

Filters applied:

Legal act = Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Download date: Monday, October 6, 2025 - 17:27



Title	Submission Date
ESMA_QA_2639	10-09-2025
ESMA_QA_2609	15-07-2025
ESMA_QA_2575	18-06-2025
ESMA_QA_2429	04-02-2025
ESMA_QA_2373	13-12-2024
ESMA_QA_2371	13-12-2024
ESMA_QA_2368	12-12-2024
ESMA_QA_2175	08-05-2024
ESMA_QA_2173	08-05-2024
ESMA_QA_1097	13-06-2023
ESMA_QA_1076	12-06-2023
ESMA_QA_1075	12-06-2023
ESMA_QA_1074	12-06-2023
ESMA_QA_708	28-03-2023
ESMA_QA_955	03-02-2023
ESMA_QA_954	01-02-2023
ESMA_QA_953	01-02-2023
ESMA_QA_952	01-02-2023
ESMA_QA_951	01-02-2023
ESMA_QA_601	22-09-2022
ESMA_QA_969	01-07-2022
ESMA_QA_960	01-07-2022
ESMA_QA_959	01-07-2022
ESMA_QA_967	01-05-2022
ESMA_QA_963	01-05-2022
ESMA_QA_958	01-12-2021
ESMA_QA_968	01-11-2021
ESMA_QA_966	01-07-2021
ESMA_QA_966	01-07-2021
ESMA_QA_965	01-07-2021
ESMA_QA_964	01-05-2021
ESMA_QA_962	01-03-2021
ESMA_QA_961	01-03-2021
ESMA_QA_1213	01-06-2019

Title	Submission Date
ESMA_QA_1212	01-06-2019
ESMA_QA_1211	01-06-2019
ESMA_QA_1210	01-06-2019
ESMA_QA_1209	01-06-2019
ESMA_QA_1092	01-03-2019
ESMA_QA_1091	01-03-2019
ESMA_QA_1090	01-03-2019
ESMA_QA_1089	01-03-2019
ESMA_QA_1088	01-03-2019
ESMA_QA_1087	01-03-2019
ESMA_QA_1086	01-03-2019
ESMA_QA_1102	01-03-2019
ESMA_QA_1101	01-03-2019
ESMA_QA_1100	01-03-2019
ESMA_QA_1208	01-07-2018
ESMA_QA_957	01-07-2018
ESMA_QA_956	01-07-2018
ESMA_QA_1207	25-05-2018
ESMA_QA_1205	05-10-2017
ESMA_QA_1206	01-07-2017
ESMA_QA_1203	24-05-2017
ESMA_QA_950	21-11-2016
ESMA_QA_949	21-11-2016
ESMA_QA_1099	12-11-2016
ESMA_QA_1204	12-10-2016
ESMA_QA_1163	12-10-2016
ESMA_QA_948	01-10-2016
ESMA_QA_1162	01-10-2016
ESMA_QA_1161	01-10-2016
ESMA_QA_1160	01-10-2016
ESMA_QA_1159	01-10-2016
ESMA_QA_1143	01-10-2016
ESMA_QA_1142	01-10-2016
ESMA_QA_1141	01-10-2016
ESMA_QA_1140	01-10-2016
ESMA_QA_1139	01-10-2016
ESMA_QA_1138	01-10-2016
ESMA_QA_1137	01-10-2016
ESMA_QA_1136	01-10-2016
ESMA_QA_1135	01-10-2016
ESMA_QA_1134	01-10-2016
ESMA_QA_1202	19-07-2016
ESMA_QA_947	01-04-2016
ESMA_QA_946	01-02-2016
ESMA_QA_945	01-02-2016
ESMA_QA_938	01-02-2016

Title	Submission Date
ESMA_QA_1117	09-01-2015
ESMA_QA_1116	09-01-2015
ESMA_QA_1115	09-01-2015
ESMA_QA_1114	09-01-2015
ESMA_QA_1112	09-01-2015
ESMA_QA_1113	05-01-2015
ESMA_QA_1174	24-03-2014
ESMA_QA_1173	24-03-2014
ESMA_QA_1172	24-03-2014
ESMA_QA_1171	24-03-2014
ESMA_QA_1170	24-03-2014
ESMA_QA_1169	24-03-2014
ESMA_QA_1168	24-03-2014
ESMA_QA_1167	24-03-2014
ESMA_QA_1166	24-03-2014
ESMA_QA_1165	24-03-2014
ESMA_QA_1164	24-03-2014
ESMA_QA_1201	01-12-2013
ESMA_QA_1107	11-07-2013
ESMA_QA_1106	11-07-2013

ESMA_QA_2639

Submission Date

10/09/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Reporting obligation of auditors under Article 106 UCITS Directive

Question

It follows from the first subparagraph of Article 106(1) of the UCITS Directive that any person approved in accordance with Directive 2006/43/EC, performing in a

UCITS, or in an undertaking contributing towards its business activity, the statutory audit referred to in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 73 of this Directive or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task and which is liable to bring about any of the following: (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS or undertakings contributing towards their business activity; (b) the impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity; or (c) a refusal to certify the accounts or the expression of reservations.

Further, it follows from the second subparagraph of that Article that that person shall have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in point (a) in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity, within which he is carrying out that task.

Finally, the following is set out in Article 12(1) of the Audit Regulation (Regulation 537/2014): “Statutory auditors or audit firms shall also have a duty to report any information referred to in points (a) (b) or (c) of the first subparagraph of which they become aware in the course of carrying out the statutory audit of an undertaking having close links with the public-interest entity for which they are also carrying out the statutory audit. For the purposes of this Article, ‘close links’ shall have the meaning assigned to that term in point (38) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.”

- In cases where a UCITS management company and its parent undertaking do not have the same auditor and are located in different Member States, what are the reporting obligations of the auditor of the parent undertaking towards national competent authorities (in both Member States) in terms of findings concerning the subsidiary that could meet the aforementioned conditions set out in points (a) to (c), e.g. bringing about a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS or undertakings contributing towards their business activity? More specifically:

- If ‘that person’ expands the reporting obligation in the first sub-paragraph, does that also apply where a UCITS management company and its parent undertaking are located in different Member States?

- If “that person” expands the reporting obligation in the first subparagraph, is the

parent company's auditor required to report to the UCITS management company's home NCA or to the NCA where the parent company is domiciled?

- How should the notion of 'undertaking contributing towards its [a UCITS management company's] business activity' (as set out in the UCITS Directive) be understood? For instance, can a company, that is not an UCITS management company, under an agreement with an asset management company be considered to be as such a company, if it advises customers to invest in UCITS managed by the UCITS management company?

- How should the notion of 'close links resulting from a control relationship' (as set out in the UCITS Directive) between a management company on the one side, and its subsidiary or parent undertaking on the other side, be understood?

- How should the notion of 'undertaking contributing towards its [a UCITS Management Company's] business activity' (as set out in the UCITS Directive) be understood?

ESMA_QA_2609

Submission Date

15/07/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 3 Regulation

Performance Fees - Guidelines on performance fees in UCITS and certain types of AIFs - ESMA34-39-968

Topic

Costs and fees

Subject Matter

Performance fees for feeder funds

Question

Can the manager of a feeder fund within the meaning of Article 58 of the UCITS Directive charge a performance fee?

ESMA Answer

15-07-2025

Original language

Under Article 58 of the UCITS Directive, a feeder fund is a fund which has been approved to invest at least 85 % of its assets in units of another fund (master funds). Paragraph 18 of the Guidelines states that a manager “should always be able to demonstrate how the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors’ interests”.

Against this background, the feeder manager does not exercise sufficient discretion over the asset allocation, selection and fund strategy to warrant the charging of a performance fee and as such, the charging of a performance fee to investors should not be considered as appropriate and justified in such cases. Therefore, performance fees, if any, should only be charged at the level of the master fund.

This is unless:

a) the master fund and the feeder fund are managed by the same manager or by managers belonging to the same group; and

b) the only investor(s) of the master fund is(are) feeder fund(s);

in which case performance fees could be paid at the level of the feeder fund(s), and not at the level of the master fund, provided that this approach applies consistently to all feeder funds, if more than one.

ESMA_QA_2575

Submission Date

18/06/2025

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Updates of notification letters for the cross-border marketing of UCITS

Question

When, pursuant to Article 93(8) of Directive 2009/65/EC, a UCITS gives written notice to the competent authorities of both the UCITS home Member State and the

UCITS host Member States, of a change to the information in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC, or a change regarding share classes to be marketed, should the documents referred to in Article 93(2) of Directive 2009/65/EC be included?

ESMA Answer

18-06-2025

Original language

No, the documents referred to in Article 93(2) of Directive 2009/65/EC, should not be included. The obligation of UCITS to give written notice of amendments to information already provided in a notification letter of cross-border marketing should be understood as covering only the updated information in Annex 1 of the [Commission Implementing Regulation \(EU\) 2024/910](#) compared to the previous notification. Amendments to fund documents should not be covered by the obligation of written notice of Article 93(8) of Directive 2009/65/EC.

ESMA_QA_2429

Submission Date

04/02/2025

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Cross-border distribution of funds

Subject Matter

Premarketing of units or shares of AIFs

Question

Article 32a, paragraph 3, third sub-paragraph of Directive (EU) 2011/61/EU (as modified by CBDF Directive) states the following: "(...) For a period of 36 months

from the date referred to in point (c) of the first subparagraph of paragraph 1, the AIFM shall not engage in pre-marketing of units or shares of the EU AIFs referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in paragraph 2.”
How should "similar investment strategies or investment ideas" be interpreted?

ESMA_QA_2373

Submission Date

13/12/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation

UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation

ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic

Funds' names

Subject Matter

Guidelines on funds' names

Question

Is there a minimum level for investment funds with the term “sustainable” in their name to be considered to be investing “meaningfully” in sustainable investments?

ESMA Answer

13-12-2024

Original language

The third indent of paragraph 18 of the Guidelines foresees that funds using “sustainable” terms should commit to invest meaningfully in sustainable investments referred to in Article 2(17) of the SFDR. While national competent authorities should carry out a case-by-case analysis of how any sustainability-related term is used in the name of a fund, they may find that investment funds with "sustainable" terms in their names investing less than 50% of the proportion of investments in sustainable investments are not "meaningfully investing in sustainable investments". That amount could be higher, subject to the circumstances of the case.

ESMA_QA_2371

Submission Date

13/12/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation

UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation

ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic

Funds' names

Subject Matter

Guidelines on funds' names

Question

How should the exclusions related to controversial weapons referred to in Commission Delegated Regulation (EU) 2020/1818 be interpreted for different types of controversial weapons?

ESMA Answer

13-12-2024

Original language

For the purpose of applying the exclusions referred to in paragraphs 16-18 of the Guidelines related to Article 12(1)(a) of Commission Delegated Regulation (EU) 2020/1818 (companies involved in any activities related to controversial weapons), national competent authorities may, in the absence of any other clarification in that Delegated Regulation, refer to the list of controversial weapons provided in indicator 14 of Table 1 of Annex I of Commission Delegated Regulation (EU) 2022/1288, namely “anti-personnel mines, cluster munitions, chemical weapons and biological weapons”.

ESMA_QA_2368

Submission Date

12/12/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation

UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Level 3 Regulation

ESMA Guidelines on funds' names using ESG or sustainability-related terms (ESMA34-1592494965-657)

Topic

Funds' names

Subject Matter

Guidelines on funds' names

Question

When applying the exclusions referred to in paragraphs 16-18 of the guidelines, can fund managers consider the underlying project for use of proceeds instruments or should the manager always consider the whole issuer?

ESMA Answer

13-12-2024

Original language

With regard to European Green Bonds that have been issued under the European Green Bonds Regulation (Regulation (EU) 2023/2631), investments in such instruments do not need to be assessed under the exclusions of investments referred to in paragraphs 16-18 of the Guidelines, because the Guidelines are intended to be read in conjunction with Level 1 legislation such as the European Green Bonds Regulation and should consider the high level of protection guaranteed by the EU legal framework for such investments.

With regard to investments in any other type of use of proceeds instruments, such as green bonds not issued under the European Green Bonds Regulation, the exclusions referred to in paragraphs 16-18 of the Guidelines should apply on a look-through basis to the economic activities financed by such instruments. The look-through approach should determine that the instrument invested in does not finance any activities referred to in Article 12(1)(a-b) and (d-g) of Commission Delegated

Regulation (EU) 2020/1818. Investments in companies excluded under Article 12(1)(c) of Commission Delegated Regulation (EU) 2020/1818 would not be able to benefit from this look-through approach (i.e. those companies are always excluded under the exclusions referred to in paragraphs 16-18 of the Guidelines).

ESMA_QA_2175

Submission Date

08/05/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Additional Legal Reference

ESMA guidelines on performance fees in UCITS and certain types of AIFs

Subject Matter

Performance fees

Question

Can the manager of a Fund of Funds (FoF) charge performance fees?

ESMA Answer

24-05-2024

Original language

In line with paragraph 18 of the Guidelines, the manager of a FoF should be able to demonstrate to the NCA that the performance fee model of a fund it manages constitutes a reasonable incentive for the manager and is aligned with investors' interests.

Against this background, as a general principle, where the investment policy of a FoF requires the active management of the FoF and the determination of the allocation in the underlying funds has a material impact on the FoF performance, performance fees for the manager of the FoF could be considered as justified.

The assessment on how performance fees are justified in light of the investment policy of the FoF should be reflected in the fund documentation, including the fund rules or the instruments of incorporation and may be reviewed, where needed, by the NCA on a case-by-case basis.

ESMA_QA_2173

Submission Date

08/05/2024

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Additional Legal Reference

ESMA guidelines on performance fees in UCITS and certain types of AIFs

Subject Matter

Performance fees

Question

Where a manager applies an additional reference indicator to the performance fee model (e.g.: a hurdle rate on top of the High-Water Mark model or the benchmark model), should the minimum performance reference period be applied to the additional reference indicator?

ESMA Answer

24-05-2024

Original language

The minimum performance reference period in accordance with paragraph 40-42 of the Guidelines should be applied to the performance fee model. However, the manager is not required to apply the minimum performance reference period to the additional reference indicator, considering that (a) the final combination (i.e.: the performance fee model plus the additional reference indicator) does not result in increased fees for investors compared to the use of the performance fee model alone and (b) the performance fee model (excluding the additional reference indicator) is consistent with the fund's investment objectives, strategy and policy, in line with Guideline 2. In line with paragraph 46 of guidelines, appropriate disclosure should be provided in the prospectus.

ESMA_QA_1097

Submission Date

13/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

AIFMD scope

Additional Legal Reference

Article 6 of Directive 2009/65/EC

Subject Matter

Scope of activities that a management company may carry out in a host Member State

Question

When a management company intends to pursue the activities for which it has been authorised in a host Member State, either directly or through a branch, may that management company passport in that host Member State only the administration or marketing functions referred to in Annex II of the UCITS Directive, without also passporting investment management functions?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section IV, Q&A 10]

No. The UCITS passporting regime is linked to the management of UCITS by UCITS management companies on a cross-border basis. Pursuant to Articles 5 and 6 of the UCITS Directive, UCITS management companies are authorised to manage collective investment undertakings and to perform the activities referred to in Annex II to the UCITS Directive. Pursuant to Article 17(2), point (b), and Article 18(1), point (b), of the UCITS Directive, a UCITS management company intending to manage UCITS established in another Member State, either directly or through the creation of a branch in another Member State, shall communicate to the competent authorities of its home Member State a program of operations referring to the services it intends to provide. That requirement cannot be interpreted otherwise than referring to investment management foremost, whereas auxiliary services remain as such auxiliary and are to be performed only in relation to the management of a UCITS.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1076

Submission Date

12/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Cross-border distribution of funds

Additional Legal Reference

Article 93a of Directive 2009/65/EC

Subject Matter

De-notification of marketing arrangements for UCITS

Question

In case there are no investors in a host Member State, do UCITS wishing to de-notify the arrangements previously made for marketing their units have to comply with the obligations set out in Article 93a(1) of the UCITS Directive?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section IV, Q&A 9]

Yes. In case there are no investors in a host Member State, UCITS wishing to de-notify the arrangements previously made for marketing their units, will still have to comply with all the obligations set out in Article 93a(1) of the UCITS Directive, making sure that there are no investors uninformed about the UCITS' market exit, that all marketing is publicly terminated and any marketing arrangements with third parties are terminated or modified to prevent any further marketing of the de-notified UCITS.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views

expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_1075

Submission Date

12/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

AIFMD scope

Additional Legal Reference

Article 6 of Directive 2009/65/EC

Subject Matter

Management of pension schemes by UCITS management companies

Question

Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage pension schemes under Directive (EU) 2016/2341?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section I, Q&A 8b]

Yes, provided that it is authorised by national legislation implementing the UCITS Directive. The scope of the UCITS license allows UCITS management companies to undertake as core services only the management of UCITS. However, Article 6(3), point (a), of the UCITS Directive provides the possibility for Member States to authorise UCITS management companies to provide, in addition to the management of UCITS, the management of pension funds' portfolios, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to Directive 2004/39/EC. Therefore, Member States can authorise UCITS management companies, in addition to the management of UCITS, to manage investment portfolios of pension funds only on a mandate basis, acting as service providers and not as investment managers of the pension funds.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers

are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_1074

Submission Date

12/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

AIFMD scope

Additional Legal Reference

Article 6 of Directive 2009/65/EC

Subject Matter

Management of AIFs by UCITS management companies

Question

Pursuant to Article 6(2) of the UCITS Directive, are UCITS management companies allowed to manage AIFs as a registered AIFM under Article 3 of Directive 2011/61/EU (AIFMD)?

ESMA Answer

13-06-2023

Original language

[ESMA34-43-392 UCITS Q&A, Section I, Q&A 8a]

Yes. UCITS management companies are allowed to manage AIFs as AIFMs registered under Article 3 AIFMD. Pursuant to Article 6(2) of the UCITS Directive, management companies can manage other collective investment vehicles, for which the management company is subject to prudential supervision. Registered AIFMs are subject to the prudential supervision under AIFMD to the degree commensurate with their complexity and systemic relevance for the stability of the financial system. Pursuant to Article 3(3) and (4) AIFMD, sub-threshold AIFMs shall be at least registered by the home competent authorities and identify the AIFs they manage providing information on the employed investment strategies. Such AIFMs are also subject to the periodic supervisory reporting obligation. There is national discretion to make those requirements stricter. Importantly, the national competent authorities can exert any of the supervisory powers enumerated in Article 46 AIFMD. This allows concluding that AIFMs registered in accordance with Article 3(3) AIFMD should be considered as prudentially supervised within the meaning of Article 6(2) of the UCITS Directive.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_708

Submission Date

28/03/2023

Status: Question Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Level 2 Regulation

UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Topic

UCITS global exposure

Subject Matter

UCITS risk spreading rules

Question

Where a UCITS holds government bond futures (e.g. US 10 Year Treasury Futures), are there any diversification requirements applicable to the pool of bonds which are eligible for delivery under the futures?

ESMA_QA_955

Submission Date

03/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Issuer concentration

Question

Article 52(1)(b) of the UCITS Directive requires a UCITS not to invest more than 20% of its assets in deposits made with the same body. Does the term “body”

referred to in the aforementioned article mean “credit institution” as mentioned in Article 50(1)(f) of the UCITS Directive or does it include also any other counterparty which is not a credit institution?

ESMA Answer

03-02-2023

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 5e]

The term “body” as referred to in Article 52(1)(b) means “credit institution” as mentioned in Article 50(1)(f) of the UCITS Directive.

The guidance provided by this Q&A is only applicable in the context of Article 52(1)(b) and should not affect the meaning of the term “body” in other instances of the UCITS Directive.

ESMA_QA_954

Submission Date

01/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Issuer concentration

Question

Where a UCITS has a hedged share class in a different currency, should unrealised FX profits and losses be counted towards the NAV of the hedged share class and

accordingly be taken into account when calculating the counterparty risk limit of Article 52(1) of the UCITS Directive?

ESMA Answer

01-02-2023

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 5d]

FX forward are OTC instruments. This means that when UCITS invest in this type of instruments for currency hedging purposes in a share class they should comply with the counterparty risks limits laid down in Article 52(1) of the UCITS Directive in respect to the NAV of the share class as provided in paragraph 26a of the ESMA's Opinion on share classes^[1]. Therefore, unrealised FX profits and losses should be counted towards the NAV of the hedged share class of the UCITS and taken into account when calculating the counterparty risk limits of Article 52(1) of the UCITS Directive in respect to the NAV of the hedged share class.

[1] See ESMA's Opinion on share classes ([ESMA34-43-296](#))

ESMA_QA_953

Submission Date

01/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Issuer concentration

Question

Article 54 of Directive 2009/65/EC permits competent authorities to authorise UCITS to invest up to 100% of their assets in transferable securities issued by

certain issuers e.g. sovereigns. Do the six different issues mentioned in Article 54(1), third sub-paragraph of the UCITS Directive refer to any kinds of issues of transferable securities and money market instruments or must they be guaranteed by a Member State, one or more of its local authorities, a third country or a public international body to which one or more Member States belong? If the UCITS holds more than six different issues, must all of these issues comply with the 30 % limit?

ESMA Answer

01-02-2023

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 5c]

Pursuant to article 54(1) of the UCITS Directive, UCITS cannot invest up to 100% of their assets in transferable securities or money markets instruments that are not issued nor guaranteed by a Member State, one or more of its local authorities, a third country or a public international body to which one or more Member States belong. In addition, Article 54(1) of the UCITS Directive unambiguously provides that if a UCITS holds more than six issues in transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country or a public international body to which one or more Member States belong, all the issues should respect the 30% limit (i.e. even if the UCITS holds more than 6 issues).

ESMA_QA_952

Submission Date

01/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Issuer concentration

Question

Can netting and hedging arrangements be taken into account for the purposes of calculating issuer concentration limits pursuant to Article 52 of the UCITS Directive?

ESMA Answer

01-02-2023

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 5b]

Only netting arrangements in accordance with the definition and conditions set out in the guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref. CESR/10-788) may be taken into account when calculating issuer concentration limits.

ESMA_QA_951

Submission Date

01/02/2023

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Issuer concentration

Question

Does the 40% limit set out in Article 52(2) of the UCITS Directive apply to index-tracking UCITS that are subject to Article 53 of the UCITS Directive?

ESMA Answer

01-02-2023

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 5a]

No. The 40% limit set out in Article 52(2) does not apply to index-tracking UCITS that comply with the requirements set out in Article 53.

ESMA_QA_601

Submission Date

22/09/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

Derogation for newly authorized UCITS

Question

Pursuant to Article 57(1) of the UCITS Directive, Member States may allow recently authorised UCITS to derogate from Articles 52 to 55 for six months following the

date of authorisation of the UCITS. For a UCITS that is authorised by the relevant regulatory authority and subsequently launches at a later point, can it be inferred that the six-month derogation runs from the moment of launch (i.e. initial investment) rather than from the date of authorisation of the UCITS?

ESMA Answer

18-06-2024

Original language

No, under Article 57(1) of the UCITS Directive the six-month derogation period runs from the date of authorisation of the UCITS, regardless of whether the UCITS launches immediately after authorisation or at a latter stage.

The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_969

Submission Date

01/07/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Delegation

Subject Matter

Responsibility to ensure compliance with the rules governing marketing communications

Question

When the marketing of an AIF or a UCITS is not performed by the AIFM or UCITS management company but by a third party distributor, does the responsibility for ensuring that marketing communications comply with the requirements set out in Article 4(1) of Regulation (EU) 2019/1156 lie with the AIFM or the UCITS management company where there is a contractual relationship between the AIFM or the UCITS management company and the third party distributor? Conversely, does the responsibility for ensuring that marketing communications comply with the requirements set out in Article 4(1) of Regulation (EU) 2019/1156 still lie with the AIFM or the UCITS management company in case there is no contractual relationship with the third party distributor?

ESMA Answer

01-07-2022

Original language

[ESMA 34-43-392 UCITS Q&A, Section 13, 1a]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation^[1]

Marketing is one of the functions included in the management of funds, and therefore subject to the provisions on delegation (Article 13 of Directive 2009/65/EC and Article 20 of Directive 2011/61/EU), which themselves govern the conditions for that delegation under the principle of full responsibility of fund managers.

Article 1 of Regulation (EU) 2019/1156 specifies that the aim of this Regulation is to establish uniform rules on the publication of national provisions concerning marketing requirements for collective investment undertakings and on marketing

communications addressed to investors. These requirements are laid down in Article 4 of this Regulation, and are further clarified in ESMA Guidelines.

Fund managers are responsible for the compliance with Article 4 of Regulation (EU) 2019/1156, irrespective of who is the actual entity marketing the fund, and of the relationship it has with the third party distributor (whether it is contractual or not).

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

ESMA_QA_960

Submission Date

01/07/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Reconciliations with tri-party collateral managers

Question

According to Article 89(1)(c) of Commission Delegated Regulation (EU) No 231/2013 as modified by Commission Delegated Regulation (EU) 2018/1618 and

Article 13(1)(c) of Commission Delegated Regulation (EU) 2016/438 as modified by Commission Delegated Regulation (EU) 2018/1619 reconciliations are conducted as frequently as necessary between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated. What does this mean in case of use of a tri-party collateral manager, which is not the depositary?

ESMA Answer

01-07-2022

Original language

[ESMA 34-43-392 UCITS Q&A, Section 10, 8a]

In this case the tri-party collateral manager is appointed by the asset manager in accordance with Article 20 of Directive 2011/61/EU or in accordance with Article 13 of Directive 2009/65/EC; it also needs to be the delegate of the depositary in accordance with Article 21(11) of Directive 2011/61/EU or in accordance with Article 22a(2) of Directive 2009/65/EC. The tri-party collateral manager is required to transmit the end-of-day positions on a fund-by-fund basis or, if applicable, on a compartment-by-compartment basis. The information provided allows the depositary to record the end-of-day positions and allows it to comply with the provisions (a) of Article 98(2a)(a) (as inserted by Delegated Regulation (EU) 2018/1618) and in particular point (ii) thereof, and (b) with the provisions under Article 15(2a)(a) (as inserted by Delegated Regulation (EU) 2018/1619), and in particular point (ii) thereof. Thus, the information provided allows the depositary (for both Regulations) to verify that the quantity of the identified financial instruments recorded in the financial instruments accounts opened in its books matches the

quantity of the identified financial instruments held in custody by the third party.

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation[1]

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_959

Submission Date

01/07/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Reconciliation frequency for funds trading on a daily basis

Question

According to Article 89(1)(c) of Commission Delegated Regulation (EU) No 231/2013 as modified by Commission Delegated Regulation (EU) 2018/1618 and

Article 13(1)(c) of Commission Delegated Regulation (EU) 2016/438 as modified by Commission Delegated Regulation (EU) 2018/1619 reconciliations are conducted as frequently as necessary between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated. What does this mean for an AIF or UCITS with a weekly dealing frequency which trades on a daily basis?

ESMA Answer

01-07-2022

Original language

[ESMA 34-43-392 UCITS Q&A, Section 10, 7a]

The reconciliation frequency depends not only on the dealing frequency of the relevant AIF or UCITS, but also on any trade which occurs even outside the dealing frequency. Therefore, if an AIF or UCITS with a weekly dealing frequency trades on a daily basis, daily reconciliations are required.

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation[1]

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent

authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

ESMA_QA_967

Submission Date

01/05/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Performance reference period for the hurdle rate model

Question

Paragraphs 40 and 41 of the Guidelines on performance fees recommend that the length of the performance reference period (if this is shorter than the whole life of

the fund) should be set equal to at least 5 years. Is this requirement applicable to the hurdle rate model?

ESMA Answer

20-05-2022

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 7a] & [ESMA 34-32-352 AIFMD Q&A, Section 15, 9]

Yes, as paragraph 42 of the guidelines^[1] clarifies that the only exception to the application of the 5-year performance reference period is “*the fulcrum fee model and other models which provide for a symmetrical fee structure*”.

[1] Paragraph 42 of the Guidelines states that “The performance reference period should not apply to the fulcrum fee model and other models which provide for a symmetrical fee structure, as in these models the level of the performance fee increases or decreases proportionately with the investment performance of the fund”.

ESMA_QA_963

Submission Date

01/05/2022

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Performance reference period for the benchmark model

Question

Based on paragraph 40 of the Guidelines on performance fees, how should the performance reference period for the benchmark model be set?

ESMA Answer

20-05-2022

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 3a] & [ESMA 34-32-352 AIFMD Q&A, Section 15, 5]

The benchmark model is defined as a performance fee model whereby the performance fees may only be charged on the basis of outperforming the reference market index. See the definitions Section of the Guidelines on performance fees.

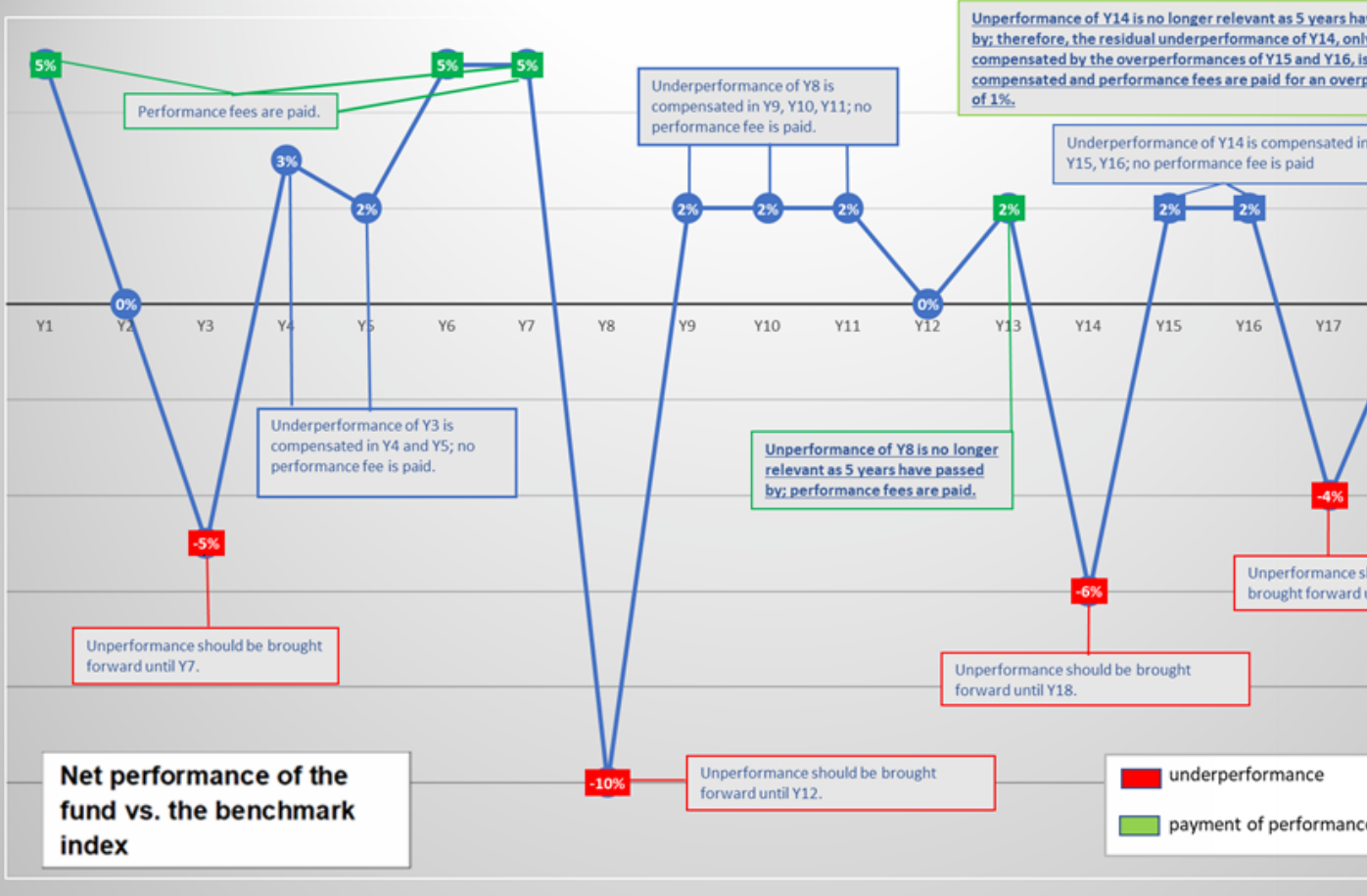
Paragraph 40)[\[1\]](#) of the guidelines recommends that:

1. any underperformance of the fund compared to the benchmark index should be clawed back before any performance fee becomes payable; and
2. the length of the performance reference period[\[2\]](#), if this is shorter than the whole life of the fund, should be set equal to at least 5 years.

In order to comply with the above recommendations, it should be ensured that any underperformance is brought forward for a minimum period of 5 years before a performance fee becomes payable, i.e. fund managers should look back at the past 5 years for the purpose of compensating underperformances.

In case the fund has overperformed the benchmark index, the fund manager should be able to crystallise performance fees.

The following example illustrates the principles above (please note that the two tables below relate to the same example, the first one illustrated through a graphical representation, while the second one displayed in numerical terms):



	Net performance	Underperformance to be compensated in the following year	Payment of performance fees
Y1	5%	0%	YES
Y2	0%	0%	NO

Y3	-5%	-5%	NO
Y4	3%	-2%	NO
Y5	2%	0%	NO
Y6	5%	0%	YES
Y7	5%	0%	YES
Y8	-10%	-10%	NO
Y9	2%	-8%	NO
Y10	2%	-6%	NO
Y11	2%	-4%	NO
Y12	0%	0% [3]	NO
Y13	2%	0%	YES
Y14	-6%	-6%	NO
Y15	2%	-4%	NO

Y16	2%	-2%	NO
Y17	-4%	-6%	NO
Y18	0%	-4%^[4]	NO
Y19	5%	0%	YES

The following are additional examples aimed at further clarifying the mechanism of compensation of underperformances:

1. in the case the net performance of the fund in Y18 was equal to 2% (instead of 0%), the underperformance to be carried forward to the following year (Y19) would be equal to -4%. This is in light of the fact that during Y18, the underperformance of -2% coming from Y14 should still be compensated and, in addition to that, the performance of -4% coming from Y17 should be brought forward to the following year.
2. in the case the net performance of the fund in Y18 was equal to 5% (instead of 0%), the underperformance to be carried forward to the following year (Y19) would be equal to -1%. This is in light of the fact that the residual underperformance coming from Y17 that was not yet compensated (-1%) should be brought forward to the following year (Y19).
3. in the case the net performance of the fund in Y18 was equal to 7% (instead of 0%), the net performance of the fund would compensate the underperformance of -6% coming from Y17. The positive accrual of performance fees for the 1% difference would therefore be crystallised in the

payment of the performance fees to the management company. There would be no underperformance to be carried forward to Y19.

This is in line with the principle in the guidelines that underperformance in a given year (e.g. Y14) should still be compensated during a period which includes the fifth year following that underperformance (Y18), while not be brought forward to the sixth year (Y19).

[1] This is defined as “the time horizon over which the performance is measured and compared with that of the reference indicator, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset”.

[2] Paragraph 40) of the Guidelines on performance fees states that “In case the fund employs a performance fee model based on a benchmark index, it should be ensured that any underperformance of the fund compared to the benchmark is clawed back before any performance fee becomes payable. To this purpose, the length of the performance reference period, if this is shorter than the whole life of the fund, should be set equal to at least 5 years.”

[3] The underperformance of Y12 to be taken forward to the following year (Y13) is 0% (and not -4%) in light of the fact that the residual underperformance coming from Y8 that was not yet compensated (-4%) is no longer relevant as the 5-year period has elapsed (the underperformance of Y8 is compensated until Y12).

[4] The underperformance of Y18 to be taken forward to the following year (Y19) is 4% (and not -6%) in light of the fact that the residual underperformance coming from Y14 that was not yet compensated (-2%) is no longer relevant as the 5-year period has elapsed (the underperformance of Y14 is compensated until Y18).

ESMA_QA_958

Submission Date

01/12/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Share classes

Subject Matter

Advance notice for the marketing of new share classes of UCITS notified for cross-border marketing

Question

According to Article 93(8) of the UCITS Directive, in the event of a change to the information in the notification letter submitted in accordance with paragraph 1 of Article 93, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of both the UCITS home Member State and the UCITS host Member State at least one month before implementing that change. If a UCITS intends to market a new share class in a host Member State where it has already been notified for marketing, should the UCITS give written notice to the competent authorities of the UCITS home and host Member States, at least one month before the marketing of the new share class starts?

ESMA Answer

01-12-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 4, 8a]

Yes, if a UCITS intends to market a new share class in a Member State where it has already been notified for marketing, the UCITS should give written notice to the competent authorities of both the UCITS home and host Member State, at least one month before the marketing of the new share class starts.

ESMA_QA_968

Submission Date

01/11/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Level 2 Regulation

UCITS - Directive 2010/43/EU on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

Topic

Costs and fees

Additional Legal Reference

Question related to Articles 22 and 29 Directive 2010/43/EU (UCITS level 2)

Subject Matter

Fee rebate arrangements

Question

Do you agree that:

- (i) restrictions under Article 29 of the Commission Directive 2010/43/EU shall not be applicable to a rebate arrangement, if management companies pay these rebates from their own resources (payment vis-à-vis an individual investor)?
- (ii) management companies may pay fees from their own resources to separate investors (e.g. by concluding side letters with institutional investors, which buy investment fund units on behalf of their clients), where management companies prevent undue costs being charged to the UCITS and its unit-holders?

ESMA Answer

01-11-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 12, 1a]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation[1]

No.

Article 29 of Commission Directive 2010/43/EU[2] lays down strict conditions for fees or commissions paid or received to/from a third party in relation to the activity

of investment management and administration of the UCITS. Those conditions ensure that management companies act honestly, fairly and professionally. In particular, they ensure UCITS best interests, investors' fair treatment and the transparency of UCITS operations.

Management fee discount arrangements entail payments to certain investors based on the fees charged by the UCITS management companies to remunerate investment management and/or administration activities. As such, they should be analysed as payments for the activity of the investment management and administration of the UCITS. Therefore, management companies shall ensure that the conditions laid down in Article 29(1)(b) of Commission Directive 2010/43/EU are satisfied:

- “(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
- (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;”

It follows from the above that, in particular:

- (a) those arrangements should be transparent and meet the conditions laid down in Article 29(1)(b) of Commission Directive 2010/43/EU;
- (b) management companies should demonstrate that:
 - (i) these arrangements will “enhance the quality of the relevant service” for the UCITS. That requirement refers to the quality of the UCITS services to the benefit of all investors and not only to investors who benefit from those arrangements;

- (ii) those arrangements will “not impair compliance with the management company’s duty to act in the best interests of the UCITS”. In particular, Article 22 of Commission Directive 2010/43/EU sets out rules related to the “Duty to act in the best interests of UCITS and their unit-holders”. Under that Article, management companies are bound to treat all unit-holders fairly, act in the best interest of the unit-holders and to refrain from placing the interest of any group of unit-holders above others. Therefore, management companies should be able to justify that all investors pay their fair share in the funds functioning (taking into account management fee discount) and the UCITS cost structure. Those arrangements should not have a negative impact on other investors.

Upon national competent authorities’ request, management companies should be able to provide accurate and documented justifications.

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.

[2] Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (OJ L 176, 10.7.2010, p. 42).

ESMA_QA_966

Submission Date

01/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Crystallisation of performance fees in case of the creation of a new UCITS/compartiment/share class in the course of the financial year

Question

In case of creation of a new compartment/share class in an existing UCITS in the course of its financial year or in case of creation of a new UCITS, can performance fees be crystallised after less than 12 months from the date of creation of such a new UCITS/compartment/share class (i.e.: the date in which the share class is launched/seeded)?

ESMA Answer

03-10-2024

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 6a]

No. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, paragraph 35 of the guidelines foresees that the crystallisation date should be the same for all share classes of a fund that levies a performance fee.

01-07-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 6a]

No. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, paragraph 35 of the guidelines foresees that the crystallisation date should be the same for all share

classes of a fund that levies a performance fee.

ESMA_QA_966

Submission Date

01/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Crystallisation of performance fees in case of the creation of a new UCITS/compartment/share class in the course of the financial year

Question

In case of creation of a new compartment/share class in an existing UCITS in the course of its financial year or in case of creation of a new UCITS, can performance fees be crystallised after less than 12 months from the date of creation of such a new UCITS/compartment/share class (i.e.: the date in which the share class is launched/seeded)?

ESMA Answer

03-10-2024

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 6a]

No. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, paragraph 35 of the guidelines foresees that the crystallisation date should be the same for all share classes of a fund that levies a performance fee.

01-07-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 6a]

No. Performance fees, if any, should be crystallised after at least 12 months from the creation of a new UCITS/compartment/share class. Moreover, paragraph 35 of the guidelines foresees that the crystallisation date should be the same for all share

classes of a fund that levies a performance fee.

ESMA_QA_965

Submission Date

01/07/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Application of the guidelines to funds with multiple portfolio managers

Question

In case the authorised management company has delegated the portfolio management function to different delegated portfolio managers, would it be

admissible to pay a performance fee to those delegated portfolio managers who have overperformed during the performance reference period, despite a global underperformance of the fund during the same performance reference period?

ESMA Answer

01-07-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 5a]

No. [Based on paragraph 37 of the guidelines, performance fees:](#)

- should be paid only where positive performance has been accrued during the performance reference period;
- could be paid in case the fund has overperformed the reference benchmark but had a negative performance.

The above also applies in case of delegation by the authorised management company to different delegated portfolio managers. Therefore, in case of a global underperformance of the fund, performance fees should not be paid to those delegated portfolio managers who have overperformed.

ESMA_QA_964

Submission Date

01/05/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Performance reference period in case of funds' mergers

Question

How should the performance reference period be set in case of a merger where the receiving UCITS is a newly established fund with no performance history and it is in

effect a continuation of the merging UCITS?

ESMA Answer

01-05-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 4a]

In order to ensure that the merger is not conducted with the aim of resetting the performance reference period^[1], in the case of a merger where the receiving UCITS is a newly established fund with no performance history and the competent authority of the receiving UCITS assesses that the merger does not substantially change the UCITS' investment policy, the performance reference period of the merging UCITS should continue applying in the receiving UCITS.

^[1] This is defined as “the time horizon over which the performance is measured and compared with that of the reference indicator, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset”.

ESMA_QA_962

Submission Date

01/03/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Timeline of the application of the performance reference period

Question

Paragraphs 40) and 41) of the Guidelines on performance fees recommend that the length of the performance reference period (if this is shorter than the whole life of

the fund) should be set equal to at least 5 years. How should the performance reference period be set for the first time in light of the application date of the guidelines?

ESMA Answer

30-03-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 2a] & [ESMA 34-32-352 AIFMD Q&A, Section 15, 2]

Managers of any funds already compliant with paragraphs 40)[1] and 41)[2] of the Guidelines on performance fees before the application date of the guidelines should look at the past 5 years/whole life of the fund for the purpose of setting the performance reference period[3] (i.e. they should not reset the performance reference period after the application date of the guidelines).

In all the other cases, managers should apply the performance reference period starting from the beginning of the financial year following 6 months from the application date of the Guidelines (i.e. the performance reference period should start at the beginning of the financial year following 5 July 2021; by way of example, if the financial year of the fund starts on 1 September 2021, the period 1 September 2021 – 1 September 2022 should be considered as the first year of the performance reference period).

[1] Paragraph 40) of the Guidelines on performance fees states that “In case the fund employs a performance fee model based on a benchmark index, it should be ensured that any underperformance of the fund compared to the benchmark is clawed back before any performance fee becomes payable. To this purpose, the length of the performance reference period, if this is shorter than the whole life of the fund, should be set equal to at least 5 years.”

[2] Paragraph 41) of the Guidelines on performance fees states that “Where a fund utilises a HWM model, a performance fee should be payable only where, during the performance reference period, the new HWM exceeds the last HWM. The starting point to be considered in the calculations should be the initial offering price per share. For the HWM model, in case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set equal to at least five years on a rolling basis. In this case, performance fee may only be claimed if the outperformance exceeds any underperformances during the previous five years and performance fees should not crystallise more than once a year”.

[3] This is defined as “the time horizon over which the performance is measured and compared with that of the reference indicator, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset”.

ESMA_QA_961

Submission Date

01/03/2021

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Costs and fees

Subject Matter

Crystallisation of performance fees

Question

Based on paragraphs 40 and 41 of the guidelines on performance fees in UCITS and certain types of AIFs (“Guidelines on performance fees”), should performance

fees be paid only at the end of the performance reference period of 5 years?

ESMA Answer

31-03-2021

Original language

[ESMA 34-43-392 UCITS Q&A, Section 11, 1a] & [ESMA 34-32-352 AIFMD Q&A, Section 15, 1]

No. The Guidelines on performance fees^[1] do not prevent to pay performance fees during the performance reference period of 5 years and/or in the first years of a fund's existence, in case the fund has not existed for 5 years.

By way of example, if on the crystallisation date of the fund (e.g. at the end of the second year of existence of the fund), the fund has overperformed the reference indicator and there is a positive accrual of performance fees those can be paid. In this case, the accrual will be crystallised in the payment of the performance fees to the management company.

On the contrary, if on the crystallisation date of the fund (e.g. at the end of the third year of existence of the fund) the fund has underperformed the reference indicator and as a consequence there are no accrued performance fees, this underperformance is brought forward for the purpose of the calculation of performance fees the following year. In this way, compensation of negative performances is ensured over the years during a reference period of 5 years.

Example:

- Crystallisation date: end of the second year of existence of the fund
 - Performance of the fund: 10%
 - Performance of the reference indicator: 5%
 - Overperformance: 5%
 - Performance fees can be paid to the management company
- Crystallisation date: end of the second year of existence of the fund
 - Performance of the fund: 10%
 - Performance of the reference indicator: 10%
 - Overperformance: 0%
 - No crystallisation of performance fees
- Crystallisation date: end of the third year of existence of the fund
 - Performance of the fund: 5%
 - Performance of the reference indicator: 10%
 - Underperformance: -5% (this underperformance should be taken into account in the subsequent calculation of performance fees)
 - Not only performance fees cannot be paid but the underperformance of -5% should be brought forward to the following year and clawed back before any performance fee can be paid (see below)
- Crystallisation date: end of the fourth year of existence of the fund
 - Performance of the fund: 8%
 - Performance of the reference indicator: 5%
 - Overperformance: 3%
 - Underperformance from year 3: -5%
 - Global net performance: -2%
 - Not only performance fees cannot be paid but the underperformance of -2% should be brought forward to the following year and clawed back before any performance fee can be paid

This should not prevent NCAs to require funds to apply stricter rules (e.g. to crystallise fees only after 5 years or to apply reference periods longer than 5 years), bearing in mind that any specific provision applying at national level in addition to the provisions set out in the guidelines should not jeopardise the rules regarding

funds' cross border distribution^[2] and the split of competences between the home and host competent authority^[3] to this regard.

[1] Paragraph 40) of the Guidelines on performance fees states that “In case the fund employs a performance fee model based on a benchmark index, it should be ensured that any underperformance of the fund compared to the benchmark is clawed back before any performance fee becomes payable. To this purpose, the length of the performance reference period, if this is shorter than the whole life of the fund, should be set equal to at least 5 years.”

Paragraph 41) of the Guidelines on performance fees states that “Where a fund utilises a HWM model, a performance fee should be payable only where, during the performance reference period, the new HWM exceeds the last HWM. The starting point to be considered in the calculations should be the initial offering price per share. For the HWM model, in case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set equal to at least five years on a rolling basis. In this case, performance fee may only be claimed if the outperformance exceeds any underperformances during the previous five years and performance fees should not crystallise more than once a year”.

^[2] See Chapter XI of the UCITS Directive.

^[3] See Chapter XII of the UCITS Directive.

ESMA_QA_1213

Submission Date

01/06/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Delegation by a depositary to another legal entity belonging to the same group

Question

Where a depositary delegates some of its functions to another legal entity which belongs to the same group, should this be considered a delegation for the purposes

of the application of the depositary delegation rules under Article 22a of the UCITS Directive?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 6]

Yes. Legal entities within the same group of a depositary should be considered 'third parties' for the purpose of the depositary delegation rules under Article 22a of the UCITS Directive.

ESMA_QA_1212

Submission Date

01/06/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositories

Subject Matter

Supervision of depository functions in case of branches in other Member States

Question

Where depository functions are performed by a branch established in the home Member State of a UCITS other than the home Member State of the depository's

head office, who is responsible for supervising the activities of the branch relating to depositary functions? Is it the competent authority of the Member State where the depositary's head office is established or the competent authority of the Member State where the branch is established?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 5]

The UCITS Directive, the CRD and the MiFID II do not grant any passport for depositary activities in relation to UCITS. Hence, branches located in the home Member State of the UCITS other than the home Member State of the depositary's head office may also be subject to local authorisation in order to perform depositaries activities in relation to UCITS. Therefore, the competent authority of the Member State where the branch is established should be responsible for supervising the activities of the branch with regard to depositary functions in relation to UCITS. This includes the supervision of the allocation of depositary functions from the branch to its head office or vice versa to avoid any possible circumvention of the establishment requirement under Article 23(1) of the UCITS Directive.

ESMA_QA_1211

Submission Date

01/06/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Performance of depositary functions where there are branches in other Member States

Question

Where the depositary of a UCITS is a branch and the head office is established in a Member State other than the home Member State of the UCITS, to which extent may the branch allocate its depositary functions (e.g. custody) to its head office in compliance with the establishment requirement set out in Article 23(1) of the UCITS Directive?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 4]

The internal allocation of functions between the head office and the branches of a depositary shall not lead to situations that may represent a circumvention of the establishment requirement under Article 23(1) of the UCITS Directive. Therefore, the operational infrastructure and internal governance system of such branches must be adequate to carry out depositary functions autonomously from its head office and ensure compliance with national rules implementing the UCITS Directive.

ESMA_QA_1210

Submission Date

01/06/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Depositary tasks entrusted to third parties

Question

May depositaries entrust third parties with the performance of tasks that would give them the ability to transfer assets belonging to UCITS?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 3]

Yes, where depositaries entrust tasks to third parties and give them the ability to transfer assets belonging to UCITS without requiring the intervention of the depositary, these arrangements are subject to the delegation requirements set out in Article 22a(2) of the UCITS Directive.

ESMA_QA_1209

Submission Date

01/06/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Distinction between depositary tasks and mere supporting tasks

Question

The UCITS Directive sets out strict restrictions under which depositaries are allowed to delegate the safekeeping of assets of UCITS, whereas the delegation of

depository functions pursuant to Article 22(3) and (4) of the UCITS Directive (i.e. monitoring of the cash flow and oversight functions) is not permitted. Recital 42 of the AIFMD states that “delegation of supporting tasks that are linked to its depository tasks, such as administrative or technical functions performed by the depository as a part of its depository tasks, is not subject to the specific limitations and requirements set out in the AIFMD”. Does this principle also apply to UCITS depositories and if so, what are ‘supporting tasks that are linked to depository tasks such as administrative or technical functions performed as part of the depository tasks’ and under which conditions would it be possible to entrust third parties with such tasks?

ESMA Answer

01-06-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 2]

The answer refers to supporting tasks linked to the depository tasks, such as administrative or technical functions performed as part of the depository tasks, only. Supporting tasks that are linked to depository tasks such as administrative or technical functions performed as part of the depository tasks listed under Article 22(3) and (4) of the UCITS Directive could be entrusted to third parties where all of the following conditions are met:

- i. the execution of the tasks does not involve any discretionary judgement or interpretation by the third party in relation to the depository functions;

ii. the execution of the tasks does not require specific expertise in regard to the depositary function; and

iii. the tasks are standardised and pre-defined.

ESMA_QA_1092

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

Article 19(4) of Commission Regulation (EU) No 583/2010 states that “In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the

past performance of the receiving UCITS shall be maintained in the key investor information document.” Article 19(4) applies in cases where a receiving UCITS has a performance history. How should Article 19(4) be interpreted in cases where the receiving UCITS is a newly established UCITS with no performance history and is in effect a continuation of the merging UCITS?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4g]

In the case of a merger where the receiving UCITS is a newly established UCITS with no performance history, UCITS should use the past performance of the merging UCITS in the KIID of the receiving UCITS if the competent authority of the receiving UCITS reasonably assesses that the merger does not impact the UCITS' performance. ESMA expects the performance of the UCITS to be impacted if there is, inter alia, a change to the investment policy or to the entities involved in the investment management. It should also be made clear in the KIID of the receiving UCITS that the performance is that of the merging UCITS.

ESMA_QA_1091

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

When several versions of a benchmark are available which differ in the approach taken to reinvestment of revenues, which version should be used in the past

performance chart?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4f]

Pursuant to Article 16 of Regulation 583/2010, past performance figures shall be calculated on the basis that any distributable income of the fund has been reinvested. Therefore, where available the performance of the benchmark with reinvestment of revenues should be used in the bar chart alongside the UCITS' past performance. Where such a benchmark does not exist, an appropriate disclosure highlighting that the benchmark does not take into account the reinvestment of revenues should be included in the KIID.

ESMA_QA_1090

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

If the benchmark is changed, how should the chart of past performance be displayed for the period preceding the change?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4e]

Pursuant to Article 17 of Regulation 583/2010, where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart, the UCITS' past performance prior to that material change shall continue to be shown. Therefore, if the benchmark is modified, the bar chart should display the performance of the previous benchmark for the period preceding the change. A statement indicating this change should also be included in the past performance section.

ESMA_QA_1089

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

What should be displayed in the bar chart for years when there is no data?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4d]

Pursuant to Article 15, paragraph 3 of Regulation 583/2010, when there is no data available, the year shall be shown as blank with no annotation other than the date.

ESMA_QA_1088

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

Does the overall requirement for the UCITS KIID to be 'fair, clear and not misleading' under Article 3(2) mean that performance disclosed in the KIID

regarding a benchmark index should be consistent with performance disclosure in other investor communications, including marketing?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4c]

Yes. UCITS management companies should ensure that disclosure of performance in the KIID is not misleading by way of being inconsistent, including by ensuring consistency:

- Across offering documents and marketing material, including the prospectus. It may be unclear to investors if the UCITS names and measures performance against a benchmark index in the prospectus, or other marketing material, but not in the KIID. The KIID should be consistent with other fund documents. This also applies to ensuring that the benchmark index used is consistent.
- Across distribution channels. It may be inconsistent if a UCITS arranges for, or permits, an index to be referred to as a benchmark in certain media, such as online platforms or financial data providers, but it does not make the same comparison in the KIID. This also applies to ensuring that the benchmark index used is consistent.
- Across investor types. It should be ensured that all types of investors receive consistent and not misleading information regarding whether or not the UCITS has a benchmark index. For example, it may be inconsistent if a UCITS suggests performance should be measured against a benchmark index to only

a cohort of investors (such as in communications to professional investors only) but does not provide the equivalent performance comparison to all investors through the KIID. This also applies to ensuring the version of the benchmark index used is consistent.

ESMA_QA_1087

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

Where a UCITS refers to an index in its investment objectives and policy as a benchmark and will measure the performance against that index, but does not

intend to track it, is it necessary to show the performance of the benchmark index in the past performance section of the KIID?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4b]

Yes, in accordance with Article 18(1) of Commission Regulation (EU) No 583/2010, a bar showing the performance of the benchmark index must be included in the bar chart alongside each bar showing the UCITS past performance. It should be made clear in the past performance section of the KIID that the performance is not tracking the index.

For additional clarity, the requirements of Article 18(1) apply to all UCITS, including total return/absolute return UCITS. For example, the requirement also applies to cases where:

The comparator is not named a 'benchmark', but the objectives and investment policy make it clear that it is a comparator the UCITS aims to outperform. For example, if the fund's objectives and investment policy state it will seek to:

- outperform cash (for example, 3-month EURIBOR), the performance of the fund against the full target should be shown
- outperform a target 'plus X%', the performance of the fund against the enhanced target should be shown.

The UCITS targets outperformance of the benchmark index over a period of time, for example 'X% per annum over four years'. In this case, annualised performance of the benchmark index should be shown alongside that of the UCITS, even if the target is to beat it over four years.

UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of this Q&A.

In accordance with Article 79(1) of the UCITS Directive and to ensure fair, clear and not misleading communications, the information disclosed in the UCITS KIID should be consistent with the UCITS' Investment Objective in the Prospectus.

ESMA_QA_1086

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Past performance - KIID

Question

If a UCITS does not yet have performance data for one complete calendar year (and is not a UCITS which may provide simulated data for past performance), how

should this position be disclosed in the KIID?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 4a]

In accordance with Article 15(4) of Commission Regulation (EU) No 583/2010 a statement that there is insufficient data to provide a useful indication of past performance should be included in the KIID. There is no need to accompany that statement with a blank performance chart.

ESMA_QA_1102

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Disclosure of the benchmark index in the objectives and investment policies -
UCITS KIID

Question

What is the meaning of indicating 'the degree of freedom from the benchmark' in Article 7(1)(d) of Commission Regulation (EU) No 583/2010?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 8c]

To satisfy the requirements of this element of the Article, investors should be provided with an indication of how actively managed the UCITS is, compared to its reference benchmark index. The KIID should strike a balance between providing the level of detail required to sufficiently disclose a UCITS' degree of freedom from a benchmark index, and the obligation to do so in clear language understandable to a retail investor.

On this basis, the UCITS management company should at least take into account the following elements when indicating in the KIID the degree of freedom from the benchmark index for actively managed UCITS whose investment approach includes or implies a reference to a benchmark index:

1. The description of the underlying investment universe of the UCITS should indicate to what extent the target investments are part of the benchmark index or not.
2. The KIID should describe the degree or level of deviation of the UCITS in regards to the benchmark index, thereby considering, where applicable, the quantitative and/or qualitative deviation limitations underlying the investment

approach (e.g. risk limits defined by reference to the benchmark index such as tracking error) as well as the narrowness of the investment universe. In this context UCITS may, when necessary for investor understanding, also disclose quantitative metrics (e.g. precise internal limits on tracking error etc.).

Unless stricter requirements specific to a Member State apply, UCITS which are actively managed in reference to a benchmark index are not required to numerically quantify the degree of freedom by outlining for instance expected tracking error, active share, or other metrics in order to provide a quantitative indication. However, where the UCITS management company believes such information will assist investor understanding, it may do so by providing explanations in language sufficiently comprehensible to retail investors.

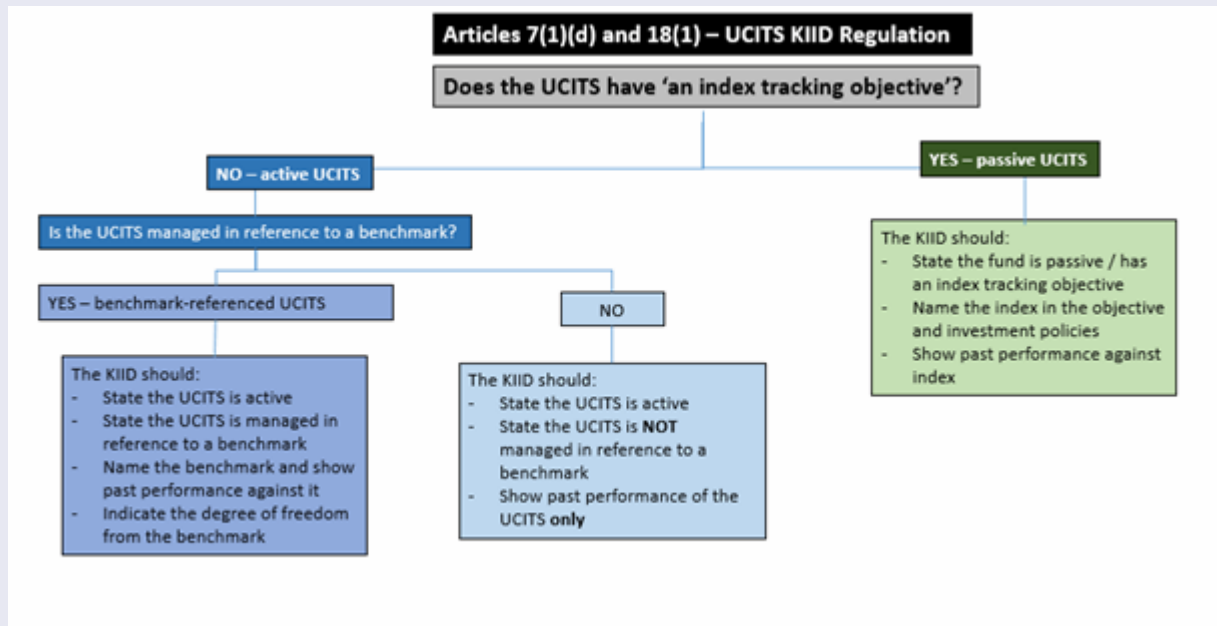
Some examples of wording that is likely to be acceptable when indicating the degree of freedom from the benchmark index in the KIID can be found below. These examples are for illustrative purposes only and are non-exhaustive:

1. Regarding point 1) above: “The majority of the Sub-Fund’s equity securities will be components of and have similar weightings to the Benchmark. The Investment Manager may use its discretion to invest in companies or sectors not included in the Benchmark in order to take advantage of specific investment opportunities.”
2. Regarding point 2) above: “The investment strategy will restrict the extent to which the portfolio holdings may deviate from the ABCD index. This deviation may be [limited]/[material]/[significant]. This is likely to limit the extent to which the Sub-Fund can outperform the ABCD Index. Deviations from the ABCD index are limited by a target tracking error of [X] [accompanied by a clear, concise description of the quantitative indicator’s meaning]”.

Where a UCITS has a defined strategy to vary the risk it will take against an index, this should be disclosed. For example, where a UCITS is structured in order to be managed in alignment with an index during periods of market volatility, it should disclose this. This does not imply that the KIID should be updated to reflect very

short-term / one-off variations in the investment strategy during a UCITS lifecycle, as long as the capacity for such variations has been previously disclosed.

This information is summarised in the following graphic.



UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of this Q&A.

In accordance with Article 79(1) of the UCITS Directive and to ensure fair, clear and not misleading communications, the information disclosed in the UCITS KIID should be consistent with the UCITS' Investment Objective in the Prospectus

ESMA_QA_1101

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Disclosure of the benchmark index in the objectives and investment policies -
UCITS KIID

Question

What is the meaning of 'whether this approach includes or implies a reference to a benchmark' in Article 7(1)(d) of Commission Regulation (EU) No 583/2010?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 8b]

A UCITS managed in reference to a benchmark index is one where the benchmark index plays a role in the management of the UCITS, for example, in the explicit or implicit definition of the portfolio's composition and/or the UCITS' performance objectives and measures. This reference may be present at the outset of a UCITS' existence, or may be introduced during its lifecycle; in both cases it should be disclosed. Ultimately, the onus is on the UCITS management company to identify whether the UCITS is in practice managed in reference to a benchmark index. However, the following are (non-exhaustive and non-cumulative) examples of where an approach may include or imply reference to a benchmark index and where a UCITS should disclose that it is managed in reference to that benchmark index:

Portfolio composition

- The UCITS uses a benchmark index as a universe from which to select securities. This applies even if only a minority of securities listed in the index are held in the portfolio and the weightings of the UCITS' portfolio holdings diverge from their equivalent weighting in the index.

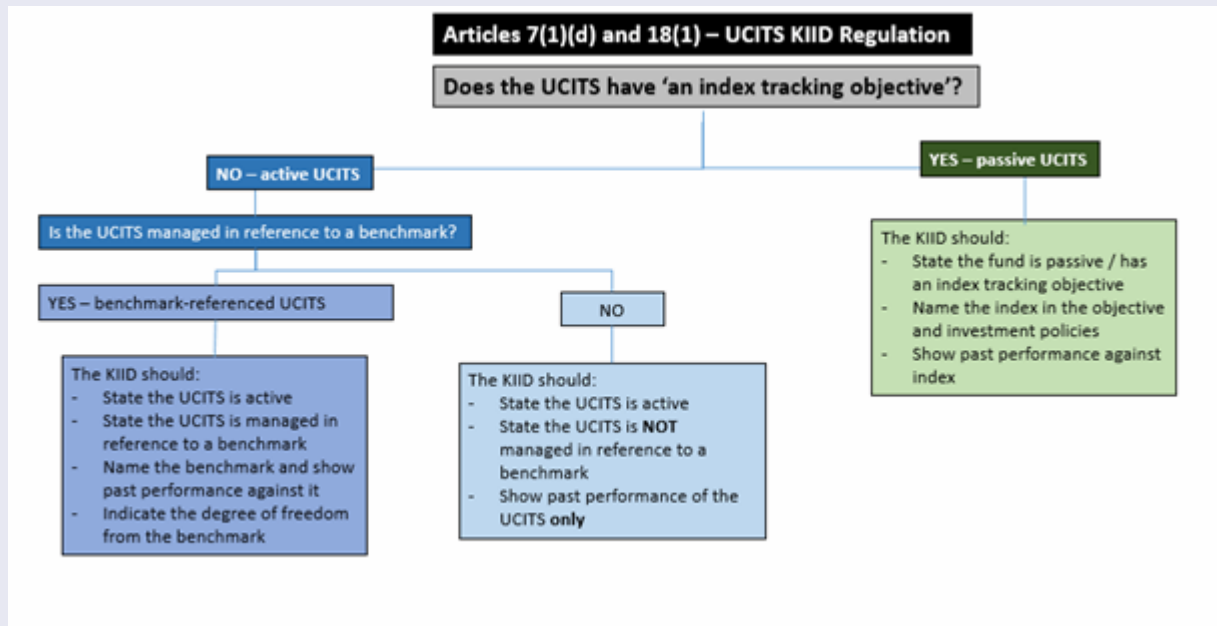
- The UCITS portfolio holdings are based upon the holdings of the benchmark index. For example:
 - The individual holdings of the UCITS' portfolio do not deviate materially from those of the benchmark index.
 - Monitoring systems are in place to limit the extent to which portfolio holdings and/or weightings diverge from the composition of the benchmark index.
- The UCITS invests in units of other UCITS or AIFs in order to achieve similar performance to a benchmark index.

Performance measures

- Performance fees are calculated based on performance against a reference benchmark index.
- The UCITS has an internal or external target to outperform a benchmark index.
- Contracts between the management company and third parties, such as the Investment Management Agreement covering delegation of investment management, or between the management company and its directors and employees, state that the portfolio manager must seek to outperform a benchmark index.
- The individual portfolio manager(s) receive(s) an element of performance-related remuneration based on the fund's performance relative to a benchmark index.
- The UCITS is constrained by internal or external risk indicators that refer to a benchmark index (e.g. tracking error limit, relative VaR for global exposure calculation).
- Marketing issued by the UCITS management company to one or more investors or potential investors shows the performance of the fund compared with a benchmark index.

For clarity, a benchmark index may refer to an individual index or composite index comprised of more than one index / a basket of indices.

This information is summarised in the following graphic.



To assist investor understanding, it is recommended that UCITS which are not managed in reference to a benchmark index also make this clear to investors.

UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of this Q&A.

In accordance with Article 79(1) of the UCITS Directive and to ensure fair, clear and not misleading communications, the information disclosed in the UCITS KIID should be consistent with the UCITS' Investment Objective in the Prospectus.

ESMA_QA_1100

Submission Date

01/03/2019

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Disclosure of the benchmark index in the objectives and investment policies -
UCITS KIID

Question

Does Article 7(1)(d) of Commission Regulation (EU) No 583/2010 require a UCITS to provide a clear indication of whether it is actively or passively managed?

ESMA Answer

01-03-2019

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 8a]

Yes. Article 7(1)(d) requires that a UCITS either has an index tracking objective, or alternatively allows for discretionary choices, and in both cases this must be disclosed in the objectives and investment policy section of the KIID.

In the case of index-tracking UCITS, using the terms 'passive' or 'passively managed' in addition to 'index-tracking' is recommended practice in order to assist investor understanding. A UCITS management company should consider providing additional wording to ensure the meaning of the term 'passive' or 'passively managed' is clear. An index-tracking (passive) UCITS must disclose the index it is tracking and show performance against that index in the past performance section of the KIID.

An actively managed UCITS is one where the manager has discretion over the composition of its portfolio, subject to the stated investment objectives and policy. As opposed to a passive UCITS, an active UCITS does not have an index-tracking objective although it may include or imply reference to a benchmark. A spectrum exists regarding the level of discretion active UCITS may wish to take or be permitted to take against a benchmark index. Some active UCITS take a lower level

of risk against a benchmark index than others, and some are managed without any reference to a benchmark index at all.

Nevertheless, just as there is a requirement under the KIID Regulation to identify a UCITS that is index-tracking (passive), it should be equally clear to investors where the UCITS is actively managed. Explicitly using the terms 'active' or 'actively managed' is recommended practice in order to assist investor understanding, and a UCITS management company should consider providing additional wording to ensure the meaning of the term 'active' or 'actively managed' is clear.

Active UCITS which are managed in reference to an index must provide additional disclosure on the use of the benchmark index (Article 7(1)(d)) and show past performance against it (Article 18(1)). They must also indicate the degree of freedom from the benchmark (see Q&A 8c). Article 18(1) requires active UCITS managed in reference to a benchmark index to display past performance against that benchmark.

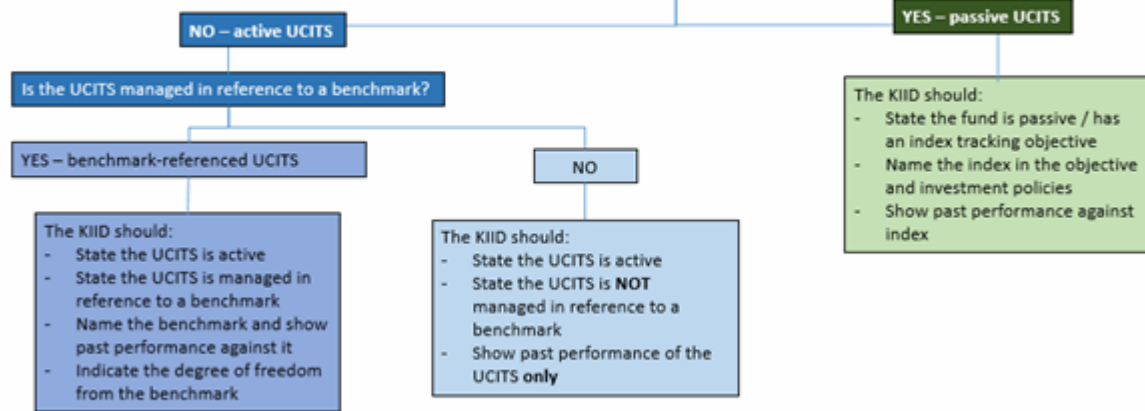
It should be clear which benchmark index (or indices) the UCITS is tracking or is being managed in reference to. Where more than one version of a benchmark index is published (for example a total return version, price return version, etc.), it should be clear which version is being used by the UCITS.

To assist investor understanding, it is recommended practice that active UCITS which are not managed in reference to any benchmark should also make this clear to investors (see Q&A 8b).

This information is summarised in the following graphic.

Articles 7(1)(d) and 18(1) – UCITS KIID Regulation

Does the UCITS have 'an index tracking objective'?



UCITS management companies should make any changes to the KIID in order to incorporate this additional guidance as soon as practicable, or by the next KIID update following the publication of this Q&A.

In accordance with Article 79(1) of the UCITS Directive and to ensure fair, clear and not misleading communications, the information disclosed in the UCITS KIID should be consistent with the UCITS' objectives and investment policy in the Prospectus.

ESMA_QA_1208

Submission Date

01/07/2018

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

Depositaries as counterparties in a transaction of assets that they hold in custody

Question

According to Article 22(7) of the UCITS Directive the depositary (or any third party to which the custody function has been delegated) shall not reuse the assets they

hold in custody for their own account. Does this provision imply that a depositary (or a delegated third party) should never act as counterparties in a transaction of assets that they hold in custody (including, but not limited to, transfer, pledge, sale and lending of those assets)?

ESMA Answer

01-07-2018

Original language

[ESMA 34-43-392 UCITS Q&A, section 10, Q&A 1]

No. A depositary (or a delegated third party) should be able to act as counterparties in a transaction of assets that they hold in custody, provided that (i) the four conditions under Article 22(7)(a) to (d) of the UCITS Directive are complied with, and (ii) conflicts of interest are properly managed and (iii) the transaction is conducted on an arm-length basis.

ESMA_QA_957

Submission Date

01/07/2018

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Supervision of branches

Question

What are the supervisory responsibilities of competent authorities in host Member States when a UCITS management company provides investment services through

a branch established in the host Member State?

ESMA Answer

01-07-2018

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 7a]

Under both the UCITS and the AIFM Directives, supervisory powers of competent authorities in relation to branches of UCITS management companies or alternative investment fund managers (AIFMs) established in a Member State that is not the home Member State are shared. The competent authority of the Member State in which the branch is located (host Member State) is responsible for the supervision of the branch's compliance with conduct rules referred to in Article 17(5) of the UCITS Directive and Article 45(2) of the AIFMD and the competent authority of the Member State in which the UCITS management company or the alternative investment fund manager is established (home Member State) is responsible for the supervision of the other requirements provided under the relevant applicable framework.^[1]

Neither the UCITS Directive nor the AIFMD provides for an explicit framework for the allocation of supervisory responsibilities and powers for those cases where UCITS management companies or AIFMs are authorised to carry out investment services set out in Article 6(3) of the UCITS Directive and Article 6(4) of the AIFMD and have branches providing those services in other Member States. ESMA is of the view that responsibilities of home and host Member States should be identified similarly to, and consistently with, the general framework established for the

provision of activities pursued by UCITS management companies and AIFMs through branches as well as with the MiFID II framework regulating the supervision on the provision of investment services across the EU. This approach is in line with the division of responsibilities provided under the MiFID II framework. In accordance with Article 35(8) of MiFID II, the competent authority of the host Member State has the responsibility for ensuring that the services provided by the branch of an investment firm or a credit institution in its territory comply with the MiFID II requirements under Articles 24 (“General principles and information to clients”) and 25 (“Assessment of suitability and appropriateness and reporting to clients”) of MiFID II, which also apply to UCITS management companies and AIFMs providing investment services.

[1] See Article 17(4) and (5) of UCITS Directive and Article 45(1) and (2) of AIFMD. On this subject, see also “Notification frameworks and home-host responsibilities under UCITS and AIFMD”, an ESMA Thematic Study among National Competent Authorities https://www.esma.europa.eu/sites/default/files/library/esma34-43-340_final_report_on_thematic_study_on_notification_frameworks.pdf

ESMA_QA_956

Submission Date

01/07/2018

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

UCITS investing in other UCITS with different investment policies

Question

Is a UCITS permitted to invest in other UCITS or collective investment undertakings with different investment strategies or investment restrictions? By way of example,

could a UCITS that in accordance with its fund rules or instruments of incorporation and prospectus is not permitted to invest in certain assets or use derivatives for purposes other than hedging invest in other UCITS or collective investment undertakings that are not subject to the same investment restrictions?

ESMA Answer

01-07-2018

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 6a]

The prospectus of a UCITS should clearly disclose whether in the case of fund of fund investments, the target fund(s) might have different investment strategies or restrictions. Where the fund rules or instruments of incorporation and prospectus of a UCITS expressly rule out certain types of assets or derivative use without any reservations, UCITS management companies/self-managed investment companies should carry out proportionate due diligence to ensure that fund of fund investments do not result in a circumvention of the investment strategies or restrictions set out in the fund rules or instruments of incorporation and prospectus of the investing UCITS. _

ESMA_QA_1207

Submission Date

25/05/2018

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Remuneration

Subject Matter

Application of disclosure requirements on remuneration to delegates

Question

Do the remuneration-related disclosure requirements under Article 69(3)(a) of the UCITS Directive also apply to the staff of the delegate of a management company

to whom investment management functions (including risk management) have been delegated?

ESMA Answer

25-05-2018

Original language

[ESMA 34-43-392 UCITS Q&A, section 9, Q&A 1]

Yes. In line with the approach followed under the UCITS Remuneration Guidelines [\[1\]](#), management companies can ensure compliance in one of the following two ways:

1. where the delegate is subject to regulatory requirements on remuneration disclosure for its staff to whom investment management (including risk management) activities have been delegated that are equally as effective as those under Article 69(3)(a) of the UCITS Directive, the management company should use the information disclosed by the delegate for the purposes of fulfilling its obligations under Article 69(3)(a) of the UCITS Directive; or
2. in other cases, appropriate contractual arrangements should be put in place with the delegate allowing the management company to receive (and disclose in the annual report for the relevant UCITS that it manages) at least information on the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the management company, the investment company and, where relevant the UCITS itself to the identified staff of the delegate – and number of beneficiaries, and, where relevant,

performance fee – which is linked to the delegated portfolio. This means that the disclosure should be done on a prorated basis for the part of the UCITS' assets which are managed by the identified staff within the delegate.

In both situations set out above, the disclosure may be provided on an aggregate basis i.e. by means of a total amount for all the delegates of the management company in relation to the relevant UCITS.

[1] See paragraph 16 of the UCITS Remuneration Guidelines.

ESMA_QA_1205

Submission Date

05/10/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Impact of SFTR on UCITS - Periodic reporting under Article 13 of SFTR for UCITS
and AIFs

Question

Pursuant to Article 13 of SFTR, UCITS management companies, UCITS investment companies, and AIFMs (“UCITS/AIF managers”) shall inform investors on the use they make of SFTs and total return swaps in annual (UCITS and AIFs) and half-yearly (UCITS only) reports. The information on SFTs and total return swaps shall include the data provided for in Section A of the Annex to SFTR.

Should this data be reported as aggregate data (with respect to the whole of the reporting period) or based on a snapshot (taken at the end of the reporting period)?

ESMA Answer

05-10-2017

Original language

[ESMA 34-43-392 UCITS Q&A, section 7, Q&A 2a]

The table below explains how each data item in Section A of the Annex to the SFTR should be reported. All data items should be reported as a snapshot, with the exception of the following:

- Data on reuse of collateral
 - Cash collateral reinvestment returns to the collective investment undertaking.
- Data on return and cost for each type of SFTs and total return swaps
 - broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps

For each of the data items firms should not artificially alter their practices in a way that would lead to the reporting being misleading.

The guidance provided by this Q&A is without prejudice to further work that ESMA intends to carry out in relation to the disclosure obligations for UCITS and AIFs under SFTR.

Heading	Sub-item	How to report
Global data	The amount of securities and commodities on loan as a proportion of total lendable assets defined as excluding cash and cash equivalents	Snapshot
	The amount of assets engaged in each type of SFTs and total return swaps expressed as an absolute amount (in the collective investment undertaking's currency) and as a proportion of the collective investment undertaking's assets under management (AUM).	Snapshot

Concentration data	Ten largest collateral issuers across all SFTs and total return swaps (break down of volumes of the collateral securities and commodities received per issuer's name);	Snapshot
--------------------	--	----------

	Top 10 counterparties of each type of SFTs and total return swaps separately (Name of counterparty and gross volume of outstanding transactions).	Snapshot
--	---	----------

Aggregate transaction data for each type of SFTs and total return swaps separately to be broken down according to the below categories	Type and quality of collateral;	Snapshot
--	---------------------------------	----------

Maturity tenor of the collateral broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open maturity;

Snapshot. All outstanding/existing collateral at the end of the reporting period should be aggregated according to their maturity tenor. That aggregation should be broken down in the mentioned maturity buckets.

Currency of the collateral;

Snapshot. Currency of the existing collateral at the end of the reporting period.

Maturity tenor of the SFTs and total return swaps broken down in the following maturity buckets: less than one day, one day to one week, one week to one month, one to three months, three months to one year, above one year, open transactions;

Snapshot. All outstanding/existing SFTs at the end of the reporting period should be aggregated according to their maturity tenor. That aggregation should be broken down in the mentioned maturity buckets.

	Country in which the counterparties are established;	Snapshot. Country where the counterparties of existing SFTs as of the end of the reporting period are established.
	Settlement and clearing (e.g., tri-party, Central Counterparty, bilateral).	Snapshot
Data on reuse of collateral	Share of collateral received that is reused, compared to the maximum amount specified in the prospectus or in the disclosure to investors;	Snapshot
	Cash collateral reinvestment returns to the collective investment undertaking.	See explanation below table
Safekeeping of collateral received by the collective investment undertaking as part of SFTs and total return swaps	Number and names of custodians and the amount of collateral assets safe-kept by each of the custodians	Snapshot

Safekeeping of collateral granted by the collective investment undertaking as part of SFTs and total return swaps

The proportion of collateral held in segregated accounts or in pooled accounts, or in any other accounts

Snapshot

Data on return and cost for each type of SFTs and total return swaps

broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps

See explanation below table

Regarding the field “Cash collateral reinvestment returns to the collective investment undertaking”, during the year the fund receives a certain amount of cash as collateral for SFTs which is invested and produces a return. All SFTs have a given duration (normally short term) and there may be several SFTs that are carried out on a number of occasions with repeated investments and divestments of cash. Due to the possible concatenation of the operations, there may be a certain amount of cash collateral which is constantly invested for the whole year and produces a return. One interpretation is that the SFTR requires managers to disclose at least the overall sum of the returns earned by the fund from all the investment operations

made during the year with cash collateral. This sum may only be an income flow that covers the whole year and therefore the distinction between aggregate vs snapshot (i.e. flow vs stock data) is not meaningful, because it could be calculated in only one way. One alternative would be to state that this is “aggregate” by definition. Another alternative would be to require the disclosure of the cash collateral investment return, calculated as the sum of the cash flows received for the investment of SFTs cash collateral over the yearly average amount of cash collateral investments.

The same reasoning applies to the field “Data on return and cost for each type of SFTs and total return swaps/broken down between the collective investment undertaking, the manager of the collective investment undertaking and third parties (e.g. agent lender) in absolute terms and as a percentage of overall returns generated by that type of SFTs and total return swaps”. The manager has to sum the inflows and outflows generated by all the operations during the year and disclose the two total amounts; again, there appears to be only one way to calculate the data required and the disclosure of rate of returns (gross and net of cost) could be required if deemed more appropriate.

ESMA_QA_1206

Submission Date

01/07/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

Independence of management boards and supervisory functions - Group links,
independence and cooling-off periods

Question

Where a group link exists for the purpose of Article 24 of the Commission Delegated Regulation (EU) 2016/438 (“UCITS V Level 2”), does a person who served in the management body or supervisory body of an entity within the group or was otherwise employed by such an entity fulfil the independence requirement under Article 24(2) of the UCITS V Level 2 where the person has ceased any function within the entity?

ESMA Answer

01-07-2017

Original language

[ESMA 34-43-392 UCITS Q&A, section 8, Q&A 1]

A person who served in the management body or supervisory body of an entity or was otherwise employed by such an entity should be deemed to fulfil the independence requirement only after an appropriate cooling-off period following the termination of his/her relationship with the relevant entity. That period should start from the final payment of any outstanding remuneration due to him/her which entails a margin of discretion from the entity (e.g. in case of any portion of variable remuneration which is deferred and still subject to contraction, including through malus or clawback arrangements) and is linked to his/her previous employment or other relationship with that entity. Non-discretionary outstanding payments from the entity to the person should not be taken into account for this purpose.

Without prejudice to any requirements established under the relevant national corporate governance rules or codes, the cooling-off period should be proportionate to the length of the employment or other relationship that the individual had with any of the companies within the group and to the type of functions performed within

such company(ies).

ESMA_QA_1203

Submission Date

24/05/2017

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Impact of EMIR on UCITS - Exemption for intra-group transactions under EMIR

Question

Where a UCITS is subject to the clearing obligation of Article 4(1) of EMIR, can it make use of the exemption for intragroup transactions (Article 4(2) of EMIR)?

ESMA Answer

24-05-2017

Original language

[ESMA 34-43-392 UCITS Q&A, section 6, Q&A 2]

ESMA is of the view that in the case of UCITS the exemption for intragroup transactions should be construed narrowly, and that in most cases it will not be possible for the exemption to be used. A UCITS can only make use of the exemption for intragroup transactions if it has been established to form part of the same group (as defined in Article 2(16) of EMIR) as the counterparty to the OTC derivative contract and if it fulfils all the criteria for intragroup transactions set out in Article 3(2)(a)(i)-(iv), (b), or (d) of EMIR.

Article 3(2)(a)(iii) of EMIR requires both counterparties to be included in the same consolidation on a full basis. In addition, they have to be subject to appropriate centralised risk evaluation, measurement and control procedures, as well as fulfil other specific requirements set out in Article 3(2) of EMIR.

An exemption to the clearing obligation based on Article 4(2) of EMIR can only be granted after a thorough case-by-case assessment, which will have to take into account whether the UCITS has been established to form part of the same group as the counterparty to the OTC derivative contract and whether the UCITS fulfils all the criteria set out in Article 3(2)(a), (b), or (d) of EMIR.

Where a UCITS is granted an intragroup exemption for the clearing obligation, it follows that the UCITS will not be considered a distinct entity and will not be treated separately for other purposes under EMIR either, in particular for the purpose of the bilateral margining thresholds calculation. Therefore, the aggregate month-end average notional amount referred in Article 28(1) of Commission Delegated

Regulation (EU) 2016/2251 shall be calculated at the group level (including the relevant UCITS).

ESMA_QA_950

Submission Date

21/11/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Investment limits

Question

Pursuant to Article 55(1) of the UCITS Directive, a UCITS may acquire the units of UCITS or other collective investment undertakings referred to in Article 50(1)(e),

provided that no more than 10% of its assets are invested in units of a single UCITS or other collective investment undertaking. Where the underlying UCITS or other collective investment undertaking is an umbrella fund, should this limit be applied at the level of the umbrella or at the level of the individual sub-funds within the umbrella?

ESMA Answer

21-11-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 4b]

The limit set out in Article 55(1) applies at the level of the individual sub-funds in the UCITS or collective investment undertaking of which the units are to be acquired. Where an investment company or a management company is currently applying a different interpretation of this limit, it must at the earliest convenience adjust the funds' portfolios whilst acting with due skill, care and diligence in the best interest of the UCITS it manages.

ESMA_QA_949

Submission Date

21/11/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Investment limits

Question

Pursuant to Article 56(2)(c) of the UCITS Directive, a UCITS may acquire no more than 25% of the units of any single UCITS or other collective investment

undertaking. Where the underlying UCITS or other collective investment undertaking is an umbrella fund, should this limit be applied at the level of the umbrella or at the level of the individual sub-funds within the umbrella?

ESMA Answer

21-11-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 4a]

The limit set out in Article 56(2)(c) should be applied at the level of the individual sub-funds in the UCITS or collective investment undertaking of which the units are to be acquired, to ensure the principle of risk-spreading within the investing UCITS. Where an investment company or a management company is currently applying a different interpretation of this limit, it must at the earliest convenience adjust the funds' portfolios whilst acting with due skill, care and diligence in the best interest of the UCITS it manages.

ESMA_QA_1099

Submission Date

12/11/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Translation requirements in relation to the remuneration disclosure - UCITS KIID

Question

Article 78(4), second sub-paragraph of the UCITS Directive requires the KIID to include a statement to the effect that the details of the up-to-date remuneration

policy are available by means of a website and that a paper copy will be made available free of charge upon request. Does this mean that, in case of cross-border distribution of a UCITS, the information on the remuneration policy which has to be made available on a website (and the paper copy of it to be made available on request) needs to be translated into the same language as the one into which the KIID has to be translated?

ESMA Answer

12-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 2, Q&A 7]

No. The information on the remuneration policy which has to be made available on a website (and the paper copy of it to be made available on request) should fall under Article 94(1)(c) of the UCITS Directive relating to information or documents other than the KIID. Therefore, this information should be translated, at the choice of the UCITS, into one of the following:

1. the official language, or one of the official languages, of the UCITS host Member State,
2. a language approved by the competent authorities of that Member State, or
3. a language customary in the sphere of international finance.

ESMA_QA_1204

Submission Date

12/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Impact of SFTR on UCITS - Commencement of reporting under SFTR

Question

Article 13 of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012, requires

UCITS management companies, UCITS investment companies, and AIFMs to provide information to investors on the use made of SFTs and total return swaps in the annual report of each UCITS/AIF under management, as well as in each half-yearly report for UCITS. As Article 13 applies from 13 January 2017, which report should be the first to include this disclosure?

ESMA Answer

12-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 7, Q&A 1a]

The information should be included in the next annual or half-yearly report to be published after 13 January 2017 which may relate to a reporting period beginning before that date.

ESMA_QA_1163

Submission Date

12/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

A UCITS has a clause in its fund rules limiting investment in units of other funds to 10%, in line with Article 50(1)(e)(iv) of the UCITS Directive. If, in accordance with

paragraph 43 of the ESMA Guidelines on ETFs and other UCITS issues, this fund re-invests cash collateral in short-term money market funds, should this investment be included in the calculation when calculating the 10% limit?

ESMA Answer

12-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6o]

Yes. Investment of cash collateral in short-term money market funds should be treated in the same way as any other investment made by the UCITS in units of other UCITS or other collective investment undertakings and should be compliant with all the requirements of the UCITS Directive.

ESMA_QA_948

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Regulated markets under the UCITS Directive

Question

Can the term “regulated market in a Member State” in Article 50(1)(b) of the UCITS Directive be understood to include a “multilateral trading facility” (MTF) as defined in

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 3a]

Yes. An MTF operated in the EU is a regulated market within the scope of the UCITS framework as long as it meets the requirements set out in Article 50(1)(b). Instruments in which a UCITS invests that are traded on such an MTF on behalf of a UCITS must comply with the Eligible Assets Directive^[1], in particular with its Article 2(1). If a UCITS proposes to invest in such an instrument, it should actively seek and review information regarding the liquidity and negotiability of that instrument in order to be satisfied that the presumptions of liquidity and negotiability in the last sub-paragraph of Article 2(1) are well-founded.

[1] Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (“Eligible Assets Directive”)

ESMA_QA_1162

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

MMF

Subject Matter

KIID Collateral management - short-term MMF

Question

When a UCITS reinvests cash collateral in short-term money market funds pursuant to paragraph 43 (j) of the guidelines, should the short-term money market funds

comply with the requirements of Article 50(1)(e)(iv) of the UCITS Directive (i.e. the short-term money market funds should not invest more than 10% of their assets in aggregate in other money market funds)?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6n]

Yes, the requirement of Article 50(1)(e)(iv) of the UCITS Directive also applies to short-term money market funds in which UCITS may reinvest cash collateral.

ESMA_QA_1161

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management - Issuer concentration

Question

When UCITS reinvest cash collateral, should the reinvested cash collateral be taken into account for the calculation of the issuer concentration limits laid down in

the UCITS Directive?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6m]

Yes, in accordance with paragraph 2 of Box 27 of the guidelines on Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS (Ref. CESR/10-788) the reinvested cash collateral should be taken into account for the calculation of the investment restrictions applicable to UCITS. For example, this means that if a UCITS has already placed 10% of its assets on deposits with a given issuer, it should not reinvest cash collateral for more than 10% of its assets in deposits with the same issuer in order to comply with the 20% limit of Article 52(1)(b) of the UCITS Directive.

In addition, the reinvested cash collateral has to comply with the diversification requirement laid down in paragraph 44 of the ESMA guidelines on ETFs and other UCITS issues.

ESMA_QA_1160

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Depositaries

Subject Matter

KIID Collateral management

Question

According to paragraph 43(g), where there is title transfer, the collateral received should be held by the depositary of the UCITS. Where there is title transfer and

where the provider is also the depositary of the UCITS, should the collateral be held by the depositary of the UCITS?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6L]

Yes. However, the depositary should have functionally and hierarchically separated the performance of its depositary tasks from its activity of collateral provider vis-à-vis the UCITS in order to address potential conflicts of interest.

ESMA_QA_1159

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

When assessing the diversification of the collateral, should re-invested cash collateral be aggregated with non-cash collateral?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6k]

Yes. UCITS should aggregate non-cash collateral and re-invested cash collateral when assessing the diversification requirements of collateral received by UCITS.

ESMA_QA_1143

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management EPM OTC EMIR

Question

Can cash collateral received by UCITS in the context of EPM techniques or OTC financial derivative transactions be used by UCITS for clearing obligations under

EMIR?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6j]

No. Cash collateral received by UCITS can only be placed or invested in the assets listed in paragraph 43(j) of the guidelines.

ESMA_QA_1142

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

Are government bonds exempt from the provisions laid down in paragraphs 43(a) and paragraphs 43 (e) of the guidelines?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6i]

No, paragraphs 43(a) and 43 (e) apply to all types of collateral received by the UCITS in the context of over-the-counter financial derivative transactions and efficient portfolio management techniques.

ESMA_QA_1141

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

KIID Collateral management

Question

Do the ESMA guidelines require that counterparty risk exposures be aggregated across both financial derivative instruments and efficient portfolio management

techniques?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6h]

Yes. According to paragraph 41 of the ESMA guidelines, both exposures should be combined when calculating the counterparty risk limits of Article 52 of the UCITS Directive.

ESMA_QA_1140

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

In the case of government bonds, can the 20% limit be deemed to apply to each different issue of bonds of the same issuer?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6g]

No. The limit applies to the issuers and not to the issue. Accordingly, exposure to any one government issuer, or any individual issuer, is limited to 20% of the net asset value of the UCITS.

ESMA_QA_1139

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

Paragraph 43(e) refers to “a basket of collateral with a maximum exposure to a given issuer of 20% of its net asset value”. Does this diversification requirement

refer to the basket of collateral or to the net asset value of the UCITS?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6f]

The diversification refers to the net asset value of the UCITS. Therefore, collateral received should be diversified so that exposure to any issuer does not exceed 20% of the net asset value of the UCITS. This means that where the amount of collateral received by a UCITS does not exceed 20% of its net asset value, the collateral can be issued by a single issuer.

ESMA_QA_1138

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

When there is transfer of title, can the collateral be held by a custodian that is not the depository of the UCITS?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6e]

Yes, but only if the UCITS' depositary has delegated the custody of the collateral to a sub-custodian and the depositary remains liable if the collateral is lost by the sub-custodian.

ESMA_QA_1137

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

Are tripartite agreements for collateral management in the context of efficient portfolio management techniques and OTC financial derivative transactions

forbidden by paragraph 40(g) of the guidelines?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6d]

No. Tripartite agreements are possible under paragraph 40(g) as long as there is no title transfer and the collateral is held by a third party custodian subject to prudential supervision and that is unrelated to the provider of the collateral.

ESMA_QA_1136

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Collateral management

Question

Which types of asset do not comply with the requirement of correlation of paragraph 43 (d) of the guidelines?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6c]

According to paragraph 43 (d) of the guidelines, collateral received by the UCITS should be issued by an entity that is independent from the counterparty and is expected not to display a high correlation with the performance of the counterparty. Therefore, collateral issued or guaranteed by the counterparty of an OTC financial derivative transaction or EPM technique or by one of its subsidiaries or by a parent company, or more generally by an entity belonging to the same issuer group should not be considered compliant with paragraph 40 (d) of the guidelines.

ESMA_QA_1135

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Collateral management

Question

Should re-invested cash collateral comply with the 20% issuer limit of paragraph 43 (e)?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6b]

Yes. According to paragraph 44 of the guidelines, re-invested cash collateral should be diversified in accordance with the diversification requirements applicable to non-cash collateral. This means that the 20% issuer limit applies to:

- entities prescribed in Article 50(f) of the UCITS Directive at which UCITS may place cash collateral;
- high-quality government bonds and Short-Term Money Market Funds in which cash collateral may be reinvested;

If UCITS reinvest cash collateral in reverse repo transactions, the reverse repo transactions should comply with sections X and XII of the guidelines on efficient portfolio management techniques and collateral management.

ESMA_QA_1134

Submission Date

01/10/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Collateral management

Question

Do the requirements on collateral only apply to the fraction of assets that reduces the counterparty risk of the UCITS to the limit imposed by the UCITS Directive?

ESMA Answer

01-10-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 6a]

No. The requirements on collateral apply to all the assets received in the context of OTC financial derivative transactions and efficient portfolio management (EPM) techniques to cover counterparty risk. This means that assets received in excess (i.e. after the application of haircuts) should also comply with the same requirements.

ESMA_QA_1202

Submission Date

19/07/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS global exposure

Subject Matter

Impact of EMIR on UCITS - Valuation of OTC derivatives

Question

For OTC financial derivative transactions that are centrally cleared and subject to the reporting obligation of EMIR, can UCITS management companies rely on the

valuation provided by the central counterparty (CCP)?

ESMA Answer

19-07-2016

Original language

[ESMA 34-43-392 UCITS Q&A, section 6, Q&A 1]

No. The UCITS framework requires UCITS management companies to have in place a process for accurate and independent verification of the value of the OTC financial derivative transactions, even if they are centrally cleared. The valuation provided by the CCP can only serve as a point of reference for the verification performed by the UCITS management company. Nevertheless, the UCITS management company should be able to justify any deviation from the valuation provided by the CCP.

ESMA_QA_947

Submission Date

01/04/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Master-feeder structures

Question

Can a UCITS invest in a UCITS feeder fund?

ESMA Answer

01-04-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 2a]

No. As UCITS feeder funds have to invest at least 85% of their net assets in their UCITS master fund, another UCITS cannot invest in a UCITS feeder fund. According to Article 50(1)(e)(iv) of the UCITS Directive, a UCITS can only invest in other UCITS if “no more than 10 % of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings”.

ESMA_QA_946

Submission Date

01/02/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Directive 2014/91/EU (UCITS V) – update of documentation

Question

When must existing UCITS depositary contracts be updated in order to meet the requirements under Directive 2014/91/EU (UCITS V)?

ESMA Answer

01-02-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 1c]

UCITS V will start to apply on 18 March 2016. Under Article 22(2) of the UCITS Directive, introduced by UCITS V, the appointment of the depositary shall be evidenced by written contract, while the delegated acts required under Article 26b will set out the particulars that need to be included in that written contract. UCITS depositary contracts should be revised promptly in accordance with any transitional arrangements outlined in the delegated acts.

UCITS V contains provisions which prescribe in law the liability of depositaries. While there is no requirement to include those liability provisions in depositary contracts, in practice existing depositary contracts will contain liability provisions which will not be consistent with the depositary liability provisions set out in UCITS V. In accordance with Article 24(4), those provisions of a contract which set out the parties' agreement on depositary liability and which conflict with the UCITS V depositary liability provisions will be void with effect from 18 March 2016. The UCITS V depositary liability provisions will apply instead. The liability provisions in existing depositary contracts should be amended to reflect the UCITS V depositary liability provisions when those depositary contracts are revised to comply with the delegated acts.

ESMA_QA_945

Submission Date

01/02/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Directive 2014/91/EU (UCITS V) – update of documentation

Question

UCITS V requires the annual report to include some remuneration-related information. The annual report shall be published within four months from the end of

the period to which it relates. Does the UCITS V requirement apply to all annual reports published on or after 18 March 2016?

ESMA Answer

01-02-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 1b]

No, it is not necessary to include the remuneration-related information in any annual report relating to a period that ended before 18 March 2016. For annual reports relating to periods that end on or after 18 March 2016, but before the UCITS management company has completed its first annual performance period in which it has to comply with articles 14a and 14b of the Directive, the UCITS management company should include the remuneration-related information in the report on a best efforts basis and to the extent possible, explaining the basis for any omission.

ESMA_QA_938

Submission Date

01/02/2016

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Directive 2014/91/EU (UCITS V) – update of documentation

Question

UCITS V requires (i) the KIID to include a prescribed statement in relation to remuneration policy and (ii) the prospectus to include some remuneration-related

information. UCITS are required to make an updated KIID available within 35 days of 31 December each year, while the 'essential elements' of the prospectus must be kept up to date at all times. Will UCITS be required to issue a further KIID and a revised prospectus on 18 March 2016 to reflect the UCITS V requirement?

ESMA Answer

01-02-2016

Original language

[ESMA 34-43-392 UCITS Q&A, Section 1, 1a]

No: except where a UCITS is subject to national laws and regulations in its home Member State that require updates to be made by 18 March 2016, the UCITS will be allowed to update the KIID with this information at the next annual update after 18 March 2016, or on the first occasion after 18 March 2016 on which the KIID is revised or replaced for another purpose, if the information is available at that point in time. Similarly, a UCITS will be allowed to add the relevant information to the prospectus at the next occasion it is revised for another purpose or in any event by 18 March 2017 at the latest.

In the meantime, UCITS management companies should make available on a relevant website the additional information about the management company's remuneration arrangements as soon as it becomes available.

ESMA_QA_1117

Submission Date

09/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

For the purpose of paragraph 39 of the guidelines, would the counterparty to a financial derivative instrument be considered as having discretion over the

composition of the underlying assets of the financial derivative instrument under the following arrangement? The role of the counterparty only involves implementing a set of rules and this set of rules is agreed in advance with the UCITS management company and does not allow the exercise of any discretion by the counterparty.

ESMA Answer

09-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5f]

No, in such circumstances the counterparty to the financial derivative instrument will not be considered as having any discretion over the composition of the underlying assets of the financial derivative instrument.

ESMA_QA_1116

Submission Date

09/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

For the purposes of paragraph 39 of the guidelines, would the counterparty to a financial derivative instrument be considered as having discretion over the

composition of the underlying of the financial derivative instrument under the following arrangement? The counterparty to the financial derivative instrument offers advice to the UCITS management company on the composition of the underlying of the financial derivative instrument or the UCITS' investment portfolio but any investment decision must be approved by the UCITS management company.

ESMA Answer

09-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5e]

No, provided that the UCITS management company expressly approves any investment decision in advance.

ESMA_QA_1115

Submission Date

09/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

For the purposes of paragraph 39 of the guidelines, would the counterparty to a financial derivative instrument be considered as having discretion over the

composition of the underlying of the financial derivative instrument under the following arrangement? The counterparty to the financial derivative instrument can decide on the composition of the underlying of the financial derivative instrument or the UCITS investment portfolio without the prior consent of the UCITS management company.

ESMA Answer

09-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5d]

Yes, because the counterparty to the financial derivative instrument has discretion over the composition of the underlying of the financial derivative instrument or the UCITS' investment portfolio.

ESMA_QA_1114

Submission Date

09/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

What is the scope of application of paragraphs 37, 39 and 40 of the guidelines?

ESMA Answer

09-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5c]

Paragraphs 37, 39 and 40 of the guidelines apply to any financial derivative instrument by which UCITS gain exposure to an asset.

ESMA_QA_1112

Submission Date

09/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

When a UCITS enters into an unfunded swap, should the exposure swapped into the UCITS be considered in combination with the assets that are swapped out to

assess the compliance with investment limits laid down in Article 52, 53, 54, 55 and 56 of the UCITS Directive?

ESMA Answer

09-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5a]

No. If the UCITS swaps the performance of its assets against the performance of another portfolio of assets, the UCITS should not combine both the assets swapped out and the exposure swapped into the UCITS when assessing the investment limits laid down in Articles 52, 53, 54, 55, 56 of the UCITS Directive because the ultimate exposure of the UCITS is not a combination of the two portfolios.

However, pursuant to paragraphs 36 and 37 of the guidelines, when a UCITS enters into an unfunded swap, both the UCITS' investment portfolio that is swapped out and the portfolio that is swapped into the UCITS should comply with the investment limits laid down in Articles 52, 53, 54, 55 and 56 of the UCITS Directive.

ESMA_QA_1113

Submission Date

05/01/2015

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

Financial derivative instruments - KIID

Question

Section XI of the guidelines on financial derivative instruments refers to total return swaps or other financial derivative instruments with similar characteristics. What

types of instrument are covered here?

ESMA Answer

05-01-2015

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 5b]

First of all, the purpose of paragraphs 36 and 37 is to clarify that total return swaps should be treated like any other financial derivative instrument. This means that, in accordance with Article 51(3) of the UCITS Directive, the UCITS' investment portfolio as well as the final exposure of the UCITS resulting from the investment in financial derivative instruments should comply with the UCITS investment limits laid down in Articles 52, 53, 54, 55 and 56 of the UCITS Directive.

As far as paragraph 36 is concerned, ESMA's intention is to make sure that the guidelines are not circumvented via the use of financial derivative instruments that are not total return swaps but that have similar characteristics.

ESMA_QA_1174

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Financial indices

Question

Paragraph 50 of the guidelines prohibits investment by UCITS in commodity indices that do not consist of different commodities and applies a correlation factor to be

considered in this regard. Can UCITS invest in a commodity index for which a particular commodity component does not have 5 years of price history available for the purposes of the correlation observation?

ESMA Answer

20-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7k]

Yes, provided that a similar asset serves as an adequate proxy. The basis for such an asset being considered as an adequate proxy needs to be supported by both qualitative and quantitative data. Those qualitative and quantitative data should be documented by UCITS management companies. The proxy asset cannot constitute more than 3 years of the 5 years of data for the purposes of the calculation. The proxy must be a single commodity (rather than a component of a basket or other amalgam/hybrid product) asset. However, this asset could include a financial index which complies with section XIII of the guidelines.

ESMA_QA_1173

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

According to paragraph 55 of the guidelines, UCITS should not invest in financial indices for which the full calculation methodology to, inter alia, enable investors to

replicate the financial index, is not disclosed by the index provider. Such information should be easily accessible, free of charge. What is meant by disclosed, easily accessible and free of charge in the context of the guidelines?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7j]

The information to be disclosed and provided must be publicly available to investors and prospective investors, and published in such a way that direct access to this information is possible. Such information may be so accessed, for example, as a direct publication or via a source which directly links to a public website or other public forum which is not password protected, encrypted or in any way hinders or impedes immediate and direct access.

ESMA_QA_1172

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Financial indices

Question

According to paragraph 59 of the guidelines, UCITS should not invest in financial indices whose methodologies permit retrospective changes to previously published

index values ('backfilling'). Does this provision cover calculation mistakes?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7i]

No. Calculation mistakes are not covered by paragraph 59 of the guidelines.

ESMA_QA_1171

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Financial indices

Question

Paragraph 61 of the guidelines recommends that financial indices in which UCITS invest should be subject to independent valuation. Does this mean that UCITS

should not invest in financial indices for which the valuation is performed by the index provider itself?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7h]

No. If the valuation is performed by an entity independent from the index provider, the criterion of independent valuation is considered to be fulfilled. However, UCITS can invest in financial indices for which the valuation is performed by the index provider, insofar as the unit in charge of the valuation of the index is functionally independent from the unit responsible for the design of the index and the UCITS itself carries out its own due diligence. Also, the remuneration of the staff responsible for the valuation of the index should not be linked to the performance of the financial index.

ESMA_QA_1170

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

Should underlying financial indices composing financial indices in which UCITS invest comply with the guidelines on financial indices?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7g]

Underlying financial indices should comply with section XIII of the guidelines except paragraphs 48, 49, 50 and 53 of the guidelines. This means that underlying financial indices do not need to satisfy the diversification requirements laid down in Article 9 of the Eligible Assets Directive.

However, to fulfil the guidelines of paragraphs 53, UCITS that invest in indices of indices should take into account the rebalancing frequency of the underlying indices.

ESMA_QA_1169

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

Are financial indices of indices permitted?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7f]

Yes.

ESMA_QA_1168

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Financial indices

Question

Paragraph 54 of the guidelines prohibits investment in financial indices which rebalance on an intra-day or daily basis but notes that technical adjustments made

to financial indices (such as leveraged indices) according to publicly available criteria should not be considered as rebalancing in the context of the guidelines. What is meant by “technical adjustments”?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7e]

Technical adjustments in the context of the guidelines are adjustments which:

- are based solely on algorithmic non-subjective frameworks;
- are generally published on an ex-ante basis;
- draw on publicly available criteria (or data); and
- do not rely on the judgement of the index-provider, for example, indices which follow mechanical rebalancing formulae.

ESMA_QA_1167

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

According to the guidelines, index components' weightings should be published after each re-balancing on a retrospective basis. What is the timetable for such

publication?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7d]

Weightings of index components should be published before the next rebalancing of the index. For example, if an index rebalances on a monthly basis, information on the weightings of the index components should be provided as soon as possible after the rebalancing but within one month of the rebalancing.

ESMA_QA_1166

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

Paragraph 56 of the guidelines recommends that all levels of an index should be subject to transparency requirements. What does this mean?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7c]

This means that if a financial index is comprised of other financial indices, the transparency requirements also apply to the underlying indices.

ESMA_QA_1165

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

UCITS eligible assets and investment restrictions

Subject Matter

KIID Financial indices

Question

Do the guidelines on financial indices apply only to index-tracking UCITS?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7b]

No, the guidelines on financial indices apply to any UCITS investing in financial indices and not only to index-tracking UCITS. This means that the guidelines on ETFs and other UCITS issues take precedence over the guidelines on eligible assets issued by CESR in 2008 (Ref. CESR/07-044b) and that UCITS should not invest even a small amount of their assets in financial indices that do not comply with paragraphs 48 to 61 of the guidelines.

ESMA_QA_1164

Submission Date

24/03/2014

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Disclosures

Subject Matter

KIID Financial indices

Question

Do the guidelines on financial indices also apply to UCITS that only use financial indices as performance benchmark?

ESMA Answer

24-03-2014

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 7a]

No. The guidelines on financial indices apply only to UCITS that are using any indices for investment purposes.

ESMA_QA_1201

Submission Date

01/12/2013

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

Risk management

Subject Matter

Risk Measurement and Calculation of Global Exposure and Counterparty Risk for
UCITS - exchange-traded derivatives and centrally-cleared OTC transactions

Question

How should UCITS calculate their counterparty risk for exchange-traded derivatives and OTC transactions that are centrally cleared under the European Market Infrastructure Regulation (EMIR)?

ESMA Answer

01-12-2013

Original language

[ESMA 34-43-392 UCITS Q&A, section 5, Q&A 5]

When calculating the counterparty risk for exchange-traded derivatives and OTC transactions that are centrally cleared, UCITS should look at the clearing model used to determine the existence of counterparty risk and, if any, where the counterparty risk is located. When analysing the clearing model used, UCITS should have regard to the existence of segregation arrangements of the assets and the treatment of claims on these assets in the event of bankruptcy of the clearing member or central counterparty.^[1]

[1] Since this question was last updated, ESMA has issued an opinion to the European institutions on the Impact of Regulation 648/2012 on Articles 50(1)(g) (iii) and 52 and of Directive 2009/65/EC for over-the-counter financial derivative transactions that are centrally cleared ([ESMA/2015/880](#))

ESMA_QA_1107

Submission Date

11/07/2013

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

ETFs

Subject Matter

ESMA's guidelines on ETFs and other UCITS issues - Secondary market

Question

When the UCITS ETF is open for direct redemptions, should UCITS management companies arrange the redemptions directly with secondary market investor of the

UCITS ETF?

ESMA Answer

11-07-2013

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 3b]

In most cases, UCITS ETFs do not have a direct relationship with secondary market investors of UCITS ETFs. Therefore, UCITS management companies are not required to be directly in contact with the secondary market investors of the UCITS ETF but should make sure that appropriate processes are in place in order to allow direct redemptions when needed. In this context, the reference to unit-holders in Article 92 of the UCITS Directive should be understood as including secondary market investors of UCITS ETFs.

ESMA_QA_1106

Submission Date

11/07/2013

Status: Answer Published

Additional Information

Level 1 Regulation

Undertakings for Collective Investment in Transferable Securities Directive (UCITS)
Directive 2009/65/EC

Topic

ETFs

Subject Matter

ESMA's guidelines on ETFs and other UCITS issues - Secondary market

Question

If a UCITS ETF is open for direct redemption for secondary market investors, what should be the redemption price?

ESMA Answer

11-07-2013

Original language

[ESMA 34-43-392 UCITS Q&A, section 3, Q&A 3a]

If secondary market investors are given the possibility to redeem directly at the level of the UCITS ETF, the redemption price should be the Net Asset Value (NAV) from which costs may be deducted. According to paragraph 24 of the guidelines the costs of direct redemptions should not be excessive.

No hay parametros en la URL.