

**MEMO# 35804**

August 13, 2024

# ICI Global Response to ESMA Call for Evidence on UCITS Eligible Assets Directive

[35804]

August 13, 2024

TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: ICI Global Response to ESMA Call for Evidence on UCITS Eligible Assets Directive

On August 7, ICI Global submitted a response to the European Securities and Markets Authority's (ESMA) call for evidence<sup>[1]</sup> on the review of the UCITS Eligible Assets Directive,<sup>[2]</sup> which was adopted in 2007.

The call for evidence was issued in response to a mandate from the European Commission for ESMA to carry out an assessment of the implementation of the UCITS EAD in the Member States in order to analyse whether any divergences have arisen in this area and to provide the Commission with a set of recommendations on how the UCITS EAD should be revised to keep it in line with market developments.

ESMA divided its questions into two main sections: (i) convergence issues and clarity of key concepts and definitions, and (ii) direct and indirect UCITS exposure to certain asset classes and related data collection/analysis.

In our response, we made the following key points:

- It is important for EU policymakers to strike a balance between (1) preserving the existing framework for UCITS and its brand as a robustly-regulated retail product and (2) modernising the product to allow greater flexibility for investments into new and evolving instruments that have emerged since the enactment of the UCITS EAD.
- Allowing EU investors access to investment strategies and underlying assets that are adjusted to current market conditions and allow diversification in a way investors have globally in similar investment vehicles is crucial. This is important both in terms of maintaining the global success of the UCITS brand, as well as the overall competitiveness of the EU market.
- We suggest certain revisions to the framework, but recommend this be accomplished without opening up the Level 1 Directive.
- We recommend that efforts be made to create a framework that fosters consistent implementation and application of the UCITS EAD across Member States. Inconsistent

implementation and application across Member States can lead to jurisdictional arbitrage, undermine the credibility of the UCITS brand, and create confusion among investors.

Eva M. Mykolenko  
Associate Chief Counsel - Securities Regulation

#### Notes

[1] The call for evidence is available at [https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-1270380148-1032\\_Call\\_for\\_Evidence\\_on\\_the\\_UCITS\\_EAD\\_Review.pdf](https://www.esma.europa.eu/sites/default/files/2024-05/ESMA34-1270380148-1032_Call_for_Evidence_on_the_UCITS_EAD_Review.pdf).

[2] The UCITS Eligible Assets Directive is available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007L0016&from=EN>.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.