

DRAFT
EFAMA reply to ESMA Discussion Paper
ESMA's policy orientations on guidelines for UCITS Exchange-Traded Funds and Structured UCITS

KBC Asset Management welcomes the possibility to reply to ESMA's Discussion Paper mentioned in reference.

KBC AM has its registered **head office in Brussels** but also owns a managing entity (100%-owned) in Luxembourg (KBC Asset Management SA).

KBC AM has **five affiliates in its second "home market"**: CSOB Asset Management (Czech Republic, Slovakian Republic), K&H Asset Management (Hungary), TFI Asset Management (Poland), and NLB Asset Management (Slovenia).

These entities are active in the local markets in brokerage, research and fund management of local funds/mandates.

In the Asian Pacific region, KBC AM is involved in a joint venture with Union Bank of India: Union - KBC AM in Mumbai (India).

KBC Asset Management has its activities

- over different regions;
- over its investment products & services (to become the actual market leader in Belgium for both retail funds and institutional portfolios);
- KBC AM is market leader in sustainable investment in Belgium;
- KBC AM has acquired unique expertise in SRI and offers a broad range of sustainable investments.

In view of our organization

Firstly when considering investor protection and disclosure, a level playing field to funds and non-fund products is of importance, we encourage a horizontal approach in the spirit of MiFID and of the PRIIPs initiative.

Secondly ETFs are UCITS the only difference is that ETFs are listed on a Regulated Market. The listing by itself does not change their risk profile and the UCITS framework already provides for a very high level of investor protection, therefore KBC AM does not consider there is a need for ETF-specific regulation, but a general platform should be created to provide the investor with the KIID.

RETAILISATION OF COMPLEX PRODUCTS

FINANCIAL STABILITY AND SYSTEMIC RISK

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.

Any approach to the marketing of UCITS to retail investors (including potential limitations) should be in line with MiFID and should apply also to similar products such as certificates and notes. Any specific risks should be subject to disclosure to investors, but also for all financial products.

All UCITS are subject to the same strict rules, and ETFs are also subject to listing rules. A definition of complexity should not be simply based on the use of specific techniques in a fund, nor on the basis, as some countries do, to what a retail investor can/cannot understand and therefore is to be considered as non-complex/complex.

The world of retail investors is very diverse and this should be taken into account.

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 disagree with this approach. Complexity is not equal to risk.

Techniques used in structured funds might be complex to explain but result is investor protection, not build-up of risk. However, the use of such techniques should be appropriately disclosed to investors, and investment managers should have adequate controls to manage risks arising from their use.

We prefer that all UCITS should remain non-complex under MiFID as they are very strictly regulated and provide a high degree of investor protection.

Creating different categories of UCITS might confuse the investor and might limit his investment possibilities, maybe harming his possibilities to return.

3. Do you have any 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?

Implementing distribution measures targeted exclusively to UCITS, and with the idea that UCITS may be inappropriate for retail investors, does not take into account the diverse world of retail investors.

What worries us, as an important retail oriented asset manager, is that host State rules show a growing trend towards divergence.

4. Do you consider that some of the characteristics of the funds discussed in this paper render them unsuitable for the UCITS label?

No

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.

We feel that any distribution guidelines should apply to all financial products under MiFID.

On the other hand , a lot of retail funds are subject to AIFMD, but AIFMD contains no product rules and we question how UCITS rules could be applied to non-UCITS, as the AIFMD applies only to AIF managers, and contains no product rules and we are worried that host State rules show a divergence

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We would welcome the idea that any guidelines/ regulations for AIFs should not apply to fund sales to institutional investors, but also to retail and the particularities of retail distribution, where there is no direct contact between the investment manager and the investor.

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

Yes.

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

Yes.

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

Defining a maximum level of tracking error may not be practicable to predetermine

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?

Yes.

SECONDARY MARKET INVESTORS

General Comments

ESMA should indicate if the criteria that will be elaborated concerning secondary market investors of UCITS ETF, have to be taken into account by UCITS when considering the investment in ETF shares (UCITS or not) and, more specifically, if the ETF in question has taken appropriate action to ensure that the stock exchange value of its units does not significantly vary from their net asset value. If ESMA decides that the criteria are not useful in this respect, ESMA should elaborate customized criteria.

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