



## Commission Q&A on UCITS Fee Rebates

December 2021

On 26 November 2021, ESMA updated its UCITS Q&A document to include an answer provided by the Commission to a question on the rules applicable to UCITS management company fee rebate arrangements. Specifically, the question sought clarification on whether the payment of rebates by a UCITS management company from its own resources to individual investors is subject to UCITS inducement rules for safeguarding the best interests of investors. Such rules set down conditions for fees paid or received to/from a third party in relation to the activities of investment management and administration to the UCITS that ensure a UCITS management company acts honestly, fairly and professionally in accordance with the best interests of the UCITS.

In its response, the Commission confirmed that such UCITS management company fee rebate arrangements should be analysed for compliance with the UCITS inducement rules on the basis that they entail payments to certain investors based on fees charged by the UCITS management company to remunerate investment management and/or administration activities.

Accordingly, UCITS management companies must ensure, in respect of the fee rebate arrangement:

- prior disclosure to the UCITS, in a manner that is comprehensive, accurate and understandable, of the existence, nature and amount of the fee, commission or benefit or, where the amount cannot be ascertained, the method of calculating that amount; and
- that the payment of the fee or commission, or the provision of the non-monetary benefit:
  - is designed to enhance the quality of the relevant service. UCITS management companies should be able to demonstrate (through accurate and documented justifications) that the rebate arrangement will enhance the quality of the UCITS service to the benefit of all investors and not only to investors who benefit from the arrangement; and
  - does not impair compliance with the UCITS management company's duty to act in the best interests of the UCITS and, in particular, the duty to treat all unit-holders equally, act in the best interest of the unit-holders, and to refrain from placing the interest of any group of unit-holders above others. On that basis, UCITS management companies should be able to justify (through accurate and documented justifications) that all investors pay their fair share in the funds functioning (taking into account any management fee discount) and the UCITS cost structure and arrangements should not have a negative impact on other investors.

### Next Steps

Existing UCITS fee rebate arrangements should be reviewed for compliance with existing UCITS inducement rules and the Commission's compliance expectations for such rules as outlined in the new Q&A, which serves as a clear reminder of the high benchmark for operating rebate fee arrangements within the structure of the fund and the applicable transparency rules.

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# WILLIAM FRY

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DUBLIN | CORK | LONDON | NEW YORK | SAN FRANCISCO | SILICON VALLEY

William Fry LLP | T: +353 1 639 5000 | E: [info@williamfry.com](mailto:info@williamfry.com)

[www.williamfry.com](http://www.williamfry.com)

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