

21 December 2022

## ESMA Supervisory Briefing on Supervision of Cross-Border Activities of Investment Firms

### Background

On 14 December 2022, ESMA published a [Supervisory Briefing](#) to ensure convergence across the European Union (EU) in the supervision of the cross-border activities of investment firms.

In 2021, ESMA Board of Supervisors decided to launch a peer review on the supervision of cross-border activities of investment firms due to the significance of the provision of investment services across the EU under MiFID II and concerns that have surfaced in the past regarding instances of cross-border activities conducted to the detriment of investors' interests. On 10 March 2022, ESMA published a peer review report on supervision of cross-border activities of investment firms wherein it identified the need for home supervisors to significantly improve their approach in the authorisation, ongoing supervision and enforcement work, relating to investment firm's cross-border activities to retail clients.

The free provision of services in the EU rests on the supervision of the home NCA and on the cooperation between home and host supervisors. To this end, the Supervisory Briefing will help promote supervisory convergence across the EU in line with the recommendations made by ESMA in its peer review report.

This Supervisory Briefing is designed to help National Competent Authorities to structure their supervisory approach to cross-border activities provided by their firms, and is structured around the following elements:

- Authorisation of firms with cross-border plans pursuant to Articles 5, 6 and 7 of MiFID II;
- Processing of passport notifications pursuant to Article 34 of MiFID II and their impact on the supervisory approach applied to firms;
- Arrangements in place to carry out ongoing supervisory activities;
- Carrying out of ongoing supervision, and
- Carrying out of investigations and inspections.

### Target Audience

Despite the content of this circular is aimed at National Competent Authorities, this Supervisory Briefing is being brought to the attention of Investment Firms which actively provide MiFID II services on a freedom of services cross-border basis (particularly targeting

retail clients) in terms of Article 34 of MIFID II. It is important that the Compliance Function and the Senior Management Team of concerned Investment Firms carefully consider the content of this Supervisory Briefing and where necessary ensure alignment with ESMA's and MFSA's expectations.

## **Way Forward**

This Supervisory Briefing will help promote supervisory convergence across the EU, in line with the recommendations made by ESMA in its peer review report.