



*Commission de Surveillance  
du Secteur Financier*

## PRESS RELEASE 18/02

### INVESTMENT BY UCITS IN OTHER UCIs UNDER ARTICLE 41(1)(e) OF THE UCITS LAW OF 2010

#### CHANGE OF POLICY

In order to enhance further convergence at the European Level in the field of the UCITS Directive, the CSSF has changed its policy with regard to UCITS investing in other UCI.

The FAQ 1.4) which stated that, "Non-UCITS ETFs are eligible investments for UCITS if they effectively comply with all criteria of Articles 2(2) and 41(1)(e) of the Law 2010, notwithstanding that the offering documents of non-UCITS ETFs grant possibilities which are not equivalent to requirements applicable to UCITS.

Given the specificities of each other ETF, an eligibility analysis must be carried out on a case-by-case basis and the UCITS must continuously ensure that the investment rules applied are equivalent to the investment rules applicable to UCITS, for example, via a system of compliance control or a written confirmation of the ETF or of the manager", has been deleted from the CSSF internet site.

Mere compliance controls or written confirmation of the ETF or of the manager as mentioned in the FAQ is not anymore acceptable.

In particular, the CSSF wishes to draw your attention to the fact that for other UCIs to be eligible under article 50(1)(e) of the UCITS Directive, such other UCIs:

- (i) shall be prohibited from investing in illiquid assets (such as commodities and real estate) in line with Article 1(2)(a) of the UCITS Directive;
- (ii) shall be bound by rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments which are equivalent to the requirements of the UCITS Directive in line with article 50(1)(e)(ii) of the UCITS Directive; mere compliance in practice shall not be considered sufficient;
- (iii) the fund rules or instrument of incorporation shall include a restriction according to which no more than 10% of the assets of the UCI can be invested in aggregate in units of other UCITS or other UCIs in line with article 50(1)(e)(iv) of the UCITS Directive; mere compliance in practice shall not be considered sufficient.

As a consequence, the UCITS subject to the Law of 2010 and which have invested in other UCI following the policy laid down in FAQ 1.4. have to disinvest from these UCIs as soon as possible taking into account the best interests of the investors. The CSSF will contact until 31 March 2018 the investment fund managers which have invested in such UCI to check the compliance with the new policy.

The CSSF also underlines that new investments in such UCIs are no more allowed.

Luxembourg, 5 January 2018