UCITS : Eligible Assets

Webinar

UCITS Webinar series

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Eligible Assets

Your contacts/speakers

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Agenda

1. Eligible Assets Directive
2. Trends and CSSF expectations
3. Restructuring of UCITS
4. Ancillary liquid assets

Eligible Assets Directive (*Directive 2007/16/EC*)

- **6 June 2023: EC calls on ESMA to provide advice on the Eligible Assets Directive**

- **Specific items under review**

  - Clarification of key definitions & consistent application across Member States
  - Risks and benefits of UCITS gaining exposure to asset classes not directly investable (**delta-one instruments**, **structured products**, **financial indices**)
  - Assess adequacy of asset categories interpreted differently in Member States (**loans**, **catastrophe bonds**, **emission allowances**, **commodities**, **crypto assets**, **unlisted equities,** etc)

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Eligible Assets Directive (*Directive 2007/16/EC*)

- **Industry reactions**
  - Great value in pursuing greater transparency and consistency while preserving UCITS' ability to invest in non-directly investable asset classes
  - Benefits of UCITS gaining exposure to non-directly investable asset classes (delta-one notes, financial indices)
    - CMU Action Plan & RIS goals: boost retail participation in the capital market
    - Performance & return opportunities (economic context) provided that sufficient diversification and transparency is ensured Industry reactions
- **Next steps**
  - ESMA recommendation expected by **31 October 2024**
  - Public consultation to take place

Trends and CSSF expectations

- **General observation** – CSSF strengthening its practice re. certain asset classes (more convergence & standardized processes across the board
  - ***Securitisation Regulation (ABS, MBS, CLOs, etc)***

    → CSSF questionnaire, due diligence requirements, risk team review, EC report of October 2022
  - ***Distressed securities, below IG and unrated securities***

    → 20% limit, disclosure requirements (downgrade policy)
  - ***CoCos***

    → potential limitations to marketing to “mass” retail investors, disclosure requirements
  - ***Article 8 & article 9 products***

    → Investment breach qualification, SFDR confirmation letter & CSSF expectations
  - ***Structured financial products***

    → Availability of valuation & monitoring

Trends and CSSF expectations

- **Other trends:**
  - ❑ ***fixed maturity products***
  - → creation of sub-funds with maturities of 3-5 years investing in bonds
  - → limited subscription window and termination of the sub-fund at maturity

  - ❑ ***UCITS participating in debt restructurings***
  - → initial investment in eligible corporate bonds
  - → restructuring of the indebtedness by the company due to financial difficulties
  - → issues with the possibility for a UCITS to participate in the restructuring

Restructuring of UCITS

- **Increasing questions on UCITS restructuring options**
  - ***Side pockets***: promoters considering options following the suspension of some funds in 2022 & investors looking for liquidity or closure

    → CSSF expectations (LMT CSSF FAQ)

    → operational impacts, tax & accounting treatment

    → investor interest, cost allocation

  - ***Splits, merger of share classes & other restructuring operations***: increasing number of promoters going ahead with split or share class mergers

    → compliance with articles of incorporation

    → absence of dedicated procedure under applicable laws

    → cross-border considerations

    → tax & accounting treatment

Clarifications of CSSF expectations

CSSF position - Ancillary liquid assets during ramp up period

- The CSSF UCITS FAQ clarified that holding of ancillary liquid assets (i.e. cash) is subject to a **20% limit** that can be exceeded only for a period of time strictly necessary in case of unfavourable market conditions

→ **The CSSF verbally clarified that the 20% limit applicable to cash provided for in the CSSF FAQ can be disregarded during the ramp up period of 6 months**

CSSF position - Ancillary liquid assets and master/feeder structures

- Master/feeder rules & CSSF UCITS FAQ question 14 when read together seem to indicate that feeder UCITS cannot hold cash equivalents such as MMIs or term deposits as part of the 15% liquid bucket
- It would be appropriate for feeder UCITS to have the ability to invest in such assets

→ **Arendt currently discussing this point with the CSSF with the aim to clarifying how question 14 should apply to feeder UCITS**

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Next webinar

Risk Management for UCITS
6 November 2023

Questions?

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