
TO : **UCITS Management Companies,
External Managers of AIFs,
Banks, Investment Firms and
Cooperative Credit Institutions in the Republic**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **29 December 2015**

CIRCULAR NO. : **C104**

SUBJECT : **Definition of the term «marketing» of units of Open-Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Funds (AIFs) in the Republic.**

The Cyprus Securities and Exchange Commission (the “Commission”) would like to draw your attention to: (a) Article 69 of the Open-Ended Undertakings for Collective Investment in Transferable Securities Law of 2012 (the “UCITS Law”), according to which UCITS established in another Member State may market their units in the Republic after following the Notification procedure provided for in Article 93 of the Directive 2009/65/EU, and (b) Articles 96 and 97 of the Alternative Investment Funds Law of 2014 (the “AIF Law”) on the requirements for the marketing of AIFs units in the territory of the Republic.

It is noted that the Commission considers that the distribution, trading and promotion of units of UCITS to the public or of units of AIFs to professional or adequately informed or private investors, as the case may be, in any manner, which aims on attracting investors in order to invest in the specific UCITS or AIFs, respectively, falls within the definition of the term “marketing” and UCITS coming from another Member State other than the Republic or AIFs coming from another Member State other than the Republic or from a third country and which are to be promoted in the Republic, must follow the corresponding procedure provided for in the UCITS Law or the AIF Law regarding the marketing of their units in the Republic.

The following cases do not fall within the definition of the term “marketing”:

1. The acquisition of units of UCITS or AIFs in the context of the investment service of portfolio management. In such a case, the investment of the portfolio under management in units of UCITS or AIFs, does not constitute “marketing”, as per the above-mentioned meaning and consequently, it is possible the client’s portfolio to be invested in units/shares of UCITS or AIFs, irrespective of the requirements provided for in the UCITS Law or of the AIF Law regarding the marketing of their units in the Republic.

2. The proposal to invest in units of UCITS or AIFs in the context of provision of investment advice as well as the acquisition of units of UCITS or AIFs following a relevant investment advice. However, it is highlighted that the exception referred to in the previous sentence does not have the meaning that the investment advisor is permitted to distribute, trade and promote units of UCITS to the public or units of AIFs to professional or adequately informed or private investors in the Republic, aiming on attracting investors in order to invest in the specific UCITS or AIFs in case that the units of the specific UCITS or AIFs are not marketed in the Republic.
3. The acquisition of units of a specific UCITS or of an AIF, on the client's own initiative, provided that the acquisition had not been preceded by an invitation to market units for the account of the UCITS or of the AIF.

As from the date of issue of this Circular, the Circular of the Cyprus Securities and Exchange Commission no. E062 of 3rd April 2015, is repealed.

Yours,

Demetra Kalogerou
Chairman of the Cyprus Securities and Exchange Commission

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