

**EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)**

**ESMA'S POLICY ORIENTATIONS ON GUIDELINES FOR  
UCITS EXCHANGE-TRADED FUNDS AND STRUCTURED UCITS:  
A DISCUSSION PAPER**

**RESPONSE FROM THE**

**ASSOCIATION OF PRIVATE CLIENT INVESTMENT MANAGERS AND  
STOCKBROKERS (APCIMS)<sup>1</sup>**

**Introduction**

ESMA's discussion paper on policy orientations on guidelines for UCITS Exchange-Traded Funds (ETFs) and Structured UCITS is an important contribution to EU debate on appropriate regulation of these products. APCIMS welcomes the opportunity to offer views in response.

The main elements of the Discussion Paper are directed at UCITS managers and institutions which develop and manufacture UCITS ETFs and have to create and provide the prospectus for their products. But there are important aspects directed also at the distribution process which are of direct concern to APCIMS' members, who are not UCITS managers and do not undertake the manufacture of UCITS products.

The APCIMS' grouping comprises intermediaries serving the retail investment community in a variety of ways. These include the provision of on-exchange dealing for retail clients in listed products, including UCITS ETFs. Indeed, it is almost certain that any retail person trading on-exchange in the UK will do so through a broker who is an APCIMS member. Because of this and other unique financial services offered by APCIMS' firms to retail consumers we believe it is important for regulators to be aware of the business models used by firms in our sector and to take them into account in formulating regulatory policy.

APCIMS would be pleased to visit ESMA in order to provide information to the staff on the nature of our firms' businesses and how regulation impacts upon them.

**APCIMS' Key Concerns**

We highlight our key concerns prior to more detailed consideration. They are as follows.

- **Greater transparency is sensible**, especially where products have become more complex, and more information of the right kind is invaluable in helping investors to make sound investment choices. But information distribution mechanisms must be commensurate with

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<sup>1</sup> The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is a trade association representing 170 member firms. Of this number 116 members are private client investment managers and stockbrokers and 54 are associate members who provide related services to our firms. Member firms deal primarily in stocks and shares as well as other financial instruments for individuals, trusts and charities and offer a range of services from execution only trading (no advice) through to full portfolio management. Our member firms operate on more than 500 sites in the UK, Ireland, Isle of Man and Channel Islands, employing c.30 000 employees. Over £475 billion of the country's wealth is under the management of our members. Our aim is to ensure that regulatory, tax and other changes across Europe are appropriate and proportionate for the investment community.

the way the market operates and not obstruct it to the detriment of investors. In the case of UCITS IV the requirement to provide a KIID ahead of every deal in exchange-traded UCITS ETFs has adversely affected the popular execution-only broking market in these products and caused difficulties for investors and firms alike.

- In this context paragraph 15 of the ESMA paper suggests that investors in UCITS ETFs do not necessarily receive the fund documentation, in contrast with other UCITS investors. APCIMS would be interested to know if this means there are different standards of application of UCITS IV across the EU and, if so, whether the UK has been gold-plating and whether ESMA is able to investigate the situation.
- **Paragraphs 42-47 raise issues** that we think should be more thought through. First, while investors should be informed of their status and rights this should not be detrimental to the broking community in the manner of the current proposed wording of the warning. Buying UCITS ETFs on-exchange through a stockbroker will indeed incur fees, but these will often be very small and it is simplistic to assume that there is no other added value in the services that brokers perform for clients. They meet a number of needs which are not referred to in the text of either the draft warning or the ESMA paper and a balanced argument should take these into account.
- Second, these paragraphs raise other issues of cost and risk that are not addressed in the text. Key among these are:
  - With broker costs for on-exchange trading being very low there is no evidence that retail investors will necessarily find it cheaper to go direct to a fund manager
  - There will be necessary costs to the ETF of having to set up arrangements to redeem units on request. These costs will be incurred for relatively few investors since many investors will stay with on-exchange broking, so how are they to be apportioned?
  - On-exchange broking in UCITS ETFs on a regulated market provides:
    - additional investor protection including defined default rules;
    - dealing and redemption throughout the trading day via an intermediary that ensures a liquid market at any time and certainty of contract after the deal.
  - Going direct to the fund manager will involve redemption only once per day at the time of NAV valuation. This can be costly and to the detriment of the retail investor, who may not understand settlement issues or the timing of calculation for net asset value and would often expect instant liquidity.
  - Secondary market investors redeeming directly with the UCITS will create credit risk and settlement risk issues.
  - Retail investors normally invest through nominee accounts and may not have their own settlement accounts.
  - On the regulatory side, ETF issuers may end up having to communicate with retail investors and may not have the relevant regulatory permissions to do so, in contrast to investment advisers.
- Direct redemptions should be permitted when an ETF does not have any authorised participants in the primary market, or market makers who are willing to make an “acceptable” two-way market (“acceptable” means as designated by the relevant regulated

market in relation to minimum spreads and amounts). This in our view is probably the only circumstance in which an investor should require primary market liquidity.

- **As regards the retailisation of complex products** we have no difficulty with ensuring that the level of risk warning to investors should be commensurate with the degree of risk inherent in the product to which the warning relates, but we are less certain that some UCITS products have become sufficiently risky to question whether they should be accessible to retail investors at all. We would want to make three caveats in this area:
  - First, it is important not to confuse complex with risky. Many complex products are designed to reduce risk and indeed have that effect, and should not be considered in the same way as products whose complexity increases risk.
  - Second, it should be the responsibility of the UCITS ETF provider to determine whether its product should be classified as complex or non-complex; the regulator will need to ensure that providers comply with certain objective criteria or standards in making their assessments.
  - Third, the use of caveat emptor: regulators and legislators must recognise that it is impossible to squeeze risk out of the financial system entirely and that without risk the financial sector cannot contribute to economic growth and employment. It is impossible to protect investors from all risk so they must be encouraged to evaluate risk – with or without help – and make informed decisions about their investments.

### **Further discussion of the issues**

Before turning to the specific questions asked in the ESMA paper we wish to elaborate on the above points. We do so (a) as a response to ESMA paper; (b) because of other problems that have arisen both for our firms and the retail consumer of UCITS funds, notably in the UCITS IV context; and (c) because the ESMA commitment in paragraph 10 of the paper to “give further consideration to the extent to which any of the guidelines agreed for UCITS can be applied to regulated non-UCITS funds established or sold within the European Union”. We would like to ensure that mistakes are eliminated now that might otherwise be repeated later in documents that take their language from policy formulated as a result of the work on this discussion paper.

### **Improved Disclosure Requirements**

APCIMS supports ESMA’s proposals for enhancing disclosure and information to investors. We agree in particular that where UCITS ETFs have become complex or where the risk in the ETF structure is difficult to understand the prospectus should contain additional information helping to explain the way the ETF works (for example, “the prospectus for index-tracking UCITS ETFs should contain a clear, comprehensive description of the index to be tracked and the mechanism used to gain exposure to the index” – paragraph 25). Proposals such as these represent an updating of relevant transparency requirements in the light of the rapid growth in number and diversity of ETFs including UCITS ETFs, and will help investors to apply the principle of caveat emptor in their evaluation of risk and selection of investment products. This will be important both where unadvised trading is undertaken for the investor, such as in execution only broking for buying into a UCITS ETF, and where the investor makes the investment decision after receiving advice.

## UCITS IV: KIID Provision and UCITS ETF Trading

At the same time it is important that, having established what new disclosures should be made, which the ESMA paper does very effectively, the mechanism for distribution of that information is also established. This should have regard to the existing business practices of firms such as APCIMS' members with long-standing experience of working in client interests and ensuring that clients are retained over long time periods – often several generations where individual families are involved.

This was not done in the case of UCITS IV with what are now appearing to be quite damaging consequences. The requirement of the Directive that the KIID be provided to the investor at all times and in all circumstances has been transcribed quite literally into UK law via the UCITS Regulations and related UK FSA rules. The result is that execution only dealing in UCITS ETFs has been made very difficult because, despite client wishes to deal immediately on the basis of a telephone call in these circumstances, the firm has to delay dealing until the KIID has been provided. The client may never read the KIID and in many cases is adamant that s/he does not want it, but the provision must nevertheless be made. This often delays or cancels dealing with the result that not only does the client not get what s/he wants, but best execution is very difficult to obtain because when dealing does take place it is very likely to be at a different price than the client required, and this may not always be advantageous.

This situation could have been avoided by a more careful approach to developing the UCITS IV directive. It seems that no thought was given during the drafting to the sorts of ways in which investors access these UCITS products, with the model of the financially unaware individual making small investments slowly with plenty of time to read the KIID on the basis of doorstep advice from an independent financial adviser, or IFA, being the one used. But this may well be a minority of cases and investment by dealing in a UCITS ETF on-exchange through a broker may be much more prevalent than realised. Certainly, use of execution only facilities takes up about 75% of all on-exchange retail trading in the UK so it is very likely that a large number of potential UCITS ETF trades have been adversely affected by the new UK rules.

### ESMA Discussion Document, Paragraph 15

APCIMS would like to ensure that repetition of the kind of mistake made in the above actual example is avoided in developments arising from the ESMA discussion document. Against this background we were interested to read paragraph 15 of the paper which states that “investors (other than creation unit-holders) usually do not subscribe or redeem directly from the ETF but rather acquire and dispose of their shares on the secondary market. Contrary to other UCITS investors, **they may not always receive the fund documentation (such as the KIID) where they acquire UCITS ETF units directly on exchange**, for example, or through dedicated websites” (APCIMS' highlighting).

The implication of this seems to us to be that it is not considered compulsory by ESMA for investors to receive the KIID under all circumstances in relation to secondary market trading in UCITS ETFs. Or there may be other member states where the interpretation of the UCITS IV Directive with respect to KIID provision in the case of on-exchange dealing in UCITS ETFs is different or more flexible than that undertaken in the UK. In any case APCIMS would be interested to know what the situation is and why ESMA has been able to use language in paragraph 15 that suggests that the UK FSA has possibly gold-plated a directive requirement to the disadvantage of industry and consumer alike. Does ESMA not have powers to require national supervisors to implement directives according to a common standard so that there is consistency across the EU internal market in the way rules are applied? If so, is there a case here for ESMA to investigate discrepancies and decide on action?

## ESMA Discussion Document, Paragraphs 42-47

The paragraphs in the ESMA document relating to secondary market investors are of concern to us. We have no difficulty with the description in paragraphs 42-44 and we agree with the proposal in paragraph 45 that “at a minimum, the prospectus and marketing material inform the secondary market investors of their status and rights”. However we have concerns about the wording in the suggested warning and about the proposal that potential UCITS ETF investors go straight to the fund.

As regards the warning, while it is true that investors buying or selling shares in a UCITS ETF must go through a stockbroker (in the UK, an APCIMS member) and that this will incur fees, in a competitive market such as the UK the execution only fees will be small. On the non-financial side, the proposed language says nothing about the value-added to an investor of going through a broker for convenience, with all the ancillary work of buying and selling units, and the time taken to fill in forms and get them right when they may be very unfamiliar, done by somebody else. Nor does it raise a series of other points, elaborated below, indicating that there is a downside for the investor in redeeming direct with the fund. A proper warning should take these into account. As a result of not being balanced the warning as exemplified by ESMA appears biased against the use of brokers. It needs changing to be more even-handed in explaining to investors their options.

The proposal that ETFs should be required to give all investors the right to redeem their units directly from the UCITS in any case needs further examination than is given in the ESMA paper to ensure that it is workable in practice. In APCIMS’ view it may not be.

First, broker practices, for example in acting for the client in the market place, have grown up because of demand. The demand has developed because people have wanted assistance in managing their financial affairs. We do not agree with language that suggests that retail investors will be better off without using a broker when they might find they get mired in time-consuming complexity and uncertainty about whether they have got a particular requirement right, without one. Far from being a risk to investor protection, brokers can add to it by helping the investor and this should be taken into account in ESMA’s considerations.

Second, with broker costs for on-exchange trading on an execution only basis being very low there is no evidence that retail investors will find it cheaper to go direct to a fund manager. The argument does not mention the necessary costs to the ETF of having to set up arrangements to redeem units on request, including the costs of the relevant manned desks which are not needed when using as a broker on-exchange. These costs will be incurred for relatively few investors since the choices offered in the ESMA paper will result in many investors staying with on-exchange broking, so the question arises as to how they are to be apportioned: only to those choosing the direct route to redeeming units in a UCITS ETF, in which case they may be prohibitively expensive, or to all investors in the fund, in which case costs will rise unnecessarily for many?

Third, on-exchange broking in UCITS ETFs on a regulated market provides additional investor protection including defined default rules, and dealing and redemption throughout the trading day via an intermediary that ensures a liquid market at any time and certainty of contract after the deal. This contrasts with going direct to the fund manager where redemption will take place only once per day at the time of NAV valuation rather than in real time. This can be costly and to the detriment of the retail investor, who may not understand settlement issues or the timing of the calculation for net asset value and would often expect instant liquidity. Retail investors also normally invest through nominee accounts and may not have their own settlement accounts.

Moreover, secondary market investors redeeming directly with the UCITS will create credit risk and settlement risk issues.

The regulatory dimension also needs to be considered: ETF issuers may end up having to communicate with retail investors and may not have the relevant regulatory permissions to do so, whereas investment advisers are authorised to have such contact.

APCIMS agrees however that direct redemptions should be permitted when an ETF does not have any authorised participants in the primary market, or market makers who are willing to make an “acceptable” two-way market (“acceptable” means as designated by the relevant regulated market in relation to minimum spreads and amounts). This in our view is the only circumstance in which an investor should require primary market liquidity.

## **ETF Popularity**

The foregoing should be read against the evident growth in popularity of the ETF model in general, and the UCITS ETF model in particular, for retail investors. There is no doubt that in the UK retail investors are increasingly investing via ETFs, primarily through an APCIMS member firm, and that this increase reflects in part the desire to gain exposure to a range of investments.

## **Role of Product Manufacturer and Exchanges**

APCIMS notes that in the opening part of the discussion document where the “retailisation of complex products” is considered, ESMA is looking at “mitigating certain risks identified in the operation of the above-mentioned funds [structured UCITS or UCITS with complex portfolio management techniques]” and considers that “it cannot be excluded that in order to protect investors, preserve the integrity of the market and the reputation of the UCITS brand it may be necessary to issue warnings to retail investors about the risks associated with certain of these products or even to limit the distribution of certain of such products to retail investors”.

We have no difficulty with the concept of ensuring that the level of risk warning to investors should be commensurate with the degree of risk inherent in the product to which the warning relates. In this context we are conscious of the rapid development of new kinds of UCITS in recent times and agree that an enhanced disclosure framework for investors may be necessary in response. We are less certain that some UCITS products may have become sufficiently risky to question whether they should be accessible to retail investors at all and would want to make three caveats in this area.

First, it is important not to confuse complex with risky. Many complex products are designed to reduce risk and indeed have that effect. They should not be considered in the same way as products whose complexity is inherently risky because, for example, no-one really understands them or knows how they will behave in different market conditions. Equally, some simple products can be very risky, such as plain equity in an unproven company in a risky sector. Are retail consumers to be prevented from accessing these products also?

Second, it should be the responsibility of the UCITS ETF provider (the “manufacturer”) to determine whether its product should be classified as complex or non-complex: it is after all in the manufacturer’s interest to make such a classification if wishing to promote a “non-complex” product to retail investors. The regulator will have a role in ensuring that manufacturers comply with certain objective criteria or standards in making their assessments, and will also be able to cross-examine the manufacturer at any point about whether and how the criteria have been appropriately interpreted and implemented. But the onus should be on the manufacturer to

make the initial determination. There might also be a role for exchanges and other execution venues where these products are admitted to trading, given that the UCITS ETFs at least are exchange-traded products. Currently it is down to the distributor (the broker or investment manager) and this can lead to uncertainty and inconsistency as different distributors may reach different conclusions. This uncertainty and confusion cannot be helpful for retail investors.

Third, the use of caveat emptor: regulators and legislators alike must recognise that it is impossible to squeeze risk out of the financial system entirely unless there is to be no system as such and that without risk the financial sector cannot make a contribution to economic growth and employment. This means that it is impossible to protect investors from all risk and that instead of being protected absolutely from their own decisions investors must be encouraged to evaluate risk – with or without help – and make informed decisions about their investments. They should be allowed access to a wide range of these and only those most obviously at the edge of risk (largely because it cannot be evaluated) should be forbidden to them.

## Specific Questions

In responding to the specific questions in this discussion paper we have kept our answers to those issues most closely associated with our members' interests. This means we have tended to concentrate on particular sections of the paper, especially but not entirely those dealing with the "retailisation of complex products" and "secondary market investors". Questions unanswered throughout the paper are those not relevant to our member firms.

**1. Do you agree that ESMA should explore possible common approaches to the issue of marketing of synthetic ETFs and structured UCITS to retail investors, including potential limitations on the distribution of certain complex products to retail investors? If not, please give reasons.**

We do not believe that there should necessarily be limitations on the distribution of certain complex products to retail investors but that there should be sufficient pre-sale information available in concise and easily understood language setting out the potential risks and downsides of investing in a particular product. In particular, the factors giving rise to the product being categorised as "complex" must be identified in the pre-sale documentation.

**2. Do you think that structured UCITS and other UCITS which employ complex portfolio management techniques should be considered as "complex"? Which criteria could be used to determine which UCITS should be considered as "complex"?**

We are unclear as to what is meant by "complex portfolio management techniques" and whether there is necessarily a link between the complexity of portfolio management techniques and the complexity of the financial product. It is in any case the risk characteristics of the product that should be determine whether or not it is "complex" in the sense of being too risky for retail investors, not its complexity.

**3. Do you have specific suggestions on the measures that should be introduced to avoid inappropriate UCITS being bought by retail investors, such as potential limitations on distribution or issuing of warnings?**

See our answer to Question 1 above. We also believe that the relevant regulator has a role in monitoring product sales – if an ETF is deemed to be complex but is being sold in large volumes to retail investors this should be flagged up to or identified by the relevant regulator and merit further investigation. The relevant Exchange or Trading Platform on which such ETFs are traded may also have a role in making such disclosures and following them up.

**6. Do you agree that ESMA should give further consideration to the extent to which any of the guidelines agreed for UCITS could be applied to regulated non-UCITS funds established or sold within the European Union? If not, please give reasons.**

Yes; it is important that there is coherence and consistency in the way in which similar categories of funds are treated in the EU. The anomalies we noted earlier in this response about the implementation of KIID use in relation to UCITS IV have meant that non-UCITS products currently have different and more straightforward disclosure requirements to investors. This biases the market because investors choose on the basis of which product has easier information flows, not which is best for them. There must be appropriate alignments, for example, over time between UCITS and PRIPS, but on an appropriate and proportionate basis not employing information overkill or poor timing in relation to market operations by firms for investors.

**7. Do you agree that ESMA should also discuss the above-mentioned issues with a view to avoiding regulatory gaps that could harm European investors and markets? If not, please give reasons.**

Yes.

**8. Do you agree with the proposed approach for UCITS ETFs to use an identifier in their names, fund rules, prospectus and marketing material? If not, please give reasons.**

Yes. As stated above, if this information is clearly displayed and easily identified by retail investors it should help enable them to consider whether such ETFs are appropriate for them.

**9. Do you think that the identifier should further distinguish between synthetic and physical ETFs and actively-managed ETFs?**

Yes.

**10. Do you think that the identifier should also be used in the Key Investor Information Document of UCITS ETFs?**

Yes.

**11. Do you agree with ESMA's analysis of index-tracking issues? If not, please explain your view.**

Yes.

**12. Do you agree with the policy orientations identified by ESMA for index-tracking issues? If not, please give reasons.**

Yes.

**13. Do you think that the information to be disclosed in the prospectus in relation to index-tracking issues should also be in the Key Investor Information Document of UCITS ETFs?**

Not all of it. The KIID and the prospectus are different documents with different purposes. Most notably the KIID is supposed to be a two-page long retail-investor-friendly document that has easy to understand language while giving a clear picture of the risks and benefits of the



product the investor is interested in. The prospectus contains large amounts of detail and has a legal status that is important for reasons beyond straightforward investor information. This difference means that not everything that is in the prospectus needs to be in the KIID. In relation to the index tracking UCITS ETFs the key issues for investors are what will help them to choose sensibly and we would suggest that the first bullet alone might do this, perhaps with a simple version of the fourth bullet added.

**14. Are there any other index tracking issues that ESMA should consider?**

No. Otherwise it starts getting too complicated for investors to follow and they will not read what is said. So it becomes of no benefit to them.

**19. Do you agree with ESMA's analysis of the issues raised by securities lending activities? If not, please give reasons.**

Yes.

**20. Do you support the policy orientations identified by ESMA? If not, please give reasons.**

Yes.

**26. Do you agree with ESMA's proposed policy orientations for actively managed UCITS ETFs? If not, please give reasons.**

Yes.

**27. Are there any other issues in relation to actively managed UCITS ETFs that ESMA should consider?**

Yes; the fact that a UCITS ETF is actively managed should go into the KIID.

**28. If yes, can you suggest possible actions or safeguards ESMA should adopt?**

See answer to question 27 above.

**29. Do you agree with ESMA's analysis of the issues raised by leveraged UCITS ETFs? If not, please give reasons.**

Yes.

**30. Do you support the policy orientations identified by ESMA? If not, please give reasons.**

Yes.

**33. Do you support the policy orientations identified by ESMA? If not, please give reasons.**

No. Please see our discussion on pages 5 and 6 of this response. This makes clear that we do not support the way ESMA has considered these issues or set them out. Our full response from these pages is copied hereunder.

The paragraphs in the ESMA document relating to secondary market investors are of concern to us. We have no difficulty with the description in paragraphs 42-44 and we agree with the proposal in paragraph 45 that “at a minimum, the prospectus and marketing material inform the secondary market investors of their status and rights”. However we have concerns about the wording in the suggested warning and about the proposal that potential UCITS ETF investors go straight to the fund.

As regards the warning, while it is true that investors buying or selling shares in a UCITS ETF must go through a stockbroker (in the UK, an APCIMS member) and that this will incur fees, in a competitive market such as the UK the execution only fees will be small. On the non-financial side, the proposed language says nothing about the value-added to an investor of going through a broker for convenience, with all the ancillary work of buying and selling units, and the time taken to fill in forms and get them right when they may be very unfamiliar, done by somebody else. Nor does it raise a series of other points, elaborated below, indicating that there is a downside for the investor in redeeming direct with the fund. A proper warning should take these into account. As a result of not being balanced the warning as exemplified by ESMA appears biased against the use of brokers. It needs changing to be more even-handed in explaining to investors their options.

The proposal that ETFs should be required to give all investors the right to redeem their units directly from the UCITS in any case needs further examination than is given in the ESMA paper to ensure that it is workable in practice. In APCIMS’ view it may not be.

First, broker practices, for example in acting for the client in the market place, have grown up because of demand. The demand has developed because people have wanted assistance in managing their financial affairs. We do not agree with language that suggests that retail investors will be better off without using a broker when they might find they get mired in time-consuming complexity and uncertainty about whether they have got a particular requirement right, without one. Far from being a risk to investor protection, brokers can add to it by helping the investor and this should be taken into account in ESMA’s considerations.

Second, with broker costs for on-exchange trading on an execution only basis being very low there is no evidence that retail investors will find it cheaper to go direct to a fund manager. The argument does not mention the necessary costs to the ETF of having to set up arrangements to redeem units on request, including the costs of the relevant manned desks which are not needed when using as a broker on-exchange. These costs will be incurred for relatively few investors since the choices offered in the ESMA paper will result in many investors staying with on-exchange broking, so the question arises as to how they are to be apportioned: only to those choosing the direct route to redeeming units in a UCITS ETF, in which case they may be prohibitively expensive, or to all investors in the fund, in which case costs will rise unnecessarily for many?

Third, on-exchange broking in UCITS ETFs on a regulated market provides additional investor protection including defined default rules, and dealing and redemption throughout the trading day via an intermediary that ensures a liquid market at any time and certainty of contract after the deal. This contrasts with going direct to the fund manager where redemption will take place only once per day at the time of NAV valuation rather than in real time. This can be costly and to the detriment of the retail investor, who may not understand settlement issues or the timing of calculation for net asset value and would often expect instant liquidity. Retail investors also normally invest through nominee accounts and may not have their own settlement accounts. Moreover, secondary market investors redeeming directly with the UCITS will create credit risk and settlement risk issues.

The regulatory dimension needs to be considered: ETF issuers may end up having to communicate with retail investors and may not have the relevant regulatory permissions to do so, whereas investment advisers are authorised to have such contact.

APCIMS agrees however that direct redemptions should be permitted when an ETF does not have any authorised participants in the primary market, or market makers who are willing to make an “acceptable” two-way market (“acceptable” means as designated by the relevant regulated market in relation to minimum spreads and amounts). This in our view is the only circumstance in which an investor should require primary market liquidity.

**34. Are there any other issues in relation to secondary market investors that ESMA should consider?**

Yes. See our answer to question 33 above.

**35. If yes, can you suggest possible safeguards ESMA should adopt?**

See our answer to question 33 above.

**36. In particular, do you think that secondary market investors should have a right to request direct redemption of their units from the UCITS ETF?**

We query the value of this idea as proposed, which we do not think has been thought through sufficiently.

See our answer to question 33 above plus the more detailed point that we are unclear how the direct redemption of units would operate in a manner that does not impact upon other unit holders.

However, see also our answer to question 37 below.

**37. If yes, should this right be limited to circumstances where market makers are no longer providing liquidity in the units of the UCITS ETF?**

Probably; see our answer to question 33 above, especially the last paragraph, repeated below.

APCIMS agrees however that direct redemptions should be permitted when an ETF does not have any authorised participants in the primary market, or market makers who are willing to make an “acceptable” two-way market (“acceptable” means as designated by the relevant regulated market in relation to minimum spreads and amounts). This in our view is the only circumstance in which an investor should require primary market liquidity.