

Insights and Commentary from Dentons

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This document was authored by representatives of McKenna Long & Aldridge prior to our combination's launch and continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

Mutual funds

Belgium: New Stricter Regulatory Requirements for UCITS Funds

The Royal Decree of April 25, 2014 ("the Royal Decree") that was to have come into force in Belgium on June 12, 2015 has been delayed.

How Will the Operational and Administrative Burden Be Handled?

The Royal Decree of April 25, 2014 concerning certain information requirements for the offering of financial products to non-professional clients ("the Royal Decree") will come into force in Belgium on June 12, 2015 and shall materially apply to the distribution, on a professional basis, of all financial products under the Law of August 2, 2002 on the Supervision of the Financial Sector and on Financial Services, *i.e.*:

- savings accounts
- life and non-life insurance agreements
- securities and other investment products

The Royal Decree practically applies to financial products that are offered to non-professional clients as defined in the Markets in Financial Instruments Directive or "MiFID" (see transposing Article 2, paragraph 1, 29° of the transposition Law of 2 August 2002).

The Royal Decree does not apply to:

- Financial Products with Minimum Subscription Requirements of at least EUR 100,000 per unit or, in case of participations in open-ended collective investment undertakings, OF at least EUR 250,000.
- Financial Products admitted to trading on a regulated market or a Multilateral Trade Facility and the applicable investment service that only consists of the reception and transmission of orders or the execution of orders, without any additional remuneration for the distributor.

Standardized Fact Sheet

The Royal Decree introduces a new requirement to provide retail investors with a short, standardized and easily understandable document that outlines certain particulars of the financial product. This document is called Standardized Fact Sheet ("SFS"), whose length may not be more than three A4-size pages. Moreover, the Royal Decree lists in Annex certain examples/templates for SFSs. For collective investment undertakings, the Key Investor Information Document, as provided in Directive 2009/65/EC (UCITS IV Directive) is presumed to comply with the SFS requirements.

Non-professional clients must be provided with the SFS free of charge and in due time before the intended purchase

of /subscription to/ participation in a financial product. Information supplied needs to be easily understandable to retail investors. In this regard, the information in the SIR shall meet the following criteria, amongst others:

- Clear, drafted in a simple non technical language correct, not misleading and consistent with information provided in other investment specific documentation.
- Clearly and specifically mentioning the persons to contact in case of questions and/or complaints and their contact details.
- Referring to the risk factor for investment products.
- Including a relevant warning/disclaimer that investment on the specific product shall take place only upon careful review of the relevant investment information.
- Addressing the applicable tax structure concerning retail investors in Belgium for the specific investment product, as already exists for UCITS Funds.
- Referring to the website where all relevant information can be found. For foreign UCITS marketed in Belgium, reference should be made to a fund-specific website preapproved by the Belgian Financial Services and Markets Authority ("FSMA").

The above list reflects already existing and new requirements for fund specific documentation and is not exhaustive.

It is noteworthy that when the issuer of the financial product uses financial intermediaries or authorized distributors to market the financial product, the responsibility to provide an SFS still lies with the issuer. Therefore, all Funds and other

finance products issuers may not evade their legal obligations under the Royal Decree by passing them on to third party marketers of their products or other financial intermediaries.

Advertisement Documentation – WARNING!

The Royal Decree applies to all pre contractual information, including advertisement and other marketing communication to all retail clients. The Royal Decree extends the reach of the FSMA's control powers to all marketing materials of financial products that may relate to not only a public offer but also to private placements. Relevant rules address:

- Comparative advertising.
- The prohibition of any misleading publicity.
- The introduction of a label indicating the financial products degree of risk. The technical requirements for the label are laid down in a Regulation adopted by the FSMA. The Regulation has been approved by a Royal Decree published on June 12, 2014. The label indicates the risk level of savings and investment products in a highly standardized format. In particular, there are 5 risk labels based on the inherent risk a specific financial product entails, namely that of not recovering one's initial investment at maturity. The Regulation sets out clear criteria for the label classification of financial products.
- Minimum information that must be included e.g. name, type, duration of the product, applicable law and country of origin, the investment objective, contact details of the offering entity etc.) and requirements pertaining to the presentation of past performance (minimum one year since creation of the product, five years of data available, clear indication of reference performance periods presented, clear indication of currency of the investment etc.).
- Cross-references in the advertising material to a benchmark. This shall take place in a consistent manner throughout the material; performance demonstration shall be exclusively in bar charts using specific warnings and calculation rules. EU regulators tend to be more lenient than the FSMA with regard to performance demonstration.

Prior Approval by the FSMA

The prior approval of new and updated advertising documentation by the FSMA is required. In fact, the FSMA has already started applying the new legislation, by referring to the Royal Decree and its enhanced compliance requirements in every UCITS' filing for approval of advertising material.

It should be pointed out that the Belgian regulator is amongst the most stringent in the EU with regard to advertising material compliance requirements for UCITS. FSMA's circular letter 2013_13 of June 27, 2013 on announcements, advertisements, and other items relating to a public offer of units in a public open-ended Undertaking for Collective Investment ("UCI") imposes complex requirements in relation to every aspect of advertising material that may differ with the relevant requirements imposed by other regulators in the EU.

Where We Can Assist You

- We bring more than 30 years experience in the finance sector across the EU. We are able to provide both Belgian and pan-European coverage and operate in different languages.
- We advise on literally all aspects of UCITS and non-UCITS fund formation and legislation compliance to all actors in the financial service supply chain.
- We have a wealth of experience in clearing and settlement and complex financial and insurance products.
- We draft all underlying documents and assist our clients in putting new systems in place within the existing legislative framework.
- We ensure compliance with the new legal requirements, including reviewing and amending contractual documentation, filling it with the FSMA and providing immediate, client focused information on file progress.
- We handle website approval in Belgium pursuant to the new mandatory FSMA requirements.
- We advise on all aspects of MiFID compliance legislation in Belgium for a wide range of investment and insurance products.
- We counsel insurance and reinsurance companies and insurance intermediaries on all aspects of insurance and reinsurance law, including the drafting of policies. We have developed a strong expertise in investment fund linked insurance products.
- We are moving into a fully automatic web based electronic compliance system, whereby all Funds will be able at a fixed fee to view, update and control their compliance filings online, while being provided with live updates on the progress made.

**For More Information and to Discuss
a Detailed Compliance Strategy in
Belgium, Please Contact:**

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