



Legal Update

New Requirements for Marketing European Investment Funds

The new EU cross-border distribution regime comprising Directive 2019/1160 (the “Directive”) and Regulation 2019/1156 (the “Regulation”) (together the “CBDF”) took effect on 2 August 2021. The CBDF has introduced a host of changes and in this update, we analyse the new marketing disclosure requirements.

General Requirements

The new rules introduce harmonised requirements in relation to marketing materials distributed within the EU. These are based upon the principles of fair, clear and not misleading marketing. In most cases such general principles would already have been applicable, but the CBDF also includes certain granular requirements which are addressed below.

Marketing Disclosure

The new rules require marketing materials to:

- be clearly labelled as marketing;
- refer the reader to the associated prospectus (and KID) and advise that any decision to invest should not be based solely on the marketing materials;
- bring the relevant risks and rewards of the fund to the reader’s attention;
- not be inconsistent with or contradict the relevant regulatory documentation; and
- outline how a summary of investor rights may be obtained, including information on potential redress mechanisms.

Further Guidance

The provisions of the CBDF are further supplemented by ESMA Guidance issued pursuant to it and contain certain additional detailed requirements. These include, for example:

- inclusion of clarification that the investment is for units in a fund, as opposed to an investment in underlying asset(s);
- any anticipated future performance, must clearly state that the projections are estimates only and include related caveats;
- sustainability related information provided should reflect the extent to which the investment strategy includes social, environmental, and sustainable objectives; and
- specific additional disclosures will be required depending on whether the fund is actively or passively managed.

Timelines and Next Steps

The deadline for adherence to the requirements is 27 November 2021.

Fund managers and management companies are advised to familiarise themselves with the new requirements and marketing materials should be reviewed to ensure they are in compliance with the new rules.

It is advisable that any third-party authors of any marketing materials (such as distributors) be required to confirm that the new rules will be adhered to.

Should you have any queries feel free to contact the parties listed below.



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