

ALFI's response to the Consultation concerning ESMA guidelines on ETFs and other UCITS issues (ESMA/2012/44)

On 30th March ALFI responded to Consultation concerning ESMA guidelines on ETFs and other UCITS issues.

ALFI welcomes ESMA's decision to broaden the scope of these proposed guidelines in such a manner as to target not only UCITS ETFs but all UCITS alike that engage in the relevant activities (e.g. securities lending) or pursue the same type of investment policy (e.g. tracking an index).

Furthermore, ALFI supports ESMA's move towards greater transparency as it will further enhance investor's understanding and confidence in UCITS products. The proposed guidelines reflect industry best practice in terms of transparency and disclosure. Transparency requirements should however be proportionate and bring real-added value in particular to retail investors allowing them to take well-informed investment decisions. For instance, we believe that the transparency requirements should be proportional to the extent that certain techniques are being used and should not apply to immaterial techniques and instruments.

When considering investor protection and disclosure requirements, we strongly encourage ESMA to take a horizontal approach to funds and non-fund products alike, in the spirit of MiFID and of the PRIIPs initiative. Any consideration regarding the marketing of UCITS ETFs cannot be dissociated from a review of other products which are also subject to MiFID, therefore any action should be taken within the MiFID Review, maintaining a level playing field vis-à-vis other financial instruments. In this context, we very much support ESMA's statements that "further consideration should be given to the development of harmonized definitions at European level of all exchange-traded products" and that "products with broadly similar characteristics should be subject to the same level of regulatory requirements and that investors in such products should be able to rely on an equivalent level of regulatory protection" (Consultation Paper, p. 11, paragraph 20).

ALFI supports ESMA's intention to harmonise the rules in relation to collateral management and the alignment with the list of qualitative criteria as set out in CESR's guidelines on risk measurement. However, we disagree with the proposed guidelines that the aggregation of collateral received by the UCITS and the UCITS assets not on loan should comply with the UCITS diversification rules.

ALFI believes that it will be important to clarify the scope of ESMA's proposed guidelines on Strategy Indices and to clarify that these only apply to index replicating UCITS.

Lastly, even if ALFI largely supports most of ESMA's proposals, it is essential to recognize that the industry – but also national regulators – will need a reasonable timeframe to comply and to put these guidelines into practice. The proposed guidelines will significantly impact existing UCITS funds. Some of them will have to go through a material restructuring. Therefore we believe that specific transitional provisions should be foreseen for existing products, including notably a "grand-fathering clause" for structured UCITS which do not accept any new subscriptions from the public. Existing products with a set maturity date should be grand-fathered until their maturity.