
TO : **Regulated Entities:**

- i. AIFMs ('AIFMs')**
- ii. UCITS Management Companies ('UCITS MC')**
- iii. Self-Managed UCITS ('SM UCITS')**
- iv. EuVECA and EUSEF managers**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **October 13, 2021**

CIRCULAR NO. : **C473**

SUBJECT : **ESMA Guidelines (ESMA34-45-1272) on marketing communications under the Regulation on cross-border distribution of funds**

1. The Cyprus Securities and Exchange Commission ('CySEC') wishes to inform the Regulated Entities that the European Securities and Markets Authority (ESMA) has published the [Guidelines](#) on marketing communications under the Regulation on cross-border distribution of funds ('the Guidelines'), on 2 August 2021 translated in all official languages of the EU.
2. These Guidelines further specify the requirements of article 4(1) of the [Regulation](#)¹ with regard to all associated marketing communications addressed to investors, including to any potential investors, and apply to the following regulated entities:
 - a) UCITS management companies ('UCITS MC'), including any self-managed UCITS ('SM UCITS'),
 - b) Alternative Investment Fund Managers ('AIFMs'),
 - c) EuVECA managers and EuSEF managers,
 - d) including those funds set up as ELTIFs and MMFs; *and*
 - e) Competent authorities.
3. The basic requirements as set out under article 4(1) the Regulation are for any marketing communications to:
 - i. be identifiable as such;
 - ii. describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner; and
 - iii. contain clear, fair and not misleading information, taking into account the on-line aspects of marketing communications.
4. The purpose of these guidelines is to specify the application of the requirements set out in Article 4(1) of the Regulation and in particular to establish common principles and guidance as to the interpretation of these requirements. Even though, the Guidelines

¹ REGULATION (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) No 1286/2014.

bring a level of clarity and practical guidance to the requirements for marketing communications, they do not intend to replace existing national requirements on the information to be included in marketing communications (e.g. fiscal treatment of the investment in the promoted fund) to the extent these are compatible with any existing harmonised EU rules (e.g. rules on disclosure of costs or performance in the KIID).

5. The Guidelines also include, a very broad meaning to what can constitute marketing communications:
 - i. All messages advertising for a UCITS or an AIF, regardless of the medium (printed material, articles/releases/interviews in the press, webpages and documents on the internet, presentations whether live or on video or radio).
 - ii. Messages broadcast on any social media platform (e.g. Twitter, LinkedIn, Instagram, YouTube, etc.), which refer to any fund characteristics (including its name).
 - iii. Marketing materials or presentations addressed to individual investors or the public.
 - iv. Communications advertising a fund to investors or potential investors.
 - v. Communications by a third party used by a fund manager for marketing purposes.
6. The Guidelines also provide examples of communications that should not be considered as marketing communications, including:
 - i. Legal and regulatory documents/information, such as a fund's prospectus, constitutional documents, financial reports or the KIID/KID.
 - ii. Corporate communications broadcast by the fund manager describing its activities or recent market developments, which do not identify a specific fund or group of funds (e.g. disclosure of earnings or senior management changes).
 - iii. 'Pre-marketing' communications for AIFs only (as defined in AIFMD under the new cross-border distribution of funds regime).
 - iv. Short messages broadcast online, in particular, on social media, which only include a webpage link, where a marketing communication is available but which do not refer to a specific fund or group of funds.
7. A summary of several of the Guidelines' key requirements, follows:
 - i. Guidelines on the Identification as such of Marketing Communications-

All marketing communications should make it clear that its purpose is purely for marketing, is not a contractually binding document and it is not sufficient to take an investment decision. Marketing communications should clearly display a disclaimer.
 - ii. Guidelines on the Description of Risks and Rewards in an Equally Prominent Manner-

Marketing communications should not refer to the rewards without referring to the risks. The font and size used to describe the risks should be at least equal to the predominant size used throughout and its position should ensure prominence.
 - iii. Guidelines on the Fair, Clear and not Misleading Character of Marketing Communications-

Marketing communications should be suitable and promoters of funds open to retail investors should avoid using excessively technical wording and provide an explanation of terminology.

Information presented in marketing communications (e.g. sustainability-related aspects) should be consistent with that contained in the promoted fund's legal and regulatory documents.

Where features of the promoted investment are described, such information is to be kept up to date, should contain sufficient information to understand the key elements of those features, and should not make excessive cross-reference to the fund's legal and regulatory documents.

Marketing communications that mention risks and rewards should at least refer to the relevant risks in the fund's legal and regulatory documents and mention where complete information on the risks can be located in a clear and prominent manner.

When referring to costs, an explanation on the overall impact of costs on the amount of investors' investment and expected returns should be included along with the impact of any currency / exchange rate fluctuations.

iv. The Guidelines also include detailed provisions and several disclaimers that may apply regarding disclosure of past fund performance, simulated performance and expected future performance.

v. Where information on the sustainability-related aspects of the fund are mentioned-

it should not outweigh the extent to which the investment strategy integrates sustainability-related characteristics or objectives; and marketing communications should indicate that the decision to invest should take into account all of the fund characteristics or objectives as described in its prospectus.

8. These Guidelines will come into effect 6 months after the date of their publication on ESMA's website in all EU official languages, i.e. 2 February 2022.
9. CySEC adopts these Guidelines by incorporating them into its supervisory practices and regulatory approach.
10. Regulated Entities must take the necessary actions in order to ensure their compliance with the Guidelines.

Sincerely,
Dr George Theocharides
Chairman
Cyprus Securities and Exchange Commission