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UCITS

ESMA's discussion paper on share classes of UCITS

On 23 December 2014, ESMA published a "Discussion Paper on Share Classes of UCITS". The UCITS Directive recognises that UCITS can offer different share classes to investors but it does not outline how share classes within a UCITS fund can differ from each other. As the permitted range and type of share classes within UCITS varies from country to country, ESMA wishes to implement a common understanding across the EU.

ESMA's discussion paper outlines its views on what constitutes a share class, including three principles on how to distinguish share classes from compartments of UCITS and examples of structures which comply with these principles.

ESMA will use the feedback from Stakeholders to this discussion paper when developing its guidelines. The deadline for submitting responses is 27 March 2015.

What is a share class?

The Discussion Paper distinguishes between compartments in UCITS and share classes. It defines the former as sub-funds with different investment strategies from the other compartments. Usually, assets of compartments are legally segregated so a liability arising in one compartment cannot be offset by the assets of other compartments.

ESMA describes share classes as categories of shares within the same UCITS which allow subsets of investors to achieve "some level of customisation which accommodates their specific needs (e.g. the distribution of revenues, a particular tax treatment under national law or a different minimum investment amount). As they are not separate sub-funds, there is no legal segregation of assets between share classes.

Principles to use in assessing the legality of different share classes

ESMA considers that UCITS management companies which seek to offer different investment strategies to investors should create a separate UCITS for each strategy.

The Discussion Paper outlines three principles which ESMA considers should be used "in assessing the legality of different share classes":

- ✓ Share classes of the same UCITS should have the same investment strategy.
- ✓ Features that are specific to one share class should not have a potential (or actual) adverse impact on other share classes of the same UCITS.
- ✓ Differences between share classes of the same UCITS should be disclosed to investors when they have a choice between two or more classes.

To illuminate the principles, the Discussion Paper suggests types of share class which would be compatible and incompatible. Compatible share classes offer different types of investors (retail v institutional), different fees and charges, currency, voting rights, or maximum and minimum investment amounts.

ESMA considers that incompatible features include different leverage terms, different degrees of protection against market risks such as interest rate risk or volatility risk and different pools of underlying assets.

Next Steps

The deadline for submitting responses is 27 March 2015. ESMA will use the feedback from Stakeholders to this discussion paper to formulate a common practice

Appendix 1 – ESMA's questions for Stakeholders

1. **What are the drivers for creating different share classes?**

2. **Why do certain UCITS decide to create share classes instead of setting up a new UCITS?**

3. **What are the costs of creating and operating a new share class compared to the cost of creating and operating a separate UCITS?**

4. **What are the different types of share class that currently exist?**

5. **How would you define a share class?**

6. **Do you agree that share classes of the same UCITS should all share the same investment strategy? If not, please justify your position.**

7. **Could you explain how the operational segregation between share classes works in practice?**

8. **Do you agree that the types of share class set out in paragraph 8 are compatible with the principle of having the same investment strategy? In particular do you agree that currency hedging that is described in paragraph 8 complies with that principle? If not, please justify your position.**

9. **Do you believe that other types of share class that comply with the principle of having the same investment strategy exist (or could exist) and should be allowed? If yes, please give examples.**

10. **Do you agree that the types of share class set out in paragraph 10 above do not comply with the principle of having the same investment strategy? If not, please justify your position.**

11. **Please provide information about which existing UCITS do not comply with the criteria laid down in paragraph 6 as well as an indication of the assets under management and the number of investors of these UCITS.**

12. **Do you see merit in ESMA clarifying how regulatory ratios such as the counterparty risk limit should be calculated (e.g. at the level of the UCITS or share classes)?**

13. **Do potential and current investors get adequate information about the characteristics, risks and return of different classes in the same UCITS? If not, what else should be provided to them?**

14. **Do you agree that ESMA should develop a common position on this issue? If not, please justify your position.**

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