

OnPoint

Dechert  
LLP

December 2012

A legal update from Dechert LLP

## ESMA's Final Guidelines on Repurchase and Reverse Repurchase Agreements for UCITS Funds

The European Securities and Markets Authority ("ESMA") published final guidelines on repurchase (repo) and reverse repurchase agreements for UCITS funds on 4 December 2012. This is a follow-up to ESMA's publication in July 2012 of guidelines on ETFs and UCITS (see [DechertOnPoint](#)) (the "ETF Guidelines"), which contained a consultation on the guidelines which have now been published.

UCITS in general and money market funds in particular make extensive use of reverse repo arrangements (i.e., fund lends out cash and receives securities collateral), with some funds lending out all their cash on the terms of such agreements. Repo arrangements (i.e., fund borrows cash and posts securities collateral) are likely to be of great interest to funds which need to post cash collateral to clearing houses when mandatory clearing of OTC derivatives applies from next year.

ESMA is mindful of the risks posed by reverse repo arrangements on funds' cash liquidity and redemption obligations, and the risks posed by repo arrangements on funds' ability to recall the posted securities collateral.

ESMA finalised its guidelines on securities lending (as opposed to repo and reverse repo) arrangements in the ETF Guidelines. The principal guideline for securities lending is that a "UCITS should ensure that it is able at any time to recall any security that has been lent out or terminate any securities lending arrangement into which it has entered". Concerns were raised at the time that application of this rule — that any securities lent by the fund should be immediately recallable — to reverse repo arrangements would rule out the entering into of "term" repo and reverse repo arrangements by funds, and that is why ESMA consulted further on the issue.

The final guidelines state:

- For reverse repo arrangements, a fund should ensure that it is able "at any time" either to recall the full amount of cash or to terminate the reverse repo agreement. The cash may be recalled either on an accrued basis (typically only applicable to overnight arrangements) or on a mark-to-market (i.e. cost of unwinding the transaction) basis. If the cash is recallable at any time on a mark-to-market basis, the fund should value the reverse repo on a mark-to-market basis as well.
- For repo agreements, the fund should ensure that it is able "at any time" either to recall the securities subject to the arrangements or to terminate the repo agreement.
- Fixed term reverse repos and repos that do not exceed seven days are considered as arrangements which allow the assets to be recalled at any time.

ESMA's earlier proposals (i) to limit the maximum percentage of the fund's assets which could be subject to repo and reverse repo arrangements on terms which do not allow the assets to be recalled by the fund at any time and (ii) to specify a minimum number of repo counterparties, have not been carried forward.

The guidelines will be incorporated into the main ETF Guidelines. The guidelines, together with the ETF Guidelines, will apply two months after their official publication on ESMA's website, which is expected to be by the end of this year or early 2013, meaning a likely implementation date of February or March 2013.

## Possible Action Points

- Check terms of repo and reverse repo agreements for compliance with guidelines.
- Check valuation policy for compliance with valuation requirements for term reverse repo arrangements.

This update was authored by John Young and Declan O'Sullivan. If you have questions or for more information, please contact:



John Young  
London

[Send an email](#)

T: +44 20 7184 7565



Declan O'Sullivan  
Dublin

[Send an email](#)

T: +353 1 436 8510

To see the full list of financial services lawyers, please [visit our website](#).

[Unsubscribe](#) | [Manage my mailings](#) | [Forward to a colleague](#)

© 2012 Dechert LLP. All rights reserved. This publication should not be considered as legal opinions on specific facts or as a substitute for legal counsel. It is provided by Dechert LLP as a general informational service and may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome. We can be reached at the following postal addresses: in the US: 1095 Avenue of the Americas, New York, NY 10036-6797 (+1 212 698 3500); in Hong Kong: 27/F Henley Building, 5 Queen's Road Central, Hong Kong (+852 3518 4700); and in the UK: 160 Queen Victoria Street, London EC4V 4QQ (+44 20 7184 7000).

Dechert internationally is a combination of separate limited liability partnerships and other entities registered in different jurisdictions. Dechert has more than 800 qualified lawyers and 700 staff members in its offices in Belgium, China, France, Germany, Georgia, Hong Kong, Ireland, Kazakhstan, Luxembourg, Russia, the United Arab Emirates, the UK and the US. Further details of these partnerships and entities can be found at [dechert.com](#) on our [Legal Notices](#) page.