



Association of the Luxembourg Fund Industry  
Association Luxembourgeoise des Fonds d'Investissement

## **ALFI comments and responses to the Joint Committee Consultation Paper on draft guidelines for complaints-handling for the securities (ESMA) and banking (EBA) sectors**

**7 February 2014**

ALFI is the representative body of the 2.6 trillion Euro Luxembourg fund industry. It counts among its members not only investment funds but also a large variety of service providers of the financial sector. There are 3,890 undertakings for collective investment in Luxembourg, of which 2,516 are multiple compartment structures containing 12,292 compartments. With the 1,374 single-compartment UCIs, there are a total of 13,666 active compartments or sub-funds based in Luxembourg.

68% of UCITS that are engaged in cross-border business are domiciled in Luxembourg. As one of the main gateways to the European Union and global markets, Luxembourg is the largest cross-border fund centre in the European Union and, indeed, in the world.

ALFI welcomes the Joint Committee's initiative to consult the public and the financial industry on complaints handling guidelines for the securities and banking sectors. As a general comment, ALFI supports a more uniform complaint-handling framework and is confident that the proposed guidelines will foster greater convergence between the supervisory approaches among the various Member States in this area. We are of the opinion that the current rules applicable to UCITS management companies, AIFMs and MiFID investment firms as far as complaints handling is concerned already contain a solid set of investor protection rules and reflect the principles outlined in these draft guidelines to a wide extent.

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

ALFI agrees that an adequate protection of complainants must be ensured in the European Union. Although existing regulations already contain a solid framework in our view, a more harmonised supervisory convergence can improve investor protection further.

#### **Comments on the draft guidelines**

##### **Guideline 1 - Complaints management policy**

ALFI is of the view that current rules on complaints management policy concerning UCITS and investment firms do already offer an appropriate framework regarding complaints

management policies. As regards UCITS in particular, these aspects are covered by the UCITS Directive and its implementing law in Luxembourg (Law of 17 December 2010), as well as subsequent CSSF regulation 10-4 on organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, and Circular 12/546 on the authorisation and organisation of UCITS management companies.

More specifically, article 5.2. of Circular 12/546 mentioned above provides for arrangements to be complied with in the area of the internal governance of UCITS management companies and article 5.2.2. provides that every management company must implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors. It also requests that the information concerning these procedures be made available to investors free of charge.

The same article provides that the management company must designate amongst its staff one person responsible for the handling, centralisation and follow-up of complaints. The name of this person must be communicated to the CSSF. A specific mandate for the handling of complaints can be given to a specialised third party established in Luxembourg or abroad. Furthermore, the activity plan of the management company must comprise a description of the complaints handling procedures established by the management company.

It should be noted that the conducting officers of a UCITS management company are among other things responsible, under the Board's ultimate responsibility, for the implementation of strategies and guiding principles for the internal governance of the management company through specific written internal policies and procedures. This includes complaints handling procedures.

## **Guideline 2 – Complaints management function**

ALFI would like to draw ESMA's attention to the fact that this guideline is consistently applied across the industry. In this context the CSSF is empowered to require any useful information to fulfil its missions from management companies under its supervision, including of course the compliance with the complaints handling requirements.

In addition, it must be noted that in many Member States, and in particular in Luxembourg, a specific regulatory text covers the organisation and functioning of the extra-judicial resolution of complaints as such. Regulation 13-02 of the CSSF details the procedure applicable to demands for extra-judicial resolution of complaints lodged with the supervisory authority<sup>1</sup>. This text applies to any request based on the law of 5 April 1993 on the financial sector, the Consumer Code, the law on payment services of 10 November 2009, the law of 17 December 2010 on undertakings for collective investment and the law of 13 July 2005 on pension funds. It also gives precisions as to the obligations of all professionals of the financial sector with regard to the treatment of complaints, and their cooperation with the CSSF with regard to the follow-up on these complaints as well. It must also be noted that on CSSF level a dedicated Financial Consumers Protection Committee has been set up.

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<sup>1</sup> CSSF Regulation 13-2 published in Mémorial A (Official Gazette), N°187 of 28 October 2013

### **Guideline 3 – Registration**

This guideline is becoming practice in our view. In Luxembourg CSSF Regulation 13-2 foresees that financial services professionals (including fund management companies) must communicate on an annual basis to the supervisory authority a table listing the number of complaints registered (categorized according to the type of complaint) and a synthetic report of these complaints as well as measures taken for their handling.

Moreover Article 5.2.1.2. of CSSF Circular 12/546, referring to Regulation 10-4 which states that every management company must maintain in an adequate and orderly manner records of its activities and its internal organisation, provides that every management company must put into place “management information” permitting the follow-up of its activity and that of its delegates. This management information must cover, among others, complaints. Such information must be available in Luxembourg and preferably kept in a central database accessible at any time in Luxembourg.

### **Guideline 4 – Reporting**

We are of the view that this guideline is already widely complied with in the fund industry. Every management company in Luxembourg must promote an internal culture of control and of risk aiming to ensure that all members of staff actively take part on the detection, declaration and control of risks incurred by the establishment. This includes risks related to complaints from investors. For clarification reasons we propose to add that the reporting to the competent authorities should be given upon request and not on a permanent reporting basis as the latter gives no added value.

### **Guideline 5 – Internal follow-up of complaints-handling**

UCITS management companies must have solid arrangements for internal governance which ensure the sound and prudent management of their activities and the risks inherent therein (as provided for in CSSF Circular 12/546- article 5.2. and 5.2.4.1). This permanent risk function also covers legal and operational risks, including the risks related to investor complaints, as referred to in our response regarding guideline 5. The analysis of complaints data along the lines suggested in this guideline is now requested by the Luxembourg legislation (CSSF Regulation 13-2).

### **Guideline 6 – Provision of information**

As far as Luxembourg is concerned, the principles listed in guideline 6 are reflected in the regulatory framework (see in particular Article 15 of CSSF Regulation 13-02 mentioned above).

Moreover most management companies’ websites already publish details on their complaints-handling process. Information on the mechanism of alternative dispute resolution is also displayed since required by Regulation 13-02.

### **Guideline 7 – Procedures for responding to complaints**

The fund industry is aligned to the principles outlined in guideline 7. As for the provision of information, CSSF Regulation 13-02 has imposed the same rules regarding the procedures for responding to complaints.

**Conclusion:**

ALFI supports the proposed guidelines, which should not represent additional compliance costs for most of the fund industry's players who are already broadly in line with the suggested rules. The guidelines should ensure a harmonisation of complaints-handling practices across the EU financial sector to the benefit of investors.