

## AMF PROPOSALS ON CROSS-BORDER DISTRIBUTION OF INVESTMENT FUNDS

JUNE 27, 2017

The European passport for the distribution of investment funds is a remarkable success. The AMF is convinced that there are no significant technical barriers to cross-border activity, as presented in its [study](#). Any remaining limits to cross-border investment are mainly due to the architecture of national distribution networks, cultural savings habits and fiscal rules.

Taking note of the Commission's willingness to further facilitate cross-border fund distribution by amending existing rules, the AMF has identified targeted areas where further clarity on applicable rules would be beneficial and makes 5 practical proposals to help reach that goal.

### 1) Delineating when marketing rules apply across the Union

There isn't a common approach across the Union to determine what activities trigger the application of marketing rules and what activities do not. Reaching an agreement on the definition of that frontier would be a welcome clarification for market participants wishing to distribute their funds in various European Member States.

- Prior to a fund's launch or to entering a new market, investment professionals may need to communicate with potential professional investors based on draft documentation in order to test the attractiveness of the project and in order to seed money. These practices should be recognized as **pre-marketing activities** and should not trigger the application of marketing rules.
- In addition, the UCITS directive remains silent on the definition of what constitutes marketing activities, while the AIFM directive explicitly defines this term. For the sake of consistency and in order to clarify the content of this notion to stakeholders, the AMF proposes **a European definition of marketing** which lies consistently between the two aforementioned directives.
- Before entering a new market, an asset manager must also establish how to exit it so that unnecessary costs are not incurred. **A fund should be able to de-register from any Member State across the Union** if the assets under management borne by investors from this Member State fall below the threshold of 5% of the fund's total asset under management and below a limited number of single investors. Investors would then be offered the possibility to exit the fund free of charges and the asset manager would be exempt from a number of regulatory requirements. If the investors choose to remain in the fund, the asset manager keeps his information duties towards the fundholders.

### 2) Promoting European standards for marketing material

Adapting marketing material to the target investors is key for a fund to raise assets. It is vitally important **that all types of marketing material are subject to supervision by host-country authorities**, who are the only ones with the relevant knowledge of local cultural norms, distribution networks and advertising methods. The adoption of common European principles for the elaboration of such documents could facilitate this exercise.

- Two key principles should guide the realization of marketing documents across the Union: **consistency** between the information compiled in marketing material and in legal documentation) as well as **clear, accurate and non-misleading information** (presenting advantages and risks of a product in a balanced way).
- **Further harmonization rules could guide the realization of the monthly fund report**, which is widely used for existing or prospective clients. This document mainly contains quantitative information such as

the evolution of the fund's past performances and its benchmark, yearly performances or risk indicators. This information could be usefully standardized across the Union.

- Manufacturers can benefit **from translation exemption** if they can prove that the professional investors targeted can understand the language in which the document was originally written.
- The rules applicable in each jurisdiction for marketing material should be **centrally posted** on ESMA website so that they are easily accessible for asset managers and all stakeholders.
- **Common standards** should be set among the host NCAs to define the maximum amount of time to review marketing material in the context of the passporting notification procedure.

### 3) Increasing transparency of regulatory fees

We see merit in increasing transparency of applicable fees in all jurisdictions and support the **publication of centralized information on ESMA's website**.

We believe that such fees are budgeted as part of the asset manager's commercial strategy and should not be supported by the fund's existing shareholders. **Regulatory fees should subsequently be charged uniformly** across the Union to the asset manager's own accounts.

### 4) Building investor confidence to foster cross-border investment

A number of practical measures could support **investor confidence** and possibly contribute to the demand for cross-border investment:

- High level of investor protection is already ensured by the existence of MiFiD rules across the Union. Yet the scope of their application is unclear for asset management companies and some asset managers selling their funds directly do not apply these rules. **Marketing a fund should activate the application of MiFiD rules applicable to the distributor**, and hence create a level playing field for all forms of funds distribution, whether direct or indirect.
- **Prompt and effective action in response to abusive practices** foster investor confidence when financial products are marketed on a cross-border basis. Powers of the host authorities should be strengthened to have the capacity to intervene rapidly when an actor infringes EU law and causes damage to the host authority's local investors.
- The appointment of a **local agent** is primarily aimed at protecting the investor by enabling a smooth subscription process and ensuring the transfer information. It also responsible for the collection of regulatory fees which are essential for the NCA to pursue their supervisory duties. If digital communication has made this intermediary somewhat redundant, there is no less a need to find an alternative means of collecting regulatory fees. The AMF suggests that the home member state NCA recover the regulatory fees on behalf of the host member state NCA in case they are not paid.

### 5) Facilitating online distribution

An answer to closed distribution networks is **to facilitate online distribution**, which allows a wider diffusion of investment funds. The rise of digital services, in essence cross border, has strengthened the need to extend marketing practices across the Union which could lead to the creation of a European marketing passport. An increasing share of digital projects proposes a wide array of services resulting in an accumulation of regulatory licenses. The AMF proposes the creation of **a new EU umbrella-license which would be dedicated to digital platforms** offering "global innovative investment solutions" (including investment advice and/or individual or collective asset management activities – with no execution of transactions) to professional and retail investors and would give access to a European marketing passport.