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ESMA Guidelines on marketing communications for funds will start to apply

February 1, 2022

On 2 February 2022, the new ESMA guidelines on marketing communications under the Regulation on cross-border distribution of funds (EU) 2019/1156) ("**Guidelines**") will start to apply.

The Guidelines set the requirements for marketing communications that promote UCITS and alternative investment funds (AIFs), such as European social entrepreneurship funds (EuSEFs), European venture capital funds (EuVECAs), and European long-term investment funds (ELTIFs).

The Guidelines apply to alternative investment funds managers ("AIFMs") based in the EEA. Non-EEA AIFMs are only subject to the requirements if they are carrying out marketing in certain EEA member states.

What is Marketing Communication?

The Guidelines apply to all communications that are made for the purpose of "marketing" as defined under AIFMD. The communications covered include websites, social media posts, live presentations - the Guidelines do not apply to legal documents, such as PPM and constitutional documents. Any information provided to investors in the context of pre-marketing (i.e. the preliminary promotional communications made before an AIFMD fund marketing approval is received for a particular fund) is also not considered as marketing communications.

What are the Requirements?

The Guidelines set out that marketing communication must:

- Be identifiable as marketing material,
- Describe the risks and rewards of purchasing units or shares of an AIF, or units of a UCITS, in an equally prominent manner, and

- Contain information that is fair, clear and not misleading.

As an example, materials provided during the AIFMD “marketing” phase which are not legal or regulatory documents should include a short disclaimer stating that it is a marketing communication and the Guidelines provide an example template disclaimer.

Next Steps

AIFMs in the scope of the new Guidelines should review which fund marketing communications and take appropriate steps to comply with the recommendations and provisions set out in the Guidelines.

Please reach out to the Proskauer Regulatory Team for further assistance.

Related Professionals

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