



EU: One month left to respond to ESMA Call for Evidence on review of the UCITS Eligible Assets Directive

July 10, 2024

Austria ... +19

ESMA's Call for Evidence asks a series of questions on the

implementation of the directive. The consultation closes next month on 7 August 2024

Why should I read this?

ESMA's [Call for Evidence](#) aims to assess the implementation of the UCITS Eligible Assets Directive (2007/16/EC) (the "EAD") by EU Member States, and provide recommendations for revisions in line with market developments. The European Commission's mandate to ESMA, which sets out the scope and expectations of the technical advice, is included in an annex.

ESMA's technical recommendations to the European Commission on potential amendments to the EAD will be guided by the responses to the Call for Evidence.

What is the background?

Since 2007, the EAD has defined which asset classes are eligible for investment by UCITS. Growth in the diversity and quantity of financial instruments available for investment since then has given rise to uncertainty as to whether UCITS can invest in a number of different types of assets, and varying interpretations and market practices concerning the application of the EAD have arisen.

In June 2023, the European Commission asked ESMA to provide technical guidance to inform a re-assessment of the EAD. Specifically, the European Commission sought ESMA's expertise in determining whether there are inconsistencies in the application of EAD by Member States. The European Commission requested suggestions to update the EAD in line with evolving market conditions.

What do I need to know about the Call for Evidence?

The Call for Evidence requests seeks input on:

- **issues of harmonisation and the transparency of fundamental concepts and definitions within the EAD;**
- **the direct and indirect involvement of UCITS with specific asset categories;**
- **the issues stakeholders have encountered on the interpretation or application of the rules;**
- **the issues stakeholders have encountered regarding the notion of liquidity and presumption of liquidity for listed securities; and**
- **how much direct and indirect exposure UCITS funds have to specific asset classes, including crypto assets and commodities.**

Next steps

Responses should be submitted via ESMA's online portal "[Call for Evidence on the review of the UCITS Eligible Assets Directive](#)", if possible along with evidence, data and estimates, by **7 August 2024**. ESMA will give its technical advice to the European Commission by **31 October 2024**.

How Eversheds Sutherland can help

Our team have been advising on regulatory interpretation and product development for the fund management industry since the 1980s and we have been at the forefront of new products under European and UK regulation since then. Our in-depth understanding of the sector and experience with the practical implementation of new product categories means that we are very well placed to guide you in complying with the changing product and regulatory environment.

If you are planning to respond to this call for evidence, we would be happy to discuss the points you might like to include and/or help you prepare such a response.

Further, Eversheds Sutherland are responding to the consultation, with the response being led by **Trevor Dolan** and our Dublin team. If you would like to feed into the consultation but do not want to make your own submission, we can incorporate your comments into our response on an attributed or anonymous basis.

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