Marketing investment funds in Greece

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Table of contents:

I. Introduction

Collective investment vehicles were first regulated in Greece by Law 608/70. However, subsequent developments in collective investment urged for more integrated and up-to-date legislation. Law 1969/91 constitutes the dominant legal instrument governing these vehicles today, whereas Law 2778/99 regulates specifically vehicles of collective investment in real estate.

Law 1969/91, implementing the European Directive 85/611/EEC, distinguishes between two types of investment funds, namely unit trusts and investment portfolio companies, the former being characterised as open-ended funds while the latter as closed-ended.

Unit trusts are UCITS under both the Directive and Law 1969/91 (Article 1 par. 2 and Article 17 par. 2 respectively), namely organizations that invest in transferable securities by raising capital from the public and operate on the basis of risk-spreading. Unit trusts are of contractual type, in the sense that the foundation of their function is the agreement between the management company and the investor.

Investment portfolio companies are, as strongly attested, not UCITS. However, both Directive and Law 1969/91 consider such companies as "UCITS of the closed-ended type", rather than no UCITS at all (Article 2 par. 1 and Article 17 par. 4 respectively). Unlike unit trusts, investment portfolio companies are of statutory nature, namely they operate as public limited companies of fixed capital the sole objective of which is the management of a securities portfolio.

Law 2778/99 reflects the latest developments in collective investment and is supplementary to Law 1969/91. It presupposes the distinction made by Law 1969/91 between organizations of contractual type (unit trusts) and of statutory type (investment portfolio companies). Nevertheless, it is differentiated by the latter Law insofar as it regulates organizations investing particularly in real estate, in the sense that a minimum of 70% of their net asset value must be invested in real estate.

The perils an investor may have to face when investing in one of the said vehicles have provided the ground for the adoption of a number of protective regulations aimed at controlling the marketing of funds. As "marketing" of funds shall be considered not only the act of purchasing shares or units, but any act relating to the promotion of funds including acts of management inasmuch as they are addressed to the public. In particular, these regulations intend to ensure that the management of funds is operated solely for the benefit of investors, to introduce transparency in management operations, and to guarantee equal treatment of investors by management companies. To that end, Law 1969/91 comprises a number of relevant provisions, whereas the Capital Market Commission (hereinafter referred to as "CMC") has adopted the Code of Conduct of companies engaged in the management of unit trusts and investment portfolio companies. It should be stressed that the above provisions are primarily intended to regulate unit trusts, since investment portfolio companies, as public limited companies, are subject to the safeguarding mechanisms of the Consolidated Law 2190/1920. Furthermore, at international level, the Internet Task Force formed by the International Organization of Securities Commissions (hereinafter referred to as "IOSCO") has issued a report addressing general principles and guidelines in respect of the marketing of investment

funds through the Internet.

The following analysis will focus on the legal framework governing the marketing of investment funds in Greece, covering predominantly the Code of Conduct of collective investment vehicles that constitutes the principal legal instrument controlling the promotion and management of investment funds. Attention will also be drawn to the relevant provisions spread through Law 1969/91 as well as to the general principles and guidelines relating to the marketing of investment funds through the Internet, as incorporated in the report of the Internet Task Force. Finally, special reference will be made to the legal framework governing the marketing of foreign investment vehicles.

II. The Code of Conduct

The Code of Conduct of companies engaged in the management of open-ended funds and investment portfolio companies (hereinafter referred to as "the Code") lays down a uniform set of rules of behaviour for these companies and their employees. It was adopted by virtue of decision 8422/98 of the CMC pursuant to Article 78 par. 1 of Law 1969/91 as amended by Article 113 par. 21 of Law 2533/97.

Originally, the Code was not intended to cover organisations of collective investment in real estate since these organisations were firstly regulated after the adoption of the Code. However, it is argued that the Code can be interpreted so as to cover the open-ended entities of Law 2778/99 insofar as it does not regulate acts pertaining solely to the management of transferable securities. On the contrary, closed-ended entities investing in real estate are by definition exempted from the scope of the Code, since the latter expressly refers to closed-ended vehicles investing in transferable securities[1]. In any case, the existing legislative vacuum can only be covered by the adoption of appropriate legislation.

The principal aim of the Code is to ensure that the management of collective investment funds is operated for the sole benefit of investors and to prevent abusive behaviour by companies managing unit trusts and investment portfolio companies. It consists of ten Articles classified in two Chapters, the first of which includes general provisions and

[1] See Spilios Mouzoulas, The Organizations of Collective Investment in Greece and in the European Union, p. 640-643.

guidelines of conduct while the second comprises specific principles implementing its objectives.

1. First Chapter

a. Article 1

Article 1 identifies the natural and legal persons falling under the scope of the Code, while it particularly addresses the meaning of the terms "management" and "manager". The first paragraph provides that the obligations laid down by the Code concern unit trust management companies (hereinafter referred to as "UTMC") and investment portfolio companies (both types hereinafter referred to as "the companies" and each one as "the company" or "a company"). It is worth mentioning that investment portfolio companies were correctly regulated by the Code, since they are indeed vehicles of collective investment in transferable securities regardless of whether they are regulated or not by the Directive.

Furthermore, the Article defines a manager on the basis of a functional criterion according to which a manager is a natural person engaged in acts of management regardless of the type of such person's legal relationship with the company. Only managing directors are ipso jure managers in the sense that they are considered as such only due to their legal relationship with the company. In this context, even advice aiming at setting up an investment portfolio can be considered as an act pertaining to a manager. Nevertheless, the act of determining the category of a unit trust by identifying its

composition, e.g. equity fund, bond fund, money market fund etc., does not constitute an act of management. Likewise, the Directors of "a company" do not act as managers when merely approving acts of management without having the power to modify them.

Moreover, the Article determines the persons subject to the Code. The term "personnel" used by Article 113 par. 21 of Law 2533/97 is hereby defined with considerable breadth. Indeed, it is meant to include not only the persons employed by "the companies" on the basis of a labor contract, but also any other person that is in any way involved in achieving "the companies"' goals under any legal relationship with "the companies". In this sense, the Code applies to employees engaged in all activities pertaining to the management of a unit trust, namely investment advice, administrative support of the unit trust and distribution of units. The breadth in which the meaning of "personnel" is interpreted prevents "the companies" from defying their contractual obligations by claiming liability of a third person operating as an associate or a go-between. Further to the above, a depositary can also be regarded as falling under the scope of this Article insofar as it cooperates with "a company" in the context of an investment contract. Nevertheless, the Code does not apply to the employees of the depositary, since the above cooperation is deemed to exist only between "the company" and the depositary and not between the former and the employees of the latter. It should be underlined, however, that the relationship between "a company" and a depositary is a delicate one, since the Code subjects it to restrictions, as it will be elaborated later on.

Finally, the Code adopts an apparently restricted interpretation of the term "investors", since it considers as such only the unit-holders of a unit trust or the shareholders of an

investment portfolio company. In some cases, however, the meaning of the above term is extended so as to include persons that have not yet acquired units or shares.

b. Article 2

Article 2 lays down the principal objectives of the Code. It provides that the rules governing the behaviour of "the companies" and their personnel shall aim at safeguarding the sound operation of the market and at ensuring that the management of funds is exclusively operated for the benefit of investors. This Article actually extends the scope of the relevant provision applying to unit trusts so as to cover investment portfolio companies.

c. Article 3

Article 3 sets specific principles governing the behaviour of "the companies" and their personnel when pursuing "the companies'" goals. In particular, "the companies" shall act as follows:

- **operate in such a way as to ensure the sound operation of the market;**
- **guarantee the independence of the management towards the depositary and the confidentiality of investment decisions. In doing so, they shall adopt rules in order to prevent conflicts of interest and take appropriate measures, should a conflict arise;**
- **observe the investors' interest when setting the terms according to which they shall exercise any rights relating to shares or other securities forming their portfolio. This**

provision addresses the governance of investment funds, already practised in foreign jurisdictions, and facilitates decision-making procedures within corporate companies inasmuch as the above rights refer to voting rights;

- **refrain from misleading advertisements;**
- **take necessary measures so as to secure the effectiveness of internal control mechanisms;**
- **ensure equal treatment of investors and transparency of management operations, so that investors are granted adequate information before selecting a particular investment as well as up-to-date information in relation to their investment;**
- **especially the companies engaged in the management of unit trusts shall organize their distribution networks in such a manner as to guarantee protection of the investors' interests.**

These obligations constitute the hard core of the Code and are dealt with extensively in the following Chapter.

2. Second Chapter

a. Article 4

Article 4 elaborates on the first of the principles set right above. In particular, "the companies" shall ensure the sound operation of the market by observing the rules laid down hereby.

Firstly, they shall prevent the use of confidential information for the personal interest of their personnel. Although not expressly provided, this provision shall be considered as also covering the use of confidential information for the personal interest of "the companies"[2].

Secondly, "the companies" shall guarantee that their intention to purchase or sell shares within the stock market will not be abused by their personnel in such a way as to enable the latter purchase or sell the same in accordance with that intention. In this context, it is essential that an employee or associate performs either one of the above acts prior to "the company", since otherwise the said employee or associate cannot derive any benefit from knowing "the company's" intention. Indeed, employees or associates would be able to diminish or even eliminate their investment risk by knowing their employer's intention.

Furthermore, the same obligations are imposed upon the personnel of "the companies" as well, since the latter is directly required to refrain from any transaction regarding units or shares, insofar as such transaction is facilitated by confidential information that has become available to it in the course of its duties.

Finally, "the companies" shall adopt rules in respect of the above and ensure that they are complied with.

[2] See Spilios Mouzoulas, The Organizations of Collective Investment in Greece and in the European Union, p. 559.

In respect of the second obligation set above, Article 81 of Law 2533/97 should be considered as applying proportionally, insofar as it specifies natural persons that are not allowed to perform directly or indirectly any transaction in the stock market. Similarly to the Code, this Article intends to prevent some persons from investing at low risk or at no risk by taking advantage of their position. Such persons may be the Directors of the Athens Stock Exchange, those of the CMC, of the companies of Article 1 of the Code, etc. Attention should be drawn to the meaning of the term "indirectly" referring to the way such transactions are effected. According to ministerial decision 7834/B/424/1998, the term covers the case where relatives of the said persons intervene in a transaction, as specified above, acting not independently, but as a go-between. Despite the initial rigidity of the above Article, the transactions referred to therein are eventually not prohibited, but subjected to prior notification to the responsible authorities, should the total value of the transactions during a period of three months prior to the notification exceed a certain limit. Failure of the above persons to comply with this requirement incurs criminal charges, nevertheless, does not affect, the validity of the performed transaction.

As regards the third of the above obligations, it should be highlighted that the respective provision should not be interpreted as establishing an ipso jure assumption that some persons abuse confidential information when purchasing or selling shares or units, should the value of the same shares or units vary significantly after such transaction. It is the first time that the abuse of confidential information in respect of securities not negotiable within the stock market (units) is disapproved by the law. On the contrary, the abuse of confidential information regarding securities negotiable within the stock market constitutes a criminal offence.

b. Article 5

Article 5 specialises the second principle of the Code, which is also encountered in Article 30a of Law 1969/91 in respect of unit trusts. According to this principle, "the companies" shall ensure the independence of the management and the confidentiality of investment decisions.

In respect of the former, "the companies" shall adopt rules against conflicts of interest and shall take appropriate measures to resolve such conflicts. The Code refers to conflicts that arise within the group of companies which "the companies" may be part of. Indeed, it is common practice in Greece that investment funds, especially unit trusts, are set up by banks or insurance companies which also participate in the setting-up of the relevant "companies" and can, therefore, exercise control upon them. Subsequently, such bank or insurance company is deemed to form with "the company" of the fund a group of companies in the sense of the Code. The independence addressed hereby should be interpreted as functional rather than as legal. In particular, it refers to the operation of the management independently from the depositary's interests and does not extend to the legal relationship between "the company" and the depositary. In other words, it is not prohibited for the depositary to hold shares of "the company" and to participate in the latter's decision-making procedures, insofar as this constitutes common practice in Greece.

Furthermore, it is possible, according to paragraph 2, that the management of a fund or portfolio be assigned to a third party. Such assignment actually refers to the specialization

of the management in the sense that it is exercised by an expert. Prior approval by the CMC is not required. The assignment shall only be notified to the CMC within 5 working days after its signature; nevertheless such assignment may be subject to control by the CMC in accordance with the interest of the investors. In any case, the management cannot be assigned to the depositary.

With respect to the legal form of the assignment, it is expressly provided that it should take the form of a written agreement. The question that arises is whether the written form constitutes an essential element for the validity of the agreement. In this respect, the relevant provision shall not be interpreted as laying down requirements for the validity of the assignment. Its intention is to facilitate and ensure that the agreement of assignment is notified to the CMC. Consequently, failure of "a company" to comply with this rule does not affect the validity of the contract. It may only entitle the CMC to impose sanctions upon the said company.

Another issue that arises is whether "a company" is subject to any sanctions for failing to meet the requirement as to the written form of the assignment contract. As explicitly provided, the rules set by the Code engage only "the companies" and their personnel. It follows from the above that the assignee of a contract of assignment is not subject to these rules, insofar as it cannot be considered as "a company" in the sense of Article 1 for the period that it does not operate the management. The assignee is subject to the Code only from the moment that it is assigned the management according to the contract.

Furthermore, such assignment does not have the meaning that the assignee acts as the representative of the assignor. On the contrary, the assignee is free to determine the investment policy of the fund without the assignor having the power to object. Nevertheless, as provided by paragraph 2 of the Article, the assignor remains in any case fully responsible for the management. The Code establishes here the objective liability of the assignor insofar as it remains under the obligation to monitor the performance of the assignee and intervene whenever the former deems necessary for the protection of the investors' interests. It is worth mentioning that, in case the assignee is a legal person, it cannot be regarded as a manager in the sense of Article 1, inasmuch as, according to this provision, such function pertains only to natural persons. In this case, as managers can only be considered the natural persons actually involved in the management on behalf of the assignee, as such persons are specified under Article 1 of the Code.

To the direction of ensuring the independence of the management, paragraph 2 further provides that some posts are incompatible to that of a manager. For example, a manager cannot at the same time be the Director of a company providing investment services in general or the General Director of a company the shares of which belong to the portfolio to be managed. It should be stressed that in the case of the latter, it is not a requirement that the shares be negotiable within the stock market. The aim of this provision is to prevent the situation where a manager acts in disregard of the investors' interests, due to commitments or interests with another company in which such manager holds a similar post. Nevertheless, by imposing restrictions of behaviour upon persons not involved in the management of funds, the Code contradicts Article 2, inasmuch as it goes beyond regulating the behaviour of "the companies" and their personnel.

Finally, paragraph 5 of the Article sets two requirements. Firstly, "the companies" shall identify the duties of their personnel that are likely to cause conflicts of interest, and secondly, they shall determine posts not compatible to that of a manager, in the sense that they can cause a conflict of interest. In the case of the latter, this provision is supplementary to paragraph 2 which is more specific in addressing issues of incompatibility. Indeed, paragraph 5, due to its general character, is intended to cover cases that do not fall under the scope of paragraph 2.

c. Article 6

The most significant innovation introduced by the Code is that it regulates the rights relating to the ownership of shares by "the companies". The first paragraph of this Article sets the general principle according to which any rights referring to shares that belong to a unit trust or a portfolio must be exercised in consideration of the investors' interests. Indeed, "the companies" must be very cautious when exercising voting rights in the General Meetings of the issuing companies, and must always aim at serving the investors' interests. Subsequently, "the companies" shall be accountable to the unitholders/ shareholders or to the CMC not only for favouring a decision or proposal, but also for failing to exercise their voting rights. In this context, the Code does not object an agreement in relation to the exercise of voting rights entered into by "the companies" and other shareholders of an issuing company, as long as it is serves the interests of the investors. "The companies" are, nevertheless, under the obligation to avoid abusive behaviour when exercising their minority rights.

The Code goes further by recommending that "the companies" attend the General Meetings of the issuing companies and exercise their voting rights, especially when, at the day of the General Meeting, they hold shares that represent more than 4% of the total number of shares of the issuing company. The Code here lays down a general obligation founded, however, on a moral rather than on a legal basis.

Finally, attention should be drawn to the fact that the Code does not require that "the companies" report back to the unitholders/shareholders in respect of the exercise of the above rights. Such information may only be acquired through the annual or semi-annual reports published by "the companies".

d. Article 7

This provision lays down rules referring to the promotion and advertisement of funds and is, therefore, of particular significance. Initially, the Code provides a general rule according to which "the companies" shall not advertise their funds by means of messages that can be misleading for the investors. As investors should be considered here not only the unitholders or shareholders of a fund, but primarily the public, since the principal aim of advertisement is to attract prospective investors.

Secondly, the Article imposes upon "the companies" specific obligations implementing that rule. Particularly UTMCs must communicate to the public the following statement: "The performance of unit trusts is not guaranteed and past performances cannot be a guide for the future". The Code exaggerates here when requiring that this statement be

included in any message, advertisement or announcement whatsoever, written or spoken. Indeed, observance of this requirement may lead to the uncommon situation where the above statement be announced even in a telephone conversation.

In connection with the aforementioned statement, the Code does not prohibit a UTMC to undertake a moral commitment as to the minimum performance of a unit trust. Indeed, some unit trusts, due to their composition, can provide low risk performances that are to great extent predictable. Since, however, UTMCs are only morally committed, they are not under the obligation to offset any losses that may be suffered by the investors, should the real performance of the fund be lower than the anticipated. Nevertheless, UTMCs shall make clear to the investors that they do not undertake any contractual obligation as regards the anticipated performance of the fund. Moreover, they are originally not allowed to apply different assessments as to the performance of a fund to different categories of investors. Such distinction is justified only if it is grounded on the particular circumstances of the time of application or on variations such as per the duration of the subscription or the sum invested. However, it is in the UTMCs' discretion to provide an assessment, since they may decide that, due to the particular circumstances of the market, such a commitment would be harmful for their interests.

Attention should be drawn to the fact that "the companies" should be more cautious in providing reliable information when their funds invest in emerging markets, inasmuch as the risk of such an investment may be considerably high.

UTMCs are further required to communicate to the public the commission of purchase[3]. The issue that arises is whether the commission provided for in the fund rules may be modified by the newsletter bulletin[4]. This should be considered possible, as long as the fund rules merely set a ceiling and the commission referred to in the bulletin is lower. However, for the period that the bulletin is in force, UTMCs cannot increase the commission set therein, even if such commission remains below the limit referred to in the fund rules. Nevertheless, when redeeming units an investor may have to pay higher commission insofar as such investor willingly withdraws from the unit trust at an earlier stage than the agreed.

Moreover, the companies shall submit to the CMC any material intended for advertisement or for the information of the investors. Prior approval of such material by the CMC is not required.

e. Article 8

This provision addresses the fifth principle of the Code according to which "the companies" shall ensure proper organisation and effective internal control procedures. It is, indeed, essential for the protection of investors that "the companies" meet certain requirements in their course of business. Such requirements include the adoption of a set of rules clearly allocating duties and responsibilities within "the companies", the

[3] **See also under Article 9.**

[4] **The Newsletter Bulletin is further elaborated under Chapter IV.**

employment of experienced and reputable personnel, adequate technological support of the services provided and special measures relating to internal control.

"The companies'" set of rules may be adopted by means of a resolution of the General Meeting or of the Board of Directors. However, adoption of the set of rules through a Board of Directors resolution is more favourable as regards their amendment, inasmuch as the latter is not subject to the formalities pertaining to the General Meeting.

Internal control should be exercised by an independent unit headed by a suitably qualified person. Such person may not, at the same time, carry out other duties, especially those of a manager. Similarly, an internal controller should be distinguished from a chartered accountant, insofar as the latter provides only independent services and is not employed by "the company". Furthermore, an internal controller is directly accountable to the Board of Directors, while such person's duties involve monitoring "the company's" compliance with the set of rules as well as with the laws governing its activities.

Finally, it is provided that each unitholder can have only one code number relating to a personal file where all data concerning the unitholder's subscription are kept. Indeed, the Code gives particular credit to the technological support of the services provided. Especially in the case of unit trusts, where UTMCs often have to keep track of a vast number of investors, technology is key to ensuring transparency in investment transactions and guarantees the quality of the services provided.

f. Article 9

According to this Article, "the companies" shall ensure equal treatment of the investors and take transparency measures in order to guarantee that the investors or the public are granted sufficient and reliable information. The aim of this provision is actually to ensure high quality services to potential or to real clients. Moreover, it is primarily intended to regulate UTMCs, since investment portfolio companies are subject to the safeguarding mechanisms of Consolidated Law 2190/1920.

Further to the above, "the companies" shall deal with investors on the basis of pre-determined objective criteria such as the status of the investors as natural or legal persons, the amount invested or the special circumstances of the time of subscription. It follows that variations may be justified as long as they are effected on such basis. In this case the principle of equal treatment shall apply to the investors of the same category. It is worth mentioning, that the application of the above rule diminishes, insofar as the law to great extent allows "the companies" to employ at their own discretion methods of classification of investors. In this context, "the companies" may adopt criteria that amount to discrimination and yet eschew legal sanctions.

Moreover, UTMCs shall quote explicitly in the application forms for subscription, and in accordance with the set of rules, the commission rates relating to their services. In doing so, they may distinguish between different categories of investors in observance, nevertheless, of the previous rule. In implementation of this provision, the CMC adopted decision 8596/98 which specifies the thresholds above which UTMCs shall quote

commission rates. In practice, however, UTMCs manage to elude the consequences of non-compliance with the above provisions by determining short periods of subscription subject to renewal and charging cumulative commissions.

UTMCs are further required to deliver to investors, prior to their subscription, sufficient information material, namely the detailed newsletter bulletin and the rules of the fund as well as the last annual and semi-annual reports. They shall also point out to potential investors the risks involved in a proposed investment and provide regular information to unitholders in relation to their investment. Finally, they shall provide detailed information to unitholders withdrawing from the fund particularly as regards the performance of their investment.

g. Article 10

Further to the previous Article, the Code actually addresses here the means of achieving transparency by requiring that UTMCs maintain properly organised distribution networks. In particular, they are expected to monitor the setting-up of such networks as well as their operation.

As regards the former, UTMCs are under the obligation to recruit by means of appropriate procedures adequately skilled and experienced personnel, able to conduct effectively such companies' business. To that end, UTMCs shall consider information relating to the character of the applicants as well as to their academic and professional qualifications. The assessment of such information lies in the sole discretion of UTMCs.

Nevertheless, the latter shall be held responsible for their employees' acts, insofar as they infringe the provisions of this Code. It is worth mentioning that the said companies do not escape liability by assigning recruitment to a third party.

Furthermore, control of the operation of distribution networks shall be extensive and involve any act of UTMCs' personnel or associates relating to the distribution of units. It should be noted that in the case of personnel or associates of a UTMC's representative or intermediary, control can be only ensured on the basis of a contract signed between the latter and the UTMC. Such control may also be exercised by the depositary.

In monitoring the distribution of units, UTMCs shall also supervise the methods of their promotion. No definition of the term "promotion" is provided, however, it appears that the Code favours a rather broad interpretation of the term.

The said companies shall further keep records of the natural persons involved in the distribution network. Especially in the case of the personnel or the associates of these companies' representatives, the records of such persons may be kept by the representatives as may be agreed in writing between the latter and the UTMCs. However, the UTMCs remain responsible for the accuracy of such records.

This Article further sets an obligation serving directly the need for transparency rather than fulfilling the requirement for control of distribution networks. Indeed, UTMCs are, under certain circumstances, required to report to the investors the termination of co-operation with their personnel or associates. In particular, they shall effect such

notification should the termination concern the employee or associate with whom an investor is in business. In case of a UTMC's failure to observe this rule, it shall be held liable for any illegal act of an ex employee or associate that may cause damage to the investors.

Moreover, UTMCs shall ensure that the value of the purchased units is fully paid up and subscription is completed, in accordance with the law and the rules of the fund, within two days from the delivery of the application form to the potential investor. The Code employs a rather inaccurate wording in addressing the consequences of not observing this rule. In particular, it is provided that in case of a UTMC's failure to comply with the said rule, the application form for subscription shall be void. Indeed, the term "void" is not fit both in meaning and technically. In respect of the former, it may lead to the unjustifiable rejection of an investor's application, should a company delay in confirming payment of the purchase price. As regards the latter, an application form cannot be declared void. The proper expression would be that the application form "shall have no effect" upon occurrence of the above.

Finally, UTMCs are required to quote explicitly in the application forms that payment of the units' price shall only be made to the said companies' representatives specifically referred to in Article 20 par. 4 of Law 1969/91. Such persons may only be financial institutions, insurance companies or companies providing investment services in general, co-operating with the UTMCs. Although not mentioned, it is self-evident that such payment can originally be made to such companies' employees. Failure of UTMCs to observe this rule, does not, however, affect the validity of an investor's subscription to a

unit trust, should the latter effect payment to a person other than the above. The Code only establishes here the obligation of the said companies to take appropriate measures as regards payment of the units' price. UTMCs' responsibility, however, is founded on Article 28 of Law 1969/91 which introduces the objective liability of such companies for any act of negligence relating to the management.

III. General guidelines of Law 1969/1991 relating to the marketing of Unit Trusts

The Greek Unit Trusts' marketing regulation is governed:

***by the general principles governing the marketing of goods and services,**

***by the Code of Conduct of Unit Trusts Management Companies and Investment Portfolio Companies, in which are included the general principles of the UTMC (management company) marketing policy,**

***by special decisions of the Capital Market Commission regulating the marketing, promotion and information issues of Unit Trusts and**

***last but not least, by Law 1969/91 adopted in accordance with EC/85/611 Directive.**

Law 1969/91 contains several dispositions relating to the marketing and promotion of Unit Trusts and in particular:

- **Article 17 (8) disposes that: "The Unit Trust may be advertised to the public only after the publication of establishment license. Apart from the Unit Trust name, it should be mentioned the number of the decision that gave the permission for the establishment". Article 17 (8) impose that a reference to the name and the registered license's number is necessary for the Unit Trusts' promotion. The fact that only the number of the license for the registration of the Unit Trust is needed, may lead to the conclusion that the number of the CMC's decision that authorize a potential modification of the Unit Trust's regulation is not necessary. The purpose of this disposition is to inform the investors that the Unit Trust is actually operating under the status of organized supervision. Such information is provided with the reference**

to the Unit Trust establishment license. This is the reason for which it is not necessary to mention the CMC's decisions for the approval of the regulation's modifications.

- **Article 20 of Law 1969/91 disposes that the management company ought to offer to the future shareholders before the signature of the shares' purchase agreement a Newsletter Bulletin for the Unit Trust, as described in article 24. The UTMC (management company) may dispose its shares through representatives. Representatives in this case can be only the Banks, Assurance Companies and Investment Consultant Companies. The CMC regulates the details for the application of the present paragraph.**
- **Article 21 disposes that the reception of the participation applications is decided by the UTMC (management company), according to the rules of the Unit Trust's interne Regulation.**
- **Article 24 (3) of Law 1969/91 imposes that the advertisement of Unit Trusts, in which there is direct or indirect invitation for shares purchase, must contain the place where the Unit Trust's information newsletter is distributed or where it can be found, as well as the indication that the Unit Trusts performance is not guaranteed. Exemption from the above rule of the guaranteed Unit Trusts capital can not be accepted, as long as the guarantee is not allowed to include the performance of such Unit Trust. Nevertheless, the obligation of reporting where the Unit Trust is distributed is covered by the indication according to which any information on the Unit Trust is provided by the branches of the agent responsible for the shares distribution, as long as the representative agent is described in details (name) and as long as there is an appropriate proof for the documents' delivery to the UTMC (management company).**

The promotion on Unit Trusts should be understood as such. Therefore, it can not take the form of an article or comment in the press.

The promotion of a Unit Trust's or of the UTMC (management company)'s name on an athlete's or a sport team's shirt during a sport event or in a stadium is not excluded. In this case, reference to the elements of article 24 is not necessary, because the promotion does not include invitation to public for shares' purchase.

The text of the promotion should respond to the truth or at least, to make sure that any necessary measure has be taken, so that the text of the promotion is responding to the truth.

The promotion, according to Law 1969/91 and the Code of Conduct, should take place in healthy competition conditions. Therefore, it is not permitted to promote a Unit Trust when there is a possibility that such promotion may cause difficulties to the possession of other Unit Trusts' shares of the same or other UTMC (management company). Healthy competition is wanted even between the same UTMC (management company)'s Unit Trusts.

The information given on Unit Trusts should reflect their real situation. The information left out should not affect or change the Unit Trusts picture. The UTMC (management company) violates the Unit Trusts promotion rules, if the total of managed Unit Trusts is included in the promotion, if the positive earnings of the trust are invoked without

clarifying which one of the Unit Trusts achieved this level of earnings, if the promotion of the Unit Trusts is taking place in a not suitable period of time.

Equally, there is a violation of the regulation on the promotion of Unit Trusts, when the UTMC (management company) is referring only to the profitable managed Unit Trusts without mentioning the others.

There is an issue on whether or not it is possible to include promotion texts in the Unit Trust' s information newsletter, reports or statements asked by law or by CMC's decision. It seems more exact to give a negative answer for the reason that those documents aim to inform shareholders and potential investors on the unit trusts situation and not to encourage them to buy new shares.

The CMC decisions, numbered 119/25.8.1992 and 140/9.3.1993, dispose the Unit Trusts profits promotion regulation. The text of the above mentioned decisions remained in force after the adoption of the Code of Conduct for the investment portfolio and management companies.

According to the decision of 119th / 25.8.92 meeting of the Capital Market Commission having as subject : " Rules of promotion and methods of evaluating the Unit Trusts' performance" the Capital Market Commission having taken in consideration:

1. **Law 1969/91**
2. **Article 27 of Law 2081/92**

decided unanimously, determined the rules applied on the promotion and the Unit Trust's performance evaluation (having as aim the comparison of several promotions as well as the punctual and complete information of the investors) :

The advertised performance is calculated on annual basis. Exemption is permitted for those of the Unit Trusts that have less than a year of life on the 31st December. The performance of those Unit Trusts can be advertised for the period from their foundation till 31st December.

The annual advertised performance concerns a period starting from the end of a trimester till the end of the respective trimester of the following year. In case that the companies want to advertise a longer than one year performance, this performance will be for a period multiple to one year.

It is not allowed the less than a year performance's advertising no matter how it became part of the annual performance. Exemption is permitted to the fixed performance's Unit Trusts that did not have a year of life on the 31st of December. In this case, the minimum time of life is 3 months.

The performance is calculated on the basis of the Unit Trust share's net price.

The proposed methods for the Unit Trusts performance calculation are:

1. **Performance end of the year [……..]**
2. **Intermediate Yearly Performance [……..]**
3. **Performance of several years [……..]**

Any publication referring to the Unit Trust performance should indicate that the previous years performance is not a indicative for the performances of the following years, is not a guide to the future.

Any publication referring to the Unit Trust's performance should indicate separately the share performance and the price-earning ratio.

Decision of 140th/9.3.19993 meeting of the Capital Market Commission with subject : "Modification of the 119th/25.8.92 meeting of the Capital Market Commission concerning the rules of promotion and calculation methods of Unit Trusts performance." disposes that the Capital Market Commission having taken in consideration:

……..

decides unanimously, approves the modification of 19th/25.8.92 decision concerning "the promotion rules and calculation methods of Unit Trusts performance" as following:

- **in paragraph 3 topic b, the minimum time of Unit Trust existence became six months instead of three months.**
- **Paragraph 4 is replaced as following:**

"The performance is calculated without excluding the commissions and the salaries of the UTMC (management company). The above mentioned amounts of each company should be referred to the specific period responding to the calculated performance."

- **Paragraph 7 is replaced as following:**

"Each publication referring to the Unit Trust's performance should mention the share performance."

The above mentioned decisions do not give a satisfied answer to the problem of the Unit Trusts performance's presentation.

The advertised Unit Trust performance should be at least of a year. Exceptionally, it is allowed the advertising of a less than a year new founded Unit Trust performance. This exception is valid only for the period from the foundation of a Unit Trust till the end of the running year.

According to article 40 of Law 1969/91, the annual advertised performance reports involves the period from the end of one of the semesters of the running year till the end of the same semester of the following year.

The advertising of a longer than a year performance is possible as long as the advertised performance is for a period multiple to one year (two years performance, three years performance etc). The exception of the new founded Unit Trust is also applicable in this case. Therefore, it is still possible that the performance of a founded in the middle of a year Unit Trust can be advertised for a period of one year and a half.

The new founded Unit Trust exception is also applicable to the principle of multiple to a year period performance's advertising. Otherwise, there would be discrimination against the new founded Unit Trusts.

It is not allowed the advertising of a shorter to one year performance that has in any way been included to the annual performance. An exception is provided for the bonds Unit Trusts, if such Unit Trusts have a longer to six months life. Part of the Greek doctrine believes that this exception is no longer justified for the reason that those Unit Trusts value is calculated on the basis of their market-price. It would be more appropriate to consider that this exception is no longer in force since the bonds value is calculated on the basis of their market-price.

The calculated performance will be estimated without excluded the commissions and the salaries of the management companies. The commissions and salaries attributed will be mentioned in the promotion. The above mentioned obligation is not possible to be respected in case of an oral promotion.

The publications on Unit Trust's performance should mention that previous performances do not guarantee the followings. This obligation is valid separately from the term of not guaranteed performance.

Finally, in every publication of the Unit Trust performance it should be mentioned the share performance as well as the price-earning ratio. The share performance of a Unit Trust does not make any sense since the share price is diminishing proportionally to the share the following day of its definition. Therefore, there is no change neither to the shareholder's portfolio, nor to the price-earnings ratio.

The expression "evaluation" of the performance includes the meaning of prediction and does not permit to jump to the conclusion that the performance is certain. Therefore, the relative promotion does not lead to the misinformation of the public.

The Unit Trust's promotion plans are only submitted to the Capital Market Commission. There is no need of its approval for their realization. However, in case there is a violation of the promotion rules, the Capital Market Commission has the power to impose penalty or ask for their modification.

The 8227/98 decision of the Capital Market Commission relative to "the promotion and information from the management companies" disposes that:

1. **In every brochure/announcement, advertisement or Internet page of the Unit Trust management companies, the following declaration should be included:**

"Unit Trusts do not have guarantee performance and the previous earnings do not guarantee the following ones."

The above mentioned declaration should be written in capital letters, clearly, in the bottom center part of the page of the brochure/announcement, advertisements or Internet page and in case of a multiple pages text in its cover page. The font should be the same as the font of the main text.

Every time the Unit Trusts are advertised from broadcasting or television stations the above mentioned statement should be clearly transmitted at the end of the message.

2. **The responsibility of the directed to the investors information (through newsletters, reports, six-months newsletters with the percentage composition of the Unit Trust and the regulation of the specific Unit Trust) belongs to the UTMC (management company), independently from the responsibility of the legal entity or the individuals who interfere under any quality for the shares' promotion to the investor who applies in order to participate."**

The Capital Market Commission demands in case of multi-paged brochure, advertising announcements, etc that the indication of the no guarantee performance of the Unit Trust should be mentioned on the front page and not on the back page. The CMC in its report declares that the indication should be mentioned clearly, on the bottom center part of the advertisement or announcement and in case of a multi-paged brochure on the first page.

IV. The Newsletter Bulletin

Article 24 of Law 1969/91

1. **The Newsletter Bulletin of article 20, paragraph 3 is written by the UTMC (management company) and contains:**

i. **The Unit Trust regulation**

ii. **The Unit Trust's foundation date**

iii. **The announcement of the competent administrative authority (art. 7a of Law 2190/20) for the company's foundation and approval.**

iv. **Short information on the Unit Trusts tax status and mainly information for the application of the system "received from the source" on the income and the capital earnings**

v. **The identity of individuals responsible for the audit control according to article 41, paragraph 1 of the present Law**

vi. **The legal characterization of the right (title, contractual right or other) that the share represents.**

vii. **The company's head office and the UTMC (management company)'s address.**

viii. **The UTMC (management company)'s foundation date and its duration, if it is defined.**

ix. **Reference to the Unit Trusts that the UTMC (management company) manages.**

x. **The amount of the UTMC (management company)'s Unit Trusts without counting the share capital.**

xi. **The identity and the duties of the administration, direction and control committee members. Reference to the outside the company activities of the above-mentioned persons in case that such activities effect the Company.**

xii. **The legal nature and the head office of the Depositary.**

xiii. **The registered name and quality of the Unit Trusts' possible external investment consultant.**

xiv. **The principal points of the agreement between the Management Company SA and the financial investments consultant, if the external investment consultant's payment is taken from the Unit Trust.**

xv. **In general, all the necessary for the investors information so that the potential investor could have a complete opinion on the proposed investment. The last annual Unit Trust report, the last six months report as well as the authorized audit consultant report are attached in the Newsletter Bulletin.**

The Newsletter Bulletin is possible to contain even more information on the Unit Trust but only after a relative decision of the Capital Market Commission.

A Unit Trust that has its head office in Greece but disposes its shares in another member-state of the E.U. ought to include in the edited in this member state Newsletter Bulletin information on the adopted in this member state measures concerning the shareholders' payment, the shares' purchase, as well as the publication of every relative information.

2. **The Newsletter Bulletin, as being in force, is submitted to the Capital Market Commission.**

3. **Any advertising of the Unit Trust that includes directly or indirectly invitation for shares offer must mention the place where the Newsletter Bulletin is available to the**

public, as well as the indication that the Unit Trust investment does not have a guaranteed performance. The guarantee of the invested on the Unit Trusts capital from the depositary or other credit institution is permitted.

The Newsletter Bulletin is a way for the investors to be informed on the Unit Trust's financial situation. It contains the minimum information according to article 24(1) of Law 1969/91 and it aims to help the investors to form a substantiated opinion for his investment on the Unit Trusts' shares. Article 24 of Law 1969/91 does not impose neither a unique form nor that the information included in this document should follow a certain presentation. Under those circumstances, the Unit Trust Newsletter Bulletin plays the role of a informative document and not of a comparison instrument to other Unit Trusts instrument.

The Newsletter Bulletin is a source of constant and not instant information and therefore, if there is a significant change in the Unit Trusts' composition or in other element of the Unit Trust, the UTMC (management company) is obliged to make the appropriate corrections. The judgement of whether or not the change is significant is on the discretion of the UTMC (management company). However, the depositary who controls the UTMC (management company)'s activities owe to warn the UTMC (management company) for the potential change of a included in the Newsletter Bulletin information and to ask for its correction. The depositary is obliged to prohibit the delivery of newsletter documents in which there is false or untrue information.

The UTMC (management company) is responsible for the truth of the information included in the Newsletter Bulletin. The depositary has the same responsibility. The investor has the right to ask for compensation from the UTMC (management company)

and the depositary, if the Newsletter Bulletin contains false or untrue information. The proof that the damage of the investor was the result of the false information included in the Newsletter Bulletin, is not always easy and the UTMC (management company) or the depositary could claim

***that at the time of the Newsletter Bulletin's edition they ignored the false or untrue nature of the information and this ignorance existed till the deposition of the participation in the Unit Trust application,**

***that the deposition of the participation's application took place at a moment when it was impossible to change the Newsletter Bulletin and inform the potential investors**

***that the false or untrue nature of the information was know to the investor or this information was not of such nature as to influence the investors decision to participate to the Unit Trust.**

***that the UTMC (management company) and the depositary judged that the information in question was not important enough in order to ask for its correction.**

Article 24(3) of Law 1969/91 acknowledges the practical value of the Newsletter Bulletin as a way of information for the investors and imposes to the Unit Trust promotions that includes direct or direct invitation to the public to buy shares through the Newsletter Bulletin to mention the place of distribution of the informative material.

It is not obligatory to have the regulation of a Unit Trust and the Newsletter Bulletin in the same document. It is possible that the first one will be attached as annex of the second one or in a separated document, that however will be undistinguished part of the Newsletter Bulletin.

According to the Greek legislation, the share express the right of co-property over the elements of the active part of the Unit Trust. This right has the particularity, according to

which the participation in the Unit Trust offers to the shareholder the right of taking a part of the earnings of the active part of the capital.

V. The crime of false declarations or announcements

I. Unit Trusts

Article 47 of Law 1969/91 disposes in its paragraphs 4 and 5 the following :

4. Anyone who makes false declarations or announcements to the public about the financial situation of the Unit Trust having as purpose to attract investors will be punished with imprisonment and financial penalty till the amount of 100.000.000 Drs.

5. The Capital Market Commission decisions adopted according to the above mentioned paragraph could be attacked before the State Council.

The establishment of false declarations or announcements' crime relative to the financial elements of a Unit Trust is under the condition of the existence of intention to invite the public to invest and the knowledge that the declaration or the announcement are false. Whether the purpose of the person who committed the crime is fulfilled or not is irrelevant. The declaration should have taken place in such a way that the public could hear it or take knowledge of it. A specific form is not required. The oral declaration or announcement is sufficient.

II. Investment Portfolio Companies

Article 12 of Law 1969/91

1. **The investment portfolio companies put in the public's disposal every three months a report with all their investments, the average cost and the buy-out cost of every**

investment and they publish every six months the total and the by share financing position of the investment portfolio companies in current prices.

2. **The place and the time of the announcement and the publication of the above paragraph are determined by a Capital Market Commission's decision in which every special issue and detail are regulated. The portfolio investment companies can be forced by a similar decision to have special financing books, to give specific information to the their shareholders and to publish further elements determined by this decision.**

Article 12 of 1969/91 impose to the portfolio investment companies supplementary in comparison to the simple anonymous societies obligations for the information of the investment public. In any case, the portfolio investment companies are obliged to make the publications and the announcements that are imposed by the stock market and company law. The supplementary obligations of article 12 are based on the special nature of the portfolio investment companies.

Article 12(2) allows a certain flexibility on how the publications and the announcements take place and gives at the same time the possibility to the CMC to control its sufficiency. The CMC in relevant document notes that the portfolio investment companies ought to send the following information:

***Copies of the checked financial reports of the company.**

***Table with the portfolio investment every three months**

***The net asset value per share at the end of every six months period**

***Communication of all modifications on the board of directors of the Company.**

The establishment of the crime of article 14 has as condition the knowledge from the offender that the company did not or does not respond to the conditions needed for the creation of a portfolio investment company. The crime has as condition the intention of the offender. The influence of the declaration or the announcement is not irrelevant. The declaration or the announcement should have taken place in such a way that would give the wrong impression on the specific company. It is not needed specific form, the oral declaration is sufficient

The article's 14 punishment will be imposed to any person, even to those who are no connected in any short of connection with the company. The above mentioned crime could be committed from the members of the Board of Directors, as well as from the employees of the company or the stock market company.

VI. Tax issues of Unit Trusts and Investment Portfolio Companies

a. Unit Trusts

Article 48 of Law 1969/91 regulates the issues of Unit Trusts' taxation and disposes that:

i. **The act of a Unit Trust foundation, the disposal and purchase of shares are exempted from any kind of tax, stamp duty, duty, contribution, fees or any other aggravation for the public authorities, companies of the public sector or others.**

ii. **During the collection of interests on the name and for the Unit Trust there is a retention of income tax form the payer of the interests according to articles 15 and 24 of Law 2238/1994. By this retention, the shareholders' tax obligation from this income is exhausted.**

iii. **The UTMC (management company) SA is obliged to pay annually a tax of three per thousand of the 6 months average of the Unit Trust's net asset value, on the name and on behalf of the Unit Trust. The tax is been counting daily and is delivered to the tax authorities-under the responsibility of the UTMC (management company) SA- in the first 15 days of July or August of the following semester from the estimation/calculation. By the tax payment, the Unit Trust's and the shareholders' tax obligation is exhausted, with the reservation of the previous paragraph's dispositions. The dispositions of articles 113 and 116 of Law 2234/1994 are applied to the tax of the present article.**

iv. **The added value resulted form the difference between the purchase price and the sale price of the shares is dispensed from any kind of tax, stamp duty, duty,**

contribution, fees or any other aggravation for the public authorities, companies of the public sector or others.

Article 48(1) of Law 1969/1991 excludes the act of Unit Trust's foundation, the purchase and sale of shares from any tax. The regulation of the Unit Trust is considered as the foundation of the Unit Trust. In particular, the Unit Trust that does not dispose a legal personality, is excluded from the creation of capital tax. Any activity or action related to the management of the Unit Trust is excluded from VAT. Therefore, the Company's commission for the edition, disposal and purchase of shares is dispensed form VAT.

As about the shares transfer, according to Law 1969/1991 modified by Law 2214/1994, it is subject to taxation. The tax imposed is the tax in force for the action that caused the transfer, for instance heritage, parents donation, etc. The interest from the Greek Government Bonds is taxed with 10%.

The interests received in the name and for the Unit Trust are submitted to a tax of 15%, according to art.12 of Law 2238/1994. The tax percentage goes up to 20% for income from the Foreign Funds. In this case, the tax is taken from the interfered Bank that delivers this income.

In case that the beneficiary of a transferable securities income,- except from dividend income, interests from shares and foundation bonds income,- coming from a Greek SA company is a foreign company or a profitable organization without Greek establishment, the percentage of the withholding tax is 40%. The foreign beneficiary is not obliged to submit a tax declaration for the above mentioned income.

The taxation of Repos was abrogated by art.10 (12) of Law 2642/1998.

b. Investment Portfolio Companies

Article 16 of Law 1969/1991 disposes that:

1. **The Investment Portfolio Companies are exempted from any kind of tax, stamp duty, duty, contribution, fees or any other aggravation for the public authorities, companies of the public sector or others, with the exception of the capital concentration tax and VAT.**
2. **According to articles 12 and 54 of Law 2238/1994, during the interests collection from the Investment Portfolio Companies a tax withholding is taking place from the payer of the interests. By this payment, the tax obligation of this income beneficiaries is exhausted.**
3. **The Investment Portfolio Companies are obliged to pay annually a tax of three per thousand on their investment average, including the available capital, in current prices, as presented in the trimester investment tables provided from paragraph 1, article 12 of the present Law. The tax is delivered to the competent tax authority in the first 125 days of July or January in the semester after the calculation. By this tax, the tax obligation of the company and the shareholders is exhausted, with the reserve of the previous paragraph dispositions. The dispositions of articles 113 and 116 of Law 2238/1994 are applied on the tax of this article, as well.**
4. **The act of foundation, the statutory of the Investment Portfolio Company and the edited by them shares are exempted from any kind of tax, stamp duty, duty, contribution, fees or any other aggravation for the public authorities, companies of the public sector or others, with the exception of the capital concentration tax, VAT and stock broker's legal commission.**

Article 16a of the present Law relative to the Investment in Emerging Markets Portfolio Companies disposes in its article 5 that the dividend income received by the shareholders of the Investment in Emerging Markets Portfolio Companies are excluded from income tax. The collection by the shareholders of their dividend income, of the product of the shares sell out and the company's property division after the company's dissolution is excepted from any tax. The above mentioned tax exemption, according to paragraph 3 (d) of article 16a of the present Law, is valid, only for the company's income from investments that took place after compliance with the dispositions of paragraph 4 of the present article and if there is no conversion of the Investment in Emerging Markets Portfolio Company into a Investment Portfolio Company after its statutory modification.

VII. Marketing of Investment Funds through the Internet.

The International Organization of Securities Commissions (IOSCO) created a special team, the Internet Task Force, in order to examine the problems that come out from Internet's use by the financial sector, as well as the effect of the Internet transactions worldwide on the transferable values' legislation. The Internet Task Force composed a report that was ratified by the IOSCO on the 13th September 1998 in Kenya. The report deals with the second issues of the regulating policy and it does not either deals with interpretative solutions nor impose rules of general force. IOSCO leaves to the states the initiative to rule on these issues and the role of the Internet's task force report is to set forth the minimum of the principles and recommendations that the states should take in consideration when they legislate on this issue. Some of the principles set by the IOSCO are the followings:

i. **The main principles of the transferable value legislation do not change because of the chosen mean for the realization of the activity**
ii. **The normative legislators should not prohibit, without special reason, the participants in the market or the markets from using the Internet.**
iii. **The normative legislators owe to make any effort in order to impose transparency and cohesion in the application of the legislation in the Internet environment.**
iv. **The normative legislators owe to cooperate and be informed on issues related to the establishment and the supervision of the transferable values activities in the Internet.**
v. **The normative legislators owe to acknowledge that the electronic devises as well as its use are under development.**

The above mentioned principals lead to the following recommendations:

1. Promotions-offers and advertisements

i. **The normative legislators, the self-regulatory organizations and other organizations ought to direct the participants in the markets and the markets in how to apply the adopted rules and to realize the promotions and advertisements via Internet. They also ought to warn them for the possibility of other's authorities adoption of supplementary regulations.**

ii. **The normative legislators ought to modify or motive the appropriate authorities to modify the relative regulations, when it is needed, in order to adjust and secure the appropriate legal protection of Internet environment.**

iii. **The antifraud general rules ought to be applied in any promotion or advertisement that concern transferable values or financial services without examining the used instrument or whether or not the state regulator or the SRO gets involved in the validation (permission or approval)of the promotion or advertisement.**

iv. **The normative legislators and, when it is needed, the SRO owe to enforce the surveillance of advertisement and promotion via Internet in order to avoid fraudulent or not improved activities.**

2. Flow or announcement of elements and other information

i. **The normative legislators owe to make sure that the transferable values editors, who are using the Internet in order to communicate and send information to the shareholders and to the potential investors, offer the same information for their activities, their financial situation and the transferable values as the information they would have offered in case of a written in a paper report, in such a way that**

the investors will have the possibility to evaluate the risk and the value of the investment on the editor's transferable values.

ii. The normative legislators owe to guide the sector of financial services in the use of internet, in such a way that the involved persons or entities could respond to their obligations for information provision.

3. Exercise of regulator power related to trans-frontier activities via internet

i. Normative regulators owe to adopt rules, under the given circumstances, according to which they will exercise their regulator power over offers via Internet.

ii. If the offer or the sale activity of a transferable value's editor or of a person who offers financial services via Internet take place on the ground of another state legislator's authority or if the foreign offers or activities of the editor or of a person who offers financial services have significant consequences to the habitants or to the markets of the normative legislator's jurisdiction, the normative legislator may impose his regulator demands on such activities.

iii. The normative legislators owe to examine occasionally factors determining the need for their intervention by exercising their regulatory power over offers of transferable values or financial services via Internet.

4. The use of Internet to support the investors' formation and the transparence

i. The normative legislator, as well as the SRO, owe to include the use of Internet to the investor's "training" and guidance in the area of transferable values.

ii. **The normative legislator, as well as the SRO, owe to inform the investors on the internet fraud on transferable values by giving them information concerning fraudulent activities.**

iii. **The normative legislator, the SRO and the organized markets owe to use their Internet pages in order to provide the investors with the possibility of access to information on their organization, in which will be included the legal rules and procedures in force.**

iv. **The normative legislator, the SRO and the organized markets owe to make easier the investors' access to the companies' and market's information by developing computer databases containing reports and other obligatory information and by making the information accessible via their pages.**

VIII. The marketing of foreign funds

The legal framework examined above governs both domestic investment vehicles as well as those of EU origin insofar as they are UCITS in the sense of the EU Directive 85/611/EEC. Indeed, Law 1969/91 operates in line with and under the umbrella of the Directive that lays down a uniform set of rules applying to UCITS within the Community.

A UCITS shall be regarded as of EU origin, if it is established in an EU member-state. In particular, an investment portfolio company or a company managing unit trusts shall have its head office in an EU member-state (Article 17a par. 1 of Law 1969/91 as regards unit trusts). The promotion and distribution of units or shares of such UCITS are subject to prior authorisation by the CMC, whereby the latter actually examines the legality of the above UCITS. Should such authorisation be granted, the marketing and promotion of the above vehicles are governed by the same provisions as in the case of domestic vehicles.

In respect of Community vehicles not recognised as UCITS under the Directive or of vehicles having their head office outside the Community, the CMC has adopted decision 2109/14-4-1998 in implementation of Article 49c of Law 1969/91. This decision actually applies to the companies managing the above vehicles provisions governing the marketing of UCITS. In particular, it incorporates rules of the Code of Conduct relating to transparency as well as to the organisation of distribution networks. These rules, however, are primarily addressed to the representatives of the above companies, insofar as they operate the promotion and distribution of the said vehicles in Greece.

Nevertheless, the marketing of the said vehicles is subject to prior approval by the CMC, similar to the one required in the case of non-domestic UCITS.

IX. Conclusion

The Greek marketing regulation on the promotion of investment funds covers only the open-ended collective investment schemes governed by the UCITS directive. However, the dominant opinion in Greek theory does not consider the Investment Portfolio Companies as UCITS. Nevertheless, their exclusion under chapter II does not mean that they are excluded from the scope of the provision of the UCITS directive. In the contrary, the articles of chapter I of Law 1969/91 regulating these companies are based on UCITS. Chapters I and II of Law 1969/91 regulate respectively Unit Trusts and Investment Portfolio Companies. This Law abridged the Decree 608/1970, which constituted the first legislation on the collective investment schemes ever adopted in Greece.

Law 1969/91 has been modified by Law 2065/1992, Law 2166/1993, the Presidential Decree no 433/1993, Law 2214/1994 and Law 2275/1994. Article 12 of Law 1902/1990 and article 35 of Law 2076/1992 permit the formation of Unit Trusts by social security institutions. These Unit Trusts are subject to the regulation of chapter II of Law 1969/91. Greek regulation makes no provision for standards of fund marketing. Law 2778/99 on the investment funds on real estate properties did not change the essential role of Law 1969/91, whose origins is Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

Several decisions of the Capital Market Commission were adopted after special legislative authorization. Article 113(21) of Law 2533/97 gave a special authorization to

the Capital Market Commission in order to adopt Code of Conduit, that was created after a report of the Union of Institutional Investors and regulates the behavior of management companies and investment portfolio companies and their employees - staff. As a result of the previous authorization, the 8422/98 Decision was adopted by the Capital Market Commission and was completed by the Decision 8596/98.

According to the legal texts that govern the Unit Trusts, in principle the marketing is carried out by the UTMC. This activity may be contracted to a bank, an insurance company or a member of the Athens Stock Exchange. In practice, the insurance companies distribute shares of units trusts through their agents, acting as representatives. Under Greek legislation the same bank is not prohibited from acting simultaneously as depositary and as representative of the UTMC (management company) for the distribution of the shares. In fact this is a common practice.

UCITS advertisement is subject to general and specific advertising rules. They require a "wealth warning" that past performances of the Unit Trust is not a guide to the future and that the performance is not guaranteed. The quotation of past performances, if the comparison period is more than a year, is allowed and the annualization or the projection of returns for periods less than a year is not permitted. The comparison of the Unit Trust performance with appropriate benchmarks is allowed.

It is not prohibited to invite cash investments by direct mail and door to door selling is allowed and is considered as one of the major sales techniques for the life insurance companies. Advisers selling funds are supposed to be properly trained. Advertising does

not have to be presented to any official body before being circulated and the CMC is the supervising authority.

It is obvious that the legal texts and regulation on the organizations of collective investments are quite expanded. This expansion shows that the markets believe in the numerous advantages of the investments on Unit Trusts, as well as the advantages of collective management. Even if, in European and national level, the main goals of the different partners are not the same,- the integration of the European common market in European level and the development and improvement of the national market's position in national level-, it is common place to all players, regulators and professionals, that the development of the institution of the collective investment organizations is the main priority. This development will be achieved by increasing the collective investment capitals or by creating and promoting new products, only if at the same time the investors feel and are protected by a well organized system. The role of the competent supervisor authorities is essential and should not be underestimated.