Call for evidence: EU regulatory framework for financial services

AFG would like to thank the European Commission (EC) for providing the opportunity to submit comments regarding this Call for Evidence on the EU regulatory framework for financial services.

The AFG, i.e. the ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE - the French Asset Management Association - represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 416 France-based management companies representing 98% of the assets under management in France. They are entrepreneurial or part of French or foreign banking, insurance or asset management groups. Asset Management Companies based in France manage more than 3,600 billion euros in the field of investment management as of end September 2015, making in particular the Paris Fund Industry a leader in Europe for the financial management of collective investments. In the field of collective investment, our industry includes - beside UCITS - the whole range of Alternative Investment Funds (AIFs), such as regulated hedge funds/funds of hedge funds, private equity funds, real estate funds, securitization funds, as well as socially responsible investment funds and employee saving funds. AFG is an active member of the European Fund and Asset Management Association (EFAMA) and of PensionsEurope. AFG is also an active member of the International Investment Funds Association (IIFA).

Preliminary remarks:

First and foremost, we would like to highlight that asset management companies are probably the most regulated financial service entities in the EU: asset management companies are regulated themselves, in addition to their products' design and products' distribution, as well as other services they may provide (UCITS, AIFs, MiFID services).

During the last decade, and in particular since the 2007 crisis, the regulatory framework has been developing at a very fast pace (more than forty texts). Although it makes no doubt that at the time of the crisis a strong regulatory framework was key and that, post crisis, a significant part of it had to be made more resilient, this regulatory reaction has generated multiple layers of rules, guidelines and advice which today result in an increasingly complex framework, difficult both to read/interpret and to implement. These multiple layers of regulation have also

yielded requirements that often are not consistent with each other or with the European political agenda (e.g. financing SMEs and, more generally, long term growth in the EU) and put a number of unnecessary strains on asset managers and their clients. This is why we do welcome both the CMU action plan and this Call for Evidence.

In the context of this public consultation, AFG would like to draw the attention of the European Commission to the following top priorities:

I) Ensuring the global competitiveness of the EU financial regulatory framework

Ensuring the global competitiveness of the EU financial regulatory framework should be one of the top goals of the EU institutions and in particular considering how obligations / constraints / costs / prohibitions imposed on EU-based asset managers and funds affect their competitiveness. The EC should look at how the European legislation compares to that of third countries: it is crucial to ensure that the EU regulatory framework for financial services remains competitive vis-à-vis that of the rest of the world. Three main reasons underpin this much needed approach:

- It is key to keep the European based industry at the highest quality standard worldwide and to promote innovative and cost effective solutions to satisfy investors' needs.

- Additionally, since more and more pieces of EU legislation offer an access for third country players and products to the EU market, while the whole set of regulations to be applied to them in their own countries is in many instances less stringent than the one applying to EU-based players and products, it is crucial to keep the competitiveness of the regulatory framework applicable to EU-based players and products within the EU Single Market itself;

- These discrepancies in constraints and therefore in costs are also handicaps for EU-based players and products that wish to develop through exporting out of the EU: they must be able to compete in terms of constraints and regulatory costs with the local players and products on these third country markets.

Furthermore, in order to preserve, or even restore, the global competitiveness of European financial centers, we call on the EC to work more closely with international financial regulatory bodies (FSB, IOSCO), to act with them in a more coordinated way and to ensure that the relevant international standards are applied in a harmonized fashion.

II) Improving the EU Financial Regulatory process and framework

Need for consistency and coordination

AFG noticed an increased recourse to delegated acts, leading to a problem of hierarchy of the standards, explained by an intricate articulation between levels 1, 2 and 3 of the regulatory process, whereas our members need a consistent, stable and clear regulation. To that effect, it would be useful to have a more efficient Level 2 process. This means a better alignment between the principles of Level 1 and the provisions of Level 2 and better calibrated periods for the publication of Level 2 provisions and their national implementation. The same applies between Level 3 and Level 4 provisions.

The three European Supervisory Authorities (ESAs) should improve the way they coordinate their work (including when they consult market participants) as a growing series of regulatory issues overlap the remit of two or even all of them.
More generally, the creation of the ESAs, which have increased regulatory powers as compared to the three former supervisory bodies, may lead to some "sort of competition" in the production of rules between the ESAs and the European Commission - which may explain some inconsistencies among the different Levels. While giving more powers to the ESAs is fully legitimate and should facilitate the fair enforcement of European legislation across Europe, such a regulatory competition - or at least lack of regulatory coordination - between the ESAs' rules and the European legislation should be avoided as far as possible.

The various Units within the EC should also enhance their cooperation and work on cross-consistency, in particular cross-impact assessments, when proposing new pieces of legislation.

AFG considers that enhancing the evaluation of the consistency and relevance of European financial regulations and assessing their cross-sectoral impact, individually but also cumulatively, is a key priority. Indeed, a specific issue for asset management companies is that they are frequently caught by transversal legislations which do not have them as central targets but impact them very significantly (e.g. MiFID, EMIR, Benchmarks, Solvency II, CRD IV, etc.).

As developed hereunder, there are specific areas of the EU financial services legislation which contain inconsistent and overlapping requirements. It is clear that many EU texts in the area of financial services are inconsistent in their substance, sometimes in a critical manner. Inconsistencies may also be found across texts adopted by different bodies (e.g. provisions adopted by ESMA which are in our view not in line with Level 1 provisions adopted by the EC).

However, the search for consistency across texts should not lead to a “one size fits all” approach in the provisions across texts, as it might be inappropriate to replicate the same rules for different financial sectors i.e. different situations and cases may fully justify a differentiated legislative treatment. For instance, as banks have a completely different activity as compared to management companies, a mere copy-paste of legislative banking provisions in texts on asset management companies would not make sense - as for instance management companies are not allowed to perform proprietary trading and are not allowed to hold client assets.

In addition, the attempt to reduce inconsistencies across different pieces of legislation should not lead to an additional layer of legislation, on the ground of a so-called “simplification”.

And if new, more consistent, legislation is adopted, it should repeal previous legislative provisions in a smooth manner, in order to avoid sudden and potentially heavy changes in the businesses related to such provisions.

In any case, the search for a better consistency across texts must not lead to a significant production of texts. A legislative pause would be very welcome, as it would allow existing texts to be fully, properly and fairly implemented and enforced across Europe before it is considered to whether or not amend them over time.

As to overlapping requirements, for instance, MiFID and EMIR set out reporting requirements which cover the same transactions but which are not always fully consistent. In some cases, requirements may be not only overlapping but also clearly contradicting.

Finally, the efficiency of future reforms also depends on the existence of a global playing field to avoid regulatory arbitrage and any distortion of competition. Before launching new regulatory initiatives, the European institutions should ensure that in practice:

- texts are implemented in all the Member States and in the same manner;
- they are enforced in all the Member States and with the same stringency;
- they have delivered all their effects before it is considered to amend them.

Need for realistic implementation timelines

Too short or unrealistic implementation deadlines lead to legal uncertainty and cause serious challenges for EU asset managers in the implementing phase of EU financial legislation.

Given the complexity of the legislation, more attention should be paid to develop realistic timeframes for the consideration and implementation of Level 2 measures, or greater flexibility built in at level 1 to account for the time which, in practice, is required. There are many examples of directives or regulations (AIFMD, Solvency 2, EMIR, potentially MiFID II and PRIIPs) whereby it is extremely difficult to be prepared within the timeframes laid down at Level 1. The latest example relates to the PRIIPs Regulation: its final Level 2 measures will not be adopted before the autumn 2016, while a wide range of products, including many non-UCITS funds managed by our members, will be expected to comply with the PRIIPs Regulation by the end of 2016, i.e. less than three months later; as a consequence, asset management companies will not have time to put in place specific IT processes and KID production. A minimum 18 month period between the date of the final adoption of the Level 2 implementing measures and the application of the new rules by asset management companies should be set as a rule. **For an illustration of the complexity of the EU financial regulatory framework, please refer to the table detailed under issue 5 example 3 aiming to demonstrate the excesses of the EU regulatory process and timeline issues in the recent years**
In general, the too tight implementation deadlines of EU law (which cannot be met due to delays at Level 2 etc.) lead to increased uncertainty and costs for both the industry and ultimately the investors. Clear, predictable implementation timetables should become state of the art. The ESAs and the EC should be given enough time to develop secondary EU legislation.

Finally, sufficient periods of time are also relevant in assessing the actual and practical consequences of a legislation in force, before considering whether or not to revise it - as an example, a sixth revision of the UCITS Directive (so-called UCITS VI) is under consideration, while no assessment was carried out beforehand and while UCITS V has not been implemented yet.

Need for regulatory stability

European authorities have to be careful to keep a reasonable pace of legislative production, and make sure **first that the enforcement of existing rules is ensured**, in a fair way among regulators and across Europe, **before launching any new legislative initiatives**.

We would advise the EC to deepen its work, in close association with the ESAs, on the implementation and enforcement of existing rules before considering launching new regulatory initiatives which are not evidence-based. It would be desirable that the co-legislators take more time in considering changes that in many cases have profound consequences that should be carefully assessed before a final decision is made.

Indeed, one significant issue relates to the review clauses included in the EU legislation. The obligation to review the rules, paradoxically intended to allow a better calibration of the rules with the insight of experience, usually leads to a very unstable work environment for market participants, as they have to constantly adapt to new rules which in many cases only arise from the obligation contained in the initial review clauses.

In addition, these clauses usually require a review too soon after the start of implementation of the rules by market participants; as a consequence, it is usually too early to judge in a reasonable manner what should be changed - and therefore regulatory changes may ultimately lead to situations which are not needed, generating useless costs. Our proposal is that the review date set out in level 1 texts should systematically start from the date of publication of the adopted Level 2 measures and be realistic in terms of timing so as to benefit from past experience (e.g. following the final adoption of implementing measures, a minimum period of 18 months is needed for their actual application by asset management companies).

Finally, the EC should not use this Call for Evidence to justify the launch of new initiatives, which might just result in the production of texts adding to the existing ones, instead of actually simplifying and improving consistency across the texts. A legislative pause would be very welcome, that would allow existing texts to be fully, properly and fairly implemented and enforced across Europe.

Need for a better functioning regulation *in practice* ("Better regulation")

In the context of the most welcomed "Better regulation" initiative launched by the EC in May 2015 and with a view to enhance the efficiency and results of the regulatory process, the following guidelines should be systematically followed and *applied in practice* by EU law makers while producing or reviewing EU legislation:

- Better regulation implies a transversal view;
- Better regulation requires a clear definition (scope and delimitation) of the powers of each participant: EC, co-legislators and European and national authorities;
- Better regulation relies on an efficient dialogue with stakeholders, to obtain the expertise and views of those concerned, and on the EU co-legislators and the EC to properly assess, also during negotiations, all possible consequences of a given piece of legislation;
- Better regulation implies longer consultation periods, and encourages the EU co-legislators to take time to consider changes that in many cases will have profound consequences that should be carefully assessed before a final decision is made;

- Better regulation involves **a proper understanding of the basics of the asset management industry and its interactions with other sectors (in particular banking and insurance) and the financing of the "real economy";**
- Better regulation implies to assess and address risks appropriately;
- Better regulation requires a systematic and efficient cost-benefit analysis;
- Better regulation also needs to rely on **clearer and more common definitions of the relevant terminology and legal concepts ahead of any preliminary works during the pre-legislative stage** (as an example, there is no clear definition of employee schemes or employee savings schemes in the AIFMD, which leads to diverging interpretations by local regulators). We would suggest the ESAs aim to reach consistency in the understanding and definition of such legal concepts.

AFG invites the European authorities to take very particular care when developing the calendar of their consultations. A very tight calendar harms the quality of the feedback provided and, in addition, restricts the possibilities of conducting complete impact studies ahead of the financial reforms considered.

Furthermore, as referred to in the Lamfalussy Report in 2002 endorsed by the European Institutions more than 10 years ago, **consultation should occur at all stages of the legislative process** – especially when Level 2 texts diverge from ESMA's proposals (which occurred for instance while developing the AIFM Level 2 Regulation), and when Level 1 texts are not mere revisions of previous texts but complete new ones (MMF Regulation for example).

Need for a better application of the proportionality principle set out in the EU Treaty

In the context of its Capital Markets Union Action Plan, the EC wished to adopt a pragmatic approach. Such an approach should in particular recognise the key importance of the proportionality principle. In our opinion, there are three aspects to the proportionality principle: the calibration of the rules, the modulation of their implementation and an adaptation of the supervision through a risk-based approach. Without this flexibility factor in legislative texts, there is a risk that only large players are able to implement the substantial and complex body of law that currently exists, which may have the unintended consequence of a market concentration.
The principle of proportionality should be a tool providing some flexibility to the rules in order to facilitate their implementation in accordance with the regulatory aims set in terms of market integrity and investor protection.

Issue 1 – Unnecessary regulatory constraints on financing

The Commission launched a consultation in July on the impact of the Capital Requirements Regulation on bank financing of the economy. In addition to the feedback provided to that consultation, please identify undue obstacles to the ability of the wider financial sector to finance the economy, with a particular focus on SME financing, long-term innovation and infrastructure projects and climate finance. Where possible, please provide quantitative estimates to support your assessment.

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Draft Directive on Financial Transaction Tax proposed by the European Commission in 2013

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

European Financial Transaction Tax ("EFTT")

If adopted, the EFTT would not be consistent at all with the Capital Market Union objectives to "maximize the benefits of capital markets for the economy, jobs and growth":

The EFTT would be an indiscriminate tax on savings, investments and pensions ultimately borne by EU citizens, which would as well increase the cost of capital for businesses and lower returns on investments and savings.

Regarding more specifically investment funds, the consequences of the EFTT would be even worse, as compared to the impact of the EFTT on direct investments. Indeed, it is contemplated to apply the EFTT twice to investment funds: first on their underlying assets and second on the redemptions of their units. As a consequence, investments would be channeled to EU products which are not subject to EFTT or to non-EU investment funds. This would not only diminish the benefits of investing in funds and limit a cost effective access to capital market investments by the mass public but also produce extremely negative impacts on the competitiveness of the EU.

Last but not least, the EFTT would inevitably and very distressingly imply, on the basis of a reinforced cooperation among ten Member States only, a fragmentation of capital markets and, on a European-wide basis, a diversion of capital away from the EU and in favor of geographical zones which do not penalize investment as heavily.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We call on the 10 Member States participating to such an enhanced cooperation to drop this regulatory project which is contradictory with the CMU and the Juncker Plan, and

particularly not to levy the tax on the redemption of fund units, so that a double and discriminatory taxation is avoided.

Example 2

MiFID II – draft Level 2 Delegated Act

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Risk of less coverage of EU SMEs due to the EC envisaged reform of Research financing

New provisions introduced by ESMA could prohibit the payment of fixed income research to brokers and even question the existence of commission sharing agreements between asset managers and brokers with respect to equities. Research is not currently qualified as a minor non-monetary benefit. All actors in the market expressed concerns on the fact that such provisions would have a very detrimental impact on external research, especially for research on SMEs and for the activity of small and medium asset managers. Such new restrictions would considerably increase the cost and consequently reduce the offer of research on SMEs/midcap companies. Access to market finance by SMEs/midcaps will only be possible at the express condition that investors can have sufficient information and research on companies and on a continuous basis.

Properly used, commission sharing agreements (CSAs) do not introduce any conflict of interest nor impair the interest of investors but they provide some flexibility. Their absence would severely impair SMEs' research which indirectly benefits large caps. The partial sharing of the cost among several portfolios is the only way to make economies of scale and ensures as well a lower cost for research on SMEs.

In addition, regarding more specifically fixed-income investment research, if it were to be paid for, it is likely that the new regime would lead to a reduced fixed income corporate credit research coverage, decreasing the availability of information to investors and their ability to make informed decisions and issuances (particularly for SMEs) becoming more difficult since less information would be available to investors both at the point of issuance and on an on-going basis.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to maintain the search for quality for SMEs and to promote appropriate means of financing of SMEs, by not qualifying financing research - including in relation to equities - as an inducement and by defining FICC (Fixed Income, Currencies and Commodities) research as a minor non-monetary benefit, since it is widely distributed, not charged for and does not influence the choice of the execution process.

Example 3

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Prospectus Directive

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Risk of diverting professional investors away from SME markets due to a possibly reduced confidence in the Prospectuses to be issued by SMEs

Professional investors (e.g. asset managers) carry out their own assessments before investing in securities, e.g. securities issued by SMEs. Among the different sources of information available to them, they make use - both for SME equities and for SME fixed income securities - of the official prospectuses issued by the relevant companies.
Every part of each prospectus is scrutinized by asset managers. The current prospectuses bring several advantages:

- They are "regulated information": although this information is not certified as such by national regulators, the fact that information is put into a document officially issued through a process involving a regulator gives a minimum level of confidence in the quality of such information.
- If in the future elements of these prospectuses were lightened, the confidence of professional investors using them would decrease;
- This issue is even more acute for SMEs: SMEs usually communicate less on an ongoing basis than blue chips. Therefore, the relative importance of prospectuses for professional investors is even more crucial with regards to SMEs.

Ultimately, far from enticing investors back to SME markets, any lightening of the existing prospectus regime for SMEs would push investors - including professional investors such as asset managers - away from them.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest not to excessively lighten the existing content and reliability of SME Prospectuses. Any simplification of prospectuses needs to maintain a right balance with the capacity of investors to have appropriate access to information on SMEs. If it increases the difficulty in getting proper information, it will only lead to decreasing the confidence of asset managers, leading in turn to less investment choices with respect to SMEs markets. This would of course impede the growth and financing of SMEs, thus contradicting the main priority of the EC.

Example 4

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
EC Regulation No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty EU

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

The state aid regime deprives SMEs from a support crucial at their development stage

We believe that the State aid regime, in particular the regime applying to SMEs, the General Block Exemption Regulation defining European SMEs, is too strict.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

AFG would like to raise the EC's attention on the need for more flexible growth-focused State aid rules, in particular with regards to the financing of innovative SMEs (such as FinTech SMEs) and the financing of companies at start up and development stages. It should in particular be clearly established that tax regimes favorable to investments in European SMEs, when they do not impact trade among Member States, are not considered as State aids. The ceiling of 15 million euros used in the definition of SMEs and the limit of 7 years of existence that allow SMEs to benefit from a State aid should also be increased.

Example 5

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

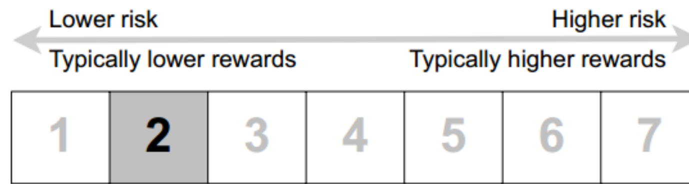
UCITS, PRIIPs, MiFID II

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

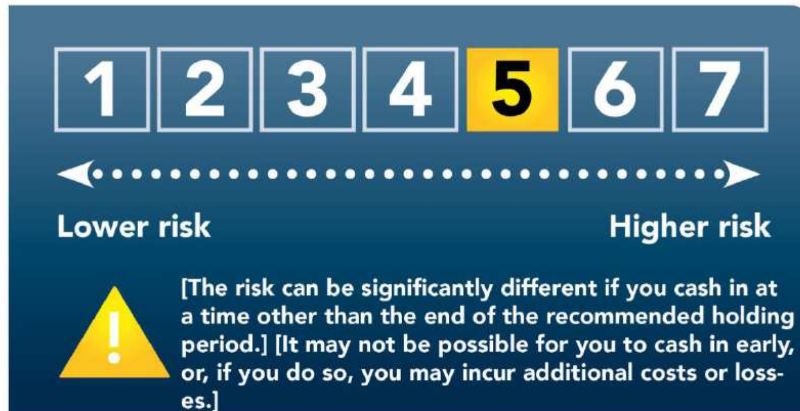
Risks of investments are over-emphasised

AFG is supportive of the PRIIPs Regulation which requires a Key Information Document for all packaged investment products in order to provide appropriate pre-sale disclosures to retail investors. Unfortunately, it has to be observed that the new PRIIP KID overemphasizes risks as compared to its UCITS KIID predecessor. The UCITS KIID measures risk and reward in its "synthetic risk and reward indicator", whereas the future PRIIP KIDs will only focus on the investment risk, forgetting to disclose the potential returns.

UCITS KIID



PRIIP KID (to be finalized)



This new presentation will have an essential impact on the choices made by retail investors, especially if the calibration between the PRIIP's lower and higher risks is not done correctly. We are, in particular, concerned by this issue in the context of the current discussion on the PRIIPs Level-2 measures. The ESAs are suggesting that products whereby investors may lose more than the money invested (i.e. creating additional payment liabilities) should be categorized on the same maximum risk level as products whereby investors may lose their money only up to the invested amount. We wish to draw the attention of the EC on this issue; indeed, if equity funds are categorized in this highest risk category it will eventually refrain (retail) investors from investing into plain vanilla capital markets products, such as equity UCITS, which employ specific risk reduction tools and for instance comply with the investment diversification obligation of the UCITS Directive.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Risk disclosure is essential to any type of investor. However, legally required pre-disclosure information should not overemphasize potential risks; in other words, it should take into account any risk spreading and highlight any potential returns in order to offer investors a true representation of the investment's potential risk and return.

Issue 2 – Market liquidity

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on market liquidity. Please elaborate on the relative significance of such impact in comparison with the impact caused by macroeconomic or other underlying factors.

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

CRD IV Directive (2013/36/EU)/CRR (Regulation No. 575/2013) derived from Basel III, in particular leverage ratio framework and disclosure requirements (January 2014)

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Capital Requirements legislation, derived from Basel III, penalizes hedging activities and liquidity management

Higher cost for hedging and lower liquidity:
Derivatives and repo bid-offers will increase by taking into account bank capital consumption.
Repo capital charge will create distortion in the bond and collateralized loan market.
Cleared positions are counted in the leverage ratio of the balance sheet of the clearer.
Regulated funds and asset managers only have access to minimum and limited in time borrowing capabilities. This has a direct impact on the liquidity and access to liquidity.
Clearing requires more cash than collateral (Variation Margins)
Margining for non-cleared OTC will increase the need for collateral
…while real investors hold assets and fund regulation prevents the reuse of collateral, including cash collateral
Products evolve to meet bank capital needs, less to meet client hedging and accounting objectives.
Ultimately, all these constraints on fund managers will decrease returns for investors.

Please refer to the following reports:

- Risk magazine's recent survey (September 2014) revealed the impact of new regulatory ratios on a 5-year, non-collateralized interest rate swap (with huge differences between banks):
  - For an A-rated counterparty, the impact of new regulations could reach up to 10 basis points of notional;
  - For a BB-rated counterparty, the impact could reach up to 40 basis points of notional.
- According to Credit Suisse, bank regulation changes could add up to 60 basis points to the cost of a repo transaction (Risk magazine November 2014).

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to allow a diversified asset collateral.

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Capital Requirement legislation, derived from **Basel III leverage ratio framework and disclosure requirements** (January 2014):
Basel III: the net stable funding ratio (October 2014)
ESMA Guidelines for competent authorities and UCITS management companies (August 2014):
sections 43 j and 44 on placement or reinvestment of cash collateral
SFTR: potentially imposing automatic haircut on collateral

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Repo and cash collateral

Repo liquidity is reduced while the need to use repo and collateral increases:

- Regulations force derivative users to use cash collateral (LR and NSFR apply penalties to non-cash collateral on derivatives);
- UCITS funds cannot use cash collateral received from repo for collateral posting: credit diversification is penalized.

In addition, according to Credit Suisse, bank regulation changes could add up to 60 basis points to the cost of a repo transaction (Risk magazine November 2014).

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The reuse of the cash collateral received from efficient portfolio management techniques (including repo) should be allowed so as to help transform assets into eligible collateral. To protect investors, the collateral received should only be reused once and the transfer of holdings should only be made through a transfer of title.

Example 3

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
CRD (capital requirements, NSFR), BRRD, CSDR

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Reduction of market making activities

The ability of banks to perform market making activities drastically reduced following the revision of the capital requirements applying to these activities. Asset managers, as

representatives of the buy side, need liquid markets to manage their portfolios properly.

On bond markets, in particular on corporate and high yield, participants experience a tightening of the liquidity. Typically, where they could before the financial crisis easily trade large corporate bonds in amounts of 10 million, they have today to split the same trade in several orders placed with different counterparties which are ready to trade 2 or 5 million but not any longer 10. We are particularly concerned with the evolution of liquidity on the repo market where intermediaries seem now at a loss when transacting, as evidenced in ICMA's paper *Perspectives from the eye of the storm: the current state and future evolution of the European repo market* published last November http://www.icmagroup.org/News/news-in-brief/post-crisis-regulation-is-driving-radical-change-in-the-european-repo-market-says-new-icma-study/. We do share the points evidenced in this paper about the drastic reduction of liquidity on the repo market and fear it is to last if no amendment is made to regulations. Repo market is essential to the liquidity of securities and especially bonds where there is no possibility to build an order book like on liquid stocks.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Considering the difficulties encountered by new intermediaries, we would like to raise the EC's attention on the need to preserve the essential role played by banks with regards to the activity of market making. In particular, through their activity of market making, banks provide a key service to bond markets. In the context of the structural banking reform, it is therefore of the utmost importance to set a definition of market making which is not too restrictive and which allows keeping this activity within banks. Transferring this activity to a subsidiary would on the contrary reduce market liquidity.

Example

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**
Liquidity Coverage Ratio / Basel III regulations

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
Lack of short term paper

There is a risk that large amounts of cash currently invested on short term CDs and CPs will no longer be directed to these channels of financing of the economy. New liquidity ratio requirements have a negative impact on issuances of short term CDs by banks. To adjust their treasury, funds - in particular MMFs - are investors on a daily basis for huge amounts on short term CDs and CPs. Banks have no interest anymore (because of Basel III regulations) in issuing CDs below a 2 month maturity, when MMF managers are precisely looking for CDs with short and very short maturities (especially less than a week). This in turn creates a negative incentive for fund managers to invest on longer maturities and impacts the risk and liquidity profiles of their funds.

On the other side, banks are penalized when they invest in MMFs, as these funds are often not considered as liquid enough to be equivalent to cash, due to the Basel III definition of the LCR ratio; in other words, MMFs are not eligible to the pool of liquid assets available to banks.

Even though the LCR has not yet been implemented, banks already anticipate the rules for reasons of financial ratio communication. MMF portfolio managers are thus very concerned that they might be forced to further concentrate their investments in other instruments such as deposits and reverse repos (where squeezes could occur).

Today, MMFs represent an easy means to diversify risk when placing liquidities and for the 282 billion euros held by MMFs in France at the end of Q3 2015, Banque de France (https://www.banque-france.fr/economie-et-statistiques/stats-info/detail/placements-des-opc.html) underlines the trend to reduce (by 21 billion euros from the beginning of the year) holdings in CDs and CPs with a stronger fall on Eurozone securities and reinforce investment in longer term bonds and securitizations (by 30 billion euros). Up to 59% of MMF portfolios finance Eurozone banks and mainly through CDs. MMFs hold a majority stake of the total standing amount of CDs which reached 212 billion euros in France, down by 18.9% from the previous year. Corporate CP is stable at around 40 billion euros. The possibility for banks to rely on the CD market for cash adjustment contributes to their ability to finance the economy. It is at risk today.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to reduce the existing disincentive by introducing a ratio for banks relating to the finance gained through short term CDs (comparable to that of cash deposit accounts) and by allowing MMFs to be considered as highly liquid assets in banks' balance sheets. We also suggest making MMFs eligible to the LCR ratio.

Example 5

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS/MMFs

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Too restrictive investment limits for MMFs

More precisely, regarding liquidity specific to money market funds ("MMFs"), we would like to point out that too strict concentration limits create a risk of investing in issues of lesser quality when the interest of the investors would suggest concentrating more on high quality investments.

MMFs have to invest large amounts (in terms of hundreds of million euros per fund daily) in short term instruments. There are but a few issuers that are ready to take such amounts any day.

They are financial institutions and many of them belong to large groups. The 5/10/40% rule in the UCITS Directive was supplemented with a 20% limit for issuers of a same group. The MMFR could include a reduction of the group limit to 10% (Commission) or less (Parliament). As there are less than 20 issuers present daily for large volumes in euros, it would incentivize to subscribe CDs from non-European banks or banks of lesser quality, and thus be counterproductive in terms of financing the economy and of investor protection.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to proportion concentration limits to the reality of the European market and recalibrate them by using the UCITS concentration limits rather than the too restrictive ones currently proposed in MMFR.

Issue 3 – Investor and consumer protection

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

Example 1

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

MiFID II/IDD

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

"Inducements" - alignment of distribution rules under MiFID II and IDD

Today, investors buying securities investment products already are protected by requirements relating to cost disclosure and quality standards applying to distributors remunerated through commissions received from product providers. This investor protection regime will be significantly strengthened under MiFID II through a requirement for a comprehensive disclosure of all costs and charges and through a further tightening of the conditions under which commission payments to distributors are allowed. In the context of the PRIIPs initiative, it was generally acknowledged by the EU institutions that the distribution of all investment products in the retail market, regardless of whether they are sold in a securities or an insurance wrapper, should be subject to equal conduct of business rules in order to effectively protect European investors. Notwithstanding this commitment, which was explicitly enshrined in the MiFID II legislation[1], the risk that the IDD framework recently agreed by the EU institutions might substantially deviate from the MiFID II standards is still there. IDD redefines the rules applying to the distribution of insurance-based investment products and thus represents a key element of a sound EU investor protection

[1] Cf. recital 87 of the MiFID II Directive (Directive 2014/65/EU).

regime. However, there is still some uncertainty in relation to the level playing field between MiFID and IDD.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Against the backdrop of the CMU initiative, we would like once again to call upon the EU institutions to work towards equal standards of investor protection at the point of sale and, in particular, to further align these essential standards of good conduct of business in the upcoming work on Level 2 measures (and if need be on Level 1) under IDD in order to ensure an level playing field and equal consumer protection.

Example 2

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

MiFID II

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Complex products vs. risky products

AIFs are an important investment pillar for European citizens. Yet, they are seriously threatened by EU legislation. They suffer from the stigma that they are hedge funds; however, in fact, the vast majority of AIFs are not. It is key for the EU legislation to appropriately acknowledge the different types of funds which qualify as AIFs, some hedge funds, but the vast majority of them AIFs with a conservative risk-return-profile comparable to that of UCITS.

The MiFID regime classifies certain products as complex in order to prohibit their sale by way of execution-only. However, the notion of complexity has also been the subject of many debates (more recently at Level 2), as the sale of complex products requires the additional assessment of their suitability to investors. We believe that the interpretation provided in the MiFID II Level 1 Directive that all AIFs (i.e. non-UCITS) are complex (see above) is not correct. In the same vein, ESMA's stance to treat all AIFs as complex products - as manifested in its technical advice on MiFID II dated December 2014 - is alarming. The scope of "AIFs" is very broad and also includes highly regulated retail funds which are UCITS-like, plain vanilla funds. Hence, a consequence of ESMA's position would be that some investment funds, although comparable to UCITS (in that they comply with rules on eligible assets and investment limits, provide for risk diversification and redemption rights for investors, where the issuer is regulated and the product is approved for marketing to retail investors) would be considered as complex and be subject to stricter suitability testing, whereas other products, such as listed shares or bonds, would be considered as non-complex, even though they tend on a general basis to be less suitable for retail investors due to their higher concentration and liquidity risk.

As many of these retail funds are regulated under national law, they have been sold to retail investors for years without any problems. We therefore believe that ESMA's interpretation of MiFID II requiring even these retail AIFs to be subject to an "appropriateness" test would add to barriers and costs - even though there has been no detriment arising from the existing regime.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

AIFs should not generally be treated as complex products. Instead, they should be allowed to be assessed against the complexity criteria to be endorsed in Level 2 measures under MiFID II. Their treatment should be based on grounds of the fund's specific features (investment assets, liquidity, leverage, clients). This would avoid an unjustifiable bias in the distribution of retail AIFs.

Example 3

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS, AIFMD, MiFID, PRIIPs

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Relevancy of information for retail investors

Transparency is key to investor protection. Thus, we approve the major improvements introduced with the KIID under the UCITS Directive and the disclosure regime under the AIFMD or MiFID. However, there comes a point where it is arguable that disclosure becomes excessive in the sense that it loses relevance or worse prevents a clear understanding by the client of the reality of the investment proposal. AFG agrees with MEP Balz and "*Believes that consumer protection does not necessarily entail large volumes of information; is concerned that the multiplicity of customer information might not ultimately serve real customer needs; points to the necessity of a European initiative for more and better financial education*".

In-depth work was conducted in the context of UCITS IV when defining the content of information relevant for investors. The KIID has proven difficult to implement but is now considered as a standard with regards information. However, PRIIPs has very unfortunately not capitalized on this experience and taken a totally different approach, which is damaging for fund promoters and confusing for investors (they are well aware that past performance does not predict future returns - as it is explicitly mentioned in the UCITS KIID - and that any expected return forecast would require so many assumptions to be disclosed that it would be neither understandable nor informative). We believe that the investor opinion survey that is under way should have been thoroughly discussed with practitioners ahead of time in order to prevent future criticism on the interpretation of the results.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

As a general rule, the granularity of information provided to retail investors should be calibrated and should focus on the key data that answers their main needs and concerns. More specifically, the PRIIP KID should capitalize on the established practice of the UCITS KIID and, as far as possible, use the same standards (past performance, disclosure of costs, market risk profile…), which have been successfully tested in practice.

Example 4

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
MiFID

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Distinction between High Frequency Trading and Algorithmic Trading, the latter optimizing the search for best execution deals and costs for the benefit of investors

AFG supports MiFID's objective to limit the potential negative impact of High Frequency Trading (HFT), which may generate multiple orders and cancellations. However, from an investor protection perspective, it is important to distinguish between algorithmic trading and HFT; algorithmic trading should receive a different treatment from HFT. Algorithmic trading refers to order execution by algorithms, whereas HFT is a way of deploying strategies whereby computers make decisions to initiate orders.

Most of the algorithms used in asset management are used to facilitate best execution and not as decision-making tools. The current provisions on algorithmic trading are far too broad and will capture many firms that do not use HFT. Although we acknowledge the need for proper systems and controls as well as business continuity, we believe that investment managers (as users of execution algorithms only) should be carved out, as they undertake business and initiate transactions on behalf of clients. Thus, execution algorithms that are used by asset managers to route orders should be carved out of algorithmic trading.

As the micro second unit is only relevant for HFT robots, we tend to believe that introducing a time stamp at the micro second unit would give the possibility to have a clearer view on the order book sequence, thus allowing better controls.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Authorities should give proper consideration (and distinction) to the investment management use of execution/routing algorithms (as decision-support tools for asset managers to optimize the search of best execution deals and costs for the benefit of their investors) and envisage in addition other routes that could help to ensure a better control of HFT by introducing for instance a latency period of two seconds before cancelling an order.

Issue 4 – Proportionality / preserving diversity in the EU financial sector

Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules

adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

AIFMD: para 23 to 31 of the Guidelines on sound remuneration policies under the AIFMD (including Annex II).

UCITS: Art 14 b (1) of the revised "UCITS V" Directive, para 21 to 29 of the proposed Guidelines on sound remuneration policies under the UCITS Directive, including Annex II).

CRD IV: EBA's Opinion of 21 December 2015 on the application of the principle of proportionality to the remuneration provisions in CRD IV.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Proportionality is a key principle of the EU regulatory framework and it is clearly defined, in particular, in the asset management regulatory framework (para. 21 to 29 of the proposed UCITS remuneration guidelines, and 23 to 31 of the AIFMD guidelines, as well as in their respective Annex II).

A careful reading of the regulations leads to observe that in that framework there are two areas of proportionality:

- *General proportionality* on pay-out process requirements (i.e. on deferral, instruments, retention, malus/claw-back) and on remuneration committees, which applies at entity level.
- *specific proportionality* on identification of staff and the implementation of the pay-out process requirements to them, which applies at individual employee level.

1) On the general proportionality principle:

- The proportionality principle, as defined in the AIFMD and draft guidelines under UCITS V, allows the possible disapplication of the (AIFMD/UCITS) requirements relative to the pay-out process or relative to having/not having to establish a remuneration committee within the asset management company, to the extent that this is appropriate to their size, internal organisation and the nature, scope and complexity of their activities (these characteristics are defined by ESMA on the basis of several criteria).
  We are most concerned to note that EBA Opinion is asymmetric for asset management entities when they are subsidiaries of a banking group.

- In addition to this proportionality principle, Article 3 of the AIFMD provides a full exemption from the scope of the Directive for asset managers either:

- with less than 100 million euros of assets under management in AIF(s), or
- with less than 500 million euros of assets under management in AIF(s), when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

As a result, in the AIFMD, the scope covers firms which have a minimum of assets under management in AIF(s). To the contrary, the UCITS Directive offers no such size-based exemption. This results in the UCITS Directive explicitly being a more demanding standard than the AIFMD so far as remuneration regulation is concerned, whilst the very specificity of the UCITS framework is that it already is more restrictive and more prescriptively protective as regards clients' risk exposures, than the AIF framework.

2) On the "specific proportionality principle" regarding the identification of staff and the implementation of the pay-out process requirements applying to them.

Indeed, a key cost-driver for the EU asset management industry is the scope of the pay-out process requirements, which in practice, was addressed by several national regulators in the EU via a "de minimis" threshold, i.e. a specific proportionality approach.

In fact, Identified Staff should be subject to pay-out requirements only if the latter are economically meaningful to them, i.e. if there is a real long term alignment of interest. In other words, it is only when their variable remuneration is high enough to be spread over at least three years, i.e. when it is higher than the "de minimis threshold", that such staff should be subject to the pay-out process requirements. Otherwise, administrative costs would represent a significantly increased burden, to no avail.

As explained above, we believe that CRD IV should not apply to asset management companies which are subsidiaries of banking groups; additionally, we are quite concerned to note that EBA Opinion contemplates to **no longer let proportionality apply to:**

(i) **Malus and clawback**(EBA Opinion does not include article 94-1 (n) in its proposed insertion of article 94.3 in CRD IV;
(ii) **remuneration committees** (EBA Opinion no longer provides for it in its proposed article 94.3 in CRD IV).

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

1) The general proportionality principle provided for in the AIFMD is valuable to avoid the cost of a remuneration committee where it can be avoided by a firm, based on its nature, internal organisation, scope, complexity of activity.

Therefore, the blanket exemption of the remuneration requirements for firms with less than 100 million euros of assets under management should be provided for in the UCITS Directive, for the sake of competitiveness, simplicity and consistency.

This de-minimis size criterion should not be construed as limiting, in any manner, the ability of national competent authorities (NCAs) to apply general proportionality based on the regulations' existing principles, notably: size, internal organisation, nature, scope and complexity of activities.

2) Regarding specific proportionality, for the sake of competitiveness, simplicity and consistency, it would be appropriate to determine a de-minimis threshold in terms of an absolute amount of variable remuneration under which deferral, malus, retention and the payment in instruments would not be required. This de-minimis threshold should be applied EU-wide at a reasonable level (as is currently the case in many jurisdictions). We note that a de-minimis threshold of 167,000 British pounds is currently used in the UK Remuneration Code.

3) Moreover, although CRD IV does not systematically apply to asset management entities, we would like to propose the following amendment to CRD IV 94-1 (l) 4th sub-paragraph, which would be most welcome: **Instead of requiring the same percentage of instruments in "both the portion of variable remuneration** component **deferred** in accordance with point (m) **and** the portion of the variable remuneration component **not deferred**" ; **one should only require a minimum of 50% in** instruments in **the total** variable remuneration, and a **higher proportion** of instruments **in the deferred** component than in the upfront component.

   This would allow, for example, having 50% of total variable remuneration in instruments structured as follows:

   - 50% of total variable remuneration deferred and fully (100%) in instruments,
   - 50% of total variable remuneration paid upfront in cash.

   Currently, the current CRD IV provision requires that the 50% of total variable remuneration paid upfront be itself paid 50% in cash and 50% in instruments.

   Indeed, payments in instruments are complex and costly to implement, and ensuring firms which wish to pay 100% of the deferred component in instruments, when they are allowed to do so, should be possible without pushing them in a weak competitive position (i.e. having also at least 50% of the upfront component in instruments).

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

MiFID II - Best execution, transparency and reporting requirements, Research Financing

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Reduction in the number of small brokers

The whole set of MiFID II rules and in particular the best execution, transparency and reporting requirements and the research financing provisions (as proposed by ESMA) would both:

- **Harm small brokers** which might not be able to adapt to the proposed new processes of Research Financing, due to the cost imposed by the new operational processes to be set. It would then lead to **oligopolies of big brokers,** which in turn could result in a reduction of competition and consequently to higher brokerage fees for market participants, including for asset management companies and their clients;
- **Harm EU asset management companies** which would have to comply with this rule which does not exist for their **non-EU competitors**, e.g. in the USA or in Asia.

Smaller EU-based brokers will not be able to adapt to the new financial markets rules, due to the technology costs that these transparency, reporting and best execution requirements imply.

*

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest not to limit best practices to the analysis of execution costs (quality and security should also be taken into consideration) and to develop rules that foster diversity in the EU financial sector and in particular preserve small brokers.

Issue 5 – Excessive compliance costs and complexity

In response to some of the practices seen in the run-up to the crisis, EU rules have necessarily become more prescriptive. This will help to ensure that firms are held to account, but it can also increase costs and complexity, and weaken a sense of individual responsibility. Please identify and justify such burdens that, in your view, do not meet the objectives set out above efficiently and effectively. Please provide quantitative estimates to support your assessment and distinguish between direct and indirect impacts, and between one-off and recurring costs. Please identify areas where they could be simplified, to achieve more efficiently the intended regulatory objective.

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

All EU pieces of legislation applicable to EU-based asset management companies

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Increase of the initial and running costs of implementation

As a result of new regulations over the period 2008-2015, the increase in the number of staff in compliance, legal, risk control, data management teams (to say the least) in EU-based asset management companies was dramatic over the last seven years. For example, a global France-based asset management company doubled its Compliance staff for EU matters between 2010 and 2015; and its IT charges due to EU legislations doubled as well during this period.

Furthermore, the acceleration and piling of specific EU legislations (as well as their amendments), together with tight implementation timelines and very often complex provisions, generated a growing necessity to have recourse to external consultants in order to make sure to be ready and compliant by the requested deadline. Concerning the use of external consultants, EU texts (e.g. AIFMD, MiFID II) entail asset management companies to hire consultants in addition to their much strengthened internal teams and to set up extensive central project teams and decentralized working groups.

For example, a global French asset manager stressed that 15 persons in total - including external consultants - had to work in relation to the EMIR implementation on a full time basis during 3 years, which proved very costly.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest improving the EU legislation process by:

- setting reasonable deadlines for national transpositions or entries into force, as well as for implementing measures (delegated acts and technical standards);
- setting reasonable revision deadlines for the different pieces of legislation (they are usually too early and cannot benefit from the actual experience of the legislation in place);
- conducting more comprehensive and cross-sectoral cost/benefit analysis prior to any new regulation.

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

Article 27 Obligation to execute orders on terms that are most favorable to the client

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Best execution reporting requirements

Under the Best Execution requirements, investment firms have to report to their clients data relating to the quality of execution of their transactions on trading venues and systematic internalizers. ESMA developed draft regulatory technical standards to determine the specific content, the format and the periodicity of data relating to the quality of execution to be published.

The volume and complexity of the data under the proposed best execution reporting requirements is seriously disproportionate and will undermine the purpose of the Level 1 measures.

Under the proposed ESMA RTS, it seems that billions of data fields under RTS 27 and up to 36,000 data fields under RTS 28 are to be consumed and analyzed by investors. The sheer volume and the complexity of such data will not help them in getting a better understanding of the quality of a bank's best execution practices.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The unconfirmed benefits of the proposed regime should be measured against the actual costs and effectiveness of implementing such a complex and disproportionate regime. A more appropriate scoping and usable data set is needed, in order to make this data "informative".

Furthermore, best practices in terms of execution orders should not be limited to a cost analysis since the quality of the service and the security for investors are also key elements to be taken into consideration.

Example 3

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS V, MiFID II, AIFMD, PRIIPs, ELTIF, EMIR

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Complexity of the EU financial regulatory framework and timeline issues

Complexity and timeline issues ***lead to legal uncertainty and cause real difficulties/challenges for EU asset managers in the implementing phase of EU financial legislation.***

Deadlines for the implementation of Level 2 texts, usually inextricably linked to Level 1 texts, appear generally impossible to meet when the adoption of Level 2 texts is delayed - or if the timelines are too short. For example, PRIIP KIDs should be produced for all the funds which do not currently have a UCITS KIID by end 2016 (according to Level 1 deadlines); however, the relevant Level 2 implementing measures will not be legally adopted by the European institutions before the summer or autumn 2016: how can the budgets, production and IT

processes in asset management companies reasonably be ready in just a few months? Another example can be mentioned, regarding depositary agreements for UCITS funds.

As an illustration of the complexity of the EU financial regulatory framework, please refer to the table below aiming to demonstrate the excesses of the EU regulatory process and timeline issues in the recent years.

Indeed, the following table highlights the fact that the EU financial regulatory process worked pretty well under CESR supervision and shows that the timelines for Levels 2 and 3 implementing measures were mostly respected.

As from the AIFMD and the switch to ESMA supervision, delays for the issuance of implementing measures started to extend significantly, the Level 2 and 3 measures being even sometimes released after the implementation date of the Level 1 text by the industry.

	Publication date	Entry into force date	Initial transposition deadline	Revised transposition deadline	Initial application date	Revised application date
MIF Regulations						
MIF I 2004/36	**21/04/2004**	**30/04/2004**	**30/04/2006**	**31/01/2007**	**31/01/2007**	**01/11/2007**
MIF I 2006/73	**02/09/2006**	**22/09/2006**	**31/01/2007**		**01/11/2007**	**01/11/2007**
CESR best execution	**27/05/2007**				**01/11/2007**	**01/11/2007**
UCITS IV Regulations						
OPCVM IV 2009/65	**17/11/2009**	**07/12/2009**	**01/07/2011**		**01/07/2011**	
KIID Regulation 583/2010	**10/07/2010**	**00/07/2010**			**01/07/2011**	
Directive 2010/43	**10/07/2010**	**30/07/2010**	**30/06/2011**		**01/07/2011**	
Directive 2010/42	**10/07/2010**	**30/07/2010**	**30/06/2011**		**01/07/2011**	
CESR on going charge KIID	**01/07/2010**	**01/07/2010**			**01/07/2011**	
CESR template KIID 10-1321	**20/12/2010**	**20/12/2010**			**01/07/2011**	
AIFM Regulations						
AIFM Directive 2011/61	**01/07/2011**	**20/07/2011**	**22/07/2013**		**22/07/2013**	
AIFM Regulation 231/2013	**22/03/2013**	**12/03/2013**			**22/07/2013**	
Guidelines ESMA AIF Definition N°013/611	**13/08/2013**	**13/08/2013**			**13/08/2013 FIA definition released more than 1 year after the application date**	

	Publication date	Entry into force date	Initial transposition deadline	Revised transposition deadline	Initial application date	Revised application date
Regulation 2014/694 (définition of open ended AIF and closed ended AIF)	**24/06/2014**	**14/08/2014**			**14/08/2014 Open ended definition released more than 1 year after the application date**	
UCITS V Regulations						
UCITS V Directive	**28/08/2014**	**18/09/2014**	**18/03/2016**		**18/03/2016**	
Implementing Regulation UCITS V	**Not released to date**	**Not released to date**			**No Level 2 measures yet while entering into application soon**	
MIF II Regulations						
MIF Directive 2014/ 65	**12/06/2014**	**01/07/2014**	**03/07/2016**		**03/01/2017**	
Implementing Measures	**Not released to date**	**Not released to date**	**Not released to date**		**Not released to date**	**Not released to date**
ELTIF Regulations						
ELTIF Regulation	**19/05/2015**	**09/06/2015**			**09/12/2015**	
Implementing Measures	**Not released to date**	**Not released to date**	**Not released to date**		**No Level 2 measures yet while already entered into application**	
PRIIPS Regulations						
PRIIPS Regulation 2014/1286	**09/12/2014**	**29/12/2014**			**31/12/2016**	
Implementing measures	**Not released to date**	**Not released to date**	**Not released to date**		**No Level 2 measures yet while entering into application within 1 year**	**Not released to date**

Another striking example of the difficulties faced by the industry in anticipating and implementing EU financial regulations is **EMIR** whose implementation is still in progress, whereas the Level 1 Regulation was released in July 2012 (more than 3 years and a half ago) as outlined below:

EMIR IMPLEMENTATION TIMELINE

Publication date: **27 July 2012**
Entry into force: **16 August 2012** (20 days after its publication date)

I) **Dates of entry into force of non-cleared OTC Derivatives obligations**:

- Timely confirmation requirement: 15 March 2013
- Daily valuation of Derivatives contracts requirement: 15 March 2013
- Dispute resolution requirement: 15 September 2013
- Portfolio réconciliation requirement: 15 September 2013
- Portfolio compression requirement: 15 September 2013
- Collateral exchange requirements: As from September 2016 (provisional timetable)

II) **Dates of entry into force of clearing obligations of certain OTC Derivatives contracts**:

As from 21 June 2016 and until 21 December 2018 (depending on the relevant categories) only on interest rates Derivatives.

Other Derivatives contracts should be covered in the future.

III) **Dates of entry into force of reporting obligations to a trading repository** for operations related to the conclusion, modification or extinction of derivatives contracts : **12 February 2014**

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

So as to avoid an impossible implementation as a result of delays in the adoption of Level 2 texts by the EC, we suggest the EC to explore the following two options:

1) The implementation framework is set in the Level 1 text but foresees that the implementation date will start X months later, e.g. 18 months, after the publication date of the Level 2 texts;

2) The implementation date of a text is set not in the Level 1 text but in an ad hoc Level 2 Regulation adopted by the EC (by power of delegation of EP and Council). It would be underlined in the Level 1 text that an ad hoc Level 2 text is to set the application date.

In addition, the implementation of EU texts by the industry is not only determined by the Level 2 but also by:

- → Level 3 measures (ESMA guidelines: for example, on remuneration): update of the documentation under UCITS V and of our remuneration policies;

- additional national texts (in France: AMF General Regulation, AMF instructions), which take a lot of time to be amended (e.g.: UCITS V: update of the documentation - Prospectus, KIID, annual report), the update of the AMF General Regulation and Product instructions will not be adopted on time by 18.03.2016)

- Level 4 measures (ESMA Supervisory convergence of the consistent and harmonized implementation across the 28 Member States so as to ensure a level playing field of high quality regulation and supervision without regulatory arbitrage or a race to the bottom between Member States), which are often poorly or insufficiently performed by ESMA.

Issue 6 – Reporting and disclosure obligations

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.

Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals.

Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

Example 1

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

EMIR, AIFM Directive 2011/61/EU, MiFID II/MiFIR, SFTR, UCITS, SOLVENCY II, MMF

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Lack of rationalization of reporting requirements in terms of data standards and contents

In the aftermath of the financial crisis, several new or enhanced reporting requirements were imposed upon asset managers and the broader financial sector. These pertain to

individual transaction data on the one hand and to positions and their inherent risks on the other hand.

The applicable and pending requirements for transaction-level reporting under EMIR, MiFID II/MiFIR and SFT Regulation display considerable differences in terms of reporting details, reporting channels, data repositories and applicable IT standards.
The same is true with regard to the regulatory reporting on positions and risks required under AIFMD, UCITS Directive and contemplated MMF Regulation as well as to reporting obligations for institutional investors under Solvency II/CRR which require delivery of data and further support services by asset managers. In addition, reporting is often insufficiently standardized, which causes significant problems in the collection of data as currently experienced under AIFMD. In particular, there are idiosyncrasies in the AIFMD reporting requirements of each Member State, as many seem to use different template layouts and different software versions to the main ESMA requirements, which means that each country-specific particularity has to be taken into account and no single reporting system for the whole EU exists. This leads to completing the AIFMD reporting becoming a very time and resource intensive exercise, as each AIF report (quarterly) has over 200 data fields to fill out. Some of the data points are varied and open to interpretation and calculation, whereas others need converting to a specific file format for transmission. This data is then sent to and validated by the local regulators before being passed on to ESMA.
The different data standards, formats and contents represent a huge burden for the industry in both operational and financial terms and impede efficient supervision concerning in particular macroeconomic risks. Enhancing the consistency of regulatory reporting is therefore highly needed in order to enable regulators to use the stored data for the purpose of detecting systemic risk and to keep the administrative burden for market participants at a reasonable level. Moreover, there is also an urgent need for stronger integration in technological terms. The use of common reporting channels and standardized IT formats would enable regulators to use more efficiently the loads of information submitted for supervisory purposes, especially for prompt detection of systemic risk, and should entail cost savings for market participants such as fund management companies which may amount to millions of euros.
Furthermore, the increase in reporting requirements in terms of data creates a market oligopoly for data providers, which results in the explosion of costs charged to asset managers by such intermediaries.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We call on the European Commission to ensure that regulatory reporting requirements are accompanied by practical implementation deadlines which allow all market participants to implement new regulatory obligations on time. Lessons should be learned from the practical experience with EMIR reporting obligations, where the lack of sufficient implementation time combined with legal and operational uncertainty due to undefined ESMA standards significantly hampered the ability of the market to timely implement the relevant technical

specifications.

- A possible solution to the varying reporting requirements under the AIFMD may be to create a central data collection point within ESMA which will ensure the use of a single format with corresponding data requirements; this would relieve the necessity for NCAs to collect this data and pass it on to ESMA.

- Use the existing Trade Repositories (as set in EMIR and SFTR) and the existing data under MiFID I to build up a Consolidated Tape across instruments.

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

EMIR/SFTR

Article 9 of the EMIR regulation of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
Article 4 of the proposal dated 29 01 2014 of a regulation on reporting and transparency of securities financing transactions

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Unnecessary dual sided reporting requirements

Those rules provide for a double reporting of a single transaction by both counterparties. Double sided reporting was supposed to increase the quality of data at a low operational cost. It proves to be unduly burdensome, costly and complex. It creates many error signals that reduce the quantity of data processed in contradiction with the objective of getting an immediate overview of the market. For instance, a big French player estimated that the implementation cost of the EMIR declaration of the non-listed derivatives solely ranges from EUR 250.000 up to EUR 300.000.

By contrast, in the USA, reporting under the Dodd Frank Act is single sided, made by the "most active" counterparty.

As a result of the double sided reporting requirement, EU counterparties have to organize an uneasy transfer of data on time for them to be able to control what is reported in their name. As a matter of fact, in the EU, many buy side actors have required their "active" counterparty, i.e. the investment bank they deal with or the clearing broker for exchange traded or centrally cleared deals, to report that they deal with this obligation.

Additionally, the delegation of this EMIR reporting requirement has proven to be difficult with respect to futures/listed derivatives. The clearing brokers who are in a position to take care of this obligation impose to asset managers strict contractual delegation provisions with no possibility for the delegating entity to oversight and control the actual reporting performed by the clearing broker (e.g. no audit log).

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to adopt a single-sided reporting obligation, as it would significantly facilitate the communication of data available to regulators by removing the requirement under the dual-sided reporting to match trades (both legal entity identifiers (LEIs) and unique trade identifiers (UTIs) which are not yet standardized), reduce the operational complexity of the current reporting framework, lower the related costs, and remove the reporting burden for less sophisticated users.

Example 3

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

EMIR

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Useless front/ back loading

Due to the difference of timing between the date of application and the effective date of implementation, we come to the strange situation whereby deals that no longer live at the time of actual implementation of the reporting obligation in February 2014 could be reportable if dealt after August 2012, date of application of EMIR. New regulation should never be retroactive and should not apply to deals concluded prior to its application date.

The aim of EMIR reporting is to provide authorities with a better view of existing positions or market exposures by different stakeholders on derivative markets. Reporting deals that are no longer active is meaningless. More generally, considering all the regulations that require reporting, front and back loading should be very limited: first, short term deals will disappear and should not be loaded, small size deals should be disregarded as they are insignificant, front loading should be limited to a few larger actors.

The price of derivatives traded bilaterally may vary depending on whether initial margin is provided or not. Loading the positions on the new regulation and applying a new collateral obligation would simply change the economic parameters of the transactions. In that sense, back/front loading (that does not concern reporting) should be avoided as well.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to remove the requirement for front and back loading of existing deals, when a new legislation is passed, except for reporting long term deals of a significant size that impact the assessment of systemic risk. This, for instance, could be applied in the final text of the proposal on securitization.

Example 4

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
MiFID, UCITS, AIFMD, IDD and PRIIPs

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Inconsistent disclosure requirements

The intense regulatory production agenda over the past few years - MiFID II, the PRIIPs Regulation, IDD and UCITS V Directive - resulted in a series of overlapping and contradicting requirements regarding investor information. From an investor protection perspective, it is crucial to ensure a regulatory level playing field in the distribution of investment products.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

With the aim to strengthen investor protection, information disclosure needs to be meaningful to end investors, who should not be overburdened with excessively detailed information. Equally, disclosure standards must be consistent for all investment products in revealing both costs and risks relating to investing, thereby offering investors a meaningful comparison of similar investment options wrapped up in different products.

Issue 7 – Contractual documentation

Standardised documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/ investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not adequately meet the objectives above. Please indicate where digitalisation and digital standards could help to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
UCITS V Directive (2014/91/EU) and its delegated Regulation

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Depositary Agreement

Protracted delays in the adoption of the delegated Regulation by the EC placed the UCITS asset management industry and those institutions providing depositary services and other UCITS service providers in the impossibility of meeting the Directive's requirements on time

for the transposition deadline of 18 March 2016.
The most important challenges that UCITS asset management companies and depositary institutions in Europe are facing are as follows:

I. Legal and operational challenges as a result of having only until the 18 March 2016 deadline to update existing agreements for countless UCITS fund ranges and AuM volumes, between:

- The depositary and the management company/fund; and
- The depositary and its entire sub-custody chains, including entities located in non-EU jurisdictions, with the contents of the Level 2 Regulation constituting key parameters for the drafting of the contractual documentation.

Moreover, new complications arise by having to meet those "new" requirements not foreseen under the analogous AIFMD regime, e.g. the implementation of the independence requirements between the asset management company and the depositary, and potentially delegates of the depositary, necessarily calls for a sufficient amount of time following the release of the Level 2 for firms to assess if their current arrangements are compliant, to initiate and implement any required changes and to carry out an adequate due diligence process where required. The additional need for independent legal advice on local insolvency law regimes for non-EU third countries would be another complicating factor;

II. Operational risk linked to implementing procedures and setting-up the necessary infrastructure to comply with the Level 2 Regulation. The volumes involved require scalable solutions aimed at reducing these risks and such short timeframes do not allow for this;

III. Fragmented implementation across EU Member States, undermining legal certainty, where each NCA would implement the "UCITS V" package on its own domestic terms and calendars, with an opportunity (as being considered by certain NCAs) to opt for a parallel regime of both new EU and old domestic rules over a one- or two-year period;

IV. Costs in terms of having to re-negotiate or amend thousands of appointment contracts, service-level agreements (SLAs) and their appendices twice in the matter of six months (i.e. once to comply with the Directive's transposition deadline and subsequently to adhere to the delegated Regulation's probable application date). The time and efforts of internal legal and compliance teams could be used more efficiently. Furthermore, since negotiation of a depositary contract is time consuming and burdensome, smaller asset managers do not have much leverage to discuss its terms. Hence, in several countries and for instance in France, professional associations of depositories and asset managers work together on a standard contract or at least on standard provisions. The risk is high to have asset managers being forced to sign as a matter of urgency contracts that they will not have time to negotiate,

except with the expensive help of external lawyers, or to rely extensively on the costlier role of external consultants within project teams;

V. Legal uncertainty. How can the Depositary agreement be set up as of 18 March 2016 if the exact obligations of the depositary are still unclear in the absence of the Level 2 Regulation?

VI. Problematic timeline for the adaptation of disclosures on UCITS manager remuneration in prospectuses and annual reports in the absence of ESMA's final Guidelines on sound remuneration policies for UCITS managers by the Level 1 transposition deadline.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Bearing these essential considerations in mind, but cognizant of the difficulties in amending the transposition deadline of the Level 1 Directive (i.e. probably the best solution), we - acting jointly with the representatives of the European depositary and trust industry - called on the EC to issue - possibly in coordination with ESMA and its NCA Members - appropriate guidance and/or communication to the UCITS industry as to transitional measures to be put in place by the industry during the period between 18 March 2016 and the application date of the UCITS V implementing measures.

We also recommended a postponement of the delegated Regulation's date of application, from the envisaged six to nine months from its entry into force, thereby granting the UCITS industry as a whole more reasonable time to comply with the new rules.

Finally, we noted that, even in those areas where the corresponding delegated acts accompanying the earlier AIFM Directive (2001/61/EU) of 8 June 2011 do overlap with UCITS V, they can – by nature – not achieve the desirable degree of legal certainty that the European depositary institutions absolutely need, as they strive to meet their enhanced responsibilities under the recently revised "UCITS V" framework. Only the final UCITS V delegated act can provide this certainty.

As the draft Regulation was adopted by the College on 17 December 2015, opportunities for remedies appear to have vanished.

We would only recommend that implementing measures be adopted and published well in advance of the transposition deadlines in the future.

Example 2

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

All pieces of EU legislation applicable to asset management companies and its clients which impose in practice to enter into contractual arrangements with data providers

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Data provider Agreements

With a view to comfort financial stability and fight against systemic risk, authorities addressed the case of Credit Rating Agencies (CRAs) and are, in the EU, about to regulate administrators of indices and benchmarks. These are essential steps. Data providers are other actors that are heavily relied upon by market actors. Like CRAs and major benchmark administrators, they are not numerous and may all be tempted to take advantage of their de facto oligopolistic position.

Negotiation of contracts with data providers, including CRAs and benchmark administrators, is difficult for actors smaller than large investment banks. We more specifically focus on the definition of proprietary data, the existence of commercial offers adapted to clients' needs, a specific treatment for data used by the subscriber or its client in the framework of a regulatory reporting, the responsibilities of the provider, the possibility to buy data and not only access to data, the development of competition in the industry…

Over the last years we tried to reduce costs; however, there is one area where external costs had to increase: data. Some of these costs directly relate to the regulation concerning investors on the one hand and data providers like CRAs on the other hand. Others are due to the business model whereby each level in the chain has to pay for what it uses or transfers. Eventually, the end investor (in the case of asset management) pays several times for the same data.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We urge legislators to take into account the cost that results for financial institutions from regulatory requirements and especially in terms of reporting. A common rule should be introduced that data used for regulatory purpose is paid once and for all.

Issue 8 – Rules outdated due to technological change

Please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

All documents to be sent to national regulators could be sent in electronic format, without faculty for national regulators to require original paper documents whereas currently some national regulators request paper documents and even more frequently original papers.

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

All pieces of EU legislation which require the sending of documents to national regulators

* **Please provide us with supporting relevant and verifiable empirical evidence for**

your example:

Hard copies/original documents required by national regulators

For instance, the German securities regulator (Bafin) requires KYC documents in paper version and in original version andpaper and/or original documents are also requested by the Swiss regulator (FINMA).

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

All pieces of EU legislation regarding asset management companies should allow them to send electronic documents to national regulators. This adaptation of EU legislation would be fully in line with the general objective of the EC to achieve a Digital Agenda.

Issue 9 – Barriers to entry

Please document barriers to market entry arising from regulation that the EU should help address. Have the new rules given rise to any new barriers to entry for new market players to challenge incumbents or address hitherto unmet customer needs?

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS Directive 2009/65/EC

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Functioning of EU fund passports: Gold-plated marketing requirements for UCITS funds

Despite the original intent of a cross-border notification regime, the number of notification files - one for each of the host competent authorities in the Member State where the manager intends to market the fund's shares or units - remains overly burdensome as a result of additional requirements imposed by the host regulator.

In order to facilitate cross-border fund distribution, it is very important to introduce smooth and standardized processes and to avoid as much as possible national regulations gold-plating the EU rules. This is of particular importance in relation to the functioning of the EU passports since additional obligations in this regard act as deterrents for middle-sized and smaller fund managers to offer their products cross-border.

Need to appoint a local paying agent or representative agent

The modalities of UCITS marketing and dealing with redemption requests/other payments to investors are subject to diverging national requirements under Art. 91(3) of the UCITS Directive. In this regard, some Member States require the identification of a local financial

institution as a paying agent who satisfies redemption requests and makes other payments to investors or as an information agent whose role is to provide information on the funds to local investors. These requirements which are not foreseen by the UCITS Directive significantly increase the costs of marketing UCITS in the relevant jurisdictions.

Documents required which are additional to the obligations of the UCITS IV Directive (Annex 1) in some host Member States

Specific addendum to the Fund prospectus or notification letter are required in many Member States, e.g.:
Germany: "German Chapter"
Austria: "Austrian country supplement"
Denmark: "Danish country supplement"
Luxembourg: "Addendum to the prospectus"
UK: "UK country supplement"
Belgium: "Very exhaustive information to be notified to the FSMA in relation to local distribution"

Excessive review of marketing materials by host regulators regardless of the means of communication (paper, internet, social networks)

The possibility let to national supervisory authorities of reviewing/approving all marketing/sales documentation related to foreign domiciled UCITS marketed in their respective domestic market (option they use intensively) tends to induce implementing mechanisms/obligations that are more stringent in terms of investor disclosure/information and increase the costs of marketing UCITS in spite of the passporting notification system set out by the UCITS IV Directive.

One of our members stressed that the extra cost may represent up to 15% per host country as compared to initial charge, not to mention the need for staff to acquire the expertise on such local regulations/constraints.

The following examples can be mentioned:

Italy: UCITS intended to be marketed to retail investors in Italy must comply with strengthened obligations (rather burdensome) in terms of investor information and documentation. As a case in point, an Italian subscription form ("modulo di sottoscrizione") shall be updated prior any marketing of funds to retail investors. Besides, the fund information disclosed on the asset management company's website is required to be provided *for information only* to the Italian regulator ("CONSOB") if aimed at retail investors. Such requirement imposes further delays in relation to the marketing of UCITS to the public in Italy.

Belgium: Any marketing materials (be it documents or advertising) disseminated in writing or by any other mean of communication must be approved beforehand by the FSMA (Ref. Arrêté royal Art. 22)

<u>Modification of Fund Documentation: Additional constraints imposed by certain host Member States on the content or the release of shareholders' letters</u>

As regards Shareholders' letters, some national regulators may have specific requirements which are considered by market participants as burdensome and sometimes costly from an administrative standpoint and that add some further delays to the cross-border distribution of funds throughout Europe.

Belgium: Submission of any shareholders' draft letter to the Belgian regulator ("FSMA") for approval and inclusion of specific mentions or additional disclosures intended to Belgian investors prior any dissemination. Such requirement delays the dissemination of the letter to all fund investors (pursuant to the application of fair treatment principle among all investors) and therefore the implementation of the changes relating to the relevant UCITS, the notification process to the other Host Member States and consequently the marketing of the UCITS in such local markets.

Germany: The national supervisory authority ("BAFIN") imposes the recharging of costs incurred by the distributors to the Fund/Management Company in relation to the dissemination of shareholder's letters involving a substantial change for German investors ("Durable medium obligations").

Furthermore, pursuant to some host Member State legislation (in particular in Belgium), management companies must disseminate press release(s) to inform shareholders of UCITS even if no press release is required in the home Member State. Those press releases are additional information to those (already) disseminated to shareholders of the host Member State.

<u>Modification of documents: Additional constraints imposed by certain host Member States in relation to the modification of the Articles of Incorporation and the appointment of an administrator of a SICAV</u>

The evolution of a product can be subject to a prior authorization in certain countries and not in others. As an example, the modification of articles of incorporation of a SICAV and the appointment of an administrator of a SICAV is subject to a prior approval of the CSSF (article 27(1) of the Luxembourg law dated 17 December 2010) and not of the AMF.

<u>Fees to local authorities</u>

Fees required by national regulators, when EU funds are registered in another Member State through the passport notification process, vary a lot from one national regulator to another. Additionally, the date of payment of the relevant registration fee may also vary from one national regulator to another: either, they have to be paid before the notification letter is sent to the supervisory authority or once the UCITS is able to market its shares in accordance with the procedure of notification.

Lack of harmonization of EU fund passport notification process to regulators

Some regulators impose the use of outdated technologies or to encode documents while filing the notification request, which makes the work tedious from an operational standpoint.

Below are examples of constraints on the submission of marketing files for UCITS funds to national regulators:

AMF (French Regulator): GECO Database (old database, difficulties to download heavy files…)
CSSF (Luxembourg): Need to encode each document contained in the marketing file to be read by the CSSF computer server: it is very constraining and potentially a source of errors
CBI (Ireland): the easiest way of marketing file deposit, since we just have to send the full file to a CBI email address. We request a harmonization of the file submission on the Irish example.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The erection of more or less implicit barriers, sometimes merely administrative, by host Member States tends to reduce the reality of the freedom to distribute products throughout Europe.

As a consequence, we see a case for harmonizing the notification process, the marketing standards for UCITS using the EU passport to market their units cross-border as well as the national requirement for fund tax reporting. Indeed, an extensive harmonization of product-related marketing rules, including the means of communication, has the potential of reducing costs and should thus enhance the economic appeal of cross-border distribution. The setting up of a central portal on ESMA website for instance, or at least of a harmonized standard filing process (e.g. sending the file by email with acknowledgement of receipt), would ease the use of the EU fund passport. Lastly, the EU institutions should continue working towards a truly single rulebook for EU funds (especially UCITS) and common marketing rules in order to drastically reduce the workload of national regulators when they are notified of incoming funds, depriving them from the rationale to charge high fees. The work towards fully European funds could end up with them not being "national" anymore (.it, .fr, .lux, .irl, etc.) but European (.eu).

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
AIFM Directive 2011/61/EU

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
Difficulty in making use of the AIFM Management Company Passport in some Member States

The Management Company passport does not work yet in some Member States, such as in Luxembourg:

In Luxembourg, a differentiation seems to be made between the UCITS Directive, which provides for a full asset management company passport, and the AIFM Directive which is felt – wrongly we believe – not to provide such a "full" passport.
Indeed, the CSSF requires a General Partner (GP) located in Luxembourg for locally-domiciled SIFs under the form of a Société en Commandite par Actions, despite the AIFM Management Company passport. In this case, a "co-management" system is imposed, with a management agreement imposed between the two entities (the GP and the AIFM). Furthermore, the CSSF requires a majority of SICAV Directors to be based in Luxembourg.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Ensuring a really smooth functioning of the EU AIF and EU AIFM passports should be considered as a pre-requisite before enlarging the passports to non-EU AIFs and non-EU AIFMs.

Example 3

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
AIFM Directive 2011/61/EU

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
Hurdles to the cross-border offering of Employee shareholding funds

More than 120 billion euros are managed within the framework of employee savings plans in France, of which 47 billion in shares of firms (employee shareholding funds).
In short, employee savings schemes rely on an agreement whereby the employer and the employees agree to offer funds to collect money that is by law or by contract paid to employees with an obligation of lock up. Lock up is either 5 years or till retirement age depending on the schemes. There are exceptions allowing for early redemption. Employees subscribe units of funds totally dedicated to these schemes and if they can top up with their own savings it is within a limit of 25% of their earnings. In any case, only employees and former employees can access the funds. Personal securities accounts are opened for each

employee on the basis of information provided by the employer.

Firms which developed at pan-European level would like to offer all of their EU employees access to their shares when they launch a capital increase with a tranche dedicated to their employees, with a usual discount of 20% compared to the public offer.

The introduction of the AIFMD made this impossible, because some regulators consider that in the absence of a retail passport for AIFs, there is no possibility to offer shares of the company to employees who are retail investors. It is badly resented, as social inequity and unfair discriminative practices, by employees that are denied the possibility to subscribe.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

For the specific issue of employee shareholding funds, a workable solution is urgently needed throughout the EU. A common view should be confirmed that there is neither marketing nor offer but a strictly limited distribution of shares to qualified persons, namely employees who have the choice to accept or refuse to participate.

Consequently, employee shareholding funds should be open for subscription by any EU employee of the firm. More generally, employee savings schemes should be considered as a specific segment and in many regulations benefit from a carve out on the basis of the absence of commercialization.

Example 4

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

National Taxation Laws

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Tax issues – fund tax reporting and withholding tax issues

Local rules require asset managers to provide specific data that is absolutely necessary to receive the appropriate tax treatment (e.g. in Belgium, Germany, Austria and the UK). These different national requirements relating to fund tax reporting (e.g. BE, DE, AUT, UK) constitute a barrier to the development of a cross-border offer of funds. The multiplication of these local specificities is an impediment to the development of a cross-border distribution of funds. The same point is valid when addressing third country markets.

In addition, the cross-border distribution of funds in the EU often remains penalized by the introduction of local tax regimes that are difficult to implement, including but not limited to the withholding tax system.

Indeed, withholding taxes currently applied at national level and the fact that in many cases investment funds do not directly have access to reduced withholding tax rates available under tax treaties act as a barrier. The time and cost of recovery of withholding taxes in many cases act as deterrent for investment funds and pension funds to invest in States other than that of their residence where they are normally taxed at a low rate or exempt from taxes. Not to mention the difficulties to get reimbursement of withholding tax unduly levied.

The European Court of Justice decided that European countries cannot levy a withholding tax (WHT) on dividends paid to foreign funds where national funds are not subject to the same WHT. Therefore, many funds asked for the reimbursement of withholding taxes. It appears that some countries pay them back (France, Norway, Belgium, Finland, Poland, Sweden for example). However, some countries do not reimburse or ask for detailed documentation in order to complicate and differ the reimbursements (Germany, Austria, The Netherlands, Denmark for example).

Taxation on accrued or paid coupon varies from country to country or within a country from one investor's tax regime to another. Taxation of capital gain rules may as well take into consideration different elements such as the period of holding. This may explain the multiplication of funds with limited assets under management in the EU as compared to the USA.

Moreover, in some countries (e.g. Germany and Austria), foreign domiciled funds are required to appoint for that purpose a tax representative when marketed to the public, which creates additional complexity and entails extra costs for non-domestic funds (i.e. tax representative fees + newspaper publication fee of this tax data).

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

First, we would suggest the EC to set a single pan-European tax reporting format for EU funds. Within the EU, the long term objective is to develop a harmonized framework for the taxation of savings and investment products; for funds, it will not be achieved if tax reportings are not harmonized across Member States. This lack of harmonization represents a barrier to entry for non-local management companies as compared to local ones. As regards third countries, international negotiations should build on reciprocity and mutual recognition and avoid one sided equivalence and unilateral recognition.

Second, regarding withholding tax issues, 2 solutions may be considered:

- The fund is considered as the beneficial owner (or a qualified person) and qualifies for the Treaty. This solution, which is supported by the 2010 OECD CIV report, should be applied to all widely held open ended funds;
- The TRACE project.

Given that both Directive 2014/107/UE and Common Reporting Standards of the OECD provide for an exchange of tax information between countries, building on the experience on exchange of information of these initiatives, the implementation of the TRACE (Treaty

Relief and Compliance Enhancement) initiative in EU countries should be fostered in order to ease the problem of recovery of withholding taxes and reduce tax barriers on cross-border investments for funds that cannot be considered as beneficial owners.

Example 5

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Securitization Regulation vs. AIFMD and MiFID (regarding eligibility for investment firms) and Solvency II (regarding capital constraints).

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Under the Securitization Regulation proposal, AIFMs do not qualify as sponsors

– Sponsor's status

CLOs are often managed by independent asset managers and as such usually do not have an "originator" or an "original lender" from whom the portfolio is purchased and which raises capital through the sale of the portfolio from its balance sheet.

Nevertheless, the STS Securitization Regulation proposal keeps the CRR definition of "sponsor", which includes either a "credit institution" or an "investment firm". Thus, whether a CLO manager qualifies as a "sponsor" under the CRR will depend upon the MiFID authorizations (or permissions) that the collateral manager holds from its EU home country supervisor. However, most of EU national supervisors do not consider UCITS managers nor AIFMs as "investment firms".

This raises an issue of level playing field among market participants, and therefore a barrier to entry.

- Solvency II

The existing Solvency II regime bases its risk weighting on securitizations which meet the requirements either of a "Type 1" or "Type 2" securitization. While there are some similarities to the STS criteria, the Solvency II criteria are fundamentally different.

With Solvency II going live as of 1 January 2016, insurers are faced with having to implement the Solvency II due diligence and risk weighting requirements, and then needing to re-adapt these to reflect the considerable changes that the STS Regulation will bring. Adapting systems and internal controls to reflect the differences will not be a minor change.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

- Sponsor's status:

  Our recommendation is to open the "Sponsor" definition to UCITS/AIFM asset managers:

Indeed, this would:

- Enable UCITS/AIFM asset managers to act as sponsors for the purpose of retention (and not only with a delegation of the sponsor), rather than requiring them to act as originators as is currently the case. In particular a UCITS/AIFM Manager should assume the risk retention requirement;
- Create a common level playing field for all market participants as asset managers would be allowed to act as sponsors in both European and US environments.

- Solvency II

We would therefore ask the EC to give some clarity over their intent as to how STS securitizations are meant to fit with the existing Type 1 – Type 2 rules in Solvency II:

- will STS rules replace, or add to Solvency II rules; or
- should the STS rules change the current article 177 in Solvency II?

Additionally, we urge the EC to concurrently propose a modification of the Solvency II rules concerning securitization rather than wait until the Securitization framework is agreed. Should this not be the case, insurers may decide to exit the securitization market permanently.

Issue 10 – Links between individual rules and overall cumulative impact

Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

Example 1

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

PRIIPs/UCITS/ AIFMD

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

PRIIPs KID implementation in 2017 irrespective of Level 1 exemption for UCITS until 2020 and unrealistic implementation timelines

UCITS are retail products that will be covered by the PRIIPs Regulation. However, until end 2019, UCITS shall be exempt from PRIIPs obligations (PRIIPs Level 1, Art. 32).

Regarding life insurance contracts, if they are unit-linked the PRIIP KID shall provide at least a generic description of the underlying investment options (PRIIPs Level 1, Art. 6) - which may very often include UCITS funds in practice - and this obligation will apply from end 2016.

The point is that currently the ESAs would like to oblige UCITS asset managers to anticipate the adoption of the PRIIPs KID, at least when UCITS funds are underlying investment options of insurance unit-linked products.

From a legal perspective, we do not agree with this proposed obligation by ESAs. In our view, the two Level 2 provisions are fully compatible: insurance wrappers might have to provide for a generic description of their wrapper while the underlying UCITS funds could still provide for their UCITS KIDs until the end of 2019.

From a more general perspective, the final Level 2 measures will not be adopted before the autumn 2016 while many non-UCITS funds managed by our members - as they do not have a UCITS KIID - will be expected to comply with the PRIIPs Regulation by the end of 2016, i.e. less than three months later, asset management companies cannot reasonably put in place specific IT processes and KID production in such a short time-frame.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest keeping the exemption for UCITS to publish PRIIPs KID before end 2019; in particular, to confirm that PRIIP KIDs are not required for UCITS which are underlying options on insurance unit-linked products. Furthermore, we call for a deferral period of implementation for PRIIPs obligations until end 2018. More generally, as far as the implementation period is concerned, a minimum 18 month period starting from the date of the final adoption of Level 2 should apply in order to give a reasonable timeframe for fund managers to start applying new rules (this should be a general rule).

Example 2

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

The **EBA Guidelines on sound remuneration policies** (EBA/GL/2015/22) of 21 December 2015, specifically paragraph 68, in conjunction with the exchange of letters between the Staff of the EBA and the Directorate General for Justice and Consumers of the European Commission dated 23 February 2015.

The relevant provisions of the sectoral legislation are as follows:
Regarding **AIFMD**: Article 13 and Annex II of the Directive (2001/61/EU), accompanied by the abovementioned ESMA Guidelines (ESMA/2013/232);

Regarding **UCITS**: Articles 14a and 14b of the amended “UCITS V” Directive (2014/91/EU), accompanied by the draft ESMA Guidelines as published in the consultation of 24 July 2015 (2015/ESMA/1172)

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Risk of cumulative layers of regulation on Remuneration rules for AIFs and UCITS managed by asset management companies which are subsidiaries of banking groups – subsidiarity

Remuneration rules should focus on mitigating the risks in the business and particularly for asset management, aligning the interests of the firm with that of the customer. They should be consistent and not depend on, for example, whether the manager is part of a banking or insurance group or stand-alone, or whether it is managing UCITS or AIFs. Until this day, remuneration rules applicable to asset managers (i.e. UCITS, AIFMD and MiFID) across the different EU frameworks have worked remarkably well in guaranteeing the fundamental alignment as described above. Underpinning this consistency is the proper application of the remuneration principle, allowing for remuneration principles – especially within a group context – to be adapted to the complexity, size, internal organization, scope, but above all to the "agency" nature of the asset management business.

The application of such rules is currently challenged by the EBA in its final Guidelines on sound remuneration policies (EBA/GL/2015/22) of 21 December 2015. Here, the EBA has a potentially controversial reading of the proportionality principle under CRD IV, in particular in the manner it envisages extending the application of the CRD IV specific remuneration principles to all group entities, including asset management companies. This reading is at risk of disregarding, over-ruling and confusing the relevant sectoral remuneration requirements and practices currently in force in the asset management industry. Generally, we note a clear tendency to consider that asset management subsidiaries have always a material impact on the risk profile of their banking parent, even though they may be clearly non material business units of their banking parent.

The fact that the business models of banking and asset management are very different (notably because asset management entities manage risks on behalf of their clients) seems to be worryingly ignored. In addition, remuneration policy and practice may end up insufficiently differentiated. As a result, the fact that these rules apply to asset management subsidiaries of banks and not to independent asset management players, creates a damagingly unlevel playing field. For example, the notion of "excessive risk taking" applied to asset management activities is used loosely and without a sufficient understanding of the "agency" nature of the asset management business overall.

Thus, EBA's position is deeply at odds with the existing remuneration requirements of the AIFMD (Annex II), as further substantiated in ESMA's 2013 Guidelines on sound remuneration policies under the AIFMD, as well as with those of the "UCITS V" Directive and in proposed ESMA guidelines on the same topic (still pending final publication). The bonus cap is not and should not be implemented in asset management subsidiaries of banking parents unless they have a proven significant impact on the risk profile of such a parent.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We would suggest aligning EBA with ESMA interpretation of subsidiarity: "most effective" framework prevails, to the exclusion of others, with freedom left to firms/regulators to define which framework is "most effective".

Furthermore, we urge for a closer internal coordination among the competent EC services, as well as between the EC and EBA staff. We also believe that an increased understanding within these institutions about the differences between banking and non-banking activities would facilitate an appropriate outcome.

We would recommend safeguarding the EU securities markets and, by doing this, avoid unhelpful read-across and damaging extrapolation from debates of another sector held by bank supervisors to the asset management industry.

Concretely, article 109-2 of CRD IV should not be construed as propagating application of article 94 of CRD IV to financial institutions (not subject to CRD IV). This article 109-2 should only be read as requiring consistency and transparency in processes and methods and exchange of information and data on remuneration, to allow for effective overall supervision at the banking parent level.

Moreover, article 4.5 of RTS 604/2014 should not allow EBA to gold-plate CRD IV, restricting the ability of staff:

(i) meeting the quantitative threshold (1 million euros total remuneration), but

(ii) not having a material impact on the risk profile of their bank parent (e.g. because they are active only in the non material business unit employing them),

to be exempted from the CRD IV remuneration requirements stated in article 94, only in cases of "**exceptional circumstances**".

An opportunity to improve inter-service consultation on the specific issue of remuneration will be offered during the preparation of the EC review of remuneration principles under CRD IV (see Article 161 thereof) by 30 June 2016. We trust the services involved will draw from the ample and factual evidence presented by our industry on numerous recent occasions to prepare a report (to be addressed to the Council and European Parliament) whose contents will reflect and uphold the principle of proportionality in its consistent application across CRD IV and the applicable asset management-specific legislation of the UCITS and AIFM Directives.

Example 3

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**
ESMA Guidelines on ETFs and other UCITS issues/EMIR

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

The access of UCITS to liquidity for the purpose of collateralizing derivative transactions currently is gravely inhibited due to the ESMA Guidelines on ETFs and other UCITS issues. According to these guidelines, the purchase price of a repo contract shall be treated as collateral in itself and may not be reused or reinvested by the fund. Since clearing banks only accept a limited range of non-cash collateral (not included in all UCITS), liquidity demand in UCITS will increase with the broader application of EMIR.
The ESMA Guidelines deprive UCITS of the main liquidity source, as short-term credits are only allowed up to 10% of the fund's NAV and generally are used for handling fund redemption requests. Moreover, UCITS generally are not able to use cash funds collected from investors as collateral, since they are contractually obliged to invest these inflows in accordance with the relevant investment strategy.

* **If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

In our view, the use of cash from repos for the purpose of collateralizing centrally cleared derivative transactions does not entail any additional risk for the fund and its investors compared e.g. to deposits with credit institutions which are admitted under the ESMA Guidelines. Therefore, **UCITS should be allowed to use cash obtained through repo transactions or other portfolio management techniques for the purpose of collateralizing other transactions subject to central clearing**.

Issue 11 – Definitions

Different pieces of financial services legislation contain similar definitions, but the definitions sometimes vary (for example, the definition of SMEs). Please indicate specific areas of financial services legislation where further clarification and/or consistency of definitions would be beneficial.

The **lack of a generally applicable terminology in numerous** areas of the EU capital market legislation encourages national gold-plating. The most prominent examples are the different meanings or unspecific definitions of the terms "**security/securities**" as well as "**marketing" /"distribution**" (i.e. UCITS vs. AIFMD vs. MiFID vs. Prospectus Directive etc.).

Our Members outlined that there is a real need for a clear and common definition of terminology and that legal concepts should be clarified upstream in the EU legislation process (i.e. ahead of preliminary works during the pre-legislative stage). An automatic glossary issued by ESMA will be most welcome.

Furthermore, from a national language perspective, the different national language versions

of the same Directive have led to many inconsistencies. In this case, Member Sates which use several language versions are in a position to choose the most favorable language version in order to optimize their regulatory arbitrage. The absence of a systematic consultation of national authorities on the different language versions of the EU official texts to be published frequently ends up with different meanings of the same provisions across Europe and even at national level.

Example 1

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**
Texts are listed under the heading evidence when possible

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
A clear, unambiguous and unique definition should be provided for the following terms:

- **Market making**
- **Hedging**
- **Marketing as opposed to distribution**
- **Securitization**
- **Asset division and asset segregation**
- **Funds and asset classes**
- **Material change** as used in Article 31 and 32 of AIFMD

Definitions are somehow conflicting in the following list of examples:

- MiFID II and short selling Regulation for **Market making**
- Under Solvency II, EIOPA and ESMA do not define **Funds** and **asset classes** in the same way

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The EC should work on a common language transversally and make sure that the same word has the same meaning in all the texts. We should stop using a word with the necessity to add as "defined for the purpose of investor protection in…", for example, knowing that it does not have the same meaning when applied to another domain or in another regulation. This work should be conducted with extreme care and a total implication of NCAs and professionals as an interpretation change may heavily impact key processes in the industry.

Example 2

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**
EBA CRR Guidelines
UCITS Directive
AIFMD

Money Market Fund Regulation proposal [COM (2013) 615 final]

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Draft EBA CRR Guidelines on "shadow banking" vs. forthcoming MMF Regulation and AIFMD: need for consistency in the scope of the "shadow banking" concept as applied to funds. Please refer to the EBA consultation document EBA/CP/2015/06 published on 19 March 2015. In particular, refer to the definition of shadow banking entities under paragraph 7 of the document, which is plainly at odds with the degree of regulation and oversight prescribed under the AIFMD.

EBA initially proposed in its CRR Guidelines on "shadow banking" to capture in its scope both all MMFs and all AIFs, while the forthcoming MMF Regulation is specifically addressed to solve this issue and the AIFMD was specifically launched to tackle this aspect for non-UCITS funds.

Despite the initial orientation of its draft Guidelines on banks' limits on exposures to shadow banking entities in March 2015, we appreciate that EBA partially revised its policy position, expressed in the final Guidelines as published in December 2015. We appreciate, in particular, that the inclusion of MMFs into the shadow banking remit may become subject to a review once the details of the current MMFR proposal are finalized and published.

We regret, however, that EBA extended the scope of its final Guidelines to AIFs which are allowed to originate loans or purchase third party lending exposures onto their balance-sheet pursuant to the relevant fund rules or instruments of incorporation. In this regard, please refer to our following two important observations, denoting once again a poor policy coordination process between the services of the EC and those of EBA:

1. The extension of the shadow banking scope to loan originating funds (AIFs) and the funds investing in the latter were not - neither implicitly, not explicitly - consulted upon in the EBA's March 2015 consultation. EBA therefore not only extended the reach of its Guidelines to a policy domain which more appropriately falls within the securities markets competence of ESMA, but also drew a distinct policy conclusion in the absence of any material evidence, stakeholder views or a proper cost/benefit analysis;

2. We are concerned that EBA's approach towards loan-originating activities in the non-bank remit lies at odds with the aims of the CMU, intended to re-start loan origination for the benefit of the real economy. Surprisingly, EBA pre-empted the EC own consultation on the subject of loan-originating funds announced for Q2 2016. In

our opinion, there is on the part of EBA (as with a variety of other central bank supervisors) a tendency to consider non-bank financing the economy as a "second-tier" means to bank financing, all while tarnishing an important part of the Commission's CMU initiative with a "shadow banking" label.

To better appreciate this last contradiction, the Commission's CMU Action Plan states that large institutional investors or investment funds can further diversify credit intermediation and increase financing opportunities for mid-sized firms by originating loans (sometimes in partnership with banks). According to the figures and estimates available to the EC, as of end 2014, over 350 transactions were completed by 36 alternative lenders in just over two years, which underlines that there are opportunities in the development of private credit.

We would therefore encourage further considering the notion of "EU loan funds", by addressing the existing barriers such as the lack of information to non-bank lenders (which can be a key barrier to their further growth) and the necessary level playing field between bank and non-bank lenders, in particular when it comes to capital requirements and banking license, as well as tax regimes.

In addition, it is worth mentioning that the systematic inclusion of AIFs into the scope of recent banking regulations without considering for example the existing sectoral regulations, the risk profile of such AIFs or the consequences of such coverage, is problematic both in terms of financing and competitiveness of EU-based AIFMs. As an example, the Banking Structural Reform proposal, which sets much stricter conditions than the US Volcker rule, may lead to a reduction of seed money activities by banks, whereas seed funding is vital for the launch of new product development initiatives by AIFMs.

We therefore strongly recommend that, in order to ensure the competitiveness of EU-based fund managers, fund seeding by banks should be allowed in the EU at least in the same limits as those that are set in the Volcker rule, both in terms of amount cap and in terms of time-limit.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

With regard to AIFs, we would welcome that the competent Services of the EC and/or ESMA refute the inclusion of AIFs into the scope of the EBA Guidelines. The same we would be required for MMFs, although we do acknowledge that a final political agreement on the MMFR proposal is still pending. In this regard, we are satisfied that the EBA Guidelines provide an appropriate review clause for MMFs, whose inclusion in the shadow banking definition would deserve to be reassessed once the MMFR text is finalized.

We deem the sudden and specific inclusion of loan-originating funds into the scope of the EBA's shadow banking Guidelines to be a notable example of mis-guided policy-making,

both content-wise and from a procedural perspective.

Even though at a late stage EBA liaised with ESMA to get ESMA's advice on the potential scope of shadow banking regarding funds, AFG suggests that for the future, EBA should systematically liaise with ESMA and the EC to find consistent solutions and in general we ask for a better coordination among the European Institutions (EBA, ESMA and the EC).

We would therefore call on the competent Services of the EC and/or ESMA to ensure that the applicable body of EU rules and their respective purposes are better explained to and well understood by EBA. On various occasions, banking supervisors (as in this case EBA) attempted to discipline non-bank financial market actors and activities from a bank-centric perspective, at times ignoring existing market legislation - with therefore the risk of unjustified potential detrimental consequences on EU fund managers - and undermining the authority of ESMA by over-reaching their own mandate.

Issue 12 – Overlaps, duplications and inconsistencies

Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

In general, the treatment of funds (both UCITS and AIFs) should be consistent in banking and insurance legislations. This means that coherence and consistency is needed. The rule to be applied should be: no different treatment between a fund and any direct investment (i.e. in terms of liquidity ratio calculations etc.).

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

MiFID II/PRIIPs/IDD

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Problematic definition of the target market under MiFID II

The MiFID II regime requires the definition of a target market by product manufacturers and distributors taking into account the risk and reward profile and the charging structure of a product. Similar obligations will be imposed on insurance undertakings and distributors under the new IDD. Currently, there is significant uncertainty relating to the specific criteria for identifying the target market of a product and different industry initiatives have been launched at national level in order to develop a common understanding on the concept of target market.

Current discussions within the industry show that the target market concept has the potential to significantly change the retail distribution landscape. In order to avoid

unintended consequences and additional barriers for cross-border distribution, the following actions are essential:

- Overall, a common approach to identification of the target market would be necessary since (1) many products are distributed cross border and through different distribution channels which should be able to rely on the same description of the target market by the relevant product manufacturer and (2) the target market specification at the manufacturer's level shall be disclosed in the PRIIPs KID according to the draft RTS currently consulted upon by the ESAs. However, the ESAs draft Level 2 goes too far compared to Level 1 since the authorities ask for more information ("financial interests, knowledge, objectives and characteristics of the types or retail investor including their ability to bear investment loss and their investment horizon") than the Level 1 does ("ability to bear loss and investment horizon") and also more than MiFID II actually does ("objectives, needs and characteristics"). We should stick to the MiFID requirements, as this regulation sets investor protection and distribution rules.

- The approach to determining a target market has to be feasible in practice and should allow for implementation by all distribution channels legitimated by MiFID II, including execution-only distribution. Any attempts to introduce target market criteria which effectively anticipate a suitability test on a client incumbent only in case of investment advice must be rejected as impracticable in terms of non-advisory distribution. In particular, for non-complex products eligible to be sold via execution-only services, the target market must be set very broadly in order not to hamper the provision of these services which in accordance with MiFID II do not require any information on personal circumstances to be collected from the client. Again, we should leave MiFID exclusively govern investor protection and distribution and remove Article 20 of the draft RTS relating to PRIIPs.

In addition, it should be clear that the manufacturer of a specific financial product cannot provide for a target market definition which takes into account investors' portfolio structures comprising many different investments.

A UCITS (say, a bond or an equity fund) can be sold to investors on their initiative through execution-only services. When using the execution-only channel, distributors are not obliged to obtain any information from potential clients, but are allowed to proceed with the purchase order as requested. If the target market criteria were to imply the collection of personal information e.g. on the investment objectives, knowledge and experience or risk tolerance of a client, distribution of non-complex products via execution-only would be no longer possible.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Therefore, we urge the EC to work together with the ESAs and the market participants towards a viable concept of target market which should allow for a straightforward implementation. Regarding financial instruments that are deemed non-complex for the purpose of execution-only services, the target market should be defined as the mass retail market in order to account for the effective lack of personal information in the execution-only distribution as admitted by the MiFID II legislator.

Example 2

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS Directive 2009/65/CE

ESMA Discussion Paper on share classes of UCITS (ESMA/2014/1577), specifically paragraph 10 listing the types of share classes that ESMA would deem as "non-compatible" with the underlying strategy.

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

The use of share classes by UCITS in order to respond to investor needs should not be inhibited

Share classes are essential tools for cost-efficient fund management in the European and global context. They allow fund managers to respond to the needs of investors relating to e.g. maximum/minimum investment amounts, types of fees and charges, denomination of currency, allocation of revenues etc. in a prompt and cost-efficient manner, all while maintaining a common investment strategy. Another significant advantage from an investor's perspective derives from the efficiencies that are generated from the economies of scale tied to the management of a larger underlying pool of assets and visible in lower administration and transaction costs. This comes as a result of investors simply opting to switch from one share class to another, instead of triggering an additional transaction (in turn resulting in a higher portfolio turnover) every time they subscribe / redeem into / out of a fund.

Economic benefits accrue to managers as well, especially where economies of scale translate into a larger mutualization of costs; i.e. rather than launching several and separate individual funds, each customized to meet investor demands albeit all sharing the same investment strategy - proliferating a product offer with considerable regulatory approval, set-up, and marketing costs - far greater efficiencies can be achieved by allowing more investors into one single fund with several customized share classes in turn based on the same "engine", i.e. the fund manager's expertise in delivering the same strategy.

In connection with cost mutualization and in the backdrop of the worldwide competitive landscape, the capacity to create different share classes also is an important factor that allows the European asset management industry to therefore i) manage larger funds in order to more effectively face competition from non-European providers, while helping to resolve the problem of excessive fund fragmentation noticeable in Europe; and ii) offer UCITS shares outside the fund's base currency area to meet rising UCITS demand in non-EU, third-country jurisdictions (particularly Asia). A broader array of available share classes would also prove competitively advantageous in drawing more non-European investors towards the UCITS product brand.

While welcoming a common approach to the use of share classes by UCITS as envisaged by ESMA in its 2014 discussion paper, we caution against hampering the existing use of share classes for the efficient management of various investor demands. In its discussion paper, ESMA preliminarily adopted the view that only currency-hedged share classes would be consistent with the underlying strategy of the fund. A view that in our opinion is not justified, as currently some cases of duration-hedged share classes as well as equity market index-hedged share classes have been working for several years without any market failure.

As was noted in the EC 2006 White Paper on enhancing the single market framework for investment funds, there still is a proliferation of small funds in Europe, whereas the larger the pool of assets, the more likely the opportunity to achieve economies of scale. Such economies can in turn lead to a reduction in charges or better performance for investors as a result of scale savings. Whilst the focus of the White Paper (and in turn the update of the Directive to UCITS IV) was on other methods to achieve larger pools – e.g. master-feeder arrangements and fund mergers - the ability to create share classes within a single UCITS fund also delivers such an outcome via the pooling of assets of investors who all seek exposure to the same underlying portfolio of investments, albeit with a degree of customization.

As an example of the degree of fund fragmentation in Europe, the following EFAMA figures are striking: for the fourth quarter of 2014, the average size of a UCITS fund compared to the average of a U.S. mutual fund was of 245 million euros against 1.8 billion euros respectively.
From this perspective, keeping the current types of hedging overlays for different share classes ensures an economy of scale by managing common underlying portfolios for UCITS funds. Conversely, introducing a restriction in the types of hedging overlays allowed would both dissatisfy investor demands and kill economies of scale.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Specifically, we think that UCITS managers should be allowed to respond to their investors' requests for different levels of protection against some elements of market risk - other than

currency risk -such as interest rate, equity market or volatility risk, by setting up customized share classes of a UCITS instead of being required in each case to launch a new fund. For the reasons explained above, the establishment of an ad hoc new fund instead of a mere share class would entail additional costs both for the manager and for investors forced to invest in a specific sub-scale fund.

Therefore, subject to the above considerations, we positively welcome ESMA consultation on share classes with a view to allow the **harmonized continuing development of such a scheme**.

Example 3

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

UCITS Directive

AIFMD

MMFs

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Inconsistent application of rules in UCITS funds across Member States

Across European countries, practices may vary and impair competition among UCITS managers or threaten the level playing field that is intended. There are four different areas where clarification is needed and where the EC could rapidly act in order to implement a harmonized interpretation by the NCAs:

- Share classes (see detail in Example 4 above)
- Delta one derivatives
- Total Expenses Ratio (TER)
- Liquidity as ancillary.

Inconsistent application of the rules governing share classes across Member States (see detail in Example 4 above)

Inconsistent application of the rules governing eligible assets for investments of UCITS (Delta one) across Member States

The French regulator for instance considers delta one products as non-eligible assets, hence prohibited, while other EU regulators authorize them (Luxembourg, Ireland). Indeed, the eligibility of "delta-one" products, i.e. structured debt instruments that duplicate the performance of other financial instruments, which may be fixed interest, indices, commodities, is applied inconsistently across the Union for UCITS. These instruments permit to be exposed to the performance variation of assets that normally are not eligible assets under the UCITS Directive. The divergence between the European interpretations is linked to the delta one's classification. Either delta-one products are considered as embedded derivatives and a look-through approach is needed (which concludes to the ineligibility of the delta one

instruments by transparency) or they are considered as instruments simply linked to the performance of the underlying assets and a look-through to verify the eligibility of the underlying assets is not required (which comes to the conclusion of the eligibility of delta one products, as there is no transparency with the underlying asset). Concretely, the issue is very important for instance regarding the eligibility of commodity certificates for UCITS (gold certificated for instance).

Inconsistent application of the rules governing the disclosure of Total Expenses Ratio ("TER") in UCITS KIIDs across Member States - Revenues of securities lending

There are conflicting interpretations as to whether the TER disclosed in UCITS KIIDs should comprise revenues of securities lending. Some regulators exclude the revenues of securities lending from the obligation to disclose all revenues in UCITS KIIDs (a mere mention, by reference, of the split between the fund and the management company is sufficient) while others (e.g. French regulator) impose to include such revenues of securities lending in the TER, which leads to a distortion of competition.

Inconsistent application of the rules governing the liquidity holding in UCITS across Member States

There are conflicting interpretations of the term "ancillary holding assets" set out in the UCITS Directive. Some regulators have an extensive interpretation (e.g. in Germany, less than 50% of the assets of the UCITS) while others have a restrictive one (e.g. in France, 10% maximum of the assets of the UCITS unless exceptional circumstances). The liquidity holding in UCITS is of particular importance due not only to the new rules related to the management of collateral, but also to the extremely low level of money market rates.

Lack of harmonization of the liquidity tool box available to face redemptions in funds in exceptional circumstances:

Liquidity management is part of asset management. To be able to avoid the extreme solution that consists in suspending redemptions, fund managers should equally have access to a diversified tool box to face different degrees of impairment of liquidity and up to exceptional circumstances. We would like to mention a series of tools which are recognized and currently accepted in several Member States, such as swing pricing, gates, anti-dilution levies and side pockets. However, such a series of tools is not harmonized at European level, which creates an unlevel playing field among Member States.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

As part as its role under Level 4 of the Lamfalussy process, ESMA should deliver opinions on these four topics after careful assessment of the existing practices in different countries and extensive consultation with professionals.

Therefore, we strongly suggest ESMA to harmonize the conflicting interpretations of UCITS rules across Members States and in particular:

1) as to whether Delta-one products are eligible assets for investments by UCITS especially as the difference of interpretation was acknowledged by the Commission since 2007. We advocate for an alignment with the position permitting to consider delta-one products as performance linked instruments (and not embedded derivatives) so as to allow them to be eligible instruments under the UCITS Directive on a cross-border level.

2) as to whether revenues of securities lending should be included in the TER disclosed in UCITS
KIIDs.

3) on its interpretation of the term "ancillary holding assets" set out in the UCITS Directive.

As regards the diversified liquidity tool box available for funds in certain Member States, it should not be discouraged but on the contrary be put in place even more largely through a harmonized approach at European level. However, such harmonized approach at the European level should include the whole set of tools currently available in some Member States.

Example 4

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

SRD II proposal

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Duplication of reporting/disclosure requirements for asset managers under the proposed SRD II

The Commission's revision proposal of the Shareholders' Rights Directive "SRD II" adds another layer of regulation (e.g. reporting / disclosure requirements) for asset managers although similar rules already are included in the AIFMD and UCITS framework. For instance, the SRD II proposal requires asset managers to set up an engagement policy for their relationship with investee companies. This requirement, however, partly duplicates the existing duties of asset managers under the AIFMD and UCITS Directive, particularly in relation to the exercise of voting rights and the management of conflicts of interest. The same applies to the proposal to include reporting requirements for asset managers to specific institutional clients where both the AIFMD and UCITS Directive require client reporting on the same or similar subjects such as investment activities and portfolio turnover costs.

We would like to provide a concrete example of overlap on the exercise of voting rights:

- Under Chapter IB, Article 3f of SRD II, the engagement policy states that, inter alia, asset managers should develop a policy on shareholder engagement, this policy shall

determine how institutional investors and asset managers conduct the exercise of voting rights.

- However, asset managers are required under the AIFMD and UCITS Directive to set up a voting policy and to report to their clients, including on the exercise of voting rights. The only difference between SRD II and sectoral legislation requirements on the exercise of voting rights is the **public** nature of the disclosure under SRD II. AFG believes it is more meaningful to report to clients and does not see any added value in reporting this particular information to the public. The corresponding text in the AIFMD and UCITS legislation is as follows:

UCITS

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organizational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

- Article 21(1) states:
  "Member States shall require management companies to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned".
- Article 21(3) states:
  "A summary description of the strategies [of the exercise of voting rights] shall be made available to investors. Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request".

AIFMD

Commission Delegated Regulation No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

- Article 37(1) states:
  "An AIFM shall develop adequate and effective strategies for determining when and how any voting rights held in the AIF portfolios it manages are to be exercised, to the exclusive benefit of the AIF concerned and its investors".

- Article 37(3) states:
  "A summary description of the strategies [of the exercise of voting rights] and details of the actions taken on the basis of those strategies shall be made available to the investors on their request".

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

SRD II legislation should clearly acknowledge the reporting and disclosure requirements applying to asset managers under EU sectoral legislation. To avoid duplication and maximize efficiency, SRD II should make clear that existing requirements under sectoral legislation provide adequate reporting and disclosure.

Example 5

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Benchmark Regulation article 16 (deleted in current discussions) vs UCITS/EMIR/MiFID/MiFIR obligations

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Transparency standards for benchmark providers do not match with the information needs of benchmark users

The level of transparency in relation to benchmarks as determined in the latest discussion on the EU Benchmark Regulation is not sufficient for investment funds and other users of indices to comply with their obligations under UCITS, EMIR and MiFID/MiFIR. Asset managers are themselves subject to extensive transparency requirements and conditions if using financial indices as benchmarks especially under the ESMA Guidelines on ETFs and other UCITS issues[2]. In light of the growing importance of indices and growing transparency requirements, including the regulatory reporting on underlying indices by end users as foreseen in the EMIR and MiFID/MiFIR transaction reporting, it is necessary to impose corresponding transparency requirements upon index providers in order to enable index users to comply with their own regulatory requirements. This pertains in particular to the availability of clear summary information on the index objectives and its key construction principles, complete information on the index construction and calculation methodology and historical data on constituents and weights. In this context, we strongly support ESMA assessment[3] related to the transparencies for alternative indices that index providers have to provide investors with a tool box of methods, data, constituents and weightings allowing investors to replicate both the index construction and also the simulated/historical performance.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We suggest to reinstate Article 16 on data transparency in the final Level 1 text or alternatively, to provide for a possibility to introduce the necessary transparency standards through Level 2 measures.

[2] Cf. para. 56 to 62 of the ESMA Guidelines on ETFs and other UCITS issues (ESMA/2014/937).

[3] Cf. http://www.esma.europa.eu/system/files/2015-esma_rd_01_2015_527.pdf.

Issue 13 – Gaps

While the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether they are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.

Rather than regulatory gaps, AFG believes there is a need for targeted improvements in existing or forthcoming proposed EU legislation, which would allow flexibility to EU-based players and products both to facilitate the financing of the EU economy (in particular SMEs) and to be more competitive vis-à-vis non-EU based players and products (in order to ensure a fair competition with non-EU players and products both within the EU Single Market and on third country markets).

Issue 14 – Risk

EU rules have been put in place to reduce risk in the financial system and to discourage excessive risk-taking, without unduly dampening sustainable growth. However, this may have led to risk being

shifted elsewhere within the financial system to avoid regulation or indeed the rules unintentionally may have led to less resilient financial institutions. Please indicate whether, how and why in your view such unintended consequences have emerged.

=} EU asset management companies are largely regulated though the UCITS and AIFM Directives and are already subject to strong management risk processes.

Example 1

* **To which Directive(s) and/or Regulation(s) do you refer in your example?**

IFRS9 /FTT /SRD II / Solvency II /MiFID II

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

Disincentives to invest in open ended funds compared to mandates/dedicated funds or to equities

There is a trend in regulations to penalize access to financial markets through funds to the benefit of direct investment. This is new and highly concerning for fund managers. The historical and constant stand was to promote regulations that would not discriminate depending on the wrapper used (fund or direct portfolio) and would focus on the economic

result and risk exposure. This indeed is the only way to maintain a level playing field between funds and a direct holding of securities.

Several proposed or recently passed provisions are clear incentives not to invest in funds:

* **Accounting standards -IFRS 9** : Shares and bonds directly held by an investor subject to proposed IFRS 9 benefit from a more favorable accounting treatment than if the investment is made through a fund. Funds can only be considered under Fair Value through profit and loss (FV P/L) without any option for amortized cost or FV OCI methodologies.

* **EFTT** - The redemption of fund shares may be subject to the tax, creating a double taxation (the tax will be paid on the management of the funds' assets and when the investor sells/redeems the fund's shares), which has extremely negative impacts on European competitiveness.

* **SRD II** - Highly excessive disclosure requirements on the investment strategy could discourage investment in equities.

* **Solvency II** – The treatment of equities held through funds during the transitional period does not allow the detention of funds as a strategic investment.

* **MiFID II** (inducement regime) - The rules on fair remuneration of fund distributors changed and now impose additional requirements, limitations and prohibitions that reduce the appetite for the distribution of funds.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

We urge the EC to maintain the principle of equality of treatment of investments irrespective of the legal structure, fund or portfolio.

Issue 15 – Procyclicality

EU rules have been put in place to make the financial system less procyclical and more stable through the business and credit cycle. Please indicate whether some rules have unintentionally increased the procyclicality of the financial system and how.

As mentioned above, the Political Risk itself generates a procyclicality, by reacting with strong moves to ex post situations.

One – and significant – issue consists of the Review Clauses included in almost all pieces of EU legislation. The obligation to review the rules usually leads to instability in the way of working for market participants, as they have to constantly adapt to new rules which in

many cases only arise from this initial obligation contained in the Review Clauses.
In addition, these Review Clauses are usually required too soon after the start of implementation of the existing new rules by market participants, as a consequence it is usually too early to judge in a reasonable manner what should be changed – and therefore the regulatory changes may ultimately lead to situations not needed, generating useless costs.

This endless mechanical production of new rules has probably become even more complicated with the co-decision process: while from a pure democratic perspective co-decision is excellent, it may lead to competition between the European Parliament and the Council in producing amendments on the basis of initial proposals of the EC.

Example 1

* **which Directive(s) and/or Regulation(s) do you refer in your example?**

BRRD Directive/CCP resolution regime/ EMIR clearing obligation and ISDA rules

In relation to the BRRD directive: **ISDA 2014 Resolution Stay Protocol** so far only applied to Banks.
However, there is a willingness from the FSB to extend it to non-banks through a separate protocol.
In relation to EMIR clearing obligation: **ISDA/FOA Client Cleared OTC Derivatives Addendum**
Should such protocol be applied, this would create an illegal situation for UCITS funds which are legally bound to be able to terminate transactions "at any time".

* **Please provide us with supporting relevant and verifiable empirical evidence for your example:**

BRRD Directive/EMIR clearing obligation and ISDA Rules

In their relationships with banks on derivatives, investors and asset managers suffer from the fact that ISDA rules and protocols are elaborated and designed by banks and will reflect the point of view of the latter and not that of derivative end-users. Investors are reluctant to implement a standard Clearing Agreement that reduces their rights on several major points. Furthermore, they do not know, to date, what would their effective exposures be in case of a default of banks (counterparty or clearing member) and CCPs and how they would be in a position to properly manage this risk.

Standard documentation for derivatives is produced by ISDA. ISDA gathers the main market participants, i.e. investment banks which do not share the view of asset managers nor their bias in favor of the interest of their client investors. Thus, some provisions which are specific to funds or more generally reduce investor protection are not acceptable. Among others, we can mention the following two examples:

ISDA rules & Protocol are defined by banks and not for derivative end-users:

- ISDA Bail-in Protocol suspends Early Termination provision and drastically reduces liquidity on derivative contracts in case of market stress;

→ Under ISDA FOA Addendum for clearing, Clearing Members have no contractual commitment to accept trades and apply their own collateral requirements.

More generally, we believe that applying the same contractual framework on both bilateral and centrally cleared trades will increase procyclicality and contagion risks in periods of stress. In such a context of stress, we feel that ESMA should be empowered to temporarily suspend the obligation to centrally clear it set under EMIR.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

European authorities should adapt Bank and CCPs Resolution regimes to ensure that the collateral and margins posted on behalf of end-users will be guaranteed and fully protected in case of default of a bank or a CCP. Moreover, they should protect investors better and demand specific amendments to the standard documentation currently proposed: ISDA 2014 Resolution Stay Protocol (in relation to BRRD directive) and ISDA/FOA Client Cleared OTC Derivatives Addendum in relation to EMIR clearing obligation.

Moreover, in order to ensure a higher level of investor protection, ESMA should be authorized to suspend the obligation to clear under EMIR on some instruments. This suspension should apply as a temporary measure and be limited to those instruments when circumstances are exceptionally stressed.

AFG would then suggest that the EC:

- ensures that ISDA rules and Protocol ensure a better treatment of end-users vis-à-vis clearing members.
- adapts the banking resolution and stay protocols to avoid an illegal situation for UCITS funds.