

# Global Registration Services Market Update – Q3 2023

**Period: 1 July 2023 – 30 September 2023**

## Europe

*ESMA publishes 2022 UCITS and AIFMD Sanction Reports*

On 18 July 2023, the European Securities and Markets Authority ("ESMA") published its 2022 reports on the use by National Competent Authorities ("NCAs") of sanctions under the Undertakings for Collective Investments in Transferable Securities ("UCITS") Directive and the Alternative Investment Fund Managers Directive ("AIFMD").

The level of sanctions issued at national level remains stable and generally low, in particular with penalties; notwithstanding, a small number of NCAs are issuing an increasing number of sanctions.

The report contains information on the penalties and measures imposed by NCAs from 1 January 2022 to 31 December 2022.

Some highlights from the data include:

- UCITS Sanctions: Nine NCAs imposed a total of 38 penalties with 98% of the total penalties being imposed by a single NCA (namely the AMF in France).
- AIFMD Sanctions: 10 NCAs issued a total of €2.5 million in penalties (compared to €42.9 million in 2021). Of these penalties, 60% were imposed by a single NCA (namely the AMF in France).

- Sixteen NCAs did not impose any sanctions under the UCITS Directive nor the AIFMD in 2022.

ESMA continues its work to foster supervisory convergence in the application of the UCITS Directive and AIFMD, and contributes to its goal to develop a common EU outcome-focused supervisory and enforcement culture.

ESMA will issue separate reports on an annual basis for future reporting periods.

The full report is available online<sup>1</sup>.

## Finland

*FIN-FSA Update on AIFMD Reporting Obligations*

On 12 June 2023, the Finnish regulator ("FIN-FSA") updated its webpage on AIFMD Reporting to include more detailed instructions and to remind AIFMs of their reporting obligations.

One of the prerequisites for the registration or authorisation of domestic AIFMs and for the marketing permission of foreign AIFMs is the fulfilment of regulatory reporting obligations.

### *Reporting Obligation*

The AIFMD reporting obligation starts at the beginning of the quarter after the granting of the AIFM authorisation or registration (domestic

<sup>1</sup> ESMA publishes 2022 UCITS and AIFMD sanction reports ([europa.eu](https://www.esma.europa.eu))

market participants) or the marketing permission (foreign market participants). The reporting obligation concerning each new fund also starts at the beginning of the quarter after the marketing permission is granted. The start of the reporting obligation does not depend upon the launch of activities. If there are no activities, a so-called "zero report" should be sent to FIN-FSA.

## *AIFMD Reporting Deadlines*

Data Reference Date	Deadline
31 March	30 April
30 June	31 July
30 September	31 October
31 December	31 January

When the activities of a domestic or a foreign reportable entity ceases in Finland, it must be notified without delay to the FIN-FSA.

An AIFM may cease marketing in Finland only where the requirements of Article 32a of AIFMD have been met (i.e. relevant de-notification arrangements). In addition to this the AIFM must comply with provisions laid down in Chapter 20, Section 5a, Subsections 4-6 of the Finnish Act on Alternative Investment Fund Managers (in Finnish: *laki vaihtoehtorahastojen hoitajista*, the "AIFM Act" 162/2014, as amended).

The AIFMD reporting obligation ceases at the end of the quarter when the fund is terminated or the marketing of a foreign fund in Finland ends. In this case, one must send a so-called "final report".

The webpage<sup>2</sup> also includes details required for non-EEA reporters to access the FIN-FSA Reporter portal.

<sup>2</sup> ESMA publishes 2022 UCITS and AIFMD sanction reports (europa.eu)

## Luxembourg

### *CSSF Issues General Findings and Observations on Marketing Communications under the Regulation on Cross-Border Distribution of Funds*

On 23 August 2023, the Commission de Surveillance du Secteur Financier ("CSSF") published its general findings and observations of its thematic review of the marketing communications of Luxembourg UCITS management companies and AIFMs ("IFMs").

The CSSF has stated that it is up to the IFMs to assess what exactly constitutes marketing communications based on the guidance provided by ESMA.

The CSSF has made the following recommendations regarding marketing communications, which it asks IFMs to consider when preparing fund marketing communications:

- Specific terms and acronyms must be properly defined.
- Any target investment group must be specifically identified particularly in circumstances where a fund is publicly offered.
- Regarding a description of the features of the investment, the CSSF mentions leverage, types of eligible assets and the recommended holding period as examples of key elements of said features.
- Where labels, ratings or certifications are used, the concerned product, date, granting entity and a hyperlink to a website where further information is provided should be disclosed.
- Hyperlinks should be directly linked to the webpage where the information is actually available (i.e. not just a homepage), with such links being maintained by IFMs.
- Risks should be tailored to the product and a prominent indication of where complete risk factors are available should also be included.
- Periodicity of the costs should be included, and it should be made clear that not all

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costs are present and further information may be found in the prospectus.

- The 10-year period of performance disclosure foreseen in the ESMA guidelines for "funds establishing a KIID" also applies to funds establishing (PRIIPs) KIDs<sup>3</sup>.
- Any changes which significantly affect the past performance of the promoted fund should be disclosed.

The CSSF is of the opinion that showing performance for the current year updated at the end of the most recent month instead of quarter, and showing simulated performance for newly launched funds based on a related group strategy (or equivalent), are not compliant with the ESMA Guidelines<sup>4</sup>.

The general findings and observations of the CSSF can be accessed online<sup>5</sup>.

### Norway

#### *Introduction of Fees for Marketing UCITS and AIFs*

On 26 May 2023, the Norwegian Ministry of Finance adopted a regulation enabling the Norwegian regulator (Finanstilsynet) to charge regulatory fees in respect of cross-border activities into Norway of non-Norwegian alternative investment fund and UCITS managers. See our Passle<sup>6</sup> update on this.

Under the new rules, annual levies as well as one off application/registration levies will be introduced in respect of the following:

- UCITS established in another member state marketing cross-border into Norway pursuant to the UCITS Directive;

- The marketing of an AIF managed by an AIFM authorised or registered in another EEA country; and
- Non-EEA AIFMs applying to market under the AIFMD national private placement regime ("NPPR").

The annual fees took effect from 1 June 2023 and amount to NOK7,000 (approximately EUR 600) per sub fund (both UCITS and AIF) and will be capped at NOK10,000 (approximately EUR 850).

While the one-off application/registration levies are capped at NOK30,000 (approximately EUR 2,500), the exact amount of this fee has yet to be confirmed but the minimum has been set at NOK5,000 (approximately EUR 425). The confirmed fee will come into effect from 1 January 2024.

### Portugal

#### *New Circular Note to Financial Intermediaries on Advertising*

On 5 May 2023, the Portuguese Securities Market Commission (the "CMVM") issued a Circular Note to all investment firms and credit institutions that provide or intend to provide investment services activities on a cross-border basis to Portuguese retail clients under the provisions of Article 34 of MiFID II (freedom to provide services).

The Circular Note aims to strengthen investor protection by increasing the level of market transparency when dealing with advertisements for financial intermediation activities and/or financial instruments.

The Circular Note was prompted by financial intermediation activities observed by the CMVM which lacked full and clear identification of the financial intermediary responsible for the content.

In accordance with the Circular Note, the CMVM recommends that the following information be included to identify financial intermediaries in advertisements for financial intermediation activities and/or financial instruments:

<sup>3</sup> PRIIPs Regulation (EU) 1286/2014

<sup>4</sup> Guidelines on marketing communications under the Regulation on cross-border distribution of funds

<sup>5</sup> 2021-2023 Marketing communications under the regulation on cross-border distribution of funds – CSSF

<sup>6</sup> Norway – introduction of fees for marketing of UCITS and AIFs, Aoife Convey (maples.com)

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- For financial intermediaries authorised by the CMVM, their registration number with the CMVM; and
- For financial intermediaries qualified to carry out financial intermediation activities in Portugal under the freedom to provide services, a reference to the fact that they are qualified to provide financial intermediation services in Portugal and the identification of the NCA of the Member State in which they are registered.

## United Kingdom

### *Landing Slots for Funds in the Temporary Marketing Permissions Regime*

On 19 September 2023, the Financial Conduct Authority ("FCA") published an update on its website regarding landing slots for funds in the Temporary Marketing Permissions Regime ("TMPR").

In the update, the FCA advised that the process of exiting the TMPR and the notification of landing slots is still under review.

However, to avoid any delays in future communications, the FCA recommended that operators of UCITS in the TMPR should ensure the FCA holds the correct contact email address as this will be used to contact UCITS with details of the process and landing slot.

This email address should be for the operator and not an external consultancy firm or other third-party.

If funds registered under TMPR are no longer marketing in the UK, they should be removed via the FCA's Form TMPR CH.

If you would like further information on this, please get in touch.

## Hong Kong

### *Circular on Licensing and Registration of Depositories of SFC-Authorised Collective Investment Schemes and Related Transitional Arrangements*

On 27 July 2023, the Securities and Futures Commission (the "SFC") in Hong Kong began accepting applications for carrying on Type 13 regulated activity under the Securities and Futures Ordinance ("SFO") through a new regime which will bring depositories of SFC-authorized collective investment schemes under the SFC's direct supervision.

Upon commencement of the new regime on 2 October 2024, trustees and custodians (i.e. depositories) of SFC-authorized collective investment schemes will be required to be licensed by or registered with the SFC under the SFO in order to provide depository services, unless the collective investment scheme is:

- a registered mandatory provident fund scheme or a constituent fund of such scheme; or
- an approved pooled investment fund, which is intended to be offered only to professional investors but not to retail investors.

Under the new regime, a depository is required at all times to maintain paid-up share capital of not less than HK\$10 million and is required to comply with the requirements set out in the Code of Conduct for Persons Licensed by or Registered with the SFC. A depository must submit monthly financial returns under the Securities and Futures (Financial Resources) Rules and other periodic statutory returns required under the SFO.

Under the new regime, the following staff members of the depository performing key functions must be licensed or registered as the depository representatives:

- staff members assuming oversight duties to ensure that a relevant collective investment

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scheme is operated in accordance with its scheme documents; and

- staff members who are empowered to approve instructions or transactions for custody-related purposes if the depositary carries out all or part of the custody operations in respect of a relevant collective investment scheme by itself.

If a depositary of a collective investment scheme also acts as the fund administrator or transfer agent for that scheme, its staff members who are only involved in providing those services are generally not required to be licensed or registered.

The SFC is currently accepting licence and registration applications via its online submission platform, WINGS. The SFC advised that firms which provide depositary services for relevant collective investment schemes in Hong Kong are required to submit their corporate licence or registration applications on or before 30 November 2023 to allow a smooth transition.

Individual practitioners seeking to become licensed representatives of existing depositories are required to submit their applications to the SFC through WINGS between 1 June 2024 and 31 July 2024.

### Malaysia

#### *Revision of Guidelines for the Offering, Marketing and Distribution of Foreign Funds*

On 29 August 2023, the Securities Commission Malaysia revised the Guidelines for the Offering, Marketing and Distribution of Foreign Funds (the "Guidelines").

The Guidelines have been updated to permit a foreign fund specified in Appendix 4 (Foreign Exempt Scheme) ("FES") of the Guidelines to be offered, marketed or distributed in Malaysia, subject to certain requirements. One such requirement is that the operator of such foreign fund must be a related corporation to a locally

licensed fund management company. The FES may only be offered to accredited investors and high-net worth entities as set out in Part 1, Schedules 6 and 7 of the Capital Markets and Services Act 2007 ("CMSA"). Furthermore, the FES must not be a listed collective investment scheme that invests primarily in real estate.

The Guidelines set out in detail the responsibilities of the operator, representative and adviser of an FES.

If you would like further information on any of the above, please get in touch.

### How the Maples Group Can Help

Maples Group GRS supports UCITS<sup>7</sup> and AIFMs<sup>7</sup> 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.

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<sup>7</sup> Domiciled in Ireland and Luxembourg.

## Further Information

Should you require any further information or assistance in this regard, please contact the following or any member of the Maples Group GRS team.

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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 (based on the most recent Monterey Insight Ireland Fund Report, as of 30 June 2022).

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