

Compliance Alert

ESMA and EBA Harmonize Guidelines for Handling Consumer Complaints Across the EU

The European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) have published their joint committee final report on guidelines for handling consumer complaints in the securities and banking sectors (Guidelines). In order to ensure the adequate protection of consumers, these Guidelines seek to:

- Clarify expectations relating to the manner in which firms organize the handling of complaints;
- Provide guidance on the provision of information to complainants;
- Harmonize the arrangements of firms for the handling of complaints they receive; and
- Ensure that firms' arrangements for handling complaints are subject to at least a minimum level of supervisory attention across the EU (see MaComp, Germany).

The Guidelines aim to increase market confidence and, for the benefit of consumers and firms alike, ensure a harmonized approach to handling complaints in all 28 EU member states and across all financial services sectors.

The Guidelines are part of the efforts of the European Supervisory Authorities to create further supervisory convergence across the securities and banking sectors. They were developed on the

basis of the existing complaints-handling guidelines established by the European Insurance and Occupational Pensions for Authority (EIOPA) for the insurance sector. This is one of the first times that ESMA and EBA have looked to the experiences of EIOPA regarding compliance structures for handling consumer complaints.

The Guidelines relate to the following matters:

- Complaints management function and policy;
- Registration;
- Reporting;
- Internal follow-up on the handling of complaints;
- Information provision; and
- Procedures for responding to complaints.

ESMA and EBA expect that the Guidelines will ensure a consistent approach to complaints handling across the EU. Consumers can purchase financial services and products in the investment, banking and insurance sectors across the entire EU market; the Guidelines will now allow them to rely on a single set of complaints-handling arrangements irrespective of what type of product they have purchased and where they have purchased it. The new unity of compliance structures across products and jurisdictions will allow groups of financial institutions with different products and different approaches to unify their complaints handling systems and procedures, making them more effective and permitting economies of scale such as centralized compliance functions. Because the complaint handling process is a fundamental source of information regarding product, process and distribution failures, a unified complaints-handling process may also potentially enable companies to improve their product manufacturing and distribution channels more effectively. In addition, the standardization of complaints handling should simplify the process of internally supervising that process itself.

In addition to strengthening consumer protection—a key statutory objective for both ESMA and EBA—the Guidelines will also allow national regulators to supervise the same harmonized requirements across all sectors of financial services in their own jurisdictions.

Unfortunately, within the current MiFID II discussions on Level II measures, ESMA has taken the position that the compliance function should itself operate the complaints-management process. This would appear to require the compliance function to supervise itself, causing a

conflict of interest. It is essential that each credit institution or investment firm find a way to implement the Guidelines in a manner that will allow the compliance function to function independently and effectively, while using the complaints-handling process as a tool for detecting and avoiding compliance risks.

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