
Recent Developments in UCITS: Part III

By Claire Cummings and Helen Busby

This is the third and final part in a three-part series on recent developments relating to UCITS. This final part provides a brief discussion of UCITS VI.

UCITS VI.

On 26 July 2012, the European Commission released a paper outlining further ideas as to how the UCITS Directive can be improved, which became known as UCITS VI. The Commission's consultation on UCITS VI came very soon after its legislative proposal for the UCITS V Directive, which was also published in July.

The focus of UCITS VI centered on proposals concerning areas other than those addressed by UCITS V and the eight topics raised for discussion in the original UCITS VI consultation include:

(i) eligible assets and the use of derivatives—whether the current criteria (e.g., eligibility, liquidity and diversification for example) require amendment;

(ii) efficient portfolio management techniques—whether the current criteria require amendment;

(iii) OTC derivatives—how OTC derivative transactions should be dealt with when assessing UCITS limits on counterparty risk;

(iv) extraordinary liquidity management rules—whether there is a need for a common framework for dealing with liquidity bottlenecks in exceptional cases or otherwise;

(v) depositary passport—whether a depositary passport should be introduced and how this would work in practice;

(vi) money market funds—whether they present a source of systemic risk and/or whether they need harmonised regulation at EU level;

(vii) long-term investments—(a) whether, in order to limit the scope of eligible investments and the use of derivatives generally, it is necessary to limit the scope of eligible institutions and channnels for a small number of institutional investors, and (b) whether such investments could be introduced and how this would work in practice.

A long-term investment as defined in the Directive is an investment in a fund if the portfolio is expected to be invested in a stock exchange-listed fund for at least five years.
(vii) A topic that could be amenable to improvement in the UCITS IV framework is the disclosure of the diversification rules. Article 64(1) of the UCITS IV Directive requires UCITS to provide information to investors in the following two cases: (a) where an ordinary UCITS converts into a feeder UCITS; and (b) where a master feeder UCITS changes. As it stands, this does not cover a third possible scenario, namely where a feeder UCITS converts into an ordinary UCITS. Such conversions may lead to a significant change in the investment strategy.

Next Steps.

There is no indication as to when UCITS VI will be introduced, and it is no longer clear whether a UCITS VI legislative proposal will be published at all as the underlying issues referred to in UCITS VI have been, or are in the process of being, dealt with via other measures, such as UCITS V.

Similarly, the FCA had said that in its Business Plan for 2013/14 it would continue to feed into the development and publication of the Level 1 text of UCITS VI following its predecessor's, the FSA, and HM Treasury's joint response to the July 2012 consultation. However, there was no reference to UCITS VI in the Business Plan for 2014/15 and a UCITS VI legislative resolution has not been published.

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