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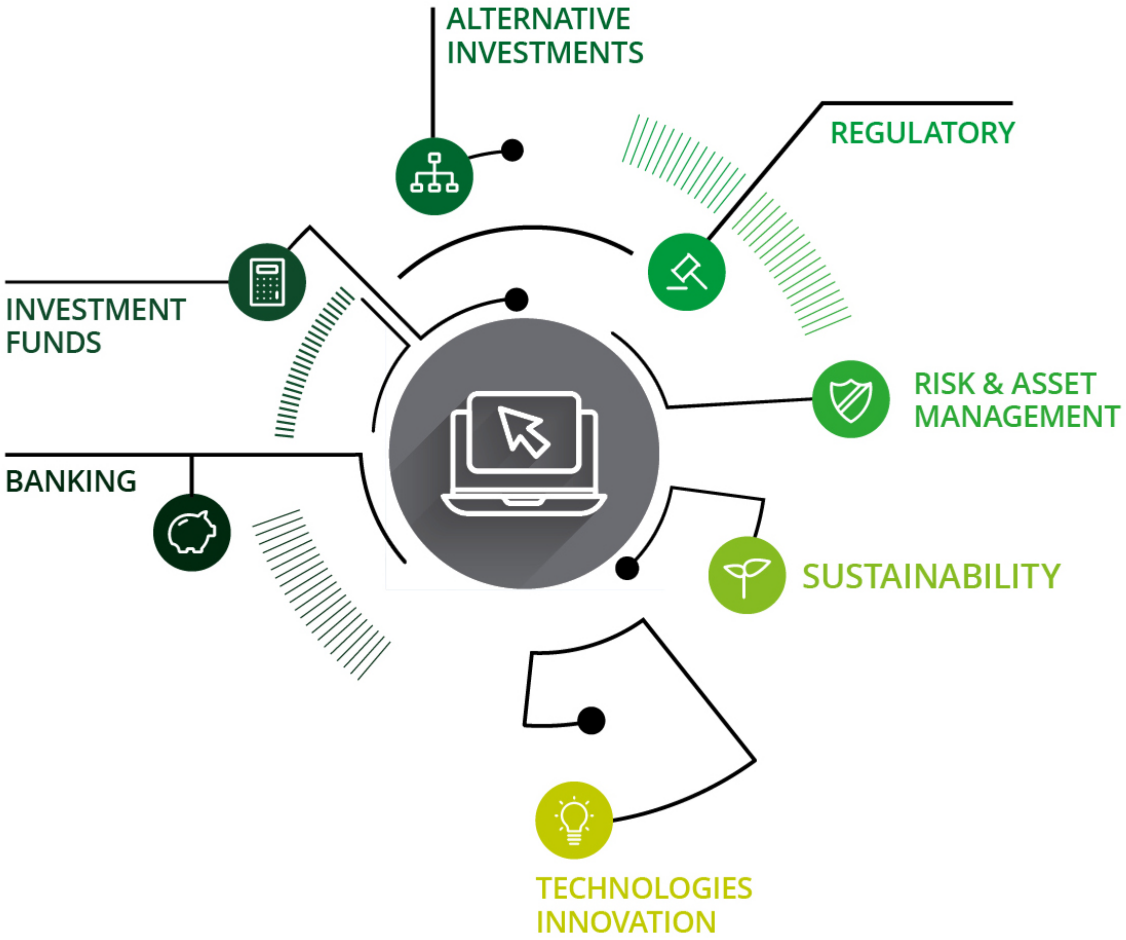


# Cross-border distribution and marketing of foreign funds: hot topics, latest trends and new opportunities

Link'n Learn 2024 – 31 January 2024

# Getting Started

## Here with you today

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## Agenda

1. United Kingdom: Overseas Funds Regime and the new Retail Disclosure Framework
2. Retailisation of private assets - from a cross-border distribution angle
3. ELTIF 2.0
4. Navigating Asia
5. UAE: Updates on the cross-border distribution of foreign funds
6. Marketing materials: Trends

# United Kingdom

## Overseas Funds Regime and the new Retail Disclosure Framework

# Overseas Funds Regime

## The eligibility of recognition of a foreign funds under the OFR will follow a two-step process involving equivalence at the level of the jurisdiction and recognition of the individual fund

There must be **adequate arrangements for co-operation** between the FCA and the financial regulator of the jurisdiction.

HM Treasury has the power to **impose additional requirements on funds recognised under the OFR** to ensure comparability and consistency with the regulation of UK funds.

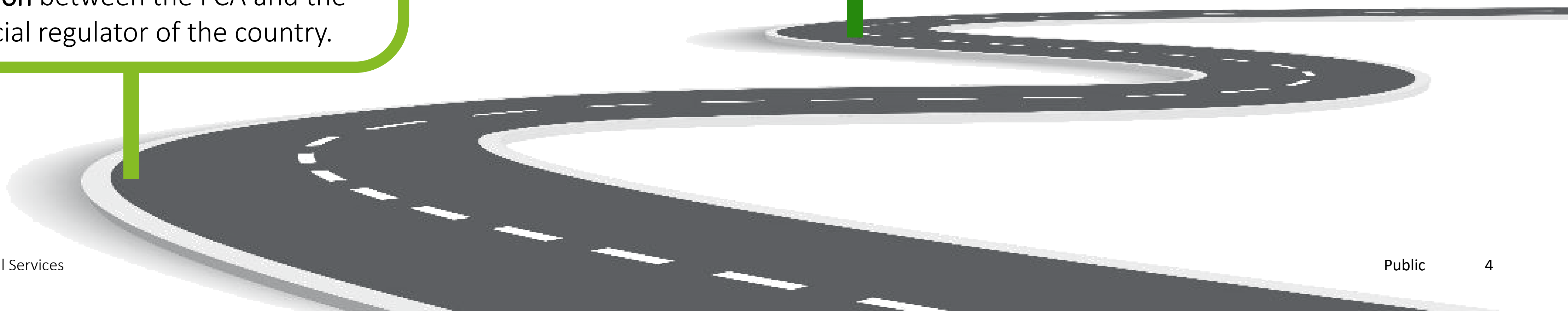
__Update 30 January 2024:__
HM Treasury announced that following its assessment, **it has deemed EEA UCITS (that are not MMF) equivalent under the OFR**.

HM Treasury has the power to grant equivalence to a retail fund from an overseas jurisdiction if it meets the **"equivalent investor test"** and if there are **adequate arrangements for co-operation** between the FCA and the financial regulator of the country.

Foreign funds, which are eligible to benefit from an equivalence, can apply to the Financial Conduct Authority ("FCA") for recognition. Once recognised by the FCA, they can be able to be marketed to UK retail investors.

Foreign funds marketed to <u>retail</u> investors in the UK must still appoint a local facilities agent.

The FCA must grant recognition under the OFR **within two months of the FCA receiving a complete application**, containing all the information it requires.



# Overseas Funds Regime

## The FCA consults on its plans for the implementation of the OFR

**FCA Consultation on the implementation of the OFR**

**Background**

The Overseas Funds Regime is the new streamlined process for foreign funds seeking recognition in the UK and will replace the Temporary Marketing Permissions Regime (TMPR). Although the OFR entered into force on 23 February 2022, it is **not yet operational**.

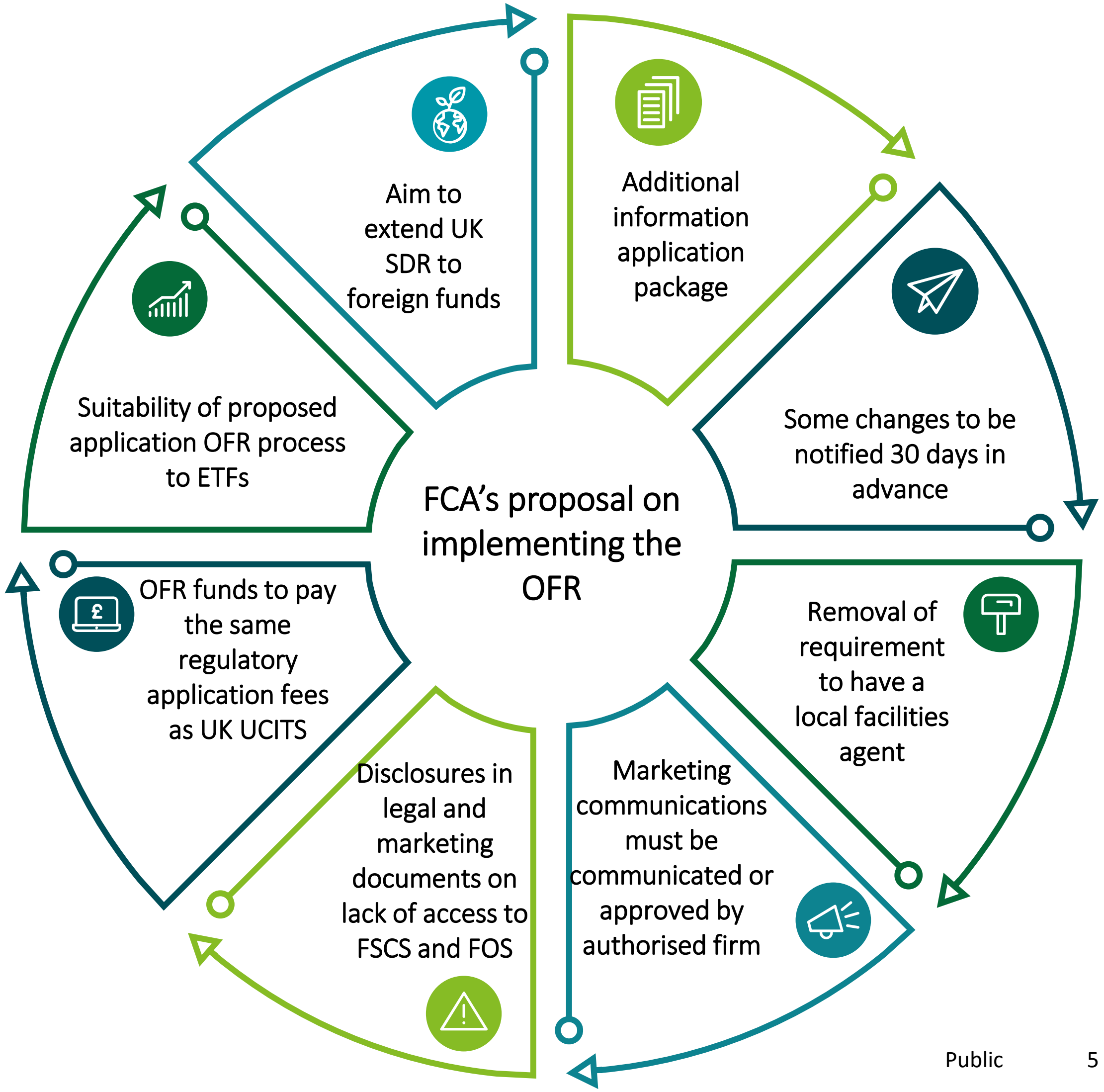
**Update**

On 4 December 2023, the Financial Conduct Authority (FCA) published a consultation paper on **implementing the Overseas Funds Regime ("OFR")**. The consultation discusses the recognition process for foreign funds from jurisdictions that His Majesty's Treasury ("HM Treasury") has deemed equivalent.

**Next steps**

The OFR consultation will remain open for feedback until 12 February 2024.

The final policy statement is expected to be published by the FCA in the **first half of 2024**.



# Retail Disclosure Regime

## The UK published draft regulations containing the framework which will replace the UK PRIIPs Regulation

On the 22 November 2023, HM Treasury published a draft Statutory Instrument (the Consumer Composite Investments (Designated Activities) Regulations 2024) and an accompanying Policy Note setting out the framework for the UK's **new retail disclosure framework for Consumer Composite Investments ("CCIs")**, which would **replace PRIIPs and repeal the UK PRIIPs Regulation**.

The FCA will be given rule-making powers and specific supervision and enforcement provisions to implement the new disclosure regime.

Manufacturing, advising and offering a CCI to retail investors in the UK are defined as designated activities which will require firms to provide disclosure under the new regime. **Consequently, the new UK disclosure requirements will apply to all funds marketed in the UK to retail investors**

UCITS must provide a UCITS KIID until 31st Dec 2026. Once the new Retail Disclosure Regime is implemented, **UCITS will have an option to either transition to the new regime or continue providing UCITS KIIDs until 31 December 2026.** From 1 January 2027, at the latest, all funds marketed to retail investors in the UK will be required to follow FCA rules under the new UK retail disclosure framework for CCIs.

HM Treasury plans to pass legislation in 2024. In due course and the FCA will publish a consultation on their proposed rules regarding CCI disclosures.

At the end of the Brexit transition period, the Regulation (EU) No 1286/2014 on packaged retail and insurance-based investment products ("**EU PRIIPs Regulation**") was one of the many pieces of EU legislation which formed part of the UK's retained EU law by virtue of the European Union (Withdrawal) Act 2018. **Changes were made to the UK PRIIPs Regulation** by the Financial Services Act 2021 and to the technical standards by the Financial Conduct Authority ("FCA").

# Retailisation of private assets

## From a cross-border distribution angle

# Retailisation of private assets

## From a cross-border distribution angle

Since the implementation of the Alternative Investment Fund Managers Directive ("AIFMD"), access to Alternative Investment Funds (AIFs) and Private Equity Funds has been restricted to a select group of of institutional and professional investors. This is due, to a complex regulatory framework and to several prerequisites that need to be considered when investing in these types of funds. These include a significant minimum investment, limited or even no liquidity and a complex investment structure, that requires a comprehensive understanding typically held by well-informed and experienced investors.

### Objectives of the AIFMD

- ✓ To bring a response to the lack of transparency in the market of non UCITS investment products
- ✓ Created a comprehensive regulatory and supervisory framework for the management and marketing of private equity and other AIFs in the EEA
- ✓ Focused mainly on the distribution and marketing to institutional/professional investors

### Complexity of private assets

- ✓ Higher minimum investments requirements
- ✓ Complex investment structure and legal documents often available only in English
- ✓ Illiquid and long-term assets
- ✓ No harmonized regulatory framework for the distribution and marketing to individual investors

### "Democratization" of private assets

- ✓ Appetite for a portfolio diversification
- ✓ New challenges for fund managers: higher volume of investors, more liquidity, transparency and more digitalization
- ✓ Complete change of business models and enhancement of operational model and skills

# ELTIF 2.0

## Latest update

# Summary of changes to the requirements for the distribution of ELTIFs by the AIFM or an appointed distributor as of 10 January 2024

| Previous requirements | Changes since10 January 2024 |
|---|---|
| The AIFM must put **facilities** in place for retail investors in accordance with Article 26 of the ELTIF Regulation. | Requirement removed*<br>*The facilities requirement pursuant to Article 43a of the AIFMD will apply. |
| The AIFM/distributor must provide appropriate **investment advice** to retail investors. | Requirement removed |
| The AIFM/distributor must also ensure that the retail investor with a portfolio of EUR 500,000 or less shall not invest an aggregate amount exceeding 10% of its instrument portfolio in ELTIFs and that the **initial minimum amount invested in one or more ELTIFs is EUR 10 000**. | Requirement removed |
| Article 27 of the ELTIF Regulation requires that for each ELTIF that is intended to be marketed to retail investors, a **specific internal process be implemented to assess the investment strategy and the life of an ELTIF** before it is marketed to retail investors. | AIFMs and distributors to comply with MiFid rules on organizational requirements and information to clients instead |
| If the end of **life exceeds 10 years**, a written alert shall be issued that ELTIF may not be suitable for retail investors. | No change |
| ELTIFs provide a **KID** to retail investors. | No change |

# Draft regulatory and technical standards on ELTIF 2.0

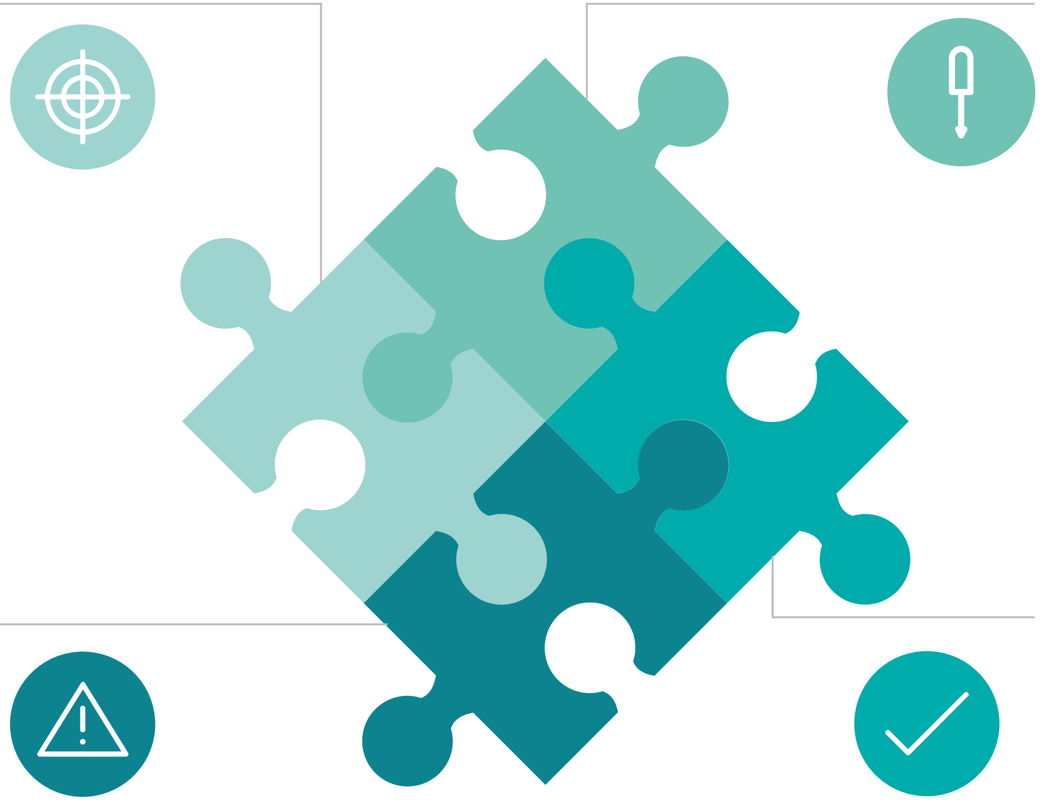
## Proposition and impacts

**Main contents of the RTS**

- ✓ Definition of the minimum holding period by the fund manager.
- ✓ Quarterly redemption at maximum
- ✓ Notice period of 12 months or heightened ratio of liquid assets
- ✓ Liquidity management tools (anti-dilution levies, swing price, redemption fees)

**Impacts of potential delays**

- ✓ Delay in the adoption of RTS might impact the approval process for new launches of ELTIFs



**EFAMA FAQ**

- ✓ Publication of the FAQ in January 2024, clarifying several aspects of the ELTIF regulation
  - Investment requirements
  - Targeted investors
  - Operating requirements
  - Distribution and Marketing
  - Authorisation and Registration
  - Taxes

**Timeline for revision by European Commission**

- ✓ 3 months following submission
- ✓ RTS can be adopted, rejected or amended.

# Navigating Asia

3rd edition

# Navigating Asia

## Insights into distribution possibilities and local regulatory frameworks including tax and reporting obligations

- Asia has become the second-largest region for the cross-border distribution of Luxembourg funds.
- The Asia-Pacific region is now the **third-largest in terms of assets under management**, constituting 8% of cross-border fund assets.
- Despite the attractive potential, **the landscape of domestic investment products is relatively restrained**. This is especially the case in Hong Kong and Singapore, in comparison to recognised foreign funds.
- Initiatives like ASEAN and Asia Fund Passport, aimed at fostering cross-border fund distribution, have faced challenges and low adoption by countries in the region.


In this 3rd edition we

- explore detailed insights on **distribution possibilities and local regulatory frameworks**, encompassing tax and reporting obligations;
- expand geographical scope to cover Brunei, China, India, and Malaysia, offering **insights into a total of 13 countries across the Asia-Pacific region**;
- emphasise **regulatory reporting**, addressing newly introduced ESG requirements and reporting obligations for local funds.

# Cross-border distribution in the UAE

## Latest updates

# Key dates of the new SCA Regulations relevant to foreign-domiciled funds

01 Jan 2023
Suspension of all foreign-domiciled marketing activities to retail investors in the UAE

31 May 2023 (in the past)

(1) By 31 May 2023 the latest, legal representatives had the possibility to :

- request the grace period and renew their funds for public distribution until 30 June 2023; and/or
- request the transfer of the registration from public offering to private placement.

(2) Funds not renewed / transferred by this date will be automatically de-registered and the fund will be charged with the relevant regulatory fees

30 Jun 2023 (in the past)

End of the grace period for public offering:

(1) Funds that did not apply for the transfer together with the grace period request will be automatically de-registered and the fund will be charged with the relevant regulatory fees
(2) Private placement of Funds that applied for the transfer together with the grace period request can start.

SCA offered the possibility to extend the grace period until end of March 2024

30 December 2023
Deadline for the renewal of the marketing of foreign-domiciled funds registered under the private offering regime for 2024 or under the grace period until March 2024 and then will switch to private placement as of 1 April 2024.

31 Dec 2023
End of the deadline to request the extension of the grace period.

**31 March 2024**
**End of the extended grace period (further information will follow)**

# UAE: Grace period – Extension of the grace period – transfer from public to private placement

## Registration status by scenario

| Initial grace period until 30 June 2023 | Extension of the grace period until 31 March 2024 | Automatic switch from public to private after grace period | No automatic switch | Transfer from public to private (no grace period) | Status of the foreign fund | Annual fees for 2024 |
|---|---|---|---|---|---|---|
| X | X | X | | | The sub-fund is currently registered under the public distribution and will automatically switch to private placement as of April 2024. | 5,000 AED |
| X | | X | | | The sub-fund is currently registered under the private placement since 1 July 2023. | 5,000 AED |
| X | X | | X | | The sub-fund is currently registered under the public distribution and will be deregistered as of 1 April 2024. | 1,250 AED |
| X | | | X | | The sub-fund is deregistered. | 1,000 AED of deregistration fees. |
| | | | | X | The sub-fund is currently registered under the private placement. | 5,000 AED |
| | | | | | No action: The sub-fund is deregistered. | 1,000 AED of deregistration fees. |

# Suspension of distribution of foreign-domiciled funds to retail investors

## Grace Period Extension (ending 31 March 2024)

Grace Period

### Requirements

The SCA regulations provided a possibility for foreign funds to benefit from an extension of the grace period that will end on **31 March 2024.**

### Procedure

1. The foreign-domiciled fund must have been registered within the SCA for public distribution in the UAE on or before 31 December 2022;

2. The extension request had to include one of the following reasons justifying the intention to continue the public distribution of the foreign-domiciled fund in the UAE:
   - The establishment of a local management company licensed by the SCA;
   - The use of a licensed entity in the UAE or in a financial free zone (e.g. the DIFC); or
   - If there is any other reason, an explanation must be provided.

3. The provision of a schedule/plan to achieve compliance with the requirements of the Authority's Board of Directors' Decision No. (04/R.M) for the year 2023, after the expiration of the temporary grace period with an explanation of the alternative procedures and mechanisms that the promoter will apply during the grace period. The plan/schedule must cover the following points:
   - Operational procedures and action plan that will be put in place during the grace period.
   - A timeline for the implementation of the promoter's action plan to remediate its situation.
   - A signed undertaking from the entity to commit to the execution of the action plan.

4. The extended grace period is also subject to the payment of the regulatory renewal fees on a pro-rata basis up to 31 March 2024, if the application is approved by the SCA.

### Timeline

Legal representatives shall have submitted the request by 31 December 2023 at the latest.

The foreign-domiciled fund was authorised to continue the distribution as soon the relevant documents are submitted to the Authority via e-mail. Regulatory fees shall be paid upon receipt of the SCA request on the portal once ready.

# Marketing materials

## Latest trends

# Marketing Compliance

## A trend towards reinforced controls on marketing communications

- **20 September 2022** – Q&A of the CSSF on Marketing Communication
- **12 December 2022** – FSMA (Belgian Regulator) integration of ESMA Guidelines on marketing communication
- **16 January 2023** – ESMA Common Supervisory Action with regards to marketing communication
- **3 July 2023** – ESMA Report on marketing requirements and marketing communications under the CBD Regulation
- **23 August 2023** – CSSF Report on 2021 – 2023 marketing communications

# ESMA Report on marketing requirements and marketing communications under the CBD Regulation

## ESMA Methodology for the report

As per CBD Regulation, every second year, ESMA shall submit a report to the European Parliament presenting an **overview of marketing requirements** in all Member States and an **analysis of their effective impacts.**

ESMA submitted its first report to the co-legislators on 30 June 2021. The 2023 report is therefore the **second ESMA's report** under the Regulation.

ESMA **sent two questionnaires** to each NCAs of all EU and EEA Member States.

The first one aimed at receiving a summary of the national laws, regulations and administrative provisions governing marketing Requirements **for UCITS and AIFs** and identify **potential changes or amendments** compared to provisions provided in the scope of the 2021 ESMA Report.

The second questionnaire aimed at **identifying the impacts** of these laws on regulations by collecting quantitative information on the number of requests for amendments of marketing communications and qualitative information on the reasons for such requests

ESMA led a review of the questionnaires and summarized the finding within a **report published on 3rd July 2023**.

**Analysis on the effects of these local requirements.**

- Existence of request for amendment made on an ex-ante basis in (BE, FR)
- Existence of request for amendment made on an ex-post basis (BG, DE, FR, HR, IE, IT, LU, PT, PL, SK, ES)
- Identification of decision taken following request for amendment in (BE, DE, FR, IE, PL, PT)

- Examples of breaches identified:

✓Fair, clear and not misleading
✓How and in which language additional information can be provided
✓Identification of the communication as being for marketing purpose
✓Risks, costs or returns not sufficiently explained
✓Inconsistencies with regulatory documents

# CSSF Report on 2021 – 2023 marketing communications

## Main recommendations included in the report

### VISUAL

- **Identification of Marketing Communications**
  - The identification of the document as "marketing" should be systematic
  - Identification within the disclaimer at the bottom of the page is insufficient
  - Applies for Website and Social media
- **Presentation of required information**
  - Minimum information should not be too small or presented in a block.

### CONTENTS

- **Consistency Requirements**
  - Reminder of the need for consistency between MC, Prospectus, KI(I)D and SFDR
  - MC should clearly specify when the listed costs are not exhaustive.
- **Right to terminate the marketing**
  - The notion should be included in all marketing communication

### SUITABILITY

- **Suitability to Investor**
  - Required information should not be hidden in bottom-page notes.
  - Language should be adapted to targeted investors and acronyms explained
- **Suitability to the fund**
  - Risks, benchmark and performance displayed should be accurate

### HYPERLINKS

- Use of hyperlinks should be limited
- Hyperlinks should point to the information linked to the fund.

### REFERENCE TO FUND DETAILS

- **Prospectus and KI(I)D, investor rights**
  - MC must mention where, how and in which languages they can be found

# Next Link’n Learn webinar

*Date:* ***07/02/2024***

Topic: **L&L | Regulatory | Regulatory Landscape for 2024 – focus on Sustainable Finance**