

# ESMA'S BREACH OF UNION LAW POWERS

EU National securities and markets  
Regulators are obliged to apply EU law  
that falls within ESMA's remit

WHY?

If ESMA suspects that this is not applied correctly

Breach of Union Law (BUL) Powers

# ESMA'S BREACH OF UNION LAW POWERS

WHAT?

- It is up to ESMA to decide whether to initiate a BUL investigation
- ESMA cannot give redress or provide compensation to complainants who have suffered financial loss
- ESMA's BUL role is complementary to that of the European Commission as Guardian of the EU Treaties

# ESMA'S BREACH OF UNION LAW PROCESS

HOW?

- Based on:
  - ESMA's initiative
  - Information from complainants
  - Request from certain EU bodies
- Request for information to the National Regulator

BUL cases are often solved at this stage

# ESMA'S BREACH OF UNION LAW PROCESS

HOW?

- Chair starts investigation (where appropriate)  
↓
- Assessment of the case by independent panel  
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- ESMA's Board of Supervisors decides whether to adopt a BUL recommendation to the National Regulator

Ongoing possibility of engaging in settlement discussions with National Regulator



# ESMA'S BREACH OF UNION LAW CRITERIA

Before opening an investigation, ESMA will take into account:



Impact on the public interest



Repeated infringement by the National Regulator/general approach followed by the National Regulator



Clear and unconditional legal obligation on the National Regulator



Matter already being dealt with by other bodies/through other means