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The Open-Ended Undertakings for Collective Investment (UCI) Law of 2012

Directive DI 78-2012-12

Of the Cyprus Securities and Exchange Commission as regards avoidance of market timing and late trading practices when offering units in Undertakings for Collective Investment in Transferable Securities (UCITS)

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The Commission taking into consideration that:

- a) by means of the practice of «late trading» an investor can take advantage of knowledge of facts or of information published after the cut-off time for submitting subscription or redemption requests of units of UCITS and having not been taken into consideration for calculating the subscription or redemption price of those units, to its own illicit benefit;
- b) by means of such a practice, such an investor is placed at an advantageous position compared to the rest of the investors that have submitted subscription or redemption orders for units of UCITS prior to the said cut-off time;
- c) by means of the practice of «market timing» an investor can take advantage of the time difference and the resulting difference in the Net Asset Value (NAV) of the UCITS to its own illicit benefit;
- d) by means of such a practice, an unfair allocation of the benefits resulting from the participation in the UCITS, occurs among investors
- e) late trading and market timing practices violate the principle of fair and equal treatment of investors, and may also affect the performance of the UCITS by raising its operational cost and cause the investment strategy to focus on matters lying outside of investment management

and in the exercise of the powers vested therein under Sections 16(7) and 123 of the Open-Ended Undertakings for Collective Investment (UCI) Law of 2012 issues the following Directive:

Part I: INTRODUCTORY PROVISIONS

Short Title 1. The present Directive shall be cited as the Directive of 2012 on the avoidance of certain practices of market timing and late trading when distributing units of Undertakings for Collective Investment and on related matters.

Interpretation 2. For the application of the present Directive following definitions shall apply:

«Late trading»: means reception of a subscription or redemption order for units of UCITS, after the pre-determined cut-off time at a particular date and the processing of such order at the price of this particular date.

«Market timing»: means reception, within short timeframe, of several subscription or redemption orders for units of UCITS, with the aim of benefiting from the time difference, if any, and from the resulting difference in the NAV of the UCITS.

«Cut-off time»: means the ultimate time of day, up to which subscription or redemption orders for units of UCITS will be accepted, in order for the subsequent issue or redemption to be effected at the price of the date at which the application has been submitted.

78(I) of 2012 «Law»: means the Open-Ended Undertakings for Collective Investment (UCI) Law of 2012.

«Directive»: means the present Directive.

(2) For the application of this Directive:

- (a) The term “units” also covers the shares of a Variable Capital Investment Company.
- (b) The term redemption also covers the repurchase of units, whereas the term subscription also covers the transfer to another UCITS or another UCITS investment compartment.
- (c) Reference to a Management Company also covers Variable Capital Investment Companies, which have not appointed a Management Company.

Terms used herein and not being interpreted differently have the meaning ascribed to them in the Law.

- Scope of application 3. The Directive regulates the procedures for avoidance of certain late trading and market timing practices when subscribing or redeeming units in Undertakings for Collective Investment.

PART II: GENERAL PROVISIONS REGARDING AVOIDANCE OF MARKET TIMING AND LATE TRADING PRACTICES

- Cut-off time 4. (1) The Management Company shall clearly determine the cut-off time regarding subscription or redemption orders for units of UCITS under its management.

(2) The cut-off time shall be prior to the UCITS NAV calculation time, on the grounds of which the subscription or redemption price of its units shall be calculated, and shall be determined in such a manner, so that any possibilities of abusive choice of the timing for submitting subscription or redemption orders with the aim of drawing benefit from the time difference and the resulting difference in the Net Asset Value (NAV) of the UCITS be minimized.

(3) The Management Company ensures that the UCITS Depositary applies, in case it suspects that through a specific transaction use of a late trading or market timing practice is being made, particular diligence as to the frequency and the amounts of the transactions regarding the respective subscription or redemption of units of UCITS.

- Content of the Prospectus and of the subscription and redemption forms
5. (1) The UCITS Prospectus contains, in addition to what is required under the Law following particulars:

- (a) The cut-off time for submitting subscription and redemption orders for units of UCITS,
- (b) That the subscription or redemption of units is effected at an NAV, which is unknown at the moment of submission of the order,
- (c) That market timing is not allowed and that the Management Company retains the right not to accept a subscription or redemption order for units of UCITS, if there are reasonable grounds that such an order is submitted within the context of such a practice and that

it retains the right to take any appropriate measure towards protecting the rest of the unit-holders in the UCITS,

- (d) The expected reasonable time regarding the frequency of transactions in units of this UCITS that serves as a criteria for identifying market timing practices. When determining this reasonable time, the Management Company shall take the investment policy of the UCITS into consideration
- (e) The risks, to which investors could be eventually subject, from the use of late trading and market timing practices and
- (f) That the Management Company and the persons participating in the subscription and redemption of UCITS under its management, apply appropriate procedures for avoidance of late trading and market timing practices.

(2) The subscription and redemption form for units of UCITS shall state the cut-off time for submitting subscription and redemption orders for units of UCITS.

Provision of information regarding the composition of a UCITS portfolio

- 6 The Management Company applies procedures regarding the provision of information as to the composition of the UCITS portfolio in real time, so that late trading and market timing practices are avoided.

Report by the Management Company's Board of Directors

- 7 The Management Company's Board of Directors, shall draw at the end of each calendar year a report relating to the application of the provisions of the Directive and of the measures and procedures that have been taken and implemented during the year regarding the avoidance of late trading and market timing practices; it shall further assess such measures and procedures and confirm their implementation also by the subscriptions or redemptions network. The report shall also state any such cases of transactions, where such practices have been discovered, during the period of time at issue.

Part III: MEASURES FOR AVOIDANCE OF LATE TRADING PRACTICES

Procedures for avoiding late trading

8. The Management Company and the persons participating in the subscriptions or redemptions of units of UCITS under its management apply adequate procedures for avoiding late trading practices, so that they comply with the obligations imposed under the Directive.

Obligations for avoiding late trading

9. (1) The Management Company ensures that the subscription or redemption of units of UCITS is effected at the price corresponding to the date of submission of the order, only if the latter has been received until the cut-off time.

(2) By exception, the Management Company shall process subscription or redemption orders of units of UCITS at the corresponding price of the date of submission of the order, even if the latter has been submitted after the cut-off time, provided following conditions cumulatively apply:

- (a) The order has been submitted after the cut-off time because of technical failure of the entries' or electronic order submission system and
 - (b) A special approval has been granted by the Compliance Officer or the Internal Auditor of the Management Company, in which it is confirmed that the late submission of the order is exclusively due to a technical failure of the system.
- (3) The Management Company requires that persons with which it enters into contractual arrangements regarding the subscription and redemption of units of UCITS under its management to:
- (a) Explicitly inform the investor that the orders for subscription and redemption of units will be processed at the price of the date of submission of the order, only if the latter has been received until the cut-off time.
 - (b) Ensure that the orders for subscription and redemption of units, transmitted to the Management Company for processing at the price of the date of submission of the order, have been received either until the cut-off time, or exceptionally and subject to justification, only in the case of sub-paragraph (2).
 - (c) To further impose the obligations under points (a) and (b) above to the persons with which they enter into contractual arrangements regarding the distribution of units of UCITS.
- (4) The Management Company keeps a record of orders, which according to sub-paragraph (2), have exceptionally been processed by it, despite the fact that they have been submitted after the cut-off time. The evidence proving fulfillment of the conditions of sub-paragraph 2 must also be filed in the said record.

PART IV: MEASURES FOR AVOIDANCE OF MARKET TIMING PRACTICES

Measures for avoiding market timing

10. (1) The Management Company, taking the interests of unit-holders into consideration, lays down and implements adequate measures and appropriate procedures, in particular within the context of its commissions' policy or through the monitoring mechanisms of subscriptions and redemptions orders for units of UCITS under its management, so that market timing is avoided.
- (2) The Management Company ensures that the measures and procedures of sub-paragraph (1) are applied by the persons of the subscription and redemption network of units of UCITS under its management.

PART V: ADDITIONAL PROVISIONS REGARDING THE OBLIGATIONS OF THE PERSONS PARTICIPATING IN THE DISTRIBUTION NETWORK OF UNITS OF UCITS

Obligations of the persons participating in the network of subscription and

11. (1) The Management Company requires the persons with which it enters into contractual arrangements regarding the subscription and redemption of units of UCITS under its management, in addition to what is stated in other paragraphs

redemption of units
of UCITS

of this Directive:

- (a) No to communicate to investors any privileged information that they may possess, which could influence the investor on taking its investment decision or contribute to the use of a late trading and market timing practice,
- (b) To dispose of appropriate techniques and procedures as well as of any other adequate measure, so as to identify the use of late trading and market timing practices when a subscription or redemption order for units of UCITS is submitted and to immediately inform the Management Company, in case they suspect or in case they identify the use of such practices,
- (c) To ensure that the Management Company will have access to the systems and procedures they apply for avoiding late trading and market timing practices, in such a manner that the Management Company will be in a position to control the adequacy of such systems and procedures and the way these are applied, and
- (d) To apply special due diligence measures for avoiding and identifying late trading and market timing practices in case of aggregated orders, so that the latter be not used as a vehicle for disguised application of such practices.

(2) All obligations imposed in accordance with the Directive to the persons with which the Management Company enters into contractual arrangements regarding the subscription and redemption of units of UCITS under its management must be explicitly laid down in the respective agreement. These persons must further impose the obligations of the previous sentence also to other persons, with whom they enter into a contractual arrangement regarding subscriptions and redemptions of units of UCITS.

(3) The Management Company exercises the required monitoring on the persons of the subscription and redemption network of units of UCITS under its management, so that the obligations imposed on it by virtue of the Directive are complied with.

Transactions of
persons participating
in the network of
subscriptions and
redemptions of units
of UCITS

12. The Management Company lays down, adopts and implements all necessary measures and appropriate procedures regarding the monitoring of transactions of subscriptions and redemptions of units of UCITS, which are conducted by the persons participating in the network of subscription and redemption of units of UCITS, or by persons employed by them, either on their name or on their behalf, so that use of privileged information, possessed by such persons, relating to the UCITS is avoided.

PART VI: FINAL PROVISIONS

Entry into force

13. The Present Directive shall enter into force following its publication in the Official Gazette of the Republic.