

PRESS RELEASE

ESMA calls for consistent application of MiFIR product intervention powers

The European Securities and Markets Authority (ESMA) has issued today an [Opinion](#) regarding the scope of the product intervention powers under the Markets in Financial Instruments Regulation (MiFIR). These powers can be exercised by both national competent authorities (NCAs) and ESMA from 3 January 2018.

Currently, the powers will only apply to MiFID investment firms marketing products which pose risks to retail investors, market integrity, and financial stability in the EU, but do not cover UCITS management companies and Alternative Investment Fund Managers (AIFMs). ESMA is concerned about the potential for regulatory arbitrage and the potential reduction in effectiveness of future intervention measures, and believes that the EU institutions should address this issue.

The Opinion outlines the potential consequences linked to the exclusion of fund management companies from the scope of the powers, including the risk of arbitrage where a type of fund that is restricted or banned under MiFIR could be distributed through fund management companies if they decided to market or distribute the funds themselves.

Steven Maijoor, Chair, said:

“ESMA believes that including fund management companies in scope of the MiFIR intervention regime would ensure a harmonised framework across entities and instruments.

“This would create a level-playing field between MiFID firms and fund management companies, ensuring we appropriately address risks to investors and financial stability.”

Background

From 3 January 2018, ESMA and NCAs will have the power to temporarily prohibit or restrict investment firm’s marketing, distribution or sale of:



- (1) units or shares in UCITS and Alternative Investment Funds (AIFs); and
- (2) financial instruments with certain specified features.

ESMA and NCAs will also have the powers to prohibit MIFID financial activities or practices which pose risks to investors, market integrity, and financial stability in the EU.

Notes for editors

1. [ESMA 50-1215332076-23 – Opinion on the impact of the exclusion of fund management companies from the scope of the MiFIR Intervention Powers](#)
2. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- i. assessing risks to investors, markets and financial stability;
 - ii. completing a single rulebook for EU financial markets;
 - iii. promoting supervisory convergence; and
 - iv. directly supervising specific financial entities.
3. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

Further information:

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