



Chambre Nationale  
des Conseillers  
en Investissements  
Financiers

**To the ESMA/2014/549 consultation paper dated 22 May 2014 relative to the implementation measures for Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU<sup>1</sup> and Regulation (EU) no. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending regulation (EU) no. 648/2012**

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<sup>1</sup> JOL 2014 173 dated 12.6.2014, p. 349–496.

[http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.L\\_.2014.173.01.0349.01.FRA](http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.L_.2014.173.01.0349.01.FRA)



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## 1. Foreword

The CNCIF, in its capacity as professional association authorised by the French *Autorité des marchés financiers*, in charge of the collective representation of financial investment advisors (FIA), has examined the ESMA/2014/549 consultation paper of 22 May 2014 with the aim of commenting, specifically, on the draft technical advices relating to sections:-

- 2.15 (The legitimacy of inducements to be paid to/by a third person)
- 2.16 (Investment advice on an independent basis).

Indeed, although FIAs do not belong to the population of investment firms, they provide, in the legal context applicable to them in France, a service of investment advice, and in this respect are subject to all legislation applicable to the provision of investment services.

Moreover, being essential partners of the producers within the financial products and services distribution network in France, FIAs naturally maintain business relations with the investment firms to which Directive 2014/65/EU and Regulation 300/2014 apply directly and provide a global advice service under the title of "asset management advisor" (AMA).

The reason why investors would choose an Asset Management Advisor (AMA), is in order to **have access to a global approach that takes into account their family, business, financial and investment environment** resulting in a global statement of assets that serves as support for recommending the most suitable investment solutions for clients.

Thus, opting for an AMA is justified by their essential role both vis-à-vis financial establishments and vis-à-vis the clients they advise.

Indeed, AMAs are both sub-contractors for financial establishments and arbitrage expert advisors for clients - they are the only professionals able to act as both interface and advisor.

This is why they occupy a special place in the French economic business model.

The results of a survey<sup>2</sup> show that the role and mission of AMAs fulfil a genuine need expressed by investors.

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<sup>2</sup> BNP PARIBAS CARDIF 2013 study "Market Survey of IAMAs and their clients"



## AMAs - a profession that enjoys the support of a loyal client base

Extracts:

Why investors remain loyal to their independent financial advisors:-	
<b>The quality of the investment advice</b>	<b>76</b>
<b>The strong performance of their investments</b>	<b>77</b>
The human qualities of your advisors	78
A long-term relationship with your advisor	74
<b>Reasonable administration costs</b>	<b>74</b>
Fast response times to your questions	73
<b>The quality of the range of investments</b>	<b>69</b>
<b>Attractive offers compared to the competition</b>	<b>38</b>

Why clients resort to IAMAs:-	
<b>Their independence</b>	<b>80</b>
Their asset management advice	88
The wealth audits and diagnoses that they offer. Their help and advice, during significant life events (marriage, divorce, death, etc.)	54
<b>More personalised approaches and products</b>	<b>66</b>
<b>Greater confidence in the advice provided by independent advisors</b>	<b>66</b>
<b>Seek further advice and the independence of their advice (they do not belong to any network)</b>	<b>65</b>
A better understanding of our requirements	64
Open to a wider range of investments	63
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And also:

- 85% of clients have a good opinion of their AMAs.
- The loyalty of clients to their AMAs which is evidenced in a relationship with an average length of 12 years.
- For 50% of clients, AMAs remain the main partner:- 50% of clients entrust the majority of their investments to an independent asset management advisor

## Choosing an AMA also means that costs can be shared between "mass market" and "mass affluent" clients

### Example - Comparison of commission-based and fee-based payment

First year's services to two clients looking for advice and eventually subscribing to a fund with 1% entry fee and 1% management fee out of which 50% is retro-commissioned to the distributor.

We have listed the diligences and assessed the necessary meetings performed on the clients, but feel free to modify the list of duties.

- Client A's portfolios are €20,000.
- Client B's portfolio is €100,000.



Services performed by the Investment advisor the first year	For a €20,000 investment		For a €100,000 investment	
	Commission-based payment*	Fee-based payment	Commission-based payment*	Fee-based payment
KYC, LBC/FT, Suitability test		30.'		45'
Letter of mission and Suitability Report		15'		30.'
Preparation and selection of the investment services providers and different funds		30.'		45'
Investment advice / Face-to-face meeting		30.'		60'
Investment advice / Following up (face-to-face or call meeting)		30.'		60'
Annual reporting/ Face-to-face meeting		30.'		60'
Annual reporting (hard copy)		30.'		60'
"Special event" additional meeting		-		-
...				...
	3h15 €150/h		6h00 €250/h	
First year Total Cost for the client	<b>€473</b>	<b>From</b>  <b>to</b>	<b>€1,500</b>	<b>From</b>  <b>to</b>

\* hypothesis of commissions : 1% entry fee, 0.5% on-going fee

### Consequences :

- Requiring AMAs to invoice their advice in fees will incite them to increase the number of meetings to the detriment of clients with disproportionate fees for "mass market" clients.
- The situation of the UK economic model risks spreading <sup>3</sup> throughout Europe: 150 decision-makers within financial investment firms, investment platforms or wealth managers concentrate capital inflows in a handful of funds.

<sup>3</sup> "Conclusions of the Deloitte / Harvest study on " **The Analysis of the behaviour of IAMAs in their choice of partners and their allocation advice**"



## II. CNCIF response to:

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



## 1. Extract of the Commission's request for advice

*ESMA is invited to provide technical advice on:-*

*- the conditions under which investment firms providing investment advice on an independent basis and portfolio management fulfil the requirement to not accept or retain any monetary or non-monetary third party fees, commission or benefits as well as on the definition and conditions for acceptable minor non-monetary benefits;*

*- the conditions under which payments and non-monetary benefits, paid to or provided by investment firms providing all other investment or ancillary services, are not deemed to meet the requirement of enhancing the quality of the relevant service to the client;*

*- disclosure and organisational arrangements to be complied with by investment firms in order to meet the requirements set out in Article 24 (7), (8) and (9).*

1. MiFID I (directive concerning the markets in financial instruments) contains requirements for third party payments in the context of Article (26)(b) of the MiFID Implementing Directive, regulating inducements. The essential requirements for the legitimacy of inducements to be paid by/to a third person (other than payments by or on behalf of the client) are:

- i. disclosure of the existence, the nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained the method of calculating that amount prior to providing investment or ancillary services;
- ii. the third party payment must be designed to enhance the quality of the relevant service to the client; and
- iii. the third party payment must not impair compliance with the firm's duty to act in the best interest of the client.



## 2. ESMA draft technical advice on "Other investment services - quality enhancement"

10. ESMA advises the Commission to introduce a non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met. A fee, commission or non-monetary benefit may not generally be regarded as designed to enhance the quality of the relevant service to the client if:
  - i. it is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business;
  - ii. it does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client;
  - iii. it directly benefits the recipient firm, its shareholders or employees without tangible benefit or added value to its end user client; or
  - iv. in relation to an on-going inducement, it is not related to the provision of an on-going service to an end user client.
11. In understanding whether or not the enhancement test can be met in accordance with these criteria, 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, so long as any such service is provided without bias or distortion as a result of the fee, commission or non-monetary benefit being received.
12. In order to specify the circumstances listed in the above criteria, it could also be considered appropriate to develop further ESMA guidelines and recommendations at a later point of time.
13. Investment firms should be obliged, as part of the organisational requirements for investment firms, to demonstrate that they pay or receive payments and non-monetary benefits to enhance the quality of the service to the investor in the following ways:
  - i. by keeping an internal list of any and all commissions, fees and non-monetary benefits accepted by the investment firm from a third party in relation to the provision of investment or ancillary services; and
  - ii. by recording how the investment firm uses or intends to use the commissions and fees in order to enhance the quality of the services provided to its clients.

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**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.

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**A.81. NO**



### 3. The CNCIF response to question 81:

*"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."*

#### a) Observations on the Financial Investment Advice dimension of the job of asset management advisor

Before responding formally to question Q81, the CNCIF would like to make a number of observations concerning paragraphs 10 and 11 of the draft technical advice the wording of which was previously referred to, for the record.

##### i. Description of the job of Asset Management Advisor in the context of the provision of Financial Investment Advice and the added value of its services

In France any investors wishing to invest assets in a financial investment, may contact:-

- A Financial Institution,
- An Asset Management Advisor, who generally has more than one status, including that of Financial Investment Advisor. In this respect, it is authorised to offer investment advice with or without third party order reception service and the transmission of UCITS orders.

The reason why investors would choose an Asset Management Advisor (AMA), is in order to have access to a global approach that takes into account their family, business, financial and investment environment resulting in a global statement of assets that serves as support for recommending the most suitable investment solutions for clients. It is only after this advice and subject to it being relevant that investors will be advised to invest in one of the possible asset classes (financial instruments, life assurance contract, real estate investment or other).

If the asset class suitable for these clients corresponds to an investment in a financial instrument (securities account for example), Asset Management Advisors will be in the context of their mission of Financial Investment Advice, responsible for establishing the risk appetite profile of their clients in order to assess their risk acceptance profiles, which will be used to determine the corresponding management profile (balanced, dynamic or aggressive management).

On the basis of these observations, Asset Management Advisors in the context of their mission of Financial Investment Advice will then be able to offer their clients **the choice of a number of high-quality financial institutions** (good score, wide range of UCITS, high-quality back office, ...). Following this, advisors will be able to either **directly help their clients choose between the numerous UCITSs available**, or offer them a discretionary management, in both cases appropriate to their risk appetite profile.

In accordance with the regulations, financial advisors will have provided their clients with the documentation of the various UCITSs, drawing their attention to the risk profile, volatility, the theme of the fund, the quality of the manager, past performance, ..., which



ensures that clients are fully informed and can invest in accordance with their risk appetite.

*The CNCIF believes that Asset Management Advisors in the context of their Financial Investment Advice mission, are indeed, - in this case, within the framework of the system described in paragraph 2.15 Draft Technical Advice § 11 which states that it should be understood that a fee ... could be considered acceptable if it enables the client to receive access to a wider range of suitable financial instruments*

NB: In this case the text proposed by ESMA could also mention access to a wider range of investment service providers in addition to accessing a wider range of suitable financial instruments.

In both cases, financial advisors can offer their clients **regular monitoring over time of the performance of the UCITSs chosen**, either by them directly or as part of a discretionary management service. The long-term advisory mission being thus:-

- to ensure that a position taken on a type of UCITS (emerging countries, US market, ...) ought not to be hedged in favour of another type of UCITS (Small cap market, European market, ...),
- Moreover, the privileged relationship that they maintain with their clients enables them to know their clients' future projects (Reorganising their assets, buying a second home, financing their children's studies, investing in setting-up or developing a business, ...) and pre-empt current investments .

*The CNCIF believes that Asset Management Advisors in the context of their mission of Financial Investment Advice are indeed, - in this case, within the framework of the system described in paragraph 2.15 Draft Technical Advice § 11 which states that it should be understood that a fee ... could be considered acceptable if it enables the client to receive non-independent advice on an on-going basis*

*The CNCIF notes that in the context described above, there is indeed provision of an additional service or higher quality service above the regulatory requirements provided to the end user client, with a tangible benefit and an added value for the end user client. The regulatory requirements consist simply in offering clients a UCITS that corresponds to their risk aversion profile and to provide them with the documentation relative to this UCITS.*

## ii. **Description of the job of Asset Management Advisor in the context of its mission to provide Financial Investment Advice in relation with investment services providers**

Throughout the lifetime of this investment, Asset Management Advisors in the context of their mission of Financial Investment Advice must deliver to their clients that part of the service that would be the responsibility of the financial institution if it managed the clients directly, namely:-

1. Analysis and comments on the results of the situation statements received by the clients (analysis of the performance and cost details),
2. Telephone hotline service for all questions that clients may have on their investments and how they are progressing,
3. Advice for maintaining the funds or hedging advice based on the economic environment or future projects of the client,



4. Advice regarding the possible change of financial institution if the institution were to fail to perform as it should or if the service provided was not satisfactory,
5. If the management mandate given to the financial institution, verification of the suitability of the funds for the client's risk acceptance profile.

It should therefore be noted that this detailed description of the service provided by Asset Management Advisors in the context of the mission of Financial Investment Advice provided to their clients and remunerated via commissions by the financial institution reveals 2 types of commissions associated with two types of service:

- A first fee corresponding to the service that would have been provided by the financial institution if it had been required to manage the client directly, i.e. an outsourcing mission,
- A second fee corresponding to the advisory service enabling the client to resort to another institution if necessary and/or to hedge its asset allocation (it should be noted that this second part of the AMA's fees, does not actually come from the financial institution, even if it is paid by it, but that it in fact comes from each of the UCITS management firms who pay for the information delivered regularly from the performance of their funds).

As a result, the justification for the commission on outstandings is based on two separate types of mission:

- **An outsourcing mission:** The fee for the work carried out by Asset Management Advisors in the context of their mission of Financial Investment Advice on behalf of the financial institution (Points 1 and 2)
- **An added value advice mission:** The fee for the premium service provided by Asset Management Advisors in the context of their mission of Financial Investment Advice to help any investors to retain their freedom of choice regarding the financial institution in charge of their securities account or their Equity Savings Plan and the premium service provided in respect of the selection of the different UCITSs.

*The CNCIF believes that in respect of the commission paid to Asset Management Advisors in the context of their mission of Financial Investment Advice in the framework of an outsourcing mission on behalf of the financial institution, it must be clearly stated that in accordance with Article 24(9) of MiFID II, it is "... the payment which enables or is necessary for the provision of investment services ... and is not subject to the above-mentioned requirements"*

**iii. Figures regarding the commissions received by asset management advisors in respect of the provision of Financial Investment Advice**

Ex: 1. €10,000 invested in a securities account:

Description	Client invoicing	PIS base	AMA share	AMA share in value
Subscription costs			0.5%	€50/h
<b>UCITS (exc. monetary)</b>	<b>Average of 1% (Information Notice)</b>	<b>0.5%</b>	<b>0.5%</b>	<b>€50x</b>



Custody costs	0.6%	0.3%	0.3%	€30/h
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Based on an hourly rate for Advice that can be estimated on average at between €150 and €250 per hour, the commissions received each year on outstandings (subscription costs being paid once only) would correspond to advice of a duration of 20 - 30 mins. a year.

However, in order to provide the same quality of advice to all investors, this basic service needs to be shared.

**b) Consequences of the total prohibition of commissions received by asset management advisors in exchange for Financial Investment Advice**

The CNCIF wishes to question the ESMA members on the consequences and risks of a total de facto prohibition of commissions. We will present these consequences below based on the logical chain of repercussion if such a decision was maintained:-

- Closure of a certain number of firms as was the case in the UK who do not have the retail client profile that allows them to change their commission-based economic model to a model based on the fees that their clients will have to pay,
- Clients who would be ready to agree to pay fees would de facto see the payment of this service increased by the amount of the VAT (20% in France),
- As the least important clients in terms of outstandings, who do not agree to pay fees will find themselves forced to deal with large distribution networks, with no advisory service but only compliance with the regulations in terms of information provided and abusive invoicing,
- Investment service providers who wish to continue to distribute their products via an external distribution network, will suggest, as is the case for real-estate products and as was the case in the past, larger up-front commissions, designed to offset the loss of commissions on outstandings. In this case financial advisors will simply act as a business provider, which will no longer justify retaining the status of advisor. They will therefore fall outside the regulatory framework of Financial Investment Advisor.

**c) Proposed wording of §10 and §11 of the draft technical advice on "Other investment services - quality enhancement"**

The CNCIF draws the attention of ESMA to the particularly incomprehensible nature of these paragraphs. The insertion of a (non-exhaustive) list of negative criteria in paragraph 10 appears to be contradicted by the more general provisions of paragraph 11. The CNCIF suggests the following wording:

<b>Version proposed by ESMA</b>	<b>Version proposed by the CNCIF</b>
10. ESMA advises the Commission to introduce a non-exhaustive list of circumstances and situations that NCAs should consider in determining when the quality enhancement test is not met. A fee, commission or non-monetary benefit may not generally be regarded as designed to enhance the quality of the relevant	10. In understanding whether or not the enhancement test can be met in accordance with these criteria, 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 <u>greater number of investment services</u> or to a



<p>service to the client if:</p> <ul style="list-style-type: none"><li>i. it is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business;</li><li>ii. it does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client;</li><li>iii. it directly benefits the recipient firm, its shareholders or employees without tangible benefit or added value to its end user client; or</li><li>iv. in relation to an on-going inducement, not related to the provision of an on-going service to an end user client.</li></ul> <p>11. In understanding whether or not the enhancement test can be met in accordance with these criteria, 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, so long as any such service is provided without bias or distortion as a result of the fee, commission or non-monetary benefit being received.</p>	<p>wider range of suitable financial instruments or to benefit from the provision of non-independent advice on an on-going basis, so long as any such service is provided without bias or distortion as a result of the fee, commission or non-monetary benefit being received.</p> <p>11. ESMA advises the Commission to introduce a non-exhaustive list of the circumstances and situations that NCAs should consider in determining if when the enhancement test is met. A fee, commission or non-monetary benefit may not generally be regarded as designed to enhance the quality of the relevant service to the client if:</p> <ul style="list-style-type: none"><li>i. <del>it is used to pay or provide goods or services that are essential for the recipient firm in its ordinary course of business;</del></li><li>ii. it does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client;</li><li>iii. it directly benefits the recipient firm, its shareholders or employees without tangible benefit or added value to its end user client; or</li><li>iv. in relation to an on-going inducement, it is not related to the provision of an on-going service to an end user client.</li></ul>
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### III. CNCIF response to:

*"2.16 Investment advice on an independent basis"*



## **1. Extract from the Commission's request for advice (mandate)**

ESMA is invited to provide technical advice on requirements to be complied with by investment firms providing investment advice on an independent basis. In particular, ESMA should advise on appropriate measures concerning the selection process to assess a sufficient range of financial instruments as well as the conditions under which investment firms may offer advice on an independent basis and on a non-independent basis.

1. Recital 73 of MiFID II states:-

"In order to further establish the regulatory framework for the provision of investment advice, while at the same time leaving choice to investment firms and clients, it is appropriate to establish the conditions for the provisions of this service when firms inform clients that the service is provided on an independent basis. When advice is provided on an independent basis a sufficient range of different product providers' products should be assessed prior to making a personal recommendation. It is not necessary for the advisor to assess investment products available on the market by all product providers or issuers, but the range of financial instruments should not be limited to financial instruments issued or provided by entities with close links with the investment firm or with other legal or economic relationships, such as a contractual relationship, that are so close as to put at risk the independent basis of the advice provided."



2. Article 24(4) of MiFID II states that information to clients shall specify whether the advice is provided 1) on an independent basis or not and 2) “whether the advice is based on a broad or more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided.”

3. Article 24(7) of MiFID II states that when the investment firm informs the client that investment advice is provided on an independent basis, the firm shall:

“(a) assess a sufficient range of financial instruments available on the market, which should be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met and should not be limited to financial instruments issued or provided by:

(i) the investment firm itself or by entities having close links with the investment firm; or  
(ii) other entities with which the investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided

(b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the investment firm’s duty to act in the best interest of the client must be clearly disclosed and are excluded from this point.”

4. Article 4(1)(35) of MiFID II states that: “‘Close links’ [means] a situation in which two or more natural or legal persons are linked by: (a) ‘participation in the form of ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking; (b) ‘control’ which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 22(1) and (2) of 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered to be a subsidiary of the parent undertaking which is at the head of those undertakings; (c) a situation in which they are permanently linked to one and the same person by a control relationship.”

5. Article 24(13) of MiFID II empowers the Commission to adopt delegated acts concerning measures to ensure that investment firms comply with these principles, including the criteria for the assessment of a range of financial instruments available on the market.



## 2. ESMA draft technical advice on "Other investment services - quality enhancement"

### *Sufficient range of sufficiently diverse financial instruments available on the market*

1. An investment firm informing a client that investment advice is provided on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market. The selection process should include all of the following elements:
  - i. a diversified selection of financial instruments by type, issuer, or product provider, which is not limited to financial instruments issued or provided by the investment firm itself or by entities having close links with the investment firm should be considered;
  - ii. the number and variety of financial instruments considered should be proportionate to the scope of advice services offered by the independent investment advisor;
  - iii. the number and variety of financial instruments considered comprises a substantial part of financial instruments available on the market;
  - iv. the quantity of financial instruments issued by the investment firm itself or by entities closely linked to the investment firm itself is proportionate to the total amount of financial instruments considered;
  - v. the criteria for comparing the various financial instruments should include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and should ensure that neither the selection of the instruments that may be recommended nor the recommendations that are made to the client are biased.
2. If such a comparison would not be possible because of the business model or the specific scope of the service provided, the investment firm providing advice should not be allowed to claim itself as "independent".
3. An investment firm that provides investment advice on an independent basis and that focuses on certain classes or a specified range of financial instruments should comply with the following requirements:
  - i. the firm is able to market itself in a way that only attracts clients with a preference for certain classes or a range of financial instruments;
  - ii. (potential) clients should be able to easily identify a preference for the specified classes or range of financial instruments and be able to self-select with a high degree of accuracy;
  - iii. clients indicate that they are only interested in investing in the specified classes or range of financial instruments; and



- iv. the firm is able to easily confirm whether its service is appropriate for each new client, i.e. that its business model matches the client's needs and objectives, and the range of financial instruments are suitable for the client. If this is not the case the firm must not provide such a service to the client and should refer the client to another firm.

*Investment firms providing both independent and non-independent advice*

- 4. An investment firm offering investment advice on both an independent basis and on a non-independent basis should comply with the following obligations:
  - i. in good time before the provision of its services, the investment firm should inform retail clients, in a durable medium, whether the advice will be independent or non-independent in accordance with Article 24(4)(a) of MiFID II and the relevant implementing measures (see the 'Information to clients about investment advice and financial instruments' chapter of this Consultation Paper);
  - ii. the investment firm should not hold itself out as "independent" for its business as a whole. However a firm may hold itself out as acting independently in respect of the services for which it provides independent advice; and
  - iv. it should have adequate organisational requirements and controls in place to ensure that both types of advice services and advisors are clearly separated from each other. To this end the firm should not allow a relevant person to provide both independent and non-independent advice. These requirements and controls should also ensure that clients are not confused about the type of advice that they are receiving and are given the type of advice that is appropriate for them.

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

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**85. NO**



**3. The CNCIF response to question 85:** *Do you anticipate any additional costs in order to comply with the requirements proposed in this chapter? If yes, please provide details.*

The CNCIF is familiar with the draft technical advice and wishes, before answering question Q85, to make a certain number of observations.

**a) Observations**

The draft technical advice provides that an investment firm informing a client that investment advice is provided on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market.

This selection process should, according to the technical advice, include a range of measures, including:

*ii. the number and variety of financial instruments considered should be proportionate to the scope of advice services offered by the independent investment advisor;*

→ The CNCIF has doubts about the significance of the criterion of proportionality introduced here - providing by definition only one advice service (financial investment advice), how are we to understand this criterion of proportionality?

→ The CNCIF also has doubts about the significance of the notion of "scope of the services" offered and the ability, for the regulator, to define this concept in an intelligible manner.

*iii. the number and variety of financial instruments considered comprises a substantial part of financial instruments available on the market;*

→ The CNCIF has doubts about the significance of the notion of availability on the market, in particular in so far as concerns UCITS shares or units that are not always admitted into clearing houses. Does the fact that shares or units of UCITSs are marketable mean that they are "available on the market" or does it imply that they must necessarily be available for purchase directly by the end client?

*v. the criteria for comparing the various financial instruments should include all relevant aspects such as risks, costs and complexity as well as the characteristics of the investment firm's clients, and should ensure that neither the selection of the instruments that may be recommended nor the recommendations that are made to the client are biased.*

→ The CNCIF has doubts about the practical methods for implementing this measure - for the comparison to be possible, the producers should be required to create harmonised documentation that presents the different sections desired (risks, costs, complexity) in a standardised manner. As the regulations currently stand, this standardisation does not exist.

2. If such a comparison would not be possible because of the business model or the specific scope of the service provided, the investment firm providing advice should not be allowed to claim itself as "independent".

→ The CNCIF fears that, for the reasons evoked above, such a comparison is impossible, such that the "independent" advice cannot by definition exist. In reality, the



independence of the advice does not result from the sole existence of a selection process of financial instruments, but much rather the conditions in which the advice itself is given, namely by having the rule of favouring the interest of the client over that of the advisor.

**b) CNCIF response:**

In response to Q85, the CNCIF expects additional costs to be incurred by the client.

- Only a few major investment firms have the means to put in place the selection process recommended by ESMA.
- The creation of this process undoubtedly leads to significant human and technical costs that we are not able to cost but that will undeniably be passed on to the cost of the advice offered to the client.
- The notion of independence applied by the MiFID and by ESMA does not at all correspond to the notion of independence as understood by the public.