

MEMO# 31772

May 23, 2019

European Supervisory Authorities Review - Final Agreement Adopted by Parliament

[31772]

May 23, 2019 TO: ICI Members

ICI Global Members

ICI Global Brexit Task Force

ICI Global Regulated Funds Committee SUBJECTS: International/Global

MiFID, EMIR, AIFMD, UCITS V RE: European Supervisory Authorities Review - Final Agreement Adopted by Parliament

In April the European Parliament adopted a package of reforms, first introduced by the European Commission (Commission) in the fall of 2018, intended to improve the supervisory framework for European financial institutions, including with respect to anti-money laundering powers. The Parliament's vote acts as a political confirmation of the political agreement that was reached on the core elements of the proposal in March 2019.

This package of reforms, collectively referred to as the "European Supervisory Authorities (ESAs) review package," is comprised of the:

- (1) Omnibus Regulation, which includes amendments to the regulations establishing each of the ESAs, consolidated text available at http://www.europarl.europa.eu/doceo/document/A-8-2019-0013-AM-002-02_EN.pdf?redirect;
- (2) Omnibus Directive, consolidated text available at http://www.europarl.europa.eu/doceo/document/A-8-2019-0012-AM-002-002_EN.pdf; and
- (3) European Systemic Risk Board Regulation, consolidated text available at http://www.europarl.europa.eu/doceo/document/A-8-2019-0011-AM-002-002_EN.pdf.

The texts are expected to be published in the Official Journal in late 2019, following reconfirmation by the new Parliament and formal adoption by the Council of the European Union (Council).

Of particular concern to our member firms had been the Commission's proposed article on delegation and outsourcing (Article 31a), which would have resulted in the European Securities and Markets Authority (ESMA) acting as a supervisor-of-supervisors systematically second-guessing individual supervisory decisions involving delegation and outsourcing to third countries. For many months we advocated in support of an approach put forward by the Council, in which coordination groups or platforms, not limited to particular areas such as delegation, are used to promote convergence of supervisory practices.

We are encouraged that the original Article 31a that had been proposed by the Commission was not adopted and instead the parties agreed to adopt an article regarding coordination groups (Article 45c), which outlines how such groups are to be established and operate (with respect to ESMA the text is found on page 238-239 of the Omnibus Regulation). We anticipate, however, that delegation and outsourcing, particularly to third countries, will remain an area of scrutiny, and we will continue to be fully engaged on this issue.

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.