FESE note on the review of the UCITS Eligible Assets Directive (EAD)

Brussels, 15 July 2026

In the context of the Savings and Investments Union (SIU), FESE supports efforts aimed at enhancing the attractiveness of EU capital markets and ensuring regulatory clarity. In line with this, we welcome ESMA's technical advice to the European Commission on the review of the UCITS Eligible Assets Directive (EAD), published on 26th June 2025 (available here). The Commission is now expected to take ESMA's technical advice into account as it reviews the UCITS EAD.

This note elaborates on FESE's key considerations regarding certain ESMA policy proposals, focusing on: (i) the criteria to assess the liquidity of assets and the presumption of liquidity under the UCITS framework; (ii) the limits for UCITS investments in transferable securities and money market instruments; and (iii) the disincentives for UCITS to centrally clear SFTs.

1. The concept of liquidity under the UCITS framework

In its technical advice, ESMA addresses the concept of liquidity and proposes incorporating a minimum common list of criteria into the UCITS EAD legal text for assessing the liquidity of assets. This proposal would thus remove the current approach of treating the listing of instruments on a regulated market as a presumption of liquidity and negotiability, instead requiring liquidity and negotiability to be assessed across multiple factors on both an ex-ante and ongoing basis.

FESE, along with the majority of respondents to the Call for Evidence, as reported by ESMA, considers that **the existing presumption of liquidity and negotiability derived from the listing remains appropriate, with no need to introduce additional provisions**. Even though ESMA has retained the listing as one of the key criteria, the introduction of multi-factor mandatory ex-ante and ongoing assessments would significantly increase costs, as it would require a more detailed and continuous analysis of liquidity.

The proposed removal of the presumption of liquidity could have significant implications in different respects. First of all, it could **reduce incentives to list**: if listing no longer guarantees that instrument are eligible for UCITS investments, issuers may reconsider whether the benefits associated with a public listing outweigh the burdens, potentially leading to a decline in new listings. Removing the liquidity presumption might also allow for **divergent interpretations across Member States** of what constitutes "liquid" or "negotiable", increasing the possibility of complex and less efficient cross-border investment. Another unintended consequence could be the **potential emergence of a two-tier bond market**, where a subset of smaller, novel, or retail-focused bonds becomes stigmatised as illiquid. For the same reason, **efforts to promote sustainable finance might be hindered** as green and social bonds may not meet traditional liquidity metrics.

Most importantly, the removal of the liquidity presumption would affect **fund structures commonly used across the EU**. While the impact may be limited for UCITS investing in closed-ended alternative investment funds (AIFs) listed on RMs, the change would nonetheless add complexity and uncertainty, potentially undermining investor confidence and creating divergences in interpretation across Member States.

A substantial concern involves investment structures where institutional funds rely on listed AIFs to gain exposure to alternative asset classes. In many cases, the listing currently serves as the basis for qualifying these instruments as “transferable securities” under the UCITS framework. Removing the presumption of liquidity attached to listing could disqualify a significant number of such funds from eligibility, disrupting well-established market practices and reducing access to investment opportunities. This would not only impact fund structuring and distribution models but could also lead to legal uncertainty and regulatory fragmentation across the EU. More broadly, it risks undermining the objectives of the SIU by making cross-border investment more complex and less efficient, particularly in alternative funds, where market depth and investor access are essential for scale and integration.

For the above reasons, FESE suggests **retaining the existing presumption of liquidity and negotiability derived from the listing**.

A more nuanced approach could consider distinguishing structural from cyclical or technical illiquidity, treating formal liquidity-support programmes as evidence of liquidity commitment, and refining the meaning of liquidity for sustainable bonds.

2. Limits for investments in transferable securities and money market instruments

ESMA proposes to extend the 10% limit for UCITS investments to all eligible asset classes, including indirect exposures to alternative assets. While we appreciate that this proposal aims to expand investment possibilities and allow risk diversification, **we consider the application of these thresholds and of the “5/10/40 Rule” (UCITS Directive Article 52) too restrictive**.

We believe that these UCITS limits are detrimental to issuers and investors and the vitality of capital markets at large. Many issuers have expressed dissatisfaction, arguing that they negatively impact the performance of shares by restricting the potential for higher capital inflows from UCITS funds. Additionally, some asset managers temporarily exceed the 10% threshold but then engage in strategic selling around certain dates to comply with the limit, which could cause market distortions and volatility. Furthermore, some passive investment strategies, including non-UCITS funds, are not bound by the 10% limit, which raises questions about the fairness of restricting active managers who are also better positioned to make informed investment decisions.

Therefore, FESE recommends a review and potential adjustment of the “5/10/40 Rule” in the UCITS Directive to allow for a more flexible approach. This would not only better align with market realities and the needs of both issuers and investors, but also promote market stability and help retain major issuers, thereby enhancing the overall attractiveness and competitiveness of the EU financial markets. A preferable approach would align with the rules under Article 53 of the UCITS Directive, which allows investments in shares or debt securities issued by the same body to reach 20% or 35% of a portfolio under certain conditions.

3. Eligibility of indirect commodity exposures through ETCs and the associated derivatives

ESMA’s technical advice seeks to address divergent interpretations across Member States regarding the eligibility of certain assets under the UCITS framework, including by clarifying the application of a look-through approach to the final underlying. **FESE notes that such approach should not unduly restrict UCITS investors’ ability to gain indirect exposure to commodities through ETCs and the associated derivatives.**

These can provide investors with additional opportunities for growth, hedging and diversification without the complexities of investing directly in the underlying commodities. Investors benefit from ease of trading, price tracking, reduced operational complexities and, where applicable, central clearing, which materially reduces counterparty risk. ETCs are traded in a transparent trading environment and are subject to high regulatory standards in line with MiFID II. These advantages include a high degree of pre- and post-trade transparency, intraday liquidity, and the availability of volume and spread data for best execution considerations. A deep and competitive derivatives market for such products further enhances liquidity and risk-management capabilities for both institutional and retail investors.

In this context, **expanding the scope of eligible assets to explicitly include indirect commodity exposures through ETCs and the associated derivatives would enhance investor outcomes and contribute to greater consistency across jurisdictions, given the current framework's divergent interpretations.** While ESMA's technical advice seek to address these inconsistencies through a stricter look-through approach to the final underlying, such an approach may not fully align with investors' interests. In particular, indirect exposure to commodities via ETCs or the associated derivatives can offer clear benefits in terms of diversification and portfolio efficiency, without giving rise to material investor protection concerns. Imposing a rigid look-through requirement in these cases risks limiting these benefits without delivering proportionate safeguards.

For these reasons, **FESE recommends targeted amendments to Article 50(2) of the UCITS Directive and Article 8 of the UCITS EAD to explicitly include indirect commodity exposures via ETCs and derivatives**.

4. Disincentives to the clearing of securities financing transactions (SFTs)

Whilst banking regulation provides clear rules on the treatment of exposures of a bank towards the CCP in a traditional clearing model, acknowledging the risk management function of CCPs, funds regulation (i.e. the UCITS Directive and MMFR) keeps strict collateral concentration and diversification requirements for UCITS. As a result, **there are regulatory inconsistencies between banking, clearing and funds regulation, unintentionally disincentivising buy-side entities from using central clearing (notably for SFTs).**

While EMIR 3.0 provided some welcome relief to counterparty and cash limits in the MMFR and UCITS Directive, further targeted amendments to the UCITS and MMF frameworks are needed to remove regulatory barriers and recognise the risk-reducing nature and the efficiencies of central clearing. Ensuring unrestricted access to central clearing for funds and asset managers across financial instruments is key to supporting an efficient financial ecosystem in the EU and levelling the playing field with non-EU funds, which can centrally clear their business without similar regulatory constraints.

4.1 Risk-adequate counterparty limits for centrally cleared SFTs

Despite the welcomed EMIR 3.0 changes to the MMFR and UCITS Directive, central clearing of SFTs is still unintentionally disincentivised through the counterparty limits imposed by Article 52 UCITS Directive and Article 17 MMFR. These provisions do not recognise that a CCP acts as buyer and seller for all centrally cleared transactions, causing the limits to be reached much faster than in bilateral contexts, despite lower risk. To ensure consistency with the recent changes that exempt centrally cleared derivatives transactions from counterparty limits, **we suggest amending Article 52(2) UCITS Directive and Article 17 MMFR to exclude all centrally cleared transactions, including SFTs, from the current counterparty limits**. Such an exclusion should apply to both direct and indirect clearing models.

4.2 Easing constraints of the re-use of collateral received through SFTs to meet CCP margin requirements

Paragraph 179 of ESMA's technical advice notes "merit in assessing the opportunity to amend the UCITS Directive to allow for the deployment of 'other collateral arrangements'", subject to certain risk-related conditions. We think, however, that this approach does not ensure that the challenges and limitations highlighted below are properly addressed.

Funds are currently not allowed to pledge collateral received through a reverse repo transaction to meet CCP margin requirements, even if this collateral would be held bankruptcy remote from the pledge. Consequently, the fund would need to source additional assets to meet the mandatory CCP margin requirements, making central clearing economically less attractive and keeping the buy-side locked in bilateral markets. With a view to avoiding inconsistent application of the Guidelines and unnecessary regulatory constraints for collateral arrangements (as recommended by ESMA), **targeted amendments to Art. 15(2) MMFR and the related provisions in UCITS Guidelines should explicitly allow UCITS funds to pledge securities to a CCP if they are received through a transfer of title in a cleared reverse repo transaction with that CCP.**

Similarly, funds are not explicitly permitted to raise or re-use cash collateral received through a repo transaction to meet mandatory CCP margin requirements. **UCITS should be allowed to use cash collateral received from centrally cleared SFTs to meet CCP margin requirements via targeted amendments to Art. 14(b) MMFR as well as Art. 52 UCITS Directive.** The respective ESMA Guidelines and Q&As reinforcing the current restriction should be amended accordingly.

Conclusion

FESE welcomes ESMA's efforts to enhance regulatory clarity and harmonisation within the UCITS framework. However, several proposed changes raise concerns about unintended consequences:

- Removing the presumption of liquidity and negotiability would create costly ongoing analysis and negatively impact certain specific fund structures, undermining the SIU objective of stimulating cross-border investment. We suggest retaining the existing presumption of liquidity and negotiability derived from the listing, without additional provisions.
- The currently applied "5/10/40 Rule" overly restricts UCITS investment opportunities, harming the vitality and attractiveness of EU capital markets. We suggest allowing investments in shares or debt securities issued by the same body to reach 20% or 35% of a portfolio under certain conditions.
- A rigid look-through approach to the final underlying asset could unduly restrict UCITS access to indirect commodity exposures through ETCs and associated derivatives, despite the diversification, hedging and liquidity benefits these instruments can provide in a regulated trading environment. We suggest targeted amendments to Article 50(2) of the UCITS Directive and Article 8 of the UCITS EAD to explicitly include indirect commodity exposures through ETCs and derivatives.
- Funds face several disincentives to the central clearing of SFTs. We suggest targeted amendments to the UCITS Directive and MMFR to (i) remove counterparty limits for all centrally cleared transactions and to (ii) allow both pledging securities received through reverse repos with the CCP and re-using cash collateral received through centrally cleared SFTs to meet CCP margin requirements.

Overall, strict criteria, limitations and unnecessary disincentives risk reducing the flexibility and appeal of UCITS funds. Avoiding such restrictions would contribute to the Savings and Investments Union's goals by encouraging retail investment and cross-border fund distribution.