

European Securities and Markets Authority, ESMA
and
European banking Authority, EBA

Postboks 1140
DK-1010 København K
Tlf. 45 82 15 91
Fax 45 41 15 90
e-mail daf@shareholders.dk

Sent to:
sarah.raisin@esma.europa.eu and joint-committee@eba.europa.eu

Copenhagen, 7 February 2014

Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors
JC-CP-2013-03

Danish Shareholders Association - the organisation representing private shareholders in Denmark – finds the Consultation paper on draft guidelines for complaints handling for the securities (ESMA) and banking (EBA) sectors very interesting.

Scope of the Guidelines

Danish Shareholders Association finds the limits of the scope a matter of concern.

16. These guidelines apply to authorities competent for supervising complaints-handling by firms in their jurisdiction. This includes circumstances where the competent authority supervises complaints-handling under EU and national law, by firms doing business in their jurisdiction under freedom of services or freedom of establishment.

17. These guidelines do not apply where a firm receives a complaint about:
a) activities other than those supervised by 'competent authorities' pursuant to Article 4(3) of the ESMA Regulation, or Article 4(2) of the EBA Regulation; or
b) the activities of another entity which is providing investment services, the service of collective portfolio management of UCITS or banking services and for which that firm has no legal or regulatory responsibility (and where those activities form the substance of the complaint).

However, that firm should respond, where possible, explaining the firm's position on the complaint and/or, where appropriate, giving details of the firm or other financial institution responsible for handling the complaint.

A firm should not have activities able to influence on a client or the relationship between the firm and a client not being supervised by the competent authorities of the ESA Regulations

A firm should always be responsible to clients for the services delivered.

A firm should always be obliged to inform clients about where to deliver a complaint if the firm is not responsible.

It should be evaluated when the guidelines have been in force for a period if the volume of complaints for which firms are not responsible is so significant that the rules on responsibility shall be reconsidered.

The questions

Question 1:

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

Danish Shareholders Association finds complaints-handling to be an area for further supervision convergence.

The financial sector, i.e. the enterprises active in the financial sector, in Europe is working across borders between the Member States, across borders between the EU and other countries and across the divisions of the financial sector (bank, securities, insurance etc.). Consumers as clients in the financial sector get financial products and services from providers in their home-country or from other countries. Sometimes it is a choice of the consumer, sometimes is the consumer not even aware of being serviced from another Member State.

The complaints process starts if something goes wrong, if the consumer gets a wrong product, or a product that is not as expected, or if the consumer has the impression that something is wrong. It makes everything easier if the rules and guidelines for complaints-handling are the same everywhere in the financial sector, geographically and product wise.

Question 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

1. Competent authorities should ensure that:

- a) A 'complaints management policy' is put in place by 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 "complaints management policy" should also be available to clients e.g. by posting it on the internet site of the firm.

Guideline 2 - Complaints management function

2. 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.

It is important that clients know who to contact if they want to complain or want information about the firms "complaints management policy".

Guideline 3 - Registration

3. 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).

Yes. No further comments.

Guideline 4 - Reporting

4. 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.

Yes. No further comments.

Guideline 5 - Internal follow-up of complaints-handling

5. 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.

Yes. No further comments.

Guideline 6 – Provision of information

6. 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.

Yes. No further comments.

Guideline 7 - Procedures for responding to complaints

7. 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.

Yes. No further comments.

Question 3:

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

The cost and benefit analysis is limited to costs and benefits for the firms.

No remarks to that part.

Question 4:

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

For society are the costs and benefits for the clients of importance too.

If a firm does not have a "complaints management policy" or if the "complaints management policy" is not easily available to clients can clients use a lot of time and have high costs trying to find out what happened and eventually start and go through a complaints procedure.

A clear and disclosed "complaints management policy" can reduce the waste of time and the costs considerably.

Kind regards
Danish Shareholders Association

Klaus Struwe
Political advisor to the Danish Shareholders Association