

CIRCULAR 55

**UCITS authorized in another Member State
intending to market units/shares in Greece**



Athens, June 2016



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Directorate of Capital Market Intermediaries

Information on the relevant laws, regulations and administrative provisions which are specifically relevant to the arrangements made for the marketing of UCITS in Greece

According to Article 93 (1) of L. 4099/2012, the Hellenic Capital Market Commission (HCMC) is designated as the competent authority with responsibility for the authorization and supervision of UCITS.

According to Article 91 of Directive 2009/65/EC the Member States shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the field governed by this Directive and which are specifically relevant to the arrangements made for the marketing of units/shares of UCITS, established in another Member State within their territories, is easily accessible from a distance and by electronic means.

The definition of marketing of units/shares is provided for in Article 2 par. 3 of Decision of the Board of Directors of HCMC 16/633/20.12.2012:

“Marketing units/shares of UCITS” means any stage of the procedure of purchasing units/shares of UCITS, according to article 7 of L. 4099/2012. This procedure includes the communication, publicity, promotion and any other action (including provision of investment advice) aiming at the purchasing of units/shares of UCITS.

This document provides information regarding the marketing of UCITS in Greece in relation to the following categories

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1. Regulatory Framework

The Regulatory Framework applicable to Undertakings for collective investment that are governed by the law of another Member State of the European Economic Area and that fulfil the conditions set out in Directive 2009/65/EC, consists of:

- i. Law 4099/2012 (Government Gazette A'250/20.12.2012), *Undertakings for collective investment in transferable securities and mutual funds management companies* (Adaptation of Greek legislation to the Directive 2009/65/EC).
- ii. Commission Regulation (EU) 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic

- communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.
- iii. Commission Regulation (EU) 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.
 - iv. Decision of the Board of Directors of HCMC 15/633/20.12.2012 (Government Gazette B'12/10.1.2013) *Organizational requirements for the operation of Management Companies, conflict of interest, conduct of business, risk management and particulars of the standard agreement between a depositary and a management company.*
 - v. Decision of the Board of Directors of HCMC 16/633/20.12.2012 (Government Gazette B'12/10.1.2013), *UCITS mergers - Master feeder structure – Notification procedure of UCITS marketing their units in member states other than those in which they are established.*
 - vi. Decision of the Board of Directors of HCMC 1/756/18.5.2016 (Government Gazette B'1781/17.06.2016) *Διάθεση στην Ελλάδα μεριδίων/μετοχών ΟΣΕΚΑ άλλου κράτους μέλους σύμφωνα με το άρθρο 89 του ν.4099/2012.*
 - vii. Ministerial Decision 0000532/2016 (Government Gazette B'999/11.4.2016), *Determination of the Capital Market Commission resources.*

2. Notification procedure of UCITS authorized in another Member State intending to market units/shares in Greece

Regulatory provisions

Article 90 of L. 4099/2012.

Any UCITS authorized in another Member State intending to market units/shares in Greece must be previously notified to the HCMC by the competent authority of UCITS home member state.

Competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in the first and the second subparagraph of Article 93(3) of Directive 2009/65/EC to the HCMC in case the UCITS intends to market its units/shares, by e-mail.

The complete documentation should contain the following:

1. The notification letter containing information about the proposed arrangements for marketing shares or units/shares in Greece, including details of each category of units/shares, where such is the case. The notification letter must be completed according to ANNEX 1.
2. The latest version of the Key Investor Information Document (KIID), translated into Greek.
3. The latest version of the fund rules or instruments of incorporation, translated in Greek or English
4. The latest version of the prospectus, translated in Greek or English
5. The latest published annual report and any subsequent half-yearly report, translated in Greek or English.
6. The attestation from the supervisory authority.
7. Proof that the HCMC filing fee has been paid.

In case the share classes are not registered as such, the UCITS should, nevertheless, specify in the notification letter which classes it intends to offer in Greece.

The HCMC informs the competent authority of the UCITS home member state within five business days whether the file is complete, and the UCITS may begin the marketing of its units/shares in Greece, or for any insufficiency of the file.

3. Updating the Notification file

Regulatory provisions

Article 26 of Decision of the Board of Directors of HCMC 16/633/20.12.2012.

A UCITS must give written notice to the HCMC in the event of a change in the information regarding the notification file, before that change takes place. Any amendments should be addressed to the HCMC at the relevant for updated documents e-mail address: UCITS-update@cmc.gov.gr.

4. Fees payable to HCMC

Regulatory provisions

Articles 11 (3, 7) and 21 of the Ministerial Decision 0000532/2016 (Government Gazette B'999/11.4.2016).

UCITS authorized by the competent supervisory authority of another Member State, regarding their intention to market units/shares in Greece are subject to a set filing fee, as provided in Article 11 para 3 and Article 21 para 1 of the Ministerial Decision 0000532/2016. The amount per compartment or per UCITS with no compartments is €1,000.00 plus a 2.4% duty stamp. The fee is payable on the day the notification application is filed with the HCMC.

UCITS of which units/shares are marketed in Greece on June 30th of each year are subject to a set annual fee, as provided in Article 11 para 7.i and Article 21 para 1 of the Ministerial Decision 0000532/2016. The amount per compartment or per UCITS with no compartments is €1,000.00 plus a 2.4% duty stamp. The fee is payable in July of each year.

The Management Company of the UCITS is responsible for paying the above-mentioned fees to the HCMC. All fees should be deposited to the following HCMC bank account held at the Bank of Greece:

HELLENIC CAPITAL MARKET COMMISSION
1 Kolokotroni & Stadiou Str.
105 62 Athens
GREECE
SWIFT BIC: BNGRGRAA
IBAN: GR590100024000000000262154

5. Advertising

Regulatory provisions

Articles 79, 89 of L. 4099/2012.

Article 46 of Decision of the Board of Directors of HCMC 15/633/20.12.2012.

- a. A UCITS may be advertised in Greece provided that it complies with provisions of Article 79 relating to the advertising of UCITS [Article 89 (9)].
- b. All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in Article 80. It shall indicate that a prospectus exists and that the key investor information referred to in Article 80 is available. It shall specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.
- c. It is prohibited that the UCITS communicate directly (e.g. via telephone, electronic communications, fax etc.) with any investor who has declared their opposition to this kind of communication.
- d. Excluding the Key Investor Information Document (KIID), any other information or brochure of the UCITS should include a statement in capital letters at the bottom of the first and last page of a multi-page form that “*UCITS HAVE NO GUARANTEED RETURN AND PAST PERFORMANCE DOES NOT GUARANTEE THE FUTURE ONES*”.
- e. All publications of the UCITS and the Management Company and any information or promotional material must be submitted, in the form available to investors, without delay to HCMC [Article 79 (4)].
- f. As provided by Article 79 (5), if requested by the HCMC, the Management Company is obliged to issue at its own expense clarifications or corrections to previous publications in case previous publications might prove misleading or misinforming to investors.
- g. Upon request of an investor, the management company shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.
- h. With respect to any reference to the UCITS performance the following shall apply:
 - i. The UCITS performance is calculated in accordance with Article 16 of Regulation (EU) 583/2010.
 - ii. UCITS may advertise the percentage yield of the last twelve months ending on the last day of the preceding calendar month, cumulative returns integer multiples of the year (two years, three years, etc.) and in addition, their performance for the period from 1st January of each year until the last day of the previous month from the date of issuance of the advertising form or notice.
 - iii. UCITS in operation for less than twelve months should not advertise their performance.
 - iv. UCITS which have changed category and UCITS whose investment objective and investment policy have undergone substantial changes should not advertise the cumulative performance for the period in which they were part of a different class or had a different investment objective and investment policy. These UCITS will still advertise their past annual returns, as provided for in Article 17 of Regulation (EU) 583/2010, labelling that these performances were achieved under different conditions which are no longer valid.
- i. The UCITS defines clearly and within the limits laid down in its rules or articles of incorporation the procurement policy the unit-holders are subject to. The UCITS in both the subscription and redemption forms indicates the exact commission rate with which the unit-holder is charged when subscribing or redeeming its units/shares.

6. Functions and Facilities

Regulatory provisions

Articles 7 and 89 of L. 4099/2012.

Article 2 of Decision of the Board of Directors of HCMC 1/756/18.5.2016.

The UCITS authorized in another Member State intending to market units/shares in Greece appoints a Paying Agent and a Distributor that will be responsible for the marketing. The appointment shall be evidenced by written contract.

6.1. Paying Agent

The Paying Agent referred to in point 2 of Part B of the notification letter is the intermediary responsible for providing the financial services of a UCITS. The Paying Agent is a credit institution domiciled either in Greece or in another country with a branch located in Greece. The Paying Agent is responsible for fulfilling the monetary elements of the subscription and redemption orders and other transactions that are a necessary complement to the marketing activities. In particular, the Paying Agent has to provide at least the following financial services:

1. receiving the cash equivalent funds for subscriptions and making payments for redemptions,
2. making coupon and dividend payments, and
3. dealing with any settlement differences arising when switching between compartments.

A UCITS may appoint more than one Paying Agents.

6.2. Distributor

The Distributors referred to in point 2 of Part B of the notification letter is the intermediary responsible for providing the marketing services. According to Article 7 (4) of L. 4099/2012, Distributors may take the form of a credit institution, management company, insurance company or investment firm. The aforementioned entities are domiciled either in Greece or in another country with a branch located in Greece. A Distributor has to provide at least the following services:

1. processing subscription forms according to Article 7 of L. 4099/2012 and redemption forms to the Paying Agent. It is clarified that the procedure of processing subscription requests laid down in Article 7 of L. 4099/2012 applies also in the case of marketing in Greece of foreign UCITS under the passport regime of Directive 2009/65/EC.
2. supplying at least the following information to unit-holders:
 - i. the latest version of the Key Investor Information Document (KIID), translated in the Greek language,
 - ii. the latest version of the fund rules or instruments of incorporation, translated, in Greek or English
 - iii. the latest version of the prospectus, translated, in Greek or English
 - iv. the latest published annual report and any subsequent semi-annual report, translated, in Greek or English
 - v. the Net Asset Value (NAV) of the UCITS or the net asset value of compartments and share classes marketed in Greece. This information may be provided on a website.

Distributors must provide the necessary information to investors on a durable medium before the latter make their intended subscription.

The Distributor reports to the HCMC the statistical data of the UCITS marketed in Greece, as it is displayed in Annex 2. In particular, the Distributor provides information regarding the Management Company, the UCITS, the Compartment, ISIN of the Share Class, the number of Greek unit-holders, the number of outstanding Units/Shares that Distributor's clients hold, their Net Asset Value (NAV) and the NAV publication link. The above data will be submitted to the e-mail address info@cmc.gov.gr within the first 10 business days of each calendar quarter and will refer to the data of the last day of the previous calendar quarter.

A UCITS may appoint more than one Distributors.

7. Termination of marketing in Greece

Regulatory provisions

Article 3 of Decision of the Board of Directors of HCMC 1/756/18.05.2016.

In general, an active UCITS may request the deregistration from the HCMC list only when the number of the unit-holders is less than or equal to one hundred (100), as this is calculated per compartment with all related share classes or per UCITS with no compartments with all related share classes in Greece.

The Management Company is required to provide, free of charge, the unit-holders with the following options:

- a) to redeem their units/shares, or
- b) to exchange them with unit/shares of other UCITS or other compartments of the same UCITS marketed in Greece by the same Management Company.

A UCITS that decides to terminate the marketing of its units/shares in Greece has to follow the procedure below:

The UCITS submits to the HCMC a file in digital form containing the following items:

- i. a request for termination of marketing in Greece including the names of the UCITS authorized in another Member State for which the request is applied and mentioning the number of current unit-holders,
- ii. a draft announcement informing the unit-holders about
 - a. the date of termination, with a time limit of at least three (3) months from the date of the notice,
 - b. the consequences of the termination regarding the services provided by the Paying Agent and Distributors to the unit-holders,
 - c. the options that are provided to unit-holders, free of charge, regarding their units/shares, namely
 - a) to redeem their units/shares, or
 - b) to exchange them with unit/shares of other UCITS or other compartments of the same UCITS marketed in Greece by the same Management Company.
 - d. the contact details of persons who may provide information and services to unit-holders after the termination of marketing in case they decide not to redeem or exchange their unit/shares,
 - e. the contact details of the person or entity in Greece from which unit-holders, who choose not to redeem or exchange their unit/shares, could obtain information on the redemption or exchange of units/shares, any payments, as well as any updates provided by the UCITS to the unit-holders, for a period of at least one (1) year after the date of the termination of marketing in Greece.

The HCMC may object to the content of the draft announcement within ten (10) working days.

The procedure above does not apply when a foreign UCITS ceases to exist because of a liquidation or restructuring. In these cases, the UCITS must submit an update of the draft announcement to the HCMC requesting its deregistration from HCMC's list of UCITS authorized in another Member State.

8. Sanctions

Regulatory provisions

Articles 93 (1) and 100 of L. 4099/2012.

Articles 11 (3, 7) and 21 of the Ministerial Decision 0000532/2016 (Government Gazette B'999/11.4.2016).

According to Article 93 (1) of L. 4099/2012, the HCMC is the competent authority for the supervision of any regulatory provisions concerning the marketing in Greece of units/shares of UCITS or UCI authorized in another country.

According to Article 100 of L. 4099/2012, the HCMC has the authority to take measures against UCITS authorized in another Member State and marketing their units/shares in Greece in case they violate the regulatory provisions set out in Articles 89 - 92 of L. 4099/2012 and Articles 11 and 21 of the Ministerial Decision 0000532/2016.

The HCMC immediately notifies the competent authority of home Member State of the UCITS Management Company about any suspension of issuing, redemption or any other sanction imposed on the Management Company.

ANNEX 1

NOTIFICATION LETTER

(Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p.16).

NOTIFICATION OF INTENTION TO MARKET UNITS OF UCITS

IN _____

(the host Member State)

PART A

Name of the UCITS: _____

UCITS home Member State:

Legal form of the UCITS (please tick appropriate one box):

common fund

unit trust

investment company

Does the UCITS have compartments? Yes/No

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of the share class(es) to be marketed in the host Member State ⁽¹⁾	Duration ⁽²⁾	Code numbers ⁽³⁾

(1) If the UCITS intends to market only certain share classes, it should list only those classes.

(2) If applicable

(3) If applicable (e.g. ISIN)

Name of the management company/self-managed investment company:

Management company's home Member State: _____

Address and registered office/domicile if different from address:

Details of management company's website: _____

Details of contact person at the management company

Name/Position: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

Duration of the company, if applicable: _____

Scope of activities of the management company in the UCITS home Member State:

Additional information about the UCITS (if necessary):

Attachments:

(1) The latest version of the fund rules or instruments of incorporation, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

(2) The latest version of the prospectus, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

(3) The latest version of the key investor information, translated if necessary in accordance with Article 94(1)(b) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

(4) The latest published annual report and any subsequent half-yearly report, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

Note:

The latest versions of the required documents listed above must be attached to this letter for onward transmission by the competent authorities of the UCITS home Member State, even if copies have previously been provided to that authority. If any of the documents have previously been sent to the competent authorities of the UCITS host Member State and remain valid, the notification letter may refer to that fact.

Indicate where the latest electronic copies of the attachments can be obtained in future:

PART B

The following information is provided in conform with the national laws and regulations of Greece in relation to the marketing of units of UCITS in Greece.

1. Arrangements made for marketing of units of UCITS in Greece

Units of the UCITS/UCITS compartments will be marketed by:

- the management company that manages the UCITS
- any other management company authorised under Directive 2009/65/EC
- credit institutions
- authorised investment firms or advisers
- other bodies

(1) _____

(2) _____

(3) _____

2. Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC:

A. Details of Paying Agent:

Name: _____

Legal form: _____

Registered office: _____

Address _____ for _____ correspondence _____ (if _____ different):

Details of contact person (name, position, telephone number, fax, e-mail):

B. Details of Distributor from whom investors may obtain information and documents:

Name: _____

Registered office: _____

Address _____ for _____ correspondence _____ (if _____ different):

Details of contact person (name, position, telephone number, fax, e-mail):

Manner in which the issue, sale, repurchase or redemption price of units of UCITS will be made public:

C. Details of Legal Representative in Greece (if any):

Name: _____

Registered office: _____

Address _____ for _____ correspondence _____ (if _____ different):

Details of contact person (name, position, telephone number, fax, e-mail):

3. Other information required by the competent authorities of the host Member State in accordance with Article 91 (3) of Directive 2009/65/EC

Include (if required by the UCITS host Member State):

- details of any additional information to be disclosed to unit-holders or their agents
- in case a UCITS makes use of any exemptions from rules or requirements applicable in the UCITS host Member State in relation to marketing arrangements for the UCITS, a specific share class or any category of investors, details of the use made of such exemptions:

Evidence of payment due to the competent authorities of the host Member State:

PART C

Confirmation by the UCITS

We hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in the Directive 2009/65/EC. The text of each document is the same as that previously submitted to the competent authorities of the home Member State, or is a translation that faithfully reflects that text.

(The notification letter shall be signed by an authorised signatory of the UCITS or a third person empowered by a written mandate to act on behalf of the notifying UCITS, in a manner which the competent authorities of the UCITS home Member State accept for certification of documents. The signatory shall state his/her full name and capacity and shall ensure the confirmation is dated.)

