

ESMA GUIDELINES ON MARKETING COMMUNICATIONS UNDER THE REGULATION ON CROSS-BORDER DISTRIBUTION OF FUNDS

30 September 2021

On 2 August 2021, the translations of the guidelines on marketing communications of investment funds were published on the website of the European Securities and Markets Authority (ESMA). The guidelines were approved on 27 May 2021 and shall enter into force six months after the publication of the translations (2 February 2022).

The purpose of these guidelines is to establish common principles on marketing communications for investment funds, in order to promote good practices with regard to investor protection to ensure convergence among the different Member States. The Guidelines do not intend to replace existing national requirements on the information to be included in marketing communications.

These guidelines apply to management companies (and to self-managed vehicles) and must be applied to marketing communications addressed to investors or potential investors for UCITS and alternative investment funds (AIFs), including European venture capital funds (EuVECA), European Social Entrepreneurship Funds (EuSEFs), European long-term investment funds (ELTIFs) and money market funds (MMFs). They include a non-exhaustive list of the types of communications that are subject to the guidelines, which also cover any messages disseminated on any social media platform, when such messages refer to any characteristics of a certain investment fund. Furthermore, they include a negative list with examples of communications that should not be considered as marketing communications, such as the prospectus, annual and six-monthly reports or corporate communications disseminated by the fund manager describing its activities without referring to specific funds.

The Guidelines also establish common principles on the identification as such of marketing communications, the description of risks and rewards of purchasing units or shares of funds in an equally prominent manner, and the fair, clear and not-misleading nature of marketing communications, taking into account whether they are disseminated online.

With regard to the link between these guidelines and CNMV Circular 2/2020, of 28 October, on the advertising of investment products and services, it should be borne in mind that the Circular has a broader scope as it regulates the advertising of all investment products and services, and also establishes rules on internal organisational requirements of entities, registration and adherence to self-regulation systems. Notwithstanding the foregoing, the content of the guidelines is consistent with the provisions of the Circular, and supplements the latter in very specific aspects related to investment funds such as language-related requirements of marketing communications; or when advertising includes certain references, such as in the case of leveraged funds or illiquid investments, the impact of these characteristics; the potential impact of the currency on the information on costs and returns; requirements for simulations of returns or future returns; information on

the active or passive management of the fund; or requirements for information on sustainability-related aspects in ESG products.

The Guidelines have been issued under Article 16 of Regulation No 1095/2010 of the European Parliament and of the Council, of 24 November 2010, regulating the creation of ESMA, which establishes that the competent authorities and financial market participants will do everything possible to adhere to these guidelines. Additionally, the ESMA Regulation also establishes the obligation incumbent upon competent authorities to confirm whether they comply with the guidelines published by ESMA.

To this end, the Spanish National Securities Market Commission has notified ESMA that it complies with the Guidelines. Therefore, the CNMV will take these guidelines into account in its supervisory procedures, bearing in mind that these will develop the obligations set forth in Spanish Law 35/2003 on CISs, and other applicable legislation.