



VB – n° 2975/Div.

ESMA
103 Rue de Grenelle
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AFG response to ESMA's consultation paper Guidelines on certain aspects of MIFID compliance function requirements

The Association Française de la Gestion financière (AFG)¹ is grateful for the opportunity to respond to ESMA's consultation paper on Guidelines on certain aspects of MIFID compliance function requirements.

General comments

First and foremost, AFG would like to stress that the application of the proportionality principle is fundamental, as the diversity of asset management companies requires rules adapted to their situation.

The current rules stemming from MIFID 1 have already given a framework for the compliance function, which was properly integrated into the French legislation, in particular through an AMF (Autorité des Marchés Financiers) general regulation and the implementation of the function of RCCI (Responsible for internal control and compliance). Indeed, the RCCI function involves specific missions which are strictly regulated by the French regulation.

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 416 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups. AFG members manage 2,600 billion euros in the field of investment management, making the French industry the leader in Europe in terms of financial management location for collective investments (with over 1,300 billion euros managed from France, i.e. 20% of all EU assets managed in the form of investment funds), wherever the funds are domiciled in the EU, and second at worldwide level after the US. In the field of collective investment, our industry includes – beside UCITS – employee savings schemes and products such as regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment. AFG is of course an active member of the European Fund and Investment Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

Please find below AFG detailed comments, shown in bold.

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Detailed comments

Question 1: Risk-based approach

The risk-based approach is with any doubt useful for asset management companies to allow vigilance enhanced on certain aspects. However, it is necessary to distinguish the role of proposition of the compliance function and the decision itself, which has to be made by the executive management of asset management companies.

In our opinion, the regular compliance risk assessment on the validity of controls and advisory activities required of the compliance function should be made through an evaluation by the executive management and not from a self-assessment by the compliance function.

Question 2: Monitoring program

It is essential for the compliance function not to be involved in the operational, and thus the compliance must not take decision which can bring him(her) to go beyond its role, what would prevent a control in due form.

It is not desirable that under a «monitoring 14 February 2012program " the compliance function be put in the front line on a number of subjects.

The compliance monitoring program mentioned in ESMA's paper seems to be widely redundant with the plan of internal control developed by the internal control team of large asset managers when both functions are separated. We consider that compliance function does not have a specific responsibility regarding the monitoring of the activities.

It should be specified that in any case the monitoring only occurs within the framework of a control of second level.

When an investment firm is part of a group, subsidiaries having their own compliance officers must be distinguished from branches for which the compliance function has to be done by the investment firm.-We need more precisions about the notion of "operative business units» (point 14).To our view, this approach covers only the own compliance function of the asset management companies (and not subsidiaries having their own compliance).

Besides, the reviews mentioned seem to relate more to the internal audit function (periodic control) than to the compliance function (permanent control).

In the general control system such as described in point 17, we wonder why internal control is not mentioned.

Question 3: Reporting obligations of the compliance function

The compliance function obviously includes reports to senior management; however, it is not possible in practice for that reporting to cover an excessively widened scope. Concerning the standards and guidelines set out by ESMA, persons in charge of the compliance need to have versions available in their national language in order to allow them to perform their activity with a maximum of efficiency and thus to verify their adequacy with the requirements.

In our opinion and considering the legal and operational framework, it's very clear that the compliance function should relate to the control of investment services and not to all the activities of the investment firms (Accounts / management control / Human resources / IT etc...).

The notion of "Additional reporting line to the group compliance function needs to be clarified. As functional line of reporting has its own function, it is not useful to overlap reporting.

Question 4: Advisory obligations of the compliance function

As the notion of «advisory obligations" seems dangerous, its outlines should be precisely defined.

The compliance should have realistic functions. The missions attributed to the compliance - «training for staff, day-to-day assistance for staff " - would cover an excessively ambitious scope, all the more that the compliance should perform them on a regular basis. The number of persons that may benefit from a direct support of the compliance should be limited. The compliance teams cannot be more expert than the operational teams. It is important to define more exactly the notion of day-to-day assistance for staff.

As regards the evaluation mentioned in point 29, we don't consider that the compliance function requires perform skill tests on employees. The professional certification - such as that planned in France for certain functions as management, trading and control - could serve as a useful reference. This system may be usefully extended and harmonized throughout Europe

Concerning the subject of the establishment of policies and procedures (point 31), it seems important to precisely define its scope. The compliance should not dictate operational services; rather, it should be consulted in the final phase of elaboration of the procedures only. Otherwise the compliance function would lose its capacity of control because of confusion with the tasks incurring to the operational staff.

Question 5: Effectiveness of the compliance function

The notion of effectiveness of the compliance function should not result in giving the compliance officer a role of fuse in case a problem arises in the asset management company.

Is there a set ratio for the "number of staff required for the task of the compliance function» (point 35) depending on the number of managers, portfolios, size of AUM?

We believe that it would be useful to allocate a budget specific to the compliance function and that the compliance officer should have access to all relevant information. Concerning the French situation, to our knowledge, there is no specific concern about these points: it's already the case for our members, notwithstanding their statute, size or activity.

However, we are of the opinion that (in point 38) the compliance officer should be a systematically invited to the meetings of the executive committee and thus allowed to attend all those meetings. The compliance officer should also receive all the relevant documents before the meetings however without having any decision-making role during these meetings.

Regarding the skills required for the compliance function, French RCCI are delivered a specific card by the AMF and must comply with professional certification rules. This system may be usefully extended throughout Europe.

Question 6: Permanence of the compliance function

The permanence of the compliance function will have to be adjusted to the size of the relevant asset management company. Indeed, the compliance function will have to be ensured by the manager itself in the case of small-sized companies.

The purpose of the "compliance charter" (point 43) should be specified in particular in relation to the codes of ethics.

Questions 7 & 8 Independence of the compliance function

The independence of the compliance function is crucial. Any measure to protect it will obviously be useful in respect with the prerogatives of the management body, given by the law (COMOFI) and the AMF regulation.

Question 9: Exemptions

We need more precision concerning incompatibilities (point 50). The internal control function requires in particular explanations on its scope.

It would be useful to have more detail on the way asset management companies should organize their compliance and legal functions, in particular on whether both functions may have links of subordination.

Question 10: Combining the compliance function with other functions

We agree on the necessity to avoid any overlap of the compliance function with other functions, provided that the proportionality principle is applied for small size companies.

In this respect more precisions should be given concerning the internal control, in particular the role that an internal team of control, distinct from the compliance team, would have.

Question 11: Outsourcing the compliance function

We agree on the principles set out by ESMA in its consultation paper.

Questions 12 & 13

We believe that the French system currently in place works properly.

As for the implementation of these guidelines, a deadline of 4 months seems more appropriate than a deadline of 30 days.

If you need any further information, please do not hesitate to contact myself at v.bonnet@afg.asso.fr.

Sincerely Yours,

(Signed)

Pierre Bollon