



Press release - 28 January 2020

UCITS KIID benchmark disclosures - the CSSF's expectations

The CSSF published a communication reminding UCITS management companies and self-managed UCITS to include the changes required by the ESMA's Q&A on the UCITS Directive in the upcoming annual UCITS KIID update.

On 27 January 2020, the CSSF published a press release in which it reminded UCITS management companies and self-managed UCITS that their KIIDs needed to include the necessary changes required to comply with the disclosure obligations regarding the reference to benchmark(s) and inclusion of such benchmarks in the past performance chart introduced by the updated ESMA Q&A dated 29 March 2019 no later than at the annual update of the UCITS KIID which is to take place on 19 February 2020.

The CSSF has confirmed that the updated UCITS KIIDs have to be filed with the CSSF via the usual transmission channel. This confirms that updated KIIDs will not be pre-approved by the CSSF and need to be uploaded to the CSSF system according to the usual procedure.

The CSSF has further reminded market participants that in this context the following information must be included in the UCITS KIID:

- a clear indication whether the strategy of the UCITS is active (actively managed) or passive (passively managed);
- an indication of the benchmark index (or indices) the UCITS is tracking or making reference to in order to provide investors with an indication of how actively the UCITS is managed;
- a disclosure on the use of the benchmark, the degree of freedom from the benchmark and the past performance against the benchmark.

One should note that, in particular, the third requirement mentioned above raised questions in the industry as the notion of "use" may create some uncertainties as regards the scope of the disclosure requirement (e.g. use of multiple indices, use of cash rate for calculation of performance fees etc.). Since the notion still leaves room for interpretation, we are in discussion with the CSSF to obtain a clearer understanding of the regulator's expectations in this context.

As the UCITS management company is responsible for the content of the KIID, the CSSF does not expect the updated KIIDs to be submitted to its approval. However, one would expect the CSSF to review some of the updated KIIDs *a posteriori*, in particular in the context of the CSSF's ongoing monitoring based on the ESMA Statement – Supervisory work on potential closet index tracking.

Finally, the CSSF has reminded market participants to assess whether the prospectus needs to be updated

as well. If so, the CSSF expects the prospectus to be aligned with the UCITS KIID at the occasion of the next revision or by the end of 2020, whichever date comes first.

Please liaise with your usual contact in the Fund Formation Team.

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