



#### Irish Funds

Ashford House,  
18-22 Tara Street  
Dublin 2 D02 VX67

**t: +353 (0)1 675 3200**

**e: info@irishfunds.ie**

6th Floor,  
Square de Meeûs 37  
1000 Brussels

**t: + 32 (0)2 791 7693**

**w: irishfunds.ie**

## **Response Form to the Consultation Paper – Implementing technical standards under the regulation (EU) 2019/1156**

### **(Consultation Paper - Draft implementing technical standards under the Regulation on cross border distribution of funds)**

30 June 2020

Submitted via ESMA website.

#### **Introduction**

Irish Funds is the representative body for the international investment fund community in Ireland representing fund managers, depositaries, administrators, transfer agents, professional advisory firms, and other specialist firms. Irish Funds' more than 140 member companies represent more than 7,700 UCITS and AIFs domiciled in Ireland with a net asset value of €2.9 trillion<sup>1</sup>.

These funds are widely distributed to investors throughout the European Union and further afield. We believe it is critically important to maintain investor choice through the cross-border distribution of investment funds and to maximise competition across asset managers for the ultimate benefit of underlying investors. Furthermore, maintaining international flows of capital and efficient structures for the global asset management community benefits investors and the wider economy. Anything which assists with the distribution of funds to investors, including clear and concise information regarding the necessary requirements being available on National Competent Authorities websites, is very welcome.

The investment fund industry in Ireland supports an open, transparent and regulated regime with a strong emphasis on investor protection.

#### **Specific Questions:**

- 1. Do you agree that the information to be published should concern not only requirements applicable specifically to the marketing of investment funds, but**

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<sup>1</sup> Data from the Central Bank of Ireland as of April 2020

**should also encompass a general statement relating to the potential application of other bodies of law applicable.**

Yes, we agree with this approach and the requirement of National Competent Authorities ("NCA's") to publish and maintain, on their websites, up to date and complete information on the applicable national laws, regulations, etc. for AIFs and UCITS, as a minimum.

We would strongly recommend to ESMA that a general statement (at a minimum) should also be published relating to the potential application of other bodies of law applicable to the marketing of UCITS and AIFs in the particular jurisdiction. These types of domestic laws and rules, for example consumer protection, complaints procedures, etc. vary considerably across Member States and clarity on their relevance to the marketing and distribution of funds is highly sought.

Ultimately, investor protection will be heightened and allowing a tighter control to be placed on the compliance of marketing funds on a cross border basis should further transparency on relevant jurisdictional specific legislation be easily available.

- 2. Do you agree with the proposed approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs? If not, please provide alternative suggestions.**

Yes, we agree with the proposed approach.

A common format across NCA's websites would be extremely welcomed and helpful and more importantly for the information published to be up to date.

We propose that there is also a requirement imposed to ensure the information is date stamped and a requirement imposed to ensure the information is refreshed, reviewed and updated annually at a minimum.

- 3. Do you agree with the approach taken regarding the main characteristics of the summary of marketing requirements that NCAs shall publish on their websites? If not, please provide details on the elements that you would favour including in the text or in table.**

We agree with the suggested approach. The information should contain a full outline of initial and ongoing requirements and in particular, a focus on any jurisdictional nuances.

The information should be clear and concise listing all requirements.

In addition to the proposed table format provided in the Consultation Paper, which we agree should be harmonised across NCA's, we would suggest the inclusion of the following subheadings:

- Statistical Reporting Requirements
- Distributor Requirements
- Private Placement Exemptions
- Conditions for Pre-Marketing of funds
- Local agents/paying agent requirements<sup>2</sup>.

**4. Do you agree with the approach taken with respect to the scope of regulatory the fees and charges to be published by NCAs on their websites?**

Yes, we agree with the approach taken with respect to the scope of regulatory fees and charges to be published by NCAs on their websites. This is a much-needed resource.

Currently, the information in relation to fees can be either difficult to find on NCA's websites or the methodology is difficult to understand.

It is extremely difficult for asset managers to fully appreciate the regulatory fees for particular markets and this results in inefficient budgeting when considering cross border distribution to certain jurisdictions.

**5. Do you agree that the publication to be made by NCAs under this ITS should be made in the form of a table? If not, do you have any alternative suggestion on the format of the publication on regulatory fees and charges?**

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<sup>2</sup> Noted that the requirement to have a local agent in some jurisdictions will be phased out next year, but until such time comes, it remains difficult in certain jurisdictions to figure out if a local agent (separate to a distributor) is required to be appointed, and what exact role they need to fulfil.

We agree that the table format is the best approach as it is an easily digestible format, as long as the fees are divided into relevant sections and given clear guidelines i.e. initial, ongoing, other etc.

Further detail is provided in question 7.

We would also suggest that all fees should be recorded in the same base currency if possible. i.e. EURO

**6. Do you agree that NCAs have the option to supplement the tables setting out the details of the fees and charges with a full text providing detailed information on the fees and the fee calculation, if a table would risk giving incomplete or misleading information?**

We do agree, the only additional comment in this regard would be in relation to the details around fee calculation and ensuring that the detail on methodology for calculation is clear and concise. The fee calculation detail that has been provided to date on NCA's websites for some jurisdictions is difficult to follow.

**7. Do you agree with the content of the table? Do you think any other information should be published by NCAs in relation to the regulatory fees and charges?**

Yes, generally speaking the proposed content of the table, if applied, will address the issues that currently exist in relation to lack of transparency in some Member States in relation to both initial regulatory fees and ongoing regulatory fees applied. We would suggest the addition of the following content to the proposed table:

- Split fees into initial, ongoing/annual
- Other fees, for example "deregistration fee"
- Include a note in the table on where fees are expected to change
- Include detail on whether initial fee must be paid at time of the initial passport notification
- For annual fees, provide detail on when these annual fees become due
- Clear and concise details on how the regulatory fees are to be paid, both initial and ongoing. Will an invoice be issued, will the requirement to pre-approve number of funds currently registered in a Member State continue to exist as it currently does in some Member States
- Form by which the invoice will be issued and to which entity (management company, fund company, registered office, service provider)

- Full Bank Account details to be included in the table

**8. Please specify the use you would make of the information to be contained in the central database listing UCITS and AIFs marketed on a cross-border basis. Do you have any suggestion regarding the format of this central database?**

It is agreed that it is the obligation of the asset manager to maintain accurate records of where funds are registered and marketed on a cross-border basis. However, it is often the case that NCA's do not maintain consistent accurate records of fund passport approval and at times NCA's records can contradict asset managers records.

Where there are internal considerations of a potential mis-selling of a fund for example, it is crucial to have back up evidence internally but also to be able to seek validation from the relevant Member State of the passport approval. If both the NCA's and ESMA maintained this central database, we would envisage this to be a considerably useful marketing compliance tool.

From an investor perspective, there is often a requirement that evidence is available from the NCA's that the fund has been passported into a particular jurisdiction, as it currently stands, only a portion of NCA's maintain registers which can be publicly accessed and this can often delay investment into funds or discourage entirely.

We believe this would be a useful tool in order to access statistical information relating to distribution footprints in various Member States.