EFAMA RESPONSE TO EC CONSULTATION

CAPITAL MARKETS UNION MID-TERM REVIEW 2017

Executive summary

- EFAMA[1] reiterates the European asset management industry's strong support for the CMU project in all its dimensions. We welcome the range of initiatives, from the overarching aim of rebuilding confidence in financial markets by putting investors' interests at the heart of the project, to the promotion of market-based financing of the economy, the development of a PEPP or the development of a comprehensive strategy on sustainable finance.

- Investor confidence is the number one premise for ensuring the success of the CMU project. **Investors' interest** needs to be the heart and soul of any EU action. A key element of this continues to be financial education, which we firmly believe the European Commission as well as the ESAs need to promote further in parallel to regulation. We would like to mention the European Platform for Financial Education, recently created by a group of nine European organisations and associations, amongst which is EFAMA. The initiative aims to promote the need for financial education and to boost financial literacy in Europe.

- EFAMA also supported the ambitious parallel exercise of assessing the **cumulative impact** of financial regulation. Much remains to be done, and we welcome the Commission's efforts to address the numerous unintended consequences. In itself, this work would sufficiently fill the agenda of EU policymakers for the future.

- We firmly believe investment funds are a success story which can inspire a well-functioning EU Single Market in other areas. UCITS is a very good example of that. We would therefore encourage the European Commission to pave the way for further deepening the **Single Market for investment funds**. A key objective of the CMU should be to bring down remaining barriers for cross-border fund distribution. This is essential to provide a larger and more diversified choice of investment and saving opportunities for European citizens, increase competition in the markets, allow for further innovation and reduce the costs and fees.

- We reaffirm our strong support for the Commission's continued efforts for improving the Single Market for **retail financial services**. It is essential for the European Union to provide retail investors with better access to the capital markets as this will create potential for citizens' savings, which are currently under-exploited. With this in mind, we have taken note of the fact that the European Commission and the ESAs are currently undertaking studies on the distribution of retail investment products. We take note however of the fact that a new wave of EU legislation (MiFID II, PRIIPs and IDD), about to come into force in early 2018, will significantly enhance product disclosures and distribution rules for retail investment products. Parallel studies on disclosures

[1] EFAMA is the representative association for the European investment management industry. EFAMA represents through its 28 member associations and 61 corporate members close to EUR 23 trillion in assets under management of which EUR 14.1 trillion managed by 58,400 investment funds at end 2016. Just over 30,600 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds, with the remaining 27,800 funds composed of AIFs (Alternative Investment Funds). For more information about EFAMA, please visit www.efama.org

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conducted at a time when MiFID II/PRIIPs/IDD are not fully implemented or in force may fail to consider, or pre-empt in the best of cases, the effects of these new pieces of legislation.

- EFAMA welcomes the Commission's plans for a legislative proposal on **personal pensions** across the EU. We remain strongly convinced that European households and savers need to be encouraged to save more for retirement. EFAMA has for long advocated for the creation of a Pan-European Personal Pension product (PEPP). In our view, the PEPP would be the appropriate policy tool to create a true single market for personal pensions, and would contribute to growth and investment within a CMU. For EU citizens, this would ensure delivery of cost-efficient, simple and portable personal pensions. And providers would be able to provide similar products within a wide range of Member States, which should lead to economies of scale, lower costs and increased competition.

- EFAMA is also very supportive of the CMU's focus on **sustainable finance**. With citizens and companies increasingly feeling a responsibility to take part in addressing environmental, social and governance ('ESG') challenges in their investments, asset managers, as the linchpin between investor's savings and the real economy, have a crucial role to play in providing the tools and advice for selecting responsible investments. In this regard, we would highlight the importance of pursuing a sustainable finance agenda focused on a balance of the three E, S and G pillars.

- EFAMA's response to the CMU Mid-Term Review consultation aims to be a reminder of the asset management views on the many initiatives under the CMU umbrella. Much remains to be done to achieve the ambitious objectives of the CMU, and EFAMA will stand ready to support the various workstreams.

Asset managers want to continue playing a part in the changing landscape of a more capital market based economy. We stand ready to continue the open and constructive dialogue with EU institutions to achieve a successful Capital Markets Union.

1. FINANCING FOR INNOVATION, START-UPS AND NON-LISTED COMPANIES

Revise EuVECA and EuSEF Regulation

EFAMA welcomed the Commission Proposal for a Regulation on the Review of the European Venture Capital (EuVECA) Fund Regulation, with the aim to open up EuVECAs to a broader range of managers and to expand the scope of SMEs that can be financed by them.

We consider the proposal to bring AIFMs, currently considered too big to be allowed to manage EuVECAs, into the scope of this Regulation as an improvement and an alignment with the goals of the CMU, i.e. a step forward into unlocking important capital and encouraging their shift towards investments in longer term projects.

EFAMA also strongly supports the objective of the Commission to make the registration and cross border marketing of these funds easier and cheaper. Indeed, the explicit prohibitions of fees imposed by competent authorities of host Member States, the request for simplifying registration processes and determining the minimum capital to become manager are an important step forward to further enhancing the cross border distribution of those funds, which we believe should be the case for every type of investment fund.

The duplication of registration fees and processes imposed by different member states for the marketing of a fund is an important remaining barrier to the cross-border distribution that needs to be tackled through further cooperation at ESMA level and supervisory convergence. In this sense, whereas the requirements included in this Proposal are going in the right direction, further cooperation among the national competent authorities is also necessary for such requirements to be put in place.

Work with Member States and European Supervisory Authorities (ESAs) to assess the need for a coordinated approach to loan origination by funds and the case for a future EU framework

With regards to non-bank lending, we consider that there are opportunities in the development of private credit for diversifying the available funding sources for European companies. At the same time, we believe there are some barriers that need to be addressed to encourage more non-bank lending, especially from certain types of investment funds:

a. The lack of available information to non-bank lenders can be a key barrier in the growth of non-bank lending.
b. 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 also took note of the ESMA opinion related to the loan-originating funds, published in April 2016. We share part of the ESMA's findings on some of the key areas related to these types of funds. We consider, however, that as with current barriers to cross-border distribution, similar barriers exist in relation to loan funds, so the most appropriate approach is to further enhance a common understanding and transparency of the requirements at the ESMA level and to promote closer cooperation of the national competent authorities.

In the majority of the EU member states loan funds are still a recent product and national frameworks - if any - are only now starting to be implemented, so EU action may be too early and for that reason

bringing negative effects. This is still a growing market, of which an in-depth understanding and further development is necessary, prior to assessing the need for an EU regulatory framework on loan-origination funds. In that respect, we would encourage the Commission to let the markets first evolve further before taking any decisions.

EFAMA would also like to remind of the possibility to originate loans as foreseen in the ELTIFs Regulation. Article 9(c) allows the origination or the granting of loans by an ELTIF to eligible undertakings. Granting the possibility to provide loans in relation to a portfolio an ELTIF is invested in is an important investment option for the ELTIF's manager, but also for the qualifying entity itself. However, it is important that the Commission clarifies that this possibility also extends to investing in loans held by a qualifying portfolio undertaking of an ELTIF, as this would further reinforce the ELTIF's investment on an eligible undertaking. (EFAMA considers them as a quasi-equity and/or debt instrument, which can therefore be in conformity with articles 9(a) and (b) and an eligible asset according to the ELTIF Regulation).

2. MAKING IT EASIER FOR COMPANIES TO ENTER AND RAISE CAPITAL ON PUBLIC MARKETS

Proposal to modernise Prospectus Directive

EFAMA welcomed the decision of the Commission to review the prospectus regime with the objective to make it easier and simpler for companies generally and in particular SMEs in Europe to access capital markets, to provide all types of issuers with further simplification and flexibility and to ensure adequate information for investors. We also welcomed that these objectives have been partially met in the final conclusion of the political trilogues at the end of 2016.

Prospectuses are relevant for the European asset management industry as they allow access to information on the material risk factors pertaining to the issuer and its securities, which is also scrutinised by the national supervisors - even if only for their completeness and consistency. Thus, they are an additional tool supporting managers' informed investment decisions.

Moreover, they hold a particular interest for asset managers, as the Prospectus Directive includes a number of investment funds in its scope (closed-ended funds, article 1, paragraph 2 (a)). These type of funds need to prepare a prospectus. At the same time, it should be stressed that AIFMD, which covers managers of all AIFs regardless of their open or closed-ended type, entails concrete requirements for information to be made available to investors before the investment, which must be kept up to date afterwards (article 23 of the AIFMD). The multiple disclosure requirements stemming from different pieces of legislation that closed ended funds need to comply with impedes legal clarity as to which legislative framework applies for that type of funds and what is the appropriate information to be provided to the investor.

Having such type of funds included in the original 2003 Prospectus Directive might have been justified as AIFMD was not in force and UCITS was the only regulation covering fund managers and funds (including investor information). AIFMD and its delegated acts, in force since 2011, establish the appropriate level of information to be given to the investor prior to investment. For this reason, we believe a wider exemption of all investment funds, including closed-ended funds, of the proposed Prospectus Directive would avoid unnecessary duplicative requirements.

EFAMA has strongly supported the exclusion of the closed ended funds from the scope of the Prospectus Directive in order to ensure legal clarity and to avoid any unnecessary duplicative burden when it comes to the prospectus of particular types of investment funds (the closed ended ones). We

regret that this is not the case in the final agreed text of the trilogues and we still consider it important and in full alignment with the objectives of the CMU to ensure a simple disclosure requirements regime for all investment funds of the same type. For that reason, we would consider it important to ensure a further rationalisation of the disclosure requirements for closed-ended funds that are publicly offered.

Corporate bonds

EFAMA fully supports the overall objectives of the Commission to assess the EU corporate bond markets and the ongoing work of the EC expert group. EFAMA supports this work as we consider it crucial for the Commission to understand the impact of the post-2008 financial reforms, as well as the impact of other exogenous factors (e.g. central bank intervention through monetary easing).

We would not at this stage propose any complementary policy measures, and will be monitoring the discussions and final recommendations of the expert group.

3. INVESTING FOR LONG TERM, INFRASTRUCTURE AND SUSTAINABLE INVESTMENT

Consultation on the main barriers to the cross border distribution of investment funds

EFAMA welcomed the consultation that the European Commission carried out on the cross-border distribution of different types of investment funds (AIFs, UCITS, EuVECA/EuSEF, and ELTIF) and submitted an extensive response on the remaining barriers to marketing funds across the EU single market, as well as the ways to eliminate them[2]. We share the goal of the European Commission in seeking further ways to deepen the Single Market for investment funds. This is essential for widening the opportunities for European citizens to save and invest and facilitates better outcomes both for savers and the wider European economy.

Investment funds are probably one of the best examples to date of a generally well-functioning EU single market in the area of financial services. There is an important rise in the share of cross-border funds over the last decade, which further highlights the significant potential of the cross-border distribution of investment funds has for the EU single market.

This being said, there is certainly significant room for improvement and further integration of the EU Single Market for investment funds. Enabling a wider distribution of funds outside their domicile member state means a larger and more diversified choice of investment opportunities for both retail and professional investors, as well as more efficient allocation of resources across the EU. It also means further competition at the EU level and at the level of domestic markets that can increase the overall quality of the products offered, allow for further innovation and reduce the costs and fees. Thus, identifying the reasons that hinder cross-border market for investment funds and the areas where further improvement is necessary, does not just respond to the needs of particular market players, but also helps deepening the single market and strengthening the European economy.

EFAMA has highlighted a number of areas where there is still further work to be done. We would like to reiterate our support here for actions to be taken in those areas.

A. Marketing Requirements

EFAMA has highlighted the important differentiation between the different national interpretations of what is marketing and premarketing as being a significant market entry barrier. The definition of what

[2] Please see EFAMA's response here
http://www.efama.org/Publications/Public/AIFMD/EFAMA_response_cross-border_CP.pdf

marketing is needs to be clarified, potentially via common guidelines and standards on the scope of marketing activities on which the AIFMD rules apply and of pre-marketing when those rules do not apply. EFAMA believes ESMA should be assigned this task with the aim of clarifying existing rules without imposing new requirements in order to ensure regulatory stability.

Reviewing the level 1 text of the core regulatory framework for investment funds in Europe not only is a lengthy and burdensome process, but can also pose risks for the regulatory stability for asset managers and for investors inside and outside Europe. Instead, any practical solutions should be preferred with the aim of clarifying and understanding regulatory requirements, such as Guidelines published by ESMA –that could provide with the right responses and ensure the appropriate and necessary level of regulatory convergence.

In that regard, we would recommend that ESMA first carries out a mapping exercise of all existing national marketing regimes for investment funds and of the potential inconsistencies among them. Based on that and as a second step, ESMA should address inconsistencies that cause legal uncertainties and burden for the cross-border distribution. ESMA could promote closer cooperation among national competent authorities (NCAs) and develop common Guidelines to which national regulators, asset managers and practitioners could refer to and which can provide clarification with regards to what constitutes a common definition of marketing (in particular the notion of pre-marketing) or distribution for both UCITS and AIFs as well as what constitutes reverse solicitation.

In addition, EFAMA has proposed that a specific internet portal in a language customary in the sphere of international finance be put in place by ESMA in association with NCAs, in which legal, tax and practical information on the marketing regimes will be published, including:

- A single table on the regulatory fees regularly updated by the NCAs;
- A harmonized and easily accessible Guide to national UCITS, AIF, EUVECA, EUSEF and ELTIF marketing regimes, regularly updated by the NCAs (updates should be visible by investors in real time);
- A table with the main national tax costs.

B. Regulatory Fees

EFAMA believes that the biggest barrier does not come from the existence or the level of regulatory fees imposed by NCAs, but rather from their significant variation both in scale and how they are calculated in different member states, consequently creating a burdensome process. That leads to a situation where the costs and time spent in researching those regulatory fees and organising payments constitute de facto a material barrier. Such diverging regulatory fees and processes related to them are at odds with the spirit of a Capital Markets Union.

Given that the main related barrier is the lack of transparency and legal certainty concerning the regulatory fees, EFAMA would like to reiterate its proposal for an ESMA portal to be built and updated in association with the NCAs, which will include amongst others a single table with all the regulatory fees in each jurisdiction. This can be the first step towards addressing those issues and further rationalising the regulatory costs.

A step towards rationalising and bringing further consistency and transparency concerning regulatory fees can be found also in the recent proposal for amending the EUVECA Regulation (COM (2016)421), where the Commission explicitly requests that fees and other charges in relation to cross-border marketing of EuVECA and EuSEF funds are not to be imposed by competent authorities of host member states. The same Proposal also requests that the NCA of the home member state notify the NCAs of the host member states and ESMA immediately of any registration of a EUVECA manager and asks ESMA to maintain a central database publicly accessible on the internet, listing all managers of funds

using the designation "EuVECA" and the funds for which they use it, as well as all the member states in which those funds are marketed. EFAMA fully supports these proposals. This is a good practice at EU level that could be followed in the case of UCITS and AIFs as well.

Administrative arrangements

The wide range of requirements on local agents that must be appointed before an investment fund can be distributed cross-border is a barrier. The roles of local agents in relation to the cross-border distribution of investment funds also differ among national jurisdictions.

When it comes to local agents and physical facilities, it is important to stress that the requirements initially foreseen in the UCITS Directive for local facilities and paying agents were appropriate at the time of their adoption, when these were the main means to obtain the necessary information. However, they do not reflect anymore the current technological developments, which render them outdated and for that reason, they can increase the administrative costs for the investment funds. Today the access to information, payments and issue handling services can be provided by other means and without having a physical facility in each member state in which a fund is marketed. It would, therefore, be appropriate to give the possibility to the manager to put in place either physical facilities or on-line and telephone ones, bringing the requirements in line with the existing market conditions.

We also took note of the ESMA final report on the draft RTS under the ELTIF Regulation[3] that recognised this fact and stated that similar services can also be provided by telephone or electronically. Moreover, in the same report, ESMA is providing a mapping of the national requirements for facilities available to the retail investors under Article 92 of the UCITS Directive, which highlights the important divergence of such requirements per jurisdiction and hence, the burdensome activity they pose to asset managers.

Given the continued reliance on such intermediaries, there are inevitable delays and burden in the registration process, resulting from the time to source local partner institutions, from carrying out an extensive due diligence and negotiating the underlying service agreements. The accompanying costs are at the expense of the fund and their investors while, often, they bring no added value to the investor.

Instead of the existing arrangements, we would recommend to establish a requirement to ensure the accessibility to the selling intermediary and the asset manager via a number of means:

- Having on-line or telephone access to information related to the investment (via an on-line account, the website of the asset manager or a telephone line);
- Possibility to introduce complaints via electronic means and in in a language customary in the sphere of international finance (also valid for the responses to be received);
- Having access to information provided by NCAs on the funds that are notified for marketing in their country of residence.

Moreover, it should be stressed that the investor's access to the appropriate amount of information is not restricted only to the information provided by the asset manager, but should also include the one that can be provided by the NCA. For that reason, improving the NCAs' websites and the access they provide to information on the funds that have been authorised for marketing in their jurisdiction, will also significantly enhance the quality and level of information investors receive.

Direct and on-line distribution of funds

Although there is a high interest from the asset management industry to use the potential of distribution via a single on-line platform across the EU, there are a number of barriers that effectively prohibit this: different marketing rules, different definition and rules on advice, diversified fund pricing

[3] https://www.esma.europa.eu/sites/default/files/library/2016-935_final_report_on_eltif_rts.pdf

structures, additional registration requirements imposed by national frameworks etc. Moreover, electronic distribution often requires a local country website, which means further efforts that may not always be related to financial regulatory requirements (for instance, rules related to national privacy rules and data retention) and further resources to support that.

For that reason, a more holistic/coordinated approach is necessary to come up with the right solutions. EFAMA considers, that this is an issue to be tackled within the EU digital single market agenda.

We would invite the Commission to consider in the long term 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 securities accounts or purchase other investment services – including UCITS – with more providers (even in different member states) and individually manage his/her digital account in a consolidated manner. This digitalization of savings solutions will necessarily be adapted to fit both execution-only products, as well as those requiring investment advice.

Notification Process

The problems and barriers related to notification processes are not only related to the absence of common rules as to what is necessary for the initial notification process, but also arise in cases of maintenance of the notification (when updates and modifications are necessary) and in cases of deregistration, where there is no common process across the single market. There are also significant differences as to the time necessary for the reaction of the NCAs concerning the treatment of the notification files.

We, therefore, recommend focusing primarily on further standardising a number of requirements such as:

- The specific requirements applicable to the marketing of AIFs to retail investors;
- Requirements to appoint local agents, in particular, in relation to AIFs marketed to retail investors;
- Specific local marketing material rules in each member state;
- Specific criteria for which the notification period will start again, including a distinction between an incomplete file and comments on the documents.

Moreover, with regards to the update of the notification, it is still unclear (and not harmonized at the level of the European regulators) what is considered as material change and what needs therefore to be notified to the home country regulator of the AIFM. Further clarifications would be necessary as to that.

Taxation

(please refer to section 6 below regarding the taxation barriers to the free movement of capital)

Ensuring the global competitiveness of the EU financial regulatory framework

Global competitiveness should remain one of the key goals of the EU agenda for the building of a strong CMU. In particular, the Commission should further assess in a more horizontal approach how obligations /constraints / costs / prohibitions imposed on EU-based asset managers and funds affect their competitiveness. It is crucial to ensure that the EU regulatory framework for financial services remains competitive vis-à-vis that of the rest of the world. Three main reasons underpin this much needed approach:

- It is key to keep the European based industry at the highest quality standard worldwide and to promote innovative and cost effective solutions to satisfy investors' needs.
- Additionally, since more and more pieces of the EU legislation offer access for third country players and products to the EU market, while at the same time the whole set of regulations to

be applied to them in their own countries is in many instances less stringent than the one applying to EU-based players and products, it is crucial to keep the competitiveness of the regulatory framework applicable to EU-based players and products within the EU single market itself;

- These discrepancies in regulation and therefore also in costs are also handicaps for EU-based players and products that wish to further develop and engage outside the EU. It has to be ensured that EU financial service providers and products can compete on a level playing field when it comes to regulatory constraints and costs with the local players and products on these third country markets.

UCITS share classes

With regard to the Commission's objectives to remove cross-border barriers to the distribution of funds, and in particular with regard to its objectives in respect of UCITS, EFAMA regrets the recent ESMA Opinion published on 13 February 2017. The Opinion determined that for those UCITS offering different kinds of share classes with derivative overlays to hedge-out non-foreign currency factor risks (e.g. duration, volatility, etc.), these share classes will be deemed non-compliant.

It is our view that the Opinion marks a clear "step back" in that it will oblige fund providers to phase-out the offer of the relevant share classes, despite strong investor demand and where the relevant factor risks to portfolios remain elevated (e.g. the impact of a rising rate environment on bond portfolios in the coming years). The closure of certain share classes – for no apparent benefit and despite the fact that their relative derivative overlays are implemented in the same manner when compared to the permitted foreign currency hedged ones – will inevitably oblige asset managers to re-invest client assets into new UCITS structures, to be created ex-novo and bearing all the related authorisation, initial set-up, transaction and administration costs. Inevitably, the size of the previously existing UCITS funds with a broad array of different share classes will be reduced with all the foregone opportunities in terms of greater economies of scale and in terms of larger funds with a stronger cross-border appeal to investors, especially institutional investors that have committed considerable amounts of their own and clients' money to fixed-income portfolios managed through UCITS. For years, the European asset management industry and its investors have suffered from lower economies of scale vis-à-vis non-EU asset management companies, particularly those in the USA. Where a broad array of share classes based on the same underlying asset pool is allowed, fund administration and distribution costs are mutualised across a larger population of investors, delivering significant savings in terms of economies of scale to the benefit of investors.

As the creation of share classes is essentially demand-driven, investors are faced with reduced choice due to the decision of authorities to limit permissible hedging overlays at share class level to currency hedging. In connection with better cost mutualisation and against the backdrop of the worldwide competitive landscape, EFAMA asked regulators to help European UCITS managers:

I. Manage larger UCITS funds to effectively face-off competition from non-European providers, while helping to resolve the problem of excessive fund fragmentation noticeable in Europe;
II. Hedge duration risks in fixed-income portfolios as real and non-secondary to foreign-currency ones; and
III. Offer UCITS shares outside Europe to meet rising demand in non-EU, third-country jurisdictions (particularly Asia), thus drawing more non-European investors towards the UCITS product brand.

EFAMA requests that the Commission asks ESMA to reconsider its Opinion in respect of the permissibility non-currency hedging overlays at share class level for UCITS to ensure the Commission's objectives for CMU in respect of UCITS can be achieved.

Additional actions that can contribute to fostering the financing for innovation, start-ups and non-listed companies

EFAMA considers it important that the Level 2 measures under the ELTIF Regulation are finalised and available to the market. The European Commission has supported the ELTIFs regime and its role to fill in the existing financing gap for non-listed entities and listed SMEs and to unlock and encourage the shift of important capital towards investments in longer term projects. EFAMA has welcomed and supported this objective. For this reason we believe that putting in place the final implementing measures of the ELTIF Regulation is urgent and necessary to ensure further legal clarity to investors and asset managers concerning the establishment and operations of ELTIFs.

Support sustainable investment

EFAMA is very supportive of the creation of a European Commission High-Level Expert Group on Sustainable Finance with a view to contributing to an effective EU sustainable finance agenda by the end of 2017. With asset owners increasingly feeling a responsibility to take part in addressing environmental, social and governance ('ESG') challenges in their investments, asset managers, as the linchpin between investor's savings and the real economy, have a crucial role to play in providing the tools and advice for selecting responsible investments.

EFAMA would firstly highlight the importance of pursuing a sustainable finance agenda focused on a balance of the three E, S and G pillars. While we are supportive of the momentum in green finance since the Paris accords, we would strongly emphasize the equal importance of social challenges such as labour conditions, human rights, and governance issues, besides environmental issues (which are not all climate related) in pursuing a comprehensive, complementary and effective approach to sustainable finance.

We would also make the point that any mandatory regulatory requirements would risk shifting ESG integration from a rapidly developing, market-driven field to a compliance matter, thereby stifling the growth of responsible investment.

From an asset management perspective, there are some examples of additional actions which could help contribute to long-term sustainable investment:

- As well as the need for more coherence in the green bond market to allow investors to better evaluate and compare products, increased supply of green bonds is also recommended. For example, sovereigns could set an example - the problem is not with the financing of green bonds, rather the supply, with France, Sweden, Morocco and the US state of Massachusetts being the only sovereigns to have issued green bonds.
- Asset owners generally judge the performance of their asset managers on 3-5 year contracts. However, a short-term view of the asset managers' performance may not fit with the long-term investment horizon of asset owners, therefore a change of practice by the asset owner, in relation to how the relationship with the asset manager is viewed, may be necessary to ensure alignment.
- We welcome the work done by the European Commission on non-financial disclosure guidelines for companies and the work done by the FSB Taskforce on Climate-related financial disclosures, however further standardisation between different disclosure frameworks would be useful for asset managers who need comparable information.

4. FOSTERING RETAIL INVESTMENT AND INNOVATION

EU retail investment product markets

We reaffirm our strong support for the Commission's continued efforts to improve the Single Market for retail financial services. It is essential for the European Union to provide retail investors with better access to the capital markets to tap the potential of citizens' savings currently lying dormant.

With this in mind, we have taken note of the fact that the European Commission and the ESAs are currently undertaking studies on the distribution of retail investment products. We question what possible conclusions can be drawn at this point in time. As highlighted by the Commission in its consultation paper, a new wave of EU legislation (MiFID II, PRIIPs and IDD) is about to come into force in early 2018 which intends to significantly enhance product disclosures and distribution rules for retail investment products. We note that the studies are being conducted at a time when MiFID II/PRIIPs/IDD are not fully implemented or in force. We caution the Commission to duly take into consideration the considerable changes that these new frameworks establish, and to use the studies' conclusions to build a more coherent regulatory regime.

We therefore recommend to the Commission and the ESAs to:

- approach these studies from a cross-sectoral basis, including all types of PRIIPs which aim to provide capital market exposure to retail investors and not only look at each type of investment product in isolation. Only when looking at this from a horizontal perspective can the benefit or detriment of investment products be truly confirmed.
- focus not only on the cost component of retail investments, but on their overall performance net of fees and other more qualitative measures to determine the added value to retail investors when comparing them with savings products.
- to distinguish between product costs and distribution costs which – while inherently linked – address different parts of the value chain. Only by separating out different cost components will it be possible to single out areas of further improvement for retail investors. Unfortunately, despite the timing of these studies (MiFID II/PRIIPs/IDD are not fully implemented or in force), they should still take account the enhanced transparency disclosures as a potential and additionally standardised data source.

In light of CMU's objectives, EFAMA would like once again to call upon the European Commission to work towards equal standards of investor protection and a level playing field at the point of sale. We believe the IDD framework falls behind the relevant MiFID II standards in several instances such as cost disclosure rules, legitimacy of commission payments and other inducements. Also the IDD's minimum harmonisation approach when it comes to financial distribution rules contrasts with MiFID II' maximum harmonisation. As far as possible, equal or at least equivalent standards should be introduced in the pending work on IDD implementation at Level 2. More generally, we would encourage the Commission to investigate the indicated obstacles to a level playing field as part of its EU retail investment product market assessment to be conducted in 2017.

Assessment of the case for a policy framework to establish European personal pensions

EFAMA welcomes the Commission's reference in this consultation to a legislative proposal expected in Q2 2017 to underpin the development of personal pensions across the EU. The general support from respondents to the Call for Evidence creates a very favorable momentum for the creation of a Pan-European Personal Pension product (PEPP). In our view, the PEPP would be the appropriate policy tool to create a true single market for personal pensions, and contribute to growth and investment within a CMU. For EU citizens, this would ensure delivery of cost-efficient, simple and portable personal pensions. And providers would be able to provide similar products within a wide range of Member States, which should lead to economies of scale, lower costs and increased competition.

5. STRENGTHENING BANKING CAPACITY TO SUPPORT THE WIDER ECONOMY

Proposal on simple, transparent and standardised (STS) securitisations and revision of the capital calibrations for banks

Asset managers, acting on behalf of investors, are key players in ensuring the appropriate transmission of financing to the issuers of securitisations, thereby facilitating the flow of funds to the real economy. EFAMA, as the European representative association of the asset management industry, is supportive of the principles behind the European Commission's initiative to consolidate a high-quality framework for EU securitisation, which includes the creation of a simple, transparent and standardised 'STS' securitisation. EFAMA is engaged in the legislative process and believe there are some key principles which need to be taken into account by the co-legislators in any final agreement to ensure investor appetite for the securitisation market:

- 5% retention rate in line with global standards.
- Ensuring the EU securitisation is viewed in the context of the wider global environment, from an EFAMA perspective UCITS funds being able to continue investing in non-EU securitisation exposures is of critical importance. It should also be clarified that UCITS funds need adequate grandfathering of existing positions prior to the Securitisation Regulation being in force. Due diligence rules already apply to certain types of market participants and the proposals currently being discussed ensure that these rules continue applying retroactively. However, the situation is also created whereby the rules are retroactively applied to a type of market participant (UCITS funds) who have not had the rules applied to them already.
- Ensuring no undue regulatory burden is placed on securitisation when compared to other asset classes, particularly in relation to transparency requirements.

6. FACILITATING CROSS-BORDER INVESTMENT

Strategy on supervisory convergence to improve the functioning of the single market for capital

Having strong institutions with a specific mandate to take decisions on behalf of the EU is incremental to the development of a single rule book. This is particularly crucial in the context of the Capital Markets Union, which will undoubtedly benefit from reinforced supervisory cooperation and enforceable rules. In EFAMA's view, it is therefore essential that the ESAs are given a clear mandate from EU policy makers. There have been question marks in certain instances over whether the ESAs acted within the remit of their mandate.

Review of the macro-prudential framework

With regard to the Commission's ongoing **review of the EU macro-prudential framework**, we would condense our views in the few following points:

- A revised macro-prudential policy framework for the European financial system should necessarily be characterised by a holistic approach, aimed at better understanding the multi-dimensional nature of contemporary financial markets. These involve, to name only a few, the complex interactions between bank and non-bank sectors, as well as the means and objectives of countless entities and individuals, of which the asset management industry represents only a minor part[4];

[4] In this regard, the approximate "size" of the global asset management industry was correctly reflected in a recent FSB consultative document, addressing a series of alleged "structural vulnerabilities" in the asset management industry, whereby "Third-party asset managers as a group only manage about one-third of the total financial assets of pension funds, SWFs, insurance companies and high net worth individuals. The remaining assets are managed by the investor or asset owner without the help of independent asset managers." Please

- For a more robust and fact-based assessment by macro-prudential supervisors, it is imperative for the current multitude of separate data collection efforts to be harmonised, so as to yield data sets that are precise, comparable and subsequently actionable for public policy goals. In this regard, we regret that, given the uncertainties surrounding multiple reporting requirements stemming from EU-based rules, preliminary assessments as to the contribution of non-bank actors to European-wide (or global) systemic risks will only be partial at best, when not entirely flawed;
- We believe the ESAs have a clear mandate to identify and monitor potential systemic risks arising in their respective areas of responsibility, accounting for eventual macro-prudential concerns in both their regulatory and standard-setting work. However, in case a revised EU macro-prudential policy architecture were to be extended to the assessment of non-bank actors and activities, we consider it essential that the relative "weight" of market supervisors be enhanced within the organisational structure of the ESRB. In parallel, we would also recommend that the current composition of the ESRB Secretariat staff be more diversified by recruiting non-bank expertise from national market supervisors and ESAs. The outcome would in our opinion achieve a better balance among bank-specific and non-bank-specific skill-sets, necessary to avoid some of the recurring biases in the ESRB's present analysis of market realities;
- Finally, in view of the existing "strong link" between the ESRB and the ECB, EFAMA wishes to avoid that the, in our view misleading policy conclusions the FSB has been drawing over the past several years in the attempt to designate asset management companies and their funds as "global systemically important financial institutions" (G-SIFIs) be replicated at European level. Quite worryingly, this attempt was initially carried out on the basis of a methodology used to designate "global systemically important banks" (G-SIBs) by the Basel Committee on Banking Supervision (BCBS) since 2011. EFAMA welcomed that, in view of the proposed methodology's inherent weaknesses, this initial approach was sensibly amended to take into account our industry's views, as well as those of securities market regulators as represented globally by the IOSCO. In this regard, it is fundamental that the ESRB/ECB recognise that asset management is primarily an "agency" business, and as such should not be viewed through the prism of banks' activities, as well as the fact that – especially in Europe – our industry is already comprehensively regulated.

In our view, the above conditions need to be duly considered should the EC envisage to expand the ESRB's remit to cover non-bank actors and activities.

Review progress in removing remaining Giovannini barriers

Regarding the post-trade landscape, EFAMA welcomed the Commission's initiative to create the EPFT and we are actively participating in the effort to build an updated and clear view of the European post-trade environment as well as addressing the remaining difficulties or the ones stemming from changes in recent EU legislation.

EC Report on national barriers to the free movement of capital: taxation barriers

EFAMA believes it is crucial to simplify Withholding Tax procedures, and have suggested the following solutions.

refer to the FSB's Proposed Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities, published on 22 June 2016; available at: http://www.fsb.org/wp-content/uploads/FSB-Asset-Management-Consultative-Document.pdf

- **Treaty Entitlement of CIUs**

CIUs should always be considered as the beneficial owner (or a qualified person) and qualify for the double tax treaty without further requirements (no LoB-requirement). This solution, which is in part supported by the 2010 OECD CIV report, should be applied at least to all widely held open-ended funds. The EU should encourage in this respect member states 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.

Many CIUs (UCITS as well as AIFs) are widely distributed and held by or through distributors or through CSDs (Central Securities Depositors). All the information with respect to the end investors lies with the distributors (e.g. account holder banks, brokers or transfer agents) which – mostly for commercial and legal reasons – often are not willing or able to share the information with the issuer (CIU). Therefore, the CIUs would only have information about those distributors, if any, but not of their "end" investors. Tax treaties, however, often foresee LoB-rules (limitation on benefits) in order for the funds to achieve treaty entitlement. LoB-rules require the funds to proof their "end" investor base (nationality/residence). Due to the before mentioned, for CIUs this is often very difficult or even impossible to achieve.

Alternatively, in a European context, the current application of LoB clauses provided by certain DTTs concluded between member states should at least be reconsidered for funds, as it may be viewed as a barrier since a fund must in some instances only be held by resident investors of the country where it has been established in order to qualify for said DTT benefits (look-through approach): in our view, investors from all European countries should be accepted. A potential further step could even be in this respect to consider that a fund set up in a European country, authorized and controlled by a European regulator and marketed only in European countries is deemed to be a European resident for tax treaty purposes and benefit, as a beneficial owner, from the various tax treaties signed between European countries.

EFAMA welcomes the fact that the EU Commission encouraged Member States to implement a general anti-avoidance rule based on a Principal Purpose Test (PPT) in its recommendation dated 28 January 2016. Nevertheless, with respect to the special nature of investment funds EFAMA has some concerns regarding the above recommendation of the Commission. CIUs operate under different tax regimes around the world with the intention of ensuring that investors are not impacted by an unnecessary additional taxation at fund level. Divergence in the interpretation of a PPT by different tax administrations can undermine and create further uncertainty on the ability of UCITs and comparable AIFs to meet treaty qualifications. We therefore believe that the EU Commission should encourage Member states to consider that UCITs as well as AIFs shall not be considered as creating opportunities for treaty shopping. They should thus be expressly excluded from the scope of the PPT clause.

- **Implementation of TRACE**

TRACE has been designed to improve efficiency for claiming treaty benefits for investors and EFAMA understands that TRACE could be a way to overcome WHT issues. EFAMA is therefore supportive of a TRACE implementation or any other alternative that provides additional information to investors.

As mentioned above, at the moment the time and costs of recovery of WHT in many cases act as deterrent for investment funds to invest in states other than those of their residence. An implementation of TRACE could definitely ease the problem of recovery of WHT and reduce tax barriers on cross-border investments for funds.

However, EFAMA is concerned that in practice implementation may be quite protracted and will not in all cases ensure treaty entitlement of widely-held CIUs. Thus, EFAMA is of the opinion that it would

be helpful to have better and easier European WHT rules in advance of the implementation of TRACE. It is necessary that investment funds are generally entitled to double tax treaties so that the fund itself will always be considered as the beneficial owner in all member states and is therefore able to claim benefits in its own right. In this regard it is necessary to set up a unified system.

A general treaty-entitlement for widely-held CIUs would serve the goals of neutrality between direct investments and investments through a CIU as the risk of double taxation between the source state and the investor's state of residence would decrease. Existing barriers to cross-border investments would be eliminated and especially investors from small countries would enjoy a greater choice of investment vehicles.

As already outlined above, many funds are widely distributed, in particular Luxembourg and Irish funds are routinely distributed beyond Europe. Retail funds are typically held by or through distributors or CSDs and would only have information about those intermediaries, if any. Thus, in case TRACE requires the knowledge of the investor base it is not helpful for a lot of widely-held CIUs. Consequently, better and easier rules including a general treaty entitlement for UCITS and comparable AIFs would be mandatory.

- **Abolishment of WHT**

From our point of view the easiest solution to solve complex legal and practical WHT problems in Europe and to foster retail investment accordingly would be the abolition of WHT on transferable securities for payments made to UCITS and AIFs within the EU and partner jurisdictions to the EU.

This is a less radical proposal than may at first appear. First, generally abolishing WHT on cross border dividend payments was one possible option presented by the Commission in its 2011 consultation.

Second, further to the judgement of the ECJ on the principles of the free movement of capital (especially "Santander", C-338/11 or "Emerging Markets", C-190/12), some member states already abolished under certain circumstances WHT for certain types of foreign CIUs (France; Spain; Poland) or limited the WHT rate to 15% (e.g. Netherlands, Belgium, Germany from 2018). In the case of Netherlands, it already limited the WHT rate to 15% on January 2007 in order to limit administrative burdens. The Netherlands came to the conclusion that due to its extensive treaty network in most cases the shareholder receiving the dividend was entitled to a reclaim of 10% anyway. So it was decided that in order to limit reclaim procedures, the statutory rate should be limited to 15%, which is equal to the standard treaty WHT rate for dividends. Other member states do not levy WHT on certain type of income paid on the basis of their domestic legislation (e.g. UK on dividends and Luxembourg on interest). The Commission could thus consider a recommendation to member states to abolish the WHT for payments made to UCITS and AIFs in order to ensure a uniform and consistent application of the ECJ judgements.

As an alternative approach, an EU wide limit could be imposed on the WHT rate equal to the rate foreseen in double tax treaties, i.e. 15%. As major source countries in Europe already follow those approaches this would also help to create a level playing field for all countries within the EU and partner jurisdictions and to boost the competitiveness of the Single Market as a whole.

As to a potential 'treaty shopping' argument against this, it is worth reiterating that investors invest in a widely held fund to benefit from professional management of a diversified portfolio. They do not have control over the investment decisions and treaty benefits are not the primary objective of investing in a fund.

ENDS