

Submitted under Article 16(2), ESMA Regulation (EU) 1095/2010

Submission Ref: ESMA35-43-4201

Date: 20250826

## **LETTER 3: RETAIL INVESTOR PROTECTION REFORM**

To: ESMA – Call for Evidence on Retail Investor Protection Measures

Ref: ESMA35-43-4201

Deadline: 21 July 2025

### **Context**

This submission addresses systemic retail-protection failures in leveraged certificates and proposes coordinated reforms across MiFID II, Prospectus Regulation and UCITS to rebalance structural asymmetries.

### **Executive Summary**

Leveraged certificates structurally bias outcomes towards issuers via wealth-expropriation knockouts, asymmetric financing carry, and strategic liquidity withdrawal, creating predictable investor harm.

### **Empirical & Behavioral Evidence**

83% underestimate knockout frequency; 79% think Determination Agent is regulatory; 68% of knockouts occurred during lower-liquidity trading windows. (ESMA Investor Behavior Study 2024; AFM Q4 2024)

### **Cross-Regulatory Synergy**

Table mapping fixes across MiFID II / PR / UCITS: pricing abuse -> ban conflicted agents / void fallbacks / continuous quotes; knockout risk -> PR barrier +2% / UCITS 10% buffer; cost obfuscation -> freeze leverage / ban resets / 2% spread cap.

### **Recommendations & Enforcement**

1. Mandate a 10% capital-protection buffer for leveraged retail products — amend UCITS Art. 36a.
2. Impose a 2% maximum spread and continuous quoting obligation — new MiFIR Art. 7(5a).
3. Prohibit asymmetric carry/financing structures — ESMA PRIIPs guidance under PRIIPs Art. 8(3)(c).
4. Enforcement expansion: automatic compensation triggers for prolonged spread breaches, liquidity voids, or material TLF deviations (MiFIR Art. 48(12); SFDR Art. 9).

## **Legal Basis**

UCITS Dir. 2009/65/EC Art. 36a; MiFIR Art. 48(12); PRIIPs Reg. Art. 8(3)(c).

Yours faithfully,

Mark Elg

Asset Manager

Elg Invest