

BEAMA Response to the Joint Committee Consultation Paper on draft Guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors (06/11/2013)

BEAMA¹ welcomes the opportunity to comment on the ESMA and EBA's proposed guidelines regarding complaints-handling for the securities and banking sector.

1. General Comment

BEAMA wishes to thank ESMA and EBA for submitting their draft Guidelines to consultation and formulates a few comments in its role of representative of the Belgian Asset Managers. The latter are directly in scope for the new measures.

The Association broadly agrees with the proposed guidelines which are in line with the MiFID requirements. However, BEAMA expresses some reservation as to how reporting and control of the application of the guidelines should occur.

2. Response to ESMA and EBA's specific questions

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

BEAMA is convinced that enhanced and standardized complaints-handling procedures amongst the Member States can have positive externalities. Indeed, asset managers now often entrust the management of their different portfolios, if not parts of one same portfolio to various experts located in investment centres all across Europe. This allows them to let their clients benefit from highly skilled teams and this with no geographical constraints.

Further harmonizing the rules can thus facilitate this process and require less time-consuming procedure analyses in the case a client would have to complaint in relation to the provision of those services. BEAMA also opines that any effort in order to reduce conflicts between Member States' regulations should be warmly welcomed.

¹ BEAMA, www.beama.be, the Belgian Asset Managers Association, is the professional association of Belgian fund and asset managers. BEAMA has 114 members (64 effective members – 50 associated members), representing €225bn in assets under management as of the end of 2012. BEAMA is a founding member of Febelfin, the Belgian Federation of the Financial Sector.

2. 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

We definitely agree with the fact firms should put complaints management policy in place. Such a policy should be easily understandable, clear and accurate. It is also important to ensure the policy remains adequate and is periodically reviewed and updated.

In our view, any complaints-handling policy should at least contain the following elements:

- Procedure and point of contact for clients to complain.
- Definition of internal procedures for complaints-handling.
- Maximum timing to provide the plaintiff with an answer/ confirm of receipt.

We are happy to note these requirements are encompassed in the proposed guidelines.

Guideline 2 – Complaints management function

A complaint policy by nature requires the setting up of a complaint management function. We would add that it is also important that the persons allocated to this function have the necessary authority and independence to perform internal investigation and propose solutions to complaints.

It is important that the employees affected to this function receive sufficient training and are provided with the necessary tools to perform synthetic analysis leading to a solution taking all involved aspects into account.

Guideline 3 – Registration

Complaints should indeed be registered in an appropriate manner. In addition, we would suggest adding that complaints should be registered in a sequential manner and with a clear status. Status should be easily traceable. This is to avoid possible dubious treatment of complaints (e.g. modification of priorities, arbitrary deletion of complaints).

Guideline 4 – Reporting

We do not oppose the idea of the National Competent Authorities gathering information relating to complaints. However we strongly oppose the NCA becoming a party to the complaints-handling process as this absolutely deviates from the role of a supervisor.

In addition, we would like to remind that the Belgian NCA (i.e. the FSMA) already proceeds to the collection of extensive data in relation to the provision of MiFID services. This is done via a tool called “MiFID cartography”, the fields relating to complaints in the reporting schedules are the following:

1. Received complaints

- Number of complaints

- Accounting provision booked as a result of complaints
- Part of MiFID-related complaints in the total of received complaints

2. Closed complaints

- Number of complaints
- Indemnities paid
- Average handling time

More information regarding this reporting can be found on the FSMA website: see <http://www.fsma.be/fr/Supervision/MiFID.aspx>. (Only French and Dutch versions available)

BEAMA wishes to strongly insist on the fact that reporting is costly and that we do not favour adding supplementary data to be systemically collected on a periodic basis.

We agree that control has to be performed to some extent but we do not favour the NCA to require extensive description of the handling of every single complaint received. We believe that a thorough control of a selected sample gives sufficient view to the supervisor and is a much more feasible solution in this respect.

Guideline 5 – Internal follow-up of complaints-handling

Also here we share the view that complaint analysis is an important element of performance enhancement and adequacy of the provided services. However as explained in our comment on guideline 4, we question how the competent authorities will monitor this internal follow-up. Once again, we wish to repeat that reporting should not be excessively burdensome.

Guideline 6 – Provision of information

BEAMA agrees with the proposed principles. Information should be accurate in any case but we would not require the firm to go into too much detail as to how it is possible to complain. Some flexibility should be left to the complainant and room left for dialogue between parties. Through this we want to stress that complaint process should not be too rigid, leading to technical rejections of complaints.

Guideline 7 – Procedures for responding to complaints

This is a central theme of complaints-handling and we fully agree with the proposed guideline.

3. Do you agree with the analysis of the cost and benefit impact of the proposals?

BEAMA would like to remind that asset managers are already extremely well regulated entities and are bound to a fiduciary duty towards their clients. It is in the asset managers' interest to deliver the best service and ensure satisfaction of their clients. As a result, asset

managers already have complaints-handling procedures in place. We, of course, agree with the advantages deriving from the complaints-handling process.

However and as already mentioned, BEAMA wants to stress the fact there is no need for extensive detailed reporting on this matter. Several dispute resolution mechanisms already exist and there is no need for intervention of the competent authority beyond general control.

As a conclusion, the costs of those new guidelines will not be too high only in case no costly reporting is implemented on basis of the guidelines. In any case, the added value of supplementary reporting should be clearly demonstrated before rolling out the measures without a well-balanced impact assessment.

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

As such, the costs and benefits will vastly depend on the current level of compliance of the various entities in scope for these new proposed guidelines. As said, it is ESMA and EBA's role to demonstrate the costs and benefits of new rules. In any case, proportionality should always be a central consideration when elaborating new requirements.

3. Varia

As a last point, BEAMA would like to share with ESMA and EBA its interpretation of two points of the definition of the scope. The following rationales seem correct to us:

Through the definition of the complaint and complainant on page 11 of the consultation paper, BEAMA understands that a complaint directed to the provider of a MiFID service (such as the sale of a UCITS fund for example) and related to this service should solely be handled by the distributor. In no case should the UCITS Management Company be involved in the handling of such a complaint as it relates to a separate legal entity.

Also, from point 17 b) on same page 11, we understand that when securities are offered by a subsidiary company to local clients, potential complaints relating to the offer of such securities are to be handled and reported to the local competent authority by the subsidiary and not by the parent company. This seems logical as the parent company cannot have a complete overview of those complaints.

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