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Consultation Paper

**Draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors
'JC complaints-handling CP 2013-03'**

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General remarks submitted by:

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Response by the Dutch Investors' Association (*Vereniging VEB NCVB*, hereafter, *VEB*) to the "Draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors - published 6 Nov 2013".

Introduction

Beleggersvereniging VEB (the Dutch Investors' Association) was founded in 1924 with the objective of representing the interests of retail and institutional investors. Today, the VEB is the largest investors' association in the Benelux with 50,000 members. The VEB was also a founding member of EuroInvestors (now EuroFinUse) and EuroShareholders, both pan-European organisations representing retail investors and shareholders.

1. Questions and answers

Please find below the VEB's response to the relevant questions in the Consultation Paper.

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

We agree that complaints-handling is an opportunity for further supervisory convergence. Complaints-handling constitutes an important part of investor protection, as it forms the starting point for e.g. acting against mis-selling and enforcing conduct of business rules. Consumers in the EU can purchase, and firms can offer, financial services and products in the investment, banking and insurance sectors across the EU Single Market. Therefore, it would be good to develop a harmonised approach to handling complaints. This harmonisation can be reached through guidelines that, once adopted, will apply equally across Europe for all Member States and will be identical for all of the relevant (investment, banking and insurance) sectors of financial services. This will increase market confidence of all participants. On the one hand this will allow EU consumers to refer to a single set of complaints-handling arrangements, irrespective of the type of product or service or the geographical location of the firm in question. On the other hand this will allow firms to streamline and standardise their complaints-handling arrangements. Furthermore, all national regulators will be able to supervise the same requirements across all sectors of financial services.

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 3 - Registration

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).

We do not believe it is sufficient if competent authorities must ensure that firms register complaints in accordance with national timing requirements. Minimum harmonisation, setting a minimum threshold of the timing requirements all Member States must meet, is necessary (e.g. to prevent forum shopping by firms that offer services and products across Europe).

Guideline 4 - Reporting

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.

It is important that firms are obliged to provide information on complaints and complaints-handling to the competent authorities. This would provide the competent authorities with the opportunity to supervise and (if needed) act on wrongs within the firms. The data to be provided by firms should indeed cover the number of complaints received, but such data should not be differentiated according to the national criteria or the firms' own criteria. Instead, more standardised criteria should be included in the guidelines to prevent that reporting deviates among firms and (as a result thereof) national regulators are confronted with different forms of reports.

Guideline 7 - Procedures for responding to complaints

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.*

It should be clarified if it is sufficient if competent authorities ensure that firms seek to gather and investigate all relevant evidence and information regarding the complaint (i) by making sure a general duty of care is applicable to firms or (ii) whether more specific and strict requirements should be imposed on firms. We prefer the last option, since this will benefit consumers.

We do not believe it is sufficient if competent authorities must ensure that firms provide a response without 'any unnecessary delay' or at least within the time limits set at national level. The time frame for responding to and handling complaints should be capped by including a maximum term in the



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guidelines (e.g. a maximum term of 2 x 6 weeks). This would result in minimum harmonisation, setting a minimum threshold of the timing requirements all Member States must meet.
