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**Reply to ESMA Consultation paper - ESMA's guidelines on ETFs and other UCITS issues**

The Danish financial industry including both manufactures and distributors of UCITS welcome the opportunity to respond to the ESMA Consultation paper - ESMA's guidelines on ETFs and other UCITS issues. We would like to take this opportunity to describe some important aspects to be considered in respect of the possible introduction of an **"ETF-identifier"**. Unfortunately the purpose of introducing a UCITS ETF identifier is not clear in the consultation paper. This response will focus on the specific national issues which ESMA ask for in the consultation paper section V.

The Danish financial industry acknowledges that it is challenging to find a comprehensive definition on ETFs which does not also capture traditional UCITS. If the current proposed definition in box 3 is maintained there is a genuine risk that listed UCITS (and UCITS admitted to trading on Regulated Markets) which in their structure are not ETF's will be labeled as ETF's. The suggested identifier is therefore too broad and will have severe implications for investors who in many circumstances will invest in a UCITS without the ETF characteristics they expect.

The ETF characteristics are very well and more precisely described in the explanatory text than in box 3. In the guidelines on ETFs and other UCITS issues we therefore suggest that ESMA states that the relevant national authorities will have the authority to decide which UCITS are considered ETF's, based on the descriptions in the explanatory text mainly in nos. 21 and 22 in the guidelines.

Alternatively, we urge ESMA to introduce a solid definition in collaboration with the European fund industry. We strongly support the definition suggested in the response paper by EFAMA as Danish and German listed UCITS among others will not be considered ETFs according to this definition.



The reason for our comments is two-fold:

## **1. Investor perspective**

### **Investors costs**

More than 420 traditional Danish and foreign UCITS are traded at a tailor made UCITS marketplace called IFX ([www.ifx.dk](http://www.ifx.dk)) which is run by Nasdaq OMX. Danish UCITS have been traded on this exchange for more than 25 years, but have never been identified as ETF's and are not mentioned in any ETF survey. It is beneficial for the investors that traditional UCITS are listed on this market place as costs when buying and selling UCITS shares are typically lower than the maximum issue and redemption fees.<sup>1</sup> The reason for this is that the UCITS manager can reduce the number of issues and redemptions. If the UCITS are listed on a marketplace it will ensure transparency for the investors<sup>2</sup>. We believe that there is a high risk that the Danish UCITS or their management companies will choose to delist if it implies a misleading ETF-label. This will mean a lower level of investor protection.

### **The ETF-identifier suggested by ESMA will confuse investors**

Since the normal procedure in Denmark is to list UCITS on the IFX exchange the current definition of an ETF in box 3 will have the consequence that all UCITS on the IFX must add the ETF identifier to their name.

This identifier might confuse investors in all other countries where the UCITS is distributed because they will only be able to buy it through their distributor or via the UCITS itself. Furthermore a non-Danish fund group that wants to list a UCITS at the IFX exchange in order to attract Danish investors, will not be able to do it without confusing investors because the UCITS is not exchange traded in the other markets.

As a consequence of this situation the ETF-identifier proposed by ESMA will harm cross-border competition and thus the internal market for UCITS.

## **2. Danish UCITS are in structure different from ETFs**

The typical characteristics of ETF's are described in the proposed ESMA guidelines explanatory text. Almost all of the characteristics do not apply to Danish UCITS that are different in the following areas:

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<sup>1</sup> Danish listed UCITS use the double-pricing method, implying that new (and leaving) investors pay the costs the UCITS incurs when the portfolio has to be changed. This means that the issue price is above NAV and redemption price is below NAV. Exchange trading means prices closer to NAV, compared to no trading.

<sup>2</sup> In Denmark all UCITS traded on the IFX exchange have full price transparency both pre and post.



- No use of creation units (recital 32). Issues and redemptions are *not* done in creation units in Danish UCITS, and it is not possible to split the UCITS shares.
- Full redemption rights.
- The management company for a Danish UCITS always buys and sells the securities in contrast to an ETF that uses Authorized Participants, who deliver or receive the securities on behalf of the UCITS in exchange for a creation unit of UCITS shares.
- Unit holder records and investor rights (recital 33 and 38). All Danish UCITS shares aimed at the retail market are – as a starting point - registered in the name of the end investor with the Danish CSD, called VP Securities. This means that all ownership rights are transferred to the new investor when a fund share is traded, and the investors have all the usual UCITS investor rights directly.
- Actively managed. 95% of Danish listed UCITS are actively managed while most ETFs are index-tracking (recital 28).
- Trade at the Danish market place can be stopped by the management company which is not an option in an ETF. If a Danish management company cannot supply NAVs under extraordinary circumstances and ensure that investors are treated equally according to Danish law it is responsible for asking IFX to stop the trading of the UCITS.

In conclusion we propose that UCITS without the typical ETF characteristics should not be labeled ETF's. Therefore, we suggest that the national regulators should be given the authority and discretion to decide which UCITS are ETFs, and suggest that the definition of the ETF-identifier is changed according to the new definition proposed by EFAMA. The decision by the national regulators shall be valid in all other EU countries.

For additional comments to the guidelines we would like to draw your attention to the previous thorough comments from The Federation of Danish Investment Associations of 21 September 2011.

Yours sincerely

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