

# ESMA publishes Call for Evidence on review of UCITS Eligible Assets Directive

May 2024

## Introduction

On 7 May 2024, ESMA published a [call for evidence](#) on the review of the UCITS Eligible Assets Directive<sup>1</sup> (**Call for Evidence**).

Given that the responses received to its Call for Evidence will inform its technical advices to the European Commission on possible reforms to the UCITS Eligible Assets Directive, this is likely to be of interest to all promoters and managers of UCITS funds.

## Background

Under the UCITS Directive, a UCITS may only invest in specific asset classes, including certain transferable securities, money market instruments, other investment funds, bank deposits and financial derivative instruments. The UCITS Eligible Assets Directive supplements the UCITS Directive by setting down specific criteria which must be satisfied by an instrument in order to be considered eligible for investment by a UCITS. However, since its adoption in 2007, the number, type and variety of financial instruments traded on financial markets have increased considerably.

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<sup>1</sup> Directive 2007/16/EC





In June 2023, the European Commission [wrote](#) to ESMA requesting that it provide technical advice on the review of the UCITS Eligible Assets Directive. In particular, it asked ESMA to analyse whether any divergences have arisen in the implementation of the UCITS Eligible Assets Directive across EU member states and to provide it with a set of recommendations on how it should be revised to keep it in line with market developments.

## Areas of focus

To supplement the data gathering exercise that ESMA is carrying out with EU national competent authorities, the Call for Evidence seeks feedback on a wide range of issues, divided into two sections. The first section deals with convergence issues and the clarity of key concepts and definitions under the Eligible Assets Directive while the second section considers direct and indirect exposure of UCITS to certain asset classes.

Areas of particular focus include the following:

- **Inconsistent interpretation or application of existing Eligible Assets rules**

ESMA has asked for feedback on recurring or significant issues stakeholders have encountered on the interpretation or consistent application of the UCITS eligible asset rules on a wide range of instruments, including the criteria for transferable securities, financial indices, the UCITS “trash bucket”, investment in other funds and embedded derivatives amongst others.

- **Notion of liquidity and presumption of liquidity for transferable securities**

Unsurprisingly given the recent continued focus of the European Commission and ESMA on liquidity risk management in UCITS funds, the Call for Evidence has asked for feedback on issues with the interpretation or consistent application of the notion of “liquidity” under the UCITS framework. It has also asked for feedback on whether the presumption of liquidity and negotiability which currently exists for listed securities is still appropriate.

- **Direct and indirect exposure to certain asset classes**

ESMA has also sought feedback on the extent to which UCITS have gained direct and indirect exposure to certain asset classes, including for example leveraged/structured loans, catastrophe bonds, CoCo bonds, crypto assets, ABS and MBS, EU and non-EU AIFs and commodities. It has also sought views on the merits of allowing UCITS to gain exposure to the specific asset classes identified in the Call for Evidence.

Noting the use by some UCITS of delta-one instruments and exchange-traded products to gain exposure to asset classes that are not eligible for direct investment, ESMA has also asked for feedback on whether a look-through approach should be introduced under which the list of eligible assets classes set down in the UCITS Directive would be deemed exhaustive, thus reducing the risk of circumvention by gaining indirect exposures to ineligible asset classes.

## Request for data

ESMA has asked respondents to substantiate responses provided by sharing as much evidence (including any available data or estimates) as possible.

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## Next Steps

The deadline for responding to the Call for Evidence is 7th August 2024.

We are currently supporting a number of UCITS management companies in preparing their responses to the Call for Evidence.

If you would like to discuss the Call for Evidence in further detail or require any assistance in preparing a response to it, please get in touch with your usual contact in Dillon Eustace or any of the authors listed below.



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