

Global Registration Services – Market Update Q3 2020

United Kingdom

UK FCA Reopen the TPR

Further to our client update on 7 July 2020¹, the UK FCA re-opened the notification window for the Temporary Permissions Regime ("TPR") on 30 September 2020.

Firms that had not previously notified the FCA of their intention to use the TPR can now do so; fund managers can also update their previously submitted notifications before the end of the transition period on 31 December.

Any firms and fund managers that intend to update their previously submitted TPR notification should notify the FCA no later than 9 December 2020, with all updated **and** new notifications to be submitted by 30 December 2020.

Europe

European Commission Issue Communication on Readiness at the End of the Transition Period between the UK and the EU

On 9 July 2020, the European Commission issued a communication² on readiness at the end of the Brexit transition period on 31 December 2020. The communication is of particular significance to the financial services industry at Section B1 (pp.12 – 15) of the communication, where key points around EU

and UK equivalence are discussed, and the Commission outlines those specific areas where an equivalence decision will not be taken in the short or medium term.

The Commission has also identified that the central clearing counterparties of derivatives may present a financial stability risk and to address this, they are considering an adoption of a time-limited equivalence decision for the UK in this area.

ESMA Letter on AIFMD Reform

On 18 August 2020, ESMA published a letter³ sent to the European Commission on the upcoming review of the Alternative Investment Fund Managers Directive ("AIFMD"), which sets out its recommendations across a range of different areas. This review is part of the wider action plan on the cross border distribution of investment funds under the Capital Markets Union ("CMU"), which is due to come into effect in August 2021. See also our client update of 14 June 2019.⁴

Some of the key points from a distribution perspective include:

- (a) Provision of local facilities: removing the requirement to appoint a local agent when marketing an AIF or UCITS fund in certain member states and granting authority to certain management entities and / or third parties to provide these facilities, on the condition that these

¹ <https://maples.com/Knowledge-Centre/Industry-Updates/2020/07/FCA-Temporary-Permissions-Regime-Update>

² https://ec.europa.eu/info/publications/getting-ready-changes-communication-readiness-end-transition-period-between-european-union-and-united-kingdom_en

³ <https://www.esma.europa.eu/press-news/esma-news/esma-recommends-priority-topics-in-aifmd-review>

⁴ <https://maples.com/Knowledge-Centre/Industry-Updates/2019/06/Cross-border-Fund-Distribution-Rules--Welcome-Changes-in-the-Pipeline>

facilities are provided in the official language (or one of the official languages) of the relevant member states.

- (b) Pre-marketing: A definition of "pre-marketing" will be introduced to enable EU AIFMs to test market interest before establishing an AIF or registering it under Article 31 or Article 32 of AIFMD.
 - (c) Harmonisation of the AIFMD and UCITS Regimes and harmonised reporting for UCITS funds.
 - (d) Harmonisation of supervision regarding cross-border entities.
 - (e) AIFMD reporting regime and data use.
 - (f) Definitions of "semi-professional investors", "AIFs" and "reverse solicitation", in addition to the definition of "negligence" regarding external valuer liability under AIFMD.
 - (g) Clarification on the power of Member States to apply additional requirements under their national law to sub-threshold AIFMs.
- (a) All non-French UCITS funds with ESG strategies registered for marketing in France prior to 11 March 2020 are required to update their marketing documentation by 10 March 2021.
 - (b) All non-French UCITS funds with ESG strategies registered for marketing in France between 11 March 2020 and 27 July 2020 had until 30 September 2020 to update their marketing documentation.
 - (c) The new rules regarding marketing documentation come into immediate effect for any non-French UCITS fund with ESG strategies that apply for approval to market in France going forward.

required from collective investment schemes incorporating non-financial approaches. The main points to note include the following:

- (a) All non-French UCITS funds with ESG strategies registered for marketing in France prior to 11 March 2020 are required to update their marketing documentation by 10 March 2021.
- (b) All non-French UCITS funds with ESG strategies registered for marketing in France between 11 March 2020 and 27 July 2020 had until 30 September 2020 to update their marketing documentation.
- (c) The new rules regarding marketing documentation come into immediate effect for any non-French UCITS fund with ESG strategies that apply for approval to market in France going forward.

It is important to note that anything more than "concise information", as defined in the updated position, in the marketing documentation will prompt the AMF to consider the UCITS fund in question to be making the non-financial criterion a central component of its communication, which therefore will result in the full application of the French rules.

It is possible to include language in the KIID without prompting the full application of the rules however this language must only be contained in the 'Other Information' section of the KIID and the language is deemed to be concise information.

France

AMF on New Rules Impacting the Marketing of Non-French ESG UCITS Funds Passporting for Sale in France

Further to our client update on 31 July 2020⁵, the AMF published their updated position⁶ with regard to the new rules governing information

⁵ <https://maples.com/en/Knowledge-Centre/Industry-Updates/2020/07/Update-to-the-AMFs-policy-on-collective-investments-incorporating-ESG>

⁶ https://doctrine.amf-france.org/en_US/Reglementation/Doctrine/Doctrine-list/Doctrine?docId=workspace%3A%2F%2FSpacesStore%2F138e8494-3731-476e-a7da-7bf79200c1a2&category=II++Investment+products

Italy

CONSOB Communication on the Brexit Transition Period Expiration

On 23 July 2020, CONSOB published a communication⁷ outlining the conditions and requirements for any British investment firms providing services and undertaking activities in Italy to remain eligible to do so after the Brexit transition period expires on 31 December 2020. From 1 January 2021 onwards, British investment firms providing operating in Italy will be subject to Article 28 of the Consolidated Law on Finance (TUF) and Articles 25 - 31 of CONSOB Regulation no. 20307/2018.

CONSOB is recommending that those firms wishing to continue operating in Italy as a third country firm or by transferring their business to an Italian investment firm submit an application for authorisation to CONSOB as soon as possible. Those firms that intend to transfer their activities to an EU investment firm are required to complete this transfer by 31 December 2020 and, where necessary, complete the passport notification process into Italy.

Further details are outlined in the communication and all authorisation applications and communications regarding Brexit should be notified to din.Brexit@pec.consob.it.

CONSOB Resolution on UCITS Distribution in Italy

On 22 September 2020, CONSOB published a resolution⁸ amending Article 34 of the Issuers Regulation no. 11971, which will come into effect at the end of October 2020. Article 34 has been amended to state that where past

⁷http://www.consob.it/documents/46180/46181/c20200723_08_en.pdf/de9674a2-1246-41c5-80fd-d3449750743f

⁸<http://www.consob.it/web/area-pubblica/bollettino/documenti/bollettino2020/d21508.htm>

performance is disclosed in UCITS marketing material provided to retail investors in Italy, these performances must be compared with the reference index or the return target that is identified in the prospectus for the UCITS. In the event that these performances are not tracking a reference index or a return target is not identified in the UCITS prospectus, it will not be necessary to disclose additional information other than past performances, noting that a clear indication must be included in the past performance section that the performances are not tracking any index or other parameter.

Spain

CNMV Consultation on the Regulation and Control of Financial Products Marketing

On 20 July 2020, the CNMV published a draft circular⁹ for public consultation on the regulation and control in relation to the marketing of investment services and products by investment firms. The circular contains proposed rules on the procedures and controls that firms should adhere to, including information on the content and format of promotional material. There is also information on the criteria that the CNMV has been applying in its supervisory capacity to firms on marketing of their funds.

Sweden

Updated Reporting Guidelines for Fixed Income Funds

On 15 September 2020, the Swedish Investment Fund Association published updated reporting guidelines¹⁰ for fixed income funds. These funds are already required to disclose the measurement duration in their

⁹www.cnmv.es/portal/verDoc.axd?t=%7Bf2733b59-6968-492d-a682-d3eb5872c291%7D

¹⁰<https://www.fondbolagen.se/aktuellt/pressrum/pressmeddelanden/branschen-forbattrar-info-om-rantefonder/>

financial reports and following this recent update, they are now required to disclose the measurement Duration Times Spread or "DTS". A standardised way of presenting credit ratings, for those who wish to, has also been included in the update.

It should be noted that although these guidelines go further than the EU regulation and are part of the self-regulation maintained by the association, they are generally considered 'good practice' in Swedish law.

Switzerland

FinSa and Finla Developments

Further to our client update on 23 April 2019¹¹, the Swiss Federal Department of Finances have approved the first Ombudsman's Offices in line with new Swiss Regulations - the Federal Act on Financial Services Act ("FinSa") and Federal Act on Financial Institutions ("Finla") – which came into effect on 1 January 2020. The new Ombudsman's Offices were approved on 24 June 2020 after which Swiss-registered firms that provide financial services directly to Swiss investors have a six month transitional period to affiliate with an Ombudsman's Office. This expires on 24 December 2020.

Where the management company or distributor of a Swiss-registered fund is providing a financial service in Switzerland directly to investors, the fund is required to affiliate with an Ombudsman's Office, and these funds should contact their Swiss Representative to arrange for the affiliation to be completed before the deadline to ensure continued marketing in compliance with the new regulation.

¹¹<https://maples.com/Knowledge-Centre/Industry-Updates/2019/04/Proposed-Changes-to-Swiss-Distribution-Rules>

On 7 July 2020, the Swiss Financial Market Supervisory Authority, FINMA, approved the first Register of Advisors under Article 31 of FinSA. Client advisors of Swiss-registered firms also have a six month transitional period to apply for inclusion on this register which expires on 31 January 2021.

South Africa

FSCA Regulatory Fees for Foreign Collective Investment Schemes

On 19 August 2020, the FSCA published its revised levies¹² for 2020 for foreign collective investment schemes.

The levies are payable in four quarterly instalments on or before 31 July, 30 September, 31 December and 31 March of the relevant levy year. The variable sum is calculated based on provided statistics, which is to be submitted to the FSCA within 30 days after the end of the preceding quarter.

The applicable levies are as follows:

- Per umbrella fund – ZAR 11,942
- Per sub-fund – ZAR 6,477
- Variable based on net assets under management on behalf of South African investors - 0.00031231% of the net assets under management

Hong Kong

*Updated SFC FAQs, Guides and Information*¹³

Updated FAQs on the Application Procedures for Authorisation of Unit Trusts and Mutual Trusts under Revamped Process

¹²<https://www.fsc.co.za/Regulated%20Entities/Pages/FSC-A-Levies.aspx>

¹³<https://www.sfc.hk/en/faqs/Publicly-offered-investment-products>

On 7 August 2020, the SFC updated these FAQs as follows:

- Question 4A has been added outlining the requirements for submitting documents and application fee in support of a new fund application and as a result, Question 14 has been removed;
- Question 2 on the process of starting an application for authorisation has been updated; and
- Question 4 on when the SFC will take up an application has been updated.

The updated FAQs are relevant for UCITS funds domiciled in France, Ireland, Luxembourg and the Netherlands, in addition to collective investment schemes domiciled in the UK which are authorised as UK UCITS funds.

Updated FAQs on Post-Authorisation Compliance Issues of SFC-Authorised Unit Trusts and Mutual Funds

On 29 September 2020, the SFC updated these FAQs as follows:

- Question 3A of Section 3 has been removed as it is deemed to be obsolete in light of the other information provided in Question 3.

The updated FAQs are relevant for UCITS funds domiciled in France, Ireland, Luxembourg and the Netherlands, in addition to collective investment schemes domiciled in the UK which are authorised as UK UCITS funds.

Updated FAQs on Revamped Post-Authorisation Process of SFC-Authorised Unit Trusts and Mutual Funds

On 7 August 2020, the SFC updated these FAQs as follows:

- Question 22 regarding requirements for submitting post-authorisation documents to the SFC has been added.

Please also see the following:

- Updated Guide on practices and procedures for application for authorisation of unit trusts and mutual funds as at 7 August 2020, with key updates at Paragraph 3 of Chapter 2, and Annex 2; and
- Updated Information Checklist¹⁴ for application for authorisation of unit trusts and mutual funds under the revamped process.

Provision of Further Guidance to Intermediaries on Assessment of Corporate Professional Investors ("CPIs")

On 8 September 2020, the SFC updated these FAQs¹⁵ as follows:

- Question 2 has been updated to provide further guidance on the assessment of corporate structure and investment process of CPIs, particularly family trust-owned investment vehicles or family offices that engage investment professionals to manage their investments.

Canada

Proceeds of Crime (Money Laundering) and Terrorist Financing Act Changes

On 10 July 2020, the DFC published¹⁶ amendments to the Regulations Amending Certain Regulations Made under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act with the aim of harmonising

¹⁴<https://www.sfc.hk/en/Forms/products/Investment-products-Forms-and-checklists>

¹⁵<https://www.sfc.hk/en/faqs/intermediaries/supervision/Professional-Investors/Professional-Investors>

¹⁶<http://gazette.gc.ca/rp-pr/p2/2020/2020-06-10/html/sor-dors112-eng.html>

domestic anti-money laundering and counter terrorist financing regime with international standards.

The main points to note include the following:

- (a) The 'travel rule' will be extended to businesses dealing in virtual currencies, by requiring them to obtain and hold originator and beneficiary information.
- (b) The definition of 'business relationship' will be amended to include real estate developers, real estate brokers and sales representatives who will be deemed to be in a business relationship with a client after a single transaction or activity that triggers the client identification requirements under the Act and its associated regulations.
- (c) Stronger customer due diligence requirements and beneficial ownership requirements will be applied to certain designated non-financial businesses and professions.

CSA Changes to the Offering Memorandum and Prospectus Exemption

On 17 September 2020, the CSA published their proposed changes¹⁷ to the offering memorandum exemption in NI 45-106 and companion policy 45-106CP, which propose introducing new disclosure requirements for issuers engaged in real estate activities and issuers that are collective investment vehicles.

CSA Final Rule Amendments

On 17 September 2020, the CSA published their amendments¹⁸ to NI 81-105 and other instruments to prohibit the following practices:

- The payment of trailing commissions by members of publicly offered mutual fund organisations to participating dealers who do not make a suitability determination in connection with the client's purchase and ownership of prospectus-qualified mutual fund securities; and
- The solicitation or acceptance of trailing commissions by participating dealers from publicly offered mutual fund organisations in connection with the securities of a mutual fund held in the account of a client of a participating dealer if that dealer was not required to make a suitability determination for that client for those securities.

The trailing commission bans come into effect on 1 June 2022 across Canada.

How the Maples Group Can Help

Maples Group Global Registration Services ("Maples Group GRS") supports UCITS¹⁹ and AIFMS¹⁹ in their multi-market distribution strategies by providing an integrated global network of experts coordinated by a dedicated central team supporting all legal and regulatory aspects governing the cross border marketing of investment funds on both a private placement and public offer basis.

¹⁷ <https://osc.gov.on.ca/en/15126.htm>

¹⁸ <https://osc.gov.on.ca/en/13054.htm>

¹⁹ Domiciled in Ireland and Luxembourg.

Further Information

Should you require any further information or assistance in this regard, please do not hesitate to contact the following or any member of the Maples Group GRS team.

Emma Conaty

+353 1 619 2708

emma.conaty@maples.com

Eimear Clarke

+353 1 619 2041

eimear.clarke@maples.com

The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland *in terms of total number of funds advised and total number of new Irish sub-funds established (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2019).*

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