

# UCITS share classes

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Further to the publication of two consultation papers on the use of share classes by UCITS (in December 2014 and April 2016), ESMA released its final Opinion on UCITS share classes on 30 January 2017 ("**Opinion**").

In this Opinion, ESMA focuses on the possibility for UCITS to use derivative overlays at share class level, while subjecting this practice to compliance with four principles: (i) common investment objective, (ii) non-contagion, (iii) pre-determination and (iv) transparency.

As regards the first principle, ESMA is of the opinion that hedging arrangements at share class level are not compatible with the requirement for a fund to have a common investment objective. The only exception is for currency-risk hedging arrangements. As a consequence, other derivative strategies such as duration hedging or beta hedging are not permitted at share class level for UCITS. Other main rules stemming from these four principles and affecting, in particular currency hedged share classes, are the following:

- the costs, profits and losses should be operationally and from an accounting perspective only attributable to the relevant share class;
- counterparty risks should be calculated at share class level;
- only systematic hedging is compliant with the pre-determination principle. Over-hedging and under-hedging should be limited to 105% of the net asset value of the relevant share class and to 95% of the portion of the net asset value of the share class which is to be hedged against currency risk, respectively;
- adequate monitoring and stress testing should be made at share class level;
- adequate transparency in the prospectus and availability to shareholders of a list of share classes with contagion risk should be ensured.

To avoid too much disruption in the European fund market, share classes which were established before 30 January 2017 and which do not comply with the Opinion may continue to exist but will

have to be closed for investment by new investors by 31 July 2017, and to additional investment by existing investors by 31 July 2018.

New share classes should comply immediately with the new rules.

In its Press Release 17/06 which was published on 13 February 2017, the *Commission de Surveillance du Secteur Financier* ("**CSSF**") confirmed that it expects UCITS to take the necessary measures to comply with the transitional provisions set forth in the ESMA Opinion and that new share classes do henceforth have to comply with the common principle for setting up share classes in UCITS funds.

For any further information please contact us or visit our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).

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