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| Response Form to the Consultation Paper  |
| Draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS |

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper (CP) on draft technical standards on the notification for cross-border marketing and cross-border management of AIFs and UCITS and in particular on the specific questions summarised in Annex III of this CP. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the CP, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions of the CP in the present response form.

Please do not remove tags of the type <ESMA\_QUESTION\_NOTIF\_1>. Your response to each question has to be framed by the two tags corresponding to the question.

1. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
2. When you have drafted your response, name your response form according to the following convention: ESMA\_ NOTIF\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ NOTIF\_ABCD\_RESPONSEFORM.
3. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation Paper on the draft technical standards on the notifications for cross-border marketing and cross-border management of AIFs and UCITS”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for alternative investment fund managers, internally managed AIFs, UCITS, management companies, internally managed UCITS, and their trade associations, as well as professional and retail investors investing into UCITS and AIFs and their associations..

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | Veneziano & Partners LTD |
| Activity | Audit/Legal/Individual |
| Are you representing an association? |[ ]
| Country/Region | UK |

*Please make your introductory comments below, if any:*

<ESMA\_QUESTION\_NOTIF\_0>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_NOTIF\_0>

Questions

1. : Do you agree with the content of the provisions of the first chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by a management company? If not, please justify your position and make proposals of amendments.

<ESMA\_QUESTION\_NOTIF\_1>

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<ESMA\_QUESTION\_NOTIF\_1>

1. : Do you agree with the content of the provisions of the second chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by an AIFM? If not, please justify your position and make proposals of amendments?

<ESMA\_QUESTION\_NOTIF\_2>

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<ESMA\_QUESTION\_NOTIF\_2>

1. : Do you agree with the template notification letter set out in Annex I of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposal.

<ESMA\_QUESTION\_NOTIF\_3>

The new template of notification letter for cross-border marketing of UCITS under article 93(1) of Directive 2009/65/EC is in line with the expectations and caters well for the additional information already required to be provided under the so-called Crossborder Distribution Directive. We also believe that assigning a separate part – PART 2 – for the information on the UCITS is a good approach. However, on this particular point, we wanted to propose the following for Part 2:

1. That it was moved at the very end of the letter; and
2. That it included also the section for the attachments to the notification letter related to the UCITS object of the notification (now still contained under Part 1 of the notification letter).

In some cases, the number of sub-funds/compartments as well as unit/share classes to be listed under the UCITS specific information part is very high, taking in excess of one page. It would make sense to move that part at the very end of the letter so as to facilitate the review by dedicated operators National Competent Authorities of the letters and have a complete view of the general information first on the UCITS first.

For the same reason, the section attachments, now under Part 1, should be moved under the same Part 2 of the notification letter containing the UCITS specific information. The rationale is the same: in case of high number of sub-funds/compartments as well as unit/share classes, the list of key investor information documents will be very long, taking more than one page.

Also, we wanted to make a comment for what concerns PART 3 of the notification letter and specifically the request to indicate the name, address and contact details of each third-party distributor in the host Member State. The request for this information might pose some challenges to certain specific UCITS, whose crossborder activity should be facilitated as part of the Capital Market Union action plan. We make reference to new UCITS entering a specific market, which would have regulatory and practical challenges in complying with this request for information.

From a regulatory compliance perspective, it is noteworthy to mention that in one of the very first drafts of the so-called Crossborder Distribution Directive, premarketing was envisaged to be extended also to UCITS. However, in the final version of the Crossborder Distribution Directive, it was decided not to extend it to UCITS. Against this backdrop, the request to provide specific details on each third-party distributor for the target EU Member State, as part of the notification letter, poses concerns with regards to the activities that a UCITS, not authorised for marketing in that specific domicile, might be able to carry out in order to obtain interest from local third-party distributors. It is well possible that, in order to obtain such interest, the UCITS and its management will have to carry out *marketing-like* activities in that specific domicile in advance of being authorised to do so and without any mechanism for premarketing available to them. On this point, it helps to consider that the introduction of a general EU wide concept of premarketing in our view overrides any type of local practice, where existent prior to the Crossborder Distribution Directive, allowing for premarketing, soft marketing or other similar activities.

From a more practical perspective, in the selection process of investment funds by local third-party distributors, we believe that general information on the fund will not be satisfactory in order to obtain any interest, with third party distributors wanting to be able to compare existing similar products, based on actual strategy and performance, before making a decision to take on another product on their distribution channels. Also, some third-party distributors might want to see the fund authorised for marketing first in that specific EU Member State, before taking a more thorough look at its features and decide whether to take it onboard for distribution or not.

Lastly, it makes also sense to point out that in certain EU Members States, like Italy, we have a two-tier level of marketing authorisation, so-called institutional and retail marketing authorisation. The institutional marketing authorisation, which does not require for the appointment of a specific local entity (i.e. former paying agent now facilities agent), allows for UCITS and their management to be able to present the fund to third-party distributors in order to assess their interest in distributing their products.

For the purposes of the information to be provided in the notification letter, some optionality should be retained on this point, in the sense that UCITS shall be able to seek and obtain a marketing authorisation in order to be able to assess, in a full compliant manner, any interest from local third-party distributors in a specific EU Member State. Accordingly, the notification letter should allow for an option where UCITS are seeking marketing authorisation in order to establish a distribution network in the specific EU Member State along with the option of including the details of the specific local third-party distributor. It follows from this that, should this optionality not be retained, this request of information would favour UCITS promoted by larger organisations rather than the smaller new entrants to the UCITS arena, which the Crossborder Distribution Directive and the Capital Market Union action plan intends to support.

<ESMA\_QUESTION\_NOTIF\_3>

1. : As indicated in Section 1 of Part 3 of the template notification letter set out in Annex I of the draft ITS, management companies would be required to provide information on the “envisaged marketing strategy in the host Member State in relation to each fund the marketing of which is intended”. What type of information could you provide in this context, including any type of indicator or supporting document?

<ESMA\_QUESTION\_NOTIF\_4>

The request to provide information on the envisaged marketing strategy in the host Member State seems to be appropriate, especially in the context of an initial marketing passport authorisation in a specific EU host Member State. Such a request is also not uncommon in other non-European countries, like the United Kingdom, where it is required to provide similar information when applying for recognition to offer a fund to retail investors.

For what concerns the information and the level of details to be provided by UCITS promoters or managers in this respect, we believe it would be appropriate to enclose a simple and concise business plan containing a brief indication of the following;

1. Why the specific EU Member State, including general information as to size of the market and estimated share for the specific fund and strategy;
2. Description of sales activities (reach in via phone/mail, webinar, fly in, meetings, attendance to conferences) including also personnel involved;
3. Business target description, including indication of estimated gross income and expenses per year over a set period of time (e.g. 3 years).

As an alternative, the same main indicators above could also be included in the relevant part of the notification letter, for the responses to be provided directly in the text of the notification letter, so as to avoid the need to produce and enclose a separate business plan.

<ESMA\_QUESTION\_NOTIF\_4>

1. : Would you be able to provide information on the envisaged marketing targets in the host Member State, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given UCITS.

<ESMA\_QUESTION\_NOTIF\_5>

Please see answer to question 4. This should be indeed possible

<ESMA\_QUESTION\_NOTIF\_5>

1. : Do you agree with the template notification letter set out in Annex II of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

<ESMA\_QUESTION\_NOTIF\_6>

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<ESMA\_QUESTION\_NOTIF\_6>

1. : Do you agree with the template notification letter set out in Annex III of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

<ESMA\_QUESTION\_NOTIF\_7>

In first instance, we like the fact that this template of notification letter now makes also reference to the ELTIF structure. This clears any potential uncertainty as to the template letter to use in case of marketing passport authorisation for this type of funds, considering that in the past there was no specific reference to the ELTIF in the template letter to be used for the marketing passport of alternative investment funds. We also like the fact that, similar to the notification letter for UCITS, it is clarified that in case the notification relates to changes to a previous notification, it is only necessary to fill in the part of the letter containing the amended information. The sentence containing this statement should be bolded so as to attract attention of the user. Part of the comments made under question 3 above shall apply also to this template notification letter. In particular, we believe it makes more sense to move the part containing the details of the alternative investment funds at the very end of the template letter, as well as include in that part the information on the attachments to the letter.

Also, we do note that the template notification letter, to the contrary of the template contained under annex IV of the consultation paper, does not include any reference to a facilities agent.

Lastly, the fact that there is premarketing for AIFs, seems to justify the reference to the name address and contact details of the third-party distributor in the home member state, considering that there are ways to premarket this type of fund and gather interest from specific distributors.

<ESMA\_QUESTION\_NOTIF\_7>

1. : As indicated in Section 1 of Part 3 of the template notification letter set out in Annex III of the draft ITS, AIFMs are required to provide information on the “envisaged marketing strategy in the home Member State in relation to each AIF the marketing of which is intended”. What type of information could provide in this context, including any type of indicator or supporting document?

<ESMA\_QUESTION\_NOTIF\_8>

Please see our response under question 4 above.

<ESMA\_QUESTION\_NOTIF\_8>

1. : Please provide feedback on whether information on the envisaged marketing of AIFs in the home Member State of the AIFM would be available, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given AIF.

<ESMA\_QUESTION\_NOTIF\_9>

Please see again response under question 4 above.

<ESMA\_QUESTION\_NOTIF\_9>

1. : Do you agree with the template notification letter set out in Annex IV of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

<ESMA\_QUESTION\_NOTIF\_10>

Please see again response under question 7 above, save for the reference to a section dedicated to the details of a facilities agent, which is indeed contained in this template notification letter.

<ESMA\_QUESTION\_NOTIF\_10>

1. : As indicated in Section 1 of Part 3 of the template notification letter set out in Annex IV of the draft ITS, AIFMs are required to provide information on the “envisaged marketing strategy in the host Member State in relation to each AIF the marketing of which is intended”. What type of information could you provide in this context, including any type of indicator or supporting document?

<ESMA\_QUESTION\_NOTIF\_11>

Please see our response under question 4 above.

<ESMA\_QUESTION\_NOTIF\_11>

1. : Please provide feedback on whether information on the envisaged marketing of AIFs in the host Member State would be available, in particular as regards the minimum and maximum capital raising target, the expected duration of the marketing and the revenues treatment? If not, please explain why this information would not be available when notifying the intention to market a given AIF.

<ESMA\_QUESTION\_NOTIF\_12>

Please see our response under question 4 above.

<ESMA\_QUESTION\_NOTIF\_12>

1. : Do you agree with the template notification letter set out in Annex V of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.

<ESMA\_QUESTION\_NOTIF\_13>

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<ESMA\_QUESTION\_NOTIF\_13>

1. : What is the anticipated impact from the introduction of the proposed ITS and RTS? Do you expect that the currently used practices, in particular as regards the content of the information provided to NCAs and the models used to notify cross-border marketing or the provision of activities in a host Member State, would need to be changed?

<ESMA\_QUESTION\_NOTIF\_14>

Some of the information required to be provided according to the ITS in the notification letters for the marketing passport authorisation of UCITS, AIFs and ELTIFs is new and more detailed than what was currently requested and will certainly require an adjustment in the practice of European crossborder distribution.

Whilst it is difficult to forecast an accurate increase in the cost of compliance, we are of the view that aligning with the requirements to provide this information will require even increased internal coordination amongst the sales, marketing, legal and compliance as well as operational teams within the fund promoter or management group. Whilst we do believe that a more accurate description of the marketing means to be deployed should not pose particular problems, as fund managers and promoters should have clear already their marketing strategies at firm or group level, we take the view that the more detailed analysis or business plan to describe the capital raising targets is where the most of the adaption effort will have to be concentrated.

Whilst it may take time to ingrain these new requirements in the actual practice, in the long run we take the view that it will help reducing the instances of creation of products, presented to the market but which fail to launch in the end exactly for the lack of sufficient preparatory work on the business plan.

<ESMA\_QUESTION\_NOTIF\_14>

1. : What would be the additional costs and benefits of the proposed ITS and RTS? Please provide quantitative figures, where available, in particular in relation to costs of compliance.

<ESMA\_QUESTION\_NOTIF\_15>

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<ESMA\_QUESTION\_NOTIF\_15>