

The European Regulatory Outlook

CISI 2015 Annual Conference – London

Verena Ross
Executive Director

- I am very sorry I can't be with you in person today at the CISI Annual Conference 2015 to speak to you about the investment landscape in Europe.
- Today, I will first talk about the Capital Markets Union (CMU), which will play a key role in the European landscape in the coming years.
- I will focus the second part of my remarks on ESMA's work on investor protection, both under the MiFID II framework and also the work we are doing together with the other European Supervisory Authorities (ESAs).
- Finally, I would like to talk briefly about the digitalisation of financial services, which is a hot topic for both firms and regulators.

Capital Markets Union

- It would be remiss of me to speak about the European financial market landscape without first mentioning the Capital Markets Union – or CMU. The CMU will be one of the forces shaping the future of finance in Europe, and a key topic to take into account when considering the opportunities and challenges in the investment landscape.
- One of the key aims of the Capital Markets Union – or CMU – is to create a balanced funding system that maximises the benefits of capital markets and is less reliant on funding by the banking sector. The foundations of this ambition are currently being built, and ESMA's main objectives, of enhancing investor protection and promoting stable and orderly financial markets, are fully aligned with the objectives of the CMU.
- A successful CMU based on a single capital market in the EU would promote the attractiveness of the EU for investors, which should in turn create more jobs and stimulate economic growth. This could bring with it many opportunities investors and market participants. As one example, more funding channels will increase choice and competition in

the financial system, which would provide investors and market participants with the opportunity to decide which channel best meets their needs.

- The objectives of the CMU imply also attracting retail investors to more actively participate in the financial marketplace. This reinforces the relevance of ESMA's existing investor protection framework, because investor trust is crucial to meeting this aim. Only when investors feel sufficiently confident will they be willing to enter financial markets.
- The objectives of the CMU highlight the importance of ESMA's work to establish a single rulebook that is applied in a predictable way across the EU. A high level of investor protection and increased supervisory convergence are both key to reduce barriers and fragmentation between national capital markets, and to achieve the ambitions of the CMU.
- Against this background, I would like to briefly talk about some of ESMA's work on investor protection. I will say a bit more about supervisory convergence later.

ESMA's work on investor protection - MiFID II

What we have done

- MiFID represents the most far-reaching overhaul of European securities legislation in the past decade and the review of MiFID (so called MiFID II) is one of the key responses of the European Union to the financial crisis.
- MiFID II is wide-ranging – market structure, transparency, etc - and importantly it strengthens further protections for retail investors through limits on the use of commissions; conditions for the provision of independent investment advice; stricter organisational requirements for product design and distribution; the disclosure of costs and charges; the regulation of cross-selling; and product intervention powers.
- ESMA has been tasked with a significant role in contributing to further refine the framework as laid down in MiFID II. During 2014, ESMA submitted an extensive technical advice to the European Commission covering the breadth of MiFID II, including on key investor protection measures and on a broad range of issues for secondary markets.
- As for all our policy work, extensive consultations with a broad range of stakeholders were an important building block of this advice.

What we are working on

- So, we have already achieved a lot. But the work is not yet finished. The decisive date for the application of MiFID II is 3 January 2017. ESMA is currently working on delivering technical standards to the Commission between July and December 2015.

- One area of the MiFID II where ESMA's work is ongoing is our Consultation Paper (CP) on draft guidelines on Knowledge and Competence – a subject that I know is of particular interest to many of you here today.
- It is crucial for the protection of investors that the people who provide them with investment advice or with information on investment products and services are sufficiently knowledgeable and competent, so that clients can safely rely on the advice or information being provided.
- In the European context, this poses particular challenges because of the vastly differing education and qualification systems across the different Member States. That is why ESMA's draft guidelines set minimum standards that national competent authorities and other relevant national bodies need to take into account when determining the specific qualifications and experience that are expected from investment advisors and others providing information on investment products and services.
- The first important element of the guidelines is that advisors and staff providing information understand the investment products and services that they work with. They should also be knowledgeable of the larger macro-economic, market and regulatory context that they work in.
- The other key part of the draft guidelines is that the level of knowledge and competence should be maintained, and subject to ongoing evaluation by both firms and by supervisors.
- The consultation period ends on 10 July 2015 – so you still have a few more days to participate, if you have not done so already!

What we have still to do – supervisory convergence

- Given the breadth and complexity of the single rulebook – and MiFID II is just one of many relevant pieces of legislation – regulators need to make choices about where to concentrate their efforts. Many factors are at play in making these decisions, including the relevant economies, market structures, business culture, and the resources available to regulators relative to the market size. However, diversity in these choices can result in an unlevel playing field which could be used for regulatory arbitrage or create a “race to the bottom.”
- Our aim is to achieve high, consistent standards of supervision throughout the EU, to ensure investor protection, orderly markets, and financial stability are achieved in practice. That cannot just be done through rule making, once you have a common regulatory framework it is important to work collectively to achieve convergence of supervisory outcomes and practices.
- The draft guidelines on knowledge and competence are one example of how ESMA can enhance the single rulebook and promote supervisory convergence by making recommendations in areas where differences in application exist.
- ESMA has a number of convergence tools available at our disposal. The list ranges from, for example, training and workshops, to issuing opinions, publishing guidelines or Q&As

(clarifying our views on the practical application of legislation), to peer reviews, mediation and, at the most forceful end, formal proceedings in the case of breaches of Union Law. The effectiveness of each tool will depend on the precise nature of the problem at hand.

- Currently there is significant room for increased supervisory convergence amongst national competent authorities (NCAs). But achieving consistency between NCAs is not an easy task. It is a task that requires more focus and a closer coordination role by ESMA, including the deployment of the wider range of tools to carry out our work. This is why, in our Strategic Orientation for 2016-2020, ESMA has committed to dedicate more resources to tackle the important issue of supervisory convergence on specific areas, in close cooperation with NCAs.

ESMA's work on investor protection – joint work with other ESAs

- I would now like to move on to briefly talk about our cross-sectoral work in relation to consumer and investor protection. As from an investor perspective it is important to have consistent standards whatever product or service the consumer is looking for, we have done a lot of work jointly with the other European Supervisory Authorities (ESAs). Consumer protection is a statutory objective that all three authorities have in common.
- ESMA works regularly and closely with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) to ensure cross-sectoral consistency our work.
- Recently, our work has focussed on the major regulatory mandate on Packaged Retail Investment and Insurance products (PRIIPs), which will enhance investor protection by creating uniform requirements for the manufacturers of PRIIPs – such as fund managers, insurance companies, credit institutions and investment firms – to produce a clear, concise Key Information Document (KID), where these products are targeted at retail investors. The PRIIPs KID will be required from 31 December 2016. This work is extremely important as it will really impact on each investor in the EU. Our work is involving a number of consultations (we just launched a further one) and also intensive consumer testing.

Digitalisation

- The three ESAs also work closely to promote consumer protection on other topics where a cross-sectoral view is key. One such example is in relation to the increasing digitalisation of financial services. This brings me to the final area I would like to briefly touch on today.
- Technology is a hot topic that certainly brings opportunities but also creates some challenges for firms and regulators.

- Technology continues to change our day-to-day lives. In 2014, over three quarters of adults in Great Britain (38 million) accessed the Internet every day, an increase of 38% since 2006¹. Worldwide, Europe already has the highest level of households with internet access, reaching 81% in 2014.² An increasing number of consumers are becoming digitally savvy and firms are seeing this trend and acting on it. It is up to regulators to also keep up with this trend.
- Digital innovations and new applications of existing technologies offer firms new ways to interact with their clients. One benefit of the increasing digitalisation of financial services is that it may reduce costs; not only for firms, but ultimately also for investors. This may increase the affordability of financial advice and consequently mean that financial advice can be made available to a wider population of investors. However, as the barriers to accessing financial products and services are lowered, investor protection is even more important. Investment firms need to act in the best interest of their clients, regardless of the channel through which they provide their products and services.
- Another risk of moving the management of our finances to digital platforms is that it may increase our vulnerability to certain operational risks. I understand that later today, you will hear about “cyber threats.” Firms and regulators must be aware of these and other risks – for example various types of IT failure – and be able to react quickly, especially given the pace at which digitalisation initiatives in the financial sector evolve.
- As there are common drivers, risks and benefits to be considered from increasing digitalisation in the investments, banking and insurance sectors, the three ESAs have recently started working jointly on the topic of the automation of financial advice. The first stage of this work will be to map the existing and possible future variations of automated financial advice tools, to identify both the risks as well as the benefits of these types of tools for financial consumers. So watch this space...

Final remarks

- To conclude, the European landscape continues to evolve. The EU has made big steps to increase the protection of investors. This is important and will become even more important because investor trust is a key component to contribute to the sustainable growth of European financial markets. The CMU will be a key force in shaping this future and we need to ensure that the financial markets are well placed to support growth and employment in Europe.
- The creation of a single rulebook has been and will continue to be important. However, we cannot rest on our laurels after developing a single set of financial regulation across the EU.

¹ The Office of National Statistics, Internet Access – Households and Individuals 2014, 7 August 2014 (<http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2014/index.html>)

² Eurostat, Information Society, Level of internet access – households (<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tin00134&plugin=1>) and World Retail Banking Report 2015 (Capgemini and EFMA), p. 10.

Regulation should also be applied and supervised consistently within the single market, both to the benefit of financial services firms and, most importantly, to the benefit of end investors.

- The market place is evolving rapidly. This presents new opportunities, but also new challenges for investors, firms and regulators.
- Reacting to all of these challenges without hampering, and indeed while supporting, positive developments will require, more than ever, a flexible mindset and a close and continuous dialogue between national supervisors, ESMA, the other ESAs, and the legislators on one side and industry and retail investor stakeholders on the other.