J.P.Morgan
Asset Management

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European Securities & Markets Authority
CS 60747
103 rue de Grenelle
75345 Paris Sedex 07
France

Re: ESMA Consultation Paper, Guidelines on certain aspects of the MiFID II suitability requirements

Dear Sir/Madam:

J.P. Morgan Asset Management ("JPMAM") welcomes the opportunity to provide comment on ESMA's Consultation Paper, Guidelines on certain aspects of the MiFID II suitability requirements ("the consultation").

JPMAM manages assets of $331 billion (at end Q3 2017) on behalf of European clients that include individual private investors, financial advisers, professional investors and institutions. We offer a wide range of investment capabilities covering multiple asset classes and investment instruments, utilizing teams from around the world to manage these assets on behalf of our clients in Europe. Our clients invest in vehicles including UK domiciled OEICs, Luxembourg domiciled SICAVs, Life Funds and segregated accounts.

We broadly support ESMA's proposed approach to the Guidelines. However, we are concerned with its application to discretionary portfolio management for institutional asset management investors. We offer a recommendation that we believe meets the legislation's objectives while addressing these concerns. JPMAM also supports the European Fund and Asset Managers' Association (EFAMA) response to this consultation.

MiFID II Delegated Regulation, Article 54 (11), requires portfolio managers to undertake a cost-benefit analysis when their clients switch from one investment to another.[1] Guideline 10 in the consultation outlines how firms could in practice fulfil the requirement. The proposals, however, do not consider the specific circumstances that exist when providing discretionary portfolio management to institutional/professional clients.

[1] MiFID II Delegated Act, Article 54 (11): "When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs."

The nature of the Investment Management Agreement that exists in the Institutional Management relationship, which documents investment, risk parameters and a pre-agreed investment strategy, removes the need for an additional defined cost-benefit approach. Discretionary portfolio management can be a continuous process of adjustment and the concept of "switching", which does not apply to Institutional Discretionary Portfolios. For example, because bond fund managers continuously adjust a yield curve or duration, trying to select any "pair" of trades and define them as a switch would be arbitrary and meaningless. Further, many discretionary portfolios are sub-advised or delegated mandates linked to a fund where inflows or outflows are initiated by the client and occur on a daily basis, requiring the asset manager to trade to reflect the direction of monetary flow. Again, the concept of switching does not apply in this scenario.

Given the volume of trading, which is often driven by client request due to the nature of the discretionary mandate, the need to conduct a cost benefit analysis for each trade would drive significant delay into the trading lifecycle, add frictional costs and potential detriment to the client's portfolio. Additionally, in institutional discretionary portfolio management, the investment firm is unlikely to be the only portfolio manager providing services to the client. To the extent the proposal requires an assessment of a client's entire investment portfolio before every trade, managers would need to know about the other investments that the client has, including those with other firms. Clients are unlikely to have real-time information on those investments, and understandably might not be willing to share that information with other managers.

Consequently we believe that Guideline 10 and the proposed cost-benefit analysis are not necessary for institutional mandates. Professional clients, whether per se or elective, will have sufficient knowledge and experience to support their agreement of the mandate. Any changes to the strategy are discussed with the client and confirmed for consistency with the client's investment objectives, risk tolerance and other relevant factors. Trading within the client's portfolio must be suitable because its composition must be aligned with the investment mandate, which itself has been assessed for suitability. Clients are further protected because trades within the strategy are subject to best execution policy. This ensures that the trades are executed in the client's best interests, including but not limited to costs.

We therefore recommend that the obligation not be applied on a trade by trade basis to regulated firms who provide discretionary portfolio management to professional clients under an Investment Management Agreement. We note that this approach appears to have been considered in Annex 3 of the consultation. Instead, we suggest that the cost-benefit assessment should be applied at the level of the portfolio and suitability assessed accordingly. A suitability assessment would be required when a client initiates a new mandate. If there is a decision to change the strategy or model to which the client's portfolio is aligned then a cost benefit analysis of switching to this new investment strategy should be undertaken.

Finally, we recommend that greater clarity be provided on what constitutes a switch and how common scenarios, such as rolling a derivative contract or trading as a result of a client flow, should be considered if the requirement remains.

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JPMAM appreciates the opportunity to comment on ESMA's proposed Guidelines on suitability. We would welcome the opportunity to provide any further information or respond to any questions you may have.

Yours sincerely,

/s/ Mike O'Brien

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