

Cross-Border Fund Distribution – European Commission Proposal March 2018

Introduction

In an attempt to make cross-border fund distribution more efficient and cheaper, the European Commission (“the Commission”) published a legislative proposal on the cross-border distribution of investment funds on the 12th March 2018. The proposal seeks to address the obstacles faced by investment funds wishing to distribute in Europe on a cross-border basis. The Commission has estimated that the proposed measures will reduce annual cross-border distribution costs for the €14.3 trillion EU funds market by €440 million per annum.

Background

The proposal forms part of the Capital Markets Union action plan. This action plan seeks to remove barriers between capital markets and to facilitate a true single capital market. In the context of fund distribution, the Commission is working towards the harmonisation of member state marketing requirements, regulatory fees and notification requirements. These requirements can vary considerably, and as shown by an open consultation conducted by the Commission in 2016, they contribute significantly to the reluctance of many asset managers to distribute their products internationally.

It is currently estimated that 70% of total assets under management (“AUM”) held by investment funds is authorised or registered for distribution only in their domestic market. It is also estimated that only 37% of UCITS structures and 3% of AIFs are registered for distribution in more than 3 member states. These statistics demonstrate that there is significant scope to increase cross-border fund distribution once regulatory barriers and costs are minimised.

The Commission Proposal

The proposal consists of a Regulation and a Directive.

Regulation

The proposed regulation deals with the circumstances of entry into a market of an EU member state and aims to improve transparency by aligning national marketing requirements. Specifically, the proposed regulation entails:

- A ban on requirements for funds to establish a (costly) physical presence in a member state prior to the commencement of distribution.
- A suggestion that regulatory fees should be proportionate to the supervisory tasks carried out, and need to be disclosed on the relevant regulators’ websites.
- A suggestion that European Securities and Markets Authority (ESMA) will maintain a central interactive database of regulatory fees and national laws and regulations.

Directive

The proposed Directive, on the other hand, seeks to introduce rules around market exit. The proposal envisages that a fund may only cease to be registered for marketing into an EU member state if that fund has 10 or fewer investors in the relevant EU member state and its overall investments amount to less than 1% of the fund’s AUM.

The Directive also introduces the possibility of a harmonised definition of what constitutes pre-marketing for AIFs (the provision of early stage marketing materials such as draft term sheets and draft offering documents to potential investors). The aim is to align member states in terms of what type of pre-marketing activity would not trigger licencing/notification obligations under AIFMD.

Industry Reaction

The proposal has generated mostly negative feedback from the industry. Industry representatives have voiced concerns that the proposal adds “a new layer of rules” and doubt whether legislation, rather than consolidation of the existing rules and processes, is the most efficient approach to take. The proposed rules around market exit have been criticised for making cross-border fund distribution more difficult rather than easier by introducing a barrier to the deregistration of funds.

On the other hand, the proposed changes around fees, transparency and removing the requirements for local facilities/physical presence in member states have been generally welcomed.

Next steps

The proposal is now to be discussed by the European Parliament and the European Council. There is also an open consultation period for industry input, which ends on the 9th May 2018.

How can KB Associates Assist?

KB Associates provides a range of services to investment funds including:

- The provision of UCITS ManCo/AIFM services
- The provision of designated persons to perform UCITS business plan/AIFMD PoA functions
- The provision of operational and compliance services to both UCITS and AIFMD compliant structures
- The provision of cross-border fund registration services

If you would like to discuss any issues raised in this paper, please feel free to contact any of the contacts below:

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