EFAMA
European Fund and Asset Management Association

POSITION PAPER

Brussels, 17 February 2026

European asset management industry position on art. 17 of the draft RTS on CDD and specific rules for collective investment undertakings (CIUs)

EFAMA, the pan-European association representing the full diversity of the European investment management industry[1] supports the goal of strengthening the AML and CFT framework. In particular, we welcome the creation and commencement of AMLA's activities and its recently published ambitious work programme for 2026-2028[2]. We believe that a dedicated AML authority at the EU level will significantly contribute to a more coordinated response to these threats and help tackle the increasingly cross-border nature of financial crime.

Within the broader financial industry ecosystem, the asset management industry operates based on significantly different parameters than, for example, the banking industry. This manifests particularly in how units/shares in investment funds are sold and in the character of their relationship, or lack thereof, with the underlying investors. **We hope that AMLA will recognise these specificities in line with the current industry practice and international standards established by the FATF**.

In order to achieve that, changes are necessary to Art. 17 of the draft RTS on CDD proposed by the EBA[3] **and maintained in the text currently open for public consultations**[4]. While it includes specific rules on how CIUs (i.e. funds and their managers) are allowed to fulfil some of the CDD obligations, it does not recognise these specificities correctly, favouring an approach that would still require a look-through on the intermediaries' client base. **These new measures do not leverage existing asset management industry solutions and expertise, and do not take into account the diversity of business models**

[1] EFAMA's membership consists predominantly of 29 European national associations, which bring their country-specific expertise and viewpoint, and 46 corporate members who provide asset management services across the EU.
[2] AMLA, Single Programming Document 2026-2028, 02.02.2026.
[3] EBA, EBA response to the European Commission's call for advice on six AMLA mandates, October 2025, EBA/REP/2025/35.
[4] AMLA, Consultation Paper. Draft Regulatory Technical Standards under Article 28(1) of Regulation (EU) 2024/1624 (Consultation Paper).

successfully operating in different Member States. They are also inconsistent with the risk-based approach underpinning the EU's AML/CFT regime and would not bring added value to the prevention of ML/TF. By introducing additional data-gathering requirements and inflicting changes to established relationships, they risk jeopardising well-functioning distribution channels for investment products in Member States.

As a result, well-established brands of EU investment funds, in particular UCITS, will be affected both with regard to their attractiveness to investors in the EU, as well as in third countries[5]. This would have negative implications on the competitiveness of the EU financial industry, at a time when strengthening its position on the global stage is a crucial objective and necessity. It would also be counter-productive to the current EU goals of increased retail investor participation in financing of the economy (through e.g. simpler investor journey, financial inclusiveness, and promotion of savings and investment accounts), and achievement of the Savings and Investments Union.

In our paper below, we present (1) a detailed description of the asset management industry's specificities, (2) the negative consequences of the approach proposed, and (3) our suggested solution. We hope that it will help AMLA in its current discussions on the matter and that it will mark the start of an open dialogue and good cooperation between the asset management industry and the Authority.

Separately, EFAMA will also respond to the recently published Consultation Paper and provide its views on all elements of the draft RTS on CDD.

I. <u>How are investment funds accessed by investors?</u>

There are a number of models existing across the EU through which investment funds are made available to end investors, and they often depend on the type of fund. With regard to funds made available to a broad range of investors, such as UCITS, they can, in principle, be categorised under the two main scenarios:

<u>Scenario I:</u>

In the majority of Member States (including, for example, Germany, Denmark, France, Ireland, Luxembourg, and Sweden), funds are mainly subscribed through intermediaries, e.g., banks, investment firms, or brokers. In the same manner, the EU funds are subscribed to by investors from third countries through the intermediaries active in those non-EU jurisdictions. In such cases, **units/shares in the fund are purchased in the name of the financial intermediary and on behalf of the underlying clients**. These clients can be retail or professional, such as other financial institutions, which can also pool proceeds from their underlying investors. Recent changes to AIFMD and UCITS clarified additionally that, as in such instances the intermediary would not be acting on the management company's or AIFM's behalf, rules on delegation under these directives would not apply[6]. **As a result, only the intermediaries are recognised as the fund's customers.**

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[5] At the end of 2024 EUR 5.7 trillion in net fund assets domiciled in the EU (the vast majority being UCITS) were held by investors located outside the EU. This proves the scale and strategic significance of UCITS cross-border success.
[6] Directive (EU) 2024/927 of the European Parliament and of the Council of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC as regards delegation arrangements, liquidity risk management, supervisory reporting, the provision of depositary and custody services and loan origination by alternative investment funds (Text with EEA relevance) (Amending Directive 2024/927), recital 10 and 39.

As the underlying investors of the intermediary are not customers of the fund, there is no legal relationship binding them, and CIUs do not have visibility into those natural or legal persons. Intermediaries are prevented from disclosing to CIUs data gathered during their client onboarding by data protection and professional secrecy obligations, among other reasons. Any additional obligation to access the data imposed on CIUs would not entitle intermediaries to share the data, and such disclosure may be further constrained by the laws of third countries. Moreover, because the identities of their underlying investors are a crucial commercial asset for intermediaries, they would be hesitant to enter into relationships that could threaten disclosure of this data. **This is also why investment funds and their managers are prevented from applying a look-through approach to the intermediary's end investors,** i.e., identifying and verifying natural persons on whose behalf the transaction is being conducted and verifying their identities using KYC documents. These efforts would, in any case, be duplicative, as **intermediaries, which are AML-obliged entities, already conduct full CDD measures on their underlying clients**.

Instead, the fund performs CDD obligations on its customer - the intermediary[7]. In addition, and in compliance with the risk-based approach, funds apply additional measures towards intermediaries, such as: (a) gathering of sufficient information about the institution to understand fully the nature of the financial intermediary's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a ML/TF investigation or regulatory action; (b) assessing the financial intermediary's AML and CFT controls; (c) obtaining approval from senior management before establishing new relationships; (d) clearly understanding and documenting the respective responsibilities as regards the fight against ML/TF of each institution; (e) being satisfied that the financial intermediary has a framework in place to verify the identity of and perform ongoing due diligence on their customers. **Through this ongoing AML risk assessment and an in-depth understanding of distribution channels, and because intermediaries are AML obliged entities themselves, subject to AML/CFT supervision by competent authorities, ML/TF risk in the fund sector is properly mitigated**.

Scenario II:

Similar to the one described above is the case, for example, in Italy, where the **intermediary acts as a distributor of the fund and the fund's units/shares are registered in the name of the end client**, rather than the bank or broker platform's own name. In these cases, the primary distinction from the scenario described above would be that the end clients would also become clients of the fund.

However, while the name of the end investor may appear in the fund share register, there are many aspects that this model shares with the one previously described: (i) the end investors are primarily clients of intermediaries, (ii) intermediaries are obliged entities subject to AML/CFT obligations, (iii) they are required to perform all elements of the risk-based CDD on end investors, (iv) the access to information gathered on end investors by intermediaries is not without significant practical challenges, and (v) the CIU will undertake the due diligence on the intermediary as described above to thoroughly understand the distribution channels and evaluate AML/CFT risks. **Also in this case, the exposure to ML/TF risk is substantially mitigated as it concerns UCITS funds and involves an intermediary that is an obliged entity directly responsible for conducting CDD on end investors**.

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[7] With the exception of Denmark, where until now the national regulatory framework exempted CIUs from AML obligations due to their low ML/TF risk.

Within these two scenarios, further sub-scenarios can be recognised, such as additional solutions in Sweden, Denmark, or Finland, where structures similar to stock exchanges were also set up for funds. They allow a wide range of intermediaries to make a variety of funds available to end investors at cost-efficient prices. This has been a fundamental prerequisite for the development of these markets, where the participation of retail investors in the financial market is exemplary for the entire EU. The main characteristic remains that the end investors are already subject to the CDD measures applied by other obliged entities than the CIUs, and any analysis conducted by the CIU would be duplicative and subject to significant constraints, if possible at all.

Apart from the scenarios described above (which are also explained by the infographic included in Annexe I to this paper), there are also others, including when the end investor purchases units/shares from the fund directly and not through intermediaries. These cases, however, are not considered for the purpose of this discussion, as they do not seek relief from the CDD obligations under art. 20(1) AMLR.

II. Negative consequences of the proposed approach

The abovementioned specificities of the funds' industry have long been recognised by the FATF, particularly that the fund's units/shares are typically sold through another financial institution, which would, in such a case, be treated as the fund's customer, and the fund would not have visibility on end investors.[8] In that sense, **they are also similar to cross-border correspondent relationships**, and as the FATF explains "*the customer of the respondent* (ed. Author: the intermediary) *would not be considered as a customer of the correspondent* (ed. Author: the CIU)*, and the **FATF Recommendations do not require the correspondent securities providers to conduct CDD on the customers of their respondent institutions**.*"[9]

In order to secure a level-playing-field for the EU asset management industry vis-á-vis competitors from third countries, apply the widely recognised FATF's approach, and take into due consideration the limited ML/TF risk, it is necessary to provide CIUs with a relief from the look-through obligations under Art. 20(1)(h) of the AMLR. Such a direction has already been marked out by the co-legislators in recital 51 of AMLR, where it is said that "*In the context of customer due diligence, the person for the benefit of whom a transaction or activity is carried out does not refer to the recipient or beneficiary of a transaction carried out by the obliged entity for their customer*". **The currently proposed Art. 17 of the draft RTS on CDD fails to achieve these goals by still requiring CIUs to secure visibility into intermediaries' client bases in cases where the AML/CFT risk is not high.** This expectation goes against the logic of these relationships, as explained above, and their legal reality.

An obligation for CIUs, enshrined in level 2, to be satisfied that intermediaries will provide information on their client base would have significant implications for the established and well-functioning relationships

[8] In the [Risk- based Approach Guidance for the Securities Sector](para. 100) the FATF specifically recognises the distribution of investment funds: "*the CDD measures an investment fund should take will depend on how the ultimate customer invests in the fund. Depending on how the investment fund is sold, with whom the business relationship is established or who is registered in the fund's share/units register, the investment fund may be required to treat an underlying investor as its customer or the intermediary as its customer. **Where an intermediary is treated as the investment fund's customer, the investment fund may not have visibility on the intermediary's underlying customers. This includes not having comprehensive identification nor transaction related information on the customers of the intermediary** in cases such as, for example, where the intermediary nets all of its customers' orders and submits a single net order to the investment fund each day.*"

[9] FATF, Risk-based Approach Guidance for the Securities Sector, para. 107.

with these entities. It would require substantial new information sharing and record-keeping arrangements between investors, distributors, and asset managers. In many cases, it would prove legally and operationally impossible due to the nature of fund distribution and intermediaries' being prevented from sharing this data. **This could lead intermediaries to reduce the number of funds they distribute, ultimately limiting the diversity of investment solutions available to retail investors**. In the EU, intermediaries may be inclined to limit their offer to funds managed by entities from the same capital group. In the Nordic Member States, where systems similar to stock exchanges for funds were established, these could lead to the total collapse of these well-functioning solutions. Outside the EU, it would make it harder for EU funds to compete successfully in an increasingly challenging international landscape, risking UCITS losing its position as a global gold standard. Further exercise of CDD obligations by investment funds directly on end investors would be duplicative, prolonging their onboarding process. **This could counterproductively affect current efforts to incentivise retail investors to participate in financial products.**

At the same time, it would not benefit AML/CFT purposes as it would simply duplicate the work and analysis already done by intermediaries. **To prove that this additional level of scrutiny is unnecessary, it is crucial to note that no shortcomings in the AML/CFT were detected in the entire asset management industry by the European Commission**[10]. To recall, Art. 28(1)(b) of AMLR requires the RTS on CDD to specify measures applicable to specific categories of obliged entities and products or services, having regard to the risk assessment at EU level, conducted by the European Commission.

Moreover, as already described above, the proposed relief from some CDD obligations does not apply to instances where units/shares are sold without the involvement of another financial institution.

III. Necessary changes to the Art. 17 of the draft RTS on CDD

To address the specificities of the CIUs sector, the practical functioning of the asset management industry, as described above, needs to be fully recognised. In EFAMA's view, the issues explained above will not be solved by the current wording of Recital 14 of the draft RTS on CDD, as proposed in the Consultation Paper. Given its interpretative function, we do not believe the proportionality and risk-based approach introduced therein will provide the necessary relief from the directly binding obligations of Art. 17. Moreover, as the identity of their underlying investors presents a crucial commercial asset for intermediaries, the threat of possible disclosure would pose a sufficient argument to cease the relationship with the CIU, nevertheless.

Therefore, we believe that the following changes need to be made in Art. 17 of the draft RTS on CDD:

1. **In instances where shares/units of the fund are subscribed through an intermediary under Scenario I, CIUs should not be expected to apply a look-through approach, provided that conditions under points (a) to (d) are met.**
2. **The Article should also recognise the specificities of Scenario II in a separate dedicated paragraph 2. This would allow for an equal treatment of situations where ML/TF risks are already**

[10] In the *Commission Staff Working Document accompanying the document Report from the Commission to the European Parliament and the Council on the assessment of risk of money laundering and terrorist financing affecting the internal market and relating to cross-border activities*, (COM(2022) 554 final, p. 45) the Commission recognised that "***To have access to the investment sector, perpetrators need to introduce money through the banking system**, and hiding illegal money through opaque structures requires a high degree of expertise and/or high cost. Therefore, **banks are often a first barrier that mitigates the inherent money laundering risk**.*" .

mitigated to the same extent, upholding the standards of a risk-based approach and proportionality.

When a CIU is distributed through an intermediary and the subscription is made in the investor's name, the investor may also be considered a client of the CIU. In this scenario, the reliance put on AML/CFT measures conducted by the credit or financial institution should be considered sufficient and adequate to fulfil the obligations under Article 20(1) of the AMLR and not merely those under Article 20(1)(h)[11]. The method of subscription or distribution of CIU units or shares should not, by itself, be considered a factor that determines a different intensity or nature of AML/CFT obligations conducted by CIUs on end-investors.

3. The description of the relationship between the CIU, the intermediary and the client of the intermediary has to be amended to correctly reflect the current market practice.
4. The Article has to fully reflect the fund industry's mitigated ML/TF risk and refer to instances where the risk associated with the relationship is "not high". Within the AML/CFT terminology, the adjective "standard" is typically used to describe the type of CDD measures rather than the level of ML/TF risk associated with a relationship. The reference to the level of risk that is "not high" would be more in line with the current practices of AML/CFT risk-based approach.
5. The Article should also recognise the robustness of AML/CFT rules applied by international capital groups.

<u>Taking all that into account, we would suggest the following changes in the wording of the Art. 17 of the draft RTS on CDD:</u>

"1. *When **shares or units of** a collective investment undertaking ~~distributes its shares or units~~ **are sold** through another credit institution or financial institution that acts in its own name but on behalf or for the benefit of one or more ~~final~~ **underlying** investors, ~~it~~**the collective investment undertaking** may fulfil the requirement under Article 20(1), point (h), of Regulation (EU) 2024/1624 **by being** ~~if it is~~ satisfied that ~~the credit institution or financial institution will provide information necessary to identify and verify the identity of the final investors without undue delay and upon request. This applies provided that~~:*

(a) *the credit institution or financial institution is subject **directly or through group policies** to AML/CFT obligations in an EU Member State or in a third country that has AML/CFT requirements that are not less robust than those stipulated by Regulation (EU) 2024/1624;*
(b) *the credit institution or financial institution is effectively supervised for compliance with obligations as provided for in point (a);*
(c) *the risk associated with the relationship with the credit institution or financial institution is ~~low or standard~~ **not high**; and*
(d) *~~the collective investment undertaking is satisfied that~~ the credit institution or financial institution applies robust and risk-sensitive CDD measures to its own customers and its customers' beneficial owners.*

2. ***When shares or units of a collective investment undertaking are sold through another credit or financial institution to one or more underlying investors, where the units or shares are subscribed***

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[11] ESMA in its Report on the total costs of investing in UCITS and AIFs defines: "*Indirect distribution: Distribution model where fund management companies sell their investment products to end investors through intermediaries such as investment firms, credit institutions, insurance undertakings, neo-brokers or other entities. **The intermediary assumes responsibility for client relationships, suitability assessments, and regulatory compliance obligations toward the end investor**.*"

in the name of the investor, the collective investment undertaking may fulfil the requirements under Article 20(1) of Regulation (EU) 2024/1624 by being satisfied that:

(a) ***the credit institution or financial institution is subject directly or through group policies to AML/CFT obligations in an EU Member State or in a third country that has AML/CFT requirements that are not less robust than those stipulated by Regulation (EU) 2024/1624;***

(b) ***the credit institution or financial institution is effectively supervised for compliance with obligations as provided for in point (a);***

(c) ***the risk associated with the relationship with the credit institution or financial institution is not high; and***

(d) ***the credit institution or financial institution applies robust and risk-sensitive CDD measures to its own customers and its customers' beneficial owners*.”**

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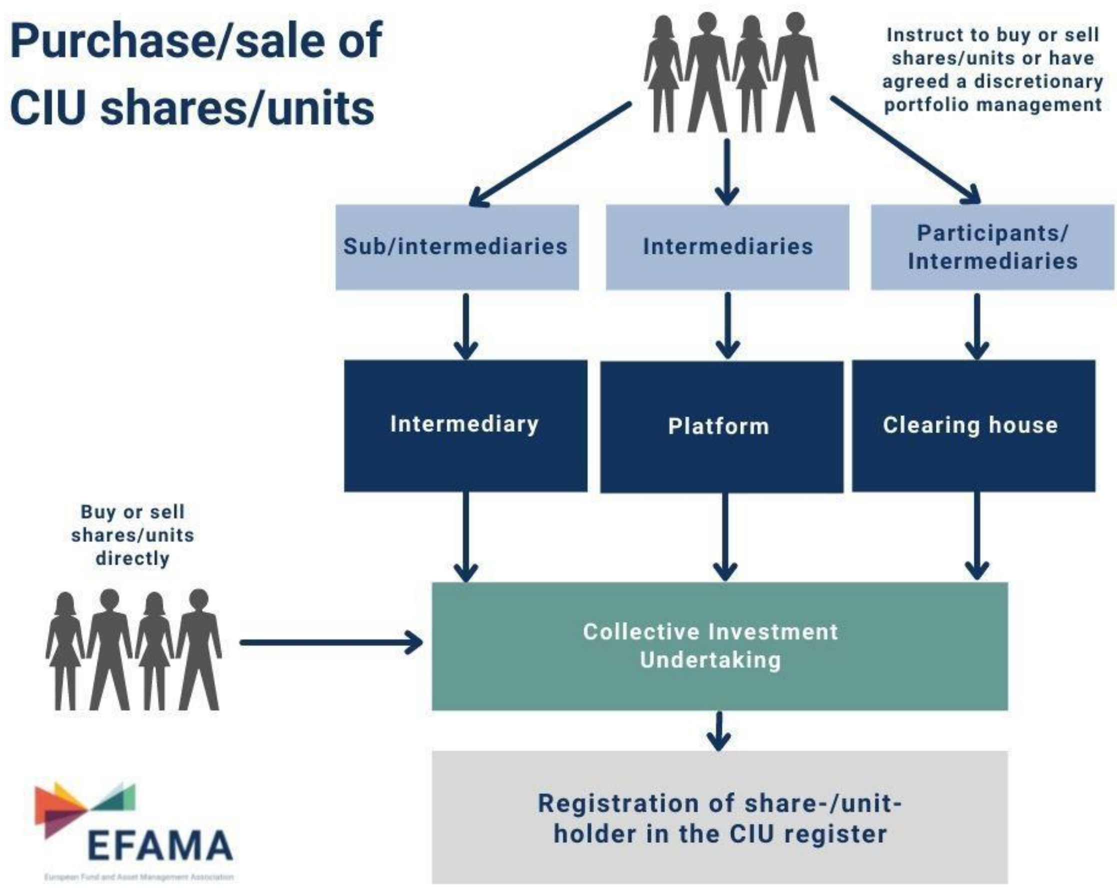
Annex I:



ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages about 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

More information is available at www.efama.org

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