

29 July 2021

Coming into Force of the Cross-Border Distribution of Funds (“CBDF”) Directive and Regulation

This circular is addressed to Alternative Investment Fund Managers (“AIFMs”), self-managed Alternative Investment Funds (“AIFs”), UCITS management companies and self-managed UCITS and EuVECA/EuSEF managers (collectively “the licence holders”).

The purpose of this circular is to inform licence holders of the entry into force of [Directive 2019/1160 on the Cross Border Distribution of Funds](#) as well as Articles 4(1) to (5), 15 and 16 of [Regulation 2019/1156 on the Cross-Border Distribution of Funds](#) on 2 August 2021. The CBDF Directive, will be fully transposed into the local legislative framework by way of amendments to Subsidiary Legislations under the Investment Services Act, particularly S.L. 370.18, 370.20, 370.21 and 370.22.

The CBDF Regulation introduces new marketing communication requirements, as highlighted further below, whilst the CBDF Directive sets out, *inter alia*, a definition and conditions for pre-marketing, de-notification arrangements and notification procedures relating to the changes in particulars communicated as part of a passporting notification.

Marketing Communications

As per Article 4 of the Regulation, AIFMs, EuVECA managers, EuSEF managers and UCITS management companies have to ensure that all marketing communications addressed to investors or potential investors (both retail and professional investors) are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner, and that all information included in marketing communications is fair, clear and not misleading.

To note that these marketing communication requirements have been extended to AIFMs and EuVECA/EuSEF Managers. Furthermore, ESMA has published [Guidelines](#) on the application of these marketing communication related requirements which will become applicable 6 months after the date of the publication of the respective translations. Licence Holders are encouraged to familiarise themselves with these Guidelines and to update their policies and procedures to ensure full compliance with them, once in force.

What is Considered as a Marketing Communication

Marketing communications shall include sufficient information to make it clear that the communication is purely for the purposes of marketing. Legal and regulatory documents such as the KID or the prospectus are not considered to be marketing communications, however, the information

included in the marketing communication must be consistent with the legal and regulatory documents of the promoted fund.

The marketing communication should include the following disclaimer: *“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.”*

The Authority will be issuing an additional Circular to inform the industry once the Conduct of Business Rulebook and the relevant Part B of the Investment Services Rules have been amended to make reference to the requirements emanating from the CBDF Regulation. Nevertheless, the Regulation is directly applicable and licence holders are expected to comply with the relevant requirements emanating from the CBDF Regulation and Directive in the interim, once in force.

Please contact us on financiapromotion@mfsa.mt in respect of any queries relating to marketing communications applicable to UCITs and on funds@mfsa.mt should you have any queries in respect of requirements relating to AIFMs; EuVECAs and EuSEFs.