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EU Capital Markets Union

EU Commission seeks to have a more effective Capital Markets Union

On 18 February 2015, the EU Commission issued a consultation paper entitled "Building a Capital Markets Union". The paper can be accessed via this link. In the paper, the Commission states that its priority objective is to encourage and facilitate economic growth and jobs. A key aspect to this is to ensure that funding is readily available to European companies and that there is investment in infrastructure.

The Commission acknowledges that funding sources for European businesses (particularly small and medium sized businesses – **SMEs**) remains too costly and narrow which is reflected in the fact that businesses are heavily reliant on banks as their primary source of funding. The Commission suggests that Europe would benefit from stronger capital markets which would provide an alternative source of funding for European businesses. This will require building a true European Capital Markets Union (**CMU**) that will link savers and investors. The purpose of the consultation is to assist the Commission to develop an action plan for putting in place an effective CMU by 2019.

The Commission acknowledges that this is a complex area which will require a wide range of initiatives, some of which will be small with others being more significant. It will be an on-going project. However, the Commission sets out a number of priority areas which it suggests could be reviewed or amended as part of this process. These include (i) amending the current prospectus regime with a view to making it easier for companies (including SMEs) to raise capital throughout the EU; (ii) developing a common minimum set of comparable

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information for credit reporting and assessment which could help attract funding to SMEs; (iii) building a sustainable securitisation regime (which can provide investment opportunities and also increase capacity of banks to lend); (iv) determining whether the recently finalised European Long Term Investment Funds (**ELTIFs**) regulatory framework can be further enhanced; and (v) developing a European private placement market.

It is not currently clear precisely how this will impact upon the funds industry. However, there are some positive indications that the Commission is prepared to review areas such as the Prospectus Directive and cross-border marketing of funds with the aim of making them more efficient. For example, in the case of cross-border marketing, it may look at introducing a regulator-to-regulator notification process for on-going updates (similar to the process already in place for the initial notification of a UCITS seeking to market its shares into another EU member state). It also acknowledges that ELTIFs need to be supported and kept under review in order to ensure that they can make a successful contribution to long term investment in the EU. It is hoped that the Commission will also support a harmonised approach to loan origination funds as part of this project.

It is encouraging to see that the Commission has also recently indicated it is aware that there has been a very significant level of legislation since the financial crisis of 2007/8 and consequently its intention is now to focus on reviewing the legislation introduced to date in order to ensure that it is proportionate (i.e. does not burden smaller, lower risk institutions with the same requirements applicable to higher risk institutions) taking into account the different business models which exist in the European landscape. As part of the CMU project, it will also seek to encourage a consistent interpretation and enforcement of EU financial laws and regulations. This should result in a level playing field for financial institutions and give investors greater comfort generally. The Commission has indicated that this will require significant effort on the part of the European Supervisory Authorities. In the case of the funds industry, this will of course primarily be the European Securities and Markets Authority (**ESMA**) through existing means such as issuing opinions or Q&A's to clarify its views on applicable legislation and regulator peer reviews. In addition, it is possible that the Commission may also look at augmenting ESMA's powers for this purpose.

The Commission's focus on and declared approach to the CMU would appear to be a welcome development from both the supply and user side. Nevertheless, given the extensive nature of the CMU, it will be necessary to monitor its progress in order to see what is actually proposed following on from this consultation. The formal consultation ended on 13 May 2015 and a copy of the Irish Fund Industry Association's response to the Commission's Consultation Paper can be accessed via this link. The Commission's CMU conference will be held on 8 June, 2015 which will conclude its consultation process. The Commission will then issue an Action Plan later in 2015.

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