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ICI Global Response to European Commission Green Paper on "Building a Capital Markets Union"

Submitted via online questionnaire on 13 May 2015

Q1) Beyond the five priority areas identified for short-term action, what other areas should be prioritised?

We support the Commission's stated objectives for the CMU. Experience in many markets over the last century has shown the parallel role of capital markets and the banking sector in the funding of the real economy and in driving economic growth.[1] Capital markets have a critical role for the economy following the financial crisis.[2]

We would urge the Commission to prioritise a small number of high impact initiatives on which realistic, achievable progress can be made, for which the necessary political momentum exists, and to which the Commission can commit sufficient resource. These initiatives should seek to enhance the coherence of EU capital markets regulation, collectively support stronger retail investor engagement with the capital markets, promote the liquidity and depth of the capital markets, and incentivise investment by reducing fragmentation and regulatory barriers. As we have outlined in our responses, we consider that initiatives to develop a pan-European private placement market, including through changes to the Prospectus Directive, the development of a framework for high-quality securitisations, and the strengthening of the internal market in pension provision, are all important and potentially high impact initiatives that we recommend the Commission pursue. As the Commission has highlighted in the Green Paper, initiatives concerning taxation and the harmonisation of insolvency and securities laws may not be achieved in a realistic time frame. Nevertheless, we would encourage the Commission to continue to engage with its co-legislators in respect of these issues, and to pursue initiatives in areas where it identifies that short-term, meaningful progress can be made.

Development of an EU framework for infrastructure financing by Member States and their authorities

To further support the Commission's efforts to boost infrastructure investment in the EU and deepen capital market based financing, we recommend exploration of an EU framework for infrastructure financing by Member States and their authorities. Member State authorities, including local authorities, could provide significant support through a market mechanism, such as the issuance of securities, for the financing of a wide variety of infrastructure projects similar to the "municipal securities market" in the United States. The Commission could contribute in a variety of ways, including by providing a regulatory framework to be utilised by Member States as well as contributing expertise, coordination and financial support for projects.

The US$3.6 trillion municipal securities market in the United States is critical to the building and maintenance of the US infrastructure. SEC Commissioner Aguilar recently noted that "ensuring the existence of a vibrant and efficient municipal bond market is essential, particularly at a time when state and local government budgets remain stretched."[3]

While smaller than the US corporate bond market, it is still a significant market in the United States and millions of US retail investors directly purchase municipal securities or invest in this market through their regulated funds. In fact, individual, or "retail," investors are the largest holders of municipal securities. They hold 42 percent of municipal bonds directly and another 26 percent indirectly through mutual funds, closed-end funds, UITs, and ETFs. According to ICI's most recent data, investment companies of all types hold US$962 billion, or 26 percent, of the US$3.65 trillion municipal bond market. Mutual funds alone account for 23 percent of all U.S. municipal securities, totalling $845 billion. Closed-end funds hold 2 percent, totalling US$90 billion; municipal bond UITs hold US$12 billion; and ETFs that track municipal bond indices hold $15 billion in assets.

Depending on the type of financing underlying a US municipal security, payments of principal and interest on US municipal securities may come from the revenues of the authority issuing the security, the authority's tax receipts, or its other revenues. These securities also may be issued in different forms such as fixed or variable rate bonds. For investors in the different states in the US, the interest paid is typically exempt from US federal income tax and may be exempt from State income and other taxes (e.g., residents of Virginia may receive exemptions from Virginia income taxes for interest on Virginia municipal securities). The tax treatment is attractive to the issuers and investors. For example, for issuers, because municipal securities offer tax-free income, these securities generally have annual yields below those of corporate bonds or US government bonds. This means the lower yields allow state and local governments to borrow money for public projects at below market rates.

The US SEC issued a comprehensive report on the US municipal securities market in 2012 which includes important background and an overview of this market as well as some recommendations to improve it.[4]

[1] Appendix A, "The Parallel Role of Banks and the Securities Industry in the U.S. Capital Markets", Letter from Paul Schott Stevens to the Secretariat of the Financial Stability Board, Re: Shadow Banking – Scoping the issues, dated 3 June 2011, available from http://www.ici.org/pdf/25258.pdf

[2] A Strong Footing: The Critical Role of Capital Markets in the Post-Crisis World, Speech by Paul Schott Stevens, 21 April 2015, available from http://www.iciglobal.org/iciglobal/news/speeches/ci.15_pss_japan_capmkts.global.

[3] See Statement on Making the Municipal Securities Markets More Transparent, Liquid and Fair, Commissioner Aguilar (Feb. 13, 2015) available at http://www.sec.gov/news/statement/making-municipal-securities-market-more-transparent-liquid-fair.html.

[4] The SEC's report is available at https://www.sec.gov/news/studies/2012/munireport073112.pdf.

Q4) Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

The Commission has a critical role in developing a single private placement market for the EU and we encourage the Commission to vigorously pursue the development of a single private placement regime. We strongly agree that supporting market-led efforts also is very important to this work.

The importance of a single private placement market for financing a variety of businesses and diversifying funding has been well recognised, particularly following the financial crisis and changes affecting bank financing. Market-led efforts in the EU, such as work led through the ICMA to launch the 2015 Pan-European Corporate Private Placement Guide, along with the Commission's own efforts, such as in 2007, demonstrate support and desire for such a regime for the EU. A single private placement regime also would benefit investors. The variety of "private placement" rules throughout the EU can present daunting challenges that are costly, cumbersome and time-consuming. A single regime would help address fragmentation and bring meaningful efficiencies as well as more competition and diversification in financing. Furthermore, a single regime would bring consistency in regulatory approaches and strengthen investor protection in the EU – making it more efficient for issuers and providing greater confidence to investors. We note that one of the challenges under the AIFMD for third-country managers and AIF has been the ability to only access investors in the EU through available Member State private placement mechanisms rather than through a "passport" available to EU AIFM or as provided for EU funds authorised under the UCITS Directive. In contrast, the US has a private placement regime that effectively allows access to investors across the 50 states.[5]

In considering a framework, it will be important that the regime have clear and well-defined elements, such as regarding the types or sophistication of eligible investors, to avoid divergent implementation. A framework that supports consistent approaches for cross-border marketing also is important to the development of a single market for both issuers and investors. In addition, it is important to include a framework that will support the "resale" of securities that are acquired in a private offering. Clear rules for the resale of such securities is important to developing a stronger and deeper private placement market and will attract more investors. For example, in the US, holders of securities issued in a private placement may only resell those securities under certain conditions, for example those specified in Rule 144A under the Securities Act of 1933.

Generally, Rule 144A has been very important to the US private placement market because it permits an intermediary to purchase privately offered securities and resell them to an unlimited number of qualified institutional buyers in certain transactions. So although Rule 144A does not apply to the issuers in a private placement, it is valuable because it reduces an issuer's costs of raising capital by improving the liquidity of the institutional secondary market for privately placed securities, which positively impacts pricing. Rule 144A represents a significant market in the US, for example in corporate debt.[6]

We therefore believe the development of a single private placement regime along with rules for resales of these securities would be an important opportunity to deepen capital market financing in the EU and strengthen the single market.

[5] See Market Access for Regulated Fund Managers in the United States and the European Union (October 2013) (generally describes private offer of funds in the United States), available from http://www.ici.org/pdf/27643.pdf

[6] See FINRA and Rule 144A Corporate Debt Transaction Data, available at http://www.finra.org/newsroom/2014/finra-brings-144a-corporate-debt-transactions-light.

Q6) Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

As the Commission[7] and IOSCO have considered this topic[8], both have recognised that corporate bond markets have an important role in financing the real economy. In its work, IOSCO underscored the global nature of these markets and suggested that in some regions of the world, as well as supporting larger issuers, these markets had potential for SME financing, a core CMU objective.

We support the Commission's efforts to examine and better understand liquidity in the corporate bond market. Liquidity in the corporate bond market is, however, a complex and dynamic topic both in national and global markets as it is dependent on a number of supply and demand factors, as well as local factors. The regulatory structure for the issuance of corporate bonds also must be studied, as it is important to assess the regulatory costs of offering corporate bonds and how the offerings take place and the profiles of investors as well as issuers. As noted in our response to Question 4, the US private placement rules and US Rule 144A have a significant role in the US corporate bond market. We are also mindful that there have been, and will be more changes to the operation and functioning of the global corporate bond markets resulting from post-crisis regulatory reforms, e.g., US Volcker Rule, MIFID II, EMIR. The impacts of regulatory changes are still to be seen in many cases and global policymakers remain especially interested in the functioning of the bond markets.

We also believe that the Commission must be careful as it considers liquidity. We caution against seeking some sort of "optimal" or single level of liquidity as such a standard would be difficult to identify and unlikely to be appropriate across sectors of the corporate bond market. For example, issuers and investors may have very different liquidity requirements or tolerances and would likely vary over time, too.

[7] p23, Commission Staff Working Document: Initial Reflections on the obstacles to the development of deep and integrated EU capital Markets, 18 February 2015, available from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0013&from=EN

[8] p3, Corporate Bond Markets: A Global Perspective, Staff Working Paper of the IOSCO Research Department, April 2014, available from http://www.iosco.org/research/pdf/swp/SW4-Corporate-Bond-Markets-Vol-1-A-global-perspective.pdf

Q11) What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

The experience of our members managing and operating UCITS indicates the cost of cross-border marketing and management of UCITS varies among Member States.[9] Higher costs result from additional, and often duplicative, requirements applied by Member States beyond EU level requirements, or from differences in the implementation of EU Directives across Member States. While there have been efforts to improve the passporting of UCITS, more could be done to reduce the cost and complexity of cross-border distribution, such as:

- **Eliminating the requirement for a paying agent in each Member State where a UCITS is distributed**.[10] We believe many changes have occurred to make the paying agent requirement redundant, including enhanced responsibilities and liabilities for depositaries and improved electronic payment systems. Furthermore, requiring a paying

agent in each Member State creates an extra layer of unnecessary additional credit risk into the money transfer process for subscriptions and redemptions. We recommend that the Commission remove the requirement in the UCITS Directive for a paying agent in each Member State;

- **Eliminating the requirement for local information facilities in each Member State where a UCITS is distributed**. We believe that technological advances, particularly the electronic delivery of documents and the internet, negate the need for physical facilities to be made available to provide for information to UCITS investors. In addition, investors are able to request a paper copy of documents, such as the prospectus, to be delivered to them free of charge;[11]

- **Work to develop a uniform single stage UCITS authorisation and notification process, akin to MiFID services passport.** Authorisation of UCITS funds is a matter for home Member State regulators. Following authorisation, UCITS funds provide notification of their intention to distribute on a cross-border basis through their home Member State regulator. The authorisation process varies among Member States, despite the process being based on the UCITS Directive. Following the notification process, additional requirements are commonly imposed on the grounds of investor protection, leading to delays and costs for cross-border UCITS. Given the mature nature of the UCITS regime, and the experience of regulators authorising UCITS funds, we consider that there should be more "convergence" among the Member States in their approaches to authorisation and notification. We recommend that the Commission examine ways to make the authorisation process for UCITS more straightforward and consistent across Member States, e.g., specified review times, and expedited procedures for minor changes or UCITS that are "clones" of existing authorised UCITS. Such an exercise may also identify good or best practices that can be shared across regulators to encourage more consistency. In addition, ESMA is tasked with "contribut[ing] to common regulatory and supervisory standards and practices".[12] We note that in comparison the services passport (under MIFID) can be obtained for all 28 countries in one filing with the home Member State. A more streamlined process would be beneficial for UCITS and their investors. The current challenges posed by selling UCITS cross-border can be especially seen in the context of UCITS exchange traded funds (ETFs). Since ETFs are listed and purchased on an exchange, an investor resident in any Member State with a brokerage account can purchase shares of an ETF. The investor however will face complications if the UCITS ETF has not been authorised for sale in their jurisdiction. This places pressure on the UCITS ETF to be authorized, and maintain such status, in all 28 Member States, which is complicated and very expensive. Simplifying this process would eliminate costs to the benefit of investors.

- **Develop more abbreviated filing process for UCITS sub-funds.** UCITS sub-funds are subject to the same authorisation and notification process as UCITS umbrellas. Several elements of the authorisation and notification process are repeated and duplicated for each new sub-fund within an umbrella, for instance re-examining information provide at the point of the umbrella's initial authorisation. We recommend that the Commission simplify the authorisation and notification processes for new sub-funds;

- **Introduction of a depository passport.** The adoption of UCITS V introduced harmonised standards for UCITS depositories but the UCITS Directive still restricts the

ability of a depository to act for a fund established in another Member State. We recommend that a depository passport be introduced that would enable a depository to act for funds across the single market, regardless of the Member State in which the UCITS is established. A depositary passport would increase competition, provide funds with a broader range of depositories and may reduce operational costs.

- **Harmonise key information documents and co-ordinate approval of marketing communications.** A number of steps have been taken to harmonise the information provided to investors, including the development of the Key Information Document (KID).[13] Nevertheless, additional disclosure is frequently required by Member States in marketing communications as a UCITS is passported cross-border in the EU (e.g. cost disclosure).[14] This disclosure "creep" is cumbersome and expensive. We recommend that the Commission assess the additional requirements imposed by Member States to analyse the costs and benefits of this additional disclosure and establish a harmonised approach, the intended approach for the KID. In addition, consideration should be given to the establishment of a prescribed time period for Member State review of UCITS marketing communications, prospectus and annual and half-yearly reports. Unless issues are identified by the host Member State within this time period, a UCITS should be able to proceed with marketing in the Member State. Changes to improve this process, must also take account of the forthcoming implementation of the PRIIPs Regulation[15] that will, in time, apply to UCITS KID. The costs of frequent changes and rewriting of investor disclosure documents such as the KIID are very expensive and confusing for investors;

- **Harmonisation of anti-money laundering (AML).** Considerable divergence exists in Member State implementation of EU AML legislation, including know your customer (KYC) requirements. This divergence concerns the process and compliance obligations that apply to funds, including the way in which AML checks are performed and the eligibility of identification requirements, all of which increase costs and operational complexities for funds operating cross-border. We recommend undertaking work to identify the divergence in process and compliance obligations so that steps can be taken to standardise AML approaches across Member States;

- **Increase UCITS Fund of Fund Investment Limits.** A UCITS Fund of Funds may enable an investor to access multiple funds in a more efficient manner than investing directly in each individual underlying fund. A UCITS is restricted to investing a maximum of 20% of its assets in another UCITS fund (i.e. a UCITS Fund of Funds investing all its assets in other funds must invest in at least five underlying funds).[16] We recommend that a UCITS be able to invest 35% of its assets in another UCITS fund. We believe such an approach would be valuable for investors. For example, there are retirement fund products available in other jurisdictions which successfully incorporate asset allocation strategies by investing fund assets in other funds, e.g., allocate assets in certain stock and bond funds.

[9] p17, Green Paper

[10] Article 92, DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF

[11] Article 75 of the UCITS Directive requires that "The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge"

[12] Article 8, REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, available from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1095&from=EN

[13] Section 3, DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF

[14] Under the UCITS Directive, host Member States may verify that marketing communications, not including key investor information, the prospectus and annual and half-yearly reports of a UCITS comply with local law, subject to this being non-discriminatory and not preventing that UCITS from accessing the market., see Recital 64, DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF

[15] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) Text with EEA relevance, available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_352_R_0001

[16] Article 55 of DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:en:PDF

Q13) Would the introduction of a standardised pension product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

We support Commissioner Hill's objective for the CMU that European citizens "who are saving for their future and retirement (should) be able to benefit from a wide range of affordable investment opportunities".[17] We agree, and are fully supportive of, work to develop a pan-European personal pension product that, in turn, may involve the standardisation of various aspects of the way in which EU citizens save for their retirement. We think this work would be highly valuable to supporting a more mobile EU workforce which also will help EU employers. Also, by pooling assets on a cross-border basis, certain efficiencies in cost, management and administration can be achieved that will benefit savers and the EU's capital markets. As already noted in the Commission Staff's Working Document accompanying the Green Paper, the substantial and ongoing work is already being undertaken by the European Commission and EIOPA to consider the issues around the creation of an EU-single market for personal pensions.[18] We encourage the continuation of this work and believe that the CMU work will be an important complement to that work.

While the CMU initiative is going through several stages, we believe there are existing structures that could be considered to benefit the EU's savers and be supportive of the CMU's goals. For example, tax transparent funds (TTFs) are one approach that can facilitate pan-European asset pooling and are helpful in accommodating Member State tax conventions such as those around pensions and retirement saving. With a TTF, there can be a broader pooling of investments while preserving the tax position of each Member State's approach to pension fund taxation.

[17] Presentation of Green Paper on Capital Markets Union, available from http://europa.eu/rapid/press-release_SPEECH-15-4494_en.htm

[18] see p33 of Commission Staff Working Document, Initial reflections on the obstacles to the development of deep and integrated EU capital markets, Accompanying the document Green Paper (dated 18.2.2015). In this regards, in 2012, the Commission requested technical advice on this issue from the European Insurance and Occupational Pensions Authority (EIOPA). In response, EIOPA created the Task Force on Personal Pensions (TFPP), conducted a three-month public consultation, and also hosted a public event with stakeholders. See https://eiopa.europa.eu/Pages/Working%20Groups/TaskForceOnPersonalPensions.aspx. Based on this work, in February 2014, EIOPA delivered a 120-page report to the Commission, titled: "Towards an EU-single market for personal pensions: An EIOPA Preliminary Report to COM." The Report includes a summary of existing PPPs, applicable regulatory regimes, and also describes possible new product ideas suggested by the commenters. In July 2014, the Commission issued a follow-up call for advice to EIOPA "On the Development of an EU Single Market for Personal Pensions Products (PPP)," with a response date of 1 February 2016, due to the Commission Services (DG MARKET, and Insurance and Pensions

Unit). See http://ec.europa.eu/finance/pensions/personal-pensions/index_en.htm. The Commission's new call for advice builds on the earlier EIOPA report and seeks to obtain further advice from EIOPA, particularly on the cross-border, prudential regulation and consumer protection measures required to develop an EU-wide framework for the activities and supervision of PPPs. Following the receipt of the response, the Commission will examine "whether a legislative initiative for PPP's is necessary, and if so, which measures should be proposed."

Q17) How can cross border retail participation in UCITS be increased?

Cross-border retail participation in UCITS has increased steadily since the creation of the UCITS framework over 25 years ago and is expected to continue as retail investors become more familiar and comfortable with investing and funds. We support measures that will improve the attractiveness of UCITS as a tool to support the saving goals of investors. UCITS like regulated funds in other markets allow investors to share costs, access professional management and gain diversification. Through UCITS, retail investors also are able to gain exposure to markets or investments that they would otherwise be unable to gain exposure to, such as foreign markets, and financial instruments requiring high minimum subscriptions, high unit sizes (e.g. corporate bonds) or otherwise limited to institutional investors. We recommend several areas to enhance cross border retail participation in UCITS:

- As we have identified in our response to Q11, we recommend that the Commission take steps to reduce the costs and simplify the process for setting up and marketing UCITS across the EU. Such measures will enable more efficient distribution for the benefit of investors;

- As we have identified in our response to Q18 and Q19, we have identified measures that can be taken to enhance investor education and financial literacy to support and encourage retail participation in capital markets including through investment in UCITS;

- The Commission should consider initiating work to better understand the ways in which retail investors engage with investment funds, including the way in which investor preferences are influenced by local market conditions. Common investor preferences or practices, for instance a preference for particular asset types, could be identified and their relevance for other Member States or across the whole single market could be examined. If it is found that investors in other Member States would benefit from access to new investments, then the Commission could take steps to encourage this, including considering changes to the eligible assets into which UCITS funds are able to invest, e.g., broader range of debt instruments. Consistent with the principle of diversification, on which UCITS is founded, expanding the investment universe should provide additional tools through which investors can manage risk and reward to achieve their investment objectives and goals;

- The Commission should continue to examine other factors, for instance taxation, that may influence investment choices or the attractiveness of cross-border investment.

Q18) How can the ESAs further contribute to ensuring consumer and investor protection?

The European Supervisory Authorities (ESAs) have an important role for ensuring consumer and investor protection. In fact, the ESAs have considerable authority under the establishing Regulations to ensure consistent supervision and this authority is important to ensuring consumer and investor protection across the EU.[19]

An aspect of consumer and investor protection should include the development and support of investor education and financial literacy across the EU. Investor education and financial literacy is an area of focus for regulators across the globe, including the International Organisation of Securities Commissions (IOSCO)[20].

We acknowledge the work that has already been undertaken concerning investor education and financial literacy by the European Commission[21] and also by the ESAs, for example ESMA has established an annual investor day.[22] We would encourage this work to be further developed including, as appropriate, examining work done at international level by IOSCO and the OECD[23] to identify and benchmark how investor education and financial literacy can be further developed at EU level and also the additional role that the ESAs can play in supporting Member State initiatives in this area.[24] We also encourage initiatives with industry whom also are working in a variety of ways to assist investors in better understanding investing and markets more generally. We believe industry can contribute its experiences with investors, including insights into investor behaviour (e.g., investor behaviour during market volatility, investor preferences, use of educational material or websites).

[19] For instance, Article 9 of the ESMA Regulation outlines specific tasks related to consumer protection and financial activities, REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, available from http://www.esma.europa.eu/system/files/1095-2010_esma_regulation_amended.pdf

[20] Strategic Framework for Investor Education and Financial Literacy, Final Report, IOSC, October 2014, available from http://www.iosco.org/library/pubdocs/pdf/IOSCOPD462.pdf

[21] http://ec.europa.eu/finance/finservices-retail/capability/index_en.htm

[22] http://www.esma.europa.eu/page/Events

[23] http://www.financial-education.org/join_INFE.html

[24] http://www.esma.europa.eu/page/Financial-education-websites-country

Q19) What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

We commend the Commission's attention to identifying ways in which retail investment can be increased and how EU citizens can be empowered to access capital markets.

We are encouraged by the strong rates of household saving in the EU. As is noted in the Green Paper, these rates are higher than in some other parts of the world. As we have identified below, we consider that steps to expand the range of retirement savings products, coupled with efforts to support capital market participation through financial education, will contribute to enhancing retail investor participation in capital markets.

Emphasise and help foster more individual retirement savings

As is identified in the Green Paper and supporting documents, pension funds in the EU are relatively small as a percentage of GDP compared to other countries such as the US.[25] The Staff's Working Document Accompanying the Green Paper states that "[e]mpirical evidence shows

that there is a significant positive relationship between the size of … pension funds and capital market depth."[26] Experience from other countries demonstrates the significant role that the development of a country-wide retirement saving system can have on capital markets.[27] ICI Global research also shows a link between the size and development of defined contribution arrangements in a particular country or region, and the size of its long-term mutual funds industry.[28] In the US, $7.3 trillion dollars in IRAs and defined contribution accounts are invested in mutual funds, which represents 46% of all mutual fund assets.[29] These funds are helping US citizens save for their retirement but also have increased their familiarity with the capital markets, including in and outside the United States, and regulated funds more generally. Regulated funds are uniquely positioned to serve retail investors who are savings for their retirement. Such funds provide a cost-effective way for retail investors to access professional management, through a well-regulated, diversified vehicle.[30] We encourage the Commission to diligently continue work on a pan-European personal pension product (see our response to question 13) while also working with Member States to strengthen participation in individual retirement savings products and enhance the diversity of such investment products.

Support increased participation in EU capital markets through investor education and financial literacy

Investor education and financial literacy is imperative to engender and support increased retail investor participation in capital markets. As is discussed in our answer to Q18, we consider that there is an important role for industry participants and EU level regulators to play in this area. Retail investors need education to engage confidently in a pan-EU capital market, including to better understand mutual fund investments as a vehicle providing professionally managed and affordable access to a diversified portfolio of investment opportunities that may otherwise not be available to them in seeking to achieve their investment goals and objectives.

We would also recommend that the Commission examines how tax policies impact retail investor participation in capital markets and identify changes that could be made to encourage or support greater participation.

[25] p6, Financial Stability Paper No. 33 – February 2015, A European Capital Markets Union: implications for growth and stability, Bank of England, available from http://www.bankofengland.co.uk/research/Documents/fspapers/fs_paper33.pdf; also see p32 of Commission Staff Working Document, Initial reflections on the obstacles to the development of deep and integrated EU capital markets, Accompanying the document Green Paper (dated 18.2.2015).

[26] p32, Staff Working Document Accompanying Green Paper.

[27] For example, see the discussion on the impact of developing defined contribution schemes in Chile on its capital markets, Insights from 2014 Global Retirement Savings Conference, available from http://www.iciglobal.org/pdf/pub_14_grsc_insights.pdf

[28] Plantier, L. Christopher. 2014. 'Globalisation and the Global Growth of Long-Term Mutual Funds.' ICI Global Research Perspective 1, no. 1 (March), available from http://www.iciglobal.org/pdf/icig_per01-01.pdf

[29] See p160 of 2015 Fact book.

[30] See Insights from the 2013 Global Retirement Savings Conference The Role of Investment Funds, available from http://www.ici.org/pdf/pub_13_grsc_insights.pdf

Q20) Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

We are aware of recent efforts in the UK to encourage so-called simple products.[31] We believe that transparency and clear disclosure are essential to assisting investors in understanding funds. For example, recent efforts have been made in the United States to improve investor understanding of "target date funds" which are intended to be an efficient and simple way for an investor to save for retirement as the portfolios of these funds invest in a mix of asset classes that periodically rebalance to become more conservative over time.[32] Other measures that we believe help investor understanding of funds include rules related to fund names, which can help limit confusion and support comparability.[33] We also note that some industries have developed classifications for different types of funds.[34]

[31] Simple Financial Products, UK Government, available from https://www.gov.uk/government/publications/simple-financial-products

[32] Principles to Enhance Understanding of Target Date Funds, Investment Company Institute, June 2009, available from http://www.ici.org/pdf/ppr_09_principles.pdf

[33] For example, the SEC Investment Company Names rule address certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks, available from https://www.sec.gov/rules/final/ic-24828.htm

[34] For example, the European Fund and Asset Management Association has developed a fund classification system, available from https://www.efama.org/Publications/Public/European_Fund_Classification/EFCF_brochure%20(final).pdf and various national associations in the EU define fund sectors, for instance the UK Investment Association (http://www.theinvestmentassociation.org/investment-industry-information/fund-sectors/).

Q21) Are there additional actions in the field of financial services regulation that could be taken to ensure that the EU is internationally competitive and an attractive place in which to invest?

We support the Commission's attention to identifying ways in which the competitiveness of the EU on the international stage can be ensured. The development of the CMU should reflect the global nature of the financial system and the importance and attractiveness of the EU as a place of business and for investment. We support the Commission's focus on the Better Regulation agenda. Consistency and certainty in the field of financial services regulation are important factors that impact the confidence of overseas investors, including funds and their managers. To engender this confidence, we consider that EU legislators and Member State legislators have an important role to play in enacting clear, forward looking legislation and regulation through a transparent process and to that end we recommend the following:

- the use of impact assessments to aid the development and analysis of policy proposals, with account of the costs and benefits for investors, markets, industry, and EU competitiveness;
- sufficient time and transparent dialogue for the evaluation and debate of Commission proposals, including among EU institutions, with public input and consultation throughout;
- transparent and timely involvement of European Supervisory Authorities and Member State regulators in advance of the development of implementing measures and guidelines, to ensure consistent understanding and implementation of EU legislation to promote the single market.

In the immediate term, implementation of the remaining third country elements of financial services legislation should take account and, where possible seek to enhance, EU competitiveness. In respect of investment funds, this includes measures concerning the implementation of the AIFMD Third Country Marketing passports, UCITS V requirements concerning depositories and remuneration of staff and of delegates, and the third-country elements of MIFID II. In particular for UCITS, as it is a global fund vehicle that is distributed in many markets outside the EU, we believe it is especially important for policymakers to take careful account of the global context of UCITS, including how UCITS are distributed, operated, managed and where its investors may be located. It is essential that changes take careful account of the features that have made UCITS well suited as a global fund platform, e.g., delegation arrangements, access to global portfolio management expertise.

Q22) What measures can be taken to facilitate market access of EU firms to investors and capital markets in third countries?

With respect to regulated funds for retail investors like UCITS, EU firms already have access to many third country markets.[35] In the global funds industry, the importance of the UCITS framework for investors worldwide is clear. There is no other regulated fund vehicle that rivals the worldwide distribution of UCITS.

Against this backdrop, and to continue to support the strength of UCITS outside the EU, we think that it is imperative that the Commission evaluate reforms to the UCITS framework, or changes to regulations affecting UCITS, such as the proposed Money Market Funds Regulation, in a global context because of the global footprint of UCITS. This is important to the continued and future access of UCITS in non-EU markets. When proposed changes will affect investors of UCITS in a non-EU jurisdiction, it is important that the Commission consider the costs and benefits of those changes for investors in those markets. In addition, regulators in those markets also must be made aware of proposed changes.

Another approach for facilitating access of EU firms to other markets is to consider the approaches in other jurisdictions. In this way, regulatory approaches can be harmonised where appropriate and make it easier for EU firms to enter those markets. For example, in the fund context, the ability to run "mirror funds", meaning funds established in different jurisdictions but with substantially similar investment objectives and policies, is an important method for exporting fund management expertise across jurisdictions. In addition, as we noted in our response[36] to the paper by IOSCO's Task Force on Cross-Border Regulation,[37] the examination of regulatory approaches on a worldwide basis helps regulators better identify and avoid, where possible, adverse cross-border impacts and regulatory conflicts.

The Commission should also re-examine the impact of existing legislation. Changes to UCITS, MiFID and the enactment of the AIFMD have resulted in substantial changes in the asset management and fund industry, including for EU managers and investors as well as for third country managers and investors. We believe an assessment of how fund investment has been impacted would be beneficial, from both the investor and the fund perspective, e.g., how have investors reacted.

[35] For a discussion of the access EU fund managers have to the US market, see Market Access for Regulated Fund Managers in the United States and the European Union, Investment Company Institute, October 2013, available from http://www.ici.org/pdf/27643.pdf

[36] Letter from Dan Waters to Ms. Rohini Tendulkar, IOSCO, Re IOSCO Task Force on Cross-Border Regulation Consultation Report, dated 23 February 2015, available from http://www.iciglobal.org/pdf/28764.pdf

[37] IOSCO Task Force on Cross-Border Regulation Consultation Report, September 2014, available from http://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf

Q27) What measures should the EU take to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?

Like many other types of institutional investors, investment funds such as UCITS engage in transactions for which they post and receive collateral to cover their outstanding exposures. We strongly support jurisdictions enforcing netting arrangements at close-out particularly in the event of a counterparty's insolvency. If close-out netting arrangements are not enforced, we are concerned that the bankruptcy trustee can demand payment on obligations to the insolvent entity but not pay out on the insolvent entity's obligations to counterparties. This type of selective enforcement of the obligations may increase the exposure of investment funds to their insolvent counterparties.

More generally, new reforms designed to reduce the risks associated with cross-border enforceability of collateral could be valuable for EU markets. However, any new measures should be developed with due regard for current laws and market practice and the importance of legal and operational certainty for market participants. If appropriate consideration is not given, there is a risk that new rules could have the opposite of their intended effect. It is therefore essential that any new reforms in relation to collateral transfer and enforceability are developed in coordination with market participants and with thorough analysis of the impacts on existing laws and operational practices.

Q29) What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

Investment funds seek certainty as to the speed, efficiency and recovery rate of portfolio investments that are subject to insolvency proceedings. As the Commission has identified in the Green Paper, features of insolvency regimes vary considerably across Member States. Furthermore, the Commission has acknowledged that this variability makes the assessment undertaken by investors difficult and costly for investors.[38] These impose additional costs on those investment funds with portfolio investments in multiple EU Member States. Greater certainty and predictability in the approach to insolvent asset recovery would be beneficial in enabling funds to better assess risk and invest with confidence, particularly on a cross-border basis, thereby supporting the development of a pan-European capital market. Recent progress has been made to address certain conflict-of-law issues.[39] We would recommend that further work is undertaken by the Commission to achieve greater harmonisation in several aspects of Member State insolvency regimes including: (i) the length and terms of the automatic stay that is effective once a bankruptcy petition is filed; and (ii) the rights of debtors and creditors to propose restructuring arrangements and the right of creditors and shareholders to consent, modify or object to such arrangements.

[38] Insolvency Law in Europe – Giving people and businesses a second chance, Speech by Commissioner V?ra Jourová, 23 April 2015, available from http://ec.europa.eu/commission/2014-2019/jourova/announcements/insolvency-law-europe-giving-people-and-businesses-second-chance_en

[39] For instance, the agreed Council position on new-EU wide rules on insolvency proceedings, available from http://www.consilium.europa.eu/en/press/press-releases/2015/03/12-insolvency-proceedings-new-rules-to-promote-economic-recovery/

Q30) What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level?

Tax regimes can create substantial barriers to efficient capital flows. The lower the tax burden on cross-border investment, the more efficient the capital markets will be in allocating capital to the most productive enterprises.

One important step involves improving the process by which investors receive the tax relief to which they are entitled under tax treaties negotiated by their governments. Providing tax treaty benefits at source and administrable mechanisms for establishing the treaty eligibility of collective investment vehicles (CIVs) or a CIV's investors would enhance the after-tax value of investing cross-border. The Treaty Relief and Compliance Enhancement (TRACE) initiative advanced by the Organisation for Economic Cooperation and Development (OECD) addresses these concerns.

Financial transaction taxes (FTTs) are counterproductive to efficient capital markets and also make participating markets less competitive in comparison to those that do not have an FTT. FTTs discourage investments in any security subject to the tax relative to comparable non-taxed alternatives. FTTs also make markets less efficient by reducing market volumes, impairing liquidity, and distorting price discovery.

National laws that impede cross-border business consolidations also should be addressed. While merging two UCITS domestically generally will be tax-free, merging one UCITS into a UCITS organised in another country may cause all of the unrealised gains in the first UCITS to be taxed. To prevent the resulting reduction in investor returns, mergers that would improve capital efficiency often are avoided.