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## Updated ESMA Q&A on its Guidelines on ETFs and other UCITS Issues

On March 24th, 2014 the European Securities and Markets Authority (ESMA) issued an updated Q&A document to give further clarity to certain aspects of its guideline document published on December 18th, 2012 in relation to ETFs and other UCITS issues (the Guidelines). The Guidelines became effective on February 18th, 2013.

The updated Q&A document provides clarity in respect of two aspects of Financial Indices (Section XIII of the Guidelines) as further outlined below. The updated Q&A can be found [here](#).

### Financial Indices (Section XIII of the Guidelines)

#### *Calculation Methodology*

The Guidelines (paragraph 55) provide that a 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. It further provides that such information should be easily accessible and free of charge.

ESMA has now clarified that 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

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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.

The additional clarification from ESMA is welcome. However, on the face of it, this may mean that certain financial indices are not eligible investments for a UCITS on the basis that index service providers cannot comply with the disclosure requirements in the Guidelines (or at least until they can and do comply). It is worth noting that during the consultation process prior to the implementation of the Guidelines, ESMA noted the strong pushback from stakeholders on the disclosure of the calculation methodologies of financial indices. However, ESMA was of the view that those elements are of utmost importance for investors and noted that some market participants already disclose the full calculation methodology in the format of index rule books which are publicly available on the internet.

### *Commodity Indices*

The Guidelines (paragraph 50) prohibit investment by UCITS in commodity indices that do not consist of different commodities and applies a correlation factor to be considered in respect of sub-categories of a commodity. In this regard, single commodity indices are not permissible. The correlation calculation is on the basis of equally-weighted daily returns of the corresponding commodity prices from a 250-day rolling time window over a 5-year period.

ESMA has now confirmed that a UCITS can 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. This is provided that a similar asset serves as an adequate proxy. ESMA has advised that the basis for such an asset being considered as an adequate proxy needs to be supported by both qualitative and quantitative data, as further outlined in the Q&A.

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