Q1: Do you agree with the suggested approach on the information to be provided on the suitability assessment and specifically with the new supporting guidelines on robo-advice? Please also state the reasons for your answer.

We agree with the general guideline 1. However, we do have concerns with regard to the new supporting guidelines on robo-advice[1]. The supporting guidelines should not single out the (assumed) issues of robo-advice, while failing to consider the (present) issues of the traditional industry. We fear that this approach results in a negative framing effect which will (in addition to the burdens for new market entrants of an already heavily regulated industry) impede the growth of this nascent industry. We are of the opinion that this approach is the result of a biased assessment of the risks and benefits of robo-advice in comparison to the traditional industry. We would like to highlight only some of the issues of the traditional industry which robo-advice addresses and which are, amongst others, the reason for the risen demand for robo-advice services:

- While in the past statements made by traditional investment advisors / managers or their employees in the course of the suitability assessment were from time to time not documented and in contradiction with regulatory requirements (e.g. downplay of risks, referring to acknowledgement risk warnings as mere formalities, inappropriate guidance of the clients in filling out questionnaires), the online tools potentially provides for a fully documented process and with none of the aforementioned interference by investment advisors / managers.
- While some traditional investment advisors / managers do not provide any clear rationale as to their investment methodology as they make the investment decisions based on (assumed) experience and general assessments of the “investing environment”, robo-advice propositions provide for a modern rule-based approach. Since scientific findings of the last decades do not support the assumption that stock picking and market timing based approaches lead to better performance, robo-advice services can potentially provide increased levels of transparency and less individual bias with regard to the investment process.
- While the fees of traditional investment advisors / managers have partly been intransparent and excessively high, in general, robo-advice services aim to address this by providing a transparent, higher volume, lower margin and more commoditized proposition. We think this is well in line with the best interests of the clients and the aim of MiFID II.

Given the above, we think ESMA should consider either to restrict itself to substantiating general principles (e.g. proportionality, fair, clear and not misleading rule etc.) without singling out specific business propositions or come up with a wording which addresses risks of all business propositions alike. Against this background, we would like to illustrate our concerns in detail by commenting on the robo-advice specific sections of the supporting guidelines:

- No. 20: For the above reasons, we deem this wording inappropriate as the supporting guidelines do not mention the typical shortcomings of the traditional industry. We suggest to consider a wording which is business model agnostic.
- No. 21: While traditional investment advisors / managers are not obligated to state their (if any) investment methodology, explain their operations, elaborate on the functionality and update of the suitability assessment,

[1] We also would like to bring to the attention of ESMA that the Guidelines create the impression that a clear distinction between „robo-advice“ and „traditional" investment advice/portfolio management propositions can be made. However, according to the definition (Annex. 3.3 II. under No. 6) „robo advice“ is "the provision of investment advice or portfolio management services, in whole or in part, through an automated or semi-automated system". Thus, the definition rightly reflects the current situation on the market in which most relevant firms use "hybrid models“ that are not fully automated. Also in this regard ESMA should favour the use of overarching general principles and business model agnostic wording over business model specific language.

robo-advice propositions have to include corresponding statements. We suggest to consider a wording which is business model agnostic.

- No. 22: Again, while paper forms, questionnaires and other paperwork of traditional investment advisors / managers are not addressed, robo-advice propositions need to consider detailed requirements on the design of their online tools. We suggest to consider a wording which is business model agnostic.

Q2: Do you agree with the suggested approach on the arrangements necessary to understand clients and specifically with how the guideline has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

We agree with the general guideline 2, especially as it is business model agnostic ("irrespective of the means used to collect such information"). However, we do have concerns with regard to the supporting guidelines.

With regard to the requirements on the process of collecting of client information (no. 25) and the nature of the information to be collected (no. 26), we fear that these sections do not add any clarity in comparison to the wording of the law. The law requires firms to collect required information based on the principle of proportionality and communicate in a fair, clear and not misleading way. Against this background, we suggest to refrain from wording which lists certain circumstances, while omitting others. In any case,

- the wording "questions presented in batteries" needs clarification, as the question(s) on knowledge and experience by the very nature of the matter require different investment classes to be listed.
- no. 26 should explicitly mention the principle of proportionality, as the extent of the information required must be assessed against this principle.

Again, with regard to the robo-advice specific section, for the reasons given in the answer to Question 1, we think ESMA should either restrict itself to substantiating general principles (e.g. proportionality, fair, clear and not misleading rule) without singling out specific business propositions or come up with a wording which addresses risks of all business propositions alike.

Q3: Do you believe that further guidance is needed to clarify how firms should assess clients' ability to bear losses?

No, as we believe regulatory supervision should allow firms to come up with different solutions, not impede this process in advance and assess the individual solutions on its merits and on a case by case basis.

Q4: Do you agree with how the guideline on the topic of 'reliability of client information' has been updated to take into account behavioural finance and the development of robo-advice models? Please also state the reasons for your answer.

In general, we agree with the general guideline 4 and supporting guidelines. However, we do have concerns with regard to the statement that "such measures are particularly important in the case of robo-advice, since the risk of overestimation by clients may result higher when they provide information through an automated (or semi-automated) system." Is this statement based on empirical data? If not, we suggest deleting this section or replace it with business model agnostic wording.

Q5: Do you agree with the suggested approach on the topic of 'updating client information'? Please also state the reasons for your answer.

Yes, we agree and have no comments.

Q6: Do you agree with the suggested approach to conduct the suitability assessment for a group of clients, especially where no legal representative is foreseen under applicable national laws? Please also state the reasons for your answer.

Yes, we agree and have no comments.

Q7: Do you agree with the suggested approach on to the arrangements necessary to understand investment products for the purposes of suitability assessment? Please also state the reasons for your answer.

In general, we agree with the general guideline 7 and supporting guidelines. However, we do suggest to mention the legitimacy of the portfolio approach in the section on complexity of products (no. 71) to clarify that less stringent requirements apply if certain complex products are included in a portfolio for diversification and hedging purposes and the portfolio as a whole is suitable for the client (see Final Report on Guidelines on MiFID II product governance requirements of ESMA dated 2 June 2017, page 42).

Q8: Do you agree with the additional guidance provided with regard to the arrangements necessary to ensure the suitability of an investment? Please also state the reasons for your answer.

In general, we agree with the general guideline 7 and supporting guidelines. However, we do suggest to delete the last section on robo-advice (no. 86) due to the following reasons:

- The extent of the information to be collected from clients is already addressed under Guideline 3.
- IT and other security considerations should not be part of this guidance on suitability.
- Marketing considerations should not be part of this guidance on suitability. Also, non robo-advice propositions make use of social and other forms of electronic media in connection with marketing.
- ESMA should consider to either restrict itself to substantiating general principles (e.g. proportionality, fair, clear and not misleading rule) without singling out specific business propositions or come up with a wording which addresses risks of all business propositions alike.

Q9: Do you agree with the suggested approach for ensuring that firms assess, while taking into account costs and complexity, whether equivalent products can meet their clients' profile? Please also state the reasons for your answers.

Yes, we agree and have no comments.

Q10: Do you agree with the suggested approach for conducting a cost-benefit analysis of switching investments in the context of portfolio management or investment advice? Please also state the reasons for your answer.

Yes, we agree and have no comments.

Q11: Do you believe that further guidance would be needed with regard to the skills, knowledge and expertise that should be possessed by staff not directly facing clients, but still involved in other aspects of the suitability assessment? Please also state the reasons for your answer.

No, as we believe regulatory supervision should allow firms to come up with different solutions, not impede this process in advance and assess the individual solutions on its merits and on a case by case basis.

Q12: Do you have any further comment or input on the draft guidelines?

No further comments.

Q13: What level of resources (financial and other) would be required to implement and comply with the Guidelines (market researches, organisational, IT costs, training costs, staff costs, etc., differentiated between one off and ongoing costs)? When answering this question, please also provide information about the size, internal organisation and the nature, scale and complexity of the activities of your institution, where relevant.

We cannot assess the impact of this Guidance on its own. Rather we see it as part of the extensive MiFID II documentation. Against this background, we would like to highlight that while the finalised guidance (which in turn needs to be implemented by national authorities) is not to be expected before Q1 2018, MiFID II regulations comes into effect on 3 January 2018. This approach adds to the already significant insecurity of the industry as to the specific contents of this major regulatory overhaul.

That being said, we consider the resources for the regulatory gap analyses and implementation of any action required to be substantial. Our group consists of a holding company and two financial service institutions (in Germany and UK) which provide ruled-based investment management services using exclusively ETFs and together currently manage approx. EUR 350m. All in all, we assume that we will spend approximately EUR 200,000 both in internal (working hours) and external resources (advisors, legal counsel and other service providers) to implement MiFID II (on top of other costs incurred for fulfilment of costs pertaining to fulfillment of regulatory requirements).