



Asset Management & Investment Funds Update

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ESMA Guidance on UCITS Issuer Concentration and Marketing Rules

On 17 December 2021, ESMA published a revised draft of its UCITS Q&A document with new clarifications of the issuer concentration rules and the share class marketing rules introduced by the Cross-Border Distribution of Funds (CBDF) regime. In what is likely a disappointing, albeit not entirely unexpected clarification of the share class marketing rules, ESMA has confirmed the CBDF requirement for one month's prior notice to home and host authorities of the cross-border marketing of a UCITS share class. As previously reported (see [here](#)), the one-month advance notification requirement represents a material departure from the pre-CBDF market practice for passporting a new share class and, since coming into effect on 2 August 2021, has had a significant and unwelcome impact on UCITS managers marketing processes and procedures.

UCITS RULE	ESMA Q&A CLARIFICATION
ISSUER CONCENTRATION	
<p>UCITS may invest up to 100% of assets in transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, a third country or public international bodies of which one or more Member States are members provided the UCITS:</p> <ul style="list-style-type: none"> holds securities from at least 6 different issues but securities from any one issue does not account for more than 30% of its assets; complies with relevant constitutional and offering document disclosure requirements. 	<p>UCITS may not invest up to 100% of assets in transferable securities or money market instruments that are not issued nor guaranteed by a Member State one or more of its local authorities, a third country or a public international body to which one or more Member States belong.</p> <p>If a UCITS holds more than six issues all the issues should respect the 30% limit.</p>
<p>The risk exposure to a counterparty of a UCITS in an OTC derivative transaction shall not exceed -</p> <ul style="list-style-type: none"> in case the counterparty is a credit institution established in the EU or an equivalent third country, 10% of its assets, in any other case, 5% of its assets. 	<p>Where a UCITS invests in FX forwards for share class currency hedging purposes, it should comply with the UCITS counterparty exposure rules and any unrealised FX profits and losses should be counted towards the NAV of the UCITS hedged share class when calculating when calculating the counterparty risk limits.</p>

In the case of a currency hedged share class, the exposure to any counterparty of a derivative should be in line with the above limits based on the net asset value of the share class.

SHARE CLASS MARKETING

In the event of a change to the information in a UCITS cross-border marketing notification letter or a change regarding the share classes to be marketed, the UCITS shall provide written notice to the home and host competent authorities at least one month in advance of implementing the change.

If a UCITS intends to market a new share class in a Member State where it has already been notified for marketing, the UCITS should give written notice to the home and host competent authorities at least one before the marketing of the new share class starts.

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