



Page 1

### **Current challenges for the Fund Management Compliance – time is of the essence**

1. [ESMA's supervisory briefing](#)
2. [Sustainable Finance journey](#)
3. [Reduced Subscription Tax](#)
4. [FATCA and CRS](#)

Have you thought about your investment funds' status regarding the latest crucial compliance matters? What should be urgently implemented and what could the hefty monetary drawbacks of non-compliance be?

Highlighted below are some issues to be immediately considered:

#### **1. ESMA's supervisory briefing on the supervision of costs in UCITS and AIFs**

On the 4<sup>th</sup> June 2020, European Securities and Markets Authority (ESMA) published a supervisory briefing on how national competent authorities (NCAs) should supervise the cost-related provisions of UCITS and AIFMD, and managers' obligations to prevent disproportional costs charged to investors. This briefing also provides the market participants with NCAs expectations and compliant practices for the development and periodic review of a structured pricing process document. It must cover especially:

- |                   |                    |
|-------------------|--------------------|
| ✓ Best interest   | ✓ Accounting       |
| ✓ Proportionality | ✓ Cap              |
| ✓ Complexity      | ✓ Performance fees |
| ✓ Sustainability  | ✓ Disclosures      |
| ✓ Equality        | ✓ Date reliability |

In January 2021, ESMA launched a common supervisory action (CSA) to assess supervised entities' compliance with the cost-related provisions of the UCITS framework, and the obligation of not charging the investors with undue costs.

#### **2. Sustainable Finance journey – from the 10th of March 2021 and beyond**

The Sustainable Finance Disclosure Regulation (SFDR) requires financial market participants to define and publish a sustainability risk policy by the 10th of March 2021. Moreover, from the 1st of January 2022, the risk management process of UCITS and AIFM will need to identify and monitor sustainability risks under the amended UCITS and AIFM delegated acts:

- ✓ Develop an ESG strategy
- ✓ Monitor Sustainability Risk
- ✓ Report according to the latest draft of Regulatory Technical Standards (RTS)

#### **3. Advantage of the Reduced Subscription Tax on environmentally sustainable investments**

As part of its 2021 Budget law, the Luxembourg government has introduced a reduction of the annual subscription tax rate of UCIs and compartments of UCIs if they invest in economic activities qualifying as environmentally sustainable under Article 3 of the EU's Taxonomy Regulation. Find out how to benefit from the reduced tax rate and enjoy the monetized impact of such investments.

#### **4. FATCA and CRS**

All Luxembourg financial institutions (including investment funds and ManCos – third party Management Companies) must comply with the Foreign Account Tax Compliance and the Common Reporting Standards (CRS). Moreover, the FATCA and CRS law of 18<sup>th</sup> June

Page 2

5. [Cybersecurity](#)
6. [AML/CTF Compliance](#)
7. [Performance fees](#)



Page 1

1. ESMA's supervisory briefing
2. Sustainable Finance journey
3. Reduced Subscription Tax
4. FATCA and CRS

Page 2

5. [Cybersecurity](#)
6. [AML/CTF Compliance](#)
7. [Performance fees](#)

2020 also reinforced the Luxembourg tax authorities' powers to carry out audits within a 10-year time limit. Market players must ensure that appropriate policies, controls, procedures and IT systems are in place to meet their reporting and due diligence obligations. It is considerable EUR 250,000 penalty - that may apply in case a Luxembourg CRS or FATCA audit unveils a non-compliance with the due diligence procedures. In addition – in case reportable accounts are unreported or under-reported, maximum penalty of 0.5% of the non-reported amount could apply.

### 5. Cybersecurity – the latest threat alongside the benefits of digital transformation

Digitalisation is unquestionable asset and measure to boost collaboration and deliver the better client experience. Along with the obvious rewards derived from modern technologies, however, the risks of cyberattacks are increasing exponentially. The profits of cybercrimes are surpassing, by some estimations, those of the drag trades. As a result the regulatory requirements have to expand to ensure that the innovations do not increase risk and the business is protected from the criminal activities. The pandemic and worldwide home office practices have increased the risks of such attacks, like CEO fraud, phishing attacks and compromising business emails – to name a few. While the delegation and outsourcing remain widely justified preferred business model – client data is often passed across the value chain – and wide web of third-party providers and custodian banks is increasing the risks of cyberattacks.

### 6. Uncovering the Funds Status regarding AML/CTF Compliance

Money laundering and the financing of terrorism are financial crimes with the economic effects.

Consequently, regulatory authorities have never been stricter in their zero-tolerance approach regarding AML/CFT non-compliance as from the beginning of 2021. External auditing of the investment funds will be revised with new AML/CTF 2021 obligations and provisions at ManCo/IFM level already by the end of the current year. The changes will take into account:

- ✓ The Law of 25 February 2021
- ✓ Draft bill 7533 transposing the 6<sup>th</sup> AML Directive (still under discussion)
- ✓ EBA revised guidelines on ML/TF risk factors from March 2021, replacing ESA guidelines of 2017.

### 7. ESMA guidelines on performance fees

In November 2020, ESMA published guidelines on performance fee requirements for UCITS funds and certain open-ended AIFs distributed to retail investors (except for private equity/real estate funds).

The guidelines already apply to new funds or new performance fees schemes for existing funds. There is, however, a transition period for existing funds with existing schemes – for these funds the guidelines will apply from the beginning of their performance year starting after 5 July 2021. It is therefore vital for the organisations to identify and plan any required changes to the existing models; allowing enough time to select a new model and adapt the documentation and operations accordingly.

**Please feel free to contact us for more information, we are happy to help.**