

John Berrigan
Director General
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Stability, Financial Markets and Capital
Markets Union
European Commission
1049 Brussels
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Ref: Request for support in relation to the report on reverse solicitation

Dear Mr. Berrigan, Dear Sean

In [your letter](#) dated 24 September 2021, you asked for ESMA's input for the report on reverse solicitation and demand on the own initiative of an investor that the European Commission has to deliver to the European Parliament and the Council under Article 18(2) of Regulation on facilitating the cross-border distribution of collective investment undertakings (Regulation (EU) 2019/1156 and hereafter referred to as 'the Regulation'). In particular, you invited ESMA to ask National Competent Authorities ('NCAs') for input on a number of questions relating to the use of reverse solicitation by asset managers and the impact on passporting activities. ESMA conducted a survey among NCAs and invited them to respond to these questions¹.

The result of this survey showed that almost all NCAs have no readily available information on the use of reverse solicitation either via asset managers or investor associations. Consequently, the vast majority of NCAs were not in a position to provide an estimation of the share of reverse solicitation as compared to marketing. However, a couple of NCAs provided some interesting information on the extent to which reverse solicitation is used in their jurisdiction that allows ESMA to share some anecdotal evidence of the use of reverse solicitation within the Union.

Consob reported that, in 2020, 25% of the total subscriptions in funds gathered by Italian asset managers (ruling out the amount distributed through third-party distributors) were done on the basis of reverse solicitation² and, in 99% of the cases, these subscriptions were made for the account of professional investors³. For example, in Italy, reverse solicitation is frequently used by professional investors that engage with AIFMs to require the set up and management of tailor-made AIFs (for example, a real estate fund where the invested real estate assets are

¹ ESMA received replies of the NCAs of the following EEA states: Denmark, Cyprus, Greece, Sweden, Iceland, Slovak Republic, Estonia, Slovenia, Belgium, Portugal, Italy, Croatia, France, Latvia, Bulgaria, Luxembourg, Romania, The Netherlands, Liechtenstein, Czechia, Lithuania, Germany, Norway, Austria, Malta, Finland, Ireland, Spain and Poland.

² The remaining 75% was gathered on the basis of the marketing directly put in place by asset managers.

³ There is no reverse solicitation for UCITS in Italy and only AIFs with a minimum subscription of €500,000 can be subscribed by reverse solicitation.

delivered to the fund by the investors). CySEC also reported that 30% of the UCITS management companies and 50% of AIFMs established in Cyprus use reverse solicitation.

This data was obtained by the relevant NCAs on the basis of national provisions requesting asset managers to report to Consob and CySEC information on the use of reverse solicitation. It shows that, in both jurisdictions, reverse solicitation is significant in size, and that it concerns almost exclusively professional investors in Italy. Unfortunately, in the absence of quantitative information for other Member States, it is difficult at this stage to draw any conclusion for the rest of the Union. CNMV reported that they did not have any information on reverse solicitation but that 1.36% of the total of assets under management of funds established in Spain are owned by foreign investors and since Spanish funds are hardly marketed outside Spain, this figure could be used as a proxy to assess reverse solicitation in Spain.

The absence of figures on reverse solicitation can be explained by the fact that under EU law asset managers are not subject to any obligation to report to their NCAs any information on subscriptions stemming from reverse solicitation. Therefore, any information on this practice provided by some NCAs stems from national provisions, as is the case in Italy and Cyprus.

With respect to the impact of reverse solicitation on the passporting regime, several NCAs believe that reverse solicitation is used in practice to circumvent the rules of the third-country and EU passport regimes, which raises some concerns in terms of investor protection but may also create an unlevel playing field between EU asset managers and non-EU asset managers operating in the Union via reverse solicitation. However, this assumption could not be confirmed by any tangible data from NCAs.

In your letter, you also asked for ESMA's thoughts on the steps that could be taken by the European Commission to fill any information gap in this field, if any. ESMA consulted the commercial databases on market data that the Authority has access to and no quantitative information on reverse solicitation could be retrieved. In an attempt to obtain information on this practice, the European Commission may consider contacting directly market participants such as asset managers, depositories or account holders, possibly via national and European trade associations, which may have such information and, if not, could consult their members. ESMA is of the view that using the proportion of foreign investors in funds may not be an appropriate proxy for all jurisdictions, in particular for home jurisdictions from where funds are passported significantly across the Union. Indeed, a significant proportion of foreign investors in funds established in these jurisdictions may have subscribed in other jurisdictions where these funds are marketed on the basis of the cross-border marketing passport. One solution could be to use the proportion of foreign investors from countries where funds are not notified for cross-border marketing but this information might be difficult to obtain. If there was willingness to fill in this information gap on a more permanent basis at European level, consideration should be given to the introduction of new reporting requirements allowing to collect information on reverse solicitation across the EU.

Finally, regarding the possible extension of the notification portal referred to in Article 13(2) of the Regulation to enable the exchange of notifications of cross-border marketing between NCAs which you alluded to in your letter, I am pleased to confirm that this extension has been proposed for prioritisation in the context of the 2022 IT ESMA budget and ESMA staff will keep



the staff of the European Commission updated on the progress made. With respect to the Commission's endeavour to modernise the European supervisory reporting systems in the EU, ESMA will continue its engagement with the European Commission where necessary and therefore stands ready to contribute to this project.

In case of you have any questions on our reply, please feel free to contact myself or Evert van Walsum, Head of the Investors and Issuers Department (evert.vanwalsum@esma.europa.eu).

Yours sincerely,

[signed]

Verena Ross