



STATE STREET.

17 October 2014

Via e-mail: fundspolicy@centralbank.ie

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

Consultation Paper 84 – Consultation on the adoption of ESMA's revised guidelines on ETFs and other UCITS - “CP84”

Dear Sir/Madam:

State Street Corporation (“State Street”) appreciates the opportunity to respond to CP84 issued by the Central Bank of Ireland (“CBI”) regarding its adoption of ESMA's revised guidelines on ETFs and other UCITS issues.

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union (“EU”), State Street specialises in providing institutional investors with investment servicing, investment management and investment research and trading. With EUR 28.4 trillion in assets under custody and administration and EUR 2.48 trillion in assets under management, State Street operates in 29 countries and in more than 100 markets worldwide¹. Our European workforce of 9,000 employees provides services to our clients from offices in ten EU Member States and includes 2,000 employees and 5 locations in Ireland.

State Street believes it is very important that the CBI consults with the industry on any topic in which it intends to diverge from the guidelines set at an EU level by ESMA. We set out our responses to the particular questions asked below.

¹ As of June 30, 2014.

Question 1: Do you agree that the concerns of the Central Bank outlined in this paper are valid?

In our response to ESMA's consultation on the revision of its guidelines in relation to the diversification of collateral issued in December 2013, we stressed that the purpose of collateral received by a UCITS is to mitigate counterparty risk rather than to prevent excessive concentration of investments. We highlighted the importance that the collateral is of good credit quality and sufficiently liquid to enable the UCITS to realise the collateral in the market in the event of a counterparty default.

The concern that a UCITS should only be in receipt of collateral of good credit quality is a view that we share with the CBI. However, we do not agree with the CBI's proposals to add to the requirements of ESMA's guidelines as suggested in CP84. ESMA's guidelines already oblige all UCITS to ensure that collateral received meets all of the stipulations as set out in paragraph 43 concerning liquidity, valuation and credit quality among others. The revisions to the diversification rules contained within the guidelines were subject to an EU-wide consultation process and have been adopted by ESMA following careful consideration of the issues and feedback received.

The criteria specified in paragraph 43 of the ESMA guidelines must be met at all times. This means that a UCITS must continually monitor all of the collateral it receives against those criteria, including that the collateral is always of high quality. Further, the UCITS must disclose to investors in its prospectus and its annual statement details and practical application of its collateral policy. Should collateral exceed 30% of its overall NAV, a UCITS must also put in place appropriate and regular stress testing to ensure that there are no liquidity concerns surrounding the collateral pool.

We do not believe that the CBI's proposals add any further safeguards to the ESMA guidelines other than to create an unnecessary requirement to place "additional resources" to a "more frequent and more detailed re-assessment of collateral issuers" where those issuers exceed the 20% limit, the meaning of which is not clear given the requirements of the ESMA guidelines to apply "at all times" in any case.

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

State Street does not agree that the CBI should limit the derogation from the 20% issuer diversification rule only to UCITS Money Market Funds. This approach was initially suggested by ESMA in its December 2013 consultation but was not adopted in its final revised guidelines. As noted in our answer to question 1, the criteria for eligible collateral as set out in ESMA's guidelines are sufficient for ensuring that a UCITS only receives acceptable collateral, which must be of high quality, irrespective of the strategy of the UCITS. A consistent approach to the diversification guidelines for all UCITS should therefore be chosen in line with ESMA's final position and the CBI should not unilaterally create a two-tier approach to collateral diversification.

Question 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?

As noted, State Street does not believe that the CBI should be creating additional requirements for Irish UCITS over and above those requirements contained within ESMA's guidelines. As noted, we do not believe that the CBI's proposals give any additional safeguards to UCITS and their investors and only serve to put Irish UCITS at a disadvantage to other jurisdictions. A significant part of ESMA's mandate is to foster supervisory convergence amongst securities regulators. We believe that any unilateral decision by the CBI to gold-plate ESMA guidelines is contrary to the spirit of ESMA's work in this regard.

We therefore suggest that the CBI does not proceed with any of the additional language in paragraph 5(c) that is not included in the ESMA guidelines. Other than being unnecessary gold-plating, the language refers to "total collateral" being the denominator for assessing the 20% limit, rather than the UCITS' net asset value, which would mean that a UCITS, which was in receipt of only a small pool of collateral, would still need to diversify that pool among at least five issuers to avoid having to apply the CBI's additional requirements. Further, the CBI's suggestion that the collateral's credit quality be assessed by reference to its holding "one of the two highest available ratings by each recognised credit rating agency that has rated the instrument" is also contrary to the amended Credit Rating Agency Regulation which imposes obligations on management companies and investment companies to avoid sole or mechanistic reliance on credit rating agencies for assessing the creditworthiness of a financial instrument.

Finally, we would note that CP84 has already delayed the application of the revised ESMA guidelines in Ireland. We believe that the CBI should adopt the ESMA revisions without any added requirements or undue delay in order to keep Ireland in step with other jurisdictions.

Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Yours faithfully,



Susan Dargan, Head of Global Services Ireland

State Street International (Ireland) Limited