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UCITS

A Guide for Asset Managers

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OVERVIEW

UCITS are open-ended collective investment schemes established and authorised pursuant to EU law, as implemented in the member states of the EU. Perceived as safe and well regulated investments, once authorised, a UCITS can be marketed and sold to retail investors throughout the EEA. Over the past 38 years, the UCITS product has become increasingly popular as a liquid, transparent, diversified and robustly regulated investment product with Ireland at the forefront of UCITS investment fund product development.

Ireland is widely recognised as one of the world's leading international fund centres for domiciling and servicing collective investment schemes. Irish UCITS funds are regulated by the Central Bank of Ireland (the "Central Bank") pursuant to the various UCITS Directives, as implemented into Irish legislation.

UCITS today can invest in a diverse range of financial instruments. This starts with investment in 'transferable securities' (broadly being listed shares and bonds) as well as: (i) shares of other regulated funds; (ii) cash, cash equivalents and money market instruments; and (iii) financial derivative instruments. There is also a facility for investment of up to 10% in unlisted securities.

As the rules for permitted asset classes and governance requirements evolve, UCITS continue to be a popular investment management product. Critically, by using derivatives, UCITS can generate leverage and achieve synthetic short exposure. Accordingly, most (but not all) alternative investment strategies can be replicated, to a certain extent, within a UCITS.

However, it should be said that there are elements of the UCITS regime that can restrain this process and add an administrative burden. These include: (i) asset eligibility rules; (ii) asset diversification rules; (iii) liquidity requirements; (iv) risk and counterparty exposure limits; and (v) operational, compliance and governance rules. These elements are considered in more detail within this brochure.

UCITS EUROPEAN GROWTH

UCITS are an appealing product structure for asset managers looking to access both European retail and institutional investors and international investors.

A UCITS authorised in one member state can benefit from a passport regime allowing it, subject to notification, to be offered in another member state.

As reflected in the statistics below, UCITS have achieved phenomenal growth levels, particularly in Irish UCITS over the last decade.

**€12.6
trillion**

in European UCITS¹

**€173
billion**

Inflows in European UCITS in Q1 2023

188%

Increase in AUM in Irish UCITS since 2013²

**€3.0
trillion**

in Irish UCITS³

1 Statistics as at 30 June 2023. Source: EFAMA

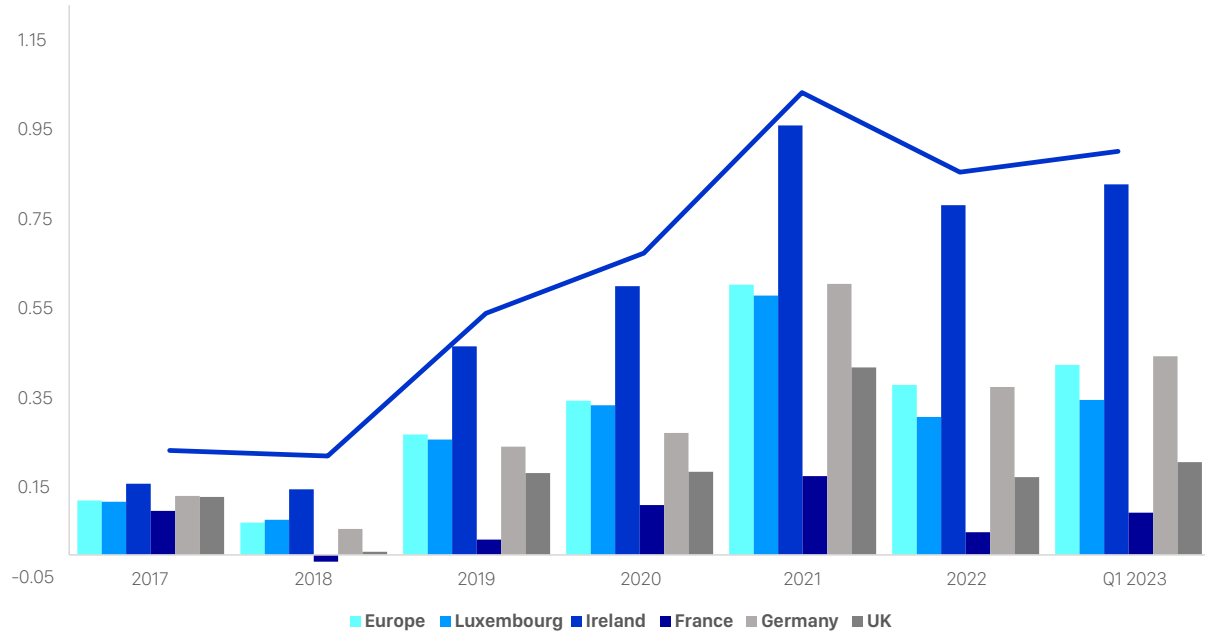
2 Statistics as at 30 September 2023. Source Irish Funds. Source: EFAMA

3 Statistics as at 30 September 2023. Source: Irish Funds.

UCITS IRISH ASSET LEVELS

Ireland is now the strongest growing fund domicile in Europe. Assets in Irish UCITS funds have significantly outgrown its main European rivals (Luxembourg, the UK, France and Germany) over the last 10 years.

Ireland - Fastest Growing of Largest European Fund Domiciles



Source: EEAMA, March 2023

KEY FEATURES OF A UCITS

Liquidity	A UCITS must be able to offer redemptions at least twice a month, i.e. fortnightly. A 10% fund level gate is permitted. Redemption proceeds to be received within 14 calendar days / 10 business days of the redemption deadline.
Asset Eligibility	At least 90% of assets must be in liquid (UCITS eligible) instruments e.g. listed equities, fixed income, money market instruments, regulated funds and derivatives on eligible assets or financial indices). No direct short-selling permitted. Direct exposure to real estate and commodities is not permitted.
Asset Diversification	No single asset can represent more than 10% of the fund's assets; holdings of more than 5% cannot in aggregate exceed 40% of the fund's assets. This is known as the "5 / 10 / 40" rule. There are certain exceptions for government issued securities and for index tracking funds.
Borrowing and Leverage Limits	Temporary borrowing is limited to 10% and not permitted for investment purposes. A general leverage limit of 100% is applied (although use of Value at Risk ("VaR") to measure global exposure for more complex strategies gives significant flexibility in this regard).
Independent Service Providers	Irish based, regulated depository, administrator and auditor provide independence in key support and oversight functions.
Retail Investors	No minimum investment level is applied under UCITS regulation (although funds may fix levels themselves); no investor eligibility criteria is applied.
Legal Structures	UCITS can be established as Irish Collective Asset-management Vehicles ("ICAVs"), investment companies, unit trusts and Common Contractual Funds ("CCFs").
Availability as a Segregated Umbrella	UCITS can operate as a standalone fund or as an umbrella fund, with multiple sub-funds with segregation of liability at sub-fund level.
Operational, Compliance and Governance Rules	Detailed operating rules are applied covering, for example, valuations, board oversight and monitoring, set out in greater detail in Central Bank guidance.
Taxation	As a general rule, UCITS funds which fall within the investment undertaking tax regime are not subject to tax in Ireland on any income or gains they realise from their investments. UCITS funds structured as a CCF are transparent for Irish tax purposes. For further tax features of UCITS funds, please see the section Tax - Headline Points for UCITS.
Key Investor Information ("PRIIPS KID")	Where a UCITS is made available to retail investors in the EEA, a PRIIPS KID must be produced. The PRIIPS KID is a short pre-contractual disclosure document. Its form, content and how it is distributed are highly prescribed. The PRIIPS KID must include disclosure on matters such as: (i) forward-looking performance scenarios; (ii) detailed cost disclosure; and (iii) risk measurement (based on a summary risk indicator).
Key Investor Information Document ("KIID")	In certain circumstances, a KIID must continue to be produced. Similar to a PRIIPS KID, a KIID is a simplified product factsheet that follows a rigid format. While the form and function of the KIID is similar to the PRIIPS KID, there are some key differences owing to the differing legislative basis for each document.

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They are outstanding on international aspects...

Commercially minded, aware of new developments and very proactive...

They have great strength in handling country registrations and all aspects of maintaining all regulatory filings...

CHAMBERS GLOBAL

Maples is a global titan in the investment funds arena...

...regarded by some as being 'the best in Dublin'...

Exceptional knowledge of the investment funds industry sector...

LEGAL 500

Partners and associates are technically excellent and can be relied on for practical and sound business advice...

The team at Maples is outstanding...

Leading Irish firm advising on funds & investment management, often being the first to implement new products...

IFLR

”

The Maples Group is independently ranked first amongst Irish law firms in Ireland in terms of total number of funds advised (based on the latest Monterey Ireland Fund Report, as at 30 June 2022).

DEPOSITARY AND THE MANAGEMENT COMPANY

Depositary

The entity responsible for holding and safe-keeping the assets of a UCITS is a depositary. This role is highly regulated and any entity seeking to fulfil this role for Irish UCITS must be located in Ireland, and regulated and supervised by the Central Bank or an Irish branch of an EU regulated entity. A single depositary is appointed to each UCITS. The core functions of a UCITS depositary are oversight, safekeeping and cash monitoring.

A depositary to a UCITS is strictly liable for the loss of financial instruments that can be held in custody, unless it can prove the loss has arisen as a result of an external event beyond its reasonable control. In the event of such a loss, the depositary is required to return identical assets to those lost or a corresponding amount to the UCITS without undue delay. This strict liability affords investors in a UCITS a strong level of protection against loss. The level of protection for assets that are not financial instruments that can be held in custody is significantly lower.

Management Company

Each UCITS must appoint a management company or be structured as a self-managed UCITS. The core activities covered by the UCITS management company passport are investment management, administration and marketing.

UCITS structured as an investment company or an ICAV are permitted to be established as a self-managed UCITS, however, the prevailing trend is to appoint an external management company. This has largely been driven by the increased regulatory burden and substance requirements imposed by the Central Bank on management companies.

The UCITS management company must be authorised in Ireland or another EU Member State (having passported its management license into Ireland in respect of the Irish UCITS). This provides flexibility for management companies to provide collective portfolio management services cross border, without being obliged to be established in the UCITS home member state.

The UCITS management company is responsible for the appointment and oversight of delegate service providers.



LEVERAGE, USE OF DERIVATIVES AND COUNTERPARTIES

Global Exposure

The Central Bank requires a UCITS to calculate its 'global exposure' on at least a daily basis through either of the following methodologies:

- (i) Commitment Approach; or
- (ii) Value at Risk

Commitment Approach

Under the Commitment Approach, global exposure is measured by the incremental exposure and leverage generated by the UCITS through the use of Financial Derivative Instruments ("FDIs") (including any embedded derivatives) which may not exceed the total of the UCITS net asset value. Through applying this approach, the UCITS cannot have global exposure of in excess of 100% of its net asset value.

Value at Risk

Under the VaR approach, global exposure is measured by the market risk of the UCITS. This means a measurement of the maximum expected loss at a given confidence level over a specific period. The 'market risk' of a UCITS is not the same as the 'leverage' of a UCITS. A UCITS using the VaR approach is therefore not limited to a global exposure of no more than 100% of its net asset value, as is the case for a UCITS using the Commitment Approach.

For UCITS using either absolute VaR or relative VaR to calculate global exposure, disclosure must be made in the offering document disclosing an expected level of leverage, calculated on the basis of the sum of the notionals method. However, there is no regulatory maximum level imposed in respect of this disclosure. Stated levels can be high, provided in all cases that the UCITS meets the VaR disclosure requirements.

Counterparty Exposure

Prime brokers may not be engaged by UCITS in a full service manner as would be customary for alternative investment funds. However, most prime brokers offer synthetic prime brokerage services to comply with UCITS rules. In relation to such prime brokers / derivative counterparties, UCITS apply risk exposure rules, counterparty exposure limits and also counterparty eligibility criteria, addressing counterparty credit risk issues.

The maximum amount a UCITS may be exposed to a counterparty is 10% of the net asset value of the UCITS, depending on the classification of the counterparty. An EU credit institution amount is 10%; any other regulated counterparty is 5%.

Counterparty exposure will be measured based on the mark-to-market value of the derivatives (subject to certain adjustments). In essence, at a point in time, if the positions were settled, what would the counterparty owe the UCITS in total?

That amount needs to be less than the relevant 5% or 10% limit. There is a range of means by which a UCITS can operate a derivatives portfolio with a single counterparty and manage counterparty exposure within the limits. For example, large 'in the money' positions can be settled and rolled over before limits are exceeded – so the counterparty pays its obligations to the UCITS regularly (for example, by triggering set buffer levels) and never owes more than the maximum 5% or 10% at any one time.

To reduce the exposure, other tools are also available. Netting of counterparty exposures is permitted (where there is a contractual netting agreement and therefore a single flow of obligations). Also, exposure can be reduced to the extent that the UCITS receives eligible collateral from the counterparty or operates a pledge account for cash / collateral which remains within the depositary's custodial network, and is subject to the control and security interest of the counterparty.

DISTRIBUTION OF UCITS

The Maples Group Global Registration Services

Our Global Registration Services (“GRS”) team provides a range of services, including supporting UCITS (domiciled in Ireland and Luxembourg) by providing an integrated global network of experts coordinated by a dedicated central team who manage and support all legal and regulatory aspects governing the cross border marketing of these products on both a private placement and public offer basis.

Combining expert local knowledge with full project management functionality through a seamless service creates a powerful and efficient multi-jurisdictional solution. In doing so, our GRS team delivers tailored solutions through a single point of contact, which frees valuable internal resources and generates significant added value for our clients.

Our aim is to offer a service that provides efficiency, value and peace of mind so that our services become solutions, tailored to the needs of our clients.

We offer our clients a range of services addressing regulatory aspects to help optimise fund distribution activities globally. We believe that by having a dedicated team solely focused on registration business, coupled with our experience in dealing with a broad range of local services, we provide the best service to our clients and can proactively identify areas where economies of scale can be achieved.

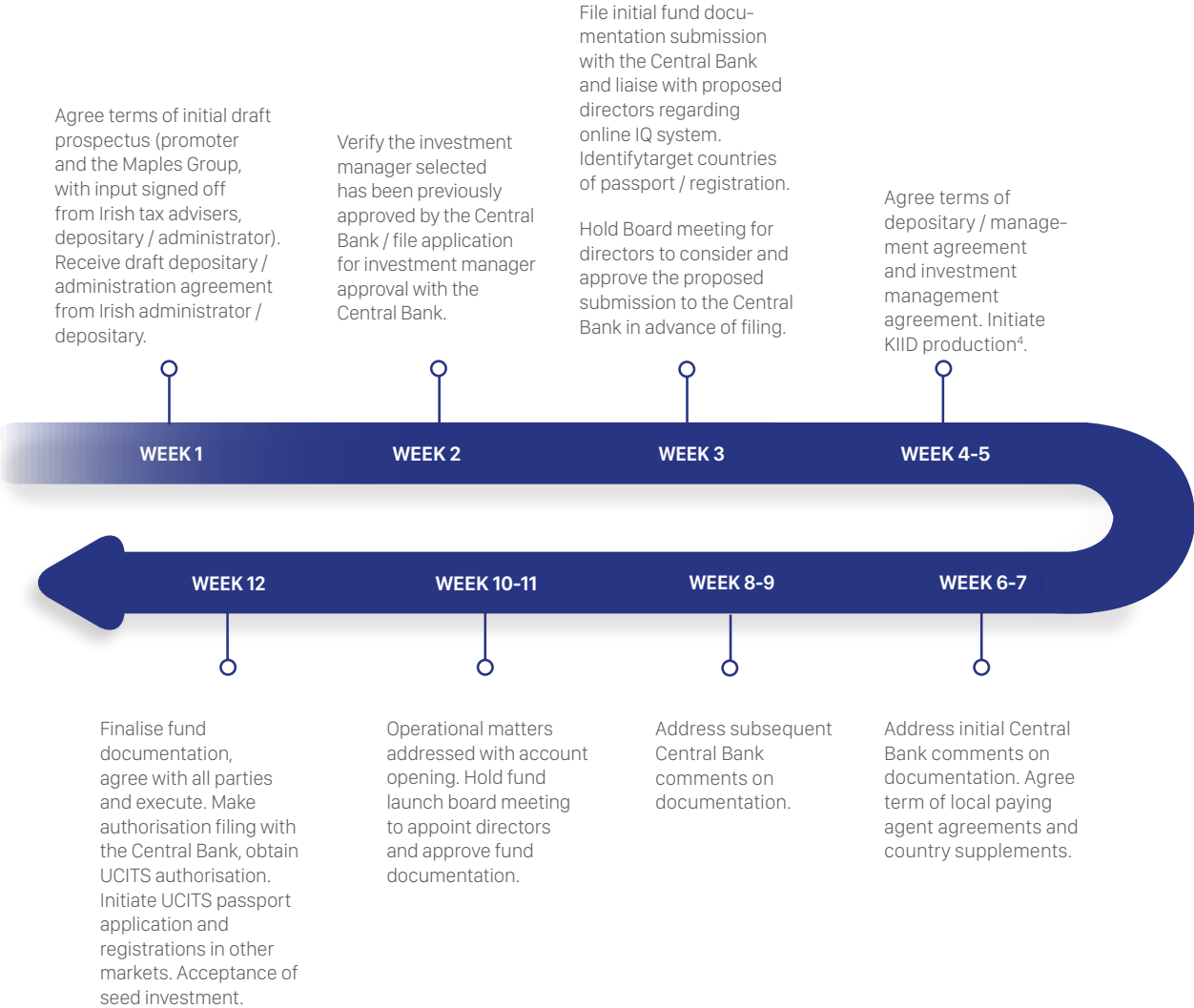
Our core GRS services include:

- Market intelligence > 80 Markets;
- EEA / Non-EEA de-notification / cessation of marketing;
- Global private placement(s);
- EEA passport / Non-EEA registration; and
- Ongoing registration maintenance.

For further details please refer to our GRS Guide to [Marketing UCITS and AIFs through the European Passports](#).

INDICATIVE LAUNCH TIMETABLE FOR A UCITS

In the context of the establishment and authorisation of an Irish UCITS, we would generally anticipate a timeline of approximately 10-12 weeks from the point at which all parties have been engaged and have commenced work on the project. Below is a very high level overview of the key steps.



⁴ For further details, please refer to our [UCITS KIID and PRIIPs KID Production brochure](#).

TAX HEADLINE POINTS FOR UCITS

Tax Efficient

No Irish taxation arises on income or gains at the level of the Irish UCITS fund.

No Withholding Tax

No withholding tax on dividend or redemption applies on payments to non-Irish investors or certain Irish resident exempted investors.

Tax Treaty Access

Irish UCITS funds may be entitled to benefit from the provisions of Ireland's double tax treaties, including the US / Ireland treaty, subject to the provisions of each treaty and the rules in the relevant treaty partner country in each case.

VAT Exemptions

The provision of certain standard services to Irish UCITS funds (e.g. investment management, administration, transfer agency, depositary etc.) are treated as VAT exempt in Ireland. In general, the activities of UCITS are considered to be VAT exempt, however, the funds may be required to register for VAT if they receive taxable services from outside Ireland under the reverse charge VAT rules. To the extent that the Irish UCITS fund incurs Irish VAT on certain services it receives (e.g. audit and legal fees), it may recover a portion of this VAT based on its recovery rate.

Stamp Duty and Subscription Taxes

No stamp duty is payable in Ireland on the issue, transfer, repurchase or redemption of shares in an Irish UCITS fund. No subscription taxes are levied by the Irish tax authorities on the assets of an Irish UCITS fund.

Exchange of Information

Ireland is fully compliant with the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Ireland has implemented the US FATCA regime, the OECD Common Reporting Standard ("CRS") and Council Directive (EU) 2018/822 on mandatory disclosure for cross-border transactions ("DAC6"). Irish UCITS funds are thus capable of complying with international FATCA and CRS requirements. Provided the Irish UCITS fund complies with its FATCA obligations, no FATCA withholding should apply on payments from US sources.

Tax Transparent Investment Funds

An Irish UCITS fund structured as a CCF is treated as a tax transparent entity for Irish tax purposes and therefore its income and gains are treated as arising to the investors, in proportion to the value of the units beneficially owned by those investors. The CCF is required to make a statement to the Irish Tax Authorities setting out the income and gains arising to the CCF, the name and address of each investor and the quantum of the total amount of income, gains and losses of the CCF allocated to (or deemed to be allocated to) each investor. Investors may be subject to tax in their home jurisdiction and may be able to access the benefits of double tax treaties between their home jurisdiction and the jurisdiction of the underlying investment.

US "Check-the-Box" Options

Where a UCITS fund is established as an ICAV, there are potential advantages which relate to its tax treatment for US purposes. A UCITS structured as an ICAV may elect to "check-the-box" to be treated as a tax transparent partnership or a "disregarded entity" (rather than an opaque "per se corporation") for US federal tax purposes.

Compliance Requirements

UCITS funds which fall within the investment undertaking tax regime are obliged to register with the Irish Tax Authorities to obtain a tax reference number and each UCITS fund must file a bi-annual tax return with the Irish Tax Authorities.

PAYE

Remuneration arising from the office of director of an Irish incorporated company, including UCITS funds structured as ICAVs or investment companies, is subject to the Irish income tax PAYE system of deductions at source, irrespective of where the director is resident or domiciled for tax purposes. An exemption may be available if the director in question has obtained a PAYE Exclusion Order.

FREQUENTLY ASKED QUESTIONS

What is the most popular structure for Irish UCITS?

The ICAV is by far the most popular choice of vehicle for asset managers forming Irish UCITS. For more details on the ICAV structure, please refer to [our ICAV brochure](#).

Can a fund redomicile to Ireland under the UCITS regime?

Ireland offers a corporate migration regime supported by specific legislation as well as regulatory measures supporting unit trust redomiciliations. Funds can migrate from Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and the Isle of Man. Migrating funds can be authorised as UCITS.

Can a UCITS merge with another UCITS?

Yes. UCITS legislation provides for a specific merger regime for UCITS funds under which Member States must allow for cross-border and domestic mergers in accordance with one or more of the following merger techniques:

- (i) Where a UCITS transfers all of its assets and liabilities to another existing UCITS without going into liquidation;
 - (ii) Where at least two UCITS transfer all their asset and liabilities to a new UCITS which they form without going into liquidation; and
 - (iii) Where one or more UCITS, which continue to exist until the liabilities have been discharged, transfer their net assets to another sub-fund of the same UCITS, to a new UCITS or to another existing UCITS.
-

Are there requirements in relation to the regulatory status of the investment manager?

Ireland will recognise and approve investment managers who are regulated by an EU supervisory authority (such as the AMF, BaFin) or global equivalents (such as the SEC, NFA or CFTC in the United States, the SFC in Hong Kong and regulators in other jurisdictions) subject to filing short organisational and background details to ensure the integrity of the investment manager together with details of the financial resources of the investment manager.

Can UCITS apply credit strategies?

Yes. Credit strategy managers can invest across the full credit spectrum and use derivatives in order to generate returns. In particular, UCITS may invest in various types of asset-backed securities ("ABS") such as mortgage-backed securities.

Can UCITS invest in, or gain exposure to, financial indices?

Yes. Financial indices, whether or not comprised of eligible assets, can be considered eligible financial indices provided they comply with the general conditions applicable to financial indices, as set out in guidance issued by the Central Bank, which implements the ESMA guidelines on exchange traded funds and other UCITS issues (ESMA/2012/832EN).

Can UCITS invest in, or gain exposure to, commodities?

Yes, however direct exposure to commodities is not permitted. A UCITS may invest in a financial index (using a derivative, such as a swap) or invest in structured products known as "structured financial instruments" ("SFIs") which can be classified as a transferable security to gain indirect exposure to commodities.

Can UCITS be structured as ETFs?

Yes, European-domiciled exchange traded funds ("ETFs") are traditionally established as UCITS. Ireland is also the leading domicile for ETFs, representing approximately 70% of the total European ETF market. The key factor which differentiates an ETF from other investment fund structures is that it is traded on one or more stock exchanges. Therefore, ETFs are an investment product which combines the features of an investment fund with those of an exchange traded security.

For further information on establishing ETFs, please see our [ETF guide](#).

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