European Securities and Markets Authority
CS 60747
103 rue de Grenelle
75345 Paris Cedex 07, France

July the 31st, 2014

Response to the Consultation Paper / MIFID II (ESMA/2014/549)

Dear Madams, dear Sirs,

DNCA FINANCE would like to thank the European Security and Market Authority for giving it the opportunity to answer such important matters.

For the record, DNCA FINANCE is a French management company, launched in 2000, with 15 billion euros of assets under management, mainly under the UCITS form.

We would like to emphasize that our success comes mainly from the quality of our asset management, as well as the richness of the relationships we have developed with our distributors, being our main links with our customers.

We conclude that under these propositions, their economic viability is in danger. This will in turn have the consequence of creating a poorer offer of financial products to our final customers.

We strongly believe that everything must be done in order to prevent a concentration of the financial markets between very few hands. Some of these proposals will clearly bring about such a result.

Would you please find, attached, our responses to some of your questions (those in particular under points 2.7, 2.14 and 2.15).

We sincerely hope that you will help in maintaining an open architecture for the benefit of all investors.

Sincerely yours.

Joseph CHATEL
President
&
Philippe DE VECCHI
Secretary General

2. Investor Protection

2.7 “Product Governance” p.39

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

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

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

- On “Distribution”: MIFID refers only to a list of investment services.

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

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

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

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?

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

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?

No.

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

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)?

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

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

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

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

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

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

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)?

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

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

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

No. And we fear that new layers of rules would blur even more the respective responsibilities.
The risk of confusion is on the client's side with a high likelihood of the client being sent back and forth between manufacturer and distributor in case of issues.

First, as a general comment, rather than detailing in a specific regulation such as MIFID II the rules that should prevail in manufacturer / distributor relationship, it would seem more adequate to refer to the PRIIPs/UCITS/AIFM Directives.
This approach would avoid any discrepancies between the PRIIPs/UCITS/AIFM Directives and the MIFID II regulation.
From an operational point of view, this would facilitate the implementation by management companies of their various duties towards their clients.
On a more specific approach, we believe that there is a risk of confusion between the responsibilities of manufacturers and distributors.
We disagree with the following detailed requirements:

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

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

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

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

- DTA.9.(page 47): Investment firms should undertake a <u>scenario analysis of their products</u>, with particular tests on "poor investor outcome" scenario and its causes;
  ESMA should clarify what kind of products it has in mind for this specific requirement, as it doesn't cover products ruled by UCITS/AIF and PRIIPs regulation

- DTA.11 (page 47): Investment firms should ensure that information given to distributors is of an "adequate standard", i.e. includes information about the "appropriate channel for the product, the product approval process and the target market assessment".
  "…appropriate channel for the product..": it could be a recommendation from manufacturers, not a mandatory indication for the distributors. Distributors should remain in charge of the distribution.
  "…the product approval process…": what does ESMA means? It certainly cannot be the minutes of the meetings leading to the approval of the product; this is internal and confidential information of the manufacturer. Manufacturers do of course communicate all regulatory information about the product (Directive UCITS IV).

- DTA.12.13.14.15 (page 48): Manufacturers should review their products on a regular basis:
  - Identifying crucial events that may affect risk or return of the product (14)
  - Taking appropriate actions when such events occur (15**)**

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

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

  There is some inconsistency in the existing and proposed rules. A list of "not compatible" clients is useless. Some riskier products might be added to a client's portfolio to diversify the overall investment portfolio, although this client has a low risk profile.

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

  French distributors already have the obligation to communicate their promotional material to the manufacturers for validation.
  The relevance of passing sales information to the manufacturers should be left to the agreement of the parties concerned. (see our answer to Q.16)

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

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

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.

No

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

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

We can anticipate that the requirements would have cost impact on many business units such as:
- Information system
- Organization of the Controls of 1st and 2nd level
- Reporting
- Client service
- Legal service

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

2.14. “Information to clients on costs and charges” p.99

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?

No.

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

We believe that information to professional clients should remain tailored to their specific needs. Information as well as investment services provided to professional clients are mostly based on bilateral agreements, with costs and charges being an important part of each agreement.
It is of course always possible for a professional client to opt for a non-professional categorization and therefore to receive retail type information.

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

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

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

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

-where providing portfolio management and investment advice services, ESMA writes in .56 p. 112: “ with regard to information provided about the costs related to the investment and/or ancillary services, the investment firm should provide personalised/tailored information of the costs that the client will incur “.
We believe it is more appropriate to deliver costs and charges information on a generic basis rather than on actually incurred costs. The reason is that these two investment services have tailor-made fees depending on the specific financial instruments/portfolio recommended to the client needs and cannot rely on past or current costs.
Moreover, contingent costs related to transactions are only known on ex-post, are ~~also~~ subject to misleading estimation when given on ex-ante basis and shouldn’t be included in the scope.

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

Yes, under conditions.

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

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

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

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

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.

In order to facilitate the reading of our answer, we have recalled below the detailed costs and charges listed by ESMA.

Costs charged for investment services: portfolio management, investment advice, execution, reception/transmission...

Costs and associated charges charged for the investment service(s)	
Cost items to be disclosed	**Examples**
One-off charges related to the provision of an investment service	Deposit fee, termination fee and switching costs.
On-going related to the provision of an investment service charge	Management fee, advisory fee, custodian fee.
All costs related to transactions initiated in the course of the provision of an investment service	Broker commissions, entry- and exit charges paid to the fund manager, platform fees, marks up embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
Any charges that are related to ancillary services	Research costs. Custody costs.

Costs and associated charges related to the financial instrument	
Cost items to be disclosed	**Examples**
One-off charges	Front-loaded management fee, structuring fee, distribution fee
On-going charges	Management fee, performance fee, service costs, swap fee, securities lending costs and taxes, financing costs.
All costs related to the transactions	Broker commissions, entry- and exit charges paid by the fund, marks up embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.

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

Moreover, this "transaction cost" disclosure, difficult and costly to achieve, is not consistent with the requirements on the KID/KIID; this disclosure would be an additional requirement above the KID/KIID level and would create an unlevel-playing field between investment services and UCITS/IAF funds.

Lastly, we doubt that the retail investor is in a position to fully appreciate detailed transaction costs.

b. As to **research costs**, it would not be possible to itemise them on a specific investment service or specific portfolio, since research includes macroeconomic studies, country or sectorial analysis that are used on a global basis by the investment firm.

The disclosure of too many technical costs would lead the client into perplexity and discomfort. Performance should be the ultimate judge on the quality of the investment service.
Lastly, and very importantly, the transaction costs are already covered in the **"Best execution"** rules of MIFID.

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

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

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

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

d. **Disclosure on ex-ante basis on real amounts:** It would be very difficult or impossible to disclose ex-ante costs based on real amount when it comes to portfolio management service.
The reason lies with the fact that costs are linked to variable data not known at the point of sale such as market conditions, all types of financial instrument that will be used, size of the investment, turn-over of the portfolio, etc...

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

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.

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

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

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

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

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

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

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

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

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

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

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

But calculating cumulative returns on an ex-ante basis needs to rely on market scenarios. There is no common market practice in drawing market scenarios. We would recommend to clearly stating the basis of those scenarios in order to avoid discrepancies on the methodology used by practitioners. Indeed, in the absence of precise criteria to ascertain future scenarios, information provided to clients will in fact be misleading.

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

Display of cumulative costs (whatever their accuracy) would deter clients from investing in long-term products, even though these long-term products are the most suitable investments for them.
It is worth reminding that ESMA's KIID consultation 09/949 concluded that cumulative costs in EUR value where seen by clients as being of little additional value and where hence dropped from the KIID.

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

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

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

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

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

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

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

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

2.15. "The legitimacy of inducements paid to/by a third person" p.118

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.

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

1. **It goes beyond MIFID II level 1**
2. **Research is used for the best interest of clients**
3. **ESMA should clarify how to distinguish "personalized research" and "tailored and bespoke research"**
4. **The impact on market has not been fully assessed**
5. **Our proposal**

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

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

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

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

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

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

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

   We believe the interests of the end-investors are best served by the ability of all asset managers to access a wide variety of research and differentiated points of view. If asset managers are forced to reduce their sources of research or are drastically limited in their selection of research providers, it could translate into poorer results for the very clients ESMA is seeking to protect.

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

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

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

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

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

For example, asset managers specializing in specific instruments –such as high-yield bonds, asset-backed securities, small and mid-cap equities, private equity, securitization, SRI approach,…-do rely on specific financial researches that are not always widely distributed and that could be tailor-made to specific products. They do contribute to the investment management decision and to the performance delivered to clients.
It is not clear whether, according to ESMA, it should be considered minor or non-minor non-monetary benefits.
It is not clear either why ESMA considers "tailored or bespoke" research against clients' best interests.

Lastly, having to distinguish between different kinds of research material would be a difficult and risky enterprise, especially where it is provided by the same provider.
We suggest other solutions in .5 below.

4. The impact on market has not been fully assessed

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

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

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

Only large investment firms would be in a position to afford it while smaller actors would need to cut down their research unless they can reflect its costs to their clients through higher management fees.

> It would create higher barriers to entry. Smaller asset managers would be disadvantaged as they are less able to defray the fixed costs of both external and internal research compared to larger competitors. Their access to research may also be curtailed.

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

> Research coverage of small and mid cap European names would come under pressure. This would make raising capital more difficult and reduce trading liquidity; hampering both economic growth and investor returns.

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

The cost of research would increase. The internalization of research across many asset managers will cause duplicated efforts compared to the economies of scale provided by the sellside. In addition, unbundled research would likely attract VAT which may not be recoverable by asset managers.

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

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

Moreover, non-European investment firms still benefiting from an abundant research material would have a competitive advantage over European actors and their European subsidiaries would be able to benefit from it through in-house channels.
ESMA would create a distortion of competition in favor of Non-EU investment firms not subject to these rules.

c. The volume and scope of research provision would shrink. Provision of research by independent research houses -- which are unable to cross-subsidize the cost of research with other business activities -- is likely to fall.

5. Our proposal

We propose that research remains exclusively and rightly ruled by the **"Conflicts of Interests"**, which provides investors full transparency and protection against conflicts of interests.
In addition, some countries have gone further in tightening these rules by implementing **commission sharing agreements (CSA)**, under which cost of research and cost of execution can be split to ensure that each provider is remunerated at the level it should be.

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

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

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

As an illustration of transparency provided by current regulation on CSA in France, French asset managers have currently to publish a **"Report on Intermediation Fees"**. (RG AMF 314-82)
The Report gives full transparency on the intermediation fees related to "order reception, transmission and execution services" on the one hand and intermediation fees related to "Investment decision aid and order execution services" on the other hand.
The report also gives an account of the measures implemented to prevent or deal with any potential conflicts of interest in the selection of service providers.
Such Report could be more detailed if need be in order to increase transparency and protection towards Investors in the use of transaction fees.
It's also worth mentioning the **"Best selection" rules** included in the AMF regulation (RG AMF 314-75): investment firm must establish a detailed process for selecting their brokers, they must publicly disclose this process to the clients and finally they must regularly assess and review their selection.
We think ESMA should consider favorably all these current regulations that ensure that research is distributed and financed in a fair and transparent way.

Question 80 : 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?

No.
<u>Preliminary</u>
Scope of investment services contemplated in the answer: non-independent investment advice.

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

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

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

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

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

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

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

Question 81: Do you agree with the non-exhaustive list of circumstances and situations that NCA should consider in determining when the quality enhancement test is not met? Should any other circumstances and/or situations be included on the list? If so, please explain.

No.

We do not fully agree with the list of circumstances and situations that NCAs should consider when determining whether a quality enhancement test is not met.
**NDLA : le principe d'une liste "négative" est déjà actée dans le niveau 1; revenir là-dessus dès la première phrase risque de se faire détourner l'ESMA du reste de la réponse.*

The major concern is that the spirit of MIFID II Level 1 would not be respected. The list of criteria for determining what is not a service enhancement ends up in an excessive narrowing of service enhancement possibilities.

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

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

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

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

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

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

2. **10.ii :** *ESMA writes* that quality enhancement test is not met when *" it does not provide for an additional or higher quality service above the regulatory requirements provided to the end user client".*
   This condition could only apply where the regulatory requirements are of appropriate nature and scale.
   We have noticed in the consultation paper that regulatory requirements have been significantly increased in the fields of

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

We therefore suggest that some of the regulatory enhancement suggested by MIFIF II level 1 and in ESMA' draft technical advice be left to the consent of the parties and, as a result, be considered as a service enhancement and that <u>regulatory requirements remain at a reachable level for all investment firms</u>. See our suggestions below in 3.
Besides regulatory requirements may vary over time and space. Referring to "regulatory requirements" is not a clear, explicit and stable reference where, to the contrary, giving an explicit definition with positive criteria would be more helpful for assessing additional or higher quality services.

3. *We agree with .11 of the draft technical advice (page 124)*
.11: *ESMA writes "...it should be understood that a fee, commission or non -monetary benefit could be considered acceptable if it enables the client to receive access to a wider range of suitable financial instruments or the provision of non-independent advice on an on-going basis"*

We agree with these two criteria:

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

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

4. <u>We would like to propose more examples of service enhancement that could be offered to the client:</u>

- **Giving a periodic suitability assessment**, at least annually, in line with the position of AMF 2013-10, should be a service enhancement where ESMA seems to consider it as a regulatory service in 2.17 Suitability, draft technical advice .3, page 134.

- **Giving an annual aggregate report on costs and charges**. Along with chapter 2.14 on Costs and Charges, Q/A. 73, we believe that providing a recapitulative report on costs and charges where there is a continuous investment advice relationship should be a service enhancement and not a regulatory requirement as ESMA mentions it page 105. §31.32.33.iii.

- **Giving a personalised report on costs and charges** when it is technically possible. Along with chapter 2.14 on Costs and Charges, Q/A. 74, we believe that providing a personalised report on costs and charges is a service enhancement and not should be a regulatory service as requested by ESMA.

- **Alerting the client on specific thresholds (% of gain or loss) agreed with client**. Along with chapter 2.20 Reporting to Clients, we think that special alerts agreed with clients should be a service enhancement and not a regulatory service as requested by ESMA.

5. In order to better articulate .10 and .11 we suggest that

- 10 (i) and 10 (ii) be suppressed and 10 (iii) and 10(iv) kept
- 11 be developed with more examples of positive criteria in a non-exhaustive list that would help investment firms to better comply with the principle of service enhancement.

Conclusion

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

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

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

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

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