

## New ESMA Guidance on UCITS KIID Disclosures

The European Securities and Markets Authority (“**ESMA**”) has published updated guidance relating to the disclosures to be made in UCITS KIIDs.

On 29 March 2019, the European Securities and Markets Authority (“**ESMA**”) published an updated version of its **questions and answers** document on the application of the UCITS Directive (“**ESMA UCITS Q&A**”). The updated ESMA guidance will impact on disclosures in the UCITS Key Investor Information Document (“KIID”), with updates to the KIID being required to be made “as soon as practicable” or as part of the next KIID update.

The updates to the ESMA UCITS Q&A follow increased regulatory focus on “closet index-tracking” UCITS and require increased clarity in the KIID as to whether the UCITS is an index-tracking fund or an actively managed fund. The updated guidance will impact in particular on: (1) the investment objective and policy section; and (2) the past performance section of the KIID.

The changes introduced by the updated ESMA UCITS Q&A are set out below.

### **Past Performance Disclosure where Target, not “Benchmark”, Named**

The Q&As on past performance have been modified to clarify that, where funds name a target in their investment objectives and policies, the performance should be disclosed against the target, even if the comparator is not named a "benchmark" eg, where the strategy is to seek to outperform three month EURIBOR, the past performance section should show the fund’s performance against the target.

### **Consistency of Past Performance Disclosure in all Investor Materials**

Performance disclosed in the KIID should be consistent with performance disclosures in other investor materials, including marketing materials. It would therefore be necessary to consider any instances where, for example, a marketing brochure includes reference to a benchmark but this is not set out in the prospectus and KIID, or where references to benchmarks can vary between the fund documents and marketing materials.

### **Active or Passive?**

KIIDs must indicate whether a strategy is active or passive in the objective and policy section. It is recommended that the terms “passive” or “passively managed” in addition to “index tracking” are used, or “active” or “actively managed”, and that in each case, the meaning of those terms is made clear. It is also recommended that it is made clear where an active UCITS is not managed in reference to a benchmark. Where an active UCITS is managed in reference to an index, it must disclose this in the objective and policy and past performance sections, and indicate the degree of freedom from the benchmark. The ESMA UCITS Q&A includes new commentary on how to indicate the degree of freedom from the benchmark, along with suggested sample disclosures.

### **Meaning of “UCITS Managed in Reference to a Benchmark Index”**

The updated ESMA UCITS Q&A provides new guidance on the assessment of whether a UCITS is managed in reference to a benchmark index, as referred to in the KIID Regulation (Commission Regulation No 583/2010). ESMA states that, where a benchmark index plays a role in the management of the UCITS, for example in the explicit or implicit definition of the UCITS composition and / or performance objectives and measures, then this should be disclosed. The ESMA UCITS Q&A provides a non-exhaustive list of examples where an approach may include or imply reference to a benchmark and where the UCITS should disclose that it is managed in reference to a benchmark, and that list includes: (a) where the UCITS uses a benchmark as a universe from which to select securities (even where only a minority of securities listed in the index are held in the UCITS and the weightings diverge from that in the index); (b) the UCITS portfolio holdings are based on holdings of a benchmark index; or (c) the UCITS invests in other collective investment schemes in order to achieve similar performance to a benchmark.

### **Next Steps for UCITS Managers**

UCITS managers should take steps to ensure that their UCITS KIIDs are in compliance with the updated ESMA UCITS Q&A. This will involve determining whether the UCITS is active or passive. Where the UCITS is active, the manager will have to determine whether the UCITS is managed in reference to a benchmark and then assess the degree of freedom the UCITS has relative to that benchmark. The investment objective and policy section of the KIID should be updated to reflect these determinations and the past performance section of the KIID should include the past performance of the benchmark, where relevant. All marketing materials and distribution channels ought to be reviewed to ensure the consistency of disclosure of past performance throughout. As noted above, the changes ought to be made to the KIID “as soon as practicable” or by the next KIID update following the publication date of the updated ESMA UCITS Q&A (29 March 2019).

*Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.*

*Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at [www.matheson.com](http://www.matheson.com).*

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