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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 2012.

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—in particular, whether it is necessary to limit the scope of eligible derivatives and the use of derivatives generally to those traded on multilateral platforms and cleared by a central counterparty;

(ii) efficient portfolio management techniques—whether the current criteria (on eligibility, liquidity and diversification for example) requires 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 do they need harmonised regulation at EU level;

(vii) long-term investments—(a) how access can be afforded to retail investors and how this could be implemented and regulated; (b) what proportion of a fund's portfolio should be dedicated to such assets; and (c) whether diversification rules are necessary to secure adequate liquidity;

(viii) improvements to the UCITS IV framework—for example Article 64(1) of the UCITS Directive requires UCITS to provide information to investors in the following two cases: (i) where an ordinary UCITS converts into a feeder UCITS; and (ii) where a master 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 more pressing issues referenced in UCITS VI have been, or are in the process of being, dealt with via other measures.

Steven Maijoor, ESMA chairman, gave the proposed Money Market Funds Regulation as an example of this in a speech given in November 2014 and said that he would favour first taking some time to ensure that the UCITS framework, as amended most recently by UCITS V, is implemented correctly and that national regulators are applying it in a convergent manner rather than introducing new or different requirements, such as UCITS VI.

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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