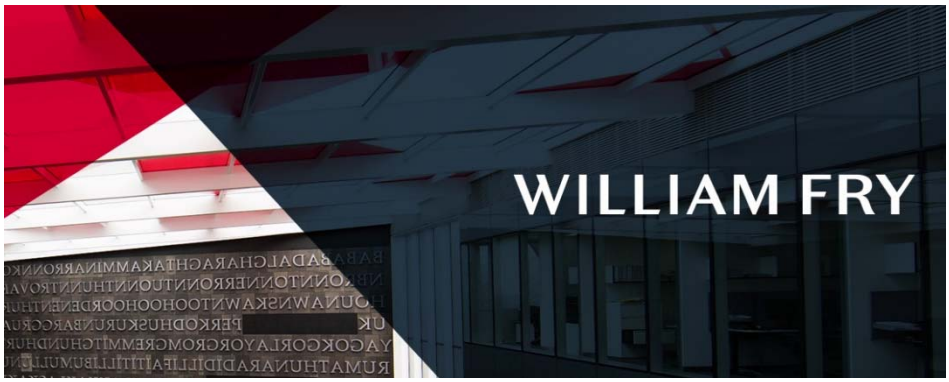
# Asset Management & Investment Funds Update – April 2019




# No-Deal Brexit Developments

## *ESMA clarifies restriction to trading on UK markets in no-deal Brexit scenario*

ESMA, acknowledging that one of the main financial markets is leaving the EU, issued a statement on 20 March 2019 clarifying the ability of investments firms to continue to use UK markets to satisfy their regulatory share trading obligations in the event of a no-deal Brexit.

***Regulatory obligation for trading shares on EU markets (the 'share trading obligation')***

Investment firms are obliged (under Article 23 MiFIR) to trade shares having a liquid EU market on an EU regulated market, MTF or systematic interaliser or a third-country venue assessed as equivalent by the European Commission (each a Qualifying EU Market). In this instance, a liquid EU market for shares is a market on which shares are traded systematically and frequently.

***Post-Brexit status of UK markets***

When the UK leaves the EU, ESMA notes that UK markets will become third-country venues and to date, the European Commission has not assessed any UK market (including the LSE) as equivalent. Therefore, investment firms could be precluded from using UK markets to meet their regulatory obligation to trade on Qualifying EU Markets.

***Impact of no-deal Brexit***

Many UK listed shares would also be traded on a liquid basis in the EU due to the interconnectedness between the UK and EU markets. Under the share trading obligation, these shares would be required to be traded on a Qualifying EU Market. In the event of a no-deal Brexit and in the absence of an equivalence decision, UK markets will not be Qualifying EU Markets. Therefore, firms may be precluded from trading many UK listed shares on UK markets and would instead be required to trade such shares on a Qualifying EU Market.

***ESMA mitigation measures***

ESMA has sought to provide clarity and mitigate any adverse effects of this consequence of Brexit by assuming the following for shares traded in the EU27, EEA and the UK in the event of a no deal Brexit:

- shares with EU or EEA ISIN prefixes must be traded on Qualifying EU Markets, and
- shares with GB ISINs are permitted to be traded on UK markets unless those shares qualify as liquid in the EU27.

A list of ISINs that, under the above, would be required to trade on a Qualifying EU Market is appended to ESMA's statement.

While ESMA's recognition of what it describes as unaccounted for "complications" in complying with the share trading obligation in the event of a no-deal Brexit may be welcome, industry may consider the mitigating measures do not go far enough to meaningfully address the issue. The inability to automatically deem UK listed shares as falling outside the share trading obligation and the absence of concrete guidance on what constitutes market liquidity are likely to be considered unhelpful elements of ESMA's approach to the issue. These elements could significantly negate the benefit of ESMA's mitigating measures by effectively preventing the trading of UK listed shares on UK markets which are also dual listed on an EEA market.

## *ESMA confirms UK derivatives markets ineligible to meet MiFIR derivative trading obligation*

On 21 March 2019, ESMA published a statement on the impact of a no-deal Brexit on the derivative trading obligation under Article 28 MiFIR.

Similar to the above-mentioned share trading obligation, the derivative trading obligation obliges investment firms to conclude transactions in a prescribed set of derivatives (several classes of interest rate and credit derivatives) on EU regulated markets, multilateral trading facilities, organised trading facilities or equivalent third-country venues. As no UK derivatives market has been assessed as equivalent by the European Commission, post-Brexit UK derivatives markets will not qualify as trading venues on which derivatives, subject to the MiFIR derivative trading obligation, can be traded.

ESMA does not propose any mitigation measures in its statement but is of the view that any gap in available derivative trading venues as a result of the UK's exit from the EU will be addressed through the addition of new venues to its public register of eligible trading venues. ESMA has recently updated the register with new entities authorised in France and the Netherlands and is also aware of several UK trading venues which have established/are in the process of establishing new EU trading venues which will offer the same product portfolio in the EU27 as they are currently offering in the UK.

## *ESMA issues update on the use of UK CRAs' credit ratings for 'regulatory purposes'*

On 15 March 2019, ESMA issued an update to its November 2018 statement in relation to the use of UK credit rating agencies (CRAs) in a no-deal Brexit scenario. The Regulation on CRAs (1060/2009) (the CRA Regulation) provides that in-scope entities, including UCITS, UCITS management companies and AIFMs, may use credit ratings for regulatory purposes (i.e. when required to do so to comply with EU law e.g. under the MMFR) only if they are issued by credit rating agencies established in the EU and registered in accordance with the CRA Regulation.

In the event of a no-deal Brexit, UK credit rating agencies would become third-country agencies and their registration under the CRA Regulation would be withdrawn. As a result, credit ratings issued by such CRAs would no longer be usable for regulatory purposes.

In response to ESMA's requests to UK-based CRAs in respect of Brexit contingency plans, entities have either transferred their business to the EU27 or have taken the necessary steps to avail of the 'endorsement' regime under the CRA Regulation. This regime allows for credit ratings issued by third country CRAs to be endorsed by an EU27 CRA as usable for regulatory purposes. ESMA notes that the conditions necessary to allow for the endorsement of UK credit ratings should be in place in the event of a no-deal Brexit and, to date, ESMA has received notification of the intended endorsement by an EU 27 CRA of all but one UK CRA.

# Timeframe fixed for SFT reporting

On 22 March 2019, a series of Delegated and Implementing Regulations supplementing the Securities Financing Transactions Regulation (SFTR) (Supplementing Regulations) were published and will enter into force on 11 April 2019. The publication of these Supplementing Regulations triggers the commencement of the transitional arrangements for the reporting obligations set out in Article 4 of the SFTR.

***What is the SFTR?***

The SFTR aims to enhance transparency in the securities financing transaction (SFT) market through the imposition of disclosure and reporting obligations on SFT counterparties.

SFTR has a broad application due to its wide definition of SFT, the extent of in scope counterparties and the absence of any exemption for de minimus amounts of transactions.

***What is an SFT under the SFTR?***

The definition of SFT includes repos, securities lending or borrowing, commodities lending or borrowing, sell-buy and buy-sell backs and margin lending.

***Who is in scope?***

Any SFT counterparty established in the EU (including all its branches irrespective of location) or in a third-country if the SFT is concluded in the course of operations of a branch in the Union of that counterparty. UCITS, AIFs, UCITS management companies and AIFMs are all in scope.

***When do SFTR obligations apply?***

The bulk of the provisions under the SFTR have been in force since 12 January 2016. In addition, any transitional arrangements, save for those in respect of the Article 4

reporting obligations, have now concluded. The requirements for periodical report disclosures (applied from 13 January 2017), pre-contractual disclosures (applied from 13 July 2017 for existing UCITS or AIFs) and on reuse of collateral (applied from 13 July 2016) are all now in force.

Therefore, the reporting obligations are the last of the SFTR provisions to come into effect and are being phased in with applicable commencement dates determined by reference to the authorisation status of the reporting counterparty.

***What is the impact of the recently published Supplementing Regulations?***

The transitional arrangements for the SFTR reporting obligations referenced the date of publication of the Supplementing Regulations as the commencement date for the transitional periods. Accordingly, their publication allows for the identification of the dates on which the reporting obligations will come into force, as set out in the table below.

Of the eight Supplementing Regulations published, six are concerned with the role of trade repositories (TRs) while the remaining two will be of most interest to funds and their managers in complying with their SFT reporting obligations. These are Delegated Regulation 2019/356, which specifies the details of SFTs to be reported to TRs, and Implementing Regulation 2019/363, which lays down the required format and frequency of SFT reports. These regulations establish a standardised approach to the reporting of SFTs in compliance with the SFTR and incorporate annexes setting out the prescribed transaction details and report format to be used for reporting SFTs to TRs.

***When must I start reporting SFTs?***

| COUNTERPARTY TYPE | TRANSITIONAL PERIOD (ALL PERIODS COMMENCE ON 11 APRIL 2019) | REPORTING COMMENCEMENT DATE | SFT IN SCOPE FOR REPORTING |
|---|---|---|---|
| Investment firms & credit institutions | 12 months | 11 April 2020 | SFTs concluded on or after 11 April 2020** |
| CSDs & CCPs | 15 months | 11 July 2020 | SFTs concluded on or after 11 July 2020** |
| All other FCs (including UCITS management companies & AIFMs*) | 18 months | 11 October 2020 | SFTs concluded on or after 11 October 2020** |
| NFCs | 21 months | 11 January 2021 | SFTs concluded on or after 11 January 2021** |

*Where a UCITS or AIF is a counterparty to a SFT and has appointed a manager, its manager is responsible for reporting that transaction to a TR on behalf of the fund.

**SFTs concluded before the relevant date of application are also in scope if they remain outstanding on that date of application with a remaining maturity on that date that exceeds 180 days or have an open maturity and remain outstanding 180 days after that date.

***What must I report and to whom?***

Both counterparties (or their appointed delegates) are obliged to report SFTs entered into and any modification or termination of the SFT, to an ESMA registered or recognised (in the case of non-EU) TR, or directly to ESMA where one is not available. ESMA maintains a list of registered TRs which can be accessed via its website.

The following information is required to be reported in the form and detail prescribed by the Delegated Regulation and Implementing Regulation cited above:

- parties to the SFT and, where different, the beneficiary of the rights and obligations arising therefrom including whether the reporting party is a collateral provider or a collateral taker;
- the principal amount;
- the currency;
- the assets used as collateral and their type, quality and value;
- the method used to provide collateral;
- whether collateral is available for reuse;
- in cases where the collateral is distinguishable from other assets, whether it has been reused;
- any substitution of the collateral;
- the repurchase rate, lending fee or margin lending rate;
- any haircut;
- the value, maturity and first callable dates;
- the market segment;
- cash collateral reinvestment details (if applicable); and
- securities or commodities being lent or borrowed (if applicable).

***Impact of no-deal Brexit on SFTR***

The reporting obligations and reuse transparency requirements under the SFTR are disapplied for certain bodies including members of the European System of Central Banks (ESCB), other Member States' bodies performing similar functions and other Union public bodies charged with, or intervening in, the management of public debt. Following the UK's departure from the EU, the Bank of England and UK institutions involved in managing the public debt would no longer come within the terms of such provision. To address this, the Commission has adopted a Delegated Regulation which extends the list of excluded entities under the SFTR to include UK institutions. This Regulation will take effect on the day following Brexit.

In respect of UK TRs, ESMA has noted that "in a no-deal Brexit scenario, TRs…established in the UK will lose their

EU registration as of the UK's withdrawal date" however, "UK-based…TRs currently registered with ESMA have implemented contingency plans in preparation of a no-deal Brexit scenario." Accordingly, and as the first SFT reports are not due to be submitted until April 2020, the impact of a no-deal Brexit should be minimal.

# Central Bank permits Irish funds invest through Bond Connect

On 29 March 2019, the Central Bank updated its UCITS and AIFMD Q&A documents to include Q&As addressing the requirements for an Irish fund investing in Chinese bonds through Bond Connect and thus paving the way for the use of such infrastructure by Irish funds.

Similar to its Q&As on Stock Connect, the Central Bank expects the depositary of the fund to retain control over the bonds acquired through Bond Connect and, through continuous review, to ensure it meets its safe-keeping obligations on an ongoing basis.

Bond Connect is a mutual bond market access programme, established in July 2017 between Hong Kong and Mainland China, which allows international investors access the Mainland China Interbank Bond Market (CIBM).

Bond Connect, along with Stock Connect which links the Shanghai, Shenzhen and Hong Kong equity markets and which the Central Bank cleared Irish funds to access in July 2015, is part of the Hong Kong Exchanges and Clearing Limited's (HKEX) 'Mutual Market' programme. Currently over 300 international institutional investors enter the CIBM through Bond Connect and on 22 February 2019, Bond Connect Company Limited, the joint venture of China Foreign Exchange Trade System and HKEX established to support Bond Connect related trading services, launched its Primary Market Information Platform. This is the first English-language portal for the dissemination of Chinese primary bond market information which "provides timely and reliable information on new Chinese bond issuances to global Bond Connect users".

While there are certain differences between the programmes, Bond Connect, like Stock Connect, represents a straightforward and efficient market access alternative to the Qualified Foreign Institutional Investor (QFII) and Renminbi Qualified Foreign Institutional Investor (RQFII) regimes.

The ability to efficiently access CIBM is a welcome development for Irish funds in view of the increasing recognition and importance of the Chinese bond market.

# EMIR refit may be in force as early as end May 2019

On 28 March 2019, ESMA published a statement proposing that, following the publication of the Refit text as agreed by the Council and the European Parliament on 6 March 2019, EMIR Refit may be adopted "as early as May 2019 and thus could enter into force…as early as end of May 2019".

ESMA states that, as the published Refit text does not provide for delayed implementation beyond the date it enters into force, those subject to EMIR will need to know, on the date the Refit enters into force, whether they are subject to the clearing obligation under the Refit and equally if they need to notify ESMA and their NCA that they are subject to the clearing obligation.

Therefore, financial counterparties entering into OTC derivatives who elect to calculate whether they are subject to the clearing obligation according to their aggregate month-end average position for the previous 12 months, would need to have the results of that calculation on the day the Refit enters into force. As such, ESMA expects such financial counterparties to begin now collecting all necessary data and information for the calculation in order to be ready for the calculation when the Refit text enters into force, possibly "as early as end of May 2019".

For those financial counterparties who elect not to calculate their aggregate month-end average positions for the previous 12 months, or where the result of that calculation exceeds any of the clearing thresholds, whether previously subject to the clearing threshold or not, are required to immediately notify ESMA and their NCA, on the day the Refit enters into force, that they are subject to the clearing obligation.

# Anti-Money Laundering - New Regulations establish public register of benefical ownership for corporate entities

The publication, on 22 March 2019, of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (the 2019 Regulations) establishes a central register of beneficial owners of shares in Irish corporate entities; the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the Central Register).

The 2019 Regulations also enhance, with effect from **22 March 2019**, the rules for the collection and internal maintenance of information on beneficial owners of shares and their interests which are currently set out in the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the 2016 Regulations).

The 2016 Regulations, which partially transposed Article 30 AMLD4, required corporate entities to hold adequate, accurate and current information on their beneficial ownership in anticipation of the submission of same to a central register. The 2019 Regulations, which effectively update and replace the 2016 Regulations, complete the transposition of Article 30 (as amended by AMLD5).

With effect from **22 November 2019**, the 2019 Regulations require in scope corporate entities to submit the enhanced beneficial ownership information to be maintained internally to the Registrar of the Central Register. In scope entities include ICAVs, UCITS corporate entities, most AIF corporate entities, UCITS management companies and AIFMs (each a relevant entity).

There is an exemption from the requirements under the 2019 Regulations for relevant entities listed on a regulated market and which are subject to the Transparency (Directive 2004/109/EC) Regulations 2007, as amended. As listed UCITS and most listed AIF corporate entities are open-ended funds and not subject to the Transparency Regulations, they will not qualify for this exemption.

**Definition of beneficial owner**

The definition of "**beneficial owner**" is taken from Article 3(6)(a) of AMLD4. It means *"the **natural person(s)** who ultimately own(s) or control(s) a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means.*" AMLD4 states that "control via other means" may be determined, amongst other things, in accordance with the criteria for establishing a parent/subsidiary relationship, such as a company having a majority of the voting rights in another company.

A shareholding of 25% plus one share or an ownership interest of more than 25% held by a natural person will be an ***indication*** of ***direct*** ownership, whereas a shareholding of 25% plus one share or an ownership interest of more than 25% held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural persons(s), will be an ***indication*** of ***indirect*** ownership.

**Directors as "default" beneficial owners of corporate UCITS and AIFs**

If, "having exhausted all possible means and provided there are no grounds for suspicion by the relevant entity" as to the identity of a beneficial owner, or there are doubts as to the beneficial ownership, the senior managers (including the directors and CEO) of the entity must be entered on the internal register effectively as the default "beneficial owners". In such circumstances, the relevant entity must also keep records of all the steps taken to ascertain the beneficial owners. It should be noted that, in the case of some corporate entities, especially UCITS and AIF funds, there may not be any beneficial owners because of the broad-based ownership of many of such funds. In such cases, the directors of the fund entity will need to be entered on the register as the "beneficial owners".

**What amendments have the 2019 Regulations made to the pre-existing regime?**

The 2019 Regulations carry over and enhance the pre-existing provisions of the 2016 Regulations.

1. **Enhanced rules for the collection and internal maintenance of beneficial ownership information**

The 2016 Regulations, which have now been revoked and replaced by the 2019 Regulations, obliged corporate entities to collect:

- the name,
- date of birth,
- nationality,
- residential address, and
- statement of the nature and extent of the interest held, or the control exercised.

The 2019 Regulations additionally require corporate entities to obtain the Irish Personal Public Service (PPS) number of each beneficial owner (where such a number has been issued). The PPS number should not be entered on the internal register of the entity but must be otherwise maintained in order to submit it to the Central Register. A relevant entity must not disclose the PPS number of a beneficial owner to any person, including competent authorities and designated persons.

Irish corporate funds which have entered their directors as the "default" beneficial owners on their internal register will now require those directors to provide PPS numbers to comply with these enhanced requirements.

2. **Access to internal register to be made available**

New provisions allowing certain persons to have access to the information on the internal register of a relevant entity are in force from **22 March 2019**. As mentioned above, the PPS numbers of beneficial owners must not be disclosed when providing access to the internal register.

Firstly, a relevant entity must provide to any member of the Garda Síochána, the Revenue Commissioners, any State competent authority, the Criminal Assets Bureau or any inspector appointed under the Companies Act 2014 with timely access, on request, to its internal beneficial ownership register. Secondly, where a relevant entity enters into certain business transactions or relationships with a "designated person" (within the meaning of anti-money laundering legislation), the entity must:

(i) provide, in addition to information about its legal ownership, information on its beneficial ownership when the designated person is carrying out customer due diligence;

(ii) on request from the designated person, provide information identifying all the beneficial owners of the relevant entity; and

(iii) notify the designated person of any change to its internal register that occurs which is relevant to the occasional transaction in question or that occurs during the course of the business relationship formed, and the date on which the change occurred. This must be done within 14 days of the date on which the relevant entity became aware of the change.

### 3. Establishment of a publicly accessible central register of beneficial ownership information

A Registrar of Beneficial Ownership of Companies and Industrial and Provident Societies (the Registrar) will be appointed with responsibility for the Central Register effective 22 June 2019. Although not specified in the 2019 Regulations, it is understood that this function will, other than in respect of ICAVs, sit within the Companies Registration Office (CRO) structure. For ICAVs, which are both registered and authorised by the Central Bank of Ireland, it is anticipated that a separate central register will be required which is likely to be the responsibility of the Central Bank. Industry is engaging on these aspects of the new rules and further clarification is awaited.

***What must be submitted to the Registrar?***

The information contained on the internal beneficial ownership register of a relevant entity must be filed with the Registrar. This information must be kept up to date. Relevant entities will have 14 days from the date they were obliged to update their internal register to submit these updates to the Central Register (the "follow up obligation").

The PPS numbers of beneficial owners must also be submitted, but the 2019 Regulations stipulate that the Registrar must not disclose these PPS numbers and only a 'hashed' version of the number (generated using a mathematical function) will be stored by the Registrar.

The information on the Central Register will be deleted 10 years after the dissolution of the relevant entity.

***When does the obligation to submit information to the Registrar commence?***

All relevant entities in existence before 22 June 2019 must make their filings by **22 November 2019**. A relevant entity that comes into existence after 22 June 2019 will have 5 months from the date of its incorporation to submit its beneficial ownership information to the Central Register.

***Who in the relevant entity must submit information to the Registrar?***

An officer or employee of a relevant entity may file the information. It may also be filed by a third party known as a "presenter" (for example, a provider of corporate secretarial services). The name, address, phone number and email address of any officer, employee or presenter must be stated on the filing, in addition to the capacity in which that person is acting.

***How can information be submitted to the Registrar?***

The information will be submitted by way of online filing. The system/forms have not yet been made available.

***Access to the Central Register***

The legislation provides that inspectors appointed by the relevant entity and persons of a particular senior rank within the Garda Síochána, the Financial Intelligence Unit Ireland, the Revenue Commissioners, a competent authority and the Criminal Assets Bureau and have the right to inspect the Central Register.

The following have the right to **restricted access** to the Central Register:

- Designated persons (i) entering into occasional transactions or business relationships with a relevant entity or (ii) taking customer due diligence measures with regard to a relevant entity
- Members of the public

Persons with restricted access will be able to view the following beneficial ownership information:

- Name
- Month and year of birth
- Country of residence
- Nationality
- Nature and extent of interest held or control exercised

The difference between unrestricted access and restricted access is that persons with restricted access will not be able to view the full date of birth or residential address of the beneficial owner. In addition, they may have to pay an administrative fee to view the beneficial ownership information.

### 4. Increased sanctions

There are a variety of sanctions for breach of the different obligations under the 2019 Regulations. Most importantly, failure by an entity in scope to maintain an internal beneficial ownership register and/or to file beneficial ownership information with the Central Register can result in a maximum fine of up to €500,000. This is an increase from the maximum fine of €5,000 under the 2016 Regulations.

**What do I need to do now?**

- If your relevant entity does not already have an internal beneficial ownership register, you must take steps to establish one.
- If your relevant entity already has an internal beneficial ownership register, ensure that it is up to date. Be aware of the requirement to now gather the PPS numbers of beneficial owners.
- If your internal beneficial ownership register records the directors as the beneficial owners request PPS numbers from the directors.
- Be aware of the requirement to allow competent authorities to have access to the internal register on request.
- Consider whether beneficial ownership information needs to be disclosed to designated persons when entering into business relationships.
- Be in a position to submit all beneficial ownership information to the new Central Register by 22 November 2019 at the latest.

# ESMA updates MiFID II / MiFIR Q&A document

On 28 March 2019, ESMA published a revised version of its Q&A document on 'MiFID II and MiFIR investor protection and intermediaries topics' which incorporates new and modified Q&As on various aspects of the regime including requirements for best execution, reverse solicitation, product governance and suitability.

Notably for funds with a MiFID investment manager, ESMA addresses the application of the ex-ante costs and charges disclosure requirements and how they should be applied to the service of portfolio management. Under MiFIR, an investment firm must provide information on costs and charges relating to (i) the investment and ancillary service(s) to be provided (service costs) and (ii) the financial instrument(s) in which the client's portfolio could be invested in accordance with the mandate given by the client (product costs). ESMA acknowledges that while it is not appropriate in the context of the portfolio management service to provide cost disclosure in relation to each investment decision taken, ex-ante information about costs and charges should be provided in good time before the firm starts providing the service and be based on the value of assets under management and the anticipated portfolio corresponding to the investment objective of the client.

# ESMA prescribes new 'passive' and 'active' disclosures for UCITS KIIDs

In a series of new Q&As published on 29 March 2019, ESMA has provided extensive additional guidance on the requirement for the investment objective and policy section of a UCITS KIID to disclose "where specific asset management techniques are used".

ESMA requires that any changes to a UCITS KIID which are necessary following the publication of the new guidance should be made as soon as practicable or by the next KIID update following the publication of the Q&As on 29 March 2019.

Any UCITS updating KIIDs to take account of the Q&As must be mindful of the obligation under the UCITS Directive for information disclosed in the KIID to be "fair, clear and not misleading" and consistent with the UCITS objectives and investment policy as set out in its prospectus.

In its guidance, which is almost certainly triggered by the continuing focus on 'closet index-tracking' UCITS, ESMA confirms that a UCITS must specifically disclose in the KIID whether it is an index-tracker or an actively managed fund. In addition, in the case of index-trackers, ESMA recommends supplementing the 'index-tracker' identification with the terms 'passive' or 'passively manged' and considering whether such terms require to be explained for the benefit of investor's understanding. Actively managed UCITS are recommended to use the terms 'active' or 'actively managed' to assist investor understanding and, again, considering the benefit to investors of providing an explanation of those terms for clarity.

ESMA notes that while an active UCITS is one which does not have an index-tracking objective it may still include or imply reference to a benchmark i.e. the benchmark index plays a role in the management of the UCITS, for example, in the composition of the portfolio or the calculation of performance fees. In the case of such active UCITS, the level of discretion exercised in the management of the assets may vary with some taking a lower level of risk against a benchmark index and others being managed without any reference to the benchmark index. ESMA recommends this should be clear from the disclosure in the KIID.

ESMA requires that active UCITS which are managed in reference to an index provide "additional disclosure on the use of the benchmark index" and "show past performance against it". "They must also indicate the degree of freedom from the benchmark" and in doing so UCITS should have reference to the elements which ESMA recommends be taken into account and the sample wording provided by ESMA in its Q&A