May 24, 2021

ICI Global Response to the EC Targeted Consultation on Supervisory Convergence and the Single Rule Book

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TO: ICI Global Members SUBJECTS: MiFID, EMIR, AIFMD, UCITS V RE: ICI Global Response to the EC Targeted Consultation on Supervisory Convergence and the Single Rule Book

In March, the European Commission launched a consultation[1] on supervisory convergence and the single rule book. Input to the consultation will feed into the preparation of a report required by the Capital Markets Union,[2] which will also cover the review required under the European Supervisory Authorities (ESAs) founding Regulations.[3] Despite being labeled as "targeted," the consultation is very broad and the majority of the questions are open-ended and "fact finding" in nature.

Key areas covered by the consultation include:

- an assessment of the supervisory convergence tasks of the ESAs and their performance
- the effectiveness of the ESAs existing toolkit
- the efficiency of ESAs supervision of delegation and outsourcing
- governance of the ESAs
- direct supervisory powers for the ESAs
- the role of the ESAs as regards to systemic risk
- the ESAs work towards a single rule book
- the use of regulations versus directives

On May 21, we submitted the attached response, answering a limited number of questions from the perspective of the European Securities and Markets Authority (ESMA).[4] The approach that we took in this consultation response is to communicate our high-level messages by answering a limited number of questions, and to urge the European Commission to issue a more targeted consultation at a later date, once the Commission and market participants have had an opportunity to assess the impact of the ESAs amendments that went into force in January 2020.

We made the following points in our response:

- The Commission should collect and analyze the feedback that it receives from this consultation and then allow for a reasonable amount of time, such as three or four years, to pass to allow regulators and market participants to further understand and assess the impact of the 2019 reforms before it takes any action to make legislative changes to the ESAs founding Regulations.
- ESMA can deliver most effectively upon its mandate if it is well-resourced and performs its functions as an independent, non-political regulatory body.
- ESMA's powers in getting information about national supervisory practices should be enhanced as this supports the efforts for convergence.
- Duplicative reporting could be reduced or eliminated by enhancing the sharing of information amongst the ESAs and national competent authorities (NCAs), including data obtained from trade repositories and regulatory reports.
- We believe that ESMA is well-placed and has the tools necessary to ensure that NCAs effectively supervise outsourcing, delegation, and risk transfer arrangements in third countries.

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] The Consultation is available at
https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/2021-esas-review-consultation-document_en.pdf.

[2] The CMU action plan published in September 2020 including as action 16 that "The Commission will work towards an enhanced single rulebook for capital markets by assessing the need for further harmonization of EU rules and monitoring progress towards supervisory convergence. It will take stock of what has been achieved in Q4 2021 and consider proposing measures for stronger supervisory coordination or direct supervision by the European Supervisory Authorities.

[3] Article 81 of the ESAs founding regulations requires the Commission to review the functioning of the ESAs every three years, and next time by the end 2021.