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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013 - Confirmation of the final compromise text with a view to agreement

REGULATION (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds (AIFs), as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council[2], including European Venture Capital Funds (EuVECA), as defined in Regulation (EU) No 345/2013, European Social Entrepreneurship Funds (EuSEF), as defined in Regulation (EU) No 346/2013 and European Long-Term Investment Funds (ELTIF), as defined in Regulation (EU) No 2015/760 and undertakings for collective investment in transferable securities (UCITS), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council[3], result in fragmentation and barriers to cross-border marketing and access of AIFs and UCITS, which in turn could prevent them from being marketed in other Member States. Any reference in this regulation to UCITS management company should be understood as a reference to a company, the regular business of which is the management of UCITS which may be externally or internally managed, depending on its legal form.

(2) In order to enhance the regulatory framework applicable to collective investment undertakings and to better protect investors, marketing communications to investors in AIFs and UCITS should be identifiable as such, and should describe risks and rewards of purchasing units or shares of an AIF or UCITS in an equally prominent manner. In addition, all information included in marketing communications should be presented in a manner that is fair, clear and not misleading. To safeguard investors' protection and secure a level playing field between AIFs and UCITS, the standards for marketing communications should therefore equally apply to marketing communications for AIFs and UCITS.

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2 **Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (**OJ L 174, 1.7.2011, p. 1).

3 **Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)** (OJ L 302, 17.11.2009, p. 32).

(2a) Marketing communications to investors in AIFs and UCITS should specify where, how and in which language investors can obtain summarised information on investor rights and they shall contain clear information that the manager or management company may decide to terminate the arrangements made for marketing.

(2b) In order to increase transparency and investor protection and facilitate access to information on national laws and regulations and administrative provisions applicable to marketing communications, national competent authorities should publish such texts on their websites in at least a language customary in the sphere of international finance, including their non-official summaries which would allow managers of collective investment undertakings to get a first indication of these requirements. The publication should only be for information purposes and should not create legal obligations. For the same reasons, the European Securities and Markets Authority ('ESMA') should create a central database containing summaries of national requirements for marketing communications and hyperlinks to the information published on the websites of competent authorities.

(2c) In order to promote good practices of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including their on-line aspects, ESMA should issue guidelines on the application of those requirements for marketing communications.

(3) Competent authorities may decide to require prior notification of marketing communications for the purpose of ex-ante verification of compliance of those communications with this Regulation and other applicable requirements, such as whether the marketing communications are identifiable as such, whether they describe risks and rewards of purchasing units or shares of a UCITS and, where a Member State allows marketing of AIFs to retail investors, of an AIF in an equally prominent manner and whether all information in marketing communications is presented in a manner that is fair, clear and not misleading. That verification should be performed within a limited timeframe. Where competent authorities require prior notification, this should not prevent them from verifying marketing communications ex-post.

(3a) Competent authorities should report to ESMA the results of those verifications, requests for amendments and any sanctions imposed on managers of collective investment undertakings. With a view to increasing awareness and transparency on the rules applicable to marketing communications, on the one hand, and ensuring investor protection, on the other hand, ESMA should on a bi-annual basis prepare and send to the European Parliament, the Council and the Commission a report on those rules and their practical application on the basis of ex-ante and ex-post verifications of marketing communications by competent authorities.

(5) To ensure equality in treatment and facilitate decision-making of AIFMs and UCITS management companies or whether to engage in cross border distribution of investment funds, it is important that fees and charges levied by competent authorities for supervision of cross-border marketing activities referred to in Directives 2009/65/EC and 2011/61/EU are proportionate to the supervisory tasks carried out and publicly disclosed, and that in order to enhance transparency those fees and charges are published on their websites. For the same reason, hyperlinks to the information published on the websites of competent authorities in relation to the fees and charges should be published on the ESMA website in order to have a central point for information. The ESMA website should also include an interactive tool enabling indicative calculations of those fees and charges levied by competent authorities.

(5a) To ensure better recovery of fees or charges and to increase transparency and clarity of the fees and charges structure, where such fees or charges are levied by the competent authorities, AIFMs and UCITS management companies should receive an invoice, an individual payment statement or a payment instruction clearly setting out the amount of fees or charges due and the arrangements for payment.

(6) Since ESMA, in accordance with Regulation (EU) No 1095/2010 of the European Parliament and of the Council[4], should monitor and assess market developments in the area of its competence, it is appropriate and necessary to enhance the knowledge of ESMA by enlarging ESMA's currently existing databases to include all AIFMs and UCITS management companies, the Member States in which they are providing services and all AIFs and UCITS which those AIFMs and UCITS management companies manage and market, as well as all the Member States in which those collective investment undertakings are marketed. For that purpose, in order to enable ESMA to maintain the central database with up-to-date information, competent authorities should transmit to ESMA information on the notifications, notification letters and information that they have received under Directives 2009/65/EC and 2011/61/EU in relation to cross border activity as well as information about any change which should be reflected in the database. In that respect, ESMA should establish a notification portal into which competent authorities should upload all documents regarding the cross-border distribution of their UCITS and AIFs.

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4 **Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (**OJ L 331, 15.12.2010, p. 84).

(7) In order to secure a level playing field between qualifying venture capital funds as defined in Article 3(b) of Regulation (EU) No 345/2013 of the European Parliament and of the Council[5], or qualifying social entrepreneurship funds as defined in Article 3(b) of Regulation (EU) No 346/2013 of the European Parliament and of the Council[6], on the one hand, and other AIFs, on the other hand, it is necessary to include into those Regulations rules on pre-marketing that are identical to the rules laid down in Directive 2011/61/EU on pre-marketing. Those rules should enable managers registered in accordance with those Regulations to target investors by testing their appetite for upcoming investment opportunities or strategies through qualifying venture capital funds and qualifying social entrepreneurship funds.

(7a) In accordance with Regulation (EU) No 1286/2014 of the European Parliament and of the Council , management companies as defined in point (b) of Article 2(1) of Directive 2009/65/EC, investment companies as referred to in Article 27 of that Directive and persons advising on, or selling, units of UCITS as referred to in Article 1(2) of that Directive are to be exempt from the obligations under Regulation (EU) No 1286/2014 until 31 December 2019. Regulation (EU) No 1286/2014 also provides that the Commission is to review that Regulation by 31 December 2018, in order to assess, inter alia, whether that transitional exemption should be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in Directive 2009/65/EC should be replaced by or considered equivalent to the key information document as laid down in Regulation (EU) No 1286/2014.

(7b) In order to allow the Commission to conduct the review in accordance with Regulation (EU) No 1286/2014 as originally provided for by the European Parliament and the Council, the deadline for that review should be prolonged by 12 months. The competent committee of the European Parliament should support the Commission's review process by organising a hearing on the topic with relevant stakeholders representing industry and consumer interests.

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5 **Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (**OJ L 115, 25.4.2013, p. 1).

6 **Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds** (OJ L 115, 25.4.2013, p. 18).

(7c) In order to avoid that investors receive two different pre-disclosure documents, namely a UCITS KIID and a PRIIPs KID, for the same investment fund while the legislative acts resulting from the Commission's review in accordance with Regulation (EU) No 1286/2014 are being adopted and implemented, the transitional exemption from the obligations under Regulation (EU) No 1286/2014 for management companies as defined in point (b) of Article 2(1) of Directive 2009/65/EC, investment companies as referred to in Article 27 of that Directive and persons advising on, or selling, units of UCITS as referred to in Article 1(2) of that Directive, should be prolonged by 24 months. Without prejudice to that prolongation, all institutions and supervisory authorities involved should endeavour to act as fast as possible to facilitate the termination of that transitional exemption.

(9) The Commission should be empowered to adopt implementing technical standards, developed by ESMA, with regard to the standard forms, templates and procedures for publication by competent authorities of the national laws, regulations and administrative provisions and their summaries on marketing requirements applicable in their territories, the levels of fees or charges for cross-border marketing activity levied by them, and, where applicable, relevant calculation methodologies. Furthermore, to improve the transmission to ESMA, implementing technical standards should also cover notifications, notification letters and information on cross-border activities that are required by Directives 2009/65/EC and 2011/61/EU. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.

(10) It is necessary to specify the information to be communicated every quarter to ESMA, in order to keep the databases of all managers and collective investment undertakings up-to-date.

(11) Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data by the competent authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council[7], and any exchange or transmission of information by ESMA should be undertaken in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council[8].

(11a) In order to enable the national competent authorities to exercise the functions attributed to them in this Regulation, Member States should vest them with all the necessary supervisory and investigative powers.

(12) Five years after the entry into force of this Regulation, the Commission should conduct an evaluation of the application of this Regulation. The evaluation should take account of market developments and assess whether the measures introduced have improved the cross-border distribution of investment funds.

(12a) In order to assess the phenomenon of reverse solicitation and demand on the own initiative of an investor, the Commission should publish a report on these issues two years after the entry into force of this Regulation specifying the extent of this form of subscription to funds, its geographical distribution, including third countries, and its impact on the passporting regime.

(13) In order to ensure legal certainty, it is necessary to synchronise the application dates of national laws, regulations and administrative provisions implementing [Directive amending Directive 2009/65/EC and Directive 2011/61/EU with regard to cross-border distribution of collective investment undertakings] and of this Regulation with regard to provisions on marketing communications and pre-marketing.

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7 **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (**OJ L 119, 4.5.2016, p. 1).

8 **Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (**OJ L 8, 12.1.2001, p. 1).

(14) Since the objectives of this Regulation, namely to enhance market efficiency while establishing the Capital Markets Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

(a) 'alternative investment fund' or 'AIF' means an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU, and includes EuVECA, EuSEF and ELTIF;

(b) 'alternative investment fund manager' or 'AIFM' means an AIFM as defined in Article 4(1)(b) of Directive 2011/61/EU and authorised in accordance with Article 6 of that Directive ;

(ba) 'EuVECA manager' means a manager of a qualifying venture capital fund as defined in point (c) of Article 3 of Regulation (EU) No 345/2013 and registered in accordance with Article 14 of that Regulation;

(bb) 'EuSEF manager' means a manager of a qualifying social entrepreneurship fund as defined in point (c) of Article 3 of Regulation (EU) No 346/2013 registered in accordance with Article 15 of that Regulation;

(c) ‘competent authority’ means competent authorities as defined in Article 2(1)(h) of Directive 2009/65/EC, Article 4(1)(f) of Directive 2011/61/EU or Article 4(1)(h) of Directive 2011/61/EU;

(d) ‘home Member State’ means the Member State in which the AIFM, the EuVECA manager, the EuSEF manager or the UCTS management company has its registered office;

(e) ‘UCITS’ means a UCITS authorised in accordance with Article 5 of Directive 2009/65/EC;

(f) ‘UCITS management company’ means a management company as defined in Article 2(1)(b) of Directive 2009/65/EC.

Article 2

Requirements for marketing communications

1. AIFMs, EuVECA managers, EuSEF managers and UCITS management companies shall ensure that all marketing communications to investors shall be identifiable as such, describe the risks and rewards of purchasing units or shares of an AIF or units of an UCITS in an equally prominent manner and that all information included in marketing communications is fair, clear and not misleading.

2. UCITS management companies shall ensure that marketing communications that contain specific information about a UCITS do not contradict or diminish the significance of the information contained in the prospectus referred to in Article 68 of Directive 2009/65/EC or the key investor information referred to in Article 78 of that Directive. UCITS management companies shall ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available. Such marketing communications shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information and shall provide hyperlinks to or web addresses for those documents.

2a. Marketing communications referred to in paragraph 2 shall specify where, how and in which language investors or potential investors can obtain information on a summary of investor rights and shall provide a hyperlink to such a summary, which shall include, as appropriate, access to Union level and national collective redress mechanism in the event of litigation.

Such marketing communications shall also contain clear information that the manager or management company referred to in paragraph 1 of this Article may decide to terminate the arrangements made for the marketing of its collective investment funds in accordance with Article 93a of Directive 2009/65/EC and Article 32a of Directive 2011/61/EU.

3. AIFMs, EuVECA managers and EuSEF managers shall ensure that marketing communications comprising an invitation to purchase units or shares of an AIF that contain specific information about an AIF do not contradict the information which needs to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, with Article 13 of Regulation 345/2013 or with Article 14 of Regulation 346/2013, or diminish its significance.

4. Paragraph 2 of this Article shall apply mutatis mutandis to AIFs which publish a prospectus in accordance with Regulation 2017/1129 of the European Parliament and the Council[9], or in accordance with national law, or apply rules on the format and content of the key investor information referred to in Article 78 of Directive 2009/65/EC.

5. By [PO: Please insert date 24 months after the date of entry into force], ESMA shall issue guidelines, and thereafter update those guidelines periodically, on the application of the requirements for marketing communications referred to in the first paragraph, taking into account on-line aspects of marketing communications.

[9] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

Article 3

Publication of national provisions concerning marketing requirements

1. Competent authorities shall publish and maintain on their websites up-to-date and complete information on the applicable national laws, regulations and administrative provisions governing marketing requirements for AIFs and UCITS, and the summaries thereof, in at least a language customary in the sphere of international finance.

2. Competent authorities shall notify to ESMA the hyperlinks to the websites of competent authorities where the information referred to in paragraph 1 is published.

Competent authorities shall notify ESMA of any change in the information provided under the first subparagraph of this paragraph without undue delay.

3. ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the publications and notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by [PO: Please insert date 18 months after the date of entry into force of this amending Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 4

ESMA central database on national provisions concerning marketing requirements

By [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish and maintain on its website a central database containing the summaries thereof as referred to in Article 3(1), and the hyperlinks to the websites of competent authorities as referred to in Article 3(2).

Article 5

Ex-ante verification of marketing communications

1. For the sole purpose of verifying compliance with this Regulation and with national provisions concerning marketing requirements, competent authorities may require prior notification of marketing communications which the management companies intend to use directly or indirectly in their dealings with investors.

   The requirement for prior notification referred to in the first subparagraph shall not constitute a prior condition for the marketing of units of UCITS and shall not be part of the notification procedure referred to in Article 93 of Directive 2009/65/EC.

   In cases where competent authorities require prior notification of marketing communications referred to in the first subparagraph for the purpose of ex-ante verification, they shall, within 10 working days, starting on the working day following that of the receipt of marketing communications, inform the UCITS management company of any request to amend its marketing communications.

   The prior notification referred to in the first subparagraph may be required on a systematic basis or in accordance with any other verification practices and is without prejudice to further supervisory powers to verify marketing communications ex-post.

2. Competent authorities that require prior notification of marketing communications shall establish, apply, and publish on their websites, procedures for the prior notification of marketing communications. The internal rules and procedures shall ensure transparent and non-discriminatory treatment of all UCITS, regardless of the Member States in which the UCITS are authorised.

3. Where AIFMs, EuVECA managers or EuSEF managers market to retail investors units or shares of their AIFs, paragraphs 1 and 2 shall apply mutatis mutandis to those AIFMs, EuVECA managers or EuSEF managers.

Article 5a

ESMA report on marketing communications

1. Competent authorities shall, by 31 March of every second year starting from [PO: Please insert date 24 months after the date of entry into force], report the following information to ESMA :

(a) the number of requests for amendments of marketing communications made on the basis of ex-ante verification, where applicable;

(b) the number of requests for amendments and decisions taken on the basis of ex-post checks, clearly distinguishing the most frequent breaches, including a description and the nature of those breaches;

(ba) a description of the most frequent breaches of the requirements referred to in Article 2;

(c) one concrete example for each of the breaches referred to in point (a).

2. By 30 June of every second year starting from [PO: Please insert date 24 months after the date of entry into force], ESMA shall submit a report to the European Parliament, the Council and the Commission which presents an overview of marketing requirements in all Member States referred to in Article 3, paragraph 1 and contains an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received in accordance with paragraph 1.

Article 6

Common principles concerning fees or charges

1. In cases where fees or charges are levied by competent authorities in carrying out their duties in relation to the crossborder activity of AIFMs, EuVECA managers, EuSEF managers and UCITS management companies, fees or charges shall be consistent with the overall cost relating to the performance of the functions of the competent authority.

2. Competent authorities shall send an invoice, an individual payment statement or a payment instruction to the address indicated in [second subparagraph of Article 93 (1) of Directive 2009/65/EC or point (i) of Annex IV of Directive 2011/61/EU] for the fees or charges referred to in paragraph 1, the means of payment and the date when payment is due.

Article 7

Publication of national provisions concerning fees and charges

1. By [PO: Please insert date 6 months after the date of entry into force], competent authorities shall publish and maintain up to date information on their websites listing the fees or charges referred to in Article 6(1), or, where applicable, the calculation methodologies for those fees or charges, in at least a language customary in the sphere of international finance.

2. Competent authorities shall notify to ESMA the hyperlinks to the websites of competent authorities where the information referred to in paragraph 1 is published.

4. ESMA shall develop draft implementing technical standards to determine the standard forms, templates and procedures for the publications and notifications under this Article.

ESMA shall submit those draft implementing standards to the Commission by [PO: Please insert date 18 months after the date of entry into force].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 8

ESMA publication on fees and charges

1. By [PO: Please insert date 30 months after the date of entry into force] ESMA shall publish and maintain on its website hyperlinks to the websites of competent authorities as referred to in Article 7(2).

2. By ... [PO: Please insert date 30 months after the date of entry into force of this amending Regulation], ESMA shall develop and make available on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance that provides an indicative calculation of the fees and charges referred to in Article 6(1) . That tool shall be kept up to date.

Article 10

ESMA central database on cross-border marketing of AIFs and UCITS

1. By [PO: Please insert date 30 months after the date of entry into force], ESMA shall publish on its website a central database for the cross-border marketing of AIFs and UCITS, publicly accessible in a language customary in the sphere of international finance, listing :

(a) all AIFs that are marketed in another Member State, their AIFM, EUSEF manager or EUVECA manager, and a list of Member States in which they are marketed; and

(b) all UCITS that are marketed in another Member State, their UCITS management company and a list of the Member States in which they are marketed.

ESMA shall keep that central database up to date.

2. The obligations in this Article and in Article 11 related to the database referred to in paragraph 1 of this Article are without prejudice to the obligations related to the list referred to in the second subparagraph of Article 6(1) of Directive 2009/65/EC, to the central public register referred to in the second subparagraph of Article 7(5) of Directive 2011/61/EU, to the central database referred to in Article 17 of Regulation (EU) No 345/2013 and to the central database referred to in Article 18 of Regulation (EU) No 346/2013.

Article 11

Standardisation of notifications to ESMA

1. On a quarterly basis, competent authorities of home Member States shall communicate to ESMA the information which is necessary for the creation and maintenance of the central database referred to in Article 10 of this Regulation regarding any notification, notification letter or information referred to in Article 93(1), Article 93a(2) of Directive 2009/65/EC and in Article 31(2), Article 32(2), Article 32a(2) and of Directive 2011/61/EU, and any changes to that information, if such changes would result in a change to the information in that central database.

2. ESMA shall establish a notification portal into which each competent authority shall upload all documents referred to in paragraph 1.

3. ESMA shall develop draft implementing technical standards to specify the information to be communicated, as well as the forms, templates and procedures for communication of the information by the competent authorities for the purposes of paragraph 1 and the technical arrangements necessary for the functioning of the notification portal referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by [PO: Please insert date 18 months after the date of entry into force of this Regulation].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 11a

Powers of competent authorities

1. Competent authorities shall have all supervisory and investigatory powers that are necessary for the exercise of their functions pursuant to this Regulation.

2. The powers conferred on competent authorities in accordance with Directive 2009/65/EC, Directive 2011/61/EU, Regulation (EU) No 345/2013 and Regulation (EU) No 346/2013, Regulation (EU) 2015/760 including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2 of this Regulation.

Article 12

Amendments to Regulation (EU) No 345/2013 on European venture capital funds

Regulation (EU) No 345/2013 is amended as follows:

(1) in Article 3, the following point (o) is added:

‘(o) ‘pre-marketing’ means provision of information or communication, direct or indirect, on investment strategies or investment ideas by a manager of a qualifying venture capital fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying venture capital fund which is not yet established, or in a qualifying venture capital fund which is established, but not yet notified for marketing in accordance with Article 15, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the investor to invest in the units or shares of that qualifying venture capital fund’;

(2) the following Article 4a is inserted:

‘Article 4a

1. A Manager of a qualifying venture capital fund may engage in pre-marketing in the Union, except where the information presented to potential investors:

(c) enables investors to commit to acquiring units or shares of a particular qualifying venture capital fund;

(d) amounts to subscription forms or similar documents whether in a draft or a final form ;

(da) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying venture capital fund in a final form.

Where a draft prospectus or offering documents are provided, such documents shall not contain sufficient information to allow investors to take an investment decision and shall clearly state that:

(a) the document does not constitute an offer or an invitation to subscribe to units or shares of a qualifying venture capital fund;

(b) the information presented in those documents should not be relied upon because it is incomplete and may be subject to change.

2. Competent authorities shall not require managers of qualifying venture capital funds to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before they engage in pre-marketing.

3. Managers of qualifying venture capital funds shall ensure that investors do not acquire units or shares in a qualifying venture capital fund through pre-marketing activities and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying venture capital fund under marketing permitted under Article 15.

Any subscription by professional investors, within 18 months of the managers of qualifying venture capital funds beginning pre-marketing, to units or shares of a qualifying venture capital fund referred to in the information provided in the context of pre-marketing, or of a qualifying venture capital fund established as a result of the pre-marketing shall be considered the result of marketing and shall be subject to the applicable notification procedures referred to in Article 15.

3a. Member States shall ensure that a manager of a qualifying venture capital fund sends, within two weeks of it beginning pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall contain references to the Member States and the periods of time in which the pre-marketing took place, a brief description of the pre-marketing including the information on the investment strategies presented and, where relevant, a list of the qualifying venture capital funds which were subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying venture capital fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying venture capital fund was engaged in pre-marketing. The competent authorities of the Member State in which premarketing took place may request the competent authorities of the home Member State of the manager of a qualifying venture capital fund to provide further information on the pre-marketing that took place on its territory.

3b. A third party shall only engage in pre-marketing on behalf of an authorised manager of qualifying venture capital fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to all conditions set out in this Article.

4. Managers of qualifying venture capital funds shall ensure that pre-marketing is adequately documented.'

Article 13

Amendments to Regulation (EU) No 346/2013 on European social entrepreneurship funds

Regulation (EU) No 346/2013 is amended as follows:

(1) in Article 3, the following point (o) is added:

'(o) 'pre-marketing' means provision of information or communication, direct or indirect, on investment strategies or investment ideas by a manager of a qualifying social entrepreneurship fund, or on its behalf, to potential investors domiciled or with a registered office in the Union in order to test their interest in a qualifying social entrepreneurship fund which is not yet established, or in a qualifying social entrepreneurship fund which is established, but not yet notified for marketing in accordance with Article 16, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the investor to invest in the units or shares of that qualifying social entrepreneurship fund;'

(2) the following Article 4a is inserted:

'Article 4a

1. A Manager of a qualifying social entrepreneurship fund may engage in pre-marketing in the Union, except where the information presented to potential investors:

(c) enables investors to commit to acquiring units or shares of a particular qualifying social entrepreneurship fund;

(d) amounts to subscription forms or similar documents whether in a draft or a final form ;

(da) amounts to constitutional documents, a prospectus or offering documents of a not-yet-established qualifying social entrepreneurship fund in a final form.

Where a draft prospectus or offering documents are provided, such documents shall not contain sufficient information to allow investors to take an investment decision and shall clearly state that:

(a) the document does not constitute an offer or an invitation to subscribe to units or shares of a qualifying social entrepreneurship fund;

(b) the information presented in those documents should not be relied upon because it is incomplete and may be subject to change.

1a. Competent authorities shall not require managers of qualifying social entrepreneurship funds to notify the competent authorities of the content or of the addressees of pre-marketing, or to fulfil any conditions or requirements other than those set out in this Article, before they engage in pre-marketing.

3. Managers of qualifying social entrepreneurship funds shall ensure that investors do not acquire units or shares in a qualifying social entrepreneurship fund through pre-marketing and that investors contacted as part of pre-marketing may only acquire units or shares in that qualifying social entrepreneurship fund under marketing permitted under Article 16.

Any subscription by professional investors, within 18 months of the manager of a qualifying social entrepreneurship fund beginning pre-marketing, to units or shares of a qualifying social entrepreneurship fund referred to in the information provided in the context of pre-marketing, or of a qualifying social entrepreneurship fund established as a result of the pre-marketing shall be considered the result of marketing and shall be subject to the applicable notification procedures referred to in Article 16.

3a. Member States shall ensure that a manager of a qualifying social entrepreneurship fund sends, within two weeks of it beginning pre-marketing, an informal letter, in paper form or by electronic means, to the competent authorities of its home Member State. That letter shall contain references to the Member States and the periods of time in which the pre-marketing took place, a brief description of the pre-marketing including the information on the investment strategies presented and, where relevant, a list of the qualifying social entrepreneurship funds which were subject of pre-marketing. The competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund shall promptly inform the competent authorities of the Member States in which the manager of a qualifying social entrepreneurship fund was engaged in pre-marketing. The competent authorities of the Member State in which premarketing took place may request the competent authorities of the home Member State of the manager of a qualifying social entrepreneurship fund to provide further information on the pre-marketing that took place on its territory.

3b. A third party shall only engage in pre-marketing on behalf of an authorised manager of a qualifying social entrepreneurship fund where it is authorised as an investment firm in accordance with Directive 2014/65/EU, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an alternative investment fund manager in accordance with Directive 2011/61/EU, or acts as a tied agent in accordance with Directive 2014/65/EU. Such a third party shall be subject to all conditions set out in this Article.

4. Managers of qualifying social entrepreneurship funds shall ensure that pre-marketing is adequately documented.'

Article 13a

Amendment to Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

Regulation (EU) No 1286/2014 is amended as follows:

(1) in Article 32(1), "31 December 2019" is replaced by "31 December 2021";

(2) in Article 33(1), "31 December 2018" is replaced by "31 December 2019";

(3) in Article 33(2), "31 December 2018" is replaced by "31 December 2019";

(4) in Article 33(4), "31 December 2018" is replaced by "31 December 2019".

Article 14

Evaluation

By ... [PO: Please insert date 60 months after the date of entry into force of this amending Regulation] the Commission shall, on the basis of a public consultation and in light of discussions with ESMA and competent authorities, conduct an evaluation of the application of this Regulation.

By... [PO: Please insert date 24 months after the date of entry into force of this amending Regulation] the Commission shall, on the basis of a consultation of competent authorities, ESMA and other relevant stakeholders, submit a report to the European Parliament and to the Council on the phenomenon of reverse solicitation and demand on the own initiative of an investor, specifying the extent of this form of subscription to funds, its geographical distribution, including third countries, and its impact on the passport regime. This review shall also examine whether the notification portal established in accordance with Article 11(2) should be developed so that all transfers of such documents between competent authorities take place through it.

Article 15

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from [PO: Please insert the twentieth day following that of its publication in the Official Journal of the European Union], except for paragraphs 1 to 4 of Article 2, paragraph 1 and 2 of Article 3, Article 12 and Article 13, which shall apply from ... [PO: Please insert date 24 months after the date of entry into force of this amending Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	For the Council
The President	The President