

RESPONSE SENT VIA EMAIL:Sarah.raisin@esma.europa.euJoint-committee@eba.europa.eu

7 February 2014

For the attention of the European Securities & Markets Authority (ESMA) and the European Banking Authority (EBA):**Re: British Bankers' Association response to JC Complaints Handling CP 2013-13**

The British Bankers' Association (BBA) welcomes the opportunity to respond to this important consultation regarding complaints handling for the securities (ESMA) and banking (EBA) sectors in the EU. The BBA is the leading trade association for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking centre.

In general, the BBA is of the view that effective complaints handling policies are central to a banks' every-day business and continuous efforts are being made by the industry to improve standards in this regard. The BBA is therefore, in principle, largely supportive of the proposals of draft Guidelines for complaints handling for the securities and banking sector in the EU.

Nonetheless, the BBA does have some specific comments on the questions laid out in the consultation paper, as well as the proposed Guidelines, which you will find outlined in the annex to this letter.

If you have any questions, please do not hesitate to contact me.

Yours sincerely,



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Annex: Specific Questions

Q1: Do you agree that complaints-handling is an opportunity for further supervisory convergence? Please also state the reasons for your answer.

The BBA agrees that complaint-handling is an opportunity for further supervisory convergence. It is important there is consistency with minimum standards across the EU community to allow consumers, firms and National Authorities to adopt a uniform approach to complaints handling.

The BBA agrees, in general, with the introduction of high level principle-based guidelines as a way to improving confidence in financial services, ensuring a consistent approach and enhancing customers experience and understanding. However, it is important to ensure that the correct balance between a principle based guidance approach and a rules based approach is struck. For example, points 18 & 19 (page 11) indicate that firms must comply / make every effort to comply with the guidelines (this then leads one to question whether these are in fact rules). A genuine principle and guidance based approach should provide flexibility for both firms and National Authorities to reflect the requirements of their customers and the specific markets they are working in. The BBA is ultimately concerned that some of the guidelines outlined in the proposals are more rules-based which may impact on firms' ability to provide their customers with the most effective complaint handling experience. The BBA would therefore call for greater clarity in distinguishing between rules and guidelines in this regard.

Q2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

○ **Guideline 1: Complaints management policy:**

Competent authorities should ensure that:

- a) A 'complaints management policy' is put in place in firms. This policy should be defined and endorsed by the firm's senior management, who should also be responsible for its implementation and for monitoring compliance with it.*
- b) This 'complaints management policy' is set out in a (written) document e.g. as part of a 'general (fair) treatment policy'.*
- c) The 'complaints management policy' is made available to all relevant staff of the firm through an adequate internal channel.*

The BBA agrees with the proposed wording of this guideline and anticipate that most firms would already have this in place.

○ **Guideline 2: Complaints management function**

Competent authorities should ensure that firms have a complaints management function which enables complaints to be investigated fairly and possible conflicts of interest to be identified and mitigated.

The BBA is concerned that the use of the word 'function' may be interpreted to mean the setting up of a central area to deal with complaints, something which is ultimately an individual firm decision. The BBA would therefore suggest that either: 1) guideline 2 is amended to make it clear that this guideline relates solely to a complaints management function overseeing the complaint-handling process or 2) the word 'function' is replaced with the word 'approach', which continues to allow firms to decide the best way to manage their complaint-handling process. For example, a number of complaints can be resolved at the customer's first point of contact without the need of a central function to get involved.

○ **Guideline 3: Registration**

Competent authorities should ensure that firms register, internally, complaints in accordance with national timing requirements in an appropriate manner (for example, through a secure electronic register).

The BBA agrees with the proposed wording of this guideline, however, concerns remain around the proposed definition of a 'complaint'. Such a wide definition of a 'complaint' without any acceptance of lighter touch requirements for complaints that are resolved at first point of contact or are non-material and any parameters regarding reporting criteria will render it dysfunctional and create an overly heavy administrative burden for firms.

Furthermore, at present it is unclear as to what is meant by a 'natural or legal person'. The BBA would welcome greater clarity in this regard.

○ **Guideline 4: Reporting**

Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

Subject to the aforementioned comments concerning the definition of a 'complaint', as highlighted in the response to guideline 3 above, the BBA agrees with the principle that relevant complaints data (as defined by national authorities) should be provided to them. The BBA would see the provision of the data to the national authority as being appropriate, rather than to any ombudsman service. However, the expense and timing of setting this up for countries where the national authorities don't currently request it should be considered. The BBA would also expect the relevant cross-border regulators to be working to consistent data requirements and would appreciate if some clarity could be provided in this regard.

○ **Guideline 5: Internal follow-up of complaints handling**

Competent authorities should ensure that firms analyse, on an on-going basis, complaints-handling data, to ensure that they identify and address any recurring or systemic problems, and potential legal and operational risks, for example, by:

- a) Analysing the causes of individual complaints so as to identify root causes common to types of complaint;*
- b) Considering whether such root causes may also affect other processes or products, including those not directly complained of; and*
- c) Correcting, where reasonable to do so, such root causes.*

The BBA has no comments on this proposed Guideline.

○ **Guideline 6: Provision of Information**

Competent authorities should ensure that firms:

- a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.*
- b) Publish details of their complaints-handling process in an easily accessible manner, for example, in brochures, pamphlets, contractual documents or via the firm's website.*
- c) Provide clear, accurate and up-to-date information about the complaints-handling process, which includes:*

- (i) Details of how to complain (e.g. the type of information to be provided by the complainant, the identity and contact details of the person or department to whom the complaint should be directed);*
- (ii) The process that will be followed when handling a complaint (e.g. when the complaint will be acknowledged, indicative handling timelines, the availability of a competent authority, an ombudsman or alternative dispute resolution (ADR) mechanism, etc.).*
- d) Keep the complainant informed about further handling of the complaint.*

In the BBA's view, given the wide definition of 'complaint' that is being proposed, consideration needs to be provided to the different channels that the complainant can use to raise a complaint, non-material complaints, and the timescale taken to resolve, e.g. when complaints are resolved quickly at the first point of contact there would be no need to provide written information on the complaints process.

Guideline 7: Procedures for responding to complaints

Competent authorities should ensure that firms:

- a) Seek to gather and investigate all relevant evidence and information regarding the complaint.*
- b) Communicate in plain language, which is clearly understood.*
- c) Provide a response without any unnecessary delay or at least within the time limits set at national level. When an answer cannot be provided within the expected time limits, the firm should inform the complainant about the causes of the delay and indicate when the firm's investigation is likely to be completed.*
- d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the firm's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.*

The BBA has the following remarks:

With regard to guideline 7.a): Firms should be allowed to retain their right to make a commercial decision or provide benefit of the doubt to the customer in ensuring the customer receives a fair outcome, rather than delaying a resolution by having to investigate all relevant evidence and information regarding the complaint.

With regard to guideline 7.d): Clarification should be provided around the meaning of 'thorough' as this may mean different things regarding different types of complaints. In the BBA's view, it is more important to provide an explanation which is easily understood by the complainant rather than the explanation being 'thorough'.

Q3: Do you agree with the analysis of the cost and benefit impact of the proposals?

The BBA agrees with the cost and benefit impacts identified. However, the BBA believes that there are a number of additional impact costs that should be considered, including complaint management system development and staff training.

Q4: Please provide any evidence or data that would further inform the analysis of the likely cost and benefit impacts of the proposals.

Please see the response to question 3 above.

ENDS.