International Funds Net

Your latest fund distribution updates

May 2022

Europe

European Union

ESMA publishes consultation paper proposing changes to notification letters for cross-border UCITS and AIFs

On 17 May 2022, ESMA published a consultation paper seeking views on draft Implementing Technical Standards and Regulatory Technical Standards regarding the cross-border marketing and management of UCITS and AIFs within the EU. The draft standards include five template forms for firms to provide when informing regulators of cross-border marketing and management activities.

Although the forms' content is predominantly the same, key changes have been introduced in respect of the following information requirements:

- information to be notified in relation to the provisions of activities in a host member state by a management company or AIFM
- a management company or AIFM's marketing strategy in the host member state foreach fund or AIF intended for marketing
- the marketing targets in the home and host member state, in particular the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment
- information on the marketing of AIFs in the home and host member state of the AIFM.

ESMA publishes updated Q&As on AIFMD

On 20 May 2022, ESMA published an updated version of its Q&As (ESMA34-32-352) on the application of the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD).

ESMA has modified or added the following Q&As:

- [modified] Section XV, Question 5 regarding how the performance reference period for the benchmark model should be set under the Guidelines on performance fees.
- [new] Section XV, Question 9 regarding whether the recommended length of the performance reference period under the performance fees guidelines is applicable to the hurdle rate model.

ESMA publishes updated Q&As on UCITS Directive

On 22 May 2022, ESMA published an updated version of its Q&As (ESMA34-43-392) on the application of the UCITS Directive (2009/65/EC).

ESMA has modified or added the following questions:

- [modified] Section XI, Question 3 regarding how the performance reference period for the benchmark model should be set under the Guidelines on performance fees
- [new] Section XI, Question 7 regarding whether the recommended length of the performance reference period under the performance fees guidelines is applicable to the hurdle rate model.

Greece

Cross-Border Distribution Directive transposed into Greek law

The Greek Parliament passed law 4920/2022 (Government Gazette A' 74/15.04.2022) on 12 April 2022 which, among other laws, transposed into Greek law, with a delay of 9 months, the Directive amending the pre-existing framework on the distribution of undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

The key changes introduced are as follows:

- makes UCITS marketing communications more in line with those of AIFs
- removes the physical presence requirement for UCITS marketing in Greece
- introduces concept of pre-marketing AIFs to institutional investors

- introduces a new deregistration regime for UCITS and AIFs.

Information kindly provided by our relationship firm in Greece, Zepos & Yannopoulos.

Ireland

EU Covered Bonds Directive to be implemented in Ireland from 8 July 2022

On 8 July 2022, the European (Covered Bonds) Regulation will enter into force in Ireland, giving effect to Directive 2019/2162 (Covered Bonds Directive) which will also enter into force on the same date.

The Covered Bonds Directive looks to harmonise the covered bonds regulation across the EU Member States through:

- clear definition of a covered bond
- clarification of the structure of a covered bond to include:
  - the entitlement of investors in covered bonds to against the issuing credit institution
  - priority for claims against the principal and
  - interest upon the insolvency of the issuer
- introduction of parameters for eligible cover assets and liquidity requirements
- obligation for transparency by credit institutions regarding the profile and risks associated with their covered bonds program
- obligation on regulatory authorities to impose administrative, or where appropriate criminal, penalties for breaches of covered bond rules.

Covered bonds issued before 8 July 2022 will continue to be governed by the present requirements outlined in Irish UCITS regulations. UCITS funds will only be able to benefit from the higher investment restrictions and diversification threshold for covered bonds under the European (Covered Bonds) Regulation once they are certain that the covered bonds and UCITS fund in question comply with the relevant criteria outlined in the Directive.

North Macedonia

Securities and Exchange Commission adopts rulebook on the Register of Investment Funds

At a session held on 4 April 2022, the Commission adopted a rulebook prescribing the form, content and manner of keeping the Register of Investment Funds. It also sets out the manner of determining the identification number of the investment fund in the Commission. The Register consists of three sub-registers:

- register of open-end investment funds
- register of closed-end investment funds and
- register of private investment funds.

The rulebook came into force on 6 April 2022. Companies managing open and closed investment funds, as well as managers of private investment funds already listed in the Register kept by the Commission, were obliged to submit a request to the Commission in order to be issued a new identification number within 10 days of the new registers' introduction.

Information kindly provided by our relationship firm in North Macedonia, Karanovic & Partners.

UK overseas territories

Jersey

Limited Partnerships (Amendment No.2) (Jersey) Law 202-, will come into force in Q3 this year subject to Privy Council approval

The Amendment Law is a significant overhaul of Jersey LP Law, which governs a large proportion of Jersey investment funds, particularly private equity and real estate funds, as well as asset holding structures, joint ventures and employee incentive arrangements.

The Amendment Law was designed to modernise the existing law and offer maximum flexibility for partners, in particular through changes to:

- clawback obligations

- partner liability
- liability of limited partners to creditors
- rights between partners
- rights to access partnership records
- third party rights
- winding up and dissolution upon termination and other circumstances
- reinstatement of a dissolved limited partnership
- annual confirmation.

Date set for new limited liability company regime

The Jersey Government approved the final elements of Jersey's new limited liability company (LLC) regime, which will come into force on 1 September 2022.

The changes were designed to optimise the LLC legislation with the aim of making the regime a viable option in Jersey's offerings to international managers. The changes in particular allow LLCs to be able to opt for body corporate status.

Information kindly provided by our relationship firm in Jersey, Ogier.

Americas

Canada

Proposals on cost reporting for investment and segregated funds published

On 28 April 2022, the Canadian Securities Administrators and the Canadian Council of Insurance Regulators published proposals which would enhance total cost reporting for investment funds and segregated funds. The proposals would include:

- periodic reporting to clients showing the ongoing costs of owning segregated funds and investment funds
- for securities investors, expansion of account statements to include the fund expense ratio for each of the investment funds that the client owns, expressed as a percentage
- expansion of annual cost and compensation reports for securities investors to include the total dollar cost of owning investment funds over the past year
- a new annual report for segregated funds holders including information on fund expense ratio and total dollar cost.

These proposed changes would therefore expand existing requirements for account statements and annual compensation reports, rather than requiring additional documents be sent to clients.

The proposals for the securities sector are for amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) and related guidance. IIROC and MFDA rules would be amended to be uniform in substance with final amendments to NI 31-103.

The proposals for the insurance sector are for an Individual Variable Insurance Contracts (IVICs) Ongoing Disclosure Guidance.

Updated FAQs released on Client Focused Reforms

On 29 April 2022, the Client Focused Reforms Implementation Committee released an updated list of FAQs, which consider and provide guidance on operational issues and questions shared by industry stakeholders relating to the implementation of the Client Focused Reforms.

The amendments are relevant to all categories of registered dealer and registered adviser, with some application to investment fund managers. These may be found at the following link.

Information kindly provided by our relationship firm in Canada, McMillan LLP.

Chile

CMF issues General Rule No.476 streamlining Foreign Securities Registration

On 14 April 2022 with immediate effect, the CMF issued General Rule No.476, replacing Section I of General Rule 352, which establishes the requirements for the registration of securities in the Foreign Securities Register. The most relevant changes include:

- replacement of the obligation to include a summary of information in the registration request with a confirmation such information is publicly available on the website of the issuer, regulator or markets in which it is listed and traded
- Rule 352 specifically sets out a limit of UF 500 (Approximately USD 20,000) on registration fees payable on similar securities registered by a sponsor
- the list of characteristics for which submission of a formal request for modification to the register is required has been reduced to modifications of:
  - issuer name
  - country of incorporation and
  - type of security, and series or classes or their description
- the timeline for information filings and modification requests is set to 5 business days.

Information kindly provided by our relationship firm in Chile, Alessandri.

Asia Pacific

Hong Kong

Changes to position limits and large open position reporting regime proposed

The Hong Kong Securities and Futures Commission (SFC) has started a two month consultation on proposed changes to the position limits and large open position reporting requirements in Hong Kong.

One of the SFC's key aims in doing so is to provide greater legal certainty on how the Rules apply to unit trusts and umbrella funds.

The following amendments are proposed for unit trusts:

- clarification that, for a unit trust, the trustee is obligated to observe the prescribed limits in relation to the positions of the unit trust, as well as to report the unit trust's reportable positions
- obligation for a person holding or controlling positions of multiple unit trusts, to separately apply the prescribed limits and reportable positions to the positions of each unit trust.
- clarification that when reporting on behalf of a unit trust, the unit trust's name should be specified rather than the trustee's identity
- clarification that a unitholder is not regarded, only by virtue of the unitholder holding one or more units in a unit trust, as holding or controlling futures contracts or stock option contracts in respect of a unit trust.

The following amendment is proposed for umbrella funds:

- clarification that the prescribed limits and reportable positions are applicable to each sub-fund individually and separately, as if each sub-fund were a stand-alone fund. However aggregation would still be expected from a fund manager who has discretion over all positions.

The SFC considers these changes are consistent with how positions are managed and monitored in practice, and will not place undue burden on the fund management industry. Market participants and interested parties are invited to submit comments on the proposals by 27 June 2022.

Implementation details announced for exchange-traded funds scheme with mainland China

On 27 May 2022, the SFC and the China Securities Regulatory Commission (CSRC) jointly announced the implementation of the connect scheme for trading of exchange-traded funds (ETFs) between Mainland China and Hong Kong (ETF Connect).

The Stock Exchange of Hong Kong (SEHK) issued a circular to provide the industry with details of the eligibility criteria:

- the ETF must be traded in HKD and have a daily average assets under management in the last six months of no less than HKD 1.7 billion

- the ETF must be listed for no less than six months
- the benchmark index must be launched for no less than one year
- the ETF must not be synthetic ETFs or Leveraged and Inverse Products
- the total weighting of SEHK-listed stocks in the benchmark index must not be less than 90%
- the total weighting of Stock Connect Southbound eligible constituents in Hang Seng Index, Hang Seng China Enterprises Index, Hang Seng TECH Index and Hang Seng Hong Kong-Listed Biotech Index must not be less than 70% and the total weighting of Stock Connect Southbound eligible constituents in other benchmark indices must not be less than 80% and
- the benchmark index or the index methodology of the benchmark index must be broadly based or be able to satisfy certain thresholds in terms of concentration of its constituent stocks.

Under ETF Connect, investors can only trade ETFs on secondary markets. No subscriptions or redemptions are allowed. The official implementation date of ETF Connect is to be announced, but it is expected to be launched soon.

Information kindly provided by our relationship firm in Hong Kong, Deacons.

Singapore

Guidelines issued on new conditions for family offices

New guidelines have been issued by the Monetary Authority of Singapore (MAS) on the new conditions set out under sections 13O and 13U of the Income Tax Act 1947, concerning tax exemption schemes for family offices. These conditions came into force on 18 April 2022 and govern all subsequent applications.

The changes to the section 13O (previously section 13R) scheme are as follows:

- a new minimum AUM of S$10 million at the point of application and the fund must commit to increase its AUM to S$20 million within a two year grace period
- the fund must be managed or advised directly throughout each year by a family office in Singapore. The family office must employ at least two Investment Professionals (IPs) which include portfolio managers, research analysts, and traders who are earning more than S$3,500 per month and must be engaging substantially in the qualifying activity. A one year grace period is permitted where the family office is unable to employ two Ips at the point of application
- the fund will need to incur at least S$200,000 in total business spending in each financial year. However, this can increase to S$500,000 or S$1 million depending on the AUM range. MAS has specified that "total business spending" should relate to the operating activities of the fund and not financing activities
- it will need to invest at least 10% of its AUM or S$10 million, whichever is lower, in local investments at any one point in time. Where the fund is unable to do so by the point of application, a one year grace period will be afforded.

The changes to the section 13U (previously section 13X) scheme are as follows:

- the fund must be managed or advised directly throughout the year by a family office in Singapore, where the family office employs at least three IPs. One of the three IPs must be a non-family member of the beneficial owner(s). If the family office is unable to appoint a non-family member as an IP at the point of application, it will be given a grace period of one year to do so
- the fund will need to incur at least S$500,000 in local business spending in each financial year. This is subject to the same tiered spending framework based on AUM as section 13O, and can increase to S$1 million
- it will also similarly need to invest at least 10% of its AUM or S$10 million,

whichever is lower, in local investments at any one point in time. Where the fund is unable to do so by the point of application, a one year grace period will be afforded.

Information kindly provided by our relationship firm in Singapore, Harry Elias Partnership LLP.

Taiwan

Amendments to SICE Directions

On 4 May 2022, the Directions for Securities Investment Consulting Enterprises to Provide Securities Investment Consulting Service under Robo-Advisor Service were amended following a ruling by the Securities Investment Trust and Consulting Association of the R.O.C. The amendment provided that securities investment consulting enterprises (SICE) may conduct the rebalance service under Robo-Advisor service, provided:

- the rebalance threshold is agreed by SICE and the client and
- the agreed conditions for rebalance service are satisfied.

The amendment incorporates the new requirements of Ref. No. Jin-Kuan-Chen-Tou-Tz-1100364865 issued on 18 November 2022 by the FSC.

Information kindly provided by our relationship firm in Taiwan, Lexcel Partners.

Your contacts

Please note that this update on recent legal developments is not designed to provide legal advice and it is advisable to consult with local legal counsel before any actual undertakings.

For more information on these updates or about FundsNet, our specialist solution for global AIFs and UCITS distribution activities, please contact:

Lindi Rudman
Legal Director

Dir: 0207 919 0837
Int: +44 20 7919 0837
lindirudman@
eversheds-sutherland.com

Michaela Walker
Partner

Dir: 0207 919 0541
Int: +44 20 7919 0541
michaelawalker@
eversheds-sutherland.com

Ronald Paterson
Partner

Dir: 0207 919 0578
Int: +44 20 7919 0578
ronaldpaterson@
eversheds-sutherland.com

eversheds-sutherland.com