

## ESMA to invest in Trust

We believe ESMA has to invest in trusting non-ESMA Regulators' ability to manage their Jurisdictions. ESMA's circular of October 31st, 2022 with respect to the India-based CCPs that are regulated by the Central Bank (RBI) and capital markets regulators (SEBI, IFSCA) indicated one such opportunity to do so.

ESMA and SEBI are members of IOSCO and as such run their own jurisdictions. The current precepted overreach by ESMA is contrary to the well-established principles of respecting a home Regulators oversight of its constituents.

ESMA's proposed action may have the potential to disrupt relations between the EU and India, especially as India which is the 5th largest Economy has a thriving Capital market, attracting investors from many European Countries. The role of European banks in India has been long and significant.

### **ESMA's action may severely impact European Banks' Indian franchises as in:**

1. Ability to service their Capital market and Banking clients (European and local- Mutual Funds, AIFS, PMS, Clearing business, Pes etc)
2. Revenue Impact (significant-as India is amongst the most profitable jurisdiction for Custody Business)
3. Creation of uncertainty of continuity post April 2023 amongst those doing business with European banks
4. Significantly increase the cost of doing business for European Banks (if they were to set up a subsidiary)

In 2013, the Indian Regulators permitted its CCPs to register with ESMA for the first time ever. This enabled European Banks to protect, invest and grow their Indian business (local and inflow). The CCPs may be paying periodic subscriptions to ESMA. What if the CCPs are deregistered effective 2023, by ESMA. The CCPs probably save on the fees while the European banks get impacted. Indian CCPs have almost non-existent exposure to European markets.

### **Why would ESMA want to superimpose on the Indian CCPs that are:**

1. World-class (the UPI Payment of RBI has no parallel worldwide)
2. Have an excellent Risk management settlement system (not in existence in Europe while India rolled out T+1 for 4000 listed securities its managing T+2 as well)
3. Known for Settlements being guaranteed
4. Are separate legal entities and follow good governance standards
5. Handle over 1.5 billion contracts or more a day
6. Trusted by European banks over the last two decades who have not found a reason to withdraw from Clearing activity; in fact, they have only grown their products, services, and franchises as well as been centres of excellence. In my view, Deutsche Custody besides being a thought leader, established excellence in service parameters and assisted in developing best practices. Would ESMA's action put all this at risk!

7. Highly digitized and technology-driven servicing over 100 million investors (maybe the cumulative population of quite a few European countries) day in and day out
8. Have well-informed Regulators (SEBI, IFSCA, RBI) who have helped markets to grow exponentially vs other markets

**The other resultant impact of ESMA's actions may be:**

1. FPIs: vs the year 2013 when it took almost 1-2 months for FPIs to shift from one Custodian bank to another, it's possible in the year 2022 to shift in 10-12 days maximum. Except for the hassles of one-time shifts, no other impact on FPIs, if they decide to move from European Banks
2. Over 2600 FPIs from Europe (ex UK and Switzerland) may be unaffected by ESMA's decision as not all do business with European Banks. Hence very minimal impact on them
3. FPIs with European Banks may consider shifting, to continue their presence in India and compete with their peers as well as remove the uncertainty- this thinking could start as early as December 2022. Available options for FPIs include non-European banks such as Citi, JPM, HSBC, DBS and Single country Custodians like ICICI, Axis, HDFC etc. Maximum impact on European banks for no fault of theirs
4. Custody is a highly competitive business as well as Commoditised. Once a client moves to another Custodian, getting them back is difficult! It creates more difficulties, if in future ESMA was to relent and continue with the status quo
5. India could get impacted due to limited exposure to European Banks' products. However, these are now provided by other Global banks as well, hence minimal impact
6. This could provide an opportunity for leading Single Country Custodians like ICICI Bank (3rd largest in India by Assets), HDFC, Kotak, etc to provide services to more local clients and FPIs, that are catered to by the European Banks. Some local Custodians provide superior services if one goes by the GC ratings. A silver lining for Indian Institutions
7. RBI could cut the risks in the Capital markets by providing limited banking licenses (to be par with global standards) to Custodians such as StockHolding, Edelweiss, Orbis, etc. A case of Atma Nirbhar for developing the local systems and local institutions to become alternate avenues for FPIs. These institutions will then add on the competition to the European Banks

In essence, Indian Banking systems and Capital markets in many ways are larger than (many of) 42 CCPs in ESMA's list. The India-based CCPs are well-regulated. Adding one more regulator (ESMA) does not add value- in fact, creates more work for the CCPs- as expectations will be different of different Regulators.

From my experience, India in early 2000s considered the best practices of the advanced markets (including those in Europe) and developed its markets, thus attracting over \$ 600 bn of FPI assets and \$ 1200 bn of local. It now uses superior practices and standards using technology and enabling regulations. It's time for many markets (including ESMA) to check this out and collaborate with RBI, SEBI, IFSCA to develop its markets for the common good of Investors worldwide.

Collaboration and trust be the theme and thrust. We believe neither RBI nor SEBI are 'stubborn' as is believed in some quarters. In fact they can be regarded as engaging and being right in their stand. Maybe more engagements amongst them will create greater cooperation, awareness, and confidence.

We believe leading banks like Deutsche and BNP Paribas may once again play a key role.

We believe ESMA will engage more with SEBI, RBI and IFSCA on areas that lead to investor protection, than imposing on others jurisdictions.

Finally we believe all Regulators are reasonable and find workable solutions to the benefit of the markets.