

**DSW'S POSITION ON THE CONSULTATION PAPER ON
ESMA GUIDELINES ON
ENFORCEMENT OF FINANCIAL INFORMATION**

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DSW is the leading investor association in Germany with more than 25.000 private investors as members.

DSW welcomes the opportunity to respond to ESMA's proposal for "Guidelines on enforcement of financial information" from 19 of July 2013.

One of the lessons the investors learnt from the financial crisis is that a well functioning enforcement system is a highly important element in restoring confidence in the financial markets. Therefore DSW would like to underline the relevance of an efficient enforcement system first on a national level and secondly on the European level by ESMA and in future EESC.

DSW therefore is very supportive of the proposed guidelines in general but also very precise in giving a few comments on the most important questions from the investors' perspective.

Q1: Do you think that the proposed guidelines will improve the quality and consistency of financial reporting in Europe?

DSW fully agrees with the objectives of the proposed guidelines which aim to contribute to the protection of investors and the promotion of market confidence by a consistent application of a

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harmonized relevant reporting framework and avoiding of regulatory arbitrage in the EU regulated financial markets. From the investors' view the importance of compliance with the relevant financial reporting standards and the transparency of financial information are well recognized.

DSW believes that the experience with the German enforcement system and its high efficiency is worth reporting and emphasizing.

Since 2004 the German enforcement system consists of a 2 step model. On the first stage the DPR (Deutsche Prüfstelle für Rechnungslegung = FREP Financial Reporting Enforcement Panel) acts as a self-regulatory body equipped with examination power by national law. Until today the DPR/FREP consistently recruited highly qualified personnel in order to fulfill their highly complex procedures of examination. The track record of now 9 years of successful work of DPR/FREP shows a highly effective and cost-efficient way to examine the financial information provided by the issuers. It is only on a second stage that the German financial supervisory authority, the BaFin will then get involved, e.g. if a company does not cooperate with the DPR/FREP.

In case of a further harmonization of enforcement structures on the EU-level it should be ensured that this well-functioning 2 step model in Germany will continue as it is presently established. Otherwise if major changes of the current German enforcement structure would come into force this could severely endanger the high quality of the work of the German enforcement model and could thereby lead to a lowering of investor protection and could only mean a change to the worse.

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Q 7: Do you agree that enforcers should have adequate independence from each of government, issuers, auditors, other market participants and regulated markets? Are the safeguards discussed in paragraphs 38 to 41 of the proposed guidelines sufficient to ensure that independence? Should other safeguards be included in the guidelines? Do you agree that market operators should not be delegated enforcement responsibilities?

DSW fully supports ESMA's approach towards the importance of independence of enforcers while performing their functions. Independence should not be unduly influenced either by members of the government, political parties, nor by market operators, auditors, users or other market participants.

This is one of the reasons why DSW is supportive of the current 2 step model of the German enforcement system. The current structure of this model ensures its independence. Members of DPR/FREP include all major institutions in Germany of the industry, banks, insurance companies but also from the employee and investors' side. Furthermore its board "Vorstand" shows a well balanced representation of highly independent members to represent issuers, auditors and investor representatives such as the president of DSW.

We believe that this structure and the by-laws of DPR/FREP guarantee the high level of independence needed for an effective enforcement agency.

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Q8: Are you in favour of enforcers offering pre-clearance? Do you have any comments on the way the pre-clearance is described and the pre-conditions set in paragraphs 42 to 45 of the proposed guidelines?

Again DSW is very supportive of the previously described 2 step model of the German enforcement and its advantages since it also allows the self-regulatory body DPR/FREP to offer a well-developed pre-clearance system which is an excellent opportunity for issuers to secure enforcement decision ex-ante i.e. before they publish the relevant financial information. This is of great help both for the issuer but also for the investor in order to avoid any misleading public information included in the financial information.

Q 10: Do you agree that a risk-based approach for selection methods should not be used as the only approach?

DSW fully agrees with a combined approach for the selection of issuers for review. The selection by the national enforcement agency should be based both on a combination of a risk based approach and random sampling. A pure risk approach or a pure random sampling will not be able to reflect the full range of possible infringements with all its risks. The current German system is based on this combined approach and so far proves to work well.

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Q 17: Do you have any comments on the specific criteria for the submission of decisions or emerging issues to the EECS database?

DSW advocates the European Enforcers Coordination Sessions (EECS) established by CESR a few years ago. This is an excellent forum in which national enforcers can exchange views and discuss experiences relating to the enforcement of financial reporting requirements. DSW also supports the establishment of an EECS data base which can be useful for the end-investors. But it should be clear that the activities and the decisions of the enforcement agencies should primarily be taken at the national level. Nevertheless DSW would be supportive of a higher level of transparency with regard to the outcome of the national enforcement activities on an EU wide level.

DEUTSCHE SCHUTZVEREINIGUNG FÜR WERTPAPIERBESITZ (DSW),

Düsseldorf, 31 of October 2013