Fondbolagens förening
SWEDISH INVESTMENT FUND ASSOCIATION

ESMA

April 9, 2025

# Proposals for Simplification and Burden Reduction in the Fund Sector

Dear all,

Thank you for the opportunity to submit proposals for regulatory simplifications in the Fund Sector.

The EU Commission's ambition in the area of better regulation is welcome and necessary in order to strengthen competitiveness within the EU. It is also important that investor protection is ensured to achieve the goal of increasing household participation in financial markets. The two goals could be reached by reducing regulatory burden where compliance costs are not proportionate to the outcome for investors. All costs will eventually end up as fees and charges to investors, why reducing unnecessary burden would also help reaching the goal of lower costs for investors.

Below are specific proposals for regulatory simplification/improvement. When it comes to estimating the burden reduction in relation to the total burden of regulation for the fund sector, as requested by ESMA, it is a difficult task. Below is, however, a best effort to describe what would be the benefits of the proposed changes.

1. *The Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment products (PRIIP Regulation), in particular the Commission Delegated Regulation (EU) 2017/653*

<u>Key issue/problem</u>

The PRIIP Key Information Document (KID) must include information on a fund's transaction costs. As of the beginning of this 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 KID 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 neither theoretically nor practically 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 client 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 the time 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 nevertheless regarded as a transaction cost in the Regulation. The value of informing retail investors about such implicit transaction costs for funds is, say the least, questionable. Given the costs of such reporting, the requirement is difficult to justify.

Changes required

Remove the requirements in Annex VI, part I, 1.12-20, to the Commission Delegated Regulation (EU) 2017/653 regarding the calculation of transaction costs for investment funds. Instead, the calculation method ("for new PRIIPs") in Annex VI, part I, 1.21-23, should be used. The result of the latter calculation is just as relevant, but to a much lower cost. To further reduce costs for the industry, ESMA could establish these standardized estimates for different market segments.

Expected gains

Due to the requirement the industry is dependent on costly external market data. Those costs are not proportionate to the benefit, if any, to retail investors. Since different outcomes of the calculations are received from different data providers it could even be misleading to investors in their choice of fund and distorting competition between funds.

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

Key issue/problem

When the regulation is to be 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. At the same time the benefits of ESAP appear minimal for a fund management company that does not market or wish to market its funds abroad. It should be noted that Swedish funds to a large extent are marketed to retail investors on a national basis. Fund fees are generally, from an EU perspective, low. At the same time many of the fund managers on the Swedish market are small or medium sized.

According to the Commission's impact assessment, reporting under ESAP was expected to incur very limited costs. However, the Swedish 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. Fund management companies will also have to pay the costs incurred by the Swedish FSA through yearly fees. There is significant concern in the Swedish industry about the impact of this regulation. Given this, it is important that the costs to establish ESAP are evaluated before it is implemented and that a proper impact assessment is performed.

Changes required

For funds that are not marketed cross-border it should be voluntary to transmit data to ESAP.

Expected gains

The Swedish fund industry alone could face costs of estimated two million euros the first year. Retail investors are unlikely to benefit from ESAP, especially since most funds are not marketed cross-border. The costs, however, will increase the regulatory burden on fund managers and will be especially burdensome for smaller companies. This is counterproductive to the purpose to promote low fees in the fund sector.

3. *The Market Abuse Regulation (Regulation [EU] No 596/2014, MAR)*

Key issue/problem

Under Article 16(2) of MAR, any person that professionally arrange or execute transactions shall establish and maintain effective arrangements, systems, and procedures to detect and report suspicious orders and transactions. Article 3(28) of MAR defines that such persons mean those that are engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments.

A fund management company that neither engage in the reception and transmission of orders, nor the execution of transactions (i.e., does not execute trades on a trading venue) should not be subject to the market surveillance requirements. This situation is common in Sweden, where fund management companies are not members of the stock exchange and therefore themselves do not execute trades. Instead, they use investment firms for the execution of transactions.

Even so, statements from ESMA (in the form of Q&As) has created ambiguity, with the consequence that the requirement is nevertheless applied to fund management companies that do not themselves execute transactions. This means that surveillance is conducted by the exchange, by the investment firm executing the transactions, *and* by the fund management company itself. As a consequence a fund manager must implement a surveillance system that only covers its own placement of orders with an investment firm. There is no indication that this was the intent of the regulation. The requirement imposes heavy costs with minimal benefit. The lack of clarity has led to different interpretations across Member States and institutional investors, distorting competition.

Changes required

The scope of Article 16(2) must be clarified by the EU Commission. It is not appropriate that ESMA defines the scope through Q&As. Fund managers, as other investors, that neither engage in the reception and transmission of orders, nor the execution of transactions (i.e., does not execute trades on a trading venue) should not be subject to the requirements of Article 16(2).

Expected gains

Removal of one layer of the triple costs for surveillance systems held by the exchange, the firm executing transactions, and their clients (fund managers and others). An impact assessment would likely show that requiring a fund management company to establish a market surveillance system, despite not executing transactions, is disproportionate. The costs for establishing and maintaining IT systems for the surveillance are quite severe, but unfortunately of little use. Data providers are finding difficulties in calibrating their surveillance systems to only one customer monitoring itself. A clarification of the scope would promote fair competition between fund management companies and other institutional investors that do not themselves execute orders.

*4. The UCITS Directive (2009/65/EU) and the AIFM Directive (2011/61/EU)*

Key issue/problem

The UCITS Directive and the AIFMD include rules on remuneration policies which contain a proportionality principle (Article 14b[1] of the UCITS Directive and point 1 of Annex II to the AIFMD). Equivalent rules and principles exist for investment firms. For the latter firms the proportionality principle has been clarified through the Investment Firms Directive ([EU] 2019/2034). This Directive explicitly exempts firms from applying deferred payment and payment in instruments when the 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 managers. Since the current interpretation from the Swedish Supervisory Authorities is that EU law, i.e. the fund directives, do not allow for such exemptions, fund managers are facing disproportionate costs, distorting competition.

Changes required

Insert in the UCITS Directive and the AIFMD the same exemptions from the application of deferred payment and payment in instruments as in the Investment Firms Directive.

Expected gains

Level-playing-field with other financial institutions when it comes to remunerating staff. Removing the burdens for smaller sums of remuneration and smaller companies will increase the possibility to use variable remuneration of staff in the best interest of investors.

Key issue/problem

The requirement to produce a half-yearly report for UCITS entails costs, while its benefits are questionable. There has been no demand for this report among retail investors. The annual report, which is subject to audit control, should suffice.

Changes required

Eliminate the requirement in Article 68(1)(c) of the UCITS Directive to produce a half-yearly report. This would also be in line with the AIFMD.

Expected gains

Reduction of the administrative burden to produce the half-yearly report.

Key issue/problem

Article 19(4)(b) of the AIFMD states that the manager may perform the valuation function itself, provided that the function is "functionally" independent from the portfolio management. The requirement for functional independence is difficult to meet for smaller managers. If functional independence could not be met the function must be performed by an external valuer. It would in those cases be rational to have valuation performed by another company in the same group, if possible, since the function would then be independent from the portfolio management. However, according to Article 19(4)(a) of the AIFMD an external valuer must be independent from the fund, the manager and any other persons with close links. This prevents outsourcing valuation to another company within the same group and creates unnecessary burdens, especially given that internal valuation is permitted as long as functional independence is ensured.

Changes required

In Article 19(4)(b) of the AIFMD the requirement of functional independence should be replaced with a requirement that the valuation function may be internal, provided that the portfolio manager does not unduly influence the valuation.

It should, as an alternative, be clarified that functional independence could be achieved by outsourcing the performance of valuation to a company within the same group.

Expected gains

Performing valuation internally, or within the group, would create economies of scale and increase cost-efficiency. If there is already staff within the company or group that has valuation expertise it would be counterproductive not using that expertise but be forced to buy those services externally.

*5. ESMA Guidelines on outsourcing to cloud service providers (ESMA50-164-4285)*

The guidelines should be repealed or revised in so far as they constitute a form of double regulation in the light of the Dora Regulation. In any case, it should be clarified how the guidelines and the Dora Regulation relate to each other.

Sincerely,

Helene Wall
Member of IMSC – CWG