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Marketing requirements for UCITS

This page contains information on the national laws, regulations and administrative provisions relating to marketing requirements for UCITS, as referred to in Section 5(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating the cross-border distribution of collective investment undertakings.

(a) format and content of marketing material, including identification of the information and documents to be notified to the competent authority prior to beginning of marketing

Marketing communications made to investors in relation to the UCITS shall be accurate, clear and not misleading in relation to regulation (EU) 2019/1156. Pursuant to Section 4:22(1) of the Dutch Financial Supervision Act (*Wet financieel toezicht*, hereinafter: Wft), additional rules have been laid down for careful provision of services by a UCITS management company or UCITS. Section 49 of the Decree on the Supervision of the Conduct of Financial Undertakings Wft (*Besluit Gedragstoezicht financiële ondernemingen Wft*, hereinafter: BGfo) lays down further rules with regard to the provision of information by the UCITS management company, Section 50 BGfo imposes further requirements on the website of the management company and Sections 52 and 55 BGfo contain requirements for marketing expressions and other non-compulsory pre-contractual information.

In the Further Regulation on the Supervision of the Conduct of Financial Undertakings Wft (*Nadere Regeling gedragstoezicht financiële ondernemingen Wft* hereinafter: NRGfo), Sections 2:3, 2:5 and 2:6 give further substance to the requirements of Section 52 BGfo.

If the name of a UCITS management company or of a UCITS that is used or will be used in the Netherlands is liable to cause confusion, the AFM may, on the basis of Section 4:53(b) Wft, require the UCITS management company or the UCITS to add an explanatory statement to the name.

The key investor information document referred to in Section 78(1) of the Directive on undertakings for collective management of transferable securities 2009/65/EC (hereinafter: UCITS Directive), must be provided in the Dutch language pursuant to Section 4:62(2) Wft. Other information and documents that a UCITS management company of a UCITS with registered office in another Member State that is offered in the Netherlands must make public, should be made public in the Dutch or in English language pursuant to Section 4:62(1) Wft.

<https://wetten.overheid.nl/BWBR0020368/2020-10-15>

<https://wetten.overheid.nl/BWBR0020421/2020-01-01>

<https://wetten.overheid.nl/BWBR0020540/2020-01-01>

(b) verification of marketing communications by the competent authority

Prior notification to the AFM of the marketing communications that a UCITS management company intends to use in the context of dealing with investors is not required. The AFM may assess the information provided in its ongoing supervision against the aforementioned requirements.

(c) reporting obligations in relation to marketing

A UCITS management company with its registered office in another Member State informs the AFM if there are:

- Changes to the information contained in the original notification (Section 4:26(4) Wft).

- Suspension of the repurchase or redemption of units in a UCITS managed by him (Section 4:26(5) Wft).

<https://wetten.overheid.nl/BWBR0020368/2020-10-15>

(d) passporting regime

Pursuant to Section 2:69b(3) Wft, a UCITS management company of a UCITS with its registered office in another Member State, that intends to offer that UCITS to investors in the Netherlands, must meet the requirements of Section 93 of the UCITS Directive.

After the supervisory authority in the home Member State has forwarded the notification and accompanying documentation to the AFM, it will send a confirmation to the UCITS management company. Upon receipt of this confirmation, the UCITS can be offered in the Netherlands on the basis of Section 2:69b(3) Wft. The criteria set out in the Policy Rule Active in the Netherlands 2013 (*Beleidsregel Actief in Nederland 2013*) apply with regard to determining whether a UCITS is considered to be offered in the Netherlands.

A UCITS which units are offered in the Netherlands on the basis of Section 4:62 Wft must make available the provisions referred to in Section 92(1) under (a) to (f) UCITS Directive. The aforementioned facilities in the Netherlands must be made available in the Dutch language now that the AFM has not currently approved another language as referred to in Section 4:62(2) Wft.

<https://wetten.overheid.nl/BWBR0020368/2020-10-15>

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(e) de-notification of arrangements made for marketing

The de-notification of a European Passport for the offering of units in a UCITS must meet the requirements of Section 93a(1) UCITS Directive which are implemented in Section 2:124.0a Wft.

<https://wetten.overheid.nl/BWBR0020368/2020-10-15>

(f) other rules governing the marketing of UCITS applicable within the jurisdiction of the competent authority

In addition to the Wft and underlying regulations, other regulations may also apply in the case of offering units in a UCITS to retail investors in the Netherlands. This includes, in any event, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, which is implemented in the Netherlands in Section 3A, Title 6, Book 6, of the Dutch Civil Code (*Burgerlijk Wetboek*, hereinafter: BW). Section 6:193b BW and further explains when there are unfair commercial practices and Section 6:193f BW states which essential information must be stated in the case of commercial communication, advertising or marketing aimed at non-professional investors.

<https://wetten.overheid.nl/BWBR0020586/2021-07-01>

<https://wetten.overheid.nl/BWBR0020368/2020-10-15>

https://wetten.overheid.nl/BWBR0005289/2020-07-01#Boek6_Titeldeel3_Afdeling3A

Other requirements

In addition to the provisions referred to above, which are set out specifically for the marketing of UCITS, there may be other legal provisions that may apply when marketing them in the Netherlands, although they are not specifically designed for the marketing of UCITS, depending on the individual situation of those involved in the marketing of shares or units of UCITS. Marketing in the Netherlands may trigger the application of other requirements, such as, but not limited to, requirements that apply on the basis of:

- Dutch Civil Code (*Burgelijk Wetboek*);
- General Administrative Law Act (*Algemene Wet Bestuursrecht*);
- Bankruptcy Act (*Faillissementswet*);
- Competition Act (*Mededingingswet*);
- Money Laundering and Terrorist Financing Prevention Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*);
- Sanctions Act (*Sanctiewet*); and
- the Income Tax Act 2001 (*de Wet inkomstenbelasting 2001*).

Disclaimer: the AFM has taken reasonable care to ensure that the information on the national provisions governing the marketing requirements for UCITS in the Netherlands included on this webpage is up-to-date and complete. The AFM is not responsible for maintaining external websites and is not liable for any error or omission on any external website to which hyperlinks are provided on this webpage.