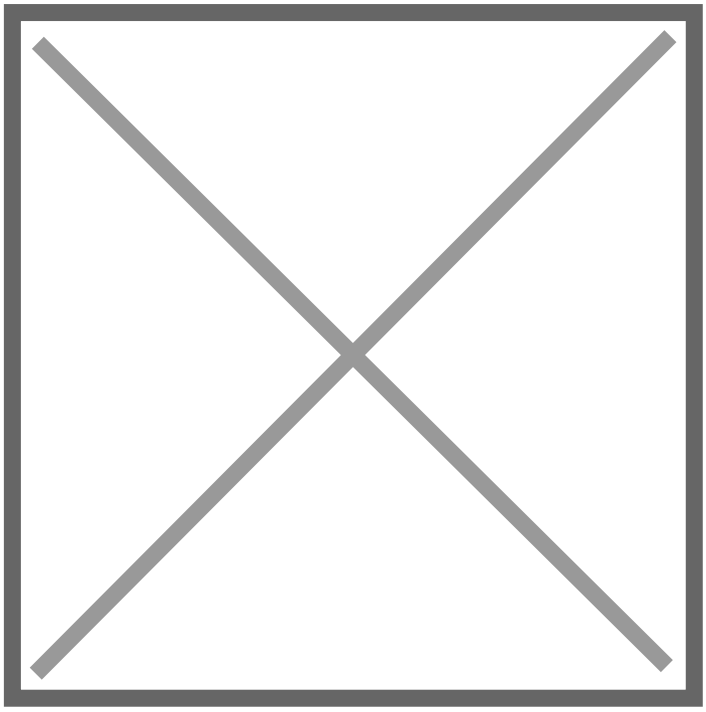


ESMA_QA_1026

Submission Date
20/07/2022
Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU
Topic
Delegation
Subject Matter
Delegation
Question
When the marketing of an AIF or a UCITS is not performed by the AIFM or UCITS management company but by a third party distributor, does the responsibility for ensuring that marketing communications comply with the requirements set out in Article 4(1) of Regulation (EU) 2019/1156 lie with the AIFM or the UCITS management company where there is a contractual relationship between the AIFM or the UCITS management company and the third party distributor? Conversely, does the responsibility for ensuring that marketing communications comply with the requirements set out in Article 4(1) of Regulation (EU) 2019/1156 still lie with the AIFM or the UCITS management company in case there is no contractual relationship with the third party distributor?
ESMA Answer
20-07-2022

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 8, 4]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation[1]

Marketing is one of the functions included in the management of funds, and therefore subject to the provisions on delegation (Article 13 of Directive 2009/65/EC and Article 20 of Directive 2011/61/EU), which themselves govern the conditions for that delegation under the principle of full responsibility of fund managers.

Article 1 of Regulation (EU) 2019/1156 specifies that the aim of this Regulation is to establish uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing communications addressed to investors. These requirements are laid down in Article 4 of this Regulation, and are further clarified in ESMA Guidelines.

Fund managers are responsible for the compliance with Article 4 of Regulation (EU) 2019/1156, irrespective of who is the actual entity marketing the fund, and of the relationship it has with the third party distributor (whether it is contractual or not).

---

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.