

Esma looks for powers to block Ucits and alts fund distribution

By Robert Van Egghen 5 February 2020

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Asset management companies could be blocked from distributing and marketing funds after Europe's markets watchdog backed a call by policymakers to extend its product intervention powers.

The European Securities and Markets Authority yesterday proposed an extension of its ability to restrict and prohibit the sales and marketing of financial products under Mifid II to Ucits management companies and alternative investment fund managers.

Esma submitted a report to the European Commission calling on Brussels to expand its remit so it can "apply restrictions and prohibitions directly to [alternative investment fund managers] and Ucits management companies".

This means Esma would be able to suspend the marketing, sale and distribution of funds it deems unsuitable for retail investors.

The watchdog says this would avoid the risk of "regulatory arbitrage" between Mifid firms and fund management firms, as Ucits management companies and alternative investment fund managers could continue to market and distribute a fund when Mifid firms had already been restricted or prohibited from doing so.

The watchdog has the power to temporarily restrict Mifid firms from carrying out investment activities and block the marketing, distribution and sale of financial instruments and products.

However, the supervisory authority says Ucits management companies and alternative investment fund managers are currently able to exploit a loophole in EU regulation and continue distributing a product after it has been banned.

“The distribution of the type of Ucits or [alternative investment fund] subject to the restriction could continue through fund management companies if they decide to market their funds



elves,” says Esma.

Esma says this creates “a unlevel playing field” across the EU as “product intervention measures [do] not cover these entities”.



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Esma says policymakers should also consider extending the length of its product banning powers to 18 months and permit it to issue permanent bans as well as temporary ones.

The watchdog has previously imposed temporary restrictions on the sale of certain binary options and contracts for difference.

However, Mr Veneziano cautions that, unlike those instruments, Ucits and alternative investment funds are “not necessarily considered to be complex products”.

The commission is currently reviewing both the Ucits directive and AIFMD, and is expected to act on Esma’s advice in the coming months.

The commission had previously proposed expanding Esma’s product intervention powers in 2017 as part of its plan to reform the supervisory authority.

Brussels said this would ensure consistency of approach between different national regulators.

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