

16 May 2017

DG FISMA  
European Commission  
1049 Bruxelles/Brussel  
Belgium

**Re: Public Consultation on the Regulations establishing the European Supervisory Authorities (“ESAs”), namely the EBA Regulation, the EIOPA Regulation and the ESMA Regulation**

Dear Sir/Madam,

CFA Institute appreciates the opportunity to respond to this consultation on the Regulations establishing the European Supervisory Authorities (“ESAs”). CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors’ interests come first, markets function at their best, and economies grow. CFA Institute has more than 140,000 members in 150 countries and territories, including 133,000 Chartered Financial Analyst® charterholders, and 147 member societies.

Please find below our comments in response to the consultation questions.

**I. Tasks and Powers of the ESAs**  
**A. Optimising Existing Tasks and Powers**

**1) Supervisory Convergence**

1. *In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed? Please elaborate on your response and provide examples.*

CFA Institute is the global professional body for investment professionals. Our members comprise portfolio managers, analysts, and other investment professionals from across the financial services sector. We support efforts to promote fair and effective capital markets and investor protection. Therefore, our interest resides mostly with the work and remit of ESMA.

In general terms, we perceive that ESMA has functioned well in its regulatory work to achieve a common rule book through the development of technical standards and other implementing measures. The greater regulatory harmonisation that has arisen has provided the foundations for supervisory convergence. However, in general terms, there is some room for improvement in terms of delivering greater harmonisation and consistency in supervision and enforcement practices among member states. We do not consider all national competent authorities to be equally effective.

Moreover, capital markets are fragmented and still quite heterogeneous among EU member states; more consistency and predictability in the legal, regulatory and supervisory environment is important to unify EU capital markets.

2. *With respect to each of the following tools and powers at the disposal of the ESAs:*

- *peer reviews (Article 30 of the ESA Regulations);*
- *binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations)*
- *supervisory colleges (Article 21 of the ESA Regulations);*

*To what extent:*

*a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision;*

*b) to what extent has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?*

*Please elaborate on questions (a) and (b) and, importantly, explain how any weaknesses could be addressed.*

3. *To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices? Please elaborate on your response and provide examples.*

In addition to existing supervisory convergence tools outlined in the consultation, more emphasis could be given to reporting of best practices by the ESAs, including benchmarking of national competent authorities against best practices. Such reporting and benchmarking would bring market discipline to the practices of national competent authorities and may help raise supervision standards more generally across the EU.

4. *How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases? Please elaborate on your response and provide examples.*

In general terms, the ESAs role in cross-border cases could be strengthened. For example, when a fund manager wants to manage an investment fund (e.g. UCITS or AIFM) domiciled in another country, or where an investment firm wishes to provide ancillary services in another country, bilateral discussions between the two responsible regulators can be time consuming, resulting in uncertainty and delays. In such cases, it is not clear to what extent ESMA is able to intervene in

order to resolve differing local interpretations of the applicable rules. More clarity regarding the role and powers of the relevant ESA in this regard would provide greater assurance to market participants.

## 2) Non-binding measures: guidelines and recommendations

5. *To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed? Please elaborate and provide examples.*

The development of guidelines and recommendations is an important part of the level 3 regulatory work and generally serves the purpose of providing more clarity and reduced uncertainty to market participants over the application of laws and regulations.

However, in some cases (e.g. aspects of MiFID II), too much onus is placed on these guidelines and recommendations, both by policymakers and market participants, because of insufficient clarity in the level 1 and level 2 legislation. The lack of sufficient detail at level 1 and/or level 2 may be problematic where it gives rise to mis-interpretation or overstepping legislative boundaries at level 3. This can create confusion for market participants and runs counter to the objectives of the level 3 work.

By bringing more clarity and specificity to the level 1 and level 2 rule making, where appropriate, there would be less need and less scope for the subsequent development of non-binding instruments at level 3. In turn, this would benefit market participants by providing needed certainty, thereby allowing firms and their clients (end-investors) more lead-time to prepare for implementation.

## 3) Consumer and Investor Protection

6. *What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.*

In general, regarding the development of rules, the Joint Committee of the European Supervisory Authorities plays an important role in delivering a joined-up approach to horizontal investor protection issues. One example is the Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs), which cuts across the mandates of ESMA and EIOPA; a horizontal approach is necessary to avoid inconsistencies and gaps/overlaps between the securities and insurance sectors, respectively. Although the PRIIPs regulation itself suffers from some drawbacks, notably with respect to the presentation of performance information, the approach to the development of technical standards under the oversight of the Joint Committee of the ESAs provided scope for appropriate coordination.

Regarding tasks and powers, centralising more authority with ESMA for consumer and investor protection would be beneficial. Specifically, we would support establishing ESMA as the single supervisory authority for capital markets in the EU.

Capital Markets Union cannot be realised without more supervisory convergence and catch-up between EU periphery and core. The current divergence is reflected in the relatively low levels of capital raising and liquidity in smaller EU member states. Issuers favour consistent rules and legal certainty provided by more developed markets (for example, the UK); post-Brexit, it will become all

the more important for the EU to strengthen its capital markets infrastructure to support capital raising and investment opportunities. A single supervisory authority for markets would be an important component of this infrastructure. It would facilitate pan-European investment through more consistent rules and supervision throughout the EU, thereby benefitting investors in the EU core, and would provide higher standards of investor protection and market integrity for investors in the periphery.

7. *What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection? If you identify specific areas, please list them and provide examples.*

One area of consumer protection not adequately addressed at the European level is investor redress. ESMA could play an important role in delivering a common supervisory approach to investor redress. This would include monitoring of complaint-handling, cooperating with alternative dispute resolution (ADR) schemes to facilitate the correct understanding and application of relevant regulatory principles and provisions, and the exchange of information among relevant authorities on emerging risks for consumer detriment, for example by using aggregate data from complaint-handling and ADR schemes.

#### **4) Enforcement powers – breach of EU law investigations**

8. *Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure? Please elaborate and provide specific examples.*

#### **5) International aspects of the ESAs' work**

9. *Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts? Please elaborate and provide examples.*

As noted in the consultation, the ESAs currently do not have specific responsibilities to follow third-country developments having an impact on the continuity of equivalence decisions taken. There is scope to strengthen the ESAs' role in this regard. We believe it would be appropriate for the ESAs to conduct periodic monitoring of third country developments and consider whether there have been any material changes to third country circumstances that would warrant a reappraisal of the equivalence decision. An annual assessment of any such changes would seem appropriate. More frequent assessments may be costly or burdensome and likely of insufficient benefit having regard to the policy cycle and the expected pace of regulatory change among third country jurisdictions.

#### **6) Access to data**

10. *To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates? Please elaborate and provide examples.*

We believe the ESAs are effectively delivering on their mandates and do not perceive data reporting or access to information to be an obstacle in this regard. Greater access to information may, in some instances, allow for more efficiency in the work of the ESAs, but this must be balanced against the burden to market participants from having to report information to multiple authorities. Weighing this balance, we do not believe there is a compelling argument to grant additional powers to the ESAs over access to information.

11. *Are there areas where the ESAs should be granted additional powers to require information from market participants? Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.*

We caution against granting additional powers to the ESAs (as currently structured) to require information from market participants. There is already a significant burden on market participants to report a vast array of data to regulators (for example, as required under MiFID II / MiFIR), and, as yet, it is not clear whether regulators have sufficient capacity to fully utilise this data. Moreover, we believe the ESAs are effectively delivering on their mandates and do not perceive data reporting to be an obstacle in this regard.

Instead of granting more powers, greater attention should be given to facilitating more efficient exchange of information among regulators and the ESAs. Asking market participants to report yet more data, or report the same data to multiple authorities, would be sub-optimal. The development of a common database or technology platform among EU regulators and the ESAs may facilitate more efficient information exchange.

## **7) Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements**

12. *To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements? Please elaborate your response and provide examples.*

As noted in the consultation, more consistent and streamlined reporting could contribute to supporting closer market integration and reducing market participants' costs for complying with numerous information requests. We agree with this view. The ESAs are best placed to coordinate and facilitate standardisation and consistency of reporting practices.

13. *In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations? Please elaborate and provide concrete examples.*

## **8) Financial Reporting**

14. *What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened? Please elaborate.*

Our views on enhancing the financial reporting institutional framework are elaborated below and comprise the following themes:

- Strengthen the role of ESMA in financial reporting oversight;
- Endorsement and audit regulation bodies should not be replaced but must better engage and have some accountability to ESMA; and
- Ensure EFRAG's long-term relevance

#### **Strengthening the Role of ESMA in Financial Reporting Oversight**

The availability of and ready access by investors to high quality financial and non-financial information from companies across EU member states can facilitate efficient capital allocation and needs to be considered as a cornerstone of the CMU. In turn, the accounting quality, robustness of disclosures and level of transparency of companies across the EU depends on the strength of the underlying institutional framework. It is our view that strengthening ESMA's oversight activities, without necessarily absorbing or usurping the role of EU endorsement and audit regulation bodies, is needed to fortify the corporate reporting institutional setting in a manner that is aligned with the objectives of developing the CMU.

High quality reporting by EU companies is a by-product of the following: a) the development and implementation of robust international and/or national accounting and auditing standards; b) endorsement of international standards that are appropriate for the EU operational environment; c) rigorous and well-coordinated national and cross-country supervisory and enforcement mechanisms.

As noted in the consultation, the EU currently has a variety of institutions including national accounting and auditing standard setting bodies, national competent regulatory enforcement authorities, Committee of European Audit Oversight Bodies (CEAOB), European Financial Reporting Advisory Group (EFRAG), and ESMA. Over the years, these institutions have each established a distinctive role in respect of the reporting requirements process.

However, the effective implementation of reporting requirements is also dependent on an effective interaction of corporate governance, audit and regulatory enforcement mechanisms. Therefore, beyond different EU reporting related bodies having distinctive roles, it is necessary for them to have formal and well-coordinated engagement between themselves as they focus on their respective mandates- to ensure coherence and complementarity of their objectives.

Furthermore, it is necessary for these key EU financial reporting related bodies to have an ability to anticipate and adapt to the changing corporate reporting and financial information landscape, which has been articulated by, among others, Accountancy Europe (Formerly Federation of European Accountants) in its publication on the Future of Corporate Reporting. Other information (e.g. alternative performance measures, non-financial information, human capital and other intellectual capital assets) and not just GAAP/IFRS information is increasingly important to assess the value creation, long-term value and effective stewardship of companies. Furthermore, as articulated in a recent CFA Institute publication (Data and Technology: Transforming the Financial Information landscape, available at cfapubs.org), technological innovation can, radically and in beneficial fashion, change the mechanisms of delivery of company information (structured data). Blockchain technologies, if these are widely adopted, will have the potential to radically change the nature and audit requirements of company financial information.

Hence, it is important to have EU institutions that are not only technically proficient in contemporary accounting and audit requirements but also those that have their pulse on the big picture changes within corporate reporting and pursue an agenda that is holistic and broad. It is our observation that ESMA fits the bill of having a holistic, panoramic view of corporate reporting issues. This very fact, in addition to ESMA's investor protection mandate, is a good reason to strengthen its oversight activities. ESMA activities that bolster the quality of reporting include the following:

- Setting enforcement guidelines on key topics (e.g. alternative performance measures)
- Thematic reviews of implementation that highlight key areas of inconsistent reporting
- Consistently elevating inconsistent implementation issues to the International Financial Reporting Interpretations Committee (IFRIC)
- Providing implementation guidance for new standards (e.g. IFRS 9 and IFRS 15) are fully aligned with investor interests.

ESMA considers other aspects of corporate reporting including the EU non-financial directive. It is to some extent engaging with the newly formed CEAOB, and most recently, through the European Electronic Single Format (ESEF) requirements, has set the platform for enhanced delivery of company financial information.

Yet, as noted within the consultation, ESMA only has a limited informal, ad-hoc and fragmentary engagement with key bodies such as EFRAG and is constrained on the extent to which it can enforce breaches of requirements that are not addressed by NCAs.

#### **CEAOB & EFRAG Should Have Greater Accountability to & Formal Engagement with ESMA**

We advocate for the strengthening of ESMA and in so doing we are primarily arguing for enhancing the accountability by EFRAG and the CEAOB to ESMA. We are not arguing for ESMA to usurp these two bodies as there are advantages to be derived from having bodies that specialize on different aspects of reporting and audit requirements.

As we observe further below, EFRAG is a well-established institution with distinctive and hard-to-replace capabilities in respect of the endorsement of IFRS standards. If anything, EFRAG may have provided a template and example for the effective adoption of IFRSs in many other major markets such as the United States, Japan and even the U.K. in the post-Brexit world. In a similar vein, the CEAOB, though nascent in its operations, is pursuing a model of coordinating cross-border audit regulation. This has proven reasonably effective elsewhere judging by the ongoing coordination outcomes of the International Federation of Audit Regulators (IFIAR).

We recognize that the three ESAs declined to be on the EFRAG supervisory board and this may make it complicated to design a mechanism of creating EFRAG's greater accountability to ESMA. That said, putting aside the specific objections that the ESAs had towards being part of EFRAG governance structure, we are not persuaded that previous efforts to involve ESMA alongside other ESAs in EFRAG's supervisory board took sufficient account of ESMA's distinctive investor protection focus and its panoramic involvement in different aspects of corporate reporting requirements, or whether it was more of an attempt to be simply inclusive to all key bodies. Hence, we would encourage continued exploration of how EFRAG's accountability to ESMA can be established, without radically altering the existing governance structure.

#### **Ensuring EFRAG's Long Term Relevance: Strengthening EU IFRS Development & Endorsement Process**

The EU is the largest capital market that has adopted IFRS standards. Hence, it is necessary to ensure that there is a constructive, well-coordinated, and influential representation of EU stakeholders in the international accounting standards development process, especially considering the inherent diversity of viewpoints and preferences of different EU stakeholders on almost every accounting topic. Furthermore, the required IFRS endorsement process within the EU

provides another mechanism of ensuring that promulgated IFRS standards meet the needs of preparers, auditors and users of reported company information within EU markets. In our response to Q15, we share our views on strengthening EFRAG's role in financial reporting development.

*15. How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened? Please elaborate.*

As noted in our response to question 14, it is necessary to ensure that there is a constructive, well-coordinated, and influential representation of EU stakeholders in the international accounting standards development process, especially considering the inherent diversity of viewpoints and preferences of different EU stakeholders on almost every accounting topic. Furthermore, the required IFRS endorsement process within the EU provides another mechanism of ensuring that promulgated IFRS standards meet the needs of preparers, auditors and users of reported company information within EU markets.

EFRAG fulfils a vital role in the development and EU endorsement of IFRS standards. The EFRAG team hold considerable and in-depth technical accounting expertise and the organization has over time accumulated significant institutional memory on key accounting issues and stakeholder viewpoints. EFRAG also provides rich technical commentary on many topics that stakeholders including investors find to be very useful. As such, EFRAG is well placed to continue playing a vital role in the development and endorsement of EU IFRS related reporting requirements.

Following and after adopting the 2013 Maystadt review recommendations, EFRAG's updated structure, which consists of the supervisory board, technical evaluation group, pro-active research functions and several working groups, has augmented the due process required to fulfil its mandate. The Maystadt review aimed to strengthen the governance and mechanisms of ensuring legitimacy and incorporating a cohesive European voice into EFRAG's representation on financial reporting positions. The review also called for the strengthening of the endorsement criteria to include an economic cost-benefit analysis and assessment of financial stability impacts of accounting standards. EFRAG's effects analysis on the revised lease accounting standards – IFRS 16 – is an example of hard to do, yet fundamentally rigorous assessment of the economic consequences of a soon to be implemented accounting standard. Hence, there are overwhelming reasons to keep EFRAG's core operating and governance model intact.

That said, there is a need to ensure that EFRAG is not only fulfilling its brief of contributing to the development and EU endorsement of existing IFRS standards but is also enhancing its capabilities and mechanisms of anticipating key and wider developments in corporate reporting. Such enhancements will help it to remain relevant even as the landscape of corporate reporting information continues to change, with stakeholders and investors relying on a wider spectrum of company financial and non-financial information and with technology potentially disrupting the delivery and form of company information.

However, there is very little evidence of EFRAG's current agenda being focused on anything other than technical accounting topics including those that may not be on the IASB agenda in the near term. Hence, as argued earlier, establishing greater engagement between ESMA and EFRAG, and establishing some level of accountability to ESMA can only contribute to ensuring that EFRAG has its finger on the pulse on key and relevant corporate reporting developments.

We would also encourage EFRAG to undertake the following measures in the near term to ensure the relevance of the full spectrum of its activities:

- Issue an agenda consultation to validate and ensure its research agenda is attuned to the needs of EU stakeholders including investors

- Undertake a strategic review to ascertain what stakeholders expect to be the appropriate scope of its activities particularly whether it needs to focus on wider corporate reporting information, SME financial reporting and impact of technological developments on reporting. Incidentally, the IASB has similarly sought stakeholder opinion on the scope of its activities and is actively developing an IFRS taxonomy to enable digital reporting.
- Ensure that the research agenda can translate to standard setting activity in the near term (e.g. the next 2 to 3 years). EFRAG's raison d'être is to influence IFRS development and endorse IFRS for the EU – hence its activities are only likely to be relevant and useful if they are aligned to the IASB agenda.

### **B. New Powers for specific prudential tasks in relation to insurers and banks**

16. *What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups? Please elaborate on your views, with evidence if possible.*

17. *To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages? Please elaborate and provide examples.*

18. *Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance? Please elaborate and provide examples.*

### **C. Direct supervisory powers in certain segments of capital markets**

19. *In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?*

In general terms, as noted in our response to question 6, we would support establishing ESMA as the single supervisory authority for capital markets in the EU.

Capital Markets Union cannot be realised without more supervisory convergence and catch-up between EU periphery and core. The current divergence is reflected in the relatively low levels of capital raising and liquidity in smaller EU member states. Issuers favour consistent rules and legal certainty provided by more developed markets (for example, the UK); post-Brexit, it will become all the more important for the EU to strengthen its capital markets infrastructure to support capital raising and investment opportunities. A single supervisory authority for markets would be an important component of this infrastructure. It would facilitate pan-European investment through more consistent rules and supervision throughout the EU, thereby benefitting investors in the EU

core, and would provide higher standards of investor protection and market integrity for investors in the periphery.

A specific area where direct supervision powers for ESMA would be beneficial is cross-border investment funds. As the European Commission has identified through its consultation work on Capital Markets Union, significant barriers exist to building a more harmonised and integrated market for the distribution of cross border funds. These barriers include divergent national requirements regarding marketing of investment funds and translations into local languages, the process for registration of funds with national authorities, and taxation differences among member states, among others.

Although taxation, as a member state competence, would not be addressed by centralising supervision with ESMA, distribution could be streamlined by eliminating duplicative national requirements and other inconsistencies.

For example, our members have cited 'local adherence' obligations as being a key issue regarding online fund distribution. Typically, an asset manager will rely on a network of local agents, who will be responsible for preparing local reporting requirements and be the main point of contact for investors. Although it is possible for a fund management company/sponsor to have a centralised distribution function, some countries legally require the use of a local agent for distribution (including the marketing of the fund to the targeted client pool) which can obstruct a seamless electronic distribution model. Another source of inefficiency is the need to appoint a local paying agent in each member state where a fund is distributed. A centralised approach to supervision of cross-border investment funds may help reduce or alleviate these points of friction in the distribution chain.

*20. For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?*

The primary advantage from centralising the supervision of cross-border investment funds with ESMA is the potential ability to reduce obstacles to fund distribution. As noted in our response to question 19, a centralised approach to supervision of cross-border investment funds may help reduce or alleviate duplicative requirements or inconsistent national rules that give rise to frictions in the distribution chain.

The main disadvantage, however, would be the inability to tackle differences in local taxation requirements, which is a key hindrance to a cross-border market.

*21. For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?*

In accordance with our response to question 19, direct ESMA supervision could be considered for all EU-domiciled collective investment schemes marketed to investors outside the home member state.

## **II. Governance of the ESAs**

22. *To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated.*

We share the view that improvements could be made to improve the efficiency and accountability of decision-making among the ESAs. For example, as suggested in the consultation, more supra-national representation or voting interest in the ESAs' boards of supervisors may help overcome any potential bias toward national interests in the decision-making processes.

Two specific changes could be made in this regard. First, consideration should be given to upgrading the management board of each ESA to an executive board with a certain number of full-time executive board members, as outlined in the consultation. This would help to address the perceived under-representation of supra-national interests in the current governance framework. Such a move would bear similarities with governance arrangements at the European Central Bank. Second, consideration should be given to giving voting rights to the chairpersons of the ESAs. This would strengthen accountability and the decision-making process in the board of supervisors.

23. *To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively? Please elaborate.*

As per our response to question 22, we believe that consideration should be given to upgrading the management board of each ESA to an executive board with a certain number of full-time executive board members, as outlined in the consultation. This would help to address the perceived under-representation of supra-national interests in the current governance framework. Such a move would bear similarities with governance arrangements at the European Central Bank.

24. *To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up? Please elaborate.*

As per our response to question 22, we believe that consideration should be given to upgrading the management board of each ESA to an executive board with a certain number of full-time executive board members, as outlined in the consultation. This would help to address the perceived under-representation of supra-national interests in the current governance framework. Such a move would bear similarities with governance arrangements at the European Central Bank. The appointment of permanent executive board members may also allow for more attention to strategic and thematic issues, and facilitate long-term planning by providing more governance stability.

25. *To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be*

*delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages? Please elaborate.*

We believe consideration should be given to giving voting rights to the chairpersons of the ESAs. This would strengthen accountability and the decision-making process in the board of supervisors. We do not have specific views on whether certain additional powers could be delegated to the chairperson.

*26. To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses? Please elaborate and provide concrete examples.*

Generally, we consider the ESA stakeholder groups, such as the standing committees and consultative working groups supporting the standing committees, are effective in supporting the work of the ESAs. CFA Institute is represented on several ESMA consultative working groups; we believe these are an effective forum for dialogue, insight and advice on policy issues, drawn from an appropriately balanced group of interested stakeholders.

### **III. Adapting the supervisory architecture to challenges in the market place**

*27. To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective? Please elaborate and provide examples.*

In general terms, we perceive the current model of having three separate ESAs for banking, insurance, and securities markets, to have been effective and efficient.

Other models could also be effective; indeed, there is no perfect model for structuring the ESAs because, at the national level, the supervisory architecture varies among member states. Some member states have a unitary structure, others have a “twin-peaks” model, and others the sector-based model that is reflected in the current configuration of the ESAs. Therefore, whichever model is pursued for the ESAs, there will not be perfect alignment in supervisory architecture between the EU-level and national levels.

*28. Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?*

As per our response to question 27, there is no perfect model for the European supervisory architecture and there are good arguments both for and against changing the current tripartite set-up.

As noted elsewhere in our consultation response (see question 1 for example), CFA Institute is mostly interested in the work and remit of ESMA. We would support establishing ESMA as the single supervisory authority for capital markets in the EU. We do not have a clear view on whether

ESMA should also assume consumer protection responsibilities for the banking and insurance sectors.

#### IV. Funding of the ESAs

29. *The current ESAs funding arrangement is based on public contributions:*

*a) should they be changed to a system fully funded by the industry;*

*b) should they be changed to a system partly funded by industry?*

*Please elaborate on each of (a) and (b) and indicate the advantages and disadvantages of each option.*

As the consultation notes, 60% of the ESAs funding comes from national regulators, and 40% comes from the general EU budget.

We are not in favour of changing the funding model of the ESAs to one which is fully funded by industry. We recognise some merit in a model in which the ESAs are partly funded by industry, as noted in the consultation, however several drawbacks remain. First, firms may consider additional direct contributions to the ESAs a double levy. Firms already pay regulatory fees to national authorities in some member states, and in turn, those fees are partly allocated to the funding of the ESAs. A double levy may indirectly hurt investors if some of those fees are passed on to clients and consumers in the form of higher costs. Second, an industry-funded model can create the perception of a conflict of interest, whereby the public may distrust the ability of the regulator to supervise and enforce against the firms that fund it. In contrast, a mostly publicly-funded model provides more democratic accountability (to parliamentary institutions) and independence from the industry.

On balance, we do not favour a material change to the funding structure of the ESAs. However, it may be appropriate to alter the balance of funding between national regulators and the ESAs should the ESAs assume enhanced responsibilities for direct supervision (that is, a reallocation of funding from NCAs to the ESAs without necessarily increasing overall costs). In general, we support higher levels of resources for the ESAs to better equip them to deliver on their mandates, including where they make take on enhanced powers and accountabilities. This implies higher contributions from the EU budget may be needed.

30. *In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities:*

*a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key"); or*

*b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")?*

*Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.*

31. *Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so? Please elaborate.*

General Question

32. *You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above. Please include examples and evidence where possible.*

**Concluding Remarks**

We welcome the opportunity to comment on this consultation on the European Supervisory Authorities. Please do not hesitate to contact us should you wish further elaboration of the points raised.

Yours faithfully,



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