

Reply form

On the review of the UCITS Eligible Assets Directive



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **Wednesday 7 August 2024**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Call for Evidence, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Call for Evidence in this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_EADC_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_EADC_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_EADC_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at <https://www.esma.europa.eu/press-news/consultations/call-evidence-review-ucits-eligible-assets-directive> under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

This Call for Evidence is of particular interest for investors and consumer groups interested in retail investment products, management companies of Undertakings for Collective Investment in Transferable Securities (UCITS), self-managed UCITS investment companies, depositaries of UCITS and trade associations.

1 General information about respondent

Name of the company / organisation	Loan Market Association (the "LMA" and "we").
Activity	The LMA is the trade body for the European, Middle Eastern and African loan markets. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency, liquidity, transparency and sustainability, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 850 organisations across over 65 countries and consists of banks, non-bank investors, borrowers, law firms, rating agencies, regulatory bodies and service providers, including many members who manage UCITS schemes.
Country / Region	International

2 Questions

Q1 In your view, what is the most pressing issue to address in the UCITS EAD with a view to improving investor protection, clarity and supervisory convergence across the EU?

<ESMA_QUESTION_EADC_1>

The LMA welcomes ESMA's Call for Evidence on the UCITS EAD. We agree that there is scope to update and clarify the contents of the UCITS EAD and support the aim of providing a clear, harmonised, proportionate and modern framework to determine which assets qualify as eligible for investment by UCITS schemes ("**Eligible Assets**").

As the trade body for European, Middle Eastern and African loan markets, our response relates to the treatment of loans under the UCITS EAD. We are aware that there is currently a lack of harmonisation across EU Member States over the way in which loans are categorised under the UCITS EAD. We therefore urge ESMA to recommend that the European Commission takes this opportunity to state that it is possible for loans to constitute Eligible Assets, thereby removing the existing lack of harmonisation between EU Member States and ensuring that the UCITS EAD continues as a harmonised, proportionate and modern framework.

Treatment of loans under the UCITS EAD

We are aware that there is currently divergence between EU Member States over the extent to which loans constitute Eligible Assets and the rationale for this conclusion. In particular, we are aware that:

- in August 2020, the Luxembourg *Commission de Surveillance du Secteur Financier* ("**CSSF**") updated its FAQs on the UCITS regime (named "Law of 17 December 2010 – FAQ" and available here:

https://www.cssf.lu/wp-content/uploads/FAQ_Law_17_December_2010_171221.pdf)

to state that UCITS cannot invest in loans as loans do not constitute money market instruments or transferable securities. The relevant FAQ, FAQ 13, states:

"Do Loans constitute eligible investments for UCITS?"

7 August 2020

No.

Loans cannot be considered as assets as referred to in Article 41 (1) and (2) (a) of the Law of 2010 as they do not qualify as:

- money market instruments within the meaning of article 1 (23) of the Law of 2010 and Articles 3 and 4 of Regulation 2008, further clarified by the CESR guidelines;
- transferable securities within the meaning of Article 1 (34) of the Law of 2010 and Article 2 of the Regulation 2008, further clarified by the CESR guidelines.

UCITS that would be invested in Loans have to disinvest from those positions by 31 December 2020, taking into account the best interests of investors.

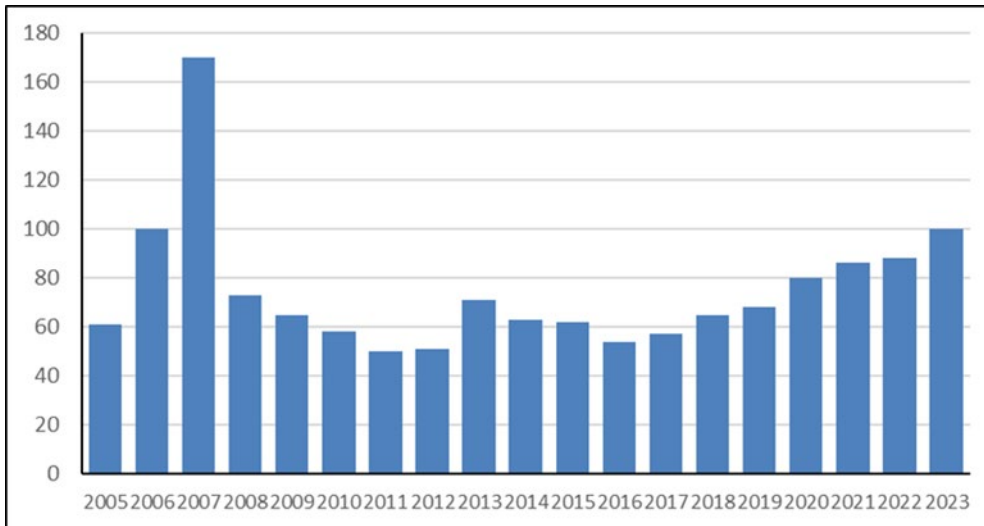
In addition, the prospectuses of those UCITS, offering the possibility to invest in Loans, have to be updated, by 31 March 2021 at the latest, in order to no longer provide for the possibility for such investments."

- by contrast, we understand that the Central Bank of Ireland ("**CBI**") permits UCITS to invest in loans that constitute money market instruments (thereby implicitly recognising, in contrast to the CSSF's view, that it is possible for loans to constitute money market instruments).

As this represents a material divergence between EU Member States, with significant implications for UCITS funds, we recommend that ESMA advises the European Commission to rationalise the position.

In our view, it is appropriate for UCITS to be able to invest in loans. In particular, we consider that it is possible for loans to have many of the features attributed to other assets that currently constitute Eligible Assets. In this regard, we note that:

- when investing in a loan, it is possible to ensure that the potential loss that the UCITS may incur is limited to the amount paid for the loan. This can be achieved through a number of methods, including by ensuring that, under the terms of the loan, the UCITS (or indeed any other purchaser) is not liable to extend any further credit;
- the secondary loan market is, and has an extensive history of remaining, a liquid market throughout different global economic conditions. The below chart from Thomson Reuters LPC/the LMA illustrates the scale of the EMEA secondary trading market (in EUR billion) between 2005 and 2023. As can be seen, this indicates that, since 2005, the volume of loans purchased on the secondary market has not fallen below EUR 40 billion per annum and last year stood at approximately EUR 100 billion.



(Note to graph: y axis represents loans traded in EUR billions)

- there are reliable valuation mechanisms in the market for secondary loan purchases, including active market makers and traders. The below chart from S&P Leveraged Commentary & Data illustrates the market value weighted index of European senior secured leveraged loans since 2005, priced as % of face value (par). This demonstrates that there is an active and transparent secondary loan market with price market makers and traders.



The European Leveraged Loan Index (ELLI) includes over 300 issuers. 98% of the ELLI index are senior secured instruments with the highest seniority and priority claim on the security.

- appropriate information is available when engaging in the purchase of secondary loans. Secondary purchasers of loans, subject to agreeing to appropriate confidentiality arrangements, are able to undertake due diligence on the borrowers of those loans and the terms of those loans. As a result, secondary purchasers are able to make an informed decision about whether to invest based on the borrower's financial information and the specificities of the loan in question.
- with regards to whether the risks of loans can be adequately captured by the risk management process of the UCITS manager, we understand that managers of Irish-domiciled UCITS are satisfied that this requirement can be met and currently invest in loans, and that Luxembourg UCITS managers were also satisfied that this requirement could be met and invested in loans prior to the publication of the CSSF's FAQ on the eligibility of loans. Of course, each UCITS manager will need to consider this question individually, in the context of the relevant UCITS at hand.

In addition, we note that:

- loans are not a complex product from an investment perspective. Unlike more complex products that are already eligible for UCITS investment, loans do not require a highly sophisticated investment strategy in order to generate returns.
- permitting UCITS to invest in loans may assist UCITS to achieve a greater spread of asset types and greater diversification of exposure to underlying counterparties, assisting UCITS to achieve their aims of prudent risk management and the avoidance of excessive concentration of exposure to a single counterparty.
- permitting UCITS to invest in loans would permit retail investors that wish to gain exposure to loans to do so through a secure and highly-regulated product (i.e. a UCITS), with the associated benefits of UCITS products, such as transparency and prudent risk management.
- as we mention above, in and of themselves, the loan markets are liquid. In addition, funds that invest in loans can be structured to increase liquidity by, for example, using a liquidity facility to bridge the receipt of sales proceeds or by investing in other assets such as bonds and other securities to maintain a diversified portfolio with sufficient liquidity to meet redemption requests under varying economic conditions.
- loans present an attractive investment and risk profile. Whether in terms of average return, income generation, volatility, default rates or recovery rates, loans show themselves to be an attractive investment, particularly when compared to other UCITS-compliant products.

- the European Commission's policy approach in its AIFMD II legislative proposal was to recognise and support the benefits that non-bank financing can bring to the wider economy. In particular, in its legislative proposal, the European Commission referred to the ability of non-bank lending to support job creation, economic growth, innovation and the green transition and to serve as a shock absorber when liquidity is constrained when traditional lenders wish to exit the market. In our view, permitting UCITS to invest in loans would align with, and support, these benefits.
- including loans as Eligible Assets would prevent the regulatory arbitrage that could occur if some EU Member States (or non-EU jurisdictions) permitted certain types of retail funds to invest in loans whilst the EU prohibited this for its main retail fund product, the UCITS.

In light of the above, we urge ESMA to recommend that the European Commission removes the existing lack of harmonisation over the ability of UCITS to invest in loans, confirming that loans may constitute Eligible Assets.

To the extent helpful, we would be delighted to further engage with ESMA on this topic, including providing further data and information on the nature and operation of the loan markets or assistance with drafting.

Please contact Nicholas Voisey, Managing Director, LMA (nicholas.voisey@lma.eu.com) if you have any further questions.

<ESMA_QUESTION_EADC_1>

Q2 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD rules with respect to financial indices? If so, please describe any recurring or significant issues that you have experienced and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence. Where relevant, please specify what indices this relates to and what were the specific characteristics of those indices that raised doubts or concerns. Where possible, please provide data to substantiate the materiality of the issue.

<ESMA_QUESTION_EADC_2>

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<ESMA_QUESTION_EADC_2>

Q3 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD rules with respect to money market instruments? If so, please describe the issues you have experienced and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence. Where relevant, please describe the specific characteristics of the money market instruments that raised doubts or concerns.

<ESMA_QUESTION_EADC_3>

Yes, we are aware of a significant issue with the consistency of application of the UCITS EAD rules with respect to money market instruments. As noted in our response to question 1 above, we are aware that:

- the position of the CBI is that it is possible for certain loans to fall within the definition of 'money market instrument' and, accordingly, Irish-domiciled UCITS may invest in loans;
- the CSSF has stated that it is not possible for any loan to fall within the definition of 'money market instrument' and, accordingly, all Luxembourg-domiciled UCITS have had to divest of their loan holdings.

This provides Irish-domiciled UCITS with the opportunity to invest in a greater spread of asset classes, with the associated diversification and risk management benefits.

<ESMA_QUESTION_EADC_3>

Q4 Have you experienced any recurring or significant issues with the interpretation or consistent application of UCITS EAD provisions using the notions of « liquidity » or « liquid financial assets »? If so, please describe the issues you have experienced and how you would propose to amend the UCITS EAD to better specify these notions with a view to improving investor protection, clarity and supervisory convergence. Where relevant, please explain any differences to be made between the liquidity of different asset.

<ESMA_QUESTION_EADC_4>

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<ESMA_QUESTION_EADC_4>

Q5 The 2020 ESMA CSA on UCITS liquidity risk management identified issues with respect to the presumption of liquidity and negotiability set out in UCITS EAD. In light of the changed market conditions since 2007, do you consider such a presumption of liquidity and negotiability still appropriate? Where possible, please provide views, data or estimates on the possible impact of removing the presumption of liquidity and negotiability set out in the UCITS EAD.

<ESMA_QUESTION_EADC_5>

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<ESMA_QUESTION_EADC_5>

Q6 Please explain your understanding of the notion of ancillary liquid assets and any recurring or significant issues that you might have experienced in this context. Please clarify if these are held as bank deposits at sight and what else is used as ancillary liquid assets. Where relevant, please distinguish between ancillary liquid assets denominated in (1) the base currency of the fund and (2) foreign currencies.

<ESMA_QUESTION_EADC_6>

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<ESMA_QUESTION_EADC_6>

Q7 Beyond holding currency for liquidity purposes, do you think UCITS should be permitted to acquire or hold foreign currency also for investment purposes, taking into account the high volatility and devaluation/depreciation of some currencies? Where relevant, please distinguish between direct and indirect investments.

<ESMA_QUESTION_EADC_7>

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<ESMA_QUESTION_EADC_7>

Q8 Have you observed any recurring or significant issues with the interpretation or consistent application of the 10% limit set out in the UCITS Directive for investments in transferable securities and money market instruments other than those referred to in Article 50(1) of the UCITS Directive? If so, please explain the issues and how you would propose to address them in the UCITS EAD with a view to improving investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_8>

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<ESMA_QUESTION_EADC_8>

Q9 Are the ‘transferable security’ criteria set out in the UCITS EAD adequate and clear enough? If not, please describe any recurring or significant issues that you have observed and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_9>

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<ESMA_QUESTION_EADC_9>

Q10 How are the valuation and risk management-related criteria set out in the UCITS EAD interpreted and applied in practice, in particular the need for (1) risks to be “adequately captured” by the risk management process and (2) having “reliable” valuation/prices. Please describe any recurring or significant issues that you have observed with the interpretation or consistent application of these criteria and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_10>

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<ESMA_QUESTION_EADC_10>

Q11 Are the UCITS EAD provisions on investments in financial instruments backed by, or linked to the performance of assets other than those listed in Article 50(1) of the UCITS Directive adequate and clear enough? Please describe any recurring or significant issues that you have observed in this respect and how you would propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_11>

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<ESMA_QUESTION_EADC_11>

Q12 Is the concept of « embedded » derivatives set out in the UCITS EAD adequate and clear enough? Please describe any recurring or significant issues that you have observed with the interpretation or consistent application of this concept and how you would propose to amend UCITS EAD to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_12>

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<ESMA_QUESTION_EADC_12>

Q13 Linked to Q11 and Q12, ESMA is aware of diverging interpretations on the treatment of delta-one instruments under the EAD, taking into account that they might provide UCITS with exposures to asset classes that are not eligible for direct investment (see also Section 3.2). How would you propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence? Please provide details on the assessment of the eligibility of different types of delta-one instruments, identify the issues per product and provide data to support the reasoning.

<ESMA_QUESTION_EADC_13>

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<ESMA_QUESTION_EADC_13>

Q14 Have you observed any recurring or significant issues with the interpretation or consistent application of the rules on UCITS investments in other UCITS and alternative investment funds (AIFs)? In this context, have you observed any issues in terms of the clarity, interaction and logical consistency between (1) the rules on investments in UCITS and other open-ended funds set out in the UCITS Directive and (2) the provisions on UCITS investments in closed ended funds set out in the UCITS EAD? Please describe any recurring or significant issues that you have observed in this respect and how you would propose to amend the relevant rules to improve investor protection, clarity and supervisory convergence. Where relevant, please distinguish between different types of AIFs (e.g. closed-ended, open-ended), investment strategies (real estate, hedge fund, private equity, venture capital etc.) and location (e.g. EU, non-EU, specific countries). In this context, please also share views on whether there is a need to update the legal wording used in the UCITS EAD and UCITS Directive given the fact that e.g. they refer to ‘open-ended’ and ‘closed ended funds’, whereas it might seem preferable to use the notion of ‘AIFs’ by now given the subsequent introduction of the AIFMD in 2011.

<ESMA_QUESTION_EADC_14>

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<ESMA_QUESTION_EADC_14>

Q15 More specifically, have you observed any recurring or significant issues with the interpretation or consistent application of the rules on UCITS investments in (1) EU ETFs and (2) non-EU ETFs? Please describe any issues that you have observed in this respect and how you would propose to amend the relevant rules to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_15>

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<ESMA_QUESTION_EADC_15>

Q16 How would you propose to amend the UCITS EAD to improve investor protection, clarity and supervisory convergence with respect to the Efficient Portfolio Management (EPM)-related issues identified in the following ESMA reports: (1) Peer Review on the ESMA Guidelines on ETFs and other UCITS issues; (2) Follow-up Peer Review on the ETF Guidelines; and (3) CSA on costs and fees. In this context, ESMA is interested in also gathering evidence and views on how to best address the uneven market practices with respect to securities lending fees described in the aforementioned ESMA reports with a view to better protect investors from being overcharged.

<ESMA_QUESTION_EADC_16>

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<ESMA_QUESTION_EADC_16>

Q17 Would you see merit in linking or replacing the notion of EPM techniques set out in the UCITS Directive and UCITS EAD with the notion of securities financing transaction (SFT) set out in the SFTR? Beyond the notions of EPM and SFT, are there any other notions or issues raising concerns in terms of transversal consistency between the UCITS and SFTR frameworks?

<ESMA_QUESTION_EADC_17>

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<ESMA_QUESTION_EADC_17>

Q18 Apart from the definitions and concepts covered above, are there any other definitions, notions or concepts used in the UCITS EAD that may require updates, further clarification or better consistency with definitions and concepts used in other pieces of EU financial legislation, e.g. MiFID II, EMIR, Benchmark Regulation and MMFR? If so, please provide details on the issues you have observed and how you would propose to clarify or link the relevant definitions or concepts.

<ESMA_QUESTION_EADC_18>

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<ESMA_QUESTION_EADC_18>

Q19 Are there any national rules, guidance, definitions or concepts in national regulatory frameworks that go beyond ('gold-plating'), diverge or are more detailed than what is set out in the UCITS EAD? If so, please elaborate whether these are causing any recurring or significant practical issues or challenges.

<ESMA_QUESTION_EADC_19>

Yes. As indicated in our response to question 1 above, we are aware that the CSSF has issued an FAQ document stating that it is not possible for UCITS to invest in loans. In our view, this goes beyond and diverges from the content of the UCITS EAD.

<ESMA_QUESTION_EADC_19>

Q20 Please fill in the table in the Annex to this document on the merits of allowing direct or indirect UCITS exposures to the asset classes listed therein, taking into account the instructions provided in the same Annex. Please assess and provide evidence on the merits of such exposures in light of their risks and benefits taking into account the characteristics of the underlying markets (e.g. availability of reliable valuation information, liquidity, safekeeping). To substantiate your position, please fill the table with any available data and evidence (e.g. on liquidity or valuation of the relevant asset classes and underlying markets). ESMA acknowledges that the availability of data on direct/indirect exposures to some of the asset classes listed in this table is limited and would welcome receiving any available data (whether on individual market participants and products or market-wide) and even rough estimates that help to understand the practical relevance of the relevant asset class for UCITS and the possible impact of any future policy measures.

<ESMA_QUESTION_EADC_20>

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<ESMA_QUESTION_EADC_20>

Q21 Please elaborate and provide evidence on how indirect exposures to the aforementioned asset classes (e.g. through delta-one instruments, ETNs, derivatives) increase or decrease costs and/or risks borne by UCITS and their investors compared to direct investments.

<ESMA_QUESTION_EADC_21>

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<ESMA_QUESTION_EADC_21>

Q22 Under the EAD, should a look-through approach be required to determine the eligibility of assets? Please explain your position taking into account the aforementioned risks and benefits of UCITS gaining exposures to asset classes that are not directly investible as well as the increased/decreased costs associated with such indirect investments. A look-through approach would aim to ensure that the list of eligible asset classes set out in the UCITS Level 1 Directive would be deemed exhaustive and reduce risk of circumvention by gaining indirect exposures to ineligible asset classes via instruments such as delta-one instruments, exchange-traded products or derivatives. Where possible, please provide views, data or estimates on the possible impact of such a possible policy measure.

<ESMA_QUESTION_EADC_22>

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<ESMA_QUESTION_EADC_22>

Q23 What are the risks and benefits of UCITS investments in securities issued by securitisation vehicles? Please share evidence and experiences on current market practices and views on a possible need for legislative clarifications or amendments.

<ESMA_QUESTION_EADC_23>

Please refer to our response in column 3 (*Merits of allowing indirect UCITS exposures*) of row 1 (*Loans*) of the table in the Annex for consideration of this point.

<ESMA_QUESTION_EADC_23>

Q24 What are the risks and benefits of permitting UCITS to build up short positions through the use of (embedded) derivatives, delta-one instruments or other instruments/tools? Please share evidence and experiences on current market practice and views on a possible need for legislative clarifications or amendments.

<ESMA_QUESTION_EADC_24>

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<ESMA_QUESTION_EADC_24>

Q25 Apart from the topics covered in the above sections, have you observed any other issues with respect to the interpretation or consistent application of the UCITS EAD? If so, please describe the issues and how you would propose to revise the UCITS EAD or UCITS Directive with a view to improve investor protection, clarity and supervisory convergence.

<ESMA_QUESTION_EADC_25>

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<ESMA_QUESTION_EADC_25>

Annex – Question 20. Table on eligible assets UCITS EAD.

For the purposes of Question 20, please complete the table below with the requested information, taking into account the instructions provided in the footnotes. After having completed the form, please save the document (according to the following convention: “ESMA_Q20_nameofrespondent”) and upload it online at <https://www.esma.europa.eu/press-news/consultations/call-evidence-review-ucits-eligible-assets-directive> under the heading ‘Your input - Consultations’, as an Annex to the Reply Form. In case you upload a pdf file, please choose an editable form.

Asset class ¹	Merits of allowing direct UCITS exposures	Merits of allowing indirect UCITS exposures ²	Extent/amount of existing UCITS exposures ³	Additional comments ⁴
1. Loans ⁵	<p>A. Loans have comparable features to many of the assets in which UCITS may currently invest under the UCITS EAD. In particular, and as outlined in more detail in our response to question 1 of the ESMA response form:</p> <p>- it is possible to ensure that the potential loss</p>	<p>We believe that many of the benefits of permitting direct exposure to loans also apply to permitting indirect exposure to loans. In particular, indirect exposure to loans, such as through CLOs, presents an attractive risk and return profile, would permit UCITS to</p>		

¹ ESMA acknowledges that most of the asset classes listed below have not been clearly defined in EU legislation and this might be a source of divergent interpretations and misunderstandings. Where possible, ESMA invites stakeholders to specify their understanding or definition of the relevant asset classes under the “additional comments” box.

² Where relevant, please distinguish between indirect exposures via instruments such as delta-one instruments, exchange-traded products, derivatives, or AIFs (EU or non-EU).

³ Please share any available data or estimates that help to assess the amount or extent to which there are existing UCITS exposures (distinguishing between direct and indirect, where possible) to these asset classes. Where no reliable data is available, ESMA would appreciate receiving estimates in terms of numbers and/or percentages of UCITS exposed to these asset classes and what is the average proportion in the relevant portfolios. Any additional data and insights on strategies, techniques and instruments used to gain exposure to these asset classes would be also highly appreciated.

⁴ Please include under this column any other evidence or views that you would like to share.

⁵ Where relevant, please distinguish between leveraged/structured loans, collateralised loan obligations (CLOs) and other types of loans or loan participations (please specify).

	<p>that the UCITS may incur is limited to the amount paid for the loan;</p> <ul style="list-style-type: none"> - the secondary loan market is a liquid market; - there are reliable valuation mechanisms in the market for secondary loan purchases; and - appropriate information is available when engaging in the purchase of secondary loans. <p>As a result, we cannot see an obvious policy rationale for adopting a different approach towards loans when compared to other asset classes in which UCITS may currently invest under the UCITS EAD.</p> <p>B. In addition, we believe there are strong policy reasons for confirming that UCITS may invest in loans.</p>	<p>diversify and gain exposure to a wide range of counterparties and would enable retail investors to gain exposure to this asset class via UCITS vehicles.</p> <p>Data from S&P Global indicates that CLOs are a robust asset class, weathering significant macroeconomic events, such as the global financial crisis, the COVID-19 pandemic and subsequent recessions, with minimal defaults.</p> <p>European CLO 1.0 (which refers to those issued before the financial crisis) performance has stood the test of time, with data indicating that only 1.5% of rated tranches suffering a loss since 2000.</p> <p>European CLO 2.0 (which refers to transactions originated in 2010 and thereafter) performance has also been strong,</p>		
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	<p>In particular, and as outlined in more detail in our response to question 1 of the ESMA response form:</p> <ul style="list-style-type: none"> - loans are not a complex product from an investment perspective and, unlike some Eligible Assets, do not require a sophisticated investment strategy in order to generate returns; - permitting UCITS to invest in loans may assist UCITS to achieve a greater spread of asset types and greater diversification of exposures to underlying counterparties; - permitting UCITS to invest in loans would allow retail investors that wish to gain exposure to loans to do so through UCITS, which are a transparent and highly-regulated product; 	<p>with data indicating zero defaults and a low number of downgrades in the past 11 years.</p> <p>We set out beneath this table data from S&P Global indicating the low number of defaults by European CLO 2.0 issuers.</p> <p>As a result, and as with direct exposure, overall we consider that permitting UCITS to gain indirect exposure to loans would benefit UCITS, their investors and the broader economy.</p>		
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	<ul style="list-style-type: none"> - funds that invest in loans can be structured to increase liquidity where necessary, using liquidity techniques such as liquidity facilities; - loans present an attractive investment and risk profile; - permitting UCITS to invest in loans would contribute to the European Commission's efforts to support non-bank lending; and - permitting UCITS to invest in loans would prevent the regulatory arbitrage that could occur if some EU Member States (or non-EU jurisdictions) permitted certain types of retail funds to invest in loans whilst the EU prohibited this for its main retail fund product, the UCITS. 			
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	As a result, we consider that permitting UCITS to gain direct exposure to loans would benefit UCITS, their investors and the broader economy.			
2. Catastrophe bonds ('Cat bonds')				
3. Contingent Convertible bonds ('CoCo bonds')				
4. Unrated bonds				
5. Distressed securities				
6. Unlisted equities ⁶				
7. Crypto assets ⁷				
8. Commodities and precious metals ⁸				
9. Exchange-traded commodities ('ETCs')				
10. Real estate				
11. Real Estate Investment Trusts ('REITs')				

⁶ Where relevant, please distinguish between equity instruments issued by (1) private companies and (2) shares in public companies that are not listed.

⁷ Where relevant, please specify what type of crypto assets and whether the implementation of MICA will change anything in terms of your assessment. With respect to indirect exposures, ESMA is particularly interested in stakeholder input on exchange-traded products including ETFs with crypto assets as an underlying.

⁸ With respect to indirect exposures, ESMA is particularly interested in stakeholder input on ETFs with commodities/precious metals as underlying. Please note that under the current UCITS rules, precious metals and certificates representing them are not eligible (Article 50(2)(b) of the UCITS Directive).

12. Special Purpose Acquisition Companies ('SPACs')				
13. EU AIFs ⁹				
14. Non-EU AIFs				
15. Emission allowances				
16. Delta-one instruments				
17. Exchange-traded notes ('ETNs')				
18. Asset-backed securities ('ABS') including mortgage-backed securities ('MBS')				
19. Other relevant asset classes (please specify)				

⁹ Where relevant, please distinguish between different types of AIFs (e.g. open-ended, closed-ended) and investment strategies (e.g. real estate, private equity, hedge funds).

Data on defaults by CLO 2.0 issuers (source: S&P Global)**European CLO 2.0 issuers -- default summary by original rating**

	No. of CLOs	No. of defaults	No. of outstanding CLOs
AAA	418	0	373
AA	422	0	380
A	423	0	380
BBB	423	0	381
BB	421	0	381
B	393	0	364
Total	2,500	0	2,259

CLO--Collateralized loan obligation.