Deloitte.

How to sell funds into the UK post-Brexit

Brexit News

24 April 2017

As the UK prepares to hold a general election widely expected to give the Conservative party a strong hand to negotiate the country's exit from the European Union, cross-border asset managers must consider how they will sell funds to UK investors post-Brexit.

Experts believe non-UK Ucits funds may eventually be prevented from being sold in the UK, adding that firms should be thinking about how they will provide services to one of Europe's largest markets once it leaves the bloc.

Although observers say the June election may result in a transition period and a free-trade deal between the UK and the EU, there is still an element of uncertainty as to what exactly will happen.

Julie Patterson, head of Brexit for investment management at KPMG, says: "There is no obvious regulatory policy reason why EU27 Ucits [funds] should be prevented from marketing to UK retail investors. However, this is a political and trade negotiation.

"If UK Ucits [funds] can no longer be sold into the EU, the political override may be that EU27 Ucits [funds] will no longer be able to access UK retail investors."

Richard Heffner, partner at law firm Dechert, says the question of reciprocal rights for UK and EU funds will depend on the nature of the negotiations.

"If negotiations start breaking down and there is tit for tat, then ... the UK might make it more difficult for non-UK Ucits to be marketed into the UK," says Mr Heffner.

Monica Gogna, financial regulation partner at Ropes & Gray, adds: "Firms are right to think about it.

"They should be engaging with regulators, or via their industry associations, just to make sure the business case is being made."

However, Ms Gogna adds that it would "seem odd" if there are problems on this issue as the UK and EU share Ucits rules for retail funds that should be deemed "broadly equivalent" post-Brexit.

Mr Heffner also says he is “not expecting difficulties on this issue” as UK firms would also be adversely affected by such an outcome from the negotiations.

But there are three main approaches that firms selling non-UK Ucits into the UK should consider to Brexit proof their business, according to Mr Heffner.

“If you want absolute certainty, the most bullet-proof way is to set up UK clones of EU funds,” he says.

This is an approach that Natixis Global Asset Management has taken and Pictet Asset Management is considering.

Traditionally there has been a preference among UK financial advisers for UK-domiciled funds rather than Ucits from other jurisdictions, which Ms Gogna says is “more of a market issue than a regulatory [one]”.

However, if the UK does not put up distribution barriers foreign EU funds may also be able to carry on being distributed in the country, albeit without automatic registration that the Ucits regime currently allows.

Mr Heffner says a second option is for firms to use Article 272 of the Financial Services and Markets Act to gain permission to market funds in the UK.

Article 272 covers individually recognised overseas collective investment schemes and is currently used by funds established in the Channel Islands selling into the UK mainland.

He expects Article 264 of Fsma – under which non-UK Ucits are currently recognised in the UK – to change with Brexit so that firms and management companies are forced to apply to the UK regulator, prompting them to consider Article 272 instead.

This would be a reversion to the situation before the introduction of Ucits IV in the UK in 2011.

For funds not marketed to retail investors, a third option is available.

If a fund is not recognised under Fsma rules, it would be considered as an unregulated collective investment.

In this situation Mr Heffner says it is “pretty easy” to market to institutional clients but targeting retail clients would be “more of a problem”.

A further consideration for firms is the impact on alternative investment funds if reciprocal arrangements are not agreed between the UK and EU.

Ms Patterson says “in theory” there is nothing to prevent EU alternative investment fund managers continuing to be sold into the UK because alternative funds need not be domiciled in the EU.

However, passports for non-EU managers have not yet been introduced and some EU countries have “very restrictive” private placement regimes.

“If UK [alternative investment funds] cannot be sold into these countries, the political override may be that [alternative funds] domiciled in those countries will not be able to be marketed into the UK,” Ms Patterson adds.

BlackRock, Mercer, Insight and Vanguard are the largest managers of assets in sterling share classes of Luxembourg and Irish funds, Ignites Europe analysis shows. This is a proxy for the size of UK clients in these funds.

Assets in sterling share classes of Irish and Luxembourg funds total some €310bn, according to Morningstar data.

Your contacts

Vincent Gouverneur
Partner | EMEA Investment Management Leader
Tel: +352 45145 2451
vgouverneur@deloitte.lu

Benjamin Lam
Partner | Investment Management Leader
Tel: +352 45145 2429
blam@deloitte.lu

Raymond Krawczykowski
Partner | Tax Leader
Tel: +352 45145 2500
rkrawczykowski@deloitte.lu

Simon Ramos
Partner | Luxembourg Brexit Leader
Tel: +352 45145 2702
siramos@deloitte.lu

Deloitte Luxembourg
560, rue de Neudorf
L-2220 Luxembourg

Tel: +352 451 451
Fax: +352 451 452 401
www.deloitte.lu

Designed and produced by MarCom at Deloitte Luxembourg