

## GREAT FUND INSIGHTS

# Cross-Border Fund Distribution Package: ESMA's Final Guidance on Funds' Marketing Communications

### Background

Pursuant to a requirement to do so under the Regulation on the cross-border distribution of funds (2019/1156) (**CBDF Regulation**), on 27 May 2021, ESMA published its final report on the Guidelines on Marketing Communications (the **Marketing Guidelines**).

The final report provides an overview of the feedback received from ESMA's consultation on the draft marketing guidelines launched in November 2020 and explains how ESMA took this feedback into account.

The final set of Marketing Guidelines are then set out in Annex IV at the back of the final report.

The Marketing Guidelines apply to **all marketing communications** addressed to investors or potential investors (of any kind) for UCITS and AIFs, including when they are set up as EuVECAs, EuSEFs, ELTIFs and money market funds.

### Purpose of the Marketing Guidelines

The CBDF Regulation specifies that European fund managers shall ensure that marketing communications addressed to investors:

- are **identifiable** as such;
- describe the **risks and rewards** of purchasing interests in a fund in an equally prominent manner; and
- contain **clear, fair and not misleading information** (taking into account the online aspects of marketing communications).

The purpose of the Marketing Guidelines is to elaborate on the application of these requirements.

“The Marketing Guidelines apply to all European fund managers (UCITS ManCos (including UCITS which have not designated a UCITS ManCo), AIFMs, EuVECA managers and EuSEF managers).”



## Who do the Marketing Guidelines apply to?

The Marketing Guidelines apply to **all European fund managers** (UCITS ManCos (including UCITS which have not designated a UCITS ManCo), AIFMs, EuVECA managers and EuSEF managers).

## Third country managers?

The Marketing Guidelines are issued pursuant to the CBDF Regulation which is directly applicable in each Member State and as such do not contain any provision on what the position is for third country managers.

The position regarding marketing communications issued in this context will therefore depend on the approach taken by each Member State.

## Third-party distributors?

Third-party distributors are not subject to the Marketing Guidelines. Following feedback to ESMA's consultation, the draft Marketing Guidelines were amended to delete reference to a fund manager having responsibility for the marketing communications issued by third-party distributors

(other than those used by a fund manager). Third-party distributors will still, however, need to comply with other rules governing the provision of information to investors such as Article 44 of the MiFID II Delegated Regulation.

## What do the Marketing Guidelines apply to?

The term “marketing communications” is not specifically defined in the Marketing Guidelines. However, the Marketing Guidelines include non-exhaustive lists of examples of communications that are marketing communications and of the types of communications that are not marketing communications:

	Examples of marketing communications		Examples of communications which are not marketing communications
✓	All advertisements for a UCITS/AIF, regardless of medium (includes press articles, webpages, radio messages, video presentations, factsheets)	✗	Information or communication issued during pre-marketing activities
✓	Messages broadcast on social media which refer to characteristics of an AIF/UCITS, including its name	✗	Legal and regulatory documents/information of a fund (eg offering document, KID/KIID, annual/half-yearly accounts and constitutional documents)
✓	Materials addressed to investors as well as documents or presentations made publicly available	✗	Corporate communications broadcast by fund manager describing its activities or some recent developments which don't refer to specific UCITS/AIF or a group of UCITS or AIFs. However this exclusion will not apply where the activities of the fund manager are limited to one fund or a small number of funds which can be implicitly identified in such corporate communication.
✓	Communications advertising a UCITS/AIF addressed to investors in both home and host Member State of the fund manager	✗	Short messages broadcast online (which only include a link to a marketing communication) but which do not contain any information on a specific fund or group of funds.
✓	Communications by third parties which are used by a fund manager for marketing purposes		

## Required Disclaimer

All marketing communications should clearly display a mandatory disclaimer, such as the following:

*“This is a marketing communication. Please refer to the [prospectus of the UCITS/AIF/EuSEF/EuVECA]/Information Document of the [AIF/EuSEF/EuVECA] and to the [KIID/KID](delete as applicable) before making any final investment decisions.”*

However, where such disclaimer will not fit to the format and length of an on-line marketing communication, it may be replaced by a shorter identification. For example, the words “marketing communication” used in the case of a banner or title of a short video lasting only a few seconds or the hashtag “#MarketingCommunication” for use on social media platforms.

“The level of information and the way that information is presented may be adapted depending on whether the fund is open to retail or professional investors.”

## Content Requirements for Marketing Communications

The Marketing Guidelines also set out the requirements that should be met in relation to the coverage of the following areas in marketing communications:

- information on the **risks and rewards**;
- the principle of being **fair, clear and not misleading**;
- information on **costs**;
- information on **past performance and expected future performance**; and
- information on **sustainability-related aspects**.

The level of information and the way that information is presented may be adapted depending on whether the fund is open to retail or professional investors.

## When do the Marketing Guidelines apply?

The Marketing Guidelines will apply six months after the date of the publication of the Guidelines on ESMA's website in all EU official languages. Following publication, each national competent authority has a two month period to notify ESMA as to whether it will implement the Marketing Guidelines or choose to diverge or gold-plate. Whilst it is unclear when the six month clock will start running, fund managers should begin preparing their marketing materials for compliance.

## Keeping you aware of developments

aosphere's **Rulefinder Marketing Restrictions – Asset Management** service provides practical guidance applicable to the marketing of open and closed-ended funds and managed accounts, covering the position for institutional and retail investors across 70+ jurisdictions. Key features of the service include a useful comparison tool, allowing you to compare across jurisdictions and regions, daily monitoring and email alerts and disclaimer language.

To learn more about Rulefinder Marketing Restrictions – Asset Management visit [www.aosphere.com/aos/mr-am](http://www.aosphere.com/aos/mr-am) or email [info@aosphere.com](mailto:info@aosphere.com) to request a free trial.

For information on the impact of the CBDF Package on pre-marketing activities, see [here](#).

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