

European Securities and Markets Authority, ESMA
103, rue de Grenelle
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Copenhagen, 22 September 2011

ESMA's policy orientations on guidelines for UCITS Exchange-Traded Funds and Structured UCITS
ESMA/2011/220

Danish Shareholders Association is the organisation representing private investors in Denmark.

This means that the comments are linked to the interests of the retail investors, consumers.

General remarks

Danish Shareholders Association does not have a detailed policy concerning UCITS Exchange-Traded Funds and Structured UCITS. This means that the answers to the questions can change over time.

The Association is not giving individual investment recommendations to investors, but giving general recommendations about how to invest and products to avoid or ask for. The Association is organising investor training in the "Shareholder School", a series of training seminars for private investors. This is not an activity giving individual advice to investors but training aimed at developing the decision-making abilities of private investors, by teaching about how to find and use information, teaching about investment products, and teaching about investment-techniques.

Danish Shareholders Association recommends ETFs because the costs (especially trading-costs) are lower in the "traditional" ETFs than in UCITS trading actively.

Danish Shareholders Association warns against structured UCITS because the retail investor has difficulties in finding what the risks are.

New investment possibilities

Retail investors are interested in new investment possibilities. They appreciate when new techniques, new products, new combinations of products and techniques developed for the professional market are made available to the retail market.

But many retail investors are not able to find out what the risks are in new products.

Detailed disclosure about policies and techniques can from a theoretical point of view make complicated products transparent, but only to those who understand the mathematics and the strategies.

It is necessary, in order to protect retail clients, that information in clear language about the main sources of risk is part of the disclosures.

Prohibitions and restrictions

It is important and a task for the legislator to protect the consumers against products or sales methods, that lures them to invest without having a clear picture of the main risks related to the investment.

But retail investors are interested in new investment possibilities. Products giving the producer or intermediaries a high income and the retail investor a high and not understood risk will come up again in new wrapping or disguised if hit by prohibitions or restrictions.

It is important that prohibitions or restrictions are efficient and followed by control from the supervisors.

II. General policy discussion

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.

Yes.

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'?

Only if it is possible to set up operational criteria.

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?

Clear language disclosure of the main risks associated with the product.

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.

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.

III. Exchange Traded Funds

III.1. Title

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.

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.

III.II Index tracking issues

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.

To the policy orientations should be added:

"The index-tracking UCITS ETF should inform the investors on the main sources of risks due to the investment strategy"

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.

III.III. Synthetic ETFs – counterparty risk

16. Do you support the disclosure proposals in relation to underlying exposure, counterparty(ies) and collateral? If not, please give reasons.

It is important, that the disclosure is informing the investors on the main risks in clear language.

Securities lending activities

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.

It is important that the information to investors is not confined to in technical terms explaining the risks related to securities lending, but explains in clear language the risks to the investor.

III.V. Actively managed UCITS ETFs

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

Yes.

III.VI. Leveraged UCITS ETFs

29. Do you agree with ESMA 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.

31. Are there any other issues in relation leveraged UCITS ETFs that ESMA should consider?

III.VII. Secondary market investors

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

Yes.

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?

Yes.

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

No. Investors should have right to redemption not related to the activity of market makers.

38. How can ETFs which are UCITS ensure that the stock exchange value of their units do not differ significantly from the net asset value per share?

It is not possible to ensure that the stock market value of the units is the same as the net asset value per share, but by giving correct and full information to the market it is possible to reduce the risk of a difference.

If the information to the market from UCITS ETFs about strategies, risk and the investment activity is correct, should the only difference be based on differences in fees etc. More important differences will only appear if external analysts reject the estimations or forecasts from the UCITS.

IV. Structured UCITS

IV.I. Total return swaps

39. Do you agree with ESMA analysis of the issues raised by the use of total return swaps by UCITS? If not, please give reasons.

Yes.

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

Yes. It is important, that the information to the market is clear and understandable stressing the consequences and risks for the investor and not hiding this important message in technical information.

IV.II Strategy indices

43. Do you agree with ESMA's policy orientations on strategy indices? If not, please give reasons.

Yes. But once again, it is important, that information to the market is understandable at not a collection of technical information that is incomprehensible to the retail investors.

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

For further information or questions please contact Charlotte Lindholm, CEO of Danish Shareholders Association, charlotte@shareholders.dk or Klaus Struwe, political advisor to Danish Shareholders Association, struwe@post9.tele.dk.

Kind regards

Dansk Aktionærforening
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