

Keynote speech by Steven Maijoor, Chair of ESMA, at the EVCA Investors' Forum, Geneva, 15 March 2012

Ladies and Gentlemen,

I am very pleased to have the opportunity to speak at your conference today. I would like to compliment the European Private Equity and Venture Capital Association on organising this event and offering a programme with distinguished speakers and panellists covering such a broad range of key private equity and venture capital issues.

During the various speeches and interventions I have made so far in my role as ESMA Chair, I have consistently stressed two key objectives that I see for ESMA as an organisation. I would like to say a few words about these today before moving on to discuss topics of more specific relevance to this audience.

The first key objective is the development of a single rule book for the regulation of financial markets in the European Union. This is a significant challenge and one which we do not take lightly, but I feel that we can already point to some substantial progress over our first 14 months or so of existence. To take just a few examples, we have already issued draft technical standards on credit rating agencies, developed draft guidelines on ETFs and other UCITS issues and delivered technical advice to the European Commission on both the Prospectus Directive and the AIFMD (more of which later). We have done this while managing the transition from ESMA's predecessor, CESR, to the new entity and dealing with the various procedural and organisational changes that has implied.

The second key objective of ESMA is the establishment of a consistent supervisory framework for financial markets in Europe. This aim relates more to supervisory activities and practices rather than detailed rule-making, and of course is focused more on those areas for which we do not have supervisory powers ourselves. There are a number of ways in which ESMA can work to achieve this objective. One is the use of peer reviews of national authorities' activities in line with the powers given to us under the ESMA Regulation. These reviews look at such elements as the degree of convergence reached in the application of EU law and in its enforcement. They may also identify best practices in particular areas that could be adopted by authorities more broadly.

It is worth stressing at this point that the two objectives I have mentioned are equally important – without a common basis of rules at the European level, there can be no true convergence in supervisory



approaches. At the same time, a harmonised set of rules will not achieve its objectives unless those rules are supervised and enforced in a similar manner ‘on the ground’.

I would also like to say a few words today on the issue of ESMA’s resources. The establishment of ESMA, and the European System of Financial Supervision more generally, was an important political decision that was made in order to improve financial services regulation and supervision in Europe. ESMA is already building itself a good reputation as a transparent, efficient and effective European authority for financial markets and I am of course pleased to see that ESMA’s efforts are being recognised. However, one should always be aware of the consequences of having such a reputation. As we can witness in many of the legislative proposals being brought forward currently, ESMA is increasingly seen as an automatic port of call when responsibilities are being allocated – not only with respect to drafting of technical standards, but also in terms of data collection, co-ordination of national authorities’ activities and even more supervisory-type intervention (to name but a few).

What must be borne in mind in such discussions is that ESMA needs to have appropriate resources in order to carry out its tasks in the correct way. In that context, I would like to recall our view that ESMA should move as soon as possible to 100% funding from the EU budget, instead of the current mixed model where National Authorities also fund ESMA. This move to 100% EU funding will help alleviate the understandable strains that ESMA’s growth is placing on some of the national authorities in these difficult budgetary times. It will also reinforce what I consider to be a key message, namely that we should not be in a zero sum game when we look at ESMA’s resources versus those of the national authorities. Indeed, the important regulatory initiatives that are being taken within Europe – many of which stem from G20 commitments – require increased resources at both the European and national levels.

Before I move on to some more specific topics that I am sure will be of interest to you, I would make one final point on resources. It is easy to forget that an equally precious resource that ESMA can be given is time. For example, we are currently working to deliver technical standards to the European Commission on short selling by the end of March, when the Short Selling Regulation itself was only agreed at the political level in November. Similarly, we will have to submit draft technical standards to the Commission on EMIR by the end of September, bearing in mind that the content of EMIR itself was still changing until last month.

These are not ideal circumstances in which to draft high-quality rules on very technical subjects and – just as crucially from your point of view – they restrict our ability to engage properly with external stakeholders. With this in mind, we will continue to highlight to the EU institutions the importance of building flexibility into the timetables for any work allocated to ESMA.

Moving on to a topic which I am sure is of great interest to you, I would like to say a few words about the Alternative Investment Fund Managers Directive (AIFMD). The delivery to the Commission of the Level 2



technical advice was one of our top priorities for last year and I am very pleased with the high-quality submission we were able to produce in time for the deadline of 16 November. If I may say so, this was particularly impressive given the tight timetable to which we were working and the broad range of subjects to be covered. We also managed to fit in a significant amount of consultation with external stakeholders during the process and were very grateful for the amount of constructive input we received. The European Commission is now transforming our technical advice into Level 2 implementing legislation and we are hopeful that the final text will reflect closely the recommendations we made.

Perhaps one of the most complex features of the AIFMD is the third country framework for non-EU entities. Before saying more about the approach that the AIFMD takes in this context, I would like to say a few words about third country regimes more generally.

ESMA will play a central role in Europe and can ensure a consistent application of European rules toward third country entities. It will also ensure that Europe speaks with one single voice when we have to deal with third country regulators and will strengthen Europe's position. ESMA has already been one of the parties most actively involved in the formation of a high-level group of global derivatives regulators who met for the first time in ESMA's premises last December, with the objective of finding common solutions to extraterritoriality rules in derivatives regulations.

In this context, I believe that the easiest and most efficient option is relying on mutual recognition. Without mutual recognition, entities operating on a cross-border basis would be subject to different requirements and to the jurisdiction of different authorities. This exposes them to potentially conflicting requirements and to higher compliance costs. Global leaders have established common objectives at G20 levels and regulators have set up a number of international groups aiming at international consistency of the different regimes. At the end of the process we will need to rely on equivalence and co-operation among authorities. We will never be effective if a single regulator seeks to regulate the entire global financial markets from one single location.

Let us now focus on the third country aspects of the AIFMD. Our advice of last year already covered in broad terms what we saw as the key content of the co-operation arrangements that have to be put in place with non-EU authorities. We are now moving towards the establishment of these arrangements in view of the deadline of July 2013. Although the agreements themselves are between non-EU and EU authorities, there is an important role for ESMA to play in ensuring an efficient process and contributing towards a level playing field across Europe. Indeed, we plan to centralise the process and to negotiate on behalf of the EU competent authorities.

This approach has a number of advantages. First, it allows non-EU authorities to have a single interlocutor for the whole of the EU rather than having to deal with 27 different authorities. Secondly, it alleviates the burden on EU authorities by transferring much of the work to the ESMA level. Thirdly, and perhaps most



importantly, it is more likely to lead to the establishment of a level playing field vis-à-vis third country entities as ESMA – in its position as lead negotiator on the EU side – will ensure that a consistent approach is taken across the MoUs. Such an approach also reduces the possibility that certain MoUs could be challenged on the basis that they are more flexible or stricter than others. With this in mind, ESMA is currently developing guidelines on the content of the co-operation arrangements – these guidelines are in effect a model MoU that will serve as the basis for the negotiations with third country authorities. We are looking forward to making progress on these MoUs in the course of this year.

Another aspect of the AIFMD that I believe is worth mentioning is data collection. Here there is a clear link to two of the key objectives of the Directive, namely increased transparency and mitigation of risks to financial stability.

As you will be aware, the AIFMD requires AIFMs to report significant amounts of information to their home competent authorities on such matters as the main instruments in which they trade, their principal exposures and the risk profiles of the funds they manage. In our advice of last November, we elaborated on the content of this information, as well as on the frequency of the reporting. We also developed a template to be used by managers in order to have as much consistency in the disclosures as possible. The interesting point from the ESMA perspective is that all of the information provided by managers to their home authorities must also be made available to ESMA and the European Systemic Risk Board. Now, we should not underestimate the challenges involved in gathering such vast amounts of data and analysing it in a way that adds value from a regulatory perspective. However, we are confident that this additional transparency will be a key tool in helping both the EU and national authorities better understand the functioning of this sector, as well as in identifying possible systemic impacts. This role is also a good illustration of the additional responsibilities that ESMA has compared to its predecessor, CESR, and of the move beyond a purely rule-making role.

ESMA's work on the AIFMD does not stop there. We are also working on guidelines on remuneration under Article 13 of the Directive and plan to publish a consultation paper with our proposals in the second quarter of this year. There is already a broad set of material from which we can draw inspiration when developing these guidelines, such as the Commission Recommendation of 2009 and the CEBS guidelines of 2010, while bearing in mind the need to adapt that material to the alternative investment fund sector.

Still on the AIFMD, you will have seen that we recently published a discussion paper on key concepts of the Directive and types of AIFM. This is the first stage of our work on the regulatory technical standards required under Article 4(4) of the Directive. We see this as a valuable opportunity for us to clarify some areas of potential uncertainty arising from the Directive and ensure that there is a common understanding of the text across the EU. The discussion paper addresses such issues as the delegation of portfolio and risk management functions, the definition of the term 'alternative investment fund' and the interaction of the AIFMD with other pieces of EU legislation such as UCITS and MiFID. These latter points are unlikely to be



included in the technical standards themselves and will probably take the form of ESMA guidelines or a Q&A at a later stage. To some extent the precise legal form here is less important than the overall objective, namely the consistent application of the Directive throughout Europe.

It would be possible to speak for many more minutes – or indeed hours – on the AIFMD but I would also like to touch briefly on a few other topics that are likely to be high on your agendas.

At the end of last year the European Commission published its proposed Regulations on venture capital and social entrepreneurship funds. There are a number of similarities between these two initiatives, and indeed they are being negotiated by the European Parliament and the Council as a package. Both proposals aim at creating a single market for this type of fund, based on the principle of the passport for the manager. The Regulations would apply to managers that are below the threshold of the AIFMD (managers of AIFs with less than €500M of assets under management). Both initiatives stem from the Single Market Act and we know they are a high priority for Commissioner Barnier. We will have to await the outcome of the political negotiations in order to see what role ESMA will have to play in these two initiatives, be it the delivery of technical advice on implementing measures or the preparation of technical standards.

I have spoken today about some of the key objectives for ESMA as an organisation and how they relate to our work on investment management. It will hopefully be clear to you, if it was not already, that we collectively face a very busy agenda in the coming months. However, I am confident that on the basis of the progress that ESMA has made since its establishment and the constructive relationships that we have already developed with external stakeholders, we are well-placed to meet these challenges.

Thank you for your attention.