

European Commission

BRUXELLES

Milan, 30th July 2020

Subject: response to the public consultation on the Final Report on the High-level Forum on the Capital Markets Union (“CMU”).

Dear Sirs,

We are pleased to take part, in our capacity as Italian Association of Private Banking, to the consultation on the recommendations for future CMU policies with the view to share the evaluations that AIPB has carried out over the past years and which we believe might be of help for the intention to create a capital market union.

As a way of background, our Association involves national and international private banking operators of primary standing, universities, research centers, service companies, sector associations, and legal firms with the aim to identify and propose solutions for individuals with a significant financial portfolio and complex investment needs (i.e. private banking clients).

Over the past few years, our Association has established several working groups with our Associates for the purpose of envisaging the best opportunities for private banking clients and, in particular, the measures for increasing the participation of non-professional clients to the banking and financial markets and for encouraging cross-border investments. Considering such objectives, our Association has assumed an active role by submitting to the attention of the national and international Commissions and Authorities and by discussing with these latter certain *ad hoc* intervention measures. We are of the view that the evaluations and the proposed solutions which our Association has carried out and identified from time to time might be useful for the purpose of reaching the scope of creating a capital market union. Our Association, in fact, believes that the creation of a single European market in which banking, financial and insurance products and services are offered in a homogeneous manner within the European Union, represents a necessary condition for developing a single market. Even if significant progresses have been made in recent years in trying to remove barriers to such single market, we believe that the process is still not completed, considering that there are certain sectors characterized by evident asymmetries between the various European States.

AIPB, thanks to the contributions, data and proposals received by our Associates, has identified the following four main topics which are essential for the discussed purpose, which we would be grateful if you could take into consideration in your evaluation process. In particular:

- Introduction of a harmonized definition of "semi-professional investors";
- Introduction of a harmonized definition of "insurance-based investment products" ("IBIPS");
- Proposals of amendments to the ELTIF Regulation;
- Introduction of a harmonized definition of an alternative investment fund and simplification of the related passporting regime.

We remain at your complete disposal for any clarification you might need on this and for any further discussion.

Your sincerely,

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AIPB EVALUATIONS AND PROPOSALS

1. Introduction of a harmonized definition of "semi-professional investors"

The first aspect which, in our opinion, deserves to be evaluated concerns the possibility of reconsidering the client classification envisaged across the European laws and regulation and, in particular, the introduction of a new definition of non-professional investor including certain "retail" clients. As you surely know, in certain jurisdiction a category of "semi-professional client" already exists (e.g. in Luxembourg where it is envisaged a notion of "well-informed investors") but remain significant differences in relation to the conditions which lead to the qualification of such clients as "semi-professional".

Our Association has considered such topic in several occasions and from different standpoints. In particular, we have submitted our position in response to the consultation of the European Commission for changes to the MiFID II ("*Public consultation on the review of the MiFID II / MiFIR regulatory framework*") and, at the national level, in the response to the proposed amendments to Article 14 of Decree of the Italian Ministry of Economics and Finance n. 30/2015.

The common thread envisaged by our Association in such respect is that it could be advisable to anchor the notion of "semi-professional client" to the level of service rendered rather than making reference to specific characteristics of the individual investor. In other terms, we believe that the proposed new category of "semi-professional client" should include those non-professional private banking clients accessing to illiquid investments (for instance) through a professional intermediary within the context of the provision of an investment service. More in details, the criteria (or enabling conditions) under which a client could be regarded as a "semi-professional" should be the following:

(i) consistency of the overall financial portfolio;

(ii) level of service rendered to the client (e.g. individual portfolio asset management and/or investment financial advice) to access to the investment in certain financial instruments.

Where the criteria referred to under points (i) and (ii) are evaluated on an individual basis, they may not be sufficient in terms of investor protection, while the compliance with both assumes an enabling function. In such respect, the knowledge and experience of the client in relation to the financial instruments would assume a marginal role to the extent that investment decisions are assumed with the support of a qualified intermediary in the context of a service provided to the client.

Although there are substantial differences among banking, financial and insurance sector which might make difficult to identify a similar definition of "semi-professional client" in all these sectors, we believe that it should be ensured a consistency across them (for instance, by mitigating the above-mentioned criteria to the relevant sector)¹.

¹ In fact, there is no uniformity regarding the classification of clients in the various sectors. One should consider the classification referred to in MiFID II which, as known, provides a distinction between professional customers, qualified counterparties and retail clients, providing for the possibility for these latter to be treated as professional client to the extent that at least 2 of the following criteria are satisfied: (i) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters, (ii) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000, (iii) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged. In the banking sector, on the other hand, there is no classification of clients provided that the rules envisaged in relation to the provision of banking services apply regardless of the type of client to whom the service is rendered. The internal banking regulation requires the compliance with some additional provisions should the clients be a retail client (meaning, consumers, natural persons who perform professional or craft activity, non-profit organizations, micro-enterprises). Even in the insurance sector there is no clear distinction between professional and non-professional clients. The introduction of a definition of semi-

2. Introduction of a harmonized definition of "insurance-based investment products" ("IBIPS")

Even if the process of creating an European harmonized framework on IBIPs has produced important progresses (reference is made to process of harmonization between the rules contained in the Insurance Distribution Directive with those referred in the MiFID II to create a common level playing field between those products with a financial component), our Association is of the view that there are still significant differences between Member States with respect to the characteristics and the distinctive elements that should (or could) have such types of products to be qualified as insurance investment products. This is for example the case of capitalization policies whose qualification elements and the relevant legal framework are substantially different between the European jurisdictions.

A different qualification between European countries of insurance products with a financial component (and the related underlying investments) entails a greater difficulty in the possibility of distributing such products across EU and at the same time increases the risk of litigation.

These are the arguments which lead our Association to reconsider the characteristics that insurance-based investment products must have in order to be qualified as such, attempting, where possible, to provide for a harmonized definition at European level.

3. Proposals of amendments to the ELTIF Regulation

A third area which, in our opinion, deserves to be explored in this consultation, is the possibility of making certain amendments to the current ELTIF Regulation.

Our Association fully agrees with all the critical issues pointed out by the European Commission as well as the intervention proposals, recommendation and legal amendments included in the published Final Report and, in particular, has highlighted and believes that the current investment limits of ELTIFs are excessively stringent, especially where compared with the investment strategies allowed to other types of alternative investment funds.

In our opinion, therefore, on the one hand, it would be necessary to intervene by expanding the list of eligible investments referred to in the ELTIF Regulation, including the possibility for ELTIFs, for example, to invest in more liquid products (e.g., in units or shares of open-ended fund or in money-market funds). This is particularly relevant, if considering that typically ELTIF envisage a *fully paid-in* structure and therefore the management of the initial liquidity - pending the investment in the eligible companies as defined in the ELTIF Regulation - becomes of particular importance. Furthermore, we fully agree with the proposed review and broadening of the scope of eligible assets and investments (e.g. to modify the limits on eligible portfolio companies including the investment also in "financial undertaking" which are in line with the ELTIF's investment strategy and limits referred to in the ELTIF Regulation as well as with the possibility for an ELTIF to invest in investment funds other than ELTIF, EUVECA and EUSEF).

On the other hand, one might also consider to reconsider the current definition of small-medium enterprises (SMEs) referred to under the ELTIF Regulation which could prevent some medium companies from the access to financing by removing the capitalization limit.

professional investor would be particularly important in relation to the distribution of insurance-based investment products in relation to which it is necessary to carry out the assessment of the suitability or appropriateness of this product with respect to the client profile.

4. Introduction of a harmonized definition of an alternative investment fund and simplification of the related passporting regime

A final topic which we would like to point out is the opportunity to introduce a harmonized notion of alternative investment fund. If we are aware that, as of today, the definition of an alternative fund is not a harmonized - and consequently that the various EU countries consider AIFs in a very diversified manner - we believe that it may be appropriate to introduce a common definition of AIF at European level. The lack of a uniform definition of AIF, in fact, entails a greater difficulty in the passporting of these funds and in the relevant marketing of the same within the European Union and increase the level of discretionarily granted to the national competent Authority in the authorization of the marketing of such funds.

Our Association believes that it is essential for the European real economy to encourage the distribution of AIFs (including ELTIF) across-EU and, thus, that a more simplified passporting and standardized regime would help. Should a harmonized definition of AIF be introduced, we believe, in fact, that an additional measure to be taken is to simplify the passporting regime (for example, by envisaging a European passport regime currently set forth for the marketing of AIF for professional clients only which require a mere notification between the Authorities).

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