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ESMA publishes technical advice on review of the UCITS Eligible Assets Directive

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Introduction

On 26 June 2025, ESMA published its **technical advice** on the review of the UCITS Eligible Assets Directive[1] (**Advice**). The Advice is in response to a mandate issued to ESMA by the European Commission in 2023 and follows its Call for Evidence last year in which it sought feedback from stakeholders on required changes to the UCITS regime.

In its Advice, ESMA has proposed changes to both the UCITS Directive itself[2] and the UCITS Eligible Assets Directive.

While the European Commission will have regard to the Advice in considering any revisions to the UCITS framework, it is not bound by the proposals put forward by ESMA. This means that any proposed changes to the UCITS framework put forward by the European Commission may not fully align with ESMA's recommendations set down in the Advice.

What are the key proposals put forward by ESMA?

Application of a look-through approach in determining eligibility

As expected, ESMA has focused on the ability of UCITS funds to gain exposure to ineligible assets through the use of certain "wrapper" instruments such as delta-one instruments and exchange traded notes as well as via financial indices, financial derivatives and shares in other funds. Under the UCITS framework, ineligible assets, which are described in the Advice as "alternative assets", include for example commodities, real estate, crypto, emissions allowances and certain investment funds giving exposure to such assets.

Under the Proposal, a look-through analysis will have to be performed on each investment within the UCITS portfolio[3] to determine the final underlying of that investment and whether that underlying comprises eligible assets or ineligible assets under the UCITS framework. The UCITS manager must then ensure that at least 90% of the UCITS portfolio provides exposure to eligible assets (**90% Bucket**).

Does this mean that ESMA has proposed that a UCITS cannot gain any exposure to ineligible assets?

No. ESMA has acknowledged that exposure to ineligible assets can improve risk diversification and the generation of returns from uncorrelated asset classes.

Under the current framework, a UCITS can invest up to 10% of its assets in aggregate in unlisted transferable securities and certain categories of money market instruments. This is commonly referred to as the "UCITS trash bucket".

1 Directive 2007/16/EC

2 Directive 2009/65/EC

3 ESMA has however clarified in its Advice that the look-through approach does not need to be applied to "traditional company shares or bonds".

ESMA has proposed that the current UCITS "trash bucket" be extended to allow financial derivative instruments and units of AIF funds to be included within this bucket once certain criteria have been met. It has also proposed that any investment held within the "trash bucket" may provide indirect exposure to otherwise ineligible assets.

Therefore, under ESMA's proposal any exposure of a UCITS to ineligible assets such as commodities, real estate, crypto or other ineligible assets is capped at an aggregate of 10% of its assets.

Removal of presumption of liquidity and negotiability for listed instruments

ESMA has suggested that the UCITS Eligible Assets Directive be revised to remove the presumption of liquidity and negotiability for listed instruments. It is of the view that the liquidity and negotiability of all transferable securities and money market instruments should be assessed ex-ante and on an ongoing basis.

Harmonisation

In addition to suggesting specific changes to the UCITS legislation to eliminate divergences between Member States on the implementation and practical application of the UCITS Eligible Assets Directive, ESMA has also recommended to the European Commission that it considers using EU regulations in the area of UCITS instead of minimum harmonisation directives which is currently the case.

What next?

As noted above, while the European Commission will have regard to the Advice when finalising its legislative proposal to reform the UCITS framework, it is not bound to implement ESMA's recommendations.

Our current understanding is that the European Commission is considering issuing its own consultation or call for evidence to gather feedback from relevant stakeholders on required changes to the UCITS framework before finalising its legislative proposal.

UCITS managers are therefore encouraged to keep a watching brief on developments in this important area.

Contact Us

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