

PRESS RELEASE

EU Regulators must disclose the falsely active funds (“closet indexers”) they identified to misled investors

On February 2nd ESMA released some long awaited results of its investigation on falsely active equity UCITS funds (also called “closet indexers”). Those are funds that claim to be “actively” managed but that are in fact merely following market indices, although they charge much higher fees than low cost index-tracking funds such as ETFs. The distribution of such funds as “active” funds is very misleading to the investor and causes detriment because the investor is paying for a service that he is not actually receiving.

Better Finance had asked ESMA to launch this EU-wide investigation in October 2014, and thanks ESMA for having carried it out. These results confirm that investor detriment is most likely massive since ESMA found that up to 15 % of the UCITS funds it sampled are in all likelihood falsely active. This already very alarming percentage would probably have been even higher if ESMA had included the equity funds that are most widely sold to retail investors in major markets like France or Germany, i.e. “AIF”¹ funds rather than the Pan-European UCITS ones.

However, ESMA - unlike the Norwegian regulator - did not disclose these funds that were uncovered by its investigation as most likely falsely active, nor did they disclose in which countries they are domiciled, leaving EU investors in the dark. Moreover, despite having already taken more than a year to perform a quantitative followed by a qualitative investigation, ESMA now leaves it up to National Competent Authorities to deal with this huge case of wronged investors, without setting any timeline or obligation to disclose. However, investors holding those funds have waited and suffered long enough, and can certainly not wait for hypothetical action, with no timeline, by unknown national regulators.

EU law clearly requires ESMA to enhance the protection of EU investors. Therefore, Better Finance asks ESMA to promptly disclose the names of the hundreds of funds² that it highly suspects of engaging in “closet indexing” and therefore of severely misleading investors.

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¹ AIF: « alternative Investment fund ». Despite their name, these funds are mostly ordinary funds and are much more widely sold to individuals than « UCITS ».

² 15% of the ESMA « sample » equals 390 UCITS funds; 15 % of the ESMA “sub-sample » equals 188 UCITS funds. ESMA did not disclose why it could work only on the « sub-sample ».