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ESMA has deemed all investment trusts are "complex"

The European Securities and Markets Authority ("ESMA") has stated that all listed investment companies should be deemed complex under MiFID II (The Markets in Financial Instruments Directive (2014/65/EU) and the Markets in Financial Instruments Regulation (Regulation 600/2016) (MiFIR) (ESMA 35-43-349), collectively referred to as MiFID II). The effect of this, if implemented by the Financial Conduct Authority (the "FCA"), would be to prohibit brokers/platforms from selling investment company shares on an execution only basis (i.e. without carrying out an appropriateness assessment) and have an extreme impact on the retail market for investment company shares.

The decision announced through an updated version of the investor protection topics covered in ESMA's MiFID II Q&A on Tuesday (ESMA's Q&A are available [here](#)) is in direct contradiction to the FCA's current position (set out in the FCA's consultation paper (CP16/29) published on 28 September 2016, available [here](#)). The FCA had previously indicated that investment companies could be assessed on a case by case basis and, if appropriate, treated as non-complex.

Whilst the ESMA Q&A should in principal be followed by the FCA, it is imperative that all participants in the listed fund industry assist lobbying efforts to ensure that the FCA maintains its current stance notwithstanding this Q&A from ESMA (#sharesaresimple).

If the FCA's current position was maintained, shares in investment companies would not automatically be deemed complex or non-complex: instead they would be considered against specific criteria set out in MiFID II and the relevant delegated legislation. Applying these criteria, the vast majority of listed investment company shares would be expected to be deemed non-complex.

ESMA, the European capital markets and securities regulator, has stated all non-UCITS (UCITS funds are open ended EU regulated funds, they are the most common funds used by retail investors), should be treated as complex so the ruling impacts more than just listed investment funds. MiFID II is the new EU financial markets directive which will come into force on 3 January 2018.

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