

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (EXCHANGE TRADED FUNDS) INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 247 (Trust scheme rules);
 - (e) section 248 (Scheme particulars rules);
 - (f) section 261I (Contractual scheme rules); and
 - (g) section 261J (Contractual scheme particulars rules);
 - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 July 2014.

Amendments to the FCA Handbook

- D. The Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annex to this instrument the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Exchange Traded Funds) Instrument 2014.

By order of the Board of the Financial Conduct Authority
26 June 2014

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.2 Pre-sale notifications

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Guidance on contents of the prospectus

4.2.6 G ...

- (6) The authorised fund manager of a UCITS scheme should consider the appropriateness of including additional matters in its prospectus as a result of the ESMA Guidelines on ETFs and other UCITS issues, which can be found at http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf.

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4.5 Reports and accounts

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4.5.7 R ...

Additional information that may need to be included in the annual and half-yearly long report of a UCITS scheme

- 4.5.8-A G The annual and half-yearly long reports of a UCITS scheme may be required to contain additional matters not referred to in COLL 4.5.7R and COLL 4.5.8R, such as those required by the ESMA Guidelines on ETFs and other UCITS issues, which can be found at http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf.

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Provision of short report

4.5.13 R ...

- (4) The authorised fund manager must provide the reports in (1) and (3) to each unitholder:

- (a) in a durable medium; or

(b) by means of a website that meets the *website conditions*.

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4.7 Key investor information and marketing communications

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Synthetic risk and reward indicators and ongoing charges disclosures in the KII

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4.7.9 G *Authorised fund managers of a UCITS scheme* are further advised that CESR, and its successor body, *ESMA*, have issued guidelines in relation to several other matters concerning *key investor* information of a *UCITS*. These are:

~~Guidelines—Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318)~~

~~Guidelines—Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319)~~

~~CESR's guide to clear language and layout for the Key Investor Information document (CESR/10-1320)~~

~~CESR's template for the Key Investor Information document (CESR/10-1321)~~

CESR's guidelines on a common definition of European money market funds, which refer to matters that should be included in the key investor information for money market funds and short-term money market funds (CESR/10-049)

<http://www.esma.europa.eu/content/Guidelines-Common-definition-European-money-market-funds>

that apply to all *authorised funds* in the *UK*.

For *UCITS* only, *ESMA*'s guidelines on ETFs and other *UCITS* issues, which refer to matters that should be included in the key investor information for certain types of *UCITS* (ESMA 2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

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5.2 General investment powers and limits for UCITS schemes

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5.2.20B G ...

(3) ...

(b) If *derivatives* on that index are used for risk-diversification purposes, provided that ...

[**Note:** ~~CESR's~~ *UCITS eligible assets guidelines* with respect to article 9 of the *UCITS eligible assets Directive*]

(3A) Authorised fund managers of UCITS schemes are advised that UCITS schemes should not be invested in commodity indices that do not consist of different commodities, as provided by paragraph 50 of ESMA's guidelines on ETFs and other UCITS issues (ESMA 2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

(4) ~~When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, firms should consider The Committee of European Securities Regulators' guidelines on the classification of hedge fund indices as financial indices (CESR/07-434). Those guidelines are available at www.fca.org.uk/your-fca. [deleted]~~

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ESMA guidelines

5.2.36 G Authorised fund managers of UCITS schemes are advised that ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

Guidelines concerning eligible assets for investment by UCITS

http://www.esma.europa.eu/system/files/07_434.pdf

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues.

http://www.esma.europa.eu/system/files/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf

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5.3 Derivative exposure

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ESMA guidelines

- 5.3.11 G ~~Authorised fund managers of UCITS schemes are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have~~ ESMA has issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section in relation to UCITS schemes:

...

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA/2012/197)

<http://www.esma.europa.eu/system/files/2012-197.pdf>

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

5.4 Stock lending

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Treatment of collateral

- 5.4.6 R (1) *Collateral* is adequate for the purposes of this section only if it is:

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- (c) for a non-UCITS retail scheme, in the form of one or more of:

...

...

- 5.4.6A G As regards the collateral adequacy of a UCITS scheme and restrictions on collateral that take the form of cash for a UCITS scheme, authorised fund managers are referred to paragraph 43 of the ESMA Guidelines to competent

authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832).

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf and

Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues.

http://www.esma.europa.eu/system/files/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf

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- 5.4.10** **G** *Authorised fund managers of UCITS schemes* are advised that *ESMA* has issued guidelines which, in accordance with the *UCITS implementing Directive*, authorised fund managers should comply with in applying the *rules* in this section in relation to *UCITS schemes*:

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

Revision of the provisions on diversification of collateral in ESMA's Guidelines on ETFs and other UCITS issues.

http://www.esma.europa.eu/system/files/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf

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6.9 Independence, names and UCITS business restrictions

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Use of the term 'UCITS ETF'

- 6.9.8B** **G** (1) *ESMA* has issued guidelines on the use of the term 'UCITS ETF'. A 'UCITS ETF' is a *UCITS* with at least one *unit* or share class which is traded throughout the *day*, on at least one *regulated market* or *multilateral trading facility*, with at least one *market maker* that takes action to ensure that the stock exchange value of its *units* or *shares* does not significantly vary from its net asset value and, where applicable, its indicative net asset value.
- (2) A 'UCITS ETF' should use the identifier 'UCITS ETF' which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, *instrument of incorporation*, *prospectus*, *key investor information document* or marketing communications.

The identifier 'UCITS ETF' should be used in all EU languages.

- (3) A UCITS which is not a 'UCITS ETF' should not use the 'UCITS ETF' identifier, 'ETF' or 'exchange traded fund' in its name or in any of the documents or communications referred to in (2).

[Note: ESMA's Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)]