Fondbolagens förening
SWEDISH INVESTMENT FUND ASSOCIATION

Ministry of Finance

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Comments on the Simplification of EU Regulations in the Fund Sector

The Swedish Investment Fund Association has been given the opportunity to submit proposals for regulatory simplifications of EU regulations. The association presents the following views.

The association is very positive about the EU Commission's ambition in the area of regulatory simplification, aimed at strengthening competitiveness within the EU. The initiatives discussed regarding simplifications and improvements in sustainability reporting, such as ensuring that funds are not included in the reporting chain under CS3D and simplifying reporting under SFDR to make it more consumer-friendly, are welcomed. It is also essential to review the reporting burden across different regulatory frameworks, not only to avoid duplicate reporting but also to eliminate unnecessary reporting.

In general, better impact assessments should be required when introducing new regulations. The association has observed instances where regulations turn out to be much more costly than anticipated (e.g., the ESAP regulation). If these costs and other consequences had been known when the Commission presented its proposal, the regulation would likely have been deemed disproportionate. There should also be some form of impact assessment of proposals submitted by the European Parliament and the Council during negotiations on the Commission's proposal. There are examples of rules introduced during negotiations without even being justified in a recital and seemingly without any impact assessment. An example of this can be found in the fund directive that has not yet been implemented into Swedish law (Article 1.6 and 2.5 of Directive 2024/927). This directive also includes provisions that distort competition between fund management companies and securities firms providing the same services, without apparent consideration (Article 1.9 and 2.4). Additionally, these provisions result in the same issue being regulated differently in two different regulatory frameworks (see also Article 1.1 referring to Chapter II, Section 2 of the Commission's Delegated Regulation [EU] 2017/565). Such ambiguities and inconsistencies in the regulations unnecessarily lead to high compliance costs for companies.

Below are specific proposals for regulatory simplification/improvement.

EU Regulation on the Preparation of Key Information Documents (PRIIPs Regulation), Particularly Commission Delegated Regulation (EU) 2017/653

PRIIPs Key Information Documents (KIDs) must include information on a fund's transaction costs. As of the beginning of the year, a standard method can no longer be used; instead, actual "transaction costs" for each transaction must be reported. However, depending on the systems and data providers used by the fund management company, calculations vary between institutions for similar transactions. The purpose of including transaction costs in the KIDs is to inform customers that transaction costs can differ between markets depending on liquidity and fees paid to exchange members in connection with trading. However, under best execution requirements, these costs should theoretically and practically not differ between two fund management companies trading in the same market.

The current method for calculating transaction costs is not only unreasonably expensive for fund management companies, especially smaller ones, but it also does not produce the same result for the same transaction. The calculation varies based on the data source and methodology the fund management company can use. The most significant issue is that it does not capture what a customer would typically consider a transaction cost, i.e., compensation to the exchange member either in the form of brokerage fees or a spread (as in the bond market). Instead, it measures factors such as market movements from when the order was placed until it was executed. This market movement, usually resulting from a general market trend rather than the price impact of the order, is counted as a transaction cost.

The value of reporting such implicit transaction costs for funds is questionable. Given the costs of such reporting, the requirement is difficult to justify. If the requirement remains, at the very least, a standardized calculation of these transaction costs should be reinstated. To further reduce costs for the industry, ESMA could establish these standard values for different market segments.

EU Regulation on Foreign Direct Investments (Regulation [EU] 2019/452 on the Screening of Foreign Direct Investments in the Union)

The foreign direct investment screening regulation should clarify that portfolio investments, i.e., investments that do not aim to gain control over a company, should not be subject to national screening mechanisms. Fund management companies make portfolio investments on behalf of the funds they manage. Currently, the rules are applied to such investments, which complicates business operations. This is counterproductive in relation to the EU's goal of increasing the type of investments that fund managers handle.

ESAP (Regulation [EU] 2023/2859 on a "Single Access Point")

When the regulation is applied, fund management companies will need to submit data to the Financial Supervisory Authority in a prescribed format and manner for forwarding to ESMA. This will entail substantial costs for companies, both in terms of IT system investments and personnel resources. Fund management companies already provide large amounts of information to the Financial Supervisory Authority. Every change in reporting requirements is associated with costs.

The benefits of ESAP appear minimal for a fund management company that does not market or wish to market its funds abroad. According to the Commission's impact assessment, reporting under ESAP was expected to incur very limited costs. However, the Financial Supervisory Authority has stated that its own costs will be **one hundred times higher** than the Commission estimated. This suggests that fund management companies' costs will also be at least one hundred times higher. There is significant concern in the industry about the impact of this regulation. Given this, the ESAP regulation should be evaluated before it is implemented.

EU Market Abuse Regulation (Regulation [EU] No 596/2014, MAR)

Under Article 16.2 of MAR, entities that professionally arrange or execute transactions must establish effective arrangements, systems, and procedures to detect and report suspicious trade orders and transactions. The definition in Article 3.28 of MAR applies to entities engaged in receiving, transmitting, or executing transactions in financial instruments.

A fund management company that neither receives nor executes transactions (i.e., does not execute trades on a trading venue) should not be subject to the market surveillance requirement. However, due to statements from regulatory authorities (including ESMA Q&As), the requirement is now applied to fund management companies that do not execute transactions themselves. In such cases, monitoring is conducted by the exchange, the securities firm executing transactions for the fund, and the fund management company itself. This means that the fund must implement its own surveillance system for order placement. There is no indication that this was the intent of the regulation. The requirement imposes costs with minimal benefit. The lack of clarity in the regulation has led to different interpretations across EU countries, distorting competition.

The EU Commission should clarify the regulation. An impact assessment would likely show that requiring a fund management company to establish a market surveillance system, despite not executing transactions, is disproportionate. A clarification would promote fair competition between fund management companies and other institutional investors.

UCITS Directive (2009/65/EU) and AIFM Directive (2011/61/EU)

The fund directives include rules on remuneration policies for companies, which contain a proportionality principle (Article 14b.1 of the UCITS Directive and point 1 of Annex II to the AIFM Directive). Equivalent rules and principles exist for securities firms. However, for securities firms, the proportionality principle has been clarified through the Investment Firms Directive ([EU] 2019/2034). This directive explicitly exempts certain firms from deferred payment and payment in instruments if remuneration falls below a certain threshold. The European Commission has noted that these rules are disproportionately burdensome for smaller firms and employees with lower compensation (COM[2016]510 final). The rationale for these exemptions applies equally to fund management companies and AIF managers. It is essential that equivalent exemptions are introduced for fund management companies and AIF managers. Since the current interpretation does not allow for such exemptions, fund managers are facing disproportionate costs, distorting competition.

It should be considered whether to eliminate the requirement in Article 68.1.c of the UCITS Directive to produce a semi-annual report. This entails costs, while its benefits are questionable.

Article 16.4.b of the AIFM Directive states that the manager may have an internal valuation function, provided it is functionally independent of portfolio management. The requirement for "functional independence" is difficult to meet for smaller managers. Consideration should be given to replacing this with a requirement that the valuation function can be internal, provided the portfolio manager does not unduly influence valuation.

The requirement in Article 16.4.a that an external valuation function must be independent of the fund, the manager, and other closely related persons prevents outsourcing valuation to a sister company. This appears unnecessarily burdensome, especially given that internal valuation is permitted as long as functional independence is ensured.

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