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FSUG Response

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



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

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

We agree that the complaints-handling needs to be under further supervisory convergence. There are differences in the regulatory provisions for complaints-handling between the securities and banking sectors, and also among the Member States. The unified regulatory view should help to ensure a consistent approach to complaints-handling (especially for customers) across the banking and investment sectors and should strengthen consumer protection which has key importance in terms of feedback for the prudential operation.

Question 2: Please comment on each of the guidelines, clearly indicating the number of the guideline (there are 7 guidelines) to which your comments relate.

General remarks

FSUG has only minor remarks to the guidelines as such, however we would like to underline that first of all consumer should know about this special procedure. It means that information should be spread widely and deliver effectively to make it a part of general knowledge of consumers.

Furthermore an access to the internal complaints-handling procedure should be as easy as possible with special attention paid to vulnerable people who could need some assistance or special way of communication

Internal complaints handling should be monitored by supervisors regularly, especially regarding guideline 5 c). Internal complaints-handling cannot be used to lengthen period of pay-out or provision of services. For example in Germany consumers address their complaints to their relevant branch which are then tend to be send on to a central complaints handling department where the consumers loses touch with his or her complaint. Timely responses are usually only available if the consumer decides to use a lawyer or gets assistance from a local consumer advice centre.

Firms should be required then to operate central complaints handling centres which are in direct contact with the consumer and accountable to them. There should also be clear rules regarding timelines and firms should be required to refer to the existence of an ombudsman service in their correspondence with the consumers.

Complaints relating to systemic consumer issues should not be left without reaction and should meet special attention of supervisory authorities. From this perspective an internal complaints-handling should be considered as early warning system for financial institutions, supervisors and regulators.

Guidelines on complaints-handling

Guideline 1 - Complaints management policy

1. Competent authorities should ensure that:

a) A 'complaints management policy' is put in place by firms. This policy should be defined and endorsed by the firm's senior management, who should also be responsible for its implementation and for monitoring compliance with it.

It's also essential for the high quality application that the employees who are directly or indirectly handling the complaints need to get proper training about the details on the compliance management policy and its implementation tools.

b) This 'complaints management policy' is set out in a (written) document e.g. as part of a 'general (fair) treatment policy'.

FSUG is asking for removal of brackets, and to include words "written" and "fair" into the final form of the guideline.

Guideline 4 - Reporting

4. Competent authorities should ensure that firms provide information on complaints and complaints-handling to the competent authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant.

Regarding the specifications on reporting and supervisory monitoring, data on complaints can be a very useful tool for the supervisors to track what is going on in the market and react if necessary, both in terms of how providers deal with consumer complaints and which products or procedures lead to a larger amount of consumer discontent. Also, an increased number of complaints can be an indicator of consumer harm stemming from a new risky practice or product. Because the way in which the reporting criteria are specified will be essential for the effectiveness of monitoring, there is a need for further supervisory guidance. In our opinion, the ESAs could not only specify the criteria on complaint reporting but also use it for its own supervisory tasks. For example, this data would be a welcome supplement for their list of indicators used in the bi-annual risk assessment reports they publish. Further on, publishing of national statistics on complaints by the supervisors could contribute to consumer awareness and be an incentive for providers to improve their services. The data on uphold rates are interesting, because they show the degree to which some firms may try to 'game' the system by not dealing with customer complaints internally, but letting the Ombudsman make the decision. This adds delay for consumers. It should also act as a signal to the regulator that there are problems with a particular firm's complaints procedure (or, applied to product complaints, with complaints related to a particular product).

Guideline 6 – Provision of information

6. Competent authorities should ensure that firms:

a) On request or when acknowledging receipt of a complaint, provide written information regarding their complaints-handling process.

In our opinion written information should be provided regarding their complaints-handling process, in an easily accessible and visible manner, mandatory on the homepage of the firm's website or in other ways, on request or when acknowledging receipt of a complaint.

b) Publish details of their complaints-handling process in an easily accessible and visible manner, mandatory on the homepage of the firm's website. Other channels could be also used - for example, brochures, pamphlets, or contractual documents.

According to our experience details of their complaints-handling process should be published in an easily accessible and visible manner, mandatory on the homepage of the firm's website. Other channels could be also used - for example, brochures, pamphlets, or contractual documents

Guideline 7 - Procedures for responding to complaints

7. Competent authorities should ensure that firms:

d) When providing a final decision that does not fully satisfy the complainant's demand (or any final decision, where national rules require it), include a thorough explanation of the firm's position on the complaint and set out the complainant's option to maintain the complaint e.g. the availability of an ombudsman, ADR mechanism, national competent authorities, etc. Such decision should be provided in writing where national rules require it.

In our opinion as a rule an answer should be in the same form as a claim. The answer to complaint should always be in writing . Furthermore financial institutions do refer to the ombudsman in the legal contract with the client but often not in the correspondence directly related to the complaint. Different types of financial institutions operate different ombudsman schemes. Our experience is that consumers tend to get a better outcome when dealing with more centralised ombudsman service covering most types of contracts as well as direct involvement of consumer protection bodies. That is why if there are many ombudsman services the list of them should be built based on effectiveness criteria.