



## **Questions and Answers (Q&As) on the implementation of Regulations, Directives, Guidelines and issues of interest. November 2014.**

Article 8.1 b) of Regulation N° 1095/2010 establishing a European Securities and Markets Authority (ESMA) provides that ESMA shall have the task to contribute to the consistent application of legally binding European Union acts, in particular by **contributing to a common supervisory culture**, ensuring consistent, efficient and effective application of the legislation, preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, and ensuring effective and consistent supervision of financial market participants.

ESMA annual work programme has considered supervisory convergence as one of the operational objectives of ESMA performances. Specifically, ESMA work program for 2015 (see article in this issue of the International Bulletin) sets out three strategic objectives: investor protection, financial stability, and the orderly functioning of markets, which are achieved through a series of operational objectives being the first of them the supervisory convergence. The supervisory convergence is based on the consistent application of the legislation of the European Union which is achieved through the issuing of guidelines, opinions and Question & Answers (Q&As).

The legal basis for the issuance of Q&As can be found in article 29.2 of the ESMA, which states that, as appropriate, ESMA may develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

The purpose of a Q&As document is to promote common supervisory approaches and practices in the application in the application of legislation or specific issues provide answers to questions from the general public, market participants and competent authorities in relation to the practical application of the particular rule.

The content of a Q&As document is aimed at competent authorities to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements described in the dispositions.

Due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

ESMA will periodically review the Q&As documents to identify if, in a certain area, there is a need to convert some of the material into ESMA Guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation would be followed.

The Q&As documents are intended to be continually edited and updated as and when new questions are

received. An e mail is available for the reception of new questions. The date on which each section was last amended is included for ease of reference.

ESMA, since its establishment in January 2011, has issued a large set of Q&As that have been useful for regulators, industry and investors for the uniform and correct application of EU legislation. CESR (ESMA's predecessor) also published Q&As from June 2005 to January 2011 and ESMA has continued to update some of them. Also the European Commission uses the Q&As and Frequently Asked Questions (FAQs) to help all legislation addressees in the uniform application of the law.

The Q&As ESMA has issued could be classified as they relate to: 1) a whole or partial act (Directives, Regulations, or Guidelines), 2) issues of great interest and practical utility that can affect various acts, and 3) specific issues, usually of a technical nature, within a disposition. In all three cases, the laws, issues or specific provisions on which the Q&As are issued are those that, due to their innovative character, complexity or difficulty of interpretation, have arisen or have been able to arise discussion or differing applications. In addition, ESMA published a first Q&As on a guide to understanding ESMA.

The Q&As ESMA has issued till now are the following:

## **1) Q&As on the implementation of whole or partial acts (Directives, Regulations, Guidelines)**

### **.- Directives**

- Q&As on MiFID in the area of investor protection and intermediaries.
- 6 updates of the Q&As on the implementation of the Fund Managers Directive for Alternative Investment (DGFIA).
- 1st update of Q&As on the implementation of the Transparency Directive.
- Q&As on the implementation and operation of the Market Abuse Directive.

### **.- Regulations**

- 1st update of the Q&As on the implementation of regulations on European social entrepreneurship funds and European venture capital funds (EuSEF and EuVECA).
- 10 updates Q&As on the Regulation on OTC derivatives, central counterparties and trade repositories (EMIR).
- 2nd update of the Q&As on the Regulation on Credit Rating Agencies (CRA).
- 2nd update of the Q&As on the implementation of the Regulation on short selling and certain aspects of credit default swaps.

### **.- Guidelines**

- 3rd update of the Q&As on Guidelines on Exchange Traded Funds and Exchange Traded Funds (ETF) and other questions about UCITS.

## **2) Issues of great interest and practical utility that can affect more than act or law.**

- 22 Q&As updates Prospectus.
- 1st update of Q&As on a common definition of European money market fund. Q&As on the document

key investor in Undertakings for Collective Investment in Transferable Securities (UCITS) information.

### **3) Specific issues, usually of a technical nature, within a disposition.**

- 1st update of the Q&As on risk measurement and the calculation of global exposure and counterparty risk for UCITS.
- Q&As on the UCITS notification and exchange of information between competent authorities.

If you want to read some examples of Q&As ESMA, please click the links below:

6 updates Q&As on the implementation of Directive Managers Alternative Investment Funds (DGfIA):  
[http://www.esma.europa.eu/system/files/2014-esma-1357\\_qa\\_aifmd.pdf](http://www.esma.europa.eu/system/files/2014-esma-1357_qa_aifmd.pdf)

10 updates Q&As on the Regulation on OTC derivatives, central counterparties and trade repositories (EMIR):  
[http://www.esma.europa.eu/system/files/2014-esma-1357\\_qa\\_aifmd.pdf](http://www.esma.europa.eu/system/files/2014-esma-1357_qa_aifmd.pdf)

3rd update of the Q&As on Guidelines on Exchange Traded Funds and Exchange Traded Funds (ETF) and other questions about UCITS:  
[http://www.esma.europa.eu/system/files/2014-295\\_qa\\_on\\_guidelines\\_on\\_etfs\\_and\\_other\\_ucits\\_issues.pdf](http://www.esma.europa.eu/system/files/2014-295_qa_on_guidelines_on_etfs_and_other_ucits_issues.pdf)

22 Q&As updates on prospectus issues:  
[http://www.esma.europa.eu/system/files/2014-1279\\_22nd\\_version\\_qa\\_document\\_prospectus\\_related\\_issues.pdf](http://www.esma.europa.eu/system/files/2014-1279_22nd_version_qa_document_prospectus_related_issues.pdf)