

Corporate & Financial Weekly Digest

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ESMA Issues Discussion Paper on UCITS ETFs and Structured UCITS

On July 22, the European Securities and Markets Authority published a discussion paper *Policy Orientations on Guidelines for UCITS Exchange-Traded Funds and Structured UCITS* on aspects of the regulatory regime governing Undertakings for Investments in Transferable Securities (UCITS). On July 22, the European Securities and Markets Authority published a discussion paper *Policy Orientations on Guidelines for UCITS Exchange-Traded Funds and Structured UCITS* on aspects of the regulatory regime governing Undertakings for Investments in Transferable Securities (UCITS).

ESMA stated that it had reviewed the current regulatory regime applicable to UCITS Exchange-Traded Funds (ETFs) and Structured UCITS and, in light of its review, considered that existing regulatory requirements were not sufficient to take account of the specific features and risks associated with these types of funds. In particular, the discussion paper suggests possible measures that could mitigate the risks following from complex products being made available to retail investors described as UCITS.

ESMA seeks feedback on the various “policy orientations.”

For ETFs points raised include:

- **Identifier.** Whether ETFs should be required to identify themselves as such in their name, instrument of incorporation, prospectus and marketing material.
- **Index-tracking issues.** The manner in which the prospectus of index-tracking ETFs should contain a description of the index to be tracked and the mechanism used to gain exposure to it.
- **Actively managed ETFs.** Where an ETF is actively managed, investors should be clearly informed of that fact and of the risks arising from its investment strategy.
- **Leveraged ETFs.** The leverage policy and the risks associated with it should be clearly disclosed to investors.
- **Redemption rights.** ETFs should be required to give all investors, including those who acquire units on the secondary market, the right to redeem their units directly from the fund.

For structured UCITS points raised include:

- ESMA considers guidelines are needed to cover the use of total return swaps and strategy indexes.
- Where a structured UCITS gains exposure to complex investment strategies, ESMA considers the structure of the UCITS fund's investment portfolio that is swapped and the instruments underlying the swap to which the UCITS gains exposure should comply with relevant diversification rules of the EU directives and regulations.
- For strategy indexes, ESMA is concerned about frequency of rebalancing the index and the manner in which the index must fulfill the criterion of being an adequate bench mark for the market to which it relates.
- The comment period closes on September 22. Responses to the discussion paper will be used by ESMA to formulate proposed guidelines for UCITS ETFs and Structured UCITS.

Click [here](#) for ESMA's discussion paper.

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