



**AMF POSITION-RECOMMENDATION
DOC-2011-24**

GUIDE TO DRAFTING MARKETING COMMUNICATIONS AND DISTRIBUTING COLLECTIVE INVESTMENTS AND SOFICA FUNDS¹

Background regulations: Articles L. 533-12, L. 533-22-2-1 and L. 541-8-1 of the Monetary and Financial Code, Articles 325-12, 411-126 and 421-25 of the AMF General Regulation and Article 4 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019.

This guide does not aim at compiling all the applicable rules, positions and recommendations for creating marketing communications² for collective investments. It is the duty of asset management companies, other investment services providers, financial investment advisors and more generally distributors of collective investments to identify these rules in the applicable regulations and to make sure that they are being complied with.

A few years ago, the Autorité des Marchés Financiers (AMF) initiated a process to identify the practices governing the drafting of marketing communications for collective investments, with the aim of refocusing its action on monitoring marketing.

The AMF also complies with the ESMA guidelines on marketing communications under the Regulation on the cross-border distribution of collective investment undertakings, published on 2 August 2021 (ESMA34-45-1272),³ which clarifies the implementation of the requirements for marketing communications referred to in Article 4(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating the cross-border distribution of collective investment undertakings.

In this context, this guide aims to specify how to interpret the regulations for all collective investments marketed in France (UCITS, AIFs,⁴ etc.), whether governed by French or foreign law and whether the documents are drafted by asset management companies,⁵ other investment services providers, financial investment advisors or any other distributor (the “distributor(s)”).

¹ Qualification as an AIF to be reviewed on a case-by-case basis, in accordance with the criteria defined in Article L. 214-24, I of the Monetary and Financial Code and specified in AMF Position DOC-2013-16.

² This term should be understood as referring also to the promotional communications mentioned in Articles L. 533-12, L. 533-22-2-1 and L. 541-8-1 of the Monetary and Financial Code and Articles 411-126 and 421-25 of the AMF General Regulation.

³ <https://www.amf-france.org/fr/actualites-publications/actualites/communications-publicitaires-au-titre-du-reglement-sur-la-distribution-transfrontaliere-des>

⁴ Including the AIFs referred to in the last paragraph of II of Article L. 214-24 and “other AIFs” referred to in points 2° and 3° and the last paragraph of III of the same Article.

⁵ For the purposes of this Position-Recommendation, the term “asset management company” means:

(a) UCITS’ French asset management companies, UCITS’ European management companies and UCITS that have not designated a asset management company or asset management company;

It should be noted that when distributing collective investments is accompanied with providing an investment service, the rules applicable to information, including marketing information, addressed to clients by distributors are set out in Article 44 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and Article 325-12 of the AMF General Regulation.

In addition to these rules, this guide provides further details, notably on the clear, accurate⁶ and non-misleading nature of marketing communications for collective investments marketed in France, in accordance with Articles L. 533-12 and L. 541-8-1 of the Monetary and Financial Code.

Specific points pertaining to the marketing of SOFICAs (companies for the financing of the film and audio-visual industry), which are also covered by the positions and recommendations in this guide, are also presented. Accordingly, this guide lists all the encountered practices that are considered incompatible with the regulations and those that contribute to improving the quality of information.⁷

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(b) French asset management companies, European asset management companies or third-country managers of AIFs referred to in Article 316-1 of the AMF General Regulation and legal entities managing “other AIFs” referred to in point 3° of III of Article L. 214-24 of the Monetary and Financial Code, including where the asset management company, the management company or legal entity managing the AIF has chosen not to submit them to the rules of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers;

(c) managers of European venture capital funds falling under Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds;

(d) managers of European social entrepreneurship funds falling under Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

⁶ This term should be understood as referring also to the correctness of the information as mentioned in Articles 411-126 and 421-25 of the AMF General Regulation and Article 4 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019.

⁷ This guide is updated on a regular basis.

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1. TYPES OF MARKETING COMMUNICATIONS

For the purposes of this document, “marketing communications” shall be understood as meaning any information of a promotional nature addressed directly to potential or existing investors, or likely to be passed on by distributors to their potential or existing clients, either in writing or verbally.

Examples of documents that may be considered as marketing communications for the purposes of this guide include the following:

- all marketing messages relating to a UCITS or an AIF, regardless of the medium used, including paper printed documents or information made available electronically, press articles, press releases, interviews, advertisements, documents made available on the internet, web pages, video presentations, live presentations, radio messages or fact sheets;
- messages broadcasted on any social media platform, where such posts refer to characteristics of a UCITS or an AIF, including the name of the UCITS or the AIF. For the purposes of this guide, the term “social media” means any technology that enables social interaction and the creation of collaborative content online, such as

- blogs and social networks (Twitter, LinkedIn, Facebook, Instagram, TikTok, YouTube, Discord, etc.) or discussion forums, accessible by any means (including electronically, e.g. by computer or mobile applications);
- marketing communications addressed individually to investors or potential investors, and documents or presentations made available to the public by an asset management company or distributor on its website or at any other location (registered office of the asset management company or distributor, etc.);
- marketing communications about a UCITS or an AIF addressed to investors or potential investors located in France;
- communications by a third party used by an asset management company or distributor for marketing purposes.

2. A COLLECTIVE INVESTMENT'S SITUATION BEFORE IT IS GRANTED APPROVAL (OR A VISA⁸) AND/OR ITS MARKETING AUTHORISATION

Pursuant to Articles 411-9, 411-14, 422-10, 422-15, 422-84 and 422-126 of the AMF General Regulation, a collective investment may be marketed only after it is granted, as the case may be, regulatory approval, a visa⁹ and/or a marketing authorisation (where applicable, by filing a marketing notification in France in accordance with Articles L. 214-2-2 and L. 214-24-1 of the Monetary and Financial Code).

Position

Any reference to a collective investment in a press article, advertisement, press release on the internet or on any other medium may be made only after the AMF has granted approval, a visa¹⁰ or its marketing authorisation or, where applicable, after the asset management company has been notified of the authorisation to market the collective investment in France.

Publishing an article in the print media or in any other medium that might prejudice the outcome of the approval process for a collective investment (or its visa or marketing authorisation) is a breach of the regulations.

3. USING THE NAME OF THE REGULATOR IN MARKETING COMMUNICATIONS

Position

Marketing communications shall refrain from using the name of the AMF in such a way that would indicate or suggest that the AMF endorses or approves the marketing of units or shares of the collective investment.

In particular, the AMF's approval, visa or marketing authorisation may be mentioned in marketing communications but should not be used as a selling point.

For instance, the advertising slogan "Product complying with AMF management requirements" should not be used.

4. GENERAL PRINCIPLES FOR DRAFTING MARKETING COMMUNICATIONS

⁹ Or the approval of its prospectus.

¹⁰ Or the approval of its prospectus.

The requirement to provide clear, accurate and non-misleading information, including marketing communications, applies to the following, among others:

- asset management companies, pursuant to the second paragraph of Article L. 533-22-2-1 of the Monetary and Financial Code and to Article 4 of Regulation (EU) 2019/1156 of the European Parliament and the Council of 20 June 2019,
- investment services providers, including asset management companies when they are authorised to provide investment services or when they distribute units or shares in UCITS or AIFs in France on the terms set out in Articles 411-129 and 421-26 of the AMF General Regulation,¹¹ pursuant to Article L. 533-12, I of the Monetary and Financial Code and Article 44 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016,
- financial investment advisors, pursuant to Article L. 541-8-1, 8° of the Monetary and Financial Code and Article 325-12 of the AMF General Regulation,
- more generally, any person distributing UCITS or AIFs under the terms of Articles 411-126 and 421-25 of the AMF General Regulation, with regard to marketing communications.

In accordance with these provisions, marketing communications must be clearly identifiable as such.

Position

The requirement that marketing communications to be identifiable as such should imply that all marketing communications contain sufficient information to make it clear that the communication has a purely marketing purpose, that it is neither a binding contractual document nor an information document required by law, and that it is not sufficient for making an investment decision. In this context, a marketing communication is considered to be identified as such where it prominently displays the words “marketing communication” (even when preceded by the # symbol if using this symbol means that the text following it is prominently displayed in the case of online marketing communications), so that any person viewing or listening to it can identify it as a marketing communication.

Additionally, marketing communications must include a disclaimer such as the following:

“This is a marketing communication. Please refer to the [prospectus for the [UCITS/AIF/EuSEF/EuVECA]/information document for the [AIF/EuSEF/EuVECA] and to the [key investor information document/key information document] (delete as applicable)] before making any final investment decisions.”

However, where this disclaimer is not appropriate to the format or length of an online marketing communication, it may be replaced by a shorter indication of the commercial purpose of the communication, such as “Marketing Communication” for a banner or short video lasting only a few seconds on a website, or “#MarketingCommunication” on social media platforms.

The disclaimer should be clearly visible in the marketing communication. The visibility of the disclaimer should be assessed according to the type of communication concerned: in the case of a video presentation, the disclaimer should be integrated into the video and displaying it only at the end of the video is not considered appropriate.

A marketing communication should not be identifiable as such where it contains excessive cross reference to legal or regulatory provisions, unless this is appropriate (e.g. references to the provisions of national legislation governing the operation of the specific type of AIF that is the subject of the marketing communication).

Pursuant to the provisions mentioned above, all asset management companies and distributors are reminded that they must ensure that all the information, including promotional information, addressed to retail or professional clients, or that could possibly reach such clients, meets the requirements for “clear, accurate and non-misleading

¹¹ Article L. 532-9, VII of the Monetary and Financial Code and Articles 316-2, IV and 321-1, III of the AMF General Regulation.

information”, regardless of the chosen means of communication, which includes social media. Consequently, it is the duty of the asset management company and the distributor of such products respectively to ensure that all the information disseminated complies with the provisions set out above. The requirement for clear, accurate and non-misleading information must be assessed for any information addressed to clients.

Position

All marketing communications shall contain accurate, clear and non-misleading information, regardless of the target investors.

The requirement for clear, accurate and non-misleading information is therefore also applicable to any information document aimed at presenting a collective investment to intermediaries, which will themselves be informing end clients, such as, for instance, to all salesperson training materials. It also applies to information that is published by a third party on social media and relayed by the asset management company or distributor. In this case, the information relayed by the asset management company or distributor shall invoke the liability of the asset management company or, where applicable, the distributor, to the same degree as if said parties were the initiator.

However, this does not require all the information needed for making an investment decision to be included in all documents. Indeed, the level of accuracy of the information depends on the nature of the document.

Additionally, the level of information and the manner in which it is presented may be adapted depending on whether the investment in the collective investment is open to retail investors (i.e. UCITS or AIFs open to retail investors) or to professional investors only (i.e. AIFs other than those open to retail investors). In particular, marketing communications promoting collective investments open to retail investors must refrain from using excessively technical terms and must include an explanation of the terminology used, be easy to read and, where appropriate, provide adequate explanations of the complexity of the collective investment and the risks involved in investing, to help investors understand its features.

Marketing communications shall not refer to the benefits without referring to the risks.

When a collective investment is being presented in several documents (or several messages for publications on social media), no document shall present more specifically the benefits and then refer the investor to another document for the risks. In that case, the information may be considered misleading.

The risks and benefits are mentioned either at the same point or immediately after each other.

This does not preclude communicating short messages (an advertising poster or advertisement for instance) that do not present all the features of the collective investment, provided that the legislative and regulatory provisions, and notably the principle of balanced information, are complied with.

For instance, marketing communications promoting an equity fund, which briefly draw the attention of investors to the risks relating to the management strategy that will be implemented are not misleading insofar as the presentation is balanced, even if not exhaustive.

Position

Marketing communications shall be written in French.

However, marketing communications may be written in a language other than French that is customary in the sphere of finance after the person marketing the units or shares of the UCITS or AIF has ensured that:

- when it is intended solely for professional clients, they have agreed to receive the communication in that language;
- when it is intended for or likely to be addressed to retail clients, they understand that language.

Position

When a foreign UCITS or AIF must draw up a prospectus and that prospectus has not been translated into French, it must be specified in very prominent lettering in the marketing communications for this collective investment that the prospectus is not available in French.

Any person may market units or shares in UCITS or AIFs or units or shares in UCITS or AIF sub-funds whose articles of incorporation, rules or any other document intended to provide information to investors is written in a language customary in the sphere of finance other than French, under the conditions set out in Article L. 214-23-1 or L. 214-25 of the Monetary and Financial Code, as specified in Article 411-129, III and 421-26, III of the AMF General Regulation.

4.1. Balanced information

4.1.1. Accuracy of the information

4.1.1.1. Risks and benefits described in an identical manner

Pursuant to the provisions mentioned above, the assessment of the accuracy of information requires a balanced presentation of the different features of the collective investment. These risks shall be pointed out in as apparent a way as the benefits. The space dedicated to less favourable features in the documents and the typography used will determine whether the information is accurate.

Position

Where marketing communications contain information on risks and benefits, the following requirements shall be met:

- Marketing communications that mention a potential benefit of subscribing to units or shares of an AIF or UCITS shall be accurate and shall always correctly and prominently indicate any relevant risks. Whether the risks and benefits are described in an identical manner shall be assessed both in terms of the presentation and format of such descriptions;
- In the information on risks and benefits, the font and size of the characters used to describe the risks shall be at least equal to the predominant font and size used for all information communicated. The layout shall also make this information on risks prominent.
- Information on risks shall not be included in a footnote or displayed in small print in the body of the communication. Presenting the risks and benefits in a two-column table or summarised in a list that clearly distinguishes, on a single page, the risks from the benefits are good examples of how risks and benefits can be described in an identical manner.

4.1.1.2. Information on risks and benefits

Position

The description of the UCITS or AIF risk profile in a marketing communication shall use the same risk classification as that used in the key information document¹² or key investor information document.

¹² Document required by Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPS).

Marketing communications that describe the risks and benefits of subscribing to units or shares of the UCITS or AIF shall refer at least to the relevant risks mentioned in the key information document, the key investor information document, the prospectus or the information referred to in Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 or Article 14 of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013. Such marketing communications shall also indicate, clearly and prominently, where full information on the risks can be found.

In the case of AIFs open to retail investors, marketing communications shall clearly refer to the illiquid nature of the investment, where applicable.

Rankings presented in marketing communications may only be based on collective investments that have a similar investment policy and risk/reward profile. Rankings presented must also include the relevant time period (at least 12 months or a multiple thereof) and the risk classification of the funds.

For newly established collective investments for which no historical performance is available, the performance profile may only be represented by reference to the past performance of the benchmark index or the performance target, where a benchmark index or performance target is provided for in the regulatory documents or instruments of incorporation.

Additionally:

- advertising slogans may not be simplified by referring to one positive feature of the collective investment only, i.e. the advertising slogan “Reap the benefits of the equity markets” for a formula fund when the performance offered is an average of the market performance over a period of years;
- an advertising insert in a financial newspaper may not highlight the potential for high and quantified yields of a formula fund while referring to a capital risk at maturity in a less prominent manner;
- a UCITS or an AIF offering exposure to commodities through a futures index may not suggest in its communication that it directly replicates the performance of the underlying market (a commodity futures index does not necessarily reflect the price movements of the underlying commodities);
- for a real estate investment company (SCPI), subscription on credit may not be proposed without mentioning the risk borne by the partner if the proceeds derived from the sale of the units and the dividends are not enough to repay the whole credit;
- an advertising slogan shall not juxtapose the concepts of “performance” and “security” in a simplistic manner (as protecting the capital can only be achieved to the detriment of performance, since this protection has a cost, presenting the notions of “performance” and “security”, or any similar notion, without additional explanatory notes shall not be permitted);
- a document promoting an ETF (“tracker”) may not refer to the reduced fees linked to this type of product as an advantage without specifying that the financial intermediary nonetheless charges transaction fees;
- a document that promotes an index fund that aims at replicating the performance of an index using leveraged investment strategies (which offer a leverage effect, i.e. a market exposure exceeding 100% of the asset’s value) or short investment strategies (which allow investors to take a reverse position in the market) shall specify clearly that this objective can only be achieved at the close of the trading session. This objective is no longer achievable over a longer observation period;

- the investment period of an index fund that aims to replicate the performance of a short equity strategy index is different from that of an index fund that aims to replicate the performance of a long equity strategy index and shall not be set at five years;
- in the presentation of a leveraged structured employee savings fund, the discount shall not be presented as a benefit insofar as it is traded in exchange for the guarantee and formula offered to the investors (just like a part of the performance and dividends).

4.1.2. Clarity of the information

Pursuant to the provisions mentioned above, in order to be clear, the information must be sufficient to help investors understand the main features of the collective investment they are investing in. Investors need to be able to assess the benefits and risks. The vocabulary used in the presentation of the collective investment needs to be understood by the target clients.

For example:

- the features of the collective investment may not be presented to the target clients with too much technical vocabulary or jargon, which is detrimental to the clarity of the information;
- the presentation of the collective investment may not use ambiguous vocabulary, whose common meaning does not match the economic reality of the collective investment;
- marketing communications may not present an annual performance indicator (20% for instance) along with a formula that creates confusion between past performance and the promise of future profits;
- as regards the capital risk of a collective investment, marketing communications may not simply state “this collective investment is not capital-protected or guaranteed” instead of stating clearly that “this collective investment poses a risk of capital loss”.

4.1.2.1. Information containing a description of the features of the collective investment

Position

Where marketing communications describe certain features of the collective investment, the following conditions shall be satisfied.

Information on the features of the collective investment shall be kept up to date.

The amount of information contained in a marketing communication shall be proportionate to the size and format of the communication. For example, when the marketing communication is in paper or electronic format, the font and size of the characters shall be such that the information is easily readable. If an audio or video medium is used, the rate of speech and sound volume shall make the information understandable and clearly audible.

When marketing communications describe certain features of the collective investment, they shall contain sufficient information to understand the key elements of those features and shall not contain an excessive number of references to the collective investment’s regulatory documents or instruments of incorporation.

Where they provide details of the features of the collective investment, marketing communications shall accurately describe the features of the investment. Accordingly, marketing communications shall:

- a) clearly indicate that, where the collective investment is open to retail investors, it involves subscribing to units or shares of a collective investment and not of a given underlying asset, such as real estate or company shares, as these are only underlying assets held by the collective investment;
- b) contain at least a brief description of the investment policy and an explanation of the different types of assets in which the collective investment may invest.

Where marketing communications relate to the use of leverage, however obtained, they shall include an explanation of the impact of this feature on **increasing the risk of potential losses or returns**.

Information in marketing communications shall be presented in a manner understandable to the average member of the investor group to which it is addressed or is likely to reach. Where marketing communications promote a collective investment open to retail investors, care must be taken to ensure that the meaning of all terms describing the investment is clear.

Recommendation

When marketing communications describe the investment policy of the collective investment, it is recommended that, to facilitate investors' understanding, the following practice be applied:

- a) in the case of index funds, the words "passive" or "passively managed" shall be added to the words "index";
- b) where the collective investment is actively managed, the words "active" or "actively managed" shall be explicitly mentioned;
- c) active funds that are managed by reference to an index shall provide additional information on the use of the benchmark index and indicate the degree of freedom from it;
- d) active funds that are not managed by reference to a benchmark index shall also clearly indicate this to investors.

4.1.2.2. Identification of sources

Position

Short marketing communications, such as posts on social media, shall be as neutral as possible and shall specify where more detailed information can be found, in particular by providing a link to the relevant web page where the collective investment's information documents are available.

All statements in marketing communications shall be duly substantiated by objective and verifiable sources that should be quoted. Furthermore, communications shall refrain from using overly optimistic wording, such as "the best fund" or "the best manager", wording suggesting low risk, such as "a safe investment" or "effortless returns", or wording suggesting high performance, without clearly explaining that such performance may not be achieved and that there is a risk of total or partial loss of the investment.

Any comparison of the collective investment with others shall be limited to collective investments with a similar investment policy and a similar risk/reward profile, unless the marketing communication contains a relevant explanation of the difference between the funds.

Any reference to external documents, such as an independent analysis published by a third party, shall mention at least the source of the information and the period to which the information contained in the external document relates.

4.1.3. Misleading information

Misleading information misleads investors by misrepresenting or offering an incomplete presentation of the collective investment, with the ultimate purpose of promoting the sale of the said collective investment. Practices aimed at presenting only the benefits of the collective investment can also be qualified as misleading practices.

The AMF also reiterates that all misleading commercial practices are forbidden in France.

This may include the publication of misleading advice or false recommendations, whether anonymous or not (on discussion forums, for example), positive or negative advice or recommendations concerning collective investments or asset management companies, and even purchasing “likes” on Facebook or “followers” on Twitter.

Position

The information presented in marketing communications shall be consistent with the collective investment’s regulatory documents and instruments of incorporation, as appropriate, and in particular:

- a) the prospectus or the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 and Article 14 of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013;
- b) the instrument of incorporation, articles of incorporation, by-laws, trust agreements or similar documents required for its legal establishment;
- c) the key information document or key investor information document;
- d) the information published on the websites of UCITS asset management companies, AIFs, EuVECA managers and EuSEF managers under Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019; and
- e) annual and half-yearly reports.

This requirement applies to, among other things, the disclosure of information on the investment policy, recommended holding period, risks and benefits, costs, past and expected performance, and sustainability aspects of the investment.

Consistency between marketing communications and the associated regulatory documents and instruments of incorporation does not mean that all relevant information necessary to make an investment decision shall be included in marketing communications. However, the wording or presentation used in marketing communications shall not be inconsistent with, supplement, detract from or contradict the information contained in the regulatory documents or instruments of incorporation.

Where indicators, simulations or figures relating to risks and benefits, costs or past and expected performance are mentioned or disclosed in marketing communications, they shall be consistent with the indicators, simulations or figures used in the regulatory documents and instruments of incorporation. This means that, while the presentation may differ, the methodology and value used to calculate the indicators shall be identical to those used in the regulatory documents and instruments of incorporation.

For example:

- the name of a collective investment whose exposure to the equity markets or any other asset aimed at boosting the performance of the fund is superior to 30% of the asset may not contain terms such as “safe”,¹³ “serenity” and “regularity”, which would have investors believe that the fund is not risky;

¹³ Not applicable to collective investments that may be subscribed to only within the framework of retirement savings plans using the wording “prudent horizon retraite” (cautious retirement horizon). The wording “cautious retirement horizon” is reserved exclusively for collective investments subscribed to under retirement savings plans. It must be used in full, and the term “cautious” cannot be used on its own.

- marketing communications promoting a formula collective investment undertaking may not base their communication on the distribution of a high annual yield while capital is not guaranteed in fine;
- marketing communications promoting a formula collective investment undertaking may not state a potential final performance of the financial instrument without mentioning the equivalent annual yield;
- marketing communications promoting a formula collective investment undertaking may not present any coupon without specifying that it is “fixed and capped” when that is the case. The “capping” effect of a formula must be clearly illustrated in the various marketing communications as part of the presentation of performance scenarios.

Examples of wording:

“Any gains are capped at a predetermined, fixed amount

Example 1:

If, at 2 years, the Euro Stoxx 50 index excluding dividends progresses by 30%:

- o You will not benefit from the whole of the rise in the index
- o You will receive your invested capital plus a predetermined fixed gain of 17%, or an annual rate of return of X%

Example 2:

If, at 6 years, the Euro Stoxx 50 index excluding dividends progresses by 70%:

- o You will not benefit from the whole of the rise in the index
- o You will receive your invested capital plus a predetermined fixed gain of 51%, or an annual rate of return of X%”

When the formula does not take 100% of the capital initially invested as a component in the repayment, but a smaller portion of the invested capital, it must clearly indicate the progression required for the investor to recover the invested capital.

Example:

At maturity, you will receive 90% of the original capital, plus or minus the performance of the index. The index must progress by X% for the investor to recover their investment.

- marketing communications for a formula fund may not present a disadvantage as an advantage. For instance, if a structured fund offers an annual final performance of 10% when the CAC 40 index achieves a performance of more than 15% over a similar period, it cannot present the 10% performance objective as an advantage in marketing communications;
- marketing communications promoting a formula collective investment undertaking may not contain any wording or language that might be misinterpreted or prevent an effective understanding of the formula.

Recommendation

Using the wording “final performance” to present the result of the formula at maturity may have a positive connotation, despite the fact that the result of the formula may be positive or negative. The AMF recommends using more neutral wording such as “the final result of the formula.”

Recommendation

The AMF recommends that when the change in the value of the collective investment is linked to that of an index, whether upwards or downwards, this should be clearly indicated.

Wording of the same type may appear in the marketing communication.

This recommendation is binding upon index-linked collective investment undertakings for which it must be stated that their objective is to replicate the change in an underlying index, whether upward or downward.

- marketing communications promoting a formula collective investment undertaking shall specify, where applicable, that the fund has a risk of capital loss at maturity, and also during its lifetime in the event of early repayment before maturity;

- a formula collective investment undertaking may provide possibilities for early repayment during its lifetime depending on changes in an index. This early withdrawal is generally accompanied by payment of coupons that are fixed and capped. In this case, care must be taken to ensure that any such coupons are presented as alternative and not cumulative in marketing arguments;

- if the marketing communication compares the performance of a collective investment to a benchmark indicator that is measured with dividends not reinvested when the collective investment's performance is measured including the dividends, a clear and explicit reference must be provided to the difference in the basis for the calculation of the performance;

- the marketing communications or management reporting of a collective investment compare some elements of the collective investment's performance to a benchmark indicator that is identical to the one referred to in the regulatory documents and instruments of incorporation of the collective investment. If several benchmark indicators are referred to in the marketing communications, in addition to the one presented in the regulatory documents, they cannot be selected afterwards and the comparison between the collective investment and these market indicators must be sustainable;

- marketing communications promoting a collective investment that uses a constant proportion portfolio insurance (a type of management that belongs to the portfolio insurance techniques) shall not suggest that it is possible to achieve "the performance of the equity markets without bearing the associated risk." It should not be omitted that exposure to the equity markets may only be partial, or even non-existent if the collective investment is invested in monetary assets only;

- the description of a feeder UCITS or AIF investment strategy in a marketing communication shall not present only the strategy of the master UCITS or AIF without clearly stipulating that the proposed fund is a feeder UCITS or AIF and, accordingly, that it is invested in the master UCITS or AIF and that its net asset value may be lower than that of the master UCITS or AIF because of its own management fees; in addition, if a feeder UCITS or AIF is not invested 100% in its master UCITS or AIF, any wording suggesting that their movements are identical should be avoided;

- marketing communications promoting an ETF shall not suggest that the ETF replicates the performance of the underlying benchmark index perfectly. As long as the market price of the ETF might not be identical to its net asset value at any time, it should be specified that the ETF aims to replicate the performance of an index and that its market price can be different from its net asset value and from the net asset value of the index. The ETF's marketing communications must comply with AMF position DOC-2013-06 relating to listed funds and other issues related to UCITS;

- the collective investment's name cannot include any figures that could suggest a yield objective and/or guarantee to the investor. For instance, in the case of private equity funds launched every year and with the same name as those of the previous generation, the word "digit" shall be included in the name of the fund to avoid confusion with the period during which the assets are frozen or about the promise of future profit. Roman numerals are allowed provided that they are not associated with the notion of return. For example, "Formula fund 3" would be bad practice, while "Formula Fund IV", "Formula Fund V" or "Formula Fund 2015" would be acceptable;

- a UCITS or AIF shall not indicate in marketing communications that it aims to achieve absolute performance while the fund implements strategies based on a significant and sustainable directional bias in a single asset class, which means that its performance depends significantly on the price movements in the markets, either upward or downward;

- a UCITS or AIF shall not indicate a quantified performance objective in marketing communications without referring to the recommended investment period or featuring an insert warning investors that the objective is based on the accomplishment of market assumptions set by the asset management company and that it can by no means be considered a guarantee of future performance;

- a formula UCITS or AIF investing in indices or baskets of shares with a dividend waiver shall indicate that it does not take into account the dividends waived in the calculation of its final performance. When the proposed formula is based on indices or baskets with selection criteria for the underlying assets comprising them that are linked to the level of dividends distributed, a communication that would highlight this selection policy and the dividend waiver may be considered as misleading. In that respect, any communication that might emphasise the high dividend distribution rate and that would have investors believe that these dividends contribute directly to the final performance of the UCITS or AIF shall be avoided;

- the Synthetic Risk and Reward Indicator indicated in marketing communications shall be identical to the one indicated in the key investor information document;

- when a compound benchmark indicator exists and the weighting of the different indices that compose it changes over time (e.g. a strategy to reduce the sensitivity of the fund to equity markets in PERCO employee retirement savings plans), it is important that the changing nature of the benchmark indicator be disclosed. The description that is made must enable investors to know the weight of each index when they consult the information relating to the said collective investment.

Any bar chart comparing changes in the net asset value of the UCITS or AIF with changes in its benchmark indicator must follow the same logic.

- when an indicator is available in a version that takes into account the dividends or coupons reinvested, the performance achieved by the UCITS or AIF shall systematically be compared to that of the said indicator to avoid providing investors with potentially misleading information.

Where an indicator is measured including the dividends or coupons reinvested, the performance of the UCITS or AIF shall systematically be compared to it to avoid providing investors with misleading information.

4.2. Information on costs

Position

Where reference is made to the costs of subscribing to, holding, converting or selling units or shares of an AIF or UCITS, marketing communications shall include an explanation to help investors understand the overall impact of the costs on the amount of their investment and on the expected returns.¹⁴

Where part of the total costs are to be paid or represent an amount in a currency other than that of the Member State in which the target investors reside, marketing communications shall clearly indicate the currency in

¹⁴ See AMF Position DOC-2011-01 on performance fees in UCITS and certain types of AIFs and the annexes relating to the standard template for KIIDs, prospectuses and regulations of AMF instructions DOC-2011-19, DOC-2011-20 and DOC-2011-21 on the information needed to enable investors to properly understand the performance fee model, the calculation method and their potential impact on investment returns.

question and include a warning that the costs may increase or decrease due to currency and exchange rate fluctuations.

4.3. Marketing communications about performance and performance fees

Position

The information concerning passed performance shall be based on historical data. It shall indicate the reference period chosen to measure performance and the source of the data.

Where marketing communications refer to the collective investment's past performance, this information shall be consistent with the past performance specified in the prospectus, in the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 or Article 14 of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013, in the key information document or in the key investor information document. In particular, when performance is measured against a benchmark index in the prospectus, in the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 or Article 14 of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013, in the key information document or in the key investor information document, the same benchmark shall be used in the marketing communications.

4.3.1. Indicating past performance shall not be the main component of the information communicated

Pursuant to the provisions mentioned above, the AMF reiterates that indicating past performance, where applicable, including simulated past performance, shall not be the main component of the information communicated.

Position

The information concerning passed performance shall be based on historical data. It shall indicate the reference period chosen to measure performance and the source of the data.

Where marketing communications refer to the collective investment's past performance, this information shall be consistent with the past performance specified in the prospectus, in the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 or Article 14 of Regulation (EU) 346/2013, in the key information document or in the key investor information document. In particular, when performance is measured against a benchmark index in the prospectus, in the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 or Article 14 of Regulation (EU) 346/2013, in the key information document or in the key investor information document, the same benchmark shall be used in the marketing communications. This regulation naturally rules out any communication focusing on product performance only.

When the performance of the collective investment stands as given information in the same way and on the same level as other features of the collective investment, one can consider that it is not the main component of the information communicated. In such a situation, particular attention should be paid to the typography and colours used in marketing communications about performance to avoid this piece of information being given prominence.

Any indication of performance shall be considered as the main component of the information when:

- the size of the font for presenting the data relating to the performance is disproportionate compared with the font used to present the other features of the collective investment;
- the main content of the marketing communication is a curve that compares the performance of the collective investment with that of a market index.

An advertising insert that includes many graphs in the background and that would have investors believe that the collective investment systematically achieves a positive performance: stylised performance graphs that do not display the abscissa and ordinate axes and which are not representative of the collective investment's real performance, arrows systematically pointing up, and figures always positive (+30, +100) can be considered as focusing mainly on performance.

4.3.2. Indicating the reference period and the source of the data used to calculate performance

Pursuant to the provisions mentioned above, the AMF reiterates that this information must be clearly indicated in marketing communications.

Position

If the information on the reference period chosen for measuring the performance and the source of the data used are mentioned in a footnote or if the use of a small font size makes it difficult to read, the marketing communication can be considered as non-compliant.

Conversely, if the font size does make it possible to read the information, mentioning it in a footnote is not generally such as to call into question compliance with the applicable provisions.

4.3.3. Communicating about annualised performance

Position

When describing cumulative performance, marketing communications shall also indicate the performance of the collective investment for each year of the reporting period. To ensure that the description is accurate and not misleading, cumulative performance may be presented, for example, in the form of a graph.

Recommendation

If the information that is disseminated includes a graph displaying the cumulative performance of a collective investment, the AMF recommends that this should be accompanied by the annualised performance of this collective investment over the period.

4.3.4. Reference to past performance

Position

Where marketing communications include information on past performance, they shall comply with the following conditions:

- Disclosure of past performance shall cover the previous 10 years for UCITS and AIFs providing a key investor information document and the previous 5 years for all other collective investments, or the whole period during which the collective investments in question have been marketed (if this period is less than 10 years for those providing a key investor information document, or 5 years for the others).¹⁵ In all cases, past performance

¹⁵ It should be noted that in accordance with Article 44.4 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 and Article 325-12 of the AMF General Regulation, past performance information may cover a longer period.

information is based on full 12-month periods. However, this information may be supplemented by the current year's performance updated at the end of the latest quarter.

- Any changes that have had a significant impact on the past performance of the collective investment (such as a change in asset management company) shall be prominently disclosed.

- Where information on past performance is presented, it shall be preceded by the following statement: "*Past performance does not predict future return*".

It is essential to look at the typography used for writing the information and its place in the document to determine whether or not the applicable provisions are being complied with. Using a small font size or a footnote reference that would make it difficult to read the warning is not compliant with the regulations. Writing the warning in colour makes it more visible.

- If past performance information is based on figures expressed in a currency other than that of the Member State in which the target investors reside, marketing communications shall clearly specify the currency in question and include a warning that returns may increase or decrease due to exchange rate fluctuations.

- Where no information on the past performance of the collective investment is available, in particular where the collective investment has been recently established, marketing communications shall avoid disclosing simulated past performance based on irrelevant information. Therefore, disclosure of simulated past performance is limited to marketing communications relating to:

- a) a new category of shares or units in an existing collective investment or sub-funds, whose performance can be simulated based on the performance of another unit or share class and provided that the two unit or share classes have the same or substantially identical features; and

- b) a new feeder fund whose performance can be simulated by taking the performance of its master fund, provided that the strategy and objectives of the feeder fund do not allow it to hold assets other than units or shares of the master fund and liquid assets held on an ancillary basis, or that the features of the feeder fund do not differ substantially from those of the master fund.

The information on simulated past performance shall comply *mutatis mutandis* with the conditions referred to in the above paragraphs.

4.3.5. Reference to expected performance

Position

Where marketing communications refer to expected performance and the reward profile of the collective investment, the following conditions shall be satisfied:

- Expected performance shall be based on reasonable assumptions supported by objective data.

- Expected performance shall be presented by collective investment only, and aggregated figures shall not be permitted.

- Expected performance shall be presented over a time period consistent with the recommended investment horizon of the collective investment.

- Where information on expected performance is presented based on past performance and/or current conditions, this information shall be preceded by the following statement:

"The scenarios presented are an estimate of future performance based on evidence from the past on how the value of this investment and/or current market conditions and are not an exact indicator. What you will get will vary depending on how the market performs and how long you keep the investment /product."

- Marketing communications shall also include at least a warning that future performance is subject to tax, which depends on the individual investor's circumstances and may change in the future.

- The information on expected performance shall include a statement that the investment may result in a financial loss if there is no capital guarantee.

- If the information relates to a listed index-linked collective investment, marketing communications shall indicate the regulated markets on which the collective investment is listed. If figures on expected performance are referred to in marketing communications, those figures shall be based on the net asset value of the collective investment.

4.3.6. Performance fees

It should be noted that the ESMA guidelines on performance fees in UCITS and certain types of AIFs (ESMA 34-39-992) set out specific provisions on the content of any marketing communications.¹⁶

4.4. Information on the consideration of non-financial criteria and sustainability aspects

It should be noted that AMF Position-Recommendation DOC 2020-03 provides details on the quality of information, including marketing communications, provided for investors and its consistency with the non-financial investment management approaches adopted by the managers of collective investments authorised for marketing in France to retail investors.

Position

Where marketing communications refer to the sustainability aspects of the investment in the collective investment, the following conditions shall be satisfied:

- The information shall be consistent with that contained in the collective investment's regulatory documents and instruments of incorporation. A link to the website with information relevant to the collective investment's sustainability aspects, in accordance with Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019, should be included in marketing communications, where appropriate, depending on the nature of those marketing communications.
- Information on the collective investment's sustainability aspects shall not be disproportionate to the inclusion of sustainability features or objectives in the investment strategy.
- When referring to the collective investment's sustainability aspects, marketing communications shall specify that the investment decision takes into account all the features and objectives of the collective investment as described in its prospectus or in the information to be provided to investors in accordance with the third paragraph of Article L. 214-24-19 of the Monetary and Financial Code, Article 13 of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 and Article 14 of Regulation (EU) 346/2013 of the European Parliament and of the Council of 17 April 2013.

Recommendation

For greater legibility, the AMF recommends that marketing communications for SRI funds present (i) an investment objective stating the non-financial aspect of their management strategy, (ii) the type of SRI approach used, and (iii) information about the selection and management methods employed.

Article L. 533-22-1 of the Monetary and Financial Code requires that asset management companies provide their investors and the public with a document setting out their policy on how they factor social, environmental and governance quality criteria into their investment strategy and how they contribute to the energy and ecological transition, together with their strategy for implementing this policy, in the standard format specified in Article D. 533-16-1 of that code.

Recommendation

¹⁶ See AMF Position DOC-2021-01 and, on the scope of application of these guidelines, AMF Position-Recommendation AMF DOC-2012-12.

To make it easier to access this information, the AMF recommends publishing information about the asset management company's general approach (paragraph II, sub-paragraph 1 of Article D. 533-16-1 of the Monetary and Financial Code) in a single document that is easily accessible on the asset management company's website (e.g. through links from pages discussing sustainable development issues) and written in French if the asset management company targets retail investors in France.

Recommendation

If the asset management company reports having an engagement policy, the AMF recommends that it specify the procedures for accessing the documents that provide details on these aspects (voting and dialogue report). The AMF recommends that any collective investment marketed in France and wishing to promote its SRI aspects publish a document that clarifies its approach, modelled on the European Transparency Code, or adhere to a charter, code or label that factors in criteria relating to the achievement of social, environmental or governance quality objectives.

The AMF recommends that non-financial reporting (whether incorporated into traditional financial reporting or not) be easily accessible from web pages dedicated to SRI funds and that it be updated at least once a year. The AMF recommends to asset management companies that manage collective investments whose investment objective is based on a benchmark index to produce reports for investors, allowing them to assess how closely the collective investment tracks its benchmark indicators. These reports must at least include the following indicators:

- the comparative performance (compared in a chart and a table),
- the portfolio's volatility compared with the volatility of the index, and
- the annualised standard deviation of the collective investment's performance relative to its benchmark index (or tracking error).

The AMF also recommends that collective investments marketed to retail investors that advertise SRI characteristics obtain the SRI label. Now that a public SRI label has been introduced, using the same terminology for marketing purposes without having obtained the label may be confusing for investors.

5. MARKETING COMMUNICATIONS FOR FINANCIAL INDICES AND STRATEGY INDICES

5.1. Indices aimed at generating a specific behaviour or an outperformance

Position

As soon as an index has unusual features such as the existence of an intrinsic systematic strategy aimed at inducing a specific behaviour compared to its benchmark market or at outperforming it, the requirements for "clear, accurate and non-misleading" information require all these elements to be communicated to the investors:

- by labelling such indices "strategy index";
- by giving details about the main elements of the index rules aimed at generating this bias or this outperformance.

The intrinsic strategy of a strategic index relies on systematic allocation. The method for determining the components of the index does not rely on a discretionary bias.

When a collective investment replicates (or is backed to) the performance of an index that includes elements of discretion for choosing the assets that are part of it, the term "index" cannot be used. Terms like "tactical allocation" or "proprietary strategy" shall be used instead.

For French formula funds, structured UCITS¹⁷ and equivalent foreign AIFs, if the discretion is exercised by an entity that is not regulated for the provision of asset management services for third parties, or UCITS or AIF management, the following warning must appear and be clearly visible (in other words it must appear in an inset and in bold) at the start of marketing communications:

“The change in the product’s value depends, in whole or in part, on the discretionary decisions of [name of entity], which is not an entity approved for the management of UCITS or AIFs, or for the provision of portfolio management services for third parties.”

5.2. Special methods for calculating the financial index or strategy index

Position

When marketing communications promote a financial index, it should be ensured that they do not eclipse certain key elements of the index. In particular, some indices do not reflect the total simulated performance of a specific investment in their components. This may be the case where:

- the performance of the index is measured without taking into account the reinvestment of the dividends paid out by the underlying assets;
- the performance measured is a performance that is said to be generating excess return;
- the acquisition and sale of some components required by index rebalancing are recorded at different prices (thereby simulating a buy/sell price range);
- the performance is calculated including a funding margin (e.g. paying out liquid assets at the risk-free rate by deducting a fixed cost expressed in basis points);
- the performance is measured including the execution cost of some transactions;
- the performance is measured including the total index operating costs, a “synthetic dividend”, or other deductions or equivalent costs (e.g. the performance of the index is deflated by a fixed percentage or by a pro rata temporis percentage at each reporting date).

Failing to mention such costs in the information documents increases the risk that information may not be “accurate, clear and non-misleading”.

The following elements shall be included in the information disseminated:

- mention of the fact that the index does not reflect the total performance of its underlying assets;
- details on the applicable rules that might result in the index value being reduced in relation to the aforementioned total performance (these rules shall naturally be predetermined, failing which, the risks that the index value might be manipulated are greatly increased);
- elements that allow the client to assess the impact of these performance deductions on the total performance (for instance, referring to a website which compares the index with the index featuring the total performance, or the impact of these “costs” over a pertinent past period, may help meet this requirement).

5.3. Using the term “index” appropriately: available information on the index or the strategy index

Position

The information provided to unitholders or shareholders is not clear, accurate and is misleading if the term “index” is used when it does not offer the guarantees usually expected for the development and dissemination of an index. This requires notably that appropriate information, either on the general rules for developing and managing the index or on the index composition, be easily accessible or disseminated to unitholders, shareholders or potential investors.

¹⁷ Structured UCITS are referred to in Article 36 of Commission Regulation (EU) 583/2010 of 1 July 2010 implementing directive 2009/65/EC.

5.4. Information on potential conflicts of interest

Measuring the value of the assets comprising an index and disseminating them require two successive stages:

- the first stage consists of listing the components and of their relative weight;
- the second stage consists of measuring the value of the index based on the predetermined rules for calculating the index.

These two stages are likely to give rise to conflicts of interest. In particular, the most sensitive situation identified as regards collective investments is where a UCITS or AIF is exposed to an index that is measured, released and disseminated by several entities owned by a single financial firm via futures financial instruments and when the counterparty to the futures financial instrument is managed by the same firm. The risk is further increased where the asset management company is an entity of the financial firm in question.

Recommendation

In this case, it is essential that investors be clearly informed about potential conflicts of interests.
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6. ORDER EXECUTION POLICY FOR FORMULA UCITS OR AIFs

The AMF reiterates that pursuant to Article L. 533-22-2 of the Monetary and Financial Code, the asset management company that manages a formula UCITS or AIF and executes orders resulting from its investment decisions, implements and conducts an order-execution policy.

Position

For a formula UCITS or AIF, this order execution policy specifies in particular the procedures used by the asset management company to choose the counterparty, or counterparties, to the UCITS or AIF party to the derivatives contract or contracts, which will provide the formula promised to investors.

The asset management company is allowed to solicit bids from several competing counterparties, according to a formal, traceable and controllable procedure, and to choose the counterparty that will offer the UCITS or AIF the best result based on predetermined factors. This is generally the most natural procedure to prove that the choice is the best result possible.

However, this does not rule out the possibility for the asset management company to commission, as part of its order execution policy, a single counterparty to the derivatives contract entered into by its formula UCITS or AIF without systematic calls for competition, as long as it considers that this counterparty offers the best result possible for its transactions. This counterparty can be an entity belonging to the asset management company's group.

In all cases, the asset management company is responsible for the procedures for choosing its counterparties, as described in its execution policy.

Such a responsibility shall lead the asset management company to take into account, as of the structuring of the UCITS or AIF, the procedures used to market the said instrument and the type of investors targeted, including when the latter invests in unit-linked life insurance policies.

Where the formula UCITS or AIF is mainly marketed by the asset management company itself, or by entities that do not have a sufficient degree of autonomy from the asset management company, to retail investors, i.e. investors to whom the best result possible is based on a total cost, failure to launch calls for competition between several counterparties is not sufficient to ensure that the UCITS or AIF has an optimised cost structure for investors.

That is why, when no prior call for competition between several counterparties has been launched, asset management companies that manage formula UCITS or AIFs aimed at retail investors are required to give priority to entities that enjoy real autonomy from the asset management company and from the chosen counterparty as regards the choice of the financial instruments it distributes. This allows these autonomous entities to refer the clients to other financial instruments, should they consider that the cost structure of the formula UCITS or AIF does not serve their best interests.

7. MARKETING RULES GOVERNING "INDEX" UCITS OR AIFS

Position

Any UCITS or AIF that is described as an "index" fund in marketing communications shall display its ex post tracking error, or the tracking error target for newly created funds that have not operated for a sufficient time to display their tracking error, i.e. the standard deviation between the performance of the UCITS or AIF and that of the index over a reference period. The standard deviation shall not exceed one of the two following limits:

1° 1% or, if higher, 5% of the index volatility;

2° 2% or, if higher, 15% of the index volatility.

The limitation provided for in 2° does not apply to UCITS or AIFs that meet at least one of the following conditions:

a) The financial instruments comprising the index are eligible for trading on markets that have different closing times;

b) The financial instruments comprising the index are eligible for trading on markets on which the net asset value of the UCITS or AIF is released outside trading days;

- c) The index comprises a significant percentage of financial instruments whose trading value is reported in multiple currencies;
d) The time at which the UCITS or AIF value is being determined is different from the time at which the index value is being determined;
e) The index is reported in a currency that differs from the reporting currency of the UCITS or AIF net asset value;
f) The index is synthetically replicated through derivative products.

The ex post tracking error is measured as follows:

$$ES = \sqrt{52} \sqrt{\frac{1}{N-1} \sum_{s=1}^N (R_s - \bar{R})^2}$$

where:

- R_s is the performance tracking error in week s between the UCITS or AIF and its benchmark index, calculated from the fluctuations in the net asset value of the UCITS or AIF and the index value,

that is

$$R_s = \ln\left(\frac{VL_fonds_s}{VL_fonds_{s-1}}\right) - \ln\left(\frac{indice_s}{indice_{s-1}}\right)$$

$$\bar{R} = \frac{1}{N} \sum_{s=1}^N R_s$$

- \bar{R} is the average tracking error over a twelve-month period ($N = 52$ weeks).

The ex post tracking error complies with the calculation method provided for in the recommendations for the standardisation of the calculation methods of the tracking error published by the French Asset Management Association.

When, in application of Articles D. 214-22-1 II and D. 214-32-31 II of the Monetary and Financial Code, units or shares of the UCITS or AIF are admitted to trading on a regulated market, the marketing communications shall specify that the following operating rules, determined by [Euronext Paris SA], apply: reservation thresholds are set by applying a variation percentage of [X%] on both sides of the indicative Net Asset Value or iNAV of the UCITS or AIF, published by [Euronext Paris SA] and updated with an estimate during the session according to any index variations [X];

The “market makers” ensure that the market price of the fund units of the UCITS or AIF does not deviate by more than [X%] on either side of the indicative net asset value of the UCITS or AIF in order to remain within the reservation thresholds set by [Euronext Paris SA].

8. DISTRIBUTING FUNDS USING A CONSTANT PROPORTION PORTFOLIO INSURANCE STRATEGY (A TYPE OF MANAGEMENT BELONGING TO PORTFOLIO INSURANCE TECHNIQUES)

8.1. Collective investments using a constant proportion portfolio insurance strategy with capital protection or guarantee staggered over time

Performance scenarios:

Position

Marketing communications shall feature several scenarios that graphically illustrate the algorithm chosen in respect of the constant proportion portfolio insurance strategy, or any other similar strategy, a type of management belonging to portfolio insurance techniques.

Just like for formula UCITS or AIFs, this scenario, or these scenarios, aims at, or aim at, illustrating the following:

- how the strategy works in the context of slightly unfavourable market conditions;
- the mechanisms specific to the strategy;
- the situations in which these mechanisms have a slightly unfavourable impact on the final performance.

The examples used in the conception of the scenario(s) are based on reasonable and prudent assumptions about future price developments and market conditions.

Some elements appear to be essential for investors to understand properly the mechanisms of a Constant Proportion Portfolio Insurance strategy and may need to be specified. Accordingly, the variables that best describe such types of management and could feature on the illustrations are (other variables may be added to the description):

- the dynamic asset prices,
- the exposure of the UCITS or AIF to the dynamic assets expressed as a percentage,
- the temporal evolution of the guaranteed net asset value,
- the temporal evolution of the UCITS or AIF net asset value.

Unfavourable situation:

Recommendation

The AMF recommends that the unfavourable scenario be presented first. This scenario aims to illustrate the most harmful events for investors and highlights the risk linked to the portfolio being entirely invested in monetary assets.

Accordingly, in the case of a collective investment using a classic Constant Proportion Portfolio Insurance strategy, the scenario could feature:

- a decline in the financial markets that is sharp enough to prompt the UCITS or AIF to reduce its exposure to the dynamic assets;
- a subsequent rebound of the aforementioned dynamic assets in which the UCITS or AIF cannot take part;
- the possibility for the UCITS or AIF to be entirely invested in monetary assets if its exposure to dynamic assets reaches a certain threshold and if the strategy allows such a move;

The objective is to have investors understand that they cannot reap the full benefits of a market rebound, and the example shows to which extent the performance of the UCITS or AIF depends on the path chosen.

For instance, after a significant decline in the dynamic asset price, the fund will be forced to cut its exposure to these assets progressively until it is entirely invested in monetary assets. At this point, investors will not be able to benefit from a market rebound and the fund net asset value will converge towards the guaranteed net asset value.

Conversely, if the fund structure prevents it from being entirely invested in monetary assets, the unfavourable scenario will have to be adjusted accordingly. This includes not implying that the investment strategy avoids all risk of monetisation, in view of the very low residual exposure to risky assets in the event of a sharp correction in their value.

Favourable situation:

The following scenario looks to describe a situation in which investors can reap most of the benefits of the strategy implemented:

- The scenario features a bullish financial market that allows investors to benefit from outperforming dynamic assets;
- The performance of these dynamic assets shall be realistic and in line with the current market conditions.

Recommendation

A favourable scenario may feature a constant increase in the risky asset price, in proportions consistent with its performance history, which would explain the good performance of the UCITS or AIF. Its net asset value may then be much higher than the guaranteed net asset value.

Position

However, given the complexity of the strategies implemented, the message shall be limited to essential information when it comes to describing the basic mechanisms. It shall not mislead investors.

For instance, combining high volatility and a bullish market would suggest wrongly that volatility chiefly contributes to the performance of such UCITS or AIF.

In the case of a strategy that provides ongoing capital protection (for instance a protection that, at all times, amounts to 90% of the reference net asset value, adjusted through a ratchet effect), the collective investment is able to demonstrate that this guarantee contributes to reducing exposure to risky assets and that, accordingly, the performance will be lower than when contracting a simple maturity guarantee.

Intermediate scenario:

Position

The “intermediate” scenario cannot simply be defined as a slightly worse favourable scenario in which the financial markets are slightly bullish. Constant Proportion Portfolio Insurance strategies do feature disadvantages which are inherent in their sophisticated structure and which must be explained to investors. Such a scenario would then be too optimistic and could eclipse such disadvantages.

Recommendation

The AMF recommends presenting the intermediate scenario as a scenario offering “disappointing performance” that will involve relevant market distortions in order to fully explain the limits of the Constant Proportion Portfolio Insurance strategies, such as the following:

- a decline in the value of the dynamic assets that leads to changing exposure to these assets, in order to show the imperfections of the adjustment mechanism,
- highly volatile dynamic assets fuelling unstable exposure,
- a constant, quasi-money return on the dynamic assets,
- etc.

For instance, a UCITS or an AIF using a Constant Proportion Portfolio Insurance strategy that offers capital guarantee upon maturity may involve a sudden market decline in the first days of its term that could ultimately result in its exposure to risky assets being adjusted. Time remaining until maturity may allow some limited exposure to these assets to be regained, which will ultimately provide investors with low returns.

However, the intermediate scenario strongly depends on the features of the management strategy implemented and particular attention should be paid to the way it is built.

Position

When the investment strategy implemented in a given time period is systematically extended, the scenarios shall reveal the existence and impact of this automatic extension.
Moreover, the scenarios on the performance of the structured UCITS or AIF should be accompanied by wording in the marketing communications explaining the advantages and disadvantages of the strategy.

The purpose of this explanation is to help investors understand the advantages and disadvantages of the proposed strategy.

- Multiple and simultaneous guarantees

Providing multiple and simultaneous guarantees or increasing the collective investment's hedging level during its term provides additional protection to the capital or performance. However, this may give rise to an additional management requirement that may limit exposure to risky assets.

- Absence of external formal guarantees

When the UCITS or AIF is structured in such a way as to preserve the principal at maturity but is not guaranteed by an entity referred to in Articles R. 214-19 and R. 214-32-28 of the Monetary and Financial Code, the lack of guarantee is a disadvantage whose consequences shall be explained. See position DOC-2013-12 on the requirement to offer a guarantee (on formula or capital, depending on the case) for structured UCITS and AIFs, "guaranteed" UCITS and AIFs and structured debt securities issued by special purpose vehicles and marketed to the general public.

- Monetisation risk

The risk that the UCITS or AIF may be invested in monetary assets only, which consists of cutting its exposure to the performance of the risky assets totally and definitively, implies that investors waive their rights to benefit from a rebound in these risky assets.

- Partial participation in the performance of risky assets

The structure adopted entails the risk of participating only partially, and not totally, in the performance of the risky assets.

- Guarantee extension

Where the investment strategy is implemented in a given time period, and systematically extended, the impact of the systematic extension process on the risk profile of the UCITS or AIF shall be listed.

Accordingly, a UCITS or AIF that implements a Constant Proportion Portfolio Insurance strategy aimed at preserving the capital with a one-year objective and that is automatically extended sees its risk level increasing each time the strategy is extended.

- Systematic managed structured funds

Where some specific market conditions have a particularly negative or positive impact on the behaviour of the structured fund, these situations shall be identified and stipulated.

- Leverage effect and composition of the risky asset class

Constant Proportion Portfolio Insurance strategies are structured in such a way as to reap the benefits of a leverage effect that offers the possibility to adjust exposure to risky assets and to yield a return.

Adjusting this leverage effect is a direct consequence of the composition of the risky asset class, both for actively managed and passively managed Constant Proportion Portfolio Insurance, where assessing the value of the applicable multiplying factor is required.

The features of the assets chosen to comprise the risky class need to be highlighted in order to fully explain the imperfections of the adjustment mechanism.

Let's take the example of low-liquidity risky assets. In order to adjust the leverage level of the strategy during the term of the fund, an allocation adjustment between the two classes that will lead to liquidating the risky assets is needed. The liquidation period can last a long time and, consequently, delay the effective adjustment, thereby making it impossible to meet the management objective.

- Impact of volatility on the strategy

The impact of volatility on adjusting allocation between the risky and non-risky asset classes shall be clearly highlighted insofar as the performance achieved by the risky asset class relies heavily on the volatile price movements in the assets comprising it. These volatile price movements can indeed amplify the behaviour of the strategy and, notably, speed up the process through which the collective investment may be invested in monetary assets.

For instance, an asset class including non-diversified and highly correlated risky assets that is exposed to the consequences of sharp price movements on a stressful trading day would have to change its composition substantially. Such changes could result in the collective investment being invested in monetary assets more quickly.

8.2. Collective investments using a constant proportion portfolio insurance strategy with capital protection or guarantee staggered over time

UCITS or AIFs using a constant proportion portfolio insurance strategy aim at offering a capital protection and a performance linked to some markets at a given maturity.

Implementing capital protection or guarantee in UCITS or AIFs staggered over time is possible. For instance, it may consist of offering total capital protection to investors after six years and partial participation to a bullish stock market, intermediate protections of the initial investment in the third, fourth and fifth years at levels of 85%, 90% and 95% respectively.

Accordingly, the way such collective investments are managed depends on the different protection or guarantee commitments to be met. Should intermediate guarantees become more demanding than the guarantee offered upon maturity – notably because of the influence of the price movements in interest rates on the cost of the guarantees – management could prove less effective for investors who are willing to retain their units until maturity.

Position

Marketing these types of collective investments requires that particular attention be paid to information aimed at unitholders and shareholders. In that respect, marketing communications shall be coherent with the opportunities that are truly offered through the diversity of the protections proposed on the one hand, and, on the other hand, with the risk/reward profile of the collective investment. In that respect, formulations restricting themselves to highlighting the optimised nature of the management without mentioning the constraints and impact linked to the guarantees shall be avoided. The asset management company may naturally mention, where appropriate, that it uses techniques aimed at minimising the impact of the intermediate guarantees.

Advice to final customers as regard this specific feature of the collective investment and on its risk/reward profile throughout its term shall be enhanced.

9. MARKETING FEATURES OF SOFICAs

9.1. Information on backed investments

Some SOFICAs (film investment funds) use a mechanism known as “backing”.

Through this mechanism, SOFICAs fund an investment (for instance 100) that can yield returns throughout the investment period (for instance 10).

At a time known in advance, this investment is usually bought out from the SOFICA at a determined price corresponding to the purchase price 100, minus the returns paid out. The SOFICA does not make any profit on the investment, even when its value has appreciated (for instance 300).

From an economic point of view, the shareholder will lose the amount of the fees charged on the assets by the SOFICA but will not make any profit.

Position

Marketing communications released by the SOFICA shall present this mechanism, the proportion of the assets on which it is backed and specify that the shareholder will not make any profit on this asset class. They shall also mention whether the backed amount is guaranteed by a bank or not.

9.2. Marketing communications for successful films and awards

Position

Marketing communications released by film investment funds (SOFICAs) cannot refer to successful films, award-winning films or soon-to-be-awarded films, the names of famous actors and/or actresses that were linked to SOFICAs incorporated in the past. Since these lists are not exhaustive and could lead potential investors to subscribe to units in the SOFICA based on past performance, it is advisable to remove this type of reference from marketing communications released by the SOFICA waiting to be marketed.

10. MARKETING FEATURES OF SCPIs (REAL ESTATE INVESTMENT COMPANIES)

10.1. Link between the minimum investment period for partners holding units in taxable real estate investment companies and their term

Taxable real estate investment company (SCPI) partners have, in return for the tax advantage they are granted, the obligation to hold their units over a predetermined time period, which may vary, depending on the tax regime. It should be noted that for this type of SCPI, there is no transferability of the tax advantage in the event of a unit resale and, when reselling takes place before the end of the minimum investment period, partners lose all tax advantages they were granted when they first subscribed to units in the SCPI. Consequently, the market for exchanging units in taxable real estate investment companies is almost non-existent.

Position

Marketing communications shall clearly specify that investors shall not consider their investment as liquid before the real estate investment company reaches the end of its term (usually between 13 and 15 years for such instruments), to which shall be added the selling time of the buildings, and shall avoid any emphasis on the secondary market.

10.2. Allowing investors to buy real estate investment company units on credit

Instalment loans or interest-only loans for real estate investment company units are often proposed to investors, with the revenues paid out by the real estate investment company being used to cover the repayments. Should an interest-only loan be proposed, repaying the loan in a single repayment may be covered by the prior sale of the real estate investment company's property portfolio.

Position

As regards the use of loans, marketing communications shall notably draw investors' attention to the following:

- given the randomness of the revenues generated by the real estate investment company, investors shall not rely on these revenues alone to meet their repayment obligations;
- the term of an interest-only loan aimed at financing taxable real estate investment company units is not compatible with the predictable liquidation time periods of the real estate investment company, which can last several years; it is recommended that investors stay informed about the maximum time period during which the real estate investment company can be liquidated;
- moreover, should a payment default on the loan granted occur, the real estate investment company units may be sold, which may cause a capital loss and/or, in the case of a taxable real estate investment company subsidiary, result in the tax advantage being lost;

- lastly, should the real estate investment company units be sold at a discounted price, investors will be required to compensate the possible difference between the capital outstanding (with a view to repaying the outstanding part of the loan) and the amount generated by the sale of their units.

10.3. Marketing communications for “Malraux” and “Déficit foncier” real estate investment companies

Position

Marketing communications for real estate investment companies offering investors tax reductions or a reduction in their tax base, in relation to the amount of works undertaken (for “Malraux” and “Déficit foncier” real estate investment companies in particular), must explain clearly and intelligibly the expected effect on taxable capital gains resulting from the sale of real property assets each time that the tax gain is evoked in the first days of its term.

11. MARKETING FEATURES OF PRIVATE EQUITY FUNDS

Position

All marketing communications promoting retail private equity investment funds, retail venture capital investment funds and retail local investment funds that qualify for tax incentives shall feature a warning. This warning shall be displayed in bold and in a box and worded as follows:

“Investors’ attention is drawn to the fact that the money deposited will be blocked for a duration of [X] years, [except in the case of an event qualifying for early release as provided for in the regulation]. The retail private equity investment fund, retail venture capital investment fund or retail local investment fund in question is chiefly invested in non-listed companies that present specific risks.

You must be aware of the risk factors linked to this retail private equity investment fund, retail venture capital investment fund or retail local investment fund, described under the “Risk profile” heading in the regulation.

Lastly, approval by the AMF does not mean that you will automatically benefit from the different tax schemes presented by the asset management company. This will depend on compliance with certain investment rules, on the time period of your investment and on your personal circumstances.”

This warning shall be followed by a summary table aimed at helping investors assess the ability of the asset management company to meet the investment requirements needed to be granted the tax advantage. This table shall be displayed for any approved retail private equity investment fund, retail venture capital investment fund or retail local investment fund. In addition to its name and creation date, the table features the percentage of the asset eligible for the quota that was reached at the time the document was last created and the date at which the quota needs to be reached.

As the performance of a private equity fund can be determined only at maturity, marketing communications for such funds during their lifetime cannot describe successful past investments. These investments are not exhaustive and could encourage the investor to subscribe on that basis. However, this sort of information can appear in marketing communications for private equity funds that are currently being distributed only if these marketing communications also mention investments that have not performed as well.

The performance of private equity funds must be presented without the tax benefit, as the latter is subject to compliance with certain investment rules and depends on the situation of each individual investor.

The description of the tax benefit must systematically be balanced out by wording stating the period during which the assets are blocked (without which the investor will not qualify for the said benefit) and the risk of loss of capital.

Marketing communications of private equity funds that implement a strategy allowing investment in preference shares, the characteristics of which may fix or cap the maximum performance of certain investments (or which implement mechanisms having similar effects, such as shareholder agreements), must

illustrate the yield and risk profile of the investment over the recommended investment period, using one or several scenarios.

These scenarios are intended to show:

- The cap on performance;
- The risk of loss of capital.

Also, when the asset management company, on behalf of the fund, has the intention of investing in preference shares with a redemption option at the initiative of a third party at a predetermined price, this mechanism cannot be presented as a liquidity mechanism.