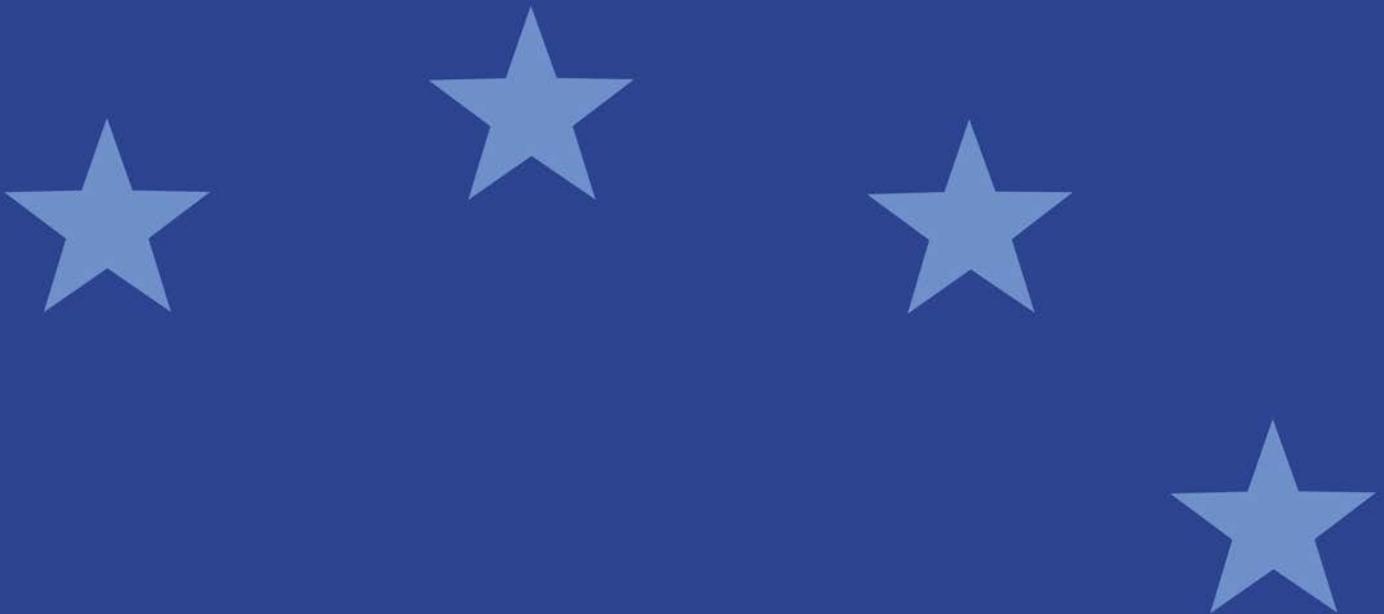




European Securities and  
Markets Authority

# **Reply form for the ESMA MiFID II/MiFIR Consultation Paper**



22 May 2014



European Securities and  
Markets Authority

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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](http://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***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.



## **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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_5>

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

**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>  
Even though the minimum list proposed in the table is largely based on the one identified in CESR Level 3 Recommendation (Ref. CESR/06-552c), we believe that the investment firm should be obliged to record only the information about the “*clients*” knowledge and experience and not also the information about the “*potential clients*” knowledge and experience. As long as the client doesn’t enter into an agreement with the investment firm for the provision of an investment service, any obligation of record keeping information could have a detrimental impact on the “*potential clients*” right to privacy which couldn’t be justified under the directive 95/46/EC on the protection of individual’s personal data. Therefore, the technical advice no. 7 should be amended deleting the words “*or potential client*” in the sections of the table concerning the “*client details*”.

Moreover, the record keeping obligation of sample of each marketing communications addressed to potential client may lead to the same breach of privacy regulation. More generally, we consider that the technical advice should be amended wholly deleting this requirement; the investment firms should be able to decide whether and what kind of marketing communications’ samples addressed to its client or potential clients should be kept.

In conclusion, we believe that European legislation and ESMA recommendations should leave to the discretion of investment firms the definition of certain aspects in order to foster the achievement of the appropriate balance between costs and benefits expected

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE



<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>  
TYPE YOUR TEXT HERE  
<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>  
On the assumption that the obligation to include in meeting minutes or notes the information regarding the relevant face-to face conversation relates only to the orders orally communicated by clients – in the absence of a durable medium – we agree with the list of information proposed to be included as a minimum in such minutes or notes.  
<ESMA\_QUESTION\_10>

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

<ESMA\_QUESTION\_11>  
We believe that the client shouldn't be required to sign the minutes or notes. Such obligation, indeed, could be able to distort the "orally" nature of the "face to face" orders, compared with the orders signed by clients.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>

According to us, the question is not correctly phrased. We believe that the chance for the distributor to know the product and to establish a two-way flow of information with the manufacturer (and not the market, primary or secondary, where the operation is executed) is relevant for the application of distributor requirements. This flow of information can be regulated only in the agreement between the manufacturer and the distributor (placement agreement). We believe, therefore, that the proposed distributor requirements should apply only in the presence of a placement agreement between the manufacturer and the distributor.

<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>

TYPE YOUR TEXT HERE

<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>

Flows of information from the distributor to the manufacturer are usually provided within the placement agreement, in the common interest of the parties to identify products suitable to the needs of different category of investors. We believe, therefore, that manufacturers and distributors should continue to determine circumstance and timing of the flow of information; they should also continue to identify the content of the information, which must take into due account the concrete circumstances of the relationship as it unfolds. Thus, technical advice no. 21 should be deleted.

<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>

We believe that the placement agreement should also regulate the relationship between manufacturer and distributor and the remedies for any contractual breaches; the Authority should not intervene in this area.

<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>

See *supra* answer no. 17.

<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>

*In apicibus* we believe that the regulation proposed is redundant.

<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>  
See *supra* answer no. 19.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We believe that is up to the investment firm to determine whether establish and maintain a client assets oversight function or not. We believe, indeed, that the compliance officer could effectively fulfil this role; while the obligation to appoint a separate dedicated officer, its operation and the consequential review of the system of information flows would result in unjustified cost increases.  
<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>  
We do not agree with the proposal to place high level requirements on firms to consider the appropriateness of TTCA with non-retail clients professional clients. We believe that for non-retail clients clear information on risks and effects of TTCA on the asset would be sufficient and exhaustive. On the other hand,



the provision of such requirements seems to go beyond Level 1 Directive. Thus, technical advices no. 3 and 4 should be deleted.

<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>

We don't agree with the proposal to fix a limit to the intra-group deposit of clients' funds. We consider, indeed, that the investment firm and its client should be allowed to determine such limit on a discretionary basis. Furthermore, we believe that the contagion risk envisaged in parr. 35 *et. seq.* of the analysis doesn't seem to arise, considering that usually the client maintains the full ownership of the funds held by the investment firms on his behalf in the provision of investment services; therefore, in the event of investment firm insolvency, those funds don't enter into the bankrupt asset and, *sic et simpliciter*, they must be returned in full to the clients.

<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>

We believe that the conflict of interest's disclosure under the technical advice no. 3 shouldn't regard necessarily "*the risks to the client that arise as a result of the conflict*". Pursuant to article 23(2) of MiFID II, the investment firm shall clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps taken to mitigate those risks. After all, such information is already able to allow the client to understand the scope of the risk of damage to his interest which this conflict may create. In fact, detailed information about risks is included in the conflict of interest policy owned by client or accessible at any time, provided that the conditions specified in article 3(2) of MiFID Implementing Directive are satisfied. Thereof, repeating the description of these risks in the disclosure provided to client would be redundant and inconsistent with the need to provide clear information in summary form, so that the client could effectively take advantages from it.

Consequently, we believe that the technical advice no. 3 should be amended deleting the words "*as well as the risks to the client that arise as a result of the conflict*". As an alternative, ESMA could assess the opportunity to state that the disclosure provided to clients should include a reference to the conflict of interest policy which identifies all the relevant risks arising from the specific kind of conflict and describes the steps taken to mitigate those risks. In this way, the disclosure could be relieved as a result/because of its limitation to an effective description of the conflict arose from the specific operation.

As observed by ESMA, under the current regime it's a normal business practice for investment firms to periodically review their conflict of interest policies considering the evolution of both their business and relevant legislative framework. *Viceversa*, the obligation for investment firms to assess and review at least annually their conflict of interest policy should constitute mere bureaucratic tinsel which is able to increase costs and expenses incurred by the investment firm. Thus, we consider that the technical advice no. 4 should be amended deleting the words "*at least annually*", leaving to the discretion of investment firm the choice about the frequency of the conflict of interest policy's review.

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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 believe that relevant rules shouldn't be further detailed and it would be rather appropriate to delete the last provision of the technical advice no. 19 according to which "*in some cases, if the conflict of interest cannot be managed by procedures or arrangements, the only way to manage the conflict would be for the investment firm not to engage in the operation*". The obligation to not engage in the operation doesn't constitute a "mean for managing conflict" but it introduces a prohibition which doesn't found its legal basis on the MiFID II framework. Article 23(2) of MiFID II prescribes to the investment firms, as a last resort, to disclose to the client that they are not able to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, without prohibiting the engagement in the operation. Actually, IOSCO, in its document entitled "*Market Intermediary Management of conflicts that arise in Securities offerings*" states, as a last resort, that the investment firm "should refrain if the conduct (which creates or is likely to create a conflict) is contrary to the interests of a client and other approaches are unlikely to be effective to adequately address the conflict". IOSCO statement, however, doesn't empower the European Commission to introduce a general prohibition which seems to be inconsistent with the legislative provisions set by MiFID II and seems to go beyond the scope of the mandate *ex* article 23(4) of MiFID II.

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
Concerning the technical advice no. 2.iv, ESMA should clarify, if possible, the scope of the obligation to update the information addressed to or likely to be received by retail clients or potential retail clients. We believe that an example of this obligation could be the following: if an investment firm provides information on the indication of past performance of a financial instrument by means of a website, it should update such information as to ensure that it always includes appropriate performance information which cover the immediately preceding 5 years, or the whole period for which the financial instrument has been offered. The updating obligation shouldn't regard the product fact sheet, eventually, given to the client when the transaction was concluded.



<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

On the assumption that the disclosure is more effective when it is limited to the essential information for the client, we believe that the provision according to which the investment firm should explain, when each recommendation is provided (if this is *voluntas legis*), whether and why investment advice could qualify as independent or not and the type and nature of the restrictions is redundant. The information on the basis of the investment advice – including those related to the “independent basis” – must be provided before the conclusion of contract (and in the contract itself): consequently it makes no sense to repeat the same information multiple times, especially when it concerns homogenous advice, for which it would be more effective a reference to the initial information. In any case, the fact that the investment firm should explain to the client every time “*why investment advice could qualify as independent or not*” is redundant. In this regard, it has to be noted that recommendations can be very frequent (weekly or even daily). The repetition of such information would not make sense, likely, even when the investment firm provides to the same client investment advice both on independent basis and on non-independent basis. Even in this last case, indeed, both bases on which the investment advice is provided concern, probably, different types of products, which should have been clearly identified at the time of contract. Thus, last period of technical advice no. 1, according to which “*Investment firms should explain in a clear and concise way whether and why investment advice could qualify as independent or not and the type and nature of the restrictions that apply*” should be deleted or, at least, reworded as to take into account what *supra* explained.

Then, with regard to the *ex-ante* information about the periodic assessment of suitability, we believe that the identification of the basis on which this assessment is made should be left to the discretion of the investment firm. An excessive stiffening of the conditions of the periodic assessment of suitability could be in breach of MiFID 2 and, in any case, could deter many investment firms from doing it. In particular: i) the investment firm should not be required to inform the client about the conditions that trigger the assessment; ii) the investment firm should not be required to increase the frequency of the assessment depending on the risk profile of the client and the type of financial instrument recommended. On the other hand, MiFID II allows the investment firm to provide investment advice service also without giving the periodic assessment of the suitability: *a fortiori* investment firms could be allowed to provide a periodic

suitability assessment taking as parameter only the elapse of certain time period and not also other circumstances, such as the risk profile of the client or the type of financial instrument recommended. Moreover, these circumstances could be considered as not relevant to the type of service provided. Therefore: i) the last period of technical advices no. 6.i, *i.e. "the conditions that trigger that assessment"* should be deleted; ii) the last period of technical advice no. 7, according to which "*the frequency of this assessment should be increased depending on the risk profile of the client and the type of financial instruments recommended*" should be deleted.

<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>

We believe that Esma should usefully clarify that the obligation to provide information on financial instruments laid down in technical advice no. 8, 9, 10, 11 and 12 can be satisfied through prospectus or other documents required by Union legislation (Prospectus Directive, UCITS ...).

<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>

Please, refer to answer at Q69.

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_71>

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

<ESMA\_QUESTION\_72>

We don't believe that the reference to the financial instrument "*recommended or marketed*" should be understood in a broad manner. The expression "*recommended or marketed*" is used in the MiFID II framework only relating to investment advice and placing of financial instrument services. The former requires investment firm to verify the cost of the financial instrument recommended and to consider such cost for the purpose of the recommendation; the latter also implies that the distributor must have a complete knowledge of the cost of the financial instrument placed and provides that this cost is disclosed to the client.

In the provision of the other investment services, having particular regard to the reception and transmission of orders, execution of orders on behalf of clients and dealing on own account, the investment firm plays only a passive role, from which cannot be inferred neither the obligation to provide information on costs, nor the obligation to aggregate such information with those relating to the service provided. Also referring to PRIIP regulation, only the "*person advising on or selling a PRIIP*" is requiring to provide the

retail investor with the KID (see art. 12 of the Council agreement with EP approved on the 4<sup>th</sup> April 2014, Ref. 8356/1/14 REV 1). In the MiFID II framework the KID or the KIID should be deemed as documents which allow the investment firm to provide the information about the costs of the financial product (only when investment advice and/or placing of financial instruments are provided).

Moreover, we believe that article 24(4), last subparagraph, of MiFID II, relates only to the aggregation of own costs to the same client without requiring the investment firm (adviser or distributor) to aggregate the cost of its service with that of the financial instrument recommended or placed. It would be particularly difficult and complex for the investment firm to provide this further information, considering the wide range of financial instrument recommended and/or marketed and the differences between them. The implementation costs, furthermore, will be incurred by the client as a detrimental consequence of the technical advice in comment. In any case, the mentioned article 24(4) doesn't state that the investment firm is obliged to illustrate to the client the cumulative effect of costs on return; it states that the investment firm is obliged to illustrate to the client costs and charges "to allow the client to understand the overall cost as well as the cumulative effect on return of the investment".

Then, we believe that the investment firm should be allowed to decide, on a discretionary basis, whether to provide or not the client with the aggregated information about the costs related to the financial instrument and the service provided. As an alternative, the investment firms could be usefully allowed to provide this aggregated information using standardised examples of amounts invested by clients and the percentage of costs consequently applied. These standardised examples could also be used when the investment firm receives a periodical commission proportioned to the overall client's portfolio, as such unable to be ascribed to the single financial instrument included in the portfolio.

In the light of the above, the technical advice no. 3 should be amended specifying that: i) the scope of information about the costs of the financial instrument should be limited to investment advice and placing of financial instrument, ii) in these cases the investment firm should be allowed to decide, on a discretionary basis, whether to provide the client with aggregated information about the costs related to the financial instrument and the service provided, iii) investment firms should always be allowed to use, to that end, standardised examples of amounts invested by clients and the percentage of costs consequently applied.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_75>

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

<ESMA\_QUESTION\_76>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_76>



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

<ESMA\_QUESTION\_77>

Please, refer to answer at Q72.

<ESMA\_QUESTION\_77>

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

<ESMA\_QUESTION\_78>

TYPE YOUR TEXT HERE

<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>

We do not agree with the proposal to establish an exhaustive list of minor non-monetary benefits, *i.e.* benefits that, by the virtue of their nature, could not jeopardise the fair provision of investment service in accordance with the best interests of the clients. CESR (in its document 07-228b, *Inducements under MiFID*, § 10 and recommendation 3) correctly stated that “*This is a test that needs to be considered in the abstract, on the “nature” of the item*”. Therefore, we believe that the current list should be regarded as non-exhaustive and should include sufficient information to allow clients to understand when *other* non-monetary benefits could be considered as minor.

<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>

TYPE YOUR TEXT HERE

<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>

Due to the non-exhaustive nature of this list, we don't have particular remarks about it, neither about the examples of “quality enhancement” laid down that, after all, are in line with recital 29 of the MiFID Implementing Directive and recommendation 5 of the CESR's document 07-228b (*Inducement under MiFID*).

However, we observe that technical advice no. 11, in relation to the quality enhancement test in the provision of placing of financial instruments and investment advice on a non independent basis, states that the inducements “*could be considered acceptable if 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*”. To this regard, the adjective “*suitable*” seems to be a “typo” which is able to create confusion, as it relates to finan-

cial instruments available to the client only in the provision of investment services *other than* investment advice and portfolio management, the only ones to which the suitability rule, instead, applies.

Thus, word “*suitable*” should be delated from technical advice no. 11, also in accordance to the recommendation 5 of the CESR’s document 07-228b (*Inducement under MiFID*).

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

First of all, we point out that the expression “*independent and non-independent advice*” used in the Q84 as well as in the title of the technical advice, does not correspond to the relevant legislative provision and may create confusion on an essential feature of investment advice service. The expression “non independent advice” may lead to suppose that an advice which is not independent could exist. It must be clear that MiFID II regulates a single investment advice service which must consist, by definition, in the provision of personal recommendations which are always independent: this means that it is provided in the exclusive interest of a client, without any bias arising neither from the possible restricted range of financial instrument recommended nor from the possible commission/inducements paid by manufacturer/issuer to the investment firm. Therefore, we believe that it is not correct to use a shorter legislative form and, according to the MiFID II framework, it must be always used the expression “*advice on an independent basis and on a non-independent basis*”.

That said, we consider that investment firms should be allowed to determine the organizational requirement and controls to adequately separate the different business models that can be adopted to provide investment advice; it doesn’t exist an optimal solution which can be fit the features of each of the investment firms and its business model/models.

Particularly, we do not agree with the proposal to separate the two ways of the provision of the same service, even throughout the establishment of two different networks of relevant persons providing investment advice (employees or tied agents). This proposal triggers an excessive increase of costs as a result of the necessary reallocation of clients from an adviser to another arising from the new business model, whilst the same adviser can provide a wide range of services to the client. Moreover, the risk of client’s confusion, about the different business models adopted in the provision of investment advice, should be avoided providing the client with the *ex ante* disclosure about whether or not the advice is provided on an independent basis pursuant to article 24 (4)(a) of the MiFID II and in accordance with the agreement between the client and the investment firm. In fact, on the one hand, this agreement must clearly specify

whether, and in relation to which financial products, the investment advice is provided on an independent basis and, on the other hand, the relevant person appointed by the investment firm for the provision of the service to the client that must operate according to it. Even where investment firms provide to the same client the investment advice both on an independent and non independent basis, the circumstance that these different business models usually relate to different financial products would considerably mitigate the risk of confusion. Furthermore it's important to bear in mind that under the current regime, and even in the new regulatory framework, it is never required to separate the relationship between the client and the relevant person appointed by investment firm in the provision of different investment services, subject to different rules (placing and advice, trading and execution only; management and RTO/ execution of orders, etc.).

Finally, we believe that requiring investment firm “*to have adequate organisational requirement and controls in place*” should be sufficient in order to prevent the risk of client's confusion about the basis, independent or non independent, on which the investment advice is from time to time provided.

As mentioned, requiring investment firms to establish two different networks of relevant persons for the provision of investment advice, respectively on an independent and non independent basis, could have a detrimental impact on the current investment firms' activities, on their auxiliaries (employees or tied agents) as well as on investors. Particularly, the investment firms would bear additional costs deriving from the duplication of the network; the auxiliaries would suffer an improper *deminutio* of the scope of their professional activities; investors would incur the increased cost of the service as a result of the duplication of the network and, where they are receiving investment advice both on independent and non independent basis (depending on the product from time to time recommended), they should face with two different relevant persons even when they trust one of them, who is certainly able to provide investment advice notwithstanding the business model adopted.

Having regard to tied agents, who are consequently required to opt only for a single business model adopted by the investment firm, the mentioned *deminutio* is in breach of recital 100 and articles 4(29) and 29 of the MiFID II. According to the latter provision “*Member States shall allow an investment firm to appoint tied agents for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that investment firm*”. As a consequence, the extent of a tied agent activities relating to the provision of investment advice corresponds to that carried out by the investment firm on which behalf he operates.

Furthermore, we have to take into account that tied agents provide to the client the personal recommendations using software designed and implemented by the investment firm in order to ensure the suitability of those recommendations paying attention only to the clients' interest (as mentioned above, the recommendation must always be *ex se* independent, regardless of the business model adopted by the investment firm and notwithstanding the attempt of regulator to make also the adviser independent). Therefore, prohibiting a single tied agent from providing independent advice both on an independent and non independent basis, on one hand, would breach the relevant MiFID II rules and, on the other hand, would be *ultroneus*, since the investor protection depends on the suitability assessment and conflict of interest rules and not on the business model adopted by the investment firm.

<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>

TYPE YOUR TEXT HERE

<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>

We do not agree with the provisions laid down in points iii and ix of technical advice no. 1. These provisions seem to define the content of the investment advice service and the suitability assessment beyond both MiFID II and the Commission's mandate.

Actually, these provisions suggest that:

- i) the comparison with alternative products constitutes an essential part of the investment advice service;
- ii) the evaluation of the cost and/or the complexity of the product constitutes an essential part of the suitability assessment;
- iii) the adviser should recommend the most suitable product, simplistically identified with the less complex and with the lowest cost.

But, that wouldn't be the case.

Moreover, we do not agree with Esma mandatory approach aimed at impose terms and arrangements of the investment advice service that, instead, should be left to the discretion of the adviser; actually, the imposition of these requirements would result in costs and barriers to the activity with an adverse effect on the interest of the client.

In particular:

- i) we do not agree with the obligation imposed on the adviser when he provides any single advice to assess whether alternative financial instruments, less complex or with lower costs, could better meet client's profile; this obligation doesn't reflect the scope of the investment advice service and would also trigger high implementation costs and could therefore discourage the exercise of this service, in contrast with the principle of neutrality of regulation as regards the means;
- ii) we do not agree with the idea according to which the cost or the complexity of the product are preferential selection criteria in suitability assessment. *Viceversa*, it has to be considered that the cost of the product is also influenced by the "quality" of the investment advice service and that flattening of costs would not only impair market competition, but also result in a substantial decrease of the "quality" of the advice provided to the client, and, in the end, of the investor protection;
- i) on the other hand, investment advice service cannot be reduced to the indication of products less complex and with lower costs. To this end it would be sufficient a market research, enjoyable by public investors, after all. At most, the adviser could lay down policies aimed at identifying categories of clients – in accordance with their (low) risk tolerance and/or ability to bear losses – to which less complex products, and likely with lower cost, could be preferably recommended. Even in this case, legislator does not interfere in the investment firm's policies.

Stating that the obligation of the adviser is to recommend suitable products, we believe that the technical advice goes beyond MiFID 2 for two reasons: 1. it imposes the obligation to recommend the "most suitable product"; 2. when different products are suitable, it imposes the obligations to recommend the product less complex or with lower costs. In the latter case, the provision is clearly arbitrary, not being understood why it could not be considered the most suitable the product that, for example, has the highest rating. This is to say that every criterion is arbitrary and that a suitable recommendation is the synthesis of an evaluation process that takes into account a number of variables, none of which could rationally take priority.

Moreover, it should be noted that when Esma approved the *Guidelines on certain aspects of the MiFID suitability requirements*, the reference to the "most suitable product" was deleted because "*beyond MiFID provisions*" (v.. Final Report, Ref: ESMA/2012/387, Feedback Statement, para. 14, third paragraph, p. 6).

On this regard, it has to be noted that neither MiFID 2 laid down such provisions.

Finally we do not agree with the alleged identification of the most suitable product with the less complex and with lower cost.

Therefore, points iii and ix, of the technical advice no. 1, should be deleted.

<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>  
TYPE YOUR TEXT HERE  
<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>

Firstly, we believe that the content of suitability reports can be simplified, allowing the adviser, on the one hand, to group the recommendations of the same type and, on the other hand, to summarize, making it less personal, the explanation of the suitability assessment having regard to the types of financial instruments and/or non-complex and standardized products. As it is not clearly stated, we require Esma to specify those possibilities or alternatively to lay down a basic rule according to which the investment firm may decide the degree of detail of the suitability report from time to time, with regard to the nature of the recommendations and the types of products recommended. In this way redundant disclosure is avoided, in the interest of the best and easy understanding of the report by the client.

Secondly, we believe that the explanation of the disadvantages of the recommended course of action triggers additional costs and is difficult to implement. Actually, recital 82 of MiFID II does not introduce, nor assumes the obligation to indicate in the report the disadvantages that could result from the recommended course of action, but, taking into account its nature of recital, it could only clarify that "*the client does not incur a loss out as a result of the report presenting in an inaccurate or unfair manner the personal recommendation, including how the recommendation provided is suitable for the client and the disadvantages of the recommended course of action*". Thus, the recital highlights the need to avoid a misleading content of the report; it doesn't require (nor it could require) the obligation to explain the disadvantages of the recommended course of action. Therefore, point iii of the advice no. 2 should be deleted or, alternatively, it should be clarified that this explanation can be provided in a standardized form, having regard to the risks arising from the types of financial instruments considered.

<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We believe that the obligation to state, in the client agreement, the instruments and transactions prohibited is really burdensome, if not the impossible. Therefore we believe that the technical advice n. 4.ii should be amended deleting the words *“as well as any instruments or transactions prohibited”*.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
TYPE YOUR TEXT HERE  
<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 believe that the obligation to indicate the estimated value of the financial instruments is difficult and arbitrary to implement and it would trigger additional cost that, at the end, are borne by the clients. Thus, we consider that the technical advice no. 8.iii should be deleted.  
<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>  
TYPE YOUR TEXT HERE  
<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>  
We point out that the introduction – provided by the technical advices no. 5 and no. 7 – of a quarterly reporting obligation would increase the costs of investment service borne by the client that, at the end, doesn't answer a real need for information.



We believe therefore that the technical advice no. 5 should be amended: i) stating that the basic frequency for reports for portfolio management service should “*every six months*” (instead of “quarterly”); ii) introducing the possibility for “*the client to request this statement more frequently at a reasonable commercial cost*”, as provided by the technical advice no. 7 (relating to the reporting obligations in respect of statements to clients on their holdings of instruments and funds).

Moreover, we believe that the technical advice no. 7 should be amended stating that the basic frequency for reports on clients’ financial instruments and fund should “*every six months*” (instead of “quarterly”).

<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>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_101>

**Q102: Do your policies and your review procedures already 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>  
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>



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>  
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>  
TYPE YOUR TEXT HERE  
<ESMA\_QUESTION\_163>

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

<ESMA\_QUESTION\_164>  
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>

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 Errore. L'origine riferimento non è stata trovata.), 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** Errore. L'origine riferimento non è stata trovata., **Errore. L'origine riferimen-** to non è stata trovata. **or** Errore. L'origine riferimento non è stata trovata. **Errore. L'origine riferimento** non è stata trovata.?

<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 Errore. L'origine riferimento non è stata trovata.) 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** Errore. L'origine riferimento non è stata trovata. **Errore. L'origine riferimento non è stata trovata. and** Errore. L'origine riferimento non è stata trovata., **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>