

ALFI reply to the ESMA Consultation paper on technical advice to the European Commission on delegated acts required by the UCITS V Directive (ESMA/2014/1183)

Luxembourg, 24 October 2014

Dear Sirs,

The Association of the Luxembourg Fund Industry ('ALFI') is the representative body of the 2.9 trillion Euro Luxembourg fund industry. It counts among its members not only investment funds but also a large variety of service providers of the financial sector. There are 3,896 undertakings for collective investment in Luxembourg, of which 2,529 are multiple compartment structures containing 12,434 compartments. With the 1,367 single-compartment UCIs, there are a total of 13,801 active compartments or sub-funds based in Luxembourg. 67% of UCITS that are engaged in cross-border business are domiciled in Luxembourg. As one of the main gateways to the European Union and global markets, Luxembourg is the largest cross-border fund centre in the European Union and, indeed, in the world.

Preliminary remarks – executive summary

ALFI welcomes the opportunity to respond to the ESMA Consultation Paper on technical advice to the European Commission on delegated acts required by the UCITS V Directive (ESMA/2014/1183). ALFI subscribe fully to the following EFAMA statement “... we deeply regret that industry stakeholders have been given such an extremely tight deadline (i.e. one month) within which to provide ESMA the valuable information that is sought in the consultation paper. Although we are conscious of the European Commission’s calendar for implementing the Level 1 text of the UCITS V Directive review, it is our and our entire Membership’s view that the narrow timelines given to ESMA for the purpose of preparing its draft advice ultimately and seriously compromise what should be for the Commission an objective fact-finding effort on which justify its policy choices in line with its internal impact assessment guidelines. For these choices to be evidence-based and contribute to an effective and efficient regulatory environment, as well as to informed policy-making that is both justified and proportionate, we would like to stress the importance of providing industry stakeholders with adequate time to formulate their replies, so as to also provide the necessary granularity as often called for by the EU’s legislators and regulators when responding to their consultations. This should be true especially when some of the proposed policy options - as in the present consultation – could have far-reaching consequences.”

Finally, we wish to draw ESMA' attention to the following key points:

Advice on the insolvency protection of UCITS assets when delegating safekeeping

- Specific means such as seeking legal advice from independent legal counsel should be recommended but not prescribed;
- As pointed out by IOSCO, we would like to remind ESMA that the ultimate regulatory and market risk of each domestic securities market remains and is beyond the control of the depository. As IOSCO stresses, “where assets are held in foreign jurisdictions, there may be specific country risks that should be taken into account, e.g. the effectiveness of the local regulatory regime, whether a judgement can be enforced effectively and other factors that make it difficult to repatriate CIS assets” – factors for which clearly ALFI believes the depository as well as any appointed third party have no influence on;
- Finally, ALFI would plead for an inclusion of appropriate escalation procedures into ESMA's advice.

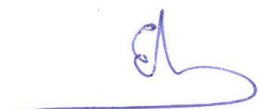
Advice on the independence requirement

- ALFI is concerned that the ESMA advice might go beyond the requirements of the Directive 2014/91/EU of the European Parliament and of the Council ('UCITS V'). The prohibition of cross-shareholding as foreseen in Option 1 is inadvisable as this would imply the separation of a large number of entities. In addition, Option 1 could have adverse consequences such as significant re-structuring of the financial industry across a number of Member States finally resulting in an increase of costs for end investors;
- In the light of Level 1 provisions, ALFI is of the opinion that the requirement to act independently does not coincide with requiring the “structural” independence of the Relevant Entities. The provision requiring the Relevant Entities to “act independently” should not be interpreted as requiring more “structural” or far-reaching independence requirements for the Relevant Entities;
- Finally, we believe that ESMA should not give any indications as regards to the composition of the management body of the management company/investment company and the depository.


For further details please refer you to our detailed replies to the questions.

We look forward to continuing engagement with ESMA and the European Commission regarding UCITS V. If you have any questions regarding our submission, please contact Mr. Marc-André Bechet (marc-andre.bechet@alfi.lu) or Mr. Alexander Fischer (alexander.fischer@alfi.lu).

Yours sincerely,



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