

ESMA – Issues and Priorities

EFAMA Investment Management Forum, Brussels

Steven Maijoor

Chair

European Securities and Markets Authority

Ladies and Gentlemen,

I would like to thank EFAMA for giving me the opportunity to speak here today as part of such a distinguished line-up of speakers. EFAMA is an organisation that is well known to us and has for many years been one of our key interlocutors in the asset management sector.

ESMA was established on 1 January 2011 and is now approaching its third birthday. In my speech today I would like to reflect on some of the key achievements of the Authority during those three years and set out the areas on which we will be focusing our attention in the coming months – with a focus on asset management issues. I will talk about the work we have done on the drafting of the single rulebook, and discuss how such a harmonised set of rules can be used to achieve supervisory convergence.

Many of you already know my organisation quite well, so I will only spend a few minutes on general ESMA developments. In 2011, we had to open the shop while it was still being built and stocked. We continue to simultaneously build the organisation and deliver on our five main objectives and tasks: stability, investor protection, single rulebook, supervisory convergence, and direct supervision. However, I would like to mention that our portfolio of activities is changing and becoming more balanced. In the early years, as a result of the regulatory reform in response to the crisis, the single rule book was the dominant activity. Now ESMA is moving into a phase where direct supervision and supervisory convergence is becoming a solid share of our portfolio of activities. The unit responsible for CRA supervision is close to reaching its cruising speed, and the number of registered CRAs increases steadily. In September, more than 30 CCPs from third countries applied for recognition with ESMA, and we expect to register the first Trade Repositories this month. Our supervisory convergence activities are also increasing, but I will



discuss that more extensively later in my speech.

As you probably know, ESMA's third birthday will coincide with the first formal evaluation of what we have achieved so far in our relatively brief existence. Considering this short period, and the good progress made, I think this first evaluation should not trigger a fundamental overhaul of the new European System of Financial Supervision or ESFS. However, at the same time it would be good to use this opportunity to strengthen further the ESFS. It is good to see that EFAMA has a similar view on the evaluation of the ESFS, although, as can be expected, on some elements our viewpoints differ somewhat.

Let me now move to the specific topic of today's conference. The past few years have been challenging ones for the asset management industry. The effects of the financial crisis are still being felt and much work still needs to be done to restore investor confidence. At the same time, the industry has had to adapt to a significant amount of regulatory change at international, European and domestic level. On this last point, I have often stressed at events such as this that the financial services industry should avoid the temptation to automatically and instinctively oppose regulatory initiatives or seek to water them down. While it is true that not each and every aspect of every regulatory initiative is necessarily perfect, it would be just as inappropriate to claim that all new regulation is ill-conceived or would lead to undue regulatory burdens. It is here that the consultation process is so important both to policymakers and market participants. Indeed, we continue to place great value on the feedback we get through the consultation process. We always try to consult as broad a range of stakeholders as we can and for as long a period as we can, taking into account the constraints and deadlines imposed on us.

The establishment of a single rulebook for European financial services regulation has become something of a holy grail over the years. Although much remains to be done to achieve that objective, the work of ESMA over the past three years has made significant steps in that direction. Let me illustrate this with some figures – in the area of asset management alone, since January 2011 ESMA has issued 6 sets of guidelines, 5 Q&As, 4 opinions, 1 technical standard and 1 set of technical advice. All of these pieces of work have played a considerable part in the development of the single rulebook for asset managers in the EU, thereby facilitating the functioning of the single market and – particularly in the case of UCITS – strengthening investor protection.



Before addressing the issue of supervisory convergence, allow me to cover in more detail some of our most recent achievements in the area of asset management.

Regarding AIFMD first of all, the establishment of this new framework has been one of ESMA's top priorities during its first three years of existence. Many of you will be familiar with the individual work streams in this context, but let me recall a few of them.

The first challenge under the AIFMD was to deliver technical advice to the European Commission back in 2011. We were able to produce what was widely acknowledged as a comprehensive and high-quality piece of work in a relatively short period of time. The extensive input we received from stakeholders was crucial in allowing us to take final decisions on the various policy issues covered in the advice.

Over 2012 and 2013, while responsibility for the drafting of the Level 2 Regulation passed to the Commission, ESMA launched a number of workstreams in order to supplement the AIFMD framework:

- Negotiation of supervisory cooperation arrangements (MoUs) with third country authorities;
- Guidelines on key concepts, remuneration and reporting; and
- Technical standards on types of AIFMs

I think it is worth spending a few moments on the MoUs. The decision by EU national authorities to delegate responsibility for negotiation of the MoUs to ESMA was an important step, helping Europe speak with one voice, ensure a level playing field, and greater efficiency in the negotiation process. Indeed, this approach was in some ways a perfect illustration of what the new European System of Financial Supervision can achieve.

ESMA adopted an open approach to the negotiation of the MoUs by approaching all authorities that are members of IOSCO: more than 80 non-EU regulators in total. We were pleased with the high level of interest and engagement among our non-EU counterparts and our initial contacts quickly led to intensive discussions with a more limited number of regulators. We defined this group based on input from EU authorities on the jurisdictions with which it was most important to have MoUs in place.



The content of the MoUs – which are now available on our website – reflects the high standards of cooperation mandated by the AIFMD itself, and the fact that there is no requirement on equivalence of regulation in the third country. This makes it all the more important for EU national regulators to have a close supervisory relationship with the third country entity and to be able to rely on assistance from the authority of that entity.

ESMA has approved MoUs with 42 non-EU authorities. In concrete terms, this means that ESMA's work on the agreements has led to the signature of more than 1,000 bilateral MoUs so far. Not only has this further strengthened the basis for international supervisory cooperation, but it also ensured a smooth transition to the AIFMD framework following the July transposition deadline.

I would like to stress that responsibility for signature of the MoUs remains at national level. It may be that an EU authority considers there is no need for an agreement with a particular non-EU regulator because there is no relevant cross-border activity; similarly, an EU supervisor might choose to prohibit any such activity by not signing the MoU. Indeed, in the absence of an MoU, the relevant cross-border activity should cease.

As some of you have no doubt already noticed, ESMA recently published a matrix setting out all the MoUs that have been signed in order to provide transparency to stakeholders. This publication brings to an end the main bulk of ESMA's work on the AIFMD MoUs, although I would like to draw your attention to the fact that we are continuing negotiations with a number of non-EU authorities such as those in China, Russia and South Africa.

Moving on from the MoUs, let me address briefly the other work done by ESMA so far under the AIFMD.

Over the past year we have issued guidelines to clarify the obligations on AIFMs arising from the Level 1 and Level 2. The first set of guidelines related to the remuneration policies of AIFMs – this attracted a lot of attention due to the sensitivity of this issue, but we believe that our final approach was reasonable and balanced, and should be seen in the wider context of the move towards consistent rules on remuneration across the financial services sector.

We also contributed to the smooth implementation of the AIFMD framework by issuing



guidelines on key concepts of the Directive – these guidelines help clarify the scope of the Directive, on which a number of questions had been raised by stakeholders.

The most recent output was a package on the reporting obligations of managers, consisting of guidelines and an opinion. The guidelines clarify what managers have to report on the basis of the Directive and the Level 2 Regulation, while the opinion sets out ESMA’s view on how national authorities should use the discretion afforded by the Directive to request some additional information. ESMA’s initiative will help ensure that there is clarity for managers on what to report and that the data is harmonised, thereby allowing ESMA and the ESRB to have a better overview of the sector.

The final item I would like to mention in view of building a single rulebook for AIFMD are the regulatory technical standards (RTS) on types of AIFMs. We decided to focus these RTS on distinguishing between open-ended and closed-ended funds, due to the relevance of this distinction to the requirements in the Directive on liquidity management and valuation. ESMA submitted draft RTS to the Commission in April; the Commission then contacted ESMA in July indicating that it did not intend to endorse the draft due to a potential lack of consistency with the Level 1 text.

ESMA is of the view that the original draft RTS were valid and legally sound, but in order to move the process forward – and recognising that the Commission ultimately holds the pen – we submitted a revised draft in August. The revised version incorporates some flexibility to take account of certain existing fund structures. The final decision on these RTS now lies with the Commission.

I have spoken at length about the AIFMD, but we should not forget that ESMA has been, and continues to be, very active in the area of UCITS. Since the most recent reforms of the UCITS Directive go back a few years, much of ESMA’s role since 2011 has been what I would loosely call “maintenance work”. What I mean by that is that we have focused on clarifying and strengthening existing rules rather than introducing significant new requirements. Examples of this include our Q&A documents on the Key Investor Information Document and the UCITS notification procedure, or the opinion on the trash ratio.

One notable exception to the above are the guidelines on ETFs and other UCITS issues. This was



a major piece of work that simultaneously addressed issues arising from the shadow banking debate and investor protection concerns. I propose not to go into detail today on the many important changes introduced by these guidelines. However – and without wishing to pre-empt the upcoming initiatives of the European Commission – I believe it is worth noting that the work we did on the ETF guidelines stands us in good stead for the input we may have to provide in the future in the context of UCITS VI.

I would like to say a few words about one related issue on which we are currently working. The ETF guidelines addressed some deficiencies in the rules that apply to ETFs covered by the UCITS Directive. For example, we considered it important to strengthen the disclosure requirements on ETFs and to ensure that secondary market investors can make direct redemptions at the level of the ETF in certain circumstances. However, the introduction of these requirements was in no way meant to stigmatise or single out ETFs for regulatory treatment. Indeed, we deliberately chose to apply certain of the new rules to UCITS in general since they were not only relevant to ETFs, such as the provisions on index-tracking funds. We recognise that ETFs could in certain cases be appropriate investment products for retail investors seeking exposure to the main equity or bond markets. However, it seems that in Europe ETFs are mostly acquired by professional investors. This is in contrast to the situation in the US, where the share of investment by retail investors is much greater.

Supervisory and regulatory authorities should always be wary of intervening in specific investment decisions. There are of course many factors that need to be taken into account when assessing the merits of a particular investment choice, so regulators should focus on ensuring that those choices are made on the basis of sound and accurate information and, where relevant, good-quality advice. Financial education is also a key piece of the puzzle. However, we as an authority are interested to understand better why retail exposure to ETFs appears to be relatively low. We are looking into this matter further, and hope to have a clearer overview of the situation in the coming months.

You will see that ESMA's work in the asset management area in the recent past has been in the context of the UCITS and AIFMD frameworks, but in the coming months and years ESMA's role in this sector will adapt to reflect the new regulatory landscape. In particular, ESMA will have a part to play in the roll-out of the Regulations on Venture Capital (EuVECA) and Social Entrepreneurship Funds (EuSEF). Here it will be important to develop rules that are appropriate



to the nature of the entities concerned and that encourage the take-up of these new European products. ESMA is also likely to be asked to contribute to the application of the Regulations on Money Market Funds and Long-Term Investment Funds.

This is not to say that we will stop working on AIFMD and UCITS. On the former, for example, we will soon start to turn our attention to the drafting of the report on the possible extension of the passport to non-EU AIFMs and AIFs. On UCITS, meanwhile, we are monitoring developments in the political discussions on UCITS V and stand ready to provide input at the appropriate stage.

I mentioned at the outset that I would speak about the topic of supervisory convergence. There is a clear onus on ESMA to make progress on this objective, based on the recognition that a single rulebook – while important and desirable – should not be the end of the story. Indeed, it would be too easy simply to rely on a harmonised set of rules and assume that this automatically leads to a level playing field and a smoothly functioning internal market. While it is very difficult, or even impossible, to have converged supervision without a single set of rules, consistency of rules does not in itself automatically lead to harmonised supervisory practices.

As an authority we are determined to look at what is happening “on the ground” in the Member States. Of course, we need to be realistic about what can be achieved here given the many demands on our time and resources – after all, we remain a relatively small organisation compared to the securities regulators in many of the larger Member States. Nonetheless, we are keen to step up our efforts in this area. These efforts should build on work already done through ESMA’s peer review process, which has been a useful tool in highlighting the extent of application of particular measures across the EU. A recent example of this in the asset management area was the assessment of the application of the money market funds guidelines of May 2010. We are actively considering ways to strengthen our peer reviews such as through increased use of on-site visits, targeting of topical supervisory matters and independent assessment teams. These changes might mean that we have to focus on a more limited number of topics each year but I believe that this is fully justified if it allows us to assess those topics in a more in-depth way.

A final word on this topic – in the earlier mentioned upcoming review of the ESFS, I believe that thought should be given to strengthening the tools available to ESMA, and the ESAs in general,



in order to promote convergent supervisory practices. I know that EFAMA has also expressed the view that the ESAs should progress more on the issue of supervisory convergence.

There is also a link here to the governance model of the ESAs, which is more suited to development of the single rulebook and direct supervision than to supervisory convergence issues. This is not to say that we cannot already achieve a lot using the current tools and governance arrangements, but the ESFS review is an ideal opportunity to look at what more can be done.

Today I have highlighted some of the key achievements for ESMA in the asset management sphere over the past three years and what we will be working on in the coming period. I have touched on the positive developments towards the creation of a single rulebook while highlighting the challenges we face as an authority in ensuring this leads to supervisory convergence. As ESMA approaches its third birthday, I hope I have given you a flavour of the progress that has been made towards the objectives underlying the creation of the ESFS, and what remains to be done.

Thank you for your attention.