efama
European Fund and Asset Management Association

EFAMA feedback to IOSCO Task Force on Cross Border Regulation relating to London Industry Meeting on 25 April 2014

EFAMA[1] would like to thank IOSCO's Task Force on Cross Border Regulation for having been invited to share our industry's views with IOSCO members at the roundtable in London on 25 April. EFAMA is also very pleased to have the opportunity to respond to the Task Force's questionnaire, which was shared with trade associations and market participants in advance of the roundtable.

I. General remarks

We would like to start by stating that we are very supportive of both IOSCO and the task force's objectives[2]. Generally speaking, the most frustrating development for our EFAMA members who are present in many regional markets is to see the general lack of harmonised implementation of IOSCO principles and work streams, with certain regions choosing to gold-plate existing and agreed principles[3]. Our wish would be that greater emphasis is put on coordination of measures to ensure an implementation of the IOSCO work in a more harmonised fashion throughout geographical regions.

a. Funds

After this more general view, let us now focus our comments towards the asset management industry. We believe that we are not exaggerating when we say that every asset management firm dreams of a product that can easily be passported or recognised across borders. If the same fund could to be marketed and sold to a broader range of investors, this would lead to important economies of scale and generally lower costs (and in turn, better net return) for investors. On a smaller scale version within the EU UCITS funds have benefited from this development through the creation of UCITS framework since 1985 which can clearly be seen as a success story of converging regulations.

[1] EFAMA is the representative association for the European investment management industry. EFAMA represents through its 27 member associations and 62 corporate members about EUR 15 trillion in assets under management of which EUR 9.8 trillion managed by 55,000 investment funds at end December 2013. Just over 35,600 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds. For more information about EFAMA, please visit www.efama.org

[2] Objectives of the task force: (1) Developing a "toolkit" of cross-border regulatory approaches for use by IOSCO members; (2) Describing issues and experiences with the use of those techniques; and (3) Laying a foundation, if appropriate, for the development of guidance to achieve the coordinated use of the "toolkit" in the best interests of investors and in fostering fair and efficient global securities markets.

[3] One of such examples in the EU would be European Commission proposals on benchmarks; link: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0641&from=EN

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On the whole EFAMA strongly supports any efforts to make authorised funds that reach agreed standards (e.g. in terms of risk spreading, transparency of costs and operation and clarity of structure) more easily passportable and recognised on a cross border basis (whether regionally or globally). As investor's movement and demand for global accessibility increase, we believe that regulators should first look at the easily achievable goal of mutual recognition or passporting of certain tried and trusted mutual fund or collective investment scheme structures. Here we could highlight the excellent example of funds established under the European UCITS Directive as an example. From a cross border distribution perspective (especially throughout Asia) such a framework could be used as a blueprint for other geographical regions in the world as well as IOSCO to take inspiration from the way Europe has dealt with the questions about organisational models, investors protection but also delegated supervision and mutual recognition.

Where retail investors have invested in such authorised funds for many years, using structures with which major regulators are comfortable with seems a logical step. Perhaps with true IOSCO sponsorship to consider whether certain authorised funds could form a category of "globally authorised vehicles" enabling them to be marketed across all IOSCO jurisdictions.

II. Practical Examples of obstacles to cross border activities

We would also like to take this opportunity to also provide you with the requested practical examples highlighting the current difficulties in providing cross border services which have been raised by our members.

a. Fund reporting

One example that shows the practical difficulties in distributing funds on a cross border basis is that of reporting – an issue which might seem of little importance at first glance.

In terms of a response to the financial crisis regulators policy makers have the identified the lack of data as a key barrier to understanding systemic risk. The G20 identified alternative funds such as hedge funds, private equity funds, real estate, and institutional funds as a blind spot that needed to be looked at in further detail in order to understand the existing or non-existing systemic implications of these types of funds. Although alternative funds did not cause the financial crisis of 2007 and 2008, genuine policy concerns exist as to whether alternative funds could lead to or amplify potential future crises. Regulators therefore are in need of more and more data and data flows for enhanced cross border supervision and cooperation.

In 2010 IOSCO produced a high level reporting template[4] intended to "enable the collection and exchange of consistent and comparable data amongst regulators and other competent authorities for the purpose of facilitating international supervisory cooperation in identifying possible systemic risks in this sector"[5]. The template is high-level in nature and includes key data fields such as leverage,

[4] http://www.iosco.org/news/pdf/IOSCONEWS179.pdf
[5] ibidem

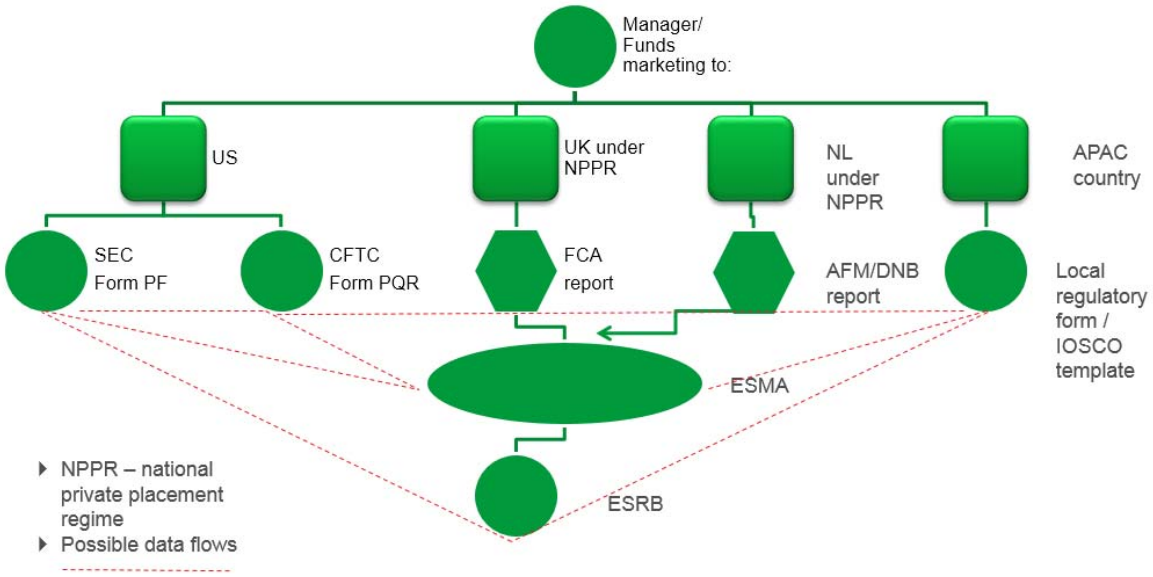
liquidity, investor concentration, counterparty exposure and asset concentration. Since its publication it was widely used as a blueprint and was considerably expanded in size and granularity by regional and national regulators in their fund reporting toolkit (e.g. forms PF/PQR under Dodd Frank Act and ESMA reporting Annex under AIFMD).

This apparent proliferation of templates, formats and definitions though reduces the ability of regulators to share data on a cross border basis and cooperate effectively with each other. The current processes also lead to duplications and inconsistencies in reporting by asset management firms and create enormous operational complexities. In some cases, up to 500 separate data points – per fund and per filing – are required. While it is not so much the number of data points that is contentious, it is rather that reporting many of this data points requires manual intervention to provide them in specific formats/definitions as set out by each individual regulator. This is especially tedious and resource consuming since the nature of a majority of data points requested tends to similar in nature – at the very least between US and EU regulators. As an example we can compare the reporting requirements under the EU's AIFMD and the US' Form PF: Almost 30% of the required data represent a direct overlap, a further 40% a close fit and only 30% uniquely differ.

One of the reasons for this "silo reporting" is simply that the required information derived from these reporting template is solely designed to drive local systemic risk analysis (e.g. by SEC/ESMA/ESRB). Unfortunately, very little information is aggregated beyond these regions and it seems that almost none of the data is shared among regulators. From our European viewpoint we can only see that ESMA's Memoranda of Understanding (MoUs) under AIFMD[6] makes allowances for exchange of information. Nevertheless, we still have not witnessed any examples of an exchange of aggregated data and it is still unclear to us if pooling of data for systemic risk analysis purposes is an aim that international regulators want to expand on.

As an example, we would also like to provide you with the potential reporting lines for an asset manager that provide possible way of connecting and harmonising already existing data flows.

[6] http://www.esma.europa.eu/system/files/2013-998_guidelines_on_the_model_mous_concerning_aifmd.pdf



b. <u>Remaining obstacles in Europe through non-harmonisation</u>

Despite the success of the UCITS framework in (and outside of) Europe, tax regimes do not form part of the EU's competencies. Therefore each country also requires its own tax reporting requirements with some countries requiring quite extensive data. In practical terms this means that although the act of passporting a UCITS fund cross-border has been considerably simplified, the costs of complying with local tax reporting requirements can be a very substantive consideration in determining whether to register in particular countries.

Secondly, another issue that forms operational barriers for distributing funds even within Europe relates to the approval of marketing materials within Europe. Even though, as stated above, UCITS funds can be registered easily in other European countries, national regulators are imposing the right to authorise individual marketing documents. This can lead to a situation in which – even though a fund has already received its approval for distribution from a host country – it can still take several weeks (or months) until an asset manager receives the required approval for its marketing materials and can only then practically start selling its funds.

c. <u>Investor-related documents</u>

Another point worth mentioning is that of the disclosure documents that are targeted towards the marketing of funds towards retail investor. While the UCITS Directive requires its own Key Investor Information Document (KIID), summarising the key points into a 2-3 page document, the notions what constitutes the "key points" are also not uniform across the world. Again, this requires the creating of different key information documents for different regions, increasing costs for compliance when distributing products to other regions.

d. Derivatives regulations

A final example in which we can clearly see that cross border approaches matter greatly to our members is the current developments in derivatives surrounding Europe's EMIR and US' Dodd-Frank regulations. Several of our members have indicated to us that they have deliberately structured their derivatives business (e.g. moved trades, selected counterparties) based on their decision to avoid being captured by Dodd-Frank. The reasoning behind this move is not the avoidance of regulation rather an operational consideration. These asset managers in question simply do not have the resources to build a clearing mechanisms under EMIR only to then replicate these enormously expensive efforts under Dodd-Frank. Implementing EMIR is already costing these managers a significant amount of money (proportionate to the revenues) and certain activities would have become unviable if they had to implement Dodd-Frank as well. Nevertheless, even for these European asset managers that are trying to completely stay within the EMIR framework are still recurrent legal cost in order to understand the developments around Dodd-Frank and not being suddenly caught within scope through some implementation changes in the near to medium future.

Brussels, 19 May 2014

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