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Esma seeks Ucits/AIFMD convergence

By Anna Devine, David Ricketts 13 February 2017

Europe's securities watchdog has launched an attempt to foster greater consistency between Ucits and the Alternative Investment Fund Managers Directive as part of a wider focus on regulatory convergence.

The European Securities and Markets Authority says it wants to develop a common approach regarding delegation of portfolio management and depositary functions under the two legislations, and provide a common understanding of so-called substance requirements for Ucits management companies and alternative investment fund managers.

This comes after the authority last month published an opinion calling for its powers on banning investment products to be the same under Ucits and Mifid.

In new evidence that Esma is focused on harmonising fund rules, the authority has announced that it will seek to address some of inconsistencies between Ucits and AIFMD this year.

In a convergence work programme published last week, the securities watchdog says it also wants to gain a better understanding of how firms use liquidity management tools under the two fund directives.

The Paris-based body says it will also give consideration to “the development of common approaches to the rules on eligible assets in the Ucits directive” and develop common practices on fund fees and expenses, depending on resources available.

Esma also aims to use its convergence work to follow up an earlier consultation on asset segregation under AIFMD, as well as developing common rules around leverage limits.

Asset managers have complained to the European Commission that both Ucits and AIFMD are applied inconsistently across EU member states, citing differences in regulatory and administration fees as well as specific local marketing requirements among their main frustrations.

The drive by Esma to focus on convergence between Ucits and AIFMD comes after the authority last month published an opinion expressing concerns over the non-application of Mifid II investor protection rules to all asset managers.

The opinion paper suggested that it should be able to extend certain Mifid II intervention powers to Ucits management companies and alternative investment fund managers, which can carry out certain Mifid activities.

According to Esma’s research, 51 per cent of Ucits management companies have permission to provide portfolio management services and 45 per cent investment advice.

Regarding alternative investment fund managers, 28 per cent have permission to carry out portfolio management activities, while 29 per cent can provide investment advice.

Upcoming Mifid II legislation, which will be introduced in January 2018, will allow Esma and national regulators to ban the sale of certain products they believe are unsuitable for retail investors.

Speaking to *Ignites Europe* last month, Clément Boidard, policy analyst at Esma, said: "We want to close the gap and get further clarity on whether we should have the same powers over asset management companies and not just Mifid firms."

He added that while Esma and national watchdogs can intervene over the marketing of products and services offered by Mifid firms, "it is not possible to apply the same powers to [management companies]".

Attilio Veneziano, founder of law firm Veneziano & Partners, says Esma is aiming to create a more homogenised single market and fulfil its "reactionary function" in European financial regulation.

Mr Veneziano adds that Esma's approach is also in keeping with the "vital role" it sees itself playing in the creation of the EU's landmark capital markets union initiative.

Sean Tuffy, head of regulatory intelligence at Brown Brothers Harriman, says Esma's opinion piece signals a shift in its focus from post-crisis rule-making to ensuring harmonisation across the EU.

"The industry should be on the look out for more action like this out of Esma," he says.

Esma to scrutinise fund fees

by Sandra Heistruvers

Europe's main securities regulator is to scrutinise the fees charged by European Union investment funds as part of wider plans to improve supervisory convergence across the bloc.

In its supervisory convergence work programme published last week, the European Securities and Markets Authority says its activities in the area of investment management will include the "development of common practices on fees and expenses of investment funds".

Esma says, however, that this workstream is "subject to resource availability".

The convergence programme outlines the activities and tasks Esma will carry out to "promote sound, efficient and consistent supervision" across the EU.

The move by the Paris-based organisation to scrutinise investment fund fees and charges comes after several probes by national regulators.

In November the Financial Conduct Authority concluded in its interim report on competition in the UK asset management industry that active funds rarely outperform and that charging models should be overhauled to improve returns for investors.

Valdis Dombrovskis, the EU commissioner in charge of financial services, recently called for an investigation into the performance of investment funds and the fees they charge retail investors.

Ignites Europe reported recently that Brussels had tasked professional services firm Deloitte with conducting a study of European fund fees and investment performance.

Sven Gentner, head of the European Commission's asset management unit, said the EU was "keen to advance the policy agenda" on fees so investors would have a better understanding of the costs involved with fund investments.

He noted that the findings of the Deloitte study would "inform policy decisions" made by the commission.