

17 October 2014

Adoption of ESMA's revised guidelines on ETFs and other UCITS issues  
Markets Policy Division  
Central Bank of Ireland  
Block D, Iveagh Court  
Harcourt Road  
Dublin 2

## **CP84 – Consultation on the adoption of ESMA's revised guidelines on ETFs and other UCITS issues**

Dear Sirs

William Fry welcome the opportunity to share our views on CP84 and set out our comments below.

As a general comment, our view is that the implementation of the proposed amendments to ESMA's revised guidelines proposed by the Central Bank in CP84 could put Ireland in a disadvantageous position relative to other European Member States if Ireland's rules on collateral impose upon Irish UCITS additional requirements over and above those stipulated by ESMA. Doing so could put Ireland's position as a leading UCITS domicile at a major disadvantage to other European domiciles and would be contrary to the objective of the ESMA guidelines of having a harmonised approach to collateral management for UCITS across Member States. For this reason and for those outlined below, we oppose the amendments proposed in CP84.

### **1. Do you agree that the concerns of the Central Bank outlined in this paper are valid?**

While we accept the Central Bank has concerns in the area of collateral management we are of the view that these concerns do not justify the proposals outlined in CP84. ESMA engaged in a detailed consultation process over a considerable period of time on management of collateral by UCITS, including a specific consultation on collateral diversification policies. Given the significant period of time spent consulting on the collateral management aspect of the guidelines we are of the view that ESMA's final position as outlined in the final revised guidelines are sufficiently robust to address any concerns. If ESMA were of the view that there were shortcomings in the collateral management policies proposed at that time we would have expected ESMA to have addressed those in their final revised guidelines.

Operating within the new revised guidelines will in itself create considerable challenges for UCITS. Imposing additional requirements which the Central Bank is suggesting over and above ESMA's requirements will add to these operational challenges and may inhibit the efficient movement of collateral between parties. For example, in the context of UCITS money market funds, who are significant users of overnight repos, it is always difficult to know until the end of any given trading day what might be included in a collateral pool which the fund may receive. This will make monitoring that collateral pool, where a fund is fully collateralised in securities of one issuer, to ensure that the six and 30% diversification requirements are observed a real challenge, compounded where multiple counterparties are used. To overlay these diversification requirements with additional requirements, many of which are subjective and difficult to interpret and apply in practice will work against the

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\*Not a member of the law society

Fitzwilton House, Wilton Place, Dublin 2, Ireland. T: +353 1 639 5000 F: +353 1 639 5333 E: [info@williamfry.ie](mailto:info@williamfry.ie) [www.williamfry.ie](http://www.williamfry.ie)

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efficient flow and management of collateral between parties. This ultimately may not be in the best interests of investors.

**2. Do you consider that the Central Bank should implement the ESMA guidelines but limit the derogation to UCITS MMFs?**

No. We firmly believe that no distinction should be made between UCITS money market funds and other UCITS. This point has already been considered by ESMA and as we understand it the Central Bank has already confirmed to ESMA that it is the Central Bank's intention to implement the revised guidelines.

**3. Do you agree with the proposed rule to be included in the UCITS Rulebook? Is there another way to achieve a satisfactory risk mitigation effect?**

For the reasons outlined above, we do not agree with the proposed rule being included in the UCITS Rulebook. We would also note that the provisions of paragraph 43 (e) of the revised ESMA guidelines, as reflected in the draft text, is somewhat confusing— reference to the 20% limit should be by reference to NAV and not as a percentage of the collateral pool as a whole.

Our view is that the requirements stipulated by ESMA are sufficient and no further risk mitigation procedures are required.

**Other comments/observations**

In addition to addressing the questions raised in CP84 we would also raise the following queries and would request that the Central Bank use the opportunity to clarify the queries below when it implements the final ESMA guidelines.

**A. Transitional period**

**UCITS MMFs**

In relation to UCITS MMFs established before 18 February 2013 which do not currently have to comply with the provisions of the original paragraph 43 (e) (i.e. the 20% by NAV in any one issuer limit) could the Central Bank please clarify the following:

- When will UCITS MMFs be required to comply with paragraph 43 (e) of the revised ESMA guidelines?
- Will there be a transitional period to enable UCITS MMFs to realign their collateral pools for the purposes of
  - (a) availing of the derogation from the 20% by NAV issuer limit or
  - (b) ensuring compliance with the 20% by NAV issuer limit if they cannot satisfy the six issues/30% diversification requirements?
- When will the derogation from the 20% by NAV issuer limit become available?
- What is the Central Bank's expectation vis a vis prospectus updates before a UCITS MMF can avail of the provisions of paragraph 43 (e) once implemented?

**Non MMF UCITS**

In relation to non MMF UCITS will prospectuses need to be amended before the derogation from the 20% NAV issuer limit in paragraph 43 (e) be availed of? In short, can the derogation be availed of immediately upon implementation or will a prospectus update be required first?

(The revised ESMA guidelines do refer to transitional periods although it is not clear whether these refer only to the disclosure of any issuers in Prospectuses where it is intended to have more than 20% NAV or if the transitional period refers to the requirement to comply in practice with the diversification requirements when the 20% NAV limit is exceeded.)



## **B. Clarification of the six issue/30% diversification rules**

It would also be very helpful if the Central Bank could clarify, as ESMA have failed to do so, whether or not the six issue requirement applies only when a fund is fully collateralised with a single issuer i.e. at 100% NAV or over, or if it applies when the 20% NAV limit is exceeded. If the latter, at what point does the 30% NAV limit in any one issue and the six different issues requirement apply? For example, where a fund holds 40% of NAV in collateral issued by a single issuer, does the 30%/six issue rule apply to that 40% collateral pool?

Yours faithfully

  
William Fry

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