

ESMA Opinion concerning Article 50(2)(a) of the UCITS Directive

On 20 November 2012, the European Securities and Markets Authority (ESMA) has published an opinion on Article 50(2)(a) of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (2009/65/EC).

Article 50(2)(a) of the UCITS Directive provides that UCITS may not invest more than 10% of their assets in transferable securities and money market instruments other than those referred to in Article 50(1) of the UCITS Directive. Questions have emerged about the correct interpretation of this Article and, in particular, whether the derogation in Article 50(2)(a) of the UCITS Directive applies to units or shares of collective investment undertakings as defined in Article 50(1)(e). To ensure uniform application of Article 50(2)(a) of the UCITS Directive, ESMA has taken the decision to publish a formal opinion on its interpretation.

ESMA is of the view that Article 50(2)(a) refers only to investments in transferable securities and money market instruments and not to units or shares of collective investment undertakings. Therefore, UCITS may only invest in units or shares of collective investment undertakings as defined in Article 50(1)(e) of the UCITS Directive.

ESMA expects that any portfolio adjustments required to ensure compliance with this opinion will be made taking into account the best interests of investors and at the latest by 31 December 2013.