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CP2008-13

Consultation Paper of the Cyprus Securities & Exchange Commission regarding the issue of Directive DI 200-2004-04 for the making UCITS advertisements

The Cyprus Securities and Exchange Commission ('the Commission') exercising its efficient supervision and consultation procedures with the relevant parties at the market as far as the proposed amendments at the national legislation, circulates the Consultation Paper CP2008-13 for purposes of submitting comments/views.

The above-mentioned Consultation Paper relates to the draft Directive DI200-2004-04 the Commission has prepared for the making of UCITS advertisements.

The said draft Directive regulates, among other things, the rules governing the way of making UCITS advertisements and of advertising UCITS returns.

In accordance to the above, the Commission invites you to submit your comments/views until Wednesday, the 26th of November 2008, preferable at the email legal@cysec.gov.cy or, if this is not possible, at the address:

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Attached, as Annex A, is the draft Directive DI200-2004-04 in an unofficial translation in English.

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ANNEX A

OPEN-ENDED UNDERTAKINGS OF COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AND RELATED ISSUES LAWS OF 2004 TO 2008

Draft Directive issued by virtue of article 116(4)

DIRECTIVE D1200-2004-04 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION ON MAKING A UCITS ADVERTISEMENT

ARRANGEMENT OF PARAGRAPHS

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		<p>The Securities and Exchange Commission exercising the powers vested in it by virtue of article 116(4) of the Open-ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Issues Laws of 2004 and 2008, hereby issues the following Directive:</p>
200(1) of 2004 59(I) of 2008		
Short title	1.	This Directive shall be referred to as the Directive for making UCITS advertisements.
Interpretation	2.	<p>(1) In this Directive, unless the context shall otherwise prescribe:</p> <p>«Republic» shall mean the Republic of Cyprus;</p> <p>«Commission» shall mean the Cyprus Securities and Exchange Commission;</p> <p>«Law» shall mean the Open-ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Issues Law of 2004 in force at the time;</p> <p>«UCITS» shall mean the Open-ended Undertakings for Collective Investment in Transferable Securities (UCITS) by virtue of articles 13, 70, 129 and 130A of the Law;</p> <p>Without prejudice to the above provisions, any terms used in this Directive and not otherwise interpreted shall have the meaning attributed to them by Law.</p> <p>(2) Where in this Directive a reference is made to the Law, this shall include the Regulatory Administrative Acts issued thereof.</p>
200(I) of 2004 59(I) of 2008		
Scope of application	3.	This Directive shall apply to UCITS that market in any manner their units in the Republic.
Special compliance rules	4.	<p>During advertising, every UCITS should comply with the following special rules:</p> <p>(a) Every UCITS advertisement should be made in accordance with the Law, the laws of the Republic on advertising including the Control of Misleading and Comparative Advertisements Law and the Directives issued thereof;</p> <p>(b) Every UCITS advertisement should be made in accordance with the special rules set out in paragraph 5 on the way of making UCITS advertisements;</p> <p>(c) Every UCITS advertisement which contains comparisons should be made in accordance with the special rules set out 6 on UCITS advertisement which contain comparisons;</p> <p>(d) Every UCITS advertisement should be made in accordance with the special rules set out in paragraph 7 on advertising UCITS returns;</p> <p>(e) Every UCITS is obliged to keep a register of UCITS advertisements in accordance with paragraph 8.</p>
92(I) of 2000 42(I) of 2008		
Rules governing the way of making UCITS advertisements	5.	<p>(1) The outlet, content and way an advertisement is presented should be such so as to exclude any misunderstanding on the part of the persons to which the advertisement is addressed, including the persons with no special knowledge about the topics referred to in the advertisement, and should not exploit any lack of</p>

experience and knowledge or the fears and concerns of the public.

In addition, the outlet, content and way an advertisement is presented should be such so as not to hide, conceal or diminish the importance of any statement, warning or other element which the advertisement should contain.

(2) Every advertisement should be fair and present a balanced picture of the investment, identifying with clarity the offered investment in a UCITS and presenting the risks of such investment along with its advantages. Risks should be presented in the form of footnotes.

(3) Every advertisement should avoid to transmit misleading messages, create false impressions to investors as well as avoid to include inaccurate, misleading or exaggerated indications or elements.

(4) Every advertisement should be prepared with caution so as to ensure that investors understand the nature of any obligations to be undertaken.

(5) In case footnotes are used in the advertisement, these should be of a satisfactory size, distinctive and intelligible and when deemed necessary they should relate to the corresponding text in the main part of the advertisement.

(6) When advertising, reference to historical data shall be permitted, provided that these data contribute to forming a clear, sufficient and informed opinion on the offered investment and do not cause confusion to the investment public as to the return of the investment.

(7) When the attainment or maintenance of the offered return on a specific investment depends in any way on the proposed result of taxation, then this should be explicitly explained and the advertisement should clarify that the possibility of tax system reform which will affect the offered return cannot be excluded.

(8) When an advertised UCITS is expressed/issues units denominated in a currency other than that of the Republic, then every advertisement should draw the investor's attention that any changes in exchange rate may have negative impact on the value of the investment price or return.

(9) In case the charges of a UCITS are escalating as time passes by and higher charges apply to the first years of the investment, then each advertisement should draw investor's attention that he may not get the initial amount invested if he maintains his investment for a very short period of time.

(10) Companies are obliged when advertising UCITS not to copy or imitate advertisements of any kind (e.g. printed material, message, etc.) of other Companies.

(11) Having as an objective to provide the most accurate and complete information to investors in the Republic, every UCITS advertisement, subject to the provisions of clauses (1) to (3) of article 116 of the Law, should also state the following information:

(a) whether the UCITS falls within the provisions of the European Directive 85/611/EEC or not, and

(b) the existence of a complete and simplified prospectus and the places where these are available to the public in the Republic.

(12) Each UCITS advertisement (including those placed on a website) should contain the following statements:

(a) «Investing in UCITS units does not have a guaranteed return and previous returns do not safeguard future returns»;

(b) «The value of the investments and the return of a UCITS may go down as well as up and you may not get the initial amount invested».

These statements should be presented clearly with capital letters at the bottom centre of the forms, announcements and messages, and in the case of multi-page form, on the front cover. The font used for these statements should be the same as the one used for the main text. In the case of a radio or television message, both statements should be clearly transmitted.

(13) Subject to the provisions of the above sub-paragraph, every advertisement which refers to taxation, should also have the following statement:

«The amount and level of taxation may change and the value of tax relief depends on the tax conditions of each tax payer».

(14) It is prohibited for a UCITS advertisement to:

(a) use phrases such as «tax free» or «tax paid» unless the advertisement clearly sets out the specific tax or due and states as clearly as possible the tax obligations which may arise and who should pay for them:

Provided that subject to the provisions of the above sub-paragraph, an advertisement which refers to tax exemptions must distinguish between the tax exemptions which directly concern the investor and those which concern the UCITS;

(b) affect the interests of other Companies and other UCITS and/or refer to issues of their reliability;

(c) make references or claims to terms which attach value to the UCITS, the Company managing the UCITS and the UCITS manager such as e.g. «best», «biggest», «leading», «champion» «manager of the year» unless all the above or any other terms of similar content have been given by a specialised and independent firm not directly or indirectly related to the Company and/or its Distributors in the Republic and which specialises in investment assessment issues;

(d) describe, present the UCITS as a guaranteed investment unless there is a legal agreement in force with a third party which undertakes to secure any guarantee for the investor. In such case, that is, when values are guaranteed, then the advertisement should, in view of protecting investors, make clear reference to the guarantee provided by third parties as well as reference to any restriction governing such guarantees and in general it should include sufficient information so that the investor can make an informed opinion as to the nature of the guarantee;

(e) include any detail, declaration which constitutes a projection or estimate of future returns;

(f) state or provide that the content of the advertisement has been approved by the Commission.

(15) It is prohibited to directly communicate (e.g. house visit, telephone communication, fax, e-mail, etc.) with any person who has stated his opposition thereto. In the case of advertisement through direct communication, then :

(a) anything which is unfair, unclear or misleading or forms a false declaration should not be transmitted;

(b) the capacity of the person, the name of the UCITS represented as well as the purpose of the contact with the investor should all be stated from the beginning of the contact with the interested person;

(c) the contact with the interested person is made at a time and place which is appropriate for the said person and if the latter wishes to interrupt the contact, the UCITS or its Distributor is obliged to terminate this contact.

Rules for UCITS advertisements which include comparisons

- 6.** (1) UCITS advertisements which include comparisons such as a comparison of returns between various UCITS or of a benchmark, should be designed and presented in such manner, so that these comparisons do not mislead and are subject to the principles of fair competition.

Furthermore, the said advertisements should clearly state and distinctly disclose the key facts on which these comparisons are based accompanied by all necessary explanations.

(2) Comparison details must be based on facts which can be proved and which are selected in good faith and impartially, and concern the same period as the period during which the comparison is made.

(3) Any comparison made must be meaningful and presented in a fair and balanced manner:

Provided that in any comparison made between a UCITS and a benchmark, the benchmark must at least reflect the composition of the UCITS compared.

- Rules for advertising UCITS returns
7. Having as an objective the comparability of the advertisements of UCITS returns as well as the more precise and complete provision of information to investors in the Republic, the following rules must at least be abided by in every UCITS return advertisement:
- (a) Presentation of the annual returns for the past ten full consecutive years.
- In case the UCITS has not completed ten years from the date of commencement of its operation and provided that is active for a period of at least one year, its annual returns must be given for all years available.
- The annual returns of the UCITS are calculated after tax and charges, excluding marketing and redemption commissions, a fact which must be clearly stated.
- (b) If a UCITS is managed in accordance with a benchmark or if the structure of the cost includes a performance fee which is dependent on a benchmark, the information on the previous returns of the UCITS should include a comparison with the previous returns of the benchmark according to which the UCITS is managed or the performance fee is calculated.
- (c) Presentation of the cumulative average return of the UCITS for a time period of three, five and ten years.
- It is understood that where paragraph (b) applies, the information on the cumulative average return of the UCITS must include a comparison with the cumulative average return of the benchmark.
- (d) Subject to the above provisions, it is prohibited either to advertise a UCITS return which covers a period less than a year or advertise a UCITS return which makes in any way reference to a year.
- (e) An exemption to the prohibition to advertise a UCITS return which covers a period shorter than a year is permitted only when the advertised return pertains to a UCITS in money market fund.
- Keeping of a register of UCITS advertisements
8. (1) Every UCITS should keep a register of all advertisements it may launch using any medium as well as of all the data used for the calculation of the return in such manner so as to represent with preciseness the advertisement made.
- (2) The aforementioned Register shall be at the disposal of the Commission for purposes of checking UCITS' compliance with the Law and this Directive.
- (3) The UCITS is obliged to keep a register of UCITS advertisements for a time period not less than five years.
- Entry into force
9. This Directive shall enter into force on the date of its publication in the Official Gazette of the Republic.