European companies. MiFID II will lead to significant changes to public markets and their functioning will be dependent on calibrations in Level 2, particularly as regards defining liquidity in debt markets.

Furthermore, MiFID II will fundamentally change the system through which individuals access savings products: it should be implemented in a way that encourages more savings to be put into constructive use via investment products.

- EFAMA believes that another area to be prioritised lies in the context of Solvency II, which as currently drafted is a considerable barrier to investing in infrastructure projects.

    - Long-term investors such as insurance companies and pension funds should not be prevented by regulation from investing in long-term projects such as infrastructure. EFAMA supports reviewing the capital requirements for insurance companies when investing in infrastructure and SMEs assets by taking more into account the benefits of diversification and reduced volatility over the lifetime of these assets. Recalibrating the Solvency II requirements is necessary to ensure these incentivise long term investments by long term institutional investors.
    - These investors should also be encouraged to invest in non-listed equity and debt instruments. This could be done by creating a number of standards required for special treatment of such investments. For this to be possible, there is the need to adapt the calibration rules for the capital requirements in Solvency II and CRD.
    - EFAMA supports work currently underway within EIOPA to define infrastructure as an asset class, and subsequently recalibrate Solvency II risk weights on the basis of the new definition.

- A key priority for asset managers concerns Alternative Investment Funds (AIFs). AIFs are an important investment pillar for European citizens. Yet, they are being seriously threatened by EU legislation. They suffer from the stigmata that they are hedge funds but in fact the vast majority of AIFs are not. It is key for EU legislation to appropriately acknowledge the different types of funds which qualify as AIFs, some hedge funds, but the vast majority of them AIFs with a conservative risk-return-profile comparable to UCITS. A number of ongoing legislative discussions fail to do this:

    - In MiFID II the Commission incorrectly interprets the Level-1 Directive as deeming all AIFs (i.e. non-UCITS) as complex. This strongly contrasts with many nationally regulated non-UCITS retail schemes[3] will be deemed complex products from January 2017 meaning that any non-advised sales would require an appropriateness test. There has been no market failure or investor protection issue arising in Member States under non-UCITS retail schemes and making them complex products undermines national regulation. This needs to be remedied as quickly as possible for the CMU not to be undermined by creating a system that impairs retail investment.

[3] The following are (non-exhaustive) examples of nationally regulated non-UCITS retail schemes: Belgium (fonds d'épargne-pension/pensioenspaarfondsen); France ("Fonds d'investissement à vocation générale"); Germany (Gemischte Investmentvermögen, sonstige Investmentvermögen and offene Immobilien-Sondervermögen); Netherlands; Spain (Non UCITS fixed income funds, Non UCITS Fixed income defined return funds and Non UCITs global investment policy SICAVs); Sweden (Specialfond) & United Kingdom (Non-UCITS Retail Schemes)

- The proposal on Banking Structural Reform will also severely impact asset management companies that are EU bank subsidiaries as well as many alternative investment funds. In this proposal, all AIFs are inappropriately and inaccurately being considered as hedge funds and therefore barred access to those nationally regulated AIFs.
- More recently, the EBA Guidelines on limits on exposures to shadow banking entities currently under consultation suggest treating all AIFs as shadow banks and in consequence limit the credit institutions' exposure to AIFs[4]. This approach would have detrimental effects on the provision of capital-based financing in the EU.

- The corporate bond market is also an area where early action might be necessary due to market conditions. This has important potential funding sources for EU companies. However, we currently see structural challenges facing the secondary market that are impairing liquidity. The role of active market makers remains key to the liquidity of this market. However, greater standardisation of information related to issuance and voluntary standardisation of larger issues could help improve liquidity.

  - SMEs, in particular, need support to access alternative sources of funding through capital markets. For this to be possible, there should be more flexible rules in the listing process and simplified procedures and information disclosure for SMEs by amending the Prospectus Directive. Nonetheless, we would suggest the EC find a balance to allow for cost reductions associated with the implementation of the prospectus while maintaining a sufficient level of useful information for investors to make informed decisions.

- EFAMA sees opportunities in developing a European market for investments in bank loans by converting bank loan assets into security-like instruments. This would also free up bank balance sheets in order to increase lending. The main structural impediment in Europe for a market for bank whole loans developing further is the often long settlement times for bank loans, which makes them ineligible to be held by many UCITS funds. Agreement by regulators on standard settlement time for bank loans could enable a market growth, thereby enhancing the role of securitisation in relieving bank balance sheets.

- EFAMA would finally suggest reviewing the categorisation of particular investors such as mid-tier pension schemes, insurance companies, churches, charities and foundations that currently fall in the general category of retail investors. A big majority of them possess significantly larger resources and expertise and a much better understanding of the complexity and risks of an investment compared to the retail investors. Applying the MiFID II criteria in relation to their request to be treated as professional investors can generate too high a legal hurdle and investment costs that would make it

[4] Cf. Consultation Paper relating to Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013 (EBA/CP/2015/06).

difficult for them to meet the criteria. The calibration of these assessment criteria will allow their bigger involvement in particular in certain categories of AIFs, ELTIFs, EUSEFs and EUVECAs, that are in line with their investment strategies.

Question 2: What further steps around the availability and standardisation of SME credit information could support a deeper market in SME and start-up finance and a wider investor base?

- The lack of harmonised credit information about SMEs is a barrier to investment and can inhibit cross-border lenders from providing capital to SMEs. EFAMA believes it to be important to address this lack by centralising information, accessible cross-border.

- Standardisation of the information that needs to be disclosed to the regulators and to investors is essential in order to reduce the cost of providing such information. The level and complexity of the information to be provided to regulators and investors should also be reduced to its minimum. This would equally require addressing concerns regarding finding the right balance between having access to SME information and the need to ensure confidentiality as appropriate.

- A measure EFAMA would suggest is reducing the context costs associated with the issuance of debt instruments by SMEs. This reduction should not prevent, however, SMEs from disclosing the relevant information which enables investors to make an informed decision regarding that investment.

- To overcome existing restrictions on the investment on unrated and/or non-listed instruments (e.g. UCITS Funds), mechanisms for the listing of SMEs debt and equity instruments should be implemented.

Question 3: What support can be given to ELTIFs to increase their take up?

EFAMA has welcomed the new regulatory framework for European Long Term Investment Funds. We consider this to be a concrete step forward in the debate on boosting long-term investment in the EU and towards meeting Europe's pressing needs for financing growth and long-term development.

EFAMA also welcomes the fact that ELTIFs are one of the key priorities in the context of the capital markets union and appreciates the Commission's intention to seek views from the market to ensure it will be able to attract the interests of both asset managers and investors.

For the European asset management industry, the new ELTIFs framework has the potential to unlock important capital and to encourage a shift towards investments in longer term projects. Asset managers have an important role to play in the changing landscape of a more capital market based economy and we stand ready to continue our engagement with EU policy-makers towards the important objective of financing growth in Europe.

At the same time, EFAMA has been vocal on the fact that the ELTIFs Regulation should avoid a one-size-fits all approach that would fail to address the different needs of the wide range of investors it seeks to target.

Given the different needs of each investor category, as well as the different strategy and projects each ELTIF will carry, we would like to stress that the new Regulation needs to ensure that the interests and needs of different types of investors are met and that the right incentives are in place for ELTIFs to become a market success. Moreover, channeling investments towards infrastructure projects and SMEs will also require removing existing EU and national regulatory and fiscal barriers when it comes to investing in more long-term and illiquid assets.

Flexibility and adaptability not only in the provisions of the ELTIFs Regulation, but also in the general regulatory framework linked to long term investments, will define the successful take up of the ELTIFs.

Remarks as to the provisions of the ELTIFs Regulation

The main added value of ELTIFs as a new type of investment funds focused on long term investment strategy and assets is based on:

- The EU passport the Regulation provides to the ELTIFs label for cross border marketing, contrary to the different existing types of AIFs with a long term investment strategy foreseen by national legislations;
- The possibility of mid-size investors such as mid-tier pension funds and insurance companies as well as local and regional entities to access the market and invest in infrastructure and SMEs projects. Such projects are currently mainly accessible by large-scale institutional investors who have the resources and expertise to invest directly in them. Given the extent of investment analysis and research necessary from a product development point of view, in particular in the case of infrastructure projects, the possibility to invest in such projects via an a EIB financed projects or the EFSI pipeline projects will enable their financing by a larger group of investors and offer mid-scale investors the possibility to diversify their portfolio beyond cash and high liquid securities, also at a cross border level.
- The possibility to open to retail investors markets;
- The potential to boost the attractiveness of EU funds for international investors by enabling access in SMEs portfolios and infrastructure projects.

As mentioned in our general remarks, if ELTIFs are to materialise, their added value and increase their market potential, the Regulation has to enable a structure that is efficient, well-balanced and sufficiently attractive to different long-term investors.

In that respect, the elements EFAMA considers to be critical for the ability of ELTIFs Regulation to attract the investors' interest are:

- The definition of semi-professional investors as a separate investors' category from the wide category of retail investors

  The added value of ELTIFs lies also in the access they provide to mid-sized investors to infrastructure and SMEs projects, a market that due to its complexity and important research and investment analysis is up until now more accessible mostly to large scale professional investors. We agree that such investors as small and medium pension schemes can become a key market for ELTIFs as they have long term liabilities and seek to diversify their risk exposures.

  At the same time, this category of investors, although they possess significant larger resources and more enhanced expertise and understanding of the complexity and risks of an investment compared to the retail investors, are treated in principle as retail investors, which means that they can only participate in ELTIFs open to retail investors. It should be also noted that ELTIFs are likely to become complex products under MiFID II if no liquid secondary market will be established. There could be important investor protection concerns from regulators about complex products, which would reduce the number of ELTIFs open to retail investors and therefore open to that category of investors as well.

  When it comes to investors such as mid-tier pension schemes, churches, charities and foundations it is also possible for them to ask to be treated as professional investors and thus participate in a wider range of ELTIFs. However, the ELTIFs Regulation foresees that this can be done upon their request provided that they comply with the respective requirements of Section II of Annex II of MiFID[5]. This can generate too high a legal hurdle and significant costs for them as the associated requirements (such as a minimum portfolio of more than € 500,000 and especially the requirement of trades with an average frequency of 10 per quarter over the previous four quarters) will usually not be easy for them to meet.

  EFAMA considers that apart from the assets of a particular investor, the time in the future he will be needing the invested money is also a crucial factor to be taken into consideration as to the eligibility of an investor. In particular investors such as mid-tier pension schemes are the ones that have the long-term liabilities that can match the long term strategy of ELTIFs.

  For that reason, a review of the criteria set for them to be treated as professional investors is necessary to make ELTIFs accessible for an important category of mid-scale investors.

  EFAMA encourages the Commission to determine a different and more customised set of criteria which is closer to the criteria foreseen in the EuSEF/EuVECA Regulations (the category of "semi-professional investors[6]) and apply this criteria also in the case of ELTIFs.

[5] Recital 35a of the draft ELTIFs Regulation (the final text had not been published at the time of this EFAMA submission)

[6] Regulation 346/2013 of the European Parliament and the Council, Article 6 para (1)on European social entrepreneurship funds and Regulation 345/2013 of the European Parliament and the Council, Article 6 para (1) on European venture capital funds

- ELTIFs ' as an attractive product for retail investors

  The EU institutions agreed in the trilogue to add specific requirements for marketing to retail investors. While we understand the general concerns and agree with many of the safeguards to be beneficial to the investor, we doubt that the 10 percent threshold for the aggregated portfolio of retail investors with a portfolio not exceeding Euro 500,000 serves a beneficial purpose for the investor. Thresholds might also give an incentive to investors to reach these and consequently provide the ELTIF manager with incomplete information. The rules in addition bear liability risks for the manager despite the legislator's intention in the trilogue to reduce such risks, since they will also be subject to interpretation under national civil law. These uncertainties may discourage management companies from setting up ELTIFs.

- Loans as part of the ELTIFs' eligible investment assets

  Article 9(c) of the ELTIFs Regulation foresees that loans are eligible investment assets if granted by the ELTIF to a qualifying portfolio undertaking and if they have a maturity no longer than the life of the ELTIF.

  This provision clearly permits the origination or the granting of loans to eligible undertakings, but remains less clear on the possibility to invest in loans, even if not granted by the ELTIFs, e.g. other loans of the qualifying portfolio undertakings an ELTIF invests in. Granting the possibility to invest in / buy loans on the secondary market in relation to a portfolio ELTIFs are invested in, is an important investment option for the ELTIF's manager. He will need to have all the available tools as to how to reinforce the ELTIFs' investment on an eligible undertaking and the possibility to buy at a certain time loans of those undertakings is one amongst them. We therefore consider that the buying of a loan of a qualifying undertaking could be considered as a quasi-equity and/or debt instrument as foreseen in articles 9(a) and (b) and we would welcome any additional clarification to that direction.

- A flexible regime as to the redemption rights policy and the lifecycle of the ELTIFs

  EFAMA supports the flexibility foreseen as to the redemption policy of ELTIFs via the discretion to the ELTIF's manager to create a redemption regime that better fits its investment strategy and underlying assets as long as it is fully disclosed to the investors in the ELTIF's rules.

  At the same time, we also believe that the same flexibility and discretion should apply to the choice of the lifetime of each ELTIF. In practical terms this means that for each ELTIF the need to have a defined or no defined lifetime is to be assessed individually and by the ELTIFs manager. ELTIFs managers should not be forced to sell assets in unfavorable market conditions where potential contract partners would be aware of the situation and could use this for their negotiations.

  Given that the final text foresees ELTIFs as funds with limited only lifetime, we would urge ESMA to adopt an approach in the adoption of level 2 measures as to the definition of "sufficient in length lifetime" that would allow ELTIFs managers to take the decisions as to the lifetime and its extension that meet the investment strategy and the needs of investors of ELTIFs.

- Eligibility of ELTIFs' units/shares for UCITS
  In order to broaden retail investors' access to ELTIFs, the Regulation foresees that a UCITS is able to invest in units or shares issued by an ELTIF to the extent that the ELTIF's units or shares are eligible under Directive 2009/65/EC[7]. UCITS Directive identifies in article 50(1)(a)-(d) "transferable securities" as UCITS eligible investments. Therefore units or shares of ELTIFs would not be eligible for UCITS investments, unless they are listed and traded on a secondary markets. This leaves ELTIFs units and shares as eligible for UCITS investments only when it comes to the 10% threshold of the assets of the UCITS, as prescribed in article 50(1)(e)(iv) and 50(2) of the UCITS directive.

  It is therefore important that the Commission clarifies whether the intention of the reference to UCITS in Recital 33a of the ELTIFs Regulation refers only to the 10% ratio of UCITS assets.

- Additional flexibility for ELTIFs open only to professional investors
  EFAMA welcomes the flexibility given to the asset manager to set up ELTIFs open only to professional investors or both to professional and retail investors. In the second case EFAMA understands and has stated its support for additional safeguards for marketing such long term and illiquid in nature funds to retail investors, aligning the ELTIFs regulation provisions with those of MiFID II and some of the UCITS V (such as the internal assessment process, the requirement for prior advice, provisions on the depositary etc.).

  At the same time, for ELTIFs not open to retail investors, but only to professional investors (and those that are treated as such upon request), additional flexibility vis a vis the portfolio diversification rules and the marketing and transparency requirements has a key role to play for ELTIFs becoming a sustainable option for that particular category of investors. Professional investors have adequate expertise to understand deviation from portfolio composition and diversification provisions and do not need the same type of safeguards retail investors do. It should also be kept in mind that professional investors have already a range of instruments to meet their longer-horizon investment objectives which include far less restrictions than ELTIFs. Hence, in order to attract professional investors' capital, ELTIFs should feature distinctive advantages over other available instruments.

  EFAMA would therefore like to stress the need for additional discretion for the manager of an ELTIF not open to retail investors in particular concerning the sub-rules of the portfolio composition (article 12 para 2-5) in order to increase the competitiveness of this new vehicle amongst the range of options for professional investors.

- Facilities available to retail investors
  Article 23 of the ELTIFs Regulation foresees the need to establish facilities for retail investors available for making subscriptions, making payments to unit or shareholders, repurchasing or redeeming units

[7] Recital 33a of the draft ELTIFs Regulation (the final text had not been published at the time of this EFAMA submission).

or shares and making available the information which the ELTIF and the manager of the ELTIF are required to provide. EFAMA would like to stress that there is no provision as to the access of the retail investor to that information via internet platforms. The digitalisation of those facilities is not only a more appropriate option for retail investors, but would also bring down distribution costs to the benefit of the investors.

Remarks as to the general regulatory framework linked to long term investments

Apart from the right structure of the ELTIFs that is to be set by the ELTIFs Regulation, there are a number of other important factors that are linked to the general regulatory environment and which can also play a key role for the market success of ELTIFs. EFAMA would like to stress in particular the following ones:

- Calibration of capital requirements for insurance companies and pension funds for investments in ELTIFs

  EFAMA shares the view of the Commission, as described in the Green Paper, that insurance companies and pension funds represent key potential investors into ELTIFs, for their need of steady and long income streams, with naturally long term holdings. EFAMA notes, however, that the existence of certain regulatory constraints can significantly restrain their interest in ELTIFs as a vehicle for long-term investments through which channelling their holdings. In this sense, the provisions on capital requirements as set forth in the Directive on the taking-up and pursuit of the business of Insurance and Reinsurance (Directive 2009/138/EC) (Solvency II) and the Commission Delegated Regulation (regulation 2015/35/UE) represent a concrete hindrance for the investments of insurance companies in ELTIFs. The provision of similar requirements in the revision of the Directive on the activities and supervision of institutions for occupational retirement provisions (IORPs II's proposal) would also discourage pension funds from directing their capital into ELTIFs.

  While appreciating the Commission's efforts to ensure that the standard formula to calculate insurers' capital requirements would recognise a favorable treatment for long term investments (Recital 150 of Commission Delegated Regulation 2015/35/UE) , EFAMA encourages the Commission to take concrete actions, in order to make the necessary adjustments to the relevant provisions of the regulation in the view to incentivise concrete access for investments into ELTIFs by those institutional investors.

  In this regard, EFAMA welcomes EIOPA's assessment on the treatment of equity exposure to close-ended unleveraged funds for insurers (EIOPA/13/513) and also welcomes further assessment undertaken by EIOPA on the treatment of infrastructure investments under the Solvency II standard capital requirements formula.

- Fiscal Incentives

  EFAMA would welcome the development at national level of fiscal incentives related to long term investments through ELTIFs. One of them could be by extending to ELTIFs the most favourable tax treatment of funds at national level (for instance this is the case in several jurisdiction of the tax

treatment of UCITS). This will significantly help shift investments to new diversified structures and meeting the ELTIFs policy goal on long-term investments.

Moreover removal of any additional barriers and restrictions deriving from national tax regulation can also incentivise the take up of ELTIFs, in particular when it comes to burdensome national tax reporting requirements.

Question 5: What further measures could help to increase access to funding and channelling of funds to those who need them?

Please refer to our response to Question 1.

Question 6: Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

EFAMA fully supports the European Commission's initiative promoting the market of bonds, especially the corporate bond market which is Europe's most used source of capital for companies. Considering its crucial role in the EU economy, a stable, well-functioning bond market is a critical part of financial market infrastructure, providing capital for issuers and investment opportunities for savers and investors

1. Liquidity in bonds markets is welcome

EFAMA has on various occasions expressed its view that, for the sake of ultimate transparency towards end-investors, the regime of transparency and liquidity drawn in MiFID II will largely dry-out the liquidity of the bond market. Liquidity is a key feature for asset managers, across all categories of assets but even more for bonds[8] globally.

It is a well-known fact, recognised by regulators[9], that the liquidity regime for bonds is totally different from the liquidity regime for equities.

In the bonds market, only larger government bonds and a few benchmark bonds enjoy robust liquidity with large daily exchanges.

Other types of bonds, such as corporate bonds are usually reasonably liquid (i) at the time of their issuance and in the following weeks (up to three months); (ii) when there is a new issue by the same issuer and (iii) in the year before the maturity of the bond.

[8] See our reply to question n° 57 to the ESMA consultation on MiFID II/MiFIR dated 19 December 2014.
[9] See e.g. Verena Ross's keynote speech on MiFID II to ABA/Law Society Conference in London

Corporate bonds are very often bought and held until their maturity. There are not many issues where buyers and sellers are in sufficient numbers to build an order book. Thus liquidity is currently provided by intermediaries (the market makers) for trades which are of a larger size.

The currently discussed measures regarding pre- and post-trade transparency (MiFIR) increase risks of lower liquidity in the mentioned markets, a move which is at odds with the CMU:

- Market making activities by banks are already becoming unattractive due to corresponding capital requirements and additional burdens relating to LCR, depriving markets of liquidity;
- The regulatory pressure put on the market makers through MiFID II and the Banking Structural reforms will largely diminish the liquidity of the corporate bond market through inappropriate disclosure requirements (at least until a consolidated tape including bonds has not entered into force) and excessive capital requirements.

There are a number of initiatives that could be taken to improve the liquidity in bonds' markets:

- Further development of all-to-all platforms that allows e.g. buy-side firms to trade with other buy-side or sell-side firms.
- New trading protocols, such as e-trading protocols to complement RFQs (request for quote) and CLOBs (central limit order book).

2. Limited standardisation in the bonds market

Overall, we support the European Commission's consideration of liquidity and its initiative to facilitate access to capital markets, especially as we have already observed fading liquidity due to new solvency regulations in the banking sector, intensified by the repurchase programme of the ECB for certain asset classes.

As preliminary remarks, we would like to insist on the fact that Corporate Treasury departments and Corporate Finance operations are staffed by financially sophisticated individuals who are fully cognisant of the impacts, costs and benefits of different issuance structures. It is not clear that current market practice does not represent an efficient equilibrium between the demands of the two parties. We also want to insist on the fact that the liquidity in the non-equities secondary market is principally driven by the turnover of a security, the issue size, tailor made issues for issuer and/or investors and broker/dealers and other market participants being able to hold large positions in their books.

Regarding the facilitation of access to capital markets through standardisation, we believe the possible way forward is to provide better and more easily understandable information to every type of investor. Consequently, we could agree with the EU Commission that some degree of standardization could be a positive way to improve participation in capital markets, especially for the corporate bond market.

We would then welcome improved levels of disclosure regarding proposed new issues. Investors need to have documentation that should be well-written and accurate, in order to ensure that they can adequately understand and price the risk of their possible investments. Additionally, a standardisation limited to key factors to disclose could contribute in (i) lowering issuance costs for corporate and lowering transaction costs for investors and (ii) providing greater transparency and better access to the corporate bond markets for retail investors.

We also appreciate that standardisation will be more readily adopted by larger issuers with more stable funding needs.

In our view, a complete standardisation of new issuance terms, especially the smallest ones, is not a desirable outcome. We believe that the Issuers should be able to choose maturity and seniority according to their precise funding needs and not be subject to a pre-set list of terms and conditions which could increase their cost of borrowing and result in concentration risk but also taking into account the size of the markets from which they seek financing to improve liquidity of their issues in those markets.

A limited voluntary standardization of the largest issuances could help to reduce the overall number of new issues, thereby facilitating and concentrating liquidity. This will also allow for greater accessibility through the rate cycle increasing the reliability of market access for issuers.

A contrario, such standardisation should not be made mandatory as it would otherwise reduce the flexibility of bond issuers to develop fixed income products which serve the investor needs and the real economy.

We also believe that some flexibility must remain in the bond's issuance process and values as those bonds have to meet the business needs of the issuers, especially for small and medium corporate bond issuers (which have more specific needs).

Having said this, we believe that some elements could be subject to standardisation:

- The most important aspect of standardisation of corporate bonds issuance is the standardisation of data provided to investors. Currently, investors may receive insufficient – or late – information, which does not help with their current due diligence process and can impede investments
- Bonds could be registered at the relevant National Competent Authority (NCA) prior to their issuances on the markets.
- Standardised bonds could also be listed on an official trading venue which would help reaching a higher level of electronic trading (which in turn would improve price transparency).
- Lastly, a limited voluntary standardisation of the largest issuance could help to reduce the overall number of new issues, thereby facilitating and concentrating liquidity. This will also allow for greater accessibility through the rate cycle increasing the reliability of market access for issuers.

Even if the creation of centralised venues and development of e-trading will help to improve liquidity, the impact of new issuance practices will need to be more fully understood and addressed.

The non-equity instruments share a different lifecycle than equities:

- Unlike equities, bonds exhibit a decreasing liquidity profile as time elapses from their issue date: frequent issues ensure that there is always a relatively recent liquid 'new issue'. It is not clear that replacing these 'new issues' with multiple taps would provide the same liquidity profile – so there is a risk that standardisation could actually reduce liquidity.
- At best, whilst standardisation may improve some liquidity at the margin, this is not likely to have a significant impact on overall liquidity. Mandatory standardisation would have negative implications for issuers without providing material benefits for investors.

We would also like to insist on the fact that some of the Solvency II provisions which are currently being developed may also contribute to decreased liquidity in corporate bond markets. Since trading may only take place for a risk reduction-related purpose, this restriction may (a) reduce market liquidity and/or (b) concentrate trading by insurers which such a trade can be justified or an asset becomes ineligible.

3. Suggestions

As a first step, the proposals currently discussed under MiFID II/MiFIR for determining liquidity thresholds for non-equity instruments should be reconsidered as they risk reducing liquidity in these markets.

The second suggestion is to improve the investment chain at every level: intermediaries, infrastructures and the broader legal framework in order to reach a better level of liquidity and an increased level of participation in capital markets also from retail investors.

- EFAMA supports the implementation of the above mentioned measures by a market driven action plan which is encouraged and monitored by the regulatory community instead of regulatory requirements in addition to already existing regulations such as MiFID II/MiFIR.

Question 7: Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

EFAMA is of the view that the EU has already started to regulate Environment, Social and Governance 'ESG' investment, particularly by reinforcing transparency[10]. We therefore believe that no legislative

[10] Disclosure on non-financial and diversity Directive (September 2014): annual non-financial statement regarding information relating to human rights, environmental and social matters for public interest entities with over 500 employees; Packaged Retail and Insurance-based Investment Product Directive (PRIIPs) and Key Information Document (KID) (December 2014) and Undertakings for Collective Investment in Transferable Securities IV (UCITS

action by the EU is needed on the development of ESG investment as the impact of these measures now needs to be assessed in due course.
However, given the growing interest of asset managers' clients resulting in the rapid expansion[11] of the Responsible Investing (RI)[12] sector, the asset management industry is broadening its range of options in an area which will move from niche to mainstream rapidly. Asset managers would therefore further welcome the promotion of RI by the European Commission. In concrete terms, the European Commission could play a role in incentivising RI/ESG by:

- Promoting RI/ESG in the European Fund for Strategic Investments; RI/ESG should play a role in the selection of projects;
- Highlighting how some evidence shows the positive influence of RI on investment returns and encouraging scientific research on RI/ESG (risk, performance, reporting), for example through the creation of an ESG research prize and an ESG promotion prize; work could begin with defining IR/ESG;
- Member States could act as role models, i.e. RI/ESG should be taken into account for all investments in the public sector;
- Further promoting reporting from the asset owner13;
- Facilitating the cross-border investment in ESG products;
- Promoting specific RI/ESG markets segments for the stock exchanges.

The European Commission could also support and promote private sector initiatives on corporate social responsibility ('CSR') codes of conducts. EFAMA believes that RI/ESG is not an end in and of itself, it is a means to an end, and a way of promoting CSR. The end goal of CSR policy should be to encourage responsible leadership and behaviour amongst corporations. EFAMA believes the European Commission can play a role in promoting a change of paradigm and culture amongst the business community.

EFAMA is also of the view that issuers' enhanced disclosure of ESG criteria is decisive to enable asset managers increase ESG investment.

EFAMA does not consider that standardisation of RI/ESG investment should be undertaken by the European Commission. A vast array of methods have been developed to implement and execute various RI/ESG methods such as screening, active ownership, integration. Given the evolving nature of the

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IV) Key Investor Information Document (KIID) (July 2011): Transparency requirements and mandatory disclosure document for retail investors; Conflict Minerals (2014): Self-certification as "responsible importer" requiring independent audits and public disclosure; Country-by-country reporting in Capital Requirements Directive 'CRD' IV (June 2013) and Review of the Accounting Directives (2013): country-by-country public reporting obligation for banks and investment firms.

[11] Since 2012, in terms of RI, Assets Under Management increased by 56%, while the number of funds increased by 6%, according to a survey by KPMG 'European Responsible Investing Fund Survey'

[12] In discussing 'Responsible Investing', EFAMA refers to any method of selecting investments in which both financial and non-financial considerations, such as ethical norms are taken into consideration.

[13] The European Commission's legislative proposal for a Directive amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement has taken steps to encourage greater reporting by the asset owner.

industry, which is currently developing new and better methods of achieving its goals, it would be too premature to discuss standardisation of processes, beyond retail investor information on the investment process, which has been standardised in the UCITS-KIID and the PRIIPs-KID.

Question 9: Are there barriers to the development of appropriately regulated crowdfunding or peer-to-peer platforms including on a cross border basis? If so, how should they be addressed?

With regard to barriers to the development of crowdfunding or peer-to-peer platforms, it would seem contradictory for EU legislation to strengthen investor protection measures (eg PRIPS, MIFID II ...) for safer and highly regulated products (in particular UCITS and AIFs) while not developing similar stringent standards for crowdfunding, which is by definition highly risky.

Ensuring investor protection at all levels is fundamental, and the quality of information given to EU citizens must be certified.

Question 10: What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high-growth start-ups?

For infrastructure projects:

- Investors need stable and predictable regulatory environments. This prerequisite becomes even more relevant in the case of illiquid investments, in which the link to a particular jurisdiction is of longer duration.
- Enhance the role of ELTIFs and certain types of AIFs as investment vehicles through which the European Investment Bank and EFSI can channel their support for European infrastructure or SME financing projects and the European Investment project pipeline.
- Clarify the conditions of the first loss guarantees and government support.

For SMEs financing:

- Provision of high quality credit information data shared on equal basis with banks and investment funds.
- Keeping the existing CSA financing of investment research would avoid having the risk of concentrating the investment research on blue chip companies.

Tax incentives

Member States could incentivise institutional investors to raise larger amounts of funds through tax benefits which would stimulate citizens to save into long-term/retirement savings products.

Patient capital from pension savings

Given that pension funds are important institutional investors with a long-term investment horizon, their capacity and motivation to invest in long-term and less liquid assets should be promoted. The revision of the IORP directive should serve this purpose and any other initiative on capital requirements undertaken by EIOPA (e.g. imposing the holistic balance sheet) should take these issues into account.

Currently, there is no EU legislative framework for personal pensions. This means that each Member State is responsible for defining specific rules for their personal pension products. This explains why the personal pensions market is very fragmented around national legislation which is often based on home-biased investment rules. The creation of an EU-wide personal pension would facilitate capital flows between Member States and to alternative asset classes.

Appropriate legislative framework

EFAMA welcomes the Commission's proposal in the IORP recast directive to allow IORPs to invest in "*instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities or organised trading facilities*".

EFAMA believes that, besides IORPs, other institutional investors such as banks and insurers should also be incentivised to invest larger amounts in less-liquid growth-enhancing asset classes. For this to happen, their prudential frameworks should contemplate a specific standard formula treatment for such investments. Currently, risk-weighting calibrations in Solvency II and CRD make infrastructure investments far less attractive because of the capital charges associated with it.

Availability of information

Centralised information about project pipelines is necessary for institutional investors to build appropriate scale, specialisation and expertise in order to identify and invest in viable investment opportunities.

For SMEs, availability of credit information is essential to increase funding opportunities, mostly only accessible to banks therefore justifying their historical dominance as primary lenders to most SMEs. Ensuring that more SMEs, especially larger ones, are turning to public markets for funding (either debt through PEPP for example or equity) would increase the investor base and in turn free up more capital from banks to lend to other companies that are smaller in size and hence less able to access markets. Efforts should be made to make databases available whenever it is possible, to avoid the situation that non-bank lenders do not have the possibility to build their own performance/risk models.

Question 11: What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

From a fund managers' perspective, initial set-up costs could be further reduced by lowering the related administrative fees, especially those tied to the necessary notification for the fruition of a fund "product

passport". In general, fund set-up costs include notary and advisory fees relating to the initial structuring, home NCA authorisation fees, expenses for the preparation of prospectuses and offering documents, and cross-border notification fees where a manager wishes to avail itself of a "passport". Despite the original intent of the cross-border notification regime, most EFAMA Members would agree that the number of notification files – one for each of the host competent authorities in the Member State where the manager intends to market the fund's shares or units – remains overly burdensome if compared to the actual use of the information done by the host authorities. In this sense, we would suggest the Commission seeks to identify common criteria to help NCAs set the costs related to the exercise of their supervisory activities. Such costs currently differ from Member State to Member State: creating a single, harmonised system of criteria through which national supervisory costs can be calculated, in line with what has already been done for sanction regimes, would help removing barriers from cross-border marketing, reducing costs and incentivising economies of scale.

As a solution to the above sets of problems, the option of a single European tariff regime for the setting-up of business and use of the UCITS & AIFM passport regimes should be explored, so as to limit divergences, intentional "gold-plating" and facilitate the take-up of an investment management business. With regard to the multiple notification requirements, we would invite the Commission to consider centralising notifications to ESMA in the future, once an initial authorisation has been granted by one Member State NCA. For UCITS, a sweeping harmonisation of product-related marketing rules and further bundling of supervisory competences at the fund manager's home Member State authority has also the potential of reducing costs.

Further cost savings could be achieved by streamlined reporting requirements. Regulatory reporting under the UCITS Directive, AIFMD and the future MMF Regulation takes/will take place in different frequencies, different formats and with reference to different contents. This entails huge unnecessary costs for fund managers offering products under all three sets of EU rules. Furthermore, asset managers provide assistance to their institutional clients, in particular insurance companies and banks, for fulfilling regulatory reporting duties incumbent upon these entities. Also in this regard, different risk indicators apply to investment funds under Solvency II and the CRD IV regime, thus adding to the complexity and costs of risk reporting.

In addition, different national requirements for fund tax reporting constitute an additional barrier to the development of cross-border offer of funds, and should be harmonised as far as possible.

Finally, the possibility to offer a broad array of different share classes for each UCITS/AIF is essential for fund managers for the purpose of tailoring a product offer which will reflect multiple client needs (especially where such clients are established across several jurisdictions, each with its own regulatory and tax specificities) and to allow those clients to benefit from economies of scale. As recently explained in our reply to ESMA's recent Discussion paper on UCITS share classes, economies of scale become beneficial only once a fund has reached a certain size. Share class diversification facilitates this by attracting a larger population of different investors (each characterised by its own risk profile, investment

horizon, tax situation, etc.) around a larger common pool of assets where ongoing management costs are distributed more widely, hence contributing to substantial savings for investors. Alternatively, one single asset manager would confront the respective authorisation and ongoing charges for each of the separately-managed, sub-scale funds, albeit where these would offer a very similar – if not identical – investment strategy.

The need for economies of scale has also become a necessity for the European investment management industry in the backdrop of the worldwide competitive landscape for fund products. In this regard, the Commission should bear in mind that the capacity to create different share classes is also an important factor that allows the European managers to 1) manage larger funds to more effectively face-off competition from non-European providers, while helping to resolve the problem of excessive fund fragmentation noticeable in Europe[14]; and 2) to offer UCITS outside the fund's base currency area to meet rising UCITS demand in non-EU, third-country jurisdictions (particularly Asia, but also Latin America and Canada). A broader array of available share classes would also prove competitively advantageous in drawing more non-European investors towards the UCITS product brand as well.

Question 12: Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

EFAMA welcomes EIOPA's new work stream on infrastructure investments by insurers towards a more granular treatment of infrastructure investments within the regulatory framework of Solvency II.[15]

EFAMA believes institutional investors falling under CRD and Solvency II should benefit from a specific standard formula treatment for a category of infrastructure investments.

EFAMA proposes that the Commission also considers a special treatment in CRD and Solvency II of "*instruments that have a long-term economic profile and are not traded on regulated markets, multilateral trading facilities or organised trading facilities*", along the lines of what it covered in its proposed IORP II.

EFAMA is also particularly supportive of initiatives to identify 'qualifying' securitisation – that is, securitisations that are transparent, clearly structured, and prudently underwritten – which should benefit from appropriately calibrated prudential treatment.

[14] As an example of the degree of fund fragmentation in Europe, the following EFAMA figures are striking: for the fourth quarter of 2014, the average size of a UCITS fund compared to the average of a U.S. mutual fund was of € 245 million against € 1.8 billion respectively.
[15] Call for Advice from the European Commission (04/02/2015). EIOPA is currently consulting stakeholders and its advice is expected by June 2015.

Question 13: Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

The Commission has asked for a technical advice from the European Insurance and Occupational Pensions Authority (EIOPA) on possible solutions to create an EU single market for personal pensions.[16] This is an important initiative because the personal pension market in Europe is very fragmented today.

Currently, pension providers have to offer country-specific products in line with national legislation, which increases the costs of engaging in cross-border activity. This market fragmentation limits competition between providers and the choice available to EU citizens.

In March 2015, EFAMA published its second report promoting the creation of an EU-wide standardised personal pension product.[17] The report entitled "*Towards a Single Market for European Personal Pensions: building blocks for an EU framework*", lays out EFAMA's views in favour of the creation of a standardised pension product.

The EU legislative framework for the European Personal Pension should not aim at harmonising all types of existing personal pensions. Instead, the aim should be to create an EU-wide personal pension product that could be offered to EU citizens, in addition to the products currently available at national level.

The recommendations presented in this report aim to contribute further to the work undertaken by EIOPA on personal pensions and follow on from the September 2013 Report of EFAMA on the Officially Certified European Retirement Product (OCERP).[18] To make this proposal and its objectives clearer and easily understandable for the wider public, EFAMA has renamed the proposed product as the "European Personal Pension" (EPP).

A European Personal Pension should have three key features.

1) it should benefit from an EU passport to ensure that once approved by the supervisory authority in one Member State, it can be offered across Europe.
2) it should comply with a set of product rules that could be defined in an EU regulation, drawing on the experience accumulated with the UCITS and the recently approved regulation on European Long Term Investment Funds (ELTIFs). The standardization resulting from the common product rules should lower its cost by increasing the potential for scale economies and removing the need for providing advice.

[16] European Commission (2014): "*Call for Advice from the European Insurance and Occupational Pensions Authority (EIOPA) on the Development of an EU Single Market for Personal Pension Products (PPP)*". Available here: https://eiopa.europa.eu/Publications/Requests%20for%20advice/Personal_pension_EIOPA_Anexx_-_CfA_EIOPA.pdf

[17] The EFAMA 2015 report is available here: http://www.efama.org/Publications/Public/EFAMA%20_EPP_Report_FINAL4March2015).pdf

[18] The EFAMA 2013 report is available here: http://www.efama.org/Publications/Public/EFAMA_OCERP_Report_September_2013_Print_Final.pdf

3) it should be a simple-to-understand pension product.

A European Personal Pension would pave the way towards a single market for personal pensions since it would allow for:

- A more efficient environment for personal pensions, enhancing the choice between different types of pension products and providers.
- Facilitated procedures for cross-border activity that will allow to achieve economies of scale.
- Improved portability of pension saving across borders. This would simplify life for people working and living in more than one EU Member State – a trend that will only become stronger.

A European Personal Pension would play an important role in increasing retail investors' participation in capital markets. By relying on robust consumer protection rules, such a product should win the trust of people. Also, the long-term nature of retirement savings will ensure that the savings accumulated into EPPs would be invested in long-term projects. Ultimately, EU citizens could also be expected to benefit from a better return on their savings. From this perspective, the creation of a single market for personal pensions should be seen as an integral part of the European Commission's goal of building a Capital Markets Union.

Question 14: Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

Changes to the EuVECA and EuSEF Regulations, making it easier for larger EU fund managers to run these types of funds, would be welcome. Allowing managers with assets over € 500 million to manage EuSEFs or EuVECAs would definitely broaden their appeal to larger EU fund managers.

Question 16: Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

Bank lending

A more investor-centric securitisation legislative framework could support stronger bank lending in the medium term. However, in the short term, banks are currently able to receive far less expensive funding from the ECB than they would via placing new securitisation issuances. When macroeconomic conditions encourage greater issuance, a better framework needs to be in place to encourage the market to return. Prudential requirements for institutional investors (such as Solvency II for insurers) are a considerable barrier to investment and are already pushing many types of investors away from securitisation all together (*please see our reply to Question 12*).

Besides securitisation, developing a market for bank whole loans (that is, individual, unsecuritised, loans) could also help free up bank balance sheets for more lending. The market exists in the US, where

investment funds play a strong role. The main structural impediment in Europe for this market developing further is the often long settlement times for bank loans, which makes them ineligible to be held by many UCITS funds. Something as simple as standardising settlement times for bank loans could enable this market to grow.

Non-bank lending

There are opportunities in the development of private credit for diversifying the available sources of funding for European companies. However, some barriers need to be addressed to encourage more non-bank lending, especially from certain types of investment funds:

a. The OECD's BEPS initiative could have negative consequences on investment funds, particularly those which hold real assets such as infrastructure or real estate and alternative funds. This may discourage capital commitments to these funds and hence, their ability to invest (*please refer to our comments on tax treatment of private assets under Question 30*).

b. The lack of availability of information to non-bank lenders can be a key barrier in the growth of non-bank lending.

c. Unlevel-playing field between bank and non-bank lenders: in some countries, a lender must have a banking license, which prevents institutional investors or funds from making loans. There are also different tax regimes for different types of investors/lenders and banks often receive preference in insolvency proceedings.

EFAMA encourages further considering the notion of "EU loan funds".

Question 17: How can cross border retail participation in UCITS be increased?

As a preliminary observation, we wish to highlight that, although forming the "backbone" of the retail fund market, UCITS are nevertheless only one part of the retail offer of investment funds. Certain types of AIFs are also of importance for retail investors in Europe and the relevant directive expressly provides that AIF products be accessible to retail investors as well, besides their more natural institutional and professional client base[19]. We therefore wish to link this answer to our more extensive comments in our reply to Question 18 below.

Our reply to Question 11 notes the concerns tied to the obstacles to cross-border distribution affecting the range of fund products consumer can choose from. Beyond this, one of the main obstacles to greater cross-border participation for the retail investor are fragmented marketing rules.

[19] In this regard, please refer to Chapter VIII of the AIFM Directive (2011/61/EU).

With regard to the existing KIID regulation under the UCITS regime[20] we are aware that current MiFID II requires additional information at the point of sale that cannot be included in the current KIID thus depriving the KIID of its important status of a product disclosure document (*please see our response to Question 19 for further details*). In this regard, the ongoing trend towards greater digitalisation of financial services, catering to the education and needs of future savers, also promises to accelerate a move away from "hard" and more costly mediums towards digital supports that prove cheaper to adapt and maintain, as well as access.

Another considerable obstacle is the discriminatory withholding tax within the European Union by Member States (*please refer to our comments on the simplification of withholding tax relief procedures and the access of investment funds to tax treaties under Question 30*).

Looking ahead to the future needs of a growing, "tech savvy" generation of consumers of financial services (i.e. the so-called "millennials"), digitalisation promises to bring about a revolution in the way fund products are to be marketed and sold. Such means should in the near term be facilitated through appropriate amendments to the EU's E-Commerce Directive in a way to facilitate the cross-border online sale of fund products[21]. Over the longer term, we would invite the Commission to consider the idea of a "digital passport", i.e. a single saving solution that once completed and validated by a single provider would allow a consumer to open accounts or purchase other investment services – including UCITS – with more providers and individually manage his/her digital account in a consolidated manner. This digitalisation of savings solutions will necessarily be adapted to fit both execution-only products, as well as those requiring investment advice.

Where these objectives can be achieved, they would pave the way for our proposed single European personal pension product, open to UCITS investments and offering a plain and efficient "egg nest" for an increasingly mobile group of European citizens to carry with them throughout their working lives to fund their retirement. Instrumental to this accomplishment, EFAMA would emphasise the primary importance of (re-)building consumers' trust in the financial system, one that is still healing in the aftermath of the 2008 crisis and tainted by some of the large scandals reported in the global press since then. Despite regulators' reactions over the past six years to substantially amend existing legislation and introduce stricter rules *ex novo* (at times unjustly targeting the asset management industry), moving forward, an effective enforcement regime at the national level, which aides itself of extensive cross-border cooperation frameworks, remains equally – if not more – important in reconquering investors' trust in

[20] Please refer to Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

[21] Please refer to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

Europe's financial markets. It is only by regaining this trust that Europe's savings may finance citizens' retirement income goals and aid the real economy through greater intermediation.

Question 18: How can the ESAs further contribute to ensuring consumer and investor protection?

EFAMA believes there needs to be a reform of national implementation of EU directives to ensure EU harmonisation, and thus predictability, across Europe with regard to financial market regulation. Too often, EU Member States either gold-plate EU directives or, by contrast, delay implementation that impair the reality of a European single market.

Furthermore, it would be extremely important to see a move from introducing new legislation to enhanced supervision of the already existing wide range of rules: The financial services sector has seen a major overhaul of all its fundamental rules in the last few years, it is important to implement these new rules. One could even go as far as to suggest that no major new legislations should be introduced as long as the existing rules are not implemented everywhere and on an equal footing. Revision should take place in instances where the new rules are unworkable and therefore need to be properly calibrated.

Regulatory consistency and level playing field

When financial products are intended for retail investors, and when retail investment products are similar, be they investment funds, structured products or insurance-based investment products (so called PRIIPs), they should be subject to the same rules. Retail investors must receive the same high level of protection: what is good for consumers of one financial sector is good for those of other sectors. A regulatory unlevel playing field does not benefit investors. For this reason, the requirements and consumer protection standards set in IMD II should be appropriately be aligned to the MiFID II standards.

Marketing and distribution

Another important contribution by the ESAs would be to provide, within their remits, incentives for major distributors to maintain open architecture for funds. In a large number of EU Member States distribution is dominantly made through life insurance products or banking networks, which means that there could be a risk that these entities might cut down the number of third party funds (or other protects) that are being provided on their platforms to the extent that they only offer their in-house products and accept a non-independent adviser position. This could lead to less choice for investors and does not encourage registration of funds cross-border.

As part of the ESAs' goal to create a Single European Rulebook, it would make sense to also ease some of the requirements connecting to marketing. In some instances, "regulatory overkill" does exist in relation to specific marketing requirements, particularly through the internet (e.g. requirement for warnings on very simple strapline adverts). Here it would make sense to re-examine such overly strict rules and reduce red-tape without compromising investor protection, of course.

Question 19: What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

Re-establish trust in financial markets

The important first step will be to continue to re-establish trust in financial markets. This means ensuring that investor protection does not stop the moment an investor has been sold an investment product, but that their savings are protected throughout the process of being invested in markets to the greatest extent possible. Consequently, finalising an effective benchmarks regulation that addresses conduct issues, and bringing forward an effective regime for CCP resolution that protects investors should be high on the agenda.

Channeling savings to long-term investments in Europe

A key objective of the CMU project should be to shift savings in Europe to long-term investment and financing of the EU economy. Increased retail investment (be it in investment funds, directly in stocks and bonds, or saving via pensions vehicles or insurance products) should thus be a focal area for policymakers.

The figures from EFAMA 2014 Fact Book publication show that the overall amount of households' savings in bank deposits (EUR 7 trillion in the Euro area) represent 42% of euro area households' financial wealth. A more optimal allocation, especially in light of the low interest rate environment, is desirable. This shows the huge potential retail investors represent to the financing of the EU economy if those savings were invested in the capital markets.

For this purpose, EFAMA believes the creation of a pan-European personal pension product that would deliver a cost-effective savings solution to EU citizens would contribute to a greater savings culture (*please see our response to Question 13 for further details*).

AIFs are an important investment pillar for European citizens

Alternative Investment Funds suffer from the stigmata that they are hedge funds and therefore pose a large threat to society as a whole which is not true. Since EU legislation defines everything not being a UCITS as an AIF, this incorporates all types of funds under this banner. In fact, the vast majority of AIFs are not hedge funds but nationally regulated retail funds, very similar to UCITS funds. UCITS are thus only one part of the overall picture of retail investment in funds. Unfortunately, in current and upcoming EU legislation EU AIFs suffer heavily from this misconnection and misinterpretation. Therefore, it is of utmost importance to draw a line between different types of funds which qualify as AIFs, namely hedge funds and other AIFs with a conservative risk-return-profile comparable to UCITS. There exist already different European legislation[22] with a respective distinction.

[22] See Art.128 Regulation No 575/2013 Capital Requirements Regulation :
"Items associated with particular high risk
1. Institutions shall assign a 150 % risk weight to exposures, including exposures in the form of shares or units in a CIU that are associated with particularly high risks, where appropriate.

In MiFID II the Commission incorrectly interprets the Level-1 Directive as deeming all AIFs (i.e. non-UCITS) as complex. This strongly contrasts with many nationally regulated non-UCITS retail schemes[23] will be deemed complex products from January 2017 meaning that any non-advised sales would require an appropriateness test. There has been no market failure or investor protection issue arising in Member States under non-UCITS retail schemes and making them complex products undermines national regulation. This needs to be remedied as quickly as possible, before 2017, so that the CMU is not itself undermined by creating a system that impairs retail investment.

The proposal on Banking Structural Reform will also severely impact asset management companies that are EU bank subsidiaries as well as many alternative investment funds. While one of the main objectives of the Commission's Proposal is to prevent banks from circumventing the intended prohibition of certain activities, all AIFs are being considered as hedge funds that can be used for the circumvention of those rules and therefore barred access to those nationally regulated AIFs as well to the detriment of the European financial system.

Another example of an undifferentiated treatment of AIFs are the EBA Guidelines on limits on exposures to shadow banking entities currently under consultation. Specifically, EBA suggests treating all AIFs as shadow banks and in consequence intends to limit the credit institutions' exposure to AIFs[24]. Besides the fact that such blanket classification of AIFs as shadow banks lacks any basis in the international work on the shadow banking issue conducted so far, the approach suggested by EBA would have detrimental effects on the provision of capital-based financing in the EU.

Empowering consumers through investor education

UCITS are a good example of a product created for retail investment purposes that provides consumers' access to financial markets. Since consumer protection is already part of the UCITS legislative framework, EFAMA believes there is a strong case for consumer empowerment in terms of willingness to invest. This can be done through investor education programmes that can increase consumers' confidence in investment products.

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2. Exposures with particularly high risks shall include any of the following exposures:[…]
(b) investments in AIFs as defined in Article 4(1)(a) of Directive 2011/61/EU except where the mandate of the fund does not allow a leverage higher than that required under Article 51(3) of Directive 2009/65/EC;[…]"

[23] Here are (non-exhaustive) examples of nationally regulated non-UCITS retail schemes: Belgium (fonds d'épargne-pension/pensioenspaarfondsen); France ("Fonds d'investissement à vocation générale"); Germany (Gemischte Investmentvermögen, sonstige Investmentvermögen and offene Immobilien-Sondervermögen); Netherlands; Spain (Non UCITS fixed income funds, Non UCITS Fixed income defined return funds and Non UCITs global investment policy SICAVs); Sweden (Specialfond) & United Kingdom (Non-UCITS Retail Schemes)

[24] Cf. Consultation Paper relating to Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013 (EBA/CP/2015/06).

Investor education is a strategic priority for EFAMA. In March 2014, EFAMA published the report "*Building Blocks for Industry Driven Investor Education Initiatives*".[25] This report describes member associations and corporate members' initiatives and shares experiences and best practices with the industry. It also sets out a number of guidelines based on investor education initiatives, but also academia, financial authorities and regulators.

The overarching aim of the report is to inspire and encourage investor education initiatives. The guidelines are also useful to those which have already undertaken initiatives as they may provide some useful best practice suggestions that could be sewn into existing initiatives. EFAMA remains committed to spreading out good practices in investor education programmes carried out by the asset management industry in several Member States.

EFAMA also believes there is an urgent need to foster cooperation among different financial institutions like banks and insurance companies, as this is a common goal to everybody. Increased cooperation between European and national regulators and firms, would also be needed. EFAMA would suggest launching the idea of a European Foundation for Financial Education coordinating national efforts.

National tax treatment of funds compared to other investment products

Generally speaking, certain types of investment products, such as funds, are disadvantaged in several Member States due to their differential tax treatment as compared to other types of investment products. While taxation is not only in the remit of the European Commission, it should nonetheless encourage Member States to look at equal tax treatments for all types of investment products and/or could encourage long-term savings (*please refer to our comments on fiscal incentives under Question 3*), and encourage pan-European tax reporting forms, in particular for investment funds, to facilitate the cross-border provision of products from other Member States towards domestic investors (being retail or non-retail). Regarding private pension funds, a preferential tax regime should be implemented in the national tax legislations.

Providing consistent product disclosures to retail investors

With respect to disclosure requirements, EFAMA would note that intense regulatory agenda over the past few years – i.e. MiFID II, the PRIIPs Regulation, IMD II and UCITS V Directives – has resulted in a series of overlapping and confusing requirements regarding information to consumers. The table below attempts to capture the different types of disclosure information that have to be provided to retail clients, depending on how a fund is distributed/marketed/packaged for the end client.

[25] The EFAMA Report on Investor Education, published in March 2014, can be found here: http://www.efama.org/Publications/EFAMA_Investor_Education_Report.pdf

		Disclosure requirements		
		UCITS KIID until at least 31 December 2019	PRIIPs KID from 31 December 2016	Additional alignment of MiFID II cost disclosure requirements
Product type (Distribution Channel)	UCITS and AIFs with UCITS KIID[1] (*direct distribution*)	Yes	No	No
	UCITS and AIFs with UCITS KIID[1] (*distribution through MiFID firm*)	Yes	No	Yes (through point of sales)
	UCITS and AIFs with UCITS KIID[1] as underlying of unit-linked insurance	Yes	Yes (indirectly)[2]	No (IMD II)[3]
	Other retail AIFs (*distribution through MiFID firm*)	No	Yes	Yes (through point of sales)
	Other retail AIFs (*national direct marketing*)	No	Yes	No (depending on national rules)

Table as of April 2015

[1] non-UCITS funds offered to retail investors that are required by Member States to apply the UCITS KIID

[2] provided to Insurance companies whose products fall under the PRIIPs' scope will require these additional disclosure to draw up the PRIIPs KID

[3] IMD II investor protection rules have not yet been finalised by the co-legislator

EFAMA agrees with the Commission's overall goal to ensure that the relevant disclosure information is meaningful to end consumers, and avoids to overburden consumers – especially retail in the UCITS domain - with excessively detailed information. Also, we would argue that the disclosure standards for all investment products, including UCITS funds, must be consistent in revealing both costs and risks tied to investing, thereby offering investors a meaningful comparison of more investment options.

Making it easier to invest

Another rather open possibility to connect a bigger part of the European population to the capital market and investments could be for the Commission to develop a more focused and downsized approach to financial advice and distribution services in general, with more reasonable duties in terms of suitability testing and greater sensitivity to the circumstances of the client (e.g. if this is a small part of a larger portfolio or it the client wants advice in a limited context). It is a fact that the initial know-your-customer, suitability and assessment checks take a certain amount of time and feature a big amount of documentation that has to be read, understood and agreed upon by the potential investors. If this process

is considered to be too burdensome and not productive enough, or portrayed with a too negative bias in terms of the overall costs of investing and their potential net returns, investors will just continue to leave their money in their bank account and choose not to invest at all. It could be envisaged whether lighter regimes for strongly regulated products (such as UCITS) could be envisioned, if only a small amount of money is invested.

Furthermore, the Commission should also consider to make it easier to invest through the internet. EU legislation in some instances require physical copies of disclosure information to be provided in order to distribute a product which is proven to be a major hurdle for EU citizens to invest online.

Harmonising rules across all types of retail investment products

Consumer protection becomes an issue when it comes to the lack of harmonised rules across all types of retail investment products. Increased transparency and comparability across different types of investment products should be a priority (implementing PRIIPs, UCITS, MiFID II and IMD II).

As the PRIIPs[26] debate recently clarified, the so-called "packaged retail and insurance-based investment products" are comparable investment products and therefore substitutable. However, such similar investment products are currently governed by two separate directives: MiFID II[27] and IMD II[28]. Since investment products under MiFID II and insurance-based investment products under IMD II are substitute products they should be subject to the same level of investor protection.

Therefore, EFAMA believes the main issue related to the protection of EU citizens accessing capital markets is the need to harmonise investor protection rules for all types of retail investment products under IMD II and MIFID II by establishing a regulatory level playing field among similar products.

Question 21: Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?

In relation to attracting international investment in the EU, we agree that international trade and investment policy has an important role to play. The Commission rightly points out that portfolio investments coming from outside the EU amounted to €5 trillion (as compared to €9.6 trillion between EU Member States).

In relation to EU attractiveness, purely from a regulatory perspective, we would like to ask the Commission to support IOSCO efforts, both to reinforce in the medium term the harmonisation of high level principles

[26] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).
[27] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.
[28] Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast). Brussels, 2012/0175 (COD).

at worldwide level (top down approach), as well as developing in the shorter term the principle of mutual recognition among countries. Harmonisation from the global level will take time, and therefore a shorter-term approach based on mutual recognition would be beneficial to all countries to develop cross-border business.

From a purely asset management perspective, the two most important cross-border retail "markets" are the US (representing 50% of the global fund market) and Asia (benefiting from a fast growing rate compare to the developed markets). Having higher market openness as well as mutual recognition with these two markets/regions would benefit the European capital markets.

Comments on the attractiveness of Europe's capital markets

The CMU initiative will be a positive development for the attractiveness of Europe's capital markets. If there is a fruitful focus on getting more savings channelled into markets, for example, and the overall availability of capital increases, issuers will find European markets equally more attractive. Increasing cross-border efficiency to create a single EU capital market will also increase the overall attractiveness of European markets. Avoiding policies detrimental to investors – such as the FTT – will also help maintain the competitiveness of European markets.

On the project funding side (e.g. infrastructure – another key focus of the CMU initiative and the related European Fund for Strategic Investments), increasing the number of viable investments with strong political commitments to new projects will increase the attractiveness of Europe. Initiatives such as the Energy Union, and the creation of the Digital Single Market will be important in attracting funding to individual investment projects.

A harmonised European regulatory and tax environment could be the basis for a more competitive marketplace. At this point in time different tax regimes hinder the application of an efficient cross border approach to distribute financial services from so called home countries to a host country. In the shorter term, getting the harmonisation of local tax reporting forms from one Member State to another would also contribute to economies of scale for EU asset managers willing to develop their offer to investors across Europe.

Generally the successful implementation of the product and management company passports in the context of the UCITS IV Directive serves as a positive example of an attractive market place. Nevertheless certain data and reporting requirements should be harmonised and an approach towards internationally recognised identifiers of companies and financial products as a basis for the efficient data exchange, IT implementation and reporting should be pursued on a European and global basis.

At the same time certain aspects of an over-regulation (e.g. disclosure requirements to investors) have to be adapted and it has to be reinsured that an equal part of regulation is adapted on a competitive level playing field of financial products (e.g. investment funds as well as packed products and insurance based investment products). The ongoing efforts on a European consent to avoid a gold-plating would strongly

support not only the efficient European financial market but also strengthen the international attractiveness.

To ensure the international competitiveness of the EU, the EC should work more closely with international financial regulatory and act in a more coordinated way between them. In many areas (securities financing transactions, indices used as benchmarks, prudential rules for insurers, FTT), the EU has anticipated or went beyond the work done in international forums (FSB/IOSCO) or by its main partners (US, Brazil, Australia ...). This dual approach has created a regulatory arbitrage position in favour of our competitors, especially as the EU is opening up more and more its market to third countries players (notably via potentially passport third countries AIFM).

<u>Assessing Europe's financial services on the world stage</u>

The first set of measures should improve the conditions of access granted to European managers wishing to sell their funds in certain third countries. In Australia, South Korea and Brazil, European managers are forced to seek a company registered locally to distribute their funds. Some third countries, including mainland China, have a system of quotas for European funds. India and South Korea have rendered the tax situation of funds under European law more difficult either through a retroactive application of domestic tax law or through rendering the access of European investment funds to tax treaties more difficult (*please refer to our comments under Question 30*). Some third countries, particularly Brazil, China, India and the United States, fully prevent the distribution of funds set under the European law.

The second set of measures should focus on improving fund management conditions by European managers in certain third countries. In Australia and the United States, a license from the local authorities is necessary to exercise as a European asset manager. Many third countries, such as Brazil, South Korea and Taiwan, require from European asset managers the creation of a local entity, or a joint venture; in the case of India. Some third countries, prevent (China) or constrain (Brazil, India, Japan, US) European actors who are willing to manage funds registered under local law. We are supportive of the ongoing negotiations and hope that the EC will seize those two opportunities to meet the objectives stated above.

<u>A word on Asia</u>

UCITS remains a very strong brand in Asia. Since 2008, we have seen positive inflows into UCITS in Asia including strong inflows.

Interest in Asia is particularly strong, reflecting the region's huge potential for long-term savings growth. This is only being heightened by the emergence of three proposals for Asian cross-border fund distribution. In fact, mutual recognition is likely to be expanded in the future in Asia (HKCMR). China may be open to reciprocity with other markets in Asia or beyond, but we expect Hong Kong to enjoy at least a few years of exclusivity. Asian passporting (ASEANC, ARFP) remains a long way off, with proposed schemes facing significant technical and political hurdles. For now their major impact is likely to be to add to asset managers' strategic uncertainty. These proposed changes, once implemented, will most likely have a profound effect on UCITS in Asia.

Asian markets are becoming critical not only as markets for distribution but also as major hubs of production. As a result, it becomes essential for Europe to explore opportunities to engage in strategic partnerships in the local initiative to preserve the strong UCITS footprint and enhance European's shares in the future outlook and openness of each individual market.

Question 22: What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

There is an unbalance between the growing EU Single Market openness (see the third country passports planned by the AIFMD and MiFID II and the remaining barriers to market access in non-EU countries which will stay in the near future[29].

In order to facilitate the investment from non-EU countries into Europe, we would encourage the European Commission to require that in international trade negotiations such as the TTIP and TiSA, third countries allow EU players to offer EU investments more easily than today to local, non-EU, investors. Therefore, we fully support Commission's statement that direct marketing of EU investment funds and other investment instruments in third countries should be facilitated.

However, beyond EU investment funds as mere vehicles, we would advise the European Commission to enlarge the same objective for asset management at large, i.e. including the provision of investment services by EU asset management companies. Investment in Europe may occur through funds, but also through mandates or investment advice as well.

We strongly invite the EC to keep the full area of asset management within the scope of TTIP and TiSA negotiations, to make sure that for the future non-EU investments could finance EU projects more easily than today.

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[29] For instance, PWC's Report on "*Capital Markets 2020: Will it change for good?*" issued in April 2015 states that: "*Access to local financial markets will become more restricted to cross-border institutions. Geopolitical uncertainty and the balkanised nature of financial regulation will continue to swing the pendulum away from the globalisation of financial markets. Traditionally restrictive markets (…) will be joined by others (even developed countries) that limit the presence of foreign institutions through local policy and subtle preferences for domestic institutions. Under such restrictive rules, multinational players will be forced to either increasingly regionalise operations or seek local partners to intimately understand and comply with local rules, or exit these markets altogether. Cross-border investment and capital flows will lag, particularly to emerging financial markets, as access remains restricted, either through direct regulation (e.g. limitations on foreign ownership) or more indirect rule-making (e.g. US enhanced prudential standards rules). Interestingly, the eurozone is moving against this global trend with the introduction of the Single Supervisory Mechanism and other steps outlined in the recent EU Green Paper, "Building a Capital Markets Union". We expect this to drive increasing movement towards greater use of the single passport concept within the zone to reduce overall regulatory compliance costs.*"

In addition to this remark on trade negotiations, on the pure regulatory side we would like to ask the Commission to support IOSCO efforts in order both to reinforce in the medium term the harmonisation of high level principles at worldwide level (top down approach), as well as developing in the shorter term the principle of mutual recognition over the world. Harmonisation from global level will take time, and therefore a shorter-term approach based on mutual recognition would be beneficial to all the countries to develop cross-border business.

In the medium to long-term, the EU´s international trade policy should support cross border international sale of financial products and be based on an equal market access for financial products among all regional markets. A minimum level playing field considering an appropriate level of consumer protection as well as a sufficient level playing field for financial services providers should be a core target of the international negotiations.

Free movement of capital, harmonised environment of registration of financial products and safekeeping requirements should be facilitated. An international passport mechanism, starting potentially with bilateral regulatory approvals could be the nucleus for a further international development and standard. Any mutual recognition has to be based upon a certain degree of regulatory convergence (including Memorandum of Understanding or Passport, e.g. ASEAN CIS Framework). Clear investor protection rules including the relevant depositors have to be developed.

Question 23: Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

We believe that excessive transparency would harm trading on illiquid markets. The waivers currently provided under MiFIR in order to exclude transactions from any pre- trade transparency obligation or to postpone post-trade transparency might not be sufficient for avoiding unintended effects. This specifically refers to the proceeding described in Art. 4 para 4 and Art. 9 para. 2 of MiFIR.

We also support the development of a consolidated tape, especially for liquid equity markets (*please refer to our reply to Question 24 for further details*).

Finally, in our reply to Question 6 EFAMA also suggests measures to increase liquidity in bond markets.

Question 24: In your view, are there areas where the single rule book remains insufficiently developed?

There is a widespread recognition among EFAMA members that a lot of ground has already been covered by the ESAs (and ESMA in particular) over the last few years towards the development of a single rule book. Even though further harmonisation of the applicable rules would definitely be welcome in a number of areas (e.g. better alignment between investor protection and conduct of business rules between MiFID II and IMD II to create a level playing field between similar retail investment products), we believe that

the focus should now be placed on making sure that this Single Rule Book is effectively and consistently applied across the different Member States (see also our reply to Question 25). In that respect, we insist on the relevance of Level 4 in the Lamfalussy framework.

One area, however, where we would see considerable merits in further developing the single rule book is the area of reporting requirements. Asset managers and investment funds are indeed confronted today with multiple and often inconsistent reporting requirements.

We would, therefore, strongly welcome the reinforcement of a consolidated tape with the objective of avoiding:

1) Multiple national data reporting to different national regulators, in different formats although on the same data
2) Heterogeneous data reporting based on various pieces of EU legislation although on similar data

Such a consolidated tape would not only increase operational efficiency for firms, but would also give supervisors more complete and comparable data sets, allowing them to identify and manage cross-border risks more effectively.

Question 25: Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

The ESAs are key for consumers/investors, market participants and the financing of the economy. The retail investor's participation in capital markets as a crucial component of a Capital Markets Union partly hinges on the ESAs ensuring consumer and investor protection of the financial products they regulate.
In EFAMA's view, the implementation of the ESAs guidelines through efficient peer reviews and their consistent application across the 28 Member States is one of the most crucial element in ensuring a successful Capital Markets Union through supervision.

EFAMA would also emphasize the importance of a level playing field for financial products services regulated by the three ESAs, which would require better coordination between all three agencies. This does not imply taking a "one-sector-fits-all" approach. For example, EBA's recently published Draft Guidelines on remuneration policies under CRD IV[30] unilaterally, and in our view, unduly set out to impose bank-fit rules on UCITS Management Companies and AIFs managers, even though they are already subject to specifically tailored UCITS and AIFMD remuneration rules. In a similar vein, the EBA Consultation on

[30] Draft Guidelines on sound remuneration policies under Article 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013. Available at: http://www.eba.europa.eu/documents/10180/1002374/EBA-CP-2015-03+%28CP+on+GLs+on+Sound+Remuneration+Policies%29.pdf

Shadow Banking[31], through its unilateral interpretation of the definition of 'shadow bank', could undermine non-bank financing, one of the key pillars of the Capital Markets Union.

ESMA

Given our focus, EFAMA would like to share specific views on ESMA. We believe ESMA should be given sufficient time by level 1 texts to ensure adequate consumer and investor protection.

We are also of the view that ESMA should respect its legislative mandate. There are instances where ESMA has, in our view, overstepped its mandate. For example, ESMA's proposal regarding investment research in MiFID II did not match the level 1 agreement by the Parliament and Council, and could lead in practice to a significant decrease in the availability of investment research, ultimately negatively impacting investors, particularly the smaller players in the market. This in turn would affect the financing of the economy and severely undermine the aim of a Capital Markets Union.

As an active stakeholder participant within ESMA, EFAMA suggests that ESMA's method of consulting stakeholders could be improved to further ensure consumer and investor protection by:

- Providing longer consultation periods;
- Offering more feedback on responses to consultation;
- Making more effective use of stakeholder panels and the promotion of the exchange of views.

EFAMA believes appropriate coordination between the ESAs and the different national authorities is necessary to ensure consistent implementation and interpretation of EU legislation.

Question 26: Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?

At this stage, EFAMA is not in favour of any changes to the securities ownership rules. It is important to first take stock of the important changes that have been initiated and not yet entirely implemented before initiating any new change (e.g. the regime for Securities Financing Transactions will have an impact on the reuse of securities, especially their ownership).

[31] Draft EBA Guidelines on limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395 para. 2 Regulation (EU) No. 575/2013. Available at: https://www.eba.europa.eu/documents/10180/1019894/EBA+CP+2015+06+%28CP+on+GL+on+shadow+Banking%29.pdf

Question 27: What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

Asset management companies, especially those managing numerous UCITS, are currently facing the problem that the increased demand for collateral, which the Commission points out on page 23 of the Green Paper, has been answered by ESMA with a prohibition to provide the purchase price under a repo for providing collateral (cf. ESMA's Guidelines on ETFs and other UCITS issues (ESMA/2014/937), para. 42 in combination with para. 43 j).

UCITS' access to liquidity for the purpose of collateralising derivative transactions is currently inhibited due to the ESMA Guidelines on ETFs and other UCITS issues. According to these Guidelines, the purchase price of a repo contract shall be treated as collateral in itself and may not be reused or reinvested by the fund. Those Guidelines have been implemented by NCAs and therefore became de facto binding (and, in certain cases, were also extended to Non-UCITS).

As banks accept only a limited range of non-cash collateral (not included in all UCITS), liquidity demand in UCITS will increase with broader application of EMIR. The ESMA Guidelines deprive UCITS of the main liquidity source, as short-term credits are only allowed up to 10% of the fund's NAV and generally being used for handling fund redemptions.

Question 28: What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?

EFAMA is of the view that a major obstacle to integrated capital markets arising from corporate governance relates to the exercise of cross-border voting rights and the operational complexity of the voting chain. Efficient and reliable cross-border voting rights, put in place in a proportionate manner, would ensure transparency of voting across the EU for minority shareholders, who are generally cross-border large and individual shareholders. We recognise the European Commission's proposal on Revision of the Shareholders' Rights Directive[32] as a first step towards addressing this inefficiency.

EFAMA would highlight the fundamental principle of 'one-share, one-vote' in shareholder democracy. We believe that the concept of differential voting rights ('DVR'), which has been introduced by some Member States and is being considered by the European Parliament[33] as a means of promoting long-term

[32] Directive of the European Parliament and of the Council amending Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement'

[33] In its report entitled 'Draft Report on the proposal for a directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and

shareholding, will result in a reduction of cross-border investment flows, one of the key objectives of a Capital Markets Union. Given the operational complexity for shareholders to register their shares, DVR will result in the majority shareholders, generally domestic entities, gaining more influence while the cross-border minority shareholders, are disenfranchised. According to the European Commission, cross-border shareholders hold 44% of shares of EU listed companies[34]. Investors will be less likely to invest in those companies, or markets, where this mechanism is in place as the ensuing reduction of their voting rights lessens their influence on the company's strategies and policies and therefore reduces the value of their investment in such companies.

The diverging company law regimes across the EU is also, in our view, another obstacle to a European Capital Markets Union.

EFAMA believes that the European Commission could overcome these obstacles with the following targeted measures:

- Discouraging the introduction of differential voting rights as a means of encouraging long-term shareholding;
- Favouring direct electronic vote which could facilitate the exercise of cross-border voting rights;
- Ensuring that the outcome of negotiations on the Revision of the Shareholders' Rights Directive[35] achieves better governance for minority cross-border shareholders, in particular in relation to shareholder oversight on related party transactions and the exercise of cross-border voting rights;
- Analysing the possibility of standard business reporting for SMEs, such as the initiative taken by the Australian government[36];
- Encouraging companies to produce a company documentation in English alongside their national language, could help attract investment from outside the EU. Such documentation could include the Articles of the association or company charter or a description of the persons in charge and their role. Also, in certain countries Corporate Governance Codes describe the main regulatory requirements for issuers and the rights of their shareholders. Such Codes should be available in English.

Directive 2013/34/EU as regards certain elements of the corporate governance statement' in the Economic and Monetary Affairs

[34] http://europa.eu/rapid/press-release_IP-14-396_en.htm?locale=en

[35] Directive of the European Parliament and of the Council amending Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement'

[36] Standard Business Reporting, an Australian government initiative introduced in 2010, is a standard approach to online or digital record-keeping to simplify business reporting obligations

Question 30: What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

Financial Transaction Tax

The proposed Financial Transaction Tax is a tax barrier to the CMU. European investment fund industry has always expressed its deep concerns and serious objections on the FTT, even more so in the context of the CMU. The FTT proposal is not consistent with the objectives of the CMU to "maximize the benefits of capital markets for the economy, jobs and growth" and for this reason we would recommend its withdrawal.

- An FTT amongst elven Member States distorts the creation of a single market for capital for all 28 MS. Failure to implement FTT on a EU-wide, fully standardised basis would lead to competitive advantage of non-participating jurisdictions and create a risk of relocation of financial activities outside of the 11 MS area
- Even if FTT is implemented across the 28 EU MS, its introduction would be detrimental for EU financial markets. It would increase the cost of capital for businesses, lower returns on investments and savings, increase distortion on the market and encourage entities to relocate their financial activities outside the EU.
- An FTT that combines the application of the residence basis and the issuance basis on cross border transactions will require complex collection mechanisms that will increase costs and uncertainty for participants in capital market transactions.
- FTT would increase the costs borne by investment funds and will render EU investment funds more expensive compared to direct investment because the FTT applies additionally on investment funds' units instead of lowering the cost of capital. As a consequence, investments would be channelled to products not subject to FTT, such as insurance contracts or savings deposits instead of e.g. ELTIFs, or to non EU investment funds. This would diminish the benefits of investment in funds on providing cost effective access to capital market investments to the mass public.

Simplification of withholding tax relief procedures - Implementation of TRACE - Access of investment funds to tax treaties - Impact of upcoming Base Erosion Profit Shifting ("BEPS") elements in European and national legislations

At least three developments in the withholding tax treatment of pooled investment funds directionally tend to artificially favour domestic funds serving a single national investor base over cross-border funds *i.e.* a single fund serving investors from many countries. By so doing, they inhibit the free pooling of capital in Europe.

The European Union has had a considerable success with the UCITS brand, such funds typically based in Luxembourg and Ireland, which are successfully sold in Asia and Latin America, as well as across the European Union, and such funds illustrate where the impact is felt.

1. *Access to double tax agreements:* the work currently undertaken by the Organisation for Economic Co-operation and Development ("OECD") on tax avoidance (BEPS), and in particular examining the abuse of double tax treaties (Action 6 of the BEPS action plan) illustrates that many OECD members, and EU members continue to view funds (both UCITS funds and other types of funds, such as those investing in private equity, real estate development, infrastructure and private corporate debt) as entities that exist with a purpose of treaty shopping or treaty abuse. In fact, these funds serve only to pool investment from diverse sources into business and vital projects that support economic growth and prosperity. Often the structures that support these funds are designed to attempt to replicate the tax treaty entitlement (and more general tax effect) that investors would have achieved by investing directly, but through a pooled vehicle.

   In order to achieve the aims of CMU it is vital that EU member states arrive at a settlement on the correct treaty entitlement for funds, both UCITS and alternative in order to ensure that capital can be effectively and efficiently be deployed through pooled arrangements that work on a cross border basis in the EU.

2. *Treatment of withholding within the EU:* European investment funds have, for many years and with slow success, challenged, primarily through the European Court of Justice, the differential withholding treatment between cross border and domestic investors. Progress in this direction continues, but not all discriminatory treatment is yet eliminated. Again, this state of affairs incentives investment funds to remain domestic rather than pan-European.

3. *Access to tax treaties becoming administratively harder:* tax authorities are increasingly inclined to require evidence as to the underlying holders of funds. Typically, pooled investment funds are held via banks and brokers, so it is often virtually impossible for a fund to evidence who the underlying holders are. The current process whereby claims for relief must be supported by a Certificate of Tax residence from the fund's own home tax authority is burdensome for both the industry and the latter tax authority, and in general getting more so.

EFAMA would recommend that:

- A renewed effort be made to discourage discriminatory withholding tax within the European Union by Member States.
- The European Union should try to take a harmonised position in negotiating revisions to double tax treaties. That position should aim to protect pooled fund investing, UCITS in particular, and do so on a more standardised basis.
- The European Union should lend support to the long-standing OECD Tax Relief And Compliance Enhancement ("TRACE") initiative. The benefits that initiative is designed to deliver are:
  - i) more reliable treaty access for funds
  - ii) increased comfort for tax authorities that treaty benefits are being given only to qualified end recipients and

iii) reduced administrative effort for both public and private sectors through no longer requiring Certificates of Tax Residence.

- We also believe that extending the current proposal for Digital Investor Passports, to additionally include one-time documentation of tax residence status, would be of longer term practical benefit. It would assist investors in providing their tax status only once, as opposed to every time they open a new account or invest in a new type of product. A single European standard digital identifier for investors would at the same time facilitate the development of technology solutions that make TRACE easier to operate, and with improved assurance to tax authorities.

Tax treatment of private assets

As the Green Paper makes clear, reduced reliance on bank finance requires a deeper pool of private asset finance as well as public markets. In particular, it will be important to package private assets in funds that are suitable for higher net worth individuals and small institutions, as well as the more traditional large institutional investors. The OECD BEPS initiative inadvertently makes that packaging of private assets in a tax neutral way (that is, neutral when compared with direct investment) very much more difficult.

Out of the 15 BEPS Actions at least four - Action 2 Hybrid Instruments, Action 4 Interest deductions, Action 6 Treaties, Action 7 Permanent Establishment – make it more difficult to structure a "one-size-fits-all" fund that invests in private assets. However, Action 6 and the potential loss of treaty access is again the centre of the issue. The partial solution referred to above - reverting to the 2010 Report – applies only to CIV's i.e. mainstream funds. No OECD level solution exists for private asset funds.

An option we would recommend, but on which no agreement was reached at OECD level, is that a "good fund" meeting certain standard criteria (such as genuine diversity of ownership, and the purpose of real long term capital provision) would be protected from most of the above impacts. We believe that providing such a standardised "good fund" safe harbour regime at EU level would be both highly beneficial and complementary to the ELTIF initiative.

Misalignment of national legislations on tax questions for investment funds and asset management industry

Direct taxes remain a significant barrier to cross-border fund mergers and fund restructurings in general. The current EC Directive 2005/19/EC (common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares) so-called "Merger Directive" does not guarantee the tax neutrality of investment funds' restructuring such as cross-border mergers, implementation of master-feeder structures…) at the level of investors, irrespective of the legal type of vehicle (corporate type or contractual type funds).

We recommend that investment funds be included in the EC Directive 2005/19/EC so-called "Merger Directive" with the view to create a harmonised framework for tax neutral investment funds' reorganisations.

Tax incentives for long term portfolios and assets

In particular for long term assets and portfolios with long term investment strategy invested in SMEs and critical infrastructure projects, such as ELTIFs, substantial tax incentives could significantly address the need to reallocate financing to their direction. EFAMA would welcome the development at national level of any tax incentives related to long-term investments through ELTIFs. This will significantly help shifting investments to new diversified structures and meeting this EU's policy goals on long-term investments.

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