

Mr Steven MAIJOOR
Chairman
European Securities and Markets Authority

Brussels, 14 October 2013

**Subject: EBF Comment Letter on the ESMA Consultation:
ESMA Guidelines on Enforcement of Financial Information**

Dear Mr Maijoor,

The European Banking Federation¹ (EBF) appreciates the opportunity to provide comments on the European Securities and Markets Authority (ESMA) Consultation Paper '*ESMA Guidelines on enforcement of financial information*'.

The EBF considers the Committee of European Securities Regulators (CESR) Standards on the enforcement of financial information (CESR/03-073 & CESR/03-317c) and the principles established in these two standards have efficiently assisted to deliver a sound framework for the work of enforcers in Member States. The EBF therefore welcomes that the ESMA proposed guidelines are based on these CESR standards' principles. The EBF further welcomes that the long-standing approach of leaving enforcement to the individual Member States is to be retained.

The EBF also welcomes the statement raised in the consultation paper that the issuance of accounting standards and the interpretations of their application are roles exclusively of standard setters e.g. IASB and IFRS Interpretation Committee, and that enforcers in contrast must exclusively aim at enforcing compliance with standards. In this context, the EBF urges ESMA to ensure that a clear dividing line between standard setters and enforcers is put in force and effectively respected to avoid misinterpretations.

The EBF also emphasizes that the risk-based approach in enforcement activities is the only way to focus enforcement efficiently. Efficiency (effective methods and cost-efficiency) is in fact mentioned as one of the objectives in the consultation paper. The EBF considers that if enforcement has no risk-based significance, the additional value of enforcement becomes questionable.

¹ Launched in 1960, the European Banking Federation is the voice of the European Banking sector from the European Union and the European Free Trade Association countries. The EBF represents the interests of some 4,500 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU alone.

While in this opportunity we are not providing answers to the questions raised in the consultation paper, we would like to draw your attention to the following few points where we consider further discussion and work is required in order to improve the proposed guidelines:

- We disagree with the consideration presented in Annex II that it is not appropriate to produce a cost benefit analysis in relation to the proposed guidelines based on the reflection that the proposed guidelines are not addressed to financial markets participants but to the competent authorities. We believe that since market participants normally fund the enforcer activities, the guidelines are providing minimum criteria for the efforts that a local enforcer has to make. The guidelines will thus affect the cost for the issuers directly in all the cases in which enforcement is paid by the issuers.
- The consultation paper uses for guideline 8 the term ‘full review’ implying this means examinations based on random sampling. Since this term is normally understood to mean the full audit of the annual financial statements by the auditor, we suggest that in order to avoid future problems ‘full review’ and ‘partial review’ should be replaced by ‘focused review’ and ‘non-focused review’ respectively.
- The wording of guideline 14 suggests that practically all enforcement decisions are in future first to be discussed in the European Enforcers Coordination Sessions (EECS). We however consider this would radically change the role of EECS. As we understand, EECS is a forum for coordinating enforcement decisions of relevance to all involved Member States and for discussing issues on which accounting practices have been seen to diverge. We therefore consider there is no added value for the EECS discussing highly specialised issues relating to specific sectors or countries as this would significantly slow down national enforcement procedures and lead to a loss in quality.
- Concerning guideline 16 and a probable divergence between a latter enforcement decision in relation to a preceding decision on the same accounting issue, the wording presented is not clear enough as it seems to imply that only the first endorsement decision is the correct one. We suggest that a more clear wording is used to efficiently state that the latest decision might be the right decision and that a principle is established by which a first decision can be abolished or in some way indicate that a latter decision is in contradiction with the preceding one.
- The consultation paper notes that the guidelines will become effective from one month from the publication of the adoption of the decision by the Board of Supervisors on the ESMA’s website. We question whether enforcers should not get time to adjust in case they are not compliant.

We appreciate your consideration of our comments and suggestions and remain at your disposal as we would be pleased to contribute further as the work develops.

Yours sincerely,



Guido Ravoet