

## **Opening statement: Verena Ross, Executive Director of ESMA**

### **ECON EP public hearing: MiFID Review**

### **5 December 2011**

The revised MiFID seeks to strengthen investor protection through an even stronger framework for the provision of services to retail clients. This is welcome!

The Commission proposals provide the opportunity to build on the initial success of the more harmonised investor protection framework introduced by MiFID 1. ESMA considers that the MiFID 2 proposals have delivered on this in several respects. Let me highlight in the short time I have just a few important areas.

In my view, these five areas should take us all forward in terms of protecting consumers in increasingly complex and fragmented markets:

- Firstly: The powers for both ESMA and national regulators (in coordination with ESMA) to intervene to protect investors from inappropriate products or services by banning products is a major leap forward. These proposals have been developed in the context of the new world we live in: rapid innovation, the ever increasing complexity of financial markets and products, as well as increasing retail investor participation in these financial markets. All these developments necessitate the need for higher levels of investor protection.

The proposed approach seems balanced: allowing both national action and co-ordinated EU responses. But this may prove rather more challenging to deliver in practice! The key challenge for ESMA here is, of course, the co-ordination of any action taken by national competent authorities. ESMA will need to take account of the fact that some national initiatives may be appropriate to address specific national risks - but other market failures will raise common concerns across the EU. This means that ESMA will have to manage the inevitable differences and co-ordinate accordingly – as we should avoid ‘national action’ creating fragmentation in the market and possibly creating consumer confusion.

Another issue is the extent and practicability of these intervention powers. Whilst we appreciate the need for building in safeguards and limiting the scope for intervention, we need also to ensure that there is the real possibility for ESMA to take swift action, where necessary, in this important area of product intervention.

- Secondly: The current MiFID suitability standards can usefully be supported and enhanced by two things: (i) greater disclosure of the nature of advice – whether it is independent or not - and (ii) addressing bias arising from some services being paid for by commissions from third parties. The key proposal here (in order to prevent potential conflicts of interest) is that – for independent advice - investment firms and portfolio managers cannot make or receive any fees or commission provided by any third party. We are aware of concerns that limiting this ban on inducements to independent firms only could lead to possible distortions in the market (where advisers discard the label ‘independent’ to carry on receiving inducements). We need to be careful not to create consumer confusion, so clarifying



consumer understanding of the type of advice they are getting is important. We think the Commission proposals reach a fair balance on this complex issue.

- Thirdly: We are glad to see the strengthening of the best execution framework which should, in particular, improve the quality of the information that brokers provide to the clients: not only the information received in execution policies, but also information on execution venues used, and data from each trading venue relating to the quality of executions. Improving the quality of such information is essential if we are to deliver greater transparency for investors, and thereby enable clients to understand how their orders will be executed.
- Fourthly: The proposals to harmonise the conditions for third country firms and market operators to do business in the EU are also a welcome move. An integrated single market should have consistent access rules. We need to be careful however that the equivalence criteria and the scope of access restrictions do not lead to an all-out restriction on third country firms doing business with or through Member State authorised firms. This could potentially be damaging to investors and firms, particularly given the increasingly global nature of financial services activity.
- Fifthly: We welcome the proposed inclusion within MiFID's scope of structured deposits as part of the drive for greater consistency in selling practices for competing Packaged Retail Investment Products (PRIPs). ESMA supports delivering consistent investor protection regardless of the legal form of products. We will work together with our fellow regulators in the Joint Committee in order to support investor and consumer protection, including by reducing the scope for regulatory arbitrage.

In concluding, it's important to remind ourselves that MiFID 1 already has a comprehensive set of rules to ensure investor protection. Over the past 4 years, progress has been made towards protecting investors across the EU. Going forward, it is important not just to focus on changing the regulation though, but also to ensure that the regulation is effectively supervised and enforced in a similar way across the EU. This is another area where ESMA will focus its attention - proper implementation and supervision under MiFID 1 - even while we negotiate and debate MiFID 2/MiFIR.

ESMA (and its predecessor CESR) played key roles in supporting the work to develop and implement MiFID 1 and the Level 2 Implementing text. We hope that we can make good use of this work as the basis for updated conduct of business requirements in MiFID 2 and the related Level 2 text. ESMA remains available to support the Parliament, the Commission and the Council in the forthcoming legislative process, and, of course, to contribute to issuing any necessary Technical Standards that the European legislators deem could add value.