Channel Islands
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EU Capital Markets Union Mid-Term Review Consultation

Channel Islands views

About the Channel Islands

1. The Channel Islands ('the Islands') consist of the Bailiwicks of Guernsey and Jersey. They are British Crown Dependencies. They are not part of the United Kingdom, but the UK has ultimate responsibility for their external affairs and defence. The Islands enjoy a high degree of autonomy, including their own fiscal and judicial systems, and receive no financial subsidy from the UK or the EU.

2. By virtue of Protocol 3 of the UK's Accession Treaty, the Islands are part of the Customs Union and within the Single Market for the purposes of trade in goods, but not services and as such are treated as "third countries" in financial services regulation. The UK's decision to leave the EU, therefore, does not have a direct impact on the Islands' ongoing relationship with the EU in the area of financial services. Market access for Channel Islands firms is based on case-by-case 'equivalence' decisions by the European Commission where the relevant EU Directive and Regulations allows for a third country regime.

3. The OECD Convention was extended to Guernsey and Jersey in 1990 and they are part of the UK for the purposes of its membership of the OECD. OECD Decisions and Recommendations apply to Guernsey and Jersey to the same extent as they do to the UK unless the contrary is specifically stated in a particular case. The Islands are part of the Sterling Zone and by virtue of equivalence under the EU's Wire Transfer Regulation are part of the UK's payment and clearing system.

Channel Islands Finance Sectors

4. The Islands are home to a significant and sizable finance sector whose success is founded on professionalism, regulatory leadership and a commitment to meeting international standards and co-operation. The Channel Islands funds sector's particular expertise is in the closed ended alternative funds sector and in the marketing to professional investors.

5. The Islands have a demonstrable track record in the application of equivalent regulatory approaches to the European Union where there is a relevant contribution by the Islands to the EU markets. In the summer of 2015 and again in the summer of 2016 ESMA's public opinion was that both Islands' funds regimes were effectively equivalent under AIFMD and that there were no grounds not to extend the passport to the islands.

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Channel Islands and Capital Markets Union

6. When CMU was launched by the Commission in September 2016, one of its stated objectives was to make the EU attractive to international investors. This is an objective that the Islands strongly support. We hope that, as CMU develops further, the EU recognises more clearly than it has done so to date, the important role foreign investment has in helping the EU to achieve its overall jobs and growth objectives. The Islands believe that they have a valuable perspective as third country jurisdictions to provide to the European Commission to assist in achieving success in its objective.

7. The Islands have engaged actively with the European Commission's Capital Markets Union initiative launched in 2015. Guernsey and Jersey contributed to:

   - the Green Paper consultation (May 2015)
   - the call for evidence on the EU Regulatory Framework (January 2016)
   - the EuVECA/EuSEF consultation (January 2016)
   - the EuVECA workshop held by DG FISMA (January 2016)

8. In this spirit, the Islands also contributed to the Commission's consultation as part of the CMU mid-term review (MTR). The response to the MTR in the following section was submitted to the Commission on 17 March. It was a joint response by the governments of Guernsey and Jersey and by the two financial regulators, the Guernsey Financial Services Commission and the Jersey Financial Services Commission. It was submitted on their behalf by the Channel Islands Brussels Office, which is the joint representative office of the two governments.

9. The Channel Islands look forward to the publication of the results of the MTR by the European Commission in June 2017. They have made clear that they stand ready to provide whatever further contribution to this work the Commission might find helpful, including attending further workshops and meetings and contributing additional materials in writing.

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Channel Islands response to the European Commission's CMU mid-term review consultation questionnaire

(Submitted by the Channel Islands Brussels Office on 17 March 2017 on behalf of the governments and financial services regulators of Guernsey and Jersey)

A: Are there additional actions that can contribute to fostering the financing for innovation, start-ups and non-listed companies?

When CMU was launched in September 2015, much emphasis was placed on opening up the EU to global capital flows. Our main observation, which we have also made in response to the recent CMU consultations, is that since its launch, CMU has evolved into a more inward looking initiative with diminished emphasis on this global dimension.

As leading centres in alternative asset administration the Channel Islands understand that unlocking the supply side is key to development of the capital markets. Providing access to and/or from domiciles where there is a critical mass of providers, skills and expert capital would facilitate the development of market based finance to this key sector.

We appreciate the laudable proposal to develop the EU venture capital (VC) market within the EU to date. However the lack of ready routes from third country managers and capital to European start-ups denies the market an important source of development. The VC market growth as stated in your current consultation remains flat, despite best intentions, and lacks momentum for future development. Opening this market up to third country managers could provide the stimulus it requires.

We therefore again press for the inclusion of third country measures in EU legislation linked to CMU.

B: Are there additional actions that can contribute to fostering long-term, infrastructure and sustainable investment?

Revisions to the risk weightings to better enable insurers to participate in investment in long term and infrastructure assets was a laudable move and we hope it has the desired effect. However, in a similar vein to comments we made about moves to develop VC markets, we feel that a significant omission was the failure to include third country measures in either the ELTIF or the Qualifying Infrastructure Investment class.

A key component of the rationale of the ELTIF was to open up long term investment class to retail investors. We remain unconvinced that such direct investment is to be encouraged. Liquidity matching concerns between the underlying assets and the redemption demands of retail investors is a policy area that has been of key focus to the work of the Financial Stability Board (FSB) and IOSCO. Specifically, this work has sought to address the structural vulnerabilities of the asset management industry to systemic risk. The extension of the asset class to retail investors to us seems to be contrary to the global policy movement.

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A key issue in ensuring market integrity and protection of professional investors (or, as described in MIFID II, 'elective' professionals) is the need to ensure effective and genuine valuations. Expertise in the asset class is thus fundamental to achieving this. We therefore again return to our theme that the lack of third country measures precludes access to market expertise located in third country jurisdictions such as the Channel Islands. In 2013 the Channel Islands administered four times the volume of private equity (PE) assets as that held collectively by all EU based insurers.

These points are of particular relevance and importance in the consideration of any changes to the risk weighting to Private Equity and Private Debt products which is due for review by the Commission during the course of this year. We would be happy to participate in this process to provide the benefit of our market and regulatory expertise in this area.

C: Are there additional actions that can contribute to fostering retail investment?

We fully support the EUs efforts to improve retail investor confidence in financial markets. We hope that the development of EU wide pensions products help in this regard to improve the scale of investment in market based products for retirement. This would in itself help improve the efficiency of capital allocation for European investment.

We believe that restoring retail investor faith in capital markets is hampered by placing restrictions on the flow of international capital. These restrictions risk being perceived as a lack of confidence of EU policy makers in global capital markets and thus curtail efforts to improve retail confidence. Global capital markets have helped deliver stronger growth rates than those experienced by the EU since 2008 to many areas of the world.

Thus, as noted in previous answers, we believe opening up CMU to third country participants would be beneficial to the EU retail consumers in the long run through, amongst other things, the signal of confidence in global capital markets that such an action would give.

D: Are there additional actions that can contribute to strengthening banking capacity to support the wider economy?

We again suggest inclusion of third country measures. Similar to the points we have made about market expertise in previous questions, we believe it is essential that supply side considerations are addressed in an attempt to reinvigorate the securitisation market. Providing access to expertise and experience is essential as a catalyst for the development of the market. Where that expertise more readily resides in third countries, it would seem logical to incorporate measures that facilitate such access. The Commission's original STS proposal provided for this and we hope it is retained in the final text.

E: Are there additional actions that can contribute to facilitating cross-border investment?

Our final point is to underline the message that we have attempted to relay in our responses to the other questions. Namely, that removing barriers to cross border investing is as important extra EU as it is intra EU and that greater emphasis needs to be given to the former than has been evident to date

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with the CMU initiative. We believe that to gain the full benefits of capital market union the EU should become better integrated with global capital markets and flows.