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Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors

BVI¹ gladly takes the opportunity to present its views on the Joint Committee`s Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors.

We consider it of utmost importance that financial institutions have sound procedures in place to deal with consumers complaints in an adequate way. Proper complaint-handling mechanisms are of benefit for both consumers and financial institutions as well as the financial markets in general.

Therefore, the German investment fund industry already has established appropriate procedures and arrangements to ensure the properly dealing with investor complaints in the area of UCITS and AIF retail funds due to Article 15 of the UCITS Directive and Article 6 of the UCITS Implementing Directive respectively Article 10 of the MiFID Implementing Directive. The statutory sources in German national law can be found in Paragraph 28 (2) German Capital Investment Code (Kapitalanlagegesetzbuch – KAGB) and Paragraph 4 (3) of the Regulation on the Rules of Conduct and Organisational Rules Pursuant to the Investment Code (Kapitalanlage-Verhaltens- und Organisationsverordnung – KAVerOV) and in Paragraph 5 (2) KAGB, 33 (1), Sentence 2, No. 4 Securities Trading Act (Wertpapierhandelsgesetz – WpHG). These rules provide that Capital Management Companies implement and exercise effective and transparent procedures to adequately deal with investors complaints in a timely manner. Capital Management Companies are obliged to document each complaint and the respective measures taken. Capital Investment Companies have to inform investors about their complaint-handling procedures free of cost on their websites.

Moreover, to emphasize the importance of the relationship between Capital Management Companies and retail investors, the German investment fund industry maintains one of the most effective and consumer-friendly dispute resolution scheme (www.ombudsstelle-investmentfonds.de) in the area of financial services.

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

The German investment fund industry already has established sound procedures in terms of complaints handling due to the UCITS Directive. From this perspective, we see no need for further regulation. On the other hand, there might be opportunities for further supervisory convergence where e.g. the UCITS Directive has not properly been implemented in the respective national laws or in areas other than the investment management business where no rules for effective and transparent complaints-handling exist.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 75 members currently handle assets of EUR 2.0 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI`s investor education programmes support students and citizens to improve their financial knowledge. BVI`s members directly and indirectly manage the capital of 50 million private clients in 21 million households. BVI`s ID number in the EU register of interest representatives is 96816064173-47. For more information, please visit www.bvi.de.



As a general remark to the proposed guidelines it should be clearly stated in the guidelines themselves that they only refer to complaints of retail clients as the purpose of the guidelines is aimed to ensure the adequate protection of consumers. The guidelines otherwise might go beyond relevant European legislation and their implementing national legislation (see. Art. 10 MiFID Implementing Directive).

Q 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 4 – Reporting

We recommend that the ESAs should focus on reporting to competent authorities upon request rather than implementing permanent reporting obligations to competent authorities which have no legal basis in European law, e.g. the UCITS Directive or the AIFM Directive. Without regard to legal concerns, we consider permanent reporting obligations as no additional benefit for consumers and not effective to enhance their relationship to financial service providers.

In fact, we consider the existing German national competencies of the German Federal Financial Supervisory Authority as effective tools to keep the activities of Capital Management Companies e.g. in the area of complaints-handling in line with European and national legislation. The German Federal Financial Supervisory Authority has the right to request all information from Capital Management Companies as far as there are indications for misbehavior. Furthermore, the German Authority as of today is able to prove and understand whether German Capital Management Companies comply with their legal obligations in terms of complaint handlings e.g. by the independent auditors´ annual report.

Not least, consumers have the right to address their complaints directly to the Authority or respective alternative dispute resolution schemes to resolve problems, too.

As far as the Guidelines provide for reporting especially the number of complaints to the competent authorities, it should be considered that the number of complaints is not a meaningful figure per se given the fact that all complaints have to be registered by a company whether or not they are reasonable or not.

Guideline 6 – Provision of information

We recommend to allow companies to inform complainants about complaints-handling procedures upon request or via reference e.g. to the relevant companies´ website for practical reasons. While it is good practice to acknowledge receipt of a complaint within a reasonable time frame, it seems overachieving to provide every complainant with further information on the companies´ internal procedures whilst these information can be made publicly accessible on the company website.

Therefore, we propose to use a wording along the following lines:

“6. Competent authorities should ensure that firms:

a) On request, provide written information regarding their complaints-handling process.



b) Publish details of their complaints-handling process in an easily accessible manner, for example, via the firm's website.

c) Keep the complainant informed about further handling of the complaint."

Guideline 7 – Procedures for responding to complaints

With respect to Guidelines 7c) we would like to emphasize that there should be no fixed timeframe for dealing with a complaint. Complaints vary in nature and often refer to complex issues which date back in time as the case may be. Therefore, a response within a reasonable timeframe without any unnecessary delay seems the most sensible way to proceed.

Q 3: Do you agree with the analysis of the cost and benefit impact of the proposals?

No comment

Q 4: Please provide any evidence or data that would further inform the analysis of the likely costs and benefit impacts of the proposals.

No comment