



Commission de Surveillance  
du Secteur Financier

## COMMUNIQUÉ

### CSSF CONCLUSIONS ON CLOSET INDEX TRACKING WORK

On 2 February 2016, the European Securities and Markets Authority (ESMA) published the Statement “*Supervisory work on potential closet index tracking*”<sup>1</sup> providing details on its work concerning European UCITS qualifying as closet index trackers. The alleged practice consists of fund managers claiming in their investor information documentation to manage their funds in an active manner while the funds are, in fact, i) staying very close to a benchmark and therefore implementing an investment strategy which requires less input from the investment manager and ii) charging management fees in line with those charged by actively managed funds. ESMA also highlighted in its Statement that due to the limitations of its essentially quantitative analysis, definitive evidence will require a more detailed follow-up by national competent authorities.

On this basis, the CSSF carried out its own investigations by considering, in addition to the quantitative measures used by ESMA such as *Active Share*, *Tracking Error* and  $R^2$ , qualitative criteria including the actual management style and the disclosure to investors.

In this context, except one isolated case for which the analyses have not yet been completed, the CSSF could not identify any UCITS qualifying as closet index tracker. It could however be observed that investor disclosure in relation to the use of a benchmark can be improved for some of the funds under review. As a result, the CSSF asked the concerned management companies to increase the level of information disclosed in the key investor information document (KIID) and the sales prospectus.

The CSSF would like to take the opportunity to remind that the “Objectives and investment policy” section of the KIID shall, in accordance with the regulations in force, indicate any benchmark used explicitly or implicitly by the UCITS in its investment approach, along with the degree of freedom in relation to this benchmark. The description of the degree of freedom shall in particular enable an investor to understand to what extent the investments of a UCITS are close to its benchmark. Finally, the CSSF is of the view that the aforesaid provisions apply in the same way to the disclosure in the sales prospectus.

Luxembourg, 28 July 2017

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<sup>1</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-updates-supervisory-work-closet-indexing>