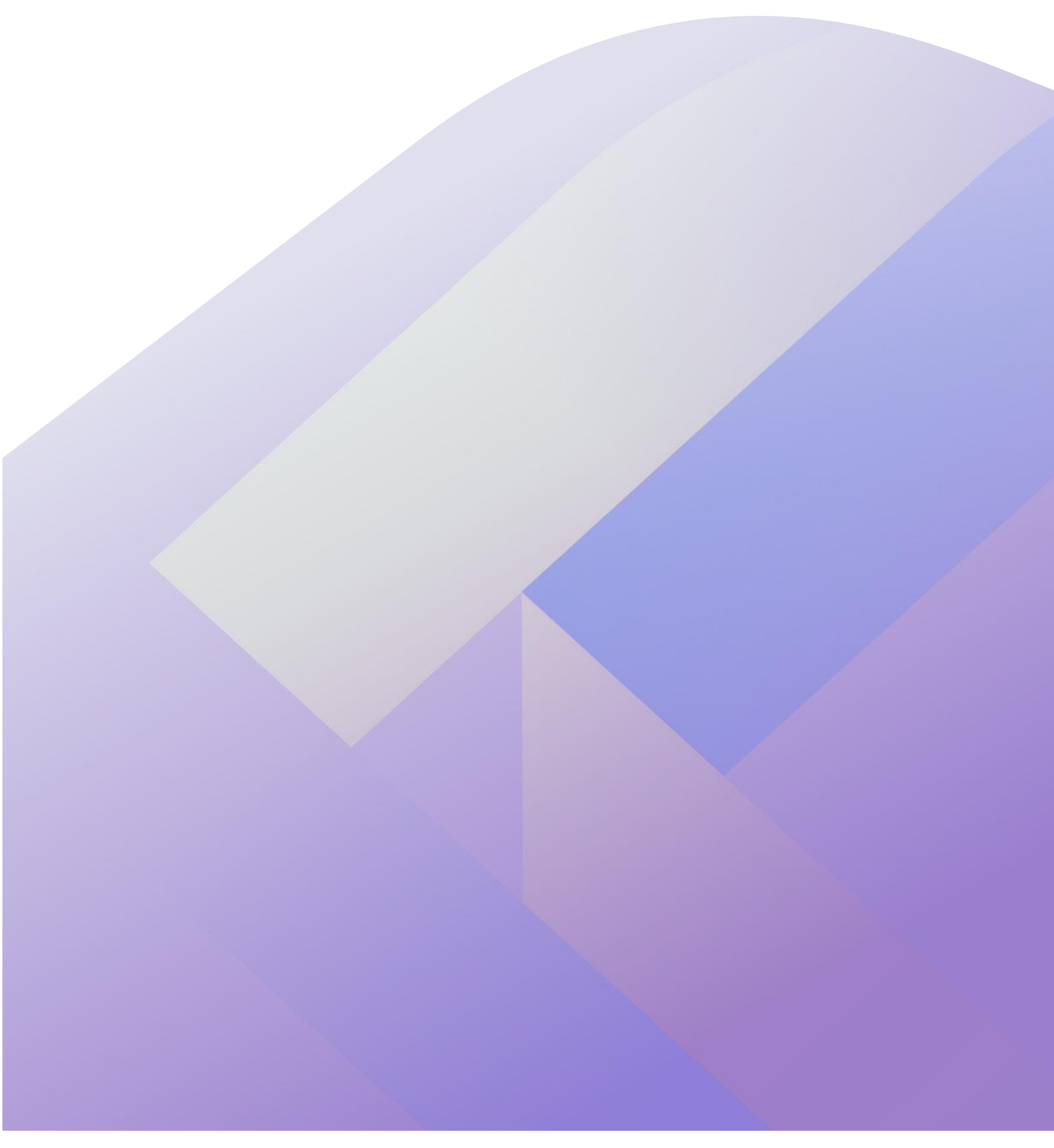


Reply form

On the review of the UCITS Eligible Assets Directive



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. **respond to the question stated;**
2. **indicate the specific question to which the comment relates;**
3. **contain a clear rationale; and**
4. **describe any alternatives ESMA should consider.**

ESMA will consider all comments received by **Wednesday 7 August 2024**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Call for Evidence in this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_EADC_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_EADC_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_EADC _ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at <https://www.esma.europa.eu/press-news/consultations/call-evidence-review-ucits-eligible-assets-directive> under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This Call for Evidence is of particular interest for investors and consumer groups interested in retail investment products, management companies of Undertakings for Collective Investment in Transferable Securities (UCITS), self-managed UCITS investment companies, depositaries of UCITS and trade associations.

1 General information about respondent

Name of the company / organisation	AMUNDI
Activity	Asset Management
Country / Region	France

2 Questions

Q1 In your view, what is the most pressing issue to address in the UCITS EAD with a view to improving investor protection, clarity and supervisory convergence across the EU?

<ESMA_QUESTION_EADC_1>

The UCITS brand is central to the EU investments and savings market, as an effective framework for diversified, liquid and transparent products, **particularly valuable for retail investors. We strongly believe that the UCITS and Eligible Assets Directives do not need to be re-opened. Instead EU financial markets need regulatory stability at least for such pieces of regulation that have functioned well for several decades.** And this notably in a context of multiple recent regulatory evolutions, on the one hand, and where EU markets face strong non-EU competition and a challenging economic environment, on the other hand. Indeed, **only a few interpretation disparities among National Competent Authorities need to be clarified and harmonised (e.g. delta-one products), preferably through guidelines or Q&As,** in order to diminish the EU market fragmentation, and to further increase the efficiency and competitiveness of EU markets.

<ESMA_QUESTION_EADC_1>

Q2 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD rules with respect to financial indices? If so, please describe any recurring or significant issues that you have experienced and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence. Where relevant, please specify what indices this relates to and what were the specific characteristics of

those indices that raised doubts or concerns. Where possible, please provide data to substantiate the materiality of the issue.

<ESMA_QUESTION_EADC_2>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_2>

Q3 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD rules with respect to money market instruments? If so, please describe the issues you have experienced and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence. Where relevant, please describe the specific characteristics of the money market instruments that raised doubts or concerns.

<ESMA_QUESTION_EADC_3>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_3>

Q4 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD provisions using the notions of « liquidity » or « liquid financial assets »? If so, please describe the issues you have experienced and how you would propose to amend the UCITS EAD to better specify these notions with a view to improving investor protection, clarity and supervisory convergence. Where relevant, please explain any differences to be made between the liquidity of different asset.

<ESMA_QUESTION_EADC_4>

We strongly believe that liquidity management is relevant at portfolio level, as per the recently updated liquidity-management rules, rather than focusing on liquidity concepts definitions, which are always subject to interpretation, as well as cliff and procyclical effects.

The high-level principle of liquidity as the ability to satisfy investors' redemptions requests should be sufficient. The liquidity risk management (LRM) sets and maintains adequate rules

and processes to ensure compliance with this principle. Thus, liquidity of a single asset should be considered from a fund portfolio perspective.

Moreover, the recent reviews of UCITS and AIFM Directives have further enhanced both investor protection and financial stability, through new requirements regarding the use of liquidity management tools by UCITS and AIFs. We consider such a change in UCITS regulatory framework as instrumental, as it addresses the liquidity management of UCITS with the right angle.

<ESMA_QUESTION_EADC_4>

Q5 The 2020 ESMA CSA on UCITS liquidity risk management identified issues with respect to the presumption of liquidity and negotiability set out in UCITS EAD. In light of the changed market conditions since 2007, do you consider such a presumption of liquidity and negotiability still appropriate? Where possible, please provide views, data or estimates on the possible impact of removing the presumption of liquidity and negotiability set out in the UCITS EAD.

<ESMA_QUESTION_EADC_5>

We have not identified major concerns regarding this topic. The presumption of liquidity and negotiability set out in UCITS EAD is sufficient as long as the portfolio-level Liquidity Risk Management complies with the large set of rules adopted in this area since 2007, and strongly enhanced under the recent reviews of AIFM and UCITS Directives.

<ESMA_QUESTION_EADC_5>

Q6 Please explain your understanding of the notion of ancillary liquid assets and any recurring or significant issues that you might have experienced in this context. Please clarify if these are held as bank deposits at sight and what else is used as ancillary liquid assets. Where relevant, please distinguish between ancillary liquid assets denominated in (1) the base currency of the fund and (2) foreign currencies.

<ESMA_QUESTION_EADC_6>

Despite various definitions and/or interpretations of ancillary liquid assets among NCAs, we have not encountered major issues related to this topic.

<ESMA_QUESTION_EADC_6>

Q7 Beyond holding currency for liquidity purposes, do you think UCITS should be permitted to acquire or hold foreign currency also for investment purposes, taking into account the high volatility and devaluation/depreciation of some currencies? Where relevant, please distinguish between direct and indirect investments.

<ESMA_QUESTION_EADC_7>

Holding currency should continue to be permitted for both liquidity and/or investment purposes, as long as the related currency risk, which we consider as the most important parameter to monitor, is in line with the fund's investment strategy as described in the prospectus.

<ESMA_QUESTION_EADC_7>

Q8 Have you observed any recurring or significant issues with the interpretation or consistent application of the 10% limit set out in the UCITS Directive for investments in transferable securities and money market instruments other than those referred to in Article 50(1) of the UCITS Directive? If so, please explain the issues and how you would propose to address them in the UCITS EAD with a view to improving investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_8>

For considerations related to look-through approaches, delta-one products, exchange-traded products, please refer to our responses to [Q13 and Q14](#).

Except for these, we have not encountered noteworthy issues linked with the application of the 10% limit within Article 50(1) of UCITSD.

While additional types of assets could be allowed within this limit, for instance EU collective investment schemes that do not comply with the article 50(1)(e), this is not a material issue.

<ESMA_QUESTION_EADC_8>

Q9 Are the ‘transferable security’ criteria set out in the UCITS EAD adequate and clear enough? If not, please describe any recurring or significant issues that you have observed and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_9>

We have not identified major concerns regarding the ‘transferable security’ criteria set out in the UCITS EAD.

<ESMA_QUESTION_EADC_9>

Q10 How are the valuation and risk management-related criteria set out in the UCITS EAD interpreted and applied in practice, in particular the need for (1) risks to be “adequately captured” by the risk management process and (2) having “reliable” valuation/prices. Please describe any recurring or significant issues that you have observed with the interpretation or consistent application of these criteria and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_10>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_10>

Q11 Are the UCITS EAD provisions on investments in financial instruments backed by, or linked to the performance of assets other than those listed in Article 50(1) of the UCITS Directive adequate and clear enough? Please describe any recurring or significant issues that you have observed in this respect and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_11>

Please refer to our response to Q13.

<ESMA_QUESTION_EADC_11>

Q12 Is the concept of « embedded » derivatives set out in the UCITS EAD adequate and clear enough? Please describe any recurring or significant issues that you have observed with the interpretation or consistent application of this concept and how you would propose to amend UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_12>

Please refer to our response to Q13.

<ESMA_QUESTION_EADC_12>

Q13 Linked to Q11 and Q12, ESMA is aware of diverging interpretations on the treatment of delta-one instruments under the EAD, taking into account that they might provide UCITS with exposures to asset classes that are not eligible for direct investment (see also Section 3.2). How would you propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence? Please provide details on the assessment of the eligibility of different types of delta-one instruments, identify the issues per product and provide data to support the reasoning.

<ESMA_QUESTION_EADC_13>

Indeed, there are diverging interpretations among National Competent Authorities (NCAs) regarding delta-one instruments, including exchange-traded products (e.g. REITs, exchange-traded commodities – ETCs, and exchange-traded notes – ETNs). As an example, some NCAs consider that a 1-to-1 replication should not be systematically interpreted as embedding a derivative (e.g. Germany, Luxembourg), and liquid products traded on a major exchange should be considered as eligible, irrespective of their structure and underlying asset class (e.g. Germany, Luxembourg, Spain), thus exempting them from a look-through approach. In contrast, other NCAs consider delta-one products as embedding a derivative by default, and hence subject to a look-through treatment (e.g. France).

These **conflicting national implementations of the EAD lead to a fragmented EU market and an unlevel playing field**, where some European investors have access to funds invested in delta-one products, while other European investors, in other Member States (e.g. France), do not. Indeed, in jurisdictions with a look-through approach, such as France, funds are denied the possibility to invest in exchange-traded products (ETPs) that offer exposure to non-eligible

asset classes (e.g. commodities). This fragmentation is obviously **contrary to the objectives of the Capital Market Union (CMU) and hence calls for a EU-wide harmonised interpretation of the EAD on this particular topic.**

Since the UCITS brand is very important for EU investments, especially for the retail markets, its high standards of diversification and transparency should be maintained. As such, it would be reasonable to analyse **delta-one products with a look-through approach, and to include their non-eligible underlyings in funds' 10% limit of Article 50(2)(a).** These exposures should be allowed, as they can bring important diversification and return benefits, while being managed within existing sound risk limits and constraints.

We strongly believe that such a harmonised interpretation should be clarified at EU-level through guidelines or Q&As, avoiding to re-open the EAD. Indeed, in a context of continuously and rapidly-changing regulatory requirements, challenging economic context and high competition from non-EU actors, it is paramount that the CMU be supported through regulatory stability for topics that are well functioning such as UCITS Directive and EAD.

<ESMA_QUESTION_EADC_13>

Q14 Have you observed any recurring or significant issues with the interpretation or consistent application of the rules on UCITS investments in other UCITS and alternative investment funds (AIFs)? In this context, have you observed any issues in terms of the clarity, interaction and logical consistency between (1) the rules on investments in UCITS and other open-ended funds set out in the UCITS Directive and (2) the provisions on UCITS investments in closed ended funds set out in the UCITS EAD? Please describe any recurring or significant issues that you have observed in this respect and how you would propose to amend the relevant rules to improve investor protection, clarity and supervisory convergence. Where relevant, please distinguish between different types of AIFs (e.g. closed-ended, open-ended), investment strategies (real estate, hedge fund, private equity, venture capital etc.) and location (e.g. EU, non-EU, specific countries). In this context, please also share views on whether there is a need to update the legal wording used in the UCITS EAD and UCITS Directive given the fact that e.g. they refer to 'open-ended' and 'closed ended funds', whereas it might seem preferable to use the notion of 'AIFs' by now given the subsequent introduction of the AIFMD in 2011.

<ESMA_QUESTION_EADC_14>

In France there are two issues:

1. UCITS are forbidden to invest in a large majority of non-UCITS funds due to an incorrect translation into French of the EAD

French investors are penalised compared to the ones in other Member States, as they cannot benefit from UCITS invested in AIFs. This is due to an incorrect translation into French of “*asset segregation*” as “*asset division*” in article 50(1)(e)(ii) of the UCITS Directive regarding funds’ investments in other UCITS and other collective undertakings (namely “*règles relatives à la division des actifs*” instead of “*segrégation des actifs*”).

Given that one of the conditions for UCITS to be allowed to invest in non-UCITS funds is the latter’s segregation of assets, the above-mentioned incorrect French translation led the AMF to require, instead of this condition, that underlying non-UCITS funds comply with risk-division rules (the so-called “5/10/20/40” rule in UCITS Article 52).

However, while the asset segregation rule does apply to AIFs, the risk-division one does not. Consequently, the erroneous substitution of the asset segregation rule with the risk-division one in France effectively excludes many AIFs from UCITS underlyings, while they are allowed in all other Member States.

2. The governance requirement in Article 2(2) of the EAD is not directly applicable to the majority of French funds, which are not legal entities, but to their management companies.

Indeed the majority of French funds are FCPs (Fonds Communs de Placement), without legal personality, contrary to the SICAV (Société d’Investissement A Capital Variable). For the former, it should be clarified through Q&As that governance requirements apply to the management company of the funds, as it is in charge with these topics.

More generally, it should be clarified that the exclusion of open-ended funds as underlyings of UCITS, does not apply to regulated funds such as the AIFs and ELTIFs.

Currently, the EAD only allows closed-ended funds within the 10% limit in Article 50(2)(a), hence excluding other types of funds. Nonetheless, some open-ended funds have become subject to comprehensive regulation since the drafting of this requirement, and notably open-ended AIFs and ELTIFs.

<ESMA_QUESTION_EADC_14>

Q15 More specifically, have you observed any recurring or significant issues with the interpretation or consistent application of the rules on UCITS

investments in (1) EU ETFs and (2) non-EU ETFs? Please describe any issues that you have observed in this respect and how you would propose to amend the relevant rules to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_15>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_15>

Q16 How would you propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence with respect to the Efficient Portfolio Management (EPM)-related issues identified in the following ESMA reports: (1) Peer Review on the ESMA Guidelines on ETFs and other UCITS issues; (2) Follow-up Peer Review on the ETF Guidelines; and (3) CSA on costs and fees. In this context, ESMA is interested in also gathering evidence and views on how to best address the uneven market practices with respect to securities lending fees described in the aforementioned ESMA reports with a view to better protect investors from being overcharged.

<ESMA_QUESTION_EADC_16>

The existing regulations are satisfactory.

EPM techniques have long been a source of additional performance for UCITS shareholders. This extra-revenue stems from the offering of multiple services and from the know-how of the lending agent that is in charge of implementing these specific activities. EPM techniques cover a value-chain that includes various tasks and requires several capabilities such as:

- The sourcing of market interests,
- The management of the collateral,
- The assessment of counterparty risk,
- The implementation of detailed disclosure requirements.

The necessary set-up to provide such services results from significant investments and requires regular additional ones, not to mention their running costs. Consequently, as the ESMA peer review on the guidelines provides a clear framework, any provision that would

excessively tighten the rules covering EPM techniques could impair their well-functioning at the expense of UCITS shareholders.

We thus propose not to amend the UCITS EAD with respect to EPM-related issues identified in the two reviews and the CSA mentioned in the question.

<ESMA_QUESTION_EADC_16>

Q17 Would you see merit in linking or replacing the notion of EPM techniques set out in the UCITS Directive and UCITS EAD with the notion of securities financing transaction (SFT) set out in the SFTR? Beyond the notions of EPM and SFT, are there any other notions or issues raising concerns in terms of transversal consistency between the UCITS and SFTR frameworks?

<ESMA_QUESTION_EADC_17>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_17>

Q18 Apart from the definitions and concepts covered above, are there any other definitions, notions or concepts used in the UCITS EAD that may require updates, further clarification or better consistency with definitions and concepts used in other pieces of EU financial legislation, e.g. MiFID II, EMIR, Benchmark Regulation and MMFR? If so, please provide details on the issues you have observed and how you would propose to clarify or link the relevant definitions or concepts.

<ESMA_QUESTION_EADC_18>

We have not identified major concerns regarding this topic.

<ESMA_QUESTION_EADC_18>

Q19 Are there any national rules, guidance, definitions or concepts in national regulatory frameworks that go beyond ('gold-plating'), diverge or are more

detailed than what is set out in the UCITS EAD? If so, please elaborate whether these are causing any recurring or significant practical issues or challenges.

<ESMA_QUESTION_EADC_19>

Please refer to our responses to Q13 and Q14.

<ESMA_QUESTION_EADC_19>

Q20 Please fill in the table in the Annex to this document on the merits of allowing direct or indirect UCITS exposures to the asset classes listed therein, taking into account the instructions provided in the same Annex. Please assess and provide evidence on the merits of such exposures in light of their risks and benefits taking into account the characteristics of the underlying markets (e.g. availability of reliable valuation information, liquidity, safekeeping). To substantiate your position, please fill the table with any available data and evidence (e.g. on liquidity or valuation of the relevant asset classes and underlying markets). ESMA acknowledges that the availability of data on direct/indirect exposures to some of the asset classes listed in this table is limited and would welcome receiving any available data (whether on individual market participants and products or market-wide) and even rough estimates that help to understand the practical relevance of the relevant asset class for UCITS and the possible impact of any future policy measures.

<ESMA_QUESTION_EADC_20>

There are no additional remarks outside those already raised within the other questions of the consultation.

<ESMA_QUESTION_EADC_20>

Q21 Please elaborate and provide evidence on how indirect exposures to the aforementioned asset classes (e.g. through delta-one instruments, ETNs, derivatives) increase or decrease costs and/or risks borne by UCITS and their investors compared to direct investments.

<ESMA_QUESTION_EADC_21>

<ESMA_QUESTION_EADC_21>

Q22 Under the EAD, should a look-through approach be required to determine the eligibility of assets? Please explain your position taking into account the aforementioned risks and benefits of UCITS gaining exposures to asset classes that are not directly investible as well as the increased/decreased costs associated with such indirect investments. A look-through approach would aim to ensure that the list of eligible asset classes set out in the UCITS Level 1 Directive would be deemed exhaustive and reduce risk of circumvention by gaining indirect exposures to ineligible asset classes via instruments such as delta-one instruments, exchange-traded products or derivatives. Where possible, please provide views, data or estimates on the possible impact of such a possible policy measure.

<ESMA_QUESTION_EADC_22>

Please refer to our response to Q13.

<ESMA_QUESTION_EADC_22>

Q23 What are the risks and benefits of UCITS investments in securities issued by securitisation vehicles? Please share evidence and experiences on current market practices and views on a possible need for legislative clarifications or amendments.

<ESMA_QUESTION_EADC_23>

Securitisations have been a long-dated eligible asset under the UCITS Directive. These specific financial instruments provide UCITS investors with two major benefits:

- credit exposure to asset classes that are rarely available through traditional bond holdings, such as loans to households, pooled in Asset Backed Securities (ABS) and Residential Mortgage Backed Securities (RMBS), corporate leveraged loans accessible through Collateral Loan Obligations (CLOs) or commercial real estate loans through Commercial Mortgage Backed Securities (CMBS);
- the possibility to adjust the targeted risk/return profile by investing in the appropriate tranches (super senior, senior, mezzanines or equity tranches).

The main risk of securitisations lies in the difference between the expected cash-flows generated by the underlying assets vs. the actual cash-flows. This is due to the fact that the pool of securitised assets may evolve across time in a different way from the one expected or modelled. Differences may generally arise from:

- interest rate volatility, than can lead, for example, retail borrowers to prepay their mortgages more rapidly, or more slowly than initially expected;
- values of the safeties that mitigate the risk (i.e. income of ABS, and additionally property prices for mortgages) distinct from the estimated ones;
- higher ex-post default rate or higher default correlation than expected. The latter source of risk is magnified when the collateral is not granular, but consist in a small number of assets (e.g. typically transaction not qualified as STS – Simple, Transparent and Standardised). Such risk is also present when assets are sensitive to a single major external factor (e.g. regulatory change, technological obsolescence), which may be the case for whole-business securitisations. Examples of mitigators of this risk are using large number of underlying assets, and geographical and sectoral diversifications.

<ESMA_QUESTION_EADC_23>

Q24 What are the risks and benefits of permitting UCITS to build up short positions through the use of (embedded) derivatives, delta-one instruments or other instruments/tools? Please share evidence and experiences on current market practice and views on a possible need for legislative clarifications or amendments.

<ESMA_QUESTION_EADC_24>

Short positions should be allowed where necessary to implement the investment strategy of the fund, as described in the fund's prospectus, for instance within long-short investment strategies.

<ESMA_QUESTION_EADC_24>

Q25 Apart from the topics covered in the above sections, have you observed any other issues with respect to the interpretation or consistent application of the UCITS EAD? If so, please describe the issues and how you would propose to revise the UCITS EAD or UCITS Directive with a view to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_25>

No additional remarks outside those already raised within the other questions of the consultation.

<ESMA_QUESTION_EADC_25>