

# EU Cross-Border Fund Distribution Rules – Are You Ready?

New EU Directive EU/ 2019/1160 regarding the cross-border distribution of collective investment undertakings and Regulation EU/ 2019/1156 on facilitating cross-border distribution of collective investment undertakings under the Capital Markets Union ("CMU") comes into effect on 2 August 2021.

Please refer to our previous client update below<sup>1</sup>.

## UCITS - What do you need to know?

- Facilities currently administered by a local agent may be provided remotely, i.e. a physical presence in the relevant EEA Member State is no longer necessary.
- Certain update notifications must be notified to the home Member State national competent authority ("NCA") and host EEA Member State NCA at least one month before implementing the change (e.g. registration of new share classes).
- To de-register a UCITS, a blanket offer to repurchase or redeem, free of charge, all shares held by investors in the host Member State must be made, along with a public announcement and termination of contractual arrangements with delegates to ensure no further offering of shares. De-registration notifications must be made via the home Member State NCA.
- Additional standards for marketing communications have been introduced

enhancing those already in place under the UCITS Directive.

## AIFs - What do you need to know?

- The concept of pre-marketing has been introduced allowing EU AIFMs to test market interest before establishing an AIF or registering an AIF under a marketing passport in a Member State (subject to certain conditions).
- An AIFM may not rely on reverse solicitation after carrying out any pre-marketing activities.
- The de-registration of AIFs will be subject to similar requirements applicable to UCITS and notification must be made directly to the AIFs home Member State NCA<sup>2</sup>.
- Crucially, once an AIF is de-notified from marketing, for a period of 36 months from the date of de-notification, the AIFM may not engage in pre-marketing that AIF, or any other AIF with a similar investment strategy or investment idea, in that Member State.
- AIF Marketing communications will be aligned with the UCITS requirements i.e. must be identifiable as such, describe the risks and rewards of purchasing units or shares of an AIF in an equally prominent manner, and all information included must be fair, clear and not misleading.

## ESMA Guidelines on Marketing Communications

<sup>1</sup> <https://maples.com/en/knowledge-centre/2019/6/cross-border-fund-distribution-rules--welcome-changes-in-the-pipeline>

<sup>2</sup> Except in the case of closed-ended AIFs and funds regulated by Regulation (EU) 2015/760 of the European Parliament and of the Council.

On 27 May 2021, ESMA issued their guidelines on marketing communications for UCITS and AIFs<sup>3</sup> (the "Guidelines"). These Guidelines will apply six months after the date of the publication of the Guidelines on ESMA's website in all EU official languages.

## Member State Implementation

- Despite the looming August 2021 deadline, to date, there has been quite a low level of local implementation across EEA Member States.
- Crucially, certain Member States are applying pre-marketing rules to non-EU AIFMs – if you would like further information on this, please get in touch.
- We are closely monitoring the implementation of the changes in each EEA Member State and if you would like jurisdictional specific information, please get in touch.

## Further Information

If you would like further information, please contact the following or any member of the Maples Group GRS team.

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**The Maples Group's Irish legal services team is independently ranked first among legal service providers in Ireland in terms of total number of funds advised (based on the most recent Monterey Insight Ireland Fund Report, as at 30 June 2020).**

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<sup>3</sup> <https://www.esma.europa.eu/document/final-report-guidelines-marketing-communications>