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The Open-Ended Undertakings for Collective Investment (UCI) Law of 2012

Directive DI78-2012-10

of the Securities and Exchange Commission regarding the rules to be followed by UCITS for the launch of advertisements

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The Securities and Exchange Commission, exercising the powers vested in it by virtue of subsection (5) of section 66 of the Open Ended Undertakings for Collective Investment (UCI) Law of 2012, hereby issues the following Directive:

Short title            1. This Directive shall be cited as the Directive of 2012 on rules to be followed by UCITS during the launch of advertisements.

Interpretation        2. For the purposes of this Directive, unless the context shall prescribe otherwise:

'Directive' shall mean this Directive.

78(I)/2012            'Law' shall mean the Open-Ended Undertakings for Collective Investment (UCI) Law of 2012.

Official Gazette EE: L. 302, 27.11.2009, p. 1    'Registered credit ratings agency' means registered credit rating organization which has been registered with the European Commission in accordance with the Regulation (EC) no 1060/2009, or which is subject to the transitional provisions of section 40 of the Regulation.

Terms used in this Directive that are not interpreted differently have the meaning given to them by Law.

Scope of application    3. The Directive is applied to UCITS marketing their units in the Republic of Cyprus.

Presentation and content of the UCITS advertisements

4.
  - (1) The UCITS Management Company safeguards that the information in the advertisement is accurate, clear, no misleading and is presented in a way that is understandable from the investors, including the persons with no special knowledge about investments in UCITS.
  - (2) The information in the advertisement should not hide, conceal or diminish the importance of any statement, warning or other element related with the investment in UCITS.
  - (3) The UCITS advertisement should present the offering investment with clarity, identify the risks and obligations of such investment along with its advantages. Risks should be presented in the main content of the advertisement.
  - (4) Withstanding the provisions of paragraph 5(1)(c) of the Directive, the use of footnotes may be used provided that these are linked with the corresponding text in the main part of the advertisement and are presented clearly, in a distinctive part of the advertisement and with a manner that makes them understandable from investors.
  - (5) UCITS advertisements may refer to historical data of the UCITS provided that this contributes to forming a clear, sufficient and informed opinion on the offered investment and do not cause confusion to investors as to the return of the investment. The reference period to which the historical data relates shall be clearly stated.
  - (6) The UCITS advertisements may present any favorable tax regime regarding investing in UCITS provided that there is a clear distinction between the tax regime which concerns the investors and the tax regime which concern the UCITS and in parallel, to present the tax obligations of investors shall be presented.
  - (7) Withstanding the provisions of section 66 of the Law and with the objective to provide the most accurate and complete information to investors in the Republic of Cyprus every UCITS advertisement, apart from the provisions of the above-mentioned section, must also include the following information:
    - (a) that UCITS falls within the provisions of the European Directive 2009/65/EC,
    - (b) with the reservation of the cases of UCITS which in their name provide for a guarantee of capital or return, an indication that investors may not get back their initial amount invested as the value of UCITS is subject to changes.
  - (8) In the case of UCITS expressed in a currency other than the Euro, the advertisement should note that changes in the exchange rate may impact negatively the value of the investment.
  - (9) In case the charges of a UCITS are decreasing and lower charges apply after the conclusion of determined periods, this must be denoted in the advertisement.
  - (10) Information included in an advertisement regarding the tax

treatment of the investment in the UCITS, must be accompanied by a note stating that the tax regime of the investment in the UCITS is subject to possible changes that may affect the return of the offered investment.

(11) Every UCITS advertisement should be made in accordance with the Law, the Laws of the Republic of Cyprus on advertising including the Control of Misleading and Comparative Advertisements Law and the Directives and Regulations issued thereof.

Restrictions during UCITS advertisements

5. (1) It is prohibited for a UCITS advertisement to:
  - (a) to attribute terms to the UCITS which result from or are linked with a rating procedure such as e.g. «best», «biggest», «leading» e.t.c, except in the case where these attributes have been acknowledged and assigned by recognized credit rating agencies,
  - (b) include any information, declaration which constitutes a projection or estimate of future returns,
  - (c) presented risks associated with the investment of UCITS in the form of footnotes,
  - (d) use the name of the Commission, as competent authority In a way that will state or imply state that the content of the UCITS advertisement has been approved by the Commission.

(2) The direct communication (e.g. house visit, telephone communication, fax, e-mail, etc.) with any person, who has stated his opposition thereto, is prohibited. In the case however, where no such opposition is made, it may be possible of a direct UCITS advertisement provided that all of the following conditions shall be followed:

- (a) It should be stated from the beginning of the presentation, the capacity of the person contacting the investor, the name of the UCITS for which the presentation concerns and the specific purpose of the contact with the investor,
- (b) the choice of the place and time of contact is made after an agreement with the interested person,
- (c) the advertisement follows the rules and conditions of the applicable legal framework, and
- (d) the contact with the investor is not subject to time limitations or commitments and may be terminated, freely, if the latter wish.

Rules regarding advertisements including comparisons

6. (1) UCITS advertisements which include comparisons must be presented in a manner so that the comparison shall:
  - (a) be meaningful, clear, not misleading and presented in a fair manner,
  - (b) be in accordance with the provisions of the Control of Misleading and Comparative Advertisements Law, and
  - (c) based on facts which:
    - (i) can be defined with clarity,
    - (ii) can be proved,
    - (iii) are selected in a good faith and impartially, and
    - (iv) relate to the same period which the comparison is

made.

Rules regarding advertisement of UCITS returns

7. In the case of advertising UCITS returns, in addition to the provisions of paragraph 4(5) of the Directive, the following conditions must also be followed:

- (a) indication of past returns should not constitute a prominent part of the advertisement,
- (b) the advertisement should present, at minimum, the annual percentage return of the last twelve months, ending on the last date of the immediately preceding calendar month (annual percentage return) and the cumulative percentage return of the last five years, ending on the last date of the immediately preceding calendar month,
- (c) the period of the twelve month and of the five years, for the determination of the annual and cumulative percentage return of the UCITS must be calculated from the last date of each calendar month until the last date of the previous corresponding month one or five years, respectively,
- (d) the percentage return of the UCITS must be calculated in accordance with the net asset value of the UCITS' units and it concerns, at least, of a twelve month period. For a period greater of one year, the percentage return of the UCITS must relate to multiples of one year (2 years, 3-years, e.t.c),
- (e) in the case of dividend distribution, presentation of the dividend yield must be presented as well,
- (f) a UCITS which has not completed one year of operations should not proceed to advertising its return unless if the UCITS is a money market fund and thus, can advertise its return for a period of less than one year,
- (g) a UCITS which has completed one year of operations but it has not completed five years of operations, must present its annual percentage return as provided for in sub-paragraph (b) and its cumulative return for the period from the date of commencing until the ending of the immediately preceding calendar month,
- (h) a UCITS which changed category and has completed twelve months of operations but has not completed five years of operations in the new category, it must present its annual percentage return and its cumulative return for the period from the date it entered in the new category until the last date of the immediately preceding calendar month,
- (i) the presentation of returns shall be accompanied with a warning that the refer to the past and past performance does not guarantee future performance,
- (j) in the case where the presentation of returns is based on numerical data expressed in a currency other than the Euro, it must be explicitly stated that the return may be impacted, either negatively or positively, due to currency volatility.

Register of UCITS advertisements

8. The UCITS Management Company should keep records of all advertisements launched by any medium, for a period of three (3)

years from the date of the launch.

- Entry into force
- 9. The Directive shall enter into force on the date of its publication in the Official Gazette of the Republic of Cyprus.