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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013 - Mandate for negotiations with the European Parliament = Compromise proposal

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No 345/2013 and (EU) No 346/2013

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Divergent regulatory and supervisory approaches concerning the cross-border distribution of alternative investment funds ('AIFs'), as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council[2], including EuVECA, EuSEF and ELTIF, and undertakings for collective investment in transferable securities ('UCITS'), within the meaning of Directive 2009/65/EC of the European Parliament and of the Council[3], result in fragmentation and barriers to cross-border marketing and access of AIFs and UCITS, which in turn could prevent them from being marketed in other Member States.

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1 OJ C,, p..

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

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

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

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

(2b) In order to promote good practicies of investor protection which are enshrined in the national requirements for fair and clear marketing communications, including their on-line aspects, ESMA may adopt guidelines on the application of these rules to marketing communications.

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

(3a) Those Member States which conduct verifications of marketing communications, whether on a systematic basis or using a risk-based approach, should report to ESMA the results of these verifications, requests for amendments and any sanctions imposed on managers of collective investment undertakings. With a view to increasing awareness and transparency on the rules applicable to marketing communications, on the one hand, and ensuring investor protection, on the other hand, ESMA should on a bi-annual basis prepare and send to the Commission a report on those rules and their practical application on the basis of ex-ante and ex-post verifications of marketing communications by competent authorities.

(4) (deleted)

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

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

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

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

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

(8) (deleted)

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

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

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

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

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

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

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

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

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

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

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

HAVE ADOPTED THIS REGULATION:

Article 1

Definitions

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

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

(b) 'AIFM' means an AIFM as authorised in accordance with Article 6 of Directive 2011/61/EU;

(ba) 'EuVECA manager' means a manager of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013;

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

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

(d) 'home Member State' means the Member State in which the AIFM or the UCITS management company has its registered office;

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

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

Article 2

Requirements for marketing communications

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

2. UCITS management companies shall ensure that no marketing communication that contains specific information about a UCITS contradicts the information, or diminishes its significance, contained in the prospectus referred to in Article 68 of Directive 2009/65/EC and the key investor information referred to in Article 78 of that Directive. UCITS management companies shall ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available. The marketing communication shall specify where, how and in which language investors or potential investors can obtain the prospectus and the key investor information.

3. AIFMs, EuVECA managers and EuSEF managers shall ensure that no marketing communication comprising an invitation to purchase units or shares of an AIF that contains specific information about an AIF makes any statement that contradicts the information that needs to be disclosed to the investors in accordance with Article 23 of Directive 2011/61/EU, or, respectively, with Article 13 of Regulation 345/2013 or with Article 14 of Regulation 346/2013, or diminishes its significance.

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

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

Article 3

Publication of national provisions concerning marketing requirements

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

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

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

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

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

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

Article 4

ESMA central database on national provisions concerning marketing requirements

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

Article 5

Ex-ante verification of marketing communications

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

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

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

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

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

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

Article 5a

ESMA report on marketing communications

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

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

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

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

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

2. By 30 June of every second year starting from [*PO: Please insert date 12 months after the date of entry into force*], ESMA shall submit a report to the Commission which presents an overview of marketing requirements in all Member States referred to in Article 3, paragraph 1 and contains an analysis of the effects of national laws, regulations and administrative provisions governing marketing communications based also on the information received in accordance with paragraph 1.

Article 6

Common principles concerning fees or charges

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

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

Article 7

Publication of national provisions concerning fees and charges

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

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

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

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

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

Article 8

ESMA publication on fees and charges

1. By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall publish and maintain on its website hyperlinks to the websites of competent authorities as referred to in Article 7(2).
2. By [*PO: Please insert date 30 months after the date of entry into force*], ESMA shall develop, make available and maintain on its website an interactive tool publicly accessible in at least a language customary in the sphere of international finance that provides an indicative calculation of the fees and charges referred to in Article 6(1).
The interactive tool shall constitute a part of the database referred to in paragraph 1.

(Article 9 is deleted)

Article 10

ESMA central database on crossborder marketing of AIFs and UCITS

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

(a) all AIFs that are marketed in another Member State, their AIFMs and a list of Member States in which they are marketed; and

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

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

Article 11

Standardisation of notifications to ESMA

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

2. ESMA shall develop draft implementing technical standards to specify the information to be communicated, as well as the forms, templates and procedures for communication of the information by the competent authorities for the purposes of paragraph 1.

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

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

Article 11a

Powers of competent authorities

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

2. The powers conferred on competent authorities in accordance with Directive 2009/65/EC, Directive 2011/61/EU, Regulation 345/2013 and Regulation 346/2013, Regulation 2015/760 including those related to penalties, shall also be exercised with respect to the managers referred to in Article 2 of this Regulation.

Article 12

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

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

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

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

(2) the following Article 4a is inserted:

‘*Article 4a*

1. Managers of qualifying venture capital funds may engage in pre-marketing in the Union, excluding where the information presented to potential investors:

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

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

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

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

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

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

2. Competent authorities shall not require managers of qualifying venture capital funds to notify their intention to engage in pre-marketing.

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

In particular, any subscription by investors to units or shares, within 18 months after the manager of a qualifying venture fund engaged in pre-marketing, of a qualifying venture capital fund referred to in the information provided in the context of pre-marketing, or of a qualifying venture capital fund established as a result of the pre-marketing shall be considered the result of marketing.

4. Managers of qualifying venture capital funds offering for subscription units or shares of qualifying venture capital funds that were the object of pre-marketing shall inform the competent authority in accordance with Article 15.'

5. For the purposes of paragraph 3, the manager of a qualifying venture fund shall ensure that its pre-marketing activity is adequately documented.

Managers of qualifying venture fund shall ensure that information relating to pre-marketing activities is available, and provided upon request, to its competent authorities after that activity taking place and shall include the reference to the Member States and the period of time in which the pre-marketing activities took place.

Article 13

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

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

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

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

(2) the following Article 4a is inserted:

‘*Article 4a*

1. Managers of qualifying social entrepreneurship funds may engage in pre-marketing in the Union, excluding where the information presented to potential investors:

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

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

(c) amounts to constitutional documents, a prospectus or offering documents of a not-yet-registered qualifying social entrepreneurship funds in a final form.

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

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

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

2. Competent authorities shall not require managers of qualifying social entrepreneurship funds to notify their intention to engage in pre-marketing.

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

In particular, any subscription by investors to units or shares, within 18 months after the manager of a qualifying social entrepreneurship fund engaged in pre-marketing, of a qualifying venture capital fund referred to in the information provided in the context of pre-marketing, or of a qualifying social entrepreneurship fund established as a result of the pre-marketing shall be considered the result of marketing.

4. Managers of qualifying social entrepreneurship funds offering for subscription units or shares of qualifying social entrepreneurship funds that were the object of pre-marketing shall inform the competent authority in accordance with Article 16.'

5. For the purposes of the paragraph 3, the manager of a qualifying social entrepreneurship fund shall ensure that its pre-marketing activity is adequately documented.

Managers of qualifying social entrepreneurship fund shall ensure that information relating to pre-marketing activities is available, and provided upon request, to its competent authorities after that activity taking place and shall include the reference to the Member States and the period of time in which the pre-marketing activities took place.

Article 14

Evaluation

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

Article 15

Entry into force

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

It shall apply from [*PO: Please insert the twentieth day following that of its publication in the Official Journal of the European Union*], except for paragraphs 1 and 4 of Article 2, paragraph 1 and 2 of Article 3, Article 12 and Article 13, which shall apply from [*PO: Please insert date 24 months after the date of entry into force*] and paragraph 2 of Article 5a which shall apply from [*PO: Please insert date 48 months after the date of entry into force*].

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*