

Looking to the future

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Ladies and gentlemen,

Firstly, I would like to thank the Futures Industry Association (FIA) for inviting me to deliver the keynote address today at your flagship event. This year's IDX is a special one considering it is its 10th anniversary, and I want to congratulate FIA on this important milestone. I would also like to take a moment to express my heartfelt sympathy to the people of London in the wake of last weekend's attack, an act which strikes at all of us with long personal and professional links with one of the globe's great cities, our thoughts are with you.

Last week was one of the busiest week's I have experienced during my time at ESMA, one during which we published three significant pieces of work. This work, I believe, reflects our growth as an organisation in terms of confidence – in our vision for our future – and maturity – as a supervisor.

I refer to our response to the European Commission's review of the operation of the European Supervisory Authorities (ESAs), the publication of our General Opinion on relocations from the UK to the EU27 and our enforcement action against Moody's.

In this speech I will reflect on the first two issues and what these mean for financial markets, and ESMA itself, while - knowing that this is currently a high priority in both of our daily activities - I also want to provide an update on the progress being made on MiFID 2/MIFIR implementation and preparation.

ESAs Review

A week ago we published our response to the ESAs Review. The response contained recommendations that, we believe, will improve ESMA's functioning and better enable us to achieve our objectives of investor protection, and stable and orderly EU financial markets.

Our response reflects ESMA's experience over the past six years including our work in supporting the Capital Markets Union (CMU), the progress made on promoting and facilitating supervisory convergence across Member States, and taking into account the challenges posed by the UK's decision to leave the EU.

ESMA believes that successful European capital markets require a strengthened EU framework. One that ensures consistent regulatory and supervisory outcomes for all EU market participants, and can adequately and efficiently mitigate cross-border risks. Our key proposals concern four main areas: (1) International aspects of EU financial markets; (2) Direct supervision; (3) Supervisory convergence; and (4) Access to data and reporting.

International aspects of EU financial markets

The EU framework for third countries rightly tries to achieve consistent regulation and supervision of global financial markets, and to strengthen the EU as a stable global financial region where it is attractive to conduct financial activities, while safeguarding investor protection and stable financial markets.

ESMA is ready to play a key role in third country issues, as it has the technical expertise to provide support to the legislative and policy processes. We think ESMA should be the central point for technical third country related issues, including equivalence assessments, and ongoing monitoring of regulatory and supervisory developments in the third country. We think such monitoring and assessments should be conducted more frequently than in the past, to detect on time any possible divergences between the EU and third countries.

The current third country regimes generally rely, under certain conditions, on third country regulators. To better respond to risks that third country entities present to EU financial markets, and to ensure consistent supervision, certain third country entities should be subject to regular supervision and enforcement regimes. Let me be clear, this is not about redoing the supervision of third country regulators and creating duplications. This is about ensuring that risks related to third country entities and relevant to the EU, are properly assessed and addressed.

To ensure a common approach to third country entities active across the EU financial markets, it is the advice of the ESMA Board to conduct the supervisory and enforcement powers at EU level by ESMA for third

country entities such as: Credit Rating Agencies (CRAs), Trade Repositories (TRs), Central Counterparties (CCPs) and benchmarks.

In the absence of uniform third country regimes for trading venues, and considering how Brexit may affect the third country approach for data providers, it could also be considered to have a similar role for ESMA regarding these third country entities. ESMA intends to issue around summer a more detailed opinion on improvements for EU third country regimes for financial markets.

As I final comment on third country issues, I would like to mention the European Commission's Communication on EMIR published last month which I welcome very much. In line with ESMA's thinking discussed above, the Commission expressed its intention to present before summer further legislative proposals regarding third country CCPs to enhance their supervision where necessary.

Direct supervision

ESMA, as the single supervisor for CRAs and TRs in the EU, has worked since its establishment in 2011 to become a credible and effective supervisor. It pursues a risk-based approach to supervision, and implemented effective mechanisms to deal with possible infringements.

We are uniquely positioned to develop a European approach that could benefit the supervision of pan-European market participants, and ESMA is prepared to assume any new supervisory tasks deemed appropriate.

The following criteria could be used to decide whether the authorisation and supervision of entities should be done at the EU level:

- Strong cross-border angle;
- High risk of regulatory arbitrage;
- Availability of and ability to pool technical expertise at EU level; and
- Efficiency gains for EU and national public authorities and/or market participants.

In addition to the CRAs and TRs that we already supervise, in the consultation response my Board expressed the view that Critical EU Benchmarks should be supervised by ESMA, due to their cross-EU character and impact, and the need for efficient decision-making and consistent treatment.

Data providers which provide cross-border services and whose authorisation and supervision is required under MIFID II, and that go by the new acronyms APA, ARM and CTP, are currently largely unregulated at national level. They could also merit a centralised supervisory approach by ESMA.

Finally, while acknowledging the divergent views of Board members, ESMA believes that further consideration should be given to ensuring the consistent and effective supervision of CCPs in the EU. The key role that CCPs play in the EU warrants the strengthening and potentially centralisation of the supervisory framework, complemented by a role for the central banks of issue, and supported by a viable recovery and resolution mechanism. Such enhancements will help overcome any potential fragmentation of the EU regulatory framework and will support the development of a deeper and more integrated CMU.

Supervisory convergence

The current set of instruments, such as guidelines, opinions, and Q&As, have proven to be useful tools in achieving supervisory convergence. While ESMA has used various convergence measures, experience has shown that its powers and instruments are not sufficiently strong to deal with all cases of regulatory or supervisory arbitrage. The freedom to provide services across the EU is essential for the CMU. However, this freedom needs to be accompanied with powers to ensure that the related cross-border risks are assessed and addressed.

It will be key for ESMA to have a strong role in ensuring consistent authorisation scrutiny and supervisory outcomes, avoiding a race to the bottom with the associated risks to investor protection and stability. While respecting that authorisation and supervision should continue to be conducted at national level for the vast majority of supervised entities, convergence measures should be considered in the case of cross-border authorisations, for example for MiFID, UCITS and AIFMD, to ensure that national decisions are consistent across the EU.

ESMA is committed to using existing convergence measures as much as possible to ensure consistent and effective implementation and application of rules in the EU. However, given the importance of the supervisory convergence work in the coming years, consideration should also be given to the enhancement of these tools to address future challenges. This is especially relevant regarding the role of peer reviews, access to information on national supervisory practices, and the use of the so-called Breach of Union Law procedure.

While talking about supervisory convergence, and in front of a global audience, let me make a little side step. The ultimate objective of supervisory convergence is to ensure that market practices meet the required standards and support the well-known regulatory objectives. However, I do not consider this an exclusive role for regulators. In that context, I should mention that I very much support the recently published Foreign Exchange Global Code of Conduct, established with the support of a group of market participants. This is a significant global initiative to promote robust, fair, liquid, open and transparent FX markets and which helps to restore confidence.

Access to data and reporting

ESMA also considers it important to ensure that there are no national divergences in the level and quality of information provided to regulators and to the public. ESMA should have more powers to determine the details of EU reporting to be able to:

- set data reporting standards that would ensure the ability to share and exchange data across the EU in a consistent manner;
- ensure the consistency of data and reporting standards across sectors and pieces of legislation; and
- set detailed reporting and formatting standards in a more efficient way than the current endorsement process for technical standards.

A number of sectoral Regulations impose obligations on National Competent Authorities (NCAs) to build major databases. Currently nearly all NCAs have mandated ESMA to develop on their behalf an IT project,

as they believe that a centralised solution is more efficient and leads to more harmonised results. This concerns the reference data for financial instruments under MIFIR. For similar future tasks, it is proposed to empower ESMA to develop large-scale EU-wide databases and make the data available to NCAs and the public as necessary.

ESMA is also looking for ways to reduce the costs of reporting for market participants and regulators by streamlining the reporting requirements. One issue is that ESMA is currently not able to use data gathered for a specific purpose in the context of other purposes or activities. ESMA needs a legal basis to be able to use all data collected for all of ESMA's objectives. Only then would ESMA be able to fully leverage on available data, fulfil its mandate in an efficient manner and reduce the burden for market participants as much as possible.

UK withdrawal from the EU

The UK plays a prominent role in EU financial markets and the relocation of entities, activities and functions to the EU27 creates a unique situation requiring a common effort, at EU level, to safeguard investor protection, the orderly functioning of financial markets and financial stability.

The EU27 have a shared interest in building a common approach to dealing with relocating firms that wish to continue to benefit from access to EU financial markets. Firms need to be subject to the same standards of authorisation and ongoing supervision across the EU27 in order to avoid competition on regulatory and supervisory practices between Member States. Effective and efficient supervision by EU27 national authorities is not possible when relocated entities are empty shells.

In response to this challenge we published an Opinion setting out general principles to foster consistency in authorisation, supervision and enforcement related to the relocation of entities, activities and functions from the UK. The opinion is a practical tool to support supervisory convergence in the context of increased requests from UK financial market participants seeking to relocate to the EU27. I want to emphasise that these are not new legislative developments but that we are using existing tools and legislation to address a new and evolving situation.

In the course of the UK withdrawing from the EU, UK-based market participants may seek to relocate entities, activities or functions to the EU27 in order to maintain access to EU financial markets. These may seek to minimise the transfer of the effective performance of those activities or functions in the EU27, for example by relying on the outsourcing or delegation of certain activities or functions to UK-based entities, including affiliates. It is therefore necessary to ensure that the conditions for authorisation as well as for outsourcing and delegation do not generate supervisory arbitrage risks.

New authorisations must be granted in full compliance with Union law and in a coherent manner across the EU27, and there should be no automatic recognition of existing authorisations from other jurisdictions. Any outsourcing or delegation arrangement from entities authorised in the EU27 to third country entities should be strictly set and consistently supervised, while recognising that such arrangements may be an efficient way to perform some functions or activities. Outsourcing or delegation arrangements should not result in entities becoming letterbox entities nor in creating obstacles to effective and efficient supervision.

It is important to remember that firms and entities have the freedom to decide to locate in any of the EU27 they choose. This is an important pillar of the single market, of the EU. However, relocation should never be a decision taken with the intention of avoiding stricter standards in other jurisdictions. NCAs should be able to verify the objective reasons for the selected location in the EU27.

ESMA will establish a forum – the Supervisory Coordination Network – to allow NCAs to report on and discuss cases of relocating UK market participants. This will help to promote consistent decisions by NCAs.

Building on the general Opinion, we are currently developing further guidance in three areas: asset managers, investment firms and secondary markets. As the business models in these three areas differ markedly, as well as the relevant legislation on outsourcing and delegation practices, ESMA feels that more detailed and specific guidance for these three areas is warranted. We expect to issue this further guidance before summer.

Progressing towards MiFID 2/MIFIR Implementation

I want now to take the opportunity to provide you with a whistle stop tour of the progress we are making in relation to the preparation for MiFID 2/MiFIR implementation, and what ESMA has been doing to assist you in preparing for this event. Contrary to some recent coverage and commentary, MiFID 2/MiFIR will come into effect on 3 January 2018, there will be no further delay in its implementation. One delay has been enough for all concerned.

We have made significant progress over the last number of months, undertaking a broad range of activity aimed at supporting market participants in their preparation for implementation. This has included our work on providing Q&As across a broad range of issues related to transparency requirements, commodity derivatives, data reporting and market structures topics. We will continue to update our Q&As with the aim of promoting common supervisory approaches and practices. We also submitted two draft RTS on package orders and the non-equity consolidated tape to the Commission, that will hopefully be endorsed soon.

Additionally, we have published opinions on transparency and position limit regimes for instruments traded on non-EU trading venues, providing clarity for users regarding which transactions executed on non-EU trading venues will be subject to the post-trade transparency rules and whether positions held in contracts traded on non-EU venues will be subject to the position limits regime. ESMA has devised the procedures described in the opinions to provide legal certainty to market participants and to find a pragmatic way forward in two highly technical areas of the MiFID 2/MIFIR framework.

We also published an opinion clarifying the concept of Traded on a Trading Venue (TOTV), in particular for OTC-derivatives, following many requests for clarifications that we received from stakeholders. Our opinion provides for, again, a pragmatic approach ensuring that MiFID 2/MIFIR is implemented in an expedient manner while allowing for a more ambitious approach in the future should we consider this necessary.

We are currently working on ESMA opinions on pre-trade transparency waivers for equity instruments, and will start working soon on ESMA opinions on position limits and waivers for non-equity instruments. Altogether, we expect to handle about 1000 individual waiver notifications and about 100 notifications on position limits. We are progressing well with delivering the opinions on equity instruments. The deadline for the submission of notifications for waivers of non-equity instruments to NCAs has recently closed and they are now reviewed by NCAs before we will start processing these notifications at ESMA in August. This timeline will allow us to process all notifications by the end of November, thereby allowing trading venues to have everything in place ahead of the start on 3 January 2018.

We have made significant progress over the last months with the implementation of our ESMA IT projects that will be crucial for the successful implementation of MiFID II. ESMA is on track with all MIFID 2/MIFIR IT projects, in particular the Financial Instruments Reference Data System (comprising the collection of reference and trading data and the transparency calculations), and the double volume cap mechanism.

We will publish at the beginning of July the transitional calculations for non-equity instruments specifying the LIS- and SSTI-thresholds for all instruments, and the liquidity status of all instruments except bonds, thereby providing more certainty on the new transparency regime and giving market participants half a year to prepare their systems. The publication of the transitional calculations on the liquidity status of bonds is scheduled for end November and the beginning of December, as well as the transitional calculations for most equity instruments.

Finally, concerning the trading obligation for derivatives, we are about to finalise a Consultation Paper that we expect to publish in the coming weeks. The CP carefully considers the feedback we received from you to the Discussion Paper that we published last autumn, and we tried to improve the data analysis by supplementing TR-data with trading data requested from MTFs covering the second half of 2016.

Given the firm intention of the co-legislators and the Commission that the trading obligation becomes effective as soon as possible, we will only have a shortened consultation period of six weeks, and aim at delivering the draft RTS to the Commission in early autumn. ESMA is a firm believer in the positive effects the trading obligation will have on the transparency and competitiveness of derivatives markets. The G20 agreed on the trading obligation back in 2009, and implemented in the US since 2014. We therefore consider that all stakeholders have had sufficient time to prepare for the trading obligation, thereby allowing for its implementation in January 2018.

Conclusion

It is time to conclude. I believe that ESMA, having played a crucial role in addressing the regulatory reform in response to the crisis, has developed into an organisation with the drive, determination and, importantly, experience to deal with the challenges we continue to face. The withdrawal of the UK from the EU and the implementation and operation of MiFID 2/MIFIR are testing both regulators and market participants, but I am confident that we, at ESMA, have the capacity to meet these challenges



and provide you with the support and guidance you need. I believe that together we can further strengthen financial markets and the important role they play in the EU.

Thank you