

Spanish provisions governing the marketing requirements for AIFs and UCITS

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

Marketing requirements for UCITS

(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;

The rules on the format and content of marketing communications are Orden EHA/717/2010 and Circular CNMV 2/2020. According to these rules, the marketing communications should be clear, balanced, impartial and non-misleading. It will use simple and easy-to-understand language and prevent the omission of relevant information or the inclusion of misleading information.

In addition, the information shall be consistent and may not contradict the information or warnings that entities are required to provide to customers in the marketing of UCITS. It should also refer to the existence of the prospectus, last annual report and KIID and indicate where these documents can be obtained. Relevant information or warnings about the UCITS will have a format and position that guarantees its relevance within the marketing material, not to be included as secondary information or in footnotes.

With regard to information on costs and performance of the UCITS, it shall expressly indicate the period of time to which it relates. It shall include the performance of the last five preceding years or of the entire marketing period if it is lower, in full periods of 12 months and shall be expressed in terms of returns.

Returns on periods of time less than twelve months or periods greater than the year may be provided if certain requirements are met. In the case of newly created UCITS, information on the performance of the current year may be provided.

Historical performance may not be the highlight of the communication and it should be noted prominently that past performance is not a reliable indicator of future returns.

More information about format and content of marketing communications (UCITS and AIF):

Disposición 14107 del BOE núm. 299 de 2020
<https://www.boe.es/boe/dias/2020/11/13/pdfs/BOE-A-2020-14107.pdf>

Orden EHA/1717/2010, de 11 de junio, de regulación y control de la publicidad de servicios y productos de inversión. (boe.es)

<https://boe.es/buscar/pdf/2010/BOE-A-2010-10314-consolidado.pdf>

(b) verification of marketing communications by the competent authority;

In relation to marketing material, we do not register it prior the commencement of marketing.

(c) reporting obligations in relation to marketing;

All marketing entities of foreign UCITS, are obliged to submit a quarterly statistical statement referred to in CNMV Circular 2/2017.

CNMV Circular 2/2017, of 25 October, on information on foreign collective investment schemes registered with the Comisión Nacional del Mercado de Valores, amending CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered with the Comisión Nacional del Mercado de Valores:

http://cnmv.es/DocPortal/Legislacion/Circulares/Circular_2_2017_en.pdf

In order to send the statistical statement the distributor has to obtain access to the CIFRADO/CNMV Service. This person or entity shall obtain access to the CIFRADO/CNMV Service: [solicitudPJ.pdf \(cnmv.gob.es\)](#)

The distributor could delegate the submission of this information to an appointed person, the latter will be responsible for sending the statistical statement and has to obtain access to the CIFRADO/CNMV Service.

This manual has been published with the aim of clarifying the content of the statistical statement referred to in CNMV Circular 2/2017, so that entities will complete it in a standardised manner and ensure that it serves the purpose for which it is intended:

http://www.cnmv.es/DocPortal/legislacion/ModelosNormalizados/IIC/ManualCumpAo1-C_2_2017_en.pdf

Technical requirements for the sending the statistical information are explained here: http://www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/RequisitosTecnicoAo1-C_2_2017_en.pdf

(d) passporting regime;

Law 35/2003 on CIS and Law 22/2014 on private equity were amended transposing the cross-border marketing Directive. Please note that CNMV Circular 2/2011 will undergo an amendment process to adapt to the cross-border marketing Directive and Regulation.

Circular 2/2011 amended by Circular 2/2017:

www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/Circular211.pdf

http://cnmv.es/DocPortal/Legislacion/Circulares/Circular_2_2017_en.pdf

1. Marketing definition: Article 2 of Law 35/2003
<https://www.boe.es/eli/es/l/2003/11/04/35/con>

2. Information required to be disclosed to investors: Rule four of CNMV Circular 2/2011

- Marketing memorandum for subscribers in Spain:

www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/Marketingmemorandum.doc

- Please note that the PRIIPs KID shall be translated into Spanish.

3. Register:

UCITS are registered with the CNMV, under the UCITS Section of the CNMV Register of foreign collective investment undertakings marketed in Spain (and UCITS are assigned a CNMV registration number). This register of UCITS is structured at an umbrella level, we only register the umbrella as a whole and not the different subfunds.

Enquiry by entity: <https://www.cnmv.es/portal/Consultas/busqueda.aspx?id=34>

Complete list of UCITS: <https://www.cnmv.es/portal/Consultas/MostrarListados.aspx?id=26>

4. Information to be included in Part B of the notification letter:

-1. The notifying UCITS must appoint a person or entity entrusted with representing the UCITS before the CNMV and to act on its behalf. This person or entity shall obtain access to the CIFRADO/CNMV Service (and it can be either a local or a foreign person or entity): solicitudPJ.pdf (cnmv.gob.es)

Once the UCITS has been registered in the corresponding Registry, this designated entity must communicate by electronic means (Rule one, Section 3, of CNMV Circular 2/2011):

-The registrations and de-registrations of marketing entities of the UCITS in Spain.

-Modifications to the data of the UCITS.

- Modifications relating to this entity and to the distributor mentioned in section 2 below.

This information must be communicated in a maximum period of seven days following the date on which the modification has taken place.

- 2. For those UCITS which have a legal form of “investment company”: Designation of a distributor (established in Spain) responsible for submitting by electronic means (RIX/Cifradoc) the required information according to Rule four of CNMV Circular 2/2011.

We require this information (only in the event that the UCITS is established as an investment company) in relation to the Spanish national rules on taxation (in particular, article 52 of the Spanish Personal Income Tax Regulation). This is one of the requirements to allow investors in Spain to benefit from a more favorable tax treatment.

Otherwise the tax treatment of the Spanish investors in this UCITS could be negatively affected.

This information is available on the CNMV website.

As this requirement is not mandatory, in the event the UCITS does not designate a distributor established in Spain, the distributors should include, if necessary, a warning about the tax consequences of the lack of such designation in the aforementioned “Marketing memorandum for subscribers in Spain”, which should be provided to each shareholder prior to subscribing shares, as the tax treatment of the Spanish investors in this UCITS could be negatively affected.

5. Updates and amendments to the documents: ucits.updates@cnmv.es

6. Information on the fees levied by CNMV

[CNMV - CNMV Fees](#)

(e) de-notification of arrangements made for marketing;

Article 93a of the UCITS Directive: Since the CNMV's Register of UCITS is structured at an umbrella level, please note that, to proceed with the de-registration of the UCITS, the notification shall clearly indicate the intention to deregister the umbrella as a whole.

In the event that the UCITS has no investors in Spain, it is also possible to communicate by electronic means (RIX/Cifradoc) (Norma primera.3 e) of Circular 2/2011):

- the de-registration of the UCITS from the corresponding CNMV Registry
- a confirmation that there are no investors remaining in Spain.

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

The marketing of UCITS also falls under general regulatory provisions regarding conduct of business rules applicable to the provision of (MiFID) investment services by firms (UCITS management companies and investment firms and banks).

The most relevant regulations derive from the Securities Market Act ([English text](#)) hereinafter, LMV – Ley del Mercado de Valores (in [Spanish](#)), specifically in Title VII – Conduct of Business Rules.

Regulation developing Title VII is found in [Royal Decree 217/2008](#), amended from time to time and in CNMV Circulars [3/2013](#), on certain appropriateness and suitability obligations regarding financial instruments and [1/2018](#) on warnings to be issued to investors. Besides, the CNMV may request firms to include warnings in documents used to inform investors prior to entering a transaction on a specific financial instrument, as well as in marketing materials (article 210, paragraph 3, LMV).

Additionally, CNMV [Circular 1/2010](#) on confidential statements regarding the provision of investment services, requires investment firms and credit institutions under the supervisory competence of the CNMV to submit periodically to the CNMV detailed information on the investment services provided in a period. This information covers investment services rendered in relation to CIS.

Disclaimer: The CNMV has taken reasonable care to ensure that the information on the national provisions governing the marketing requirements for UCITS in Spain included on this webpage is up-to-date and complete. The CNMV 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.

Marketing requirements for AIFs

(a) prior authorisation for marketing;

Please refer to section h) below.

In addition, a manager of an AIF may engage in pre-marketing according to the Regulation (EU) 2019/1156.

(b) 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;

Regarding the format and content of marketing material is the same as that mentioned for UCITS in the previous section.

(c) verification of marketing communications by the competent authority;

In relation to marketing material, we do not register it prior the commencement of marketing.

(d) marketing to retail investors or to professional investors;

Please refer to section h) below.

(e) reporting obligations in relation to marketing;

All marketing entities of foreign AIFs are obliged to submit a quarterly statistical statement referred to in CNMV Circular 2/2017.

CNMV Circular 2/2017, of 25 October, on information on foreign collective investment schemes registered with the Comisión Nacional del Mercado de Valores, amending CNMV Circular 2/2011, of 9 June, on information on foreign collective investment schemes registered with the Comisión Nacional del Mercado de Valores:

http://cnmv.es/DocPortal/Legislacion/Circulares/Circular_2_2017_en.pdf

It is very important to notice that AIFs must identify the entity charged with representing them before the CNMV for statistical purposes. This entity must report the registrations and de-registrations of entities marketing the AIFs in Spain.

The procedure for the communication of identifying the representative for statistical purposes of FIAs is described in

http://www.cnmv.es/DocPortal/legislacion/ModelosNormalizados/IIC/Proced_IIC_No_armonizada_en.pdf.

In order to send the statistical statement the distributor has to obtain access to the CIFRADO/CNMV Service. For this purpose, please refer to the CNMV Virtual Office/Online Register at: <https://sede.cnmv.gob.es/sedecnmv/sedeelectronica.aspx>

The distributor could delegate the submission of this information to an appointed person, the latter will be responsible for sending the statistical statement and has to obtain access to the CIFRADO/CNMV Service.

This manual has been published with the aim of clarifying the content of the statistical statement referred to in CNMV Circular 2/2017, so that entities will complete it in a standardised manner and ensure that it serves the purpose for which it is intended:

http://www.cnmv.es/DocPortal/legislacion/ModelosNormalizados/IIC/ManualCumpAo1-C_2_2017_en.pdf

Technical requirements for the sending the statistical information are explained here:

http://www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/IIC/RequisitosTecnicoAo1-C_2_2017_en.pdf

(f) passporting regime;

Law 35/2003 on CIS and Law 22/2014 on private equity were amended transposing the cross-border marketing Directive. Please note that CNMV Circular 2/2011 will undergo an amendment process to adapt to the cross-border marketing Directive and Regulation.

Marketing to professional investors with a passport of a EU AIF managed by an EU AIFM: Article 15 bis of Law 35/2003 on CIS or Article 79 of Law 22/2014 on private equity.

Law 35/2003: <https://www.boe.es/eli/es/l/2003/11/04/35/con>

Law 22/2014: <https://www.boe.es/eli/es/l/2014/11/12/22/con>

AIF are registered with the CNMV, under the AIF Section of the CNMV Register of foreign collective investment undertakings marketed in Spain (and AIF are assigned a CNMV registration number). This register of AIF is structured at a subfund level.

Information on the fees levied by CNMV:

[CNMV - CNMV Fees](#)

(g) distribution of funds established in a third country under the national private placement regime;

Please refer to section h) below.

(h) distribution of open-ended AIFs and of closed-ended AIFs;

Marketing of AIF to retail investors and marketing of:

- non-EU AIFs managed by an EU AIFM or
- AIFs managed by a non-EU AIFM

is subject to prior authorisation from the CNMV, in accordance with the regime established in Articles 15 ter, quater and 15 quinquies of Law 35/2003 on CIS or Articles 77, 78 and 79 of Law 22/2014 on private equity, which establish the requirements that must be accredited.

The CNMV may require a legal opinion from an independent expert to confirm compliance with all requirements and for the corresponding supervisor to confirm the equivalent treatment of Spanish CISs in the corresponding home country.

Law 35/2003: <https://www.boe.es/eli/es/l/2003/11/04/35/con>

Law 22/2014: <https://www.boe.es/eli/es/l/2014/11/12/22/con>

Please also refer to the latest version available on the CNMV's website of the following document (in particular, "Sección 3. Actuaciones trasfronterizas" (cross-border actions)):

Preguntas y respuestas sobre la normativa de IIC, ECR y otros vehículos de inversión colectiva <https://www.cnmv.es/docportal/Legislacion/FAQ/QAsIIC.pdf>

Information on the fees levied by CNMV:

[CNMV - CNMV Fees](#)

(i) de-notification of arrangements made for marketing;

Please refer to Article 32a of the AIFM Directive.

(j) other rules governing the marketing of AIFs applicable within the jurisdiction of the competent authority.

The marketing of AIFs also falls under general regulatory provisions regarding conduct of business rules applicable to the provision of (MiFID) investment services by firms (management companies and investment firms and banks). Please see letter f) above regarding UCITS.

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Other requirements

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

Disclaimer: The following is a non-exhaustive list of national laws that could be applicable and the CNMV is not liable for any omission in that list. Supervision of the requirements deriving from these laws is not under the supervision of the CNMV. The applicability of these requirements, and any other legal requirements, should be assessed before marketing or investing in a UCITS or an AIF. Where uncertainty exists, those marketing or investing in UCITS or AIFs should obtain independent advice as to the applicable requirements to their individual situation.

UCITS and AIF should get advice on other relevant laws and regulations in Spain (e.g. tax regulations ...).