

PRESS RELEASE

ESMA reviews supervisory practices on MiFID investor information

The European Securities and Markets Authority (ESMA) has conducted a peer review of how national regulators (national competent authorities or NCAs) supervise MiFID conduct of business rules on providing fair, clear and not misleading information to clients.

The peer review focused on NCAs' organisation, supervisory approaches, monitoring and complaints handling in relation to information and marketing communications under MiFID. The Report found that there was overall a high degree of compliance amongst NCAs with the good practices identified in these key areas. However, a variety of approaches were observed, leading to different intensity of supervision.

A number of areas for improvement were identified. They include:

- enhanced use of on-site inspections and thematic reviews;
- a specific focus on conduct of business issues in firms' risk assessments; and
- greater efforts to detect failings by firms in a timely manner.

The review was conducted on the basis of information provided by NCAs in a self-assessment questionnaire and complemented by on-site visits to the NCAs of Cyprus, the Czech Republic, Germany, Italy, Portugal, and the United Kingdom.

Steven Maijor, ESMA Chair, said:

“Providing fair, clear and not misleading information to clients is essential for investor protection and should be applied consistently throughout the EU. This review is a major step forward in ensuring that progress is being made towards convergence in this area by national regulators.

“The report provides a thorough insight and analysis of national supervisory practices, facilitated by ESMA's first on-site visits, and includes a number of recommendations which I urge national regulators to consider when reviewing their practices in this area”.

Key Findings

The review's key findings covered the following areas:

- **Ex-ante and ex-post supervision** – supervisory systems are divided between ex-ante and ex-post reviews of marketing material. Within the ex-post approach there is also divergence in terms of the timeliness with which NCAs review the material following its dissemination and consider complaints made by clients of firms;
- **Direct and indirect supervision** – while some NCAs directly supervise firms' compliance with their obligations relating to the provision of information and marketing material to clients, others rely on annual checks performed by external auditors. The latter approach may make it difficult to detect failings by firms in a timely manner due to the successive sampling process employed by auditors and then the NCAs concerned;
- **Complaints and Sanctions** – a low level of complaints and equally low level of sanctions are reported by NCAs in the area of information and marketing to clients; and
- **Definition of information and marketing communication** - There is no precise definition of the term *marketing communication* in EU law: this would need to be further defined in order to build effective convergence of supervisory practices.

Recommendations for future work

The Report identifies a number of areas for future work by NCAs and ESMA which could promote a more coherent cross-EU application of the requirements. These include:

- establishing more robust structures and efficient coordination and cooperation arrangements between different supervisory units within NCAs;
- defining a clear set of information and marketing material to be supervised;
- assessing the frequency of NCAs' monitoring of investor information and marketing;
- assessing the adequacy of monitoring the distribution channels used by firms including in the cross border provision of services;
- requiring investment firms to submit to their NCAs details of all information and marketing material to be provided including material used for cross-border business;
- considering the use of integrated databases to assist in supervision of information and marketing to clients;
- assessing the frequency and consistency of the use of sanctions by NCAs; and
- assessing the implementation and effectiveness of the guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors.

In addition, ESMA should continue its efforts, including the use of Opinions, in promoting the development of a level-playing field regarding the provision of information in an understandable format to clients and the quality of service to clients.

Notes for editors

- [2014/1485 Peer Review Report: MiFID – Conduct of Business, fair, clear and not misleading information](#);
- The review covered the period from 1 January 2010 to 30 June 2012. The on-site visits took place between 04 December 2013 and 23 May 2014.
- The NCAs subject to on-site visits were BaFin (Germany); Comissão do Mercado de Valores Mobiliários (Portugal), Consob (Italy), Cyprus Securities and Exchange Commission (Cyprus), Czech National Bank (Czech Republic) and the Financial Conduct Authority (United Kingdom).
- ESMA has issued the following Opinions in relation to MiFID client issues:
 - [2014/332 Opinion - Structured Retail Products - Good practices for product governance arrangements](#); and
 - [2014/146 Opinion - MiFID practices for firms selling complex products](#).
- ESMA is an independent EU Authority that was established on 1 January 2011 and works closely with the other European Supervisory Authorities responsible for banking (EBA), and insurance and occupational pensions (EIOPA), and the European Systemic Risk Board (ESRB).
- ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU). As an independent institution, ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

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