

**Call for evidence on UCITS
distribution**

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Chapter 1

Distribution channels

1.1 The provider interacts directly with investors

Italian management companies directly distribute:

- their own investment funds restricted to eligible investors. Recall that¹ Italian funds restricted to eligible investors are 84 in number (out of a total 1,352 Italian funds) and have a net asset value of 7.5 billion euros (out of a total 417.5 billion in net asset value for the Italian mutual funds);
- other types of their own investment funds through their personnel, although marginally;
- other types of their own investment funds through remote communication techniques, although marginally.

1.2 The sale is transacted by a company or an agent acting as a representative of the provider

In Italy investment funds are, for the most part, distributed by third parties (banks, promoter networks) duly commissioned by management companies (Italian or authorized in other Member States) on the basis of the appropriate agreement (i.e., the distribution agreement).

Italian regulation on the fund rules and the prospectus provide:

- the duty and responsibility of the management company so that the parties entrusted with the investment do not charge clients expenses in addition to those stipulated in the fund rules;
- that the fund rules contains the distribution networks employed and that the prospectus contains, in an annex, the name and legal capacity of the parties who are undertaking the investment;
- the obligation of the parties entrusted with the investment to provide the investors with the prospectus and, at their request, with the fund rules;
- that the prospectus contains: i) whether financial facilities linked to participation in the fund, specifying the maximum applicable amount, are provided for; ii) the amount of the expenses charged to the

¹ All the data was taken from the latest Report of the Governor of the Bank of Italy and referenced to 31 December 2005.

clients and the amount of the management charges received on average by distributors.

This ensures:

- management companies that the distributors are: **i)** delivering the pre-contractual and contractual documents to investors; **ii)** not charging clients with expenses in addition to those stipulated in the fund rules; **iii)** applying financial facilities within the maximum limits established;
- investors that they will be familiar with the entire distribution network and with the size (percentage) of average compensation received by distributors.

The provisions governing the marketing in Italy of UCITS authorized in other Member States extend the aforementioned obligations to the parties entrusted with the distribution on the basis of the appropriate agreement with management companies, guarantying that, even with respect to UCITS marketed cross-border, the distributors deliver the pre-contractual and contractual documents to investors and do not charge them additional expenses; investors be informed of the size of the average compensation received by distributors.

Lastly, these same considerations apply to so-called fund supermarkets, consisting in an offer by individual intermediaries, largely via remote communication techniques, of multiple types of investments funds (group or third party, both Italian and cross-border marketed), on the basis of distribution agreements with the respective management companies.

1.3 The investor relationship is with a third party which purchases the units on his behalf

The relationship between the investor and the management company can be mediated by a third party, to whom the investor himself turns for his own needs. This can happen in the event of:

- **portfolio management service**, which provides for partial or full investment in investment funds;
- **trust registration service**, i.e., in the name of the trust company but on behalf of the client;
- **purchase and sale of investment funds negotiated** on the exchange (such as the ETF).

In the case in point, the intermediary, who has a relationship with the client, operates on the basis of the provision of the contract with the client himself. This means, in particular, that:

- if it is a matter of a portfolio management service, the intermediary is handling the investment in several investment funds in observance of the characteristics contractually established (including the benchmark and volatility of the investment funds); it is therefore up to the managing intermediary to ensure compatibility between the investment funds, in which the client's portfolio is invested, and the provisions in the management contract. The client is periodically informed of the composition of his portfolio via the management report prepared by the intermediary, on a quarterly basis, in observance of the reference provisions. The managing intermediary may charge the client for management fees, as well as for expenses linked to investment funds transactions; if it is a matter of "connected" investment funds (promoted or managed by the same management company or other management companies within the group) no charges for subscription fees and reimbursement are allowed;
- if it is a matter of a trust registration, the trust company may act as owner on behalf of the client for the units of investment fund or for the management contract including investment funds. The trust company provides a service of "mere registration in its name," for which it receives the compensation established in the appropriate contract, and interacts, as a rule, with another intermediary empowered to carry out orders on behalf of the client or to attend to their management;
- if it is a matter of dealing, the intermediary transmits orders or executes purchases or sells of investment funds on the exchange, in fulfillment of the requests made by the client, and receives the appropriate fee. The intermediary must first provide the client with the document on the general risks of the investments and inform the client of the existence of the investment fund's prospectus, from which to gather specific information on its characteristics.

Chapter 2

Packaging of UCITS funds

The types of services and products that typically incorporate UCITS are as follows:

- **funds of funds, or funds** (whether harmonized or not) **that invest a part of their assets in UCITS**. In this case, the fund rules and

prospectus identify the investment policy and the importance of the investment in other funds (among other obligations is the obligation to include, in the prospectus, the benchmark or—if that fails to comprise a significant parameter for the management style adopted—to make clear the fund's degree of risk for a specific time period). Italian regulations provide that funds investing in other funds may be subject to subscription and reimbursement costs and may stipulate compensation for the management company, provided that the overall remuneration received by the manager of the collected funds is deducted from said compensation (management fees, incentives, etc.). The participants are informed of the composition of the portfolio, even in other investment funds, during the annual and half-yearly reports. In the event of an investment of no less than 10% of total assets in other investment funds, the prospectus must include the maximum amount of the management fees applicable in the underlying investment funds;

- **portfolio management service**, which provides for (partial or full) investment in investment funds, including UCITS, as previously mentioned;
- **unit linked contracts**. This involves life insurance contracts whose performances are directly linked to the value of the assets contained in an internal fund or to the value of investment funds.

The informational note pertaining to said contracts must: **i)** identify a benchmark with which to compare the yield of the internal insurance fund or, if the benchmark fails to comprise a significant parameter for the management style adopted, the degree of annual average volatility of units deemed acceptable; **ii)** provide information on the composition of the internal fund and—if the fund invests in investment funds for more than 10%—on the underlying investment funds; **iii)** include the costs weighing on the internal fund (subject to the constraints indicated hereunder in the event of an investment in “connected” funds); **iv)** in the event of an investment in funds for more than 10%, specify the maximum amount of the subscription and reimbursement fees, as well as the management fees applied by the management company; **v)** in the event of contracts with performance directly connected to investment funds, include the costs weighing on these investment funds.

The Italian regulations pertaining to said contracts provide that: **i)** if the entire fund were invested in “connected” funds, costs and charges of any kind related to the subscription and reimbursement of the purchased connected funds may not weigh on the purchasing fund; **ii)** the insurance companies may not charge the management fees to the portion of internal fund represented by the “connected” funds, with the exception of the share of the fee identified by the company

for the services provided in asset allocation of the connected funds and in administration of the contracts;

- **liquidity account.** This consists in a functional connection between a fund and a current bank account by virtue of a mandate—issued by the subscriber to a third party (bank or trust company)—to invest sums exceeding its own liquidity requirements for the current account (i.e., “average equity”) in units of a specified investment fund or to request reimbursement of units of this fund for the purposes of restoring the pre-set average equity (in the current account). This implies the subscription of an appropriate contract, separate from the units subscription, which does not entail, with respect to participation in the fund, charges or constraints charged to the subscriber;
- **reinvestment plan,** membership in which allows the investor to parcel out the investment in the specified investment fund over time. Membership in the plan is achieved by signing an appropriate form on which the methods for distribution of the investment over time are indicated.

Chapter 3

Fund structures

The mechanism for classes of shares is rather diffuse among Italian investment funds and UCITS cross-border marketed in Italy since this allows for flexibility in the structure of the investment funds and for the possibility of adapting them to the various requirements of the investors.

The classes of shares make it possible, in fact, to offer, for the same investment fund:

- different fee structures depending, for example, on the various categories of subscribers and on the various distribution channels;
- different distribution policies for returns;
- for investment funds quoted in a currency different from the reference currency, protection against currency fluctuations (i.e., “Classes with coverage for exchange risks” or “Hedged classes”).

The critical aspect in this regard is the transparency and objectivity of the conditions required to access the various classes of shares. To that end, Italian laws provide that the fund rules and the prospectus, or the annex to the subscription form for UCITS cross-border marketed in Italy, include the distinctive characteristics of the various classes of shares issued.