



30.07.2014

INTRODUCTION

To

AFG' ANSWER TO THE CONSULTATION PAPER ON MIFID II/ MIFIR

ISSUED BY ESMA ON 22/05/2014

The Association Française de la Gestion financière (AFG)¹ is grateful for the opportunity to answer to the European Security and Market Authority consultation on MIFID II/MIFIR.

Before providing detailed answers to the questionnaire, we wish to draw ESMA' attention to the concerns raised by the Level II proposals in the French asset management industry; we recall that the French asset management market is the third one in Europe with €3 000 billion assets under management and the second one in terms of fund domiciliation (as of 31.12.2013).

The major concern is that the spirit of MIFID II Level 1 would not be respected when it comes to the inducement question. Indeed, while the EU legislator has decided to allow both commission-based and fee-based advice, the present consultation concretely closes the door to commission-based advice.

The “quality enhancement” test, as proposed by ESMA, puts most –if not all- commission-based advisory models into question even in the case of non-independent advice. Specifically, the list of criteria (2.15, paragraph 10) set for determining what is not a service enhancement would, if stayed as proposed, end up in an excessive narrowing of service enhancement possibilities. We strongly believe that this negative approach disregards the EU legislator's decision and the principles set out in MIFID II Level 1 regarding payments of inducements linked to service enhancement. Therefore, our proposal is to be more constructive about what can be a quality enhancement taking into account what has recently been done in Member States at the initiative of National Authorities (See our full assessment of the issue on our answer to Q81).

Banning all inducements on investment advice would have a very negative impact on investor protection. Indeed, several studies (notably the CFA Institute's report- see annex) show that the proposed model would give rise to a two-tiered distribution system where investors with modest means will be left to manage their savings on their own using a faceless RTO or execution-only platform, while the wealthy will have exclusive access to high value added advice that is remunerated accordingly.

The median size of the French investor' portfolio is € 20 308 according to AMF (*Observatoire de l'Épargne- June 2014*) which is far from allowing the average investor to pay advisor fees estimated to € 1 900 the first year. (*See details in our answer to Q82*).

Another consequence of reducing investment advice would be the risk for investors to be given a narrower choice of products and therefore the risk of market concentration. An increased systemic risk would also be the unavoidable result.

As an illustration of business concentration and reduced offering to clients, a recent study shows that 90% of retail investors in UK are invested in only 10 products (*Source: Study of The Economist Intelligence Unit « Seismic shifts in investment management: How will the industry respond?» June 2014*).

Last but not least, we wish to make **a special case on the way ESMA intends to submit part of the economic and financial research ("research") to inducement rules.**

We would like to stress out the risk of scarcity and maybe disappearance of research providers (especially for SME's) that would result from ESMA' requirement.

We're pointing out the risk of putting investment firms back into dependence from rating agencies. Moreover, passive management (in no need of research) would prevail in investors' portfolios, worsening both the risk of concentration and the systemic risk.

So we call for a preliminary impact study before changing investment research rules. And **such radical change needs a political decision at level 1 and should not stem from level 2 measures.**

In conclusion, we would like to stress that re-enforcing ex-post controls and sanctions where investment advice is not properly delivered would be much preferable that the proposed "quasi" ban on inducements for non-independent advice.

That being said, AFG supports the requirements that increase transparency where it enables clients to better understand the investment services they've been provided with.

On a more specific approach, there are some items where we would like to draw ESMA's attention to:

- **An un-level playing field between investment services covered by MIFID II and the products covered by the PRIIP/ KID and the UCITS/AIF/ KIID as well as potentially the IMD, notably regarding costs disclosure and unbundling payments for research.**

As such, we advocate that for investment advice and for portfolio management invested in funds, investment firms shouldn't be asked to add any information on the funds that is not already provided in the KID/KIID.

In order not to create an un-level playing field detrimental to investors and market participants, no rule that cannot be immediately taken on board in PRIPs and IMD should be imposed in MIFID II implementing measures.

- **The risk of confusion in the roles of the manufacturer and the distributor** in the sales process, notably regarding the requirement for manufacturers to target specific groups of investors; we propose that manufacturers remain in charge of describing the investment objectives matched by each of their products while the distributors remain the sole responsible for targeting relevant clients and ensuring the suitability of products to clients.
- **The inappropriateness to align the level of report for professional clients with those applicable to non-professional clients** as professional clients usually requires different and personalized information.

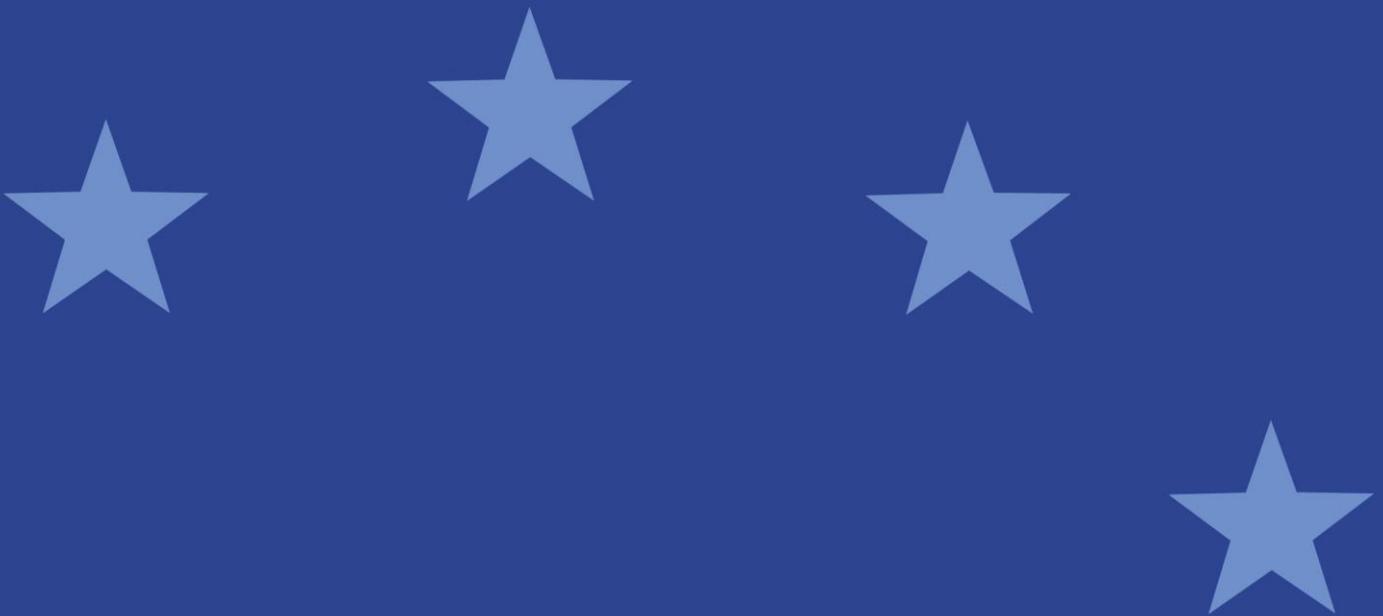
We thank you for your consideration in that matter and we remain at your entire disposal for any further discussion.

¹The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. 600 management companies are based in France. AFG members manage 3,000 billion euros, making the Paris fund industry a leader in Europe for the financial management of collective investments (with 1,500 billion euros managed from France, i.e. 19% of all EU assets managed in the form of investment funds). In the field of collective investment, our industry includes – beside UCITS – the whole range of AIFs, such as: employee savings schemes, regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment 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).



European Securities and
Markets Authority

Reply form for the ESMA MiFID II/MiFIR Consultation Paper



22 May 2014



European Securities and
Markets Authority

Date: 22 May 2014



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA MiFID II/MiFIR Consultation Paper, published on the ESMA website ([here](#)).

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

Given the breadth of issues covered, ESMA expects and encourages respondents to specially answer those questions relevant to their business, interest and experience.

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **1 August 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

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1. Overview

2. Investor protection

2.1. Exemption from the applicability of MiFID for persons providing an investment service in an incidental manner

Q1: Do you agree with the proposed cumulative conditions to be fulfilled in order for an investment service to be deemed to be provided in an incidental manner?

<ESMA_QUESTION_1>

Yes.

<ESMA_QUESTION_1>

2.2. Investment advice and the use of distribution channels

Q2: Do you agree that it is appropriate to clarify that the use of distribution channels does not exclude the possibility that investment advice is provided to investors?

<ESMA_QUESTION_2>

Yes

<ESMA_QUESTION_2>

2.3. Compliance function

Q3: Do you agree that the existing compliance requirements included in Article 6 of the MiFID Implementing Directive should be expanded?

<ESMA_QUESTION_3>

Yes. We generally agree with the proposals. However, we would question whether this level of detail is appropriate for inclusion in a Level 2 Implementing Directive or should much rather be detailed in Level 3 ESMA guidelines.

However, we would query the wording on paragraph 2 of the Draft Technical Advice. It may be preferable to refer, not to “designed to detect any risk of failure”, but to “detect any failure by the firm”.

Also paragraph 3(iv) of the Draft Technical Advice should “consider complaints as a potential source of relevant information”. Also with respect to paragraph 3(iv) of the Draft Technical Advice, there is a risk that this may lead to a blurring of the first and second lines of defence. Managing the complaints process should be clearly within the first line of defence, with compliance acting as a second line function, ensuring that the relevant controls are operating appropriately. This distinction should remain clear in any technical advice provided to the Commission.

We would suggest that the responsibility assigned in paragraph 5(ii) of the Draft Technical Advice is too broad. Compliance Officers should be responsible for “any **compliance** reporting required by MiFID II”. Also, in paragraph 3(iii), the requirement that the compliance functions should report ‘on the implementation and effectiveness of the overall control environment’ is too broad. Other control functions, such as risk management, have responsibility, and the requisite expertise, to undertake such reporting. It should be, ultimately, up to the Board to ensure that they have suitable controls, and control functions, to manage and report on the effectiveness of the overall control environment. Compliance is only one part of this structure.

We particularly appreciate, and strongly support, the proportional application of paragraphs 5(iv) and (v) of the Draft Technical Advice.

We would, finally, note that due to the wide range of investment management firms under MiFID, and the variety of ways in which they operate, it may be useful if ESMA advice were to reflect the fact that compliance functions take a range of different operational structures. Indeed, they will often outsource what may be viewed as compliance activities to other functions, such as internal or external auditors, compliance consultancies, risk functions etc. The acceptability of this should be explicitly recognised, as long as the compliance function has ultimate control and responsibility for these activities, under the board.

<ESMA_QUESTION_3>

Q4: Are there any other areas of the Level 2 requirements concerning the compliance function that you consider should be updated, improved or revised?

<ESMA_QUESTION_4>

No. Given our comments to Q3, we do not believe that there are further areas of the Level 2 requirements concerning the compliance function that should be updated, improved or revised.

<ESMA_QUESTION_4>

2.4. Complaints-handling

Q5: Do you already have in place arrangements that comply with the requirements set out in the draft technical advice set out above?

<ESMA_QUESTION_5>

Yes. Our membership already has such arrangements in place on the basis of relevant provisions in the UCITS Directive¹.

Additionally, we would like to point out that the current Article 10 of the MiFID Implementing Directive applies only to retail and potential retail clients. In order to keep this important measure of proportionality, we would highly suggest that ESMA’s draft technical guidance should only apply to retail clients (and potential retail clients), as professional clients are in a much better position to look out for their own interests.

<ESMA_QUESTION_5>

2.5. Record-keeping (other than recording of telephone conversations or other electronic communications)

¹ Cf. Article 6 of Directive 2010/43/EU (UCITS Implementing Directive).

Q6: Do you consider that additional records should be mentioned in the minimum list proposed in the table in the draft technical advice above? Please list any additional records that could be added to the minimum list for the purposes of MiFID II, MiFIR, MAD or MAR.

<ESMA_QUESTION_6>

No, we would refrain from implementing an obligatory minimum list as proposed table in the draft technical advice, as we believe that several requirements of record-keeping should remain subject to the contracts between investment service provider, its clients and counterparties.

We also believe that additional records should not be mentioned in the list. The list is a comprehensive enumeration of records to be kept by investment firms which should enable the NCAs to assess investment firm's compliance with the markets regulation in MiFID, MiFIR and MAD/MAR.

In addition, we would suggest that ESMA amends some of the requirements of allocation. It should be clarified that in case of aggregated transactions, the content should comprise “the intended basis of allocation **to the individual client**”.

<ESMA_QUESTION_6>

Q7: What, if any, additional costs and/or benefits do you envisage arising from the proposed approach? Please quantify and provide details.

<ESMA_QUESTION_7>

While we acknowledge that implementing a minimum list or enlarging the current requirements on record-keeping could help firms to track their record-keeping obligations and would promote harmonisation of MiFID implementation, we currently cannot envisage any specific benefits. For this reason it is very hard for us to quantify potential additional costs and /or benefits at this stage.

<ESMA_QUESTION_7>

2.6. Recording of telephone conversations and electronic communications

Q8: What additional measure(s) could firms implement to reduce the risk of non-compliance with the rules in relation to telephone recording and electronic communications?

<ESMA_QUESTION_8>

We do not see any further measures that investment firms could implement to reduce an alleged risk of non-compliance.

ESMA should clarify that investment firms are allowed to forbid that orders are received or transmitted through telephone in order to avoid costly storage of telephone recordings. In such a case, the investment firm should be exempt from the recording requirements relating to telephone conversations.

<ESMA_QUESTION_8>

Q9: Do you agree that firms should periodically monitor records to ensure compliance with the recording requirement and wider regulatory requirements?

<ESMA_QUESTION_9>

We would like to ask for further clarity of ESMA's proposal on the periodic monitoring of records.

It should be clarified that an investment firm's risk-based monitoring programme means that the firm should be taking a risk-based sample of all transaction records that is proportionate and appropriate to the size and organisation of the firm, and the nature, scale complexity and risk profile of the relevant business or product.

<ESMA_QUESTION_9>

Q10: Should any additional items of information be included as a minimum in meeting minutes or notes where relevant face-to-face conversations take place with clients?

<ESMA_QUESTION_10>

Yes. We would suggest that ESMA should clarify paragraph 9(v) of its Draft Technical Advice, as it is unclear what other relevant information about the transaction should be included. This wording is in our view too broad and could cover a range of information which will not serve the purpose of such records. ESMA should therefore replace the wording with the wording “**details of the order from the client including amount and type of financial instrument.**”² This would meet the purpose behind the recording requirement.

<ESMA_QUESTION_10>

Q11: Should clients be required to sign these minutes or notes?

<ESMA_QUESTION_11>

No, unless the meeting has resulted in a transaction order given by the client and that no other document of a transaction order has been signed by the client.

<ESMA_QUESTION_11>

Q12: Do you agree with the proposals for storage and retention set out in the above draft technical advice?

<ESMA_QUESTION_12>

No.

MiFID II Article 16(7) paragraph 9 states that the “records [...] shall be kept for a period of five years and, where requested by the competent authority, for a period of up to seven years.”

In this context we would ask ESMA to clarify that the intention of this is that where a competent authority has specific reasons for requiring one specific set of records to be kept they can ask the firm to retain them for a further two years. It should be clear that this provision does not allow competent authorities to extend the standard retention period to seven years for all such records.

<ESMA_QUESTION_12>

Q13: More generally, what additional costs, impacts and/or benefits do you envisage as a result of the requirements set out in the entire draft technical advice above?

<ESMA_QUESTION_13>

With regards to additional costs and impacts, we would like to make the following remarks:

- Given the uncertainty over the scope of this requirement we would suggest that ESMA takes steps to clarify this, **particularly regarding portfolio managers**, as Article 16(7) of MiFID II applies this record keeping requirement to transactions concluded when dealing on own account, and the provision of client order services that relate to the reception, transmission and execution of client orders.
- In section 2.21 on best execution of its consultation paper ESMA clearly differentiates between execution, management or reception and transmission of orders (RTO) and placing orders with a third party for execution.

Portfolio managers are only associated with the latter of these which does not constitute “execution”. The difference between the execution of client orders and the placing of orders with a broker for execution can be seen in Articles 44 and 45 of the MiFID I Level 2 Directive. MiFID II Recital 57 of states that “rec-

² See MiFID II Recital 57: “[...] such records should ensure that there is evidence to prove the terms of any orders given by clients and its correspondence with transactions executed by the investment firms, as well as to detect any behaviour that may have relevance in terms of market abuse”

orders are needed for all conversations involving a firm’s representatives when dealing, or intending to deal, on own account”.

There is no indication in the recital that portfolio managers, who act as agent, should be recording their placement of orders with brokers.

In short, portfolio managers place orders with investment firms for execution, this is not a relevant conversation, so need not be recorded.

As already highlighted previously, record keeping and storage is costly and, we would therefore suggest that ESMA should request an impact analysis regarding the costs for recording and storage of phone conversations to ensure that all legal requirements are implemented in a proportionate manner.

<ESMA_QUESTION_13>

2.7. Product governance

Q14: Should the proposed distributor requirements apply in the case of distribution of products (e.g. shares and bonds as well as over-the-counter (OTC) products) available on the primary market or should they also apply to distribution of products on the secondary market (e.g. freely tradable shares and bonds)? Please state the reason for your answer.

<ESMA_QUESTION_14>

ESMA should clarify first the scope/definition of “product” and “distribution”:

- On “product”: MiFID covers financial instruments and only captures those “products” that aren’t yet covered by any other EU regulation such as UCITS, PRIIPS, AIFM. ESMA should make clear that UCITS/AIF are not covered by MIFID II and should clarify the products it has in mind so our members – asset managers- can figure out how they are involved.

We want to highlight that for ETF and some rare others quoted funds, (“freely tradable shares”), there is generally no distribution agreement between producers and distributors and as a result, it is not possible to apply the “product governance” requirements described in this section.

- On “Distribution”: MIFID refers only to a list of investment services. The distribution services under MiFID are comprised of investment advice, portfolio management, reception and transmission of orders and dealing on own account. Secondary trading of financial instruments should not be perceived as a distribution channel. Secondary market trading can only be seen as a means of executing client orders, once the investment decision has been reached. Hence, secondary markets can only be understood as trading venues within the meaning of MiFID II Art. 4(1)(24) for executing orders resulting from distribution services under MiFID, not as distribution service of its own.

With this in mind we believe that the product governance requirements at the distributor’s level should therefore be triggered by the provision of a relevant distribution service under MiFID regardless whether the consecutive client order is being executed on the primary or secondary market.

Nonetheless, and for the avoidance of doubt, the final technical advice should clarify which investment services qualify as distribution for the purpose of product governance arrangements.

<ESMA_QUESTION_14>

Q15: When products are manufactured by non-MiFID firms or third country firms and public information is not available, should there be a requirement for a written agreement under which the manufacturer must provide all relevant product information to the distributor?

<ESMA_QUESTION_15>

Yes, as long as the “written agreement” shall be but in place at the initiative of the distributor - the sole responsible for the distribution process- and the manufacturer should not bear the responsibility to put in place the legal agreement.

<ESMA_QUESTION_15>

Q16: Do you think it would be useful to require distributors to periodically inform the manufacturer about their experience with the product? If yes, in what circumstances and what specific information could be provided by the distributor?

<ESMA_QUESTION_16>

No

It would seem disproportionate to issue specific rules on that topic (detailing the type/level of information to be provided to the manufacturer). The principle of exchanging information could be requested but the type of information, timing and other arrangements should be subject to the decisions of the parties concerned.

<ESMA_QUESTION_16>

Q17: What appropriate action do you think manufacturers can take if they become aware that products are not sold as envisaged (e.g. if the product is being widely sold to clients outside of the product's target market)?

<ESMA_QUESTION_17>

This raises the question to what extent manufacturers can/should be in the position to intervene in the determination of the target client group at the distributor level, if – according to the draft technical advice – distributors are required to set up their own product governance arrangements and to identify target client groups for each distributed product.

In our view, it is preferable to require the product manufacturer to identify, in general terms, the target market of each product. Investment firms distributing products to the end-clients should then take this determination into strong consideration, while still being allowed to sell a product outside the suggested target market where this is in line with the distributor's suitability and appropriateness assessment of its client (e.g. certain more rewarding/riskier products might be added to a client's portfolio to diversify the overall investment portfolio).

In any event, it is of utmost importance that product manufacturers are not considered responsible for any actions taken by distributors in their course of business. Investment firms distributing investment products act in their own capacity by performing investment services under MiFID. They are subject to separate regulatory requirements and to supervision by competent authorities. Hence, product manufacturers becoming aware of deficiencies at the distributor level should be expected to take corrective actions as appropriate, but must not incur responsibility or be held liable for the distributor's shortcomings.

In this context, we would also like to point out that there are no uniform criteria for classifying clients that go beyond the general client categorisation as retail or professional according to Annex II of MiFID. Therefore, the duty to determine the target market for a product should not imply a categorisation below that level in order to avoid inconsistent standards being applied by different distribution channels.

We propose that manufacturers are only asked to describe the investment objectives their products are intended to match.

Lastly, we are uncertain of the advantages to specify groups of investors for whom the product is not compatible, as it is the distributors' ultimate responsibility to ensure suitability of the product.

<ESMA_QUESTION_17>

Q18: What appropriate action do you think distributors can take, if they become aware of any event that could materially affect the potential risk to the identified target market (e.g. if the distributor has mis-judged the target market for a specific product)?

<ESMA_QUESTION_18>

The distributor is legally the sole responsible for the distribution process. In the situation where products are not sold as envisaged, the liability cannot be shifted onto the manufacturer, since the latter is not in charge of the final marketing activity toward end-client.

This being said, given that the unwelcomed situation could have impacts on the manufacturer, such as for example, unforeseen redemptions, it makes sense that the distributor keeps the manufacturer informed. Timing and contents should be left to the decision of the parties concerned.

<ESMA_QUESTION_18>

Q19: Do you consider that there is sufficient clarity regarding the requirements of investment firms when acting as manufacturers, distributors or both? If not, please provide details of how such requirements should interact with each other.

<ESMA_QUESTION_19>

No. And we fear that new layers of rules would blur even more the respective responsibilities.

First, there is a risk of confusion in the roles of the manufacturer and the distributor in regard to the sales process towards “identified target market”; we propose that manufacturers should be in charge of describing the investment objectives matched by each of their products while the distributors should remain the sole responsible for targeting relevant clients and ensuring suitability.

The risk of confusion is on the client’s side with a high likelihood of the client being sent back and forth between manufacturer and distributor in case of issues.

Second, as a general comment, rather than detailing in a specific regulation such as MIFID II the rules that should prevail in manufacturer / distributor relationship, it would seem more adequate to refer to the PRIIPs/UCITS/AIFM Directives.

This approach would avoid any discrepancies between the PRIIPs/UCITS/AIFM Directives and the MIFID II regulation.

An un-level playing field between investment services covered by MIFID II and the products covered by the PRIIP/ KID and the UCITS/AIF/ KIID as well as potentially the IMD, notably regarding costs disclosure and unbundling payments for research.

As such, we advocate that for investment advice on funds and for portfolio management invested in funds, investment firms shouldn’t be asked to add any information on the funds that is not already provided in the KID/KIID.

In order not to create an un-level playing field detrimental to investors and market participants, no rule that cannot be immediately taken on board in PRIIPs and IMD should be imposed in MIFID II implementing measures.

On a more specific approach, we believe that there is a risk of confusion between the responsibilities of manufacturers and distributors in the following detailed requirements:

- DTA.7.8 (page 46): When creating a product, firms should specify an identified target market, i.e. a specific “group of investors” ...”at a sufficient granular level” and any group of investors “not compatible” with the product;

We do not agree with this wording.

As previously said in our answer to Q 17, we would like to point out that there are no uniform criteria for classifying clients that go beyond the general client categorisation as retail or professional according to Annex II of MiFID. Therefore, the duty to determine the target market for a product should not imply a categorisation below that level in order to avoid inconsistent standards being applied by different distribution channels.

We propose that manufacturers be only asked to describe the investment objectives their products are intended to match such as horizon of investment, risk acceptance, and other criteria provided for the KID/KIID so to ensure consistency between products.

**The distributor should be the sole responsible for targeting client market segment and selecting investors.
Responsibilities need to be clearly separated.**

- DTA.9.(page 47): Investment firms should undertake a scenario analysis of their products, with particular tests on “poor investor outcome“ scenario and its causes;

If future performance should be provided under different performance scenarios, we would recommend to clearly stating the basis of those scenarios in order to avoid discrepancies on the methodology used by practitioners. Indeed, in the absence of precise criteria to ascertain future scenarios, information provided to clients will in fact be misleading.

As a matter of fact, we are already under the obligation to display three future scenarios for “structured UCITS” products (Directive UCITS IV) and it does make sense when it comes to product having risk/return profile difficult to understand.

We wish to highlight though that, from our experience, retail clients who have been presented scenarios of performance at point of sale tend to be disappointed when these scenarios doesn’t materialize and feel deceived.

- DTA.11 (page 47): Investment firms should ensure that information given to distributors is of an “adequate standard”, i.e. includes information about the “appropriate channel for the product, the product approval process and the target market assessment”.
“...appropriate channel for the product..”: it could be a recommendation from manufacturers, not a mandatory indication for the distributors. Distributors should remain in charge of the distribution.
“...the product approval process...”: what does ESMA means? It certainly cannot be the minutes of the meetings leading to the approval of the product; this is internal and confidential information of the manufacturer. Manufacturers do of course communicate all regulatory information about the product (Directive UCITS IV).
- DTA.12.13.14.15 (page 48): Manufacturers should review their products on a regular basis:
 - Identifying crucial events that may affect risk or return of the product (14)
 - Taking appropriate actions when such events occur (15)

This typically interferes with UCITS/AIF and PRIIPs regulation. Besides, ESMA shouldn’t create an un-level playing field between investment services ruled by MIFID and others products ruled by others Directives.

- DTA.17 (page 49): Distributors should determine a list of clients whose needs are not compatible with the product but nevertheless could perform suitability tests on these very same clients.

There is some inconsistency in the existing and proposed rules. **There’s no need for a list of “not compatible” clients.** Some riskier products might be added to a client’s portfolio to diversify the overall investment portfolio, although this client has a low risk profile.

- DTA.21: Distributors should provide manufacturers with “sales information” such as for example, “copies of promotional material and other information to support product review carried out by manufacturers”.

French distributors already have the obligation to communicate their promotional material to the manufacturers for validation.

The relevance of passing sales information to the manufacturers should be left to the agreement of the parties concerned. (See our answer to Q.16)

- DTA.27: The intermediate distributor must ensure that relevant information is passed both ways (i and ii) and “apply the product governance obligations for manufacturers, as relevant, in relation to the service they provide.”(iii)

The obligations included in (iii) are ambiguous as the exact role of the intermediate distributor.

<ESMA_QUESTION_19>

Q20: Are there any other product governance requirements not mentioned in this paper that you consider important and should be considered? If yes, please set out these additional requirements.

<ESMA_QUESTION_20>

No

<ESMA_QUESTION_20>

Q21: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements, either as distributors or manufacturers?

<ESMA_QUESTION_21>

The costs incurred are difficult to assess in such short notice but it is safe to say that they would be high. They would impact product manufacturers as well as distributors and, as a result, returns to clients.

We can anticipate that the requirements would have cost impact on many business units such as:

- Information system
- Organization of the Controls of 1st and 2nd level
- Reporting
- Client service
- Legal service

These costs would eventually reflect on prices charged to the client and impact returns.

<ESMA_QUESTION_21>

2.8. Safeguarding of client assets

Q22: Do you agree with the proposal for investment firms to establish and maintain a client assets oversight function?

<ESMA_QUESTION_22>

Non applicable.

<ESMA_QUESTION_22>

Q23: What would be the cost implications of establishing and maintaining a function with specific responsibility for matters relating to the firm's compliance with its obligations regarding the safeguarding of client instruments and funds?

<ESMA_QUESTION_23>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_23>

Q24: Do you think that the examples in this chapter constitute an inappropriate use of TTCA? If not, why not? Are there any other examples of inappropriate use of or features of inappropriate use of TTCA?

<ESMA_QUESTION_24>

TYPE YOUR TEXT HERE



<ESMA_QUESTION_24>

Q25: Do you agree with the proposal to clarify that the use of TTCA is not a freely available option for avoiding the protections required under MiFID? Do you agree with the proposal to place high-level requirements on firms to consider the appropriateness of TTCA? Should risk disclosures be required in this area? Please explain your answer. If not, why not?

<ESMA_QUESTION_25>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_25>

Q26: Do you agree with the proposal to require a reasonable link between the client's obligation and the financial instruments or funds subject to TTCA?

<ESMA_QUESTION_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_26>

Q27: Do you already make any assessment of the suitability of TTCAs? If not, would you need to change any processes to meet such a requirement, and if so, what would be the cost implications of doing so?

<ESMA_QUESTION_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_27>

Q28: Are any further measures needed to ensure that the transactions envisaged under Article 19 of the MiFID Implementing Directive remain possible in light of the ban on concluding TTCAs with retail clients in Article 16(10) of MiFID II?

<ESMA_QUESTION_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_28>

Q29: Do you agree with the proposal to require firms to adopt specific arrangements to take appropriate collateral, monitor and maintain its appropriateness in respect of securities financing transactions?

<ESMA_QUESTION_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_29>

Q30: Is it suitable to place collateral, monitoring and maintaining measures on firms in respect of retail clients only, or should these be extended to all classes of client?

<ESMA_QUESTION_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_30>

Q31: Do you already take collateral against securities financing transactions and monitor its appropriateness on an on-going basis? If not, what would be the cost of developing and maintaining such arrangements?

<ESMA_QUESTION_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_31>



Q32: Do you agree that investment firms should evidence the express prior consent of non-retail clients to the use of their financial instruments as they are currently required to do so for retail clients clearly, in writing or in a legally equivalent alternative means, and affirmatively executed by the client? Are there any cost implications?

<ESMA_QUESTION_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_32>

Q33: Do you anticipate any additional costs in order to comply with the requirements proposed in relation to securities financing transactions and collateralisation? If yes, please provide details.

<ESMA_QUESTION_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_33>

Q34: Do you think that it is proportionate to require investment firms to consider diversification of client funds as part of the due diligence requirements when depositing client funds? If not, why? What other measures could achieve a similar objective?

<ESMA_QUESTION_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_34>

Q35: Are there any cost implications to investment firms when considering diversification as part of due diligence requirements?

<ESMA_QUESTION_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_35>

Q36: Where an investment firm deposits client funds at a third party that is within its own group, should an intra-group deposit limit be imposed? If yes, would imposing an intra-group deposit limit of 20% in respect of client funds be proportionate? If not, what other percentage could be proportionate? What other measures could achieve similar objectives? What is the rationale for this percentage?

<ESMA_QUESTION_36>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_36>

Q37: Are there any situations that would justify exempting an investment firm from such a rule restricting intra-group deposits in respect of client funds, for example, when other safeguards are in place?

<ESMA_QUESTION_37>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_37>

Q38: Do you place any client funds in a credit institution within your group? If so, what proportion of the total?

<ESMA_QUESTION_38>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_38>



Q39: What would be the cost implications for investment firms of diversifying holdings away from a group credit institution?

<ESMA_QUESTION_39>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_39>

Q40: What would be the impact of restricting investment firms in respect of the proportion of funds they could deposit at affiliated credit institutions? Could there be any unintended consequences?

<ESMA_QUESTION_40>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_40>

Q41: What would be the cost implications to credit institutions if investment firms were limited in respect of depositing client funds at credit institutions in the same group?

<ESMA_QUESTION_41>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_41>

Q42: Do you agree with the proposal to prevent firms from agreeing to liens that allow a third party to recover costs from client assets that do not relate to those clients, except where this is required in a particular jurisdiction?

<ESMA_QUESTION_42>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_42>

Q43: Do you agree with the proposal to specify specific risk warnings where firms are obliged to agree to wide-ranging liens exposing their clients to the risk?

<ESMA_QUESTION_43>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_43>

Q44: What would be the one off costs of reviewing third party agreements in the light of an explicit prohibition of such liens, and the on-going costs in respect of risk warnings to clients?

<ESMA_QUESTION_44>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_44>

Q45: Should firms be obliged to record the presence of security interests or other encumbrances over client assets in their own books and records? Are there any reasons why firms might not be able to meet such a requirement? Are there any cost implications of recording these?

<ESMA_QUESTION_45>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_45>



Q46: Should the option of ‘other equivalent measures’ for segregation of client financial instruments only be available in third country jurisdictions where market practice or legal requirements make this necessary?

<ESMA_QUESTION_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_46>

Q47: Should firms be required to develop additional systems to mitigate the risks of ‘other equivalent measures’ and require specific risk disclosures to clients where a firm must rely on such ‘other equivalent measures’, where not already covered by the Article 32(4) of the MiFID Implementing Directive?

<ESMA_QUESTION_47>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_47>

Q48: What would be the on-going costs of making disclosures to clients when relying on ‘other equivalent measures’?

<ESMA_QUESTION_48>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_48>

Q49: Should investment firms be required to maintain systems and controls to prevent shortfalls in client accounts and to prevent the use of one client’s financial instruments to settle the transactions of another client, including:

<ESMA_QUESTION_49>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_49>

Q50: Do you already have measures in place that address the proposals in this chapter? What would be the one-off and on-going cost implications of developing systems and controls to address these proposals?

<ESMA_QUESTION_50>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_50>

Q51: Do you agree that requiring firms to hold necessary information in an easily accessible way would reduce uncertainty regarding ownership and delays in returning client financial instruments and funds in the event of an insolvency?

<ESMA_QUESTION_51>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_51>

Q52: Do you think the information detailed in the draft technical advice section of this chapter is suitable for including in such a requirement?

<ESMA_QUESTION_52>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_52>



Q53: Do you already maintain the information listed in a way that would be easily accessible on request by a competent person, either before or after insolvency? What would be the cost of maintaining such information in a way that is easily accessible to an insolvency practitioner in the event of firm failure?

<ESMA_QUESTION_53>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_53>

2.9. Conflicts of interest

Q54: Should investment firms be required to assess and periodically review - at least annually - the conflicts of interest policy established, taking all appropriate measures to address any deficiencies? Please also state the reason for your answer.

<ESMA_QUESTION_54>
Yes. We agree with ESMA that investment firms should be required to periodically review the internal conflicts of interest policy and to address any deficiencies which may emerge in the context of such a review. Moreover, we support further clarifications of the conflicts of interest provisions as suggested by ESMA in its draft technical advice.
<ESMA_QUESTION_54>

Q55: Do you consider that additional situations to those identified in Article 21 of the MiFID Implementing Directive should be mentioned in the measures implementing MiFID II? Please explain your rationale for any additional suggestions.

<ESMA_QUESTION_55>
No, we consider the situations already set out in MiFID Implementing Directive Article 21 paragraphs (a) to (e) to be comprehensive enough and therefore see not need to consider additional situations.
<ESMA_QUESTION_55>

Q56: Do you consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive is sufficient and sufficiently clear? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA_QUESTION_56>
Yes, we consider that the distinction between investment research and marketing communications drawn in Article 24 of the MiFID Implementing Directive remains sufficiently clear.
<ESMA_QUESTION_56>

Q57: Do you consider that the additional organisational requirements listed in Article 25 of the MiFID Implementing Directive and addressed to firms producing and disseminating investment research are sufficient to properly regulate the specificities of these activities and to protect the objectivity and independence of financial analysts and of the investment research they produce? If not, please suggest any improvements to the existing framework and the rationale for your proposals.

<ESMA_QUESTION_57>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_57>



2.10. Underwriting and placing – conflicts of interest and provision of information to clients

Q58: Are there additional details or requirements you believe should be included?

<ESMA_QUESTION_58>

We consider that asset managers are not concerned by this chapter as they do not provide services of underwriting and placing to issuers.

If an asset manager belongs to a group where another entity provides underwriting and placing services to issuers or issues financial instruments for itself, the asset manager has the possibility to subscribe to the new issues on behalf of its clients.

In that case, asset managers are under the obligations to respect the rules for managing conflicts of interests (RG AMF 325-8) as well as the obligation to act on the best interest of its clients (RG AMF 314-3). We see no need for additional regulation.

<ESMA_QUESTION_58>

Q59: Do you consider that investment firms should be required to discuss with the issuer client any hedging strategies they plan to undertake with respect to the offering, including how these strategies may impact the issuer client's interest? If not, please provide your views on possible alternative arrangements. In addition to stabilisation, what other trading strategies might the firm take in connection with the offering that would impact the issuer?

<ESMA_QUESTION_59>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_59>

Q60: Have you already put in place organisational arrangements that comply with these requirements?

<ESMA_QUESTION_60>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_60>

Q61: How would you need to change your processes to meet the requirements?

<ESMA_QUESTION_61>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_61>

Q62: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_62>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_62>

2.11. Remuneration

Q63: Do you agree with the definition of the scope of the requirements as proposed? If not, why not?

<ESMA_QUESTION_63>

In general, we agree with the proposed scope of the remuneration requirements. However, we would like to seize the opportunity to emphasise once again that remuneration requirements under different EU Directives must allow investment firms and other financial entities to make sound and reasonable remuneration arrangements for their employees. In particular, investment managers rendering management services under the UCITS Directive, AIFMD and MiFID must be able to remunerate their staff in a consistent manner and in accordance with one internal remuneration policy.

As regards the details of the draft technical advice, ESMA's approach to governance is not fully compatible with the CRD IV and the coming UCITS V and AIFMD rules insofar as it requires the management body to consult the compliance function before approving the firm's remuneration policy. Under CRD IV and AIFMD the responsibility for design and approval of the remuneration policy rests with the management body after taking advice from the remuneration committee if such committee has been established by the firm. Hence, in order to align the internal processes, ESMA should at least accept advice from the remuneration committee set up under other EU Directives as equivalent to the involvement of the compliance function under MiFID.

Consequently, the wording of para. 4 of the draft technical advice could be modified as follows:

“The design of the firm’s remuneration policy should be approved by the management body of the firm after taking advice from the compliance **function or where relevant, from the remuneration committee.**”

<ESMA_QUESTION_63>

Q64: Do you agree with the proposal with respect to variable remuneration and similar incentives? If not, why not?

<ESMA_QUESTION_64>

Yes. We agree that the remuneration structure must not favour the interests of the firm or its staff against the interests of any clients and therefore should be based on criteria reflecting compliance with the applicable regulations, too. There is, however, no need to overemphasise these criteria, as currently proposed by ESMA.

<ESMA_QUESTION_64>

2.12. Fair, clear and not misleading information

Q65: Do you agree that the information to retail clients should be up-to-date, consistently presented in the same language, and in the same font size in order to be fair, clear and not misleading?

<ESMA_QUESTION_65>

Yes with the exception of the prospectus and annual/semi-annual reports that are subject to their own specific rules.

It should be highlighted that regarding the asset management industry, information contained in the Key Investor Information Document (KIID) is already defined both regarding the content, the language and the lay-out. As an example, the KIID must be translated into the host state's official languages

However, translation of the main prospectus as well as of the annual/semi-annual reports is not mandatory.

The prospectus is a legal text where every word has been written with a high degree of precision and accuracy; the prospectus is the prime document for rights and obligations and therefore potential claims. Translation is not desirable and hasn't been asked in the previous product Directives.

As an example, the UCITS IV Directive did not address the issue of local translation of the KIID containing a cross-reference to the main prospectus not translated. It appears that practitioners who wish to use main prospectus cross-references may wish to consider making the cross-referenced part of the entire prospectus available in the same language as the KIID. Whether that is achieved by the full translation of the prospectus or by the translation of the relevant section and its publication on the Internet or in a supplementary document is a matter for the practitioner to decide in its sole discretion.

Regarding up to date information, we agree that solely information sent to clients should be up to date. However, it is impossible to always maintain the entire accessible information up to date (website as an example).

<ESMA_QUESTION_65>

Q66: Do you agree that the information about future performance should be provided under different performance scenarios in order to illustrate the potential functioning of financial instruments?

<ESMA_QUESTION_66>

No we do not agree.

We believe that a generic illustration should be sufficient to inform the investor about the functioning of financial instruments, as it is unclear to us whether there are any benefits for a client's understanding when presenting him with several future performance indications instead of one. Any indication must from the outset be fair, clear and not misleading. We think that showing two different figures is more likely to confuse potential investors than help them.

If future performance should be provided under different performance scenarios, we would recommend to clearly stating the basis of those scenarios in order to avoid discrepancies on the methodology used by practitioners. Indeed, in the absence of precise criteria to ascertain future scenarios, information provided to clients will in fact be misleading.

As a matter of fact, we are already under the obligation to display three future scenarios for "structured UCITS" products (Directive UCITS IV) and it does make sense when it comes to product having risk/return profile difficult to understand.

We wish to highlight though that, from our experience, retail clients who have been presented scenarios of performance at point of sale tend to be disappointed when these scenarios doesn't materialize and feel deceived.

<ESMA_QUESTION_66>

Q67: Do you agree that the information to professional clients should comply with the proposed conditions in order to be fair, clear and not misleading? Do you consider that the information to professional clients should meet any of the other conditions proposed for retail clients?

<ESMA_QUESTION_67>

No.

We support the proposed general principles for information to professional clients, but **see definitely no need to impose further requirements in this respect**. We especially think it is unnecessary to require a fair and prominent warning every time potential benefits are referenced in a document aimed at professional clients. In our view, the existing requirement in the MiFID Implementing Directive, for a warning where potential benefits are emphasised, is sufficient, even for retail clients. We agree that important items, statements or warnings should not be disguised, and that material information should be up-to-date relevant to the method of communication used. We do not believe any of the other requirements for retail clients should be extended to professionals, bearing in mind their status and likely knowledge and experience.

<ESMA_QUESTION_67>

2.13. Information to clients about investment advice and financial instruments

Q68: Do you agree with the objective of the above proposals to clarify the distinction between independent and non-independent advice for investors?

<ESMA_QUESTION_68>

No. We do not agree.

ESMA writes that *"investment firms should provide a description of the types of financial instruments considered, the total number of financial instruments and providers analysed per each type of instrument according to the scope of the service"*.

We think that providing long lists of financial universes and instruments would not be effective.

The type and number of financial instruments varies periodically along with new products, new product manufacturers and new type of clients. Each list would need to be updated on a permanent basis.

The width of a universe is not a sufficient criteria for delivering a suitable advice.

Our proposal would be to go for simplicity and transparency; where an investment firms needs to inform clients about the independency of its advice, it should:

- **specify (if any) (a) its "close-links" or its "control relationships"** with other entities and (b) the % of financial instruments and/or products under review issued and/or manufactured by these entities.
- **inform the client on its selection process** on the products it recommends. The selection process highlights the way the investment firm has reduced the universe under study rather than describing the universe of financial instruments and issuers. Example: When selecting an equity UCITS-fund, the investment firm may choose a data provider and its pre-selected universe (e.g. Europerformance' universe of equity UCITS-funds) and selects the first quartile of the so-called equity funds. Then the investment firm makes its own diligences (that could be detailed) to select the most suitable equity UCITS-fund for its client.

Later on when the advice is delivered:

- The investment firm informs the client on whether the specific product it recommends is issued or manufactured by a "close" or "related" entity.

We think that this act of transparency would provide investor the trust and the protection he's expecting.

<ESMA_QUESTION_68>

Q69: Do you agree with the proposal to further specify information provided to clients about financial instruments and their risks?

<ESMA_QUESTION_69>

No we do not agree.

As a general comment, rather than detailing in a separate regulation the complete set of information to be provided to clients, it would seem more adequate to refer to the PRIIPs/UCITS/AIFM Directives, the scope of which ascribes the rules contemplated by the ESMA.

This approach would avoid any discrepancies between the PRIIPs/UCITS/AIFM Directives and the MIFID II regulation and ensure a level-playing field.

From an operational point of view, this would facilitate the implementation by management companies of their various duties towards their clients.

<ESMA_QUESTION_69>

Q70: Do you consider that, in addition to the information requirements suggested in this CP (including information on investment advice, financial instruments, costs and charges and safeguarding of client assets), further improvements to the information requirements in other areas should be proposed? If yes, please specify, by making reference to existing requirements in the MiFID Implementing directive.

<ESMA_QUESTION_70>

No

<ESMA_QUESTION_70>

2.14. Information to clients on costs and charges

Q71: Do you agree with the proposal to fully apply requirements on information to clients on costs and charges to professional clients and eligible counterparties and to allow these clients to opt-out from the application of these requirements in certain circumstances?

<ESMA_QUESTION_71>

No.

We do not agree with the principle of applying the same information to professional and non-professional clients.

We find inappropriate to align the content of report for professional clients (both for portfolio management and execution of orders) with those applicable to non-professional clients as professional clients usually requires different and personalized information.

We believe that information to professional clients should remain tailored to their specific needs. Information as well as investment services provided to professional clients are mostly based on bilateral agreements, with costs and charges being an important part of each agreement.

It is of course always possible for a professional client to opt for a non-professional categorization and therefore to receive retail type information.

<ESMA_QUESTION_71>

Q72: Do you agree with the scope of the point of sale information requirements?

<ESMA_QUESTION_72>

We do agree with the principle of delivering information at point of the sale **but we do have some reservations** on certain cost disclosures.

-When recommending or marketing financial instruments (3.i) and when providing investment service requiring providing a KID/KIID to the client (3.ii), **investment firms shouldn't be asked to add any information about the financial instrument itself that is not already provided by the product manufacturer and/or disclosed in the KID/KIID.**

When searching for a fund, clients should not get two different sets of information on the same product depending on whether they find the product on the internet (where they are provided with the KID/KIID) or whether they are recommended with the product by their investment advisor (who should, according to ESMA' proposal, provide them not only with the KID/KIID but also with other costs related to the fund, such as the transaction costs for example). We think that the same information should be provided in both cases and the investment advisor shouldn't be required to provide any additional information on the fund itself.

-where providing portfolio management and investment advice services, ESMA writes in .56 p. 112: " with regard to information provided about the costs related to the investment and/or ancillary services, the investment firm should provide personalized/tailored information of the costs that the client will incur " .

We believe it is more appropriate to deliver costs and charges information on a generic basis rather than on actually incurred costs. The reason is that these two investment services have tailor-made fees depending on the specific financial instruments/portfolio recommended to the client needs and cannot rely on past or current costs.

Moreover, contingent costs related to transactions are only known on ex-post, are subject to misleading estimation when given on ex-ante basis and shouldn't be included in the scope.

<ESMA_QUESTION_72>

Q73: Do you agree that post-sale information should be provided where the investment firm has established a continuing relationship with the client?

<ESMA_QUESTION_73>

Yes, under conditions.

We understand that a continuous relationship should be understood as a portfolio management relationship or a continued advisory relationship between an investment firm and a client (point 32).

In portfolio management, detailed annual reports on costs and charges are already provided to the client. We see no need for further regulation.

On investment advice delivered on an on-going basis, we advise to leave investment firms and their clients deciding on the option of an annual reporting recapitulating all costs, taking into account the fact that the client has been informed of the details at the time of each transaction.

Such a recapitulative report should be considered as a service enhancement delivered to the client.

<ESMA_QUESTION_73>

Q74: Do you agree with the proposed costs and charges to be disclosed to clients, as listed in the Annex to this chapter? If not please state your reasons, including describing any other cost or charges that should be included.

<ESMA_QUESTION_74>

Not entirely.

- a. We have no reservations on disclosing broker commissions (or brokerage fees) but it would be very **difficult or impossible for a portfolio manager to carve out some transaction cost items.** Examples: "Swap fee, Securities lending costs and taxes, Marks up embedded in the transaction price, Foreign exchange costs, and stamp duty". The reason is that these costs are either only known by the broker or embedded in the bid/ask spread, the portfolio manager chooses the best global price. That's what is key for the performance.

Moreover, this type of "transaction costs" disclosure is not consistent with the requirements on the KID/KIID; **this disclosure would be an additional requirement above the KID/KIID level** and would create an un-level playing field between investment services and UCITS/AIF funds.

Lastly, we doubt that the retail investor is in a position to fully appreciate detailed transaction costs. **France has adopted similar measures for private equity funds when marketed to retail clients.** The aggregation of costs and charges into a maximum annual average rate (a so-called TFAM) has been implemented since 2010; it presents costs and charges through 5 different categories of cost, in percentage of the net asset value of the fund, and it is very similar to the ESMA' proposal. **In 2014, we are now able to assess this presentation of costs and charges. The result is not positive. Retail clients do not understand the table, the calculation of the aggregation even when details of calculation are explained above and below the table.**

- b. **Personalisation of costs** disclosure on ex-post is possible and already done for mandate and dedicated products but would face very important practical difficulties and could not hence be accurate for collective investments.

As long as there is more than one investor in a product together with continuing in-flows and out-flows, it is technically impossible to personalise certain costs.

In order to maintain consistency between investment services and products, we strongly advise not to impose personalisation of costs but to leave it to the decision of the investment firm and its client when it is technically possible.

Such a personalisation, when possible, should be considered as an optional service enhancement.

- c. **Disclosure on ex-ante basis on real amounts:** It would be very difficult or impossible to disclose ex-ante costs based on real amount when it comes to portfolio management service.

The reason lies with the fact that costs are linked to variable data not known at the point of sale such as market conditions, all types of financial instrument that will be used, size of the investment, turn-over of the portfolio, etc...

Therefore ex-ante costs need to be disclosed on generic basis or on a maximum basis. And consistency with KID/KIID rules should be considered of the utmost importance.

<ESMA_QUESTION_74>

Q75: Do you agree that the point of sale information on costs and charges could be provided on a generic basis? If not, please explain your response.

<ESMA_QUESTION_75>

Yes, we do agree, ex-ante costs should be provided on a generic basis.

Generic basis is to be understood as fee schedule or method of calculating.

However, **we believe that the limitation in para. 56 of ESMA's analysis according to which generic disclosure should be allowed only if "the investment firm ensures that the costs and charges provided in the generic disclosure are representative of the costs that the client would actually incur" is not appropriate in the broader context of the draft technical advice.**

As explained in our reply to Q74, it would be very difficult or impossible to disclose ex-ante costs based on real amount when it comes to portfolio management service.

The reason lies with the fact that costs are linked to variable data not known at the point of sale such as market conditions, all types of financial instrument that will be used, size of the investment, turn-over of the portfolio, etc...

Therefore ex-ante costs need to be disclosed on generic basis or on a maximum basis.

And consistency with KID/KIID rules should be considered of the utmost importance.

<ESMA_QUESTION_75>

Q76: Do you have any other comments on the methodology for calculating the point of sale figures?

<ESMA_QUESTION_76>

Yes. We strongly recommend that the methodology for calculating figures be the same than the methodology implemented in the KID/KIID.

Having two different sets of calculating would be costly and cause confusion for investors as well as creating an un-level playing field between investments services and UCITS/AIF funds.

<ESMA_QUESTION_76>

Q77: Do you have any comments on the requirements around illustrating the cumulative effect of costs and charges?

<ESMA_QUESTION_77>

Yes. The display of cumulative costs and charges on an ex-ante basis would be meaningless for the client if it is not accompanied with cumulative returns over the same period; costs need to be compared to revenues in order to give a comprehensive understanding of an investment.

But calculating cumulative returns on an ex-ante basis needs to rely on market scenarios. There is no common market practice in drawing market scenarios. We would recommend to clearly stating the basis of those scenarios in order to avoid discrepancies on the methodology used by practitioners. Indeed, in the



absence of precise criteria to ascertain future scenarios, information provided to clients will in fact be misleading.

Besides, costs and charges of a managed portfolio, varies from one year to another depending on events such as turn-over, type of instrument used, etc...; where it is possible to give an estimation for one year with an acceptable spread of error, the spread is no longer acceptable and would be misleading, leading to non-significant figures when cumulated over several years.

Display of cumulative costs (whatever their accuracy) would deter clients from investing in long-term products, even though these long-term products are the most suitable investments for them.

It is worth reminding that ESMA's KIID consultation 09/949 concluded that cumulative costs in EUR value were seen by clients as being of little additional value and were hence dropped from the KIID.

<ESMA_QUESTION_77>

Q78: What costs would you incur in order to meet these requirements?

<ESMA_QUESTION_78>

The costs incurred are difficult to assess in such short notice but it is safe to say that they would be high. They would impact product manufacturers as well as distributors, brokers and, as a result, returns to clients.

We can anticipate that the requirements would have huge cost impact on many business units such as:

- **Information system**
- **Accountancy**
- **Organization of the Controls of 1st and 2nd level**
- **Reporting**
- **Client service and claim-handling**

These costs would eventually reflect on prices charged to the client and impact returns.

More importantly, the costs and complexity of the information systems that would be necessary to serve these requirements would be to such an extent that **banking networks would turn away from selling financial products** (i.e.funds and portfolio management services) and would rather go for simpler products such as bank saving accounts.

ESMA would create an un-level playing field between asset management products and bank products.

The need for the long-term financing of the economy would also be negatively impacted if long-term products are too costly for distribution.

<ESMA_QUESTION_78>

2.15. The legitimacy of inducements to be paid to/by a third person

Q79: Do you agree with the proposed exhaustive list of minor non-monetary benefits that are acceptable? Should any other benefits be included on the list? If so, please explain.

<ESMA_QUESTION_79>

No, we don't agree with the proposed exhaustive list of minor non-monetary benefits and with the analysis that investment research is a non-monetary benefit.

- 1. It goes beyond MIFID II level 1**

2. **Research is used for the best interest of clients**
3. **ESMA should clarify how to distinguish “personalized research” and “tailored and bespoke research”**
4. **The impact on market has not been fully assessed**
5. **Our proposal**

1. **It goes beyond MIFID II level 1**

Nothing at level 1 nor in the Commission’s mandate mentions that level 2 measures should be developed on research as an inducement. Recital (74) of MiFID II shows that restrictions on inducements are predominantly viewed from the angle of the distribution and placing of financial products to clients, i.e. the purpose is to avoid firms being improperly influenced in their investment decisions by receiving and retaining benefits from product providers and issuers.

Such radical change needs a political decision at level 1 and should not stem from level 2 measures.

2. **Research is used for the best interest of clients**

We strongly believe that the current way the research is paid is not against but, on the contrary, in the best interest of clients.

That is indeed often common practice for a portfolio manager to agree higher execution rates to allow them to also obtain higher value research from a broker.

Portfolio management (and execution) is extremely competitive, with performance a key axis of competition. It would be self-defeating in our view for a manager to trade more than the optimal level or at a too high rate, as this would undermine performance. On the contrary, the execution rates reflect an optimal price that enables clients to benefit from competitive transaction fees while in the same time the transaction fees enable the client to benefit from a high-quality and diversified research. In fact, research directly assists the investment manager when making its investment decision and is to the advantage of the client and not to its detriment.

3. **ESMA should clarify how to distinguish “personalized” research and “tailored and bespoke” research and why the second one would impair clients’ best interests.**

ESMA intends to split research material between **minor** non-monetary benefits and **non-minor** non-monetary benefits. The latter would need to be directly paid by investment firms.

In the first category, ESMA includes in .5.i page 124: *“information or documentation relating to a financial instrument (including financial research) or an investment service. This information could be generic in nature or personalized to reflect the circumstances of an individual client”.*

In the second category, ESMA writes in its analysis .14 page 121: *“As such, any research that is tailored or bespoke in its content or rationed in how it is distributed or accessed would be of a scale and nature such that its provision is likely to influence the recipient’s behavior and cannot be a minor non-monetary benefit.”*

It would be much helpful if ESMA further clarifies the difference between “personalized” research and “tailored or bespoke” research.

For example, asset managers specializing in specific instruments –such as high-yield bonds, asset-backed securities, small and mid-cap equities, private equity, securitization, SRI approach,...-do rely on specific financial researches that are not always widely distributed and that could be tailor-made to specific products. They do contribute to the investment management decision and to the performance delivered to clients.

It is not clear whether, according to ESMA, it should be considered minor or non-minor non-monetary benefits.

It is not clear either why ESMA considers “tailored or bespoke” research against clients’ best interests.

Lastly, having to distinguish between different kinds of research material would be a difficult and risky enterprise, especially where it is provided by the same provider.



We suggest other solutions in .5 below.

4. **The impact on market has not been fully assessed**

The qualification of any research as a prohibited non-minor benefit will have a huge impact on the current market and was not intended by the EU co-legislator.

a. **It is our understanding that the effect would lead to a massive increase of costs for active manager mandates in Europe.**

Should research be considered as inducement, it would become a scarce commodity, available only to large investment firms.

Only large investment firms would be in a position to afford it i.e. to internalize research instead of receiving it from brokers while smaller actors would have no more access to research unless they can reflect it to their clients through higher management fees.

Similarly, providers of research on specific financial instruments (e.g. small and mid-caps, asset-backed securities...) may not find enough buyers to sustain their business; as a consequence, specialized research providers would end to disappear for the benefit of large providers or large traditional markets and SME's access to public financing would dry up.

The number of research providers would reduce, that would lead to a concentration of research material available in the market. Portfolio managers that are not in a position to finance abundant research would tend to rely on public ratings and therefore increase their dependency on ratings agencies. We want to stress out the increase of the systemic risk in markets.

b. **If investment management companies will have to re-price the services they offer, they will face competition at least from passive management and in particular, from overseas managers.**

Increasing cost of research would also favor passive management and index-linked products (in no need for research). As a result, States or corporates not included in indexes would be penalized for not getting access at a level-playing field to public financing.

Moreover, non-European investment firms still benefiting from an abundant research material would have a competitive advantage over European actors and their European subsidiaries would be able to benefit from it through in-house channels.

ESMA would create a distortion of competition in favor of Non-EU investment firms not subject to these rules.

5. **Our proposal**

We propose that research remains exclusively and rightly ruled by the “**Conflicts of Interests**” regulation, which provides investors full transparency and protection against conflicts of interests.

In addition, some countries have gone further in tightening these rules by implementing **commission sharing agreements (CSA)**, under which cost of research and cost of execution can be split to ensure that each provider is remunerated at the level it should be.

This unbundling introduced by major asset managers some years ago was the way to eradicate any conflict of interest because:

- research budget needed by each investment team is accurately estimated and brokers' commissions are fixed in such a way that each team pay for its own research to the benefit of investors,
- thanks to the Commission Sharing Agreements de-correlation between turnover of assets within funds and research budget is guaranteed.



Moreover, CSA has proved that it has fostered competition in the quality of the research and in the formation of competitive prices.

As an illustration of transparency provided by current regulation on CSA in France, French asset managers have currently to publish a “**Report on Intermediation Fees**”. (RG AMF 314-82)

The Report gives full transparency on the intermediation fees related to “order reception, transmission and execution services” on the one hand and intermediation fees related to “Investment decision aid and order execution services” on the other hand.

The report also gives an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.

Such Report could be more detailed if need be in order to increase transparency and protection towards Investors in the use of transaction fees.

It’s also worth mentioning the “**Best selection**” rules included in the AMF regulation (RG AMF 314-75): investment firm must establish a detailed process for selecting their brokers, they must publicly disclose this process to the clients and finally they must regularly assess and review their selection.

We think ESMA should consider favorably all these current regulations that ensure that research is distributed and financed in a fair and transparent way.

<ESMA_QUESTION_79>

Q80: Do you agree with the proposed approach for the disclosure of monetary and non-monetary benefits, in relation to investment services other than portfolio management and advice on an independent basis?

<ESMA_QUESTION_80>

No.

Regarding non-monetary benefits, financial assessment is random and unreliable; disclosure of amount shouldn’t be contemplated.

Allocating non-monetary benefits to an individual client portfolio is not possible as it is spread over a full range of investment services and clients.

Regarding monetary benefits, along with our answers to Questions 72 and 75 on chapter “Information on costs and charges”, we think that ex-ante information on monetary benefits should be disclosed on a generic basis and stick with the market practice:

- A maximum % of the amount invested as entry fees
- When relevant, an annual % of the amount invested

As for ex-post disclosure, we think that providing an exact amount (7.ii) and personalisation (7.iii) is difficult and costly ; it requires tracing all in/outflows of the client and therefore needs developing specific information systems between custodian and the distributors’ client service departments ; the costs will eventually be reflected to clients for a meagre benefit.

We think there’s no added value in providing a cash amount to the client as long as the client has received the method of calculating (as a % of the amount invested)

Providing the same display of information (in %) on ex-ante and on ex-post preserves the consistency of the information.

<ESMA_QUESTION_80>

Q81: Do you agree with the non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met? If not, please explain and provide examples of circumstances and situations where you believe the enhancement test is met. Should any other circumstances and/or situations be included in the list? If so, please explain.

<ESMA_QUESTION_81>

No.

Before providing detailed answers to the question, we wish to draw ESMA's attention to the concerns raised by the Level II proposals in the French asset management industry; we recall that the French asset management market is the third one in Europe with €3 000 billion assets under management and the second one in terms of fund domiciliation (as of 31.12.2013).

The major concern is that the spirit of MIFID II Level 1 would not be respected when it comes to the inducement question. Indeed, while the EU legislator has decided to allow both commission-based and fee-based advices, the present consultation concretely closes the door to commission-based advice.

The "quality enhancement" test, as proposed by ESMA, puts most –if not all- commission based advisory models into question even in the case of non-independent advice.

Specifically, the list of criteria (2.15, DTA, paragraph 10) set for determining what is not a service enhancement would, if stayed as proposed, end up in an excessive narrowing of service enhancement possibilities. We strongly believe that this negative approach disregards the EU legislator's decision and the principles set out in MIFID II Level 1 regarding payments of inducements linked to service enhancement. Therefore, our proposal is to be more constructive about what can be a quality enhancement taking into account what has recently been done in Member States at the initiative of National Authorities.

Banning all inducements on investment advice would have a very negative impact on investor protection. Indeed, several studies (notably the CFA Institute's report- see annex) show that the proposed model would give rise to a two-tiered distribution system where investors with modest means will be left to manage their savings on their own using a faceless RTO or execution-only platform, while the wealthy will have exclusive access to high value added advice that is remunerated accordingly.

The median size of the French investor's portfolio is € 20 308 according to AMF (*Observatoire de l'Épargne - June 2014*) which is far from allowing the average investor to pay advisor fees estimated to € 1 900 the first year. (See our full estimation in Q82).

Another consequence of reducing investment advice would be the risk for investors to be given a narrower choice of products and the risk of market concentration. An increased systemic risk would also be the unavoidable result.

As an illustration of business concentration and reduced offering to clients, a recent study shows that 90% of retail investors in UK are invested in only 10 products (*Source: Study of The Economist Intelligence Unit « Seismic shifts in investment management: How will the industry respond? » June 2014*).

As a consequence, the two first points (i) and (ii) of.10 of the Draft technical advice (page 124) lead to a quasi-ban on inducements for non-independent advisors.

- 1. 10.i :** we strongly disagree with this criteria. ESMA writes that quality enhancement test is not met when "...fee or commission is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business"-

Commissions shouldn't be submitted to criteria of volume (if that is what ESMA intends in this unclear requirement). Commissions received must be assessed through the criteria established by MIFID I and II level 1 for non-independent advisors, i.e. being disclosed to the client, enhancing the service to the client and not impairing the client's best interest.

In that matter, AMF has issued clear and demanding positions on inducements and service enhancement (e.g. Position AMF 2013-10) that match the intention of the EU legislator.

It must be highlighted that, in the end, a fully equipped distributor, that has sound processes and systems, knowledgeable staff, etc all paid from commissions is in the end in the best interest of clients – if they aren't allowed to use commission to invest in their business, that would leave the client in a bad situation, having to deal with a company which is not in a sound financial position.

We think that 10(i) should be deleted or dedicated only to non-monetary benefits.

2. **10.ii** : *ESMA writes that quality enhancement test is not met when "it does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client".*

This condition could only apply where the regulatory requirements are of appropriate nature and scale.

We have noticed in the consultation paper that regulatory requirements have been significantly increased in the fields of

- *Product Governance*
- *Suitability Report and periodic review*
- *Costs and charges detailed reporting*
- *Reporting*

We therefore suggest that some of the regulatory enhancement suggested by MIFIF II level 1 and in ESMA' draft technical advice be left to the consent of the parties and, as a result, be considered as a service enhancement and that regulatory requirements remain at a reachable level for all investment firms. See our suggestions below in .4

Besides regulatory requirements vary over time and space. Referring to "regulatory requirements" is not a clear, explicit and stable reference where, to the contrary, giving an explicit definition with positive criteria would be more helpful for assessing additional or higher quality services.

3. **We agree with .11 of the draft technical advice (page 124)**

.11: *ESMA writes "...it should be understood that a fee, commission or non-monetary benefit could be considered acceptable if it enables the client to receive access to a wider range of suitable financial instruments or the provision of non-independent advice on an on-going basis"*

We agree with these two criteria:

- Giving access to a wider range of suitable financial instruments
- Providing an on-going investment advice

On a more general approach, providing additional service above MIFID I level should be considered as a service enhancement.

4. **We would like to propose more examples of service enhancement that could be offered to the client:**

- **Giving a periodic suitability assessment**, at least annually, in line with the position of AMF 2013-10, should be a service enhancement where ESMA seems to consider it as a regulatory service in 2.17 Suitability, draft technical advice .3, page 134.
- **Giving an annual aggregate report on costs and charges**. Along with chapter 2.14 on Costs and Charges, Q/A. 73, we believe that providing a recapitulative report on costs and charges where there is a continuous investment advice relationship should be a service enhancement and not a regulatory requirement as ESMA mentions it page 105. §31.32.33.iii.

- **Giving a personalised report on costs and charges** when it is technically possible. Along with chapter 2.14 on Costs and Charges, Q/A. 74, we believe that providing a personalised report on costs and charges is a service enhancement and not should be a regulatory service as requested by ESMA.
 - **Alerting the client on specific thresholds (% of gain or loss) agreed with client.** Along with chapter 2.20 Reporting to Clients, we think that special alerts agreed with clients should be a service enhancement and not a regulatory service as requested by ESMA.
5. **In order to better articulate .10 and .11 we suggest that**
- **10 (i) and 10 (ii) be suppressed and 10 (iii) and 10(iv) kept**
 - **.11 be developed with more examples of positive criteria** in a non-exhaustive list that would help investment firms to better comply with the principle of service enhancement.

Conclusion

MIFID II requirements for investor protection induce heavy costs for investment firms; these costs can be financed either through inducements or through client fees. We believe that inducements remain the best solution and insure the fairest allocation of costs and treatment between clients.

Additionally and very importantly, no new rules should be imposed on funds distributors that would, rightly in our eyes, seem unfit for other competing investment solutions such as insurance-life, bank saving accounts or “crowdfunding”.

<ESMA_QUESTION_81>

Q82: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA_QUESTION_82>

Considering the huge economic impact of these requirements, it is more adequate to anticipate that:

- Some investment firms and research providers would face hard time to maintain their business as the balance of their business model will be disrupted (more costs, less revenues)
- Some public and private entities not covered by research nor included in market indexes would see their source of public financing drying up
- Last but not least, clients will eventually pay higher fees for research and investment advice. **See our estimation below.**

The ban on inducements will reflect in **additional costs for the client with modest means.** We present here a comparison of a commission-based advice and a fee-based advice for two clients. Client A has €20 000 to invest (median French investor) and Client B has € 100 000 to invest. Their investment advisor spends several hours performing client diligences and studying investment solutions. For the sake of the example, he recommends both clients to invest in the same fund.

- Commissions received by the investment advisor on the fund: 1% entry fee and 50% of the 1% management fees , i.e. 0.50%.
- Fees received by the investment advisor (if not commissioned) : 200€ /hour (average).
- Scope of Service : KYC, AML, Suitability diligences, Letter of mission, Preparation and selection of the investment services providers and different funds, Suitability Report, meetings and annual first year reporting. We have worked out a total of 7 Hours 1/2 in time spending.

Example 1 : comparison of commission-based and fee-based payments and impact on clients

Table 1

in €	Commissions	Fees	Delta
Client A (€20K)	300	1 900	633%
Client B (€100K)	1 500	1 900	27%



Obviously Client A would suffer an important rise, from €300 to € 1900, i.e. from 1.5% to 9.5% of its investment!
9.5% of fees is not acceptable and Client A would prefer to invest without advice.

Example 2: impact on the investment advisor if both clients pays 2% of fees

We have taken the hypothesis that the investment advisor lowers its fees to a supposed acceptable level of 2%, out of which 1% is taken as an entry fee and 1% is billed to the client as a fee for on-going service.

Table 2

in €	1% Entry Fee	1% Fee	Total
Client A (€ 20K)	100	100	200
Client B (€ 100K)	1 000	1 000	2 000

While Client B pays € 2 000, the equivalent of 10 hours of advisory, Client A only pays the equivalent of one hour (€ 200), which doesn't pay by far for the advisor's work and time.
As a consequence, the investment advisor cannot advise Client A who is not in a position to pay for advice. Actually, any client below €100 000 cannot cover for the costs of an advisor's work and time
<ESMA_QUESTION_82>

2.16. Investment advice on independent basis

Q83: Do you agree with the approach proposed in the technical advice above in order to ensure investment firm's compliance with the obligation to assess a sufficient range of financial instruments available on the market? If not, please explain your reasons and provide for alternative or additional criteria.

<ESMA_QUESTION_83>

No.

We disagree with ESMA's indication in paragraph 1 p. 128 et seq. that the total number of financial instruments and providers analysed per each type of instruments according to the scope of the service is a relevant benchmark.

A higher number of products does not necessarily lead to better investment advice.

We also strongly oppose the notion that less complex financial instruments or financial instruments issued by an entity not having close links to the investment firm generally better meet the client's profile or need (1.v page 129).

We think that the quality of the selection process and the tools employed for selecting products and financial instruments are better criteria to assess the independence of the investment advice.

Our proposal is to focus on the quality of the selection process performed on the products recommended.

We would also support the disclosure of the % of products (if any) issued by a close or related entity that are in the list of recommended products. A product issued by a close or related entity could still be a suitable product for the client, and investment firms should be left the opportunity to prove it so.

As specified in our answer to Q.68, the investment firm could:

- specify (if any) (a) its “close-links” or its “control relationships” with other entities and (b) the % of financial instruments and/or products under review issued and/or manufactured by these entities.
- inform the client **on its selection process** on the products it recommends.

Later on when the advice is delivered:

- The investment firm informs the client on whether the specific product it recommends is issued or manufactured by a “close” or “related” entity.

Further, we have concerns regarding the unclear expressions “**class**” and “**type**” of financial instrument and “various financial instruments“. In particular in connection with ESMA’s statement that if the investment firm could not compare “various financial instruments”, it would not be allowed to claim itself “independent”, e.g. p. 129 para. 1 (v) and 2. It is our understanding that an investment firm could specialize in certain types of financial instruments such as units or shares in investment funds and could still be independent, provided it meets the requirements ESMA states in para. 3, p. 129. We would appreciate a clarification in this respect, in particular what is meant by type, class or various instruments.

We also have concerns regarding the requirements for investment firms **focusing on certain classes** of instruments. It is understandable why clients should be able to easily identify a preference for the class or range of financial instruments as suggested by ESMA in para. 3 (ii), p. 129. The requirement, however, that the client shall be able to self-select with a high degree of accuracy should be deleted.

In case a client would be able to self-select, it is unlikely that he would need advice at all. Such requirement contradicts the general intention of advice, i.e. to provide the client with a recommendation which he cannot draw himself.

Furthermore, it is unclear how an advisor in practice should be able to test and proof in case of dispute such requirement.

With respect to the requirement **to refer the client to another firm** in case the firm cannot easily confirm that its service is appropriate for the new client, we strongly suggest to delete this as well (para. 3 (iv), p. 129).

First of all, it seems to be an inappropriate burden to be required to refer a client to a competitor.

Secondly, there is no requirement within MiFID for firms to know the quality of their competitors. If, however, such requirement would be imposed upon firms, they would have to analyse the market of their competitors to provide a recommendation which is of any use to the client.

<ESMA_QUESTION_83>

Q84: What type of organisational requirements should firms have in place (e.g. degree of separation, procedures, controls) when they provide both independent and non-independent advice?

<ESMA_QUESTION_84>

The contemplated requirement that a relevant person might not provide independent and non-independent advice would put small investment firms in a very difficult position. Such a requirement would clearly not be in line with the proportionality principle.

In line with the philosophy of the level I Directive, clients should have the choice, on a case by case basis, and in full transparency to have advice on an “independent basis” or not.

<ESMA_QUESTION_84>

Q85: Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.

<ESMA_QUESTION_85>

Yes.

Compiling long lists of financial instruments would induce marketing costs, but most of all, having two separate teams of investment advisors –independent and non-independent- would certainly lead to heavy additional costs that some investment firms will not be able to support.

<ESMA_QUESTION_85>

2.17. Suitability

Q86: Do you agree that the existing suitability requirements included in Article 35 of the MiFID Implementing Directive should be expanded to cover points discussed in the draft technical advice of this chapter?

<ESMA_QUESTION_86>

No.

We do not fully agree with extending the requirements on Suitability.

ESMA writes in DTA, 1.iii: Investment firms in direct relationship with clients must have procedures and be able to demonstrate that they do fully understand the product they recommend and that they **assess whether alternative financial instruments, less complex or with lower costs**, could meet their client profile. **We do not agree with this additional requirement**; ESMA is interfering in the investment advice process and induces the belief that “simplicity” and “cheapness” are relevant criteria for choosing a financial product, which they are not.

Indeed, it would (1) induce that passive management is preferable and make the way for ETF over active management which not always in the client’s best interest and could increase systemic risk (2) link “complexity” with risk which is not right (innovative management techniques are often risk mitigant) except when complexity means absence of possibility to explain the risk/reward profile of the product.

ESMA writes in DTA.1(v): When providing advice or portfolio management that involves switching investment, the firm should **collect the “necessary information on the client’s existing investments to undertake an analysis of the costs and benefits of the switch”**, so they are able to demonstrate the benefit of the switch. **We do not agree with this additional requirement.**

Where portfolio management service is provided, the client has given in writing the portfolio manager full mandate to operate transactions and switches any time the portfolio manager finds it appropriate without taking into account other assets the client might hold outside the mandate.

ESMA’s requirement creates an obligation which does not stand with the intention of the investor expressed in the portfolio management mandate. The mandate can always be adapted when the client feels like it.

ESMA writes in DTA, 1. (viii.b.c): Investment firms should have robust process to assess both the client’s ability to bear losses and the client’s risk tolerance.

We agree as long it is well understood that ability to bear losses and risk tolerance is associated with an investment horizon.

ESMA writes in DTA, 3 (page 134): “*Where the recommended instruments are likely to require the retail client to seek a periodic review of their arrangements, this should be brought to the client’s attention and included in the report.*”

We would ask ESMA to further clarify this phrase as we don’t understand what is triggering the periodic review. ESMA should reformulate or at least clarify the instruments or the situations targeted in this requirement.

When it comes to portfolio management, we do not agree with the example quoted by ESMA: “ where there is a probability that the portfolio deviates from its targeted allocation”.

Portfolio management service already includes a regular reporting and encounter with the client. But **rebalancing portfolio toward its targeted allocation is under the responsibility of the portfolio manager and doesn't need a specific review with the client.**

Should the portfolio contains derivatives, it is well understood that threshold alerts could be implemented with the client.

Once again, the client can ask for a modification of the mandate when he feels it is needed.

When it comes to investment advice, when the client and the investment firm agree on a periodic review, it should be considered as **a service enhancement** taking place in an on-going relationship. This position is in line with the AMF Position 2013-10 (§3.2.1) and with our proposal in Question 81, chapter "2.15. "The legitimacy of inducements paid to/by a third person".

<ESMA_QUESTION_86>

Q87: Are there any other areas where MiFID Implementing Directive requirements covering the suitability assessment should be updated, improved or revised based on your experiences under MiFID since it was originally implemented?

<ESMA_QUESTION_87>

No.

We think that investment firms should be given space to personalize and improve their suitability assessment adapting it to their type of services and clients.

<ESMA_QUESTION_87>

Q88: What is your view on the proposals for the content of suitability reports? Are there additional details or requirements you believe should be included, especially to ensure suitability reports are sufficiently 'personalised' to have added value for the client, drawing on any initiatives in national markets?

<ESMA_QUESTION_88>

No.

We think that investment firms should be given space to personalize and improve their suitability assessment adapting it to their type of services and clients.

<ESMA_QUESTION_88>

Q89: Do you agree that periodic suitability reports would only need to cover any changes in the instruments and/or circumstances of the client rather than repeating information which is unchanged from the first suitability report?

<ESMA_QUESTION_89>

No.

We think that investment firms should be given space to personalize and improve their suitability assessment adapting it to their type of services and clients.

<ESMA_QUESTION_89>

2.18. Appropriateness

Q90: Do you agree the existing criteria included in Article 38 of the Implementing Directive should be expanded to incorporate the above points, and that an instrument not included explicitly in Article 25(4)(a) of MiFID II would need to meet to be considered non-complex?

<ESMA_QUESTION_90>

No. We do not agree with the second criteria.

ESMA writes in DTA.1 (ii): the instrument is not complex if “*it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though technically frequent opportunities to dispose or redeem it would be possible.*”

It appears to be broad and confusing to be implemented on a satisfactory manner by the industry.

Notably, **the term “implicit exit charges” is unclear and could refer to various situations**, such as certain funds benefitting from specific tax advantages linked to the engagement not to redeem shares/units before a certain period of time.

Based on a literal interpretation of this provision, one could consider that the loss of the tax benefit would constitute an “implicit exit charges”. If so, the French PEA would be deemed complex and we know it is not.

Further, this proposal would require portfolio management companies to process with a “case by case” approach by determining for each product whether it is complex or not, based on “implicit” interpretation, with a significant degree of risk that a same product would be “complex” for a portfolio management company and “not complex” for another one.

We are also questioning the fact that an “explicit exit charge” should automatically indicate a complex product. **An exit charge is all but neither “complex” nor difficult to understand and doesn’t automatically make the investment illiquid either** (except in the cases where the exit charges are obviously high enough to prevent any redemption).

In addition, ESMA will further increase and worsen the confusion between illiquid products and complex products which was already latent in the level 1 text. One can agree with the idea that illiquid products should not be placed through so-called ‘execution only’ to retail clients. But the qualification of ‘complex’ has a very detrimental marketing effect.

The second criteria should be deleted.

<ESMA_QUESTION_90>

Q91: Are there any other areas where the MiFID Implementing Directive requirements covering the appropriateness assessment and conditions for an instrument to be considered non-complex should be updated, improved or revised based on your experiences under MiFID I?

<ESMA_QUESTION_91>

Yes.

If this new criteria is introduced, it will be necessary to change the qualification and to speak either of complex products or of illiquid products.

Structured products as defined in article 36, § 1 of N° 583/2010 EU Regulation should also be qualified as such in order to avoid employing the term complex. In fact, these products are often much safer than other UCITS as well as very simple to understand with respect to their risk/return profile.

So we propose that products which should not be sold through ‘execution only’ would be called either:

- complex products (with the meaning of having a risk/return profile difficult to assess at first glance),
 - illiquid products,
 - structured products,
- depending on the reason of their exclusion from ‘execution only’.

Lastly, MIFID II level 1 (art.25.) defines a list of non-complex products by nature; for others products, we agree with the criteria defined in art. 38 of MIF I/2006/73 determining the complex/non-complex character of other products. As such we support the fact that some AIF may match the criteria defined in art.38.



As an example, some French AIF “*fonds d’investissement à vocation générale* » are UCITS-like and match the criteria defined in art .38. As a consequence, we believe they are not “complex”.

We would be grateful if ESMA confirms this analysis.

<ESMA_QUESTION_91>

2.19. Client agreement

Q92: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement with their professional clients, at least for certain services? If yes, in which circumstances? If no, please state your reason.

<ESMA_QUESTION_92>

No.

As a general principle, we find inappropriate to align the content of duties for professional clients with those applicable to non-professional clients as professional clients usually requires different and personalized services.

We do not see any reason to impose regulatory requirements relating to the conclusion of service contracts with professional clients. The status of a professional client implies per se higher flexibility in the business relationship with the service provider which should correspond with a measurably lower level of regulatory investor protection.

Professional clients are either financial institutions and large undertakings or other entities/individuals who meet the relevant criteria relating to their financial means and experience and in respect of whom the investment firm is satisfied on the basis of an individual assessment that the client is capable of making investment decisions and understanding the risks involved³. Hence, it should be borne in mind that the assignment of the professional client status on request already involves high hurdles in order to exclude waiving the investor protection standards for the insufficiently experienced or adept clients.

Therefore, it is not appropriate to require professional clients to enter into written agreements with investment firms, let alone to prescribe the formal conditions of such agreements (in paper/other durable medium). Similarly, the content of service agreements with professional clients should be subject to contractual negotiations between the parties and not be bound by protective measures designed for retail clients. In particular, the suggestion to “state the types of financial instruments that may be purchased and sold and the types of transactions that may be undertaken” goes too far in the context of professional portfolio management. The same applies to the underlying reasoning depicted in recital 19 of ESMA’s analysis: professional clients do not need regulatory measures enabling them to better understand the nature of the services provided and where appropriate, to seek judicial recourse. **As a consequence, paragraph 2 of the ESMA’s draft technical advice should be deleted.**

<ESMA_QUESTION_92>

Q93: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of investment advice to any client, at least where the investment firm and the client have a continuing business relationship? If not, why not?

<ESMA_QUESTION_93>

No.

³ Cf. Annex II Section II(1); third subsection of MiFID II Level 1

First, for retail investors, if an investment firm is providing investment advice to clients, it shall be liable if the advice is not conducted properly. Not having in place an agreement, as now proposed by ESMA, could be used as an argument against the client, as the investment firm could deny having provided advice (and therefore not being liable for inaccurate advice). We are of the opinion that the current MiFID II Level 1 text explicitly did not mention such written agreements for this very reason.

Secondly, for professional clients; investment advice can be delivered by an asset management firm to a professional client in the course of its selling process (e.g. presentation of products and/or investment solutions that the asset manager considers suitable to its prospect).

It is usually a period of time where the client hasn't decided yet whether he will enter or not into a business relationship with the asset manager.

It is therefore not realistic to ask the client to sign a written investment advice agreement for this specific and short period of time.

Of course, should the professional client asks for a specific investment advice service on an on-going basis, we agree with the principle of writing a specific investment advice agreement that usually includes a remuneration for the asset manager.

<ESMA_QUESTION_93>

Q94: Do you agree that investment firms should be required to enter into a written (or equivalent) agreement for the provision of custody services (safekeeping of financial instruments) to any client? If not, why not?

<ESMA_QUESTION_94>

Yes.

<ESMA_QUESTION_94>

Q95: Do you agree that investment firms should be required to describe in the client agreement any advice services, portfolio management services and custody services to be provided? If not, why not?

<ESMA_QUESTION_95>

Yes.

<ESMA_QUESTION_95>

2.20.

2.20. Reporting to clients

Q96: Do you agree that the content of reports for professional clients, both for portfolio management and execution of orders, should be aligned to the content applicable for retail clients?

<ESMA_QUESTION_96>

No we do not agree.

We find inappropriate to align the content of report for professional clients (both for portfolio management and execution of orders) with those applicable to non-professional clients.

In many cases the format of the reports presented to professional clients are tailored in order to meet their specific requirements. ESMA fails to provide a justification for this suggestion.

In our view, the reporting needs of professional clients are fundamentally different from the standards applicable in relation to retail clients.

<ESMA_QUESTION_96>

Q97: Should investment firms providing portfolio management or operating a retail client account that includes leveraged financial instruments or other contingent liability transactions be required to agree on a threshold with retail clients that should at least be equal to 10% (and relevant multiples) of the initial investments (or the value of the investment at the beginning of each year)?

<ESMA_QUESTION_97>

Not on a systematic basis. Such agreement terms on threshold alerts should be left to the parties, based on the objectives of investment of the client or the periodic reporting on his managed portfolio.

We think that such agreements should be considered as a service enhancement, as we previously asked in our answer to Q.81.

<ESMA_QUESTION_97>

Q98: Do you agree that Article 43 of the MiFID Implementing Directive should be updated to specify that the content of statements is to include the market or estimated value of the financial instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity?

<ESMA_QUESTION_98>

We do agree.

However, it is not always the case that an indicative price means a lack of liquidity (i.e. a share may be suspended for a short time on a regulated market due to a corporate action or market value based on the last available redemption price).

<ESMA_QUESTION_98>

Q99: Do you consider that it would be beneficial to clients to not only provide details of those financial instruments that are subject to TTCA at the point in time of the statement, but also details of those financial instruments that have been subject to TTCA during the reporting period?

<ESMA_QUESTION_99>

Non applicable



<ESMA_QUESTION_99>

Q100: What other changes to the MiFID Implementing Directive in relation to reporting to clients should ESMA consider advising the Commission on?

<ESMA_QUESTION_100>

As a more general comment in relation to reporting to clients ESMA should consider that many retail clients already object to the high volume of paperwork they receive from their investment firm and may not wish to receive quarterly statements, as its costs are ultimately borne by them.

<ESMA_QUESTION_100>

2.21. Best execution

Q101: Do you have any additional suggestions to provide clarity of the best execution obligations in MiFID II captured in this section or to further ESMA’s objective of facilitating clear disclosures to clients?

<ESMA_QUESTION_101>

We welcome ESMA’s statement that MiFID 2 does not require major changes to the existing best execution regime. However, we would make the following points:

We would argue that the relative importance of the execution factors (generally accepted to be price, cost, speed, likelihood of execution, size, anonymity, and the potential for leakage of information) are not easily ranked. One particular set of circumstances might make size more important than price, which could be the exact opposite for the same stock in the same size the following day. Relevant factors should therefore never be ranked in a definitive way for an Execution Policy, otherwise it might influence the way a particular stock is always traded.

We would also like obtaining better clarity on when firms are executing transactions, and when they are transmitting or placing orders with other entities for execution.

The wording of the Draft Technical Advice seems indeed ambiguous with regards to the policy to be produced and the appropriate information about the policy to be provided to clients.

For example paragraph 9 requires that clear information on permitted third party payments is set out in the policy. This implies that that the client is aware of this. Paragraph 12 states that information on fees charged by execution venue should be in the policy as well in order to provide this information to clients. Just because the information is in the policy does not mean that it is a mandatory information to add in the policy that will be disclosed to clients.

We would then like further clarity on the type of information that ESMA envisages to require from investment firms regarding the “execution quality” of its chosen venues during a previous year. We would like to have a definition on the way “quality” is defined and under what benchmark.

We are concerned too over the additional cost that might be borne by investment firms in providing such granular reports. We anticipate that any additional costs on the brokers and investment banks in providing more specific best execution disclosure to us will reduce our ability to further reduce the direct costs of trading. These costs, if passed on to clients as part of the overall execution service, may outweigh any benefit of forced transparency on venue selection.

<ESMA_QUESTION_101>



Q102: Do your policies and your review procedures already detail the details proposed in this chapter? If they do not, what would be the implementation and recurring cost of modifying them and distributing the revised policies to your existing clients? Where possible please provide examples of the costs involved.

<ESMA_QUESTION_102>

With regard to their execution policy provided to their clients (e.g. pension funds, mutual fund clients and retail investors), most of AFG members already detail the top 10 venues and brokers with whom they trade.

They also run review procedures that are conducted at least annually to ensure that the appropriate choices are being made to deliver best execution.

<ESMA_QUESTION_102>

2.22. Client order-handling

Q103: Are you aware of any issues that have emerged with regard to the application of Articles 47, 48 and 49 of the MiFID Implementing Directive? If yes, please specify.

<ESMA_QUESTION_103>

We are not aware that any changes to the Implementing Directive are required.

<ESMA_QUESTION_103>

2.23. Transactions executed with eligible counterparties

Q104: Do you agree with the proposal not to allow undertakings classified as professional clients on request to be recognised as eligible counterparties?

<ESMA_QUESTION_104>

Yes

<ESMA_QUESTION_104>

Q105: For investment firms responding to this consultation, how many clients have you already classified as eligible counterparties using the following approaches under Article 50 of the MiFID Implementing Directive:

<ESMA_QUESTION_105>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_105>

Q106: For investment firms responding to this consultation, what costs would you incur in order to meet these requirements?

<ESMA_QUESTION_106>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_106>



2.24. Product intervention

Q107: Do you agree with the criteria proposed?

<ESMA_QUESTION_107>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_107>

Q108: Are there any additional criteria that you would suggest adding?

<ESMA_QUESTION_108>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_108>



3. Transparency

3.1. Liquid market for equity and equity-like instruments

Q109: Do you agree with the liquidity thresholds ESMA proposes for equities? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA_QUESTION_109>

The numbers do not seem to be material enough to warrant any change. No matter what criteria is adopted between the 6 proposed ones, the percentage of total market turnover that is deemed liquid only varies between 94.22% and 95.74% according to the figures available to our members. In all cases except for the Scenario 5, scenarios proposed by ESMA are actually worse than the current level of 94.96%.

Given the possible decrease in liquidity of these smaller companies, we feel that this desire to decrease the thresholds for liquidity is unjustified and the consequences far outweigh any benefit to market participants.

AFG members worked extensively on the definition of criteria to facilitate the definition of a liquid equity or equity-like instruments.

We would then recommend some slight modifications in the model proposed by ESMA.

The approach that would suggest to ESMA is based on a decision tree model:

- (1) Free float adjusted for foreign investors (cf emerging markets) defined by 4 families :
 - the market capitalisation is \$5 billion or more for large caps,
 - \$1 billion to \$5 billion for medium caps,
 - \$250 million to \$1 billion for small caps, and
 - less than \$250 million for micro caps (to be confirmed by members) .NB: families could be defined also by the participation to the issue in the main index of its country of issuance
- (2) The turn-over compared to the adjusted free-float by currency, segmentation to be defined

Moreover, we have agreed that this approach is of particular importance for the smaller, illiquid types of company that need their trading protected from greater transparency in the market, allowing a higher proportion of large blocks to be done in them under the negotiated trade and reference price waivers that currently exist. Having them enter the double-volume cap restriction proposed will simply further limit the chance for institutions to trade in them in a more discrete manner and with a lower risk of leakage of sensitive information.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_109>

Q110: Do you agree that the free float for depositary receipts should be determined by the number of shares issued in the issuer's home market? Please provide reasons for your answer.

<ESMA_QUESTION_110>

Yes, we agree with ESMA's approach.



The premium or discount at which a DR trades to its underlying shares is largely determined by the liquidity and costs of trading in the national market.

Where creation and cancellation of DRs is on-going and freely available, the free float of DRs should be linked to the free float in the national market.

However, foreign ownership limits in some jurisdictions may prevent the creation or issuance of new DRs, and this influences the liquidity threshold of DRs based on free float alone.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_110>

Q111: Do you agree with the proposal to set the liquidity threshold for depositary receipts at the same level as for shares? Please provide reasons for your answer.

<ESMA_QUESTION_111>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_111>

Q112: Do you agree with the liquidity thresholds ESMA proposes for depositary receipts? Would you calibrate the thresholds differently? Please provide reasons for your answers.

<ESMA_QUESTION_112>
We don't agree with ESMA's approach.

We believe that the liquidity threshold set by ESMA for DRs should be the same as for equities.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_112>

Q113: Do you agree that the criterion of free float could be addressed through the number of units issued for trading? If yes, what *de minimis* number of units would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA_QUESTION_113>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_113>

Q114: Based on your experience, do you agree with the preliminary results related to the trading patterns of ETFs? Please provide reasons for your answer.

<ESMA_QUESTION_114>
No, we do not agree.

In Europe, trade size on exchange has steadily fallen since MIFID I. Therefore, using the trade data from the stock exchanges to determine what a "large" ETF trade is likely to lead to the majority of ETF trades being un-reported and undermining the value of trade data.

We would instead recommend that ESMA bases recommendations on the broader set of data related to ETF trading:

- Visible "on screen" depth – or the liquidity that is traded visibly on exchange. This is one element of secondary market liquidity. In Europe, not all ETF transactions are reported, so visible liquidity is understated, unlike the US.
- Reserve or contingent liquidity may provided through market makers



- The “true” liquidity of an ETF may be limited by the underlying basket liquidity, especially in bonds baskets.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_114>

Q115: Do you agree with the liquidity thresholds ESMA proposes for ETFs? Would you calibrate the thresholds differently? Please provide reasons for your answers, including describing your own role in the market (e.g. market-maker, issuer etc).

<ESMA_QUESTION_115>

No, we do not agree with ESMA’s proposed definition of liquidity for ETF.

The use of reported ADV (Average Daily Volume) to structure this regulation is not appropriate since the major share of ETF liquidity is currently not being reported hence ETFs are able to support far larger transactions than the ADV would indicate.

The issue is also due to the fact that the liquidity is also determined by the liquidity of the underlying instruments. Due to the open-end nature of ETFs, this liquidity can be accessed through the “Creation & Redemption” process, adding to the intrinsic liquidity of the ETF.

The liquidity thresholds proposed for ETFs should also take into account the liquidity of the underlying basket. While this might be difficult to implement for some exposures (notably in the Fixed Income space), we suggest below a possible way to measure liquidity for equity baskets:

Table 12: Liquidity thresholds for ETFs levels

ETFs	Free Float (Number of units issued for trading)	Average daily number of transactions	Average daily turn-over
	100	20	500,000

Or (for Equity ETFs)

Underlying basket of stocks for Equity ETFs	Free Float	Average daily number of transactions	Average daily turn-over
	EUR 100,000,000	250	EUR 1,000,000

With

Free Float = $\sum_{i=1}^n w_i ff_i$ where w_i is the weight of stock i in the underlying basket and ff_i is the Free Float of stock i

ADNT = $\sum_{i=1}^n w_i ADNT_i$ where w_i is the weight of stock i in the underlying basket and $ADNT_i$ is the Average daily number of transactions of stock i

ADV = $\sum_{i=1}^n w_i ADV_i$ where w_i is the weight of stock i in the underlying basket and ADV_i is the Average daily turnover of stock i

Our preference would also be to report all trades in real time, aligning with US market structure.

A fall back option would be to delay reporting based on absolute value triggers as follows:

- Under €10m - Real time reporting;
- €10m - €50m - 60mins;
- Greater than €50m End of Day.
- NAV Trades should be reported when the price is known



TYPE YOUR TEXT HERE
<ESMA_QUESTION_115>

Q116: Can you identify any additional instruments that could be caught by the definition of certificates under Article 2(1)(27) of MiFIR?

<ESMA_QUESTION_116>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_116>

Q117: Based on your experience, do you agree with the preliminary results related to the trading patterns of certificates? Please provide reasons for your answer.

<ESMA_QUESTION_117>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_117>

Q118: Do you agree with the liquidity thresholds ESMA proposes for certificates? Would you calibrate the thresholds differently? Please provide reasons for your answer.

<ESMA_QUESTION_118>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_118>

Q119: Do you agree that the criterion of free float could be addressed through the issuance size? If yes, what *de minimis* issuance size would you suggest? Is there any other more appropriate measure in your view? Please provide reasons for your answer.

<ESMA_QUESTION_119>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_119>

Q120: Do you think the discretion permitted to Member States under Article 22(2) of the Commission Regulation to specify additional instruments up to a limit as being liquid should be retained under MiFID II?

<ESMA_QUESTION_120>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_120>

3.2. Delineation between bonds, structured finance products and money market instruments

Q121: Do you agree with ESMA's assessment concerning financial instruments outside the scope of the MiFIR non-equity transparency obligations?

<ESMA_QUESTION_121>
We do not agree with ESMA's assessment.

[Definition that deviates from the definition in the Eligible Assets Directive]

ESMA proposes to deviate from the definition of money market instrument provided in the Eligible Assets Directive because the purpose of the MiFID regulation is different from the purpose of the Eligible Assets Directive.

Beside the above point, the European Commission has proposed a regulation on Money Market Funds ‘MMFs’ that was published September 2013) and that will define what constitutes a money market instrument (i.e. an instrument that is typically traded by a money market fund). We strongly recommend that the definition of money market instrument in the context of MiFID is aligned with the final text in the MMF Directive.

For the sake of legal certainty, we recommend an alignment of definition across legislation. Additionally, as they are typically traded by MMFs and are similar to instruments with short maturities from issuance, we recommend ESMA that MiFID Delegated Acts adopt a definition that includes:

- Instruments with short residual maturities
- Short maturities from issuance

Indeed, from a trading perspective:

- Instruments with residual maturity tend to trade like instruments with short maturities.
- Both trade fairly infrequently. For example, assessing government bond trading activity and using the proposed liquidity calibration, of 1571 government bonds sampled during the period 1 October 2011 to 30 September 2013, as at October 2012, 95% of the instruments with a maturity of less than 397 days fell into liquidity category c and 90% of instruments with a maturity of less than 397 days approximately 90% fell into liquidity category c.

Liquidity category	No of ISINs with maturity from issuance <397 days	No of ISINs with Residual maturity <397 days	Total number of ISINs
c	18	158	176
b		14	14
a	1	3	4
Total	19	175	194

Source: TRAX

TYPE YOUR TEXT HERE



<ESMA_QUESTION_121>

3.3. The definition of systematic internaliser

Q122: For the systematic and frequent criterion, ESMA proposes setting the percentage for the calculation between 0.25% and 0.5%. Within this range, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications.

<ESMA_QUESTION_122>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_122>

Q123: Do you support calibrating the threshold for the systematic and frequent criterion on the liquidity of the financial instrument as measured by the number of daily transactions?

<ESMA_QUESTION_123>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_123>

Q124: For the substantial criterion, ESMA proposes setting the percentage for the calculation between 15% and 25% of the total turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and between 0.25% and 0.5% of the total turnover in that financial instrument in the Union. Within these ranges, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the thresholds should be set at levels outside these ranges, please specify at what levels these should be with justifications.

<ESMA_QUESTION_124>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_124>

Q125: Do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of shares traded? Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_125>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_125>

Q126: ESMA has calibrated the initial thresholds proposed based on systematic internaliser activity in shares. Do you consider those thresholds adequate for:

<ESMA_QUESTION_126>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_126>

Q127: Do you consider a quarterly assessment of systematic internaliser activity as adequate? If not, which assessment period would you propose? Do you consider that one month provides sufficient time for investment firms to establish all the necessary arrangements in order to comply with the systematic internaliser regime?



<ESMA_QUESTION_127>

From an AFG's perspective, we believe that market participants will need better clarity on which firms are acting as S.I.s and the range of instruments for which they would act as S.I. This would allow asset managers to define the conditions and criteria to use, both for trading and for reporting purpose with regards to the transparency regime. .

Therefore, we ask ESMA to provide a flexible set of criteria and then, define a frequency for assessments.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_127>

Q128: For the systematic and frequent criterion, do you agree that the thresholds should be set per asset class? Please provide reasons for your answer. If you consider the thresholds should be set at a more granular level (sub-categories) please provide further detail and justification.

<ESMA_QUESTION_128>

We agree with ESMA that there should be different thresholds by asset class, namely, bonds, derivatives and emission allowances.

However, we do not believe that a differentiation between the SI bond and SFP thresholds are necessary. For simplicity, this level of granularity is unnecessary.

Additionally, we do not agree on the idea to increase the levels of granularity for fixed income instruments. It is essential that the MiFID/R regime does not result in an operationally complex regime, which introduces volatility and financial stability risks.

Finally, we insist on the point that investment firms cannot trade an illiquid instrument on a frequent, systematic and substantial basis because there is simply not enough flow to do so. It is also essential that the thresholds for frequent and systematic and substantial thresholds are consistent with the liquidity threshold.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_128>

Q129: With regard to the 'substantial basis' criterion, do you support thresholds based on the turnover (quantity multiplied by price) as opposed to the volume (quantity) of instruments traded. Do you agree with the definition of total trading by the investment firm? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_129>

We do not agree with ESMA.

We consider that volume turnover should not be based on a turnover based on market value but should be based on notional volume rather.

The rationale for this approach are the following elements:

- Basing turnover thresholds on market value will introduce unnecessary price volatility;
- It is introducing arbitrage opportunities for firms to price in the SI threshold;
- Instruments do not trade on a [price x volume] manner (the size of trades) but rather on the basis of notional not price.

We believe that this approach could be extended to all volume calculations.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_129>



Q130: Do you agree with ESMA’s proposal to apply the systematic internaliser thresholds for bonds and structured finance products at an ISIN code level? If not please provide alternatives and reasons for your answer.

<ESMA_QUESTION_130>

Yes, we agree with this calculation at ISIN level.

TYPE YOUR TEXT HERE

<ESMA_QUESTION_130>

Q131: For derivatives, do you agree that some aggregation should be established in order to properly apply the systematic internaliser definition? If yes, do you consider that the tables presented in Annex 3.6.1 of the DP could be used as a basis for applying the systematic internaliser thresholds to derivatives products? Please provide reasons, and when necessary alternatives, to your answer.

<ESMA_QUESTION_131>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_131>

Q132: Do you agree with ESMA’s proposal to set a threshold for liquid derivatives? Do you consider any scenarios could arise where systematic internalisers would be required to meet pre-trade transparency requirements for liquid derivatives where the trading obligation does not apply?

<ESMA_QUESTION_132>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_132>

Q133: Do you consider a quarterly assessment by investment firms in respect of their systematic internaliser activity is adequate? If not, what assessment period would you propose?

<ESMA_QUESTION_133>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_133>

Q134: Within the ranges proposed by ESMA, what do you consider to be the appropriate level? Please provide reasons for your answer. If you consider that the threshold should be set at a level outside this range, please specify at what level this should be with justifications and where possible data to support them.

<ESMA_QUESTION_134>

We do not agree with the level proposed.

[Frequent and systematic]

Firstly, we believe that the ratio proposed for the calculation is too complex.

Secondly, for illiquid instruments, we believe that an absolute threshold rather than a ratio is a more appropriate.

E.g. if an instrument is traded twice on a market in a quarter and each trade executed represents 50% of all trades in the market. This cannot make any of those trades to be deemed frequent and systematic.

Consequently, we believe that an absolute volume turnover threshold would achieve the intended purpose and ensure alignment of the SI requirement with the liquid market threshold.

[The total internalised turnover for fixed income instruments]

From our reading, we understand that Article 2(20) MiFID provides that: “the substantial basis shall be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the Union in a specific financial instrument”.

We don't see this as relevant for fixed income instruments because it does not demonstrate that an investment firm trades an instrument on a substantial basis.

For example, if a firm trades only in one instrument, then it will meet the threshold of trading on a substantial basis (it is 100% internalised). The investment firm would then have to trade the instrument as an SI.

However, in fixed income activities, there are no standard trade sizes, which means that a firm can trade an instrument very frequently and in small sizes but with a total volume that is not substantial in comparison to the total market turnover.

Consequently, those criteria do not seem relevant and such a firm should not be considered an SI.

Therefore, we recommend for the internalisation threshold to not be used for fixed income.

[Recommendations]

We would recommend ESMA to treat an investment firm as systematic internalizer if the following criteria are met:

- if the number of transactions executed by the investment firm on own account OTC, during the most recent calendar quarter, is at least twenty transactions per week (if set at lowest liquidity threshold proposed by us); or

- if during the latest quarter, the size of OTC transactions traded by the investment firm on own account is equal or larger than 300 million EUR.

		Bonds & SFP
Frequent and systematic basis	Number of OTC transactions carried out by the investment firm on own account OTC in the previous quarter based on minimum trading frequency	At least once a week (liquid and illiquid) OR At least 20 times a week (liquid in scope only)
Substantial basis threshold	Size of OTC trading by investment firm in a financial instrument by minimum volume turnover in the previous quarter	At least EUR 300mm a quarter (notional) or a lower threshold

TYPE YOUR TEXT HERE
<ESMA_QUESTION_134>

Q135: Do you consider that thresholds should be set as absolute numbers rather than percentages for some specific categories? Please provide reasons for your answer.

<ESMA_QUESTION_135>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_135>

Q136: What thresholds would you consider as adequate for the emission allowance market?

<ESMA_QUESTION_136>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_136>

3.4. Transactions in several securities and orders subject to conditions other than the current market price

Q137: Do you agree with the definition of portfolio trade and of orders subject to conditions other than the current market price? Please give reasons for your answer?

<ESMA_QUESTION_137>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_137>

3.5. Exceptional market circumstances and conditions for updating quotes

Q138: Do you agree with the list of exceptional circumstances? Please give reasons for your answer. Do you agree with ESMA's view on the conditions for updating the quotes? Please give reasons for your answer.

<ESMA_QUESTION_138>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_138>

3.6. Orders considerably exceeding the norm

Q139: Do you agree that each systematic internaliser should determine when the number and/or volume of orders sought by clients considerably exceed the norm? Please give reasons for your answer?

<ESMA_QUESTION_139>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_139>

3.7. Prices falling within a public range close to market conditions

Q140: Do you agree that any price within the bid and offer spread quoted by the systematic internaliser would fall within a public range close to market conditions? Please give reasons for your answer.

<ESMA_QUESTION_140>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_140>

3.8. Pre-trade transparency for systematic internalisers in non-equity instruments

Q141: Do you agree that the risks a systematic internaliser faces is similar to that of an liquidity provider? If not, how do they differ?

<ESMA_QUESTION_141>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_141>

Q142: Do you agree that the sizes established for liquidity providers and systematic internalisers should be identical? If not, how should they differ?

<ESMA_QUESTION_142>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_142>

4. Data publication

4.1. Access to systematic internalisers' quotes

Q143: Do you agree with the proposed definition of “regular and continuous” publication of quotes? If not, what would definition you suggest?

<ESMA_QUESTION_143>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_143>

Q144: Do you agree with the proposed definition of “normal trading hours”? Should the publication time be extended?

<ESMA_QUESTION_144>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_144>

Q145: Do you agree with the proposal regarding the means of publication of quotes?

<ESMA_QUESTION_145>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_145>

Q146: Do you agree that a systematic internaliser should identify itself when publishing its quotes through a trading venue or a data reporting service?

<ESMA_QUESTION_146>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_146>

Q147: Is there any other mean of communication that should be considered by ESMA?

<ESMA_QUESTION_147>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_147>

Q148: Do you agree with the importance of ensuring that quotes published by investment firms are consistent across all the publication arrangements?

<ESMA_QUESTION_148>
AFG agrees with ESMA's proposal.
Given the technical evolution, investment firms should, on a best efforts basis, ensure their quotes are available simultaneously on each venue on which they are published.
TYPE YOUR TEXT HERE
<ESMA_QUESTION_148>

Q149: Do you agree with the compulsory use of data standards, formats and technical arrangements in development of Article 66(5) of MiFID II?

<ESMA_QUESTION_149>



We support ESMA's proposal to ensure use of consistent data standards.

ESMA should mandate standards so as to facilitate the consolidation of data such that they are:

- Comprehensively adopted;
- Consistently applied
- Cost effectively administered;

TYPE YOUR TEXT HERE

<ESMA_QUESTION_149>

Q150: Do you agree with the imposing the publication on a 'machine-readable' and 'human readable' to investment firms publishing their quotes only through their own website?

<ESMA_QUESTION_150>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_150>

Q151: Do you agree with the requirements to consider that the publication is 'easily accessible'?

<ESMA_QUESTION_151>

AFG insists on the importance of ensuring that the definition of Reasonable Commercial Basis (RCB) is appropriately calibrated in order to ensure that the publication is genuinely 'easily accessible'.

Please see our response to Q154

TYPE YOUR TEXT HERE

<ESMA_QUESTION_151>

4.2. Publication of unexecuted client limit orders on shares traded on a venue

Q152: Do you think that publication of unexecuted orders through a data reporting service or through an investment firm's website would effectively facilitate execution?

<ESMA_QUESTION_152>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_152>

Q153: Do you agree with this proposal. If not, what would you suggest?

<ESMA_QUESTION_153>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_153>

4.3. Reasonable commercial basis (RCB)

Q154: Would these disclosure requirements be a meaningful instrument to ensure that prices are on a reasonable commercial basis?

<ESMA_QUESTION_154>



As stated by the Commission, AFG is of the view that the cost of data in the EU is too high, especially when compared with the US.

Pricing levels for trading data do vary significantly between markets, without any transparency as to why they should differ.

For example, using Bloomberg as the supplier, the Level 2 pricing data from the LSE costs \$270 per month, whereas BATS Chi-X Level 2 data for the same market is \$80 per month, and Level 2 data from NASDAQ in the US market is only \$58 per month. There is no disclosure from Bloomberg as to what the exchange data feeds actually cost them.

Although it is a commercial decision to choose providers of our pricing information, the costs of information are part of wider service agreements (e.g. order routing, news services, etc.). This is forcing asset managers into having an overall service package that works best for the firm as a whole, rather than going purely for the cheapest supplier of exchange data feeds.

However, many providers (like Bloomberg) are apparently simply passing on the cost of feeds to us whenever the exchanges chose to increase their prices. Consequently, we believe that the notion of “reasonable commercial basis” should start by being imposed to exchanges.

Therefore, we support the disclosure requirements as listed by ESMA in 15(i-iv) as it represents a step in the right direction towards making exchanges more accountable and transparent in their data charges. However, it should also be ensured that there is no cross-subsidiary financing between trading venues. Therefore, an improved transparency regime imposed by the regulators at that level would help the comparison of prices in a centralised format.

We also support ESMA's proposition in the draft technical advice that the Commission should review the definition of “reasonable commercial basis” after three years of applicability.

There is, however, no guarantee that such disclosure on its own would be enough to ensure “reasonable” prices being charged.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_154>

Q155: Are there any other possible requirements in the context of transparency/disclosure to ensure a reasonable price level?

<ESMA_QUESTION_155>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_155>

Q156: To what extent do you think that comprehensive transparency requirements would be enough in terms of desired regulatory intervention?

<ESMA_QUESTION_156>
AFG believes that this could be a good indicator but that Transparency on its own is probably not sufficient to ensure the reasonableness of pricing of data, and further regulatory steps should be taken.
TYPE YOUR TEXT HERE
<ESMA_QUESTION_156>

Q157: What are your views on controlling charges by fixing a limit on the share of revenue that market data services can represent?

<ESMA_QUESTION_157>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_157>



Q158: Which percentage range for a revenue limit would you consider reasonable?

<ESMA_QUESTION_158>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_158>

Q159: If the definition of “reasonable commercial basis” is to be based on costs, do you agree that LRIC+ is the most appropriate measure? If not what measure do you think should be used?

<ESMA_QUESTION_159>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_159>

Q160: Do you agree that suppliers should be required to maintain a cost model as the basis of setting prices against LRIC+? If not how do you think the definition should be implemented?

<ESMA_QUESTION_160>
We would also suggest imposing to trading venues to have an external independent third party audit to their figures on an annual basis.
TYPE YOUR TEXT HERE
<ESMA_QUESTION_160>

Q161: Do you believe that if there are excessive prices in any of the other markets, the same definition of “reasonable commercial basis” would be appropriate, or that they should be treated differently? If the latter, what definition should be used?

<ESMA_QUESTION_161>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_161>

Q162: Within the options A, B and C, do you favour one of them, a combination of A+B or A+C or A+B+C? Please explain your reasons.

<ESMA_QUESTION_162>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_162>

Q163: What are your views on the costs of the different approaches?

<ESMA_QUESTION_163>
AFG is of the opinion that market participants should be able to ascertain the variables used in the creation of the price being charged by the data providers. ESMA could then use a jointly the options A+B+C in its proposed regime, i.e. the additional transparency (Ref Option A); the publication of revenue share (Ref Option B) and the implementation of LRIC (Ref Option C).

An important outcome of these proposals will be to limit the monopolistic behaviours of data providers and trading venues, leading to more improvements in service provision.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_163>

Q164: Is there some other approach you believe would be better? Why?

<ESMA_QUESTION_164>
AFG members are usually not charged directly by the venues or the exchanges for received market data, but receive them from a data vendor (e.g. Bloomberg – asset managers get both pre-trade depth of book



data via their pricing per user feeds and post trade data from Bloomberg's supply of trade publication data).

The business model that operates between the venues/exchanges and the data vendors is not really for us to comment upon.

Our members are of the opinion that the fees are high, often in forced bundles to have all relevant information to us and without much room for negotiation. We however assume that it is up to the regulators and anti-trust authorities to investigate these prices and practices to make sure that those are not manipulated.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_164>

Q165: Do you think that the offering of a 'per-user' pricing model designed to prevent multiple charging for the same information should be mandatory?

<ESMA_QUESTION_165>
AFG members believe that this should be an optional requirement.

The unbundling of current packages and a 'per-user' pricing model would allow investment firms to select their information providers and information feeds according to their need and the specific requirements of their clients. This would also allow avoiding paying several times for the same data multiple times, with the direct consequence to reduce the costs passed onto the end-investor (see also our reply to question 165)

However, we are also conscious that some clients would not need bespoke information and that the 'per-user' model might increase the administrative burden (and costs) of monitoring net client usage by the exchanges. It might then depend on what these costs might be and whether they then get passed back again to the customer.

TYPE YOUR TEXT HERE
<ESMA_QUESTION_165>

Q166: If yes, in which circumstances?

<ESMA_QUESTION_166>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_166>

5. Micro-structural issues

5.1. Algorithmic and high frequency trading (HFT)

Q167: Which would be your preferred option? Why?

<ESMA_QUESTION_167>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_167>

Q168: Can you identify any other advantages or disadvantages of the options put forward?

<ESMA_QUESTION_168>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_168>

Q169: How would you reduce the impact of the disadvantages identified in your preferred option?

<ESMA_QUESTION_169>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_169>

Q170: If you prefer Option 2, please advise ESMA whether for the calculation of the median daily lifetime of the orders of the member/participant, you would take into account only the orders sent for liquid instruments or all the activity in the trading venue.

<ESMA_QUESTION_170>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_170>

Q171: Do you agree with the above assessment? If not, please elaborate.

<ESMA_QUESTION_171>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_171>

5.2. Direct electronic access (DEA)

Q172: Do you consider it necessary to clarify the definitions of DEA, DMA and SA provided in MiFID? In what area would further clarification be required and how would you clarify that?

<ESMA_QUESTION_172>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_172>



Q173: Is there any other activity that should be covered by the term “DEA”, other than DMA and SA? In particular, should AOR be considered within the DEA definition?

<ESMA_QUESTION_173>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_173>

Q174: Do you consider that electronic order transmission systems through shared connectivity arrangements should be included within the scope of DEA?

<ESMA_QUESTION_174>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_174>

Q175: Are you aware of any order transmission systems through shared arrangements which would provide an equivalent type of access as the one provided by DEA arrangements?

<ESMA_QUESTION_175>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_175>

6. Requirements applying on and to trading venues

6.1. SME Growth Markets

Q176: Do you support assessing the percentage of issuers on the basis of number of issuers only? If not, what approach would you suggest?

<ESMA_QUESTION_176>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_176>

Q177: Which of the three different options described in the draft technical advice box above for assessing whether an SME-GM meets the criterion of having at least fifty per cent of SME issuers would you prefer?

<ESMA_QUESTION_177>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_177>

Q178: Do you agree with the approach described above (in the box Erreur ! Source du renvoi introuvable.), that only falling below the qualifying 50% threshold for a number of three consecutive years could lead to deregistration as a SME-GM or should the period be limited to two years?

<ESMA_QUESTION_178>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_178>

Q179: Should an SME-GM which falls below the 50% threshold in one calendar year be required to disclose that fact to the market?

<ESMA_QUESTION_179>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_179>

Q180: Which of the alternatives described above on how to deal with non-equity issuers for the purposes of the “at least 50% criterion” do you consider the most appropriate? Please give reasons for your answer.

<ESMA_QUESTION_180>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_180>

Q181: Do you agree that an SME-GM should be able to operate under the models described above, and that the choice of model should be left to the discretion of the operator (under the supervision of its NCA)?

<ESMA_QUESTION_181>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_181>



Q182: Do you agree that an SME-GM should establish and operate a regime which its NCA has assessed to be effective in ensuring that its issuers are “appropriate”?

<ESMA_QUESTION_182>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_182>

Q183: Do you agree with the factors to which a NCA should have regard when assessing if an SME-GM’s regulatory regime is effective?

<ESMA_QUESTION_183>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_183>

Q184: Do you think that there should be an appropriateness test for an SME-GM issuer’s management and board in order to confirm that they fulfil the responsibilities of a publicly quoted company?

<ESMA_QUESTION_184>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_184>

Q185: Do you think that there should be an appropriateness test for an SME-GM issuer’s systems and controls in order to confirm that they provide a reasonable basis for it to comply with its continuing obligations under the rules of the market?

<ESMA_QUESTION_185>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_185>

Q186: Do you agree with Erreur ! Source du renvoi introuvable., Erreur ! Source du renvoi introuvable. **or** Erreur ! Source du renvoi introuvable. Erreur ! Source du renvoi introuvable.?

<ESMA_QUESTION_186>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_186>

Q187: Are there any other criteria that should be set for the initial and on-going admission of financial instruments of issuers to SME-GMs?

<ESMA_QUESTION_187>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_187>

Q188: Should the SME-GM regime apply a general principle that an admission document should contain sufficient information for an investor to make an informed assessment of the financial position and prospects of the issuer and the rights attaching to its securities?

<ESMA_QUESTION_188>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_188>

Q189: Do you agree that SME-GMs should be able to take either a ‘top down’ or a ‘bottom up’ approach to their admission documents where a Prospectus is not required?

<ESMA_QUESTION_189>
TYPE YOUR TEXT HERE



<ESMA_QUESTION_189>

Q190: Do you think that MiFID II should specify the detailed disclosures, or categories of disclosure, that the rules of a SME-GM would need to require, in order for admission documents prepared in accordance with those rules to comply with Article 33(3)(c) of MiFID II? Or do you think this should be the responsibility of the individual market, under the supervision of its NCA?

<ESMA_QUESTION_190>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_190>

Q191: If you consider that detailed disclosure requirements should be set at a MiFID level, which specific disclosures would be essential to the proper information of investors? Which elements (if any) of the proportionate schedules set out in Regulation 486/2012 should be dis-applied or modified, in order for an admission document to meet the objectives of the SME-GM framework (as long as there is no public offer requiring that a Prospectus will be drafted under the rules of the Prospectus Directive)?

<ESMA_QUESTION_191>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_191>

Q192: Should the future Level 2 Regulation require an SME-GM to make arrangements for an appropriate review of an admission document, designed to ensure that the information it contains is complete?

<ESMA_QUESTION_192>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_192>

Q193: Do you agree with this initial assessment by ESMA?

<ESMA_QUESTION_193>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_193>

Q194: In your view which reports should be included in the on-going periodic financial reporting by an issuer whose financial instruments are admitted to trading on an SME-GM?

<ESMA_QUESTION_194>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_194>

Q195: How and by which means should SME-GMs ensure that the reporting obligations are fulfilled by the issuers?

<ESMA_QUESTION_195>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_195>

Q196: Do you think that the more generous deadlines proposed for making reports public above (in the Box above, paragraph Erreur ! Source du renvoi introuvable.) are suitable, or should the deadlines imposed under the rules of the Transparency Directive also apply to issuers on SME-GMs?

<ESMA_QUESTION_196>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_196>

Q197: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements/additional relief to those envisaged by MAR?

<ESMA_QUESTION_197>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_197>

Q198: What is your view on the possible requirements for the dissemination and storage of information?

<ESMA_QUESTION_198>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_198>

Q199: How and by which means should trading venues ensure that the dissemination and storage requirements are fulfilled by the issuers and which of the options described above do you prefer?

<ESMA_QUESTION_199>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_199>

Q200: How long should the information be stored from your point of view? Do you agree with the proposed period of 5 years or would you prefer a different one (e.g., 3 years)?

<ESMA_QUESTION_200>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_200>

Q201: Do you agree with this assessment that the MiFID II framework should not impose any additional requirements to those presented in MAR?

<ESMA_QUESTION_201>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_201>

6.2. Suspension and removal of financial instruments from trading

Q202: Do you agree that an approach based on a non-exhaustive list of examples provides an appropriate balance between facilitating a consistent application of the exception, while allowing appropriate judgements to be made on a case by case basis?

<ESMA_QUESTION_202>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_202>

Q203: Do you agree that NCAs would also need to consider the criteria described in paragraph Erreur ! Source du renvoi introuvable. Erreur ! Source du renvoi introuvable. and Erreur ! Source du renvoi introuvable., when making an assessment of relevant costs or risks?

<ESMA_QUESTION_203>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_203>

Q204: Which specific circumstances would you include in the list? Do you agree with the proposed examples?

<ESMA_QUESTION_204>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_204>

6.3. Substantial importance of a trading venue in a host Member State

Q205: Do you consider that the criteria established by Article 16 of MiFID Implementing Regulation remain appropriate for regulated markets?

<ESMA_QUESTION_205>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_205>

Q206: Do you agree with the additional criteria for establishing the substantial importance in the cases of MTFs and OTFs?

<ESMA_QUESTION_206>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_206>

6.4. Monitoring of compliance – information requirements for trading venues

Q207: Which circumstances would you include in this list? Do you agree with the circumstances described in the draft technical advice? What other circumstances do you think should be included in the list?

<ESMA_QUESTION_207>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_207>

6.5. Monitoring of compliance with the rules of the trading venue - determining circumstances that trigger the requirement to inform about conduct that may indicate abusive behaviour

Q208: Do you support the approach suggested by ESMA?

<ESMA_QUESTION_208>
TYPE YOUR TEXT HERE



<ESMA_QUESTION_208>

Q209: Is there any limitation to the ability of the operator of several trading venues to identify a potentially abusive conduct affecting related financial instruments?

<ESMA_QUESTION_209>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_209>

Q210: What can be the implications for trading venues to make use of all information publicly available to complement their internal analysis of the potential abusive conduct to report such as managers' dealings or major shareholders' notifications)? Are there other public sources of information that could be useful for this purpose?

<ESMA_QUESTION_210>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_210>

Q211: Do you agree that the signals listed in the Annex contained in the draft advice constitute appropriate indicators to be considered by operators of trading venues? Do you see other signals that could be relevant to include in the list?

<ESMA_QUESTION_211>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_211>

Q212: Do you consider that front running should be considered in relation to the duty for operators of trading venues to report possible abusive conduct? If so, what could be the possible signal(s) to include in the list?

<ESMA_QUESTION_212>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_212>

7. Commodity derivatives

7.1. Financial instruments definition - specifying Section C 6, 7 and 10 of Annex I of MiFID II

Q213: Do you agree with ESMA’s approach on specifying contracts that “must” be physically settled and contracts that “can” be physically settled?

<ESMA_QUESTION_213>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_213>

Q214: Which oil products in your view should be caught by the definition of C6 energy derivatives contracts and therefore be within the scope of the exemption? Please give reasons for your view stating, in particular, any practical repercussions of including or excluding products from the scope.

<ESMA_QUESTION_214>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_214>

Q215: Do you agree with ESMA’s approach on specifying contracts that must be physically settled?

<ESMA_QUESTION_215>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_215>

Q216: How do operational netting arrangements in power and gas markets work in practice? Please describe such arrangements in detail. In particular, please describe the type and timing of the actions taken by the various parties in the process, and the discretion over those actions that the parties have.

<ESMA_QUESTION_216>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_216>

Q217: Please provide concrete examples of contracts that must be physically settled for power, natural gas, coal and oil. Please describe the contracts in detail and identify on which platforms they are traded at the moment.

<ESMA_QUESTION_217>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_217>

Q218: How do you understand and how would you describe the concepts of “force majeure” and “other bona fide inability to settle” in this context?

<ESMA_QUESTION_218>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_218>



Q219: Do you agree that Article 38 of Regulation (EC) No 1287/2006 has worked well in practice and elements of it should be preserved? If not, which elements in your view require amendments?

<ESMA_QUESTION_219>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_219>

Q220: Do you agree that the definition of spot contract in paragraph 2 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose?

<ESMA_QUESTION_220>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_220>

Q221: Do you agree that the definition of a contract for commercial purposes in paragraph 4 of Article 38 of Regulation (EC) 1287/2006 is still valid and should become part of the future implementing measures for MiFID II? If not, what changes would you propose? What other contracts, in your view, should be listed among those to be considered for commercial purposes?

<ESMA_QUESTION_221>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_221>

Q222: Do you agree that the future Delegated Act should not refer to clearing as a condition for determining whether an instrument qualifies as a commodity derivative under Section C 7 of Annex I?

<ESMA_QUESTION_222>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_222>

Q223: Do you agree that standardisation of a contract as expressed in Article 38(1) Letter c of Regulation (EC) No 1287/2006 remains an important indicator for classifying financial instruments and therefore should be maintained?

<ESMA_QUESTION_223>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_223>

Q224: Do you agree with the proposal to maintain the alternatives for trading contracts in Article 38(1)(a) of Regulation (EC) No 1287/2006 taking into account the emergence of the OTF as a MiFID trading venue in the future Delegated Act?

<ESMA_QUESTION_224>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_224>

Q225: Do you agree that the existing provision in Article 38(3) of Regulation (EC) No 1287/2006 for determining whether derivative contracts within the scope of Section C(10) of Annex I should be classified as financial instruments should be updated as necessary but overall be maintained? If not, which elements in your view require amendments?

<ESMA_QUESTION_225>
TYPE YOUR TEXT HERE



<ESMA_QUESTION_225>

Q226: Do you agree that the list of contracts in Article 39 of Regulation (EC) No 1287/2006 should be maintained? If not, which type of contracts should be added or which ones should be deleted?

<ESMA_QUESTION_226>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_226>

Q227: What is your view with regard to adding as an additional type of derivative contract those relating to actuarial statistics?

<ESMA_QUESTION_227>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_227>

Q228: What do you understand by the terms “reason of default or other termination event” and how does this differ from “except in the case of force majeure, default or other bona fide inability to perform”?

<ESMA_QUESTION_228>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_228>

7.2. Position reporting thresholds

Q229: Do you agree with the proposed threshold for the number of position holders? If not, please state your preferred thresholds and the reason why.

<ESMA_QUESTION_229>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_229>

Q230: Do you agree with the proposed minimum threshold level for the open interest criteria for the publication of reports? If not, please state your preferred alternative for the definition of this threshold and explain the reasons why this would be more appropriate.

<ESMA_QUESTION_230>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_230>

Q231: Do you agree with the proposed timeframes for publication once activity on a trading venue either reaches or no longer reaches the two thresholds?

<ESMA_QUESTION_231>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_231>

7.3. Position management powers of ESMA



Q232: Do you agree that the listed factors and criteria allow ESMA to determine the existence of a threat to the stability of the (whole or part of the) financial system in the EU?

<ESMA_QUESTION_232>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_232>

Q233: What other factors and criteria should be taken into account?

<ESMA_QUESTION_233>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_233>

Q234: Do you agree with ESMA's definition of a market fulfilling its economic function?

<ESMA_QUESTION_234>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_234>

Q235: Do you agree that the listed factors and criteria allow ESMA to adequately determine the existence of a threat to the orderly functioning and integrity of financial markets or commodity derivative market so as to justify position management intervention by ESMA?

<ESMA_QUESTION_235>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_235>

Q236: What other factors and criteria should be taken into account?

<ESMA_QUESTION_236>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_236>

Q237: Do you consider that the above factors sufficiently take account of “the degree to which positions are used to hedge positions in physical commodities or commodity contracts and the degree to which prices in underlying markets are set by reference to the prices of commodity derivatives”? If not, what further factors would you propose?

<ESMA_QUESTION_237>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_237>

Q238: Do you agree that the listed factors and criteria allow ESMA to determine the appropriate reduction of a position or exposure entered into via a derivative?

<ESMA_QUESTION_238>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_238>

Q239: What other factors and criteria should be taken into account?

<ESMA_QUESTION_239>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_239>



Q240: Do you agree that some factors are more important than others in determining what an “appropriate reduction of a position” is within a given market? If yes, which are the most important factors for ESMA to consider?

<ESMA_QUESTION_240>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_240>

Q241: Do you agree that the listed factors and criteria allow ESMA to adequately determine the situations where a risk of regulatory arbitrage could arise from the exercise of position management powers by ESMA?

<ESMA_QUESTION_241>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_241>

Q242: What other criteria and factors should be taken into account?

<ESMA_QUESTION_242>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_242>

Q243: If regulatory arbitrage may arise from inconsistent approaches to interrelated markets, what is the best way of identifying such links and correlations?

<ESMA_QUESTION_243>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_243>



8. Portfolio compression

Q244: What are your views on the proposed approach for legal documentation and portfolio compression criteria?

<ESMA_QUESTION_244>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_244>

Q245: What are your views on the approach proposed by ESMA with regard to information to be published by the compression service provider related to the volume of transactions and the timing when they were concluded?

<ESMA_QUESTION_245>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_245>